

**REPORT OF PROCEEDINGS OF
HOUSE OF KEYS**

**Douglas, Tuesday, 4th November 1997
at 10.00 a.m.**

Present:

The Speaker (the Hon N Q Cringle) (Rushen); Mr L I Singer and Hon A R Bell (Ramsey); Hon R E Quine OBE (Ayre); Mr J D Q Cannan (Michael); Hon H Hannan (Peel); Mr W A Gilbey (Glenfaba); Mr S C Rodan (Garff); Hon D North (Middle); Mr P Karran, Hon R K Corkill and Mr J R Kniveton (Onchan); Messrs J R Houghton and E A Crowe (Douglas North); Hon D C Cretney and Mr A C Duggan (Douglas South); Mr R P Braidwood and Mrs B J Cannell (Douglas East); Messrs J P Shimmin and A F Downie (Douglas West); Hon J A Brown (Castletown); Hon D J Gelling (Malew and Santon); Sir Miles Walker CBE LLD (hc), and Mrs P M Crowe (Rushen); with Prof T StJ N Bates, Secretary of the House.

The Chaplain took the prayers.

APOLOGIES FOR ABSENCE

The Speaker: Hon. members, the hon. member for Douglas North, Mr Crowe, is attending a funeral and will be coming in later; and permission has been granted to the Treasury Minister to be absent from this afternoon, in which case it is possible, depending where we go, that the clauses stage of the Insider Dealing Bill will not be following on the agenda but will be delayed for a week.

FILM STUDIO — FUNDING FOR CONSTRUCTION — QUESTION BY MR CANNAN

The Speaker: Therefore, hon. members, can we turn then to our order paper and to the question part? Question number 1, and I call upon the hon. member for Michael, Mr Cannan.

Mr Cannan: Mr Speaker, I beg to ask the Chief Minister:

Will you reconsider and give support to the application by the Department of Trade and Industry to the Treasury for approval for advancement of capital funding in this financial year for the construction of a film studio?

The Speaker: The Chief Minister to reply.

Mr Gelling: Mr Speaker, the hon. member for Michael has posed the identical question to myself and the Treasury minister when I would, in fact, suggest it is an issue essentially for the Department of Trade and Industry to determine its priorities acting within their budgetary allocation. It also has to be said that the establishment and continuity of a film industry on the Island depends absolutely on the continuation in its present form of the Customs and Excise Agreement, and therefore I do welcome the support of the hon. member for the Customs and Excise Agreement implicit in the hon. member's question, sir.

Mr Cannan: Will the Chief Minister agree, firstly, that he has expressed at policy debates the need for the diversification of the economy, his support for the film industry and the benefits it brings to the Isle of Man, and is the Chief Minister aware that a film studio has received full planning approval on an application submitted by the Department of Trade and Industry to be established at Jurby? And finally has the Chief Minister not heard the chorus

from northern MHKs for the establishment of economic development in the north of the Island?

Mr Gelling: The answer to the three questions posed, Mr Speaker, is yes, yes, and yes, sir.

Mr Cannan: And if the Chief Minister agrees, as he has done, the importance of the film industry, the diversification of the economy and the need for economic development in the north of the Island, then why does he not, in his capacity as Chief Minister, bring to the attention of the Treasury minister and his fellow members of the Council of Ministers the need that the request of the minister and the Department of Trade and Industry that funds be made available for the establishment of a film studio?

Mr Gelling: Mr Speaker, yes, I have always supported the formation of, and now the continuation of, the film industry on this Island, but I would suggest to the hon. questioner that it is all down to the Department of Industry's allocation and the way in which they see their priorities, and as the following question posed to the Treasury minister, and as he approaches every department in the run-in to the budgetary position for the beginning in the spring, I would suggest that I would leave the answer to the availability of moneys to the hon. Minister for the Treasury, Mr Speaker.

FILM STUDIO — FUNDING FOR CONSTRUCTION — TREASURY RECONSIDERATION — QUESTION BY MR CANNAN

The Speaker: Perhaps, therefore, we could take question 2, and I call upon the hon. member for Michael, Mr Cannan, to ask the question.

Mr Cannan: I ask the Minister for the Treasury:

Will the Treasury reconsider and give support to an application by the Department of Trade and Industry for capital funding in this financial year for the construction of a film studio?

The Speaker: The Minister for the Treasury to reply.

Mr Corkill: Thank you, Mr Speaker. The capital programme proposed by the Council of Ministers has just been approved by Tynwald. However, the matter will be discussed with the Department of Trade and Industry in the estimates round that the Chief Minister has just referred to, and that is the only assurance I can give the hon. member at this time. However, I would point out two private sector developments on the Island who have produced film studios, one in Laxey and one at Balthane, I believe.

Mr Cannan: Does the Treasury minister concur with the professed policy of the government of which he is senior member, that assistance should be given to the promotion of economic development in the north of the Island and, as this is a proposal from his departmental colleague, the Minister for Trade and Industry, would it not therefore be conducive to give this matter priority support?

Mr Corkill: As I said in my opening remarks, Mr Speaker, I give the assurance that when the Department of Trade and Industry come to Treasury to discuss the estimates this will be a priority discussed at that time. I cannot give further assurances than that other than to say that the film industry has and continues to have considerable support and encouragement from the Government of the Isle of Man.

The hon. member also alludes to Island-wide development, and there is a committee at this moment in being, looking at a number of issues relating to economic development around the Island.

Mr Cannan: A supplementary in the terms of the answer given, Mr Speaker: can I have an assurance, therefore, that the Treasury minister has a commitment to economic development where there is seen to be a lack in economic development, and that is the north of the Island where there is, from statistics of his own department, the largest percentage of persons unemployed? Will he give a commitment that these matters will be borne in mind?

Mr Corkill: I take on board the hon. member's comments about the level of unemployment, which is marginally higher in the north compared to other parts of the Island, and I thank the hon. member for drawing my attention to the subject.

CONSTRUCTION INDUSTRY — PLANS FOR INCREASE IN APPRENTICES — QUESTION BY MR DOWNIE

The Speaker: Question number 3, hon. members. I call upon the member for Douglas West, Mr Downie.

Mr Downie: Thank you, Mr Speaker, I beg leave to ask the Minister for Trade and Industry:

What plans does your department have for increasing the number of apprentices in the building and associated construction industry trades?

The Speaker: The Minister for Trade and Industry.

Mr North: Thank you, Mr Speaker. As the hon. member is aware, there is no longer a route to qualified craftsman status in the construction trades by time serving alone. It is our policy to train our young people to internationally recognised standards, and on the Island these national vocational qualifications, or NVQs, are provided at either the Isle of Man College or the training centre at Hills Meadow, depending on the actual trade.

The maximum number of trainees that can be accepted onto the first year of a course is determined by the size of the training and assessment facilities and is prescribed by the NVQ awarding body on inspection of those facilities.

Another factor which needs to be taken into account is the capacity of the local industry under normal economic conditions to absorb a particular intake of new craftsmen. It is of little use encouraging young people to acquire skills for which there is likely to be little demand by the time they have completed their training.

Taking all the relevant factors into account, it has been found that an annual intake of some 60 apprentices is required. This level allows for the average rate of drop-out between recruitment and qualification.

Mr Downie: Mr Speaker, I would like to ask the minister that, given the extremely small number of apprentices who are involved in the construction industry at this time on the Isle of Man, would the minister be prepared to set up a specialist committee consisting of elements of the construction industry and associated government departments with a view to re-examining the whole structure of apprentices and training?

Mr North: Mr Speaker, I think I can give the assurance, as far as the hon. member for West Douglas is concerned, that my department is already doing that through the training division, who have regular consultation with many industries on the Island, not just the construction industry, but I certainly take the point that the hon. member for West Douglas is making and I did make the point in Tynwald just the week before last that my department is looking at additional ways all the time.

Mr Downie: Mr Speaker, I would like to ask the minister if his department has ever considered the possible introduction of some form of a small levy, or percentage, perhaps added to the value of a major government building contract, which would provide some serious funding for apprenticeship schemes?

Mr North: Mr Speaker, to my knowledge, yes, I think that idea has been floated and is part of ongoing work as to how we can attract more people into various trades throughout the Island.

Mr Rodan: Mr Speaker, can I ask the hon. minister, how does he account for the fact that so few large companies, not to mention government itself, appear to take their fair share of apprentices and it is the small firms who apparently bear a disproportionate share of future labour provision and training in the Island?

Mr North: Yes, Mr Speaker, that is a very fair observation because the whole construction industry in the last 10 years has changed dramatically. The word 'apprenticeship' has virtually disappeared and a lot of the larger companies, as I am sure the hon. member for Garff is aware, are no longer taking on apprentices and are out-sourcing a lot of their work.

Mrs Crowe: Would the minister agree that the education department could be, or should be, addressing post-14, 16, education by way of a review, with regard to introducing GNVQ courses, vocationally linked courses, into the curriculum which would equip youngsters to begin their apprenticeship training?

Mr North: Yes, Mr Speaker, I think certainly my department is working very well with the Department of Education and I would hope that in the future that is one of the possible ways of introducing more people to skills.

Mr Karran: Vainstyr Loayreyder, can the hon. minister tell us, what sort of numbers have we got as far as apprenticeships are concerned over the last, say, five years? Would he not also agree that we are facing a crisis within this industry if we do not come up with some sort of policies that will attract the industry to take on apprentices? Would he also not agree that when we talk about international standards, people want somebody who can do the job, not have a certificate to do so? And would he not agree that maybe we should be not just emulating what is happening in the adjacent isle, which is having a similar problem because of people who will not take on apprentices because of the bureaucracy?

Mr North: Yes, Mr Speaker, certainly as far as the figures are concerned, I do not want to go into too much statistical detail in the House, but basically the trades that the hon. member is taking about are electricians, plumbers, joiners, painters and bricklayers, and we aim to have a maximum number of trainees of 12 of each of those during each year. The first-year recruitment at present is that there are 12 electricians, there are 12 plumbers, 12 joiners, there are only 7 painters and 8 bricklayers, which I think was alluded to by the hon. member

for West Douglas in Tynwald. It is something that is changing, but you cannot suddenly have developed standards which are not applicable elsewhere than on the Island, because at times members will realise that skills need to travel and it would be wrong to train an electrician who could not then go and work in the United Kingdom or vice versa.

Mr Cannan: Will the minister confirm that he is aware that the Treasury and the Council of Ministers have made available sums of money to the Department of Education to extend and improve the role of GNVQ qualifications for those who are not so academically minded?

Mr North: Mr Speaker, I am aware of that and that funding is very welcome and I would repeat that my department works very well with the Department of Education because there is a way forward; we just have to keep working to make sure that skills that are needed are produced.

The Speaker: A final supplementary, I think, hon. members; in fairness to the hon. member who initiated the question, I call upon the hon. member for Douglas West, Mr Downie.

Mr Downie: Thank you, Mr Speaker. I would like to ask the minister, is he aware that currently the largest electrical company on the Isle of Man, the MEA, employs no apprentices and the building section of the Isle of Man Government has only one apprentice? I would like to ask the minister further what he feels is the long-term future for the Manx construction industry if we continue to fail to attract young people into the building trades?

Mr North: Mr Speaker, I was not aware that there were not any apprentices at the MEA. As far as the building section, certainly within government, the number of apprentices is linked to the number of tradesmen and you have to have the right number of tradesmen, in relation to the apprentices. I would repeat that the numbers at the Training Centre - I have given the figures - there are apprentices being trained; certainly whether there are going to be enough or not is a matter of concern, I think, to everyone.

SEXUAL OFFENCES 1991-1997 — NUMBERS RECORDED AND PROSECUTIONS — QUESTION BY MRS CANNELL

The Speaker: Can we move on, then, hon. members, to question 4 on the order paper, and I call upon the hon. member for Douglas East, Mrs Cannell.

Mrs Cannell: Mr Speaker, I beg leave to ask the Minister for Home Affairs:

(1) *How many sexual offences have been recorded in the Island in each of the years 1991 to 1997 inclusive; and*

(2) *what percentage of those offences have led to prosecution in Manx courts?*

The Speaker: The Minister for Home Affairs to respond.

Mr Bell: Thank you, Mr Speaker. The number of sexual offences recorded by the police in each year from 1991 up to date are as follows: 1991, there were 165 offences; 1992, 190; 1993, 78; 1994, 58; 1995, 99; 1996, 61; and to date this year - that is, to 31st October - there were 63. The percentage of offences which led to prosecutions in each of the seven years is as follows: 1991, 40 per cent; 1992, 42 per cent; 1993, 81 per cent; 1994, 53 per cent; 1995, 67 per cent; 1996, 36 per cent; and this year so far, 60 per cent. However, that figure needs to be qualified and put in perspective because in some cases the offenders were cautioned rather than prosecuted and those figures are as follows: in 1991, 15.75 per cent; 1992, 10 per

cent; 1993, 11.5 per cent; 1994, 34.5 per cent; 1995, 7 per cent; 1996, 28 per cent; and this year again so far, 12.7 per cent.

The Speaker: Hon. member for Douglas East, would you like a supplementary?

Mrs Cannell: Yes please, Mr Speaker. Is the hon. minister satisfied that persons convicted of serious sexual offences, when released into our community, are subject to proper supervision and control, particularly those persons who have committed multiple rape, and does this not make a case for preventative detention for serious habitual offenders?

Mr Bell: Mr Speaker, I am sure even the hon. member for East Douglas is aware that once someone has completed a prison sentence which has been rightly given to that person by the courts he is a free man, and we are entering new territory altogether if we are talking about preventative detention without that individual having carried out further crimes. I do know that there is an interest in pursuing this particular proposal, though, although I do not know how seriously, in the United Kingdom at the moment. It is a very fraught area to enter into and certainly not as straightforward as the hon. member would project it, but it is obviously something, I suppose, that at some stage needs to be considered.

Mr Karran: Vainstyr Loayreyder, could the hon. minister tell us what improvements have been made in order to try and address the issue before they go out, stopping them being a bigger threat? Are they still locked up for 23 hours a day in a confined space with five or six of them together?

Mr Bell: Mr Speaker, the sexual offenders in our prison are treated in the same way as they have been for a great many years. They are, by and large, in a separate wing in the prison. They do not mix with the other prisoners and, as with all the prison population at the moment, their freedom is restricted within the prison simply because of the overcrowding which exists there at the moment. The Probation Service, in particular, and where necessary the medical services, do do their best to treat and assess these people before release and there is in some circumstances a follow-up service after that.

Mrs Cannell: Mr Speaker, does the hon. minister have any idea at all, from the figures that he has given this hon. House this morning, of what percentage of those figures are sexual offences committed involving young children and young people?

Mr Bell: No, I do not have the full breakdown, Mr Speaker, but I do have the figures indicating those offences which have been committed in the home environment as to the offences which have taken place on the street and, by and large, I think those matters which take place within the home tend to involve children. Those figures are as follows: in 1991, 55 per cent of the offences occurred in the home environment; in 1992, 55 per cent; in 1993, 83 per cent; in 1994, 82 per cent; in 1995, 62 per cent; in 1996, 71 per cent; and again to date this year, 74 per cent.

The Speaker: Hon. members, the question related to asking for figures, which I think have largely been given, but I will permit one final supplementary from the member for Onchan.

Mr Karran: Vainstyr Loayreyder, would the minister not agree, if we are not to stop this trend of increases in the figures of sexual offences on this Island, that this hon. House has got to make sure that funds and facilities are provided in order that we can address the core issue

of allowing them to be in unsuitable accommodation where they are locked up together for 23 hours a day and are not there made to face up to their problems and in fact they are more of a threat after they have been in prison because we are not providing the facilities? Would he not agree that this hon. House needs to sort this thing out as a priority, or we are going to see in ever-increasing circles the fact of these offences growing in this Island?

The Speaker: Loosely related, but maybe the minister would like to reply?

Mr Bell: Yes, Mr Speaker. I fully take the point made by the hon. member for Onchan, and it is one he has raised with me on previous occasions. I have done my best, though, to try and explain to him that this matter is of the highest priority within my department as part of the overall prison redevelopment, and I would remind the hon. member that the prison redevelopment will not only entail the physical rebuilding of the existing prison or a new building being put in its place, it is also going to radically review the regime which will operate within the prison, not only towards sex offenders but indeed to all prisoners. There is an urgent need to improve the rehabilitation facilities in the prison on a general scale, not only for the sex offenders, and I agree entirely with the hon. member that that is one area which does need looking at, but if we are to try and wean persistent offenders from their normal course of action we need to have a more proactive rehabilitative regime in the prison to hopefully ensure that end. But I can assure the hon. member it is a very high priority in my department and it is one we are pursuing as fast as resources will allow us to do.

