

**REPORT OF PROCEEDINGS OF  
LEGISLATIVE COUNCIL**

**Douglas, Tuesday, 13th March 2001  
at 10.30 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, D F K Delaney, E G Lowey, Dr E J Mann, Messrs J N Radcliffe and G H Waft, with Mr T A Bawden, Clerk of the Council.

*The Lord Bishop took the prayers.*

**Apologies for Absence**

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

**Commonwealth Day Message**

**The President:** Hon members, yesterday was Commonwealth Day and I think at this stage it is appropriate that we should record Her Majesty's message for Commonwealth Day, and I ask the Clerk to so read it.

**The Clerk:** 'The theme this year - A New Generation - captures the reality of a young Commonwealth. More than half of our 1.7 billion people are under the age of 25. They are the future of the organisation.

These young people face a world of challenge and change. Many must cope with a life where even the basics of human existence - food, shelter and clean water - are far from guaranteed or in very short supply. Others have had their lives blighted by war, disease or environmental damage. Far too few enjoy the prospect of a decent education, or work which can give expression to their talents and energies.

Yet for all its ills and difficulties the world of the new generation also offers opportunities: instant communication, the transfer of knowledge, and advances in science and technology which, if applied sensibly, can help people achieve a more fulfilling life.

Despite all these opportunities, we still seem transfixed by our differences. This is where our young people are so important. They know there are so many problems which can only be resolved when people in different countries work together. I hope we can persuade them that the Commonwealth, whose very strength is in its diversity, has much to offer them in charting a path across the barriers of race and religion, distance and economic circumstance.

Making our Commonwealth matter to its younger members is the task for those of us who have lived through its development over the last fifty years or so. I hope that when the ten Commonwealth leaders who have been charged with conducting a review of our association's future report to the summit in Brisbane in six months' time they will bring with them a message of hope and renewal. For what the Commonwealth becomes will depend on its success in addressing itself to the new generation; capturing their imagination; firing

their vision; and enlisting their energy and commitment to an association which I believe can be as important to the twenty-first century as it has been to the twentieth. From Her Majesty, the Queen, Head of the Commonwealth.

Elizabeth R., 12 March 2001.'

### **Online Gambling Regulations Bill — Third Reading Approved**

**The President:** Thank you. Hon. members, we then turn to our order paper and dealing with item 1 on the agenda we have the Online Gambling Regulations Bill for third reading and I call on the hon. member Mr Lowey.

**Mr Lowey:** Thank you, Mr President. 'The Online Gambling Regulations Bill provides an important opportunity for the Island to benefit from a growing e-commerce market. The Isle of Man 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.' I opened my first reading speech with those words and they are relevant today, sir.

The Bill, as I have tried to explain at the second reading and clauses stage, will permit gambling on the internet and similar forms of on-line and interactive gaming which will be regulated. Tight regulation is the key to the success both of the companies providing the services and for the Island itself and the punters.

The Bill will provide a secure regulatory regime, involving the Gambling Control Commission, the Financial Supervision Commission, the Data Protection, Customs and Excise and the Isle of Man Constabulary. Licence-holders will only be permitted to offer games that are approved by regulation, the number of licences will be initially restricted to three to avoid over-burdening the new regulatory system while it finds its feet; companies will have to be registered in the Island; their designated officials will have to be resident here; the licence-holders must maintain sufficient financial reserve; and regulation will protect players' privacy, prohibit sales to minors and residents of jurisdictions where internet gambling is currently not permitted; and it will prevent money laundering.

The regulatory costs will be more than met by the £380,000 per annum licence fees and the Bill's emphasis is on regulation to attract only the best in the industry. Mr President, with those few words, I beg leave to move the third reading of the Bill and that it do pass.

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

**The President:** Seconded by Mrs Christian. The Lord Bishop.

**The Lord Bishop:** Could I just ask, Mr President, in view of the recent budget in the United Kingdom, does that have any knock-on effect on this legislation because of the change in the taxation on betting?

**The President:** Mr Crowe?

**Mr Crowe:** Yes, I was going to ask a similar question but I think an observation would be that what Mr Lowey is trying to do is to establish a framework and I think, whether our adjacent neighbour brings in something that affects their own taxation, in the longer term we are looking at a worldwide situation so there may be international players who may prefer to have a well-regulated base, rather than the short-term effect that the UK budget might have.

**The President:** Mr Delaney.

**Mr Delaney:** Just a quick question, that is current. I see in the British budget that they have done away with gaming duty. I take it this on-line gambling is the cause to some extent of that because of the amount of gambling being done over the internet rather than through bookmakers, et cetera. Am I to understand - does the mover know or shall I ask that question elsewhere - is it our intention as well to follow suit? Otherwise the Isle of Man punter will be at a disadvantage to people who play on the internet or play off the Island.

**The President:** Mrs Christian.

**Mrs Christian:** I expect we can obtain clarification from the Treasury minister, but my understanding is that the duty issue is one which is a mutual issue because of the Customs and Excise Agreement, but that in fact I think the view of Treasury is that taxation, being a local matter, is one which gives us flexibility to respond, notwithstanding that the duty issues are the same, but they do not think it will have a significant impact on what we are able to do here.

**The President:** Mr Radcliffe.

**Mr Radcliffe:** Thank you. I would just very briefly concur with the observations of the hon. member on my right. I have got to say that there is various small print which Treasury officials are still looking at anyway. It has always been acknowledged that the bold headlines are not the real substance of the UK budget anyway. So with those comments -

**Mr Delaney:** - which have to come before Tynwald.

**Mr Radcliffe:** Yes, indeed.

**The President:** Could I ask Mr Lowey to reply to the debate?

**Mr Lowey:** Yes, I thank the hon. members for the interest shown. I think really the replies by various members have answered the query, which was the main one raised by my Lord Bishop at the start, which is 'will that have an effect?' In effect, the duty is where the Isle of Man sees it getting its revenue from: the income tax on the Manx thing and not the duty. But these regulations will be introduced by the Treasury for the approval of Tynwald and, as the hon. member of Treasury has said, these are not actually written yet, but they will be written up in conjunction with, so any variation from jurisdiction to jurisdiction. It is a worldwide betting service; this is why it is online and it does not matter where you are when you are placing the bet. So I think those things will be dealt with in detail in the regulations, which again will come under scrutiny when they are placed before Tynwald. I think, Mr President, that has answered all the queries that have been raised by hon. members.

**The President:** Thank you, hon. member. The motion then, hon. members, before you is that the Online Gambling Regulations Bill be now read for a third time. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

### **Halifax International Bill — First Reading Approved**

**The President:** We turn then, hon. members, to the second item on our order paper, the Halifax International Bill for first reading. Mr Radcliffe.

**Mr Radcliffe:** Thank you, Mr President. The purpose of this Bill is to allow for the reorganisation of the Isle of Man operation of two subsidiaries of Halifax plc. They are Halifax

International (Isle of Man) Limited, a Manx company and Halifax International Limited, a Jersey company, operating from a branch in the Isle of Man.

The Halifax group has a long-established presence on the Island through a branch of the UK parent and the Isle of Man subsidiary's high street banking operations, as well as those through the Clerical Medical Group of companies - in total there are some 280 people employed by Halifax Group plc on this Island. Total deposits and funds under management and administration within the Isle of Man operations are in excess of £5.2 billion.

This Bill, of course, is a private Bill promoted by Halifax and it allows, as I said, for the reorganisation of the two companies which are subsidiaries of Halifax.

If I could just briefly dwell on the clauses, clause 1 provides the short title and clause 2 the interpretation. Clause 3 allows the Council of Ministers to appoint a day for the transfer to and vesting in the company of the undertaking of the transferor company. Clause 4 provides for the undertaking of the transferor company to transfer to, and vest in, the company on the appointed day. Clause 5 contains provision as to a trust property. Clause 6 contains provisions supplemental to clause 4. Clause 7 contains provisions concerning contracts of employment and certain office-holders. Clause 9 relates to retirement benefit schemes to which the transferor company is a party, and clause 9 makes provision regarding evidence of the transfer to, and vesting in, of the company of the undertaking of the transferor company. Clause 10 provides for the cancellation of the registration at the Isle of Man Financial Supervision Commission's companies registry of the transferor company at the request of the company. Clause 11 makes provisions for books and other documents to be admissible on evidence. Clause 12 relates to the application of the Bankers' Books Evidence Act 1935 to the books of the transferor company. Clause 13 prevents certain unintended consequences occurring as a result of the transfer to and the vesting in the company of any property or of a liability of the transferor company. Clause 14 saves the operation of other enactments relating to the regulation of banking business et cetera, and clause 15, not unimportant, provides for the costs of the Act to be paid for by the company. Therefore this Bill should not and certainly is not expected to have any direct effect on the income and expenditure of the Government of the Isle of Man.

With those few remarks, Mr President, I beg to move that the Halifax International Bill be read for a first time.

**Mr Crowe:** I beg to second, Mr President, and reserve my remarks.

**The President:** Mr Lowey.

**Mr Lowey:** Mr President, while I have no difficulty with the contents of the Bill, I do have to express serious concern as to how this Bill has been able to be fast-tracked. If you look at the back of the Bill you will see that it was not introduced into the House of Keys until the 23rd January this year, so in a matter of six weeks it has managed to get itself into the Legislative Council, way ahead of social legislation that has been awaited for years. Now, it is the Government's intention to be fair, I would have thought, and I cannot see any reason whatsoever why this Bill should have been fast-tracked. So I think it is quite wrong if Government time and energies - and especially time - has been devoted to a private company being allowed to seem to have leap frogged the ordinary government business of the day of the Isle of Man.

As far as I am concerned, the Bill itself - we will deal with it when we get to the clauses stage - is innocent enough and it is accepting a principle that the company is in the business of transferring and relocating and getting itself into a competitive order to compete in the world business, and that might very well be satisfactory from the company's point of view, but equally concerning to me is that the people who we represent should also have their affairs given a priority, and I can think of two or three Bills, not least of all, the Minimum Wage Bill, that should be getting a fast track which have not even arrived here yet. It started ahead of this Bill. I think of the Education Bill and I can quote others.

So, Mr President, I want to place on record my disquiet at the Council of Ministers and the way in which this Bill has apparently fast-tracked the system. If they can do it for a private company, then they can do it for social issues and I want that point to be made.

**Mrs Christian:** Mr President -

**The President:** If I may, Mrs Christian, firstly, make the point that as far as Council and fast-tracking is concerned, it has not really taken place here, though I acknowledge that I moved it to the first of our first readings in here, but it did come from another place exactly as it is, and certainly in this instance I am not anticipating that it will make any difference to the Legislative Council agenda at all; the fact that it took a matter of four weeks to go through another place has little effect here. Mrs Christian.

**Mrs Christian:** Mr President, this is not a Government Bill and I take issue with the hon. member who has implied that it is something to do with Government in terms of its order in the proceedings of another place. It is a private member's Bill; the government have no control over where private members' Bills appear on the agenda and I think that the comments which he has made are perfectly justified in terms of how he sees this Bill in relation to other measures which should be coming forward. But I think that he is wrong to imply that is anything to do with Government. Government do not control where private members' Bills occur on the agenda in either place, which is in the hands of the chair and the Speaker.

**The President:** Mr Delaney.

**Mr Delaney:** Yes, all things being equal, the situation is that the private member's Bill is introduced by a member of Treasury. I understand the business reasons, which I am sure everyone here is familiar with. The fact of it is, it does not take away from Mr Lowey, our colleague's point that somehow it seems to have arrived here in haste. We know the Bill is paid for privately because it is a private member's Bill, so there is no commitment on the taxpayer, but I think the point that the member is making - I would like to share that point, and I would hope that in your position, Mr President, as the chair of this assembly, you could discuss this with the chair of the other place to ensure that private Bills do not become the order of the day in seeking to become statute before other legislation. That is all that is being asked, as I understand it, and I would share that view. Nothing against the company - in fact, I should declare an interest because I think they gave me a mortgage at one time, but the point of it is, Mr President, that - you listened to the point the member made - it is nothing to do with anything other than the way it seems to be rushed to get something done for business which we would not do for other social legislation.

**The President:** I need to say, hon. members, I think Mrs Christian's comments are valid also, and I take the point which Mr Lowey is making, that it actually came forward to your office, to this particular Council, for our deliberations in a straightforward way. The fact that it has been handled in a different manner in another place is, frankly, to do with the office there and I will take Mr Delaney's point and I will pass the comment back to the Speaker, but I will pass that back as a comment. Mr Attorney.

