

**REPORT OF PROCEEDINGS OF
HOUSE OF KEYS**

**Douglas, Tuesday, 13th February 2001
at 10.00 a.m.**

Present:

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

The Chaplain took the prayers.

Apologies for Absence

The Speaker: Hon. members, I have apologies for absence from Sir Miles Walker.

**Jersey — Machinery of Government — Recommendations of Report —
Question by Mr Singer**

The Speaker: We will now turn to question number 1 and I call upon the hon. member for Ramsey, Mr Singer.

Mr Singer: Thank you, Mr Speaker. I beg leave to ask the Chief Minister:

Are there any recommendations in the Report of the Review Panel on the Machinery of Government in Jersey which you consider it would be advantageous for the Isle of Man to adopt?

The Speaker: The Chief Minister to reply.

Mr Gelling: Mr Speaker, the recommendations in the report are tailored specifically for Jersey, whose present situation is very different and, I would argue, considerably in arrears of the Isle of Man position. I think it is true to say that the recommendations are largely based on the Manx model and to that extent the recommendations can be seen as a catching-up exercise.

There are no recommendations relevant to the government or executive which I would see as being advantageous for the Isle of Man to adopt and, as regards the parliamentary recommendations, I will leave that for Tynwald to decide, Mr Speaker.

The Speaker: A supplementary. Mr Singer.

Mr Singer: I thank the Chief Minister for his answer and, whilst agreeing with him that many of the Clothier recommendations to Jersey are taken from our system, have you considered that perhaps our system could be improved by adopting three of the recommendations that were given to Jersey - that is, firstly establishing better checks and balances by setting up scrutiny committees of backbench members meeting in public to monitor government

departments; secondly, to appoint an ombudsman to investigate maladministration complaints and therefore increase public confidence; and thirdly that elected members should have the right to approve the appointment of ministers and substitute ministers nominated by the Chief Minister?

The Speaker: The Chief Minister to reply.

Mr Gelling: Well, Mr Speaker, first of all I can take number 2; the issue of an ombudsman is presently being considered by the Council of Ministers committee. The other two areas are areas which have been under consideration or are under consideration, sir.

The Speaker: A supplementary. Mr Quine.

Mr Quine: Thank you, Mr Speaker. Would the Chief Minister agree that an objective assessment of our legislature and government structures is more likely to flow from an independent panel than members of the legislature, particularly when we have regard to the abortive attempts that we have made to make changes? And accepting that Tynwald must ultimately approve any changes, is such an objective assessment not a vital first step to making some progress?

The Speaker: The Chief Minister to reply.

Mr Gelling: Well, indeed, Mr Speaker, I must say that this report - and that is all it is, a report - has to go before the States and there is already quite a lot of opposition in the States of Jersey against any change whatsoever, which is something I have heard in this very chamber and in another place also in the Isle of Man. However, we are 15 years down the road of a system which they are now looking to introduce, and I would suggest to hon. members that we have had 15 years of fine tuning of a system that has actually given us a lot of the checks and balances that they speak of perhaps in a different way. However, I think, as long as we have a democratic forum within this House and another place, that is the way it will always be: there will be members who will see that there should be either more checks and balances or indeed less. So for the hon. member to say that perhaps someone else should look at our system - I would say that we ourselves know the system and we know, if there are any weaknesses, where they are and we should be able to continue to fine-tune the system as I have already suggested, sir.

The Speaker: A further supplementary. Mr Quine.

Mr Quine: Yes, can the Chief Minister confirm that the Jersey report endorses the principle that all members of the legislature should be popularly elected, and does he personally prescribe to that view?

The Speaker: The Chief Minister to reply.

Mr Gelling: Yes, Mr Speaker.

Mount Murray Development Inquiry — Documents — Question by Mr Karran

The Speaker: Question number 2, the hon. member for Onchan, Mr Karran.

Mr Karran: Vainstyr Loayreyder, I beg to ask the Chief Minister:

When will all documents, to which the report of the inquiry into the Mount Murray development refers, be made public?

The Speaker: The Chief Minister to reply.

Mr Gelling: Mr Speaker, the Council of Ministers have no plans for specifically publishing documents referred to by the Mount Murray inquiry. Subject to certain deletions which were recommended by Professor Crowe, the report's author - that is the gentleman who we engaged to do the report - all that the Council of Ministers has received, Mr Speaker, has been published in full.

The Speaker: A supplementary. Mr Karran.

Mr Karran: Vainstyr Loayreyder, would the Chief Minister not agree that it is somewhat of a scandal that we have a situation where we have letters quoted in a report to try and expose the skulduggery that has been involved with this development which the government has never seen and does not want to see? If there is not the political will to find out the real truth of how this, which was supposed to be a saviour for the tourist industry, has turned out to be a sprawling residential estate, does he feel, then, maybe we should have a public inquiry into this or is it that people are too frightened because once again big people with plenty of money can have more protection than little people who have not got the money to use the legal system, and is this why the air of silence is here?

The Speaker: The Chief Minister.

Mr Gelling: Well, first of all, Mr Speaker, quite a long question, but if I can deal with the very first question that the hon. member has put, 'why are we not interested to see the letter?' well, the reason that an independent inspector was asked to look at this situation was for many reasons, both publicly and from within this House, members enquiring as to the situation, but the letter that the hon. member refers to and that Mr Crowe referred to was purely demonstrating that there was support for this particular project from the tourist division, which signalled that it was a tourist project in the beginning. What the contents of that letter said - as far as I am concerned, Mr Crowe used that as part of his evidence in coming to his conclusions. Therefore, as to whether we want to see that letter or not I would suggest that we do not need to see any letter because Mr Crowe has reported on the position that is at Mount Murray now and given us a way forward, sir.

The Speaker: A supplementary. Mr Quine.

Mr Quine: Yes, what possible objection can there be, Chief Minister, to making available to members of this legislature all the supporting documentation which is identified as having been examined by Mr Crowe? Surely, the members of this legislature can see that documentation. It would be wrong in principle for this legislature to be denied that documentation.

Several Members: Hear, hear.

The Speaker: The Chief Minister.

Mr Gelling: Mr Speaker, as far as I am concerned we asked for an independent inspector to look at a situation and report; that he has done. He has submitted his report and we are acting on the recommendations that he has therein, and I have said before, and I will say again, we do not really wish to comment in the public arena about Mount Murray until the departments of government who were referred to in that report have come back to the Council of Ministers with their side of the situation and their suggestions as to whether or not those recommendations

can be carried forward. So, all I am saying is that there must have been reams of information and documentation that the inspector had to come up with his report, and therefore we are satisfied at this time that what he has said is correct from the evidence that he has taken.

The Speaker: Mr Karran.

Mr Karran: Vainstyr Loayreyder, would the Chief Minister not agree that outside it seems incredible that members of the Planning Committee were not aware of the changes that were agreed to, and has there been any investigation or are staff just being allowed to quietly go away after this planning situation has endeared some to millions of pounds, and would he be the same if it was some ordinary working man in the street who had done something like this?

The Speaker: The Chief Minister.

Mr Gelling: Mr Speaker, the same thing would apply no matter who it was, and of course, as I have already said, this report has gone to the departments of government and the personnel that the hon. member speaks of, to that particular department, and also to the Civil Service Commission, and it is up to them now to come back to the Council of Ministers to suggest what action they believe should be taken.

The Speaker: A final supplementary. Mr Quine.

Mr Quine: Yes, I must press the Chief Minister: what objection have you to making the documentation referred to in the report available to hon. members?

The Speaker: The Chief Minister.

Mr Gelling: I would suggest that if hon. members who are interested would make enquiries to the department that has the letter, perhaps they might get a positive reply, sir.

Mr Quine: Might. And might not!

The Speaker: Mr Karran. A final supplementary.

Mr Karran: Vainstyr Loayreyder, thank you for that. I would like to ask: would the Chief Minister give some sort of time period when we are going to see (a) the report back from the departments, (b) the civil service coming back with their recommendations, and (c) what are we going to do for the people who have been forced to buy these houses on this property due to the housing crisis? What are we doing about the facilities out there that they should have in a civilised situation like street lighting and decent roads and that? What is going to happen as far as that is concerned, Vainstyr Loayreyder?

The Speaker: The Chief Minister.

Mr Gelling: Mr Speaker, as well as departments of government there were recommendations in that report which were appertaining to our Isle of Man Law Society, and I would suggest that the Isle of Man Law Society also wants to reply to us as quickly as possible in terms of how these houses were sold or purchased or whatever. Basically the hon. member says it is not right that people living on a permanent residential estate should not have lighting and I would agree, and that is one of the areas that was investigated because of people's complaints. So therefore we now know the position, we know the situation at Mount Murray and I would hope the departments of government and outside agencies will get together very, very

quickly to resolve the problems that are appertaining at Mount Murray for the people that actually live on that estate, sir.

Ramsey Marina — Details of Negotiations — Financial Implications — Question by Mr Karran

The Speaker: Question number 3, the member for Onchan, Mr Karran, to ask the Chief Minister.

Mr Karran: Vainstyr Loayreyder, I beg to ask the Chief Minister:

(1) Will your government make the full details of the negotiations on the Ramsey Marina development public; and

(2) if not, why not; and

(3) what would be the financial implications for the government and, as far as is known to you, for Ramsey Commissioners were the development not to proceed?

The Speaker: The Chief Minister to reply.

Mr Gelling: Mr Speaker, I am not clear on what is meant by 'full details of negotiations.' Discussions with the proposed developer have actually been going on since 1993 and therefore a tremendous amount of research would be required to extract and publish all that material, sir. Because of the time and cost involved and the fact that the key information is already in the public domain, I do not believe that this work could be warranted.

Hon. members will recall that this project has been discussed on two separate occasions in the hon. Court in January 1998 and December 1999, and on both occasions details were given of the content and principles of the scheme. Members may also recall that a synopsis summarising the main key points of the scheme was circulated to all members during a presentation held before the December 1999 sitting, which of course can be provided again if members require it. That is 17 pages, Mr Speaker, so you have got 17 pages of the main items of this (I think it is called) 'Summary of Proposals.' That is available.

As regards the third part of the question there are a number of imponderables here and there are at least five elements to those, Mr Speaker. With your patience, sir, first of all the direct costs, principally legal fees, incurred up to the date of any decision not to proceed, would be calculable; second there are the hidden costs of staff time and resources used by the departments of government which have been involved - these are not capable of being costed; thirdly, the loss of income or revenue to traders in the town and elsewhere which would have contributed to government through corporate taxes, VAT and whatever - These cannot be known, sir; fourthly, if government were to unilaterally withdraw from the agreement there is the possibility of litigation, the costs of which are also not known; and fifthly, Mr Speaker, the failure to ignite regeneration attracting businesses, employment, to the town will undoubtedly have an impact beyond the immediate costs. Now, the budget allocation of £1.2 million earmarked for the scheme would not be expended, but overall it is not possible to indicate the financial implications. I would add that the Department of Local Government and the Environment has just announced that the proposed developer has agreed to reconsider several aspects of this scheme, and I am sure that hon. members will await the outcome of these deliberations with interest, sir.

The Speaker: A supplementary. Mr Karran.

Mr Karran: Vainstyr Loayreyder, I thank the Chief Minister for his reply. I take it from his reply that, would the Chief Minister not agree, that he is saying that he welcomes anybody who wants to know any information about the government's commitment and promises as far as this marina is concerned, which is open to public scrutiny, that we are not tied into the scheme in that the taxpayer will not end up paying a lot of money if we try to get out of developing the Ramsey Marina?

The Speaker: The Chief Minister to reply.

Mr Gelling: Yes, Mr Speaker, I do not think there is any case of us trying to get out of building a marina at Ramsey. I think everyone is committed to a marina at Ramsey. In this latest situation I understand that it is the developer who has asked for a period of time so that they can re-evaluate the situation, so therefore I do not think there is any possibility of them taking litigation against the government because of a delay; it is they that have actually asked for this period of time to re-evaluate it. So I would say, yes, the commitment is still there from government to do something in Ramsey and in the harbour to regenerate the town, and certainly there is nothing coming from government which would make me believe that we are trying to, as the hon. member may say, renege on that particular project, sir.

The Speaker: Mrs Crowe.

Mrs Crowe: Thank you, Mr Speaker. In view of all the controversy surrounding the Ramsey Marina development, would the Chief Minister agree that the Council of Ministers should have taken heed of the government survey that clearly indicated the most suitable place for a marina on the Island was Port St Mary and that is an area that would have welcomed any economic regeneration?

The Speaker: That question has no relevance to the question.

Members: Hear, hear.

Road Bridges — Temporary Weight Limits — Question by Mr Houghton

The Speaker: Question number 4, the hon. member for Douglas North, Mr Houghton.

Mr Houghton: Thank you, Mr Speaker. I beg leave to ask the Minister for Transport:

- (1) *Which road bridges on the Island have temporary weight limits in force; and*
- (2) *in respect of each bridge, how long is it anticipated that the restriction remain in force?*

The Speaker: The Minister for Transport to reply.

Mr Brown: Mr Speaker, in reply to the question I can respond as follows: At present two road bridges have temporary weight limits on them: firstly, the A4 Ballaquine Bridge on the Peel coast road; and secondly, the A40 Station Road, St John's railway bridge.

In relation to the Ballaquine Bridge the detailed design for this bridge strengthening is in process at the moment and it is anticipated that the work on site will be completed by October 2001.

In relation to the St John's railway bridge, work is in hand at present to precast the slabs for the replacement of this bridge. It is anticipated that the work will be completed on site before

the beginning of July 2001. These temporary weight restrictions are in place as a result of checks carried out as part of my department's routine inspection programme on bridges. If any bridge is found to be under strength, then we apply a temporary weight limit to the bridge until such time as the necessary strengthening can be designed and then implemented by the department. Thank you, Mr Speaker.

The Speaker: A supplementary. Mr Houghton.

Mr Houghton: Yes, Mr Speaker. In view of the fact that owners of heavy goods vehicles pay large sums of money in road fund duty as well as a good deal of revenue in respect of duties on fuel et cetera, does the minister not agree that these bridges, especially on these rather major routes, should be urgently maintained so as to permit the passage of heavy goods vehicles on those roads as the current position is causing inconvenience to those persons who are trying to operate their own lawful businesses?

The Speaker: The minister to reply.

Mr Brown: I would say, Mr Speaker, it is in fact questionable whether or not we should allow such large vehicles on some of these roads.

Mr Houghton: Well, do not collect their money then. Do not take any road fund off them.

TT Lap of Honour — Question by Mr Houghton

The Speaker: Question number 5, the hon. member for Douglas North, Mr Houghton, to ask the Minister for Tourism.

Mr Houghton: Yes, thank you, Mr Speaker. I beg leave to ask the Minister for Tourism and Leisure:

- (1) *How many riders took part in the TT lap of honour parade in 2000;*
- (2) *have the entries for the parade been reduced for 2001;*
- (3) *if so, why and by how many; and*
- (4) *following the usual practice, will sidecars be permitted to participate in the parade?*

The Speaker: The minister to reply.

Mr Cretney: Thank you, Mr Speaker. In the year 2000 the TT Co-ordinating Committee agreed with the TT Riders Association, who have a contract to run the events, that we would have 140 entries in the lap of honour. Subsequently, because of the sponsorship of the event by Benelli a further 30 Benelli machines were agreed. In the event the TT Riders Association proposed to accept 171 entries plus 59 Benellis. All of the entries were solo machines. Whilst the committee reluctantly accepted the oversubscription, by the time the lap of honour took place there were significantly less actual starters. The TT Riders Association advised after the event that they started an overall total of 149 machines. No sidecars were declared.

Following the 2000 event the TT Co-ordinating Committee under my chairmanship undertook a review of the lap of honour. This review concluded that for 2001 the lap of honour should be improved by: ensuring that it was better presented and in particular that the start was more orderly; ensuring that machines and/or riders have a direct connection with the TT and Manx Grand Prix Races and therefore are relevant to the spectators; concentrating on the

quality of machines and riders rather than the quantity; and ensuring that all entries and particularly insurance is properly documented.

As a result of those decisions, Jim Parker, the chairman of the Road Race Committee of the Auto-Cycle Union and head of the TT organisation, was delegated by the Co-ordinating Committee to liaise with the TT Riders Association under the terms of the contract with a remit to achieve the objectives based on a field of 100 participants, plus 12 50 cc special quality machines of relevance under a proposal put forward by the TT Riders Association.

Those discussions are still ongoing and have been very cordial, so whilst the current number of participants is as projected, that cannot be regarded as a final number. However, the TT Riders Association has not raised any objection to the reduction suggested.

I am also delighted to announce publicly in this forum that Luke Lawler, who is a very big supporter of the TT races, has agreed to sponsor the parade for the year 2001. He comes from Southern Ireland. He has a great number of links with the event and I am glad that the TT Riders Association have been able to work with him in this basis.

Finally, Mr Speaker, provided that there are sidecars of an appropriate quality in terms of the historic relevance of the rider and passenger or machine to the TT they will be included. At no stage in the discussions has the Co-ordinating Committee or its representatives indicated that sidecars are banned.

The Speaker: A supplementary. Mr Houghton.

Mr Houghton: Yes, I am very grateful for the hon. minister's reply so can he confirm absolutely that no solos have been curtailed and that sidecars, if any wish to go into this procession can indeed take part? Can he confirm that, please?

The Speaker: Minister.

Mr Cretney: No, I certainly will not confirm that, Mr Speaker. What I said was that what we are looking for is quality rather than quantity. So there will be no doubt that there will be some solos and if there are any sidecars come forward - there were not last year obviously they will be subject to the same scrutiny also.

The Speaker: A supplementary. Mr Cannell.

Mr Cannell: Thank you, Mr Speaker. Would the hon. minister not agree with me that the publicity which arises from the appearance and accommodation of prominent continental journalists in this parade, notwithstanding that they are not former competitors, and other leading personalities contributes to the atmosphere of the event and produces some of the best value for money obtainable?

The Speaker: The minister to reply.

Mr Cretney: Yes, Mr Speaker, I would agree and I do believe that they do contribute, in particular the Italian influence; my colleague, the hon. member for West Douglas, has been instrumental in working with a number of people over the past several years in terms of that. It is something which is very welcome. However, we have to ensure that those journalists who are permitted entry to ride make sure they know where they are going and they do not turn left at Quarterbridge. *(Laughter)*

The Speaker: Hon. members, that brings to a close oral questions. Questions number 6 and 7 are for written answer.