BATTERY HENS — PRESCRIBED CAGE SIZE — QUESTION BY MRS CANNELL

The Speaker: Question number 5, hon. members. I call upon the hon. member for Douglas East, Mrs Cannell.

Mrs Cannell: Thank you, Mr Speaker. I beg leave to ask the Minister for Agriculture, Fisheries and Forestry:

Does your department consider that the prescribed size of cages to house three to five battery hens in the Isle of Man is sufficient?

The Speaker: The Minister for Agriculture, Fisheries and Forestry to reply.

Mrs Hannan: Thank you, Vainstyr Loayreyder. The Welfare of Livestock Regulations 1996, introduced to Tynwald in May of that year, prescribed for any new battery cages a minimum cage area of 550 square centimetres for each hen where three hens are kept in a cage, and 450 square centimetres each where four or more hens are kept in a cage. Existing cages need not meet these requirements until 1st January 2000.

The introduction of these regulations was a major step forward for farmed animal welfare and placed a statutory responsibility on the farmer for that welfare. The regulations were introduced after a full consultation with all interested bodies. The department's welfare regulations, approved by Tynwald, are based on and implement the same size criteria as the UK Welfare of Livestock Regulations 1994, which in turn implement the European Union Council Directive 88/116.

My department is required to balance the interests of those who operate battery cages, the welfare of housed birds, and the interests of the consumer. Were my department to place tighter standards and restrictions on Manx producers as opposed to similar UK producers it would add costs to an industry already under pressure to survive and in turn would increase

costs to the consumer. My department has a responsibility to maintain similar conditions of production between Mann and the UK in the knowledge that we can and do monitor production and welfare of Manx production units rather than allow the Manx market to be totally supplied by battery eggs emanating from the UK, whose method of production my department cannot influence. Thank you, Vainstyr Loayreyder.

Mrs Cannell: Mr Speaker, I thank the hon. minister for her reply, but in her reply she did say that the existing regulations governing the size of the cages need not apply to the new regulations which are coming in, and in view of that remark could I ask her, does she not agree that the present subsidy arrangements are actually encouraging the overcrowding conditions of battery hens, and would she not consider the financial support given presently by the department for the purchase of laying boxes and 25 per cent for the purchase of laying hens could be better spent towards enabling producers to conform to free-range production?

Mrs Hannan: That is quite a wide-ranging question, Vainstyr Loayreyder. My department, when we introduced the regulations, were quite clear in what we were asking the producers to take account of, and they are to take account that in three-and-a-half years' time, from the introduction of these regulations, they would have to change the size of their cages. They would have to be aware of the need to change the size of the cages. Now, only in the *Manx Independent* of last week, a farmer who is involved, or was involved, with free range and deep litter production suggested a 10 to 15-year time lag between the changes that are being suggested by the member for East Douglas, and this is a person who has been involved in animal rights and also in countryside management through organic farming, so I think he is a person who maybe we should be listening to as opposed to suggesting that there should be changes indeed straightaway. My department, I suppose, has come in on the shorter time scale, which is only three-and-a-half years from the time when these regulations were introduced to the time when the regulations must be in place for new cages, and until that time the producers have time to change over to this particular system. However, no support of any nature is given to the introduction of cages at the moment that do not conform to the cages which are spoken of in the regulations which were introduced into Tynwald in May of last year. Thank you, Vainstyr Loayreyder.

PROCEDURAL — STANDING ORDER 43(2) SUSPENDED

The Speaker: Hon. members, we are again defeated by the clock as far as our standing orders are concerned so I call upon the hon. member for Ramsey, Mr Singer.

Mr Singer: Thank you, Mr Speaker. Could I move that standing order 43(2) be suspended to enable the remaining questions tabled for oral answer at this sitting to be put?

Mr Cretney: I beg to second, Mr Speaker.

The Speaker: Hon. members, those in favour that standing order 43(2) be suspended please say aye; against, no. The ayes have it. The ayes have it. We will therefore carry on with the question paper, hon. members.

BATTERY HENS — WELFARE OF — QUESTION BY MRS CANNELL

The Speaker: I call upon the hon. member for Douglas East, Mrs Cannell, to ask question number 6, please.

Mrs Cannell: Thank you, Mr Speaker. I beg leave to ask the Minister for Agriculture, Fisheries and Forestry:

What action has your department taken under the Animal Health Act 1996 to ensure the welfare of battery hens?

The Speaker: I call upon the Minister for Agriculture, Fisheries and Forestry to reply.

Mrs Hannan: Thank you, Vainstyr Loayreyder. The appointed day order relevant to the Animal Health Act 1996 has yet to be made. Powers flowing from it are therefore not yet available to it. My department, however, has made, under the Welfare of Animals Act 1981, the Welfare of Livestock Regulations 1996, which provide conditions under which laying hens in battery cages must be kept after 1st January in the year 2000. As I advised in another place, my department has specifically targeted all battery cage producers, drawing attention to the requirements of the 1996 regulations and regularly carry out inspections on such producers, and I can assure this House that should anyone set up a battery egg production unit now, they would have to do so under the Welfare of Livestock Regulations 1996, which provides for the larger cages now.

I can assure this House that I personally found great satisfaction in introducing the Welfare of Livestock Regulations 1996 as I recognised then that they were a major advancement in the welfare of farmed animals. Thank you.

Mrs Cannell: Mr Speaker, can the hon. minister inform us, with regards to her inspectors, whether or not when the inspectors are going out twice a year, as was indicated in another place, to inspect, have they right of access without prior notice and, if not, how does the hon. minister expect members who have a welfare concern to gain access to such battery producers and report to the police, as of her answers given during the October sitting of Tynwald?

Mrs Hannan: Vainstyr Loayreyder, my inspectors can go out at any time. Should there be any concern about the welfare of animals, a vet from my department can visit. Police can enter these premises at any time. There is a statutory responsibility on everyone who operates within battery cages to be aware of the regulations. The regulations are quite clear. It says that no person shall keep or cause or knowingly permit to be kept a laying hen in a battery cage unless the conditions of schedule 1 are complied with. Schedule 1 is quite extensive. The welfare codes relate to people being employed in such establishments or a person who operates such an establishment. That person should be acquainted with the provisions of all relevant welfare codes relating to the livestock being attended, has access to a copy of those codes while he is attending the livestock and has received instruction and guidance on them. So the regulations are quite extensive and these relate to the keeping of hens in battery cages now.

With regard to access, I can assure this hon. House that there is access to these units for vets with regard to welfare. Also, officers of my department and the police can make access to these establishments at any time.

Mr Karran: Vainstyr Loayreyder, would the minister agree with me that, as far as the Animal Health Act is concerned and the welfare of battery hens, this House would find it absolutely disgraceful if the taxpayer's money here is being paid out in subsidy for places where they are being cruel to animals? And would she not also agree with me that the time

has come for a new Animal Welfare Bill in order to ban battery production on this Island? And would she not also agree that the situation is that her department needs to live in the real world? This Island can never compete on a battery hen system where we are talking of 3,000 hens and they are talking of half-a-million-plus hens, and why can she not wise up and see the situation that this whole practice should be made illegal in this Island?

Mrs Hannan: Vainstyr Loayreyder, these regulations were introduced only a short time ago after discussion with the producers and other interested bodies. I am reminded too that only in another place very months ago I was accused of heavy-handedness in hanging farmers out to dry, and this sentiment was agreed by the member for East Douglas who said, 'Like my colleague for Ramsey, I believe that farming is an essential traditional industry which we must and should be supporting, and that we should not be so high-handed, as the minister has seen fit in dealing with the problems that have come forward. Further, I think it is deplorable that there has been no time allowed for comment or explanation prior to members being asked to approve or otherwise these motions that are before us. As someone who supports freedom of access to information, open government and good government, I find this situation quite intolerable.'

We have discussed with the farming industry. Over a period we have discussed with other interested bodies before introducing these regulations to Tynwald. We are allowing producers the 3¹/₂ years to change from one system to another, taking into account that these are the first regulations that have been introduced with regard to the welfare of farmed animals, and I would hope that this House will support the action taken by my department when introducing such regulations in the interests of farm animals. It is a traditional industry. It is something that will change in the future, I am sure of that, but the producers have got a financial commitment into the production of food for consumption of us here and I think we need to be aware that sometimes some of the practices are not maybe as we would like them to be, but then I think lots of the practices that take place behind what I might call closed doors might not be acceptable to us either. Thank you, Vainstyr Loayreyder.

Mr Singer: Mr Speaker, would the minister not accept that, as a norm, random visits by her inspectors to battery hen farms should be the method of inspection, not them just going twice a year or only acting on complaints?

Mrs Hannan: I think the hon. member is assuming that there is either cruelty or lack of interest in these units, and I do not think that is the case. There would obviously be veterinary support for these producers, their own private veterinary officers, and I can assure members that if the hens are not happy, they will not lay eggs. So the member is suggesting that there is - from the way I can understand it - a problem in these units at the moment, and if there was cruelty or if the welfare of these animals were not being looked at, then I am sure that the hens would not lay. In the United Kingdom there was in 1994 a select committee on agriculture looking at the poultry industry; there was a submission there from the Universities' Federation for Animal Welfare and in their submission they suggested that there were disadvantages for birds in the battery cage system: (a) the birds are so confined that they have little space in which to move; (b) they have no perching facilities; (c) they can neither scratch nor dust-bathe; (d) there is no nest box for laying their eggs. In summary, the birds were denied several of the basic freedoms which they would have in nature.

On the converse side of this is that the battery cages do provide certain welfare advantages for birds. This was made quite clear by the Universities' Federation for Animal Welfare and it said: (a) the birds were kept in a controlled environment; (b) ready access to food and water; (c) low incidence of disease; and (d) they do not usually have to be de-beaked - and I am informed that that is because in a situation such as this, in the battery cage, there are fewer hens and therefore there is no pecking order.

Mr Downie: Not like here, then!

Mrs Hannan: The Farm Animal Welfare Council recommended in their report of 1997 that the minimum cage size be increased from 450 square centimetres to 600 square centimetres. Part of the report recognises that other systems do provide welfare problems: injurious pecking, feather pulling and cannibalism, leading to the unpleasant practice of beak trimming as well as a higher proportion of dirty eggs and health control and is therefore more difficult due to access to litter and to land.

I could go on on this subject (**Members:** No!) but I would hope that members can recognise that there is a balance that my department makes and also I think the producer makes - this sort of balance. And I think my department is behaving reasonably and has taken a reasonable attitude towards the battery hens and regulations of farm animals.

The Speaker: Hon. members, I appreciate it may very well be interesting, but it is helpful, in fact, if members relate their supplementaries to the question itself. I am happy to permit supplementaries and I had indicated to hon. members that I would permit supplementaries on this particular question. So, providing they relate to question number 6, I call upon the hon. member for Garff, Mr Rodan.

Mr Rodan: Thank you, Mr Speaker. Would the minister not agree that her last reply perhaps highlights the basic difficulty for her department inasmuch as its role in encouraging and supporting the agricultural industry, including the egg industry, which could be said to be in a fragile state, and its role in policing welfare of livestock, including battery hens, are often seen as mutually exclusive?

Mrs Hannan: I think in all cases with regard to the welfare of animals my department is the right and proper department to work with farmers and not necessarily be confrontational but to advise farmers so that they have somewhere that they can turn to look for help, assistance and guidance, and I believe that is the best role for my department.

The Speaker: A final supplementary on this question. The member for Douglas East, Mrs Cannell.

Mrs Cannell: Thank you, Mr Speaker. With regard to the inspectors that the hon. minister alluded to who from time to time go out and inspect, can I ask her, when they do inspect, especially when a producer is putting in for a subsidy to the department, does the inspector go and count the birds when they are in deep litter and, if that is the case, does he then go and count the cages in which they will be laying their eggs and does he make a comparison?

Mrs Hannan: I would have to have further notice of that question, Vainstyr Loayreyder, but I can get it for this hon. House.

POULTRY PRODUCTION — EQUIVALENT STANDARDS TO EC STATES — QUESTION BY MRS CANNELL

The Speaker: Can we go on, then, hon. members, to question number 7, which is the third question in a line allied to a very similar topic. I call upon the hon. member for Douglas East, Mrs Cannell.

Mrs Cannell: Thank you, Mr Speaker. I beg leave to ask the Minister for Agriculture, Fisheries and Forestry:

Is there a legal obligation for the Isle of Man to maintain equivalent standards of poultry production to those in member states of the European Community?

The Speaker: The Minister for Agriculture, Fisheries and Forestry to reply.

Mrs Hannan: Vainstyr Loayreyder, the question of legal European Union obligations is difficult to give a yes and no answer to and I apologise to this House for that, but I will try and explain it in the very broadest of terms.

In the broad terms in relation to Mann, European Community rules apply only to the extent set out in Protocol 3 of the 1992 Act of Accession. If not covered by that protocol, then European Community rules do not apply. However, community rules on competition in trade in agricultural products do apply to Mann. That is because certain technical rules, even though they may not be rules on competition in trade in agricultural products, are deemed as capable of affecting trade and are therefore applied.

Council regulation 706/73 applies such technical rules to the Island in areas of food, plant health, veterinary, zootechnic, quality and marketing standards. These rules are limited in their application but underpin the concept of the common market. In effect, these rules must be applied in relation to products and animals which move between Mann and member states so that trade is not distorted. However, animals and products which are produced in Mann for consumption here are not necessarily subject to those rules.

In many areas of agricultural production it is not possible to differentiate between the two groups, one for export and one for domestic use, and often the only practical approach, therefore, is to apply European Community rules to all products to ensure that there is no leakage into the European Community of products which do not comply.

It would appear, however, that Manx poultry production is solely for home use and that because there is no outward trade it would be possible for us to apply our own standards. This is why, in discussion with the Department of Local Government and the Environment on the proposed new Manx Eggs (Marketing Standards and Hygiene) Regulations Order 1997, my department has argued for the retention of the present two Manx grades of eggs rather than the UK/European Union 5 grades.

Animal welfare rules would appear not to be classified as rules on competition in trade in agricultural products and would therefore permit separate standards to apply. Any regulation, however, which has a cost implication for compliance would require to be enforced equally between two jurisdictions in order that a trade advantage or disadvantage was not created. Equally, there is an inherent risk that products which do not comply with European Union standards could be produced here and worked into the Community, thus avoiding European Community standards and safeguards.

Finally, to recap, it is the Community rules on competition in trade in agriculture with which we have to conform to satisfy the Common Market and Protocol 3 rules when trading. Thank you, Vainstyr Loayreyder.

Mrs Cannell: Mr Speaker, I thank the hon. minister for her comprehensive reply but can I ask her, what exactly are the requirements under the common agricultural policy? Do we not have an obligation to comply with that? And in view of the response that she has given this morning, does she not agree that the producers in the Isle of Man are gaining more than their European counterparts, and does she think this is fair?

Mrs Hannan: The simple answer to that, Vainstyr Loayreyder, following on from my reply is that, no, we do not have to conform to the common agricultural policy. We have to take account of trade and it is this trade in relation to Protocol 3 which we must satisfy to satisfy the Common Market, and I think that if members would listen to any of the farmers, they would say that they are worse off than their European Union counterparts.

WATER — DISCOLOURATION IN RAMSEY AREA — QUESTION BY MR SINGER

The Speaker: We move on to question number 8, hon. members, and I call upon the hon. member for Ramsey, Mr Singer.

Mr Singer: Thank you, Mr Speaker. I beg to ask the Chairman of the Water Authority:

(1) *Has your attention been drawn to the concern of people in the Ramsey area caused by the regular discolouration of the drinking water; and*

(2) *what action is being taken to restore promptly an acceptable water supply?*

The Speaker: The hon. member for Onchan, Mr Karran, to reply.

Mr Karran: Vainstyr Loayreyder, I welcome the question from the hon. member for Ramsey and in part answer to part (1) of the question, I can confirm that I am aware that there have been discoloured water problems in his constituency. However, our records would suggest that there has been no more significant increase in the numbers of complaints during October by comparison with the total of any of the previous six months of this year. There were no telephone complaints recorded at the head office in any of the months of May, June, July or August. In September there were 15 complaints but only 5 in October. This represents less than 5 per cent of the total received for the corresponding months Island-wide.