**The Attorney-General:** Thank you very much, Mr President. I just have one or two comments, if I may, in relation to clause 5 and clause 6. In relation to clause 5, sub-clause (3), reference is made to the fact that if the Isle of Man company, Halifax International (Isle of Man) Limited had been appointed an executor in a will, as a result of this legislation the Jersey company, Halifax International Limited, becomes the executor and trustee of the will without any further acts being required. I wonder if the hon. member in charge of the Bill could give some reassurance that the testator of the will will be given due notice of this fact and will also have explained to him that there can be quite significant additional costs in taking about probate of a will which is governed by the law of Jersey and in respect of which the executor of the will is a company in Jersey compared with the position in the Isle of Man. I think that is an important point, Mr President, and in the same vein, in relation to clause 6(6), we have again a statement that any account between the Isle of Man company and a customer of the Isle of Man company shall, from the appointed day, become an account between the customer and the Jersey company. Equally, therefore, Mr President, I wonder if the hon. member could give some reassurance that the customer will be given full information of the implications of that, because again of course one can imagine that if you have had an Isle of Man resident individual who has an account with the Isle of Man company, no tax would be deducted at source on the interest in the Isle of Man company, but it could well be, Mr President - although the hon. member can no doubt reassure me - that if in fact the account automatically becomes an account of the Jersey company, there would be Jersey income tax deducted at source from the interest on the account.

Now, it may be that I have it wrong, but that is my reading of clause 5 (3) and clause 6 (6). I am not suggesting that there is anything untoward in that, but people, I think, should be given the fullest information, so that they can make a reasoned and informed decision about whether they wish to maintain their account with the Jersey company rather than the Isle of Man company.

**The President:** Mr Waft.

**Mr Waft:** Yes, I just wanted to know what sort of consultation has taken place with investors in this company to make everyone aware of what the situation is with regard to the Halifax maintaining a presence on the Island and being able to continue business as normal. Has there been any reassurance given and has there been any consultation?

**The President:** Mr Lowey.

**Mr Lowey:** Yes, I do not expect a reply from the hon. mover today, but on clause 7, the contract of employment section, I presume, the way I have read that, that it is a safeguard for the existing employees and it is not a catch-all to make sure that when they move away that they have still got a right to protection under the contract of employment and legislation which is applicable in the Isle of Man, which I believe is not applicable in Jersey.

**The President:** I ask Mr Radcliffe to reply.

**Mr Radcliffe:** Thank you, Mr President. I am obliged first of all to the hon. member Mr Crowe for seconding the resolution before us. The Bill has brought forth quite a number of comments and I am pleased to hear that the hon. member Mr Lowey and other members have no real difficulty in supporting the Bill anyway. The question of fast track which has been raised in regard to this Bill - the answer to that lies in a completely different arena than this particular one here, Mr President. The Bill, as you have rightly said, has come through the system as far as we are concerned. I can understand the hon. member concerns about social legislation which seems to be lagging a little bit at times.

**Mr Delaney:** Hear, hear.

**Mr Radcliffe:** The hon. member on my right, Mrs Christian, of course, has reinforced the comments that you yourself and which I have just made about what happened to the Bill in another place.

The learned Attorney-General has raised some interesting points and seeks reassurances. I would be obliged to the learned Attorney if he could say to himself, 'I can wait two weeks because I will cause further enquiries to be made. I have the notes for the clauses in front of me here, but I would be seeking further information as to what actually is involved there in the light of the queries you have raised.

The hon. member Mr Waft has raised the question of reassurances and consultation with customers, and I think that has been done to the best of my knowledge anyway. This amalgamation will be for the benefit of customers in general anyway, and I do not think any customers of the Halifax will be any worse off through the effects of this Bill becoming law. But again, I would reiterate that at the next reading stage, Mr President, I will be in a better position to give the assurances that members are seeking here today. Can I move, sir, that the Halifax International Bill be now read a first time.

**The President:** The motion, hon. members, is that printed at 2 on your order paper, that the Halifax International Bill be read for the first time. Those in favour please say aye; and against, no. The ayes have it. The ayes have it.

### **Trustee Bill — First Reading Approved**

**The President:** We will turn then to item 3 and deal with the Trustee Bill, again for the first reading, and I call on the Attorney-General.

**The Attorney-General:** Thank you, Mr President. As I indicated when introducing the first reading of the Contracts (Rights of Third Parties) Bill, it is most important that the Island should keep abreast of developments in the context of legislation which has particular relevance to the finance sector on the Island and for those various professions which service that sector. Just as it is important that our legislation should promote and assist modern commercial contracts, so it is equally important that this approach be applied in the context of trusts the creation and management of which is of great significance for the Island.

As was pointed out by Mr Andrew Edwards in his Review of the Financial Regulation of the Crown Dependencies, and I quote Mr President, 'Trusts are an important element in the islands' international finance centres. A significant proportion of the total business involved the use of trusts in one form or another. The trust and company vehicles taken together

enable them to offer a range of facilities not generally available outside the Anglo-Saxon jurisdictions. In the islands, as elsewhere, trusts are used for a remarkable variety of purposes. The main categories are family, charitable and commercial. Within the family category trusts are widely used, among other things as sophisticated forms of will. They offer testators a wide range of possible benefits. Within charitable trusts the trustees may ask the courts to authorise them to use the assets for closely similar purposes where the original purposes are no longer germane. Some commercial trusts include a residual charitable element after other obligations have been met. Commercial trusts have been a notable growth area in the islands as elsewhere. The major applications include pension fund trusts, employee share ownership trusts, unit trusts, et cetera. In each of these cases the trust instrument offers the parties concerned a convenient solution to problems which would otherwise be highly intractable. Substantial company structures owned by a trust are quite common in the islands. Other possible advantages the islands may have compared with the main onshore centres are, inter alia, the reassurance of having a visible and generally attractive trust statute to supplement case law.'

One of the essential features of a trust is that the legal title to the trust assets is vested in the trustees, who, more often than not are professional individuals or trust companies. The trustees must keep the trust assets separately from their own and they must deal them in accordance with the directions set out in the trust deed, or, if the trust deed is silent, then in accordance with the general law which, in this area, is referred to as the law of equity. Of particular importance to the beneficiaries will be the care that trustees take in managing and investing the trust assets and the accountability of the trustees if they act negligently in their management of the trust assets, thereby causing loss to the beneficiaries.

The visible and generally attractive trust statute which was referred to by Mr Edwards and which has served the Isle of Man so well is the Trustee Act 1961, which is largely based on the Trustee Act 1925 of the United Kingdom. There have, however, since 1961 been significant developments in relation to trust law, particularly in the area of the law governing the powers and duties of trustees. It is therefore timely, Mr President, that this Bill comes before Council for consideration.

The Bill is closely based on the Trustee Act 2000 of the United Kingdom Parliament, which in turn implemented with minor modification the changes in relation to the law of England and Wales as recommended in the Royal Commission report, 'Trustees' Powers and Duties'. The principal change is to create a new and wider statutory power of investment to replace the present limited power under the Trustee Investments Act 1961 of Parliament, which applies to trustees in the Isle of Man by virtue of section 1 of the Trustee Act 1961 of Tynwald. The Bill is designed to facilitate the better administration of trusts and to enable trustees to take full advantage of the wider investment opportunities open to them whilst protecting the interest of the beneficiaries against abuse of the new powers by imposing a duty of care upon the trustees when exercising the general power of investment and other powers in relation to the trust.

The Bill is divided into six parts. Part 1, which embraces clauses 1 and 2, introduces a new safeguard for beneficiaries in the form of a statutory duty of care. Schedule 1 which is introduced by clause 2, sets out the circumstances in which the duty of care applies to a

trustee. It is important to note that paragraph 7 of the first schedule provides that the duty of care does not apply if it is apparent from the trust deed that it is not intended to apply.

Part 2, which embraces clauses 3 to 7, deals with the new general power of investment, which gives the trustees the same powers of investment as an absolute owner other than in relation to land, subject to appropriate safeguards which require a trustee to have regard to standard investment criteria and to take advice. Again it should be noted that clause 6 provides that the general power of investment is subject to any restriction or exclusion imposed by the trust deed.

Part 3, contained within clauses 8 to 10, introduces a new power which will enable trustees to acquire a freehold and leasehold land in the Isle of Man or the United Kingdom for investment purposes, for the use of beneficiaries or for any other reason. Again, clause 9 provides that this power is subject to any restriction or exclusion imposed by the trust deed.

Part 4, containing clauses 11 to 27, contains a wide range of measures relating to agents, nominees and custodians so that trustees may delegate certain functions subject to complying with the duty of care in those circumstances listed in paragraph 3 of schedule 1.

Part 5 is concerned with the remuneration of trustees, and part 6 deals with certain miscellaneous and supplementary matters such as the power to insure trust property, the powers of personal representatives when administering estates of deceased persons, the limited application of the Bill to pensions schemes trusts and unit trusts and the extension of the so-called perpetuity period.

The Bill will ensure that Manx trustees, and in particular professional and institutional trustees, have powers equivalent to those available to their counterparts in England and Wales. One of the strengths of the Island over the years is that it has had the benefit of a well-established set of trust legislation based on equivalent legislation in England and Wales. It is important that professionals in other jurisdictions can continue to recommend that their clients establish and use trusts in the Island knowing that Manx law incorporates statutory developments which reflect best practice and procedure in this area, which is of great importance to the Island. Mr President, I move that the Trustee Bill 2001 be read a first time.

**The President:** Mr Lowey.

**Mr Lowey:** I beg to second, sir, and the only point that I would like to underline is that I do think the Island has got a good reputation in this sort of financial business and in trusts and it is right, as the Attorney said, that really we should allow the professional people who operate many of these institutional trusts the most modern weapons that are available to their counterparts in competitive jurisdictions. I think it is legitimate, I think it is right and proper that we should be up to date, and it is reassuring to see that this sort of legislation has been introduced so quickly after the Law Commission's report, which was accepted by another jurisdiction, so I have no hesitation in supporting the Trustee Bill.

**The President:** Mr Waft.

**Mr Waft:** Thank you, Mr President. As the Attorney-General does have responsibility for overseeing charitable trusts and hospital trusts and a variety of trusts in his normal everyday professional capacity, there must be a number of trustees of different varieties and cases on the Island who are probably unaware of this legislation that is going through. Is it possible for

the Attorney-General to try and identify those people who will be affected by this Bill and try to identify where this Bill changes their responsibility and their capacity as trustees in the future. Thank you.

**The President:** Mr Crowe.

**Mr Crowe:** Thank you, Mr President. Again, I am supportive of this Bill. It is interesting I think at present the trustee investment if the trust deed is silent on it you have to invest in certain fixed interest securities and some equities, and I think the point that has been made by the hon. mover is that there is a trade-off, almost, between the relaxing of the investment rules, but putting a greater responsibility of duty of care onto the trustees, so I think trustees would not likely take on a very onerous responsibility because of that extra responsibility, so it does place the onus fairly and squarely with the trustees.

The only other comment I would make at this stage is about the perpetuities and accumulations which moves from 80 years to 150 years, and I think the learned Attorney will maybe explain this. It used to be restricted that it could not go through too many generations because of restricting beneficiaries' rights, so that is an interesting point and there must be some clear logic as to the reason for that. The other point is the investment of land is limited to the Isle of Man and the UK, and presumably if the trust deed allowed foreign investment in land that would override this restriction in the Act.

**The President:** Dr Mann.

**Dr Mann:** Yes, Mr President, I certainly support the updating of the law of trusts. I have gone through the clauses; one of the objections to our previous trust law was the amount of disclosure that was to be allowed, and is this altering the disclosure of beneficiaries? I am sure that when our general trust law was looked at from the view of the United Kingdom it was disclosure that was mainly worrying, not necessarily bringing the trust law up to date, but we are bringing the trust law up to date; are we actually altering the disclosure?

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, I would certainly support the Bill in bringing trust law up to date. My query, really, is particularly in relation to the standard investment criteria which we will come to when we get to the clauses stage. It looks like a useful measure, but then the definition seems to be fairly widely couched and subject to potential argument as to what was suitable investments. I just comment on that one area so that maybe the Attorney may have time to ponder on it before we come to the clauses stage. I wonder who might challenge the trustees about the suitability of the investments that they may make when this variation in the controls becomes effective.

**The President:** I call on the Attorney-General to reply.

**The Attorney-General:** Thank you, Mr President. Firstly I am most grateful to the hon. member Mr Lowey for supporting this first reading, and I am grateful to him for his observations that it is indeed necessary that we keep up to date with legislative change.