**Health Service — Registered Nurses and Care Staff — Vacancies —
Question by Mr Henderson for Written Answer**

Question 6

The hon. member for Douglas North, Mr Henderson, to ask a member for Health and Social Security:

(1) How many vacancies for registered nurses and care staff currently exist within the health service;

(2) does your department keep a record of local people who have left the service?

Answer

(1) As at today's date, vacancies (other than posts to which appointments had been made) were:

Registered Nurses 30.10 wte.

Health Care Assistants 06.40 wte.

(2) Personnel files are retained for all employees who have left the service. There is no central record of leavers which distinguishes former employees by nationality.

Sulby Reservoir — Capacity — Question by Mr Houghton for Written Answer

Question 7

The hon. member for Douglas North, Mr Houghton, to ask the Chairman of the Water Authority:

In respect of the Sulby Reservoir -

(1) approximately how many gallons of water would equate to one metre depth of water held in the reservoir;

(2) how is the water level monitored;

(3) on each occasion during 2000, by time and date, what was the capacity released in order to reduce the water level; and

(4) how is this undertaken?

Answer

(1) The capacities of the top four metres depth of Sulby Reservoir measured to the lip of the bellmouth overflow are:

top metre depth 66 million gallons

2nd metre depth 58 million gallons

3rd metre depth 53 million gallons

4th metre depth 51 million gallons

The total volume of the reservoir is 1,000 million gallons. The top water level (i.e. the lip of the bellmouth overflow) is 607 feet above sea level. The surface area at top water level is 54.4 acres.

(2) The water level is measured at present using an electronic pressure transducer. This measures the pressure in a tapping on the supply pipe work near the top of the draw-off gallery. The analogue signal is looped to a digital readout instrument sited in the pump house located at the end of the draw-off tunnel. The reading is logged by the reservoir keeper on a daily basis, generally around 9 a.m. each day.

(3) There were no occasions during the year 2000 when the Water Authority released water into the river by opening valves on either the 900 mm diameter scour/hydro pipe or 700 mm diameter draw-off pipe. All water escaped naturally down the bellmouth overflow during periods of excessive rainfall as it is designed to do under such circumstances.

However, the Manx Electricity Authority utilised excess water at the hydro electric plant, located below Tholt y Will, for power generation. This water was derived jointly from Sulby/Block Eary reservoirs. The hydro plant is generally not used if the water in the reservoir drops below 594 feet AOD.

Figures for 2000 are as follows:

January	493 million gallons or	2,244,000 cubic metres
February	297 million gallons or	1,353,500 cubic metres
March	357 million gallons or	1,623,000 cubic metres
April	89 million gallons or	406,500 cubic metres
May	308 million gallons or	1,402,500 cubic metres
June	111 million gallons or	508,500 cubic metres
July	Nil	
August	Nil	
September	327 million gallons or	1,488,000 cubic metres
October	614 million gallons or	2,795,000 cubic metres
November	615 million gallons or	2,798,000 cubic metres
December	467 million gallons or	2,126,000 cubic metres
Total	3,867 million gallons or	16,745,000 cubic metres

These figures have been derived from the kilowatt hours generated by the turbines in the hydro generating station and are based on 5 cubic metres of water per kilowatt hour.

In addition, compensation water is released at a continual rate of 1,5 million gallons per day for every day of the year through a 300 millimetre diameter pipe supplied off the main drawoff pipe. This is discharged into the overflow tail race channel just below the dam.

(4) If it should be necessary to release water from the reservoir then the cone dispersion valve on the 900 mm diameter joint scour/hydro pipe would be opened.

Online Gambling Regulation Bill — Third Reading Approved

The Speaker: We move on now to item 8 on the agenda, Online Gambling Regulation Bill for third reading, Mr Bell.

Mr Bell: Thank you, Mr Speaker. The Online Gambling Regulation Bill will permit gambling on the internet and similar forms of online and interactive gaming to be regulated. The Bill itself has evolved from the very positive steps which we have taken to regulate international telephone betting and follows approaches which my department has received from a large number of areas including a number of blue chip companies. These companies have identified online gambling as an opportunity to establish a new type of business with a potential for very substantial growth in the future. However, because these companies have established reputations to protect they would wish to locate in a well regulated top-drawer offshore jurisdiction of known probity.

The Bill will provide them with a secure regulatory regime involving the Gambling Commission, the Department of Home Affairs, the Financial Supervision Commission, Data Protection, Treasury and the Isle of Man Constabulary. Licence holders will only be permitted to offer games that are approved by regulation, and not all games will necessarily be available to all licence holders. The number of licences will initially be restricted to three; however, the Council of Ministers is provided with the power to increase that number if it is deemed necessary and of benefit to the Island. Companies will have to be registered in the Island. Their designated officials will have to be resident here and licence holders must maintain sufficient financial reserves. Regulation will protect players' privacy, prohibit sales to minors and prevent money laundering.

There are also additional player protections within the Bill such as contracts being enforceable in law, codes on advertising and accuracy of website claims and regulations covering the conduct, fairness and probity of gambling on the site. The regulator will also have rights of entry and powers to inspect software and all gaming transactions.

The Bill provides an important opportunity for the Island to benefit from a growing e-commerce market whilst providing a effective protection for the Island's hard-won reputation for probity and quality internationally. It is effectively a piece of enabling legislation at this stage. The critical part of this legislation will be the regulations which will follow and will require Tynwald approval.

The Isle of Man is ahead of its competition in this field and I am grateful to members for their support so far. There were no outstanding matters which needed a response from the clauses stage and I would urge hon. members to support the third reading today and enable us to capitalise on this opportunity as quickly as possible. I beg to move, Mr Speaker, the third reading of the Online Gambling Regulation Bill.

Mr Duggan: I beg to second, Mr Speaker.

The Speaker: Mrs Crowe.

Mrs Crowe: I wish to interject but not on the Online Gambling, Mr Speaker.

The Speaker: Thank you. Anybody else wish to speak on the Online Gambling Bill? In which case the motion is that the Online Gambling Regulation Bill be read a third time. All those in favour please say aye; against, no. The ayes have it. The ayes have it.

Procedural

The Speaker: I now call upon Mr Singer, member for Ramsey.

Mr Singer: Mr Speaker, I wish to move:

That the business at item 19 on the order paper (Highways (Amendment) Bill) be considered after item 9 (Children and Young Persons Bill)

I do apologise to hon. members for requesting that this item is brought forward. It is a second reading of my Highways Bill but, as members can see, I am struggling rather slightly with my sight at the moment and I probably will not be able to last here for the whole day. I am expecting to have my stitches out on Thursday; hopefully that will make things easier. I would hope the discussion on the Bill would not take up too much of this hon. House's time, and I do understand that the normal procedure is for government business to take preference, but I would seek hon. members' indulgence on this occasion that perhaps we could discuss this Bill earlier in the agenda. Thank you.

The Speaker: Mr Henderson.

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

The Speaker: Mr Karran.

Mr Karran: Vainstyr Loayreyder, if the hon. member is not here we can always put his Bill off. There are a number of important pieces of legislation on this agenda. His Bill is not a simple Bill; it has major implications for this Island and I think it is too easy to say, 'Oh, well, we'll bring it forward.' It is an important Bill and if the hon. member is not up to it, then it is important that we should not go ahead with the Bill at the present time, in my opinion. We might be all day on that Bill because that Bill has major implications for the Isle of Man over the whole blame culture which has happened in the adjacent Island and things like that. I think it would be wrong. I have a Bill on this order paper that is far more important -

Mrs Crowe: So do I.

Mr Karran: - to do with the housing crisis, but I appreciate that you have to go along with the agenda as it is and I believe that it would be wrong to change the agenda at the present time.

The Speaker: Mrs Hannan.

Mrs Hannan: Thank you, Vainstyr Loayreyder. We have very important legislation on our order paper today - Children and Young Persons; that is going to take quite a considerable time and I feel we should get on with it, but also the Education Bill, I feel, is important. I could have supported the mover's amending the order paper if he had brought it in after item 10 and not before 10, because I feel that those two pieces of legislation are extremely important and they are legislation which we should try to process during this sitting of this House of Keys. Therefore I will vote against that. There is other very important legislation and I would live in hopes that we could get to second reading of some of these Bills today but I cannot see us doing that. Therefore to bring this forward and to give it priority over some of the other pieces of legislation I think would be quite wrong.

The Speaker: Mr Corkill.

Mr Corkill: I think, Mr Speaker, we could be perhaps lulled into thinking this is a short Bill and it is not going to be very contentious, but certainly Treasury has identified substantial cost issues with regard to the Bill and I think to speed it forward might not be, from our point of view anyway, the best way forward. I would prefer it to stay where it is on the agenda. All the Bills are important; I think we should not get into a debate in saying one Bill is more important than another Bill, but we do have standing orders which produce a system of delivery of Bills through the order paper, and I do not think a case has been made to actually alter that, Mr Speaker.

The Speaker: Mr Quine.

Mr Quine: Well, I think the issue is fairly straightforward, sir. It may be contentious but that does not matter. Essentially it is a single issue Bill so I cannot see this Bill leading us into a long debate at the second reading. I think what is transparently obvious is that it is on the agenda so we are required to be prepared to deal with it today anyway; secondly, I think it is not unreasonable, given the hon. member for Ramsey's physical position at the present time, that we do not require him to hang around here waiting. I think if somebody was ill we would very quickly accommodate it, and I do not see why we should not do it here. I think it is a matter that should be put to the vote, Mr Speaker, and let us decide it that way quickly rather than wasting more legislative time.

The Speaker: Hon. members, the motion is that the business at item 19 on the order paper be considered after item 9. Those in favour please say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

For: Messrs Quine, Henderson, Duggan and Singer - 4

Against: Messrs Gilbey, Rodan, North, Mrs Crowe, Messrs Rimington, Brown, Cretney, Braidwood, Shimmin, Downie, Mrs Hannan, Messrs Bell, Karran, Corkill, Cannell, Gelling and the Speaker - 17

The Speaker: Hon. members, the motion fails to carry, 4 votes in favour 17 votes against.

I call upon Mrs Crowe, member for Rushen.

Mrs Crowe: Mr Speaker, thank you. I would beg to move:

That the business at item 20 on the order paper (additional sittings) be now considered.

I fully recognise the importance of the legislation and the legislative process and I am not seeking a lengthy debate, but if the motion is not brought forward then there will be no possibility of the suggestion getting a hearing, and important legislation may be lost.

Mr Cretney: I beg to second.

The Speaker: Mr Corkill.

Mr Corkill: Are we debating it now?

The Speaker: Yes.

Mr Corkill: Mr Speaker, just for information for members to take into account when thinking about this motion, Wednesday afternoon, tomorrow, Treasury has got the annual budget

briefing for members. I fully concur with the member's desire to progress legislation, we are all feeling that way, but of course once you go out of the Tuesday scenario it does interfere with people's diaries. The only one that really interferes with my diary is tomorrow afternoon with regard to the confidential budget briefing which I hope members are thinking of attending, so I just leave that with members to consider when they debate this.

The Speaker: Mr Henderson.

Mr Henderson: Thank you, Mr Speaker. It is not very often my views concur with the hon. member for Rushen, Mrs Crowe's, but on this occasion they do to an extent, and I agree that perhaps when the legislative programme is heavy some sort of consideration should be given and flexibility used to try and progress it more quickly than we sometimes do, but I do have reservations for the Wednesday afternoon scenario for the rest of the year which is going to frustrate not just the Treasury minister's diary but every member in this hon. House's diary and in another place -

Mr Gelling: It is only to Easter.

Mr Henderson: Only to Easter, but nonetheless it will cause difficulties, although I would say, though, I would like to see this issue revisited at another time where we can look at Wednesday mornings or a whole day session if necessary but after the next election, Mr Speaker, in any case.

The Speaker: Mr Duggan.

Mr Duggan: Thank you, Mr Speaker. I too have got reservations. Members do have commitments, sir, and not only that; I think I would far rather work late in the evening; instead of finishing at half past five, we could work on till seven o'clock or half past seven on a Tuesday.

The Speaker: Mr Karran.

Mr Karran: Vainstyr Loayreyder, I support the hon. member. I understand the problems that some of us have because of the way the workload is within this House and the way some in this House have got very little else to do but be in this House.

Mr Henderson: Shame on you, Peter!

Mr Karran: Well, that is the fact, as I say to the hon. member for Douglas North: some of us do not have the luxuries that come with the office of minister - private secretaries and all that - but I do agree that the hon. member is right. I think we should do this. What I am concerned with myself is making sure that the period is not too long, because at the end of the day many in this hon. House lose sight that we are making the laws of the land, and whether it is a 'shall' or a 'may' can make a complete difference within a piece of legislation from it being effective or being superfluous. I have got no problem with the principle the hon. member for Rushen has about sitting tomorrow afternoon, and I think it would be far better to do it until Easter. I actually support the hon. member and I am sure we could change the date of the budget presentation at the present time.

The Speaker: Hon. members, we are slightly drifting. The motion is that item 20 be considered. We are not debating item 20 yet, we are debating whether a debate is allowed and standing orders are suspended.

Mr Cretney: Let us have a vote on it.

The Speaker: So do you wish that the motion be now put?

Members: Agreed.

The Speaker: So the business and the motion is that the business at item 20 on the order paper be now considered. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Therefore we will now debate item 20 on your order paper. Mrs Crowe.

Mrs Crowe: Thank you, Mr Speaker. Now that we have had, I think, a fairly short debate I am suggesting that from Wednesday, 28th February - that is, after our next meeting of the other place - hon. members of this House would sit on Wednesday, afternoons only. I think those of us who work full time as members of this House would see little difficulty at which desk we were sitting on a Wednesday afternoon. I know it might mean an arrangement of one's diary and I do appreciate that most ministers and most people who are, as I say, full-time members of this House do have commitments, but if it would be at all possible I think it would be a great shame for the departments who have worked, in some cases for years, to get the legislation to this House and find that it will fall because it cannot complete its legislative process. I think that that would be a great shame, so I would suggest that the motion is that we sit on Wednesday afternoons from 28th February. Thank you, Mr Speaker. I beg to move:

That until the start of the Easter recess 2001, at a sitting where the business on the order paper of the House has not been completed by 5.30 p.m., Mr Speaker do adjourn the House until 2.30 p.m. on the next day to consider such business.

The Speaker: I would point out to you that you will need an amendment to what you are actually saying -

Mrs Crowe: Oh right. Thank you.

The Speaker: - because we are debating the actual motion on the order paper.

Mrs Crowe: Yes, but there is no date on the order paper, Mr Speaker.

A Member: It does not matter.

Mrs Crowe: I thought that. . .

The Speaker: I think the Secretary will come and talk to you. Mr Cretney.

Mr Cretney: Mr Speaker, I would like to second the proposal if it is amended in the manner in which you are speaking. I do believe that it would be sensible to start from 28th February and I do think it is an occasion where we should exercise some flexibility. There is some important legislation. It is unfortunate that it has come before us in the manner in which it has; however, that is a matter of fact and we should get on with the job we are elected to do.

The Speaker: Mr Braidwood.

Mr Braidwood: Thank you, Mr Speaker. I have a lot of sympathy with the motion, but I also think under standing order 7(2) we could sit late on a Tuesday evening -

Mrs Crowe: We do that as well.

Mr Braidwood: - and I also think it would be better to sit on full days at your discretion, sir, to arrange with the members of the Keys so we either sit on an additional day on a Monday or Friday. I think this would be better than just on a Wednesday afternoon. I have no problem with

a Wednesday afternoon but, with the bulk of the legislation coming through, I do feel that we should sit on additional days at your discretion to arrange it with members, sir.

The Speaker: Mr Bell.

Mr Bell: Mr Speaker, I fully support the sentiments expressed by the hon. member for Rushen, Mrs Crowe. We have some very important, very heavyweight Bills coming through which, the hon. member rightly says, in some cases have had years of preparation and work put on them. It would be tragic now that we run out of time simply because we are not prepared to have a flexible diary. Members I think ought to remember two things: that the progressing of primary legislation is one of the most important aspects of the job of an MHK, it is what we are basically put here to do, and we should be doing our best to progress that; and also, of course, reflect on the fact that for the biggest part of the duration of the life of this House we have not spent the full Tuesday in this chamber, we have actually had half-days with great frequency, so it is not an onerous burden. The wording of the resolution also, which has not been referred to, states that we would only have an extra sitting where the business on the order paper of the House has not been completed by 5.30 p.m. on the Tuesday (**Mr Brown:** Hear, hear.) so in effect, if the agenda for any particular week is completed on the Tuesday, there would be no requirement to sit on the Wednesday anyway, so it is not a demand that we sit every Wednesday. Perhaps it will focus our minds and our debate by this form of wording that we ensure that we will get finished on Tuesday and will not need to come in on Tuesday.

The Speaker: Mr Brown.

Mr Brown: Thank you, Mr Speaker. I would just like to say that I support the move by the hon. member for Rushen, and I would make the point that whilst the hon. member for East Douglas, Mr Braidwood, has said to arrange sittings at your discretion, Mr Speaker, there is the reality in practicalities of departments continuing to work. As hon. members know, most members work every day of the week in their departments and therefore there has to be certainty in this and I would move an amendment to overcome the problem of the budget presentation tomorrow, which of course is an important date in our diary, and also enables us to bring in some form of certainty to say that it would be every Wednesday after that. I beg to move:

After 'that' insert 'from the sitting on 27th February 2001'.

The Speaker: Mr Quine.

Mr Quine: I was going to move an amendment, sir, but I think it has been moved already. I am pleased to second.

Mrs Crowe: Thank you, Uncle Edgar!

The Speaker: Chief Minister.

Mr Gelling: I was going to move an amendment as well, Mr Speaker! (*Interjections and laughter*) However, can I in, contributing to the debate, just confirm therefore that it will be seen as one sitting -

Mrs Crowe: Yes.

Mr Gelling: - because if it is not seen as one sitting we fall into the problem of the eight-day rule for amendment so therefore the Wednesday would cause us a problem. As long as it is

agreed that the Tuesday sitting is continued on the Wednesday and Wednesday is not a sitting of the Keys -?

The Speaker: Just to clarify to the House, the Tuesday agenda will be carried over to Wednesday and when that agenda is finished that will be the close of business. There will not be a separate Wednesday agenda.

A Member: Vote!

The Speaker: Therefore first of all I put the amendment. All those in favour of the amendment put by member for Castletown, Mr Brown, please say aye; against, no. The ayes have it.

