

**Report Of Proceedings Of  
Legislative Council  
Douglas, Tuesday, 2nd December 1997  
at 10.30 a.m.**

Present:

The President (the Hon Sir Charles Kerruish OBE LLD (hc) CP), the Lord Bishop (the Rt Rev Noël Debroy Jones), the Attorney-General (Mr J M Kerruish Q C), Mr B Barton, Hon C M Christian, Mr E G Lowey, Hon E J Mann, Messrs J N Radcliffe and G H Waft, with Mr T A Bawden, Clerk of the Council.

*The Lord Bishop took the prayers.*

**Apologies For Absence**

**The President:** Hon. members, we have apologies for absence from the hon. Mr Luft, who is still undergoing hospital treatment, and the hon. Mr Delaney, who has a hospital appointment this morning.

**Insider Trading Bill — First Reading Approved**

**The President:** Turning now to our agenda paper we have at item 1 the Insider Dealing Bill, and I call upon the hon. Mr Radcliffe to take the first reading.

**Mr Radcliffe:** Thank you, Mr President. Could I just explain to hon. members that the Insider Dealing Bill of 1997 will repeal the existing law, which is principally contained in the Companies Securities (Insider Dealing) Act of 1987, and replace it with provisions from that 10-year-old Act which deal with investigations of insider dealing and with further provisions based upon part V of the Criminal Justice Act 1993, an Act of Parliament.

This Bill quite deliberately follows the legislation introduced in the United Kingdom. The reason for this is that the Isle of Man does not have any financial markets of its own, therefore any legislation introduced in the Island will be principally used in support of the United Kingdom financial markets. Although the Isle of Man does not have any financial markets of its own, the Treasury considers it to be essential to have in place legislation which prohibits insider dealing.

Hon. members may care to note that the United Kingdom Act was based upon the provisions of an EC directive which laid down minimum requirements which member states must meet in prohibiting activities in accordance with the directive. The equivalent legislation to this Bill should, therefore, be in place throughout the European Community. In broad terms the Bill makes it a criminal offence for an individual who has information as an insider to deal on a regulated market, or through or as a professional intermediary in securities whose price would be significantly affected if the inside information were to be made public. It is also an offence to encourage insider dealing and to disclose inside information with a view to others making a profit or avoiding a loss. No offence will be committed unless there is some connection with the Isle of Man.

Schedule 3 of the Bill, dealing with investigations and inspections, contains provisions which are currently contained in the Company Securities (Insider Dealing) Act of 1987. In the Insider Dealing Bill of 1997 these provisions remain the same except for one small but significant amendment which has been included to take account of comments made by the European Court of Human Rights following the Saunders case.

The Bill begins by setting out the offence of insider dealing and this has two main forms: the first consists of taking advantage of inside information for the purpose of dealing in certain securities either on a regulated investment market or where a professional intermediary is involved; the second consists of taking advantage of inside information by disclosing it or encouraging another to deal in such securities. The Bill then goes on to create defences based on establishing the absence of interest.

In schedule 1 there are special defences in three exceptional cases: market makers, persons in possession of market information, and persons acting in compliance with price stabilisation rules. The securities to which the Bill applies are defined, and these are basically shares, debt securities, and some associated derivatives. There will be further conditions which the securities must satisfy and these will be specified by order to be made by the Treasury.

The meaning of the word 'dealing' is defined and includes such terms as acquiring and disposing of securities; the term 'inside information' is defined as being information which applies to particular securities or issues of securities which is specific or precise which has not been made public but which, if it were made public, would be likely to affect the price of any securities. The individuals who may be in a position to take advantage of inside information are identified as individuals who are either insiders or persons having information from an insider. The circumstances in which information will be treated as made public are set out, and the people who will be treated as professional intermediaries are also defined. Miscellaneous definitions and interpretative provisions are included together with how the Bill will deal with prosecutions and penalties and the territorial scope of the offences defined.

The third schedule of the Bill reenacts the existing powers for the appointment of inspectors to investigate suspected cases of insider dealing.

The Bill is not expected to cause any increase in government expenditure, nor any decrease in government income.

The Bill was issued for consultation to Treasury's consultative committees and received mixed reactions. All of these responses from the consultative process were given very careful consideration by the Treasury. However, the Bill was not changed in any significant way as in the words of one consultee of the Bill it 'mirrors the UK and best practice as already practised in the Isle of Man.' I would just like to add that the Bill has the fullest support of the Treasury and is promoted as a further measure towards maintaining the Isle of Man's reputation as a well regulated centre.

I beg to move that the Insider Dealing Bill be now read a first time.

**Mr Waft:** I beg to second, sir, and reserve my remarks.

**The President:** Does any hon. member wish to speak to the resolution? If not, I will put the question that the Insider Dealing Bill be now read a first time. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

### **Mental Health Bill — Second Reading Approved — Consideration Of Clauses Commenced**

**The President:** Turning now to the second item on our agenda we have the Mental Health Bill, and I call upon the hon. Mrs Christian to take the second reading.

**Mrs Christian:** Mr President, as I indicated at the first reading of the Bill, it aims to provide us with an up-to-date consolidated and amended piece of legislation in relation to mental health which is based on current best practice. Hitherto we had embraced in our

legislation some parts of the United Kingdom Mental Health Act 1983. It is now intended that we introduce the remaining provisions of that Act into our own Manx law as well as incorporating the provisions of the United Kingdom Criminal Procedure (Insanity and Unfitness to Plead) Act 1991, the Mental Health (Patients in the Community) Act 1995 and provisions of the Crime Sentences Act.

The main issues in relation to the Bill relate to the adoption of provisions concerned with in the UK Mental Health (Patients in the Community) Act, in particular the supervised discharge of mentally ill patients. Under supervised discharge a patient must abide by the terms of an aftercare plan drawn up according to a needs-based approach which could include conditions on where a patient lives as well as attendance for treatment, education or training. The supervisor, normally the key worker for that person, would be responsible for ensuring that the plan is followed. If a patient fails to comply with the terms, the care will be reviewed and the care team will consider whether the patient should be readmitted to hospital.

The Bill will also close a loophole in the previous provision for returning patients to hospital if they have gone absent without leave. Previously patients who remained at large for 28 days ceased to be liable to be returned to detention. This will be extended to six months or the duration of the current period of detention. Changes brought about by introducing some of the previously unadopted measures from the UK Mental Health Act 1983 include reducing by one half the time for which the authority for a patient's detention lasts unless it is renewed. This will result in cases having to be reviewed twice as often as at present and the likelihood of a corresponding increase in the number of applications to the Mental Health Review Tribunal from detained patients for their detentions to be reviewed. This is being introduced, really, because of the changes in mental health treatment, the improved ability to bring about improvement in a patient and therefore the requirement to look more often at whether or not they need to be detained for a further period.

Other changes include a new right of appeal to the Mental Health Review Tribunal for those patients compulsorily admitted to hospital for assessment and new requirements under which either a patient's consent or independent second opinion, or both in some cases, is required before certain forms of treatment can be given. In addition, the Bill now provides for the setting up of a Mental Health Commission, as I mentioned at the first reading, to externally monitor the standards of the service being provided under the legislation and whose principal duties in this respect will be to issue or approve and review a code of practice for doctors, social workers and others relating to the admission and treatment and so on of mentally ill patients, and they will be responsible for keeping the care and treatment of voluntary in-patients under review.

New powers are given to the criminal courts under schedule 2 to make a new supervision and treatment order introduced as a half-way house for offenders whose mental disorder is not serious enough to warrant detention. In the case of the Court of General Gaol Delivery and the court of summary jurisdiction it introduces a power to remand to hospital for medical reports, or treatment in the case of General Gaol Delivery, at any time before sentence. Currently it is only possible to remand on bail or in custody, and if remanded on bail, attendance can be required for medical examinations but not for treatment.

There is also another important improvement in the Bill in that it enables the Court of General Gaol Delivery to make a hospital direction order so that an offender goes straight to hospital for treatment and, if he recovers, he is then returned to prison. The present position is that if the court sends an offender to hospital for treatment and he, after his treatment, is

considered by the Mental Health Review Tribunal to be well, he may be released to the community without returning to jail.

These are the essential elements of the Bill and I beg to move that the Mental Health Bill be read a second time.

**Mr Barton:** I beg to second and reserve my remarks.

**Mr Waft:** Mr President, I would just ask the minister if she would clarify the situation with regard to the interim period between the reduction of beds at Ballamona at the moment and the subsequent possible building of the new hospital, and there is a hospital direction order - what onus is there on the minister to provide that bed if there is not a bed available?

The other item I was considering raising was the ability of GPs to discharge a patient from their books within the community who have a psychiatric illness. Is there an onus on that general practitioner to make sure that they have been accepted by another surgery for the advancement of their illness?

**Dr Mann:** I think there are just two points, one of which is directly relating to the Bill and one which is consequential. If a court is now able to order a person to be treated in hospital, is that hospital accommodation actually secure? The other question relates, as we well know, to certain investigations that have been carried out in the past, and that is that if we have the long-term care of individuals at home, are we going to actually have the staff numbers, and in particular the staff training, to enable this close supervision to be set up and maintained, in particular where the patient is a woman who has children and is caring for children? Because there we have a split responsibility between the child care officers on one hand and the mental care officers on the other caring for the patient, and although that obviously cannot be set out in the Bill, presumably the department is advancing its staffing and its training to ensure that there is co-ordination between child care and mental care workers over a long period of time, because it is very easy to maintain the supervision over a short period; it is very difficult to maintain it over a long one.

**The Attorney-General:** If I may, it is more of a practical response, Mr President, to the hon. member Mr Waft. The court would not make an order unless the court was satisfied that it could be carried out. Let us take an extreme case where the hospital goes on fire the night before, so there is no hospital in the Isle of Man, the court would not make an order the next day. If the court was minded to make such an order, it would ensure that the order could be carried out. So whether the patient is to be in the Isle of Man or elsewhere or whatever, there is a practical interpretation. If the court felt there was an appropriate order but because of the lack of a bed. . . then the court would make its displeasure known quite strongly to whoever was the appropriate authority, and I would imagine in those circumstances that the court's wishes would be accommodated by the appropriate authority. But I would not have any fear that the court would make an order which would place a person in difficulties who is the subject of the order. It is merely a practical response, but I feel that would be the situation.