The hon. member, Mr Waft, has raised an interesting point again about consultation. There is no doubt that to be a trustee nowadays - in fact forever it has been an onerous task. Of course many people are happy to take on the duty of trustees of charitable trusts, and I suppose that it is rare indeed that a challenge would be made to a trustee of a charitable trust

provided that he has acted in good faith, but unfortunately, as time has gone on, even beneficiaries of charitable trusts can become quite aggressive. They can complain if the charitable trustees have sat back and allowed, shall we say, the capital value of the trust to diminish because the trustees have always applied income for a certain well-deserving beneficiary. I am afraid that this is a sign of the times and I certainly take on board the hon. member's comments that all trustees of charitable trusts as well as trustees of commercial trusts and trustees of family trusts should all be made aware of the changes which are being brought about by this important Bill, and I am grateful to the hon. member for those comments.

The hon. member, Mr Crowe, raises an interesting comment as to the trade-off between, on the one hand, giving the trustees wider powers of investment, but also imposing a duty of care. I think that there is another aspect of that: that the third feature, I think, is that it is most important that trustees should take proper advice. Clause 5 of the Bill states that before exercising any power of investment a trustee must, unless the exception in subsection (3) applies, obtain and consider proper advice about the way in which, having regard to the standard investment criteria, the power should be exercised, so there is the duty of care, there is the power of investment but there is also, coupled with that, the duty to take advice, and I am sure that as in so many areas good investment advisers will come to the fore here. They will gain a reputation and no doubt trustees will take their advice readily. If trustees do not take advice they run the risk of being held accountable by the beneficiaries.

The perpetuity period is a most difficult area under the Perpetuities and Accumulations Act of 1964, which mirrors the English Act. I think one of the main reasons for extending the perpetuity period - if I can just pause there, as the hon. member says, it is deemed to be against public policy for interests to vest too far in the future. Somebody must be able to be the absolute vested owner of property at some time, and the 80-year period was in 1961, I think, or 1964 in England, possibly 1968 here; in those days 80 years was deemed to be the appropriate perpetuity period. We are now increasing it to 150. Very often in private trusts which are established in their hundreds on the Isle of Man and elsewhere, there is a perpetuity period of 80 years and you can often find that beneficiaries under these trusts go on from generation to generation and, before you know it, the 80-year period has expired and it is then incumbent on the trustees to distribute the capital of the trust fund at the end of the 80-year period, and that might of course be catastrophic for the trust; it might be catastrophic for the beneficiaries in terms of tax and all sorts of other things. So I think really this is a long stop which is becoming even longer, 150 years, and of course the trustees can always choose a period which is less than 150 if they wish, but 150 will be the ultimate long-stop period, and I think that on balance that is entirely sensible. Insofar as investment in land is concerned, as the hon. member has pointed out, it is restricted to land in the Isle of Man or the United Kingdom by statute, but if the settlor, the person who establishes the trust, would like the trustees to invest in land in North Carolina or Queensland, Australia, whatever, (*Mr Delaney interjecting*) the settlor can stipulate that and can give additional specific powers to the trustees.

The hon. member, Dr Mann, has raised again an interesting point about disclosure of beneficiaries and, as he rightly says, from a practical point of view and from a tax planning point of view that is often the most pressing problem so far as the trustees are concerned. This Bill has no impact on that area whatsoever and I am afraid that trustees and their

advisers will still have to be careful about disclosure of beneficiaries, but this Bill has no relevance to that thorny problem.

Finally, Mr President, I am most grateful to the hon. member, Mrs Christian for alerting me regarding the standard investment criteria. I will certainly try to prepare for that, but I think that again, in so far as challenge is concerned and who can challenge, if the beneficiaries feel that the trustees have not had regard to the standard investment criteria they can bring in action against the trustees in court, and if they can prove a breach of the duty of care and can prove that they have suffered loss, then they will be able to recoup that loss from the trustees.

**The President:** Right, hon. members, the motion before us then is printed at 3 on the order paper, that the Trustee Bill 2001 be read for a first time. Will those in favour please say aye; and against, no. The ayes have it. The ayes have it.

### **Genetically Modified Organisms Bill — First Reading Approved**

**The President:** We turn then to the Genetically Modified Organisms Bill, again down for first reading, and I call on Mr Crowe.

**Mr Crowe:** Mr President, the subject of genetically modified organisms, or GMOs, is an emotive subject and it is timely that we introduce legislation covering the subject and related issues.

The provisions of the Bill are to prevent the import, release, propagation or supply in the Isle of Man of genetically modified organisms. Because of concerns raised within the farming industry about two years ago, the Council of Ministers established a working party consisting of members of DAFF, DoLGE and the Manx National Farmers Union. It also involved lengthy exchanges with the Ministry of Agriculture, Fisheries and Food in the UK in order that the Isle of Man legislation takes account of UK and EU legislation because of our commitments under protocol 3.

If I could just give some background to GM crops, the UK does operate certain controls already over GMOs whereas there is no equivalent legislation in the Isle of Man. In the UK there is control of GMOs under section 11 of the Environmental Protection Act of 1996, regulations made under the European Communities Act 1972 and the Health and Safety at Work Act of 1974. In particular, the Genetically Modified Organisms (Contained Use) Regulations 1992, which were made under the 1972 Act and the 1974 Act, deal with the use, genetic modification, storage and so on of organisms. The regulations also implement European Community legislation on the subject. The provisions deal with organisms in general and do not completely prohibit them as in the proposed legislation that we have.

The EU common catalogue of varieties of agricultural plant species lists all the varieties which are approved by member states and have been shown to be true to type and not present any risk whatsoever to the environment or to human health. At the moment there are no genetically modified plants on the EU common catalogue and there are unlikely to be any for some time.

The Manx National Farmers Union in 1999 recommended an indefinite moratorium on growing GM plants until such time as a full assessment of the situation had been made. The union has accepted that should any food crop variety, after rigorous assessment by the EU, be shown not to present any risk whatsoever to the environment or human health, then it

would become part of the EU common catalogue, and the Isle of Man's obligations under protocol 3 mean that they could not then be banned here. However, a plant so assessed would meet the new Isle of Man standards in any case, having been fully evaluated scientifically and been shown to be safe for public health and the environment.

This legislation will prohibit the planting and growing of any GM plants in the Isle of Man which have not been fully evaluated scientifically. This is in order to establish that planting and growing is only carried out when it is safe to do so in terms of public health and when release of any GM plants to the environment will not harm our flora and fauna.

EU legislation permits growing of GM material under licence for commercial and scientific evaluation. This Bill is therefore unlike EU and UK legislation in that it will prohibit that activity. Only once GM material has been fully evaluated by the EU and been given approval and accepted on the EU common catalogue could it be grown in the Isle of Man.

Mr President, the Bill also provides for liability and conviction of an offence and also for the department to make regulations subject, of course, to Tynwald approval. The Bill has received broad base support both from within and without the agricultural industry, and I beg to move the first reading.

**Mrs Christian:** I beg to second, Mr President, and wish to support the principles of the Bill. I can well understand the Island wishing to go slowly on this particular issue and to ensure that GMOs are not introduced in the Island for propagation until such time as they have been fully tested. Now one might say that we are rather leaving other people to take the risk, but I think as a small community it is not unreasonable that we do that. I think that people, while they understand ordinary plant breeding and so on, do have a fear related to the introduction of genes from different species into any material. I think it will be some time before people are comfortable with these sorts of procedures and, whilst we may be receiving processed foods in the Isle of Man which already include some genetically modified organisms, I am quite sure that those have already been tested. I think the concern is, in terms of our land use, that we do not start growing anything here that will put the Island's agricultural industry at risk. I support the Bill.

**The President:** Mr Lowey.

**Mr Lowey:** Yes, I can support what the hon. mover of the Bill has said. Could I just have a reassurance? In trying to cover every eventuality we have fish farms on the Island - will this Bill impinge on the fish farms? Now, in rearing fish it entails a degree of selection at some stage of the proceedings and rejecting fish for them to be moved on, and I just wonder whether that legitimate business which is incorporated in the Isle of Man, and has been in the past. . . will this Bill actually affect that and has that been taken into consideration? But on the crops I can understand the general concern and the uncertainty that surrounds it, and I do not think we should be experimenting with the Isle of Man and the reputation of the Isle of Man for quality goods, and they may be quality goods, but are they what we want and have we actually done enough research? The answer to that is no, I do not think we have, and therefore I think it is right for the Isle of Man to exclude them at this time. But I am just worried about the fish and the definition in the first clause, everything but human beings, and will this impact on the fish farms that we have already established in the Isle of Man?

**The President:** Mr Waft.

**Mr Waft:** Thank you, Mr President. I would support the Bill wholeheartedly, but I can see the benefits to Third World countries with genetically modified organisms provided that there is an established 'no risk' and we can have crops free from disease in the future. We now have satellites encircling the globe; we can see the crop evaluation of what the wheat is going to be like in Russia at the end of the year by the way it is growing, and if we can do that sort of scientific survey of what is going on around the world I think we will have to move with the times eventually, but I think this Bill is expressing the caution that is necessary at this stage in the proceedings. Thank you, Mr President.

**The President:** Dr Mann.

**Dr Mann:** Yes, I will support the Bill, but it does concern me as to how one is going to be sure that it will actually do what it says, because as far as I know there is nothing in, for instance, seeds coming in from North America which would identify a crop that has been genetically modified, and the defence is within the Bill that the person sowing the seed did not know, it would be quite correct, because I do not know any particular reason why such seed should be so labelled. They might be labelled in the United Kingdom, they will not be labelled elsewhere, and I do not know quite how we are going to stop a farmer quite innocently acquiring those seeds.

**The President:** Okay, I call on Mr Crowe to reply.

**Mr Crowe:** Thank you, Mr President. Firstly I would like to thank Mrs Christian for seconding this, and again I share her remarks that until GM crops have been adequately tested we should not use the Isle of Man as a test bed, and I think it will be some time before people on this Island will be comfortable with the concept of GM farming.

I would also like to thank Mr Lowey for his general support of the Bill. As to the rearing of fish, it is not something I could answer at this point. I will take it back to the second reading. He is absolutely right as to what it does cover. It covers everything apart from human beings, and if members have read clause 1, in fact I needed a good dictionary to understand some of the expressions and I think I even had to go back in my memory banks to biology at school many years ago as to what we are starting out with, so I think even DNA and gene technology - I mean - I am not quite saying a Frankenstein scenario, but it is that experimenting with nature that we read about, we talk about, and yet when it comes down to a Bill such as this you have to stop and think and say, 'Well, what are we doing?' I am not saying interfering with nature as such, but it is almost like it.

I then go on to Mr Waft's point. Again, he is supportive and does pick up this interesting point that whilst there is a downside to this, it might solve the food crisis in the the Third World, and I read recently of a crop - I am not sure whether it was maize or whatever, but they could accelerate crops of maize from about 20 years' life down to about seven years. They could triple the growth span, so planting into Third World countries could actually solve the food crisis. So you are then into very scientific engineering or gene engineering, and I think, whilst it might be experimentally used elsewhere we do have to be very careful as to what we do here, because if a thing goes wrong it might go wrong big time and I think Dr Mann again has this very good point, 'How do we control it coming in here? Should labelling . . .?' Now this again is something I cannot comment on, but it is a difficulty if a farmer imports from the US; GM crops then, should they be licensed? But I will pick this point up again and talk about

that in the rest of the Bill. So I think, Mr President, I have covered the points, if I could conclude with those remarks.

**The President:** Hon. members, the motion before us is that the Genetically Modified Organisms 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.

### **Children and Young Persons Bill — Second Reading Approved — Clauses Considered**

**The President:** Now we turn to our final item on the order paper, item 5, which is the Children and Young Persons Bill for second reading. Mrs Christian.

**Mrs Christian:** Thank you, Mr President. In talking about the second reading I will go through the various parts of the Bill. It is divided into 10 parts, much of which is re-enactment.

Part 1 is a re-enactment of part I of the Family Law Act 1991 and states that the welfare of the child should be paramount in any court proceedings. It also defines 'parental responsibility' and how it may be acquired. It stresses the responsibility parents have for their children rather than rights over them.

Part 2 of the Bill deals with orders which can be made with respect to children - for example, contact orders or residence orders; these are similar to the old custody and access issues that apply when parents separate.

Part 3 of the Bill contains a definition of 'children in need for guidance'; it insists upon consultation with relevant parties - for example, parents and other significant adults. It advises collaboration between the department and voluntary organisations, and also gives the power to make regulations around these activities.

Part 4 of the Bill deals with parent supervision orders. 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 professional assessment and judgement that harm may occur.