I now put the motion as amended. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

The Children and Young Persons Bill 2000 — Consideration of Clauses Commenced

The Speaker: We now move to the agenda proper, item number 9, the Children and Young Persons Bill for consideration of clauses. Mr Cannell.

Mr Cannell: Mr Speaker, notwithstanding it is the clauses stage I thought it might be opportune to give an outline very briefly of the Children and Young Persons Bill 2000.

Its main object is to bring the law of the Island relating to child care up to date, chiefly to bring it into line with suitable modifications to take account of the special conditions of the Isle of Man with the United Kingdom Children Act 1989, which is the legislation on which the professional training of all those concerned with child care in the Island is now based.

The Bill has no fewer than 10 parts to it and there are 13 schedules attached. Part 1 contains general principles and concepts dealing with the involvement of the law in the care and upbringing of children in the family. It re-enacts without substantial amendment part 1 of the Family Law Act 1991.

So turning now to the first of the clauses, there are 10 clauses within part 1, general provisions, and clause 1 states 'General principles as to the exercise of powers by the courts.' It restricts the courts' powers to make orders affecting a child, for example, as to custody, access or maintenance, to cases where it thinks that this is best for the child, and it requires the court to act speedily and to consider the child's welfare and nothing else. It also specifies the factors the court is to take into account when considering making an order under part 2, which is residence and contact et cetera, or part 4 of the Bill, which contains the care and supervision orders. I beg to move clause 1 do stand part of the Bill.

The Speaker: Mr Rimington.

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

The Speaker: Mrs Hannan.

Mrs Hannan: Could I just ask under this particular clause, obviously the department has to go to the court to get an order, but does the department, in putting an order to the court, have to make a case where a child is being adopted and that adoption is into the UK? Do the court and the department have to have the support of the parent in that case, or parents, if a child is being

adopted abroad? And is there contact with the child and parents in the future? It is an issue that has been raised with me by a constituent and I would be interested in the comments.

The Speaker: Mr Cannell to reply.

Mr Cannell: Yes thank you, Mr Speaker. In reply to the hon. member for Peel, much of the questions she has raised are covered by the Adoption Act, and of course we have recently had further legislative measures concerned with that. The welfare principle is established in sub-clause (1) of the first clause of this Bill, and in all situations with which the court is concerned with a child it is deemed that the child's welfare shall be of paramount consideration, and I think if this Bill does anything whatever, it does re-establish the primary right of the child but also that there shall be consultation with all relevant parties at every possible step along the way. The third sub-clause of clause 1 is to encourage children to be brought up by their families wherever possible, but it is acknowledged, in response to the hon. member for Peel, that sometimes the situation does vary from that and it includes any individual who has parental responsibility and anyone with whom that child has been living provided it is shown to be in the child's interest. I hope that answers the hon. member's points, Mr Speaker.

The Speaker: The motion 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, sir.

Mr Cannell: This clause, Mr Speaker, defines the term 'parental responsibility' as meaning all the rights and duties of a parent or guardian. The entirety of the rights and duties of parents cannot be easily defined and in any case vary according to the child's age and condition, but briefly they include various rights - for example, the right to custody of the child, the right to access to that child, the right to decide on the child's name, upbringing, religion, education, place of abode, the right to control behaviour, including the right of reasonable chastisement, and the right in certain cases to administer the property of the child.

In sub-clause (1)(b) there are various duties for example the duty to maintain the child with the basic requirements of feeding, clothing and sheltering, the duty to look after that child's health, the duty to control the child and the duty to arrange for the education of that child. The rights and duties of guardians include those of parents and in addition various rights rather like those of trustees relating to the child's property. As a father is by law the natural guardian of the child, the rights and duties of parents and guardians overlap to a great extent. However, a guardian as such does not have any legal liability to maintain his ward for the purposes of social security legislation. Mr Speaker, I move that clause 2 do stand part of the Bill.

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

The Speaker: Mrs Hannan.

Mrs Hannan: I am brought to my feet by a comment that the mover made about the father being the guardian of the child. I wonder, could he elaborate on that in his winding up? I would have thought that two parents, and then it is for the court to decide who would have parental responsibility, I would have thought, but I would have thought - and maybe I have heard the mover wrong in his comment - that the father is the guardian of the child.

The Speaker: Mr Cannell to reply.

Mr Cannell: Yes, Mr Speaker, the clause does define the term 'parental responsibility' for this Bill and for all future legislation. Previously thinking had been that parents had the rights

but this shifts the focus to the responsibilities of being a parent. The definition does not include a list of the responsibilities that persons might have for children but, in answer to the hon. member for Peel again, who has quite reasonably raised that position, it provides in sub-clause (2) that more than one person can have parental responsibility at the same time, and it makes clear that the rights of the mother and the father are viewed as equal and independent. That might be slightly at variance with my introduction to the clause, but sub-clause (3) provides that a person's parental responsibility does not cease when another person obtains parental responsibility; only adoption can deprive that person of parental responsibility and, even under those circumstances, contact can be agreed and parental permission be dispensed with.

A court is enabled under sub-clause (4) of clause 2 to restrict parental responsibility by way of orders, and sub-clause (5) makes it clear that even if a child's parent does not have parental responsibility - for example, unmarried fathers - it does not affect the child's entitlement to be maintained by the parents, nor does it affect the entitlement of the parent to inherit from that child's estate should there be one.

Sub-clause (6) clarifies the powers of someone without parental responsibility who has a child in their care - for example, foster parents, school teachers, nurses, et cetera - and having been given that power they are then enabled to do whatever is reasonable to protect the child's welfare in all the circumstances without risking liability for court action - for example, for assault.

I hope that also answers the hon. member's query on that. Clearly there is a circumstance in which the court could decide the exact area of responsibility in various matters. Just to repeat, the rights and duties of guardian include those of parents and in addition various rights relating to properties.

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

Mr Cannell: Clause 3, Mr Speaker, states who in the first instance has parental responsibility for a child. We are in the same area here, of course, and various subsequent provisions will confer parental responsibility in certain cases. In sub-clauses (1) to (5), that is defined that where parents are married to each other at the time of the child's birth they will both have parental responsibility. If the parents are unmarried when the child is born, the mother will have parental responsibility but the father will not. He has to take subsequent steps to acquire the responsibility via the courts, and if two people have parental responsibility for the same child they do not need to consult each other on every issue or, indeed, obtain the other's consent. The exception is if there is a specific act or piece of legislation requiring more than one person to consent to something concerning a child. If the other parent wishes to prevent any particular step, he can apply to the court for a varying order. A person cannot surrender or transfer in a permanent manner parental responsibility for their child. However, it can be delegated - for example, to grandparents, even to schools or to summer camps. If such delegations do take place, the persons with parental responsibility remain liable for any failure on his part to discharge the responsibilities to that child.

There are five sub-clauses to clause 3, which I now formally move do stand part of the Bill.

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

The Speaker: The motion 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. Clause 4, sir.

Mr Cannell: This enables the father of an illegitimate child to be given parental responsibility for that child either by the courts or by agreement. This is quite separate from the power of courts to order the natural father of an illegitimate child to contribute to the child's maintenance. The section deals with the way in which the father who is not married to the mother at the time of the child's birth acquires parental responsibility. If this step is to be contemplated, Mr Speaker, that person may apply to the court and the court can order parental responsibility be awarded. Secondly, he may enter into a formal agreement with the child's mother that he will have parental responsibility, but the agreement would only have legal status if made and recorded in a manner prescribed by the rules of the court. So we are dealing with an area now which is modernising legislation in this regard, and I formally move clause 4 do stand part of the Bill.

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

The Speaker: Mrs Hannan.

Mrs Hannan: Yes, the legislation is quite straightforward, but I am concerned that the mover of the legislation is going back to this situation where children are either legitimate or illegitimate, and I thought that we in this hon. House had moved away from that and we were using terms 'marital' or 'non-marital' children, and I would have hoped that the department who are moving this legislation would accept, in not just the written legislation but also in the presentation to the House, that there are these terms that we can now accept and put into legislation and also use in this House so that nobody is either before or after the law, they are all children and they should all be treated in exactly the same way, bearing in mind the responsibilities that people acquire under this legislation, which is mother, father, parents and everything else that is involved in that. But I do feel very strongly that we should move away from this and as a government we should be proactive in doing this. I do not think government is actually doing enough to treat people in a way that is acceptable. Lots of children suffer because of language that is used and I would hope that we can actually get away from that.

The Speaker: Mr Cannell to reply.

Mr Cannell: Yes, Mr Speaker. Well, even to reach the state of describing children as illegitimate is a considerable advance on their previous descriptions, I am sure. In fact the hon. member's query, if she would not mind the pun, is legitimate and in fact the next clause deals with just such a point. These are introductions; I am not reading from the actual Bill, when I make the introductions. She is quite right: we are moving to different descriptions of this to cover what would be regarded as a stigmatic description. If the hon. member would be obligingly content to allow me to come to clause 5, her points will be specifically addressed, sir.

The Speaker: The motion is that clause 4 do stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 5, sir.

Mr Cannell: Yes, Mr Speaker, this clause makes it a general principle in the Bill and in any legislation passed after the Family Law Act of 1991 that references to relationships will include both legitimate and illegitimate relationships and give general currency to the term 'marital' in

place of 'legitimate' and 'illegitimate'. It defines the term 'marital child' and I think that will cover the specific point, correctly raised of course by the hon. member for Peel, that it will henceforth be known as 'marital', and 'legitimacy' or otherwise, except in legal terms, will now disappear from the ordinary rank and file descriptions although I suspect that in fact it will be a long time before courts of law will move away from that in the same way that they are struggling to move away from so many modernisations, not least of course with the difficulties with metrication. But 'marital' will be the term in clause 5 with its sub-clauses and I formally move it stand part of the Bill.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is then that clause 5 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 6, sir.

Mr Cannell: With your indulgence, Mr Speaker, perhaps I could couple up clauses 6, 7 and 8 which are extremely related?

The Speaker: There we are, 6,7 and 8. Proceed.

Mr Cannell: These clauses, Mr Speaker, state with amendments the present statutory powers of the High Court to appoint a guardian for a child who has no-one, or no-one available with parental responsibility. The court can appoint as a guardian a person who has made an application in respect of a child who is effectively an orphan and that, of course, Mr Speaker, is another perhaps Dickensian description of people that find themselves in such situations. The court can appoint someone, even if no application has been made to the court. I would say I hope we have very few children who would find themselves in that position, but a guardian for a child appointed under such a section would have parental responsibility, in the same fashion.

In clause 7 specifically, parents can appoint guardians for their children to care for them in the event of the parents' death. A guardian can also appoint a successor to take his place on his death. The appointments must be made in the correct format in writing and signed by the appointer or by his direction in the same legal way as the ratification of a will. The appointment of a new guardian will only take effect immediately upon the death of the person who made the appointment during circumstances which are prescribed - for example, that there is no longer living a parent with responsibility who could maintain that, or if the person who died had sole residency orders in favour of the respect of that child immediately prior to their death. If a parent with parental responsibility is alive, then the appointment will only take place on the death of that parent. Two or more people can appoint guardians for children - for example, both parents via a single document rather than separately. If someone is appointed a guardian and does not wish to take up the appointment, they can disclaim it so long as they exercise that right within a reasonable time and by formal correspondence.

In clause 8 in the same area, Mr Speaker, the courts have the power to bring to an end the appointment of a guardian if any person with parental responsibility applies for that to be the case, or if the child applies to the court itself and it is agreed that this should proceed. There are also a number of subsections setting out the way in which persons can revoke appointments of guardians that have been made, and any appointment of a guardian terminates in any case when the child attains 18 years unless it is preterminated by the proceedings which I have already outlined. So clauses 6, 7 and 8 in part 1 of the Bill I formally move do stand part of the legislation.

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

The Speaker: The motion is then that clauses 6, 7 and 8 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses 9 and 10, sir.

Mr Cannell: Yes, sir. In clause 9 it just give a formal standing to the proceedings I have described, in that any order under this part of the Bill lapses when a child reaches 18 years of age and in clause 10, which concludes part 1 of the Bill, it provides that in order to prevent repeated applications which might be unsettling to the child, the courts when disposing of any application under part 1 can order that no further application for an order of a specified kind is to be made without further leave. This is to prevent where there might be fatuous claims made which, if the child was to be subjected to scrutiny on many occasions within a short period, could indeed unsettle the child and covers the fact that repeated applications will be resisted by the courts, unless special leave can be shown why that circumstance might be entertained. Mr Speaker, that is clause 10 which I now formally move, and that concludes the first part of this Bill.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clauses 9 and 10 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 11, sir.

Mr Cannell: Yes, this commences part 2 of the Bill, Mr Speaker. There are 11 clauses within this. It re-enacts part 2 of the Family Law Act 1991; it contains the standard code relating to the kinds of orders which the court can make relating to children in what are known as family proceedings.

Clause 11 list the kinds of orders that the court can make in family proceedings. A residence order sets out with whom the child is to live, perhaps one of the most important aspects. A contact order, equally important though, provides for the child to visit or sometimes reside with the other parent or for other forms of contact between them, and it may come down to having a literal court description of whether that be by telephone or by letter or by other means of communication. A prohibited steps order which debars certain actions - for example, the removal of children from the Isle of Man, and those who were listening to yesterday's 'Mannin Line' might have heard a reference to it in that it was said that the Isle of Man, by attempting to do such a thing, was 'ethnic cleansing'. I do not think I have ever heard anything more dreadful than in fact someone suggesting that a responsible department of the Isle of Man Government should be descending to such a thing. (**A Member:** Hear, hear.) A specific issue order dealing with a particular dispute or question which has arisen may arise, and we accept wholeheartedly that there are many difficult areas within this type of legislation where everybody's rights must be taken into account, and it puts the onus onto the court to address every potential issue of contention. An order varying or revoking any of the above will be made in the next clause. The 'court', for definition, means the High Court or any court of summary jurisdiction, but the powers of the lower courts are restricted as indeed in many other similar proceedings. So the High Court is in fact the ultimate authority for the preliminary hearing of any serious dispute in this area. Clause 11, Mr Speaker, I now formally move do stand part of the Bill.

Mr Rimington: I beg to second, sir.

The Speaker: Mrs Hannan.

Mrs Hannan: Could I ask the mover: it is all very well having residence orders and contact orders and other orders under this, but who in actual fact makes sure that this is in the best interest of the child? In some legislation you have guardians ad litem who are appointed and who are actually in between the department and the child or the parents. Does this come under this particular aspect of the legislation?

The Speaker: Mr Cannell to reply.

Mr Cannell: Yes, Mr Speaker, the legislation in this clause covers this because a residence order and a contact order is specifically referred to. I do not for a moment pretend that these things are easily agreed - in fact they often lead to considerable contention - but the courts will hear this and will decide with the general prerogative that they actually are operating in the best interests of everyone involved, not the least the child concerned, but will hear any genuine applications for the proposed order which is being made. Where a resistance is put up every possible account will be taken of just such a provision.

I do agree with the hon. member for Peel: this is one of the items which those who have attended courts. . . because in the old days such matters used to be heard in public, were of great contention, occupied considerable amount of time and were exceedingly harrowing for everyone involved. So I take the point entirely, but I hope the hon. member will be assured that this now will address every such point and that everybody's interest will be preserved. Clause 11, Mr Speaker.

The Speaker: The motion is that clause 11 now stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 12, sir.

Mr Cannell: This clause, Mr Speaker, lists the persons who are entitled to apply for orders - again in the same area, under clause 10 and 11, without the leave of the court - and makes further provision for such orders. The department, though, itself may not apply in its own right for a residence or court order. If the department is to control where a child lives or with whom he has contact, then this must be done by way of the care order, as has been outlined in the proceeding clause. Where a residence order is made in favour of two persons, the court may even go as far as specifically laying down how much time is to be spent with each party. I cannot really envisage a situation, but in fact there are from time to time disputes where it actually comes down to a stop-watch-type time of how much that child is to spend with each of the persons appointed. So this clause 12 gives effect to that and, with its sub-clauses (1) and (2), provides that any parent or guardian of the child can apply, and any person with whom the child is to live under a residence order can apply for the full gamut of orders in this regard, and there are in fact no fewer than seven sub-clauses of the sub-clause. So clause 12, Mr Speaker.

Mr Rimington: I beg to second, sir.

The Speaker: Mrs Hannan.

Mrs Hannan: Again I come back to the situation where the mover said that the department cannot apply for this, but they can be applied for, residence orders, contact orders and the like. What I am trying to get from the member is, does this relate to someone having the overall interests of the child at heart and working with the parents, the guardian or whoever has been appointed and the department? Someone along the line there must be somebody, surely, who

is independent of both the parents and the department who can put the interests of the child paramount. My understanding is that maybe we do not have guardians ad litem, but I know in the past the term has been used and is it under this particular area of the legislation that a guardian ad litem would be appointed by the courts?

The Speaker: Mr Cannell, can you reply?

Mr Cannell: Yes, Mr Speaker, I appreciate the hon. member's concern. I was as concerned as she is that this is taken care of by this important legislation. The department, even if in fact it was permitted, which it is not, would not be inclined in any case to operate in its own regard. However, welfare officers can be appointed, but they would be independent and would judge the matter vis-à-vis the department's observations on the matter and all the representations made on behalf of anybody else with a claim to this court. The independence is preserved, it is not a case, hon. member for Peel, in my reading of this, that in fact there could be any departmental responsibility assumed by the heavy hand of the department. It would all be subject to the most diligent scrutiny.

The Speaker: Hon. members, the motion is that clause 12 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 13, sir.

Mr Cannell: This clause, Mr Speaker, gives the court guidance on whether to grant leave to make an application for an order under clause 11, which has been outlined. Under the circumstances described here the court will have regard to the welfare checklist which has been referred to earlier, but will embrace four other specific issues: the nature of the proposed application, the applicant's connection with the child, the risk that it might be perceived that the proposed application would disrupt that child's life to such an extent that he may be harmed by it - and I use the male term 'he' here without prejudice to it being possibly viewed as discriminatory - and, where the child is cared for by the department, the department's plans for the child's future and the wishes of the child's parents. That is the matter which I have just referred to in reply to the hon. member for Peel: in fact the department does have representation directly but is not paramount and lines up with everybody else who is making representation in the matter. Indeed, the child itself may, if deemed desirable for leave to make an application for an order, but the court would only grant that if it could be shown that the child has sufficient understanding, and that in itself, of course is the subject of interpretation. But in general I think any child who would make even a badly presented case shown to be sincere and genuine to the court would carry a considerable amount of weight. There are two sub-clauses and they are detailed. That is clause 13 and I formally move that it stand part of the Bill.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that 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. Clause 14, sir.