**The President:** Are there any further observations on this occasion? Reply, minister?

**Mrs Christian:** I am grateful to the learned Attorney for his comment in relation to the powers and reactions of the court. I would say that the question of reduction of beds is not one which is before me. We are moving people from the site to different beds, but there is not an element of reduction in the number of beds which are available.

So far as the discharge of a patient from a general practitioner's list is concerned, this is a matter which is already being worked upon by the department because of the recommendations in reports which we have had. The department is notified by a general

practitioner when they take someone off their list and we are at pains now to find a suitable mechanism for ensuring that such a person does not stay off a list. They either come to the department to seek to be allocated to another general practitioner or they make their own arrangement. We have a current difficulty in that a person may make their own arrangement but may not notify us immediately, so we are working on establishing a system which invites the person who has been removed from one GP's list; we write to them and ask them if they would like to be allocated to another person or to let us know whether they have made their own arrangements, and we are setting up a computer system to track those people who have been removed so that they do not slip through the net.

The issue of long-term care at home and the issues of staffing numbers and training are of great concern to us with regard to quite a lot of our legislation, not least this particular piece of legislation. We are working at the moment on a strategy which establishes joint operations between health and social services so that our mental health strategy will be an integrated one between those two services and each will know what the other's responsibilities are and will be jointly monitored.

It is impossible for me to say whether we will be ever satisfied with the numbers of staff that we need in order to carry this out. In fact, I have to say that whether or not we are able to have an appointed day order in relation to this particular piece of legislation will very much depend on how much we are allocated in our budget for next year. But clearly it is certainly the wish of those who work in this service that this piece of legislation is enacted, because they feel it is very necessary for us to provide an up-to-date and satisfactory service for people who are suffering from mental disorder.

In terms of the example which the hon. member Dr Mann set out, yes, clearly there will be an area there where two different functions are monitoring one household, perhaps, but we do believe that the way in which we are working at the moment towards our mental health strategy there will be adequate links between health and social services divisions.

**Mr Lowey:** Could I, Mr President, just ask for clarification of the latter part of the minister's reply when she said that the Bill may not have an appointed day order, or certain sections of it? The Bill actually says in its explanatory memorandum, paragraph 15, that the implementation of this Bill will require an initial expenditure of £10,000, chiefly on training for social workers, and additional annual expenditure of about £20,000. These will be absorbed in existing budgetary provisions. Otherwise the Bill will have no effect on public revenue, expenditure or manpower. Is the minister, in her reply, if I interpret it right, saying there will be an implication for public revenue, expenditure and manpower? I hope there is.

**Mrs Christian:** Can I perhaps rephrase my remarks? There is a revenue implication within the Bill. Apart from the Bill we have revenue requirements in order to develop our mental health strategy. Certainly at the moment, in terms of our budgetary provision, our funds are totally committed. If we are not enabled to have further resources, it is certainly the will of those who work within the mental health service that other things shall go in order that this be enacted. So we are left here with a situation where we will possibly be having to determine priorities, and in order to implement this we will have to, if we are not given additional resources, use resources from other areas to enable us to proceed with the provisions of this Bill.

**Mr Lowey:** Yes, I just raised the matter as a layman who would be reading the Bill and saying, 'The total cost of this Bill is £20,000 a year plus £10,000 initially for training.' We know that all this Bill is doing is laying the foundations for a service that, if we wish to implement, will

actually cost the revenues and public expenditure quite a considerable amount of money and I think perhaps to say that this Bill will have no financial implications on public revenue is, in this instance, perhaps misleading, not intentionally, but in reality the effect of passing the Bill is to actually highlight and signpost more public expenditure for this very worthy part of the public health.

**Mrs Christian:** Yes, Mr President, we work at the moment with the staffing that we have got. It is certainly believed that our service, insofar as mental health is concerned, needs more resource. If we do not get more resource we will have to do this within the constraints that currently apply. But we recognise as a result of the Leslie report and other reviews that we have had carried out in the mental health service that we do need to strengthen that area and, irrespective of the Bill, we would be seeking to strengthen that area anyway. So maybe it is a little bit chicken and egg. The Bill does not, of itself apart from the mental health commission and the increasing number of appeals which may be heard, represent a specific increase in need, but there is a need in any case.

**Mr Lowey:** I accept exactly what the minister has said. Thank you.

**The President:** I will put the resolution, hon. members, that the Mental Health Bill be now read a second time. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Now, turning to clauses, the hon. member has indicated that this morning she would wish to take clauses 1 to 45 and take those in groupings if the Court is agreeable.

**Members:** Agreed.

**The President:** Thank you. Then we will start with clause 1, hon. member.

**Mrs Christian:** Thank you, Mr President. The Bill is divided into parts and is a very substantial Bill. For that reason I have asked that perhaps we deal only with parts 1 and 2 at this sitting.

Clause 1 sets out the scope of the Bill and defines various forms of mental illness.

Sub-clause (1) defines the scope of the Bill, the reception, care and treatment of mentally disordered persons, the management of their property and other related matters.

Sub-clause (2) defines the four basic terms used in the Bill to designate mental disorder. 'Mental disorder' is the widest concept in the Bill, covering all kinds of mental abnormality; 'Severe mental impairment' and 'mental impairment' are words now used to replace what was previously defined as severe subnormality and subnormality. The current requirement that the condition require to be susceptible to medical treatment or other special care or training is omitted, but treatability is made a condition of admission for treatments under certain sections of the Bill. 'Psychopathic disorder' is a persistent condition resulting in abnormally aggressive or seriously irresponsible conduct. Again, the requirement that the condition require or be susceptible to medical treatment or other special care or training is omitted, but a treatability condition for admission is part of the requirement in clauses 3 and 37.

A lot of this Bill is re-enactment of current legislation and it would be my wish to highlight primarily those areas which are new. So, having said that, I think I have touched on what is new in that clause so I beg to move clause 1 stand part of the Bill.

**Mr Barton:** I beg to second.

**The President:** I will put the resolution, hon. members, that clause 1 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses 2 to 6, hon. member.

**Mrs Christian:** Part 2 of the Bill deals with the ordinary procedures for the compulsory admission of mentally disordered people into hospital or their reception into guardianship.

Clauses 2 to 6 deal with admissions to hospital for assessment or treatment. Admission renders the patient liable to be detained in a hospital for a given period and constitutes a restriction on his liberty. It is therefore subject to detailed safeguards, principally the requirement for reports by two doctors, one of whom must be an approved specialist.

Clause 2 deals with the admission of a patient to hospital for assessment for up to 28 days. This replaces the current provision for admission for observation. Now we are using the term 'assessment' as opposed to the term 'observation'.

Sub-clause (4) of this clause limits to 28 days the overall period for which the patient can be detained after which he must be discharged unless he has in the meantime been admitted under a further provision of the Bill.

Clause 3 provides the most important machinery in the Bill for having a patient compulsorily detained in hospital for treatment as opposed to assessment of his mental disorder. The criteria for admission for treatment are altered in that a requirement for treatability of a psychopathic disorder or mental impairment replaces the current age limit of 21 years. The patient can appeal to the Mental Health Tribunal against admission.

Clause 4 provides an emergency procedure for the admission of a patient to hospital for assessment for up to 72 hours on a single medical recommendation. This is colloquially known as 'sectioning' a patient. That is short for applying clause 4 of the Bill to the person concerned.

Sub-clause (4) of this clause imposes an extra requirement. No emergency application may be made unless the applicant has seen the patient within the last 24 hours instead of the usual 14 days for the other kind of admissions. This is reduced from the current three days.

Clause 5 makes it clear that an application for admission may be made even though the patient is already in hospital - that is, on a voluntary basis - and lays down the procedures to be followed in that case. A new holding power is given to properly qualified mental nurses as well as to doctors.

There is a change in sub-clause (3) which enables the doctor in charge of an in-patient to nominate one other doctor on the staff to act for him if he should be absent for any period, under sub-clause (2).

Sub-clause (4) introduces a new provision, that is the provision for a properly qualified mental nurse to have a power to hold a voluntary in-patient for up to six hours if that person needs to be held for his own health or the safety of himself or others. This provision is new and is accompanied by the provisions of sub-clause (5), which require a nurse acting under that provision to report to the management as soon as possible. The six hours runs from the time the note is made on the patient's records.

Sub-clause (7) provides that the qualifications of a mental nurse to act under (4) are to be prescribed by order, and that order will require Tynwald approval.

Finally in this bunch of clauses, clause 6 sets out the effect of an application for admission under clauses 2, 3 or 4. The person who is subject of the application becomes liable to be detained. There is no change in this provision. I beg to move clauses 2 to 6 stand part of the Bill.

**Mr Barton:** I beg to second and reserve my remarks.

**Mr Waft:** I would just like, Mr President, to comment on the fact that we are still sticking to the name 'patient' and not 'client'. We have not gone into that terminology. Hairdressers have clients, not that I have had to visit one recently! (*Laughter*) But I am concerned about clause 5 (4) and the six hours that the registered nurse can detain a patient. I think it is essential to have that incorporated. It is particularly valuable during the hours in the evening

when there are very few people present, medical staff, so the senior nurse is able to contain that patient within the hospital until he can be seen by a doctor. I think that is an essential part. I am delighted that it is in this one. Thank you, Mr President.

**Mr Lowey:** Could I say that in this particular Bill it is quite extraordinary powers that are being given and therefore it is right that we should query as we go, and just because they have been practised a lot . . . Sectioning for example - I think twice in my lifetime I have been party to sectioning, for very good reasons, but to say they are distressing for the people involved is the understatement of the year. It is very distressing. I just wonder - and perhaps I am using the wrong legal terminology here - *habeas corpus* - if I am in prison and a lawyer on my behalf decides they have got to produce me for the benefit of the court - and no doubt the learned Attorney will say I am using the wrong word, but *habeas corpus* always seems to me to be the one where you have to produce the body, the person for the satisfaction of the court. Do we give the medical people total right to detain a person without any recourse to what I would call independent or other advice and they are in the sole charge of the medical authorities, whether it be the nurse, whether it be the doctor, whether it be the hospital?