Part 5 of the Bill introduces new orders to protect children; a child assessment order allows professional access to children to assess their needs and evaluate their circumstances; an emergency protection order will allow for a child to be removed from home, and an oust order will allow for the removal of a perpetrator from the family home rather than the child victim - in other words, these orders offer greater protection to the children whilst increasing the accountability that professionals will have to the court because the orders can only last for a short space of time before a return to court is necessary.

Part 6 of the Bill allows for the making of regulations for standards of care in children's homes and for the registration and inspection of such premises.

Part 7 allows for standards and regulations around fostering, including any private arrangements families may make. It also deals with the regulation and inspection of childminders, playgroups and nurseries. People who use these facilities need to be reassured that their children are safe. Generally the Bill makes improvements to the current Nurseries and Childminders Act of 1974.

Part 8 of the Bill deals with the protection of children and young people in court proceedings and in the hands of the police. Much of that is re-enactment, though there are some new provisions which I will detail when we get to the clauses stage.

Part 9 of the Bill deals with fertilisation and surrogacy issues and covers the regulation of licensing of those activities and provides for the legal status of any children born as a result of those activities.

Finally we have the miscellaneous and supplemental matters dealing with transition arrangements under appeals and so on. This is a mixture of old and new, and I will endeavour when we get to clauses to indicate where we are dealing with re-enactment or new provisions, but all in all it sets up a new framework for the better dealing with children and young people. I beg to move the second reading of the Children and Young Persons Bill.

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

**The President:** The motion, hon. members, is that the Children and Young Persons Bill 2000 be read for a second time. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Now, hon. members, if you are content shall we move forward to the clauses stage as a whole committee? Agreed? In that case, hon. members, we will do our best to take it as handily as we can in sections with the co-operation of Mrs Christian, who informs me that she is prepared to start by taking clauses 1 to 5.

**Mrs Christian:** Thank you, Mr President. Yes, part 1 is a re-enactment of the Family Law Act 1991. Clause 1 states the general principles as to the exercise of powers by the courts in cases affecting children and young people, establishing that the child's welfare shall be the paramount consideration, and it embodies a welfare checklist, a checklist that the court must consider in cases concerning children and young people.

Clause 2 defines the term 'parental responsibility', the focus being on the responsibilities of being a parent rather than the rights of being a parent.

Clause 3 states who, in the first instance, has parental responsibility for a child.

Clause 4 deals with the way in which a father who is not married to the mother at the time of the child's birth may acquire parental responsibility.

Clause 5 makes it a general principle in the Bill and in any legislation passed after the Family Law Act 1991 that references to relationships will include both legitimate and illegitimate relationships and introduces the term 'marital' in place of 'legitimate'. I beg to move that clauses 1 to 5 stand part of the Bill.

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

**The President:** Mr Crowe.

**Mr Crowe:** Yes, I am pleased to support the five clauses. It is just an observation that with the changing nature of society where the family as such is not necessarily a married couple, it is couples living together, and I think the great propensity for break-ups of marriage and so on has led to a Bill which has to cover all these different eventualities such as you mentioned in clause 4, where the father can now have parental responsibility subject to an agreement, so I

think by improving the situation to bring in certain agreements to recognise certain factual situations in human behaviour

**The President:** Mrs Christian.

**Mrs Christian:** Thank you, Mr President. Yes, that is so and this legislation has been in place for 10 years now and recognises the changes in society; it may not recognise the differences that geneologists are going to have in future generations but it does recognise what is happening in society in general. But I think it is important to note that we do here refer to marital children and remove the stigma which people felt was accorded by a description such as a 'illegitimate'. I thank the hon. member for his support.

**The President:** Hon. members, the motion then is that clauses 1 to 5 inclusive stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. The section on guardianship, clause 6 to 10.

**Mrs Christian:** Yes, again, Mr President, we are dealing with re-enactment.

Clauses 6, 7 and 8 together state the present statutory powers of the High Court to appoint a guardian for a child who has no-one or no-one available with parental responsibility for him.

Clause 9 provides that any order under this part of the Bill lapses when a child reaches 18 years of age, and clause 10 provides that in order to prevent repeated applications which would be unsettling to a child, the court can order that no further applications for an order are to be made without leave. I beg to move that clauses 6 to 10 stand part of the Bill.

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

**The President:** The motion, hon. members, is that clause 6 to 10 stand part of the Bill. Will those in favour please say aye; against, no. Dealing then with part 2, clauses 11 to 15.

**Mrs Christian:** Part 2 re-enacts part II of the Family Law Act 1991 and contains a standard code relating to the kinds of orders which the court can make relating to children and family proceedings or private law proceedings - that is, the proceedings that do not involve social services. Clauses 11 to 15 deal with the orders the court can make.

Clause 11 lists these orders: a residence order, a contact order, a prohibited steps order and a specific issue order can be made by the court as well as an order varying or revoking any of those particular orders.

Clause 12 lists those who can apply for a residence or a contact order.

Clause 13 gives the court guidance on whether to grant a person leave to make an application having regard to the welfare checklist, which I mentioned earlier, and to other issues which are set out in the clause.

Clause 14 contains restrictions relating to proceedings for an order under clause 11 and clause 15 deals with the durations of the orders under this section. I beg to move that clauses 11 to 15 stand part of the Bill.

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

**The President:** The motion, hon. members, is that clauses 11 to 15 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Perhaps then, Mrs Christian, we can take 16 to 21 and include schedule 1.

**Mrs Christian:** Yes, we are continuing with re-enactment, Mr President, and clause 16 provides for a person with whom the child lives under a residence order to have parental responsibility for that child.

Clause 17 provides for any arrangements made under a residence order to be enforced by fine or committal under the Summary Jurisdiction Act of 1989.

Clause 18 introduces schedule 1, which provides a standard code for maintenance and other financial relief for children in most family proceedings. The paragraphs within the schedule are self-explanatory and so I do not propose to go into them in detail.

Clause 19 provides for the jurisdiction of the courts under this Bill. It limits the powers of the courts of summary jurisdiction, the High Bailiff's and Magistrates' Court, in certain matters and provides for the transfer of cases from those courts to the High Court.

Clause 20 restates the rules relating to wardship proceedings.

Clause 21 aims to provide repeated applications for orders under part 3 of the Bill. These may be, as was indicated earlier, unsettling to a child and will only be allowed with the permission of the court. I beg to move that clauses 16 to 21 and schedule 1 do stand part of the Bill.

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

**The President:** Mr Waft.

**Mr Waft:** Could I ask, Mr President, with regard to the financial provision of the family, in the absence of the father in most cases when there is only one person left to bring up the child, there is no such thing as a child support agency on the Island as such, so parents can absent themselves or leave the Island; what is the possibility of the person left with the child to actually get financial recompense? It is all right saying that a magistrate will impose an order but if they are not immediately available how diligent are they in getting finances for that family?

**Mrs Christian:** Mr President, I cannot comment on how diligent they are. They can go to court for support from the other parent. I would need guidance from the learned Attorney as to how they would pursue that if one parent leaves the Island. I am not sure anyway that the CSA has been all that effective in the United Kingdom and I think the provisions we have here are probably as effective notwithstanding that we do not have CSA arrangements, but certainly in some cases, through the benefit structure, we do pursue people for payment of maintenance, but I would defer to the learned Attorney with regard to how pursuit is made when people leave the Island. I am afraid I am not able to answer that.

**Mr Waft:** If the Attorney-General is to reply, then he might perhaps identify the financial situation that the person finds himself in when they have to go to law to try and get some maintenance and there is a problem; it is not being progressed. Where does that leave the person left with the child?

**The President:** Mr Attorney-General, can you help?

**Attorney-General:** Well, I will try my best, Mr President, I think to deal with the last point first, if I may, it is, of course, open to the applicant to apply for legal aid if he or she needs to have assistance in making a case to the court. Of course, there are criticisms with the legal aid situation, that the financial limits are considered by many to be far too stringent, but, leaving that aside, my recollection is that it is possible to register an order made by a Magistrates' Court or by a High Bailiff's Court, and that can be registered in the equivalent court in the UK and hopefully enforced there by attachment of earnings orders and so on if the person concerned can be traced. But I am afraid I am speaking very much off the cuff there, and perhaps if I could just undertake to look into that and come back to the hon. member at the third reading?

**The President:** Thank you. Hon. members, the motion before us then is that clauses 16 to 21 and schedule 1 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 22, 23 and 24, together with schedules 2 and 3.

**Mrs Christian:** Yes, this part of the Bill, part 3, includes new provisions based on the Children Act in the United Kingdom. The part of the Bill deals with the duties and powers of the department in relation to needy children in the Isle of Man and the services that may be provided to fulfil its obligations towards them.

Clause 22 states that wherever possible the department is required to promote the upbringing of children within their families with the emphasis being placed on the welfare of the child, and court proceedings are to be avoided as far as possible.

Clause 23 places the department under a duty to take action where a child is in danger - that is, where a child is suffering or is likely to suffer significant harm, and it has powers to take action and provide services where children are in need. Powers are given to provide various services to support families of children in need or in danger, either directly by the department or by arrangement with voluntary organisations. Sub-clause (3) specifies the services which the department can provide; they include accommodation, day care, advice and counselling services, home-help and travelling assistance. The services can be provided for other members of the family as well as the child alone if it promotes the child's welfare and keeps him within the family. Definitions are given of children in need and in danger for guidance and other public authorities are encouraged to assist the department providing services under this clause.

Clause 24 sets out specific duties of the department where it is looking after a child. It also introduces schedules 2 and 3, which provide in more detail for the treatment of such children. A child is looked after when he is in care under a care order or where the department is providing accommodation for him over 24 hours for some other reason - for example, where the consent of those having parental responsibility has been given or accommodation requested. The department is also obliged to provide accommodation for children removed from their families under emergency protection orders or police protection, those in care, those orphaned, those under supervision in criminal proceedings with a residence requirement. It is worthy to note the emphasis placed on the child's wishes and feelings being ascertained and given due consideration in addition to the wishes of his family. For children looked after, the department is required to safeguard and promote their welfare, to maintain them, to advise, help and take a personal interest in them to equip them for life when they leave the department's care. Where the exercise of these duties may cause a

danger to the public - for example, where a child is disturbed or violent - then the department may disregard any requirements under this section.

Schedule 2 is introduced by this clause and sub-clause 5 lays down more detailed rules about the treatment of children being looked after by the department. These include contact with families, sharing information with families, paying of travel expenses to facilitate contact where appropriate, the appointment of visitors for children who have no contact with their family, the review of cases for children looked after under the complaints procedure, the emigrational transfer of children in appropriate cases and with appropriate permission. It deals with the death of children in care and the support of persons who were looked after but who are now between the ages of 18 and 21 years. Assistance can be given by way of services or cash in exceptional cases. I beg to move that clauses 22 to 24 and schedules 2 and 3 stand part of the Bill.

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

**The President:** The Lord Bishop.

**Lord Bishop:** Mr President, may I just ask the mover: thinking what an undertaking that is when you think of what you have been saying, the nuts and bolts of that, in clause 22 it says that the department are seeking 'to promote the upbringing of children by their families.' Where does that start? Does that start pre-marriage by counselling or giving parenting lessons or instruction to people on what are the duties of families? I just wondered if you could expand a bit on what you feel the department could do to meet that comment, which I think is quite an undertaking.

**The President:** Mr Waft.

**Mr Waft:** I just think, Mr President, that the connotations within the clauses. . . We have come across this 'so far as is practicable' again. Clause 22 says 'In exercising its functions under this Act, the department shall seek' and then it negates that by saying 'so far as is practicable', I would have thought that they could quite adequately say 'The department shall seek to promote the upbringing of children by their families' just a bold statement saying that; there are no obligations there, but they put in that 'so far as is practicable' and I am concerned that it does affect the clause to a degree. Also in clause 23 (2), 'The department may provide or arrange with voluntary organisations or the person for the provision of all or any services specified in subsection 3 for the purpose of . . .' and then it lists them, which is all very fine but the fact that they have 'may' there - they also may not. It would be more impressive when trying to depend on Bills of this nature to actually get the department to do something to help families. I would not like the department to rely on the fact that it only has 'may' in there or 'as far as is practicable'. These Bills are specifically here to help and promote the children and young person so I would hope, with the interpretation of these clauses, the department will look to applying the spirit of the Bill rather than rely on phrases like 'so far as is practicable' and 'may' rather than 'shall'.

**The President:** You are raising a point, Mr Waft, but I take it you are not moving an amendment?

**Mr Waft:** No.

**Mrs Christian:** Yes, thank you, Mr President, if I could deal perhaps with the comment of the Lord Bishop first, in terms of how far this extends to preconception, you were talking about, I think we are dealing here with actual children who have been referred to the department or who have been put in the care of the department, and certainly the emphasis in the Bill here is that we shall seek to provide support in the family situation, in the family home, rather than taking children away from their families for the department to look after them.

