

**REPORT OF PROCEEDINGS OF  
LEGISLATIVE COUNCIL**

**Douglas, Tuesday, 6th March 2001  
at 10.00 a.m.**

Present:

The President (Hon N Q Cringle), The Lord Bishop (the Rt Rev Noël Debroy Jones), the Attorney-General (Mr W J H Corlett QC), Hon Mrs C M Christian, Messrs E A Crowe, J R Kniveton, E G Lowey, Dr E J Mann, Messrs J N Radcliffe and G H Waft, with Mrs M Cullen, Clerk of the Council.

*The Lord Bishop took the prayers.*

**Apologies for Absence**

**The President:** Hon. members, we have apologies this morning from Mr Delaney who is off the Island on departmental business.

**Swearing-In of New Clerk**

**The President:** Now, hon. members, I have this morning the pleasure of welcoming the First Deemster, His Honour William Cain, to our chamber and inviting him at this stage to administer the oaths of office to the Clerk of our Legislative Council, Mrs Cullen.

**The First Deemster:** Mrs Cullen, would you step forward and take the oath of allegiance.

**Mrs Cullen:** I Marilyn Cullen do swear by Almighty God that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth The Second. So help me God.

**The First Deemster:** Would you now, Mrs Cullen, take the oath of the Clerk of the Legislative Council.

**Mrs Cullen:** I Marilyn Cullen do swear that I will duly and truly execute the Office of Clerk of the Legislative Council of this Isle according to the Trust reposed in me and that I will not reveal or disclose any secret which may come to my knowledge in the execution of the said Office unless by permission of the President of the Legislative Council for the time being. So help me God.

**The First Deemster:** Thank you. Would you now sign the certificate.

*Mrs Cullen signed the certificate.*

**The First Deemster:** Mr President, the swearing in of the Clerk has now been completed.

**The President:** Thank you, Your Honour. Your Honour, on behalf of the members of the Council I sincerely thank you for joining us this morning and administering the oaths of office to our new Clerk. The presence of the First Deemster in this Council chamber is of course not something which is new in that many of your predecessors were not only administering law but had a hand in making new law. Today there is a clear distinction in those duties and we acknowledge the heavy responsibility that falls on your shoulders. We are grateful, therefore, for the time you have been prepared to give to us this morning in administering the oaths to our Clerk.

We also welcome Mrs Cullen as now officially Clerk to the Council and we wish her well in her duties. No stranger in our midst, we are confident that her previous experience will be of immense value both to her and to the Council.

Hon. members, I think it is fitting this morning that we should record the occasion with a photograph and I invite the Chief Registrar and Mrs Cullen the Clerk to stand each side of my chair whilst we take a photo. If you would, hon. members.

*A photograph was taken.*

**The President:** That completes the business this morning. I would again just say thank you to the First Deemster for coming along and administering the oaths this morning and I will now ask our Clerk to take the First Deemster from our chamber. Thank you, hon. members.

**The First Deemster:** Thank you, Mr President.

### **Procedural**

**The President:** Now, hon. members, I appreciate that I reorganised the furniture for this morning. If you wish to move back to your own chairs I would be quite happy for you so to do.

### **Disability Discrimination Bill — Question by Mr Waft**

**The President:** Okay, hon. members, we therefore turn back to our order paper. We have the question printed at item number 2 on the agenda paper for oral answer and I call on the hon. member Mr Waft.

**Mr Waft:** Thank you, Mr President, I beg to ask the Minister for Health and Social Security:

*What investigations and consultations is your department undertaking in its furtherance of the Disability Discrimination Bill?*

**The President:** I call on Mrs Christian, Minister for Health and Social Security, to respond.

**Mrs Christian:** Thank you, Mr President. The Council of Ministers have asked the department to prepare a Disability Discrimination Bill. This is planned to be placed before the Council of Ministers in 2002 for approval and introduction into the branches soon afterwards.

The department is using the English Disability Discrimination Act 1995 as a basis for the Manx Bill and as such has commenced upon a process of consultation with voluntary organisations, people with disabilities, providers, business in the Island, including the chambers of commerce and other departments. The purpose of the consultation is to identify any difficulties organisations or individuals may have concerning discrimination and identify whether the English Act will deal with the problem which may develop. If it does not, then I would expect that recommendations would be made to the department on how to alleviate these problems.

The process will be aided by the results of research into discrimination against people with disabilities which we have, as the hon. member will be aware, carried out in the past.

The consultation process has already begun and this week meetings are taking place with voluntary organisations.

**The President:** Hon. member.

**Mr Waft:** Mr President, would the minister like to make any comment on the report on disability discrimination on the Island which was promised some years ago? Is that not now to take place?

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, there were two reports which were carried out. The difficulty the department had was in finding officer time to amalgamate those reports and come forward with a final document. However, those two documents are being considered by the person who is leading the consultation process, Mr Jim Hoskinson, who is employed part-time by the Manx Foundation as access officer jointly with DHSS and DoLGE. That gentleman is chairperson of the UK voluntary organisation, SCOPE, which is one of the largest voluntary organisations in the United Kingdom and he is very familiar and has been involved with the operation of the English Act and so he can bring considerable experience to this consultation process. He has those documents to consider and will bear them in mind in coming forward with his recommendations after the work he is undertaking is completed.

**Mr Waft:** Thank you, Mr President. I wonder if the minister might like to make comment on the workload of this officer, seeing that he is also the access officer and he has other jobs to do besides. Is he to be taken off the other workload or is he to be given any additional help with regard to the disability Discrimination Bill?

**The President:** I do not wish to widen the question too far, but Mrs Christian.

**Mrs Christian:** So far as the department is concerned he has accepted the appointment on a part-time basis. His other work is half-time and therefore he has that time available to undertake this work. As far as I am aware he is content that he has sufficient time to process the consultation procedures within the timescale which I have set out in the answer.

**Mr Waft:** Thank you, Mr President.

### **Children and Young Persons Bill — First Reading Approved**

**The President:** Hon. members, we turn then to item 3 on the order paper, which is the Children and Young Persons Bill, and I call on the hon. member Mrs Christian.

**Mrs Christian:** Thank you, Mr President. It may be helpful to say something about the background to this Bill. There have been two major child care inquiries in the Island, as members are aware, and the McManus inquiry reporting in 1991-92 recommended that the Island should introduce the English Children Act in its entirety. The Leslie inquiry reporting in 1997 said that there is a need to bring public and private law together. So the Children and Young Persons Bill is based largely upon the English Children Act which itself was developed from years of research into the background of child care inquiries which highlighted at times too much state intervention in family life and other times when there was not enough assistance given to protect children. This Bill attempts to address this requirement for balance.

The main aims of the Bill are to introduce reforms of law relating to the care and welfare of children and young people under the age of 18; to bring the Isle of Man law relating to child care up to date, chiefly in line with the UK Children Act of 1989 which is the legislation on which professional training of all those concerned with child care in the Island is now based; thirdly, to bring together all aspects of public law, that is, the aspects of the welfare function of

social services and other state agencies with respect to children and private law which is the care, custody and maintenance of children within the family under one set of principles, values and regulations; and finally, to cover the issues of human fertilisation and surrogacy. To that end the Bill contains the corresponding provisions to the UK Human Fertilisation and Embryology Act 1990 and the Surrogacy Arrangements Act 1985 in order to prevent the Isle of Man being used as a back door for avoiding UK controls around such activities. It also makes provision for the legal status and family relationships of children born as a result of these activities.

The Bill effectively replaces the Children and Young Persons Acts 1966 to 1990 and re-enacts without substantial amendment the Family Law Act of 1991.

There are some major themes and principles contained within it. Firstly and most importantly the welfare of children is the paramount consideration and wherever possible children should be brought up and cared for within their own families. The key issue within the Bill is that it draws a balance between the position of parents and the role of the state in family life. It draws a balance between one parent and another and it outlines the obligation of the department to children.

The second major theme of the Bill is that parents with children in need, including children who are disabled, should be helped to bring up their children themselves. This help should be offered as a service to the child and family and should be provided in partnership with the parents. It should be appropriate in terms of the child's age and background. It should be open to effective independent representation and complaints procedures and should draw upon effective collaboration between different agencies, including those in the voluntary sector. In other words we should all be working together in the interests of children.

The third major message or theme contained within the Bill is that children should be safe and protected by intervention if they are in danger or at risk. This is balanced by the fact that any intervention by the state must be open to scrutiny.

There is an introduction of the concept of significant harm, actual or likely, in the Bill. Under the current system a child has to be harmed and evidence of that harm provided before a care order can be made. Under this Bill the criteria for care can be met on the basis of a professional assessment and judgement that harm may occur.

The fourth message contained within the Bill is that when a child has no parents or where the parents cannot offer their children adequate standards of care, then high-quality substitute parenting must be provided.

The Bill makes the point that as far as possible children and young people should be consulted and kept informed about what happens to them and participate in decisions made about them. The Bill advises the court that decisions about the upbringing of children must be responsive to the needs of children and designed to foster their welfare. To further this aim the court system should be flexible and the courts well informed. Delay in making decisions must be avoided and the court should not make an order unless it is better for the child for the court so to do.

The Bill deals with the protection of children and young people in court proceedings and in the hands of the police and finally the Bill deals with fertilisation and surrogacy issues. It

covers the regulation and licensing of these activities and also the legal status of any children born as a result of those activities.

I believe that the Bill offers a structure through which its aims may be achieved, that is to say, it offers protection to children who need it. It holds the importance of family and it draws a balance between parental care and appropriate state intervention.

Any additional financial or manpower implications have been planned for.

Consultation has taken place throughout the Island with child care agencies and considerable research has been undertaken concerning the content of the Bill and in particular attempts have been made to accommodate the lessons learned from other jurisdictions.

Mr President, I beg to move the first reading of the Children and Young Persons Bill 2001.