Mr Cannell: This contains restrictions related to proceedings for an order under clause 11. The court is thus prevented from making an order if the child is in care, except for a residence order which effectively removes that child from a care order. Courts under this clause of this Bill cannot make a residence or contact order in favour of the department. Again, I think I hope that answers part of the hon. member for Peel's questioning; We seem to be a couple of clauses out of synchronisation here. The courts cannot make an order relating to a child already aged 16 or over, except in very exceptional circumstances.

Now, Mr Speaker, we have heard a considerable amount of debate in this hon. House on the age at which responsibility can be assumed in various matters, not least including my hon. friend, my colleague from Rushen, Mrs Crowe, who has put ages up for discussion in various areas, but this specifically says in clause 14 that an order will not be made except exceptionally, for children aged 16 and over. Again, they would have the right to make independent observations on what is going to happen to them in every regard. Clause 14, Mr Speaker.

Mr Rimington: I beg to second, sir.

The Speaker: Mrs Hannan.

Mrs Hannan: I am just concerned that there seems to be a gap in this legislation about who is looking after the best interests of the child. Again, I have to comment: it is all very well making legislation but I think that we have to safeguard and to protect not only the child but also the department. Surely this legislation has come about because there was a gap, and there still is until this legislation is passed, but that gap will remain. There is no-one there looking after the best interests of the child to protect the child from a number of issues, and also to protect the people in the department, the people with responsibility for carrying out this legislation. It is all very well for the department and the court and the child and the best interests of the child and the parents and all responsibility, but somewhere amongst all of this I think there has to be someone who can be appointed to look after, negotiate and liaise with all these separate interests. I think it is very important that that should be in this legislation, and I do not see that it is there.

The Speaker: Mr Cannell to reply.

Mr Cannell: Yes, Mr Speaker, with the greatest of respect to the hon. member, you do have to go a long way through it to find it and you have to go to clause number 96. For those who have spent some time in the courts hearing it, it is a bit of a mystery to young children when they hear terms being bandied about such as 'guardian ad litem' et cetera, but when clause 96 is reached it quite firmly demonstrates that the power is on the Attorney-General to appoint an advocate to represent a child in any family proceedings. So those, I think, Latin terms hopefully will be set aside for the mystery of those who did not take Latin and particularly for the children who would not know what you are talking about, particularly at that age, though some might. The Attorney-General will be concerned with appointing an advocate to represent a child, so that is covered and we will reach that at clause 96, which places on a statutory basis the present system in which the Attorney-General may appoint an advocate. In a case where the court or where other proceedings are likely to affect the welfare of the children, argument may need to be heard - this is going to be case throughout the Bill - and evidence on the question of the welfare from parties other than the parents and the department, the Attorney-General has an inherent power to intervene and to take action on behalf of the child. I hope that answers the point, Mr Speaker, on the clause under consideration, which was clause 13.

The Speaker: The motion is that clause 14 stand part of the Bill. All those in favour say aye; against, No. The ayes have it. The ayes have it. Clause 15, sir.

Mr Cannell: Clause 15, Mr Speaker, makes provision for the duration of orders under this part. Again, there are five sub-clauses. It deals with the duration of the orders, as I have said, and the general rule applicable to that is that the order should only be made, as has been

made in preceding references, until the child attains the age of 16. However, the court is provided with powers, as I have said, to make orders beyond that in exceptional circumstances which are defined, but all orders notwithstanding that lapse when the child attains 18 years. Similarly, orders made under this provision lapse where children are subjected to care orders. Contact orders and residence orders lapse after a child's parents live together for six months, which covers what would be in many cases a welcome reconciliation of their former relationship. Clause 15, Mr Speaker.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 15 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 16, sir.

Mr Cannell: Yes, still in part 2 of the Bill, Mr Speaker, clause 16 provides for the legal effect of a residence order under clause 11 with regard to parental responsibility. Basically, the person with whom the child is to reside is to have parental responsibility if he would not otherwise have that. Any parent or guardian with whom the child is not to live does not lose parental responsibility. There are exceptions and limitations to the breadth of the parental responsibility in that they cannot consent to adoption; they cannot appoint the guardian; they cannot change the child's surname nor take the child out of the Island for more than one month without the consent of everyone who has legal parental responsibility, or by leave of the court. The subsection encourages those with parental responsibility to reach agreement on issues if at all possible. Sometimes it is obvious they cannot, and therefore they must resort to the courts if consensus cannot be reached. At the time of making orders the court can give permission for the child or children to be taken out of the Island. Once that order is made, further applications must be made to the courts for permission even if at a later stage those with the parental responsibility in that regard still cannot agree on how it is to be achieved. Clause 16, Mr Speaker.

Mr Rimington: I beg to second, Sir.

The Speaker: The motion is that clause 16 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 17, sir.

Mr Cannell: Clause 17 deems any residence order or care order of a court of summary jurisdiction to contain an order directing the person who has to child at the time to hand the child to the person in whose favour the order is made or to the Department of Health and Social Security, as appropriate. Failure to do so is enforceable by a fine or committal under the Summary Jurisdiction Act, section 102. By way of more intimate explanation, it is merely to provide for the arrangements on which residence orders can be enforced. This is for those who do not choose to play the game or choose to defy the courts. They can then be brought to account. Clause 17, Mr Speaker.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 17 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 18 and Schedule 1, Sir.

Mr Cannell: Yes, Mr Speaker, the first of the 13 schedules attached to this Bill. Clause 18 provides a standard code for maintenance and other financial relief for children in most family proceedings. The existing codes applicable to matrimonial proceedings are unaffected. The

standard code for maintenance and other financial relief in the family proceedings are self-explanatory in the schedules and I hope will not require very great explanation. I have here material as proceedings for schedule one which is in fact five A4 pages. Suffice to say it is belt and braces for every step of the way, Mr Speaker. Clause 18.

Mr Rimington: I beg to second, sir.

Mr Cannell: And schedule one, Mr Speaker.

The Speaker: The motion is that clause 18 and schedule one stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 19, sir.

Mr Cannell: Clause 19 provides for the jurisdiction of the courts under this Bill. It limits the powers of courts of summary jurisdiction, which are the High Bailiff's Court or Magistrates' Courts in certain matters, and provides for the transfer of cases from those courts up to the High Court. The High Court or a court of jurisdiction summarily, the High Bailiff or Magistrates', in fact may view that the proceedings would be better served by the offices of the High Court. That would not be a normal step to take but may actually require that. It limits the powers of the lower courts and gives that legal option for the case to be transferred into the High Court with its many divisions. The obvious one would be family law division for such matters. Clause 19, Mr Speaker.

Mr Rimington: I beg to second, sir.

The Speaker: Mrs Hannan.

Mrs Hannan: Again I come back to the issue of children and protecting their rights and also their parents and the department. Although the member has referred me to clause 96, clause 96 does not satisfy, as my understanding is that the child's interests would be looked after and that the interests of the department and the workings of the department in the best interest of the child are actually protected. What it states is that an Attorney-General can appoint. Well, my understanding is that there are not advocates who specialise in liaising between the department and children and can have an input into the interest of all of these parties. It states here that if it appeals to the Attorney-General - who satisfies the Attorney-General that there is someone there to look after the best interests of the child to be a liaison between parents. It could be two parents fighting over it; it could be, in the case of an adoption, a parent not wanting a child to be adopted. It could be the courts deciding yes, that is the case because the child is in the custody of the court. So all this that is going on - to my mind it seems that it comes down to it that we have got the legislation; we have not got anyone who is actually looking after the interests of all these areas, the protection of the child, the officers of the department and also the parents.

The Speaker: Mr Cannell to reply.

Mr Cannell: Yes, Mr Speaker. The intervention of the Attorney-General would, of course, be an independent backstop and it is viewed as not being automatically referred to the Attorney-General. But in fact even in cases where that is not viewed as being the desirable step, it can be appointed onwards through an advocate who, if it is felt he does not have sufficient expertise in the field, either would sub-contract the work by bringing in someone who does, in other words appointing a further advocacy in a specific area or, indeed, having social work reports which are contained in sub-clause (2) of clause 96, which sets out just such a step. In

sub-clause (1)(a) the advocate is to represent the child and take all necessary steps in the proceedings as thought necessary in the child's interest. Now, I cannot see that it cannot be viewed as being fully independent and fully capable of having further advice being obtained. For example, a welfare report from an independent social worker - and if there is anything this Bill does, it gives actually just about every possible detachment where the department or indeed the feuding parents the hon. member refers to, or indeed any other relatives, because there could be the case of grabbing from the child's assets. It is certainly not unknown; many youngsters are actually party to quite a considerable amount of money or material possession, and you have seen the degrading spectacle of people fighting over something when people die; It is even worse when the child has possessions which people are trying to get access to. So I am quite confident that the hon. member's queries on this even if she, I am afraid, remains to be unconvinced. . . I am confident in this Bill that clause 96 (2) does allow the obtaining of welfare reports from independent social workers who would indeed not be at the behest of the department but in fact would be quite independent and act under the auspices of the Attorney-General.

Other than that I do not have any other reservations about this and I formally move that the clause stand part of the Bill. I hope that the hon. member is not considering that I am thwarting her enquiries. In fact, I am doing my absolute best to try to address her concerns, but always throughout any other concerns which are outstanding, either during the Bill at lunchtime or, in fact, at the conclusion of it, which I hope will be today, the department's resources will be available to reassure her further.

The Speaker: Hon. members, the motion is that clause 19 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 20, sir.

Mr Cannell: This clause, Mr Speaker, restates rules relating to wardship proceedings, again not a common expression which is used from day to day - the procedures for making children wards of court. It limits the court's powers to prevent wardship being used instead of care orders or supervision orders. Key decisions affecting the children are made, as we have said many times so far and probably shall do again, to the courts, but the court's powers in this matter are defined and in fact there is no question of straying from that; wardship in its definition in clause 20 and its four sub-clauses are quite specific. In fact, it is to prevent wardship being used as an overseeing measure to supersede or to actually outlaw care orders or supervision orders, which are viewed as more desirable to fit the circumstances. Clause 20, Mr Speaker.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 20 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 21, sir.

Mr Cannell: This clause concludes part 2 of the Bill, orders with respect to children. In order to prevent repeated applications which would be unsettling to the child, as we have already alluded to, a court when disposing of any application under part 3 of the Bill can order that no further application for an order of any specified kind is to be made without specific leave of the court. It is again, sir, to prevent people who may well be considerably well-healed and may instruct their lawyers to put in repeated applications in respect of children which clearly could be totally unsettling to everybody concerned and it would be adjudged that in fact there be no

further applications until a certain period be reached - not unlike a procedure within this hon. House, where certain matters cannot be raised within a certain time frame. Clause 21, Mr Speaker.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 21 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 22, sir.

Mr Cannell: Yes, commencing part 3 of the Bill, Mr Speaker, which is specific to the general functions of the department, and there is a raft of clauses in this regard - 22 to 30.

Clause 22 defines the main responsibilities of the DHSS with respect to childcare. I am sure that the hon. member for Peel, and indeed other hon. members, will be cognisant of the fact that this is the ultimate in definitions. This is what the department can or cannot to do. It must promote the family; it must try to keep children out of court. It might be viewed that everything problematic with children automatically ends up at the bar of the court, but the department for its input and everyone else concerned along the way, I am sure, does everything whatever to prevent court proceedings becoming necessary. It is only really as a last regard; regretably, though, it does seem to be on the increase. The department is required to promote the upbringing of children within their families and I am pleased to say in the Isle of Man we promote that as a general Christian principle still, notwithstanding the assaults which we have on such desirable assets as families from time to time elsewhere, the emphasis being placed on the welfare of the child with, as I have said, no recourse to court unless there is no alternative, and the department is placed under quite firm duties as defined in the sub-clauses of clause 22 which I now formally move, sir.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 22 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 23, sir.

Mr Cannell: This sets out the department's specific functions with respect to children who are in danger or who are in need, and they are defined in clause 3. The department is under a duty to take action where a child is in danger. The description or the delegation of that is defined also, and the description of what might be viewed as dangerous is, of course, subjective but is defined here for the purposes of this action: suffering or likely to suffer significant harm. This is extremely important and a departure from previous legislation. The definition of 'likely to suffer significant harm' is very, very difficult to define, but in fact it is viewed as superseding the previous legislation in that it was only where a department could be shown to have had evidence from children or from the police or from neighbours or from anyone else that a child actually has suffered, so it is a big departure. This is now viewed as bringing this legislation into operation where the child might be likely to suffer significant harm. Of course, as soon as you do that, it becomes a matter of judgement and it is defined in this clause and in subsequent areas of this Bill what that actually entails. The department has power to take action where a child is viewed as being in need. This differs from the Children Act, as I have said, under which local services authorities have duties to provide family services, but in fact this is now quite a step forward and is viewed as being an extremely important part of this Bill.

The definitions are given for guidance and powers are given to provide various services in such situations. Public authorities are encouraged to assist the department in providing services under this section, which in fact can include accommodation - for instance, through local authorities - day care by a variety of providers, advice and counselling services - again there are many - home help and travelling assistance. These are all most important areas to assist here. Services can also be provided for other members of the family if that is viewed as being desirable. So it sets out the department's specific functions in respect of children who are in danger or in need. Clause 23, Mr Speaker.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 23 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 24 and schedules 2 and 3, sir.

Mr Cannell: Yes, Mr Speaker, a little unusual in procedure, that. The clause sets out the specific duties of the department, other than the provision of accommodation, where it is looking after a child - it sounds a little bit of a generalisation. Many would say that children are being looked after at a variety of times throughout their regular day, but it introduces schedules 2 and 3 to which you refer, Mr Speaker, which provide in more detail for the treatment of the children and enable the department to recover some or all of its expenses from the parents. This equally is important too, because there are many who just cast aside their children and say that the responsibility is that of the state. This is giving the opportunity for those who take such a course to actually have some of those expenses taxed and perhaps even recovered, (**Mr Houghton:** Hear, hear.) certainly not in all circumstances, but I cannot imagine why anybody in fact should not pay their way in such regard and this is an enabling method for that. The department is obliged to provide accommodation, of course, but it is at a high cost, as we have heard in other respects.

For children are looked after, the department safeguards and promotes their welfare, and we heard that defined earlier on - the basics of life, which are feeding and clothing and shelter, to advise, help and take a personal interest. Where the exercise of these duties may cause danger to the public the department may disregard any requirements under this section.

There are many definitions within the schedules, Mr Speaker. They could be gone through, if necessary; they are, as they say, 'on the table' for inspection and indeed can be read in the schedules at the back of the Bill, though you would need to have, I think, a pretty sharp brain, certainly better than mine, to interpret everything in there, but it is all with the objective of actually addressing this situation which is defined in clause 24, Mr Speaker.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 24 and Schedules 2 and 3 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 25, sir.

Mr Cannell: Yes, Mr Speaker. This clause sets out the department's other specific obligation with respect to children in danger or need, in that it must provide accommodation for certain categories of children. They are defined, those in care under court orders, orphans and other children being looked after, children in respect of whom emergency action is being taken and children and young persons placed under supervision in criminal proceedings where a residence requirement is imposed.

Mr Speaker, this is a veritable minefield of the specific area to which a child is viewed as its situation at any time and, indeed, the situation within the child's care can change virtually from hour to hour, but every provision is actually taken care of here. However, provision is made for anyone with parental responsibility to object to the department's judgement of what is viewed as being fitting accommodation. I cannot see how that could actually happen except in people being really determined to be aggressive. The department is willing and able to arrange accommodation, but in fact if the parents can be shown, despite everything that has happened, that they can give an appropriate amount of accommodation in their own right, that will be taken into account. Everyone with parental responsibility for children placed in accommodation by the department can take the child away at any time unless the child is 16 or 17 and agrees to live in the accommodation provided. Now, what we have here is, of course, a situation where the child may want to be free of the parents, the parents may say 'Your best place is with us' and the child has the opportunity to say, 'I don't think so.' But equally the parents have the responsibility to look at the situation and, if they consider that in fact they still think their own accommodation or welfare is better than what the department is operating, then they cannot be prevented from taking the child out of that accommodation. Clause 25, Mr Speaker.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is clause 25 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 26, sir.

Mr Cannell: This clause explains how the department is to provide accommodation by placing that child with relatives or foster-parents or in children's homes - another old-fashioned expression from Glencrutchery Road, but still providing the same type of requirement for people in difficulties - but does specifically set down that that child is to be kept within the family if at all possible. Wherever possible where children are accommodated, they should be placed in their own home area and preferably with brothers or sisters - not, of course, always possible; the siblings can in fact be the root cause of the difficulty where jealousies come up, but it does, in sub-clause (1) of clause 26, define that the children can be placed with relatives or foster-parents, it can keep them in children's homes provided by the department or provided by voluntary organisations or others, and those are defined in clause 51, and can make other arrangements if appropriate - for example, placement in a hospital on a temporary basis or a residential care home which may be thought to be appropriate. I think everything is covered by that. Clause 26, Mr Speaker.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is clause 26 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 27, sir.

Mr Cannell: This re-enacts a provision introduced in 1993 not yet in force which limits the circumstances under which, and the period for which, a child being looked after by the department can be placed in secure accommodation. 'Secure accommodation' does sound menacing but, in fact, is the use of accommodation for restricting liberty and the criteria for this are clearly set out. There are many who say, why is the department not exercising this right at the moment? Under the terms under which children are placed at establishments such as Priory House, formally Cummal Shee, they are saying, 'Why are the children not restrained down there?' They do not have that provision enacting at the moment but, as we will hear in

another place next week, there will be a move by the department to construct just such accommodation and I hope that in not much more than a year's time providing Tynwald gives the go ahead for that, we will have within the department secure accommodation once again. There was in former years that facility, but in fact it is for restricting liberty.

Clearly this is a fundamental human right; the restriction of liberty for any purpose whatever cannot be regarded as anything other than having to be fully justified. The criteria are clearly set out and hopefully, but I am afraid rather naively, the department would hope that the new secure accommodation would remain permanently empty but the chances of that, I regret to say, appear to be remote, but the department would not use such secure accommodation without court orders because the objections raised on the child's behalf or by those who have parental responsibility may also say no to this and their views would be taken into account.