**Lord Bishop:** Right.

**Mrs Christian:** The emphasis here is that we shall try and provide the services which will keep the family unit together, as far as it is sensible and practical to do. Outwith the requirements of this Bill the department is certainly looking to try and provide support to parents in situations where their children have not become a problem and are not referred to the department but where we feel that may be there is a need for support in the family situation to give parenting skills in order that further down the line problems do not arise, but that, I think, is to a degree covered by seeing need before it develops to problem stages.

In so far as the hon. member Mr Waft is expressing concern about what he regards as the restrictive wording of these clauses, I think we have to recognise reality here. We can do as much as we can with the resource at our disposal and obviously would seek to maximise what we do in that way. In terms of the wording of clause 22, for example, where it says 'The department shall seek so far as is practicable to promote the upbringing of children by their families', I think that it is a moot point I suppose as to whether you need that wording in, because 'seek' would perhaps cover the point that we will do what we can but we cannot do what we cannot. There are situations where it is not practicable, not for resource reasons but because of the family situation, to seek the upbringing of children in some families. You would not wish to in certain circumstances, which is where the judgement of the professionals comes into the picture. If it is not practicable or sensible to leave children with their families for a variety of reasons, then we do not want to have an imposition to make that happen.

In terms of working with voluntary organisations as is set out in clause 23 (2), I think it is appropriate here that the word 'may' is inserted in the clause for it may be that in the department's judgement there may be voluntary organisations that would not be organisations with which we would seek to work. If it said 'shall arrange with voluntary organisations' and we had some sort of compulsion there to work with voluntary bodies that had been set up which in our view were not appropriate, then (**Mr Delaney:** Hear, hear.) I think that we would want a way -

**Mr Delaney:** To avoid it.

**Mrs Christian:** - out of that. The hon. member knows well that we work with, in social services in particular, a considerable number of voluntary organisations; I think that this is useful, sensible wording which allows us to arrange with voluntary organisations for the provision of services where we are content with the provision that those voluntary organisations can make, and so, whilst I understand his querying it, I think it is nevertheless an appropriate wording for that particular clause.

**The President:** Hon. members, the motion before us is that clauses 22, 23 and 24 and schedules 2 and 3 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. We turn then to clauses 25, 26 and 27. Mrs Christian.

**Mrs Christian:** In clause 25 provision is made for anyone with parental responsibility to object to the department providing accommodation, providing they are willing and able to arrange accommodation themselves. Additionally, anyone with parental responsibility for a child placed in accommodation by the department can take him away at any time unless the child is 16 or 17 years old and agrees to live in the accommodation provided.

Clause 26 states that the department may provide accommodation for a child by placing it with family, relations, foster-parents, in a children's home, but if possible he is to be kept with his family and, wherever possible, where children are accommodated they should be placed in their home area and with their brothers and sisters.

Clause 27 re-enacts a provision introduced in 1993 but not yet actually in force, so to that extent it is new, limiting the circumstances under which and the period for which a child being looked after by the department can be placed in secure accommodation. Obviously, as members are aware, we have not got secure accommodation at the moment but I am seeking to build that, and secure accommodation is the use of accommodation for restricting liberty. The criteria are clearly set out, and in practice the department will rarely use this accommodation without a court order because of the objections that may be raised on the child's behalf or by those who have parental responsibility for the child. The section clearly sets out the way the court should proceed in making such an order. I beg to move that clauses 25 to 27 do stand part of the Bill.

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

**Mr Waft:** On clause 27 and the right - it says, 'The court shall not make an order under subsection (2) unless it is satisfied', et cetera and on (b) it says 'where the child is not legally represented in that court, he has been informed of his right to apply for legal aid and given an opportunity to do so, and has refused or failed to apply.' That puts the obligation on the child to actually refuse legal aid or does not apply himself or herself. It does not take into account - it may be somewhere in here and I cannot see it - if the child has the mental ability to be able to apply for legal aid on his own behalf, does it take into consideration a child which is suffering from learning disabilities which are usually subject to this sort of situation, where they end up in a secure accommodation because of their limited means? What happens to the child who has not applied for legal aid, although been given the opportunity to so, because of the learning difficulties involved with that child, who is maybe borderline and would need a lot more support than the average? If the department is not taking responsibility because of A, B, C, D and the child has not applied for legal aid, is there somebody there, a representative of the court, on that child's behalf to be able to make a case for him?

**Mrs Christian:** Yes, I think the situation is that the child would have to be given advice as to their ability to call for legal aid, and then I presume that the person who supports them in the advice, and certainly children with learning disabilities, would have someone to act for them. Then, on the basis of the person who represents them, I suppose they would or not accept legal aid. Perhaps the learned Attorney-General can confirm?

**The Attorney-General:** Mr President, hopefully with a view to being of assistance, the section or the clause, sub-clause (2), provides that the child may not be kept in secure accommodation after the end of such period as may be prescribed unless a juvenile court has, by an order made on the application of the department, authorised him to be kept there and so on, and this whole clause contemplates that a juvenile court would be the appropriate court. The juvenile court members have to be particularly trained and are aware of the necessity to look out for problems of the kind which have been identified by the hon. member, and I can certainly assure the hon. member that my chambers equally are alerted from time to time if there is a problem such as this, and it is then my responsibility to ensure that a guardian *ad litem* is appointed and that an advocate with experience in these matters can look after the best interests of the child. So I do understand that there could be the problem where the child does not, as it were, exhibit all the features of someone who is unable to look after himself, but one can only hope that the training of the court members will trigger off the appropriate safety mechanism.

**The President:** Hon. members, the motion then is that clause 25, clause 26 and clause 27 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses 28, 29 and 30, please.

**Mrs Christian:** Clause 28 gives the department a general power to make regulations with respect to its functions under this Bill and those of voluntary organisations, foster-parents and others who operate under the arrangements made by the department, and such regulations will require Tynwald approval.

Clause 29 enables a court to require the department to investigate the case of a child concerned in family proceedings, particularly if the court thinks a care order or supervision order should be made. The department must report back within eight weeks or a shorter period as the court may direct.

Clause 30 deals with the situation when considering any question with respect to a child; the court may ask the department to make a report orally or in writing available to the court. The officer may be required to give evidence to the court. I beg to move clauses 28 to 30 do stand part of the Bill.

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

**The President:** Hon. members, this is clauses 28 to 30 to stand part of the Bill. Those in favour please say aye; against, no. The ayes have. The ayes have it. We turn then to part 4, clauses 31 and 32.

**Mrs Christian:** Part 4, Mr President, sets out a new code of dealing with children who are in danger or suffering, or are likely to suffer, significant harm as defined in the Bill. Much of it is based on part 4 of the English Childrens Act.

In clause 31 the court is given power to make a care or a supervision order when an application has been made by the department. Subsection (2) sets out what are commonly known as the threshold criteria which must be met before the court can go on to consider whether or not to make a care or supervision order. The court must be satisfied firstly that the child or children who are the subject of the application for care or supervision order are suffering, or are likely to suffer, significant harm. The relevant time for this purpose is the date

of the care order application or, if temporary protective measures have been continuously in place prior to the application for a care order, then the date when these were initiated. It is for the department, i.e. the applicant, to prove that the child is suffering or is likely to suffer significant harm on the balance of probabilities. 'Harm' is defined as meaning ill-treatment or the impairment of health or development, and we have dealt with this in clause 23. A care order, when made, lasts until the child attains the age of 18 years. This section precludes application being made for 17-year-olds and 16-year-olds who are married. An application can be made as a free-standing application in a juvenile court or in the course of other family proceedings - for example, in private law where there is dispute between the parents, when the department may be ordered to investigate and concludes that care proceedings are required. Where the court is dealing with an application for a care order, it can of its own volition make a supervision order and vice versa, whether or not this is requested by any of the parties to the proceedings.

Clause 32 provides that when a care order is in force, parental responsibility is shared between the department and any parent with parental responsibility. The department can override the exercise of parental responsibility by a parent but should not unless satisfied that it is necessary in the interests of the child's welfare. Where a parent has the care of the child - for example, where he has been placed by the department the care order is in place - the parent has the right to do whatever is reasonable to promote his welfare without getting the department's permission. In the exercise of its parental responsibility, the department is not permitted to allow the child to be brought up in any religious persuasion other than that of its parents. Additionally, the department cannot consent or refuse to agree to the making of an adoption order or to appoint a guardian for a child. I beg to move that clauses 31 and 32 stand part of the Bill.

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

**The President:** Mr Crowe.

**Mr Crowe:** Yes, Mr President, I think it is very important that children under threat of ill-treatment should be protected and I think this is a very important section. It is how this information would be brought to the notice or knowledge of the department; I could ask the hon. movers, would it happen through a child being ill or going to a doctor or a hospital, or would it be neighbours telling the department? How in fact would this trigger off a situation?

**The President:** Mr Waft.

**Mr Waft:** Mr President, I think it is a very fine line that social workers do walk when they are talking about care of children and placing orders on them and putting them under supervision, and I think they should be given every support. If there is any airing to be done, it should be on behalf of the child and not have any concerns as to support for the social workers when they do enter into this situation. We have seen so many cases in the past of problems that have arisen, often in the UK but elsewhere as well, where children have been missed for one reason or another. I am conscious of the legal problems that will arise because of a mistake that could be made during this very traumatic time for the family, the social workers and indeed the department when exercising duties of this nature, but at the same time it is the children who are the consequential final product, and it is the care of those

and erring on the side of the children, who must be taken into consideration every time. Thank you, Mr President.

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

**Mrs Christian:** Thank you. Yes, I would concur with hon. members: there is a fine line here. It is a very tricky one for social workers to tread on occasion but I think the whole flavour of the Bill is that we must put the needs of the child first.

In respect of who would refer children to the department to try and investigate whether or not a child is likely to suffer significant harm, there are many routes by which that can happen. Anyone can refer their concerns to the department about child; certainly we have multidisciplinary teams and there are working groups between the police, education, voluntary organisations and so on who could certainly bring to the department's attention any child who they felt might be in danger of suffering harm, or of simply suffering neglect. The department has referrals from a variety of sources which are followed up and then they would make an assessment of whether or not significant harm was a major issue. These clauses deal with the definition of 'harm' and I guess that might come down to legal argument in many cases if parents resent the fact that children are being removed from their care, but the emphasis, as has already been said, must be on the welfare of the child.

**The President:** Hon. members, the motion before you is that clause 31 and clause 32 to stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 33 and 34 and schedule 4.

**Mrs Christian:** Mr President, these are new provisions. Clause 33 requires the department generally to allow a child in care to have contact with his parents and others with whom he may have been living and gives the court power to order contact or to regulate or refuse contact. The department can, in an emergency, refuse contact even where it is allowed by a court order, but only for seven days without court permission. I think one can imagine situations developing where they felt that contact was counterproductive and they must use their professional judgement, but then have to go back to the court to justify that.

A child may himself apply for contact and the court has power to order that there be no contact between the child and any named person. A contact order is only binding on the department and may not be used to complete the person named in the order to have contact with the child.

Contact orders can be made at any time after a care order has been made. Before making a care order the court is obliged to consider the arrangements for contact with the child. If the care plan is unsatisfactory in this respect, the court can invite the department to reconsider the proposals for contact and amend the plan and, if the department refuses, the court can make orders for contact.

In clause 34, where the court makes a supervision order it places the child under the supervision of a designated officer. The duties are to advise a system to befriend the child and to take steps to give effect to the order and to consider whether to apply for variation or revocation of the order. Schedule 4 is introduced by clause 34, sub-clause 2. The schedule includes further detailed matters relating to supervision orders. I beg to move that clauses 33 and 34 and schedule 4 do stand part of the Bill.

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

**The President:** Mr Waft.

**Mr Waft:** Could I just ask, Mr President, with regard to the supervision and the child comes under a special officer who is concerned with him, it has been of concern in the past, and especially in the United Kingdom, that the supervising officer has called at the house and seen the parents but not actually have had access to see the child, and I think this is very important. The child must be seen by the supervising officer. Some of the parents in cases - we are talking about that area of problem families in some cases - can be very intimidating to a young social worker, but it must be defined that they must actually physically see the child on a regular basis and not just see the parents.