**The President:** Mr Kniveton.

**Mr Kniveton:** Yes, sir, I am happy to second the first reading of this Bill. I am not going to go into all the details of the Bill as set out by the hon. mover; they are quite enormous. As far as I can see it, that is the situation, including not only the welfare of certain children but also including controls, as has been mentioned, of fertilisation, embryology and surrogacy.

I believe, sir, that this is a very, very important piece of legislation, in all, 106 clauses.

I also believe I can unequivocally support the vast majority of this Bill. Other areas, I am sure, will be fully explained with further clarification by the hon. minister/mover I hope in due course.

I am sure that the department has been very much in need of this type of legislation for a very long time and it will, if approved, help the officers to get on and do their job.

One thing concerns me greatly, and I seek confirmation from the hon. minister, is that her department has the resources necessary to truly cope with the demands made in the Bill, otherwise it is hopeless having this type of legislation, and if I may, sir, I would just like to read clause 13 of the explanatory memorandum. 'It is expected that secure accommodation to be provided under clause 27 will involve capital expenditure of over £2 million and additional revenue expenditure of well over £<sup>1</sup>/<sub>2</sub> million per annum. Other provisions of the Bill will involve further capital expenditure of £200,000 and additional revenue expenditure of again nearly £<sup>1</sup>/<sub>2</sub> million per annum. It is not expected that the Bill will have any other effects on public revenue, expenditure or personnel.'

Now, this Bill as far as I can see it, as mentioned by the hon. mover, involves many of these 106 clauses going back many years covering those two very expansive and long-drawn-out reports, the McManus report and the Leslie inquiry. I think the most important statement within this Bill is that the welfare of the child shall be the paramount consideration during any court proceedings. I believe that is the situation at all times, whether court or not. The title of this Bill describes exactly what it is: the care of children and young persons. Of course I do support the Bill. Thank you.

**The President:** Dr Mann.

**Dr Mann:** Yes, Mr President, without trying to repeat what has just been said by the last speaker, this is a very significant advance. Unfortunately, because of many factors it has taken a long time to reach this stage. In fact we are talking now almost 10 years since the first recommendation was made. That has involved a lot of legal argument, a lot of argument within various departments and now we have the final Bill before us.

A very large amount of this is a straight re-enactment of existing legislation anyway, so I think when we come to the clauses it is very important that the mover could identify where the differences are occurring because a vast amount of this is current law in the Isle of Man anyway.

But I come to the resource issue because to a large extent it has been the resource issue that has delayed this Bill coming before the branches and we are well aware now that since a sitting of Tynwald Court we now have the authorisation for the secure unit. What I am less sure of is whether we have an assurance from the Treasury that we can put into effect what is in this Bill as quickly as possible. We are talking about resource implications, but unless those resource implications are in budgetary provision for next year or the year after, then parts of this Bill will not become effective and so I am sure there is going to be wholehearted support for this Bill. I would be very surprised if there was not, but unless we can see both the financial provision and the personnel provision, because this is going to involve the employment of a considerable number of officials that do not exist at the moment. They have been slowly built up over the last few years, but there is still a considerable personnel resource which is going to be needed to put this into effect, because we only need another disaster. We have had two, we do not need another and let us get this right now; we have been waiting a long time for it.

**The President:** Mr Radcliffe.

**Mr Radcliffe:** Thank you, Mr President. I support the Bill, although I do have one or two queries about it.

Could I say initially in response to what the hon. member. Dr Mann has just mentioned, I actually do support the Bill. It has been before Treasury of course and Treasury do acknowledge that it is going to be, at the moment, £<sup>1</sup>/<sub>2</sub> million revenue cost yearly. That will not stay that way, it is bound to go up, inevitably it will go up, so it is going to be quite a lump of money every year. The capital is not hard to manage, that is done and finished with, but the annual ongoing revenue implications are going to be, I think, fairly high before many years are passed.

What does bother me, and I would ask the mover, is when you read accounts of breakdowns of supervision and the terrible and tragic consequences of the lack of co-operation between agencies, which has happened elsewhere, I cannot help but worry as to whether this Bill will tighten things up about how agencies should and must co-operate together and pool information or whatever it should be. It could appear, and again one is not involved first-hand, but it is not hard to get the impression that there is a certain slackness and sloppiness among those who are charged with investigation and indeed there have been occasions, I think, when poor judgement has been exercised by the decision-makers regarding the welfare of children which have come to their notice and which they seem to have disregarded. Of course one has to acknowledge the reports one reads in the media are

not always 100 per cent factual as to what actually did happen in these cases, but we say probably that it would never happen here, but in all honesty it has happened here and I think we have to guard against a repeat of those sorts of events.

The hon. mover said that the Bill is incorporating the best from some other jurisdictions. I think I heard her say so. I hope so anyway. But I ask the question again, in tandem with the hon. member Dr Mann, are there any real differences in this Bill from the United Kingdom Bill and indeed what is incorporated at the moment in current Manx law? Are there any differences at all in this new Bill or is it just a consolidation of existing legislation really?

**The President:** Mr Crowe.

**Mr Crowe:** Thank you, Mr President. Yes, I too support the Bill and it seems to me that this is another example of legislation catching up with the changes in our society. I think all around us we see changes in working patterns and the need for both parents in a marriage or in a partnership to work and this leads to a consequent need for childminding facilities and the need for appropriate legislation to cover it.

It also reflects changes in law to reflect the change in medical techniques and again the mover and others have mentioned surrogacy and abduction and so on, and I did look at clause 48 on abduction, but I do not think there has ever been a case in the Isle of Man, but I do wonder, if that would be followed through, would an order in our courts be replicated elsewhere? Would it have value or validity to be taken into a foreign court? Those are the only comments at this stage, Mr President.

**The President:** Mr Waft.

**Mr Waft:** Mr President, as I see it, this Bill is attempting to address some of today's problems which we have to recognise and make legislation to accommodate the changes, as has been said, in lifestyles and attitudes.

The first paragraph of the explanatory memorandum introduces the words 'surrogacy and embryology' which set the scene as to what is going to follow within the Bill.

I would like to compliment the department on achieving the progress they have, although it has been a long drawn out process at that. We have all witnessed the McManus situation and the Leslie report and something had to be done sooner rather than later, but hopefully the concerns that were expressed at that time are encompassed within the Bill.

As usual I am particularly concerned with Bills which contain an excessive use of the word 'may' rather than 'shall' and incorporate the phrase 'where so far as practicable'. Whilst we are continually expecting individuals to take more account of themselves for their own actions, we persistently allow departments to introduce the words 'may' and 'shall' and if we give the department the opportunity to do this, we also give the departments the opportunity to say 'shall not', and with regard to concerns that have been expressed with regard to the financial situation, finance and restrictions might creep into the decisions to be made as to whether it is practicable or not practicable.

There are obviously times when 'may' is the correct word to use, but I feel if we continue to do so in most cases the word 'shall' will eventually cease to be part of our legislative programme apart from everyone else, apart from departments.

In my view no other Bill is as important as those that are protecting the rights and maintenance of the child and for those who have responsibility in the area and recognition should be given that the word 'shall' and not 'may' is part of their responsibility.

So I would endorse the thoughts of others as the concerns with the financial situation, but I hope it does not have an influence on decisions made by the department when considering the rights and maintenance of children.

I wonder if the minister might explain to me the situation when we have a situation with a child who through no fault of his own and possibly the parents have been made homeless for a period of time. Does the problem of the children's welfare come under her department or the Department of Education and what steps are taken to house that child? Thank you, Mr President.

**The President:** Mr Lowey.

**Mr Lowey:** Yes, Mr President, I would first of all like to congratulate the minister and her department and the members of her department getting this Bill forward. I think the department has had one of the heaviest workloads of any department in the last five years and I think it is very commendable that they should produce such a major piece of legislation and I think that should be placed on record.

I welcome the Bill as someone who has been here and had to read the McManus report and it made us all, and this is not any point-scoring, feel uncomfortable. Thankfully we are now making a concerted effort to set the framework in which hopefully, and nobody can guarantee these things, we have a framework which will prevent that from reoccurring.

I have to say I do share the hon. member of Council Mr Waft's concern about the 'as far as practicable' and that being introduced into the Bill, because I do understand that a department, with all the demands that are being placed on it, will have to take uncomfortable priorities and while appreciating that, I do not think we should in any way be circumscribed when it comes to the protection of children. Perhaps adults may be in extremis, but I believe children deserve 100 per cent support, but that is a minor irritation as opposed to the broad thrust that I welcome in this Bill, the legislation, the thoughts behind it and as outlined by the minister. So I give it a fair wind and hopefully our concerns will be addressed by the department now and in the future.

**The President:** Mrs Christian to reply.

**Mrs Christian:** Thank you, Mr President. I thank members for the general tenor of their comments which is supportive and I respond to the question of resources. It is obviously a Bill which is going to demand very, very considerable resources. We have, as my hon. colleague has indicated, discussed this with Treasury and there is provision made first of all in terms of the immediate needs in capital revenue and we have in the department for next year allocated a considerable number of our head capping allocation, our personnel allocation to the social services division.

Members will note that the Bill can be introduced in different parts at different times and I feel sure that that will have to be the case in order to cope with the demands of the Bill in relation to the resources that are at disposal.

Now, it is difficult to know how they are going to grow in the future but I would say that certainly the general view, I suppose, at the moment of the Council of Ministers and of society in its wider sense is a concern for the way we have problems with young people in certain areas. The vast majority are excellent and their welfare is obviously good but for those children who do have welfare problems which manifest themselves in other ways through bad behaviour or emotional problems, then clearly it is certainly the will of the department that we put resource into that area.

The question of whether or not this Bill is largely new or a re-enactment I will certainly spell out in the clauses stage. A great part of it, the private law element of it, is re-enactment with very minor amendment. Hon. members may remember that some years back at the time of the inquiries we felt it appropriate to move ahead on the private law side which was not impinged upon by those inquiries and have a Bill to deal with private law some years ago. On the basis of the recommendation in the Leslie report we have put them both together in this piece of legislation in order to facilitate the reading of the whole of the law relating to children and young people, but there is a considerable element of this which is re-enactment of the private law side.