It is a draconian order, as I have mentioned, and care must be taken to ensure that before anyone has the key turned in the lock the criteria must actually have been satisfied that there is no reasonable alternative and that child is recommended for secure accommodation and, although not strictly within the remit of the Bill, clearly the idea is for the purpose of rehabilitation which, I am reliably informed, can be achieved very quickly in some cases - not all, but in fact to the child's benefit. It might be viewed as being something that other governments would say was a short sharp shock, but there is nothing, I believe, that will educate a child more than knowing that that door is locked rather than just closed. Clause 27, Mr Speaker.

The Speaker: Mr Rimington.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 27 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 28, sir.

Mr Cannell: This gives the department a general power to make regulations with respect to functions under the Bill and those of voluntary organisations, foster-parents and others who operate under arrangements made by the department. Regulations, though, will require the approval of Tynwald Court.

Sub-clause (1) enables the department to make regulations in respect of functions of those voluntary organisations et cetera. Voluntary organisations may provide children's homes under arrangements with the department, and official foster-parents are clearly those who have also gone through sufficient scrutiny and are persons with whom children may be placed. Regulations with certain procedural matters are in sub-clause (2) and I formally move clause 28, Mr Speaker.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is clause 28 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 29, sir.

Mr Cannell: This enables a court to require the department to investigate the case of a child concerned in family proceedings, particularly if the court thinks a care order or a supervision order should be made, and a tightening up here of procedures which previously perhaps have allowed considerably more generous time or, in fact, the opposite of generosity, really, has allowed a certain amount of latitude. For the department to consider matters the department in

this clause must report back within eight weeks or earlier as a court may direct so the pressure would be on for a complete overhaul of such matters contained in this clause, sir, which I now formally move, clause 29.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is clause 29 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 30, sir.

Mr Cannell: This is the concluding part of part 3, general functions of the department, Mr Speaker. Clause 30 enables the court to require a probation officer or an officer of the department to make a report. This is yet another step for independence where not just representation for the child's past can be made but in fact a contemporary report be commissioned, not unlike a social report which might be commissioned in respect of defendants in any step of court proceedings. But a probation officer or an officer of the department to make a report - that would not be taken as the last word on it it would only be another step of the many considerations which would be made to reach a satisfactory conclusion to people in this regard. The general functions of the department then, clause 30, concludes part 3. I formally move.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is clause 30 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Part 4, clause 31.

Mr Cannell: Yes, Mr Speaker, part 4 sets out a new code for dealing with children who are in danger. I would admit, if I was not amongst the department's hon. members, you might say there is a lot of repetition in this Bill and indeed there is, but all corners are covered by this because it defines 'suffering' or 'likely to suffer' significant harm, which we have already mentioned in clause 23, by placing children in the care or under the supervision of the department, and the care order - this may interest the hon. member who raised the matter before - derives from four separate sources: the Fit Person Order, the Approved School Order and two other supervision orders. It sets out a new code, therefore, for everyone who is not only having suffered significant harm - and that may not necessarily be physical, that can be mental harm as well, and in fact it now says that it defines 'likely to suffer' and that can also, besides physical or sexual abuse or both, actually cover mental suffering as well or the likelihood of that being the case. So clause 31 is giving the court power to make care or supervision orders.

The breakdown on this, I think, is worth a few extra words. It is sometimes referred to as a threshold criteria which must be met before orders are made, and that is also set out.

The 'significant harm', I would think, is worthy of definition. As I have already said, it can be ill-treatment or the impairment of health or development. This would cover circumstances, I would imagine, where in fact parents who are so disposed could hold back a child in its development - for instance, in education, in employment possibilities or in general well-being. We have all heard of cases where parents just plonk their children in front of television sets and take no notice or regard of them. This might well be referred to this clause to say that child's development is being inhibited by the parents who, in other words, could not care less about them. Also often opportunity is given to them to go out and spend vast amounts of money totally disproportionate to actually what they should have and that also, I would think, would be

viewed by any reasonable person, if they are given £500 while the parents go away, as the impairment of health or development. But the courts must be satisfied the child is suffering or likely to suffer significant harm as a result of the inadequacy of the parents' care, and it matters not whether this is deliberate or as the result of the parents' own inadequacies - more and more of those, I regret to say, as well - or as a result of a child having begun out of parental control. It lasts until the child reaches 18 and it does not preclude application for 17-year-olds and 16-year-olds, who may in fact be in a marital status themselves. An application can be made as a free-standing application in a juvenile court or within the course of other family proceedings, and there are many examples set out; again they are all defined and it is clause 32, Mr Speaker.

Mr Rimington: I beg to second, sir.

The Speaker: Hon. members, the motion is clause 31 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 32, sir.

Mr Cannell: Yes, Mr Speaker, a little confusing here - regrets and apologies for that. Clause 32 sets out the effect of care orders, gives the department parental responsibility together with certain special duties and sets out the limits on the department and the parents' powers while those orders are in force. For example, where a parent has care of the child where he has been placed with the parent by the department and a care order is in place, the parent has the right to do whatever is reasonable to promote his welfare without resorting to requiring the department's express permission. Other examples are quoted. Clause 32, Mr Speaker.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 32 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 33, sir.

Mr Cannell: This requires the department to allow a child generally to have contact with his parents and others with whom he may have been living and gives the court power to order contact or to regulate or refuse contact. The department can in an emergency refuse contact even where it is allowed by a court order - I raised my eyebrows at that when I saw it, because one would automatically think the court would be paramount, but in fact an order made by a court on a Friday afternoon in comparative calm may well not suit circumstances at 2 o'clock in the morning on a Saturday night/Sunday morning, and the department is given the opportunity there for contact to be declined; where the parents are demanding right of contact it may be viewed temporarily at least as being not desirable, but ultimately within a very short time that decision would have to be reviewed. Clause 33, Mr Speaker.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 33 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 34 and schedule 4, sir.

Mr Cannell: Yes, Mr Speaker, if I may be indulged in a further note to the preceding clause -

The Speaker: No.

Mr Cannell: Right, thank you. Clause 34 and schedule 4 specifies the duty of the supervisor under a supervision order. It introduces schedule 4 which makes detailed provision as to the contents and operation of a supervision order, appeals for which lie from a court of summary

jurisdiction against orders under clauses; I have already made mention of that though I was not specific as to how that could be done. Clause 34 therefore defines the duties of the supervisors who are overseeing supervision orders. Clause 34 with its schedule 4, Mr Speaker.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is, hon. members, that clause 34 and schedule 4 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 35, sir.

Mr Cannell: This enables a court to make an interim care or supervision order in certain cases when proceedings for a care or supervision order or family proceedings are pending. This interim, short-term order is to safeguard the welfare of the child while the court is in the process of investigating whether or not a full order is required. It is a holding operation but, for it to be made, the courts must be satisfied there are reasonable grounds to believe again the child has suffered or would be likely to suffer a degree of harm. If in proceedings for a care or supervision order the court decides to make a residence order it is obliged to make an interim supervision order unless it is satisfied that that is not required. The definition of an interim order is down; it is a maximum interim order of eight weeks with second or subsequent periods of four weeks. Again, it is constant review. Where potential objectors consider they have had insufficient time to prepare their opposition to the making of interim orders, the court may feel it appropriate to make shorter orders. In other words, if they come to the end of the eight-week order and they need a few more days that can be granted, and similarly with the four-week orders. Directions can also be given as to the medical or psychiatric examinations of children, but a child, if reaching the age at which he is able to make independent observation, can decline to do this, and the court in any case, even if there is representation, may direct against everyone's wishes if they view the whole circumstance that no examination takes place. This is designed to protect children from being exposed to too many examinations or assessments that might be detrimental to their welfare.

I think again an important point there, that if all the people who think they know best demand constant examinations which the review of the report upon those might in fact still be in dispute, then the court can just say, 'Enough is enough' and we are sparing the children from further rigorous examination to try to get at the root of the problem. Clause 35, Mr Speaker.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is clause 35 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 36 and schedule 5, sir.

Mr Cannell: Yes, this clause and its schedule 5 enables the court, when making interim care orders, to exclude a person from a dwelling where the child is living in order to protect him from harm. This again is something of a departure from previous positions. In fact, it is recognising that the problem may not be the child residents in the house, but if a certain person from that establishment was to be removed then the child may in fact reside there without further undue difficulty. It allows the court to create a potentially safer environment and adheres to the basic principle of the Bill, the tenet that the children are best at home if any possible circumstance for that to continue can be made - for example, where a child's mother is capable of giving the child good enough parenting but she is living with a partner who puts

that child at risk. This, I regret to say, is a very common contemporary position for people to be in. The consent of the person who remains in the home to look after the child to the exclusion of their partner or whoever is causing the difficulty must, however, be obtained. In other words, it cannot be said, 'Your partner will have to go'; the person to whom the partnership is the second part must actually agree to that. I can see many scenarios where that might be difficult to obtain under duress, but in fact schedule 5 sets out how that exclusion requirement is to operate. Clause 36 and schedule 5, Mr Speaker.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is clause 36 and schedule 5 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 37, sir.

Mr Cannell: This enables the court to revoke a care order or to substitute a supervision order for that care order. The terms are outlined in the sub-clauses, which are three in number. It can be on behalf of an application of any parent, guardian, the department or indeed the child individually. Clause 37, Mr Speaker.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is clause 37 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 38, sir.

Mr Cannell: This provides for the duration of care orders, Mr Speaker, unless revoked. They normally lapse when the child attains 18 but also would lapse on the making of certain other orders with respect to him. These would be orders that supersede. The care order lapses, for instance, on a child adoption, on the making of residency orders, an order appointing a guardian, an order vesting parental responsibility in prospective adopters from overseas. Again it would be subject to review, but the care order would in fact be superseded by all those steps and gives effect to reciprocal arrangements with the United Kingdom or any of the Channel Islands. An order made by the Council of Ministers may provide for care orders to lapse when the child is taken lawfully to live there.

This caused us to think long and hard because of recent developments where adoption orders from international countries are under review from the United Kingdom Parliament, but in fact after considering that they might need instantaneous legislation they now have decided to review the position and the department locally, this department, is content to rely on continuing a reciprocal arrangement with them that if their legislation is modified then we will look to see if that position is exactly applicable to the Isle of Man. It is not a common step but it does effect under this clause 38 for the duration of the care order unless revoked, but again the pivotal age in general for the lapsing of this is the attainment of 18 years by the child. Clause 38, Mr Speaker.

Mr Rimington: I beg to second, sir.

The Speaker: Mrs Cannell.

Mrs Cannell: Thank you, Mr Speaker. I just have a query on this really, because what it is saying is that the care order with respect to a child ceases to have effect if the following happens. But looking at clause 38(3) on page 33, 'Where a child who is in the care of the department is lawfully taken to live in any part of the United Kingdom or any of the Channel Islands, the care order in question shall cease to have effect if the conditions prescribed in an

order made by the Council of Ministers are satisfied.’ My question simply is: if the child who is in care of the department is unlawfully taken to live in any part of the UK or the Channel Islands, or indeed anywhere else in the world, will the care order still be in being, will it cease to have effect and what sort of mechanism will we have in place to ensure that, if that care order is still in being and is still effected in discharging our responsibility in terms of bringing that child back to its lawful and right place to live, what kind of provision do we have for that situation? We do hear of these situations where an aggrieved partner in a relationship, when the relationship has perhaps fallen down, ‘does a runner’ with the child, disappears with the child although it does not have custody of that child. How are we protected in terms of that scenario?

The Speaker: Mr Cannell to reply.

Mr Cannell: Yes, I think, Mr Speaker, it is a very fair point. We are dealing with where children, under this clause at least, are taken away lawfully from the Isle of Man, but equally, of course, it can be, as the hon. member says, that children can go unlawfully, but the order which is made by a recognised court of the Isle of Man would remain in place until it is discharged in the same way as any other court order is given, and anyone who actually transgresses that is liable for punishment. Now, that does not mean to say that it is an easy recovery for a child who could be taken to South America, for example, but the international agencies would be instructed that a court order is in place in the same way that any defendant who jumps bail or anyone who makes off with property which is the subject of a court order is still under that order and is liable for rearrest. I am sure that does not address the concern that the hon. member and myself and everyone else would know that a child under a care order of the Isle of Man has been snatched away and taken to another place. How on earth you would actually set forth to find that if the person was determined that that child should not be found is impossible to answer, but every reasonable possible agency would be made aware of the situation and if possible the child would be relocated to the Isle of Man. Perhaps it would only be to Britain. I would hope so in the main instance, but in fact it might not be the case that it is very easy to get even the most alert agency such as the Red Cross or anybody like that to get that child back to a place like the Isle of Man if, as I say, those concerned are determined that that be not the case. And we have just heard of someone who was forced to actually deprive the children of a care order who ultimately proved they were fit people to have the child, but took, I think, about three years to convince courts that they were fit persons, having literally removed them against an order of a court. I am advised, Mr Speaker, that clauses 48 and 49 do cover this area where it is actually a criminal offence to abduct or harbour a child and makes in clause 49 a recovery order. I am afraid you could make recovery orders until you are blue in the face, but it would not address the recovery of a child if they were to disappear to somewhere pretty elusive. So I could not be of any more assistance than that in the hon. member’s query. I hope she is reasonably reassured and I formally move clause 38.

The Speaker: Hon. members, the motion before the House is that clause 38 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 39, sir.

Mr Cannell: Yes, Mr Speaker, clause 39 enables courts to make a care or supervision order pending appeals in certain circumstances. Where a court dismisses an application for care orders or supervision orders, the court may make a relevant order within the appeal period. This is just a holding operation to preserve the status quo. The provision ensures the

court actually enjoys its responsibility of making an order during the running of an appeal. In other words, sometimes where defendants make appeal or indeed even during employment tribunal appeals, it is possible for the person to continue working or to continue having their liberty while an appeal is being heard - not often, for instance, for driving cases where someone's licence has been revoked, but under these terms of clause 39 it enables a court to make a holding order while the appeal is being formulated. Clause 39, Mr Speaker.

Mr Rimington: I beg to second, sir.

The Speaker: Hon. members, the motion is that clause 39 stand part of the Bill. Will all those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 40, sir.

Mr Cannell: Yes, clause 40 concludes part 4 of the 10 parts of the Bill. It has 10 clauses and this is the tenth of them, clause 40, on the care and supervision which imposes in this clause restrictions or enables those restrictions to be imposed on the making of certain applications to ensure that a child's welfare is not prejudiced by repeated applications. I think, Mr Speaker, I have already spoken on this one and the reasons for it. This sets it all down as to how, when and why it can actually happen. Again it would be someone acting mischievously, I would imagine. Clause 40.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 40 stand part of the Bill. Will all those in favour please say aye; against, no. The ayes have it. The ayes have it. Part 5, 'Protection of Children', clause 41, sir.

Mr Cannell: Yes, sir, part 5 contains a new code dealing with the powers of the police to take action if the child is believed to be in danger. The general heading for this, sir, is Protection of Children and its first clause, number 41, deals with the case where the department suspects that a child is being ill-treated or neglected or is otherwise in danger and needs to have that child medically examined or otherwise assessed. It can apply for an assessment order to make parents produce the child for that purpose - again, a development to previous legislation and one which I think is desirable in that it is not just the presentation of a child who has been seen to suffer physical harm but now contains the requirement for an examination which probably would be largely concentrated on the psychiatric side where a child is viewed as possibly going to be in difficulty and danger and an examination might prove or otherwise that that be the case. The department must have, though, reasonable cause to suspect that the child is in danger - in other words, not just that someone who might think at a whim they may be, because this has most definitely been a criticism of social work in the past that someone thought they knew better. They must show reasonable cause that the child might suffer significant harm. An examination or an assessment will define that and, if it cannot be done or done properly, then a court order will supersede that. There are nine sub-clauses to clause 41, Mr Speaker, and I formally move.

Mr Rimington: I beg to second, sir.

The Speaker: Mrs Cannell.

Mrs Cannell: Thank you, Mr Speaker. Two queries really. The hon. mover, when moving this particular clause, said 'significant physical harm,' but surely in 41(1)(a) the wording is 'significant harm' which could be physical or mental, and in some cases there are cruelty

cases where the child is suffering as a consequence of mental cruelty and not necessarily physical cruelty, which could impede his health, his progress and his development. Further to that under 41(1)(c) in terms of the assessment order, who would actually conduct the assessment? Does the department have a list of approved assessors and, if so, what sort of qualifications would they need to have in place to be able to conduct either a physical or a mental assessment? Thank you.

The Speaker: Mr Cannell to reply.

Mr Cannell: Yes, Mr Speaker, I recognise the concern of the hon. member here. I thought I had in previous explanations tried to set out that it would cover not just physical harm but mental harm as well, but she is quite right to raise it within this clause. That is covered, of course, and I would imagine that it would be registered medical practitioners who would be approved by the department in a variety of spheres. It might not just be a problem which would be easily definable; in fact when we enter this area here we now come to psychologists, psychiatrists, trained social workers, at the first instance even GPs and anybody else who could make a reasonable input as to what harm that child might be subjected to, and it is probably one of the most difficult areas to get at because if a child comes along and can very easily show bruising, then that is physical abuse, but when the child comes along probably it would take a considerable amount of time to get at what is troubling that child, and it is an area which has been derided in the past - 'Oh, you will be all right, get on with it. Go back to school.' But that is not the case; considerable amount of time, effort and cost - because there is a cost to all this sort of thing - has to be expended to find out the root of the problem, and I am sure, though I have never been in this sphere, that many times it has been shown to be a long way from an assessment which you would make to look at the child. You may say, 'Well, he (or she) looks perfectly all right, nothing wrong with them,' but in actual fact they are descending into all sorts of grey areas because of the situation - not necessarily even in the home; it can be elsewhere: it can be at school, for instance, it can be socially, it can be with other relatives and they are reluctant to tell their parents, because they know that they are relatives of the family, of what is happening to them when they visit other people's homes. So I hope the hon. member is assured that clause 41, with its sub-clauses, does contain this provision that not just physical but also mental trauma is included and would be addressed under this provision. Clause 41, Mr Speaker.

The Speaker: The motion is that clause 41 stand part of the Bill. Will all those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 42, sir.

