

# REPORT OF PROCEEDINGS OF LEGISLATIVE COUNCIL

Douglas, Tuesday, 25th November 1997  
at 10.30 a.m.

Present:

The President (the Hon Sir Charles Kerruish OBE LLD (hc) CP), the Attorney-General (Mr J M Kerruish QC), Mr B Barton, Hon C M Christian, Messrs D F K Delaney and 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 Chaplain of the House of Keys took the prayers.*

## APOLOGIES FOR ABSENCE

**The President:** Hon. members, we have apologies for absence from the Lord Bishop who is attending General Synod, and from Mr Luft, whose indisposition continues.

## WELCOME BACK TO MR DELANEY

**The President:** This morning, however, it is a delight to welcome back to the ranks our friend and colleague, Mr Delaney. (**Members:** Hear, hear.) We have missed you, sir, and it is a delight to have you back in your accustomed place ready to participate in the fray this morning. Welcome.

**Mr Delaney:** Thank you, Mr President and gentlemen, and I am glad to be back, I can assure you.

## MENTAL HEALTH BILL — FIRST READING APPROVED

**The President:** Now, hon. members, turning to our agenda paper, as you will appreciate we have no Keys Hansard reports available to us at this stage but we have down for first readings two Bills, and the first of those is the Mental Health Bill and I call on the hon. member Mrs Christian to take the first reading.

**Mrs Christian:** Thank you, Mr President. The object of the Mental Health Bill 1997 is to re-enact with amendments the Mental Health Acts and to set out the law relating to mental disorder in a single Act. Manx law on mental disorder has for at least 70 years been based on the law of England and Wales and, as that law has changed, so too has Manx legislation followed, if somewhat slowly. The Mental Diseases Acts 1924 to 1960 were replaced by our present Mental Health Act in 1974, and that legislation was amended in 1984 and 1986 to adopt some of the provisions of the 1983 UK Mental Health Act. The Bill before us today, though largely re-enacting existing legislation, seeks to adopt further reforms based on the UK 1983 Act as well as four other sets of changes in UK mental health law.

The vast majority of people who need admission to hospital because they are suffering from a mental disorder are admitted on a voluntary basis. The Bill gives powers to provide for compulsory admission for assessment and treatment under certain circumstances. Balanced against these powers is a right to appeal against compulsory admission for assessment.

The Bill reduces by half the period of a treatment order and introduces a requirement in connection with certain treatments that the consent of the patient must be obtained as well as agreement from a second medical opinion.

After-care under supervision is also introduced, with an after-care plan supervised by a key worker and medical supervision of patients after discharge from hospital. Failure to comply may result in re-admission. A loophole in the law will be closed in relation to absence without leave, and certain qualified nurses will be given authority in some circumstances to detain a patient for up to six hours until a medical practitioner is available to examine a patient.

Schedule 2 introduces new powers for the criminal courts to make a supervision and treatment order for offenders whose mental disorder is not serious enough to warrant detention, and in some cases it allows for remand to hospital for medical reports or treatment before sentence. The Court of General Gaol Delivery may make a hospital direction so an offender may go straight to hospital for treatment and, if he recovers, then go back to prison. This is seen as a desirable strengthening of the present position where return to prison is not available.

A significant safeguard for the mentally ill is introduced by the establishment of a Mental Health Commission to monitor the standard of service and health care provided.

These, in an abbreviated form, are the main changes the Bill seeks to introduce. Its entry into the legislative programme was postponed to take account of the Leslie report. Amongst other things the Leslie report recommended compatibility with the current English mental health legislation and the Bill meets this recommendation. It seeks to provide a legal framework embracing the best of contemporary good practice, clarifying the duties and powers of health and social work professionals and providing safeguards for those whose illness prevents them from acting in their own interests. I beg to move, Mr President, that the Mental Health Bill 1997 be read a first time.