Secondly, what happens if a person is being transferred from the Island to the adjacent islands when the plane or boat goes outside our territorial waters? I can understand all our laws being applied to the plane when it is sitting on the ground, on the boat when it is sitting by the pier; what happens when it goes outside the 12-mile - or whatever it is - territorial water? What happens to the legal position? I am sure there must be. . . I mean, these are practical difficulties, but again I do not see anything here in the Bill to sort of explain what happens.

**The Attorney-General:** If I may assist, Mr President?

**Mr Lowey:** It was meant for him anyway, minister.

**The Attorney-General:** The first thing is, the hon. member refers to *habeas corpus*. You will note throughout, Mr President, that on admission, treatment, emergency admission, whatever, it requires two medical practitioners, and in certain circumstances one of those has to have specific qualification. This enables 20/20 hindsight to be afforded, so if it is considered that a patient has been wrongfully detained or that the medical practitioner was in error, then that patient has the same rights as any other person relevant to compensation for wrongful detention. I feel, having considered the Bill, that the patient's civil rights are adequately covered. One is dealing with a person who is suffering from a disorder or illness or disease relevant to the mind and, as with persons who are suffering from physical disorder, disease et cetera, sometimes it is necessary to rely on medical expertise to say that this person requires to be assessed or treatment to be administered. However, if those medical opinions are incorrect, then the patient has the same rights as anybody else in this jurisdiction to seek compensation and damages, and also application can be made to the court under the injunctive relief procedures to have the patient released if it was challenged. A nearest relative could challenge; anybody could challenge; a passer-by could challenge a medical opinion if they have *locus standi*.

With reference to the intriguing question of jurisdictions, the situation is that the Manx law relates to the Manx jurisdiction, which is the Isle and extended waters and also, where any vessel flying the Manx flag or the red ensign with the Manx flag is in international and non-jurisdictional waters, then that is deemed to be a part of the Isle of Man. Therefore, whilst a vessel or plane is within our territorial waters or our territorial air spaces, it is subject to our jurisdiction. If it then passes to another jurisdiction, it is subject to that jurisdiction. If it is in international waters, it is not subject to any jurisdiction other than the flag state. At all times it

will be covered by a jurisdiction. The situation is that when we transfer persons from this Isle to any other country, we ensure that the jurisdictional procedure is followed and that there is no lacuna. So I can assure members of Council that if a patient is transferred from here to United Kingdom, there will be a period where he or she will be under Manx jurisdiction and then immediately will come under UK jurisdiction. It is all agreed beforehand.

**Dr Mann:** I fully support what is in the Bill. I just want to just raise one practical medical aspect of this. We assume that everybody who is going to be sent into hospital under this Bill will be actually suffering from mental disease, and of course a proportion of people who get acute mental disorder are not suffering primarily from mental disease, they are suffering from another condition that exhibits mental abnormality, and one of the main causes of distress is where they are being admitted to, and I hope, with the construction of the new hospital on the same site as the mental unit, that the mental assessment unit and the medical assessment unit are in the same place because it saves a lot of objection. It is very disturbing for a doctor and, for that matter, a patients's relatives to be sent to what is seen to be a mental unit when in fact they need a physical condition to be sorted out very urgently, and I am sure that that is part of the new concept. So when we see 'hospital' here, it does not necessarily mean a mental hospital, it means an acute assessment unit which can be in a general hospital, and I know that has been the aim for many years but it has not been achieved yet and I hope perhaps in the new set-up it will be.

**The President:** Reply, minister?

**Mrs Christian:** Thank you, Mr President. Mr Waft has referred to the nurses' powers and I am grateful to him because of his experience in this field for his comments. He is quite right that this power is most likely to be used perhaps in the early hours of the morning when there may not be immediate medical help at hand, or in the daytime in other circumstances, but it is less likely to be required perhaps during the daytime. Concern has previously been expressed that nurses are availed of the proper training in order to exercise this function, and I can assure him that that training will be given.

The learned Attorney has, I think, answered the points raised by Mr Lowey and I note the comments of the hon. member Dr Mann. It is quite right: society still has quite a long way to go in terms of addressing this fear of labelling in relation to mental illness as opposed to physical illness, and the acute treatment facilities for mental illness will be on the same site as our physical illness treatment. They will all be on the Ballamona site. Precisely at this moment whether they will be located next to one another, I would not commit myself, but certainly in terms of now having one acute hospital on that site for both mental and physical illness, there is no doubt that is what is going to be provided. I think, Mr President, that deals with the questions.

**The President:** May I put the resolution, hon. members, that clauses 2 to 6 inclusive do stand part of the Bill? Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses 7 to 10, hon. member.

**Mrs Christian:** Mr President, these clauses deal with guardianship. Clause 7 enables a patient to be placed under the guardianship of another person, usually the Department of Health and Social Security or a relative. The purpose of it is to have a halfway house between detention in hospital and complete freedom. Categories of patient who can be placed under guardianship are changed to give a standard minimum age limit of 16 years. At present a patient of any age suffering from mental illness or severe subnormality and a patient under 21

suffering from psychopathic disorder or subnormality can be subject to guardianship. A standard minimum age of 16 with no maximum will now apply to all cases.

Sub-clause (4) is a new provision and it requires the application to state the patient's age, and that of course is necessary in view of the age limit to which I have just referred.

Clause 8 sets out the effect of taking a patient into guardianship under clause 7. The guardianship must be accepted by the DHSS even if a relative is to be the guardian. Currently guardianship gives the guardian wide but ill-defined powers by reference to the powers of a parent over a child under 14. This is to be changed. The guardian will now have certain specified powers, and these are set out in sub-clause (1). There will be powers to control where the patient is to live, to require the patient to attend for treatment, work, education or training and to require a doctor or social worker to be given access to the patient. There are no new provisions other than that under that clause.

Clause 9 enables the DHSS to make regulations governing the operation of guardianship for the protection of patients - that is an existing provision.

Clause 10 deals with the case where a guardian other than the DHSS of a patient dies, resigns or becomes incapable of acting, or needs to be removed. This is an existing provision as well. I beg to move that clauses 7 to 10 stand part of the Bill.

**Mr Barton:** I beg to second and reserve my remarks.

**The President:** Are there any observations before I issue those clauses? If not, I will put the resolution that clauses 7 to 10 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses 11 to 15, hon. member.

**Mrs Christian:** Clauses 11 to 15 also relate to guardianship and set out the procedures for admission to guardianship. The only change in clause 11 is to require a social worker applying for admission for assessment to notify the nearest relative. This is provided for in sub-clause (3) of that clause.

Clause 12 lays down the procedural requirements for the medical recommendations on which any application for admission for treatment or guardianship application must be founded.

Sub-clause (1) requires the doctors' recommendation supporting an application for admission for treatment to be dated before or on the same date as the application. The doctors must have examined the patient together or else not less than five days apart. Currently the two doctors who give the recommendation must have seen the patient within a space of seven days. This is being reduced to five and this provision will also apply to a guardianship application.

Sub-clause (4) provides a new exception to the rule in sub-clause (3).

Sub-clause (3) enables one, but only one, of the recommendations to be given by a doctor on the staff of the hospital except where it is a mental nursing home or the patient is to be a private patient. Sub-clause (4), which is new, relates to that issue. It provides an exception to the rule in sub-clause (3). Both recommendations can be given by hospital staff doctors where the delay in finding another doctor would endanger the patient, where one of the doctors is only part-time and where there is no consultant/junior doctor relationship between them. This is in an effort to preserve the independence of the two opinions but to cover those situations where delay would endanger.

Sub-clause (6) is a new provision and it provides that a GP who works part-time at a hospital is not treated as on its staff. That is for clarification in determining elements of sub-clause (4).

Clause 13 imposes a duty on an approved social worker of the DHSS to make an application under this part where it is appropriate to do so. It also imposes a new requirement on the DHSS to refer a patient's case to a social worker if asked to do so by the nearest relative. A new provision appears in sub-clauses (2) and (3).

Sub-clause (2) requires the social worker, before making an application for admission, to interview the patient himself and to be satisfied that detention in hospital is the right course to take. The wording 'a suitable manner' appears in here and this implies, for example, that if a person is deaf or if they are foreign and speak a different language, then those situations must be taken account of in carrying out the interview.

Sub-clause (3) requires the DHSS to refer a patient's case to an approved social worker if requested to do so by the patient's nearest relative. If the social worker decides to take no action, he must notify the relative of his decision so that no-one is left in any doubt that something has happened and what the result of that is.

Clause 14 imposes a new requirement on the hospital management to call for a social report on a patient who has been admitted on the application by their nearest relative and it requires that the DHSS provide such a report.

Clause 15 deals with the case where an application for admission or supporting recommendation is faulty. Within certain limits, that defect can be put right without affecting the validity of the patient's detention. This is an existing provision. I beg to move that clauses 11 to 15 stand part of the Bill.

**Mr Barton:** I beg to second and reserve my remarks.

**Mr Lowey:** Just a couple of small points and then perhaps one that I should have slipped in before, if the minister will forgive me - and you too, Mr President. First of all, where they have to put a report in after examining the patients, the social workers, is there any time limit or is this covered under regulations which will be issued by the department from time to time? It is not spelt out in the Bill but will that be dealt with in regulations? It is all fine and well saying, 'And by the way, the social worker will examine the individual and to the best of his in a reasonable way and then we will inform the relatives of that', but it does not say how long? Six months, three months, three weeks? What is it? My mind says, 'Well, maybe that is dealt with under regulations'. I do not know, but perhaps the minister could tell me. Would she also say, when she mentioned something about a private mental hospital, is that a new provision? I cannot recall having seen in operation on this Island a private mental hospital, but are these provisions creating the ability for a private mental hospital to be operated?

The other one is just one of curiosity, really. Where a child under the guardianship under this Bill is now 16 for all cases, yet the criminal law still defines a child under the age of 18, I think, as a juvenile, is there no sort of contradiction there? Why was the age 16 picked? That is what I was really going to ask. Sorry to complicate the matter before the minister.