Mr Cannell: This provides the main weapon against cruelty to or neglect of children. This is a significant clause, Mr Speaker, an emergency protection order. It enables the court to authorise the department to remove a child who is believed to be in danger and keep that child in safety for a short period. Now, that is defined and it also obliges the department to have the case investigated. This will be under clause 46 forthcoming, and the emergency protection order would be requiring a reason to be specified where the department suspects a child is in danger. The dodgy area in it is where one person might come along and say, 'Well, I think this child is in danger' and six others might say 'No.' It is subject to scrutiny, but it does give access to the child where the department is prevented from investigating the case. So the department's role in the matter is to cause an investigation to be made and for all the

circumstances to be taken into account. So it is not just an 'on the spot' assessment; the department can take charge of the case, but would be subject to immediate court scrutiny.

It replaces the previous system of warrants enabling JPs to sign to say children or young persons must be removed to a place of safety, and the main change is that the detention of the child is limited in the first instance to just one week and, if the option is exercised on more than one occasion, the overall period will not be more than a fortnight until the most rigid examination is taken place as to whether that step should continue or whether the child or children should revert to the normal home. So clause 42, Mr Speaker.

Mr Rimington: I beg to second, sir.

The Speaker: Mr Singer.

Mr Singer: I apologise if this has already been asked, but I am a bit concerned reading the word 'significant' all the time - 'significant harm' - and why is the word 'significant' in? Surely the word just should be 'harm'? Can perhaps the hon. member explain to me why the word 'significant' has had to be inserted in all these clauses? Why not just the word 'harm?'

The Speaker: Mr Cannell to reply.

Mr Cannell: I answer this on the bounce, as it were. The hon. member for Ramsey raises a reasonable point, of course, and I would think that it would be to prevent fatuous claims being made where people might have very minor physical injuries which might not be the subject of the requirement to take them away for a thorough examination. It is a subjective statement. 'Significant' does not actually mean anything, because 'significant' is only in the eye of those who are making the judgement, and what one person might say is 'significant harm,' as we know from over-protective parents, may well easily be a small scratch. A bump on the head could be harm, but I imagine the description is to prevent children or parents or others saying harm has occurred where clearly any court or any person of any intellect whatever would say clearly that that harm is not of a significant nature. It is dangerous to rely on the word 'significant' because such as a bump on the head could easily be the subject of major harm, and it is not unknown for people to have a bump on the head by accident, not necessarily by physical abuse, to and to find later on that they have blood clots or all manner of other difficulties, internal bleeding, so I think anybody looking at this sort of thing would regard that as just a step to prevent something ludicrous. I think if there was any reasonable concern - and the word 'reasonable' is just as undefinable as 'significant' - they would take the step of saying 'Look, I am not happy with this. This is the possibility of harm having occurred and we will take the appropriate steps for that to happen.'

I cannot go any further than that. I would think the department would probably act, and anybody else would act, over-cautiously particularly in these days of great litigation to prevent themselves being put in a position where their judgement might be viewed later on as having contributed to that child's injuries or situation where they could be actually legally sued for damages. The converse of that, of course, is that every time a child has a split toe nail or something you whip them off for medical examination. Clearly that is not practical and you have to rely on a degree of expertise, I am afraid, Mr Speaker. So I hope that is a reasonable answer to the question and I move now formally clause 42.

The Speaker: The motion is that clause 42 stand part of the Bill. Will all those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 43, schedule 5.

Mr Cannell: About half-way through part 5, Protection of Children. Sub-clause (1) of clause 43 enables emergency protection orders to include an exclusion requirement of a person from the child's home - back again to the same situation where the interests of the child might well be immediately restored by the removal of one or more persons from that home. It specifies the condition of the exclusion, because you cannot just throw someone out of their property or their home on a whim. The court must consider that if the person is excluded from the home the danger would cease - that is not guaranteeable either, but it might be a step along the way - and that there also remains someone in that home who is capable of looking after the child. Clause 43, Mr Speaker.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 43 and that part of schedule 5 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 44, sir.

Mr Cannell: This provides for the duration of emergency protection orders under clause 42. They can remain in force for up to a week, as I have said, and can be renewed once only for up to a further week. It makes supplemental provision as to appeals et cetera and there are eight sub-clauses. Clause 44 I formally move, sir.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 44 stand part of the Bill. Will all those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 45, sir.

Mr Cannell: This gives the police power to take a child into police protection for up to 72 hours if the child is thought to be in danger. At an earlier part of the progress of this legislation this was queried. A designated officer must take responsibility and is to have the child transferred to accommodation provided by the department as soon as possible. The query, I think, was the involvement of the police at all and I hope I was able to satisfy then, and I remain in the same position now, that the involvement of the police is purely where there may be no-one else of any genuine independent and sober authority who may be able to make a judgement on it - not ideal, I do not suppose. The presence of police on any matter is bound to hype up a situation, but the constable taking children into police protection most certainly does not include anything to do with their deprivation of liberty in that they may be locked up. In fact, you may say taking a child to a police station is not desirable, but I think any reasonable person would say that a child in the middle of a freezing cold wet night would be considerably better served in his interest, very temporarily, in being within the confines of a safe police station than the alternative. But, notwithstanding that, it is not the case of a policeman frog-marching someone up to the local nick; it is a case of offering them succour and comfort, the opportunity, perhaps, to be calmed down, the opportunity to be given some provisions, and a holding order until the light of dawn means that the other steps can be taken. They must give the details to the department - that is, forthwith, and I appreciate another comment that was made that that could, of course, include a holiday weekend, but the department does have people on duty throughout that in any case. They must explain why they are doing this and the outcome for the child. They must ask if the child is content with the situation and they must have the case

designated further by an examination by the Chief Constable, though I should not imagine that that necessarily means in person, but a delegated authority from him and the child must be taken to accommodation provided by the department at the earliest possible opportunity. That could literally be, I suppose, with a day in between if circumstances were against a placement immediately, but everyone must be informed that the constable has acted in this regard, for instance mainly the action must be reported to the parents and all other interested bodies and in any case, no matter what happens, the child must be released from that accommodation before the elapsing of 72 hours, but clearly that is the maximum three days rather than saying, 'Right, well we can put this off because we cannot be bothered and we will get it done Monday.' That would not be the case, Mr Speaker. Clause 45.

Mr Rimington: I beg to second, sir.

The Speaker: Mrs Cannell.

Mrs Cannell: Thank you, Mr Speaker. Again a little bit concerned on clause 45, bearing in mind that we are considering part 5 of the legislation under the protection of the child. Under 2 on clause 45 it says, 'As soon as is reasonably practicable after taking a child into police protection, the constable concerned shall. . . (b) inform the child (if he appears capable of understanding). . .' I would have thought any child at any age, unless it is a babe in arms, would be capable of understanding if the level of communication is pitched at the child's level, and that is very important in the exercise of this. Therefore, if a police constable is to be under this legislation warranted to be able to go in and remove when he thinks that the child would suffer or be likely to suffer any significant harm, then the question has to be, will there be a pool of police officers so qualified to be able to bend to the child's age to enable them to make sure that the child understands?

I am a little concerned obviously that this will happen after the child has been taken into police protection, but I do appreciate that if it is an upsetting affair, which it is bound to be, I would have thought - police coming into property or possibly bursting into premises and removing a child at any time of day or night, would be upsetting for all concerned - but then on the following page, of course, under (c) it says 'take such steps as are reasonably practicable to discover the wishes and feelings of the child.' I know it is in a list of (a) to (e), but I would have liked to see this emphasised a little bit more, because it is paramount that the feelings and the wishes, but particularly the feelings, of the child are taken into consideration, not 'if it is reasonably practicable to take them into consideration' which this particular line seems to suggest.

I have had cases in the past brought to my attention - and this is when older juveniles, offenders, have been serving time - and what led to their behaviour, which led to prison sentences and very often it came to issues, situations and scenarios such as this where a child has been grabbed because there has been a suspicion or an allegation that the child may be in danger from a parent or a relative, and the child has been snatched. Two cases were brought to my attention a number of years ago when as a member of the Department of Home Affairs I visited Stoke Heath Prison in the United Kingdom. The police officers in question, and social workers who equally were called in, never ever gauged the views or asked about the feelings and the concerns of the child throughout the trauma that he was facing at the time. As a consequence of that, that part of it was neglected throughout, which led to two young

offenders offending and resulting up in Stoke Heath Prison for quite lengthy prison sentences for strings and strings of offences.

So this cannot be underestimated; it is most important that the child gets a reasonable explanation of what is happening as it is happening, and continues to be spoken to until he quietens down and things have settled a little. Equally his feelings and his wishes must be taken into consideration and not judged just to be if it is 'reasonably practicable to discover the wishes'. They must be taken on board and discovery must take place and every opportunity to try and get those feelings and wishes out of the child must be pursued and not given up on and abandoned simply because the child perhaps goes into a silent mood as a result of trauma or shock. I just wanted to make the point here that it is most important, particularly as we are given licence under this legislation, for the police to be able to exercise this, whereas formerly that was not the case.

The Speaker: Mr Quine, Ayre.

Mr Quine: Thank you, Mr Speaker. The hon. mover, of course, has referred to the fact that this queried at the second reading, and I am grateful to the hon. mover and indeed the officers of the department for providing some further information on this at the briefing. That has been very, very helpful. Nonetheless, when I come back and have a look at the section and relate it to the reason for having this position in as was explained to us at the briefing, I am afraid the two things do not tie in. The reason that was given to us was - or the example, I should say, because I am sure there are other reasons - at the briefing was that if the police respond to a domestic situation and that situation is such that they form the opinion that a child may suffer harm, then quite rightly, quite properly, they need to have an authority to act there and then to protect the child, and that authorises them to remove the child from the household to protect the child. I have no difficulty with that; that is a situation I have seen many times and it is necessary. No problem with that all. So, yes, the police do need what I would call this emergency power to step in in these situations and remove the child to suitable accommodation and so on. That is fine.

To that extent sir, as you read clause 45, I think what we have got down to sub-clause (2)(a), is not unreasonable. Sub-clause 45(1) deals with this power which is given to the police to remove the child et cetera - that is fine - and to prevent the child also from being removed from a hospital or other accommodation, to protect the child in that sense - that is fine. Then (2)(a) goes on to say that then they will inform the department. That is fine; I have no problem with that all.

But it does not stop there, and it was follows that that causes me concern, as I explained at the second reading, in relation to what I believe are two principles. The first principle is that, so far as possible, police should not be involved with these cases because, no matter how careful and how sensitively the police may seek to deal with a child in these circumstances, they are the wrong people to deal with this child.

The second principle that guides me in this is that it is not a constabulary duty beyond the response to the disorder situation, to the protection of life situation. Therefore we should look very carefully if we are going to enact into law a provision that goes beyond that. And my reading of what follows is that we are going beyond that. For example, there is a whole list of requirements that follows in the latter part of sub-clause (2) right through to the end of this

which give the impression that the police are going to be working as social welfare officers; they are going to advise the child of the steps to be taken - again, we can live with that; the child should be kept briefed; then they have got to start discovering the wishes of the child; they have got to carry out an inquiry into the case - not the criminal case, which is a separate matter. Then, if they are not prepared to release the child from that point on because it is being protected, they are going to have to the child moved to department accommodation, contact parents, those with parental responsibility and then the police are going to have, if it is necessary, the obligation to go for an emergency protection order. This cannot be right, sir.

It is the police's role to react, deal with that immediate situation and, as I say, perhaps look after that child for a short period of time, but surely, as soon as they have done that, it is for the department to come and take this case over. If there are orders to be obtained they should be matters for the department to deal with, not for the police to deal with. It is my view, sir, that this section goes well beyond what is required by the police and it is drawing the police into the work of the department which they should not be involved in. This, to my mind, has started off I think with the right intention - i.e. to respond in an emergency situation, protect the child and take that child to a place of safety and inform the department. That is clearly set out, but from that point on it should be the department and not police officers that are dealing with this case. The department should have the capability to respond and take over that child and deal with it and even the prospect of a child staying in a police station one hour longer than necessary should not arise.

I do believe that this section is flawed. I believe it is going to lead us into an undesirable situation, an unnecessary use of police powers and a duplicity of responsibilities. I shall listen very carefully to the explanation which I am sure the hon. mover will seek to give me, but I believe that this section is an overkill, it is flawed, and therefore whereas, because we only had the briefing the other day so I have had no opportunity to move an amendment with the requisite notice following the briefing, I will have to live with it at this point in time - perhaps another place will have to deal with it - but I am very unhappy with this when I consider what follows beyond the point where we have clause (2)(a), and that is where the department is informed. From that point on it should be the department and the highly trained social workers that are dealing with this and not police officers, albeit, I am sure, the Chief Constable has done his best and will continue to do his best to have a limited number officers to deal with children. It is not their responsibility, and so I shall listen very carefully to the further explanation which I am sure the hon. mover would seek to give me.

The Speaker: Mrs Hannan, member for Peel.

Mrs Hannan: Thank you, Vainstyr Loayreyder. I cannot agree with the member who has just spoken because the police do have a family protection unit and, if children do need protection, these people are trained to help and assist children. Therefore I do not see any problem with that. I am gratified that the children will not be accommodated in a police station under the auspices of this legislation, but the mover did say that they could be taken to a police station and he did not say for how long. Sub-clause (5) says no child may be kept in police protection for more than 72 hours, and he covered that, but then he goes on to say they could be taken to a police station. But sub-clause (9) says a police station shall not be taken to be a suitable accommodation for the purposes of (1)(a). A child could be taken into protection either for themselves or because their parents are not available, or it could be for lots of reasons.

Significant harm - it might be that children are out wandering the streets at 2 o'clock in the morning where they could come to significant harm, whereas I think if we have not got it under the legislation, the police could not remove them to wherever. I would imagine the first thing that they would do would be to contact the duty social worker to say, 'We've got this child; can we take them to a place of safety?' I was just concerned that the mover said that they could be taken to a police station for as long as. . . I would be happy if he said 'until they could be collected by a social worker,' the police family unit or whatever, so that they are not in the police station for the 72 hours.

The Speaker: Mr Cannell to reply.

Mr Cannell: Yes, Mr Speaker. I am fully in agreement with the concern expressed. I am not fully in agreement with the practicalities of trying to address situations which pose very considerable problems, but the enactment of the provisions of clause 45 would only be in situations where everything else could not be entertained. There is no suggestion, to my knowledge, of anyone marching in and snatching children away at the drop of a hat, but there are regrettably from time to time some extremely serious situations where it is not possible to open up a cosy room in a family protection environment and where the child must be taken into police protection. It is not custody. The child is free to come and go and the department obviously would, on being informed of a child found wandering or a child taken away for whatever reason, act as quickly as possible to recover the child from the clutches of the police.

Now, when a child gets there, as I hoped I had tried to explain, I would far sooner know that a child that was in trouble was under the care of the Isle of Man Constabulary than that it was left to its own devices and desires if even the most dim person could see that a child was likely to come to harm, and that is if that child is out after what would be a reasonable hour, it could be in the company of undesirables, it could be presented with a danger by being given the opportunity to drive vehicles, et cetera. But what is it about the involvement of the police that concerns everybody? The police over here now are fully integrated with the social services, and in fact the family protection unit of the Isle of Man Constabulary has recently been reviewed and the numbers of staff either are, or are about to be, increased. These are specialist areas of the police, but even if they were not, do we know of constables who would act as insensitively as the hon. member for East Douglas experienced off the Island? I think not. Fearsome though the child may be because he has been brainwashed into thinking that the police are bad, I am sure that any reasonable constable. . . and we do not only have male constables on our force now, or male sergeants or inspectors; we have very good females who are capable of being brought in, and the family protection unit actually dovetails with all the other services. The 72 hours is an absolute maximum. What would be the use of finding that all the placements which are possible, for one reason or another, if you had a bad weekend, were full? You need 72 hours, but that does not mean you take them in and they are automatically there for 72 hours. I would hope that any child that is taken in at 2 o'clock in the morning would be released as soon as the rest of the ordinary services of the Isle of Man get going. There are emergency social workers on duty throughout the weekends and all nights; there are ultimate recourses to other members of families; there are many outlets for the child to be placed with. But it is a very undesirable situation for a small child to be in the middle of a battle - because that is what you are talking about; certain places - you do not need to be specific - it can be virtually a war zone, and I would back the Isle of Man Constabulary to shelter a child in any of the police stations in the Isle of Man, because we are not talking about automatically transferring them to

Glencrutchery Road. There are small police stations as well, and in fact they can be given what used to be just the old cup-of-tea treatment.

This is an emergency situation that is being spoken of here. I agree that many children, faced with a constable coming along on, perhaps literally picking them up and carting them off, is not a scenario we wish to entertain as regards snatching. It is not that at all; it is taking that child away from a situation which threatens to pose that child in a worse situation than by recovering him or her. A working party of the Home Affairs Department actually is addressing this situation with a view to more integration all the time. These are specialists; these are not constables - PC Plod, PC Flatfoot; these are people who are receiving expensive, extensive training for just such situations, and they will be capable of being called upon. It is not one person who, if he or she is not on duty, is not available; it is a unit and I imagine it is staffed by a shift, or, if it is not staffed fully 24 hours of shift, it is at least on call. So between all of those resources I am sure that the child's interest will be protected. But I do agree, the potentiality of the clause is that a bogeyman will arrive and snatch your child away and bang him up for 72 hours. I hope I would never hear of anything of that nature whatever.

Mr Quine says the police are the wrong people. I do not think they are. I think they are the very right people to deal with it. You might even make out a case that they are better because they probably have more awareness of the individual circumstances surrounding the household because, as the hon. member for East Douglas has said, often the people involved have form. So the police, the chances are, know of their background and I still, for all that has been said, would prefer to hear that a child was in the warmth and light and with a bit of provision and with a bit of sensitivity shown by the Isle of Man Constabulary than every I would to say we have got to wait until we get the social workers. There will be a link directly to the department. There will be every opportunity made for the child to be taken to anywhere other than that centre, but they are not being detained; they are being harboured, sheltered, succoured and comforted to their own advantage while the dust settles. That is all it is. Clause 45, Mr Speaker.

The Speaker: Hon. members, the motion is that clause 45 stand part of the Bill. All those in favour please say aye; against no. The ayes have it. The ayes have it.

Hon. members, this is now a suitable time to adjourn for lunch and the House will reassemble at 2.30.

The House adjourned at 1.03 p.m.

Children and Young Persons Bill — Consideration of Clauses Concluded

The Speaker: Hon. members, we will now proceed with the Children and Young Persons Bill. I call upon the mover, Mr Cannell. Clause 46, sir.