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

**Mr Lowey:** I am rather loath to speak on the Mental Health Bill in the presence of professionals such as doctors and nurses and the minister, but however I believe it is a very important piece of legislation. There are three areas - and I regret that I was unable to attend the briefing that was given by the department, therefore I have not been able to express my concerns in that way - and if the minister will take them, I believe since 1974 there is a need to consolidate and therefore the need for the Bill is self-evident and I accept that - three areas she has touched on. The health commission which she touched on at the end - is that to be an Island-based health commission or are we going to be part of the UK? In other words, will our patients' rights be protected by a UK commission or will that be a local commission set up to look after our patients? I would appreciate the minister's comments on that.

She says in the Bill that the consent of patients is required for certain treatments. I am very concerned, having read over a period of time about electrical treatment in this field; does the patient have to give consent before ECT is administered or is that an area under which they do not have a right to refuse the treatment?

Can the minister also clarify for me - she mentioned further reforms in 1984. Now, my belief is that the reforms in 1984 were based on a philosophy change of care in the community

as opposed to - and I use the word very loosely - people being kept in institutions. Most of those reforms of 1984, I would suggest, were Treasury-driven; in fact, it was a move to save money as opposed to improving the treatment. I have always been a little sceptical of treatment of care in the community because, while I accept the principle, I believe that you have the facilities before you actually put the people into the community, and, while I think we have practised that to a better degree in the Isle of Man than they have adjacently, I am still a bit apprehensive of whether the treatment is the correct treatment in most cases.

So I would like the minister's comments on those. I know they are broad - well, two of them are specific but the last one is of a broad nature, but I would like the minister's comments and her department's on this particular Bill and how this Bill will affect it.

**Mr Waft:** Mr President, I would like also to congratulate the department on finally updating this 1974 Mental Health Act. There has, however, been considerable duplication of the English Mental Health Act 1983, which is due for reappraisal in the year 2002, and there have been considerable problems with that Act.

I would like to seek assurance of the minister that those nurses who will now have the holding power, which is a considerable responsibility, do have appropriate training as to how and when those powers can be used.

Also, will the minister inform me as to whether information leaflets will be printed for those patients which this Bill will be directly concerned with and the changes that could affect them directly?

Will this Act come into being only after sufficient authorised mental health social workers are in place?

With regard to the new Mental Health Commission I take it that commission will also look after the human rights of the patients who are so concerned with the certification and exercise that power and functions to look after the patients' rights.

And I am a bit concerned as to the financial implications when it states in the Bill it will be £20,000. Just in what area will this money be spent? Thank you, Mr President.

**The President:** Are there any further points hon. members wish to make in respect of the first reading? If not, I will call on the minister to reply.

**Mrs Christian:** Thank you, Mr President. In response to the query from the hon. member Mr Lowey, the health commission will use expertise from outside the Island. It is felt that this is appropriate because it gives a totally independent view of the way in which health care is being provided for the mentally ill within the Island. It would, we believe, be difficult to find the necessary independent expertise within the Island, given that most people with expertise are already involved or employed by the department. So it is our intention to communicate with the UK health commission to discuss with them how they might provide the expertise in this area for us.

Consent of patients to electrical treatment - that is one area which certainly will require patients' consent in future.

The comment about the 1984 philosophical change with regard to care in the community being Treasury-driven - in developing the Mental Health Bill as we see it before us,

professionals involved have been very concerned to take a look at what has happened in the United Kingdom and to ensure that we do not fall into the same traps as have been fallen into there. So whilst we certainly believe that it is appropriate to move along the lines of having these care plans for people in the community with a power should the person who is subject to the plan not be complying with a power to return them to hospital care, it is believed that we do have the appropriate safeguards in place there, and of course we will have to make the necessary staffing and so on available.

The comment by the hon. member Mr Waft - nurses' holding power is a new power, as he has indicated, and it certainly will be the case that the necessary training will be given to nurses before the Act comes into effect so that they fully understand the powers that they have and the circumstances under which they are able to exercise them.

I will note his comment about information leaflets. It is always a difficulty, isn't it, when passing legislation to make sure that the population at large knows what we have enacted. So I will take cognisance of the comment that he has made with regard to the information leaflets and we will give consideration to that as a possible way of making people aware of what their rights are under this legislation.