In answer to part (2) of the question, I would inform the hon. member that regular and systematic flushing of the mains distribution system takes place in many locations around the Island, including Ramsey. This is done by opening fire hydrants to discharge the discoloured water, the inherent deposits which build up over a time. If complaints are received from customers in between the flushing exercise, the Water Authority asks the consumer to run the water off from their kitchen tap. If this does not resolve the problem, then ring the Water Authority for assistance.

The cause of the discoloured water is iron, aluminium and manganese deposits in the main system. These naturally occurring elements which pass through the water treatment works as soluble salts and precipitates out into the mains, are derived from the soils, rocks in the catchment areas of the reservoirs. I would like to reassure the hon. member and members of this hon. House that these substances are not injurious to health.

In addition to the regular flushing exercise which takes place, there is a three-year rolling programme of emptying and cleaning the service reservoirs which will help minimise the problem, since deposits collect on the floor of the reservoirs and, if not periodically removed, can carry through into the distribution.

In an endeavour to minimise the origin of these problems, the Water Authority has installed new monitoring and control equipment at the water treatment works. This should go some way to improving quality control but is not the total answer to alleviating the problem. This will only be solved when we have new water treatment works.

The authority has adopted a two-staged approach to the development of water treatment strategy works. The pre-feasibility study for the new works started in October of last year and was completed in May of this year, from which an executive summary is available to hon. members. It examined the very wide range of options and possibilities but narrowed it down to a field of eventually recommending two treatment works strategies to be the most suitable and economic way of dealing with the problem. We are now in the process of finalising the terms of reference for the feasibility study which will look in detail at the possible sites for the new works, the water treatment processes, other design and architectural features, along with preparation of the detailed estimate costs. This report will be ready in the late spring of 1998, Vainstyr Loayreyder.

Mr Singer: Mr Speaker, could I ask the Chairman of the Water Authority, is he aware that recently parents in the Ramsey area were not only reluctant to give the children your tap water to drink but it was so dirty and had so much brown sediment in that it did not appear suitable for bathing, so I do not believe it is acceptable to tell people that it is safe to drink or, in this case, even to eat. And in response to your reply, do you not think that the reduction in the quantity of complaints could be because people get disillusioned when they complain and no improvement is apparent?

Mr Karran: Vainstyr Loayreyder, all I can say is that complaints went down by two-thirds from September to October. Now, I agree with the hon. member, one wants to have no complaints at all, but the problem has been that we have seen a neglect of this part of the infrastructure of this Island for the last 40 years. We have also seen the demand for water in individual properties quadruple and we have seen the amount of properties being developed on this Island with no account taken of the infrastructure that was supplying them with this raw material. All I can say to the hon. member is that if members of the general public are finding it not worthwhile ringing the Water Authority, I would be very disturbed and I hope that the hon. member, when he has constituents that have that problem, then rings myself if they cannot get satisfaction from the Water Authority in the first place.

Mr Cannan: Will the Chairman of the Water Authority agree first of all that he has been chairman for the past eight years? And secondly, is he aware that when similar samples of dirty and disgusting water have been sent to the Government Analyst for analysis, it has been found that the water is unfit for drinking purposes, and that report has been made and those reports have been previously shown to him?

Mr Karran: Vainstyr Loayreyder, I am aware that I have been eight years; and I am dealing with a problem that has taken more than likely 60 years to develop into such a position. So I do not think that it is unreasonable, when one has not got a place at the

ministerial table to make the decisions that would make my life a lot easier. But I would also remind the hon. member that I would wonder what contribution he made to sorting out this problem when he was Treasury minister as far as making sure that money has been available. I have had to raise rates, do many unpopular decisions in order to try and get this issue addressed. Far too many in this hon. House and outside of it have this attitude that they always want to shoot the bearer of a bad news, and I believe that that has been a mistake that has been something that has happened.

As far as the question of samples being unfit for human consumption, I am aware that this happens, but I think you will find that the situation is where there has been a major burst, and there is a little bit of difference between when it is a matter of being not fit for human consumption and there is a slight discolouration in the water.

BILLS FOR FIRST READING

The Speaker: Hon. members, I think it is now time to move on from the question paper. We will move on to items 9 and 10 on our order paper and I call upon the learned Secretary.

The Secretary: The Companies (Transfer of Domicile) Bill, Sir Miles Walker; the Representation of the People (Amendment) Bill, Mrs Hannan.

RECREATION AND LEISURE BILL — CLAUSES CONSIDERED

The Speaker: Hon. members, we move, then, to item 11 on our order paper, the Recreation and Leisure Bill for the consideration of clauses, and I call upon the hon. member for Douglas South, Mr Cretney.

Mr Cretney: Thank you, Mr Speaker. Hon. members, clause 1 provides the Department of Tourism and Leisure with general powers to provide recreational facilities and entertainment facilities, these terms being defined in clauses 2 and 3 respectively. I beg to move that clause 1 stand part of the Bill.

Mr Duggan: I beg to second, Mr Speaker.

Mr Karran: Vainstyr Loayreyder, can the hon. mover just explain to this hon. House, when we talk about giving these ancillary powers to the department, what checks and balances will be given in order that local authorities who object to them. . . ? Will there be an approval in Tynwald needed for any new regulations or will it only have to be laid or will it just be something that can be done in-house at the Council of Ministers?

Mr Brown: Mr Speaker, I would just like to make the point that as far as I am concerned, this clause 1 is an important clause in the Bill and certainly, I think, will be of benefit to many people in the Island. We have seen a substantial change in the recreational and entertainment facilities in the Island and I think it is very important that we have it clearly identified that if the Department of Tourism and Leisure, whose role has changed since 1986 quite dramatically from the Tourist Board to that department, in fact has broad powers which are very wide, which are not tied down in legislation and are in fact clearly left as a responsibility for the minister and his department as to what support they give for leisure and recreational facilities. I believe that that department, being able to provide that support not only to organisations but to local authorities, is a fundamental step forward, and I think it is fair to say it is an area that we have been lacking in purely because the legislation under the old Tourist Board Act 1975, whilst it is quite broad, because it lists the functions that are available, in fact to some degree provides a limitation on the department, so I fully support this clause 1.

I think it is a major step forward and I would say the House should support fully whoever is minister of that department so that that department has the greatest flexibility possible to support the Island's community in this area, and I welcome this clause. I think it is very important.

I would certainly say to members, we should not in any way try and tie it down with bureaucracy. There are places for bureaucracy and there are places where you do not want it, and I would suggest this is one where you do not want it. The minister of the department will be answerable to Tynwald, he will be answerable to this House and therefore, whatever moves are made over the years, it does not take away that responsibility from the minister, but it is very important that the department is flexible with the community it wishes to serve.

The Speaker: The hon. member for Douglas South to reply.

Mr Cretney: Thank you, Mr Speaker. Could I thank the hon. member for Castletown, Mr Brown, for his support and his advice. The situation is, as I explained at the second reading stage, that presently the Department of Tourism and Leisure is operating certain leisure facilities. The increasing emphasis from the Department of Tourism and Leisure in this area has grown over the past several years, and that is why it is important that we have the ability to make our own byelaws rather than using, as is the case presently, those which have been inherited and which have no legal basis.

In terms of the relationship with local authorities in relation to the promotion of leisure activities, this is a matter which comes later in the Bill and will be subject to any regulations which have to go before Tynwald. I beg to move clause 1 stand part of the Bill.

The Speaker: Hon. members, the motion is that clause 1 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 2, sir.

Mr Cretney: Thank you, Mr Speaker. Clause 2 defines the term 'recreational facilities.' It expands the limited provisions now applicable to 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.

Sub-clause (2) clarifies sub-clause (1) by defining the term 'sporting or recreational activity' as including (a) any athletic pursuit; and (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. I beg to move that clause 2 stand part of the Bill.

Mr Quine: I beg to second, sir.

Mrs Hannan: Vainstyr Loayreyder, could I just ask on sub-clause (3), where it says 'place of public resort for the purpose of any enactment relating to offences against public decency', does this relate to sexual offences or does this relate to maybe a show which was on at the Gaiety which we know was banned a few years ago and which has been, I think,

played throughout the whole of the world and has since come back to the Gaiety? Is it just decency at a particular time or is it a sexual offence that this relates to?

Mr Cretney: I think it is the latter, Mr Speaker. I beg to move Clause 2 stand part of the Bill.

The Speaker: The motion is, hon. members, that clause 2 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. The hon. member, Mr Cretney. Clause 3.

Mr Cretney: Thank you, Mr Speaker. Clause 3 defines the term 'entertainment facilities.'

Sub-clause (1) lists a wide range of facilities and activities falling within the definition and I beg to move that clause 3 stand part of the Bill.

Mr Quine: I beg to second, sir.

The Speaker: Hon. members, the motion then is that clause 3 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. The hon. member, Mr Cretney, to move clause 4, please.

Mr Cretney: Thank you, Mr Speaker. Clause 4 provides the department a wide range of ancillary powers in relation to its provision or operation of both recreational facilities as defined in clause 2 and entertainment facilities as defined in clause 3.

Sub-clause (2) extends the maximum period for any lease to a public authority from the standard 7 years to 21 years.

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

I beg to move clause 4 stand part of the Bill.

Mr Quine: I beg to second, sir.

The Speaker: Does any hon. member wish to speak to clause 4? In that case, hon. members, the motion is that clause 4 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 Cretney: Thank you, Mr Speaker. 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 recreational 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 definitions would be affected by an order made by the Council of Ministers and would require Tynwald approval. I beg to move that clause 5 stand part of the Bill.

Mr Quine: I beg to second, sir.

The Speaker: Hon. members, the motion is that clause 5 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. I call upon the hon. member to move clause 6, please.

Mr Cretney: Thank you. 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 the Bill to a named local authority, and in sub-clause (2) enable 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 and, 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.

Mr Speaker, I beg to move that clause 6 stand part of the Bill.

Mr Quine: I beg to second, sir.

Mr Bell: Mr Speaker, just a small point. The Bill all the way through refers to local authorities. Could the hon. mover tell me whether in fact the definition of 'local authorities' would also cover combination authorities, two of which currently have responsibility for swimming pools? There would seem, at some time in the future, to be a strong argument for having one centralised body controlling the swimming pools on the Island, and would this be facilitated by this Bill, bearing in mind that it is combination authorities we are dealing with and not local authorities?

Mr Crowe: Mr Speaker, I am supportive of this Bill and I think it is a progressive move forward. I would just like the confirmation of the mover of the Bill that what we are seeing here is an intention to improve the leisure and recreation facilities for everybody in the Isle of Man and for the visitors coming to the Isle of Man and that the involvement of the local authorities with central government is for a partnership arrangement and a co-operation arrangement that you will be seeking so that it is for the benefit of the Island generally.

The Speaker: The hon. member for Douglas South, Mr Cretney, to reply.

Mr Cretney: Yes, I am happy to confirm to the hon. member for Douglas North that the intention of the Bill is to seek to work for the good of the people and for those who choose to visit our Island and that the purposes in which that will be enacted is via the department and by local authorities, and I think the only sensible way to achieve that is by co-operation.

In terms of the answer to the hon. member for Ramsey, Mr Bell, I am afraid I do not have the answer in relation to combination authorities, but I will endeavour to answer that at the third reading stage if that is acceptable. I beg to move that clause 6 stand part of the Bill.

The Speaker: Hon. members, the motion is that clause 6 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. It takes us on to clause 7 and I call upon the hon. member for Douglas South, Mr Cretney.

Mr Cretney: Thank you, Mr Speaker. Clause 7 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 pool and refuse boards.

This proposal did cause some concerns from local authorities when the Department of Local Government and the Environment consulted with them. 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 can assure this House, as I have several times, that it was never our intention to act in such a way. In finalising the Bill, therefore, we have had 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, and can I note from the second reading stage, Mr Speaker, in so doing I have offended others, so it is part of the job really, isn't it?

A further area of concern from the consultative process was a fear from 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, but we have incorporated in sub-clause (5) protection for the local authority in this regard.

At second reading stage, Mr Speaker, the hon. member for Douglas North, Mr Crowe, raised the issue of whether a partnership between my department and a local authority would be a partnership of equals. In terms of the Bill itself this is not covered. The matter would be covered, however, in an order which would flow from clause 7 and how the partnership would work is a matter of detail, which would be included in the order creating a joint board. Clearly there is, in terms of the Bill itself, a need to retain flexibility to tailor a joint board to specific circumstances: how many partners? What functions are being provided? Where is the funding coming from? These sorts of questions will influence the structure of the partnership.

There are, however, two major protections for a local authority: firstly, their involvement is voluntary. They have to decide that they wish to be a partner on the basis of the detailed arrangements contained in an order. Secondly, an order requires the approval of Tynwald.

At this stage we have spoken with only one local authority regarding a possible joint board, and of course that is Douglas Corporation regarding the Villa Marina. In that case we are talking about an equal partnership and Douglas Corporation have been repeatedly reassured of that. In the event that both parties decide to proceed, the terms of that partnership would be set out in the order. Douglas Corporation would have to consent to the order, which would then require Tynwald approval.

At second reading the issue of ownership of property was also raised. Once again, the Bill is not specific, because clause 7 is an enabling clause. It provides a framework within which an order can be made. An order can provide for a joint board to have property vested in it or not, as may be appropriate in all the circumstances. Once again, Mr Speaker, I would just emphasise that an order requires the consent of the local authority and then Tynwald approval and this really is a key principle that runs throughout the clause.

I beg to move clause 7 stand part of the Bill, Mr Speaker.

Mr North: I beg to second, Mr Speaker.

Mr Crowe: Thank you, Mr Speaker. I am rising to thank Mr Cretney for clarifying all the issues I raised at the second reading. It is vitally important that it is a joint board with the co-operation of all those belonging to it and it is very interesting to hear that negotiations and discussions have gone on with Douglas Corporation and I hope they come to a satisfactory conclusion. I think one of the major things, of course, will be the voting rights of the membership and to see that there is equity and possibly a chairman by rotation so that there is all this feeling that it is not a 'big brother' approach, but it is equal co-operation and, I would repeat, for the benefit of everybody on the Isle of Man and for the visiting public as well. Thank you.

The Speaker: The hon. member for Douglas South to reply.

Mr Cretney: Yes, thank you, Mr Speaker. I would like to thank the hon. member, Mr Crowe, for his comments. I think, as far as I am concerned and as far as the hon. Minister for the Local Government is concerned, the two of us who have been involved in the negotiations with Douglas Corporation over joint partnerships in the future, that has always been the basis upon which the discussions have taken place as far as we are concerned. I think the most important thing which sometimes we tend to forget is that the Villa Marina is, in my view, a national asset and perhaps we need to get on sooner rather than later and get it sorted out. I beg to move that clause 7 stand part of the Bill.

The Speaker: Hon. members, the motion is that clause 7 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Now the final clause the short title, clause 8, hon. member.

Mr Cretney: Thank you very much, Mr Speaker. Clause 8 provides various supplemental provisions.

Sub-clause (1) gives the Bill its short title.

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 by the department is deemed to be provided under the Bill.

Sub-clause (4) saves the existing powers of the department under the Tourist Act 1975 and those of the Department of Local Government and the Environment in relation to their existing powers to establish joint boards.

Mr Speaker, that concludes the clauses stage of this particular Bill. I would like to thank hon. members for their concern and their input into the moving of the Bill to this stage, and I would like to thank those who had a part to play in terms of the consultative process to date, which I think has resulted in a substantially improved Bill from that which was originally to be taken. I beg leave to move clause 8 stand part of the Bill.

Mr Quine: I beg to second, sir.

Mrs Hannan: I think, could the mover just clarify the situation? It does not relate solely to Douglas or any problems that Douglas might have. Emanating out of this legislation there may never be an agreement with regard to Douglas, but I would just like the mover to make it quite clear that it could involve all local authorities that are existing now. Could he clarify that? Thank you.

The Speaker: Does any other hon. member wish to speak? In that case I will call upon the hon. member for Douglas South, Mr Cretney, to reply.

Mr Cretney: Thank you, Mr Speaker. I am delighted to confirm to the hon. member for Peel that this Bill, of course, relates principally to the extension of powers to the Department of Tourism and Leisure. It does also provide for the department and others to enter into partnership arrangements with a range of local authorities throughout the Island and it may be that combination authorities play a part in that. I again will confirm that at the third reading stage and thank members for their support.

The Speaker: Hon. members, the motion is that clause 8 stand part of the Recreation and Leisure Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

INSIDER DEALING BILL — CONSIDERATION OF CLAUSES DEFERRED

The Speaker: Hon. members, as I indicated earlier, Mr Corkill has permission to be absent later, so we will bypass item 12 on the agenda at this stage and it will take its course on an agenda later.

