

**REPORT OF PROCEEDINGS OF
LEGISLATIVE COUNCIL**

**Douglas, Tuesday, 30th January 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, J R Kniveton, E G Lowey and Mr J N Radcliffe, 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 this morning from Dr Mann and Mr Waft, both being indisposed, and I can report that Dr Mann is in good spirits and is actually hoping to be back with us for next week albeit maybe for a short time. It is very pleasing to see Mr Kniveton has rejoined us again from his holiday or son's wedding in the States.

The Lord Bishop: He assures me he has not converted to being a Mormon. *(Laughter)*

Electricity Blackout — Question by Mr Lowey

The President: Right, okay. So we turn then to item 1 on our order paper which is questions for oral answer and I call upon the hon. member, Mr Lowey.

Mr Lowey: Thank you, Mr President. I beg leave to ask a member of the Council of Ministers, Mrs Christian:

What was the cause of the Island-wide electricity blackout on Sunday 21st January 2001?

The President: I call on the member of the Council of Ministers, Mrs Christian, to respond.

Mrs Christian: Thank you, Mr President. I do apologise I have the wrong question. Right, now I have the right one. The cause of the Island-wide electricity blackout on Sunday, 21st January 2001 was a high voltage fault which occurred when a distribution cable joint failed as a result of third party damage. The joint has since been examined and the damage is thought to have been caused by the cable being pulled as a result of third party excavations within five metres of the joint. This stretching caused the joints insulation to be damaged and allowed subsequent moisture penetration. At the time of the fault the Island's load was being supplied by the inter-connector cable whose protection systems detected the fault and disconnected the supply. This incident exposed a discrimination between the Island's protection system and those of the cable link, which are those required by the UK electrical industry regulations. This discrimination has since been rectified so that re-occurrence of this event will not be possible.

The President: The hon. member, Mr Lowey.

Mr Lowey: Would the minister not agree that the discrimination between the two systems, i.e. the English one and the Isle of Man one, should have been foretold, considering that we have invested £40 million in the new system. Surely the professionals would have known that

the safety mechanisms should have been at least compatible. Again, is there any explanation as to why it took an incident for it to actually show itself.

The President: Mrs Christian.

Mrs Christian: Mr President, I would agree with the hon. member: probably it should have been anticipated that the systems should have both been on the same failsafe timing. However, that was not the case. With the benefit of hindsight, as happens in all these sorts of circumstances, it is acknowledged that perhaps it should have been predictable, it could have been predictable. However it was not. The situation has been amended so that the fault detection on both systems is now the same, so that the local system should trip in before any effect occurs on the actual supply through the inter-connector cable. The situation was that fortunately the system did react. That is the first point. Had it not reacted a lot of damage could have been done to the local infrastructure, but steps have been taken as a result of this and lessons have been learned.

The President: Mr Delaney.

Mr Delaney: The minister when replying to the hon. member's question referred to a third party. Are we to understand that that third party is the same third party that was identified by a spokesman on behalf of the Electricity Authority the following day which subsequently was argued against the following day by the department that was blamed as the third party?

The President: Mrs Christian.

Mrs Christian: Mr President, my understanding is that the MEA are carrying out investigations to try and establish who was the third party involved in the situation in respect of the cable in the Union Mills area. However, I think it has to be acknowledged that the first statements were retracted, as the hon. member has referred to it, but their investigations are ongoing to try and establish conclusively who the third party was.

The President: Mr Delaney.

Mr Delaney: The hon. minister, in her reply to my colleague, made the point about lessons being learned. One of the lessons being learned in this particular case is that before you jump on the radio to blame somebody else for the mistakes or problems is that you get your facts right.

Mr Kniveton: Hear, hear.

The President: That is a statement rather than a question, Mr Lowey.

Mr Lowey: Yes, my final question: the minister has said that lessons will be learned. Can we have an assurance from the MEA that a comprehensive review of all safety matters will be undertaken, considering the adaption of the new cable system. So can we have an assurance that, instead of waiting for an incident to happen and then see it come into play, we can have a review of the new systems as adapted for the Isle of Man.

The President: Mrs Christian to reply.

Mrs Christian: Mr President, I am not in a position to say whether the MEA will undertake such a comprehensive review. I will convey to them your comment. I think the situation is that a review with regard to this primary safety feature has been undertaken and changes have been

made. With regard to the comments of my hon. colleague, Mr Delaney, in respect of whether or not the statement made in the first instance by the MEA in respect of the third party was true or not, this is yet to be established. It may or may not be that party.

Mr Delaney: You are guilty until you are proved innocent.

The President: Mr Lowey.

Mr Lowey: A final supplementary from me. Would the minister not agree that this has not been a painless exercise. A lot of business has been interrupted and there is no recourse for damages from the MEA?

Mrs Christian: Mr President, I accept that some business interruption has occurred. I would not accept that there is no recourse. I believe there is recourse if damage can be proven, but that will be a matter for individual businesses to take up with the MEA.

Isle of Man Constabulary — Self Regulation — Question by Mr Lowey

The President: Okay, we will go on to question 2 and I call again on the hon. member, Mr Lowey.

Mr Lowey: Thank you, Mr President. I beg leave to ask a member of the Council of Ministers, Mrs Christian:

Is the Council of Ministers satisfied that self regulation is appropriate for the Isle of Man Constabulary in view of the recent criticism of the force in connection with the death of Matthew Crosbie and other matters?

The President: And again it is down for Mrs Christian to reply to.

Mrs Christian: Thank you, Mr President. Whilst recognising the unfortunate circumstances in respect of the death of Matthew Crosbie, the Council of Ministers has received no information to suggest that there is any reason arising from that case to change the way in which the Isle of Man Constabulary is regulated.

The President: Mr Lowey.

Mr Lowey: Mr President, I note that the minister uses the same adjective as was used by the police, saying this was an unfortunate incident or accident where people did not relay information from one ship to another. It is unfortunate, but again I come down to it, is self-regulation the right system for the Isle of Man Constabulary. Would she also not agree that in nearly all other departments self-regulation is disappearing rapidly, whether it is environment, whether it is financial and should not the police be subject to outside scrutiny?

The President: Mrs Christian.

Mrs Christian: Mr President, there are two mechanisms through which investigations into any police action may proceed. The first is, if there is a complaint about the police such a matter would be investigated by the Police Complaints Commissioner. That is an independent procedure. In the case that the hon. member referred to, which was a very sad case, there has been no such complaint made. Now under those circumstances and in any case at any time the Chief Constable can cause a review or investigation to be carried out into any particular aspect of police performance and that is what happened in this case. Whether or not there is a place for that today, is, I would suggest, a matter which is evolving. The hon. member has

referred to the fact that self-regulation is something which is changing in a number of areas, but it is also under examination in respect of police matters. Perhaps not in the Island yet, but outwith the Island. I would suspect that the Island's force in due course as these things do evolve, would probably move to a situation where self-regulation is minimised if not removed altogether.

**Protected Cell Company Legislation — Views of Insurance and Pensions Authority
— Question by Mr Crowe**

The President: We turn then to question 3 and I call on the hon. member, Mr Crowe.

Mr Crowe: Mr President, I beg leave to ask the Chairman of the Insurance and Pensions Authority, Mr Radcliffe:

What views does the Insurance and Pensions Authority have on protected cell company legislation and does the IPA have any proposals to introduce such legislation into the branches?

The President: This time I call on the Chairman of the Insurance and Pensions Authority, Mr Radcliffe, to respond.

Mr Radcliffe: Thank you, Mr President. The authority examined the advisability of introducing legislation into the branches during the period 1997-98. The authority and the Treasury were well aware of the market pressures to enact such legislation and were well aware that some jurisdictions have enacted such legislation and certainly well aware that others have not. Following relevant advice and assessment of the risks, the IPA and the Treasury decided at that time that introducing such legislation into the branches was not appropriate for the Isle of Man. The authority considered, in keeping with morals elsewhere, that the security and protection sought under a possible statutory provision can equally be provided under appropriate corporate structures supported by appropriate contractual arrangements created thereunder by interested parties. Nevertheless, the authority and the Treasury have undertaken to re-examine the issue in the light of developments for this type of legislation since its original decision was taken. This re-examination is currently taking place and any proposals that may emanate therefrom will be brought forward as soon as possible. I would just like to add that the Treasury has a consultative committee from the insurance industry which meets Treasury on a regular basis quarterly and as recently as yesterday the industry representatives there had an assurance again that the IPA is re-examining the issue and will come forward with proposals before very long.

The President: The hon. member, Mr Crowe.

Mr Crowe: Thank you, Mr President. I thank Mr Radcliffe for his reply and a supplementary I would raise is would you agree that the insurance industry is keen to have this legislation introduced because of the extra insurance business that is likely to be generated and also because of the significant spin-off benefits to other Isle of Man financial services, particularly banking?

The President: Mr Radcliffe to reply.

Mr Radcliffe: Thank you, Mr President. I must agree that the insurance industry is certainly keen on the introduction of this legislation. There are other jurisdictions which have it in place. From what we are given to understand the problems associated therewith have never been

tested yet. That is one reason why we are perhaps a little bit more cautious than other jurisdictions in bringing this in, but we are, as I say, currently examining it anyway.

The President: Mr Crowe.

Mr Crowe: Mr President, again I thank Mr Radcliffe for that reply, but would you, Mr Radcliffe, consider that the Isle of Man has lagged behind Guernsey in the development of protected cell company business because, as you will be aware, Guernsey currently has 28 protected cell companies containing 136 cells since introducing its legislation in 1997.

The President: Mr Radcliffe.

Mr Radcliffe: Thank you, sir. Well I am well aware that it would appear that we are behind - well we know we are behind Guernsey as far as PCCs go, but I would suggest, sir, that it is better just to hang back a little bit and see what disadvantages may or may not turn up in the light of time. We know that there are quite a few established there, but as I say again the system has never been tested, particularly in court anyway.

Mr Crowe: Thank you.

The President: Okay, well that concludes the question part of our order paper for this morning, hon. members.

National Health Service Bill — Third Reading Deferred

The President: Now item 2 is the National Health Service Bill, down for third reading and as indicated last week there could possibly be an amendment coming forward and Mrs Christian at this stage does not wish to move the third reading this morning.

Adoption (Amendment) Bill — Third Reading Approved

The President: So we then move on to item 3 on our order paper, which is the Adoption (Amendment) Bill again down for third reading and again in the hands of Mrs Christian.

Mrs Christian: Thank you, Mr President. In moving the third reading of this Bill I would reiterate its importance in aligning the Island, in terms of its inter-country adoption procedures, with the standards of the 1993 Hague Convention, international standards which when adhered to provide agreed standards of protection for children who are vulnerable, more particularly so when being moved not only from one family to another, but also from one country to another. As we have seen in recent weeks, the best intentions of any country as set out in their statutes or signified by adoption of an international convention can be debased by inadequate enforcement or commitment to honour their undertakings. But that I believe should not prevent us from committing ourselves to the adoption of such standards as are embodied in this legislation. Our past practice in the field of adoption in association with those bodies who assist the DHSS in this field is indicative of an intention to exercise rigorously the controls and standards demanded in this area of protection of vulnerable and innocent children. We will as a matter of course take whatever steps appear to be necessary to strengthen these measures in due course if that seems to be required as a result of the cases which are currently under consideration in the United Kingdom. Questions were asked at the second reading about the nationality of children in inter-country adoption. This Bill does not deal with issues of nationality, which is covered by UK legislation extended to the Isle of Man. Under amendments to the British Nationality Act of 1981 made by the UK Act of 1999, convention

adoptions wherever made will confer British nationality on the child if the adopter is a British citizen and habitually resident in the United Kingdom, Isle of Man or Channel Islands at the time of the adoption. In respect of questions as to who is the prosecutor in clause 9 and any additional clarification as to the circumstances in which some provisions of simple adoption were to apply under clause 2, I will seek the help of the learned Attorney as proffered last week on these particular issues. Other significant provisions of the Bill enabling the Manx courts to recognise UK freeing orders and thus simplifying procedures for adoption of United Kingdom children by Manx couples were generally accepted and are to be welcomed I believe. I therefore beg to move that the Adoption (Amendment) Bill 2001 be now read a third time.

Mr Lowey: I beg to second, sir.

Mr Crowe: I beg . . .

The President: We have two. Mr Lowey.

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

Mr Crowe: Mr President, yes, just in supporting this Bill and the third reading. I am supportive of this because of the international nature of this, that we are giving effect in Manx law to the Hague Convention so it is a cross-border, cross-frontier requirement to protect children now who are being adopted from any foreign country so it is interesting that we are following a lead set by others, but it will give comfort to people who are adopting children from other countries that we now have law in place that protects the child.

The President: The Lord Bishop.

The Lord Bishop: Mr President, yes, I would like to support the Bill and in doing so I would again want to underline the very professional, highly professional work that is done in the Island, in my experience over 12 years and I want to commend that and hope that the terms of this Bill will just strengthen what is already a very good and highly professional practice.

The President: Mrs Christian, do you wish to reply?

Mrs Christian: I do not know whether the learned Attorney would care to expand on any of the points that were raised.

The President: Mr Attorney?

The Attorney-General: Mr President, thank you. Yes, insofar as the question of prosecution of any offences under the legislation is concerned, I would take it that it is the department which would enforce the provisions of the new section 44A as they would enforce the other penal provisions of the Adoption Act 1984. I do not really wish to add anything further save to say that there is a very useful document which has been issued by the Department of Health in the UK, significantly only very recently, 25th January, which is styled Inter-Country Adoption. It is on the worldwide web and it describes the procedures for bringing a child to England and so on and so forth and lists the designated countries. I think that if any hon. member is interested in the topic it might be worthwhile having a look at that, sir.

The President: Right. Mrs Christian now.

Mrs Christian: Thank you, Mr President. Can I thank members for their support for this particular measure and indeed endorse the comments of the Lord Bishop with regard to the

two agencies who assist the Department of Health and Social Security in adoption matters. They are extremely professional and they do have very much at heart the welfare of these children who are subject to adoption. Whilst there are few international adoptions currently in the Island it is clear that this trend may increase and it is appropriate that we do have in place the proper standards. This does not mean that we cannot progress adoptions from countries which are not signatories to the Hague Convention, but where they are it does indicate that certain standards are being adhered to though we have seen some weakness in that in respect of states in the United States. I am sure that that situation will be being explored by the United States as signatories to the convention in order to try and ensure that all their component states comply. The provisions of the clauses in respect of prosecution - I thank the learned Attorney for his comments on that and look forward to the implementation of this Bill which goes further to ensure that any adoptions in the Isle of Man are properly regulated.

The President: Hon. members, the motion before us then is that the Adoption (Amendment) Bill 2000 be read for a third time. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Gaming, Betting and Lotteries (Amendment) Bill — First Reading Approved

The President: We turn then to item 4 on our order paper which is the Gaming, Betting and Lotteries (Amendment) Bill and is for first reading and I call on the hon. member, Mr Delaney.