**Mr Waft:** I was just wondering, Mr President, if you might clarify the position with regard to the approved social worker's opinion on the interview that is taking place with the patient and the medical officer's opinion; is there not room for a divergence of opinion? Whose opinion is taken for the implementation?

**The Lord Bishop:** Could I just ask, in clause 13 (2), that interesting phrase 'in a suitable manner'? It seems to me a very odd phrase which needs explanation which you have given us, but would that in the Bill? To me, as a complete layman, it means the manner in which you do it, either sitting down or standing up or aggressively or gently. It does not actually mean to me what you have explained. I would have thought some other phrase would have been a little

more helpful to the people conducting this sort of interview: 'in a manner appropriate to the patient' or 'understandable of the patient' or something like that. No doubt it is a legal term which. . .

**The Attorney-General:** If I may assist, Mr President? First of all there is no contradiction relevant to ages between the criminal law and this law. A person of less than 16 years is under the control of that person's parent or guardian under the Family Acts and therefore that person can decide where the minor resides, whether the minor attends training education or has access to a practitioner. Over the age of 16 there is no such control. Guardianship is guardianship of the person, not the assets or property of that person. So what you are saying is we do not need these powers for a minor - that is, a person up to the age of 16 - but for anybody who attains the age of 16, these powers are required. The situation is that the hon. member Mr Lowey referred to clause 14, I think it was: 'as soon as practicable arrange for a social worker'. 'As soon as practicable' says what it is. You may be tempted to say not less than seven days, not less than one month, not less than 48 days. What that is generally interpreted as is 'I can go to that period before I am in trouble', so if it is not less than one month, it means that you could go to 30 days. By saying 'as soon as practicable', that is what it means: as soon as it is practicable a social worker will interview the patient. Now, in normal circumstance you would say, well, as soon as practicable ought to be within a matter of hours, shall we say. It is then for the social worker to prove it was not practicable to the courts. This is all reviewed by the courts. I would prefer to see phrases which are well known such as 'as soon as practicable' which puts the onus on the social worker then.

**Mr Lowey:** But it would be a defence for that if, for example, the social worker was on holiday?

**The Attorney-General:** Well, no, you do not have all social workers on holiday at the same time. No, they are on call 365 days a year.

**Mr Lowey:** I hope in the practice that it meets the requirements. I am happy to accept it and I understand we can never get an ideal definition. It just seemed to me that . . . So therefore we are not going to have regulations which will say a certain time, it will be interpreted in the literal sense 'as soon as practicable'. Okay, I will accept that.

**The Attorney-General:** It is a similar situation to the point raised by the Lord Bishop, if I may, Mr President. There are phrases which are used in our legislation such as 'suitable manner', 'as soon as practicable'. 'Suitable manner' means a manner which is totally suitable to the environment and the interviewee. Every aspect of the interview would be carefully considered to take a view whether in all it was suitable. So the mover has indicated where a person is hearing-impaired or does not speak the language, but it may be that you have a person who has a particular phobia; say, he does not like males, does not like females, does not like open spaces, does not like closed, confined offices. Then the interview would have to be conducted in a suitable manner for that interviewee. Again, regretfully, as of most, if you try to clearly define, it quite often leads to more abuse than leaving it, so you leave a general phrase which is clearly understood by the common man, and the courts can turn round and say, 'Right, I am interpreting this phrase "as soon as practicable" or "in a suitable manner"'. You must now satisfy me it was as soon as practicable or in a suitable manner and, if you do not do so, then you are in breach; you are in trouble.' I would prefer rather in this type of Bill, rather to see such clear definitions as leave the wording as it is, giving it flexibility not only on the patient's benefit but also the social worker.

**The President:** Do you have further points to reply to?

**Mrs Christian:** I think there is just one point that perhaps has not been responded to, and that was in relation to the issue of a private patient. There is, of course, a provision now that if a patient wishes to be treated as a private patient, provided they can find a consultant who is willing to treat them in that capacity, private treatment is available. The fact of the matter is that in my enquiring into this issue, there have been no private patients in a mental health capacity, so that it is in there, it is possible but it has not actually in practice happened. And also, with reference to a mental nursing home, there is no home registered as a mental nursing home in the Isle of Man currently, but there is provision, should anyone wish to seek to establish such a nursing home, for it to be appropriately registered. I think, Mr President, that answers the questions - Sorry, have I missed one?

**Mr Waft:** Just on the difference of opinion between the social worker. If the relatives apply to the social worker and the social worker does not agree with the recommendation of the relatives, what happens then? Is it the medical officer who then has to -

**Mrs Christian:** In terms of making an application either for guardianship or admission, the full fulfilments of an application by two medical practitioners would then presumably settle the matter.

**The President:** Hon. members, I will put the resolution that clauses 11 to 15 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses 16 to 19, hon. member.

**Mrs Christian:** These clauses, Mr President, cover the position of patients who are subject to detention or guardianship.

Clause 16 deals with the situation where the diagnosis of the patient's condition is changed during the course of his detention or guardianship. The authority for detention or guardianship will usually not be affected, but a new exception is made where treatability is a condition of detention. There is a new requirement that the doctor consult other professionals involved in the patient's case.

Sub-clause (2) provides that where treatability is the criterion for the patient's detention and the report states that the condition is not treatable, then the patient ceases to be liable to be detained.

Sub-clause (3) requires the doctor to consult other professionals involved in the patient's case before making a report under sub-clause (1). That is, (2) and (3) are new provisions relating to this issue of changing diagnosis, and we have in here the protection of a person who will not be able to be detained if they can effectively make no change or improvement to the person's condition.

Clause 17 allows a hospital to grant leave of absence to a patient who is liable to be detained. Much of this is existing legislation but there are some changes, specifically in sub-clause (3). This sub-clause enables leave to be given on condition that the patient is kept in custody, in which case he can be kept in the custody of any member of the hospital staff or another person authorised by the hospital management or, if he is to go to another hospital, a member of the staff of that hospital. The only change in here is the reference to the staff of another hospital.

Sub-clause (5) provides that a patient cannot be recalled to hospital once he has ceased to be liable to be detained. The rule that he cannot be recalled once he has been at large for 12 months is abolished. His liability will now cease only after proper consideration of his case.

Clause 18 provides for the recapture of patients who are liable to be detained and are absent without leave. The time limits after which patients cannot be recaptured are extended.

This is done to avoid the present situation in which a dangerous patient cannot be detained once he has been at large for 28 days. This new provision will allow a patient to be taken into custody at any time up to six months from the date he absconded or, if it is later, the end of the existing term of his detention or guardianship.

A new provision appears in sub-clause (2), and this provides that the patient can be recaptured by a member of the staff of another hospital where he is required to stay at another hospital as a condition of his leave.

Sub-clause (4) places this new time limit on the recapture of the patient who is absent without leave. I have outlined what that change means. The report renewing the authority to detain as from the date after the patient absconded does not count for this purpose. At present a patient cannot be recaptured once he has been at large for 28 days, or 12 months in the case of psychopathic or subnormal patients. This is a new provision.

Sub-clause (5) is also new, and provides that a patient, subject to temporary detention, cannot be recaptured if the following period has expired, 28 days from his admission for assessment or 72 hours from his admission as an emergency admission for assessment or 72 hours from a doctor's report recommending his admission where he was a voluntary in-patient, or six hours from the exercise by a mental nurse of the holding power under clause 5(4).

Clause 19 enables regulations to be made allowing for the transfer of patients between hospitals or guardians or from hospital to guardianship or vice versa. There are no changes in this clause. I beg to move clauses 16 to 19 stand part of the Bill.

**Mr Barton:** I beg to second and reserve my remarks.

**Mr Lowey:** When you start reading the Bill it is a bit like talking about fleas; you immediately start to itch, don't you? And I have been recognising many of the disorders in myself that I am reading in the Bill, and in others, I would imagine too, especially former members of this Council, but anyway, that is another story! The minister did actually mention a change in one of the clauses here: the present law is that if somebody is free for a year you do not have to be recalled and you do not have to go before anybody, and it has been highlighted and sign-posted by the minister, but the minister did not say why they had changed the rule so now the law will repeat. No matter how long you are away you have still got to come back and get the okay from the authorities. Now, I would like to know why, as the original law was brought in and has been adequate for so many years it is suddenly now decided that we are going to change that and have them imposed, the new set of regulations?

**Mrs Christian:** I think, Mr President, it has been recognised that the old provision is not satisfactory. The fact that a person who was regarded as ill and was subject to being retained in hospital compulsorily has then left the hospital and managed to stay away from society and not be brought back for 28 days some might say indicates that they are perfectly well and capable of looking after themselves. On the other hand, I think society has recognised that if a person has been ill to that degree and was subject to a compulsory order, it is entirely appropriate that we do take a look at their mental condition. They have all these other safeguards that we would not be able to retain them if it was not then established that they needed to be retained, but in order to protect both the patient and society in general I think it is regarded as necessary to extend this period and have another look at their condition to give them a further assessment.

**Mr Lowey:** The point I am making is, when the original law was written it must have been assumed that if they stayed away for 28 days or whatever the period is, then they must be . . . That was the legal position and I have not heard of any other cases - and I am sure there must

be - where people have got away and stayed away for 28 days and then come back and have been of great danger suddenly, but yet here we are changing an established law. And really the minister highlighted it in her speech but I am only highlighting it again and wanting a definition of why. Now, I accept the point that if somebody is mentally ill or meant to be removed from society for a fixed period of time, then perhaps it is wise to have a look at them again but, as it was the legal written law before we are changing it, I just think we should underline and underscore why we are imposing a different set of circumstances when the old ones seem to have worked pretty adequately.

**Mr Barton:** Through you, Mr President, could I bring in a case where you have got somebody in collusion to assist a person to stay at large or absent for 28 days? I think there have been instances there.