With regard to the public element of it, I have tried to outline that we have tried to come to this with a new perspective and whilst some of it is re-enactment, we have tried to put it together by establishing principles, as I have tried to outline in the first reading, that will be encompassed in the public law element of it, so quite a lot of that is new and I will highlight the new elements going through the clauses.

Hon. members are quite right that it has taken what might be regarded as an inordinate amount of time to get to this stage of the Bill, to have it before the branches. There was a draft Bill in existence before we embarked on the McManus inquiry and because of that inquiry that progress was held up to await the outcome so that any recommendations might be incorporated.

Now, following the McManus we had the Leslie inquiry which reflected on the McManus as well which meant that again we had to hold fire and review both those inquiries in relation to the legislation which was being considered at that time and that of course, as members will understand, has been the process which has rather slowed down the introduction of new law in relation to children.

I think those two inquiries illustrate the very fine line that social services tread in relation to the welfare of children. One inquiry was as a result of what was regarded as too much intervention by the state, whereas the other reflected not enough, and as I stated, it is hoped in this Bill we are trying to find a balance between state intervention and working with families to provide the best interests of their children's welfare. Whether or not that is achievable, I feel whatever we set ourselves up to do we are almost setting ourselves up sometimes to fail, but the effort will be made to try and get the thing right.

Hon. members have concerned themselves about whether or not we are opting out by saying 'may' instead of 'shall'. I accept that there is a view that if you put 'shall' in you are being firmer. Can I say that from the department's perspective we shall be trying to introduce all those things which say we 'may' introduce, but I think one has to be realistic about this. It does demand a lot of resource and you can define the lines in terms of welfare at any number

of points and I am quite sure that the interpretation of those clauses have in sheer practical terms got to be to some extent cognisant of the resource at our disposal, otherwise, do as has happened in other legislation which perhaps was amended at a time without proper consideration of resources in terms of disability, which hon. members are familiar with it, it was amended to say 'shall' but no resource has been available to make it work, so there are considerations there - we have got to be practical about what we can achieve - but I would say that philosophically we will want to achieve what is in here.

The question of whether or not this legislation brings in the best from other jurisdictions - as I say, it is based primarily on the United Kingdom legislation and what I would say is that the time delay in introducing this has enabled us to see what is wrong with that legislation, leaving in what seems to be working but making amendment to those areas which locally we felt would be better adapted to our own purposes, so that any variation from the UK legislation is made on the basis of experience that it could be perhaps done better.

The question of lifestyle in the Island - the hon. member Mr Waft referred to lifestyles and attitudes and I think my colleague Mr Crowe also did that in terms of working parents and so on, making provision for properly monitored and controlled child care facilities and adapting to the medical practices which are now available in relation to surrogacy and human fertilisation and embryology. It is appropriate that we have strong controls in those areas but I think again we need to as a society explore where we want the balance to be between family and home and work and the economy because some might take the view that it is moving too far from family and too much into economy, but those are perhaps wider considerations than are being met in the Bill.

One thing the Bill does do is to bring in other departments and authorities and give them also a requirement to look at the interests of the welfare of the child in a way which is stronger perhaps than has been the case in the past, and the hon. member Mr Radcliffe referred to perhaps breakdown or lack of co-operation between agencies. I would hope that when this Bill is enacted we will certainly see a working between departments so that they in their narrow confines perhaps take on board the needs of the child when formulating their own policies, whether it is housing or education or whatever else it may be. I believe that this will lead to more interdepartmental and multidisciplinary working in relation to children.

With regard to homelessness, it is our department's responsibility to assist in finding accommodation for children in those circumstances. Where families are referred to us we do our utmost to find accommodation keeping the family together where we can. If the hon. member has a particular case that he is concerned about, perhaps we can discuss it afterwards.

In terms of the comment that the hon. member Mr Radcliffe made about the media, and I can think of cases which have been alluded to in recent times and whether this is what he is thinking of I do not know, I do feel sometimes that where children come into the care of the department, whether it is voluntary or under a court order, and they are still misbehaving or behaving inappropriately we have to remember that the department does not have a magic wand which will instantly correct all the ills that have beset those children and that we are going to continue to have problems. However, we do, as hon. members know, have the secure unit coming forward which may assist us with some of the more difficult cases and we do have new agencies with whom to work who we hope will perhaps apply more structured

programmes than may have been the case in the past for children in their care, but I think we have to recall also that where parents have failed, to fire criticisms at the department because they continue to fail in a very short space of time is unreasonable because I can imagine if a child is then put into care, how much worse must they feel and how much worse their behaviour must become in the first instance before we have time to try and help those children, and I am perhaps straying from the Bill into particulars, but I do think it perhaps illustrates the difficulties that social workers do have when dealing with the welfare of children. This is not only, though, about children with emotional difficulties, it is about providing for the needs of children's welfare in cases of disability as well as in cases of emotional disturbance and so on.

It is an all-embracing provision covering many areas and I hope that members, as we go through, will give it the support that they have indicated at this first reading. I beg to move.

**The President:** Hon. members, the motion before us is printed at 3 on your order paper, that the Children and Young Persons Bill be read for a first time. Will those in favour please say aye; and against, no. The ayes have it. The ayes have it.

### **Online Gambling Regulation Bill — Second Reading Approved**

**The President:** We turn then to item 4 on the order paper which is the Online Gambling Regulation Bill, down for second reading, and it is in the hands of Mr Lowey.

**Mr Lowey:** Thank you, Mr President. Hon. members, the Isle of Man is taking a lead in allowing other forms of well-regulated gambling to be offered over the internet through the introduction of this Online Gambling Regulation Bill. The Island is ahead of the competition and is in an advantageous position from which it can benefit by attracting the best of the industry to the Island by providing a well-regulated jurisdiction.

The Online Gambling Regulation Bill will permit gambling on the internet and similar forms of online and interactive gaming to be regulated. Tight regulation is the key to success both for companies providing services and for the good name and reputation of the Island itself.

This Bill will provide a secure regulatory regime involving the Gaming Control Commission, previously named the Gaming, the Department of Home Affairs, the Financial Supervision Commission, Data Protection, Treasury and the Isle of Man Constabulary all combining. Licence holders will only be permitted to offer games that are approved by regulation and moreover not all games will necessarily be available to all licence holders. This will ensure each licence holder is competent to provide each game. The number of licences will initially be restricted to three to avoid overburdening the new regulatory system whilst it finds its feet. However, the Council of Ministers is provided with the power to increase the number of licences if this is deemed necessary and beneficial to the Island.

Companies will have to be registered in the Island, their designated officials will have to be resident here and licence holders must maintain sufficient financial reserves. This is what I would call a great comfort factor.

Regulation will protect players' privacy, prohibit sales to minors and prevent money laundering. There are also other player protections within the Bill such as contracts being enforceable in law, codes on advertising and accuracy of website claims and regulations

governing the conduct, fairness and probity of gaming of the site. The regulator will also have rights of entry and powers to inspect software in all gaming transactions.

As I said, a secure regulatory environment is likely to attract major companies. The Bill provides an important opportunity for the Island to benefit from a growing e-commerce market in gaming, but the Island's reputation for probity has to be protected. Regulation has therefore been given the very highest priority within this Bill.

Mr President, I beg to move the second reading of the Online Gaming Regulation Bill.

**The President:** Mr Crowe.

**Mr Crowe:** Mr President, I beg to second and can I again support this measure. It would appear if it is satisfactorily regulated, then it would be another source of income to the Island.

Can I just pick up one thing Mr Lowey said and that was contracts enforceable in law. I was always under the impression that a gambling debt was a debt of honour and perhaps the mover could just comment on that.

**The President:** Mr Waft.

**Mr Waft:** Mr President, just a word on taxation on gambling. I understand that the UK is possibly going to do away with all tax on gambling and I wondered if the mover might like to comment on the future of this Bill as regards the taxes.

**The President:** There will not be any. Mr Lowey.

**Mr Lowey:** Yes, can I take the last point first. In the Bill, in the clauses which we will come to, you will see that all taxes and revenues will be after consultation with the Treasury so that is where the revenue that will be quite apart from the £80,000 initial licence fee will come from, and again I think in this field, as in other fields, the Isle of Man has always taken the view that half of nothing is nothing and if you can get companies established and you can tax either the employees who earn livings from it there are other ways of getting government revenue than by direct taxation itself, and as far as I am concerned the success in the past, whether it was in shipping, whether it was in insurance or in light industry, has always been what I would call effective and farsighted Treasury decisions at the time to make the thing grow, and I believe that that same principle will be applied to this form of revenue. So the answer is it will be in conjunction and close co-operation with the Treasury. The Home Affairs and Gaming Commissioners will actually set the scene for the growth of this particular market.

On the enforceable in law, I think as we have the learned Attorney here, rather than wait until we get to the clauses, I would ask the Attorney if he could help me out on that one.

**The Attorney-General:** Yes, thank you very much, Mr President. The relevant clause is clause 23 of the Bill, which states that no contract entered into in the course of online gambling shall be void or unenforceable by reason of section 40 of the 1988 Act. I am just hoping to check and remind myself of what section 40 said. Basically, gambling debts were unenforceable at common law. If a person entered into a wager or bet with another person and did not pay, then the person who was left with the right to enforce the wager could not go to the court and get a judgment: it was felt to be against public policy that people should have enforceable gambling debts. So I just want to check section 40. Section 40 of the Gaming, Betting and Lotteries Act confirms the common law position and says that every contract by

way of gaming or wagering is void and no action shall lie for the recovery of any money or thing which is alleged to have been won or to have been paid upon a wager and so on. It does say that this section shall not apply to any agreement to subscribe or contribute to any place, prize or sum of money to be awarded to the winner or winners of any game, sport or pastime not prohibited or regulated by this Act. So in other words if people are conducting lawful lotteries and so on and someone wins a prize, it is not open to the promoters of the lottery to say, 'I'm sorry, you can't recover because it's an illegal contract.' So the legislation says generally gaming bets are unenforceable. If, however, they are regulated by the Gaming, Betting and Lotteries Act, then you can recover, and effectively what it is saying, I think, in this Online Gambling Regulation Bill is that the position is preserved in this legislation, so in other words if you are entitled to recover a bet by virtue of a regulated gambling operation pursuant to this regulation, you are entitled to your pay.