Mr Delaney: Thank you, Mr President. In moving the first reading of the Gaming, Betting and Lotteries (Amendment) Bill I want to bring members' attention to a number of amendments that were moved at clause 1 in the other place and also 10 new clauses which appear when we get to the clauses stage. This Bill is self explanatory. The Bill will remove the control of opening hours for betting shops which are currently 8 a.m. until 10 p.m. with the exception of Christmas Day and Good Friday when betting shops will be prohibited from opening. Also it has a number of other amendments, particularly dealing with lotteries on the Island and also in betting generally in relation to advertising. The Bill is a necessary evil if you like, it is recognised as such. I as a follower to some extent of the gaming life now and again would say that it has to be controlled. It is necessary for this particular Bill to be introduced to keep us in the game if you like and I feel that members should give this support because it will control this particular society activity which can become out of hand from time to time. Mr President, I beg to move the first reading.

The President: Mr Kniveton.

Mr Kniveton: Yes, I beg to second, sir. I would just like to add to what Mr Delaney has said. As I see it this Bill has been drawn up to amend several lottery issues, mainly because of the introduction of the UK Lottery into the Island. It amends the date by one month to November for the sale of Christmas draw tickets. It also amends the limit on jackpots for such lotteries. Horse racing nights, popular, are legalised within this Bill. Advertising and opening hours of betting shops are the same as the Shops Hours Act, but not including Good Friday, and a number of other small amendments are also included. Mr President, I am not a gambling man but I can see little harm in this Bill and as far as I am concerned I really consider it non-controversial and therefore I am happy to second it, sir.

The President: Mr Crowe.

Mr Crowe: Mr President, thank you. Yes, I am supportive of this Bill as well and I have personal experience of the society lottery provisions which are at present quite rigid I am involved with a club in Willaston that runs society lotteries and they were carrying out these lotteries and rollover lotteries with jackpot prizes totally innocently not realising they were doing something they should not, so the whole situation has been -

Mr Delaney: They are not the only ones.

Mr Crowe: - regularised. There were at that time a number of societies selling tickets quite unaware that they had to make returns to the Gaming and Lotteries Commission. I think that small activity by a number of societies has led to some of this legislation, interestingly enough even changing the tickets to be sold in November, because some lotteries were falling foul of the law by selling tickets in November when the date was restricted to 1st December. So again I am supportive of this. A question on the wider issue, and I know Mr Delaney has mentioned the National Lottery, does this mean scratch cards now will be made legal?

The President: I call on Mr Delaney to reply.

Mr Delaney: Thank you, Mr President. The last of the situations, the answer to that is, yes, I understand that they have already gone in for that in the British National Lottery situation, but I am quite happy what you have said about your society being one of many who were involved in these small entertainments and were technically breaking the law. That is a matter of fact. One of the questions I did want to ask Mr Attorney this morning - and I am the mover of this and it is a grey area and I did not get a chance to ask him - but for members' interest, could the Attorney tell me that under the same amendments we are moving now, at the moment before this Bill is passed, is it a fact that those cards, the football cards in public houses which are being used in every public house to my knowledge and usually 40 or 50 people take part, are they illegal at the moment? I was asked that outside this morning and I just have not had chance to research it? I think the Bishop's position, I understand, to oppose this, I understand, but at the same time I think the point being raised by my seconder clarifies that we are trying to control it and it has to be under control, Mr President.

The President: Now, hon. members, I think the best way of dealing with this is actually to take the first reading of the Gaming, Betting and Lotteries (Amendment) Bill and I am sure that Mr Delaney and the Attorney and the legal draftsman can get together over that question before we come to the second reading.

Mr Delaney: I would not expect an answer off the cuff.

The President: Hon. members, I put before you then the motion that the Gaming, Betting and Lotteries (Amendment) Bill be read for a first time. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Residence Bill — Second Reading Approved — Clauses Considered

The President: We turn then to item 5 on our order paper, hon. members, which is the Residence Bill and it is down for second reading and I call on the hon. member, Mrs Christian.

Mrs Christian: Thank you, Mr President. The thorny issue of residence control and the mechanism for effecting such control have been matters which have been discussed over a number of decades. The piece of legislation before us is one which has been born of much consideration and complications and has not very easily been drafted by those who have been

responsible for bringing it forward. It is a Bill which creates a reserve power to manage the growth of population and represents a component of the government's long-term strategy for the future development of the Island. The strategy supports the continued expansion of the economy, balanced against the maintenance of the Island's quality of life. Not an easy task to accomplish, but the Bill gives government the ability to restrict excessive population growth through a system of residence controls. We are all aware that the Island's population has been increasing due to immigration without which our population would be in natural decline as deaths exceed births. However, we are aware that the rate of growth, the composition and structure of population can cause pressures to develop and for which there is currently no effective control mechanism. The Bill does not set a fixed and rigid population target which could, for example, be exceeded if births were greater than deaths. No-one would expect us to ask a person then to leave the Island to get the numbers right. Nor can we anticipate how many people with defined Manx connections with an automatic right to return under the Bill might wish to come here at any one time. Rather the Bill allows a degree of elasticity which may be varied to suit the needs of the time in order to protect quality of life, resist pressures of infrastructure and so on, whilst at the same time endeavouring not to cut off completely the economic blood supply. The Bill to be effective will require difficult political decisions to be made and will involve a considerable measure of bureaucracy which may or may not be very acceptable to the population at large. These are inevitable if control is to be exercised. Since 1971 there have been a number of attempts to tackle this issue and all have failed. This Bill if accepted presents us with the enabling framework to introduce variable controls when it is considered necessary. It is as I have said before the result of a considerable amount of work and consultation which have explored other suggested methods of control all of which have been found wanting in one way or another. Under the recommended regime all residents will have to be registered and at the first reading I outlined the categories of registration which will apply. There will be some exemptions for existing residents and students from outwith the Island but these exemptions will cease if a person moves home or when their period of education concludes. Some will have an automatic right to registration and the control mechanisms will apply to those who have conditional registration. Regulations will determine the nature of controls to be applied at any particular time, overlaid by directions of the Council of Ministers. Breach of the rules by an unregistered individual and those who collude to provide accommodation to such persons constitute offences under the Bill punishable variously by fines, imprisonment or deportation. It also provides for some appeal mechanisms. The Bill does not control entry into the Island or employment or property ownership but requires that a person must prove to a provider of accommodation that they are registered as a person entitled to reside here. Tourists, of course, are a different category of person. The registration process will require the appointment of a registrar and other staff estimated at a total of nine persons with a consequent need for accommodation and clearly administrative costs associated with the registration process. These are currently estimated to be of the order of £370,000 per annum. The Council of Ministers views the passage of the Bill as a forward planning step with the attendant regulations being formulated as a further step in preparation for implementation if and when it is felt necessary. It does not signal the closing of doors to new development but puts in place a mechanism through which the quality of life in the Island may be balanced with other factors in order to secure the optimum living and working conditions of the Island's people into the future. I beg to move the second reading of the Residence Bill.

The President: I call on the hon. member, Mr Lowey.

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

The President: Mr Crowe.

Mr Crowe: Thank you, Mr President. Yes, I am in support of the Bill and I think the hardest part of any economy is managing growth: how do you balance growth with over-regulation and I think a lot of this Bill, the devil shall we say, is in the detail because of the orders following this. This really is an umbrella piece of legislation which allows the concept to be determined of residence control. It is interesting in our lifetimes that the Isle of Man had a population of about 45,000 in 1955 and now has a population of about 75,000, so we have had continuous growth in population for the last 40 years and that the pace of growth seems to be quickening, although I should imagine that market forces can activate a restriction on immigration because of the sheer cost of housing and other necessities of life. So, again, I am supportive of the Bill, Mr President.

The President: Hon. member, Mr Radcliffe.

Mr Radcliffe: Thank you, Mr President, I will be fairly brief. I think the aims of the Bill are certainly admirable in that some attempt is being made to control over-population as lots of people feel would be the case. I would just pick out the possible cost, the annual expenditure is estimated at £370,000. I personally feel that by the time you have got the additional nine staff, the accommodation, the administration expenses this will cost more like half a million per year for ever just to get the thing running properly. There will be considerable bureaucracy involved and that all takes time and money to resolve. I would ask the hon. mover whether there is any appeal against decisions made by the registrar? I do not seem to be able to see it but perhaps she can reassure me that there is an appeal procedure somewhere in the Bill. I have personally expressed the fear that if we shut the door on people coming into the Isle of Man other measures could be taken against young people leaving the Isle of Man that is one of the fears I have over being very strict and draconian on this. I know many members around the table have members of their family who are off the Island who, although Manx born and bred, are required by the nature of the work they do to be living off the Island and I could well imagine that if we are really draconian there could be measures taken against some of our people moving out from the Island. But the main thing is is there any appeal against the registrar's decision.

The President: Mr Kniveton.

Mr Kniveton: Yes, Mr President. Basically I am supportive of the Bill. I do not want to repeat what the other hon. members have already said or have already asked this morning but I just have one question. I do not know whether Mrs Christian can answer it at this stage, but what are the differences in this Bill compared with previous attempts to get a similar Bill enacted? Can she answer me in brief, I do not want her to go into great depth but, in brief, what are the outstanding qualities of this Bill compared to others which have failed. That is all I ask, sir.

The President: The Lord Bishop.

The Lord Bishop: Yes, Mr President, thank you. I apologise if I am continuing to be a little parochial about this but I am still, having thought about it for a week, concerned about the exemption or non-exemption and clause 19 in particular. I just wonder if the hon. mover could

say - I mean clause 19 is a little vague, it says that the Council of Ministers 'may' do something, well they may not of course. I just want to know if there is any move for the Council of Ministers to make regulations specifically and would they take into account from my point of view that clergy and ministers of all denominations arrive to take up positions in an establishment that has been there for many centuries. They come to what I would call tied cottages so that they themselves reside as representatives of the church and they are not the sort of people who are likely to move around and so on. I just wonder if it is fair for a situation which currently gives exemption from work permits and so on to be removed. I mean residency is removed in this Bill from a part of the community that enjoys an exemption and I would want to ask if the mover could ask the Council of Ministers what is their intention of this and are we going to see some specific regulations in a schedule to the Bill.

The President: I call on the hon. member Mrs Christian to reply to the debate.

Mrs Christian: Thank you, Mr President. I thank members for their general support of the principles embodied in the Bill. The hon. member Mr Crowe has commented on the difficulty of managing growth and indeed the devil being in the detail. I can endorse both of those points. I think that when the day comes when the regulations which can be drafted under this Bill are introduced there will be, I would suggest, quite a strong outcry from various quarters because no-one likes restrictions being imposed on them if it affects them. The devil certainly is in the detail. Considerable time and debate has gone on in respect of how we should define the categories, who should be exempt or entitled to unconditional registration. Indeed one could almost say that every individual might have a different view on how they should be defined and I have no doubt at all that when the legislation is effective there will be people who will sadly fall just outside of the demarcation line and there will be pressures to move it. It is inevitable that that is going to happen. There will also be difficulty I feel, perhaps, in promoting an understanding of how this particular piece of legislation is going to work with those who are the holders or responsible for accommodation and there will be a need I feel for quite a considerable education exercise to make sure that people understand what the legislation requires so that they do not inadvertently breach it. Now in terms of the requirements for appeal, yes, indeed, to the hon. member Mr Radcliffe, there are appeal procedures embodied in the legislation, certainly in respect of registration, in respect of the conditions which may be applied and indeed, at least, defences in respect of people who let accommodation in the face of perhaps not having the certificate of residence that they are required to seek. So there are defences of various kinds embodied at different points in the legislation. The hon. member Mr Crowe also referred to the nature of the growth of population. I am not sure that it is currently quickening. I think it is probably on analysis a steady growth at this time and he does infer that market forces do in themselves effect some control. However we are all conscious that there is a feeling that we need more than a market forces element to control the population in the Island because market forces in themselves perhaps do not provide the kind of level playing field which we would seek to have applying in the Island. Market forces sometimes give an advantage to those with more resource than others. The costs of the implementation of the legislation are of course estimated to the best of someone's ability and whether or not the hon. member is right that this may cost more than is anticipated remains to be seen. He is also concerned about reciprocal measures being taken against Manx people. It is clear if you look round the world that there are many countries which have a barrier against people moving into those countries. It is not a unique situation but we do live in a common travel area at the

moment and unless that situation changes the Island cannot deny access to persons from common travel areas who chose to use that as the mechanism nor I think can they immediately stop Manx residents moving into those areas. That situation could of course change. So I do not think that this particular measure in itself will provoke a response by other countries, many of whom already have their own mechanisms in place to control immigration in one form or another. The hon. member Mr Kniveton has asked if I could describe the differences between this Bill and others that have failed. Now, to be frank with him, I cannot give him chapter and verse. There have been efforts in the past to try and define 'Manx nationality' as a method of controlling population and other administrative matters in the Island and those failed. There have been explorations of other mechanisms by which we might control our population such as Immigration Acts but they do not work adequately enough because there are people, as I have indicated, in common travel areas who would not be subject to immigration controls. There have been considerations given to whether the Control of Employment Act would be adequate and as we know that does not work because it only controls the working population. Relationships with national insurance or health records have been considered, again they are not adequate because they do not necessarily reflect the whole of the population of the Island. There are some people who do not have Manx national insurance records, they have United Kingdom insurance records or may come from other countries simply to retire, so they do not cover the whole gamut of population issues. It is for this reason that finally this residency mechanism, however bureaucratic and burdensome it may be, has been deemed to be a mechanism which is viewed as perhaps giving us a satisfactory measure of control. The Lord Bishop has asked again about exemptions and perhaps I could modify my remarks of last week when I did not make it clear that it is possible under regulations in clause 19 for the Council of Ministers to provide for exemptions. No discussion has yet taken place as to what form the regulations will take or even what detail may be in them. That is the next step to be undertaken if this Bill completes its passage through the branches. I would countenance a consultation process being embarked upon I may be wrong in that but I would think that any Council of Ministers whoever they may be would probably seek to undertake a consultation exercise and even if they do not I would suggest that it may be useful for the Lord Bishop to communicate his concerns with regard to the clergy when Council of Ministers are in fact drafting that legislation. They do not have to do it - it is a provision that they may provide for exemptions - but I would invite the Lord Bishop to convey his concerns to the Council of Ministers on that particular issue. I thank members for their general support of the Bill which I think most of us acknowledge is not going to be an easy piece of legislation to use.

Mr Radcliffe: Mr President, could I just come back on this question of appeal?

The President: Mr Radcliffe.

Mr Radcliffe: The hon. mover has mentioned the various defences which can be used by people if they contravene the terms of this Bill when it is enacted but there would appear to be no appeals procedure as such -

Mrs Christian: Yes -

Mr Radcliffe: - from what she said in response to my question. I just wondered could she reassure me on that point?

Mrs Christian: I apologise if my response was inadequate. There are appeals permitted, Mr President. For example in clause 3 under conditional registration the individuals can appeal under -

The President: Clause 5.

Mrs Christian: Yes, clause 5, review of decisions, covers the appeal procedure where a person may apply to an independent tribunal which is chaired by the High Bailiff and has two lay people nominated by the Council of Ministers on it to consider matters which have aggrieved them. Clause 5 states, 'Any person aggrieved by a decision of the registrar to refuse registration, to impose conditions, to vary conditions or to vary the register may apply to a tribunal.' And the tribunal's decision has to be responded to by the registrar. He has to take on board what the tribunal decides.