**The President:** Mrs Christian.

**Mrs Christian:** Yes, thank you, Mr President. Certainly under the regulations, the supervisor does have a power to direct the parents as to where a child should be brought or where the supervisor may see the child and can dictate at what time and place that shall happen. Now, one would hope that professionally, if that was not observed, then the supervisor would clearly have concerns and would follow up on it. I take the point that the hon. member has made, that there have been circumstances in other places where perhaps social workers have not responded strongly enough to resistance or the blandishments, perhaps, of parents to say things are all right and it is their professional responsibility to make sure that they do undertake supervision that they are charged with. One can only hope that our social workers will fulfil their responsibilities if they are appointed to supervise.

**The President:** Hon. members, the motion before you is that clause 33, clause 34 and schedule 4 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. 35, 36 and schedule 5, Mrs Christian.

**Mrs Christian:** Yes. Again we are on new provisions, Mr President.

Clause 35 enables the court to make an interim, short-term care or supervision order to safeguard the welfare of the child while the court is in the process of investigating whether or not a full order is required. In order to make an interim order, the court must be satisfied that there are reasonable grounds to believe that the child has suffered or is likely to suffer significant harm. If in proceedings for a care and supervision order the court decides to make a residence order, it is obliged to make an interim supervision order unless satisfied that the child's welfare does not require this. Provision is made for maximum periods of interim orders, at eight weeks with second or subsequent orders of four weeks. Where potential objectors have not had sufficient time to prepare their opposition to the making of an interim order, the court may feel it appropriate to make a shorter order to give them the opportunity to present their arguments in full at an earlier opportunity, and I think this seeks to find the balance between the state and the parents in allowing that there is sometimes resistance to the fact that they have not had an opportunity to argue their case, and this sets out the rules for interim orders.

The court, when making an interim order, can give directions as to the medical or psychiatric examination of a child, but the child can refuse if old enough to do so. The court may direct that no examination takes place as an alternative. This is designed to protect the

child from being exposed to too many examinations or assessments that might be detrimental to their welfare.

In clause 36, when a court makes an interim care order, this section gives the power to exclude a person from a dwelling where the child is living in order to protect him from harm. This allows the court to create a potential safer environment for the child to remain at home. For example, where a child's mother is capable of giving the child good enough parenting, but she is living with a partner who is a risk to the child.

The consent of the person who remains in the home to look after the child to the exclusion order must be obtained before the exclusion order can be made. Schedule 5 sets out how an exclusion requirement is to operate. It says what it does, requiring a named person to leave; it forbids the named person to enter the home, it forbids them to go within a defined area, it sets out the requirement there may be for the term of the interim care order or less if the court feels fit, it enables the court to attach a power of arrest and extend it if necessary, it includes a power of arrest without warrant if the person breaches the requirement and the person must be brought before a JP within 24 hours and may be remanded in custody or on bail. The exclusion requirement lapses if the department takes the child away to other accommodation for over 24 hours and the court can accept a solemn promise from the person instead of imposing a requirement.

This is all new and should provide that in future children may be left in their homes rather than them having to be the ones who move out with another parent. I beg to move that clauses 35, 36 and schedule 5 do stand part of the Bill.

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

**The President:** Mr Crowe.

**Mr Crowe:** Mr President, can I just ask the hon. member as to how your department interrelates with the police on issues like this?

**The President:** Lord Bishop.

**Lord Bishop:** Yes, I just wanted to commend the department on this. I know it sounds rather draconian, in a way, but there are lots of dangerous situations sometimes in these conditions and I do support them entirely on this initiative to keep the child in the family home rather than automatically removing it for safety. There is an element of the home which is stable and which is familiar and is bound to be an area more of rehabilitation or healing, and if you can remove a source of anti that, I do commend the department on being brave enough to try it.

**The President:** Mr Waft.

**Mr Waft:** I have often seen the case where the problem has been that the child is a stepchild and the second husband sees the child as a constant reminder of the first husband and problems are set up because of this. I wholeheartedly support keeping the child in the home in that situation, but the visits of the perpetrator of the harm, successive visits to the home, are possible in cases like that. How would they be able to monitor that what has happened is to the benefit?

**The President:** Right, Mrs Christian now.

**Mrs Christian:** Yes, if I could just refer to the query from the hon. member Mr Crowe, the department, on the welfare of children, have an interdisciplinary group relating to individual cases and will monitor what is happening, so I feel quite sure that if there were an order under this clause then it probably relates to a child who is subject to the consideration of an inter-disciplinary group in any case and the police would be aware of that.

In terms of whether or not the person is allowed to revisit, that can be defined under the regulations. It may be that they are absolutely forbidden to go back to the home. Now, if they breach that order, then one assumes that police action can be taken against them and they would have to go back to court for breaching the order. There are always difficulties with legislation, aren't there? You can tell people what they should be doing, but if they break the law then you have still got the problem to deal with. However, I do agree with Lord Bishop that it is better if we can leave the children and the parent, or the carer in whom they have some faith with them in their home and to remove the offending person, rather than has been the case very often in the past, where maybe the offending person is the one who has the purse strings, and it is perhaps the mother and child who have to flee. There will be practical difficulties I have no doubt perhaps in exercising this but I think as a principle it is the right one. I beg to move, Mr President.

**The President:** The motion before us is that clause 35 and 36 along with schedule 5 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses 37 to 40.

**Mrs Christian:** Yes, we continue with new provisions, Mr President, but clause 37 allows the court to revoke a care order or substitute a supervision order for a care order on the application of any parent or guardian, the child himself or the department. So we have got flexibility there when things improve to move from care to supervision.

In clause 38, care orders, unless revoked, normally lapse when the child attains 18 years of age. The care order also lapses on a child's adoption, on the making of a residence order, an order appointing a guardian, an order vesting parental responsibility in a prospective adopter from overseas, and to give effect to reciprocal arrangements with the United Kingdom or any of the Channel Islands an order made by the Council of Ministers may provide the care order to lapse when the child is lawfully taken to live there.

Clause 39 enables the court to make a care order or a supervision order pending an appeal in certain circumstances. Where a court dismisses an application for a care order or a supervision order, the court may make the relevant order for the appeal period. This provision ensures that the court has the power to maintain the status quo until the appeal is heard.

Clause 40 enables restrictions to be imposed on the making of certain applications to ensure that a child's welfare is not prejudiced by repeated applications. For example, where a parent or guardian has applied for the revocation of the care order or a supervision order and the application is refused, no further application can be made for at least six months, and the same rules would apply to an application for contact unless, of course, the court gave authority for a repeat application, I beg to move clauses 37 to 40 do stand part of the Bill.

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

**The President:** Mr Crowe.

**Mr Crowe:** Yes, thank you, Mr President. Again, technical issues and we hear the words 'the court' a lot in the debate. Can I just ask, for parents who are going to court, are there duty advocates available that they can access for legal advice? I am just trying to visualise the circumstances when the department are there with an advocate and the parents, or one parent maybe, with a child - do they get sufficient assistance in the court?

**The President:** Mrs Christian.

**Mrs Christian:** I think, Mr President, they would have to obtain their own legal advice, but Mr Attorney may correct me on that. I think if they are going to court they would have to obtain their own legal advice and apply for legal aid if the circumstances were right, but I do not think there is any duty advocate waiting at the court to pick up anybody who has not obtained their own legal advice.

**Mr Crowe:** I was always under the impression that there are court advocates waiting to take on cases. Is this maybe a misnomer?

**The President:** Perhaps, Mr Attorney. . . ?

**The Attorney-General:** Mr President, thank you. Certainly, duty advocates are on call in the normal criminal courts, so typically the High Bailiff's Court, the Deputy High Bailiff's Court and the magistrates when exercising criminal jurisdiction. What we are concerned about here is, again typically, a specialist juvenile court and the court would be very concerned to ensure that all parties, including the parents and each of them if there was a contest between the parents as to welfare of the child, should have legal aid if they cannot afford proper legal advice. I know there has been an appeal recently before the Legal Aid Committee and the committee was very concerned that an individual parent who was, as it were, fighting the department and the other parent, should have separate legal aid, separate representation.

**Mr Waft:** Can I have clarification with regard to 38(3): 'Where the child who is in the care of the Department is lawfully taken to live in any part of the United Kingdom or any of the Channel Islands, the care order in question shall cease to have effect if the conditions prescribed in an order made by the Council of Ministers are satisfied.' We are talking about a family going to the United Kingdom, not being in care in the United Kingdom in this instance.

**Mrs Christian:** We are talking about adoption, I think.

**Mr Waft:** It is in care, 38(3). It says 'who is in the care of the Department.' We are talking about not in care of the department who is in care in the United Kingdom; We are talking about a family moving to the United Kingdom.

**Mrs Christian:** I think the question is, is the child still being looked after by the department in the United Kingdom?

**Mr Waft:** Yes, or a similar. . .

**Mrs Christian:** Yes. This is, I think, to do with reciprocal arrangements with the United Kingdom or any of the Channel Islands, so that if there is a reciprocity in some of those places - that is my understanding of it - then the care order would lapse if the child legally goes to live there, but I think this ties in with the Adoption Act. It is only to do with an adoption. It is not to do with a child which is in care of the department being taken by the department to live in the United Kingdom and still be under the care of the department. We would not want to

lose the care provision there, but if we had a child in our care who, it was agreed, should be adopted by some party who then wanted to go and live in the United Kingdom or the Channel Islands, the adoption law provides that there is a level playing field between the Isle of Man, the UK and the Channel Islands on adoption issues so that, in the case of that adoption, then the care order with Council of Ministers' approval could be removed. I presume we would not allow anybody to adopt if we did not feel that they were fit people to do so.

**The President:** The care order ceases to have effect under 38(2) -

**Mrs Christian:** If he is adopted.

**The President:** There are two reasons given, adoption in (a) and in (b) the making of any of the following orders.

Hon. members, the motion before us is that clauses 37, 38, 39 and 40 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses 41 to 44, please, Mrs Christian.

**Mrs Christian:** Part 5 contains a new code dealing with the powers of the department and the police to take action if a child is believed to be in danger, and new orders are introduced in this part including these clauses.

Clause 41 has some main features. A court will grant a child assessment order, which is one of the new orders that can be introduced. Clause 41 will allow the court to grant a child assessment order on the application of the department but only if it is satisfied that the child is suffering or likely to suffer significant harm. The order is for the assessment of a child's health or development or the way in which he has been treated. It enables the department to decide if any further action is required. Some uses may be to arrange an examination by a GP, a psychologist or an educational psychologist. This order is less interventionist than other orders in the Bill. The court, however, may make an emergency protection order if it feels there are grounds to do so. The order can be for a shorter but not a longer period than seven days. The order requires anyone who is able to do so to produce the child to a person named in the order, normally a social worker, and to comply with instructions. It also gives the legal power to anyone carrying out the assessment. A child can only be kept away from home for a specified period. The department must do all it can to inform all parties of their intention to apply for the order and, as far as is possible, must involve the child in the assessment seeking his views where appropriate.

Clause 42 deals with an emergency protection order. An emergency protection order enables the court to authorise the department to remove a child or to prevent his removal from a certain place if believed to be in danger and to keep the child in safety for short periods, during which it must investigate the case. Anyone who obstructs or prevents removal is guilty of a criminal offence. The order vests parental responsibility in the department for the duration of the order, but the court can include directions for contact with parents or others. The department is under a duty to allow reasonable contact anywhere. Directions can be included for medical and psychiatric examination or other assessment, bearing in mind that a child of sufficient age and understanding may refuse.

Clause 43 allows that the court may include an exclusion requirement within an order if it feels that it would reduce the risk to the child by excluding a certain individual. The court must

be satisfied that there is someone else to care for the child and who agrees with the exclusion. Schedule 5 as introduced within clause 36 also applies in relation to this clause and sets out how an exclusion requirement is to operate.

Clause 44 allows that the order may be made for a maximum of eight days and may be extended once for a period not exceeding seven days, allowing for public holidays and weekends. The child can be returned at any time during the order if it is felt safe to do so. The order does not lapse under these circumstances. I beg to move that clauses 41 to 44 do stand part of the Bill.

**The President:** Mr Lowey.

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

**The President:** The motion, hon. members, is that clauses 41, 42, 43 and 44 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses 45 and 46.

**Mrs Christian:** We deal now with police protection, Mr President. Clause 45 gives the police power to take a child into police protection for up to 72 hours if he is in danger. Under this section a constable is given similar powers to remove a child as the department has under an emergency protection order. Police duties under these powers are laid down and include giving all details to the department as soon as possible, explaining what is happening to the child if he is old enough to understand, finding out what the child wants, having the case inquired into by a special officer designated for the purpose by the Chief Constable, and in this case the Chief Constable must designate officers to whom children taken into police protection must be referred by the acting constable - these are known as designated officers, and must have the child taken to accommodation provided by the department and notify significant people, for example parents or anyone with parental responsibility or anyone with whom the child is living. The designated officer must release the child once inquiries have finished unless still in danger. The designated officer can apply for an emergency protection order and he need not let the department know in advance. The department does not have to give consent. The police do not gain parental responsibility for a child in their protection but do have the power to do anything necessary to protect the child without parental permission. The designated officer has to allow certain people contact unless it would be against the child's interests.