**The President:** Now, hon. members, with that comment are you happy, Mr Lowey?

**Mr Lowey:** Yes, indeed.

**The President:** In that case, hon. members, the motion before us is that the Online Gambling Regulation Bill be read for a second time. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Well, if we move on to the clauses stage, are we content, hon. members, that we go as a committee as a whole? In that case, hon. members, I call on Mr Lowey to move clause 1.

**Mr Lowey:** Thank you, Mr President. This clause defines online gambling and conducting online gambling. Online gambling involves any gaming, betting or lottery operated by means of a telecommunication and conducting it involves organising it or maintaining a server by means of which it is operated but with an exemption for a telecom or an internet provider who is not associated with the gambling operation.

Sub-clause (1) defines 'online gambling' as one of the above classes of gambling involving telecommunications: (a) gaming where a player enters or takes any step; (b) betting where the bet is negotiated or received; (c) a lottery where a participant requires a chance by means of a telecommunication. 'Telecommunication' is defined by clause 25.

Sub-clause (2) defines the conducting of internet gambling. The conduct of online gambling is illegal unless licensed under clause 2A of this Bill, organising, managing or promoting online gambling or lotteries; (b) carrying on a business involving online betting; or (c) maintaining a server in the Isle of Man by means of which online gambling is run.

Sub-clause (3) provides an exemption for a telecom or internet service provider who merely handles communications except where it is on behalf of a person with whom he is associated, and this is to prevent a gambling operator abroad running an operation through the Isle of Man by means of a tame service provider located here, in other words it is to prevent that.

Sub-clause (4) defines terms used in (3) by reference to other legislation.

That is clause 1. I beg to move that clause 1 stand part of the Bill.

**Mrs Christian:** I beg to second.

**The President:** Mr Crowe.

**Mr Crowe:** Yes, interestingly enough this actually is a clear development of e-commerce. I mean, what we have talked about is e-commerce but when it is brought to a practical level, I was approached this week by an Isle of Man software house who in turn had been approached by a European software house because the whole key to this online gambling is the software that allows encryption of the information and protection for the credit card and it is a subject I am totally unfamiliar with but when it was brought down to brass tacks I was quite intrigued as to the security aspect at the point of delivery, and the gambler has to be so exact, and I think at that point if that is established, then I think the whole thing flows from that. So I do not have any questions but it was just an observation made to me which I thought was very interesting, but it is e-commerce in real life, shall we say.

**The President:** Mr Waft.

**Mr Waft:** Just to ask for clarification from the Attorney-General. With regard to this Bill, online gambling as opposed to ordinary street gambling at a bookmaker's, is it a fact then that online gambling, they have a recourse to law to recoup their winnings if they win but within the bookmaking fraternity there is no recourse whatsoever for either the bookmaker to pay out or the gambler to actually pay his debt.

**The President:** Mr Attorney, we will try that one again.

**The Attorney-General:** Thank you, Mr President. I think the whole thrust of the legislation, not only this the Online Gambling Regulation Bill, but also the, Gaming Betting and Lotteries Act of 1988 is to say that provided that you deal with a regulated and lawful bookmaker or online gambling service provider you are going to be able to recover your stake, your winnings. What you must not do of course is to get involved with unregulated and illegal by definition illegal gambling operations because then the courts will not give you a remedy.

**The President:** Mr Lowey, do you wish to add anything?

**Mr Lowey:** Yes, just to say that again the interest that the hon. member shows is that e-commerce is really the same business done in a different way with modern technology. The interest is certainly out there but again I think we are trying to take it step by step, we are setting up the legislation, we are ahead of the game, we know the interest is out there.

Can I say to Mr Waft the other thing with this legislation is while bookmakers can take bets on horses and dogs and all the rest of it, this particular piece of legislation will have specific gains, so in other words you will be licensed not to take bets on everything but specifically, if that is what you can take bets on, on specific games to fit in with the technology and all the rest of it.

The other thing that I would like to stress again is that the Gaming Commissioners will be with the Customs and Excise, will be with Treasury, will be with the police. There is a concerted effort by all the agencies to make sure there is no money laundering et cetera. So the expertise that is available to the Gaming Commission is a pretty widespread canvas, so a lot of attention to the detail is going to be in the regulations but we do have a wide spectrum of expertise available to us. With that, Mr President . . .

**The President:** Hon. members, the motion before us 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 then, Mr Lowey.

**Mr Lowey:** Thank you, Mr President. This clause makes it an offence to conduct online gambling unless it is exempted under clause 3 or licensed under clause 4. It also makes it an offence for an operator to permit a person under 18 or a person located in a country which is prescribed, in other words specified for the purpose in regulations, to take part in online gambling.

Sub-clause (1) makes it an offence for a person to conduct online gambling unless he or a company of which he is a director or employee holds a licence under clause 4.

Sub-clause (2) makes it an offence for an operator of online gambling to allow a minor - a person under 18 - or a person located in a country which is prescribed to take part in online gambling, and to that I have to say that the Isle of Man Government will have to agree with any foreign country to assist it to prevent its residents taking part in online gambling. Such an agreement can be given effect and that is the reason why it is made illegal. There is a defence of due diligence to that and sub-clause (3) gives a defence of due diligence which I have mentioned there in a prosecution for an offence under sub-clause (2) of this Bill.

Mr President, I beg to move that clause 2 stand part of the Bill.

**Mrs Christian:** I beg to second, Mr President, and just ask for clarification. I imagine it is the case that where we were talking about material time we are talking about Isle of Man time, given that half the world may be half a day away and gambling at different time, so that is a locally specified time.

**Mr Lowey:** That will be in the regulations, absolutely. It will be Greenwich Mean Time but there will be a specific time from which we will take the bets.

**The President:** Hon. members, the motion then is 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. We will take clause 3, Mr Lowey.

**Mr Lowey:** Thank you, Mr President. Clause 3 - this clause lists certain activities which constitute online gambling but for which a licence under clause 4 is not required because they are regulated or are exempt from regulation under other legislation. These cover such things as (a) betting effected by a licensed bookmaker or a licensed betting office, for example telephone betting or credit; (b) lotteries which are permitted under part III of the Lotteries Act; or (c) gaming of a kind permitted under regulations such as the casino; and (d) a future contract or a similar contract relating to investments which technically involve a bet or a wager, for example any contract entered into by either or each party by way of business and the making or performance of which by either party constitutes an activity which is an investment business some of that can be classified, believe it or not, under the law as a wager; (e) an insurance policy, which is technically a wager on the event insured against; (f) any other activity which is prescribed, that is, specified for the purpose in regulations under clause 21(1).

I beg to move clause 3 stand part of the Bill.

**Mrs Christian:** I beg to second.

**The President:** Mr Radcliffe.

**Mr Radcliffe:** Mr President, I have been asked to move an amendment to clause 3. May I first of all apologise to hon. members for the late arrival of these amendments on the desk. They are promoted by the Department of Home Affairs rather than Treasury, and I would just like to make that quite clean for a start.

The Online Gambling Regulation Bill as it currently stands before us permits the department to prescribe activities that are excluded from the requirements of the Bill. In this connection the Department of Home Affairs recently identified the activities concerning the provision of software to online casinos elsewhere in the world, that it may be considered acceptable to exclude these from the regulatory requirements of the Bill. However, if these activities are to be excluded there still does need to be some form of control to ensure, for example, that no activity by the provider or the casino could be considered to be breaking international or other national laws. Therefore the amendment before hon. members would provide the department with the powers to attach such conditions as are required to any activity excluded from the regulatory requirements of the Bill to ensure that the Isle of Man's reputation for probity is protected.

I beg to move, sir, the amendment standing in my name to clause 3:

*Page 2 line 32, for "Nothing" substitute "(1) Subject to subsection (2), nothing".*

*Page 3 line 15, at the end insert Ñ*

*"(2) Regulations may provide that, notwithstanding subsection (1), section 2(1) shall apply to any activity or other matter mentioned in that subsection unless it complies with such conditions as are prescribed."*

**The President:** Mr Crowe.

**Mr Crowe:** I beg to second and can I speak also on the clause?

**The President:** Yes, you may, sir.

**Mr Crowe:** Interestingly enough again, by having regulations it does allow for a further development to ensure that there are no loopholes in the legislation and I was intrigued by Mr Lowey, the mover, again talking about shall we say the interaction of gambling with investment and this is highlighted by the stock market which is an investment and yet a gamble and you can invest directly into the stock market or you can even bet on the movement of the stock exchange industry. So I think to have all your loopholes, shall we say, covered or all your bases covered, whatever the expressions is, is the right method.

**The President:** Mr Waft.

**Mr Waft:** No, I was going to make a comment on the stocks and shares. It has taken a while but somebody has at last decided to make a comment and I do think it is a fair comment. Stocks and shares are obviously not involved with this and taxation et cetera. It is a different situation altogether.