**Mr Lowey:** Have there? As I say, that applied yesterday as it will apply tomorrow. But anyway, I am happy to accept the minister's definition on this one but again, if we are changing the law and, as she said at the opening, when she is changing the law she was going to signpost and highlight it and she did, and I just wanted more definition as to why we are getting rid of a system which I, as a layman, have not had any difficulty in accepting or which has been in operation without any adverse conditions. There may have been adverse conditions and I will accept that, but I just thought it was one that I should at least ask.

**The President:** I will put the resolution, hon. members, that clauses 16 to 19 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses 20 to 23, hon. member.

**Mrs Christian:** These clauses, Mr President, deal with the duration of detention or guardianship.

Clause 20 sets out the time for which the authority for a patient's detention lasts unless it is renewed. This is one of the main changes made by the Bill. In general the periods are cut by one half so that patients' cases will have to be reviewed twice as often as at present. Also, the matters as to which the doctor recommending renewal must be satisfied are more closely specified.

Sub-clause (1) prescribes the initial period for detention or guardianship, which in the first instance lasts for six months. This is reduced from the current 12 months.

Sub-clause (2) provides that the initial period can be renewed for a further six months and then for further periods of one year at a time. This is reduced from the current 12 months and two years respectively.

There is no change in sub-clause (3), which requires the responsible medical officer within the last two months of each period of detention to examine the patient and, if he recommends his further detention in accordance with sub-clause (4), to report accordingly.

Sub-clause (4) sets out the conditions to be satisfied before the responsible medical officer can recommend further detention. They are the same as for initial detention under clause 3(2) except for (b), which imposes a new condition of treatability - that is, the condition is treatable if the hospital regime stops it getting worse; it need not necessarily get any better and anyway it need not be curable.

Sub-clause (5) requires that the responsible medical officer consults other professionals involved in the patient's case before making a report under sub-clause (3). This is a new provision.

Sub-clause (7) sets out the conditions to be satisfied before the doctor can recommend renewal of the guardianship. They are the same as for the initial guardianship under clause 7(2). That is new.

Sub-clause (9) is also new. It enables a report under sub-clauses (3) or (6) to give a diagnosis of a different form of mental disorder from that originally specified. In that case, the new diagnosis supersedes the old and the doctor does not have to give a separate report under clause 16, which he otherwise must do if the diagnosis changes.

Clause 21 deals with the case where at the time when a patient's term of detention or guardianship would otherwise expire under clause 20 he is absent without leave. In line with the system introduced in England and Wales by the Mental Health (Patients in the Community) Act 1995, the authority for detention or guardianship of a patient who is absent without leave is extended for up to a week after his return and may be renewed. At present, once his term expires the authority lapses.

Clause 22 extends the time within which a patient has to be re-examined if his detention or guardianship is to be renewed under clause 20, where he is absent without leave for less than 28 days.

Clause 23 makes new provision for a patient who has been absent without leave for more than 28 days. On his return or capture he is to be reassessed within a week of his return to establish whether his continued detention or guardianship is justified. This is in place of the patient's current right to liberty after 28 days for absence without leave, and I think this covers the point that the hon. member Mr Lowey referred to. I beg to move that clauses 20 to 23 stand part of the Bill.

**Mr Barton:** I beg to second and reserve my remarks.

**The President:** Does any hon. member wish to speak to those clauses?

**Mr Waft:** I would just like to support the minister in this particular clause 20 with regard to the fact that many patients do present symptoms which could be attributed to a variety of mental illnesses and it has been recognised within this Bill.

**The President:** Any comment, minister?

**Mrs Christian:** No, again I am grateful for the hon. member's comment. The fact that there are changes needs to be recognised and I think also the duration of detention is an important issue which is being considered here.

**The President:** Hon. members, I will put the resolution that clauses 20 to 23 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses 24 to 26, hon. member.

**Mrs Christian:** Clauses 24 to 27 all deal with matters relating to discharge from detention or guardianship. Clause 27, I understand, is going to be subject to an amendment moved by the Attorney-General so I will deal with that one separately. These three clauses relate to the same matters.

Clause 24 provides that where a patient is sentenced or remanded in custody for six months or more in total, the authority for his detention or his guardianship lapses. Otherwise, at the end of any sentence or remand in custody, he is treated as having been absent without leave. This clarifies the position in relation to the court.

Sub-clause (3) provides that a patient who is released from prison and is to be returned to hospital or guardianship under (2) may be recaptured at any time within 28 days of his release.

Clause 25, which is a current provision, enables a patient who is liable to be detained or subject to guardianship to be discharged, usually by either the relevant medical officer or the patient's nearest relative.

Clause 26 provides for doctors and others who have power to examine patients and their records in order to advise on whether an order for discharge should be made.

There are new provisions here in sub-clause (2) which enables the doctor also to inspect any medical or social services records relating to the patient.

Sub-clause (3) enables any doctor or inspector authorised by the DHSS to visit and interview a patient detained in the mental nursing home. That is not changed, but it is referred to in sub-clause (4), which introduces a new power which enables a person authorised under sub-clause (3) to demand to see the authority for a patient's detention and, if he is a doctor, to examine the patient and see the patient's records, including social services records. This is a new provision. I beg to move clauses 24 to 26 stand part of the Bill.

**Mr Barton:** I beg to second and reserve my remarks.

**The President:** I will put the resolution, hon. members, that clauses 24 to 26 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 27, hon. member.

**Mrs Christian:** Clause 27 has been amended in another place, Mr President, and I will move it as amended. It will be subject to further amendment today. Clause 27 as amended requires the nearest relative to give three days' notice of his intention to discharge the patient from hospital or guardianship and gives the responsible medical officer power to veto the discharge if the patient is a danger to himself or others.

Sub-clause (2) has been inserted in another place and provides that the nearest relative has to give the hospital 24 hours' notice of his intention to discharge a patient from guardianship under clause 26.

Sub-clause (3) provides that the relevant medical officer can veto the discharge if he certifies that the patient is likely to be a danger to others or himself. In that case the discharge is ineffective and the nearest relative cannot discharge the patient for a further six months. The relative can appeal to the Mental Health Review Tribunal. This is a new provision as respects patients under guardianship. I beg to move clause 27 stand part of the Bill.

**Mr Barton:** I beg to second and reserve my remarks.

**The Attorney-General:** Mr President, if I may explain, my proposed amendment relates to sub-clause (4). You will note that in another place, as the mover said, this particular clause 27 was moved by way of amendment. Sub-clause (4) as presently approved reads: 'In any case where a report under subsection (3)' - this is the report of a responsible medical officer who raises objection - 'is furnished in respect of a patient who is liable to be detained in pursuance of an application for admission for treatment the managers or the Department, as the case may be, shall cause the nearest relative of the patient to be informed.' Sub-clause (4) as presently drafted only refers to application for admission for treatment. There is an omission relevant to guardianship and I apologise to the mover and also the mover of the amendment in the other place for this omission. My amendment will rectify it so that in a case where a report under sub-clause (3) is furnished in respect of a patient not only who is liable to be detained for treatment but also who is subject to guardianship, then the managers or the department are required to cause the nearest relative to be informed of such a report. This amendment moved by me rectifies the lacuna at present in the amended clause 27 and I therefore beg to move that sub-clause (4) of clause 27 be so amended:

*Page 25, in sub-clause (4), after 'treatment' insert 'or is subject to guardianship,'.*

**Mr Lowey:** I beg to second, Mr President. I think the minister and her department are to be congratulated, really, on the checks and balances and I think throughout a lot of the changes are putting balances in favour of the patient. I think that is to be welcomed in this day and age and I recognise how difficult this area is when dealing with it. Could I ask the minister again: the Attorney has said in the amendment, which I have seconded, that the doctors can say up to three days before they want to discharge the patient that he or she could be a threat to themselves or to others. What if they would not be a threat to others - I am answering my own question, really - but actually, by being released into the community, they may absent themselves from treatment and that could injure them? I have answered my own question, so I will withdraw the thing (*Laughter*) and just say, as I said earlier, I am analysing and I am on the couch myself! Thank you very much. I support the amendment.

**Mr Waft:** As regards the appeal tribunal in this situation, how soon would that appeal tribunal be able to be set up?

**The Attorney-General:** The appeal tribunal would be set up fairly swiftly. There are 12 members of the tribunal and a quorum is three. Providing one of each such member comes from a particular category it can be set up. There would be no reason for holidays et cetera to interfere.

**Mr Waft:** No unreasonable delay?

**The Attorney-General:** No unreasonable delay. As soon as practicable, Mr President.

**The President:** Hon. members, the resolution is set out at clause 27 and to that resolution we have the first amendment in the name of the learned Attorney-General. Will those in favour of the amendment standing part of the clause please say aye; against, no. The ayes have it. The ayes have it. Now, will those in favour of the clause as amended standing part of the Bill please say aye; against, no. The ayes have it. The ayes have it. Clauses 28 to 30, hon. member.

**Mrs Christian:** Thank you, Mr President. I would just comment that I understand the hon. member Mr Lowey's dilemma. This Bill leaves me feeling mentally disordered as I have been working through it! It is fairly complex but it is so in order to provide, as you say, the safeguards that are required.

We go on in clauses 28 to 36 - and I will deal with it in sections - to introduce a new system of aftercare under supervision based on the system introduced in England and Wales by the United Kingdom Mental Health (Patients in the Community) Act 1995, under which a measure of control can be exercised over patients who are released from detention in a hospital into the community to ensure that they receive the services provided for them. This is to break the cycle whereby a patient responds to treatment, is discharged with a care plan, fails to take medication, becomes ill again and is readmitted and so on. Clauses 28 to 30 deal with applications for supervision.

Clause 28 enables a supervision application to be made for a patient who has been detained in hospital for treatment to be supervised after his discharge.

Sub-clause (1) provides that it ensures that he receives the aftercare provided under clause 115.

Sub-clause (2) explains the terms 'supervision application' and 'subject to aftercare under supervision'.

Sub-clause (4) sets out the criteria for a supervision application. The whole of this clause is new and so I think the easiest way to deal with it is, having set out the principles, to address any questions which may arise.