Mr Radcliffe: Right.

The President: With that response, hon. members, the motion before us is that the Residence Bill 2000 be read a second time. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Now hon. members we have reached committee stage. Are we happy that in fact the Residence Bill should be considered as a whole by the whole Council acting as committee?

Members: Agreed.

The President: In that case, hon. members, we will take clause 1, Mrs Christian.

Mrs Christian: Thank you. Part 1 deals with the registration of residents and clause 1 provides for the establishment of a register under the control of a registrar to be appointed by the Civil Service Commission. The registrar will maintain a register of individuals who are qualified under this Bill to reside in the Isle of Man. The register must be maintained in accordance with part 1 and part 3 of the Bill. The register will be publicly available for inspection at the registrar's office during normal office hours and it states that the register will contain the name, sex, date of birth and last known residence in the Isle of Man of every individual who is registered. The clause provides for regulations to deal with the form of application and documentation and the information required with applications. Applications for registration of an individual who is under a disability, for example a child, may be made by his parents, guardians or other specified persons and the registrar may call for further documents or information if the registrar believes it is reasonably necessary to establish eligibility for registration. If that information is not forthcoming after three weeks the registrar may treat the application as withdrawn. He must serve a written notice of that fact on the applicant but may at his discretion extend the three week period. The registrar must not register any individual unless the registrar is satisfied that the individual is qualified for registration under clause 2, an unconditional registration, or under clause 3, a conditional registration. The registrar must deal with every application and either register the individual or refuse to register the individual and if the refusal is the decision the registrar must in any case serve notice of the decision on the applicant and if it is a refusal give reasons for his decision to refuse. I beg to move that clause 1 do stand part of the Bill.

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

The President: Mr Delaney.

Mr Delaney: The registrar refusing to register somebody, he has right of appeal as has been identified. I wonder is that situation, that non-registration, that person could pursue us to the European Court for a decision, clarification of a decision?

Mrs Christian: Mr President, my understanding is that the legislation complies with the requirements of the European Convention on Human Rights -

Mr Delaney: That is not the question, Mr President. Can they pursue us.

Mrs Christian: Well, I presume that. . .

The President: One at a time, I think, Mr Delaney, if you could just clear your question.

Mr Delaney: Can that person take this decision, even after appeal if he still feels he is hard done by in the decision, to the European Court because that would mean, as we have already had in this Island, a number of years transpiring before we get a decision? That is the reason I am asking the question.

Mrs Christian: Mr President, I would anticipate that if a person felt that their human rights had been breached by a refusal they might in the first instance - I am not sure whether they would be resident in the Island or resident somewhere else - but they may wish to approach through the legislative processes in their own country, either in the Island under our own Human Rights Bill or in the United Kingdom if they were coming from the United Kingdom under the Human Rights legislation there, and if they were not satisfied with that response everyone is still entitled to go to the European Court. Whether or not their case would be accepted would be a matter for determination in those particular courts.

The President: They must take steps locally first.

Mrs Christian: First, yes.

Mr Delaney: Right, so bearing in mind that the person is applying, say, from the Island to comply with this legislation because this is only local legislation that they are already on the Island it could take, would the mover agree with me, a number of years before the case was decided, should it be accepted by the European Court that they have a case? And therefore that is the situation we found ourselves in already when we came to the work permits.

The President: Mrs Christian.

Mrs Christian: Mr President, I think the fact that the Island has enacted human rights legislation here should make for faster passage of any matter which someone wishes to challenge under the human rights legislation. That is the purpose of embodying it in our own statute.

The President: Mr Crowe.

Mr Crowe: Mr President, whilst you were talking - and I certainly am supportive of this first clause - but I have just jotted down that we are on voters lists, we are on rating lists, some people are on work permit legislation, data protection, the tax office, national insurance -

Mr Delaney: TV licences.

Mr Crowe: - passports. I mean we seem to be. . . a wealth of bureaucracy. I am just wondering if Mr Radcliffe's comment about the cost and maybe the registrar could take over the

function of the passport office because he will have all the information. You do not have to answer that question. It is an observation rather than a question. *(Laughter)*

Mrs Christian: Thank you.

The President: Mr Kniveton.

Mr Kniveton: Just a small point here, Mr President. An application is made for registration. It is turned down by the registrar. It is turned down on appeal. Are we then talking about deportation?

Mrs Christian: Yes.

Mr Kniveton: I would assume so, either forcibly or otherwise.

Mrs Christian: Mr President, if I may respond to that point. Yes, there is a provision in here for deportation. If I may respond to the point made by the hon. member, Mr Crowe, indeed we have a number of bureaucratic systems but unfortunately they do not cover the whole gamut of the Island's population. In each one of those there seems to be an element which is not included which is why we have to have this piece of legislation if we are serious about controlling the population. Whether or not it is a refined or a crude mechanism remains to be seen. I am quite sure that if there were ways of combining some of these administrative functions that would be looked at, not least by the Treasury, and I think that certainly there may be scope for looking at control of employment legislation under the same umbrella as this piece of legislation because they will interact in some circumstances.

The President: If again I may be permitted to comment, which I am a little wary of doing, but nevertheless in relation to Mr Kniveton's comment, Mrs Christian, the deportation bit, it does say in clause 2 that an individual who is resident in the Island immediately before the commencement. So somebody who is resident on the Island at the time it comes into effect can automatically expect to be registered but need not necessarily be accepted on work permit legislation.

Mrs Christian: That is so.

The President: The motion before us, hon. members, is that clause 1 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 2, Mrs Christian.

Mrs Christian: Clause 2 deals with unconditional registration. Individuals who are entitled to register without conditions are (a) those resident in the Island immediately before this clause comes into operation - and the definition of 'resident' is dealt with under clause 20 - and (b) individuals with specific residential accommodation in the Island such as a house or a flat which he or she has established as a permanent home. The individual must continue to maintain that residence as a permanent home. This provision could apply in respect of former residents who have moved from the Isle of Man, perhaps because of their employment, but intend to re-establish residence at some point in the future. Anyone who was both born in and whose birth was registered in the Isle of Man. Individuals who have been resident in the Isle of Man for an aggregate period of at least 10 years - and there is a list of those set out in paragraphs (a) to (e) - and additionally the husbands or wives of these persons or a widow, widower or divorcee of such qualifying individuals and an individual with at least one parent who qualified under the previous headings. There is a transitional provision which prevents a

person who is in the Island for the purpose only of receiving medical treatment from claiming that he or she was resident in the Island for the purposes of subsection 1(a). When calculating the period of 10 years under subsection 1(d) any time spent in the Island as an illegal resident contrary to clause 9 of the Bill is not to be taken into account. I beg to move that clause 2 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 clause 2 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clause 3.

Mrs Christian: Clause 3, Mr President, deals with conditional registration. It permits discretionary registration which will be exercised on humanitarian and economic grounds amongst others, which will be established under the regulations. The registrar is permitted to register individuals who although not included in the list of qualified individuals in clause 2 may nonetheless be registered. To be registered under clause 3 an individual must satisfy the provisions of the clause and any criteria specified in regulations made by the Council of Ministers under clause 19(2)(a) and (b). In exercising the functions under the clause the registrar must comply with directions given by the Council of Ministers under clause 14. So within these conditions we are establishing our gateway. Dependants of any person who is registered under this clause are also entitled to conditional registration. Where conditions are imposed there is a right to a review under clause 5. Conditional registration will expire on the date set out in the conditions attached to the registration or on the date on which the individual concerned ceases to be resident in the Island. For example, if they decide to move before their conditional registration has allowed them to stay, then once they have gone from the Island, their registration ceases. An individual may apply to the registrar for variation of conditions in a form prescribed under regulations made under clause 19. Again the registrar must come to a decision in respect of every application for variation of conditions. If a variation is refused the registrar must serve a written notice of refusal on an applicant within a reasonable time. The notice must include reasons for the decision and a review procedure is provided by clause 5. It is an offence to contravene a condition imposed under sub-section (3) of this clause with a penalty as set out in clause 17. Dependants may be defined for the purposes of this clause by regulations made under clause 19. I beg to move that clause 3 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. There is logic to this clause obviously, because if a worker wishes to come to the Island on a contract for a year, or two years, or three years - and this could be anybody in any industry or in government such as doctors or teachers I would imagine - and it has to allow for the conditional registration to allow those people to work here. The more I go into this legislation the more I realise that it has to sit comfortably with work permit legislation. I think the Lord Bishop has brought this out, that it has to sit alongside because to work here a person has to get a work permit application and approval and would similarly have to, concurrently with that, apply for a residence permit for those periods. So the

work permit issued would have to be for the period of the residence so that two must sit comfortably together. So, again, it is fine as far as I am concerned and allowing the dependants the same condition of registration would allow a spouse or children to work for that period and then of course the condition can be varied if the people want to stay on. So, again, it seems to make reasonable sense, so with those remarks I will cease.

The President: Mr Radcliffe.

Mr Radcliffe: Just on a sort of a by-the-way, almost. Many people live and work off the Island and have every intention of coming back to the Island, perhaps in retirement or if suitable employment turns up here. Would it be possible for an individual to apply to be registered while still remaining in work in the United Kingdom, or indeed elsewhere in the world, or do they just have to apply for registration if and when they intend to come here to live permanently? There are also many people of course who have a base in the Isle of Man but whose working life is spent elsewhere. I am thinking of oil rig workers and people like that who spend a lot of time off the Island. But I would imagine - and I am just forecasting, if you like, what the hon. mover's answer will be - that if they are Manx born they will qualify in any case I guess. But there would be no point in applying to be registered whilst still remaining in the UK or elsewhere then in that case. I have answered my own question. *(Laughter)*.

The President: Mrs Christian.

Mrs Christian: Thank you, Mr President. I have to say that the committee spent an awful lot of time answering its own questions. *(Laughter)* In fact posing an enormous amount of questions to itself in order to try and untangle all of this. If I could perhaps first deal with the comments made by the hon. member Mr Crowe in respect of the work permits legislation. When we come to, I think, clause 21 we will deal with the inter-relationships between the work permit legislation and this legislation. In fact, there will be a change made to the work permit legislation which states that people who have conditional or unconditional registration will be exempt from the work permit legislation. So that, if you have an authority to be a resident here, that automatically gives you a right to work here. However there will be some categories of people who are not going to be resident here but who may be working here for shorter periods of time who will still require to be controlled by the work permit legislation. I think the work permit legislation will diminish in some ways, which is why I said earlier that it may be possible in the course of time to amalgamate the administrative functions under the two pieces of legislation. The hon. member has referred to the provision here which allows a spouse and children and dependants to come in with a person who may be coming in on a conditional resident's permit, say to work for four or five years. It would I think have been unacceptable under human rights legislation, for example, to say that a person could not bring their spouse or children with them in those circumstances. But what I think we have to recognise is that in the event, shall we say, of a divorce it does not mean that if one partner leaves the Island that the rest also have to go, so that there are these sort of situations that we have had to look at. The hon. member Mr Radcliffe raises an interesting question about whether you can be working off the Island and intend to come back at some point, whether you can apply. The answer is, as he said he has probably answered it himself, the sort of people he was describing - and of course we have to look at every case individually - but the sort of people he was describing might, I suggest, fit into the unconditional registration category either by virtue of being Manx born and wanting to come back here or having a Manx parent or having

lived here for 10 years themselves anyway before they went off to do this other job. So they may come in under that category. However if they do not, there is no point in applying to be registered in the Island unless you, at that actual time, want it. You cannot be given an advance permission unless you come into the unconditional category. Because, if you did that, you really are effectively losing control. So I hope that answers the hon. member's question.

The President: Right, hon. members, the motion before us then is that clause 3 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 could take 4 and 5 together.

Mrs Christian: Yes, Mr President. Clause 4 deals with variations to the register to take into account changing circumstances as set out in sub-section (1). Except, obviously, in the case of a death, the registrar must give written notice of the variation to the individual concerned or in respect of a person under a disability give notice to the parent, guardian or other person in whose care or custody that person is. Now there is a right of review contained in clause 5 if the registrar seeks to amend the register under this clause. Clause 5 establishes a review procedure in relation to decisions of the registrar, the review tribunal will be chaired by the High Bailiff. Applications for a review of the decision must be made to the tribunal in a manner prescribed in regulations and the tribunal hearing shall be held in public unless the applicant for a review requests that it be held in private. Applicants may appear before the tribunal in person or by their appointed representative, who may or may not be an advocate. The registrar must make alterations to the register to give effect to a decision of the tribunal and the clause sets out the constitution of the tribunal and its term of office of the appointed members, that is a three-year term. It sets out also the powers of the Council of Ministers to rescind, replace or appoint deputy members to the tribunal. And finally it makes it clear that the person aggrieved by a decision of the registrar, as stated in the wording of the clause, can only be the individual to whom the application of registration relates. In other words I cannot go and complain because the registrar has registered Joe Bloggs. It is only the applicant who may challenge the decision as an aggrieved person. I beg to move that clauses 4 and 5 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. Could I ask the hon. mover if fees are to be paid for this. I mean, it is an interesting exercise in raising revenue if you could charge everybody to go on the register, you could charge everybody to vary the register, you could charge everybody to inspect the register. Now I am not sure, I do not think fees are in this Bill but maybe the hon. mover could comment on that.

Mrs Christian: Yes, Mr President, unless there are any other questions.

The President: I take it Mrs Christian may reply.

Mrs Christian: Thank you. Certainly this bill does not provide for fees and my understanding is that fees are dealt with under another piece of legislation. I imagine that the Treasury would be the body who can impose fees in respect of any tribunal or any particular procedure but there certainly no provision in this piece of legislation for the imposition of charges.

The President: Hon. members, the motion before us then is that clauses 4 and 5 both do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses 6, 7 and 8, Mrs Christian, to complete Part 1.

Mrs Christian: Clause 6 deals with the obligations to supply information. Within three weeks of any change in the information contained in the register, a registered individual must notify it in writing to the registrar. So if there is a change in where you live, for example, you must notify the registrar. Any failure to notify a change constitutes an offence. Clause 7 gives the registrar access to certain information held by official bodies in order that the register may be kept up to date. For example, the Chief Registrar is obliged to supply quarterly returns of births and deaths to the registrar and through that process the registrar can update his own residents' register. It also allows the income tax assessor and the Department of Health and Social Security to disclose information to the registrar to assist in the performance of his duties. Now of course that information must only be information which actually assists him. It cannot be all the information that is held by those departments. Clause 8 ensures that, except for the purposes of the bill, non-registration does not place an individual at any disadvantage under the law of the Isle of Man. A notice of registration under clause 1 (10) is evidence that the requirements of the Act in respect of registration and of matters precedent and incidental thereto have been complied with. Subsection (2) prevents the bill from affecting the status, rights or duties of any person by reason of their inclusion in or omission from the register. Registration is only relevant for the purposes of the Bill. I beg to move, Mr President, that clauses 6, 7 and 8 do stand part of the Bill.

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

The President: Mr Crowe.