Mr Cannell: Thank you, Mr Speaker. This clause requires the department to investigate the case of any child who is taken into police protection or is thought to be in danger or in respect of whom an emergency protection order is made. This backs up our earlier discussion on the matter and the promise of by statute of the department's obligation to investigate thoroughly any child who is so placed. Clause 46, I beg to move.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 46 stand part of the Bill. Will those in favour please say aye. Clause 47, sir.

Mr Cannell: This clause gives a court additional powers when it makes an emergency protection order relating to a child. It can require anyone to give information about the child's whereabouts; it can also give the department powers of entry to premises to search for a child for another child who may be there and also may be viewed as relevantly in danger. If another child is found upon premises in addition to the subject of an emergency protection order and the relevant criteria are met, the department's representative is entitled to remove that child, and the order applies as if it were to both or indeed all children on the condition that the order was made authorising the applicant to search for additional child/children. It will be an offence, Mr Speaker, to obstruct anyone exercising a power of entry and search in such circumstances. Clause 47, Mr Speaker.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 47 stand part of the Bill. All those in favour please say aye. Clause 48, sir.

Mr Cannell: This clause, Mr Speaker, makes it an offence to abduct or harbour a child who is in care or subject to an emergency protection order or being in police protection or to assist him to abscond. Clause 48, Mr Speaker.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 48 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 49, sir.

Mr Cannell: Yes, Mr Speaker, this concludes part 5 of the Bill. Clause 49 enables a court to make a recovery order for the finding and return of a child in care, the subject of an emergency protection order or in police protection, who has been abducted or who has absconded. The order gives powers of entry and search and to make the relevant enquiries. A recovery order is not time-limited and may last until such time as the child is recovered, as was mentioned earlier on. Under reciprocal arrangements recovery orders made in England, Wales or Northern Ireland are enforceable in the Isle of Man and vice versa. Clause 49, Mr Speaker.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 49 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 50, sir.

Mr Cannell: Yes, sir, clauses 50 to 56 are under the heading of part 6, 'Children's Homes'. It is a new code regulating children's homes run by private or voluntary bodies. At present there is no control in Manx law requiring such homes to be registered or licensed or setting standards which such institutions should comply with. So this is another valuable reform.

Clause 50 introduces a concept of the children's home subject to exceptions. It is a home, not run by the department, which provides care and accommodation for more than three children who are not members of the family. Where three children or fewer who are not members of the family are cared for in a home, this is treated as fostering and is subject to a separate scheme of control under a further part of this section of the Bill. Clause 50, Mr Speaker.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 50 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 51 and schedule 6, sir.

Mr Cannell: This clause, which incorporates schedule 6, provides for the registration of children's homes and makes it an offence to look after a child in an unregistered home. Again, this is a departure from the legislation as it exists at the moment, making it an offence to look after children other than in registered premises. Sir, clause 51 and schedule 6.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 51 and schedule 6 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 52, sir.

Mr Cannell: This clause provides that a person who is disqualified from fostering under clause 58 must not be involved in children's homes unless the department concurs. It deals with people who may be disqualified from working and gives the employer a defence if he employs a disqualified person not knowing about the disqualification. Clause 52, Mr Speaker.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 52 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 53, sir.

Mr Cannell: This clause enables the department to make regulations about the placing of children in children's homes and the running of those children's homes. They include regulations regarding the standard of premises, the standards of accommodation, the staff and the associated equipment, discipline, contact arrangements, publication of using the home as secure accommodation, records and notices, facilities for religious instruction and notice to the department of any change in management - the latter, rather in the fashion of a company law change. Clause 53, sir, making regulations about the placing of children's homes.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 53 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 54, sir.

Mr Cannell: This imposes obligations on the person carrying on children's home businesses to safeguard and promote inmates' welfare, to consult properly with them and their families and to take certain matters into account over any decision affecting them. These correspond to the duties of the department in respect of children with whom it is concerned in looking after within these premises as outlined earlier in clause 24. The department is charged with a duty to inspect homes and visit the inmates. Clause 54, Mr Speaker.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 54 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 55, sir.

Mr Cannell: This imposes a supervisory duty on the department in the interests of the inmates of the children's homes including a duty to inspect those homes and to visit the inmates in two sub-clauses specifying specifically the desires in this regard, sir. Clause 55.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 55 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 56, sir.

Mr Cannell: Concluding part 6, Mr Speaker, clause 56 provides for appeals to the High Baliff against certain decisions of the department in relation to children's homes. These might include appeals against refusal of registration, conditions of registration, cancellation of registrations or variations in conditions and refusal of consent relating to management by employment of disqualified persons, but carries a 28-day time limit for further subsequent appeals. Clause 56, Mr Speaker.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 56 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Part 'Fostering, Child-minding and Day Care'. Clause 57, sir.

Mr Cannell: Yes, Mr Speaker, this part contains provisions regulating the private fostering of children and private child-minding and day care of children under eight. Clause 57 specifically defines private fostering for the purpose of the controls in this part of the Bill. It excludes short-term fostering, official fostering under the auspices of the department and caring by relatives in certain institutions. This is the basis for defining private fostering. Clause 57, Mr Speaker.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 57 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 58, sir.

Mr Cannell: Yes, these clauses all replace the Child Life Protection Act 1959. They are generally limited to the fostering of three children, as we have said. Clause 58 specifically prohibits a person fostering a child privately without the department's consent if he has been previously disqualified under regulations, in particular where he or she has been subject to past action with respect to children. An important provision here, Mr Speaker, at clause 58.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 58 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 59, sir.

Mr Cannell: This enables the department, subject to appeal under clause 68, to impose a prohibition on a person fostering privately or to impose requirements as to the number of children whom that person may foster, the accommodation and other arrangements which must be provided. This is the basis for this portion of the service proposed, Mr Speaker, at clause 59.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 59 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 60, sir.

Mr Cannell: This enables regulations to be made with respect to the notification to be given to the department where private fostering takes place, the obligation for the connection

between private fostering and the department having a record of where, when and how that fostering is to take place. Clause 60, sir.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 60 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 61, sir.

Mr Cannell: This imposes a general limit of three children who can be fostered by one person at any one time subject to exceptions. This covers both private fostering and official fostering, the official fostering being placements by the department. If the limit is exceeded, the person concerned is treated as running a children's home and is, therefore, subject to control under part 6. Clause 61, Mr Speaker.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 61 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 62, sir.

Mr Cannell: This imposes a general duty on the department to check up on privately fostered children and to take appropriate steps if they are not being properly looked after. A most important provision, sir, at clause 62.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 62 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 63, sir.

Mr Cannell: The next three clauses, Mr Speaker, replace the Nurseries and Child-minders Regulation Act of 1974, applying to children under eight. Clause 63 defines what is meant by child-minding and the provision of day care. It covers looking after children under eight otherwise than within the family or within an institution. Child-minding is in the home, day care is on other premises. Day care is later defined in the Bill at clause 102: any form of care or supervised activity provided for children during the day whether or not provided on a regular basis. Clause 63, Mr Speaker.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 63 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 64 and schedule 7, sir.

Mr Cannell: Yes, sir, the clause provided for the registration of child-minders and providers of day care in accordance with schedule 7 making it an offence to provide child-minding or day care without being the subject of registration. The registration deals specifically with a number of provisions including issuing of certificates et cetera with the department able to vary or cancel conditions. The registration of child-minders at clause 64 and schedule 7, sir.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 64 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 65, sir.

Mr Cannell: This clause prohibits a person acting as a child-minder or being involved in the provision of day care without the department's consent if the person has been disqualified

under regulations, in particular where the person has been subject to past action with respect to children. This is a vital clause, sir, at 65.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 65 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 66, sir.

Mr Cannell: This clause enables a court on an application by the department to cancel the registration of a child-minder or the provider of day care or to alter the conditions of registration if it is adjudged that a child might be in danger. Any application to the court can be done without notice to the registered person themselves. I move clause 66.

Mr Rimington: I beg to second, Sir.

The Speaker: The motion is that clause 66 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 67, sir.

Mr Cannell: This clause requires the department to make an annual inspection of all premises which child-minders are using to look after children at or at which daycare for under eights is provided. Powers of entry for inspections, clause 98, will be applicable and it will be where child-minding or day care takes place, so it covers both of those provisions at clause 67, Mr Speaker.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 67 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 68, sir.

Mr Cannell: Concluding part 7 of the fostering, child-minding and day care provisions, sir, clause 68 gives a right of appeal to the High Bailiff against decisions of the department relating to private fostering or the registration of child-minding or day care. Clause 68, Mr Speaker.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 68 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 69, sir.

Mr Cannell: Commencing part 8, proceedings involving children and young persons in general, it is principally a re-enactment with amendments of provisions contained in part 3 of the Children and Young Persons Act of 1966 dealing with the protection of children and young persons in court proceedings and in the hands of the police. It also sets out a new scheme under which a court may make a supervision order in criminal proceedings against a child or young person, replacing the present system of care orders and supervision orders in such proceedings. The terms 'child' and 'young person' in this part only are defined as being 'child' - a person appearing to the court to be under 14, and 'young person' - a person appearing to the court to be 14 or over, but under 17.

Clause 69 imposes a duty on a criminal court when dealing with young offenders to have regard to their welfare. Welfare is not the paramount consideration as it is in proceedings related to care or upbringing. Clause 69, Mr Speaker.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 69 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 70, sir.

Mr Cannell: Yes, Mr Speaker, this is a clause which has received some attention in the United Kingdom recently. It is restating the age of 10 as that of criminal responsibility and abolishes the existing presumption that a child under 12 years of age is not capable of forming the guilt intent necessary for conviction within certain offences. So, the age of criminal responsibility is reiterated now as being 10 years of age, as outlined in two sub-clauses of clause 70 of the Bill, sir.

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

The Speaker: Mrs Hannan.

Mrs Hannan: Thank you. I must admit I am concerned about this age of criminal responsibility, because children these days are under so much more pressure than children in the past, when the age was 12. Therefore, I am concerned that it is the department, when they are looking at the interests of the child, are now bringing this forward with regard to the age of 10. The pressures on children have changed greatly over the years, and in fact society as a whole provides less for children than it did do in the past, and it seems to be saying to children, 'We are doing less for you, we are putting so many more pressures on you, but here you are, you are responsible for anything after the age of 10'. Children up to the age of 10 years are not sophisticated in the ways of the world, and therefore I think it is wrong to introduce this because I feel it is a reaction to other happenings in other places, and I do not think we should have followed in this instance. I do think it is wrong to say that at 10 years old a child is responsible with all the added pressures of society on them. I just think it is wrong and I would hope that the department will look at this again.

The Speaker: Mr Cannell to reply.

Mr Cannell: Yes, Mr Speaker, I agree with the sentiment expressed by the hon. member for Peel. There is increased pressure on children, no less than exemplary pressure being applied through the media, where we are now hearing that young girls of nine are being encouraged to become virtually fashion-conscious, and all in general appears to be attempting to drive this age down. But this is the position at the moment; this is not a new position being taken at this clause, sir. It restates 10 as the age of criminal responsibility. Many might argue that there are people considerably older than 10 who are not acting responsibly, but nevertheless they are mentally capable of absorbing the responsibility. I suppose at the end of the day it is down to the development of a conscience, but responsibility for criminal actions where a person less than 10 might be thought to not be aware of the consequences of the actions whereas a person over the age of 10 now with the considerable advancement of society, regrettable thought it might be, it is restating 10 as the age of criminal responsibility and abolishing the presumption that a child under 12 is not capable of not forming guilt with intent necessary to provide a conviction for certain offences. This has, of course, received worldwide attention as a result of the Bulger affair. I think, in fact, it is only fair to say that we are restating the position here rather than varying it, clause 70, Mr Speaker.

The Speaker: The motion is that clause 70 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 71, sir.

Mr Cannell: This clause requires children and young persons to be separated from adults in police stations and courts - probably not the easiest of matters to accomplish, especially in small police stations of which we were speaking this morning. Nevertheless, I think the main intent is to separate them from anybody who may be in with the possibility of being apprehended permanently. Certainly, there is no case of them being in contact with anybody who may be detained in custody - far from it. The children and young persons to be accommodated in police stations and at courts will be treated with every possible sympathy, and of course there is provision in certain aspects of the work for them not to appear in court at all in person but to actually do it by means of electronic communication. That, sir, is contained in two sub-clauses of clause 71, which I formally move.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 71 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 72, sir.

Mr Cannell: Yes, Mr Speaker. This clause sets out the procedures to be followed where persons under 17 are arrested but cannot be taken straightaway to the court. They are normally released on police bail to the parent or guardian. This is reasonably standard practice, Mr Speaker. Clearly it is impracticable where a person under 17 becomes arrested and cannot be taken straight to court. Perhaps by being arrested in the night or at certain weekends when there is no judiciary available, but released on police bail demands the same right to have to appear as if in fact the person was detained, but this is the formal procedure to be followed at clause 72.

The Speaker: Mr Rimington.

Mr Rimington: I beg to second, sir.

The Speaker: Hon. members, the motion is that clause 72 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 73, sir.

Mr Cannell: This clause requires the parents of person under 17 and certain others to be notified of an arrest, probably in some cases, Mr Speaker, the most devastating of tasks to be undertaken on behalf of the young person. They probably fear that considerably more than anything else in certain households. But it does put an obligation on the arresting officers to inform the relevant persons as detailed in the eight sub-clauses of clause 73, which I formally move.

The Speaker: Mr Rimington.

Mr Rimington: I beg to second, sir.

The Speaker: Hon. members, the motion is that clause 73 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 74, sir.

Mr Cannell: This clause prohibits children - that is, persons under the age of 14 years - being in court during committal proceedings or trials, except where needed as a party or witness.

Sub-clause (1) prohibits a child except a baby being in court.

Sub-clause (2) requires a court to order the removal of a child who is in court in contravention of (1). The juvenile courts, Mr Speaker, have often seen miserable scenes of children being hawked into them; that will no longer be the case in this type of matter, where even during committal proceedings, which of course are in camera, will be subject to this regulation. Clause 74 and its two sub-clauses, sir.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 74 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 75, sir.

Mr Cannell: Yes, sir, a further enlightenment of court procedures which enables courts to be cleared when children or young persons give evidence in relation to offences involving indecency or immorality. Even in my times in the courts it was not the case; it had to be open to everyone including the press, but more enlightened times now see this being included in the Children and Young Persons Bill where in fact young people will be able to give their evidence and, as I have earlier intimated, that can sometimes even be via electronic links. It also exempts certain persons from that clearance: clearly the judiciary, court officials, parties and their advocates and other persons directly concerned. It does actually still allow bona fide reporters, but I would say from my experience that it is usual for the bench to give a direction that there be no identification of the individuals, nor indeed of the matters being complained of. Clause 75, Mr Speaker.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 75 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 76, sir.

Mr Cannell: This clause gives the courts new powers to remand a child or young person to accommodation provided by the department and restricts its powers to remand in custody - I am sure that will be welcomed by hon. members. In certain cases the courts may impose a requirement that young persons, but not children, be kept in secure accommodation. This is based on United Kingdom provisions enabling remands from local authority accommodation. Under the present law a court of summary jurisdiction, when remanding a child or young person or committing that child for trial to general gaol, must remand them on bail except when charged with murder or manslaughter or the charge of some other offence so serious that the circumstances are otherwise exceptionally sufficient that the person ought not to be bailed. In that case, he/she is remanded in custody.

This is a development for the Isle of Man, sir, and it will be the case that the remand in custody or the defined terms of murder or other very serious charges will actually be lessened. The remand to accommodation provided by the department would either be because the child or young person would otherwise be in danger or become a danger to the public - quite an important provision, Mr Speaker.

Subject to regulations, the detention of juveniles can be accommodated and at (c) in clause 76 the courts can impose a security requirement stating that juveniles be kept in secure accommodation where they are charged with, or found guilty of, violent sexual offences or offences punishable in the case of adults with custody for a term of 10 years or more, or have recent histories of absconding from care and committing offences.

There can be few hon. members who have not had experience of young persons who have been the subject of orders of court, or where they have been taken into care of the department and are subsequently viewed to be still what would be termed to be 'at large.' As I explained this morning, the provision so far is only that they be kept an eye on. The doors cannot be locked on them unless they are persistent offenders, and even then only by agreement rather than by statute, but if the approval is given to the construction of a secure unit which is planned for the White Hoe, then this clause will be the provision which will give courts new powers to remand children or young persons to accommodation provided by the department, because it will be the department who will operate the secure accommodation. But the persons to be detained in them will only be those who are subject to the provisions which I have said, where the allegations against them are of a serious nature but not as serious as previously when orders in the United Kingdom have been operated. I think it is fair to say that this might take out some of the more persistent people who cause difficulty was in care when it is shown that in fact that they are likely to cause serious offences or problems for other people such as our constituents, particularly those who have - I would not go so far as to say - the misfortune to live near these establishments, because in fact these establishments are supposed to be filling a need, but it will enable the department, by application to the courts, to actually put the worst of these alleged offenders in some kind of literal control where the doors will be locked and their case will be taken up. The provision, of course, will be that the persons in such secure accommodation, it is hoped by a process of education, will actually reform - perhaps a strong hope, but in fact we have evidence that there is the capability in similar establishments in the United Kingdom. A number have been picked up there and have gone on to lead worthwhile lives. I formally move clause 76, Mr Speaker.

Mr Rimington: I beg to second, sir.

The Speaker: Hon. members, the motion is that clause 76 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 77, sir.

Mr Cannell: This clause provides for a child's evidence to be given unsworn in criminal and civil proceedings and makes further provision for evidence given by minors. A new general rule is included stating that evidence of children is normally to be heard unless the court thinks it will be unintelligible. Those of us who are parents would say that there are plenty who are unintelligible considerably in advance of the age provided for here, but in fact, what we are doing is a very serious matter, but the child will have the right by writing down or verbally giving evidence in the proceedings which concern him even though in fact they are doing it on a basis of not taking an oath. I formally move clause 77 and its sub-clauses, sir.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 77 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 78, sir.

Mr Cannell: Clause 78 provides that hearsay evidence is admissible in proceedings relating to the upbringing, maintenance or welfare of minors in the High Court and, in relation to family proceedings, only in courts of summary jurisdiction. It means in practice that a witness in such proceedings can report what a child or other person has told him and the court will give that report such weight as is appropriate in the circumstances. Normally in court proceedings hearsay would be inadmissible and the child or other person would have to be

called as a witness. 'Family proceedings' cover matrimonial, wardship, maintenance, adoption and proceedings under part 12 of the Bill. This is a provision exclusive to this area of court work and is very definitely against the normal regular court procedure where a witness statement would have to be made. Clause 78, sir.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 78 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 79 and schedule 8, sir.