**The President:** Mr Lowey, would you care to wind up and comment on the amendment, sir.

**Mr Lowey:** Yes. I accept the amendment and I do thank Mr Radcliffe for his presentation of it.

Can I just say it is not very surprising that the department, even at this stage, is needing to refine this. This is a piece of pioneering legislation and again I would like to pay public tribute to the Attorney-General's department. This is not a take-off from somebody else's legislation, this is new legislation and the comments that have been received from those who have looked it over have been very complimentary indeed. But it is not surprising that every little could not be picked up straightaway and I am happy to accept all the amendments that will be moved as a strengthening of the Bill and it is again another indication by the department that they wish to have it watertight before it is put into operation. So to that extent again I think we have public servants who are, if you like, at the cutting edge of drawing-up of draftsmanship and not, as in some jurisdictions, who only just take it from somewhere else and amend it to suit the local conditions. Although that is acceptable in most cases, if we wish to be ahead of the game we need to have people who are able to adapt legislation to suit our requirements and I think our practitioners have served us well in this regard. I beg to move.

**The President:** Hon. members, the motion before us is that clause 3 stand part of the Bill and to that we have the amendment as moved by the hon. member Mr Radcliffe. Will those in favour of the amendment please say aye; against, no. The ayes have it. The ayes have it.

So the clause as amended, hon. members. Will those in favour please say aye; against, no. The ayes have it. We turn then to clause 4.

**Mr Lowey:** Thank you, Mr President. Clause 4 - this clause provides for the Department of Home Affairs, at its discretion, to grant licences for the operation on online gambling, but initially the number of licences will be limited to three.

Sub-clause (1) enables the Department of Home Affairs to grant licences to conduct online gambling. A licence may only be granted to a company limited by shares, not by guarantee, and incorporated in the Isle of Man. Regulations will define the kinds of online gambling which may be authorised by licences and a licence may authorise the conduct of either (a) any kind of online gambling listed in the regulations; or (b) one or more of those kinds of gambling specified in the licence.

Sub-clause (2) lays down the criteria for granting licences. The department must satisfy itself that (a) the licensee company is controlled by honest people; and (b) its operations are managed by honest people and it has the resources to run the kind of gambling in question.

Sub-clause (3) requires the department to consult various authorities before granting a licence, and sub-clause (4) makes it clear that the department is not required to give reasons for refusal to grant a licence. The scheme of the Bill is to give the department an absolute discretion on the grant of licences without any appeal but to be subjected to a degree of judicial scrutiny on decisions on renewal or cancellations.

Sub-clause (5) limits the number of licences to three at any time and limits any licensee to one licence only, and sub-clause (6) enables the Council of Ministers to vary the permitted number of licences under (5) by order, and sub-clause (7) requires an order under sub-clause (6) to be approved by Tynwald. Mr President, I beg to move clause 4 stand part of the Bill.

**Mrs Christian:** I beg to second and reserve my remarks.

**The President:** Mr Radcliffe.

**Mr Radcliffe:** Thank you, Mr President. Hon. members have before them an amendment to clause 4 and it is essential that the Isle of Man's good name is protected in every way.

The Bill as it is before us currently provides for the department to be provided with information to satisfy it that the applicant company is under the control of a person of integrity, its management is undertaken by persons of integrity and competence and that the company has adequate financial means. It is, however, considered that these provisions could be improved by making it explicit that an applicant for a licence shall be required to notify the department of the beneficial ownership of the share capital at the time of application. I beg to move, sir, the amendment standing in my name:

*Page 3 line 26, at the end insert -*

*“(aa) as to the beneficial ownership of the share capital of the company;”.*

**The President:** Mr Crowe.

**Mr Crowe:** Yes, sir, I beg to second and would confirm that this is very important, in fact an essential measure to know who is behind such a company. Not being an expert in gambling matters I just do not know how the question of the capital adequacy of companies will be considered because I know with insurance companies risks are laid off into a greater insurance market. I think with a gambling market there must be a provision that you can lay off risk to a bigger organisation or how that can be worked, I am not sure, but how you control the capital adequacy of a company in this business is something that we all need some educating on but it must be a well-trodden route, shall we say that we are maybe unaware of.

**Mr Radcliffe:** There are five bodies showing an interest in what is happening with the companies, Mr President, and the second part of it, clause 4. The experts are all there casting I do not know how many eyes over the whole thing.

**The President:** Mr Lowey.

**Mr Lowey:** I have really got nothing to add to the amendment. I think the hon. mover of the amendment has answered Mr Crowe's query. But again I try to make it up. The people, the Gaming Commissioners, the gambling commissioners, under the control of the Department of Home Affairs will have at its core, although they do have expertise on the board in gaming matters, to look into the character of the people of those who are applying for the licences. They have had experiences, obviously, in granting casino licences for gambling and so there is a formula there, but it is laid down in graphic form what the department will expect of anybody applying for a licence. I beg to move.

**The President:** Hon. members, the motion before us is that clause 4 stand part of the Bill and to that we have the amendment moved by Mr Radcliffe. Will those in favour of the amendment please say aye; against, no. The ayes have it. The ayes have it.

Then the clause as amended. Will those in favour please say aye; against, no. The ayes have it. Clause 5, Mr Lowey.

**Mr Lowey:** Thank you, Mr President. This clause provides for application fees, licence fees and a new excise duty on online gambling.

Sub-clause (1) requires an applicant for an online gambling licence to pay an application fee to the Treasury. The fee will be prescribed by an order made by the Treasury.

Sub-clause (2) requires the licensee to pay a fee to the Treasury on the grant of a licence and annually thereafter. The fee will be prescribed by an order made by the Treasury, and sub-clause (3) requires the licensee to pay to the Treasury a new excise duty called online gambling duty which will be a percentage prescribed by an order made by the Treasury of the gross gaming yield of the online gambling conducted under the licence. The times and manner of payment will also be prescribed by an order made by the Treasury.

Sub-clause (4) defines the gross gaming yield on which the duty will be calculated as (a) the total of all bets, stakes paid by punters, less the value of all winnings and prizes paid in the relevant period.

Sub-clause (5) provides that the value of prizes or winnings paid otherwise than in sterling, for example holidays or goods, are to be calculated in a manner provided for in an order again made by the Treasury, and sub-clause (6) applies enforcement provisions of the Customs and Excise Management Act 1986 for the collection of online gaming duty, as spelt out, and sub-clause (7) provides for anything which is to be prescribed under this clause to be prescribed by an order made by the Treasury. So that is an all-embracing one which can be varied from time to time, and sub-clause (8) requires an order under (7) to be approved by Tynwald. So all of the orders have got to go to Tynwald to be approved.

I beg to move clause 5 stand part of the Bill.

**The President:** Mrs Christian.

**Mrs Christian:** I beg to second and reserve my remarks.

**The President:** The motion, hon. members, 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. Perhaps we could take 6 and 7 together, Mr Lowey, the matter of licensing.

**Mr Lowey:** Yes. These clauses enable conditions to be attached to a licence for online gambling, making certain conditions mandatory and makes breach of a condition an offence.

Sub-clause (1) provides that the authorisation to conduct online gambling, which is conferred by licence under clause 4, is subject to any conditions specified in that licence.

Sub-clause (2) requires the licence to contain conditions to ensure that the licensee maintains sufficient resources to pay out any winnings or prizes due under the authorised gambling, and sub-clause (3) makes breach of any licence conditions an offence.

Clause 7 - this clause also provides for online gambling licences to run up to five years, subject to surrender or cancellation. It enables licences to be surrendered.

Mr President, I beg to move clauses 6 and 7 stand part of the Bill.

**The President:** Mrs Christian.

**Mrs Christian:** I beg to second, Mr President.

**The President:** The motion, hon. members, is that clauses 6 and 7 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 8 and 9, Mr Lowey.

**Mr Lowey:** Mr President, these clauses provide for application for renewal of licences and provide for a licence to continue if an application for renewal is pending appeal when it expires, so there is continuity.

Sub-clause (1) enables the licensee to apply before a licence expires to apply for its renewal.

Sub-clause (2) provides that when an application for a renewal of a licence is made, it continues in force after its expiry until (a) the application is determined or (b) if it is refused, until the time for appeal expires, or if an appeal under clause 19 against a refusal is made, until the appeal is abandoned or determined, and sub-clause (3) applies to the renewal of applications.

Clause 9 - this clause enables the department to vary a licence on application, or of its own motion, transfer a licence on application.

Sub-clause (1) enables the department to vary a licence by changing the kinds of online gambling which may be conducted under it.

Sub-clause (2) enables the department to vary a licence by altering or cancelling a licence condition, and sub-clause (3) provides that where the department makes a variation under (1) or (2) of its own motion, its operation is suspended until the time for appeal expires, and sub-clause (4) enables the department to transfer a licence on an application by the licensee.

Sub-clause (5) requires a transfer under sub-clause (4) to be endorsed on the licence, and sub-clause (6) applies provisions of clause 4 of transfers of licence, so the department is to take the same consideration into account and consult the same persons, and sub-clause (7) provides for fees for application for variation and transfers by applying relevant provisions of clause 5.

I beg to move clauses 8 and 9 stand part of the Bill.

**The President:** Mrs Christian.

**Mrs Christian:** Yes, I beg to second, Mr President. I would just say that with regard to clause 8 I am not sure why that is drafted the way it is in the sense that it will encourage everybody to apply at the latest possible dates so that if they are refused they will continue to operate for a further period guaranteed more or less. But other than that, I presume that that matter has been considered in the drafting of the Bill.

**The President:** Mr Waft.

**Mr Waft:** Could I just ask, Mr President, on the licence renewal. If the probity is established in the original application and all these different people have to be contacted on the renewal date, which I take is an annual renewal, all these same people will be contacted again and you will have to give an opinion on it.

**The President:** Mr Radcliffe.

**Mr Radcliffe:** Could I just ask about the appeals procedure: if a person or company decides to appeal, who shall appoint that appeal body? I do not think it is in the Bill as to who or where they will come from. One would imagine there would be no use having a panel of lay people to hear such an appeal as would come from one of these.

**The President:** Clause 19.

**Mr Radcliffe:** Clause 19.

**The President:** Mr Lowey.

**Mr Lowey:** Yes, in answer to Mr Radcliffe, it will be the High Court that they will bring an appeal to, and to Mr Waft, the answer there is it is every five years they will have to do it, not on an annual basis, but every five years. They will be looking after the financial things, including the checks every five years, and to Mrs Christian, yes, I think the answer to that is after consultation with the industry we believe that this is the right way deal with it, but of course these things can be altered if we see bad practice coming in, but we do not foresee that at this particular moment.