Mr Crowe: I am just amazed, Mr President, at the paper chase we are setting up here because there is about 3000 houses sold every year. If you move from one flat to another, or rented accommodation. . .

Mr Delaney: Yes the conveyancing will be wonderful.

Mr Crowe: . . . the checking on people moving here, there and everywhere is going to be quite onerous on the registrar. I know it is a necessary evil but we should not underestimate the paper it is going to create, or the e-mails even if we are on an internet, and I am not even sure if the register will be on the internet.

Mr Lowey: I believe the hon. member is right but it is not a new phenomena, I believe in biblical times the same thing was being said and done, if you like, for census purposes: at Christmas that is where they were off to to register. This is a control mechanism: it will need to be checked and there is almost an inevitability about it. The secret of this Act will undoubtedly be when it is in place it will settle itself down and when it is imposed it will actually become the norm.

The President: Mr Kniveton.

Mr Kniveton: Yes, I just follow on from Mr Crowe, he talks about the paper chase and so on. If the situation is that someone does not, as they should, advise changes, what policing takes place? Is there any policing? Because to my mind this is open to all sorts of. . . whatever you want to call it. I am not totally happy with it because I believe there are certain. . .

(Interjection) Well, but we are here discussing the Bill today and we must discuss it as it sits here on this green paper. I am not altogether happy about the policing of this, how it can be policed and are there means and ways? Is there something I have not read yet? Because I have been at it for a couple of months.

The President: Mr Delaney.

Mr Delaney: I have not spoken on this Bill because I have made it clear that that is fine if the people want this Bill and it has taken 10 years to get here. I still have the same view, the points being raised now as they were raised at the first reading. The situation if you are logical on this is that it will never be brought into being. It is just there to kid the public that we are going to do something about over population in the Island. Nobody can tell me how many people we are going to have here, that we are going to say stop, because it is an unknown quantity. It is not until the people are queuing outside for somewhere to live in a tent that somebody will want to do it. It is up to the politicians of the time. But the one value of it maybe, it will be on the statute, a Residency Bill, so the short title is handy for anyone who wants to put an amendment down. But that is about it.

The President: Mrs Christian to reply.

Mrs Christian: Thank you, Mr President. The hon. member has made his position clear and I would also make the statement that this is, I have said it before and I will say it again, it is an enormously bureaucratic system and the hon. member Mr Crowe says that he is not very happy with it. Our function is to decide whether we want it or not or we do not. And if we want it then we have to accept that the people who have been responsible for drafting it have come forward with this proposal, have looked at many others and have failed to find anything else (**Mr Delaney:** Hear, hear.) that works. Now if someone can come up with something else which is more effective. . .

Mr Delaney: The short title will be handy.

Mrs Christian: . . . I think we would all be delighted. But the fact of the matter, is it will be enormously bureaucratic if you want to impose this kind of control on residence. Bureaucratic, intrusive and expensive. Choose it or do not, support it or not. Now, so far people are supporting it and with their support are accepting all of those disadvantages. Having said that, then we come to the question of policing. There are powers within the bill for the officers in the registrar's department to carry out inspections and investigations. They can do that on the basis of information from any source. I do not doubt at all that it would be a very difficult piece of legislation to police. These are certainly the disadvantages of the legislation. The powers are there and there are some requirements for local authorities, for example, in terms of their powers to keep records and other public bodies. But in terms of the individual houses and faults in our Island there is an onus on people who are responsible for the letting or the selling or whatever it may be, as defined in the Bill, to make sure the law is complied with. Now if people collude to avoid that, it may well be difficult to bring any actions but there are powers there to investigate and I would think, too, in the area of flats in the Isle of Man we may have a fairly mobile population. It is going to be very difficult.

The President: Hon. members, the motion before us is that clauses 6,7 and 8 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. We turn then and start Part 2, clause 9.

Mrs Christian: Part 2 deals with control of residence. Clause 9 restricts residence in the Island to persons who are registered or exempt from the operation of the Act. This clause defines persons who are treated as exempt persons and regulations made by the Council of Ministers under clause 19 (2) (e) may also grant further exemptions. It declares that anyone causing or permitting another person to reside in the Island unless that other is registered or is an exempt person, then they are committing an offence. Penalties are set out in clause 17. I beg to move clause 9 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 clause 9 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 10, Mrs Christian.

Mrs Christian: Clause 10 provides for the issue of certificates of registration. Certificates will not be issued in the ordinary course of events because a notice under clause 1 (10) will normally be all that is required. To obtain a certificate of registration a special application will need to be made to the registrar. Subsection (2) recognises that certificates of registration will be issued for specific purposes and that the certificate itself will be valid only for the period specified in the certificate. I beg to move clause 10 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 clause 10 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 11.

Mrs Christian: Clause 11 requires persons transferring residence within the Island or taking up residence from outwith the Island to produce a certificate of registration to the person providing the new accommodation before commencement of residence. It also imposes an obligation on a provider of accommodation to require the production of a certificate of registration before allowing a person to commence to reside in the residential accommodation. The person providing accommodation is a vendor of premises, a landlord where there is a lease and a person granting a licence to occupy or any other formal or informal arrangement. Failure to comply with the various requirements of the clause constitute offences. Though there is a statutory defence available where it is alleged that a person has failed to produce a certificate of registration to a person providing accommodation, the defence arises if it was not practicable in the circumstances to produce the certificate before the date on which residence commenced. I beg to move clause 11 do stand part of the Bill.

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

The President: Mr Delaney.

Mr Delaney: I am trying to see how this will work in practicality of this. If you have got a block of flats, properties, and the person turns up to lease that flat for a long time then he has to produce the copy of this residency right to be here. I take it the sensible move would be for the person to take a photostat of it and have it because the only offence between themselves, unless somebody sees they are not producing it, there is no offence being committed. Until somebody complains, either of those two, that it was not done there has no offence been committed that anyone could give any evidence to that some misdemeanour occurred. It is

done in private, I take it. I mean they do not stand in the street and do it. So the situation is unless one of those two persons said this happened, this document was not produced or shown, there has no offence been committed so I do not see the point of it. What is actually achieved?

Mr Crowe: Mr President.

The President: Mr Crowe.

Mr Crowe: My reading of it is that if the certificate is not produced - and, I mean, I support this clause and. . .

Mr Delaney: But who is to know?

The President: Mr Crowe.

Mr Crowe: Well, of course, but it is like all things, most of society is honest. We all live by the social structure in a society and 99.9 per cent of people abide by the law, whether it is driving in a 30 mile per hour limit or in this case producing a certificate to your prospective landlord and I think the whole structure of society would collapse if people did not. . . because when you look at the laws they are, shall we say, the interpretation by some people or the adherence by most people but I think in any piece of legislation we have to rely on the good will of people abiding by the legislation. We cannot have a document stamped and filed because again we would be getting into something like Soviet Russia where you had to get a permit to buy a loaf of bread. We have to set the rules and rely on people's general sensibilities to adhere to them, I would guess.

Mr Delaney: It does not say it has to be the advocate and I can understand that. It says to the person providing it, so it is two people behind closed doors. One is going to give the keys over with a deposit and then the argument will occur some time in the future possibly that, yes they did not show me or they did show me I mean that is it. There is no specific registration. They do not have to produce it anywhere.

The President: Lord Bishop.

Lord Bishop: Mr President, years ago I sort of came onto this regime when I went to work in Nigeria and the authorities had to be given the assurance by the employer that you were a bona fide person who would be employed by them and they would give you accommodation and so on and you then got your chit which was actually authenticated. . .

Mr Delaney: That is more like it.

Lord Bishop: . . . as you went into the country in the passport, an immigration system. Is there an indication here that there is going to be a much higher profile of immigration where your permit to come in and be resident is going to be stamped in your passport? Otherwise I do not quite see how you can control it.

The President: Mr Kniveton.

Mr Kniveton: Just one small point, Mr President. Somebody comes to the Island, a couple, and they go into, say, the Sefton Hotel. How long can they stay there before they have to apply? Is it a month, two months, three months, six months, how long is it? They are coming on holiday and then they have decided to stay. How long can they stay before they have to apply?

The President: Mr Lowey.

Mr Lowey: Again, I am sure hon. members will not be surprised to learn that these questions were posed when we discussed it on the select committee of the Social Issues Committee. Can I say, again, if we start to analyse life today as we know it we will be quite surprised at just how much bureaucracy is already entailed and I use the word advisedly. For example, if I go and take accommodation in a flat, I have to have a rent book. The law states I should have rent book. I am entitled to a rent book stating conditions et cetera, so I do not think it is that more onerous in saying 'and by the way when you come in I want to know are you a resident or not', because already the landlord has got to comply with certain conditions under the law. So I do not think we are reinventing the wheel. I come back and fall four square behind the mover of the Bill on this when she says it is going to be bureaucratic. And at first light you think, my gum, this is not going to work. I believe if it has ever had to be activated it will work and, yes, there will be hiccups but I think they will be ironed out just like any other piece of legislation that will come in. Again, back behind the mover of the resolution, we have looked at it, we have looked at other legislation and tried to say well is that better? It has to comply with a whole series of what I would call human rights legislation which we are signatories to now. So again in trying to marry all of those things up, these are the best rules and conditions under legislation that we have been able to find. I have no doubt at all that this particular point about making sure that people notify people - because it is no use having one notification and then they disappear into the ether. We have to know where people are and what they are about. If you are going to have a control you have got to have a control and that unfortunately this goes with the territory.

The President: Mrs Christian to reply.

Mrs Christian: Thank you. I will try and respond first to the point raised by the hon. member Mr Delaney in respect of who is going to prove that the provider of the accommodation saw the certificate. There is an obligation on that provider to satisfy him or herself that the potential resident has the authority to to advise this. Now if I were that provider I would be saying, 'Can I see your certificate?' and if I wanted to protect myself, 'Would you mind if I photocopied it?'

Mr Delaney: That is exactly what I said.

Mrs Christian: Now that is a matter for them to decide. It would give them a protection and if they did not have a certificate at that time, they would need to establish that there were good reasons for such a certificate not being available. That constitutes their defence under this particular clause. Now they would have to either take the word of the person concerned that it was not practicable to get the certificate, or they might ring the registrar and say, 'Well, why haven't they got a certificate, is it being held up for a specific reason?' It is up to the provider of the accommodation to determine themselves how best to protect themselves in the event that somebody comes along later and says, 'I'm sorry, but you housed an illegal resident.' So that is a matter which they have to determine how best to deal with themselves but they are under an obligation to at least seek the information about registration. The question of immigration does not really impinge on this particular piece of legislation. That is a separate issue dealt with firstly outwith the Island, as people come into the UK firstly and then into the Island. So, notwithstanding that you may have to have a passport and go through immigration control, you still have to undergo this residence application, as you do now in respect of work permits. For people who might come on holiday and decide that they like the Isle of Man, the test is really in

the determination of residence and 'resident' is defined as 'ordinarily resident'. In other words, when they have perhaps given up their home in another place, and certainly I think 'ordinarily resident' might well be interpreted after six months of residence in the Island, but perhaps the Attorney could confirm whether or not I am right on that. (**A Member:** Yes.) But the test would be. . . ordinarily resident, you know, you are either coming into a tax situation or a benefits situation in the Island and you cut your ties with somewhere else. But the hotel would certainly be, I would suggest, under an obligation to monitor what the actual status of their residents was in the light of the legislation. The hon. member, I think, is alluding to someone who sets up their permanent residence in a hotel.

Mr Delaney: Or a self-catering establishment.

Mr Kniveton: It is quite clear, Mr President. . . I mean, I have just come back from the USA and I am well aware that a visitor can go to the USA for six months less one day and that one day is very important.

The President: Mr Attorney, do you wish to comment as Mrs Christian asked?

The Attorney-General: Mr President, I was hoping that this question would not arise. (*Laughter*) I was congratulating myself on saying nothing during the course of this Bill. (*Laughter*) But of course, Mr President, the concept of residence and ordinary residence is that the very heart of this Bill. We have to start, Mr President, I think at the definition in clause 20 sub-clause (1): ' "resident" means ordinarily resident and "reside" shall be construed accordingly', but then it gives a certain guide there. It says 'without prejudice to the generality of that definition, a person shall not be treated as ordinarily resident by reason only of the fact that the person is present in the Island for an aggregate period not exceeding 6 months in any 12 consecutive months.' So just pausing there, Mr President, if a hypothetical hotel occupier were to be present in his hotel room for an aggregate period not exceeding six months in any twelve, he would not be resident and he would not be required to register as such. Of course residence, Mr President, is very often connected with tax matters and we all know that there are many people living in the Isle of Man who still want to have a connection with the UK and certainly, under the old legislation, they were entitled to be resident in the UK for up to 90 days without becoming resident in the UK for tax purposes. I certainly can remember people who were very, very keen on fishing. They would have 89 days fishing without being resident in the UK. But more seriously, Mr President, the draftsman was concerned as to whether or not we ought to try to be more scientific in defining what residence meant and we looked at legislation and cases in Canada and New Zealand particularly and there is legislation in New Zealand which attempts to define 'ordinarily.' I think the best we can do Mr President, really is to say that 'ordinarily resident', refers to a person's abode in a particular place or country which he has adopted voluntarily and for settled purposes as part of the regular order of his life for the time being, whether of short or long duration. Now that, Mr President, is quite a convoluted definition. It comes really from the common law and although we have some nebulous concepts like 'abode' and so on and so forth, and 'the regular order of his life', nonetheless it has the benefit of being the product of case law. We would hope, Mr President, that as the legislation matures, it becomes effective, the registrar is subjected to regulations and directions, he will be able to develop an appreciation of what 'ordinarily resident' means by being able to take account of developments, not only in the UK but throughout the world, with a view to achieving fairness for applicants. I do not know if that is of any help at all to hon. members, Mr President. I could

perhaps go on further to discuss the concept of ordinary residence in tax cases but really I think the best we can do is to see whether someone has established a home in the Isle of Man. Is he residing in the Isle of Man with the intention of residing in the Isle of Man indefinitely? These are just indicators, Mr President, all of which will be taken into account and I hope that is of assistance.

The President: Hon. members, the motion before us then is that clause 11 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Turning to Part 3, will you take clause 12 and 13, Mrs Christian, please?

Mrs Christian: Yes. Part 3 dealing with general matters. Clause 12 provides that in order that provisions may be policed, investigative powers and rights of entry for the registrar and other authorised persons are set out in this clause. It also enables a justice of the peace to issue a warrant, lasting up to seven days, permitting entry for the purposes of an investigation and provides that where a property has been entered it must be left in as secure a condition as it was when the authorised person entered it. If the registrar has reasonable cause to believe that a person is residing in the Island in contravention of clause 9 (1), he or she may serve a notice to that effect, requiring a response within seven days. Where an individual has failed to satisfy the registrar within 7 days of such a notice, the registrar may certify the failure and in any prosecution the court is to take that certificate as sufficient evidence to prove that the individual is in contravention of section 9 (1). In other words, if they do not respond then it is deemed that they are not willing to prove that they are not in contravention. I then move to clause 13 which deals with false statements and obstruction. Under this clause it is an offence to provide information, knowingly or recklessly, which is false in a material particular in relation to this Act. It is also an offence to obstruct an authorised person in the exercise of any power under the Bill. The penalties for this are set out in clause 17. It enables the court to cancel a registration where a person is convicted of an offence of making a false statement and requires the registrar to effect that cancellation. However, a person who had his registration cancelled under this section may make a fresh application for registration. I beg to move that clauses 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 clause 12 and clause 13 do stand part of the Bill. All those in favour, please say aye; against, no. The ayes have it. The ayes have it. Clauses 14 and 15, Mrs Christian, please.