MENTAL HEALTH BILL — CLAUSES CONSIDERED

The Speaker: Turning to item 13 on our order paper, the Mental Health Bill, I call upon the hon. member for Garff, Mr Rodan.

Mr Rodan: Thank you, Mr Speaker. As explained at the second reading stage of this Bill, the purpose of the Bill, which is promoted by the Department of Health and Social Security, is to re-enact with amendments the various Mental Health Acts.

Mr Speaker, as something of a long-distance runner yourself I think you will appreciate the marathon we are about to embark on with 140 clauses of this Bill. Where possible I will attempt, for the convenience of members, to consolidate the various explanations of the clauses.

Part 1 of the Bill consists of one clause which sets out the scope of the Bill and defines the various forms of mental illness.

Sub-clause (1) defines the scope of the Bill, which is 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, covering all kinds of mental abnormality. Mental illness is undefined; it is a matter of clinical judgement in each case. 'Arrested or incomplete development of mind' is the term for mentally handicapped persons who used to be called sub-normal or mentally defective. 'Psychopathic disorder' is defined and any other disorder or disability of mind. 'Severe mental impairment' and 'mental impairment' replace 'severe subnormality' and 'subnormality' respectively. They cover the cases of mental handicap which are associated with abnormally aggressive or seriously irresponsible conduct, distinguishing the minority of mentally handicapped persons who need to be detained in hospital or subject to guardianship from the majority who do not. The criteria include severe significant impairment of intelligence and social functioning instead of subnormality or intelligence. The current requirement that the condition require or be susceptible to medical treatment or other special care or training is omitted. However, treatability is later on in the Bill

made a condition of admission for treatment. '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 again treatability is a requirement for admission for treatment.

Sub-clause (3) makes it clear that immorality or alcohol or drug addiction is not of itself evidence of mental disorder unless it produces an abnormally aggressive or seriously irresponsible conduct. The references to alcohol or drug addiction and aggressive or irresponsible conduct are new. Also, the reference to aggressive or irresponsible conduct is new. The reason is that the UK Government have advised that the UK equivalent to this provision could be taken to mean that a sex maniac cannot be detained as a mental patient since his conduct, however serious, is only an expression of sexual deviance. This was not intended and they have suggested that this clarification be included, which is why it is in clause 1 of this particular Bill. Mr Speaker, I beg to move clause 1.

Sir Miles Walker: I beg to second, Mr Speaker.

The Speaker: Does any hon. member wish to speak to clause 1? In that case, hon. members, the motion is that clause 1 of the Mental Health Bill 1997 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Now, hon. members, the hon. mover can take it as he wishes, but from the chair I would be perfectly happy to take, say, from clauses 2, 3, 4, 5 and 6, which is relevant to the procedure for hospital admission and take it in block, sir, thus far, if the House is prepared so to do?

Members: Agreed.

The Speaker: It appears to me as if none of those impinge on others and I would be happy to take it in that manner if the hon. mover wishes.

Mr Rodan: Thank you, Mr Speaker, I appreciate your guidance in this matter. Part 2 of the Bill deals with ordinary procedures for the compulsory admission of mentally disordered persons into hospital or their reception into guardianship. Clauses 2 to 6 deal with admission to hospital for admission 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 accordingly 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.

Sub-clause (1) creates the power to admit a patient to hospital and to detain him there for assessment, which replaces current observation. The procedure consists of a written application made by the patient's nearest relative or approved social worker, supported by two recommendations by doctors.

Sub-clause (2) sets out the criteria for admission for assessment: (a) the patient must be suffering from mental disorder of a nature or degree which warrants his detention in hospital for at least a limited period. Note that while admitted he can also be treated as well as assessed. (b) he ought to be detained for the sake of his own health or safety or to protect others.

Sub-clause (3) requires the application to be supported by written recommendations in a form prescribed by regulations, by two doctors; both must confirm that the criteria in sub-clause (2) are met.

Sub-clause (4) limits to 28 days the overall period for which the patient can be detained under this clause, after which he must be discharged unless he has in the meantime, for example, been admitted for treatment under clause 3.

Clause 3, Mr Speaker, provides the most important machinery in the Bill for having a patient compulsorily detained in hospital for treatment of his mental disorder. The criteria 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.

Sub-clause (1) creates the power to admit a patient to hospital and detain him there for treatment. The procedure consists of a written application made by the patient's nearest relative or an approved social worker, supported by two recommendations by doctors. The effect of the application is explained in clause 6.

Sub-clause (2) sets out the criteria for admission for treatment: (a) the patient must be suffering from mental illness, severe mental impairment, psychopathic disorder or mental impairment of a nature or degree which makes it appropriate for him to be treated in hospital; (b) the criteria that his condition is treatable in the case of psychopathic disorder or mental impairment; and (c) that he ought to be treated for the sake of his own health or safety or to protect others and it cannot be done unless he is detained. An example of this might be where he refuses treatment as a voluntary patient.

Sub-clause (3) requires the application to be supported by written recommendations in a form prescribed by regulations by two doctors who must both confirm that the criteria in sub-clause (2) are met and give other details prescribed by regulations and also give reasons why detention is essential and indeed why alternative methods are inappropriate.

Clause 4, Mr Speaker, 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 referred to as 'sectioning the patient', a term with which hon. members may be familiar, and this is short for 'a section 4 application.'

Sub-clause (1) is introductory and the emergency procedure may only be used in case of urgent necessity.

Sub-clause (2) enables an emergency application to be made by the same person and in the same way as an ordinary application for admission for assessment under clause 2, but it must state that, firstly, admission is of urgent necessity, and secondly, that compliance with the ordinary procedures would involve undesirable delay. The power for a JP to make an application where no approved social worker is available is abolished.

Sub-clause (3) provides that only one medical report is required to found an emergency application but it must, if possible, be given by a doctor who knows the patient and must in any case confirm the statement under sub-clause (2).

Sub-clause (4) provides that the application authorises the detention of the patient for only 72 hours instead of 28 days unless a second medical report is supplied within that time.

Sub-clause (5) 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; this is reduced from the current three days.

Clause (5) Mr Speaker, makes it clear that an application for admission may be made even though the patient is already in hospital, 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 doctors.

Sub-clause (1) provides that an application for admission can be made although the patient is in hospital. So an application for admission for assessment or treatment can be made where the patient is a voluntary in-patient: for example, where he decides to leave but the staff are concerned about his or others' safety. Also, an application for admission for treatment under clause 3 can be made where the patient has already been admitted for assessment under clause 2.

Sub-clause (2) provides that an emergency application can be made by the doctor in charge of a voluntary in-patient by making a report to that effect. This enables the patient to be detained for up to 72 hours.

Sub-clause (3) enables the doctor in charge of an in-patient to nominate one other doctor on the staff to act for him.

Sub-clause (4) gives a properly qualified mental nurse a power to hold a voluntary in-patient for up to six hours if he needs to be held for his own health or safety or to protect others. The holding power lapses after six hours or on the arrival of a doctor able under sub-clauses (2) or (3) to give a report. The power is exercised by making a note on the patient's records.

Sub-clause (5) requires a nurse acting under sub-clause (4) to report to the management as soon as possible. The six hours runs from the time the note is made in the patient's records.

Sub-clause (6) makes it clear that 'in-patient' does not include a patient who is liable to be detained - that is to say, only a voluntary in-patient is covered.

Sub-clause (7) provides that the qualifications of a mental nurse to act are to be prescribed by order.

Clause 6 sets out the effect of an application for admission under clauses 2, 3 or 4. He becomes liable to be detained.

Sub-clause (1) provides that the completion of an application for admission under clauses 2, 3 or 4 gives the applicant - that is to say, the nearest relative or social worker - power to detain the patient and take him to the relevant hospital within 14 days from the time when he was last examined by either of the doctors who have recommended his admission.

Sub-clause (2) provides that admission within the stated time, including a deemed admission of a voluntary in-patient under clause 5, gives the hospital management power to detain the patient.

Sub-clause (3) enables the hospital management to act on application which appears to be properly completed and supported by any necessary recommendations without having to

check the signature or qualifications of any doctor or social worker or getting a second opinion on any medical recommendation.

Sub-clause (4) provides that on admission any previous application for admission of guardianship application ceases to have effect. So if a patient admitted for assessment under clause 3 is then the subject of an application for admission for treatment under clause 2 the previous application lapses.

Mr Speaker, I beg to move that clauses 2, 3, 4, 5 and 6 stand part of the Bill.

Sir Miles Walker: I am pleased to second, Mr Speaker.

The Speaker: Does any hon. member wish to speak? In that case, hon. members, the motion is that the procedure for hospital admission, clauses 2, 3, 4, 5 and 6, stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

I think then, hon. members, it would be responsible to take clauses 7, 8, 9 and 10, which relate to the guardianship area. The hon. member for Garff, Mr Rodan.

Mr Rodan: Thank you, Mr Speaker. Clause 7 enables a patient to be placed under the guardianship of another person, usually either the Department of Health and Social Security or a relative, as a half-way house between detention in hospital and complete freedom. For long a dead letter in the UK, it is now used for patients in the community. The categories of patients who can be placed under guardianship are changed to give a standard age limit of 16.

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. Instead, the guardian will now have certain specified powers. Various sub-clauses give the explanation as to the intent of this clause.

Clause 9 enables the DHSS to make regulations governing the operation of guardianship for the protection of patients.

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.

Mr Speaker, I beg to move that clauses 7, 8, 9 and 10 stand part of the Bill.

Sir Miles Walker: I will second, Mr Speaker.

The Speaker: Hon. members, the motion then is that clauses 7, 8, 9 and 10 stand part of the Mental Health Bill 1997. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Hon. member for Garff, perhaps we could take 11, 12, 13, 14 and 15, sir?

Mr Rodan: Thank you, Mr Speaker. Clause 11 makes further procedural provisions as to admission and guardianship applications under clauses 2 to 10. The only change is to require a social worker applying for admission for assessment to notify the nearest relative.

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.

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 in the DHSS to refer a patient's case to a social worker if asked to do so by the nearest relative.

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

Clause 15 deals with the case where an application for admission or supporting recommendation is faulty. Within certain limits the defect can be put right without affecting the validity of the patient's detention, and this is explained in the various sub-clauses.

Mr Speaker, I beg to move that clauses 10 to 15 stand part of the Bill.

Sir Miles Walker: I beg to second, Mr Speaker.

The Speaker: Hon. members, the motion is that clauses 11, 12, 13, 14 and 15 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Hon. member, we take clauses 16 to 19 inclusive.

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

Clause 17 allows a hospital to grant leave of absence to a patient who is liable to be detained.

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 to avoid the present situation in which a dangerous patient cannot be detained once he has been at large for 28 days. The 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 later, the end of the existing term of his detention or guardianship.

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.

Mr Speaker, I beg to move that clauses 16 to 19 stand part of the Bill.

Sir Miles Walker: I beg to second, Mr Speaker.

The Speaker: Hon. members, the motion is that clauses 16, 17, 18 and 19 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Hon. member, no particular break in the next ones; Perhaps we could take from, say, clause 20 to 24?

Mr Rodan: Thank you, Mr Speaker. 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 the 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.

Clause 21 deals with the case where, at the time where 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 this 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. At present this applies to all cases but is to be limited in line with the said UK Act to patients who have been absent for 28 days or less.

Clause 23 makes new provision for a patient who has been absent without leave for more than 28 days. On his return or recapture 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' absence without leave.

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.

Mr Speaker, I beg to move that clauses 20 to 24 stand part of the Bill.

Sir Miles Walker: I am pleased to second, Mr Speaker.

The Speaker: Hon. members, the motion is that clauses 20, 21, 22, 23 and 24 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Now, hon. member, perhaps we could take clauses 25 and 26 together?

Mr Rodan: Mr Speaker, clause 25 enables a patient who is liable to be detained or subject to guardianship to be discharged, usually by either the responsible medical officer or the patient's nearest relative.

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

Mr Speaker, I beg to move clauses 25 and 26.

Sir Miles Walker: I am pleased to second, Mr Speaker.

The Speaker: Hon. members, the motion is that clauses 25 and 26 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Now, hon. members, clause 27. I call upon the hon. member for Garff.

Mr Rodan: Mr Speaker, clause 27 requires the nearest relative to give the hospital three days' notice of his intention to discharge the patient and gives the responsible medical officer power to veto the discharge if the patient is a danger to himself or others. I beg to move clause 27.

Sir Miles Walker: I beg to second, sir.

Mr Karran: Vainstyr Loayreyder, I have an amendment here. It enables the nearest relative of the patient who is admitted for treatment under clause 3 or subject to guardianship under clause 7 to discharge the patient by giving an order in writing to that effect. In the case of a patient admitted for treatment i.e. a hospital patient in clause 27, it requires the nearest relative to give 72 hours' advance notice to the hospital managers. This is to give the responsible medical officer an opportunity to veto the discharge if he thinks that the patient is likely to be a danger to himself or others. The amendment extends the power of veto to patients under guardianship, and the nearest relative will have to give the department 72 hours' advance notice of intention so that the RMO can have a similar opportunity to veto the discharge. Hon. members, this amendment is one that has been drawn up by the department in consultation with other departments of government. I beg to move:

Page 25, line 10; for clause 27 substitute -

27. (1) An order for the discharge of a patient who is liable to be detained in a hospital shall not be made by his nearest relative except after giving not less than 72 hours' notice in writing to the managers of the hospital.

(2) An order for the discharge of a patient who is subject to guardianship shall not be made by his nearest relative except after giving not less than 72 hours' notice in writing to the Department.

(3) If, within 72 hours after notice under subsection (1) or (2) has been given, the responsible medical officer furnishes to the managers of the hospital or to the Department, as the case may be, a report certifying that in the opinion of that officer the patient, if discharged, would be likely to act in a manner dangerous to other persons or to himself, -

(a) any order for the discharge of the patient made by that relative in pursuance of the notice is of no effect; and

(b) no further order for the discharge of the patient shall be made by that relative during the period of 6 months beginning with the date of the report.

(4) In any case where a report under subsection (3) 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.

Mrs Crowe: I beg to second, Mr Speaker.

The Speaker: Now, does any hon. member wish to speak to the clause as printed or to what in effect is a new clause proposed by the hon. member for Onchan, Mr Karran? In that case, hon. members, putting the amendment as moved by Mr Karran, will those in favour please say aye; against, no. The ayes have it. The ayes have it.

As it is in fact a substitution of clause 27, that then will become the substantive clause. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Perhaps then, hon. member, if we take clause 28?

Mr Rodan: Thank you, Mr Speaker. Clause 28, indeed clauses 28 to 36, introduce a new system of after-care under supervision based on the system introduced in England and Wales by the UK 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, deteriorates and is readmitted and so on.

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. I beg to move clause 28, Mr Speaker.

The Speaker: Hon. member, I notice that you did say that you were quite happy to take the complete block of the after-care under supervision which would take you to clause 36, sir. If you would care to move it in that manner and the House is in agreement I am perfectly happy from the chair.

Mr Rodan: Thank you, Mr Speaker. Clause 29 sets out the procedure for making a supervision application involving consultation with all those involved in the patient's after-care.

Clause 30 makes further provision about the content of and procedure for supervision applications made under clause 28.

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

Clause 32 requires the DHSS to keep a patient's after-care and any requirements imposed on him under review and to consider his case if he fails to receive any after-care services or to comply with any requirements imposed upon him or her.

Clause 33 makes similar provision to clause 16, where the diagnosis of a person is changed while he is subject to after-care under supervision.

Clause 34 provides for the duration and renewal of after-care under supervision. It lasts initially for six months, can then be renewed for six months and thereafter for a year at a time. This is the same as for detention for treatment in hospital.

Clause 35 provides for the termination of after-care under supervision, which is equivalent to discharge from detention for treatment.

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

Mr Speaker, I beg to move that clauses 28 to 36 stand part of the Bill.

Sir Miles Walker: I am pleased to second, Mr Speaker.

The Speaker: Hon. members, the motion is that clauses 28 to 36 inclusive stand part of the Bill. Will all those in favour please say aye; against, no. The ayes have it. The ayes have it.

Perhaps at this stage, then, hon. member, 'Functions of relatives of patients', Clauses 37 to 41.

Mr Rodan: Thank you, Mr Speaker. 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 the nearest relative.

Clause 38 makes special provision for children and young persons - defined as persons under 17 - who become mental patients while in the care of the DHSS either under a care order or where the DHSS has assumed parental responsibility. The DHSS will be the nearest relative except where the patient is married.