Clause 29 sets out the procedure for making a supervision application involving consultation with all those involved in the patient's aftercare. This is dealt with fairly comprehensively in all the sub-clauses relating to this issue

Clause 30 makes further provision about the content of and procedure for supervision applications under clause 28. It allows a supervision application and the accompanying medical recommendation to describe the patient as suffering from more than one of the four forms of mental disorder, but it requires the application and recommendation to agree at least on one form of medical disorder. It gives a doctor the right to visit and examine a patient to decide whether to make a recommendation for supervision and gives a social worker the right to visit and interview a patient to decide whether to make a recommendation for supervision. It gives a doctor and social worker the right to look at any hospital and social services records relating to the patient. It enables a faulty application or recommendation to be corrected within 14 days of its acceptance within certain provisions and defined limits. It enables the DHSS to act on the supervision application which appears to be properly completed and supported by any necessary recommendations without having to check the signature or qualification of any doctor or social worker or getting a second opinion on any medical recommendation. I beg to move that clauses 28 to 30 stand part of the Bill.

**Mr Barton:** I beg to second and reserve my remarks.

**The President:** Are there any comments on any particular clauses, hon. members? If not, I will put the resolution that clauses 28 to 30 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses 31 and 32, hon. member.

**Mrs Christian:** Clauses 31 and 32 deal with receipt and review of aftercare supervision. In other words, where supervision orders are made then there are provisions to ensure that the person receives the necessary supervision and there is a provision for that supervision to be reviewed.

Clause 31 enables the DHSS to impose certain conditions on a patient subject to aftercare under supervision as to where he is to live, requiring him to attend for treatment, work or training and requiring his supervisor, doctor and social workers to be able to see him.

Clause 32 requires the DHSS to keep a patient's aftercare and any requirements imposed on him under review and to consider his case if he fails to receive any aftercare services or to comply with any requirements. It requires the DHSS to review regularly and, if appropriate, modify the arrangements for and the requirements imposed on any patient subject to aftercare under supervision. It sets out the circumstances in which the DHSS has to act under sub-clauses (3) and (4) where the patient fails to receive any aftercare services provided for him or to comply with any requirements imposed under clause 31. It requires the DHSS in that case to review and, if appropriate, modify the arrangements and requirements and it requires the DHSS also to consider whether he should cease to be under supervision or return to hospital for treatment. If so, it is to notify the community responsible medical officer or an approved social worker as appropriate. The DHSS must carry out various consultations before modifying any of the arrangements or requirements. This sub-clause of clause 6 requires the patient, anyone involved in looking after him and his nearest relative to be consulted, and the DHSS has to take their views into account but it enables the patient to ask

that his nearest relative should not be consulted. His request is to be obeyed unless he is violent or dangerous and the responsible medical officer thinks that the nearest relative should be consulted. Where there is a change of supervisor, either before or after a patient leaves hospital, the DHSS must notify the patient, as it must where there is a change of community responsible medical officer, either before or after the patient leaves hospital.

These two clauses, I think, are important in relation to setting up the proper structures relating to supervision. Supervision is a new departure for us under the mental health provision. It is an important one, but there are public concerns that supervision is properly carried out and in these clauses I think we are setting out quite clearly where responsibilities lie, where communication should take place, and where reference is made to change to ensure that everyone knows what changes are being applied.

Clause 33 makes similar provision to clause 16 where the diagnosis of a patient is changed while he is subject to aftercare under supervision. It enables the community responsible medical officer in the case of a patient subject to aftercare and under supervision to give a report changing the form of mental disorder from that which was originally specified in the application to that which is now diagnosed.

I beg to move clauses 31 to 33, Mr President.

**Mr Barton:** I beg to second and reserve my remarks.

**Mr Radcliffe:** Just a query, Mr President, if I may? This community responsible medical officer - do we have such a person on the Island or is it an English term?

**Mrs Christian:** No, this is a term which is defined in the interpretation section of the Bill. It is not an English term. We are moving now to defining, broadly speaking, 'community' to be anything which is not acute hospital provision. So it may be a general practitioner or it may be a consultant psychiatrist who has been appointed with a specific responsibility for community as opposed to acute hospital treatment. It will be defined by the department and is set out in the interpretation section of the Bill.

**Mr Radcliffe:** I am obliged. Thank you.

**Mr Waft:** Mr President, can I take it, minister, that this covers the situation where a general practitioner, after having been rung up several times during the night and the association with the aftercare of a psychiatric patient deteriorates, if they do remove the said patient from their books, the department will then do its utmost to make sure that they are covered by another general practitioner, irrespective of whether the psychiatric patient - ex-patient, as it may be - does not care to renew an acquaintance with a general practitioner?

**Mrs Christian:** Yes, this quite clearly indicates that there must be an immediate recognition of the fact that a community responsible medical officer - if there is going to be a change of that person, then it must be made quite clear to the patient who the new CRMO is going to be in these circumstances. We are talking here of patients who are under supervision. Perhaps earlier I was talking in more general terms of people who are suffering mental ill health but may not necessarily be under supervision. Where they are under supervision there is a very clear responsibility here to ensure that the patient and the hospital and the whole team know who has responsibility, so if there is a change it must be made clear to everybody that there has been such a change so that the new responsible medical officer is known quite clearly to the patient and to the rest of the team who are concerned with the supervision of that patient.

**Mr Waft:** And the relatives of the said patient, who are the nearest to that patient when the medical officer, or the patient indeed, decides to stop taking the medication - everybody will be involved in that situation and be able to cope with it?

**Mrs Christian:** Where those relatives are directly concerned, yes. Sub-clause (6) requires that the patient, anyone involved in looking after him, and his nearest relative be consulted, so that requirement to consult is embodied in the clause. However, there is a provision also here that the patient may say that they do not want their nearest relative to be consulted and they have that right, but then there has to be a medical decision as to whether or not it is appropriate that that request be acknowledged, depending on whether the patient might perhaps be violent towards a relative or vice versa or there is a strained relationship between the nearest relative and the patient. So there is a requirement to consult, except in specific and defined circumstances.

**The President:** Hon. members, I will put the resolution that clauses 31 to 33 inclusive do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses 34 to 36, hon. member.

**Mrs Christian:** These clauses cover the duration and ending of aftercare under supervision, Mr President.

Clause 34 provides for the duration and renewal of aftercare under supervision. It lasts initially for six months and can then be renewed for six months, and thereafter for a year at a time. These time scales are the same as those which apply for detention for treatment in hospital, and all the provisions which cover the way this operates are set out in the sub-clauses of this totally new clause.

Clause 35 is also completely new and provides for the termination of aftercare under supervision equivalent to discharge from detention for treatment, with the necessary consultation processes, before this discharge takes place, being set out in detail in the sub-clauses of clause 35.

Clause 36 deals with the case where a patient receiving aftercare under supervision is either in custody or admitted to hospital for assessment.

Sub-clause (2) provides that the obligation to receive aftercare services and to comply with the requirements under clause 31 is suspended while a patient is detained in custody, either on remand or under sentence, or where that person is admitted to hospital for assessment. So these cover all the situations which relate to discharge from supervision.

I beg to move clauses 34 to 36 stand part of the Bill.

**Mr Barton:** I beg to second and reserve my remarks.

**Mr Lowey:** It only goes to show, Mr President, it sometimes does work to have a user-friendly phrase as opposed to defining specifically a set of rules regulating a particular item. But it is an important one and, as it is new, it needs to be spelt out. I support the clause.

**The President:** Hon. members, I will put the resolution that clauses 34 to 36 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses 37 to 42, hon. member.

**Mrs Christian:** These clauses set out the functions of relatives of the patient.

Clause 37 defines the nearest relative of a patient who has various powers under this part - for example, to apply for his admission to hospital, to discharge him, and rights to be informed of or consulted on various steps taken with respect to him. There are minor changes in the rules for identifying a nearest relative. There are new provisions in sub-clauses (4), (5), and (7).

Sub-clause (4) provides that where a patient lives or last lived with a relative, that relative has priority over anyone further up the list. For example, if a patient is a widow with a son aged 20 but lives with her sister, the sister, not the son, is the nearest relative.

Sub-clause (5) provides that certain relatives are to be passed over - for example, a patient's husband or wife if they are separated.

Sub-clause (7) provides that a person with whom the patient has been living for five years is added at the end of the list of relatives and can therefore become the nearest relative under sub-clause (4) but cannot be preferred to the husband or wife unless separated.

Clause 38 makes special provision for children and young persons and is unchanged. This is existing legislation.

Clause 39 provides that the patient's guardian, and anyone with whom he is to live by virtue of a residence order, is his nearest relative if he is under 18. Sub-clauses (1) and (3) are new but they have no substantial changes within them.

Sub-clause (1) provides that where the patient is under age his guardian and anyone with whom he is to live by virtue of a residence order is his nearest relative with priority over anyone else. The latter has priority over the guardian. A residence order has replaced the former custody order. This is essentially the change in this sub-clause, as it in sub-clause (3), I think.

Sub-clause (3) defines the various terms used in the clause. 'Guardian' means a guardian during minority, not a Mental Health Act guardian, as defined in clauses 7 to 10 of this Bill, and 'guardian' and 'residence order' both cover the equivalents in the United Kingdom or the Channel Islands, where appropriate.

Clause 40 provides for the High Court to appoint an acting nearest relative where there is none, or the nearest relative is incapable or unreasonably objects to an application, or has acted irresponsibly.

The only part of this which is new is in sub-clause (5), and that enables an acting nearest relative to be appointed for a fixed period.

Clause 41 provides for the discharge or variation by the High Court and the expiry of an order under clause 40 appointing an acting nearest relative. The only change in this is in sub-clause (5) and it provides that the discharge or variation of the order does not affect anything previously done in reliance on it.

Clause 42 enables the rules of court under the High Court Act to provide for applications under clauses 40 or 41 to be heard in chambers. There is no change in this clause, Mr President.

I beg to move clauses 37 to 42 stand part of the Bill.

**Mr Barton:** I beg, sir, to second and reserve my remarks.

**The President:** May I put the resolution then, hon. members, that clauses 37 to 42 do stand part of the Bill? Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses 43 to 45, hon. member.