Mrs Christian: Clause 14 enables the Council of Ministers to give the registrar general directions as to the exercise of his powers under the Act. The power to issue directions gives the Council of Ministers an element of fine tuning in respect of the administration of the Act by the registrar. The registrar is obliged to comply with the directions, which must be laid before Tynwald. The registrar must supply a copy of any directions to members of the public who request them, at a reasonable charge. Clause 15 imposes obligations of confidentiality on the registrar and other authorised persons. However, information can be disclosed with the consent of the person from whom it was received or the individual to whom it relates and the clause specifies certain circumstances in which information may be passed to others. Breaches of confidentiality constitute an offence. I beg to move that clauses 14 and 15 do stand part of the Bill.

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

Mr Delaney: Just on clause 15, Mr President. This is the informer's clause, this one, to protect the informers. I mean the information could be flowing back before anyone who has a grudge against anybody could be able to use this and pass on the information of claiming that x person has not got a right to be there. I mean the motions are set in being and the person who has passed on this information is protected by law. I find that an informer's clause.

The President: Mr Lowey?

Mr Lowey: If I could just comment on that particular one. I mean it is a bit like. . . we have that situation now, Crimestoppers and all the rest. You can inform on anybody even now. Again, we are not re-inventing the wheel.

Mr Delaney: Crime is different.

Mr Lowey: This would be a criminal offence. If you break the law, you know, it is how you evaluate crime. But the principle is already enshrined in it. It is not a new principle it has been enshrined in that. I do not particularly like it but it is not a new principle that is being introduced into legislation. It is one that is already practised now.

The President: Mrs Christian to reply.

Mrs Christian: Thank you, Mr President. There are two issues here I think. There are two aspects of this information. One is information which the registrar legitimately seeks, in some detail perhaps, before authorising registration in the Island and this clause, as I understand it, covers that kind of information and where that information may be disclosed to other parties. In respect of what the hon. member describes as informers, I do not think there is any harm done in a law-abiding society where people indicate that they believe the law is being breached. If we take that attitude, it rather undermines a society's commitment to be law-abiding and 'informers' has a rather denigratory tone about it. People supporting the sustaining of the law should not be denigrated for that, I do not believe. So I would not agree with the hon. member in his interpretation of the nature of those sort of actions. I believe that this Bill gives proper protection to individuals applying for registration where detailed information has been supplied to the registrar and if it is needed to protect other people who report where they believe there is a breach, then I have no problem with that either.

The President: Hon. members the motion before us is that clauses 14 and 15 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 could take 16, 17 and 18?

Mrs Christian: Yes. Clause 16 contains supplementary provisions as to time limits on the taking of proceedings and deals with offences by bodies corporate. The consent of the Attorney-General is required to bring proceedings. Those proceedings must be commenced within six months after the commission of the offence or within three years if sufficient information about the offence came to the prosecutor's knowledge not more than two months before the commencement of the proceedings. The clause sets out the liabilities of officers of companies, members of bodies corporate which are managed by their members rather than a board of directors and deals with the position of limited liability companies where any of these bodies are in breach of the legislation and it provides a statutory defence in respect of all offences under the Bill. Clause 17 provides a maximum penalty of £5,000 and/or six months

custody for offences under the Bill and establishes that all criminal proceedings will be heard before the Court of Summary Jurisdiction. A convicting court may order that a person leave the Island and be conveyed to the country where such person previously last resided. Clause 18 ensures that a breach of the Bill will not affect any property transaction or any property rights. A conveyance of land to a person who is not qualified to reside in the Isle of Man will not be invalidated by the provisions of the Bill. I beg to move that clauses 16, 17 and 18 do stand part of the Bill.

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

The President: Mr Crowe.

Mr Crowe: Just on clause 18, Mr President. I mean if somebody wished to live here and then bought a property and then applied for residency and was turned down, he is going to be owning a house which he is forced to sell. It may be a salutary lesson that he would have to learn, to get your permit before you buy your property.

Mr Delaney: Surely, Mr President, on this one, just to safeguard certain rights, should we in the Conveyancing Act in some way make sure that it is the duty upon the people who are paid to advise them that they are told that it has to be included in that. So these people will not be caught foul of this. I cannot see this happening actually but I would like to see it on statute somewhere that they have to be told by the people they are paying to do the business for them, that they would require a residency permit.

The President: Mrs Christian to reply.

Mrs Christian: Thank you. Yes, Mr President, the vendor, as we have covered earlier, does have an obligation to ask the purchaser for proof of their permission to reside.

Mr Delaney: That is why I raised it.

Mrs Christian: Now the vendor asks that question and therefore puts on notice the purchaser of that requirement for a certificate. It is then clear to the purchaser that, if they want to reside, there should be a requirement to get a residence permit, but what this is saying is that you can hold property without being a resident. That is simply all it says. Now the hon. member may be concerned that someone may buy a property in ignorance of the residence requirement.

Mr Delaney: Mr Crowe was concerned. I was not.

Mrs Christian: All right. I think I said the hon. member, that covers both of you, I think. *(Laughter)* The position simply clarifies the issue of ownership of property. Ownership of property is permitted outwith the Island but does not confer with it a right to reside.

The President: Hon. members, the motion there before us now is that clauses 16, 17 and 18 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Clauses 19, 20 and 21, Mrs Christian, please.

Mrs Christian: Clause 19 gives the Council of Ministers power to make regulations. Such regulations are subject to Tynwald approval. Subsection (1) is a general power for the Council of Ministers to make regulations to carry the Bill into effect and subsection (2) sets out the more specific matters which may be included in the regulations. These include for example, the criteria for conditional registration, i.e. the setting of the gateways, whether they be economic or

humanitarian or related to arts or whatever it may be, the exemptions as alluded to by the Lord Bishop and criteria for the variation of unconditional registration, which it may be felt needs to be changed at some particular time and so on. So there are a number of categories there which are specifically set out which allow the Council of Ministers to draft regulations in relation to them. Clause 20 provides for the interpretation the terms used in the Bill and we have alluded to some of those during the course of the discussion, in particular, the definition of 'resident'. Clause 21 deals with the financial aspects and provides that the expense necessary for the administration of the Bill will be paid out of moneys provided by Tynwald. I beg to move that clauses 19, 20 and 21 do stand part of the Bill.

The President: Mr Lowey.

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

The President: The Lord Bishop.

The Lord Bishop: I want to thank the hon. mover for the various bits of advice she has given on this clause 19 and I certainly will, and have already, taken up writing to various people but I think just to mark my unease on it, I might be tempted to vote against the clause just to make a comment, not to say that I am against the Bill in that sense. But I would like just to note that I am minded to vote against 19 on that basis.

Mrs Christian: Thank you, Mr President. I note the Lord Bishop's comments. I do feel that voting against will remove any opportunity for the Council of Ministers to amend to allow the clergy to be exempt, but I understand that notwithstanding that action his purpose in doing so would be perhaps contrary to that and is simply to record disquiet.

The President: Hon. members, in view of the Lord Bishop's comments I propose to put clause 19 to you separately. Those in favour of clause 19 please say aye; against, no. The ayes have it. The ayes have it and we note that the Lord Bishop has voted against. (*Interjection and laughter*) Clause 20 and 21, hon. members. Hon. members, clauses 20 and 21. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 22, schedule and clause 23 and 24 which are the savings and short title and commencement. Perhaps we can complete the Bill now Mrs Christian?

Mrs Christian: Clause 22 introduces the schedule. The schedule amends section 2(3) of the Control of Employment Act 1975. That is the section which specifies persons to whom the Act does not apply. These persons will not need a work permit under that Act and so to the exempted categories of the Control of Employment Act are added persons who are registered unconditionally or are qualified to be registered unconditionally under the Residence Bill, any person who is registered conditionally but only while such registration is in force, persons who are exempted from the Residence Bill and any person who is exempted from registration under the Residence Bill. Clause 23 provides the savings. The Bill is not to effect the operation of the Immigration Act or the Data Protection Act and clause 24 is the short title and commencement. It enables the Council of Ministers to bring the Bill into operation by appointed day order. I beg to move that clause 22 along with the schedule and clauses 23 and 24 do stand part of the Bill.

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

The President: Hon. members the motion before us is that clause 22 and the schedule, clauses 23 and 24 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Now, hon. members, that leaves us with the Matrimonial Proceedings Bill to deal with. It is a matter of some 56 clauses, I think, in this one. Being aware of the clock, hon. members, I think at this particular stage, the Council will now sit in private.

The Council sat in private.

Matrimonial Proceedings Bill — Second Reading Approved — Clauses Considered

The President: Hon. members, having completed our deliberations of the Residence Bill this morning, we have reached item 6 on our order paper. It is the Matrimonial Proceedings Bill for second reading and I call on Her Majesty's Attorney-General.

The Attorney-General: Thank you, Mr President. Mr President, I believe that hon. members were broadly content with the principle of the Bill, which seeks to achieve the three objects I referred to at first reading. Namely, firstly, the introduction of a power for the High Court to make a pension sharing order; secondly, to consolidate the legislation in relation to financial provision in matrimonial matters; and, thirdly, to enable financial provision orders made in the Island to be recognised in the UK and the Channel Islands on a reciprocal basis. Hon. members were of the view that it was a sensible Bill which recognised the fact that wives nowadays may be more independent financially than they were in the past and that when, unfortunately, a marriage does break up, the court must be able to adjust the property rights of the parties, taking account in proper cases of the financial independence of the parties and the fact that it might well be appropriate to make orders which will achieve a clean break, not only of the marriage itself but also of the financial assets of the parties, account being taken of relevant pension rights. In those circumstances, Mr President, there is little further I feel I can usefully add at this stage of the Bill and I would move that the Bill be read a second time.

Mrs Christian: I beg to second, Mr President.

The President: Mrs Christian seconds. Mr Kniveton.

Mr Kniveton: Yes, Mr President, unfortunately I was not here last week so I may be repeating questions which were asked last week at the first reading. Now, sir, as I see it, this Bill will include the power for Manx courts to order persons sharing, between couples in divorce cases, whether here on the Island or elsewhere jurisdictions. In this day and age when women go out to work, earn good money, give up their job to marry, then in her, shall we say, middle age is no longer required by the husband and has to leave with nothing or near nothing left, then she does deserve her rights, I believe. She deserves her rights as far as future pensions are concerned. I believe that is not unreasonable. But I do have a couple of points for the learned Attorney. Firstly, I would ask him, what if the husband finally receives a pension and has a wife and one, or even two, ex-wives who have not re-married who would benefit presumably? All of them. What is the case there? Secondly, what about the couples living together and not married? Does the female have any rights when the male retires with a pension? I presume she does but I would like confirmation. And thirdly, if the roles are reversed, does the same apply to the male, or even the females? I am sorry as I say, Mr

President, if these points were raised last week but they came to my mind after reading this weekend on my return, so I do ask that. But basically, I do support the Bill.

The President: The questions are perfectly in order at second reading stage, Mr Radcliffe?

Mr Radcliffe: Just a brief comment. Where orders are made under clause 1 about maintenance orders and the like, I have known of several cases where one party has gone from the Island, usually the male party I must say, and despite being pursued in another jurisdiction, there was never any settlement of what he was supposed to be paying to the wife and the children. Are there any teeth at all anywhere that the courts here can enable somebody to get to grips with a party such as that, who just takes off and leaves everything behind, but is known to be in a good job in the place where he moves to? People know where they are but just cannot seem to be able to enforce any sort of settlement at all. I just ask, sir, is there any teeth anywhere in legislation that resolves that particular problem?

The President: Mr Attorney, to reply.

The Attorney-General: Thank you, Mr President. Mr President, in answer to the questions raised by the hon. member Mr Kniveton: the question first of all as to what happens if a man has a succession of divorces and perhaps at each stage the wife or former wife wishes to have a share of the pension, because that may well be the most valuable asset. Mr President, the position is that the pension is, of course, as we see from the Bill, available as an asset which can either be earmarked, so that when the person dies part of the lump sum on the pension is earmarked for a particular former spouse, or, instead of being earmarked, it can be shared. I think, Mr President, the position must be that if a man has two or more former wives as it were, all that can happen is that on the second divorce the court would have to assess what pension rights are left, what pension rights are available to the husband after the first divorce has been dealt with. It may be, for example, that the first wife has had, say, 25 per cent of the pension allocated to her, because that is what the court felt was an appropriate proportion at that stage. If the man remarries and then divorces again, he only has 75 per cent of his pension and the court would have to really look at the situation and say, well, can we deduct a further 25 per cent for this second spouse or actually should we now adjust the whole situation? There are powers available to the court to look at orders which have been made in the past and to adjust the former orders. In other words, in our case for the first wife the court might say, well, because the man now has additional commitments to wife number two or wife number three, wife number one will unfortunately have to have her pension entitlement adjusted. So I think, Mr President, the position is that the court has to look at the position as it is when the second divorce is assessed. In so far as the second point is concerned - couples living together - does the so-called 'common-law wife' have any right to the pension? The answer to that, Mr President, under the present legislation is that she does not. The legislation is only concerned with husband and wife. This, of course, is a matter which has been subject to some criticism and I understand that the Law Commission in England are looking at the possibility of extending rights to couples other than husband and wife. And thirdly, what happens if the roles are reversed? If we had a wife with a very valuable pension, could the husband attack that pension or indeed any other assets which the wife has. The answer to that is yes. Husband and wife are treated equally. In answer, Mr President, to the question raised by hon. member Mr Radcliffe, so far as enforcement in other countries is concerned. Again it is one of the central points of this legislation that, certainly in so far as the United Kingdom and

the Islands are concerned, Jersey, Guernsey and the Isle of Man, there should be the ability to enforce orders on a reciprocal basis. So if, for example, we had a situation where a husband deserts his family and goes to live from the Isle of Man in the UK, by virtue of this legislation, a court order saying that, for example, the husband should pay maintenance or should transfer capital over, can be enforced against the husband in the UK and against his assets there.

Mr Radcliffe: Mr President, could I come back?

The President: Mr Radcliffe.

Mr Radcliffe: In one case I know of, the husband took off for the continent. They knew where he was but there seemed to be no way at all of getting any retribution from him by way of maintenance or whatever.

The Attorney-General: Mr President, I am afraid the hon. member is absolutely right. This legislation is not designed to deal with that sort of situation. I am afraid that if a former spouse, as it were escapes to a country outside of the UK and the Islands, then the wife is going to have problems, I am afraid.

A Member: That's the way to do it!

The President: Hon. members, the motion before us is that the Matrimonial Proceedings Bill 2000 is read for a second time. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Hon. members, the decision then is to whether we deal with this as a Council sitting as a full committee, or do you wish to send it to committee. So is it that we sit as a full committee? (*It was agreed.*) In which case, hon. members, I call on the Attorney-General to take clause 1.