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.

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.

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.

Mr Speaker, I beg to move that clauses 37 to 41 stand part of the Bill.

Sir Miles Walker: I am pleased to second, Mr Speaker.

Mr Bell: Just a very small point, Mr Speaker. In clause 37, sub-clause (6), could the hon. mover just confirm my understanding of that clause that that refers to common-law husbands or wives as well?

The Speaker: The hon. member for Garff to reply.

Mr Rodan: Yes, thank you, Mr Speaker. Sub-clause (6) treats a co-habitee of six months' standing as husband or wife.

The Speaker: Well, hon. members, the motion is clauses 37, 38, 39, 40 and 41 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Perhaps then, hon. member, we could complete part 2 and take clauses 42 to 45 inclusive.

Mr Rodan: Mr Speaker, clause 42 enables rules of court under the High Court Act 1991, section 25, to provide for applications under clauses 40 or 41 to be heard in chambers, to waive the ordinary rules of evidence and to enable a patient to be interviewed in private on behalf of the court.

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

Clause 44 makes special provision for wards of court. It would be worth mentioning that sub-clause (1) applies the usual rule that nothing can be done with regard to a ward of court without the leave of the High Court. An application for admission can be made with leave and the nearest relative cannot object and need not be consulted.

Clause 45 defines the various terms that are used in part 2 of the Bill.

I would therefore move, Mr Speaker, that clauses 42 to 45 stand part of the Bill.

Sir Miles Walker: Could I second, Mr Speaker?

The Speaker: Hon. members, the motion is that clauses 42, 43, 44, 45, the supplemental provisions of part 2, stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Part 3, hon. members. I call upon the hon. member for Garff to move clause 46.

Mr Rodan: Mr Speaker, part 3 of the Bill makes provision for the care and treatment of patients who are committed to hospital or guardianship by criminal courts. A hospital order commits a patient to hospital, and this is equivalent to an application for admission under part 2. A hospital order may have a restriction order attached to it, a guardianship order placed him under guardianship.

Clause 46 makes new provision requiring the DHSS to give the courts information about the accommodation and arrangements available to deal with mental patients appearing before them. I beg to move clause 46.

Sir Miles Walker: I am pleased to second, Mr Speaker.

The Speaker: Hon. members, the motion is that clause 46 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

We then turn to the hospital and restriction orders, clauses 47 to 52, sir, and including schedule 1.

Mr Rodan: Thank you, Mr Speaker.

Clause 47 explains the effect of a hospital order or guardianship order made by a criminal court. A hospital order authorises his detention in a hospital like an application for admission for treatment. A guardianship order places him under guardianship like a guardianship application.

Sub-clause (4) introduces schedule 1, part 1, which members will find on page 113 of the Bill. Schedule 1, part 1, is mostly drafting modifications to reflect the differences in procedure between applications and orders, but there is one modification of substance: the nearest relative has no power to discharge the patient under clause 25(2).

Clause 48 sets out the effect of a restriction order which a Court of General Gaol Delivery may make if it makes a hospital order and thinks that the restrictions in this clause are necessary for the protection of the public from serious harm. A new duty is imposed on the responsible medical officer to examine and report on a restricted patient at least once a year. The term 'order restricting discharge' is replaced by 'restriction order'.

Sub-clause (2) of clause 48 introduces schedule 1, part 2, which is on page 114 of the Bill, and this applies so as to modify the provisions of part 2 of the Bill in the case of a restricted patient. These modifications reflect the restrictions in (a) to (d) of sub-clause (2).

Clause 49 gives the Department of Home Affairs power to cancel a restriction order, to discharge the patient absolutely or conditionally and to recall a patient discharged conditionally. It can also take the patient to court or a public inquiry if required.

Clause 50 is a new provision dealing with the treatment as an in-patient of an offender in respect of whom a supervision and treatment order is made. This new kind of order, which is introduced later by clause 61 and schedule 2, is a half-way house for offenders who are mentally disordered but not so as to warrant detention under a hospital order.

Clause 51 provides for the revocation or variation of a supervision and treatment order.

Clause 52 deals with the case of an offender who is indicted for murder but found not guilty by reason of insanity and ordered to be detained during Her Majesty's pleasure.

Mr Speaker, I beg to move that clauses 47 to 52 and schedule 1 stand part of the Bill.

Sir Miles Walker: I beg to second, Mr Speaker.

The Speaker: Hon. members, the motion, then, is that clauses 47, 48, 49, 50, 51, 52 and schedule 1 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Hon. member for Garff, clause 53.

Mr Rodan: Mr Speaker, clause 53 enables prisoners under sentence who are mentally disordered to be transferred to hospital for treatment by virtue of a transfer direction made by the Department of Home Affairs, and this has the same effect as a hospital order. I beg to move clause 53.

Sir Miles Walker: I beg to second, Mr Speaker.

The Speaker: Hon. members, the motion is that clause 53 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. We then take, hon. member for Garff, clause 54.

Mr Rodan: Mr Speaker, clause 54 makes similar provision to clause 53 for the transfer to hospital of remand prisoners, prisoners for debt and so on. I beg to move clause 54.

Sir Miles Walker: I beg to second, sir.

The Speaker: I call upon the hon. member for Onchan, Mr Karran.

Mr Karran: Vainstyr Loayreyder, this amendment enables the Department of Home Affairs to make a transfer direction so that a sentenced prisoner, suffering from any kind of mental disorder, can be transferred to hospital for treatment. In clause 54 it gives a similar power in relation to remand prisoners, persons committed for contempt, illegal immigrants, but it is limited to prisoners suffering from mental illness or severe mental impairment. This amendment extends it to cover prisoners suffering from a psychopathic disorder or mental impairment as well, and it is suggested that the Isle of Man takes up this opportunity to do this now with this present piece of legislation. I beg to move:

Page 56, line 25; for 'mental illness or severe mental impairment' substitute 'mental illness, psychopathic disorder, severe mental impairment or mental impairment'.

Mrs Crowe: I wish to second.

Mr Gilbey: Mr Speaker, I would like to ask a question in general about these amendments. I congratulate the hon. mover of the Bill in the way he is taking us through such a complex Bill, but I do not know why at this late stage we have got so many amendments. We have had one already and there are about four or five more to come. It does seem to me that this House is entitled to an explanation as to why, when we are copying UK legislation, which

is not exactly new, these amendments suddenly arrive and why they were not put in the Bill in the first place.

The second point is that hon. members will remember that we were specifically asked if we had any amendments we should consult the department well in advance so that the effects of these could be seen on the Bill and it could not be damaged in any way, which I think is a perfectly reasonable request. But in view of that request it does seem to me somewhat startling that we were not given the courtesy of these amendments being circulated to us so that we had time to study them if we wished to, and to comment to the department on them; they were just put on our desks this morning.

So I would like to have a full explanation either from the mover or the hon. member of the department on these two points: the reason for these numerous amendments and as to why they were just put on our desks this morning.

The Speaker: A question has been asked, hon. member for Onchan. If you, as a member of the department -?

Mr Karran: Vainstyr Loayreyder, the situation is that many of these amendments are due to the legislative draftsmen and also to other departments of government coming in at a late stage as far as this Bill is concerned. I would be horrified if I felt that the hon. member for Glenfaba or any other member has felt that they could not put any amendments to this Bill at the present time simply because they did not give the department the notice. My department has no right to say that you cannot put any amendments and I think the hon. member is slightly misguided to say that you must not put amendments if he feels that we have done such a thing. If the hon. member has amendments to this Bill, it is his parliamentary duty, never mind right, to do so.

As far as the amendments are concerned, the amendments have been drafted generally for external influences and not from internal influences as far as the Department of Health and Social Security is concerned. It would be more wrong if we were to allow a situation where this Bill is passed through and amendments that could make this Bill even more effective were not allowed to go forward. I will check about the fact that these amendments could have been brought to your attention much earlier, but I am afraid that these amendments have only come to my attention in very recent times, namely late on last night.

The Speaker: I am sure the hon. member for Glenfaba is not misguided at all and he is perfectly well aware that this is the clauses stage of the Bill and we can move amendments to the clauses at this particular stage, and I am sure we are all very well aware of that. The hon. member for East Douglas.

Mrs Cannell: Thank you, Mr Speaker. I would like to speak just on the amendment which has been proposed by the hon. member for Onchan.

The Speaker: At the moment we are dealing with clause 54 and the amendment to clause 54.

Mrs Cannell: That is correct, Mr Speaker, it is that to which I am referring. I am a little bit concerned about the member moving the amendment on clause 54, line 25 here; he is suggesting that we take out line 55, which classifies illness as mental illness or severe mental

impairment for 'mental illness, psychopathic disorder, severe mental impairment or mental impairment'. What concerns me is if we are to support the amendment and thereby include other classifications, if a person is found to be suffering with a form of mental illness which is not specified as it is in the amendment, will we then come across problems? That is to say, I am a little concerned that the amendment is proposing specific illnesses and there are so many varying degrees of mental illness, and I am sure every hon. member would agree on that. Are we tying ourselves merely to those particular mental illnesses that are specified in the amendment to line 25 on clause 54?

The Speaker: Does any other hon. member wish to speak to the amendment or to the principal clause? The hon. member for Peel, Mrs Hannan.

Mrs Hannan: Thank you, Vainstyr Loayreyder. I rise in support of the amendment moved by the member for Onchan because it does introduce psychopathic disorder, which was not in the original Bill, and I am pleased that it is an area which is covered by this piece of legislation, because otherwise someone having a psychopathic disorder could not be treated under this legislation. So I see this as a major step forward. I support the amendment.

The Speaker: Does any other hon. member wish to speak? In that case I call upon the hon. member for Onchan, Mr Karran, to reply to the amendment.

Mr Karran: The amendment is put down in this hon. House simply to widen it, as we feel there would be an anomaly and it would make the department impotent as far as certain categories of persons within the Island where we feel there needs to be some legal controls on them. I would hope that hon. members would support the amendment because it does broaden it out, it does include a very important section of individuals that are in our community that at the present time we would have little or no control over who could cause an immense amount of damage and destruction within our community. So I do hope the amendment will be accepted.

The Speaker: I call upon the hon. member for Garff to reply to the debate on clause 54.

Mr Rodan: Thank you, Mr Speaker. In response to Mr Gilbey I think it would be true to say that since the drafting of this Bill the opportunity has been taken to benefit from Home Office advice and the experience in the UK of their recently introduced Patients in the Community Act 1995 and indeed Crime Sentences Act 1997, which has only just come into effect. In the course of experience of these two pieces of very recent legislation, the Home Office has obviously given advice to us in the Isle of Man, and we have taken the opportunity of adopting a good part of that advice. An example of that advice is in fact the amendment by the hon. member Mr Karran. The UK has in mind at the moment extending the availability of the provision for sentenced prisoners to be extended to remand prisoners for transfer to hospital of such prisoners who are psychopathically disordered or mentally impaired and, as Mr Karran has quite correctly pointed out and Mrs Hannan also, this has the effect of widening the scope of the Bill to embrace classes of mental disorder for remand prisoners who were not previously included and is a very sensible thing for us to do at this particular stage. So I again would certainly accept this amendment and again move clause 54, as amended.

The Speaker: Hon. members, the motion is that clause 54 stand part of the Bill, and to that I have the amendment printed on the white paper and circulated to you, as moved by Mr

Karran, replacing on page 56, line 25 with an extension to include psychopathic disorder. Those in favour of the amendment please say aye; against, no. The ayes have it. The ayes have it.

Hon. members, I then put clause 54 as amended. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Thank you, hon. members, perhaps then, hon. member for Garff, we could take clause 55.

Mr Rodan: Mr Speaker, clause 55 enables the special restrictions which can be imposed by the Court in the case of a dangerous mentally disordered offender to be imposed on a prisoner who is transferred to hospital for treatment for mental disorder. A new duty is imposed on the responsible medical officer to examine and report on a restricted patient at least once a year. I beg to move clause 55.

Sir Miles Walker: I am pleased to second, Mr Speaker.

The Speaker: I call upon the hon. member for Onchan, Mr Karran.

Mr Karran: Vainstyr Loayreyder, in the adjacent isle, section 47 of the UK Crime Sentences Act 1997 gave power for the Home Secretary, when transferring a prisoner to a hospital with a restricted direction under the equivalent of clause 55 to specify not just a hospital where he is to be detained but actually a unit in a hospital. This would be appropriate where a mental hospital comprises both a general psychiatric unit and a secure unit. It was necessary to ensure that a prisoner was kept under a secure unit. This gives the Department of Home Affairs a similar power in the case of a secure unit, should it be provided at Ballamona Hospital, if it be desirable, to send a prisoner there if such a unit is to be provided. I beg to move:

Page 57, line 14; at the end insert -

'(1A) Where the Department of Home Affairs makes a transfer direction with a restriction direction, the transfer direction may authorise the person concerned to be removed to and detained in a hospital unit specified in the direction.'

Mrs Hannan: I beg to second.

Mr Duggan: Could I just ask Mr Karran about the amendment? What unit have we got at present? Have we got no facilities at present, because we are passing legislation, hon. members, this morning but it appears to me we do not have the facilities or the back-up or the training of the staff for such a unit.

Mr Bell: Mr Speaker, that in fact really was the point I was going to make myself. I wholeheartedly support this clause and the amendment proposed by the hon. member for the DHSS, but I would just point out that if this clause is going to be effective we have got to provide the resources to make sure the facility is there in the first place, otherwise we are misleading the public insofar as we are giving an impression that we are in a position to treat some of these prisoners when in fact we are not, and we are really being dishonest ourselves in this House, knowing that we are passing legislation that in reality we are not going to be able to implement when it is actually on the statute book. So I know this is not really a departmental debate at this stage, we are moving the Bill, but I hope the hon. member will take on board the

urgent necessity for his department to make sure that the facilities are made available at whatever establishment it is decided most appropriate in good time to be available when the Bill is finally enacted.

Mrs Cannell: Mr Speaker, can the hon. mover of the amendment clarify the position with regard to this? I take on board what the Minister for Home Affairs has just said and I share his concern with regard to this. Can the hon. mover of the amendment give us some advice as to whether or not this particular provision - that is to say, the transfer, as worded in the amendment - could take place in the UK or anywhere else where there was a secure unit? Does the amendment to this particular clause provide for that or is it solely dealing with an on-Island secure unit? If it is dealing with something that is off-Island, again where is the financial provision for ensuring that it is made possible?

Mr Brown: Mr Speaker, I think the important thing on this is that we have an opportunity in the legislation to make an amendment which will enable the department to make provision to deal with patients in this way, and whether or not the department and the Home Affairs make a direction to transfer, and whether or not that is brought in in the UK or any other country, is a matter for that department, but without this provision there would be no power for the department, the minister, to actually transfer anyone anywhere and therefore, whether or not in the future we have such a unit on the Isle of Man or whether or not we buy in the facility somewhere in the UK or in another country is the important factor. But the very important factor is that we make legislative provision to enable that to happen. If we do not, the next thing that will happen is that the Minister for Home Affairs, whoever that may be, will be coming back and saying, 'Well, I can't do anything because I have no powers to transfer.'

So whilst there are concerns, we have to have the legislative power first, and from that I am sure there will be discussions between the departments who are responsible to identify the best way to make provisions for such people. Whether or not it is on the Island or off the Island is not a matter at this stage that is important; what is important is to get the provision right so then the departments will have to identify how to deal with such patients.

The Speaker: The hon. member for Glenfaba.

Mr Gilbey: The point has been covered.

The Speaker: The point has been covered, has it? Okay, very good. Does any other hon. member wish to speak? In that case I call upon the hon. member for Onchan to respond to the amendment.

Mr Karran: Vainstyr Loayreyder, the position is, to the hon. member for South Douglas, as he will be aware, there was a secure unit at Ballamona many years ago and it was lost because of resources.

The point is, to the hon. member for Ramsey, the position is at the present time that if we did not move this amendment it would mean that there would be no legal possibility of any facility on the Island being able to accommodate this situation, and I would suggest that this piece of legislation is about enabling legislation. The hon. minister for the home affairs department knows that the home affairs medical facilities are basically independent of the DHSS is concerned as far as the prison and prisoners are concerned. This is an issue that has

given me some concern and I do hope that we will see some cross-departmental cooperation as far as any dual purpose is concerned.

This amendment simply is, as the hon. member for Castletown says, a piece of enabling legislation to enable the possibility that, if a facility is built on the Island, it can then be used by the Department of Home Affairs to accommodate prisoners. This is an amendment purely to allow for the enabling legislation.

