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Y CHOONCEIL SLATTYSSAGH

PROCEEDINGS

DAALTYN

HANSARD

Douglas, Tuesday, 26th June 2018

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Present:

The President of Tynwald (Hon. S C Rodan)

The Lord Bishop of Sodor and Man (The Rt Rev. P A Eagles),
The Attorney General (Mr J L M Quinn QC),
Miss T M August-Hanson, Mr D C Cretney, Mr T M Crookall, Mr R W Henderson,
Mrs M M Hendy, Mrs K A Lord-Brennan, Mrs J P Poole-Wilson and Mrs K Sharpe
with Mrs J Corkish, Third Clerk.

Business transacted

Legislative Council

The Council met at 10.30 a.m.

[MR PRESIDENT *in the Chair*]

The President: Moghrey mie, Good morning, Hon. Members.

Members: Moghrey mie, Mr President.

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

PRAYERS
The Lord Bishop

Procedural

The President: Hon. Members, on what might well be quite a warm day, I have no objection if Members wish to remove jackets.

Mr Henderson: Gura mie eu, Eaghtyrane.

The President: We have fans on standby. Similarly, if anyone in the Public Gallery wishes to drink water there is absolutely no problem with that today.

Mr Henderson: Eaghtyrane, could I just ask on that note, is our air circulating system working?

The President: It is, believe it or not, *(Laughter)* but we will put the fans on later.

Order of the Day

1. Abortion Reform Bill 2018 –
Clauses considered

Mr Henderson to move.

The President: Hon. Members, we begin with the clauses stage of the Abortion Bill 2018.

Before we start there is a corrected amendment, number 12, to be circulated. In your concatenated list there is a typo and there are three words missing from amendment 12 on page 6 of your Order Paper. The Clerk will just circulate the corrected amendment and we will deal with that when we come to amendment 12.

Hon. Members, there are a considerable number of amendments and when we come to each clause I will explain how they are to be grouped and voted upon. Many of them do lend themselves to be voted on in groups, which will become obvious as we proceed.

So with that, Hon. Members, I call on the mover, Mr Henderson. Clause 1.

Mr Henderson: Gura mie eu, Eaghtyrane.

Clause 1 gives the Act resulting from this Bill its short title.

I beg to move, sir.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: I beg to second and reserve my remarks.

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

Clause 2.

Mr Henderson: Gura mie eu, Eaghtyrane.

Clause 2 provides that the resulting Act comes into operation on the day or days appointed by order made by the Council of Ministers. It puts that order to contain such transitional incidental and transitory provisions as may be considered appropriate.

Eaghtyrane, I beg to move.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: I beg to second and reserve my remarks.

The President: Now, Mrs Lord-Brennan, amendment.

Mrs Lord-Brennan: Thank you, Mr President.

I am tabling an amendment that would substitute 'Council of Ministers' for the 'Department' as defined as Department of Health and Social Care at 2(1) and 2(2), and do so with the support of the Minister for the Department of Health and Social Care as well as the mover and the mover in this place too.

Clause 2 does deal with the commencement of the Act and related orders. To explain my thinking: the Bill is a Private Member's Bill and relies on being brought into operation by DHSC and at this stage it seems sensible to me to have DHSC explicitly stated up front in the introductory part of the Bill instead of Council of Ministers, as it is the Department which will have to ultimately take ownership of power once the provisions of the Act are rolled out and the detail and timings of that.

I think really all it does is just put the Department of Health squarely at the forefront of this Bill, and with that I beg to move.

Amendment 1:
Page 9, lines 9 and 10 for 'Council of Ministers' substitute 'Department'.

Amendment 2:
Page 9, line 13 for 'Council of Ministers' substitute 'Department'.

The President: Mr Cretney.

Mr Cretney: I beg to second.

The President: Hon. Members, clause 2. I put first the amendments numbered 1 and 2 in the name of Mrs Lord-Brennan. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 2, as amended then, those in favour, say aye; against, no. The ayes have it. The ayes have it.

Now, clause 3 will not be moved until the end of the clauses stage.

Mr Henderson: After 27, sir.

The President: After clause 27.

So, with that, we will deal with clause 4, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

Clause 4 specifies the woman to whom abortion services may be provided. Normally these will be woman ordinarily resident on the Island although the Bill recognises that an emergency abortion may be provided in circumstances analogous to those which arose in a 1939 case and has been recognised since. Also, such a provision is necessary in order to meet the Island's obligations under Article 2 of the European Convention on Human Rights.

Eaghtyrane, I beg to move.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: I beg to second and reserve my remarks.

The President: Miss August-Hanson.

Miss August-Hanson: It is an amendment to have page 11, line 5, for 'their provision' to be substituted for 'the provision of those services'. I just thought it was slightly clearer.

Amendment 13:
Page 11, line 5 for 'their provision' substitute 'the provision of those services'.

The President: Mr Cretney.

Mr Cretney: Yes, I will second that.

The President: Mr Henderson.

Mr Henderson: I am content, Eaghtyrane.

The President: You are content.

Clause 4, I put the amendment in the name of Miss August-Hanson numbered 13. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 4 as amended, those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 5, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

Clause 5 specifies where abortion services may be provided. Except where the services consist of advice about abortion, or of medicinal products to procure an abortion in the first trimester of pregnancy, they must be provided in an NHS hospital maintained by the Department or premises approved by it.

Eaghtyrane, I beg to move.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: I beg to second and reserve my remarks.

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

We turn to clause 6, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

Clause 6 specifies the conditions which must be satisfied before an abortion may take place, and in doing so subsection (2) allows for abortion on request of the pregnant woman up to 14 weeks gestation.

Subsection (3) allows the provision of an abortion from the beginning of the 15th week and ending at the end of the 23rd week of the gestation period.

Subsection (8) details the exceptional reasons for a late termination.

Subsection (9) places a duty on the Department to provide appropriate counselling and support to a pregnant woman seeking a termination.

Subsection (10) specifies before abortion services are provided the pregnant woman must be offered counselling.

Subsection (11) specifies that the assessment of the pregnant woman's health must take into account her actual or reasonably foreseeable environment, and subsections (12) to (14) specify who can provide counselling, the guidance to be issued by the Department and that it be balanced, impartial and non-judgmental.

Eaghtyrane, I beg to move.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: I beg to second and reserve my remarks.

The President: I call on the Lord Bishop.

The Lord Bishop: Thank you, Mr President.

Mr President, the case for a 12-week time limit as opposed to the 14 weeks specified in clause 6(2) was made in the House of Keys and I revisit it now because it seems to me so foundational to this Bill as to be requiring of at least consideration by the Council. Also, because I believe that aspects of the debate in the other place were not entirely clear in their representation.

So in what I say now, I address those amendments to clause 6 that I have tabled where I am looking to substitute 12 for 14. And, if nothing else, I would like to put on the record where I believe there was a lack of clarity in representation.

So at clauses stage in the other place, when Mr Robertshaw suggested a 12-week limit, he received a response that there is no sense of unanimity about time limits in Europe and the mover of the Bill in the Keys said that it is correct:

> … that it is 12 weeks in France, Germany and the Czech Republic; but it is 13 weeks in Austria, 14 weeks in Spain and 18 weeks in Sweden.

So continued Dr Allinson:

> … there is a wide disparity of how we provide abortion services for these early pregnancies.

The clear implication of that is that there is a significant diversity of approach between countries and that therefore 12, 13, 14 or 18 weeks might in some sense be interchangeable, but I would

invite us to recognise that whilst not all countries have that 12-week limit, most of them do. The most common limit is 12 weeks.

So the question for me and for Council is, given that that has been selected by so many jurisdictions why do we identify a case for 14 weeks rather than 12? I note also that the 12-week delineation is the limit that is likely to be adopted by Ireland.

The second difficulty that I would have with this, I think, relates to the logic of setting a 14-week limit. And again I reflect back to the debate in the House of Keys on 6th March, where the mover said:

> … imagine you are a woman on the pill having regular periods and suddenly feel sick, you do a pregnancy test and find out this is positive: you might be 10 weeks, you might be 11 weeks, you are not quite sure. The clock is now ticking and the person has to access abortion services very quickly without the time to actually consider what is right for her.

And Dr Allinson said something similar to us on 12th June at our own Second Reading here. He noted that what the 14-week limit does is to give that scope between 10 and 12 weeks if there is a variation with the dating scan, if there is doubt as to the accuracy of the dating scan. It gives that leeway for clinicians to offer services to women and that leeway he said is important. But I would suggest that both of those statements lead us not to identify any kind of limit and if we set the limit now, as this Bill proposes, at 14 weeks, exactly the same concern applies – we could say that if you discover you are pregnant at 12 or 13 weeks you are not sure, the clock is ticking and there is no logical argument for choosing that 14-week limit.

But, more importantly, I think, the same argument applies in reverse. We may recall what Prof. Wyatt said to us here on the 12th June. He said:

> … a foetus who is said to be 13 weeks could in fact be 15 weeks, and what the implications would be of delivery under unsupervised circumstances, the risks of failure of the abortion process, the risks of haemorrhage and bleeding; and also the psychological consequences, for instance, of delivering a foetus into a toilet bowl – a recognisable child – at home, and what kind of implications of social support [there would be for that]

Mr President, I do not see a logically credible argument for a stable 14-week limit and I would suggest the fact that 12 weeks marks the end of the first trimester, as used by far more jurisdictions than in any other, and the way in which the argument for a 14-week limit can in any event be used in reverse persuades me that we should err on the side of caution.

We can recall, in any case, that in making a case for a 12-week limit, abortion will not cease to be available in the Isle of Man after that, which is the case in some European countries. This Bill would provide for abortion after the 12th week as we know, if certain criteria are met. But the message we would be giving is that ideally if a woman wishes for an abortion that should be sought within the first trimester. And I believe that that is a message that it is important for us to endorse, based on that weight of international practice that I have identified.

In summary, Mr President, I see no need, I see no requirement, I see no benefit for a 14-week delineation of that first trimester. Indeed, I see it as an unnecessary step and for us to set it would be anomalous, 12 weeks is acknowledged internationally as the delineating point at which the first trimester ends and I commend to Council that 12 weeks should be our normative point also.

Mr President, I beg to move.

Amendment 14:
Page 11, line 23 for '14' substitute '12'.

Amendment 16:
Page 11, line 25 for '15th' substitute '13th'.

The President: I call on Her Majesty's Attorney General.

The Attorney General: Thank you, Mr President.

I wish to address amendments proposed with reference to clause 6. If I could briefly explain that the definition of 'woman' in clause 3, which we will come to consider later, actually makes reference to a 'woman':

means a person of any age who is pregnant.

So in clause 6 where there is continuous reference to 'a pregnant woman' I am proposing that the word 'pregnant' be deleted or omitted from the provisions of clause 6. And that deals with the proposed amendments at 15, 18, 19, 21, 22 and 26; 29, 30 and 31 on the concatenated list of amendments.

And I so move, Mr President.

Amendment 15:
Page 11, line 24 omit 'pregnant'.

Amendment 18:
Page 11, line 27 omit 'pregnant'.

Amendment 19:
Page 11, line 32 omit 'pregnant'.

Amendment 21:
Page 12, line 1 omit 'pregnant'.

Amendment 22:
Page 12, line 3 omit 'pregnant'.

Amendment 26:
Page 12, line 6 omit 'pregnant'.

Amendment 29:
Page 12, line 23 omit 'pregnant'.

Amendment 30:
Page 12, line 27 omit 'pregnant'.

Amendment 31:
Page 13, line 4 omit 'pregnant'.

The President: Mr Cretney.

Mr Cretney: I second.

The President: Thank you.

The position is that amendments 14 and 16 have been moved but not as yet seconded; 15, 18, 19, 21, 22, 26, 29, 30 and 31 have been moved and seconded.

Lord Bishop, there are other amendments in your name to clause 6.

The Lord Bishop: Thank you, Mr President

I address now amendments 17 and 24.

Mr President, in moving these amendments that the limit for abortion be reduced from 24 to 22 weeks, I am again moving amendments that were debated by the House of Keys, and I do so

because the case for this change was refuted on the basis of evidence that needs to be reconsidered in light of more recent research.

Dr Allinson spoke against an amendment to move from 24 to 22 weeks stating that:

> decisions on this … should be based on medical evidence of viability and not political pressure from religious from religious or ethnically driven interest groups.

And clearly I would have no argument with that at all.

Dr Allinson went on to quote from the EPICure studies, and Hon. Members will recall that these are population-based studies of survival and later health status in extremely premature infants. And he said that:

> The current medical advice from the EPICure study showed that at 22 weeks only 0.4% of children surviving from the onset of labour leave hospital without disability – 0.4%. That rises to 8% at 23 weeks, 22% at 24 weeks and 43% at 25 weeks.

But I would suggest that there are several difficulties with that. First, those figures are not current, they relate to 2006 which was over 12 years ago and things have moved on significantly since then.

Second, a few figures are selected from a large study and they give a misleading impression. The same study showed that of babies surviving at 22 weeks a third were described as having no disability and of those surviving at 23 weeks over 50% had no disability. I would also add that those figures quoted to us reflect the experience of all hospitals across the UK, not the experience of leading centres in early baby care of which Liverpool, where babies from the Isle of Man would be treated, is one. So one would reasonably expect that there would be an even higher figure still in that regard.

Dr Allinson continued to say that:

> Between 1995 and 2006, the number of babies being admitted for care between 22 and 25 weeks has risen by 44% due to advances in prenatal diagnosis and prenatal treatment. Survival has improved from 40% to 53% for those born between 24 and 25 weeks, although survival of babies born before 23 weeks remains very rare.

And that does acknowledge improvement of course, but the data is still 12 years old and is based on the average response across all hospitals and not the experience of leading centres of baby care medicine like Liverpool.

He then goes on to say that:

> Despite these improvements in the number of babies leaving a neonatal unit, the ones that actually survive without abnormalities of the brain, lungs, bowel or eye problems are very similar to 1995. Whilst modern technology is providing the ability for those very premature babies from 24 weeks onwards to survive, it is not without a cost and for those babies born under 24 weeks, the survival rates are very low and the disability rates are extremely high.

That was what the mover of the Bill said, but that is not an accurate reflection of the 2006 EPICure study which shows that of babies admitted for intensive care over a quarter of those born at 23 weeks survived and of those who survived only 50% had no disability at all.

Another comment that was made in the House of Keys was that whilst modern technology is providing the ability for those very premature babies from 24 weeks onwards to survive, it is not without a cost, and for those born under 24 weeks survival rates are low and disability rates are high.

But we recall again perhaps what Prof. Wyatt said to us here on 12th June, that:

> … the survival of babies at 23 weeks is over 50%, and the majority of those will survive without severe disability, and survival at 22 weeks is certainly recognised and relatively common.

And in a study undertaken by Prof. Wyatt at University College Hospital, London and published in an international scientific journal, survival between 1996 and 2000 at both 22 and 23 weeks was approximately 50% and survival has continued to improve at major centres over the last decade.

I believe that had the House of Keys been presented with current data they may have come to a different decision and I would like to give Council the opportunity to reconsider and indeed perhaps to ask the House of Keys to reconsider.

If we are to lead in modern abortion law by removing the practice of abortion from the criminal law, then it makes no sense to turn our backs on current medical data. And we need to have regard for data about viability that was not available in 1990 when the UK parliament last changed the law.