The Attorney-General: Thank you, Mr President. Clause 1 is introductory and specifies the kinds of financial orders which the High Court may make in matrimonial proceedings. Sub-clause (1) lists the orders which the High Court can make against either spouse and specifies the provisions of Part I under which they are made. I will briefly refer to those, Mr President. First of all, the periodical payments order, in favour of the other spouse or a child of the family. Just pausing there, Mr President, the hon. members will be aware of the amendment made in another place to the definition of 'child'. The child now includes a child of one or both parties who is not a marital child. In other words, a child who is born, to use the old-fashioned language, out of wedlock. A secured periodical payments order in favour of the other spouse or child of the family; in this situation, Mr President, the payment of maintenance is secured by a charge on property or on a fund in the hands of trustees. Its main advantage is that it can outlast the death of the payer. Thirdly a lump sum order, in favour of the other spouse or a child of the family, fourthly, a transfer of property order, for example, requiring one spouse to transfer his interest in the matrimonial home to the other, fifthly an order for the settlement of property or for variation of the settlement - these are quite rare nowadays - a sale of property order, and finally a pension sharing order, which provides for a percentage of one spouse's rights under a pension scheme to belong to the other. Sub-clause (2), Mr President, provides for references in the Bill to any of these kinds of order to be read in accordance with the table in sub-clause (1). Sub-clause (3) introduces the terms 'financial provision order' and 'property adjustment order' defined by reference to the kinds of order which are in the table. Mr President, I move that clause 1 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. Interestingly, the Attorney-General talks about an order for a variation of settlement. It is interesting now that pre-marriage arrangements seem to be becoming a very popular thing. What it is saying here is that the courts can over-ride that. They can set that aside, which is an interesting avenue which I was not aware of. So it is a comment, not a question, Mr President.

The President: Mrs Christian.

Mrs Christian: This is a consolidation measure and whilst it is clear that it has amendments to provide for pension sharing which are new, presumably, I wonder if the Attorney could indicate whether there are any other new provisions in this clause or any other clauses of the Bill, sir.

The President: Mr Attorney.

The Attorney-General: Just on the last point first I will, as I go through the Bill, try to point out the portions of the legislation which have not been changed and have simply been consolidated and I will try to highlight the new provisions which will be of particular relevance in relation to pension sharing. In so far as the point made by the hon. member Mr Crowe is concerned, I know it was a statement rather than a question but, Mr President, so far as variation of settlements is concerned, sometimes the court might say, for example, that a lump sum should be settled on trustees - for example, to pay the income to the former wife for life and then on her death to the children - and it may be that the situation changes. It may be in that situation that, for example, the children were to die or would not need to have any maintenance paid for them, the court does have the power to vary the settlement for the benefit of the spouse or any other party under the settlement.

The President: Hon. members, the motion before us is that clause 1 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Clauses 2 and 3.

The Attorney-General: Clause 2 gives the court power to award one spouse maintenance pending suit. That is an interim order for maintenance until the main suit is determined. This clause represents no change in the existing legislation. Clause 3, Mr President, gives the court general powers to make financial provision orders, that is for maintenance or lump sums, on granting a decree of divorce, nullity or judicial separation or at any time thereafter. And it again makes no change in the present law.

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

The President: Mr Crowe again.

Mr Crowe: Mr President, can I just ask on a procedural issue, do the parties generally come to the High Court with an agreement hammered out or do they have to appear in person before the Deemster and argue a case or is every case on its merits?

The President: Mr Attorney.

The Attorney-General: Mr President, there are certainly cases where all matters in dispute, as it were, between the parties have been settled by agreement. Unfortunately those are very few and far between. But there are certainly situations where an agreement can be made in a so-called maintenance agreement which we will see referred to later on in the Bill and provided that that maintenance agreement is reasonable, the court need not be troubled with making financial provision orders.

The President: Hon. members, the motion before us is that clauses 2 and 3 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Clauses 4 and 5, Mr Attorney.

Mr Attorney-General: Thank you, Mr President. Clause 4 enables the court to make property adjustment orders on divorce, nullity or judicial separation and again makes no change in the present law. Sub-clause (1) of clause 4 enables the court to make a property adjustment order against one spouse in favour of the other or a child of the family, on granting a decree. 'Property adjustment orders' includes a transfer of property order, an order for a settlement of property or an order for variation of a settlement. Sub-clause (2) enables a property adjustment order to be made after a decree nisi of divorce or nullity. It need not wait for the decree absolute. Sub-clause (3) provides that an order can be made varying a settlement, even if there are no children in the family. Sub-clause (4) provides that a property adjustment order in favour of a spouse is not to come into force until the decree is made absolute. The same applies to any settlement made to give effect to the order. Sub-clause (5) makes it clear that the powers to make orders in favour of a child of a family are subject to the restrictions in clause 16 on the making of financial provision orders in favour of children over 18. Mr President, I move that clauses 4 and 5 do stand part of the Bill.

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

Mrs Christian: Whilst accepting that this is a re-enactment, does this provision for variation of settlements and different kinds of orders introduce in practice a considerable degree of uncertainty for anybody or are they not brought into effect very often? It seems to me that if you have got a power to make a decision and then later on you come along and change it, you can turn someone's world upside down.

Mr Delaney: Yes.

Mrs Christian: I presume they have to have very good cause but I do feel that it somehow leaves people in a very unsure position. Perhaps I misunderstood the effect of this.

The President: Mr Kniveton.

Mr Kniveton: I was going to ask, sir, clause 4(3), could the learned Attorney just give us an example of the type of case for the order of variation of settlement even though there are no children? Would he give us an example of that?

The President: Mr Crowe.

Mr Crowe: If your circumstances change dramatically, such as a national lottery win, they would re-open the case, is that what you are saying?

Mr Delaney: You are feeling lucky, Ray, are you!

The President: I think we will ask Mr Attorney to reply.

The Attorney-General: I am sorry, Mr President. Just dealing with the clause, I intended to make some comment on clause 5 as well. I am sorry about that. In answer to a good point made by the hon. member Mrs Christian about certainly and so on, I would just like to make it clear that agreements which are made between the parties are normally not open to review. The purpose of clause 4 of the Bill is to regulate the property assets of the parties at the time the divorce is being considered. So in other words, not afterwards. If, for example, we had a situation where - let us take perhaps an unrealistic example - let us say that one spouse, the husband, had three houses and the wife did not own any property at all. It would be open to the court, and probably very fair and reasonable, that one of the houses should be transferred over. In other words, there should be a property adjustment order in favour of the wife so that she could look after the children of the family. That would be a typical example. Clause 4 does not envisage setting aside agreements which have been made between the parties with the benefit of legal advice. If the parties themselves agree on the division of the matrimonial assets and the court is convinced that each party has had proper legal advice, those agreements are not going to be set aside. But the court does have very wide powers under clause 4, and indeed clause 5 if I may just come to that, to adjust the property at the time the divorce is made.

The President: Hon. members, I think it might be advisable if I just put clause 4. So, hon. members, those in favour of clause 4 standing part of the Bill, please say aye; against, no. The ayes have it. The ayes have it. So Mr Attorney, clause 5.

The Attorney-General: In the same way that clause 4 made no change in the present law, equally clause 5 makes no change in the present law. It enables the court, in certain circumstances, to make an order for the sale of property to realise capital for making other kinds of financial provision. Sub-clause (1), Mr President, enables the court to order the sale of property in which either or both the parties have an interest in order to raise capital to finance a secured periodical payment: a lump sum order or a property adjustment order. Sub-clause (2) enables the order to contain any other necessary provisions, for example as to the manner in which the sale is to be conducted. Should it be by private treaty or auction? And to approve the price, et cetera. In particular, it can require payment of a lump sum after the proceeds of sale and require the property to be offered to a particular person or persons. Sub-clause (3) provides that a sale of property order made on divorce or nullity is not to come into force until the decree is made absolute. Sub-clause (4) enables the court to defer the coming into force of a sale of property order, for example, until the children have left school. Sub-clause (5) provides that, where an order requires the proceeds of sale to be used to secure the payment of maintenance in favour of one spouse - for example, setting up a trust fund, the income of which is to pay maintenance - it only lasts for as long as that spouse is alive and does not remarry. Sub-clause (6) introduces sub-clause (7). It applies where one spouse and a third party both have beneficial interests in property, for example, where a house has been let to the wife for her life and then to her children by a previous marriage. Sub-clause (7) requires the third party, that is the children of the former marriage in that case, to be given an opportunity to be heard before an order for sale is made and requires the court to have regard to any representations which the third party may make. Mr President, I move that clause 5 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 clause 5 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Clause 6, Mr Attorney.

The Attorney-General: Thank you, Mr President. Clause 6 is the new clause which gives the court powers to make pension sharing orders in divorce or nullity proceedings. Sub-clause (1) enables the court to make a pension sharing order on or after granting a decree of divorce or nullity. It will be recalled that a pension sharing order is an order which provides that the shareable rights under a specified pension arrangement or the shareable state scheme rights of a party to the marriage be subject to pension sharing for the benefit of the other party and specifies the percentage value to be transferred. That definition, Mr President, comes from clause 1 of the Bill. Sub-clause (2) enables a pension sharing order to be made, before or after decree absolute but cannot come into force before the decree is made absolute. Sub-clause (3) prevents more than one pension sharing order being made in respect of the same pension arrangement. Sub-clause (4) prevents more than one pension sharing order being made in respect of state scheme rights, for example, SERPS, and sub-clause (5) similarly prevents a pension sharing order being made in respect of an occupational scheme or personal pension scheme where there is already an order in force under clauses 9 or 10 earmarking pension rights under the scheme. Mr President, I move that clause 6 do stand part of the Bill.

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

The President: Thank you, Mr Kniveton.

Mr Kniveton: This cannot, of course, be made retrospective. Is that correct, Attorney-General?

The President: Mr Crowe?

Mr Crowe: Can I just ask for clarification on sub-clause (3), which says 'A pension sharing order may not be made in relation to a pension arrangement which is the subject of a pension sharing order in relation to a marriage'. So once one arrangement has been made, it is the once only. Even if the parties to the divorce marry two or three times, that original pension is maintained with that pension sharing arrangement, it appears to be. That was the question, Mr President.

The President: If Radio 4 is right, that is what it said yesterday. (*Interjections*)

Mr Crowe: Oh, did it!

The President: But don't pass any other comment! Mr Attorney.

The Attorney-General: Yes, thank you, Mr President. So far as the question of retrospectivity is concerned, I confirm that clause 6 and indeed the Bill generally will not be retrospective. It will not have retrospective force. So far as the question of clause 6 (3) is concerned, a pension sharing order may not be made in relation to a pension arrangement which is the subject of a pension sharing order in relation to the marriage. I am now wondering whether I have given the right observation earlier on in the debate, Mr President, when I suggested that, in fact, the court does have power to review a pension sharing order made in respect of an earlier marriage. I wonder, Mr President, could I just look at that again? I am not sure now.

The President: I do not want to confuse the issue at all, but it is just -

The Attorney-General: Yes, I do understand the point made by the hon. member. It may be that I had not quite got it correct when I made the observations earlier. Can I come back to that?

The President: I would be grateful if you did. I did hear actually a discussion on the radio yesterday afternoon on this very topic and that was one of the points which they made but it may be that I did not pick it up correctly as well. So I think that in light of Mr Crowe's question there is probably a need for further clarification as we go. Nevertheless, I am sure that we could pick that up at a third reading.

The Attorney-General: The clause, Mr President, certainly follows the UK legislation and if the comment has been made as you have indicated, sir, it could well be that I am wrong.

The President: It could be that I am wrong too so I am not going to. . . The motion before us, hon. members, is that clause 6 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it I take those ayes with the proviso that Mr Attorney will explain further at third reading stage. Can we take clause 7, sir?

The Attorney-General: Thank you, Mr President. This clause lists the various matters which must be taken into account by the court in making any financial order under Part I. It makes no change in the present law except in adding references to pension sharing orders. Mr President, I do not want to look at the clause in very great detail, save to say that the general rule is that the court must look at all the circumstances but is to look primarily to the welfare of any children of the family and that appears in sub-clause (1). As I say, Mr President, the clause is a comprehensive clause which reflects existing law and, subject to any questions hon. members may have, I move that the clause 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 clause 7 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. Clause 8.

The Attorney-General: Thank you, Mr President. This clause requires the court, when making financial orders on divorce or nullity, to consider whether to do so in a way which secures a clean break between the parties, except in relation to provision for children of the family. Again, it makes no change in the present law, except in adding references to pension sharing orders. Mr President, it may, in very many cases, be entirely appropriate that the court should endeavour to secure a clean break - that is, terminating their mutual obligations, one to another, as soon as possible. Mr President, I move that clause 8 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 clause 8 stands part of the Bill. Those in favour, please say aye, against, no. The ayes have it. The ayes have it. Perhaps we could take 9, 10 and 11, Mr Attorney.

The Attorney-General: Thank you, Mr President. Clause 9 gives the court power, as an alternative to making a pension sharing order under clause 6, to earmark a share of one spouse's pension entitlement for the benefit of the other and requires a pension fund to pay it to the other. That clause, Mr President, re-enacts provisions in the Law Reform Act, 1997, with minor amendments. Clause 10, Mr President, makes special provision in relation to the

earmarking of lump sums due under pension schemes and again it re-enacts provisions of the Law Reform Act, 1997. It applies where the court makes a lump sum order under clause 3, having taken a spouse's pension rights into account. Sub-clause (2) of clause 10 provides that where the pension managers have a discretion as to the person to whom a lump sum is to be paid, the order can direct them to pay it to the other spouse. Secondly, where the spouse with pension rights has the right to nominate the person to whom it is to be paid, the order can direct him to nominate the other spouse. Thirdly, in other cases the order can direct the pension managers to pay it to the other spouse instead of the person to whom it would otherwise be paid. Sub-clauses (3) and (4) provide that payment in accordance with the court order discharges the pension manager's liability under the pension scheme and precludes any power under the clause being used in relation to a pension which is already subject to a pension sharing order. Mr President, clause 11. This clause makes supplementary provision in relation to pension sharing orders and orders under clause 3 earmarking pension rights. The provisions relating to pension sharing are new, so perhaps if I could deal with these in some further detail. Sub-clause (1) of clause 11 deals with the case where a person whose rights under one pension scheme have been the subject of earmarking transfers to another pension scheme. Notice can be given to the managers of the new scheme, the effect of which is to transfer the earmarking to the new scheme. Sub-clause (2) provides that regulations made by the Department of Health and Social Security, which is referred to in sub-clause (6), will require a pension sharing order to come into force after a specified period after it is made, and that will enable an appeal to be brought against the order before it comes into force. Sub-clause (3) enables a pension sharing order to include provision for the sharing between the parties of any charge due to the pension managers for implementing the order. Sub-clause (4) gives the department power to make regulations dealing with the details of the earmarking of pensions under clause 9. Sub-clause (5), Mr President, makes further provision in relation to valuation of pension rights for earmarking purposes. Regulations may require calculations to take into account guidance issued by a person specified in the regulations and, secondly, include references to regulations under the Welfare Reform and Pensions Act, 1999, which is an Act of Parliament applied by our Pensions Schemes Act, 1995. Sub-clause (6) provides definitions of various terms used in connection with pension sharing and earmarking. Sub-clause (7) states who is the person responsible for a pension arrangement, for example, pension scheme trustees or managers, and sub-clause (8) explains that references to Acts of Parliament, for example, the Welfare Reform and Pensions Act, after the Act as it applies in the Island as applied by order under the Pensions Schemes Act, 1995. Sub-clause (9) requires Tynwald approval for any regulations under the clause. Mr President, I move that clauses 9, 10 and 11 do stand part of the Bill.