I cannot give any guarantee to the hon. member for East Douglas whether such a building will be built in the short term or the long term, but I believe that if this hon. House does not support the amendment what will happen is that our department and the Council of Ministers would be then able to hide behind the fact that there is no legislative provision. So I believe that this hon. House would be wrong not to agree to this amendment that is in front of you at the present time. I beg to move.

The Speaker: I call upon the hon. member for Garff to reply to the debate on clause 55.

Mr Rodan: Thank you, Mr Speaker. I think the debate has been well covered and well answered by the hon. member for Onchan, Mr Karran. I would just draw attention to the fact that under clause 53(1), a transfer direction can be made to provide for detention 'in such hospital as may be specified in the direction.' That may be a hospital with a secure unit in the United Kingdom or it may be a hospital with a secure unit, if such existed, in the Isle of Man. The point that has been brought out quite clearly is that this amendment permits such a secure unit in a hospital to be specified as the destination for a particular prisoner. It would, therefore, be extremely sensible to make this legislative provision and it is for others to ensure that the resources are put in place to take advantage of this particular provision.

The Speaker: Hon. members, the motion is that clause 55 stand part of the Bill. To that we have the amendment, as circulated to you, in the name of Mr Karran which, in effect, inserts a new sub-clause to be numbered (1)(a) between sub-clauses (1) and (2) of clause 55. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clause 55, as amended, then, hon. members. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Perhaps, hon. member, we could take then clauses 56, 57, 58, 59 and 60 in conclusion of that section.

Mr Rodan: Thank you, Mr Speaker. Clause 56 sets out the effect of a new kind of order which a Court of General Gaol Delivery is given power to make by clause 61 and schedule 2, part 1. Where the court convicts an offender and sentences him to custody but is satisfied that he is suffering from a psychopathic disorder, it can make a hospital direction combined with a limitation direction, which has the same effect as a transfer direction and restriction direction for an existing prisoner - that is to say, he goes straight to hospital and, if he responds to treatment, he is returned to prison to serve the rest of his sentence. This is a very recent power that has been made in the UK under the Crime Sentences Act 1997 and which we are taking on board here.

Clause 57 provides for the cancellation of a transfer direction and restriction direction or a hospital direction and limitation direction in certain cases. It also provides for the recapture, as an escaped prisoner, of a prisoner who absconds from hospital.

Clause 58 makes provision for the termination of a transfer direction or restriction direction in the case of prisoners who are not under sentence or on remand.

Clause 59 makes further provision for the case where a remand prisoner is transferred to hospital under a transfer direction. The court cannot remand over six months unless the accused is brought before it and is given power to cancel the direction.

Clause 60 makes further provision for the case where a civil prisoner or illegal immigrant is transferred to hospital under a transfer direction.

I beg to move that clauses 56 to 60 stand part of the Bill.

Sir Miles Walker: I am pleased to second, Mr Speaker.

Mrs Cannell: Mr Speaker, with regard to clause 56, just a point of clarification, really. The hon. mover said that if a person is transferred to hospital suffering with a mental illness and recovers sufficiently enough, then he will be returned to prison. The time he has actually spent in prison - is that counted as to form any part of his prison sentence, or is that just literally time taken out and he has to go back and serve the remainder of time under sentence?

The Speaker: The hon. member for Garff to reply; that is 56(1)(b) you are in, sir.

Mr Rodan: Mr Speaker, sub-clause (1) of clause 56 provides that a hospital direction authorises the patient to be taken to hospital within 28 days and detained there. The limitation direction under sub-clause (2) would make the provision for the carrying-out in prison of the sentence originally passed by the court on completion of the period of hospital treatment. This is my understanding.

The Speaker: Hon. members, the motion is that clauses 56 to 60 inclusive stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 61, sir.

Mr Rodan: Mr Speaker, clause 61 lays the down the rules for medical evidence under this part of the Bill. New provision enables evidence to be given by written medical reports. I beg to move clause 61.

Sir Miles Walker: I beg to second.

The Speaker: Hon. members, the motion is that clause 61 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clause 62 and schedule 2, the hon. member for Garff.

Mr Rodan: Thank you, Mr Speaker. Clause 2 introduces schedule 2, which members will find on page 116 of the Bill. Schedule 2 re-enacts as part of the Summary Jurisdiction Act 1989 the existing powers of courts of summary jurisdiction to make hospital orders for mentally disordered offenders. The schedule give the Court of General Gaol Delivery new power to make supervision and treatment orders and hospital directions. It also gives the Court of General Gaol Delivery and courts of summary jurisdiction new power to remand a defendant to

hospital for a report on his mental condition. It gives the Court of General Gaol Delivery power to remand a defendant to hospital temporarily for treatment and gives courts of summary jurisdiction the same powers as the Court of General Gaol Delivery to make interim hospital orders.

Supervision and treatment orders were introduced in England and Wales by the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 as a kind of halfway house for offenders whose mental disorder is not serious enough to warrant detention in hospital. They are modelled on the existing probation order with a condition of psychiatric treatment. They are suitable where the offender needs treatment by his GP as a hospital out-patient or as an intermittent in-patient, not as a detained patient nor under guardianship. Power to remand a defendant to hospital for medical reports if there is reason to suspect that he is mentally disordered or for short-term treatment was given to courts in England and Wales by the Mental Health (Amendment) Act 1982. Power to make hospital directions is given to crown courts in England. The court, when sentencing a defendant to custody, can direct that he be transferred to hospital if he is satisfied that he is suffering from a treatable psychopathic disorder. If he recovers or is found to be untreatable he goes to prison to serve out his sentence. This device avoids the dilemma under the present law under which the court is bound to make a hospital order and must take the risk that the offender may be released early by a mental health tribunal.

Schedule 2, part 1, amends the Criminal Jurisdiction Act 1993, which deals with Courts of General Gaol Delivery and makes the necessary provisions to that legislation to enable the provisions of this Bill to be carried out. Part 2 of the schedule is introduced, as members will note, on page 121, conferring new powers on a court of summary jurisdiction. I beg to move that clause 62 and schedule 2, parts 1 and 2 stand part of the Bill.

Sir Miles Walker: I am pleased to second, sir.

Mr Karran: Vainstyr Loayreyder, this also follows section 47 of the UK's Criminal Sentences Act 1997, which in the UK enables a crown court to make a hospital direction with a limitation on the direction to specify a particular unit in a hospital for detention of an offender. This amendment gives a similar power to a Court of General Gaol Delivery in the Isle of Man. I beg to move:

Schedule 2, page 118, in paragraph 3, in the new section 54C(3)(a); after 'hospital' insert 'or hospital unit'.

Mrs Hannan: I beg to second and reserve my remarks.

The Speaker: Hon. members, the motion is that clause 62 and schedule 2 stand part of the Bill. To that we have the amendment circulated to you in the name of Mr Karran. Will those in favour of the amendment as circulated please say aye; against, no. The ayes have it. The ayes have it.

Clause 62, schedule 2 as amended, then, hon. members. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

The hon. member for Garff, clause 63, please.

Mr Rodan: Mr Speaker, clause 63 simply defines the terms used in this part of the Bill and I beg to move the clause.

Sir Miles Walker: I beg to second, sir.

Mr Karran: Vainstyr Loayreyder, the amendment in front of you from the department defines a hospital unit where it is used in clause 55, schedule 2 and schedule 5 and part 2. This is an interpretation provision to ensure that where the Department of Home Affairs or a court specifies a hospital unit for the detention of a patient, references to the detention in a hospital are to be taken as references to a detention in that unit. I beg to move:

Page 63, line 18; at the end insert -

‘“hospital unit” means any part of a hospital which is treated as a separate unit;’

Page 64, line 6; at the end insert -

‘(2) Where in pursuance of any statutory power a hospital order, hospital direction or transfer direction authorises a person to be detained in a hospital unit, any reference in any enactment (including one contained in this Act) to him being, or being liable to be, detained in a hospital shall be construed accordingly.’

Mrs Hannan: I beg to second.

The Speaker: Hon. members, the motion is that clause 63 stand part of the Bill. To that we have the amendment as circulated to you in the name of Mr Karran which defines a hospital unit and inserts a new 2(a). Will those in favour of the amendment please say aye; against, no. The ayes have it. The ayes have it.

Clause 63, then, as amended, hon. members. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Now that takes us, hon. members, up to part 4 of the Bill, and perhaps at this stage we could take the complete section of ‘Consent to Treatment’, clauses 64 to 72 inclusive. The hon. member for Garff.

Mr Rodan: Thank you, Mr Speaker. Part 4 of this Bill introduces new rules restricting the treatments which may be given to a mental patient without his consent. These were introduced in the UK to resolve doubts over the extent of the authority given to the responsible medical officer to administer treatment to a patient who is liable to be detained following admission for treatment. As a general rule, medical treatment can only be lawfully given if the patient consents except where it is immediately necessary to preserve his life or health. This applies to a certain extent to mental patients, though consent may be implied if the patient is incapable of giving express consent by reason of his mental disorder. It was previously considered that where the law gives power to detain a patient for treatment it also gives implied authority to administer the treatment. This has been questioned in the 1970s, and in 1982 the UK Parliament conferred express authority for the purpose subject to safeguards. It is these 1982 provisions which are reproduced in part 4 of our Bill.

Clause 64 provides that certain rules apply only to persons liable to be detained and others to all in-patients.

Clause 65 requires both the patient’s consent and a second medical opinion together with other consultations before certain irreversible treatments can be carried out on any patient, whether voluntary or detained. This does not apply to emergency treatment.

Clause 66 requires either the patient's consent or a second opinion, not both as in clause 65, to certain forms of treatment, including drug therapy, for more than three months. This again does not apply to emergency treatment.

Clause 67 enables a consent or opinion relating to treatment under clause 65 or 66 to relate to an individual treatment plan - for example, providing for variations in drugs or dosage depending on the patient's response. Any variation will not, therefore, require a further consent or opinion.

Clause 68 enables a patient at any time to withdraw his consent under clause 65 or 66 to any treatment, but this is subject to clause 70.

Clause 69 provides for a report on certain treatments to be sent to the DHSS, who must take independent advice and may cancel a certificate given under clause 65 or 66.

Clause 70 makes an exception to the rules in clauses 65 and 66, as I earlier indicated, to provide for cases of emergency treatment.

Clause 71 provides that a detained patient's consent is not required to any treatment not covered by clause 65 or 66 - that is to say, an irreversible treatment - provided it is given by or under a doctor.

Clause 72 defines certain terms that are used in part 4.

I beg to move that clauses 64 to 72 stand part of the Bill.

Sir Miles Walker: I am pleased to second, Mr Speaker.

The Speaker: Hon. members, the motion is that clauses 64 to 72 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Hon. members, turning then to part 5 of the Bill, to clause 73, which introduces schedule 3, the hon. member for Garff.

Mr Rodan: Mr Speaker, part 5 of the Bill deals with the mental health review tribunal, which is constituted as an independent tribunal to hear appeals and references concerning the detention of patients under parts 2 and 3. There is no substantial change in its constitution or functions except to give new rights of appeal in relation to new schemes of control - for example, after-care under supervision introduced under clauses 28 to 36.

Clause 73 continues the tribunal in existence and introduces schedule 3, which members will find on page 128, which provides for the constitution of the tribunal. I beg to move that clause 73 and schedule 3 stand part of the Bill.

Sir Miles Walker: I am pleased to second, Mr Speaker.

The Speaker: Hon. members, the motion is that clause 73 and schedule 3 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clause 74, hon. member.

Mr Rodan: Mr Speaker, clause 74 lists the cases in which an appeal lies to the tribunal and the time limits in which they may be made. As a result of the reduction of the periods of detention, the frequency at which appeals can be made is doubled. I beg to move clause 74.

Sir Miles Walker: And I am pleased to second, sir.

Mr Karran: Vainstyr Loayreyder, I have a consequential amendment from the amendment to clause 27:

Page 69; line 32; after 'treatment' insert 'or is subject to guardianship'.

Mr Houghton: I beg to second.

The Speaker: Hon. members, the motion is that clause 74 stand part of the Bill. To that we have the amendment in the name of Mr Karran. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

The clause, then, hon. members, as amended. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clause 75, sir.

Mr Rodan: Thank you, Mr Speaker. Clause 75 gives the DHSS power to refer the case of any patient under detention or guardianship to the Mental Health Review Tribunal and gives a doctor authorised by the patient a new power to visit and examine him for the purpose of any such reference. I beg to move clause 75.

Mrs Crowe: I am pleased to second, Mr Speaker.

The Speaker: Hon. members, the motion is that clause 75 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clause 76, sir.

Mr Rodan: Mr Speaker, clause 76 imposes a new obligation on the hospital management to refer the case of a detained patient to the Mental Health Review Tribunal at certain intervals if no application or reference has already been made. I beg to move clause 76.

Mrs Crowe: I am pleased to second.

The Speaker: Hon. members, the motion is that clause 76 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clauses 77, 78 and 79, the hon. member for Garff.

Mr Rodan: Mr Speaker, clause 77 enables a patient subject to a hospital order, guardianship order or transfer direction or his nearest relative to apply to the tribunal. The frequency at which such applications may be made is doubled.

Clause 78 enables a restricted patient to apply to the Mental Health Review Tribunal in the second six months of detention and any subsequent period of 12 months. This, as I have indicated, is twice as frequently as at present.

Clause 79 provides for references of cases of restricted patients by the Department of Home Affairs to the Mental Health Review Tribunal. There is a new duty in the department to refer a case if no appeal or reference has been made for three years.

I beg to move that clauses 77, 78 and 79 stand part of the Bill.

Mrs Crowe: I wish to second, Mr Speaker.

The Speaker: Hon. members, the motion is that clauses 77, 78 and 79 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clause 80, sir.

Mr Rodan: Mr Speaker, clause 80 sets out the powers of the Mental Health Review Tribunal in the case of patients under detention, guardianship or supervision. New powers are given in the case of supervised patients and amendments are made following the changes in the categories of mental disorder and the criteria for detention. I beg to move clause 80.

Mrs Crowe: I wish to second, Mr Speaker.

Mr Karran: Vainstyr Loayreyder, in clause 80, subsection (7), it gives the Mental Health Review Tribunal the power in certain cases to amend the application order to direct authorising a patient to be detained by altering the category of his mental disorder to be specified in it. The Home Office have mentioned that they would like this equivalent piece of UK provision to be enacted in the Island. I beg to move:

Page 75, line 30; for 'by substituting for the form of mental disorder specified in it such other form of mental disorder' substitute 'in such a way'.

Mr Houghton: I beg to second, sir.

The Speaker: Hon. members, the motion is that clause 80 stand part of the Bill. To that I have the amendment in the name of Mr Karran. Will those in favour of the amendment please say aye; against, no. The ayes have it. The ayes have it.

The clause, then, hon. members, as amended. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Hon. member, clauses 81 to 87.

Mr Rodan: Thank you, Mr Speaker. Clause 81 gives the Mental Health Review Tribunal power to discharge a patient who is subject to a restriction order either absolutely or conditionally. This does not, however, apply to a restricted patient who is conditionally discharged.

Clause 82 gives the tribunal limited powers in relation to a prisoner transferred to hospital subject to a restriction direction made under clause 55. This does not apply to a restricted patient, again, who is conditionally discharged.

Clause 83 provides for the review by the tribunal of cases of restricted patients who are conditionally discharged and then recalled to hospital.

Clause 84 enables a doctor to examine a patient on behalf of an applicant to the Mental Health Review Tribunal.

Clause 85 makes general provisions as to applications to the tribunal. In particular, only one application may be made in a given period.

Clause 86 provides for the procedure of the Mental Health Review Tribunal for payment of expenses of applicants and witnesses and for appeals from the tribunal on a point of law.

Clause 87 defines the various terms that are used in this part.

I beg to move clauses 81 to 87.

Mrs Crowe: I wish to second, Mr Speaker.

The Speaker: Hon. members, the motion is that clauses 81 to 87 inclusive stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Perhaps we could take the whole of part 6, clauses 88 to 93, hon. member for Garff?

Mr Rodan: Mr Speaker, clause 88 enables a mental patient to be sent to a hospital or into guardianship in England and Wales. This power is used where the patient needs special treatment not available in the Isle of Man or to be kept in secure accommodation. The patients covered are those liable to be detained or under guardianship other than patients remanded to hospital or subject to an interim hospital order. The DHSS must be satisfied that a place is available for him in a hospital across or that he will be received into guardianship. One should note that the powers may be extended to allow for transfer to other parts of the UK or the Channel Islands.