**The President:** The motion, hon. members, is that clauses 8 and 9 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 10, Mr Lowey.

**Mr Lowey:** Thank you, Mr President. Clause 10 - this clause requires a licensee to have at least one designated official approved by the commissioners.

Sub-clause (1) provides that a licence or the transfer of a licence does not come into force until at least one designated official has been approved by the commissioners.

Sub-clause (2) explains what it means by 'designated official', and sub-clause (3) lays down the criteria for approval of the designated official, and sub-clause (4) requires the licensee to apply for approval the a new designated official, if the commissioners withdraw their approval or the designated official dies, becomes non-resident, or ceases to be a director and there is no other designated official in post.

Sub-clause (5) provides for the automatic suspensions of the licence if the licensee fails to apply under subsection (5) within six weeks or an application under (5) is refused and the commissioners do not give an extension of time for a further application, and sub-clause (6) requires the name and address of every designated official to be endorsed on the licence.

Sub-clause (7) makes every designated official liable equally with the licensee for any offence or other matter under the Bill and provides that where anything is to happen on than the conviction of the licensee, the same is to happen on the conviction of the designated official.

I beg to move clause 10 stand part of the bill.

**Mrs Christian:** I beg to second and reserve my remarks.

**The President:** The motion, hon. members, is that clause 10 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 11.

**Mr Lowey:** Thank you, Mr President. This clause requires the Isle of Man Gaming Control Commissioners to police all online gambling.

Sub-clause (1) gives the commissioners the general duty to supervise online gambling conducted in the Isle of Man, to investigate applicants and to ensure that all fees are paid. The object is to ensure fair dealing and compliance with the legislation.

Sub-clause (2) requires the Department of Home Affairs to provide suitable staff for the commissioners for this purpose, outside experts, civil servants for example.

Sub-clause (3) requires the terms of appointments of experts under sub-clause (2)(a) to be subject to Treasury approval, and sub-clause (4) places the Treasury, including the Assessor and Customs and Excise and the police, under an obligation to supply the commissioners and the department with information about licensees, applicants and their directors and staff.

Sub-clause (5) enables the Treasury, including the Assessor and Customs and Excise and the police, to volunteer information to the commissioners and the department for the purpose of their functions under this Bill, and sub-clause (6) enables the commissioners and the department to volunteer information to the Treasury, including Customs and Excise, for the purpose of collecting online gambling duty, and sub-clause (7) makes it clear that information that may be disclosed under sub-clauses (4) to (6) despite any prohibition or restrictions on disclosure.

Mr President, this clause clearly defines a transparency that we are interested in legitimate business.

I beg to move clause 11 stand part of the Bill.

**Mrs Christian:** I beg to second, Mr President, and just comment that the effectiveness of all this will very much hang on the capabilities of the people who will be appointed under this clause to carry out work on behalf of the commission. I am quite sure that auditing computer software will be a growing career and will be one in which most of us do not appreciate how much can be detected down the line, but obviously it can be followed through, but this is an area where we will be very much dependent on the skills of the people who will be carrying out this work and on their integrity and expertise, but it is necessary for the commission to have that available in order for the Island's reputation to be protected.

**The President:** Mr Crowe.

**Mr Crowe:** Thank you, Mr President. Talking of auditing computer software, I remember reading about an employee of a bank who managed to take all the roundings up of a penny and moved it to his own named accounts so every rounding up went to his own account and he made quite a lot of money on this.

**Mr Lowey:** Stop giving me ideas. *(Laughter)*

**Mr Crowe:** But I think, as Mrs Christian says, it is the enforcement and I think it will be quite an onerous responsibility and it may even necessitate people sitting in the office of the people. However, that is something that can be addressed later.

**The President:** Mr Waft.

**Mr Waft:** Thank you, Mr President. We are talking about a completely different set of commissioners that are needed in the future than the ones they have had in the past, who just used to go around the betting shops to see there was no paper left on the floor. This is an entirely different, highly technological way forward which must be administered by informed people who are well aware of the computer software possibilities and the possibilities for problems ensuing.

I was concerned about the five years. Even in the old days they used to be only a year, but five years is a very long time for someone to have this sort of privilege given to them and there must be quite keen overseeing of the situation. Thank you, Mr President.

**The President:** Mr Lowey.

**Mr Lowey:** Thank you, Mr President. Again can I just thank Mrs Christian for her support and Mr Crowe's interest and Mr Waft's.

Can I just say that, agreeing with Mr Waft, we are in a new technical era, but I think we can learn by history, the history of the Isle of Man, especially in gambling. When we first introduced the casino we paid a price early on because we were not regulated tightly enough and I think the success of the casino business in the Isle of Man, if you can call it that, is because we have a very tight regulatory regime. Inspectors are there, they know the workings, they are there on a daily basis and it is very tightly controlled, and we have had a successful operation in the latter years of the casino. There is no doubt about that. We have learnt by our mistakes. That is why the department has already taken into a stand-alone gaming commission which will have the support of a department. They have already been taken on board, they are now part of the department and they have got all these other agencies of government, including Treasury, Customs and Excise, the police, et cetera, all working together to look at the problem, with the industry I may say, and they have come up with these controls as laid down or guidelines in this particular legislation. Yes, I do think it will need a new type of commissioner in the future, but that is not to say anything against the commissioners in the past, although my hon. friend describes them as walking round the betting shops to see they had not offended against the litter Act. But I do have to say that when it comes to casino gambling they have been successful in the past in controlling it and the officials that they have employed, the professionals to do it, accountants, et cetera, and I am sure that under these regulations that will be laid before Tynwald for approval the lessons of the past will have been learnt and applied and this will be successful without the growing pains that we had to undergo when we first formed a casino.

I beg to move that clause 11 stand part of the Bill, sir.

**The President:** The motion, hon. members, is that clause 11 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 12.

**Mr Lowey:** Thank you, Mr President. This clause requires licensees to notify the commissioners about changes in ownership, financial resources and convictions and give them powers to control the appointment of directors of licences.

Sub-clause (1) places obligations on a licensee (a) to notify the commissioners of any change in ownership of over five per cent of relevant share capital, where required to give the commissioners information about its financial resources, and to notify the commissioners of any conviction of the licensee of a designated official. Non-compliance is an offence under sub-clause (3).

Sub-clause (2) prohibits any appointment of a director of a licensee without the commission's approval. They must be satisfied as to his honesty. Non-compliance again is an offence.

Sub-clause (3) makes non-compliance with (1) or (2) an offence and for the penalties they are in clause 18.

Mr President, I beg to move clause 12 stand part of the Bill.

**Mrs Christian:** I beg to second.

**The President:** Mrs Christian seconds. Mr Radcliffe.

**Mr Radcliffe:** Thank you, Mr President. The Bill again, as before us, provides that, as the hon. mover has just said, the licence holder must inform the commissioners of any changes in the beneficial ownership of more than five per cent of the relevant share capital in the holding. This provision will be further improved by increasing the requirement to cover all share capital and not just relevant share capital, and the amendment in my name would seek to do this sir. I beg to move the amendment to clause 12:

*Page 9 line 32, for "the relevant share capital" substitute "the share capital, or of any class of share capital,".*

**The President:** Mr Crowe.

**Mr Crowe:** Yes, I beg to second and again this is an interesting amendment because in the words of the Bill the intention is there but I think this amendment spells it out clearly because I think we are all aware of ordinary and preference shares or A, B, and C and D shares and redeemable preference and so on and I think it is to make sure that the intent of the Bill is really there in statute.

**The President:** Mr Lowey, do you wish to reply?

**Mr Lowey:** No, just to agree that it is a tightening up and I support the amendment.

**The President:** In that case, hon. members, the motion before you is that clause 12 stand part of the Bill and to that we have the amendment moved by Mr Radcliffe. Will those in favour of the amendment please say aye; and against, no. The ayes have it. The ayes have it.

The clause as amended, hon. members. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Perhaps we could take 13 and 14, Mr Lowey.

**Mr Lowey:** Yes. These clauses give the commissioners various powers to suspend or cancel a licence to secure compliance with the requirements of the Bill.

Sub-clause (1) obliges the commissioners to cancel a licence if the licensee ceases to be qualified or is not controlled by honest people, if its operations are not managed by honest people and it has not the resources to run the kinds of gambling in question. An appeal under clause 19 lies against cancellation of course.

Sub-clause (2) enables the commissioners to suspend a licence for a specified period until a specified condition is fulfilled or cancel a licence in any of the cases listed in sub-clauses (3) to (5).

Sub-clause (3) sets out the first case where the licensee or a designated official is convicted (a) in the Isle of Man of an offence relating to gambling or; (b) in the Isle of Man, United Kingdom, Channel Islands or Republic of Ireland of an indictable offence; or (c) anywhere in the world of an offence carrying imprisonment for two years or over.

Sub-clause (4) sets out the second case where the licensee has (a) failed to pay any fee or duty; (b) failed to comply with the licence condition; (c) contravened any provision or regulation under clause 21; or (d) failed to comply with a direction of the commissioners; or (e) failed to comply with the money laundering code of practice; or (f) ceased to operate online gambling, and sub-clause (5) sets out the third case where the licensee has failed to satisfy the commissioners that it has sufficient financial resources, and sub-clause (6) enables the commissioners to suspend a licence pending compliance with a direction, and sub-clause (7) enables the commissioners to suspend a licence pending compliance with the requirement to produce records, and sub-clause (8) enables a suspension to operate immediately or after a specified period; again it is giving the Gaming Commissioners options.