Dr Allinson, I recall, sought to strengthen his case for keeping the limit at 24 weeks by saying that Nadine Dorries MP had unsuccessfully sought to reduce the number of weeks for abortion in the Westminster Parliament in 2012. Now, that is not quite correct. Ms Dorries did table amendments to the Human Fertilisation and Embryology Bill in May 2008 to reduce the number of weeks during which it would be possible to abort down from 24 weeks to 20. She was unsuccessful in her attempts then, but today the Isle of Man is being asked to assess the viability data, not as it was 10 years ago in 2008, any more than it was in 1990, but as it is today in 2018.

So I go back to Dr Allinson's comment that decisions on this should be based on medical evidence of viability. I agree entirely with that and on the basis of the latest evidence in that field I submit that it is not defensible in 2018 to sustain an upper limit of 24 weeks any more than it would have been in 1990 to sustain an upper limit of 28 weeks. The level of viability is such now, that I would suggest we should vote to reduce the upper limit to 22 weeks.

Mr President, I beg to move.

Amendment 17:
Page 11, line 26 for '23rd' substitute '21st'.

Amendment 24:
Page 12, line 5 for '24th' substitute '22nd'.

The President: The Lord Bishop has moved amendments numbered 17 and 24 which have the effect of reducing from 24 weeks to 22 weeks, as stated in the Bill.

At this stage, I ask is there a seconder to that?

In that case, I call on the learned Attorney General.

The Attorney General: Thank you, Mr President.

I talk briefly to the amendment at Item 20 which deals with clause 6, subsection (5) and the proposal to substitute the words *'in utero'* with the words 'in the womb'.

The explanation for this is just simply to make it clearer as to what this refers to. And I so move.

Amendment 20:
Page 11, line 33 for 'in utero' substitute 'in the womb'.

Mr Crookall: I beg to second, Mr President.

The President: Thank you, Mr Crookall.

The President: Lord Bishop.

The Lord Bishop: Thank you, Mr President.

I now move the amendment in my name which is at amendment 23. This has to do with serious social grounds and I recall how during the debate in the House of Keys there was discussion about clause 6(7) – indeed, there was significant discussion about clause 6(7), which would allow abortion

on what the Bill says are 'serious social grounds' between that period of after 14 weeks and before 24 weeks.

It says:

> This subsection applies if, according to the pregnant woman, there are serious social grounds justifying the termination of the pregnancy.

This clause has gone through some evolution and there were definitions of what it might cover in the consultation, which were removed in fact when the Bill was published; and at a late stage in the Keys, a definition of 'serious social grounds' was added in clause 3, namely:

> … circumstances or conditions affecting the woman which are long-term and will have, or can reasonably be expected to have, a significant, adverse and enduring impact on her health;

I have to say I would be interested to hear from the Bill's sponsor what those might be. But my reason for bringing my amendment forward today is to resolve what some clinicians have highlighted to me as a potential conflict in this clause. All of the conditions in 6(4) to 6(7) that allow for an abortion after 14 weeks and before 24 weeks are met only if the registered medical practitioner attending the woman is of the opinion formed in good faith that the conditions apply. They are, by very definition, conditional as opposed to on request in the first trimester.

On 13th February, Dr Allinson said about clause 6(7) that the function of this was purely about choice:

> to give women the choice to request the termination when they were in an impossible situation

And that has been interpreted by a Senior Judge in a letter of 22nd February to the House of Keys after giving expert evidence:

> … in practice if "serious social ground" is supposed to provide a means whereby a woman can get an abortion simply if this is her choice, it means that … the practical effect [of the Bill] will be far more radical in allowing abortion on request up till 24 weeks.

And on 6th March when amendments on clause 6(7) were debated, Dr Allinson said the clause is about:

> … not enforcing her to become a mother against her choice. That is why the social clause has been left in …

But he also said:

> … no, I do not want abortion on demand up to 24 weeks, that was not the intention of this Bill.

And, he said:

> There is nothing in this saying she has the right to an abortion. She has the right to request, but not the automatic right for an abortion. … this is about health care.

And at the same time the mover has been adamant that abortion is a decision for the pregnant woman.

He continued:

> What we are doing and what we are proposing by having one signatory on abortion documentation is not to put the power in a single doctor; it is to give the autonomy to that woman. … at the end of the day, surely that is a decision for the pregnant woman.

So I remain uncertain about the intention of clause 6(7) and about what the role of the medical practitioner in clause 6(3) really is. And I recall how at the Third Reading in the other place, Mrs Beecroft expressed the same concern stating:

It does not say 'according to the woman and with the agreement of the medical professional involved'. If it did, that would be a different matter, but it is not clear; it is just her.

So I am troubled by that. Also, I am troubled that doctors have contacted me to me to say they are concerned about the lack of clarity regarding their role, and of what happens quite simply in the event that the woman believes that she faces serious social grounds and the doctor does not believe she does. We might suggest on the basis of clause 6(3) that that has to be the decision of the doctor, but what are we asking that doctor to decide? Are we asking the doctor to agree that it is the view of the woman that she believes there are serious social grounds, or are we asking the doctor to agree that there are serious social grounds with all the implications of making that judgment? Those, it seems to me, are two different propositions and the distinction between them is not clear.

So my amendment, which is now amendment 23, addresses that concern about the lack of clarity surrounding 6(3) and the potential for conflict to undermine the efficacy of the provision. It addresses the concern by requiring that there must be active agreement between the doctor and the woman that there are serious social grounds that warrant an abortion, and I hope that that would lead to discussion about all the circumstances she is in and about whether solutions to what Dr Allinson described as 'a woman in crisis' can be found.

Mr President, I believe that in addressing the scope for considerable confusion in the current drafting, amendment 23 is of vital importance.

I beg to move.

Amendment 23:
Page 12, line 3 after 'woman' insert 'and the registered medical practitioner attending her'.

The President: Amendment number 23 having been moved, I ask if there is a seconder?

In that case, the learned Attorney General.

The Attorney General: Yes, thank you, Mr President.

I speak to amendment 25 which relates to Page 12, line 6 and a simple amendment to substitute the words 'the request' with the word 'request' which I consider better clarifies the position. And I so move.

Amendment 25:
Page 12, line 6 for 'the request' substitute 'request'.

The President: Mr Cretney.

Mr Cretney: I second.

The President: Lord Bishop.

The Lord Bishop: Thank you, Mr President.

I now move amendment 27 which refers to page 12 and asks that we omit lines 19 and 20.

Mr President, I am very pleased to move this amendment which would remove clause 6(8)(d)(ii) from the Bill. As the law currently stands as defined by the 1995 Act, it is legal to terminate from 24 weeks to full term when the unborn has what is described as a 'fatal foetal abnormality' such as they are deemed incompatible with life – that means that they have something fatally wrong with them and that they are unlikely either to survive birth, or are likely to die soon afterwards. And I am not proposing to change the law in that regard. But the Bill before us today maintains provision for termination in the case of fatal foetal abnormality in clause 6(8)(d)(i), but it also introduces an entirely new provision in clause 6(8)(d)(ii). This proposes allowing abortions to be permitted from 24

weeks right up to birth in cases of disability. What the Bill refers to as 'a serious impairment' which would 'limit both the length and quality of the child's life'.

When challenged on this point in the other place, Dr Allinson made two key points. First, he argued that the Isle of Man Law needs to be brought up to date with that of Britain, referring to the 1990 innovation for allowing abortion on the basis of disability in Great Britain from 24 weeks to term. I believe, and for reasons that I will set out, that to bring ourselves up to date with a nearly 30 -year-old innovation would in fact be a retrogressive step. And second, Dr Allinson highlighted the fact that clause 6(9) requires the provision of counselling for women seeking a termination under this Act and that clause 6(14)(d) requires that guidelines issued under subsection (12) must be framed so as to secure that:

> … there is available to a pregnant woman information in writing from support groups and other organisations representing people with disabilities.

I welcome the provision of information from such organisations for women who discover that the child they are carrying has a disability, but this in no sense justifies the termination of children from 14 weeks onwards just because they are disabled.

Mr President, if we vote for the Bill before us today without this amendment we will be sanctioning the abortion of babies after 24 weeks, right up to birth, a timeframe when the baby is viable and sentient. And it no longer makes sense to talk impersonally of a foetus. We will be sanctioning the abortion of such babies from 24 weeks up to birth simply because they have a disability. I would submit that it is not possible to sanction such termination during that period when the baby is viable outside the womb, unless one is content to send the message that the lives of babies with disabilities are of less value and are less deserving of protection than able-bodied babies.

No doubt the reason for suggesting this change is that it was mandated in Great Britain through a backbench amendment in 1990. But, as I said, things have moved on significantly since then. In 1990 the landmark Disability Discrimination Act had not been passed and there was no Disability Rights Commission. That Act did not come into force until 1995 and the Disability Rights Commission was not set up until several years after that. One of the things that the Disability Rights Commission quickly did was to speak out against the discriminatory nature of Britain's abortion law and the Commission said of the provision – it said this, from the Disability Rights Commission:

> The Section is offensive to many people; it reinforces negative stereotypes of disability ...

And there is:

> … substantial support for the view that to permit terminations at any point during a pregnancy on the ground of risk of disability, while time limits apply to other grounds set out in the Abortion Act, is incompatible with valuing disability and non-disability equally.
> In common with a wide range of disability and other organisations, the DRC believes the context in which parents choose whether to have a child should be one in which disability and non-disability are valued equally.

And that state of affairs continues, rightly, to be a source of embarrassment for the United Kingdom. Paragraphs 12 and 13 of the concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland published last October by the United Nations Committee on the Rights of Persons with Disabilities, states this:

> The Committee is concerned about perceptions in society that stigmatize persons with disabilities as living a life of less value than that of others and about the termination of pregnancy at any stage on the basis of fetal impairment.
> The Committee recommends that the State … amend its abortion law accordingly.

We have something similar in the spirit of our Equality Act which prevents discrimination on the grounds of disability. But if all that was not enough, Mr President, the case for this amendment has been strengthened since clauses stage in the House of Keys because of developments earlier this

month in the Supreme Court. So on 7th June, the Supreme Court ruled – in other words, after the clauses stage had been taken in the other place – that while a prohibition of abortion in the context of fatal foetal abnormality where a baby is unlikely to survive birth or die soon after which is not human rights compliant:

> … it is not possible to impugn as disproportionate and incompatible with Art 8 legislation that prohibits abortion of a foetus diagnosed as likely to be seriously disabled. A disabled child should be treated as having equal worth in human terms as a non-disabled child.

That is quite a lengthy quote but I give the last sentence of it again.

> A disabled child should be treated as having equal worth in human terms as a non-disabled child.

That was the unanimous decision of all judges, 7-0, in the Supreme Court on 7th June. And if I were to extract relevant parts of the judgment I would include the following statements.

> The unborn foetus is not in law a person, although its potential must be respected.

And:

> … in principle a disabled child should be treated as having exactly the same worth in human terms as a non-disabled child,

This is also the consistent theme of the United Nations Committee on the Rights of Persons with Disabilities expressing concerns about the stigmatising of persons with disabilities as living a life of less value than that of others, and about the termination of pregnancy at any stage on the basis of foetal abnormality, and recommending states to amend their abortion laws accordingly.

And again, UNCRPD – the United Nations Committee on the Protection of the Disabled – is based on the premise that if abortion is permissible there should be no discrimination on the basis that the foetus, because of a defect, will result in the child being born with a physical or mental disability. This is particularly so in the light of the Committee's consistent criticism of any measure which provides for abortion in a way which distinguishes between the unborn on the basis of a physical or mental disability.

My final extract from that judgment from 7th June:

> … children born with disabilities, even grave disabilities, lead happy, fulfilled lives. In many instances they enrich and bring joy to their families and those who come into contact with them. Finally, the difficulty in devising a confident and reliable definition of serious malformation is a potent factor against the finding of incompatibility.

So, given the rationale of the Supreme Court not to recognise a human right to terminate a pregnancy on the basis of disability arising from the fact that they argue a disabled child should be treated as having equal worth as a non-disabled child, I would submit that it is not possible for us to mandate the termination of those lives without entering very dubious moral territory.

Hon. Members will, I think, have been circulated by Lord Shinkwin from the House of Lords, who is one of the leading campaigners against the discrimination that this Bill would introduce without this proposed amendment, and I will not go over his words, I let them speak for themselves. But perhaps I can just take a sentence from what he has written, I believe. He writes, 'Clause 6(8)(d)(ii) of the Bill defies the logic of genuine equality and would instead enshrine deadly disability discrimination in Manx law'.

It says that, 'Human beings like me' – like him, like Lord Shinkwin – 'who live with a serious impairment which is likely to limit both the length and quality of his life can be aborted right up to birth. I believe,' he continues, 'that to allow this clause to stand would be one of the most regressive and discriminatory acts the Isle of Man has ever taken against its own future citizens'.

That is the view expressed by Lord Shinkwin and I know that his view has been welcomed by other disability charities. Disability Rights UK, for instance, which is the leading charity of its kind in

the United Kingdom run by and for people with lived-experience of disability or health conditions has been outspoken in its commitment to end disability discrimination before birth. And I might quote from Liz Sayce, the Chief Executive Officer of Disability Rights UK, who says that she congratulates Lord Shinkwin on raising this issue.

> The Bill is not about the rights and wrongs of abortion, fundamentally it is about equality

Now, we could say, Mr President, that given that late term abortions have to be provided in England where English law will obtain we should not be out of line with Great Britain; but I would disagree with that. I would suggest that we do not need to follow England or the United Kingdom in this regard. We can take a higher road and in so doing we can make it plain that in 2018 we have a different view of human rights than that which obtained and prevailed in England in 1990. I would suggest that we can take a moral lead on this issue and that we can put the Isle of Man in prime position on a moral map, challenging England to amend its own discriminatory legislation.

I repeat, I think, what I said in my Second Reading speech that I would want to afford as far as is possible within circumstances to give equal weight to the mother and to the child and to say that both lives matter. But even if one were to accept the premise that now we need to give more emphasis to the rights of the woman, it does not follow from that that we can sanction the termination of babies who are sentient and would be viable just because they have a disability. It seems to me that at this point, even if we have previously decided to prioritise the rights of the woman over the rights of the unborn, that is a different discussion once you come to that stage of viability – you are looking then at two sentient and viable lives and we need to foster a society that values them both.

In suggesting that we do not sanction for the first time the termination of sentient viable human beings, just because they have a disability, I want to be clear that I am very mindful of the challenge that that presents their mothers and indeed our society as a whole. I would very much welcome the provision of additional support for women who find that their child has a disability that is not a fatal foetal abnormality, after 24 weeks. The numbers we are talking about are small but it matters hugely. It matters hugely because of what it says about the kind of society that we want to have, and our view of disability and viable sentient human beings.

So I suggest, Mr President, knowing that Great Britain embraced its misplaced law before there was a proper regard for disability rights; knowing that the Disability Rights Commission spoke out strongly against the discriminatory provisions in English law; knowing that the United Nations Committee on the Rights of Persons with Disabilities has only just recently condemned Great Britain for its abortion law and recommended a change; knowing that the Supreme Court has now ruled since the Keys debate that there is no Article 8 case for abortion on the grounds of the child likely to be seriously disabled; and knowing all that we do about viability and about disability rights – I suggest that as a Council we cannot stand back and allow clause 6(8)(d)(ii).

I would strongly urge Council to vote for this amendment and to take an important lead in the British Isles sending the message that the lives of disabled people matter and that it is not appropriate or permissible to sanction the termination of viable sentient human beings up to birth purely for reasons of disability.