Clause 46 requires the department to investigate the case of any child taken into police protection or thought to be in danger or in respect of whom an emergency protection order is made. The department must then decide if any further action is necessary and, if so, must provide suitable resources to meet the need. In order to do this they must have access to a child and must consult with the education department if they feel that there are any needs in this area. I beg to move that clauses 45 and 46 do stand part of the Bill.

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

**The President:** Mr Crowe.

**Mr Crowe:** Thank you, Mr President. Just some clarity, perhaps, from the hon. mover. If the child is under threat, has that parent then committed an offence? Can the police take action against the parent when a child is under threat? Has a crime been committed or is it the

potential of a crime being committed that would prohibit the parent being charged by the police and yet the police have the power to remove the child because they are under threat? There is a missing piece here in the jigsaw.

**The President:** Mrs Christian.

**Mrs Christian:** I think the circumstance where we envisage this clause being effective, Mr President, is perhaps, as an example, in a domestic incident where there may be parents or others fighting which the children are not directly involved with but who are clearly in a position where they should be removed from those circumstances. They might be in danger because of drunken or violent or dangerous persons in a household, there may be drugs lying around - these sort of circumstances where they feel that a child's protection needs that they be removed from the situation that they are in. It is a very immediate kind of response and, notwithstanding that they can look after the children for 72 hours, in practical terms where these situations develop, because they would prefer that social services look after the children they would deal with handing over the children and alerting the department to the circumstances where they have removed the child for its own safety.

**The President:** Mr Lowey.

**Mr Lowey:** Would the minister not agree this is legislation that has been in operation since, I think, 1989 and it is for the immediate attention to get in and deal with the problem and give it time, then, to follow it through. It has worked reasonably well in the past; I see no reason why it should not be re-enacted in the existing legislation.

**The President:** Do you wish to add anything more, Mrs Christian?

**Mrs Christian:** No.

**The President:** In that case, hon. members, the motion before us is that clauses 45 and 46 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. We turn to clauses 47, 48 and 49, please.

**Mrs Christian:** To assist the department clause 47 gives the court additional powers to require anyone to give information about a child's whereabouts and powers of entry to premises to search for a child or any other child who may be there and in danger. If another child is found on premises in addition to the subject of an emergency protection order and the relevant criteria are met, the department's representative is entitled to remove that child and the order applies as if it were to both or all the children on the condition that the order was made authorising the applicant to search for an additional child or children. It will be an offence to obstruct anyone entering to exercise a power of entry and search.

Clause 48 makes it an offence to harbour a child who is in care or subject to an emergency protection order or in police protection, or to assist or encourage him to abscond, and the penalty for doing so is up to six months' imprisonment or a fine of up to £5,000 or both. A recovery order gives powers of entry in search and to make enquiries.

Clause 49 covers this and enables a court to make such an order for the finding and return of such children. A recovery order is not time-limited and lasts until such time as the child is recovered. It should be noted that under reciprocal arrangements recovery orders made in England, Wales or Northern Ireland are enforceable here and vice versa. I beg to move clauses 47 to 49 do stand part of the Bill.

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

**The President:** Mr Waft.

**Mr Waft:** In 47(4) again, Mr President, it says 'Where the court is satisfied that there is reasonable cause to believe that there may be another child on those premises with respect to whom an emergency protection order ought to be made, it may make an order...' Now surely, if there is a child there and reasonable cause to believe, I would think it should be 'shall' make an order authorising the department to search for the other child. It is just another case of 'may' creeping in all the time. Thank you.

**The President:** Well, I take it we note the point which you are making. Mrs Christian, do you wish to. . .?

**Mrs Christian:** Well, yes, Mr President. I presume if the court is satisfied then it would make such an order.

**The President:** Hon. members, the motion before us is that clauses 47, 48 and 49 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

We turn to part 6 and we will take clauses 50 to 56 and include schedule 6.

**Mrs Christian:** Thank you, Mr President. This part again is largely new. It contains a new code relating to the regulation of children's homes run by private or voluntary bodies. At present there is no control in Manx law requiring such homes to be registered or licensed or setting the standards with which such homes should comply.

Clause 50 is a clause in which the concept of a children's home is introduced as a home not run by the department, providing care and accommodation for more than three children who are not members of the family. Where three or less are cared for, then it is treated as a fostering and subject to a separate scheme of control.

Clause 51, which incorporates schedule 6, provides for the registration of children's homes and makes it an offence to look after children in an unregistered home. Schedule 6 provides the code for the registration of children's homes. Registration concerns premises and people who are involved.

Clause 52 deals with people who may be disqualified from working in a children's home and gives the employer a defence if he employs a disqualified person not knowing of the disqualification.

Clause 53 enables the department to make regulations which must be approved by Tynwald, including regulations about standards of premises, accommodation, staff, equipment, discipline, contact arrangements, publication of using the home as a secure accommodation, records and notices, facilities for religious instruction and notice to the department of any change in management. Contravention is an offence under clause 53(3).

Clause 54 states that a person in charge of a home must promote the children's welfare, consult with them and their families and have regard to their wishes and feelings.

Clause 55 charges the department with a duty to inspect homes and visit the children.

In clause 56 there is provision for appeal to the High Bailiff against certain decisions of the department in relation to children's homes. The appeals would include those against refusal of registration, condition of registration, a cancellation of registration or variation, the refusal of consent relating to management by or employment of a disqualification. I beg to move that clauses 50 to 56 and schedule 6 do stand part of the Bill.

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

**The President:** Mr Delaney.

**Mr Delaney:** Just to ask, I take it - I should know about it - there are no private children's homes on the Isle of Man at all. I hope there are not. Just to confirm that for me, that there are no private children's homes, because I cannot see where there is any profit - run by a charity I can understand, but run for a profit - who would pay them, a private children's home?

**The President:** Mrs Christian.

**Mrs Christian:** There are no private children's homes in the Isle of Man at the moment. One could imagine, if there were such, they would presumably be paid by the department if they were -

**Mr Delaney:** The department.

**Mrs Christian:** Yes, if they were caring for children placed by us. As it stands, we place children with voluntary bodies who are approved. The only private accommodation might be regarded as in a private school, which is dealt with under other legislation and it was recently dealt with where the department would have a right to inspect for welfare reasons the accommodation provided in a private school in the future.

**The President:** Hon. members, the motion before us is that clauses 50 to 56 and schedule 6 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Part 7, clauses 57 to 62.

**Mrs Christian:** Mr President, part 7 is a mixture of new and updated provisions. This part contains provisions relating to private fostering of children and private childminding and day care of children under eight. Clauses 57 to 62 deal with fostering and replace the Child Life Protection Act 1959.

Clause 57 defines private fostering as excluding short-term fostering, official fostering under the auspices of the department and caring by relations or in certain institutions. Private fostering covers children under 16 years or disabled children under 18, providing them with care and accommodation by someone who is not family or having a parental responsibility in their favour and not in their own home. Controls under this part do not apply until the child has been placed for 28 days, so it would not cover a holiday for up to that period, for example, unless there is an indication that the period is going to be longer than 28 days.

Clause 58 allows for certain people to be disqualified from private fostering under regulations made by the department. The criteria are set out and include where a specified kind of order has been made in respect of a person or in respect of a child in his care, where he has been convicted of certain offences relating to child care, where parental rights have been vested in a public authority, and disqualification may relate to other unsuitable people in

the household. Contravention is an offence and the department must give reasons for the refusal or disqualification.

In clause 59 the department can prohibit private fostering on the grounds of the person being unsuitable or that the welfare of the child will suffer. In a private fostering situation the department can impose requirements limiting the number, age and sex of the children, the standard of accommodation and equipment to be provided and arrangements for health and safety. The department must, however, give reasons for prohibition or for the requirements which they are setting down.

Clause 60 enables regulations to be made with respect to the notification to be given to the department where private fostering takes place. Contravention is an offence.

Clause 61 imposes a general limit of three children who can be fostered by one person at any one time. This is known as the 'normal fostering limit'. This applies to private and official fostering by the department. There are exceptions to the fostering limit where the children are brothers and sisters and where the department gives exemption in writing. In considering any exemption the department must consider the number of children, the accommodation, the relationship between the children and the time scales involved, and the welfare of the children generally.

In clause 62, where children are privately fostered the clause imposes a duty on the department to check on them and to take appropriate steps if they are not being cared for properly. I beg to move clauses 57 to 62 do stand part of the Bill.

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

**The President:** Mr Radcliffe.

**Mr Radcliffe:** Could I ask the hon. mover - I may have well misheard - clause 57(a), talking about the fostering, is either under the age of 16 or 18 if disabled. Did I hear the hon. mover say that? It does not say so in the Bill, I do not think.

**Mrs Christian:** No, I would stand correction on that perhaps, Mr President. The Bill does deal with children and young people, and to that extent it is confined to children under 18, so a disabled person over that age is an adult. I would seek guidance from the learned Attorney, but it is my understanding that this Bill applies, whether disabled or not, to children and young people under the age of 18.

**The President:** We did have disabled referred to in an earlier clause when the child was referred to as being 16. Mr Crowe.

**Mr Crowe:** Could I just ask again - sorry, are you clear?

**Mr Radcliffe:** Not really, but still - *(Laughter)*

**The President:** Mrs Christian, I am sure, will come back.

**Mr Crowe:** Yes, I am familiar, obviously, with the department employing parents to foster children; this appears to be something new, or maybe it exists and I am not aware of it, that any family can privately foster any child they wish and have a financial arrangement. So is this new or does it exist at present?

**Mrs Christian:** Mr President, my understanding is that there is provision there currently under the Child Life Protection Act 1959 to deal with these situations. However, I am not aware of any private fostering arrangements. In the Island all fostering, I think, in the Island is through the department, but this covers the situation should there be any private fostering, and private fostering arrangements are permitted but with these controls in place.

**The President:** Mr Waft.

**Mr Waft:** Mr President, taking into account the vulnerability of children in children's homes, to what degree does the department insist on positive vetting for staffing in those homes apart from the actual official who is there as the person in charge of the home - the other people who have access?

**Mrs Christian:** Everybody employed in these situations has to be vetted. I just wonder if the learned Attorney could confirm or deny. The reason, it seems to me, that it stated disabled was that that would extend the age, otherwise there is no reason for mentioning disabled.

**The Attorney-General:** Mr President, in part 7 'child' means a person under 18 years of age, so in clause 57(1)(a) a child may be fostered if he is either under the age of 16 or if he is disabled he can be under the age of 18.

**The President:** Okay, hon. members, the motion before us then is that clauses 57 to 62 inclusive stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses 63 to 68 and schedule 7.

**Mrs Christian:** Mr President, these clauses deal with childminding and the provision of day care for children under eight otherwise than in the family home or an institution, and replace the Nurseries and Childminding Regulations Act 1974.

In clause 63 a childminder is a person who looks after a child under eight for reward. 'Day care' is defined as any form of care or supervised activity provided for children during the day, whether or not it is provided on a regular basis and childminding and day care for less than two hours in the day are excluded from regulation. Parents, relations, anyone with parental responsibility, foster-parents or anyone privately fostered are also excluded from regulation. If the care is in the child's own home by a nanny or a nurse or where two families share a nanny, then those circumstances are not covered. Looking after children in school in children's homes or care provided on premises on an occasional basis for not more than six days in any year does not count.

In clause 64 it is required that the registration of childminders and providers of day care be effected and introduced as schedule 7, and makes it an offence to provide childminding or day care without being registered. The department is required to keep two registers, a register of persons who provide childminding on domestic premises and a register of persons who provide day care for under-eights on other premises.

Clause 65 prohibits certain disqualified people from becoming involved in childminding or day care including actions taken in other jurisdictions. The department in all cases must give reasons for any refusal to give consent.

Clause 66 enables a court on application by the department to cancel registration of a childminder or day care provider, and alter the terms of registration if they think a child is in danger. Any application to court can be done without notice to the registered person.

Clause 67 requires the department to make an annual inspection of all premises where childminding or day care takes place.

A right of appeal to the High Bailiff against decisions of the department is given by clause 68 providing that the appeal is within 28 days of the notification of the decision. I beg to move clauses 63 to 68 and schedule 7 do stand part of the Bill.

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

**The President:** The motion, hon. members, is that clauses 63 to 68 inclusive, along with schedule 7, do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Part 8, clauses 69 to 73.