**Mrs Christian:** Yes, I apologise, Mr President, I have gone a little bit astray with the groupings I had indicated I would take. Clauses 43 to 45, and 42 incidentally, are supplemental to part 2 of the Bill.

Clause 43 gives the DHSS general powers to make regulations to make more detailed provision for procedures, records, and so on, and for the exercise of functions by or on behalf of the DHSS and hospital managements.

Sub-clause (2) specifies particular matters with which the regulations can deal. They are forms, procedures, records, and the service of documents, the means of estimating a patient's age, regulations to enable a nearest relative's functions to be delegated, and the existing power to prescribe procedures for consultation before doctors are approved under clause 12(2) is omitted, and reference to aftercare under supervision is included in (c). The clause is otherwise as existing.

Clause 44 makes special provision for wards of court. The new provision here is in sub-clause (4), and it provides that while a ward of court may be the subject of a supervision application, any arrangements for him and any requirements imposed on him are subject to any order of the court. For example, if the court requires him to live in one place and the DHSS require him to live elsewhere, the court order prevails. This is new and introduces a clarity in relation to those perhaps conflicting powers.

Clause 45 defines various terms used in part 2.

Sub-clause (1) gives the definitions of 'the community responsible medical officer' and 'supervisor' and the reference to aftercare under supervision in the definition of 'responsible medical officer'. These are new.

Sub-clause (2) provides that a single person can act as a responsible medical officer, a community responsible medical officer, and a supervisor in respect of a patient.

Sub-clause (3) provides that 'hospital' in part 2 includes a mental nursing home which is allowed to take in patients who are liable to be detained. There are currently none of those in the Island.

I beg to move clauses 43 to 45 stand part of the Bill.

**Mr Barton:** I beg to second and reserve my remarks.

**The President:** Are there any observations, hon. members? If not, I will put the resolution that clauses 43 to 45 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. And that concludes our scrutiny of the Medical Health Bill today.

### **Recreation And Leisure Bill — Second Reading Approved — Clauses Considered — Third Reading Approved**

**The President:** We will turn next to item 3 on the agenda paper, the Recreation and Leisure Bill, and I call on the hon. Mr Lowey to take the second reading.

**Mr Lowey:** Thank you, Mr President. As I indicated last week at the first reading, the leisure role of the Department of Tourism and Leisure has evolved over a considerable number of years and since 1991 was recognised by the inclusion of 'leisure' within the formal title of the department. Initially this leisure role has its roots, as I said, in the use of leisure purposes by the local population of facilities and amenities provided primarily for tourists.

The first leisure facility for which the former Tourist Board assumed responsibility was the Gaiety Theatre, which was as long ago as in the early 1970s. Over the years that balance has certainly changed. Today most of the facilities provided by the leisure division are aimed primarily at the local population, and tourists are in effect the ancillary beneficiaries.

The leisure division now operates the National Sports Centre, the Curragh's Wildlife Park, the Gaiety Theatre and the Summerland complex, and I was interested to read on the front page of yesterday's paper some of the comments about the department daring to refurbish a facility which has been operating for over 10 years. I wonder whether the leisure division should now stop operating the National Sports Centre because the private sector are providing

certain facilities elsewhere. The logic defies me. However, in a community that lots of our visitors say there is not enough to do, to actually be asking us to shut down facilities seems to me . . . And the history of how we acquired them tells us that we acquired them because the private sector ran into difficulties and we had to rescue them.

The principal legislation under which the department functions in relation to tourism and leisure is the Tourist Act 1975. This does not provide the department with powers to operate leisure facilities and, strictly speaking, the department had no legal powers to do so. Normally this would not matter so long as Tynwald, through the budget, continues to provide funds for these purposes, but there are possible legal consequences with regard to, for example, the enforcement of contracts. Given the evolution of the emphasis of the leisure division and the expansion of the role, the learned Attorney has advised that new specific legislation in relation to leisure is now required and hence the introduction of this Bill. The Bill provides to the department powers to provide recreational entertainment and leisure facilities based not only on existing Manx legislation but also on equivalent modern legislation in other jurisdictions.

The Bill also has two secondary objects: firstly, it enables local authorities, if they wish, to be granted similar powers to those granted to the department to replace their existing more limited and disjointed powers in this area; and, secondly, it provides a framework under which the department can form a partnership with one or more local authorities for the purpose of providing leisure facilities.

There was a view, as I said, last week that this Bill related specifically to the Villa Marina. At this stage I would just like to make it clear that this is not, as I said last week, again, a specific Villa Marina Bill. The Bill does, however, enable the department to form a partnership with one or more local authority for the purpose of providing leisure facilities. The Bill could, therefore, potentially be used as a basis for an operating partnership between the department and Douglas Corporation in relation to the Villa if the corporation wishes, and it would also have to have the approval of Tynwald Court, so there are safeguards.

I beg to move the second reading of the Recreation and Leisure Bill 1997.

**Mr Radcliffe:** I beg to second, Mr President.

**The President:** May I put the resolution, hon. members, that the Recreation and Leisure Bill be now read a second time? Will those in favour please say aye; against, no. The ayes have it. The ayes have it. We turn to clauses, sir. Clause 1.

**Mr Lowey:** Thank you, Mr President. Clause 1 provides the Department of Tourism and Leisure with general powers to provide recreation facilities and entertainment facilities. The terms are defined in clauses 2 and 3 respectively. I beg to move clause 1 stand part of the Bill.

**Mr Radcliffe:** I beg to second, sir.

**The President:** Hon. members, I will put the resolution that clause 1 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 2, Mr Lowey.

**Mr Lowey:** Clause 2, Mr President, defines the term 'recreational facilities'. It expands the limited provisions now applicable to Manx local authorities and is principally based upon section 19 of the UK Local Government (Miscellaneous Provisions) Act 1976.

Sub-clause (1) lists a wide range of facilities and activities falling within the definition of 'recreational facilities' and which may thus, under the Bill, be provided by the department. They are: (a) parks, gardens, including botanical or zoological gardens, recreation grounds, playgrounds, public walks and pleasure grounds; (b) indoor facilities, consisting of sports centres, gymnasia, swimming pools and other water facilities, skating rinks, tennis, squash

and badminton courts, bowling centres, dance studios and riding schools; (c) outdoor facilities consisting of pitches for team games, running tracks, athletics grounds, swimming pools, tennis courts, cycle tracks, golf courses, bowling and putting greens, croquet lawns, riding schools, camp sites and facilities for gliding; (d) facilities for sporting and recreational activities on inland and coastal waters and for fishing in such waters; (e) facilities for shooting and archery; (f) instruction in any sporting or recreational activity; (g) premises for the use of clubs and societies having sporting, social or recreational objects; (h) staff, including instructors, in connection with any of the above facilities or premises. It goes on: (i) such additional facilities in connection with any of these facilities or premises as the department considers it appropriate to provide, including places at which refreshments may be obtained; (j) opportunities for residents of and visitors to the Island to take part in any sporting or recreational activity in the Island; (k) opportunities for residents or representatives of the island to take part in any sporting or recreational activity outside the Island.

Sub-clause (2) clarifies sub-clause (1) by defining the term 'sporting or recreational activity' as including: (a) any athletic pursuit; (b) any race within the meaning of the Road Races Act 1982.

Finally, sub-clause (3) provides that for the purpose of any enactment relating to offences against public decency, any place at which recreational facilities are provided by the department shall be deemed to be a place of public resort. So they are covered. I beg to move clause 2 stand part of the Bill.

**Mr Radcliffe:** I beg to second. Could I ask the hon. mover if, in sub-clause (2), 'sporting or recreational activity' which sets out there what it includes, that would debar the sport of, say, rifle shooting, table games such as billiards, snooker, et cetera? Are they out of the equation or not?

**Mr Lowey:** No.

**The Attorney-General:** Where it says it includes, Mr President, it does not mean it includes to the exclusion of, it is for clarification that the phrase does include any athletic pursuit, and that can include anything else that one would normally. . . . But ironically it is clarifying the situation.

**Mr Radcliffe:** It is broad enough, then?

**The Attorney-General:** Oh, yes.

**Mr Lowey:** It is wider. It is elastic, I think, is the word.

**Mr Waft:** I just wonder, Mr President, whether we need something there to maintain those facilities so provided to upkeep those facilities, with due regard to current health and safety provisions? I am thinking with regard to play areas and situations like that throughout the Island.

**The Attorney-General:** Whether it is needed to include a provision like that? I feel not, Mr President, because that is covered by other legislation and also one has a duty of care. If, for example, one was arranging a running track and you did not properly maintain it, you have a duty of care to those using it. As a general user and occupier you have that duty, and there are regulations under health and safety legislation, under public health there are regulations, so other enactments do ensure that that is covered.

**Mr Waft:** Thank you.

**Mrs Christian:** Mr President, this is an extraordinary list and at the same time there are things which do not appear on it, but maybe are included by virtue of certain sub-clauses and so on, but it really takes me back to the issue which the hon. member referred to in his moving

of the second reading in that some of these are already provided by the private sector and clause 1 allows that the department may provide such of these facilities as it thinks fit. By what criteria will they determine whether it should be them or the private sector who should be making such provision?

**Mr Lowey:** Could I say, in reply to the hon. minister, the aim of the department is, wherever possible, if a provision is being done, we do not wish to go into competition from, but having said that, when we started the Wildlife Park, if somebody came along now and set up a wildlife theme park and then complained that the department was in competition with it, it does seem a little ironic; if it is successful - and it is successful - then I would suggest that that is a fair comparison. Or if a private facility was of such importance to the Manx tourist scene and I could illustrate it chapter and verse over the years where the government have had to step in and take over an ailing proposition for the good of (a) our customers, we have advertised the fact that it was there and it was needed in the judgement of the department, then I think it is right and proper that we should be able so to do. But our aim, quite candidly, is not to compete with the private sector. We actually encourage the private sector, by giving grants and loans and various other ways, to provide facilities for locals and tourists. But, again can I come back to the point of the leisure centre? It is a national responsibility in our view to provide facilities and, where we can, we have maximised the use of that with the education authority, for example, and I think that is the right and proper way, but we are not in competition with the private sector as a policy.