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

The President: Mrs Christian.

Mrs Christian: It may be somewhere in here and I have not spotted it but in respect of clause 11, where under these provisions a person can acquire rights under a spouse's pension arrangements and, for example, at some point a lump sum might become available which will be allocated as between the parties, in the event that, let us say it is the wife who is awarded an element of the pension. If the wife dies before the pension is payable to the other spouse, does the amount which she would have received go to her estate or does it somehow revert to the other spouse?

The President: Mr Crowe.

Mr Crowe: Yes, Mr President, I think that the earmarking you have to leave until the pension fund kicks in, but I think pension sharing, again the Attorney will answer but it seems pension sharing seems to have been brought in as a safeguard against the death of either partner before the earmarking provision kicked in. The point I was just going to mention was clause 12, where it defines the pension arrangement which is talking about really private pension schemes, because earlier, I was beginning to think it meant the retirement pension but I do not think it includes the retirement pension.

The President: Mr Attorney to reply to the debate on clause 9, 10 and 11.

The Attorney-General: There is an answer, Mr President, to the question raised by the hon. member, Mrs Christian.

Mr Delaney: You are the weakest link! *(Laughter)*

Mr Lowey: Bang goes your pension!

The Attorney-General: Yes. I am sorry, Mr President, I will just. . .

Mrs Christian: I am quite content, Mr President to have an answer at some future date. I appreciate that these are complicated matters and that one could ask many, many questions which would not have a ready answer.

The President: It may be easier spotted actually in the pre-consolidation measures which have been updated.

The Attorney-General: Yes.

The Lord Bishop: It would be simpler to do away with divorce, wouldn't it!

The Attorney-General: Yes. Perhaps, Mr President, we will actually come to it as we go through the Bill. I certainly have seen it in the Bill. I just cannot put my finger on it at the moment. I am sorry, I cannot just answer it off-hand like that.

The President: Well, hon. members, the motion before us then is that clauses 9, 10 and 11 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. So we will turn to clause 12.

The Attorney-General: Thank you, Mr President. Clause 12 deals with procedural matters relating to applications for financial orders. It makes no change in the present law. It enables applications for any kind of financial order to be made at any time after the petition for divorce has been filed. Sub-clause (2) enables rules of court to require specified applications to be made in the petition or answer or to require the leave of the court if they are not made in a specified time after the petition or answer is filed. Mr President, I move that clause 12 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 clause 12 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Clauses 13 and 14, Mr Attorney.

The Attorney-General: Clause 13 gives the High Court power to grant one spouse maintenance or a lump sum in case of neglect by the other to provide reasonable maintenance for her or a child of the family. It makes no change in the present law and enables one spouse to apply to the court for an order where the other has failed to maintain the applicant or a child of the family. Clause 14, Mr President, contains provisions which are supplemental to clause 13 and again makes no change in the present law. It sets out the matters to which the court must have regard when deciding whether to make an order under clause 13. Mr President, I move that clauses 13 and 14 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 13 and 14 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Perhaps we could take the next section, Additional Provisions, clauses 15,16 and 17, Mr Attorney.

The Attorney-General: Thank you, Mr President. Clause 15 limits, generally to death or remarriage, the duration of periodical payments in favour of a spouse. It again makes no change in the present law. Sub-clause (1) enables the court to specify any term in a periodical payments order or secured periodical payments order in favour of a spouse, except that (a) a periodical payments order cannot begin earlier than the application and must not extend after either spouse's death or the remarriage of the payee and (b) a secured periodical payments order cannot begin before the application and must not extend after the death or remarriage of the payee. A secured periodical payments order, Mr President, is not affected by the death of the other spouse. Sub-clause (2), Mr President, enables the court, in the case of an order made on divorce or nullity, to bar the payee from applying for extension of the term of the order if the court thinks that a clean break is appropriate. Sub-clause (3) provides that a periodical payments order or secured periodical payments order made otherwise than on divorce or nullity, that is on judicial separation or under clause 13, if it does not terminate on divorce or nullity, is to come to an end on the payee's remarriage. Sub-clause (4) prevents a former spouse applying for any kind of financial order based on divorce if that spouse has remarried. Mr President, clause 16 limits, generally to the age of 18, the duration of periodical payments in favour of a child of the family. It again makes no change in the present law. If I may refer to sub-clause (2), Mr President, that enables the court to specify any term in a periodical payments order or secured periodical payments order in favour of a child of the family, except that it cannot begin earlier than the application and (a) must not in the first instance extend beyond compulsory school age unless the court thinks that the child's welfare requires that it should and, in any case, subject to sub-clause (3), is not to extend beyond his 18th birthday. Sub-clause (3), however, allows the court to make or extend an order in favour of a child over 18 if he is or will be in education or training or there are special circumstances - for example, he may be disabled. Sub-clause (4) provides that a periodical payments order in favour of a child always terminates on the death of the payer. Clause 17, Mr President, enables the court to direct a mortgage, settlement, conveyance et cetera to be drawn up to give effect to a secured periodical payments order or property adjustment order and to defer a decree of divorce until it has been executed. Again, it makes no change in the present law. So, Mr President, I move that clauses 15, 16 and 17 do stand part of the Bill.

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

The President: Mrs Christian.

Mrs Christian: Whilst accepting that this re-enacts present provisions of contract, I wonder if consideration has been given or whether there is any other measure which deals with a situation where a former spouse who is receiving periodical payments does not actually remarry but cohabits. One can see great injustice appearing there where they decide not to marry, simply to ensure that they continue to receive payments. Is there any redress against that in any legislation?

The Attorney-General: Well, Mr President, as hon. members have indicated this is a sort of huge frustration for the paying party and at the present time under this legislation the payer has to continue to pay even though he knows full well that the payee is living with another person who might very well be able to support him or her. We will see later on, Mr President, that there are powers for one party to go to the court for an adjustment of an order if the situation or circumstances have changed. For example, if the payee who was at the time of the divorce of meagre finances wins the lottery then the payer can ask for adjustment of the court order. I am not aware whether there has ever been the case where someone has gone to the court and successfully argued 'Well my former wife is now living with Mr Smith who is well able to look after her now.' Again, perhaps, that is something I can look at and come back to at the third reading.

The President: Hon. members, the motion before us is that clauses 15, 16 and 17 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Perhaps we can take clause 18 and 19 together as well, Mr Attorney.

The Attorney-General: Thank you very much, Mr President. Clause 18 gives the court wide powers of varying and revoking financial orders under Part I. Except so far as it covers pension sharing orders, it makes no change in the present law. Perhaps I could just refer to this, Mr President, because it is, I think, relevant in view of what we have been discussing earlier. Sub-clause (1) specifies the orders to which the court's powers apply. They are all kinds of financial order except transfer of property orders, pension sharing orders made on or after decree absolute and simple lump sum orders. So, just pausing there, Mr President, we can see that the power to vary, revoke and enforce orders under clause 18 actually does not apply to a pension sharing order which is made at a time before the decree has been made absolute. I will come to that now, Mr President. Sub-clause (2) provides that on the death of either spouse the court's powers cease to apply to an order relating to a lump sum payable on death under a pension scheme. Sub-clause (3) gives the court general powers to vary, revoke, suspend or revive an order within sub-clause (1) above. Sub-clause (4) also enables the court to vary, revoke, et cetera any instrument made pursuant to an order. For example, a settlement made under an order for settlement of property. Sub-clause (5) lays down the general rule that the court has to look at all the circumstances but is to put first the welfare of any children of the family under 18. Sub-clause (6) explains how sub-clause (5) applies in particular cases. The court must consider any change in circumstances. It must apply the same clean break principles as in clause 8(2) and 'change in circumstances' includes the death of the person against whom the order was made. Sub-clause (7) enables the court to defer the operation of any variation or revocation of a periodical payments order or secured periodical payments order, but subject to the limits in clause 15 (1) and (2). Clause 19, Mr President, makes supplemental provision relating to the variation, revocation, et cetera of financial orders. Except so far as it covers pension sharing orders, it makes no change in the present law. I think it might be useful, Mr President, if I just go briefly through clause 19. Sub-clause (1) of clause 19

restricts applications for the variation of orders for settlement of property or for variation of a settlement. They can only be made in proceedings to rescind a decree of judicial separation or for divorce. Sub-clause (2) restricts applications for the variation, revocation, et cetera of pension sharing orders made before decree absolute. They can only be made before the sale has taken place and before the grant of a decree absolute. Also, an application for variation, et cetera, suspends the operation of the pension sharing order until it has been dealt with. Sub-clause (3) limits the operation of any variation of a pension sharing order. It cannot take effect before the grant of a decree absolute. Sub-clause (4) provides that regulations made by the department will require a variation of a pension sharing order to take effect after a specified period after it is made to enable an appeal to be brought against the order before it comes into force. Sub-clause (5) requires Tynwald approval for regulations under sub-clause (4) and sub-clause (6) precludes any property adjustment order being made on an application for a periodical payments order or secured periodical payments order made on divorce, nullity or judicial separation. Sub-clause (7) precludes any order for payment of a lump sum being made on an application for a periodical payments order. Sub-clause (8), Mr President, deals with the case where the person against whom a secured periodical payments order has been made has died. Such an order can survive that person's death. An application for variation can be made by the payee or by the personal representatives of the deceased. This applies also to a sale of property order for raising the capital on which the payments are secured. No application can be made more than six months after the grant of probate or administration of the estate except with the court's leave. Sub-clause (9), Mr President, protects executors or administrators who have distributed the deceased's estate more than six months after the grant of probate or administration and then the court gives leave to make an application out of time to vary a secured periodical payments order made against the deceased. Sub-clause (10) helps to define the date when the grant of probate or administration is taken out for the purposes of sub-clause (9). Mr President, I move that clauses 18 and 19 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 18 and 19 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Perhaps we can take clauses 20, 21 and 22 and finish this particular section.

The Attorney-General: Thank you, Mr President. Clause 20 requires payments under a periodical payments order normally to be made through the General Registry and applies the same machinery to such payments as applies to payments ordered to be made by a court of summary jurisdiction. It makes no change in the present law. Clause 21, Mr President, requires the leave of the court to enforce claims for maintenance which are more than 12 months in arrear. It again makes no change in the present law. Clause 22 enables the court to order repayment of periodical payments due under an order where it thinks they are excessive because of a previous change of circumstances. It makes no change in the present law. That provision, if I may comment, Mr President, clause 22, covers the situation where the payee, for example, may have inherited a fortune but the payer did not know of it until later. The court can then vary or revoke the order and it can also direct that repayment of some or all of the maintenance should be made to the payer.

The President: Mr Kniveton.

Mr Kniveton: Yes, I beg to second, sir, and reserve my remarks.

The President: Hon. members, the motion before us, then, is that clauses 20, 21 and 22 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Now we turn to consent orders, clause 23.

The Attorney-General: Thank you, Mr President. Clause 23 enables the court to make a financial order by consent without hearing the parties or any evidence. Except so far as it covers pension sharing orders, it makes no change in the present law and, Mr President, I think deals with the question raised by the hon. member, Mr Crowe, earlier in the debate. Mr President, I move that clause 23 do stand part of the Bill.

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

The President: The motion, hon. members, is that clause 23 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Perhaps 24, 25 and 26, Mr Attorney.

The Attorney-General: Thank you, Mr President. Clause 24 makes a maintenance agreement or separation agreement valid and enforceable. Except so far as it restricts any right to apply for a financial order, it makes no change in the present law. So in other words, Mr President, again adverting to the point raised by the hon. member, Mrs Christian, the agreement remains valid and enforceable and it cannot be set aside unless, in some way, it restricts the rights of the parties to go back to the court at some future time. Clause 25, Mr President, enables the High Court or a court of summary jurisdiction to alter a maintenance agreement. It makes no change in the present law and I will, therefore, only refer to the first two sub-clauses, if I may. Sub-clause (1) enables either party to a maintenance agreement to apply to the High Court or a court of summary jurisdiction for an order. The court only has jurisdiction if each party is either domiciled or resident in the Island. Sub-clause (2) sets out the grounds for making an order. The court must be satisfied either that a change in the party's circumstances has occurred which makes the arrangements in the agreement inappropriate or inadequate or, secondly, that it does not make proper provision for any child of the family. Clause 26 enables the High Court to alter a maintenance agreement after the death of either party. It makes no change in the present law and I would again just refer to the first two sub-clauses. Sub-clause (1) deals with the case that a maintenance agreement continues to have effect after the death of one of the parties. The other party or the executive or administrators can apply to the High Court, not a court of summary jurisdiction, for an order altering the agreement under clause 25. Sub-clause(2) provides that no application can be made more than six months after the grant of probate or administration of the estate, except with the court's leave. Mr President, I move that clauses 24, 25 and 26 do stand part of the Bill.

Mr Kniveton: Again, I beg to second, sir, and reserve my remarks.

The President: Mr Crowe.

Mr Crowe: Mr President, if I could ask the Attorney on clause 25: are you saying that, where there is a separation and one of the parties is living in England and one here, they cannot apply to the court? Are you saying that it is only if they are both domiciled and resident in the Island that they can apply to the court for a variation, or alteration rather, and if one leaves the Island, that right does not exist any more?

The President: Mr Attorney.

The Attorney-General: Yes, Mr President, thank you. In answer to the question, the answer I think is yes, Mr President. The legislation would be quite clear on that, that the court only has jurisdiction to alter agreements during the lives of the parties if each of them is either domiciled or resident in the Island.

The President: Hon. members, the motion before us then is that clauses 24, 25 and 26 do stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it. We turn then to clause 27.

The Attorney-General: Thank you, Mr President. Clause 27 gives the High Court power to strike down transactions which are entered into by a spouse in order to defeat claims for maintenance or other financial provision. Except so far as it covers pension sharing orders, it makes no change in the present law. I would just highlight sub-clause(2), if I may. Sub-clause(2) enables the court to make special orders on the application of the applicant for any financial order. Firstly, an injunction might be directed restraining any disposition of property, transfer of property out of the jurisdiction or other dealing with it, for example a gift. Now, secondly, an order setting aside any reviewable disposition made by the respondent, the setting aside of which would enable the court to make a financial order or a different order. Thirdly, where a financial order has been made, setting aside any reviewable disposition made by the respondent. In any case the court must be satisfied that the respondent has made, or intends to make, the disposition with the intention of defeating the other party's claim for financial relief. Mr President, I move that clause 27 do stand part of the Bill.