**Mrs Christian:** Part 8 is principally re-enactment of part 3 of the Children and Young Persons Act 1966 dealing with protection of children and young people in court proceedings and in the hands of the police.

Clause 69 imposes a duty on the criminal courts when dealing with a young offender to have regard to his welfare although his welfare, may not be the paramount consideration.

Clause 70 states that the age of criminal responsibility is 10 years.

Clause 71 requires children and young persons to be separated from adults in police stations and courts.

Clause 72 sets out the procedure to be followed where a person under 17 is arrested and cannot be taken straight into court. The child in those circumstances is normally to be released on police bail to his parents or guardian unless charged with serious offences of murder, manslaughter or other grave crime or it is necessary to keep him away from undesirable company or if to release him would defeat the ends of justice. Parents can be required to attend court with a child or a young person.

In clause 73 where a person is arrested there is a requirement for the police to notify a parent or guardian or any other person responsible for his welfare as defined in the Bill. This is re-enactment. I beg to move clauses 69 to 73 do stand part of the Bill.

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

**The President:** The motion, hon. members, is that clauses 69 to 73 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Now then, hon. members, the question is do we sit to try to complete or should we at this stage draw a line? I doubt if we would make completion within another half hour at least. So I am reluctant to continue, though I acknowledge we have done well.

**Mrs Christian:** I think we probably could, Mr President, in about 10 minutes.

**Mr Radcliffe:** Good aim!

**The President:** Well, hon. members, if hon. members are prepared to have a go I am content.

**Mr Radcliffe:** Well, can I say that I am quite prepared to let the mover carry on on the assumption that it is not going to take much more than 10 minutes, though you cannot tell with any certainty!

**The President:** Mr Delaney.

**Mr Delaney:** We have got the CPA meeting at half past - what do you think?

**Mr Lowey:** We have at half past one.

**The President:** Shall we have a go to quarter past at least?

**Members:** Agreed.

**The President:** Right, okay. Mrs Christian, clauses 74 and 75.

**Mrs Christian:** Right, re-enactment, Mr President.

Clause 74 prohibits a child being in court during committal proceedings except where he is needed as a party or witness.

Clause 75 enables a court to be cleared when a child or young person gives evidence in relation to an offence involving indecency or immorality. I beg to move clauses 74 and 75.

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

**The President:** The motion, hon. members, is that clauses 74 and 75 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses 76 to 79 and schedule 8. Mrs Christian.

**Mrs Christian:** Clause 76 gives the court new powers, after consultation with the department, to remand a child or young person to accommodation provided by the department and restricts powers to remand in custody to cases of homicide or where only custody will protect members of the public from harm, death or injury. A remand to accommodation provided by the department would either be because the child or young person would otherwise be in danger or is a danger to the public. Power is given to the department subject to regulations to detain juveniles remanded to accommodation provided by the department while clause 76(6) enables the court to impose a security requirement stating the juvenile be kept in secure accommodation where he is charged with or found guilty of violent or sexual offences or an offence punishable in the case of an adult with a custody for a term of 10 years or more or he has a recent history of absconding from care and committing offences whilst on the run. With a remand to care the court can impose conditions providing the department agree. Consultation with the department in this case means such consultation as is practicable. If no social worker is available at an emergency sitting, then consultation is impracticable.

Clause 77 provides for a child's evidence to be given unsworn in criminal and civil proceedings. A new general rule is included stating that evidence of a child is normally to be heard unless the court thinks he will be unintelligible.

Clause 78 provides that hearsay evidence is admissible in proceedings relating to the upbringing, maintenance or welfare of a child in family proceedings. This means that a witness in such proceedings can report what a child or other person has told him and the court will give this report such weight as is appropriate in the circumstances. 'Family proceedings' covers matrimonial, wardship, maintenance, adoption and proceedings part 12 of this Bill.

Clause 79 lays down special rules that where criminal proceedings relate to an offence against a child or young person the court can hear the case in the absence of the child victim or receive evidence of a written statement taken by a JP. Schedule 8 lists the offences. This is important in that it sets out the way in which our new secure unit may be used. I beg to move clauses 77 to 79 and schedule 8 do stand part of the Bill.

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

**The President:** Hon. members, the motion is that clauses 76 to 79 do stand part of the Bill along with schedule 8. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses 80 to 83 and schedule 9.

**Mrs Christian:** Clause 80 enables a court in any proceedings involving children to direct no report of the proceedings or pictures shall be published.

In clause 81 the terms 'conviction' and 'sentence' are replaced by 'finding of guilt' and 'order' and are seen to be more appropriate to juveniles. Once a person reaches 21 years, any findings while he was under 14 years will be expunged from his record.

Clause 82 states that in criminal proceedings the court can order a parent or guardian to pay a juvenile's fine, costs or compensation providing the parent or guardian can be found and it is reasonable to expect them to do so. Similarly a parent or guardian can be bound over to ensure their children's good behaviour. This can only happen if the parent has been given an opportunity to be heard in the matter. There is a right of appeal against such order. In this way it is thought that responsibility can be placed where it belongs - with the young people and/or their parents.

Clause 83 and schedule 9 are new and enable the criminal court to make a supervision order in respect of a young offender. They widen the powers of the court; for example, it may require the defendant to live in department accommodation or undergo medical or psychiatric examination or treatment. I beg to move that clauses 80 to 83 and schedule 9 do stand part of the Bill.

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

**The President:** Mr Waft.

**Mr Waft:** Thank you, Mr President. Just on clause 80, the identification of a child or young person in the media, I wonder if perhaps the Attorney-General might stand to correct the situation with regard to the presiding officer at an inquest and his ability to make a ruling that any children involved in giving that evidence shall not be named in as much as the situation as it is at the moment is that if the presiding officer fails to make that ruling the child can be named during that inquest and therefore the media have access to that name. Would the Attorney-General like to elaborate on that?

**The Attorney-General:** I am not entirely sure, Mr President, of the point made by the hon. member, but the clear implication of this clause is that the court has a power to direct that no identification of the child or young person shall be given in relation to any publication of proceedings of a court in the Isle of Man. That, I think, is obviously correct and logical. I may not have quite got the point.

**Mr Waft:** Well, my position is that if the court fails to direct - in other words, if the presiding officer at an inquest or a judge or presiding officer, whatever, fails to direct - that no written report shall be published on the Island, then the media can actually do that; if it is by omission of the presiding officer who may for whatever reason have omitted to do so, then it gives the media -

**The Attorney-General:** Yes, I am sorry, Mr President, I do follow that now. I am sure the hon. member is absolutely right. If the court does not make a direction then the young person's details can be published.

**Mr Waft:** I would like to see it reversed - that the judge will have to direct that the media can print this for whatever reason. I cannot see any reason why they should so but it is by the omission of the presiding officer to state that no written report of the proceedings shall take place.

**The President:** That would require an amendment. Now then, Mrs Christian?

**Mrs Christian:** Yes, Mr President, the hon. member has referred to an inquest; I would need the learned Attorney's guidance as to whether or not that is defined as a court.

**The Attorney-General:** Yes, I think it would be, Mr President. I think also, actually, that the hon. member may have a good point because my recollection is that under the existing law the position is as the hon. member wishes it to be, so in other words the press are not able to publish unless the court makes an order to that effect, so there is a difference in emphasis here which the hon. member has identified.

**The President:** Now then, hon. members -

**Mrs Christian:** Mr President, it may be possible to amend it at third reading. I do not think I would have any strong view about any such amendment.

**The President:** Would members be happy that we continue to deal with the matter and approve clauses 80 to 83 and schedule 9 at this stage on the understanding that it may be that Mr Waft will come forward with an amendment at third reading? Agreed, hon. members?

**Members:** Agreed.

**The President:** The motion then is that clauses 80 to 83 and schedule 9 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses 84 to 89.

**Mrs Christian:** Mr President, part 9. These clauses introduce new controls on human fertilisation embryology and surrogacy arrangements based on United Kingdom legislation. Clause 84 imposes a general prohibition on a number of activities connected with embryos and genetic material which in the UK are either prohibited or regulated.

But clause 85 enables a scheme of licensing to be introduced by order in future in case it should ever be decided to provide these fertility services in the Island.

Clauses 86 to 89 are to ensure that children resulting from these activities have a recognised status in Manx law. Clause 89 enables the High Court to make an order declaring a child born to a surrogate mother to be the child of the married couple donating the eggs or

sperm. The effect is similar to an adoption order. Sorry, Mr President, how many clauses did you wish me to do?

**The President:** That is as far as I wish you to go.

**Mrs Christian:** Right. I beg to move then that clauses 84 to 89 do stand part of the Bill.

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

**The President:** The motion, hon. members, is that clauses 84 to 89 inclusive do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. We will take clauses 90 to 95, Mrs Christian, please.

**Mrs Christian:** Clauses 90 to 93 prohibit commercial surrogacy arrangements in the Isle of Man on a basis similar to that in the United Kingdom Act.

Clause 94 makes further provision with respect of offences under those previous clauses 91 to 93.

Clause 95 assists with definitions such as 'surrogate mother', 'fertilisation', 'surrogacy arrangements' and 'commercial basis'. I beg to move clauses 90 to 95 do stand part of the Bill.

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

**The President:** The motion, hon. members, is that clauses 90 to 95 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses 96 to 99, please.

**Mrs Christian:** This section, Mr President, contains various miscellaneous and supplemental provisions. Clause 96 places on a statutory basis the present system under which the Attorney-General may appoint an advocate to represent a child in any family proceedings. In a case where the court in care or other proceedings affecting the welfare of a child may need to hear argument and evidence on the question of his welfare from a party other than the parents and the department, both of whom might not be impartial, then the Attorney-General has an inherent power to intervene and take action on behalf of the child. Under the present system the Attorney-General in such case can appoint an advocate to represent the child. The advocate will usually request an independent social worker to prepare a welfare report for the court, and if the child is of a suitable age he will be interviewed and may give evidence as to his own wishes. The effect of such an appointment is that the child is treated as a party to the proceedings and the advocate takes all necessary steps to act in the child's interest under the direction of the Attorney-General.

Clause 97 provides for appeals against certain orders of the Court of Summary Jurisdiction under the Bill. The time limit for appeals in such cases is reduced from 28 days to 14 days in order to avoid delay in child care matters.

Clause 98 gives the department general powers of entry and inspection of premises where children will be cared for other than their own families.

Clause 99 allows the court to issue a warrant enabling the police to assist an authorised person to execute an emergency protection order or exercise any power of entry relating to the welfare of children. I beg to move clauses 96 to 99 do stand part of the Bill.

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

**The President:** The motion, hon. members, is that clauses 96 to 99 inclusive do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Perhaps, Mrs Christian, we can complete clauses 100 to 106 along with the schedules 10, 11, 12 and 13 of the Bill.

**Mrs Christian:** Thank you, Mr President. Clause 100 allows for the making of an education supervision order on the application of the education department placing a child of school age under the supervision of the department. The Department of Education must consult the DHSS before an application is made. Education supervision orders cannot be made if a care order is already in force. Schedule 10 outlines the procedures, terms and conditions of those orders similar to those for other supervision orders within the Bill.

Clause 101 refers to independent boarding schools and places a duty on the proprietor to look after the welfare of boarders and gives the department power to inspect facilities for boarding. The department must notify the Department of Education if there is a failure to promote the welfare of young people.

Clause 102 provides for definitions of the various terms used in the Bill and is self-explanatory.

Clause 103 enables the Council of Ministers by order to make reciprocal provision with the UK or Channel Islands so that a court order relating to a child made in any of those jurisdictions is to have the same effect as a corresponding order made in the Isle of Man.

Clause 104 enables the department to make regulations to enable any matter to be prescribed where required under the Bill with Tynwald approval.

Clause 105 introduces schedules 11, 12 and 13, which make respectively transitional provisions, amendments and repeals and are self-explanatory.

Clause 106 gives the Bill its title, the Children and Young Persons Act 2001, and provides for its commencement. I beg to move clauses 100 to 106 and schedules 10, 11, 12 and 13 do stand part of the Bill.

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

**The President:** The motion, hon. members, is that the remaining clauses of the Bill, 100 to 106, and the four remaining schedules, 10, 11, 12 and 13 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Slightly longer than we anticipated, hon. members, but very well done.

Can I say that I think we can hold over the summary of proceedings to our next sitting, so the Legislative Council adjournment will now be to the sitting of Tynwald on Tuesday, 20th March, Tuesday next, at 10.30 and thereafter to Tuesday 27th here in our own chamber. Thank you, hon. members.

*The Council adjourned.*