**Mr Waft:** In layman's terms?

**Mrs Christian:** In layman's terms if that is possible, yes.

I note your comment too about the sufficiency of staff in relation to the provisions here. We are developing a mental health strategy for the Island and in that strategy we have outlined the sort of staffing we believe we are going to need to fulfil a proper mental health function throughout the Island, and I cannot say at this moment whether or not we will have the whole of the team appointed by such time as the Bill becomes enacted, but certainly it will be our aim not to use the facilities of the Act if we have not got sufficient staff, for example on care orders, to give proper supervision. It will be a function of the Mental Health Commission and there is also the review tribunal which looks after the concerns of patients. Certainly human rights issues will be elements to be considered by these bodies. It is entirely appropriate that they look at the way in which we are providing care for people who cannot speak for themselves because of their illness.

You commented, sir, on the financial implications of the Bill. There will be an element of expense in relation to the increased numbers of appeals to the review tribunal because we are shortening the period of time which a person can be detained before they can register such an appeal. So there is potential there for that body to meet more frequently than is currently the case, and of course we will have a financial implication in bringing people to the Island to carry out their functions as members of the Mental Health Commission. Apart from the staffing issues which are not directly related to the Bill we believe that the financial implications in terms which are set out here will relate to the review tribunal and the commission, and there is an element also of a one-off staff training cost to facilitate the training in relation to the provisions in the Act.

**The President:** Now, hon. members, I will put the resolution that the Mental Health Bill be now read a first time. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

## RECREATION AND LEISURE BILL — FIRST READING APPROVED

**The President:** Now, hon. members, we turn to item 2 on the agenda paper and I call upon the hon. Mr Lowey to take the first reading of the Recreation and Leisure Bill.

**Mr Lowey:** Thank you, Mr President. The Recreation and Leisure Bill 1997 - as the explanatory memorandum says, this Bill, which is promoted by the Department of Tourism and Leisure, is to consider new or wider powers of the department to provide recreation and entertainment facilities and to enable corresponding powers to be conferred on local authorities.

The leisure role of the Department of Tourism and Leisure has evolved over a considerable number of years and has, since 1991, been recognised by the inclusion of leisure within the formal title of the department. Initially this leisure role had its roots in the use for 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 1974. Over the years that balance has changed. Today most of the facilities provided by the leisure division are aimed primarily at the local population, and tourist use is an ancillary benefit. The leisure division now operates the National Sports Centre, the Summerland complex, the Curragh Wildlife Park and the Gaiety Theatre and, as such, makes a major contribution to the leisure and recreation of the community.

The principal legislation under which the department functions in relation to tourism and leisure is the Tourist Act of 1975. This does not provide the department with powers to operate leisure facilities and, strictly speaking, the department has no legal power to do so. Normally this will not matter a great deal as 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 its role, the Attorney-General has advised that new specific legislation in relation to leisure is now required, hence the introduction of this Bill.

The Bill provides to the department wide 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 objectives. Firstly, it enables local authorities, if they wish - and I emphasise, *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. Secondly, it provides a framework under which the department can form a partnership with one or more local authorities for the purposes of providing leisure facilities.

I am aware that there is a view abroad that this Bill relates specifically to the Villa Marina project. At this stage I would like to make it clear that this is not a specific Villa Marina Bill but, as I indicated, the Bill does enable the department to form a partnership with one or more local authorities for the purpose of providing leisure facilities, and the Villa Marina certainly is included in that. This Bill could, therefore, potentially be used as a basis for an operating partnership between the department and Douglas Corporation in relation to the Villa. This would require the full agreement of the partners but also Tynwald approval, and I will address these aspects in more detail when I move the clauses stage.

Mr President, I would like to move formally the first reading of the Recreation and Leisure Bill 1997.

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

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

Hon. members, that concludes our public business for today and the Council will now sit in private.

*The Council sat in private at 10.43 a.m.*