I beg to move the amendment in my name.

Amendment 27:
Page 12, omit lines 19 and 20.
In consequence of this amendment, restructure the existing paragraph (d) as a continuous paragraph and omit 'or' at the end of line 18. If this amendment succeeds, the following amendment cannot be moved.

The President: Amendment number 27 having been moved, I ask if there is a seconder at this stage?

Learned Attorney General.

The Attorney General: Thank you, Mr President.
I speak to amendment number 28 in my name, which relates to clause 6, subsection (8)(d)(ii), which proposes that the words after the word 'impairment' are deleted.

Very briefly, by way of clarification, the rationale here is to actually provide clarification because of the amendment which I will be proposing with reference to clause 3, which will alter and change the definition of 'serious impairment' and I so move:

Amendment 28:
Page 12, line 19 omit everything after 'impairment' to the end of line 20.

The President: Mr Crookall.

Mr Crookall: I beg to second.

The President: Amendments having been moved, I invite the mover, Mr Henderson, do you wish to reply?

Mr Henderson: Gura mie eu, Eaghtyrane.
I just wish to acknowledge the seconded amendments and I am content with the clarification that the learned Attorney has offered.

The President: Thank you, sir.
In that case I will put clause 6 to the vote. Dealing first with the amendments that have been moved and seconded, which were all in the name of the learned Attorney General. Dealing with the learned Attorney's amendments in four groups, I deal first with amendments 15, 18, 19, 21, 22, 26, 29, 30 and 31, which all relate to the same issue, omission of the word 'pregnant'. Those in favour of those amendments, say aye; against, no. The ayes have it. The ayes have it.

We deal now with amendment number 20, reference to '*in utero*' and 'in the womb': those in favour, say aye; against, no. The ayes have it. The ayes have it.

Amendment 25, 'the request': those in favour, say aye; against, no. The ayes have it. The ayes have it.

And finally, amendment 28, 'serious impairment': those in favour, say aye; those against, no. The ayes have it. The ayes have it.

I put clause 6, as amended: those in favour, say aye; against, no. The ayes have it. The ayes have it.

We move on to clause 7, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.
Clause 7 specifies who may provide abortion services and ensures that they are authorised by the Department, suitably qualified, skilled and registered with the appropriate professional organisation. Any person who contravenes this section commits and offence.

Eaghtyrane, I beg to move.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: I beg to second and reserve my remarks.

The President: Learned Attorney.

The Attorney General: Thank you, Mr President.

I speak to amendment 32 in my name, which refers to clause 7, subsection (1)(c), currently the wording there provides:

in the case of a person supplying a medicinal product to cause the termination of a pregnancy,

In that regard I am proposing that those words 'a medicinal product to cause the termination of a pregnancy' be deleted. The rationale here is that those words will become redundant in the event of the amendment which I propose to clause 3 being passed, which reshapes the definition of 'relevant product'.

I so move the amendment standing in my name.

Amendment 32:
Page 13, line 17 for 'a medicinal product to cause the termination of a pregnancy' substitute 'a relevant product'.

The President: Mr Cretney.

Mr Cretney: I beg to second.

The President: Mr Henderson.

Mr Henderson: Eaghtyrane, I am content with the explanation from the Attorney General.

The President: In which case I put the amendment to clause 7. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 7, as amended: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 8, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

Clause 8 deals with the circumstances in which a healthcare professional may raise a conscientious objection to providing or participating in the provision of abortion services and those where such a professional may not do so.

I beg to move.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: I beg to second and reserve my remarks.

The President: The Lord Bishop.

The Lord Bishop: Thank you, Mr President.

I am pleased now to move amendment 33 in my name which, as Hon. Members will recall, was drafted by Dr Neal, one of the leading academic lawyers working in the field of conscientious objection and who appeared as my witness here on 12th June.

Before I examine the conscience provisions in the Bill and the amendment 33 in detail, I think it is important to begin by underlining the importance of conscience and freedom of conscience in a liberal democratic society.

Hon. Members will be mindful that respecting freedom of conscience is not an optional extra in relation to which we can take shortcuts, but one of our most basic obligations as legislators to the citizens of this Island. Its importance is upheld by all major human rights documents, including the Universal Declaration of Human Rights, the European Union Charter of Fundamental Rights and the

European Convention on Human Rights, Article 19, and we fail to afford conscience proper respect at our peril.

So that point being made, I would want to consider what our current legislation says about conscientious objection and then turn to the way that this topic is addressed by the Bill before us today.

At the moment, Mr President, under current abortion legislation we have conscientious objection protections on the Isle of Man which fall into two categories: first, there is a protection for existing staff, such that they cannot be required to participate in an abortion unless the woman's life is in danger; and second, there is a protection for job applicants such that their having a conscientious objection cannot be a reason for their applications being rejected by the Department.

The relevant provision is located in section 8(2) of the current Act and states:

> (2) Nothing in this Act shall be construed as imposing any duty on any person to participate in any treatment authorised by this Act to which that person has a conscientious objection and the Department shall not —
> (a) terminate the employment of any persons so refusing; or
> (b) refuse to employ persons on the sole ground that they refuse, or might refuse to participate in any treatment authorised under this Act.

And doctors and nurses employed by the Department have enjoyed those conscientious objection rights for nearly 25 years.

When the Abortion Reform Bill entered the House of Keys in 2018, it proposed replacing our current legislation with neither of those provisions. Amendments were tabled in the House of Keys to reinsert both provisions, and the House determined that the conscientious objection provision in our current law for existing employees should be replicated in the new law.

Concerns were expressed, though, about the protection for job applicants.

It has been suggested as a very rough estimate, but perhaps the closest we can get in projecting what the future might bring, that the number of abortions on the Isle of Man under the new legislation could increase to around 250 per annum. That will require medical staff to provide them and the point was made that on a small island with limited medical staff, the blanket protection afforded all job applicants by our current law might make it impossible for the Department to deliver abortion services mandated by this new legislation.

In that context, it was felt that the blanket employment discrimination protection provided by the current law could not be sustained under the new regime proposed by this Bill, and so the House did not feel able to back that provision.

Dr Neal came and spoke to us on 12th June and has put forward an amended version of the protection currently afforded to job applicants under the existing legislation. I would see it is important that we compare and contrast the Keys amendment with this proposed amendment which I am now tabling.

The Keys amendment, which was rejected, simply repeated the provision in the 1995 Act, offering a blanket protection to all doctors and nurses employed by the Department, regardless of their speciality – offering a blanket protection to them from being discriminated against if they have a conscientious objection to abortion. That means that if some of the doctors and nurses applying to work in obstetrics and gynaecology on the Island have a conscientious objection, they could not be discriminated against on this basis, with the consequence that obstetrics and gynaecology could consequently find itself without the capacity to deliver the abortion services mandated by the Bill.

This proposed amendment by contrast is different in its effect and it states that the Department must not refuse to employ a person on the sole ground that they refuse, or might refuse, to participate in any treatment or counselling authorised under this Act, except – and this is the important part – *insofar as is necessary* in order to ensure the Department's ability to provide abortion services.

In other words, the effect of the amendment is that conscientious objection is only accommodated where it can be done without preventing the Department from providing the abortion services mandated by this legislation. Or to put it another way, the effect of the

amendment is that conscientious objection is not accommodated unless it is possible to do so while meeting departmental obligations to provide abortion.

In the light of that, surely any argument for opposing conscientious objection employment protections in relation to future employees simply disappears. An argument to the effect, for example, of 'how can a small island have capacity to deliver abortion services?' becomes irrelevant because the amendment makes clear that discrimination *is* legitimate where necessary to ensure the provision of requisite services.

But crucially it is not legitimate to discriminate for any other purpose and that, it seems to me, is a proportionate and balanced response. On the one hand, it does not use conscientious objection as an excuse for not providing abortion services sanctioned by the Bill; and on the other hand, it does not use the need to provide abortions under the Bill as a pretext on which to discriminate against all job applicants who might have conscientious objections.

It may be helpful to look at numbers and again, I do not have specific numbers, but if I were to suggest that there are perhaps something around 50 doctors at Noble's Hospital, of whom up to 10 work in obstetrics and gynaecology, even in the context of providing that projected figure of approximately 250 abortions a year, the majority of those doctors will have no involvement in the provision of abortion and so there is no practical reason for removing their rights to conscientious objection. If it transpired that it was necessary for every doctor working in gynaecology to be involved in abortion provision, then clearly, on the basis of this amendment, the Department would be entitled to discriminate against all applicants for gynaecology jobs with conscientious objections. But if it transpired that it is only necessary for some doctors to be willing to provide abortions, then it would be legitimate, as I say, to discriminate against applicants only insofar as is necessary to ensure that the requisite number of non-objecting doctors was employed.

The sweeping removal of the current protections for job applicants that would occur if the Bill was passed without that amendment would indeed be disproportionate. What I am proposing in the Neal amendment, if I can call it that, is entirely proportionate and recognises both the need to uphold abortion provision and the need to uphold the importance of conscience.

I am aware, Mr President, that there have been suggestions that the Equality Act will provide doctors applying for jobs with the requisite protection, but what is clear is that any accommodation for conscientious objection under the Equality Act is implicit and is less certain than the protection that is provided explicitly up front on the face of the current abortion legislation. Thanks to the proportionate nature of this amendment, the Neal amendment, there is no need to remove that explicit upfront protection and to depend upon the possibility of implicit protection provided by another statute. To take the latter course would be a lack of regard and respect for the consciences of doctors and nurses as they seek to change jobs. To reject a means of minimising the curtailment of conscientious objection rights in favour of an unnecessary blanket discrimination would constitute a significant failure on our part.

Perhaps I might quote again from something that Dr Neal said when she spoke to us on 12th June:

> it is precisely because that is a difficult balance and the temptation would be so strong not to appoint people, if there is any suggestion that they may be conscientious objectors, that is precisely why we need protections. We need protections precisely when people are at risk of being discriminated against.

In this context, Mr President, it seems to me that this is not the time for making protection for conscientious objection less explicit; indeed the reverse. We need to signal that as a jurisdiction we take freedom of conscience and our duty to respect it very seriously and that, because of this, we are not going quite unnecessarily to initiate a blanket removal of future employment discrimination protections from the Bill, to depend instead upon implicit potential protections hidden away in another piece of legislation.

As a revising chamber, we have the ability and perhaps the responsibility to point out that while replicating the wording of the current legislation will not work, there is a middle way, a proportionate way represented by this amendment, and that we should embrace it.

Mr President, I beg to move this amendment:

Amendment 33:
Page 13, line 31, at end insert the following new subsection—
'(2) The Department must not refuse to employ a person on the sole ground that they refuse, or might refuse, to participate in any treatment or counselling authorised under this Act, except insofar as such refusal is absolutely necessary in order to ensure the Department's ability to provide abortion services.'.
Renumber the following subsections of the clause, and adjust cross-references accordingly.

The President: Amendment number 33 having been moved, I ask if there is a seconder?

Mrs Lord-Brennan: I beg to second, Mr President.

The President: Thank you.
The learned Attorney General.

The Attorney General: Thank you, Mr President.
I speak to amendments 34, 35 and 37 in my name, which all simply seek to remove the word 'pregnant', for the reasons which I have explained, in subclauses (4) and (5) of clause 8, and I so move:

Amendment 34:
Page 14, line 3 omit 'pregnant'.

Amendment 35:
Page 14, line 4 omit 'pregnant'.

Amendment 37:
Page 14, line 8 omit 'pregnant'.

The President: Mr Cretney.

Mr Cretney: I second.

The President: Mrs Lord-Brennan.

Mrs Lord-Brennan: Thank you, Mr President.
I speak to amendment 36 in my name, which is to add 'without delay' at the start of line 8. Subsection (5) of clause 8 would then read: 'A relevant professional pharmacist who has a conscientious objection referred to in subsection (1) must without delay (a) inform the woman who requests abortion services that she has the right to see another relevant professional or pharmacist (as the case requires)'.
It aims to ensure that any issues with accessing a service must be dealt with in a timely and open way in the first instance. This could be especially important, for example, if a woman was trying to access abortion services via a small practice, where it is difficult to get an appointment.
With that, I beg to move the amendment in my name:

Amendment 36:
Page 14, line 8 at the beginning insert 'without delay'.

Miss August-Hanson: I second and reserve my remarks.

The President: Mr Henderson, you have a right of reply.

Mr Henderson: Gura mie eu, Eaghtyrane.

As far as the amendments go, I am content with the Attorney General's explanation of his amendment and the effect that they would clarify and the effect they will have.

Mrs Lord-Brennan's amendment is fine.

The Lord Bishop's amendment which was seconded was extensively debated in the House of Keys, *ad nauseam* almost, with looking at this. With the best advice we have had and taking into account Dr Allinson's explanations here as my expert witness here two weeks ago, I have to say that I would ask the Legislative Council to vote against this particular amendment on those grounds, and that we need to keep the substance of the main Bill.

With that, Eaghtyrane, I beg to move.

The President: Hon. Members, dealing with the clause 8, I put first the amendment in the name of the Lord Bishop. Those in favour, say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

FOR	**AGAINST**
The Lord Bishop	Mrs Poole-Wilson
Mr Cretney	Mrs Sharpe
Miss August-Hanson	Mr Henderson
Mrs Lord-Brennan	Mr Crookall
	Mrs Hendy

The President: With 4 votes for, 5 against, the amendment therefore fails to carry.

I put the amendments in the name of the Attorney General, numbers 34, 35 and 37: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Finally, amendment 36 in the name of Mrs Lord-Brennan: those in favour, say aye; against, no. The ayes have it. The ayes have it.

I put clause 8 as amended: those in favour, say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

FOR	**AGAINST**
Mr Cretney	The Lord Bishop
Mrs Poole-Wilson	
Miss August-Hanson	
Mrs Sharpe	
Mr Henderson	
Mr Crookall	
Mrs Lord-Brennan	
Mrs Hendy	

The President: With 8 votes for and 1 against, the clause as amended carries.

Clause 9, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

Clause 9 deals with the requirement for informed consent either of the pregnant woman or of a person lawfully empowered to give consent on her behalf. This additional category of consent is required in the case of a woman who is under a legal disability or temporarily unable to make a decision, for example, because she is in a coma; or that of a child who is not competent to give consent herself, by reference to the tests set out in the decision in *Gillick v West Norfolk etc. 1986*.

Eaghtyrane, I beg to move.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: I beg to second and reserve my remarks.

The President: I call the learned Attorney.

The Attorney General: Thank you, Mr President.

I have a number of amendments to clause 9, which are detailed at amendments 38, 39, 40, 41, 42, 43, 44 and 45.

If I could explain with reference to amendment 38 and 45, for the moment, that these are simply amendments to tidy up numbering. Amendment 38 proposes where reference is made to subsections (2) and (3) to substitute subsections (2) and (4). Amendment 45 refers to where reference is made to subsections (1), (2) and (3) to substitute (1), (2) and (4).

I hope, hon. colleagues, that those amendments are self-explanatory … *(Interjection)* I'm sorry?

The President: Sorry, the learned Attorney General has the floor.

The Attorney General: Yes, I beg your pardon.

Then with regard to amendments 39 through to 44, these follow the same theme of proposing the deletion of the word 'pregnant' where it appears in those provisions.

I so move the amendments standing in my name:

Amendment 38:
Page 14, line 20 for 'subsections (2) and (3)' substitute 'subsections (2) to (4)'.

Amendment 39:
Page 14, line 23 omit 'pregnant'.