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

The President: The motion, hon. members, is that clause 27 do stand part of the Bill. Those in favour, please say aye; and against, no. The ayes have it. The ayes have it. We turn then to clause 28.

The Attorney-General: Thank you, Mr President. Clause 28 makes special provision for repayment of maintenance which should have ceased on the re-marriage of the spouse for whose benefit it is made but has continued to be paid and the court has given a discretion whether to order repayment and gives protection to certain payees, for example, under attachment of earnings orders. It makes no change in the present law. Mr President, I move that clause 28 do stand part of the Bill.

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

The President: The motion, hon. members, is that clause 28 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Take clause 29, Mr Attorney.

The Attorney-General: Thank you, Mr President. Clause 29 provides that even though a settlement or transfer of property is made pursuant to a transfer of property order, an order for a settlement of property or an order for variation of a settlement, it is still capable of being cancelled if the transferor or settlor becomes bankrupt. It makes no change in the present law. Section 30, Mr President, of the Bankruptcy Code, which is referred to in the clause, provides that if a settlor becomes bankrupt within two years after the date of the settlement, that settlement is void against the trustee in bankruptcy and also if the settlor becomes bankrupt

within 10 years after the date of the settlement, again the settlement is void unless all the parties claiming under the settlement can prove that the settlor was, at the time of making the settlement, able to pay all his debts without recourse to the property comprised within the settlement. Mr President, I move that clause 29 do stand part of the Bill.

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

The President: Hon. members, the motion before us is that clause 29, which refers to legislation over 100 years of age, should stand as part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Clause 30.

The Attorney-General: Thank you, Mr President. Clause 30 enables a payment or transfer of property due to a mental patient to be made to a person in charge of him, for example, a member of his family, unless alternative provision, for example the appointment of a receiver made under the Mental Health Act has been made. Again, Mr President, this clause makes no change to the present law and I move that clause 30 do stand part of the Bill.

Mr Kniveton: I beg to second, sir.

The President: The motion, hon. members, is that clause 30 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Clause 31, Mr Attorney.

The Attorney-General: Thank you, Mr President. Clause 31 is a new provision which limits the power of an appeal court to allow an appeal against a pension sharing order where the pension managers or the Department of Health and Social Security have already acted on the order. It is a new clause, Mr President, so perhaps I can just go through it briefly. Sub-clause(1) specifies the circumstances in which the clause operates, that is where an appeal is made against a pension sharing order under clause 6 on or after the date when it takes effect. Sub-clause(2) prevents the appeal court varying or setting aside an order relating to an occupational or personal pension if the pension managers have already acted on the order. Sub-clause(3) prevents the appeal court varying or setting aside an order relating to state scheme rights if the department has already acted on the order. Sub-clause(4) enables the court to vary or set aside the order, even where the pension managers or DHSS have acted on it if the detriment to them is negligible. Sub-clause(5) enables the appeal court, if it is prevented from varying or setting aside the order, instead to make any other order it thinks appropriate, including another pension sharing order. Sub-clause(6) disapplies clause 11(2) which requires the coming into force of a pension sharing order to be deferred for a prescribed time in the case of an order under sub-clause(5) which is not itself subject to appeal. Sub-clause(7) defines the references to the persons responsible for a pension arrangement, that is the pension managers. Mr President, I move that clause 31 do stand part of the Bill.

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

The President: Mr Crowe.

Mr Crowe: Mr President, yes, I can see it again that when a pension is shared on the order of the court, the assets in that pension fund are separated by the administrators and there will be an account for each of the parties. So administratively the pension fund is being hived off and physically separated one from the other and that is then, not necessarily inviolate, but it is clearly seen physically that the two separate funds exist where one existed before. So I can see

again the point of not allowing a further re-adjustment because it is an additional cost of the administrator to re-divide the assets which are already divided. No comment is coming forth (*Laughter*).

The Attorney-General: I agree.

The President: Hon. members, the motion before us is that clause 31 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Clause 32, the supplemental provision.

The Attorney-General: Thank you, Mr President. Clause 32 allows the court to make a financial order even though the parties' marriage was polygamous or potentially polygamous. It makes no change in the present law. Sub-clause(1) allows the court to make a financial order even though the parties' marriage was, as I say, polygamous or potentially polygamous. Manx law does not normally recognise a marriage entered into under a law which allows polygamy but this provision, Mr President, is an exception to that general rule. Sub-clause(2) defines the financial orders which are allowed. Sub-clause(3) makes it irrelevant whether the husband has a wife or wives apart from the applicant. Sub-clause(4) enables rules of court to require notice of any proceedings under Part I to be given to any other wife and giving her a right to be heard. Mr President, I move that clause 32 do stand part of the Bill.

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

The President: Mrs Christian.

Mrs Christian: Just a comment really, it is rather curious, I think, that we recognise polygamy in these circumstances, where you would equate with a common law second spouse, if you like, in our terms. But you do not recognise it as a second wife. So I do think it is rather curious but as it has been part of the provision up to now, has it?

The Attorney-General: Yes, Mr President, an existing provision. I think section 46 of the 1976 Act.

Mrs Christian: It just seems rather strange. I imagine there have not been too many cases taken under this clause.

The President: Hon. members, the motion then is that clause 32 do stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it. Now we turn to Part II. Perhaps Mr Attorney we could take clause 33, 34,35 and 36?

The Attorney-General: Yes, thank you, Mr President. Clause 33 enables a designation order to be made by the Council of Ministers allowing financial orders made in any part of the United Kingdom or any of the Channel Islands to be recognised in the Island, provided that reciprocal provision is made for recognising Manx orders there. This is a new provision, Mr President, and sub-clause(1) reflects what I have just said. The order under sub-clause(1) will designate the territory in question and specify the kinds of order made in that territory which will be recognised. Sub-clause(2) applies to following provisions of Part II in relation to a designated territory and in relation to orders of any description specified in the order. Sub-clause(3) requires Tynwald approval to a designation order and sub-clause(4) defines the terms used in Part II. Clause 34, Mr President, provides that an order of a specified kind made in a designated territory, that is an overseas order, is to be recognised in the Isle of Man but is not to be enforced unless it is registered under clause 35. Clause 35, Mr President, provides

for an overseas order to be registered in the High Court where a certified copy is sent officially to the Chief Registrar. The way in which it will be registered will be prescribed by rules of court. Clause 36 deals with the cancellation or variation of the registration of an overseas order where the order is revoked or varied in its home territory. Sub-clause(1) requires the Chief Registrar to cancel the registration of an overseas order where he is officially notified that it has been revoked in its home territory and to vary the registration where he is officially notified that the order has been varied. Mr President, I move that clauses 33, 34, 35 and 36 do stand part of the Bill.

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

The President: Mrs Christian.

Mrs Christian: Thank you, Mr President. In determining which territories should be designated, is it fair to assume that they would only make such a designation in relation to countries where very similar provisions applied. I can see there being a difficulty if treatment as between spouses in another country is very different from what we would expect and then we had to enforce or register such an order here. I presume the designated territories will have to have legislation similar to that in the Island.

The President: Mr Crowe.

Mr Crowe: Mr President, it is just again. . . the theory is fine, it is the practice that might be harder to implement. An errant payer might do a moonlight flit to Jersey and then it takes some months to find and then to have the court order. So really, working in practice will be the difficult part of this, I should think.

The President: Mr Attorney to reply.

The Attorney-General: Thank you, Mr President. I entirely accept the point made by the hon. member, Mrs Christian, and clearly the similarity of another country's divorce law to ours will be a very material point in deciding whether or not an order should be made by the Council of Ministers and so on, and I entirely accept that it would be unacceptable if we were, for example, to recognise divorces made in a country where, such as in some countries, a husband can simply divorce a wife by saying, 'I divorce thee, I divorce thee, I divorce thee.'

Mr Crowe: Islamic law.

The Attorney-General: Islamic. So clearly there has to be some sort of basis for the reciprocity. I entirely accept that point. There will inevitably be problems in practice taking up the point raised by the hon. member, Mr Crowe. I think that this part of the legislation though, Mr President, sets out a good framework and is the best we can do in the circumstances.

The President: Hon. members the motion before us that clauses 33, 34, 35 and 36 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Perhaps we can take clauses 37 through to 39, Mr Attorney?

The Attorney-General: Thank you, Mr President. Clause 37 provides that a registered overseas order is enforceable in the same way as an order made by the High Court. Sub-clause(1) provides that such an order is enforceable as if it had been made within its jurisdiction by the High Court. Sub-clause(2) makes similar provision to clause 20. The court can direct that periodical payments are to be made to the Chief Registrar and then the

enforcement scheme of the Summary Jurisdiction Act which applies to orders made by courts of summary jurisdiction will apply. Sub-clause(3) makes it clear that a provision in the overseas order relating to its enforcement is not itself enforceable by virtue of this clause. The Manx system of enforcement will apply instead. Clause 38 enables the High Court to stay proceedings for enforcement if it is shown that a person liable has taken or intends to take proceedings to vary or revoke the order. Clause 39 provides for enforcement proceedings to be dismissed where the overseas order has ceased to have effect. Mr President, I move that clauses 37, 38 and 39 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 37, 38 and 39 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Clause 40, Mr Attorney, please.

The Attorney-General: Thank you, Mr President. Clause 40 deals with the converse situation where a Manx financial order is to be enforced in the United Kingdom or the Channel Islands under reciprocal legislation and provides machinery for sending the order for enforcement in the relevant territory. Mr President, I move that clause 40 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 clause 40 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it. Clauses 41, 42 and 43, please.

The Attorney-General: Thank you, Mr President. Clause 41 enables a party to a marriage to apply to the High Court for a financial order where there has been a divorce, annulment or judicial separation outside the British Islands. It makes no change in the present law. Sub-clause(1) enables a party to a marriage to apply to the High Court for a financial order where there has been a divorce, annulment or judicial separation outside the British Islands, i.e., the Isle of Man, the UK and the Channel Islands. The application is to be made in accordance with rules of court. The court's leave is required and the jurisdiction to make orders is limited, which we will see in clause 44. Clause 42 requires the leave of the court to any application under clause 41. It makes no change in the present law. Clause 43 enables the court to make an interim order for maintenance when granting leave under clause 42. It again makes no change in the present law. So I move, Mr President, that clauses 41, 42 and 43 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 41, 42 and 43 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Clauses 44 and 45.

The Attorney General: Thank you, Mr President. Clause 44 specifies the cases in which the court has jurisdiction to make an order under clause 41. Firstly, either party was domiciled in the Island when the application for leave under clause 42 was made, or when the foreign divorce, annulment or separation took effect, (b) either party has been habitually resident in the Island for 12 months up to the date when the application for leave was made or the date when the foreign divorce, annulment or separation took effect and, thirdly, either party or both had an

interest in a former matrimonial home in the Island at the time when the application for leave was made. It makes no change in the present law, as I have said, Mr President. Clause 45, Mr President, requires the court to consider whether a Manx order should be made in the particular case and lists the factors to be taken into account for the purpose. Again it makes no change in the present law. I move that clauses 44 and 45 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 44 and 45 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Clauses 46, 47 and 48, Mr Attorney, please.

The Attorney-General: Thank you, Mr President. Clause 46 lists the kinds of orders which can be made under clause 41, namely, any order which could be made under Part I after a Manx decree of divorce, annulity or judicial separation save that the power to make a sale of property order is restricted. Except so far as it enables a pension sharing order to be made, it makes no change in the present law. Clause 47 requires the court to have regard to the same factors in considering an application under clause 41 as it must when considering an application under Part I, except so far as it relates to pension sharing orders, it again makes no change in the present law. Clause 48 enables the court to make a financial order by consent without hearing the parties or any evidence and again, except so far as it covers pension sharing orders, it makes no change in the present law. I move that clauses 46, 47 and 48 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 46, 47 and 48 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Clause 49.

The Attorney-General: This clause limits the court's powers where its jurisdiction is based solely on the existence of a former matrimonial home in the Island. In that case, Mr President, the court can only make an order relating to the parties' interest in that property. It again makes no change in the present law. I move that clause 49 do stand part of the Bill.

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

The President: Mr Crowe.

Mr Crowe: Just a query, Mr President. Can the court sell the house or have power to sell the house and have the proceeds invested for the benefit of either or both parties under clause 49? I am just thinking if the property was unoccupied it would deteriorate in the event that the parties could not agree.

The President: Mr Attorney?

The Attorney-General: Yes, Mr President, the court does have wide powers under sub-clause(1) to deal with the matrimonial home and it can order the sale of the property and it can order the transfer of part of the sale proceeds to the other and so on. There are very wide powers there indeed and it might be very sensible to make the order in the circumstances that you have outlined where the property is deteriorating.

The President: Hon. members, the motion before us is that clause 49 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Clause 50.

The Attorney-General: Clause 50 applies various provisions of Part I to orders under this part of the Bill. Except so far as it covers pension sharing orders and other provisions relating to pensions, it makes no change in the present law. Mr President, I move that clause 50 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 clause 50 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Clauses 51 and 52.

The Attorney-General: Thank you, Mr President. Clause 51 gives the High Court power corresponding to its power under clause 27 to strike down transactions entered into by a spouse in order to defeat applications under Part III. Except so far as it covers pension sharing orders, it makes no change in the present law. Clause 52 enables the court to grant a protective injunction to stop a former spouse acting to defeat an application for an order under Part III, for example, by making a gift or transferring assets outside the jurisdiction of the Isle of Man's court, before the other spouse has become qualified to start proceedings for such an order by being resident here for 12 months. It makes no change in the present law. I move that clauses 51 and 52 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 51 and 52 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Interpretation, clause 53, Mr Attorney.

The Attorney-General: Thank you, Mr President. Clause 53 provides definitions of terms used in Part III of the Bill. I move that clause 53 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 clause 53 stands part of the Bill. Are we agreed, hon. members? Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Now, Mr Attorney, perhaps we can take Part IV and the schedules in totality, can we, through to clause 57.

The Attorney-General: Clause 54 applies provisions of the 1976 Act relating to rules of court and fees to proceedings under the Bill. Clause 55 deals with the interpretation of terms and phrases used throughout the Bill. Clause 56 introduces Schedules 1 and 2, which make consequential amendments and repeals. Clause 57 makes provision for the Bill's short title and for its commencement on an appointed day or days. Mr President, I move that clauses 54 to 57 and Schedules 1 and 2 do stand part of the Bill.

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

Mr Radcliffe: Would that be clause 54 as amended, Mr President?

The President: Clause 55, I think, yes, clause 55 was amended. Mr Attorney, do you wish to comment upon the amendment?

The Attorney-General: I much obliged, Mr President. I did comment on the amendment to the definition of child in the earlier part of the debate, Mr President, and I am obliged to you for pointing out that amendment.

The President: Okay, hon. members, the motion before us then is that clauses 54, 55 as amended, 56, 57 and schedules 1 and 2 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Now, hon. members, I have to thank you for your co-operation this afternoon in getting through what sometimes might seem to be a tedious bit of legislation but I can assure you it will affect some people's lives considerably in the future. Hon. members, the adjournment of this House will be until Tuesday, 6th February at 10.30 am. Thank you, hon. members. If you would just stay behind now, we will have a few moments together.

The Council sat in private.