Clause 89 makes provision for the reception in the Isle of Man of a patient transferred from a hospital or guardianship in England and Wales under the English equivalent of clause 88. Note that the powers may be extended to allow for transfer from other parts of the UK or, again, the Channel Islands.

Clauses 90 and 91 make provision for the transfer of responsibility for a conditionally discharged restricted patient from the Isle of Man to Britain or from Britain to the Isle of Man. They make reciprocal provision in Manx law corresponding to new provision made in English and Scottish law by the Crime Sentences Act of 1997.

Clause 90 provides for the transfer by the Department of Home Affairs to the Home Secretary or Scottish Secretary of responsibility for a conditionally discharged restricted patient - that is, an offender or prisoner who was detained as a mental patient subject to the special restrictions in clause 48 but has been discharged conditionally by the department under clause 49 or by the Mental Health Review Tribunal under clause 81. The patient's consent and the consent of the secretary of state are both required to such a transfer. Provision is made for the acceptance of the patient in Britain by UK legislation corresponding to clause 91. This clause provides, as I say, for the acceptance by the Department of Home Affairs of responsibility for conditionally discharged restricted patients transferred from Britain under the provision in the foregoing clause.

Clause 92 enables clauses 88 and 89 to be applied with modifications to Scotland, Northern Ireland, Jersey or Guernsey and clauses 90 and 91 to be applied with modifications to Northern Ireland, Jersey or Guernsey if corresponding provision for transfers to and from the Isle of Man is made by the law of the relevant country.

Clause 93 enables provision to be made for the acceptance into after-care under supervision of a patient who is subject to after-care under supervision in the United Kingdom or Channel Islands provided that the legislation in the relevant jurisdiction makes reciprocal provision for acceptance there. The relevant order to be made by the Council of Ministers will enable a supervision application to be made for such a patient and will modify the relevant provisions of the Bill where necessary to deal with him, and this will require Tynwald approval as under clause 136.

I beg to move that clauses 88 to 93 stand part of the Bill.

The Speaker: Hon. member, perhaps we could continue to 94, 95, 96 and 97 as well and complete part 6?

Mr Rodan: Certainly.

The Speaker: I think I led you astray earlier.

Mr Rodan: Thank you, Mr Speaker. Clause 94 enables foreign mental patients to be transferred to a country outside the United Kingdom, Isle of Man or Channel Islands - for example, to the Republic of Ireland. The current powers will be restricted to patients liable to be detained for treatment and will be subject to the approval of the Mental Health Review Tribunal.

Clause 95 enables regulations to be made for the purpose of part 6, which we are currently discussing.

Clause 96 deals with the cancellation or continued operation of certain orders when a patient is transferred out of the Island under this part.

Clause 97 provides the hospital, as they find in the Isle of Man, includes a mental nursing home which is allowed to take restricted patients.

I beg to move that part 6, clauses 88 to 97, stand part of the Bill.

Mr Houghton: I beg to second.

The Speaker: Hon. members, part 6 in totality is moved by the hon. member for Garff, from clause 88 to clause 97, and seconded by the hon. member for Douglas North, Mr Houghton on this occasion. No hon. member wishing to speak? I will put the whole of part 6, then - that is, clauses 88 to 97 inclusive - to the hon. House. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Hon. members, in fairness to the mover in charge of the Bill, who has had a rather heavy, I think, couple of hours, perhaps it is an opportune time to call a break for lunch. The House will stand adjourned until 2.30 p.m. this afternoon.

The House adjourned at 1 p.m.

MENTAL HEALTH BILL — CONSIDERATION OF CLAUSES CONCLUDED

The Speaker: Hon. members, we resume our consideration of the Mental Health Bill 1997 and we were on to part 7. Now, that includes the clauses 98 to 111 and can I suggest to the hon. member for Garff that that is the way we take it to start this afternoon. The hon. member for Garff.

Mr Rodan: Right, thank you, Mr Speaker - the final hurdle of the Bill, perhaps. Part 7 of this Bill deals with the powers of the High Court to supervise and control the management of a mental patient's property and affairs.

Clause 98 explains references to the judge and the terms of the High Court Act and sets out the circumstances in which the powers are exercisable.

Clause 99 specifies the powers which the judge can exercise, the purposes for which he can do so, and the considerations to which he has to have regard.

Clause 100 sets out specific powers which the judge can exercise for the purposes specified in clause 99. A new provision enables certain of the powers to be exercised by the Attorney-General.

Clause 101 provides for the effect of a will made on behalf of a mental patient under clause 100.

Clause 102 enables the judge to take action under clause 99 in an emergency without having made a final decision whether the person concerned is in fact mentally disordered.

Clause 103 enables the judge to appoint a receiver to act on behalf of the patient under the direction of the court. It sets out the receiver's duties and provides for his discharge.

Clause 104 enables stocks or shares registered in the Isle of Man to be vested by court order in a receiver or similar official appointed in another country to act for a mental patient.

Clause 105 provides that a transaction authorised by the court under this part is not in certain cases to affect the rights of others under the patient's will or intestacy or a settlement made by him.

Clause 106 gives the judge, when acting under this part, the ordinary powers of the High Court to summon witnesses and to commit for contempt of court.

Clause 107 provides for an appeal to lie to the Staff of Government Division from decisions of the judge under this part.

Clause 108 provides for the rules of court governing proceedings under this part.

Clause 109 provides for security to be given and accounts to be rendered by a receiver.

Clause 110 provides that orders of the judge are admissible in evidence without having to be formally approved.

Clause 111 defines the terms used in part 7 and saves any inherent powers of the high court with respect to mental patients.

Mr Speaker, I beg to move clauses 98 to 111 of the Bill.

Sir Miles Walker: Mr Speaker, I am pleased to second.

The Speaker: Hon. members, the motion is that the part 7 of the Bill, clauses 98 to 111 inclusive, stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Turning then to part 8 which will be clauses 112 to 121, the hon. member for Garff.

Mr Rodan: Thank you, Mr Speaker. Part 8 contains provisions as to the functions of the DHSS with respect to mental health.

Clause 112 imposes a specific requirement on the DHSS to appoint approved social workers. At present there is no obligation for the appointment.

Clause 113 gives an approved social worker a new power to enter any premises other than a hospital in which a mental patient is living if he thinks the patient is not being properly looked after.

Clause 114 requires the DHSS to arrange for certain mental patients to be visited and generally looked after.

Clause 115 makes a new provision requiring the Department of Health and Social Security to provide after-care for a mental patient who leaves hospital. Such after-care may be combined with supervision by virtue of a supervision application made under clause 28.

Clause 116 imposes a new duty on the DHSS to issue or approve a code of practice for doctors, social workers and others relating to the admission, treatment, et cetera, of mental patients.

Clause 117 gives certain persons the right to visit and interview any patient detained in a mental nursing home and to inspect any records relating to his treatment. If such a person is a doctor he may also examine the patient. The persons concerned are an independent doctor or other person nominated by the DHSS and, secondly, a person authorised by the Mental Health Commission in connection with the carrying out of a review of the care and treatment of mental patients.

Clause 118 gives the DHSS a new duty to keep the detention of patients under review and to make arrangements for detained patients to be visited and interviewed, and complaints to be investigated by independent persons.

Clause 119 sets up a new Mental Health Commission to exercise certain advisory and supervisory functions under the Bill.

Clause 120 provides for the department to appoint independent doctors and other experts to exercise certain functions under the Bill.

Clause 121 enables the department to pay pocket money to mental patients in hospital.

Mr Speaker, I beg to move that clauses 112 to 121 stand part of the Bill.

Sir Miles Walker: I beg to second, sir.

The Speaker: Hon. members, dealing with part 8, clauses 112 to 121, the motion is that they stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Part 9 of the Bill, sir, clauses 122 to 126.

Mr Rodan: Mr Speaker, part 9 provides for offences involving falsification of documents, ill-treatment of patients, assisting patients to abscond, and obstructing authorised persons.

Clause 122 makes falsification of documents under this Bill a criminal offence.

Clause 123 makes it an offence for any person to ill-treat a mental patient under his care or for whom he is responsible.

Clause 124 makes it an offence to help a mental patient who is liable to be detained or under guardianship or otherwise in legal custody to abscond.

Clause 125 makes it an offence to obstruct a person carrying out any duties under this Bill.

Clause 126 enables the DHSS to bring prosecutions for offences under clauses 122 to 125 but subject to clause 123, sub-clause (5), which is the Attorney-General's consent to prosecution for offences under clause 123.

Mr Speaker, I beg to move clauses 122 to 126.

Sir Miles Walker: I am pleased to second, sir.

The Speaker: Hon. members, the motion is that part 9 and clauses 122 to 126 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Part 10 - will you take clauses 127 to 136, please, hon. member for Garff?

Mr Rodan: Thank you, Mr Speaker. Part 10 contains miscellaneous and supplementary provisions.

Clause 127 provides that patients can still be admitted and treated as voluntary in-patients and makes special provision for under-18s.

Clause 128 imposes a new requirement on hospital managements to inform detained patients and their nearest relatives of their legal status and rights.

Clause 129 requires the nearest relative to be informed when a patient is to be discharged.

Clause 130 enables the management of a hospital to censor a detained patient's correspondence. The powers under this clause are more limited than those under the current law; for example, they only apply to detained patients.

Clause 131 enables a warrant to be issued to search for and detain a mentally disordered person in certain circumstances.

Clause 132 enables the police to take in a mentally disordered person who is in a public place and seems to be in need of care or control.

Clause 133 gives anyone taking a mental patient from place to place or keeping him in a place of safety, under any provision of the Bill, all necessary powers to restrain him.

Clause 134 gives limited powers to recapture a patient who escapes while in legal custody under clause 133.

Clause 135 protects persons acting in reliance on powers conferred by the Bill provided they act in good faith.

Clause 136 enables any pay or pension, payable out of public funds, to be paid to an institution or to other persons for the benefit of the patient.

Mr Speaker, I beg to move that clauses 127 to 136 stand part of the Bill.

Sir Miles Walker: I beg to second, sir.

Mr Downie: Mr Speaker, I would just like to ask the mover, under clause 132, 'Mentally disordered persons found in public places', when this Bill becomes law will we be able to deal with the problem that exists in Douglas where people have sadly fallen out of society? They are concerned very much with drink and they are sleeping about the streets. I do not want to

go into the issue in too much detail, but members will be aware that people have from time to time slept under the Villa Marina Arcade. As far as I am concerned these people are in need of care and some sort of understanding, and in the past there has been a problem because the police have felt they have not got the necessary powers to deal with this issue. I would just to ask the mover if this clause will perhaps address this issue and these people will be able to be placed under some sort of care when, in my opinion, they are not in a fit and proper condition to look after themselves. They are so concerned with drink that most of the time they do not know what they are doing and I would be interested to see what his response is. Thank you.

The Speaker: Does any other hon. member wish to speak? In that case I call upon the hon. member for Garff to reply.

Mr Rodan: Thank you, Mr Speaker. In response to the hon. member for Douglas West, Mr Downie, he will appreciate, of course, that this Bill is mental health legislation and not public order legislation but, having said that, sub-clause (1) of the clause he refers to, 132, does enable the police to take to a place of safety, for his own or other people's protection, a person who is in a public place and seems to be mentally disordered and in need of care or control. But of course, once having done so, sub-clause (2) then comes into play and enables a person detained in this way to be kept for up to 72 hours in order to have him examined by a doctor and interviewed by an approved social worker for suitable arrangements to be made for him. So I would say to the hon. member that the police would need to have good reason to believe that there was a case of mental disorder and, as such, would need to make provision for the examination of the person, and I would suggest that detention under those circumstances would not be undertaken lightly unless they had good reason to believe that mental disorder, as opposed to public disorder, was the problem of this case.

The Speaker: Hon. members, the motion is that clauses 127 to 136 inclusive stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Now then, hon. member for Garff, perhaps we could have 137 and 138, sir.

Mr Rodan: Mr Speaker, clause 137 requires subordinate legislation to be approved by Tynwald and enables it to apply any corresponding English legislation where appropriate.

Clause 138 defines various terms used in the Bill, and I would move clauses 137 and 138, sir.

Sir Miles Walker: I beg to second, sir.

The Speaker: Hon. members, the motion is that clauses 137 and 138 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clause 139, hon. member for Garff, and the schedules 4, 5, and 6.

Mr Rodan: Thank you, Mr Speaker. Clause 139 introduces schedules 4, 5, and 6. Schedule 4 makes transitional provisions. Actions taken before commencement are treated as taken under this Bill with any necessary changes, schedule 5 makes consequential amendments and schedule 6 repeals the Mental Health Act 1974 and other provisions which are superseded by this Bill.

I beg to move clause 139 and schedules 4, 5, and 6, sir.

Sir Miles Walker: I beg to second, sir.

Mr Karran: Vainstyr Loayreyder, this amendment to clause 139, schedule 5, follows the section 47 of the UK Criminal Sentences Act 1997 which enables a crown court, when making a hospital order with a restriction order, to specify a particular unit in a hospital for the detention of an offender. This amendment gives a similar power to a Court of General Gaol Delivery. It also ties up the definitions in the amendment to section 54 of the Criminal Jurisdiction Act 1993. I beg to move:

27.(1) An order for the discharge of a patient who is liable to be detained in a hospital shall not be made by his nearest relative except after giving not less than 72 hours' notice in writing to the managers of the hospital.

(2) An order for the discharge of a patient who is subject to guardianship shall not be made by his nearest relative except after giving not less than 72 hours' notice in writing to the Department.

(3) If, within 72 hours after notice under subsection (1) or (2) has been given, the responsible medical officer furnishes to the managers of the hospital or to the Department, as the case may be, a report certifying that in the opinion of that officer the patient, if discharged, would be likely to act in a manner dangerous to other persons or to himself, -

(a) any order for the discharge of the patient made by that relative in pursuance of the notice is of no effect; and

(b) no further order for the discharge of the patient shall be made by that relative during the period of 6 months beginning with the date of the report.

(4) In any case where a report under subsection (3) 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.

Mr Houghton: I beg to second, sir.

The Speaker: Hon. members, the motion is that clause 139 and schedules 4, 5, and 6 stand part of the Bill. To that we have the amendment as has been circulated to you on your white paper in the name of Mr Karran. Those in favour of the amendment please say aye; against, no. The ayes have it. The ayes have it.

The clause and schedule as amended, hon. members - those in favour please say aye; against, no. The ayes have it. The ayes have it.

Hon. member for Garff, that takes me to the short title and commencement clause 140, sir.

Mr Rodan: Mr Speaker, this final clause, 140, provides for the short title and commencement of the Bill and I have pleasure in moving it stand part of the Bill.

Sir Miles Walker: I am pleased to second, sir.

The Speaker: Hon. members, the motion is that clause 140 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Thank you, hon. members.

BANKING BILL — SECOND READING APPROVED

The Speaker: Can we then go on to agenda paper item 14, and I call upon the hon. member for Glenfaba, Mr Gilbey, to move the second reading of the Banking Bill.

Mr Gilbey: Mr Speaker, I apologise that quite a lot of what I will say will obviously be repeating what was said in the quite excellent presentation by officers of the Financial Supervision Commission, to which I thank a number of hon. members for coming.

Mr Speaker, a sound banking industry is absolutely crucial for the future of the Isle of Man if the Island is to remain successful as an international finance centre. The Island's regulatory and business standards have so far stood the test of time and are well regarded by the international community. However, in order to ensure that our standards remain effective and meaningful we must take heed of international developments and, where appropriate, change our system to meet the changing environment. It is with this in mind that the Financial Supervision Commission, the FSC, first introduced the possibility of a new Banking Bill some two years ago. It is important to note, however, that this Bill is not radical in its approach, and indeed the majority of the provisions within the Bill simply repeat existing provisions. We are, however, doing what is necessary to bring our powers into line with international standards and the environment we foresee in the future.

It is not solely about preventing and avoiding bank failure but ensuring that we can participate fully in cross-border supervision as promulgated by the Basle Committee of International Banking Supervisors. Failure to adhere to these standards and to cooperate with other regulators in major countries could, or indeed will, jeopardise our ability to do business with those countries and in their markets.

By the time this Bill becomes law two years will have passed since the minimum standards for supervision of international banks were formally adopted at the international conference of banking supervisors in 1996. This Bill is needed to enable the Island to fulfil its commitments and maintain its reputation as a well-regulated jurisdiction.