Amendment 40:
Page 14, line 31 omit 'pregnant'.

Amendment 41:
Page 14, line 33 omit 'pregnant'.

Amendment 42:
Page 14, line 36 omit 'pregnant'.

Amendment 43:
Page 14, line 37 omit 'pregnant'.

Amendment 44:
Page 15, line 3 omit 'pregnant'.

Amendment 45:
Page 15, line 10 for 'subsection (1), (2) or (3)' substitute '(1), (2) or (4)'.

Mr Cretney: Happy to second.

The President: Mr Cretney.

Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I am content with the Attorney's explanations.

The President: I will deal with the amendments 38 and 45 first. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Amendments 39, 40, 41, 42, 43 and 44, omission of the word 'pregnant': those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 9 as amended: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 10.

Mr Henderson: Gura mie eu, Eaghtyrane.

Clause 10 deals with the position of a healthcare professional undertaking the provision of abortion advice; and clause 11 with the provision of medicinal products.

Eaghtyrane, I beg to move that clause 10 do stand part of the Bill.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: I beg to second and reserve my remarks.

The President: Learned Attorney.

The Attorney General: Thank you, Mr President.

I refer to the amendments standing my name at items 46 and 47.

Again, Mr President, these simply refer to the removal of the word 'pregnant' where it appears in clause 10, and I so move:

Amendment 46:
Page 15, line 14 omit 'pregnant'.

Amendment 47:
Page 16, line 16 omit 'pregnant'.

Mr Cretney: And I second.

The President: I put the amendments first. Those in favour of amendments 46 and 47, say aye; against, no. The ayes have it. The ayes have it.

Clause 10 as amended. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 11, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

Clause 11 deals with the provision of medicinal products to procure an abortion. In England and Wales during 2016, 62% of all abortions were carried out medically.

Medical terminations are safer than those using surgical methods, and the necessary medication can be taken at home.

I beg to move, sir.

The President: Mrs Poole-Wilson

Mrs Poole-Wilson: I beg to second and reserve my remarks.

The President: Learned Attorney.

The Attorney General: Yes, thank you, Mr President.

I refer to the amendment standing in mind at item 48, where I propose that the lines 23 to 28, which I will refer to in a moment, be omitted.

Clause 11(1) refers to and provides a definition of 'relevant product', and the amendments which I will be proposing with reference to clause 3 will tidy up that amendment and so accordingly, the provisions of clause 11(1) are redundant, the definition having already been made in clause 3. I so move:

Amendment 48:
Page 15, omit lines 23 to 28.
Renumber the following subsections of the clause and adjust cross-references accordingly.

Mr Cretney: And I second.

The President: Mr Cretney.
Lord Bishop.

The Lord Bishop: Thank you, Mr President.

I move amendments 49 and 53 which stand in my name. They bear upon the same passage of text and upon similar principles.

Mr President, I set out the case for a 12-week time limit for abortions under clause 6(2) in an earlier amendment, and my concern about the limits we are setting in this Bill remain true for clause 11, which is why I am pleased to move these two amendments now, 49 and 53.

The Bill says that a medical provider – and I mean that in a broad sense – can provide abortion pills up to 14 weeks, which ties in with the proposed limit at 6(2). I have interpreted this as saying that a woman who wants an abortion on request under 6(2) can also go to a medical provider, including a pharmacist, for the prescription of abortion pills. It seems to me that those two things are linked together, and if that is not the intention of the Bill I would be interested to hear that. But it seems to me that the message all along has been to make early abortions as simple as possible.

Two out of the three witnesses that I called on 12th June raised points and concerns about the limits at 14 weeks. I have already quoted Prof. Wyatt and his concerns that a 13-week-old foetus might actually be 15 weeks, and the difficulties that could arise as a result for the mother, both medically and psychologically. Prof. Wyatt said that BPAS would perform abortions with medical pills after 10 weeks only with supervision in the clinic; and Maire Stapleton, as Hon. Members may recall, said that the 14 weeks goes beyond the licensing conditions of the abortion pills. There was therefore considerable discussion about how that might work in practice, on 12th June at our Second Reading.

I am aware that the Department of Health and Social Care have very wide powers under clause 5(2) for abortion services to be provided in approved premises with, quote:

> … such conditions and exceptions as the Department thinks fit.

And indeed on 12th June, the Hon. Member, Mrs Lord-Brennan asked Dr Allinson:

> So it is really your intention that the Bill sets the outer parameters, not the expectation of the general use of 14 weeks?

And Dr Allinson replied:

> The Bill is a legal framework.
> The actual guidance in how services are provided will be within that legal framework …
> So the legislation is not prescriptive, it is not saying, 'This is what you do,' it is actually setting a framework under which local services and local guidelines can be originated by the people who provide the service.

That was what Dr Allinson said in response to the Hon. Member, Mrs Lord-Brennan, on 12th June.

Mr President, my concern I think is that because of the evidence we receive about the potential difficulties of taking abortion pills even up to 14 weeks, the DHSC guidance will not actually match up with the law. Mindful of the safety data, the guidance will need to state that medical professionals cannot provide abortion pills up to 14 weeks in certain contexts. That would make the law look odd and confusing for women considering an abortion about how and when abortion pills can be prescribed; and our job, as Legislative Council, is to scrutinise how this will work in practice.

So, for instance, do we expect women to be able to take abortion pills at home? And, if so, would there be any limits to that? Will women expect to be able to get abortion pills from a local nurse freely up to 14 weeks? How do we see the provision of pills over the internet within this clause? And what is our intent? What are we seeking to achieve with this clause?

I would suggest that, as elsewhere in this Bill, we need to be absolutely clear about what limits we are proposing. I have put on record my thoughts about a 12-week gestational limit in clause 6(2) and that has consequences for this amendment. But I would also say that based on the rate of complications for medical abortions there is a logic to putting the limit for abortion pills at 12 weeks. Dr Allinson told us that medical abortions are overwhelmingly safe, but that is questioned by other doctors and there is a level of complication that I think probably would be beyond the understanding of us on this Council; and when under medical supervision England and Wales' statistics show that in 2017, 221 women faced complications including haemorrhage, uterine perforation and/or sepsis before being discharged from an abortion clinic. And those figures do not include complications that occurred later. And of those 0.5% were in the first three to nine weeks; 7.4% in pregnancies 10-12 weeks; and 25.5% for 13-19 weeks.

Mr President, I raise those points because as Dr Allinson said in the other place on 27th March, this is about safety. It has to do with safety and providing safety for women within this environment. I want us to ensure that we are providing that safe environment for women and that is why I have also tabled amendment 53: 'A person who, under subsection (2), supplies a relevant product to a woman must secure that she is provided with appropriate support by a relevant professional' – or pharmacist, as well, I would add, actually – 'in connection with its administration'.

In April, the Chair of the Institute of Obstetricians and Gynaecologists in Ireland, who was very supportive of abortion, said:

> There are serious dangers when women take [abortion pills[without medical supervision.

I say that again:

> There are serious dangers when women take abortion pills without medical supervision.

And this is the Chair of the Institute of Obstetricians and Gynaecologists in Ireland:

> We have knowledge of women who have taken them in excessive dosage and that can result in catastrophe for a woman such as a rupture of the uterus with very significant haemorrhage.
> And if that happens in the privacy of a woman's home or perhaps in an apartment somewhere, that can have very, very serious consequences for women.

– for women's health, mental and physical –

> So it's really important that these tablets are regulated and licensed, and dealt with in a supervised way in the interests of the health of women in the future.

We have limited data on the outcomes of self-administering abortion pills, but an article from 2015 found that 78% of participants had excessive bleeding; 63% had incomplete abortion; and 23% had failed abortions. They also found that surgical evacuation had to be performed in 68% of the patients – 13% of them with a blood transfusion. And the authors of that 2015 report concluded:

> Unsupervised medical abortion can lead to increased maternal morbidity and mortality.

Mr President, to put it simply, we need to have a much greater confidence that the practice we are putting in place is safe for women. Therefore, Mr President, I beg to move these amendments standing in my name:

Amendment 49:
Page 15, line 29 for '14' substitute '12'.

Amendment 53:
Page 15, after line 32 insert—
'(3) A person who, under subsection (2), supplies a relevant product to a woman must secure that she is provided with appropriate support by a relevant professional in connection with its administration.'

The President: Amendments 49 and 53 have now been moved and are available to be seconded. I call on the learned Attorney.

The Attorney General: Thank you, Mr President.

I speak to amendment 50 standing in my name, which refers to clause 11, subsection (2) and the motion is that the words from 'a registered' to 'nurse' are substituted by 'a relevant professional'.

So it would now read, if passed, 'During the first 14 weeks of the gestation period, a relevant professional may…' and then it goes on.

I so move:

Amendment 50:
Page 15, lines 29 and 30 for the words from 'a registered' to 'nurse' substitute 'a relevant professional'.

The President: Mr Cretney.

Mr Cretney: And I second.

The President: Learned Attorney.

The Attorney General: Thank you, Mr President.

I speak to amendments 51 and 52 in my name, which are on the same theme of deleting, as previously explained, the word 'pregnant' where it appears as referred to in the motion.

I so move:

Amendment 51:
Page 15, line 31 omit 'pregnant'.

Amendment 52.
Page 15, line 32 omit 'pregnant'.

The President: Mr Cretney.

Mr Cretney: And I second.

The President: Learned Attorney.

The Attorney General: Thank you, Mr President.

I speak to amendment 54 in my name, which refers to clause 11(3), to delete the words from the end of line 36 and to substitute the words: 'a woman, otherwise than in accordance with this Act, commits an offence'.

If I might explain to Hon. Members, this proposal is made with a view to improving the drafting, as by definition 'relevant product' is intended to procure a product which will procure termination. So it is believed that by making this amendment it clarifies the position so it would read: 'A person who prescribes a relevant product for, or supplies a relevant product to a woman otherwise in accordance with this Act commits an offence'. So we believe that adds better clarification, and I so move:

Amendment 54:
Page 15, for the words following 'product to,' in line 34 to the end of line 36 substitute 'a woman, otherwise than in accordance with this Act, commits an offence'.
Renumber the following subsections of the Clause and adjust cross-references accordingly.

The President: Mr Cretney.

Mr Cretney: And I second.

The President: Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.
I am quite content with the Attorney General's amendment. I have nothing further to add.

The President: Thank you, sir.
Dealing with the amendments then, first the amendment number 48: those in favour, say aye; against, no. The ayes have it. The ayes have it.
Amendment 50: those in favour, say aye; against, no. The ayes have it. The ayes have it.
Amendments 51 and 52: those in favour, say aye; against, no. The ayes have it. The ayes have it.
Amendment 54: those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 11, as amended: those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 12, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.
Clause 12 imposes duties once a termination has taken place. If a child is born alive as a result of a termination, after consultation with the woman the medical professional must take all reasonable steps to preserve the life of the child. If no live birth results, clause 12(b) specifies how the foetus must be dealt with.
Eaghtyrane, I beg to move.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: I beg to second, Mr President, and reserve my remarks.

The President: Mrs Sharpe.

Mrs Sharpe: Thank you, Mr President.
I would like to move a new clause at this point. The reason the legislative drafter has drawn up a new clause is that two amendments were proposed and the drafter felt that a new clause would set things out in a much clearer manner.
The first amendment was my own. I researched methods concerning disposal of foetal tissue in the Isle of Man, in Scotland, in England and Wales and further afield and discovered that methods of

disposal in the Isle of Man are of a relatively high standard. I wanted to ensure that should any other provider of abortion services come to the Island, the provider must also adhere to the Department's policy on disposal.

The second amendment, put forward by Dr Allinson, sought to reaffirm the obligation of the medical professional concerned that if the foetus should be born alive – and clause 12 refers to the foetus at this point as a child – the medical professional must take all reasonable steps to preserve the life of the child. Dr Allinson also sought to make clear that if the child should be born alive, the medical professional must discuss with the woman as soon as is reasonably practicable – because the woman may still be under the influence of a general anaesthetic during the birth – the future medical care of the child. In most circumstances, it is likely that the life of the child would be very short. In the unlikely event that the child should live longer, it is likely that the medical professional would need to seek advice from a court regarding how the child should be cared for.

Mr President, in addition to wanting to ensure that any other providers of abortion services on the Island must follow the Department's policy on disposal, I would also like to make some recommendations which I would like the Department to consider incorporating into their policy and I would like to take this opportunity to explain this Hon. Chamber, the reasoning behind these recommendations.

I was initially drawn to this clause because I was uncomfortable with the term 'disposal', since we usually use the term to refer to something unwanted which is thrown away. In other words something regarded as rubbish. I was not able to come up with a more sensitive term, since foetal tissue *is* 'disposed of' after a termination. That is the reality. But it got me thinking: how is foetal tissue disposed of in the Isle of Man and further afield; and is there a difference between disposal methods depending on whether a foetus is wanted by a woman as opposed to unwanted? I discovered that disposal of foetal tissue is a subject which has largely not been adequately dealt with, possibly because it involves confronting the bloody realities of termination. But I believe we must confront reality and ensure that foetal tissue is always treated with dignity and is always disposed of in a manner which is commensurate with the fact that it once held the potential for an independent life.

In England and Wales a key change to policy occurred in 1991 when the Department of Health issued a directive prohibiting the maceration and sluicing of foetal tissue following abortion. Current disposal methods in England and Wales vary across hospitals and clinics but foetal tissue of a pre-24-week gestation is usually incinerated, whilst foetal material from a post-24-week gestation is required by law to be registered as a stillbirth, and the body to be either cremated or buried.

In Scotland, on the other hand, a directorate of the Chief Medical Officer and Public Health in 2012 stated that 'in recognition of the sensitivity around early pregnancy loss, disposal of any pregnancy loss by way of incineration or clinical waste is no longer considered acceptable,. The minimum standard for disposal of any foetal tissue in Scotland is cremation and where that is not available, collective burial. The Scottish directive is much more in line with the current practice of Noble's Hospital, which is based on the Miscarriage and Termination of Pregnancy under-20-weeks' gestation Patient Pathway drawn up by Noble's consultants in 2015.

The pathway states that if products are passed that can be recognised as a baby, parents can arrange for burial or cremation or take the foetal tissue home with them as they wish. Even if the woman expresses no particular wish over the disposal of the tissue, so long as there is a recognisable foetus, according to Noble's consultants, the tissue will be sent to the mortuary in its own container, recorded and collected by a funeral director to be taken to the crematorium. If there is no recognisable foetus, foetal tissue is currently sent to the Pathology Department and incinerated with other specimens.

I would argue that, if this Bill is passed – which I firmly hope it will – the Department of Health and Social Care should draw up a disposal policy which ensures the continuation of the current level of respect shown towards foetal tissue, and in addition the Department should adopt the element of the 2012 Scottish Directive which states that 'no foetal tissue should ever be incinerated'. It must, at a minimum, always be cremated and if not, buried. This is in line with guidance issued by the Human

Tissue Authority, which states that no foetal tissue should ever be incinerated, whether there is a discernible baby-shaped foetus or not. Consultants at Noble's have already confirmed that this approach is eminently feasible.

In addition, I strongly recommend that the Department of Health and Social Care, when drawing up future policy regarding termination services, considers what will happen when the majority of women requesting an abortion complete their early terminations at home.