**The President:** Hon. members, I will put the resolution that clause 2 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 3, sir.

**Mr Lowey:** Thank you, Mr President. Clause 3 defines the term 'entertainment facilities'.

Sub-clause (1) lists a wide range of facilities and activities falling within the definition and these are: (a) any theatre, concert hall, cinema, dance hall or other premises (including temporary premises and facilities in the open air) suitable for the giving of entertainment, the provision of amusements or the holding of functions or events of a social, charitable, artistic or cultural nature; and (b), premises and other facilities for the holding of conferences; and (c) restaurants, refreshment rooms and other places at which refreshments may be obtained. I beg to move clause 3 stand part of the Bill.

**Mr Radcliffe:** I beg to second, sir.

**Mr Barton:** Mr President, one query or clarification. I can understand restaurants, refreshments for existing facilities but in relation to new facilities I was thinking in terms of the new swimming pool when it was presented to members, and discussion was given at that time as to whether this was an area that could be leased to the private sector. I wonder what the future policy of the department is in relation to these types of facilities?

**The Attorney-General:** Could I just say, Mr President, without wishing to go into policy, the situation is that this Bill gives a department functions to carry out. Under the Government Departments Act a department may delegate all or part of its function to any person, and 'any person' includes a body corporate or associative persons. So if the department has the right to carry out restaurants, shall we say, it can delegate by lease, licence or general authority to a body corporate or to a group of people such as a partnership the carrying out of that function. It is a policy decision whether it so delegates but, by giving the department the power, it then gives it the power so to delegate but having ultimate responsibility for the carrying out.

**Mr Lowey:** I can give instances of where that has actually happened. Again, the Villa Marina, I believe, is being handed over by the corporation, the bars element, to the Summerland complex, who have an expertise in that field. And the swimming pool, I believe, has been actually leased to, again, Summerland to do it because they have the expertise. We have not actually employed anybody else, but we have franchised it - all right, in house at the moment.

**The President:** The resolution, hon. members, is that clause 3 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 4, sir.

**Mr Lowey:** Clause 4 provides the department a wide range of ancillary powers in relation to the provision or operation of both recreational facilities as defined in clause 2 and entertainment facilities as defined in clause 3, and these are: (a) to provide buildings and structures including shops and kiosks, equipment and supplies of any kind; (b) to assist any other person, whether financially or otherwise, in providing any such facilities, building structures, equipment or supplies; (c) to operate or manage any such facilities itself or to arrange for their operation or management by any other person; (d) to make any such facilities available for use by such persons as the department thinks fit either without charge or on payment of such charges as it thinks fit; (e) to make a charge for admission to any such facilities as it thinks fit; (f) subject to any statutory restrictions on the disposal of interests in land, to let any premises on which such facilities are provided for for any term not exceeding seven years at such rent and on such terms and conditions as it thinks fit; (g) where any such facilities provided by the department are operated or managed by another person, to allow that person to make such facilities available for use by such persons as he thinks fit on such terms as to payment and otherwise as may be agreed between the department and that person; and (h) to promote, by advertisement or otherwise, any such facilities, whether provided or operated by the department or by any other person, the use of such facilities or any event of any kind taking place at or in connection with any such facility.

Sub-clause (2) extends the maximum period for any lease to a public authority from the standard seven years to 21 years.

Sub-clauses (3) and (4) provides the department with the power to make byelaws equivalent to those of a local authority.

Sub-clauses (5) and (6) provide the department with the powers necessary to provide and operate off-street car-parks on an equivalent basis to the Department of Transport. Mr President, I beg to move clause 4 stand part of the Bill.

**Mr Radcliffe:** I beg to second, Mr President.

**The President:** May I put the resolution, hon. members, that clause 4 do stand part of the Bill? Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 5, sir.

**Mr Lowey:** Clause 5 provides for the powers of the department under clauses 1 to 4 to be widened in future by adding new categories of either recreation facilities or entertainment facilities. This is necessary because by its very nature recreation and entertainment is a fashion-driven area and it is impossible to envisage what sport or activity might be popular in, say, 20 years' time. Any extension of the definition would be affected by an order made by the Council of Ministers and would require Tynwald approval. So we could not go ahead and do it without, again, a public debate. I beg to move clause 5 stand part of the Bill.

**Mr Radcliffe:** I second, sir.

**Mr Barton:** Mr President, in relation to the last comment, subject to Tynwald approval, does that need to be in the Bill at all?

**The Attorney-General:** It is in the Bill. It is clause 8(2).

**Mr Barton:** Ah, yes!

**The President:** May I put the resolution that clause 5 do stand part of the Bill? Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 6, sir.

**Mr Lowey:** Clause 6 deals with the extension of the powers contained in the Bill to local authorities. The clause enables the Department of Local Government and the Environment to make an order applying clauses 1 to 5 of this Bill to a named local authority, and in sub-clause (2) enables such an order to amend or repeal any existing legislation relating to the provision by that local authority of recreational and entertainment facilities. An order extending the provisions of a Bill to a local authority can only be made with the prior consent of that authority. Once again, any order would require Tynwald approval. It is emphasised that there is no compulsion for a local authority to have the extended powers; it is entirely voluntary. However, any local authority wishing to form a joint board with the department under clause 6 may need to have the extended powers, otherwise there could be difficulties if there is a mismatch between the powers of the department and those of the local authority. I beg to move clause 6 stand part of the Bill.

**Mr Radcliffe:** I beg to second, Mr President.

**The President:** May I put the resolution, hon. members, that clause 6 do stand part of the Bill? Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 7, sir.

**Mr Lowey:** Clause 7, Mr President, enables the Council of Ministers to make an order establishing a joint board between the department and one or more local authorities for the purpose of operating or providing any recreational or entertainment facilities. Again, Tynwald approval is required to any order. It provides in sub-clause (2) what must and can be specified by such an order. These powers parallel those granted to the Department of Local Government and the Environment by section 7 of the Local Government Act 1985, which forms the legal basis for such as the joint swimming pools and refuse boards. I must say that is why I find it quite incredible that the Douglas Corporation seem to be objecting to a power which is already in existence and could be applied to them in the ulterior way if they thought it was going to be applied; it never has.

Local authorities were concerned that they could be forced to enter into such an arrangement or that an acceptable arrangement could subsequently be changed. I want to assure Council that it was never our intention to act in such a way. In finalising the Bill, therefore, we have regard to the concerns raised and have provided through sub-clause (3) that the consent of the local authority is required in respect of an order creating or modifying a joint board.

A further area of concern from the consultative process was a fear from some local authorities that, having formed a joint board and passed assets to it, such assets could, upon dissolution of the board, be handed to government. Again, it was never our intention to behave dishonourably and we have incorporated in sub-clause (5) protection for the local authority in this regard. I beg to move clause 7 stand part of the Bill.

**Mr Radcliffe:** I beg to second, Mr President.

**The President:** Hon. members, I will put the resolution that clause 7 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 8, sir.

**Mr Lowey:** Clause 8, Mr President, provides various supplemental provisions. Sub-clause (1) gives the Bill its short title whilst sub-clause (2) provides, as stated earlier, any orders require Tynwald approval. Sub-clause (3) provides that any existing recreational or entertainment facility currently provided for by the department is deemed to be provided under the Bill, and sub-clause (4) saves the existing powers of the department under the Tourist Act of 1975 and those of the Department of Local Government and the Environment in relation to their existing powers to establish joint boards. I beg to move clause 8 stand part of the Bill.

**Mr Radcliffe:** I beg to second, Mr President.

**The Attorney-General:** Mr President, in another place reference was made to combination authorities. A combination authority is established under section 7 of the Local Government Act 1985 for the purpose of that authority carrying out certain functions of one or more of the participating authorities. This Bill, if it becomes enacted, does not affect the powers of the Department of Local Government and the Environment under section 7 of the Local Government Act 1985. As the mover has indicated, the Local Government Acts go back some considerable time and the leisure and recreational and sporting activities that can be undertaken by local authorities are somewhat limited to modern times. If a local authority wishes to have the benefit of the functions granted by this Bill it can apply to have the Bill extended to it. That does not mean to say it has to become a joint board.

Now, with reference to the combined authorities, if they determine that they wish to have the extra facilities granted to them, they can do so. If they then wish to join with the Department of Tourism amongst the combined authority, then that would be effected by an order under this Bill simultaneous to a dissolution of the order under the Local Government Act 1985 and therefore, by using both sets of legislation, one can give any combined authority the greater facilities and the opportunity if they so wish to join with the Department of Tourism and Leisure as opposed to the Department of Local Government and the Environment or just other authorities. I hope that clarifies a point that was raised in another place, Mr President.

**The President:** May I now put the resolution that clause 8 do stand part of the Bill? Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Bill read a second time.

**Mr Lowey:** Mr President, I wonder - in the light of our having the Mental Health Bill, which I know the minister has given as two parts, I am going to ask to suspend standing orders to take the third reading of the Recreation and Leisure Bill this morning for no other reason than we could keep our decks clear for this important piece of legislation. This Bill has been ongoing for a good six months now. It has been highlighted and I just think it would be wise of us to clear the decks on this one without having any clutter for the main business of our next meeting, which is the Mental Health Bill and the Finance Bill, which I know is in the charge of Mr Radcliffe.

**The President:** You are moving the suspension of standing orders?

**Mr Lowey:** I am, sir, with your permission and the Council's.

**The President:** Is there a seconder?

**Mr Barton:** Seconded.

**The President:** The resolution then, hon. members, is that standing orders be suspended to enable the third reading of the Recreation and Leisure Bill to be taken. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Proceed, sir.

**Mr Lowey:** Mr President, I will be very brief. The Recreational and Leisure Bill is a piece of legislation that, as history has caught up with us, we need to introduce, and I formally move that the Recreation and Leisure Bill 1997 be read a third time and do pass.

**Mr Barton:** I beg to second.

**The President:** I will put the resolution, then, hon. members, that the Recreation and Leisure Bill be now read a third time and do pass. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Bill read a third time.

Hon. members, that concludes our business for this day. The adjournment will be until Tuesday next, 9th December, at 10.30 a.m. Thank you all very much.

*The Council adjourned.*