The FSC commenced its consultative process on the new Banking Bill in September 1995, when its first consultative document was issued on the principles to be addressed by the Bill. This received the broad support of the industry and, as a result, a second consultative document was issued in April 1997, which included a draft of the Bill itself. Some 22 submissions were received which, whilst broadly supportive, also raised a small number of more minor issues, many of which have been taken on board in the final Bill before hon. members. In short, we believe that the Bill carries the general support of the financial services industry in the Isle of Man.

This Banking Bill has been designed to serve three purposes. Firstly, it introduces new provisions in order to take on board the global lessons learned as a result of recent international banking problems, such as those with BCCI and Barings. The Bar Committee on Banking Supervision, which is the leading body for international banking regulation, comprising members from all G10 countries and to which the Isle of Man is affiliated, has made a number of recommendations designed to strengthen regulatory systems, thus making international banking groups safer for deposits. The Isle of Man wishes to play its part in this world initiative so that the Island's community can safely flourish in a sound and up-to-date regulatory environment.

Second, this Bill updates provisions which currently exist in the Banking Act 1975, which is being repealed by this Bill, which have over the course of time become either outdated or have proved less effective than was originally envisaged.

Thirdly, the Bill consolidates provisions which are currently contained in several pieces of legislation with the aim of making the legislation more user-friendly for practitioners in the market.

Mr Speaker, as I have said, the Bill repeals and replaces the Banking Act 1975. The Bill requires those who carry on or hold themselves out as carrying on banking business in or from the Isle of Man to hold a licence. The definition of what is 'banking business' is contained in the Bill, with powers being given to the FSC to declare in writing that something is or is not banking business. The criterion to be applied by the FSC when considering licence applications is laid down in the Bill. This is one of the key parts that has been enhanced following the failure of BCCI, particularly in relation to applications from international groups.

The Bill introduces for the first time the ability for the FSC to make regulatory codes which apply to banking businesses, a breach of which could result in a diverse range of regulatory action. The supervisory powers which already exist in the Banking Act 1975 are also carried over to the new Bill with slightly enhanced powers of investigation. The investigation powers have also been amended in order to accommodate the recent judgment in relation to Mr Ernest Saunders, following his case before the European Court of Human Rights regarding the right to use evidence obtained under compulsion against a defendant who gave that evidence.

We then come to the position of auditors and reporting accountants. Previously an auditor had a right but not an obligation to report. The Bill introduces an obligation upon the auditor of a banking institution to report certain facts to the FSC - for instance, if he becomes aware of facts which lead him to believe that the customers of the institution may be imperilled. This provision is a direct result of the BCCI crash. The Bill also introduces the concept of the reporting accountant, a concept which has been in operation in the adjacent isle for some time. This is where the commission may require a banking institution to provide a report in specified form by an approved professional on any aspect of the affairs of that banking institution. Indemnities are contained in the Bill in relation to those auditors and professionals who report information to the FSC.

The enabling power for the creation of a depositors' protection scheme, which is currently contained in the Financial Supervision Act 1988, is being moved into the new Banking Bill for ease of reference by market practitioners. Certain decisions of the FSC are open to a right of review by a committee appointed by the Treasury. The review committee consists of three members, at least two of whom must be independent persons of appropriate experience. This, I would stress, is a provision which already exists within the Banking Act 1975, so there is absolutely nothing new about it.

A number of offences are created within the Bill, the majority of which are already contained in the current Banking Act 1975. However, a new offence is being created, which is that of fraudulent inducement to make a deposit, either by way of misleading, false or deceptive statements or concealment of material facts. This provision exists in the United Kingdom and is being introduced into the new Bill because of specific cases handled by the

enforcement division of the FSC which have indicated that such an offence is needed in the Isle of Man if fraudsters are to be brought properly to account for their actions. Similarly, an offence is being created where any person knowingly or recklessly provides materially false information to the FSC. Again, this is considered necessary following practical difficulties experienced by the FSC in the past under the current legislation.

A number of amendments are being made to other statutes, the majority of which are purely consequential as a result of the new Bill. However, a small number of amendments are substantive in nature. These are to the Bills of Exchange Act 1883, a very old Act; an amendment is being made to this Act which is designed to enable cheques to be cleared electronically, thus keeping the Island's legislation in line with international developments and enabling banking institutions to take advantage of new technology. Then there are amendments to the Financial Supervision Act 1988; these are being made to enable the FSC to issue statements for the protection of persons as opposed to investors so that, for instance, the FSC could issue a public statement about pyramid schemes, as people putting money into such schemes may not technically be classed as investors.

Minor amendments are also being made to the gateways for the disclosure of information to assist the Island in fighting fraud and crime. Gateways, as those who kindly attended the seminar will know, are the legal means by which such information can be disseminated to other regulatory bodies. There are various modifications to the Investment Business Act 1991 and they are covering the following areas: investigation powers - these are being extended to enable investigation of persons who have ceased to be permitted persons. A 'permitted person' includes not just licence-holders but also those who are exempted from licensing on the basis that they are regulated by another competent authority with which the commission has entered into a mutual assistance agreement. Then the direction-making powers, again extending them to enable directions to be issued to those who have ceased to be permitted persons, have been brought in. It is no good if you cannot do anything about people who cease to be permitted persons but those people are doing things wrong. Then we come to the disqualification of directors, controllers and managers and the stopping of someone who has been declared an unfit and improper person from continuing to be a director et cetera. Then there is an enablement for the FSC to issue a public statement if it is desirable in the interests of persons as opposed to investors, and this is covering investment in the same way as similar statements which I referred to previously covered banking. Then there is indemnity for designated bodies so that the FSC are covered when exercising existing functions under the Companies Acts and in relation to credit unions.

There are new offences in respect of people who put out misleading statements to dishonestly and recklessly mislead investors. And finally, in respect of gaming contracts, there is a clarification of the impact of provisions relating to gaming contracts on the enforceability of futures and option contracts.

In respect of the Companies Acts certain provisions which refer to banking institutions are being removed from the Companies Acts and incorporated in this Bill. In addition, the Companies Acts are being modified to exempt regulated collective investment schemes from the requirement to file returns of allotment and redemption of shares. Also, in the light of experience a new provision is being brought into the Companies Acts to enable the FSC to obtain information and explanations from authorised auditors and also to enable the FSC to

make such authorisations subject to conditions. 'Authorised auditors' are persons who do not hold a recognised professional accountancy qualification but who are nevertheless specifically approved to conduct certain audits. This is a historical provision, but a small handful of authorised auditors remain registered with the FSC.

Mr Speaker, I hope that this Bill will be supported by this hon. House as the FSC believes most strongly, as does the Treasury, that it is important to keep the financial sector abreast of worldwide developments and to ensure that we have one of the best controlled financial markets in the world. I beg to move.

Sir Miles Walker: I beg to second, Mr Speaker, and reserve my remarks.

Mr Crowe: Mr Speaker, in supporting this Bill I want to see the Island introducing the most progressive legislation that meets the needs of a changing world and changing technology. As has been often said in the past, and it is worth repeating, we want to attract first-class business and prevent the fringe operators who can only do harm to the Island.

I would thank Mr Gilbey and the staff of the Financial Supervision Commission for the helpful briefing of members at lunchtime. Banking today is a hi-tech industry and global banking necessitates the huge movements of money for commercial settlement and for investment purposes every day. We must ensure that regulations in the Isle of Man and legislation can cope with the changing technology and meet the very high standards that are an essential feature of a well-regulated financial service industry. Thank you.

Mr Karran: Vainstyr Loayreyder, I think we all support the principle of the Bill; what concerns me about the Bill is a couple of points. We have seen yet again the same sort of stuff that has come out from the adjacent isle attacking the financial integrity of our finance sector, and I believe that what upsets me is, do we defend our good name enough when we know that more likely what dirty money comes through the Isle of Man in a year goes through the City of London in half a day if the truth is known, and I just wish that people who are in the industry over here would make this point quite clear, because I am tired of hearing about the way that once again we are being attacked by these people. But I do not think this Bill helps ourselves in some ways, as we say in clause 25, when we talk about fraudulent inducement to make a deposit, and that we get seven years' imprisonment because that is what they do in other jurisdictions. Now, we were talking about some other crime which has the equal amount of effect to destroy people's lives as we have seen in the past in our Island, where people's savings have been lost and their whole lives have been put into shreds; why is the Treasury not saying, 'Well, if it is seven years in most other jurisdictions it should be nine years or ten years in this Island?' because we have a commitment on this Island: we want quality, not quantity, and I believe that we should be putting that sort of provision within this piece of legislation, not to follow blindly what is done in the UK and their standards. We know how important the finance industry is to the economy of this Island, and I believe that we should be saying that the sentences should be larger in the Isle of Man, because it would have such a terrible effect on the finance industry of this Island.

So I just wonder whether the hon. mover will be telling us whether there will be any moves by his department to actually increase these sentences, because I am sure the hon. member would be telling me, if I was bringing a criminal code Bill for somebody hitting somebody over the head or somebody robbing or breaking into a house, how we would have

the usual carry-on about upping the sentences. These people are more dangerous to our society because they can destroy the whole economic basis of the economy of this Island, rightly or wrongly whether we should be so dependent on it.

The other issue I would like to ask the hon. member is that it says that it is a criminal offence to advertise that you are a bank when you are a bank in the Isle of Man, but what happens if an institution does not advertise in the Isle of Man that it is a bank in foreign journals, but it is in the Isle of Man? Is there an offence there? Can somebody advertise to be a bank outside the jurisdiction of the Isle of Man and yet, because he is advertising outside the jurisdiction of the Isle of Man, is he covered? That is something I would like the hon. member to reassure this House on.

We heard in the presentation, which was very useful, about being user-friendly. Well, I am not so sure that we want to be user-friendly; we want to make sure that we have the boys that are in this industry well and truly tied down, and my concern is that I get complaints, even if it is 'the Labour member for Onchan', as I keep on being portrayed as - as I say, 'the mad socialist', - but I get friends in the finance industry who complain to me bitterly that we have certain people within the industry that somebody needs to put some rick on. Now I do hope that this Bill will help to ease those very few people that we have out there and that we feel need to be controlled further, and I do hope that when the hon. mover is replying he will give us some detail of how it will help to cut down any of this, because we want to be 110 per cent legit.

The next issue I would like to ask, as coming from the user-friendly point that was raised in the presentation is the fact that we have these banks that are on the Island; will we see in this Banking Bill any moves as far as these banks on the Island having to have their assets on the Island or a large amount of their assets on the Island? I hope the hon. mover will explain where it is in the Bill in his response, because I feel that we have had a situation where we have had solvent banks or subsidiary banks or banks of other jurisdictions where we have suffered simply because we did not have the foresight or the registratory power to make sure that the bank was incorporated in the Isle of Man, and I think that is important.

The last point I would like to ask the hon. member is, does this Bill have any effect on the right for an Island resident to write cheques in Manx, and will he consider whether as part of the registration of any bank on the Isle of Man cheques that are issued in Manx will be honoured by the banks as part of the bank registration as far as the legislation is concerned, because if it is not I shall move amendments at a later stage to do so?

The Speaker: Does any other hon. member wish to speak? In which case I call upon the hon. member for Glenfaba to reply.

Mr Gilbey: Mr Speaker, thank you very much. I would like to thank the hon. member for Rushen, Sir Miles Walker, for kindly seconding.

I would also like to thank the hon. member for North Douglas, Mr Crowe, for his remarks. We all agree that we want the most progressive banking and financial legislation; by that the FSC means legislation which will stop wrongdoing but which, at the same time, will not so shackle the whole industry with bureaucracy that people cannot run successful businesses. I am very glad that he found the presentation by the executives of the FSC useful and, like

him, I would like to add my thanks to them for the excellent way they set out the proposals in the Bill.

Mr Karran, the hon. member for Onchan, as usual raised some very interesting points. He said he had seen attacks on the good name of the financial sector, and indeed I believe there was one in some leading newspaper quite recently.

Mrs Hannan: The leading newspaper.

Mr Gilbey: Well, I do not know about 'the' I am sure each of the newspapers across the water think they are the leading one, so I will not enter into an argument, but it was a leading one of the leading ones, but whenever we do see these the Treasury and the FSC consider whether it is best to reply or to remain silent. Sometimes silence is better than reply; at other times replies are better, and then you have to consider, if you are going to reply, how you should do it.

The hon. member for Onchan says then that he thinks seven years' imprisonment as a penalty for clause 25 is too little, and just because other jurisdictions have that level why should we have it? Well, the reason we do not have less is because we do not want people to think that we are a softer touch than anywhere else in the world. Of course, it is true one could have harsher sentences, but this is all a question of balancing not only the penalties in this Bill, but the penalties in this Bill against other penalties such as violent attacks on people's persons rather than on their moneys. I mean, basically, as I think the hon. member will know, I am in principle in favour of penalties that are a real deterrent. (*Interjections*) Of course there are other penalties that apply in this Bill which actually do not just mean being fined or imprisoned. For instance, a whole business can have its licence removed and therefore be put out of business. Furthermore, a person can be declared an unfit or improper person and will never be able to carry on business again in the financial sector. So as well as the fines and imprisonment I think the hon. member should bear in mind the other penalties, which in some cases can be just as great or greater.

He then asked about whether it was a criminal offence to advertise as a bank outside the Isle of Man. I did not quite understand what he meant, but I think he meant that if it was a body in the Isle of Man that was operating as a bank and licensed it would be illegal for them to advertise in the Isle of Man and it would be equally illegal for them to advertise outside the Isle of Man. If they had a base here, if the FSC found that they were using an address in the Isle of Man and using that in an advertisement outside the Island and they were not licensed, our officers would be after them like bloodhounds, I can assure him.

Then he raised a very good point, that some people in the industry do not behave as well as they should. This is a very sad thing. I would like to emphasise that such people are a tiny minority of those in the financial sector, just as criminals are a tiny minority in any sector of our population or in our population as a whole, but this minority does immense harm to the whole sector and to the economy of the Island, and certainly this Bill will tighten up on them and help to prevent them insofar as their actions are relating to banking or investment, but I think that the problems that have been referred to the hon. member are those resulting from or connected with the formation and management of companies, usually non-resident companies, which companies then do things that are either illegal or at least detrimental to the good name of this Island. Separate legislation is being actively considered by the Treasury

regarding this and a new consultative document is in the course of being issued to try and prevent these abuses.

He then referred to banks having assets in the Isle of Man. Well, a bank that has a branch here or is a company here has to have a proper balance sheet in the Isle of Man and it has to have assets equalling its liabilities or indeed exceeding them, but those assets do not always have to be in the Isle of Man, because banking is more and more international, and the bank will have deposits from people all round the world, it will be making loans to people round the world, it will be placing deposits with institutions all round the world, and indeed that is the reason why we agree so willingly to co-operation between our FSC and regulators in other countries, because banking now is a worldwide industry and all the regulators have to work together to stop crime and the defrauding of innocent people.

The hon. member for Onchan finally, Mr Speaker, asked about cheques in the Manx language. Now, I had been tipped off about this in advance - my spies are quite good (*Laughter*) - and the officers did try to get an answer to this, but I am afraid they have not yet been able to do so, more particularly because the provisions relating to the presentation and clearance of cheques are contained in other statutes, to wit the Bills of Exchange Acts et cetera and not the Banking Acts, and therefore the legislative draftsman is being asked to research this matter and I hope to be able to report on it next week when we come to the clauses stages. I would say personally, however, that I think one has to consider that this probably is not being very helpful to bank staff, because, as I understand it, if I can remember back to the time I was in a bank many years ago, the duty of the staff is to check every cheque and to check that the words are the same as the writing, and of course unfortunately most of our banking staff would not know what the Manx words meant and would have to get dictionaries et cetera, which would rather delay things. So although it may be nice to do for some special cheques I think, if one is realistic, it is not a thing that should be encouraged, but I will try and tell the hon. member more -

Mrs Hannan: You had better!

Mr Gilbey: The hon. member said I had better, but we have got to be practical about this. If we are to be a leading financial centre we do not want to do things that slow up the clearance of cheques et cetera unnecessarily.

Mr Speaker, I beg to move that the Banking Bill 1997 has a second reading.

The Speaker: Hon. members, the motion is that item 14 on your order paper, the Banking Bill, be now read for a second time. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Hon. members, I thank you for your co-operation during the day. That now draws our agenda paper to a conclusion for today. The House will now stand adjourned until 10 a.m. on Tuesday next, 11th November, back in this chamber.

The House adjourned at 3.27 p.m.