Myers, Lohr and Pfeffer, in their paper *Disposal of fetal tissue following elective abortion: what women think*, published in the British Medical Journal in July 2014, discovered that women who completed their terminations at home had received little or no advice on how to dispose of foetal remains. One respondent told them:

> *'… I said to my mum, "Do I put it down the toilet?" because I thought will it flush, because it's quite big? Where will it go? We just wrapped it up and put it down the toilet. We didn't know what to do with it. You don't know [how] to dispose of it if it comes out like that'.*

Another respondent told them:

> *'… I don't think I thought anything. I just wrapped it up, put it in a nappy bag and put it in the bin.'*

I would strongly suggest that the Department must supply women with literature clearly detailing how to dispose of foetal remains if the abortion is completed at home. All women must be advised on how to collect the foetal remains, be given an opaque, sealable, bio-degradable container for the remains and be advised on how to dispose of them at home or given the option to return the remains to the hospital or facility for disposal via cremation or burial – especially in Laxey, Baldrine and Peel, where raw sewerage currently empties into bathing water, I would argue women *must* be advised on how to dispose of the remains in a suitable manner.

Some people have criticised this Abortion Bill for being too liberal for, in their eyes, making abortion too easy to obtain. I understand then that, for some, concentrating on the most sensitive disposal of the foetus may seem contradictory: why treat a foetus which such dignity if you are willing to snuff-out life, or the potential life, in the first place?

It goes without saying that abortion is such a complex subject and, as the Lord Bishop said at the Second Reading, we are dealing with concepts which are bigger than us; concepts which are certainly bigger than this Bill.

There are no easy answers. In their study Myers, Lohr and Pfeffer, discovered that most women undergoing elective abortions are not concerned with the disposal of the foetus at the time. They are too focused on the termination itself. But that does not mean that we, as an island society, cannot do all we can to ensure that foetal tissue is treated with appropriate respect.

This is what this new clause seeks to do and I would urge Hon. Members to vote in favour of this new clause.

Thank you.

Corrected amendment 55:
New clause 1 to be substituted for the existing clause 12 (words omitted from previous version shown in bold italics)
On page 16 omit lines 1 to 15 and substitute the following New Clause —
'12 Duties of medical professional following termination
1995/14/6(5) and drafting
(1) Where a pregnancy is terminated in accordance with this Act—
(a) if the child is born alive, the relevant professional attending the woman is under a duty to take all reasonable steps to preserve the life of the child; or
(b) if there is no live birth, the foetus must be disposed of, subject to subsections (2) and (3)—
(i) if possible, in accordance with the wishes of the woman; or

(ii) in the absence of any direction by the woman, in accordance with the normal practice of the hospital or other premises where the termination occurs.
(2) The Department must issue directions as to the appropriate disposal of the foetus.
This subsection, and any directions under it, are subject to subsection (3).
Tynwald procedure for directions — approval required.
*(3) Neither the foetus nor any part of it **may be used** or made available for any medical or other experiment or procedure or for any purpose of any description without the express written consent of the woman.*
(4) In a case falling within subsection (1)(a), the relevant professional attending the woman must, as soon as is reasonably practicable after the birth of the child, discuss with the woman the future medical care of the child, and have regard to her wishes in planning that care.'.

Miss August-Hanson: I beg to second and reserve my remarks.

The President: Miss August-Hanson, you are seconding.
Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.
I am quite happy to accept the new clause 12 and the central explanations offered by Mrs Sharpe.

The President: Thank you.
In that case we move to the vote on clause 12, and deal first with Mrs Sharpe's amendment, the substitution for the existing clause 12 of a new clause – it is called clause 1 but it becomes clause 12, and we are talking of course about the corrected version that was circulated at the start of the sitting. Those in favour of the amendment, number 55, say aye; against, no. The ayes have it. The ayes have it.
Clause 12 then, as amended: those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 13, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.
Clause 13 makes it clear that nothing in clause 6 or 11 renders lawful termination on the grounds of gender of the foetus. This is subject to a qualification in subsection (2). That subsection does not preclude termination in connection with a hereditary condition which affects one gender more than another.
Eaghtyrane, I beg to move.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: I beg to second and reserve my remarks.

The President: I put clause 13. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 14, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.
Clause 14 creates a new criminal offence in place of that under section 71 of the Criminal Code 1872 to deal with back-street abortions.
Eaghtyrane, I beg to move.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: I beg to second and reserve my remarks.

The President: Miss August-Hanson.

Miss August-Hanson: Thank you, Mr President.
I will be moving an amendment to clause 14(2), that:

Amendment 56:
Page 16, line 37 for 'he or she' substitute 'the person'.

Equality, I feel, is about ensuring that every individual has equal opportunities and also in setting an example for upcoming generations, it recognises that people with protected characteristics, like sexual orientation and gender, have experienced some discrimination.

The learned Attorney General has pointed out in this Chamber that 'he' in all legislation is to be interpreted to mean all genders, but what about 'she' or 'woman'?

I firmly believe that we need to futureproof this legislation as we look to ensure equality and clarity in future of all of our practices. There has been a suggestion by some Members in Keys and in here, outside of this particular Chamber, that with the Attorney General's amendment to in places omit the word 'pregnant', we could find a man within legal rights to ask for abortion medication. I did contact the drafter and he gave me assurances that this would not be the case and there is no conflict. So can I ask, Mr President, that I can call on the Legislative Drafter, Mr Howard Connell to explain that point?

The President: Do I have a seconder?

Mrs Lord-Brennan: Yes, I beg to second and reserve my remarks.

The President: Mrs Lord-Brennan. Learned Attorney.

The Attorney General: Thank you, Mr President.
I refer to the amendment standing in my name which relates to clause 14(3), to delete the word 'pregnant' where it appears and I so move:

Amendment 57:
Page 17, line 4 omit 'pregnant'.

Mr Cretney: I second.

The President: Mr Henderson.

Mr Henderson: Eaghtyrane, I think Miss August-Hanson had requested an opinion from the Legislative Drafter. I was wondering if we could have such an opinion.

The President: Did she? Right, sorry, I did not catch that.
Yes, would you state please your name and position for the record.

Mr Connell: Indeed, Howard Connell, Legislative Drafter and for my sins, which obviously are many, the draftsman of this Bill.

The reason for using 'he or she' is because that is the convention when we draft at the moment, but Miss August-Hanson makes a fair point that gender is increasingly a fluid concept – I use the terms neutrally – and you will see that she has another amendment later in clause 3 which deals

with this and because of that, the amendment arguably makes the position clearer for those who are uncertain as to their identity in that area.

I am very conscious that the dynamics on gender identity have moved a tremendous distance in recent years and there are proposals, as you may know, in the UK to change the Gender Recognition Act to reflect that fact.

I trust that assists, Mr President.

The President: Thank you, Mr Connell.

Does any Hon. Member wish to ask Mr Connell any questions in this regard? No?

Mr Henderson, you have a right of reply.

Mr Henderson: Gura mie eu, Eaghtyrane.

I am quite happy with Miss August-Hanson's amendment, explanations and that of Mr Connell, and I am happy to support it, in fact.

So with that, Eaghtyrane, I beg to move.

The President: We deal with the amendment in the name of Miss August-Hanson: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Amendment 57, in the name of the Attorney General: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 15, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

Clause 15 imposes a duty on the Department to secure the provision to a woman who has had a termination under the Act of suitable and sufficient counselling and support.

Eaghtyrane, I beg to move.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: I beg to second, Mr President, and reserve my remarks.

The President: Miss August-Hanson.

Miss August-Hanson: Thank you, Mr President.

We have heard in the Second Reading of this Bill in this Chamber about the vital importance of counselling and both sides of this debate advocate that it is pivotal both before the abortion and also after the fact, and potentially during the process as it moves along.

What we have also heard in this Chamber from a counsellor with 30 years' experience in the area is that mental health counselling is so important to ensuring good overall health care of people accessing abortion services. There are cases that I have heard over the course of this debate across both Branches and indeed from the public on mental health issues developing some time after the abortion has taken place and I feel that this wording that I suggest puts responsibility on the DHSC to ensure that good mental health care is provided at any stage. Mental health issues may trigger at a point much further down the line.

Therefore I would like to move the amendment that stands in my name that would suggest that:

Amendment 58:
Page 17, after line 10 insert the following subsection—
'(2) In discharging its functions under subsection (1), the Department must have regard to the fact that a woman may need counselling and support some time after the termination as well as in its immediate aftermath.'.
Renumber the succeeding subsection of the clause and adjust cross-references accordingly.

Thank you.

The President: Mrs Lord-Brennan.

Mrs Lord-Brennan: I beg to second and reserve my remarks.

The President: Learned Attorney.

The Attorney General: Yes, thank you, Mr President.

I refer to the amendment in my name, numbered 59, which with reference to clause 15(2) seeks to omit subsection (2):

> Counselling under this section must comply with guidelines under section 6(12) insofar as those guidelines are relevant.

– anticipating no doubt that the Council Members may wish to deal with the amendments which my learned colleagues are moving at items 58 and 60.

I so move:

Amendment 59:
Page 17, omit lines 11 and 12.

The President: Mr Cretney.

Mr Cretney: I second.

The President: Mrs Lord-Brennan.

Mrs Lord-Brennan: Thank you, Mr President.

I move amendment 60 in my name which refers to clause 15 and inserts a new subsection stating that: 'A person providing abortion services must make available, to any woman who requests it, information about the availability of counselling and support.'

It therefore links the counselling directly with the service provision and as such deals with something slightly different from the other clauses and subsections dealing with counselling and support.

With that I beg to move:

Amendment 60:
Page 17, after line 12 insert as the next numbered subsection—
'(*) A person providing abortion services must make available, to any woman who requests it, information about the availability of counselling and support.'
Note: the numbering of this subsection is dependent upon the success or failure of the preceding amendments.

Miss August-Hanson: I second and reserve my remarks.

The President: Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I am content with both amendments as so put and for the reasons articulated.

I beg to move, sir.

The President: In that case, I put Miss August-Hanson's amendment: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Learned Attorney, your amendment number 59: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Amendment 60, Mrs Lord-Brennan's: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 15 as amended: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 16, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

Clause 16 deals with the relationship of the provisions of Part 2 with other enactments.

I beg to move.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

I beg to second.

The President: Learned Attorney.

The Attorney General: Thank you, Mr President.

I speak to the amendment in my name, number 61, which similarly as before seeks to omit the word 'pregnant' and I so move:

Amendment 61:
Page 17, line 17 omit 'pregnant'.

The President: Mr Cretney.

Mr Cretney: I second.

The President: I put the amendment. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 16 as amended: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 17, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

Clause 17 imposes a duty on the Department of Health and Social Care to make regulations in connection with the provision of abortion services and is similar to section 7 of the Termination of Pregnancy (Medical Defences) Act 1995, although it also includes provision for information to be supplied by a pharmacist who supplies the relevant product to a woman.

I beg to move.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: I beg to second and reserve my remarks.

The President: Learned Attorney.

The Attorney General: Thank you, Mr President.

I speak to the amendment in my name at item 62, which seeks to insert the words after 'relevant professional' 'or pharmacist'. This is to add clarification that it extends to pharmacists and we felt that this would help with clarification.

I so move:

Amendment 62:
Page 18, line 1 after 'relevant professional' insert 'or pharmacist'.

Mr Crookall: I beg to second, Mr President.

The President: Thank you.

I put amendments 62 and 63: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Mrs Poole-Wilson: Sorry, Mr President.

Mr Cretney: He has not moved amendment 63.

The Attorney General: I have not actually moved amendment 63 yet.

The President: Oh, amendment 63 – I thought you had, sorry.

Learned Attorney.

The Attorney General: Mr President, I am grateful for thinking ahead, *(Laughter)* but I need to speak to item 63, which again is the same point I was making, to add better clarification.

It is proposed at amendment 63 that the words, 'to the best of the relevant professional's knowledge and belief' are substituted with 'to the best of the knowledge and belief of the relevant professional *or pharmacist'*. We felt that would be of assistance, and I so move:

Amendment 63:
Page 18, lines 3 and 4 for 'to the best of the relevant professional's knowledge and belief' substitute 'to the best of the knowledge and belief of the relevant professional or pharmacist'.

The President: Mr Cretney.

Mr Cretney: I second.

The President: In that case I put the amendments, for the sake of order, and deal with amendment 62: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Amendment 63: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 17 as amended: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 18, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

Clause 18 provides for the interpretation of a series of terms used within Part 3.

Eaghtyrane, I beg to move.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

I beg to second.

The President: I put clause 18 do stand part of the Bill: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 19, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

Clause 19 imposes a duty on the Department to create an access zone around any National Health Service hospital where terminations or counselling provided for under the Bill will take place. It also requires the Department to do so in respect of other premises where terminations or counselling occur, if requested to do so by the person conducting the terminations or providing the counselling.

Eaghtyrane, I beg to move.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: I beg to second and reserve my remarks.

The President: Learned Attorney.

The Attorney General: Thank you, Mr President.

If I could, with your agreement, speak to both amendments 64 and 65 standing in my name which have the same effect, which in simple terms is where it appears in this clause, the word 'must' will be replaced by the word 'may'.

The President: Is that agreed?

It was agreed.

Mr Crookall: I beg to second.

The Attorney General: Mr President, when this matter, this clause was considered by the House of Keys, there was a lengthy debate with reference to whether or not the Department ought to be under compulsion to establish an access zone or alternatively whether it be provided with a power to establish an access zone. I had been requested to make comment with reference to that proposition in advance of the House of Keys considering the matter, albeit that I was not given much time at all to consider the details of these statutory provisions – it was overnight. I did advise the House of Keys that in my view it would be much safer to provide the Department with a power, as opposed to an obligation, because I was concerned as to the human rights issues with reference to anybody who might be affected by any order establishing an access zone.

Hon. colleagues, Mr President, I remain of that view and I so move:

Amendment 64:
Page 19, line 10 for 'must' substitute 'may'.

Amendment 65:
Page 19, line 14 for 'must' substitute 'may'.

Thank you.

The President: Mr Crookall.

Mr Crookall: I beg to second, Mr President.

The President: Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I am content with the Attorney's amendment, I am content with this explanation, as was put forth to the House of Keys and certainly with his reaffirmation of that now, I think that is quite a strong recommendation for Council to consider.

Gura mie eu.

The President: Thank you. Any further comment?

In that case, in dealing with clause 19, I put amendments 64 and 65: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 19 as amended: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 20, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

Clause 20 imposes a similar duty to create access zones around doctors' surgeries on request.

Eaghtyrane, I beg to move.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: I beg to second and reserve my remarks.

The President: Learned Attorney.

The Attorney General: Thank you, Mr President.

I speak to the amendment number 66 in my name. I will not repeat what I have said, but it is exactly the same effect with reference to the amendments which I moved with reference to clause 19, substituting the word 'must' where it appears with the word 'may', and I so move:

Amendment 66:
Page 19, line 22 for 'must' substitute 'may'.

The President: Mr Crookall.

Mr Crookall: I beg to second, Mr President.

The President: I put the amendment in the name of the Attorney. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 20 as amended: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 21, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

Clause 21 imposes a similar duty to create an access zone around the homes of those providing abortion services or counselling.

Sir, I beg to move.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: I beg to second and reserve my remarks.

The President: Learned Attorney.

The Attorney General: Thank you, Mr President.

I speak to amendment number 67 in my name, where in clause 21(1) reference is made to 'medical practitioner, midwife, nurse or pharmacist', for those words to be deleted and substituted by 'a relevant professional'.