Clause 14 sets out the effect of cancellation or suspension. Sub-clause (1) makes it clear that where a licence is cancelled or suspended, that does not affect liability for anything which previously happened, and sub-clause (2) provides a suspension does not affect liability to pay any fee or duty, and sub-clause (3) provides that, except as in above, a licence is ineffective while suspended until the commissioners give the licensee notice declaring that the suspension has ended or the court lifts the suspension on an appeal.

Mr President, I beg to move clauses 13 and 14 stand part of the Bill.

**Mrs Christian:** I beg to second and reserve my remarks.

**The President:** The motion, hon. members, is that 13 and 14 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. We will turn to 15, Mr Lowey.

**Mr Lowey:** Thank you, Mr President. Clause 15 gives the commissioners power to control the management of a licence and also advertising of online gambling with power to issue advertising codes of practice.

Sub-clause (1) enables the commissioners to give a direction to a licensee that a director or other manager of the licensee be removed if they think he is unsuitable to act as such. There is an appeal under clause 19 against such a direction.

Sub-clause (2) provides that such a direction, even when complied with, remains in force as a direction not to appoint the person concerned as a director or manager until it is withdrawn by a further notice, and sub-clause (3) enables the commissioners to give a licensee directions as to what must or must not be included in any advertising or any communication to punters to ensure that the gambling is fairly and properly conducted, and sub-clause (4) enables the commissioners to issue codes of practice as to advertisements and communications relating to online gambling. Where they do so, a direction under sub-clause (3) may incorporate any such code.

Mr President, I beg to move clause 15 stand part of the Bill.

**Mrs Christian:** I beg to second and reserve my remarks.

**The President:** The motion, hon. members, is that clause 15 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. And 16, Mr Lowey.

**Mr Lowey:** Thank you, Mr President. This clause gives persons authorised by the commissioners powers of entry, inspection, et cetera in order to police online gambling.

Sub-clause (1) gives an authorised person, for the purpose of enabling the commissioners to police online gambling, power to enter premises, to require the production of documents and records and take copies and to require any person to enable him to inspect a computer programme for failure to comply with a requirement under (b) or (c).

Sub-clause (2) gives the authorised person rights, ancillary to those in sub-clause (1)(b) and (c), of access to any computer and to require any person to assist him to operate the computer, and sub-clause (3) obliges an authorised person to produce his credentials if asked to do so and enables him to take other persons and equipment with him if needed, and sub-clause (4) makes it an offence for anyone (a) to obstruct the exercise of powers under this clause; or (b) to fail to comply with a requirement; or (c) to fail to provide information or produce a document, knowingly or recklessly to provide false or misleading information; or (d) knowingly or recklessly to produce a false or misleading document, and sub-clause (5) gives power to issue a warrant authorising entry - this is to a JP - and search a premises by force if required, and the need for a warrant must be justified on oath, and sub-clause (6) provides for such a warrant to remain in force for seven days only.

Sub-clause (7) is a saving for legal professional privilege, that is protecting communication between an advocate and client, and sub-clause (8) defines 'authorised person' as a person authorised by the commissioners or a police constable, and sub-clause (9) makes unauthorised disclosure of information gained as a result of the exercise of these powers an offence.

Mr President, I beg leave to move clause 16.

**Mrs Christian:** I beg to second.

**The President:** Mr Crowe.

**Mr Crowe:** Again, just an observation. I think really if we all sit and think of this and it is quite mind-boggling that the whole thing will be generated in cyberspace in computer programme software. The whole thing will be totally within a computer database and games of chance such as roulette, if you go to the casino, at least you can see the wheel and they can visibly check how many pounds are placed or chips were placed, but to imagine checking a virtual reality casino with games of chance and card games as to the percentage of payouts and all these sorts of things just almost defies our imagination, shall we say, but again I am sure it will create work or a job for somebody who will no doubt have the difficult job to enforce it.

**The Lord Bishop:** It used to be called hell. *(Laughter)*

**The President:** Mr Waft.

**Mr Waft:** I would just like to mention sub-clause (9) with regard to the disclosure of information that is obtained by entering premises and obtaining computerised information about any person and the disclosure of the same. I am glad that the clause is in there, but it says here he is guilty of an offence but it does not actually say what the fine would be.

**Mr Lowey:** The penalties are in clause 18.

**Mr Waft:** Oh right. It is just that the disclosure is made in the course of the functions for the purposes of which'. Disclosure to whom? It does not actually say, disclosure to which? Is it disclosure to a court, is it disclosure to any outside person? It does not really say. It is a very sensitive situation to anybody who does use betting activities, but disclosure and confidentiality are of the utmost importance.

**The President:** Mr Lowey.

**Mr Lowey:** Yes, if I can say to the last point raised, which is very valid, I think, sub-clause (9) makes unauthorised disclosure, so that would be to an unauthorised person. Obviously authorised would be to the Gaming Control. They would obviously be able to disclose to them the information and the penalties are set out in clause 18.

The point made by my good friend Mr Crowe - it is mind-boggling to me, I can assure you, but then I did say that this sort of gambling is growing worldwide. It has grown in three years from about \$2.5 billion to over \$8.7 billion which was the last figure that I have got before me. So it is a growth area, so obviously people are not getting that mind-boggling that the industry is not a growth area. This certainly is a growth area, and as I said, this legislation is trying to get the framework right so that we can take a share of it. We are not rushing at it and wanting everybody, we are after quality again, and I think the punters will have a comfort factor that it is a well-regulated enterprise and the industry itself is looking for a well-regulated jurisdiction to operate from.

So I think all those bits of the equation are coming together and we are ahead of the game and I think it is right that the Island should at this stage try and accommodate legitimate business which is operating now anyway.

I beg to move clause 16 stand part of the Bill, sir.

**The President:** The motion, hon. members, is that clause 16 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 17.

**Mr Lowey:** Thank you, Mr President. Clause 17 gives the High Court power, on the commissioners' application, to make an order requiring a person to disclose the beneficial ownership of shares in the licensee with power in default to vest the shares in the Treasury. These powers are similar to those in the Casino Act 1986.

Sub-clause (1) enables the High Court, on the commissioners' application, to order a holder of a relevant share in the licensee or any official of the licensee or any person appearing to have an interest in the share to tell the commissioners who the beneficial owner of the share is.

Sub-clause (2) enables the court, on the commissioners' application, to transfer the share to the Treasury if an order under sub-clause (1) is not obeyed.

Sub-clause (3) enables the court to subpoena any person to give evidence and produce documents on an application under sub-clause (2).

Sub-clause (4) enables the court to revoke an order under sub-clause (2) and re-vest the share in the person in whom it would have been vested apart from the order, provided it is satisfied that the commissioners have been told who is the beneficial owner of the share.

Sub-clause (5) defines 'beneficial owner' in relation to a share vested in an unquoted company as the individual who is the ultimate owner of that particular company.

Mr President, I beg leave to move clause 17.

**Mrs Christian:** I beg to second, Mr President.

**The President:** Mr Radcliffe.

**Mr Radcliffe:** Thank you, sir. This is tightening up again on this question of relevant share and all shares, and as the hon. mover has said, the High Court, on an application by the commissioners, can make an order requiring the disclosure of the beneficial ownership of a relevant share, but it is considered that this should also apply to all share capital and not just relevant share, and that is the reason, sir, why I beg leave to move the amendment to clause 17:

*Page 14, line 29, omit 'relevant'.*

*Page 15, line 20, omit 'relevant'.*

**The President:** Mr Crowe.

**Mr Crowe:** I beg to second that amendment and it is, I think, consequential upon the change in clause 12, so I am happy with the seconding of clause 17.

**The President:** Dr Mann.

**Dr Mann:** I am just intrigued why we, in clause 12, did not drop 'relevant' but we have substituted the share capital or any class of share capital but here we are just dropping the 'relevant'. What is the difference? Because when we came to clause 12 I could not understand why we just did not drop the word 'relevant', as we are here, but we substituted a different form of words.

**The President:** Yes. Mr Attorney, perhaps you could help us out of that one.

**The Attorney-General:** I am not so sure, but certainly the purpose of clause 12 is to impose a duty on the holder of a licence to notify the commissioners of any change in the beneficial ownership of more than five per cent of the share capital or any class of share capital in the holder. Now, as the hon. Dr Mann states, there is a difference between share capital and the classes of share capital mentioned in clause 12 and then looking at 'share' or 'shares' in clause 17. I can only say that the definition of 'beneficial owner' in clause 17(5) is very, very similar to the definition of beneficial owner that you see in all sorts of legislation and the emphasis seems to be on interests in shares or shares rather than relevant share capital. I do entirely take your point, though. It is a very fine difference. I do not think any harm is done, Mr President.

**The President:** Okay. Mr Lowey, do you wish to add anything?

**Mr Lowey:** No, I have nothing to add on the definitions of the Bill. I am quite happy to leave it to the Attorney.

**The President:** In that case, hon. members, the motion before us is that clause 17 stand part of the Bill and to that we have the amendment as moved by the hon. member Mr

Radcliffe. Will those in favour of the amendment please say aye; and against, no. The ayes have it. The ayes have it.

The clause as amended. Will those in favour please say aye; against, no. The ayes have it. We turn then to clause 18, Mr Lowey.

**Mr Lowey:** Thank you, Mr President. This clause, clause 18, specifies the penalties for offences under the Bill and restricts private prosecutions and makes provision for offences by a body corporate.

Sub-clause (1) specifies the penalties for most offences under the Bill and they are triable either way and they carry up to two years and/or an unlimited fine, so they are quite severe sentences.

Sub-clause (2) specifies lower penalties for offences under clause 16(2), that is obstructing authorised officers, which are summary offences and carry up to six months and/or a fine of £5,000, and sub-clause (3) restricts private prosecutions for such offences by requiring the Attorney-General's consent to any prosecution, and sub-clause (4) is a standard form provision under which a director or other official of the company responsible for a contravention by that company is liable to be prosecuted in the same way as the company, and sub-clause (5) extends sub-clause (4) to cover members of bodies such as local authorities.