Sorry, I beg your pardon, I have misled you. It is the words 'a medical practitioner, midwife or nurse'. The word 'pharmacist' remains so it will read, 'if requested to do so by a relevant professional or a pharmacist', and I so move:

Amendment 67:
Page 19, lines 30 and 31 for 'a medical practitioner, midwife, nurse or' substitute 'a relevant professional or a'.

Mr Cretney: I second.

The President: Mr Cretney.

Learned Attorney – your other amendment.

The Attorney General: If I then can speak briefly with reference to amendment 68, which is the same point I made with reference to clauses 19 and 20, that where the word or obligation 'must' appears, it be replaced with 'may' and I so move:

Amendment 68:
Page 19, line 32 for 'must' substitute 'may'.

The President: Mr Crookall.

Mr Crookall: I beg to second, Mr President.

The President: Dealing with clause 21, then, the amendment number 67: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Amendment 68: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 21 as amended: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 22, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

Clause 22 provides the maximum dimensions of access zones created under the earlier provisions of Part 3.

Eaghtyrane, I beg to move.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: I beg to second and reserve my remarks.

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

Clause 23, Mr Henderson.

Mr Henderson: Thank you, Eaghtyrane.

I was wondering if I can move clauses 23 and 24 together as they are interconnected in regard that they both create offences in connection with access zones?

The President: Yes, if that is agreed, we will debate together and vote separately.

Members: Agreed.

Mr Henderson: Gura mie eu, Eaghtyrane; and my thanks to Hon. Members for their concurrence.

Clauses 23 and 24 create offences in connection with access zones in order to protect the rights of those providing or accessing abortion services or counselling.

Eaghtyrane, I beg to move that clauses 23 and 24 stand part of the Bill.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

I beg to second and reserve my remarks.

The President: Learned Attorney.

The Attorney General: Thank you.

Mr President, if I can refer to amendment 69 in my name, which relates to clause 24 subsection (2): to omit from the beginning of line 19 from the word 'a patient' to line 24 and as a consequence of this amendment to then renumber lines 25 and 26 as subsection (b) of clause 24(2).

I so move:

Amendment 69:
Page 21, omit from the beginning of line 19 to 'a patient' in line 24.
In consequence of this amendment renumber lines 25 and 26 on that page as paragraph (b) of clause 24(2).

The President: Mr Crookall.

Mr Crookall: I beg to second, Mr President.

The President: Miss August-Hanson.

Miss August-Hanson: Thank you, Mr President.

I believe that in principle in this day and age if something is prohibited by letter it should also be prohibited by electronic communications. However, I do understand that electronic communications like letter, phone and fax are not place specific, and for that reason it might not be a very good fit for this subsection, as highlighted in Keys.

If a person targets an anti-abortion campaign in an unacceptable manner against an abortion provider, it is still an unacceptable behaviour. So I would like to make an amendment to put electronic means back on to clause 24 subsection (3), if only to hear what the mover has to say. I know that there is some explanation that has been had, and some debate that has been had in terms of general harassment law that has been stated on the record.

What I would like to do is say that: for 'telephone and facsimile' substitute 'telephone, facsimile or other specified means'. And following that to then insert: 'Tynwald procedure for regulations under this subsection — approval required by Tynwald' as to what those 'other specified means' are.

So, I will leave that to you. Thank you.

Amendment 70:
Page 21, lines 29 and 30 for 'telephone or facsimile' substitute 'telephone, facsimile or other specified means'.

Amendment 71:
Page 21 after line 31 insert—
'Tynwald procedure for regulations under this subsection — approval required.'

Mrs Lord-Brennan: I beg to second and reserve my remarks.

The President: Mrs Lord-Brennan, thank you.
Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.
I am quite happy to accept the amendment from Miss August-Hanson, it makes perfect sense and it certainly has the backing of the Bill's constructor, Dr Allinson.
So with that, Eaghtyrane, I beg to move.

The President: I put first clause 23. Those in favour, that this clause do stand part of the Bill, say aye; against, no. The ayes have it. The ayes have it.
Clause 24, first the amendment in the name of the learned Attorney, number 69. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Then the amendment 70 – we will take them separately – in the name of Miss August-Hanson. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
And 71: those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 24 then, as amended: those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 25, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.
Clause 25 empowers the Attorney General to seek injunctions in the High Court in relation to any breach of Part 3, regardless of whether the breach concerned constitutes an offence.
Eaghtyrane, I beg to move.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President, I beg to second.

The President: I put the motion that clause 25 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 26, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.
Clause 26 deals with the giving of notice about the creation and extent of access zones.
Eaghtyrane, I beg to move.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President, I beg to second.

The President: The motion is that clause 26 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 27, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.
Clause 27 permits the Department to revoke orders and notices designating access zones.
Eaghtyrane, I beg to move.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President, I beg to second.

The President: I put clause 27. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 28, Mr Henderson.

Mr Henderson: Eaghtyrane, after clause 27, this is where I had indicated I would like to return to clause 3 for the definitions, (**The President:** Right.) as an appropriate point to insert it back into the Act –

The President: Rather than after clause 29? (**Mr Henderson:** Yes.)

Yes indeed, okay, fine, Mr Henderson. So we are dealing now with clause 3.

Mr Henderson: Gura mie eu, Eaghtyrane; and I thank Council Members for their patience in the reorganisation of this.

Clause 3 defines terms used in the Bill including the definition of 'health', and I can see why we have put that here, and I would point out that we have amended issues accordingly. Also it defines 'relevant professional' and so on. What I would like to do, Eaghtyrane, is move the Bill and just ask for a little clarification from the Legal Drafter with regard to the changes that have occurred and what effect it will have now on clause 3, just for a little clarification.

The President: You can certainly move; do I have a seconder? Mrs Poole-Wilson?

Mrs Poole-Wilson: Yes, I beg to second and reserve my remarks.

The President: I wonder if it would be more helpful to have before us the amendments in the name of the learned Attorney which I think refer to some of those changes you refer to? All might then become clear. But we certainly have Mr Connell, if required.

Mr Henderson: Yes, Eaghtyrane, I think I have got a little previous with my explanation, but certainly.

The President: Certainly. I will come back to you, Mr Henderson, yes.

Learned Attorney.

The Attorney General: Yes, thank you, Mr President.

I refer to the amendment in my name, number 3, which is to insert a definition of 'counselling' and my amendment reads: '"counselling" means counselling which complies with guidelines under section 6(12), insofar as those guidelines are relevant in the particular case'.

If I could seek your guidance, sir, I do not know whether at that point, step by step, through you, Mr Henderson would want to refer to that particular matter and do them one by one, if I may? Or do you want me to just simply take them all at this stage, sir?

Amendment 3:
Page 9, after line 17 insert—
*'"**counselling**" means counselling which complies with guidelines under section 6(12), insofar as those guidelines are relevant in the particular case;'*

The President: I think we will go through them successively, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and after each point Mr Henderson wishes to comment.

Mr Henderson: I am happy with that approach, Eaghtyrane, I was a little ahead of myself when I was requesting the Legislative Drafter, *(Laughter)* not fully appreciating the fact that we still had amendments to insert into Part 3. (**The President:** Yes, indeed.) So I am content if the AG wishes to …

The President: Thank you.
So amendment number 3 has been moved. Mr Cretney.

Mr Cretney: And I will second it.

The President: Thank you.
Learned Attorney.

The Attorney General: Thank you, Mr President.
I now move to speak to amendment 4 in my name, which is effectively to substitute a new definition of 'gestation period' which I will read: it is proposed that 'gestation period' means the period of pregnancy calculated (a) in the case of a woman whose menstrual cycle is regular, from the first day of the menstrual period which, in relation to the pregnancy, is the last; and (b) in the case of a woman whose menstrual cycle is irregular or who suffers from menstrual disorder, in accordance with an ultrasound scan of the woman's body'.
I so move:

Amendment 4:
*Page 9, for lines 19 to 21 (definition of "**gestation period**") substitute—*
*'"**gestation period**" means the period of pregnancy calculated—*
(a) in the case of a woman whose menstrual cycle is regular, from the first day of the menstrual period which, in relation to the pregnancy, is the last; and
(b) in the case of a woman whose menstrual cycle is irregular or who suffers from menstrual disorder, in accordance with an ultrasound scan of the woman's womb;

Example of a menstrual disorder for paragraph (b) of the definition: amenorrhea.'.

Mr Cretney: And I second.

The President: Mr Cretney, thank you.
Amendment number 5, learned Attorney.

The Attorney General: Thank you, Mr President.
This amendment proposes to actually delete the definition of 'health' and I am sure there will be much said perhaps on this. But if I could just make a general comment that from the debate which took place in the House of Keys, it was quite clear that there had become a blurring between the medical and social issues which the current definition in the Bill resulted in. The view taken, with which I share, basically, is that it might be better to avoid the blurring of those issues to delete the definition and to rely upon the normal meaning of 'health' which is 'the physical and mental health and wellbeing of the woman or child as the case requires'.
I am not imposing that, I am just basically saying that on that basis I do move that the definition of 'health' in the Bill be deleted.

Amendment 5:
*Page 9, omit lines 22 and 23 (definition of "**health**").*

The President: Mr Cretney.

Mr Cretney: I will second that.

The President: We are open for debate, of course, after each particular amendment has been moved, if Members wish to take advantage.

Miss August-Hanson.

Miss August-Hanson: Can I ask, therefore, Mr President, if the mover is content with such an amendment?

Mr Henderson: Yes, I am.

The Attorney General: Yes, thank you.

Miss August-Hanson: Okay.

The President: Lord Bishop.

The Lord Bishop: Mr President, thank you.

I think I would just comment on this. Whilst fully understanding the rationale for removing the definition of 'health', I think it also exposes some of the fault lines that we have been identifying in our debate and our discussion regarding this Bill. That is to say, we are dealing with an issue which sometimes is so difficult to quantify within the terms of normal human categories that the only way to proceed with the discussion is actually to remove that definitive category.

Therefore, whilst I have no concern about removing the definition of the word 'health', neither am I particularly surprised that something that has been such a stumbling block within the discussion should most easily find itself being removed. I think I would probably want to put that observation on record.

Thank you, Mr President.

The President: Thank you, Lord Bishop.

We move on to amendment number 6.

The Attorney General: Yes, thank you, Mr President.

This amendment is to delete the existing definition in the Bill of the expression 'relevant product' and to substitute it with the following: 'relevant product' means a medicinal product which is —(a) designed or intended to procure the termination of a woman's pregnancy; and (b) prescribed for or supplied to her with a view to the termination of her pregnancy'.

I so move.

Amendment 6:
*Page 10, for line 11 (definition of "**relevant product**") substitute—*
*'"**relevant product**" means a medicinal product which is —*
(a) designed or intended to procure the termination of a woman's pregnancy; and
(b) prescribed for or supplied to her with a view to the termination of her pregnancy;'

The President: Mr Cretney.

Mr Cretney: I second.

The President: We move on; amendment number 7.

The Attorney General: Yes, thank you, Mr President.

The amendment standing in my name is seeking to amend the definition of 'serious impairment' by deleting the words 'length or quality' and substitute 'length *and* quality'. I do not know if it might be helpful if I read all of that out, but that is the effect of it, Mr President, and I so move:

Amendment 7:
*Page 10, line 16 (in the definition of "**serious impairment**") for 'length or quality' substitute 'length and quality'.*

The President: Mr Cretney.

Mr Cretney: I second, Mr President.

The President: Amendment 8.

The Attorney General: Yes, thank you, Mr President.
This amendment is to change the definition of 'treatment' as appears in the Bill currently and to substitute the following: '"treatment" means the process beginning with the consultation with the relevant professional or pharmacist leading to the termination and ending with the disposal of the products of conception'. I so move:

Amendment 8:
*Page 10, for lines 26 to 28 (definition of "**treatment**") substitute—*
*'"**treatment**" means the process beginning with the consultation with the relevant professional or pharmacist leading to the termination and ending with the disposal of the products of conception;'.*

The President: Mr Cretney.

Mr Cretney: I second.

The President: Learned Attorney.

The Attorney General: Yes, I speak to amendment 9 in my name, which seeks to amend the definition of 'woman'; and where it says at the moment it 'means a person of any age who *is* pregnant' to insert 'or, as the case requires, has been'. So it would read 'or, as the case requires, *has been* pregnant'.
I so move:

Amendment 9:
*Page 10, line 29 (in the definition of "**woman**") after 'who is' insert 'or, as the case requires, has been'.*

The President: Mr Cretney.

Mr Cretney: I beg to second.

The President: Amendment number 10, Miss August-Hanson.

Miss August-Hanson: Thank you, Mr President.
For reasons previously stated, equality, I feel in line with other jurisdictions it is important to set an example on gender equality; and also for clarity in terms of this Bill as well. I am asking that a note, a very useful legislative tool be added after line 29 on page 10 before subsection (2) in

Interpretations and that it say: 'For the sake of clarity, it does not matter whether the person to whom abortion services are provided self-identifies as a woman, transgender, gender neutral, gender fluid or non-binary'.

I feel that this properly respects a person's rights to self-identify.

Thank you.

Amendment 10:
Page 10, after line 29 insert—

> *Note: For the sake of clarity, it does not matter whether the person to whom abortion services are provided self-identifies as a woman, transgender, gender neutral, gender fluid or non-binary.*

The President: Mrs Lord-Brennan.

Mrs Lord-Brennan: I beg to second and reserve my remarks.

The President: Moving then to amendment 11, Mr Attorney.

The Attorney General: Thank you, Mr President.

This amendment standing in my name substitutes the word 'stated' for 'specified' where it appears in subsection (3). *[A mobile phone rings.]* It says: 'References in this Act to a fine of a specified level' will now read 'stated level'.

I so move:

Amendment 11:
Page 10, lines 35 and 36 for 'specified' substitute 'stated'.

The President: Mr Cretney.

Mr Cretney: I am happy to second, Mr President.

The President: It goes without saying, mobile devices must be switched off.

Amendment 12, Mr Attorney.

The Attorney General: Thank you, Mr President.

I speak to amendment 12 in my name which unusually reflects a typographical error and where the word 'on' appears in subsection (3) it should be replaced with 'in', and I so move:

Amendment 12:
Page 10, line 36 for 'on' substitute 'in'.

Mr Cretney: I am happy to second, Mr President.

The President: Mr Henderson, you have the right of reply.

Mr Henderson: Gura mie eu, Eaghtyrane.

Yes, I am very happy to accept all the amendments to this clause, which is important, as the Interpretation clause. I can assure Hon. Members that between all Legislative Council Members there have been considerable consultation meetings on all these amendments between ourselves. And certainly from my point of view the amount of time I have spent with the Legal Drafter going through each and every one of these amendments, and to the policy behind them and the individual

Member's intention, so that I have a clear scope of what is proposed here and the effect on the Bill. I can say that I am quite happy with the way it has turned out and with these definitions, Eaghtyrane. So with that, I am happy to move.

The President: Now, clause 3, the Interpretation clause. Hon. Members, I am content that we vote on all the amendments *en bloc* unless any Member specifically wishes they be voted on individually. *En bloc*? (**Members:** Agreed.) In that case, thank you, Hon. Members.

The amendments thus moved and seconded to clause 3. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 3, as amended: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Having dealt with clause 3, we dip back in to clause 28. Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I would like to ask permission from yourself and Council Members if I can move clauses 28 and 29 together as they are co-related as far as that goes.

The President: To be debated together, voted separately – is that agreed? (**Members:** Agreed.) Agreed, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

Part 4 comprises clauses 28 and 29. The former authorises the Department to incur expenditure in connection with the operation of the resulting Act and the latter repeals provisions which are no longer necessary in the light of the provision which will be made by the Act if the Bill passes.

Eaghtyrane, I beg to move that clauses 28 and 29 stand part of the Bill.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

I beg to second and reserve my remarks.

The President: Lord Bishop.

The Lord Bishop: Thank you, Mr President.

Could I ask please if the learned Attorney General might just offer a reflection, which I think he did also on 12th June, regarding clause 29(b) and the proposal to repeal section 4 of the Infanticide and Infant Life Preservation Act 1938 – the section that criminalises child destruction – and the concern raised by Dr Neal about the implications of repealing that section. I wonder if I might ask just for clarity at this stage, if the learned Attorney would offer a further reflection on that – perhaps if only to repeat what he said on that on 12th June.

The President: Thank you, Lord Bishop.

Meantime, I call Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

Just while the learned Attorney is finding his paperwork, I recall actually from 12th June that I think Dr Neal referred to a section of that Act which is not the section which is in the Bill, so if that assists the learned Attorney in finding his remarks from 12th June.

The President: Thank you.

Learned Attorney.

The Attorney General: Yes, thank you, Mr President.

I do recall that. The reference which was made was the wrong statutory reference – that was by the speaker – that the Bill actually repeals section 4, which I would have to get up on screen to refresh my memory, but the point made was off point. It just did not apply. That was the point I addressed when it was raised.

The Lord Bishop: Mr President, I thank the learned the Attorney General very much for his assurance on that point. Thank you.

The President: You are content with that. Thank you very much.

Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I think with the clarification from the Attorney General on that and the fact that we are on clauses 28 and 29, I beg to move, sir.

The President: I put clause 28 to stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Finally, clause 29: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, that concludes the clauses stage of the Abortion Reform Bill 2018.

Abortion Reform Bill 2018 – Standing Order 4.3(2) suspended to take Third Reading

Mr Henderson: Eaghtyrane?

The President: Mr Henderson.

Mr Henderson: Eaghtyrane, I would like to ask permission to have a vote on the suspension of Standing Orders under the relevant Standing Order, in order to take the Third Reading of the Abortion Reform Bill 2018 and obviously with the concurrence of Hon. Members.

The President: A move for suspension of Standing Orders to allow the Third Reading stage to be taken now has been made.

It requires a seconder.

Mr Cretney: I second that.

The President: Mr Cretney.

We go straight to a vote. It requires six votes to carry. Those in favour, say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

FOR	**AGAINST**
Mr Cretney	The Lord Bishop
Mrs Poole-Wilson	
Miss August-Hanson	
Mrs Sharpe	
Mr Henderson	
Mr Crookall	
Mrs Lord-Brennan	
Mrs Hendy	

The President: The motion therefore carries, 8 votes to 1.

Abortion Reform Bill 2018 –
Third Reading approved

The President: Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I would like to thank the Hon. Council for its permission to suspend Standing Orders and indeed for Hon. Members to allow me to make the Third Reading of the Abortion Reform Bill 2018 which I am very grateful for.

I only wish to make a short speech to the Third Reading, Eaghtyrane, because I opened with a very long and detailed First Reading. We have had the Second Reading definition. We have gone through all the clauses and the 70-plus amendments to get to this point. I would just like to say I am very pleased to be at this point in moving the Abortion Reform Bill, which modernises Manx law to where it should have been, in my view, a long time ago. It recognises equal rights; it recognises women's rights; and it recognises a lot of other issues that are equally important, not least of all somebody's right to make their own decision, which I think is fundamental to this Bill.

I have listened very carefully to all the arguments and counterarguments in the House of Keys. I have read, believe it or not, the *Hansards* from that, which I have today to reference if it was proved necessary. I have listened to the arguments and counterarguments here in the Legislative Council. I have listened to the expert witnesses.

Behind the scenes, I have held numerous consultative meetings with Members individually, collectively and I have certainly spent many hours with Mr Howard Connell, the Legislative Drafter, going through each individual clause and each individual amendment as it popped up on the progression of this Bill through Legislative Council.

I can say, as far as I am technically able, that we have a good piece of legislation which has benefited from some considerable examination both from the House of Keys, certainly from the Legislative Council, and I am happy with all the amendments made and indeed, I am happy with everyone who proposed the amendments, which showed the scrutiny and the observations that were afforded to this piece of draft legislation.

Eaghtyrane, I also must thank my seconder, Mrs Jane Poole-Wilson for her efforts in the progression of this through Legislative Council.

I wish to thank Hon. Members for their support in this and indeed your patience, sir, as we have progressed it.

Most of all, I want to thank Mr Howard Connell for his complete and utter patience with this, and the drafting of it, re-drafting and 're-re-re-drafting', as we have progressed along the line of examination, corrections, improvements and so on; (**Miss August-Hanson:** Hear, hear.) and indeed for other input and that of the Lord Bishop; and for the other expert witnesses we have had here, who have given up their time and given us their opinions and views. It has all been part of our legislative process and all part of our scrutiny and the examination process, to which I think Legislative Council have risen to the challenge quite admirably, Eaghtyrane.

So with that, I move the Third Reading of the Abortion Reform Bill.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

I beg to second. Like the hon. mover, I am very pleased that this important Bill has successfully completed its clauses stage today and is now receiving its Third Reading.

I agree that there has been detailed consideration of this Bill by the Council and we have certainly contributed to Mr Connell's workload over the last few weeks, but actually I think that is in good order because we have not only received a lot of careful thought from Members of this Council but we have also been able to listen to others who are interested in this Bill and take on board their very informed views, to be able to make sure that this Bill has received some further amendment – amendment which I think adds to it and improves its workability, but without in any way detracting from the principles and the nature of the reform which has been approved by the House of Keys. I hope that as this Bill progresses from this Council to the other place that they are able to see the amendments and that they are hopefully adding to this important Bill.

Thank you, Mr President.

The President: Hon. Member, Mr Cretney.

Mr Cretney: Yes, I just think it would be appropriate to put on record the thanks of Council Members for the amount of time dedication and detailed work that the Hon. Member, Mr Henderson has put in to bringing forward this legislation, and also I would want to add my thanks to Mr Connell for his patience with us all.

The President: Lord Bishop.

The Lord Bishop: Thank you, Mr President.

I would also very much wish to thank the Hon. Member, Mr Henderson for moving this Bill through Council; to thank the drafter, Mr Connell, for all his outstanding work; and indeed, Mr President, if I may, to thank you also for guiding us through this discussion and through this debate.

I am aware that one o'clock is not a good time to be making a speech, but I feel that I would perhaps just like to offer, if I may, a few closing observations from my perspective, before we move to the final vote on the Third Reading.

With the best will in the world, I do thank Hon. Members for everything they have given to this debate; but I take with interest what the Hon. Member, Mr Henderson just said about how this Bill emphasises equal rights. We have given greater emphasis to the rights of the mother and, as I said at Second Reading, I am not sure we have given quite the same emphasis to the rights of the child, but that is a discussion that we have already had.

In one or two of our minor amendments recently, we have given clearly great consideration to the question of gender fluidity and rightly so. I remain concerned, I think, that we have given a lesser consideration to the equal rights and status of the disabled, and I remain deeply concerned at the implications remaining in clause 6(8)(d)(ii).

Perhaps I can just offer a couple of final reflections from people who have written to me and from correspondence that I have received over the past months in regard to this debate. One was of a woman who wrote to me of a discussion that she had had with a group of people who said to her quite simply, 'Well, you won't be able to stop people having sex, so this is a way of just dealing with it all', and I think I have a significant concern that unless we have absolute clarity on how we implement this Bill, we are liable for what one might call a sort of moral slippage. That is my concern and Hon. Members may think that I express that too strongly, but I have a genuine concern about the implications for moral slippage arising from this Bill.

My second reflection is on a correspondent who wrote to me and said how wonderful it would be if the Isle of Man had the most liberal abortion legislation anywhere in Europe and if the Isle of Man was the most liberal society in Europe. I think my response to that is, while I acknowledge that point, it depends on what you mean by a 'liberal society'. I would go back again to my concern regarding the disabled and regarding perhaps especially those with Down's syndrome. It seems to me that one of the marks of a liberal society is that it is able to reach out and to embrace people of all kinds, people of all descriptions, to gather them in and to hold them in balance.

As we move towards Third Reading, I will vote against because I remain unconvinced that in passing this legislation we possess that hallmark of the liberal society that enables us to respond graciously and compassionately to all, including those who are seriously disabled.

Mr President, with those closing remarks, and I am grateful to you for enabling me to make them, I offer my concluding contribution to this debate.

Thank you.

The President: Miss August-Hanson.

Miss August-Hanson: I was not going to speak, but following what you have just said, Lord Bishop – 'we can't stop people having sex so there'd be some form of moral slippage' – I fervently disagree with that, very firmly disagree with that. That shows a blatant disregard for those who have had to make the decision to abort – one of the most challenging decisions that they will ever make. So I would like to make that point.

I would like to thank as well the drafter, Howard Connell, who has been exceptionally patient with all of us and we have worked very, very hard on this Bill in scrutinising it. I feel that we really have added to what Keys have decided to put forward, which I do think is quite key – that we did stick to very much what Keys had decided previously.

Thank you, Mr President.

Mr Cretney: Hear, hear to that.

The President: Mrs Hendy.

Mrs Hendy: Thank you, Mr President.

I think today marks a very important day. Again I would like to thank our learned draftsman and all my colleagues. I would also like to thank the Lord Bishop. I think it is right that our conscience is tested and the experts that have been brought before us gave us the extra information and expertise that is not available even on the Island at times.

But I think what we have done as a Council is scrutinise this Bill very carefully, brought amendments that I hope now take the Bill forward in a form that enables it to be enacted and an efficient piece of legislation to help the women of this Island, but also every woman will make this difficult decision when she comes into this very taxing position and her own conscience will lead her to make her own decision. But at least we now have the option to help women who in the past have found themselves in a very difficult place, with nowhere to turn to.

So I feel we leave the legislation, the Bill as it stands now, to go forward in a much better condition than it came to us.

Thank you.

The President: Of course, in the Legislative Council, debate does permit Members to come back a second time.

Lord Bishop.

The Lord Bishop: Thank you, Mr President.

I would just like to reassure Miss August-Hanson about that earlier comment. My concern, I think, is not at all to undermine the issue of the decision of having abortion. It is simply, I think, to reflect the fact that within a discussion like this, it is possible to pay less heed to the underlying causes – in other words, to those issues perhaps to have led … that prevent people from forming respectful relationships, non-exploitative relationships, non-manipulative relationships and to enable people to understand that beneath all of that and within every human action, there are consequences.

So I think the concern in the comment that I reflected to you just now simply has to do with how there is scope for the provision for abortion to become expedient and for the underlying issues of human relationships, of poverty, of education and of deprivation to be given less emphasis than they require.

Thank you, Mr President.

The President: May I invite Mr Henderson to reply.

Mr Henderson: Gura mie eu, Eaghtyrane.

Thank you, Eaghtyrane, thank you to all Hon. Members for your contributions to the Reading. I think it is now up to me just to say if I can move the Third Reading, Eaghtyrane, and I so do move.

The President: Hon. Members, I put the motion that the Abortion Reform Bill 2018 be read for the third time. Those in favour, please say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

FOR	**AGAINST**
Mr Cretney	The Lord Bishop
Mrs Poole-Wilson	
Miss August-Hanson	
Mrs Sharpe	
Mr Henderson	
Mr Crookall	
Mrs Lord-Brennan	
Mrs Hendy	

The President: Hon. Members, with 8 votes for and 1 against, the Third Reading motion carries.

That concludes the business before Council this morning. Council will now retire and we shall resume at 2.30.

The Council adjourned at 1.09 p.m.
and resumed its sitting at 2.30 p.m.

2. Criminal Evidence Bill 2018 – First Reading approved

HM Attorney General to move:

That the Criminal Evidence Bill 2018 be read a first time.

The President: Please be seated, Hon. Members.

We resume our consideration of the Order Paper at Item 2, Criminal Evidence Bill 2018, and I invite the learned Attorney General to move the First Reading.

The Attorney General: Thank you, Mr President.

Hon. Members, there are many precedents of a Bill starting its legislative journey here in Council and in my time I believe it has always been with good reason. In recent times, Council has dealt with the Police (Detention and Bail) Bill, providing its scrutiny as to its provisions in advance of the other place because of the urgency of that Bill; and because, as Attorney, I was the prime mover seeking to

ensure that the urgent legislative fix required was dealt with in the most appropriate and expeditious manner.

In this case, the Council of Ministers have requested that the Bill starts its journey here on the basis of the submission which I made to the Council. The reasoning is twofold: firstly, that because of the legislative pressures on the Department of Home Affairs at present they neither have the time or the resources to deal with the Bill with the urgency, which I explained and which I will come to later. Indeed, the Department of Home Affairs is dealing with some very hefty legislation at the moment: it is dealing with the Communications Bill which started its journey this morning; it is dealing with the Sexual Offences legislation; and major changes to the Criminal Justice system which will be consulted upon during the summer recess. I could add more but their workload is hefty and quite frankly, as I hope I can explain to you, I do not believe that provisions of this Criminal Evidence Bill can await their having the opportunity to deal with it.

So I am, Hon. Members, in the true sense, the prime mover of this Bill and Council has given me its authority and request that I bring it here today for your consideration.

The second reason is that I was hoping at this First Reading the Bill could be, to quote my hon. colleague, Mr Henderson this morning 'on the stocks', so as to ensure both the Police, who are of course responsible for investigating criminal activity here on the Island, and hopefully ensuring successful prosecutions with my Prosecution Team; and secondly to assure the judiciary – and I will come to that in a moment as to why they may be concerned – but perhaps more importantly to ensure the public that steps are being taken to address what I will again explain to you.

So what I would like to say to you is that in my view the Criminal Evidence Bill before you is being moved by today as a matter, as a Bill, of national importance falling into the categories of good governance and public safety. Good governance, as being necessary and advisable so as to ensure the Island maintains its effectiveness in the fight against crime and to reflect the changes in legislation already made in the United Kingdom in this regard – and I say that in regard to the matters which the Bill deals with; and public safety, as the proliferation and use of drugs on the Island is a grave matter of serious concern to public safety generally.

The background is, the difficulties arose in the prosecution of a case named *Attorney General v Frank Thomas* – and I will refer to that as '*AG v Thomas'* – on 9th April 2018, when legal argument regarding the admissibility of hearsay evidence was made to His Honour Deemster Montgomerie. The defendant was suspected of being a cannabis dealer. One piece of evidence relied upon by the Prosecution was an incoming text message that had been forensically downloaded from the defendant's seized mobile phone, which purported to be from one of the defendant's clients asking for 'drugs'.

The Defence asserted that for the Prosecution to adduce this message created an 'implied assertion' that the defendant *was* a drug dealer and that in the absence of calling the sender of the message – which I am sure Hon. Members will appreciate, for obvious reasons, would generally be impossible – the evidence was hearsay and therefore inadmissible.

The Defence relied upon the House of Lords case of *R v Kearley* in 1992. The learned Deemster considered that, in the absence of authority and in the absence of legislation within this jurisdiction, he must follow the House of Lords decision in *Kearley*. As such, it was held that the text message was indeed an implied assertion and was, therefore, inadmissible hearsay evidence.

Before 9th April 2018, such evidence had been adduced and admitted before the Court without any challenge from the Defence, or indeed any challenge from the judiciary, and thus it was commonplace for the Prosecution to rely upon that type of evidence.