Sub-clause (6) extends the usual time limit for prosecutions for summary offences, which is usually six months from the date of the offence, to two years from that date.

Mr President, I beg to move clause 18 stand part of the Bill.

**Mrs Christian:** I beg to second and reserve my remarks.

**Mr Waft:** Could I ask, Mr President, on 18 where it does describe the offences I wonder where that includes sub-clause (9) of clause 16. It mentions under sub-clause (4) and it mentions all the offences by the officers but not by the other side, as it were.

**Mr Lowey:** Could I draw the attention of the hon. member? In the opening paragraph: 'A person convicted of an offence under this Act (except under section 16(4)) is liable'. So it is everybody in the Act up to that is covered except 16(4)(a) and (b).

**Mr Waft:** But clause 16(9) will be caught?

**Mr Lowey:** It will be covered under that. It is everybody else.

**Mr Waft:** Thank you, Mr President.

**The President:** Hon. members, the motion before us then is that clause 18 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Perhaps, Mr Lowey, we can be brave enough to take 19, 20 and 21?

**Mr Lowey:** With your permission and the Council's, thank you, sir. These clauses enable a licensee to appeal to the High Court against a refusal to renew his licence or his variation, cancellation or suspension by the Department of Home Affairs.

Sub-clause (1) gives a licensee the right to appeal to the High Court against a refusal to renew or of the variation of the licence or of a licence condition or a suspension or cancellation.

Sub-clause (2) sets out the High Court's power on an appeal under 1. It can vary or reverse the department's decision on the ground that it made an error in law, acted outside its powers, got its facts wrong or acted unreasonably. So that is setting out the role of the court.

Clause 20 - this clause prevents a licence from being assigned by the licensee for transfer of licences by the commissioners. It is covered in clause 9(4). So that is clause 20.

Clause 21 - this clause gives the Department of Home Affairs and the Treasury powers to make regulations supplementing the Bill in various ways.

Sub-clause (1) gives the department power to make regulations to do various things: prescribe anything which is prescribed, and they lay them down, all the rules. I will not itemise each one but if members want them I can certainly deal with that.

Sub-clause (2) gives the Treasury power to make regulations as to how online gambling duty is to be accounted for and the records to be kept for that purpose, and sub-clause (3) makes special provision where a kind of gambling is specified in a licence and is subsequently removed from that list prescribed under clause 4. The change will not affect the licence or any renewal of it but the department will be able to remove it from the licence under clause 9 of this Bill.

Sub-clause (4) enables regulations under (1) or (2) to provide that a specified contravention is a summary offence. The penalty for such an offence will be specified in the regulations but they cannot exceed six months or £5,000 or both, and sub-clause (5) provides that regulations will be subject to annulment, for example that they are to be laid before Tynwald which may resolve to annul them then or at the next sitting of Tynwald Court.

Mr President, I beg leave to move clauses 19, 20 and 21.

**The President:** Mrs Christian.

**Mrs Christian:** I beg to second, Mr President.

**The President:** The motion, hon. members, is that clauses 19, 20 and 21 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 22 and the schedule, Mr Lowey.

**Mr Lowey:** Thank you, Mr President. Clause 22 and the schedule. This clause exempts licensed online gambling from other controls in order to prevent duplication.

Sub-clause (1) amends the enactment listed in the schedule so as to exempt licensed online gambling from other controls. I will not itemise them but I can answer any questions perhaps raised by members.

Sub-clause (2) gives a special exemption for online lotteries authorised by a licence, again under clause 4 of this Bill, from the general prohibition of lotteries under the 1988 Act.

Mr President, I beg to move that clause 22 and the schedule stand part of the Bill.

**Mrs Christian:** I beg to second, Mr President.

**The President:** The motion, hon. members, is that clause 22 and the schedule stand part of the Bill. Will those in favour please say aye; and against, no. The ayes have it. The ayes have it. Perhaps we could take 23 and 24 as well, Mr Lowey.

**Mr Lowey:** Thank you, Mr President. These clauses make online gambling, gaming and betting contracts enforceable at law as an exception to the general rule under the 1988 Act. That is clause 23.

Clause 24 - this clause makes special provision for notices to be served on a licensee under the Bill. They may be served at an address for service specified in the licence or any other address in the Isle of Man notified by the licensee to the commissioners.

Mr President, I beg to move clauses 23 and 24 stand part of the Bill.

**Mrs Christian:** I beg to second.

**The President:** Mr Crowe.

**Mr Crowe:** Yes, it just strikes me. I was reading the other day about an enterprising promoter who has got on screen a number of live goldfish and you can bet on which of the goldfish goes to the bottom of the tank and goes under a little bridge. So this is the sort of realms of gambling that people are now up to. I am sure it is covered under clause 23.

**The President:** Mr Lowey.

**Mr Lowey:** Yes, they will be specified and I do not know how you control your goldfish, but they used to say the Chinese would bet on two flies walking up a wall, but it is a variation on goldfish going under bridges, I suppose. But all of the games will be specified by the Gaming Commissioners, what they will be able to operate on the internet or the e-mail.

**The President:** Hon. members, the motion before us is that clauses 23 and 24 stand part of the Bill. Will those in favour please say aye; and against, no. The ayes have it. The ayes have it. Twenty-five, Mr Lowey.

**Mr Lowey:** Yes, Mr President. This clause defines various terms used in the Bill. I beg to move clause 25 stand part of the Bill.

**Mrs Christian:** I beg to second.

**The President:** And Mr Radcliffe.

**Mr Radcliffe:** Thank you, sir. The amendment which is before hon. members to clause 25 is the definition clause but some of those definitions are no longer required because of the amendment which Council has accepted to clauses 4, 12 and 17, so therefore we are proposing to omit the definition of 'relevant share' and 'relevant share capital'. I beg to move the amendment in my name:

*Page 19, line 22, omit the definitions of 'relevant share' and 'relevant share capital'.*

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

**The President:** Hon. members, the motion before us is that clause 25 do stand part of the Bill and to that we have the amendment moved by Mr Radcliffe. Will those in favour of the amendment please say aye; and against, no. The ayes have it. The ayes have it.

The clause as amended. Will those in favour please say aye; and against, no. The ayes have it. The ayes have it. And we will complete with clause 26, Mr Lowey.

**Mr Lowey:** Thank you, Mr President. Clause 26 - this clause gives the Bill its short title and you will note that there is no commencement provision, so the Bill will come into force on the day Royal Assent is announced to Tynwald. Mr President, I beg leave to move clause 26 stand part of the Bill.

**Mrs Christian:** I beg to second.

**The President:** The motion, hon. members, is that clause 26 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Now, Mr Attorney, perhaps you would just like to clear up one point for us.

**The Attorney-General:** Yes. Well, Mr President, there were two small points and without in any way wishing to detract from the address by the hon. mover there was one matter I ought to have commented on in respect to a question raised by the hon. member Mrs Christian on clause 2. The question was in relation to material time. Hon. members will see in clause 2(2) 'Any person conducting online gambling who permits - (a) a minor, or (b) a person who at the material time is in a prescribed country or territory, to participate in the online gambling is guilty of an offence', and I think the hon. questioner was concerned about Greenwich meantime or the time in the relevant country. In fact I do not think that we need to concern ourselves about whether it is Greenwich meantime or any other time. The important point is to define the time at which the bet or the gambling is concluded, in other words a gambling contract would be made when the person in the foreign country presumably communicates the bet or the offer to the service provider here in the Isle of Man, and we are not concerned with any particular time, i.e. whether it is five o'clock in the morning in Bangkok or five o'clock in the evening here in the Isle of Man. The important time is the actual point in time when the contract is concluded.

**Mrs Christian:** That is my question, though, Mr President, because when you prescribe a territory you will say from tomorrow that country is not acceptable. Is it tomorrow in our time or tomorrow in their time?

**The Attorney-General:** Well, Mr President, the way I think it would operate is like this, that if we had, say, a bet being placed from somebody in, shall we say, Thailand and in Manx time the bet was received, shall we say, at 12 noon and at 12 noon Manx time Thailand was an authorised country, that would be an entirely proper contract and no offence would be committed. If, however, later on in the day, three o'clock in the afternoon Manx time, Thailand became a prescribed country, became off limits, then that would be an illegal contract if someone tried to place a bet then. So we have to look at it from Manx time, the time when the bet is actually received here and accepted in the Isle of Man.

**The President:** Completing the contract.

**The Attorney-General:** Yes. *(Mr Crowe and Mrs Christian interjecting)*

**The President:** Hon. members, I do not wish to go back over the clauses at this stage but I think it is fair that you should reflect on it and if anybody wishes to raise it at the third reading the opportunity will be given.

**The Attorney-General:** Yes, I did want to comment on that. I am sorry, I omitted that. Mr President, also throughout the debate hon. members have been concerned about a five-year licence.

**The President:** Clause 7.

**The Attorney-General:** May I just point out that under clause 7 it is a maximum period of five years; the licence can be given for a period not exceeding five years. So I suppose for a new applicant who had not proved himself it might be very appropriate to award the licence for one year rather than two years and so on.

And then finally, Mr President, the hon. mover was very kind to refer to the services of chambers. In fact there is one person I think who, if I may say so, ought to be mentioned specifically. Mr Ken Gumbley, the legislative draftsman, produced this Bill very quickly and it has been subject to scrutiny not only by academic lawyers but also by commercial lawyers and also now subject to scrutiny in this hon. place and I think the Bill has survived intact and I am very grateful to the mover for mentioning Mr Gumbley.

**The President:** Well, hon. members, as I said previously, those comments from the Attorney having completed our clauses stage, if any member wishes to reflect on either of those points they certainly will be given the opportunity at the third reading to raise them.

Hon. members, that concludes our order paper for this morning and our adjournment is to Tuesday, 13th March, again at 10.30 a.m., and I thank you for your co-operation this morning. Thank you, hon. members.

*The Council adjourned.*