Although in the case of *AG v Thomas*, the defendant was ultimately convicted of being a cannabis dealer on other evidence, the difficulty remains following Deemster Montgomerie's decision on 9th April concerning the future admissibility of phone messages. Those difficulties will apply equally to many other types of criminal offences and their successful prosecution – as has been seen, for example, recently in nationally publicised convictions for rape, or in rape cases.

As a result of *Kearley*, the legislation in the United Kingdom was amended and the position was addressed in sections 114 and 115 of the Criminal Justice Act 2003 (of Parliament) from which

clauses 16 and 17 of the Bill before you today are derived. Sections 114 and 115 form part of Chapter 2 of Part 11 of the 2003 UK Act.

Whilst the Bill is designed to address the difficulties associated with *Kearley* it was considered prudent and proportionate to adapt and apply the majority of the other provisions of Part 1 of the 2003 Act. Those provisions, modified as appropriate to our jurisdiction, form Division 2 of Part 2 of the Bill.

Clause 17(3) of the Criminal Evidence Bill 2018, if enacted, will bring the law in the Island into line with the United Kingdom, so that the 'matter stated' that the defendant is a drug dealer, would not be one to which the hearsay rule applies, unless 'the person making the request had a purpose to either cause another to believe the matter or cause another to act as though the matter is stated'.

In the case which was recently brought before the learned Deemster, the sender of the message clearly thought that they were communicating with the defendant asking for drugs and they were not seeking to induce a state of belief or to act as though the matter is as stated. If the Bill is enacted, such a message or statement would, in future, not be hearsay and, subject to relevance, would be admissible. The Bill would override the decision in *Kearley*.

In the fight against drugs crime and equally in relation to other crimes, perpetrators are increasingly making use of electronic communications and their technology, and often the interception of communications such as phone messages has been and will continue to be of assistance in achieving successful outcomes.

Division 1 of Part 2 of the Bill completes the picture and introduces a more sensible approach when dealing with evidence of bad character, in relation to defendants – and that is in clause 6 – and also to non-defendants, in clause 5. The Division is modelled on Chapter 1 of Part 11 of the UK 2003 Act.

The present procedure under paragraphs (f) and (h) in section 1 of the Criminal Evidence Act 1946 has an exclusionary approach to bad character. The relevant provisions of the Bill in relation to bad character are, however, more balanced. The bad character provisions of the Bill would result in a move away from technical rules of inadmissibility, instead allowing judicial and lay factfinders to give relevant evidence the weight it deserves. This improvement is one of the reasons for the proposed implementation of a new inclusive framework within the Bill.

In relation to the admissibility of bad character evidence, the framework would provide firstly, an automatic inclusion rule in respect of evidence of bad character connected with the alleged facts of the offence, which is in clause 3(a)(b); and secondly, where evidence of bad character is not connected to the central set of facts, such evidence would be *prima facie* excluded, unless it came within the statutory exemptions, and only then with the leave of the Court, subject always to the Interests of Justice test.

The shortcomings of the Island's existing law have now been referred to in a recent court judgment and so are well known to the Island's legal profession. *Kearley* has been adopted as a good precedent into this jurisdiction as a result of Deemster Montgomerie's decision. This is of huge concern to both the Police and the Prosecution, as drug-related offending is increasing and on many occasions the phones, or other devices, of suspects are seized so that they can be forensically downloaded with a view to obtaining such evidence.

Future prosecution cases could be significantly undermined if any incoming messages on such phones or devices could not be used as part of the case against the suspect. Presently, by reference to *Kearley*, any such evidence will be inadmissible hearsay.

The Bill, if enacted, will remedy the position and such evidence will be admissible, thereby allowing the judiciary/the jury/a Lay Bench to hear the entirety of the evidence against the defendant, attaching whatever weight they feel is appropriate to that evidence.

There has, Mr President and hon. colleagues, been public consultation on the Bill and so far there has only been one response received which was somewhat surprising. However, it is a response from the courts which raised some technical issues and the points which they raise have been incorporated in the provisions of the Bill before you.

In the circumstances, as this is a technical Bill, as I am sure quite possibly Hon. Members appreciate from what I have been saying, what I would have asked and do ask is that a presentation to Members be arranged in advance of the Second Reading.

Mr President, I move that the Bill we read a first time. Thank you.

Mr Henderson: I beg to second, sir.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President; and thank you to the learned Attorney for his remarks.

Yes, I did have a question about the consultation period which I had realised had closed I think on 1st June, but no comments have been published so far so I thank the learned Attorney for confirming there has only been one response, which I agree with him is surprising given the nature of this Bill. I am thankful we are going to have a presentation as well to assist in thorough understanding of this Bill and also perhaps to ensure that any defence practitioners, criminal defence practitioners in the Isle of Man who might have remarks about this Bill are again given an opportunity to raise any questions they may have on the contents of the Bill.

One question I do have for the learned Attorney – and it is reminiscent to some extent of the position we were in with the Police (Detention and Bail) Bill which was last year now – and that is that I understand the decision in *Kearney* in England and Wales has only now become precedent in the Manx courts in April due to the Deemster's ruling. However, it does make me ask the question about whether we as a jurisdiction should do more to track the key decisions that are made in the courts of England and Wales, given they do have persuasive authority in the Isle of Man. I understand that up until April this year no challenge has been made by the defence or by the judiciary to our laws and it was only the defence in that case that the Attorney quoted the *Attorney General v Thomas* that has now brought this provision into our local precedent. But it makes me wonder whether we should perhaps track decisions and consequential amendments that are made by the House of Commons in the UK to address judgments perhaps sooner than we do in order that should a challenge be brought in the Isle of Man courts, our laws are perhaps moving a little more quickly to address any of these issues that come up. I would be interested to hear the learned Attorney's comments.

The President: Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I am quite happy with the principle of this Bill and if it assists in bringing perpetrators of whatever crime to justice, that is all good. What I want to ask specifically is on the consultation and who the consultees were? That would be my question.

The President: I will ask the Attorney General to respond.

The Attorney General: Thank you, Mr President.

Firstly, dealing with my learned colleague, Mrs Poole-Wilson, I thank her very much for her contribution. Like her, as I have already said, I am rather surprised that we did not receive any other responses to the consultation and I would have expected to hear perhaps from members of the Defence Bar; but all I can say is as we sit here today nothing has been received.

I entirely agree with what Mrs Poole-Wilson has said with reference to keeping a better track of changes in legislation in the UK. We were, quite frankly, caught out with reference to the Bail legislation which we had to introduce quickly. We could potentially be caught out in the fight against crime with reference to the *Kearley* decision and the proper conclusion which Deemster Montgomerie reached when he considered the persuasive authority of that House of Lords decision.

Mrs Poole-Wilson, Hon. Members, may not be surprised I went in search to see if I could find out why potentially this had happened. All I can say is that it was brought to the attention of the then Department Members with reference to the fact that the decision had been made and the legislation introduced in 2003 in the UK and it was just simply – as far I am concerned, and I am being quite frank here – not necessarily put on the backburner, but put in the pile of things that had to be addressed when they got around to it. And, Hon. Members, we potentially may be called out because of that.

So I entirely agree. I cannot be any more frank than that. When it was brought to my attention, as I have explained to Hon. Members, I did consider that this was such a matter of national importance that I ought to be the prime mover to ensure that because the Department of Home Affairs clearly has difficulties that this was brought hopefully into legislation at the earliest opportunity.

So I thank you, Mrs Poole-Wilson.

To my hon. colleague, Mr. Henderson: I cannot be exact. What I do know, which is really the key that I asked this morning, is that the Isle of Man Law Society were *specifically* given notice of this Bill and so were *specifically* consulted. And I can say, as a member of the Manx Bar, that the membership of the Manx Bar were circulated with the Bill in good order and in good time to enable them to have commented if they had so wished. I do not know specifically where else it went but that was key when I looked at this this morning to ensure that they had adequate opportunity of ensuring the membership were able to comment.

Mr Henderson: Could I ask a further question, Eaghtyrane?

The President: Yes, Mr Henderson.

Mr Henderson: Just to make that point for the record quite clear, that at least one consultee was the Manx Bar. There could be other consultees –

The Attorney General: Yes – sorry, my learned colleague Mrs Poole-Wilson has helped me. The bodies consulted directly were Tynwald Members, the Isle of Man Chamber of Commerce, the Isle of Man Law Society, the Isle of Man Trade Unions, clearly the Isle of Man Constabulary, Government Departments, Statutory Boards and Officers, and the General Registry.

Mr Henderson: Okay, thank you for that.

Then I would ask, just to clarify that point or make it for the record, that through the Law Society all members of the Bar received a copy of the draft Bill basically in the consultation document?

The Attorney General: The circular from the Law Society brought it specifically to members' attention with a link to the consultation paper.

The President: Does any other Member wish to make comment at this stage?

Mr Crookall.

Mr Crookall: Mr President, can I just check: the consultation period would have been six weeks?

The Attorney General: It was actually in this case four weeks.

Mr Crookall: Four weeks? Okay.

The Attorney General: Yes.

The President: Miss August-Hanson.

Miss August-Hanson: Thank you.

Is there anything that you feel perhaps could have been done better in terms of creating or generating a larger reach in terms of getting more responses back from the consultation?

The Attorney General: Mr President, I do not know.

It is obviously published on the Government's website and these are the specific people who were given specific and direct notice of this. It is part of the consultation. I could not really comment, Mr President, as to whether or not there is any opportunity to make it a broader or wider invitation to consult. I think it is pretty broad.

The President: Thank you, Mr Attorney.

Mrs Lord-Brennan.

Mrs Lord-Brennan: Thank you, Mr President.

If I could just ask the learned Attorney – I am sorry if I missed it – if the sole response we have had to the consultation has come from the Law Society or somebody within the Law Society?

The Attorney General: Sorry, Mr President, the sole response came from the courts through the General Registry.

Mrs Lord-Brennan: Oh sorry, yes, you did say that.

Thank you.

The President: Mr Attorney, did you wish to make any closing remarks?

The Attorney General: No, just to thank Hon. Members for their interest and their support and I move the First Reading.

Thank you.

The President: Hon. Members, the motion before Council is that the Criminal Evidence Bill be read for the first time. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

3. Standing Orders Committee – First Report received and recommendations approved

Mr Cretney to move:

That the First Report of the Standing Orders Committee of the Legislative Council for the Session 2017–18: Composition of the Committee and Other Matters [PP No 2018/0032] be received and that the following recommendations be approved:

Recommendation 1
That in Standing Order 4A.1(2) the words 'HM Attorney General and three other Members' be left out and replaced with 'the President, who shall chair the Committee, and two other Members'.

Recommendation 2
That Standing Order 3.1 be replaced with the words: 'No Member shall be absent from a sitting without the consent of the President.'

Recommendation 3
That in Standing Order 4.4(2) the words 'after the amendments have been initialled by the President' be left out; and that in Standing Order 4.5(2) the words 'signed by the President and' be left out.

Recommendation 4
That Standing Order 4.4(2) be amended by the addition at the end of the words: 'immediately unless the President determines that its return should be delayed'; that Standing Order 4.5(2) be amended by the addition at the end of the words 'immediately unless the President determines that its transmission should be delayed'; and that Standing Order 6.2(5) be omitted.

The President: We turn to Item 3, Standing Orders Committee, First Report. I call on Mr Cretney to move.

Mr Cretney: Thank you, Mr President.

This Report makes four recommendations for changes to our Standing Orders as set out on the Order Paper.

The first recommendation is about who should be a member of our Standing Orders Committee. At the moment the Committee is formed of Her Majesty's Attorney General and three other Members. The three other Members are Mr President, Mrs Sharpe and myself. The Standing Orders do not say who should chair the Committee but in practice it has been chaired by Mr President. If our recommendation is carried, the Committee will be formed of Mr President, who shall chair the Committee, and two other Members. We were asked to consider this reform in an email of December 2017 for the Tynwald Standing Orders Committee which is quoted in our Report.

The Tynwald Standing Orders Committee itself was reformed at the May sitting of Tynwald. Our recommendation follows through on the same thinking.

Mr President, our thinking is that if this recommendation is carried to day and provided other Hon. Members are content, Her Majesty's Attorney General will leave the Committee and the other three Members will continue to be you as Chair; Hon. Member, Mrs Sharpe who was elected to the Committee not long ago; and myself. It follows from the recent Tynwald Resolution that the three of us would then be the representatives of this Council on the Tynwald Standing Orders Committee as well.

Mr President, the other three recommendations in this Report are rather more technical. Recommendation 2 is about what happens if an Hon. Member is unable to attend a sitting. Under the Standing Orders as currently worded we are supposed to inform the Clerk. However, under primary legislation we are not supposed to miss a sitting without the consent of the President. The recommendation will bring our Standing Orders into line with that legislation.

Recommendation 3 removes an outdated reference to the initialling of amendments by the President. This belongs to a bygone era of hard-copy record-keeping. Amendments have not been initialled for years. This change would bring our Standing Orders into line with current practice.

Recommendation 4 is about what happens when we have passed a Bill and specifically the point at which we transmit them to the Keys. The purpose of the recommendation is to make express provision for a situation which happened in 2016 and may have happened at other times in the past. On 14th June 2016 two Bills which had been introduced first into the Legislative Council were passed: they were the Equality Bill 2016 and the Treasure Bill 2016. If these Bills had been transmitted to the House of Keys immediately, they might have been considered to be before the House at the time of the dissolution on 11th August 2016. Under Keys Standing Orders they might then have been deemed to have lapsed. That would have been an undesirable outcome from the point of view of this Council because then the new House would have had to start out as if those Bills had never existed and we might have had to debate them all over again. Those of us who were here for the Equality Bill will remember that one in particular. In order to avoid this risk, Madam President announced on 14th June 2016 that each Bill would be transmitted to the Keys on

3rd October 2016. This announcement was certainly within her powers at the time but the Committee felt it would be better if the President's ability to do this was set out in the Standing Orders.

Mr President, these are the four recommendations of this Report and I hope Hon. Members will support them. I beg to move.

The President: Mrs Sharpe, do you care to second?

Mrs Sharpe: I beg to second.

The President: Does any other Member wish to speak?

A Member: No, happy to support.

The President: In that case I put the motion that the First Report of the Standing Orders Committee and the four recommendations be approved. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, that brings us to the end of our Order Paper.

Retirement of Messenger, Mr Keith Fleming

The President: Before we go, Hon. Members may not be aware this is the last sitting that will be attended by our long-standing Messenger, Mr Keith Fleming who has been in the service of Tynwald for 20 years, Hon. Members.

Having had a long career in the Police, he joined us and has served us very faithfully and very well and has been a familiar presence here at our Legislative Council sittings. And we wish him much happiness in his retirement.

I wonder whether Keith has been in this place before, because if you just raise your gaze from where Keith is sitting to the photograph on the far wall *(Laughter)* you will see Sir Peter Stallard who was Lieutenant Governor from 1966 to 1974. Now, he may or may not be a relative but the resemblance is striking.

But, Keith, we thank you *very* sincerely for the way you have looked after us and for your friendship and for your service. Some more things will be said at the Tynwald sitting which is your official last day, but this is certainly the last day in this particular setting that you will be with us.

So, Hon. Members, could we show our appreciation. *(Applause)*

We will of course still see you at St John's.

Mr Fleming: Yes, we'll be there.

The President: So Hon. Members, Legislative Council is now adjourned until our next sitting which will be at St John's on 5th July.

The Council adjourned at 2.57 p.m.