Mr Cannell: The clause lays down special rules where criminal proceedings relating to offences against a child or young person listed in the schedules. At (a) the court can try the case in the absence of the victim; if giving evidence in court would harm the victim, his evidence can be given by deposition, which is a written statement taken by a justice of the peace, provided that certain procedural safeguards are observed. Schedule 8 actually details the list of offences which are provided for in this clause 79, which I formally move, Mr Speaker.

Mr Rimington: I beg to second, sir.

The Speaker: Hon. members, the motion is that clause 79 and schedule 8 stand part of the Bill. Will all those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 80, sir.

Mr Cannell: This enables a court in any proceedings involving a child or young person to direct that no report of the proceedings or any picture shall be published in the media if it might identify the person giving the evidence - I alluded to this a moment or two ago. We have seen in some courts where artists' impressions can be given, but that certainly would not be the case involving children or young persons and identification is specifically prohibited at clause 80, as is the reporting of the proceedings in this matter. Clause 80.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 80 and schedule 8 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 81, sir.

Mr Cannell: Yes, Mr Speaker, this clause provides that the terms 'conviction' and 'sentence' are not to be used in relation to young offenders in proceedings at courts of summary jurisdiction, and no finding of guilt of a child or young person is to count for any person as a conviction of felony. The terms will be replaced by, in the case of conviction, a finding of 'guilt' and a sentence will be 'an order'. This is viewed as being rather more sympathetic to subsequent references to the child's record. Once a person reaches 21 in any case, his findings of guilt, or orders made, will be expunged - that is, the ones prior to his attaining 14 years of age, so they could last a theoretical seven years but at the age of 21 would disappear from the records, sir, on the provisions of clause 81.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 81 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 82, sir.

Mr Cannell: This clause requires a criminal court, when convicting a child or young person and imposing a fine, an order for costs or a compensation order, to order that in certain cases his parent or guardian pay the fine, costs or compensation. We have heard plenty of reference

to that in this hon. House as to the obligation for the parents to make up for their child's wrongdoings. This is the ability for them to be awarded the opportunity to make that compensation claim. It is clearly an emotional subject, but it is one with which I think there is a lot of sympathy in that the parents should actually take some kind of responsibility for the recovery of costs and compensation. The court can order parents or guardians to pay a juvenile's fine - that is, of course, if they can be found. Parents and guardians can be bound over to ensure their children's good behaviour - that is, actually after the parents have been given the opportunity to present their side of the story. There is a right of appeal against such orders. It is thought the responsibility can be placed where it belongs. I foresee some interesting battles here for the enforcement of this, but I think that the principle is sound, sir, at clause 82.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 82 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 83 and schedule 9.

Mr Cannell: Concluding part 9, this clause and its schedule enable a criminal court to make a supervision order in respect of a young offender. It widens the power of the court in that it may require the offender to live in accommodation provided by the department, or undergo medical or psychiatric examination or treatment. The provisions are based on the United Kingdom Act, amended by the Children Act of 1989. Under the present law a criminal court may make either a care order or a supervision order when convicting a child or young person of an offence. There is currently no distinction between care and supervision orders made in care and protection cases and those which are made in criminal cases. The philosophy is that a care order is a measure of child protection to be made on the application of the social services authority to remove a minor from danger. A strengthened version of supervision should, however, be made available to deal with young offenders. This is clause 83 and schedule 9, sir.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 83 and schedule 9 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Part 9, 'Fertilisation, surrogacy, etc', Clause 84, sir.

Mr Cannell: Yes, sir, this part of the Bill introduces new controls on human fertilisation, embryology and surrogacy arrangements based on current United Kingdom legislation. These are the Surrogacy 1985 Act and the Human Fertilisation and Embryology Act of 1990. In the United Kingdom, this legislation regulates activities such as in vitro fertilisation and makes provision for the status and legal and family relationships of children born as a result of such activities. The corresponding provisions of the Bill are to prevent the Isle of Man being used as a backdoor to avoid United Kingdom controls and also to ensure that children resulting from such activities have recognised Manx law status. Commercial surrogacy is so far prohibited in the United Kingdom and this Bill introduces similar provisions in the Isle of Man.

Clause 84 proposes a general prohibition of a number of activities connected with embryos and genetic material which in the United Kingdom are either prohibited or regulated by the Human Fertilisation and Embryology Act of 1990. There are a number of sub-clauses, sir, which I will detail at Clause 84.

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

The Speaker: The motion is that clause 84 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 85, sir.

Mr Cannell: This clause provides for a scheme of licensing at certain of the activities prohibited by clause 84 corresponding to that operating under the 1990 Act in the United Kingdom to be introduced by order subject to Tynwald approval in the future in case it should ever be decided to provide fertility services in the Isle of Man. That is not so far the case; I am sure that should resources allow and there will be a call for this to be provided in the future, this clause allows for that to take place and stipulates how it would actually be put into operation. Clause 85, Mr Speaker.

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

The Speaker: The motion is that clause 85 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 86, sir.

Mr Cannell: Perhaps I could take clauses 86, 87, 88 and 89, sir, with your indulgence, similar provisions?

The Speaker: Granted.

Mr Cannell: Clause 86 provides that where a child is carried or born as a result of implanting an embryo or sperm and ova, the woman bearing the child and nobody else is treated as its mother for legal purposes.

Clause 87 makes special provision to decide who is the legal father of a child born as a result of implantation or by artificial insemination.

Clause 88 explains how the rules in clauses 86 and 87 for deciding who is the legal mother or father of a child actually operate.

Clause 89 enables the High Court to make an order declaring a child born to a surrogate mother to be the child of the married couple whose sperm or eggs or both were used. The effect is similar to an adoption order and regulations will apply to such children, the provisions of the 1984 Adoption Act as respects registration and of status of adopted children.

It ensures that children resulting from these 'activities', as they are described - I am not sure that is the most apt word - have recognised status in Manx law. This is very important. In fact, there is evidence that a number of people have availed themselves of just such a service and the clauses hereby detail the methods in which this can be legalised, at clause 89, sir. That is, in fact, clauses 86, 87, 88 and 89. I formally move, sir.

Mr Rimington: I beg to second, sir.

The Speaker: Hon. members, the motion is that clauses 86, 87, 88 and 89 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 90, sir.

Mr Cannell: This provides that no surrogacy arrangement is enforceable; no injunction can be issued to make the surrogate mother hand the baby over to the commissioning parents; no claim by the surrogate mother for an agreed payment can be enforced, even by legal action; and no action for damages can be brought for breach of the arrangement. The arrangement is not

illegal or void, so any payment made cannot be recovered. It is necessary to refer to clause 95(3) for the definition of the surrogacy arrangement, but in fact this makes it quite clear that the Island will not be in any different position in that it will not trade in payments for the actions of surrogacy, sir, at clause 90.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clauses 90 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 91.

Mr Cannell: This clause makes a negotiation of any surrogacy arrangement for any third party an offence if done on a commercial basis for payment, or with a view to payment, to anyone except the surrogate mother - similar provisions tightening it up as per the United Kingdom legislation and one with which I am sure hon. members will agree. Clause 91.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 91 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 92, sir.

Mr Cannell: In a similar vein, Mr Speaker, it makes it an offence for a body to receive a payment following a surrogacy arrangement made under the auspices of that body, even though the body may not itself have acted in negotiating the arrangement. The word 'body' is to be used corporately, I think, rather than literally. It makes it an offence on the part of any member of the management of a body for it to be involved in surrogacy arrangements entered into on a commercial arrangement.

There are five sub-clauses, the final one of which is probably most pertinent: it enables anything said, written or done by any member of the management of a body or by anyone doing anything referred to in the definitions previously stated to be used as evidence that it is involved in surrogacy arrangements. In other words, the sifting of the details cannot be used to register a claim for financial affairs to be actually conducted in this regard. Clause 92, sir.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 92 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 93, sir.

Mr Cannell: Yes, Mr Speaker. This is one that might be queried. I was not too certain about this one myself, but the clause makes it an offence to publish an advertisement for surrogacy arrangements. Now, you might say that providing everything is above board, why not? But in actual fact it has been shown that this is where the difficulties lie. There are a number of sub-clauses in which the advertisements concerned state either that someone is willing to be a party or to negotiate a surrogacy arrangement. In fact, it has been shown that where this has been permitted or where it has happened illegally, it has caused great difficulties for persons to be tracked legally - in other words, it is a backdoor arrangement and one which is capable of no control whatever if the people concerned with this do this more or less as a backstreet arrangement. It must be done properly through the proper channels if surrogacy is going to be condoned. There is nothing wrong with the principle, but the advertisements are viewed as not being desirable and it also details how those advertisements might be displayed by radio, television, newspapers, handbills et cetera and now actually contains telecommunications of a modern variety to contain this. So clause 93 - an offence to advertise, sir.

Mr Rimington: I beg to second, sir.

The Speaker: Mr Downie, member for West Douglas.

Mr Downie: Thank you, Mr Speaker. I am brought to my feet because this clause has a relationship in my view to advertisements which have appeared in the local newspaper only recently, and I wonder if the mover of the Bill would be able to give us a definition. There has been someone seeking a form of surrogacy in the Isle of Man advertising in the local newspaper, and I think it would be helpful if the exact definition of that advert and the way it appears in the press in relation to the Bill could be commented upon when moving the clause.

The Speaker: Mrs Hannan.

Mrs Hannan: I would like to ask the mover why it should be illegal for someone to advertise. Why shouldn't a person be able to advertise if this is how they feel? If you have got all the other controls in place, I would have thought that somebody advertising for this fact is better than doing it in a backstreet or behind closed doors or whatever, to make it quite clear that someone could enter into this arrangement.

The Speaker: Mr Cannell to reply.

Mr Cannell: Two very converse views there, Mr Speaker! The advertisement to which the hon. member for West Douglas alludes, I think, is one that was looking for egg donations. I think it carried the rather unpalatable headline 'We want your eggs' or something of that nature. I am sure the hon. minister was drawn to that as well, but to find that it was something slightly different. I do not know that it is savoury to do that, but the hon. member for Peel, Mrs Hannan, asks 'Why should it be illegal?' and I think I can only rely on the fact that the trade in it might be viewed as being a method of supplanting the legalising arrangements which arise out of the offspring of a liaison, such as is being proposed in that. In other words it would not be one which would be fitting in terms of the earlier orders, in that the definition of who was legally responsible for the production of children by this method might not be capable of control if private arrangements other than those mentioned in the Bill actually were to take place.

I cannot pretend that is anything other than a slightly fudged answer. I would prefer if the hon. member would allow me the privilege of perhaps elaborating on that at a later stage, sir. Clause 93.

The Speaker: Hon. members, the motion is that clause 93 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 94, sir.

Mr Cannell: Yes, this just makes further provision with respect to offences, sir. The Attorney-General's consent is required for prosecutions and there are three other sub-clauses. There is no provision for a time out on prosecutions. At the moment it is six months. A prosecution within this makes the limit two years - just further provisions earlier to 1993, and this is clause 94, Mr Speaker.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 94 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 95, sir.

Mr Cannell: Yes, sir, this is a literal definition of the terms used in part 7. With five sub-clauses, this is very important, in fact that advertisements for the service or not, saying how it

can all work. It defines particular terms for 'surrogate mother', 'fertilisation', 'surrogacy arrangements', 'commercial basis' and finally makes it clear that it will apply to both lawful and unlawful surrogacy arrangements. So I think even if indeed the action did come as result of a legal advertisement, the surrogacy arrangement provisions for definition would in fact still fall under the same terms. Clause 95.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 95 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 96, sir.

Mr Cannell: Yes, sir, in part 10, the final part of the Bill, miscellaneous and supplemental, clause 96 places on a statutory basis the present system under which the Attorney-General may appoint an advocate. This is a clause we referred to considerably earlier in the clauses stages of this Bill, Mr Speaker, where the appointment of an advocate to represent a child in any family proceedings can be made. In a case where the court in care or the proceedings affecting the welfare of children needs to hear argument and evidence on the question of the child's welfare from a party other than the parents in the department, which may be viewed to be rather less than impartial, the Attorney-General has the inherent power to intervene and take action on behalf of the child. Elsewhere, similar powers are in the vestment of the official solicitor. Under the present system, from the 1980s, the Attorney-General in such case appoints an advocate to represent the child. The advocate will usually request an independent social worker - and that is the one we referred to earlier - *independent* - in other words, not a social worker from the department's own workforce - to prepare a welfare report for the court. If the child is of suitable age, the child may be interviewed and may give evidence as to his view of the proceedings and how he wishes his future to go. I think it is very important that that provision is written in and it is at clause 96, placing on a statutory basis the present system under which the Attorney-General may intervene independently.

Mr Rimington: I beg to second, sir.

The Speaker: Mrs Hannan.

Mrs Hannan: This only relates to the present system as the mover has suggested, and in actual fact it should be the court that has available to them to appoint someone to look after the best interests of the child. This particular clause does not say that. This clause states, '... if it appears to the Attorney-General that a child concerned in the family proceedings is not, but should be represented. . .', and I think we have got it wrong here. I think it should be the court; the court should ask for the independent advice and any child coming before the court should have their best interests put to the court. Whether it is an independent social worker, whether it is a guardian ad litem which covers the two, my understanding is, between an advocate and a social worker, but that it should look after the best interests of the child and can put the position of the child both after consultation with the department, with the parents and with the child and puts the interests of the child first. If this legislation is going to mean anything, it is going to mean that. I would hope that the department will come back and put that provision into this legislation. If we are going to say, as in clause 1, that the interests of the child are paramount and the family and all of the responsibilities, then I believe that the court should have that facility to them to appoint somebody to advise the court and to act as a go-between between the various bodies. The upbringing of children is extremely difficult; it does not matter on what level

it is, but once we get into a situation where children are taken into care and in need of protection in families needing assistance or whatever, I think the court should have in its possession the capability of appointing someone independent to bring independent advice to the court in the child's interest and, as I say, work with the parents, because bringing up children is extremely difficult. It is the most important job that any of us do and, therefore, when we get into a situation of having children who come under the Children and Young Persons Act, as it will be when it is approved, I believe that the department should look again at having this independent body, which I believe is lacking from this legislation.

The Speaker: Mr Karran.

Mr Karran: Thank you, Vainstyr Loayreyder. I just wondered if the hon. mover would just clarify: I did not understand that we had an official solicitor on the Island. I knew that they had such things in the United Kingdom. If the mover could just clarify that point?

The Speaker: Mr Cannell to reply.

Mr Cannell: Yes, on the latter point, Mr Speaker, I think I was just paralleling (**Mr Karran:** Oh, sorry.) the situation in the United Kingdom. You are quite right: that is the equivalent of what we are doing here. And I do agree with the hon. member for Peel, who has a more salient point. I agree with her that the bringing up of children is a problematic thing to do and particularly for those who become wayward, and also that the courts should be viewed as having the authority, perhaps, to provide the final backstop as to what happens to them. All I can do beyond agreeing with her on a fundamental principle is to cite that what is proposed here is that where the court, so the court are in, in care or other proceedings affecting the welfare of the child may need to hear argument, so the court is not being excluded. The court is, in fact, commissioning this, and evidence on the question of welfare - that is, evidence other than from the parents and the department, and that is where the hon. member is, I think, steering us to - the impartiality may not be preserved - it is the court that is commissioning the Attorney-General as an independent to operate his inherent power to intervene and take that action. In other words, he overrides the department and parental intervention, but it is at the behest of the court, so any action would go to the court. The Attorney-General would appoint an advocate to do that who will request an independent social worker, so there are two stages of independence there, but it is still to prepare a welfare report for the court. So the court, at whatever level is decided appropriate, will actually be the final arbiter. If the child is of a suitable age, he or she will also have input. I think that probably covers it, but I have reservations, as the hon. member for Peel does on this one. But I do formally move clause 96.

The Speaker: Hon. members, the motion is that clause 96 stand part of the Bill. All those in favour, please say aye; against no. The ayes have it. The ayes have it. Clause 97, sir.

Mr Cannell: Yes, allowing for appeals against certain orders under the Bill, no provision is made for appeals from courts of summary jurisdiction to the High Court under parts 1 or 2 because provision is made for such appeals under the Summary Jurisdiction Act 1989 - a bit technical, this one, but it provides for appeals against certain orders of courts under the Bill. The time limit is reduced from 28 days to 14 days, so anybody who is aggrieved and wishes to register an appeal has to show that they are genuinely concerned rather than heading back and wondering what mischief they can make. It has got to be done in a fortnight to avoid delay in childcare matters, because once a decision is made, then it is very difficult to actually put that

into practice, but say this may be an arrangement we are making for you. However, if an appeal is lodged, it may be something quite different and that clearly is an unstable situation. Clause 97, sir.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 97 stand part of the Bill. All those in favour, please say aye; against no. The ayes have it. The ayes have it. Clause 98, sir.

Mr Cannell: Yes, perhaps contentious because it gives the department general powers of entry and inspection of premises where children are or will be cared for. Otherwise they are in their own families. As we said at an earlier stage, no battering rams are going to be used, but the department considers that it is best served by having the opportunity to make general powers of entry. It covers entry to children's homes, to the premises where children are being privately fostered, to childminders' homes, day care premises, the powers of inspection of premises and records and makes an offence for the obstruction of the exercise of any such powers.

This, as we have mentioned on quite a few other Bills and measures, is not something to be exercised lightly. The entry to the 'Englishman's home being a castle', as the phrase goes, is to be regarded as sacrosanct, except in exceptional cases, but the department does have, under this clause, the opportunity, and the provision of it is strictly where in fact it is probably on indictment that the premises do need inspecting, or they have good reason to suspect that the children in those premises are at risk or in danger, or that the equipment that is being used or the staffing which is being provided is inadequate. Only as a last resort I would imagine that this would be used, but it does give that formal power of entry at clause 98.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 98 stand part of the Bill. All those in favour, please say aye; against no. The ayes have it. The ayes have it. Clause 99, sir.

Mr Cannell: This gives a court power to issue a warrant enabling the police to assist authorised persons to execute emergency protection orders, or to exercise any power of entry relating to the welfare of the children - again, I would imagine, exceptionally unlikely to be used, but a provision which needs to be incorporated. The police are assisting authorised persons, they are not taking over from them, and they exercise the power of entry where, if you had someone who is possibly going under for running a very poor business, they might in fact say 'You cannot come in' and go as far as actually perhaps even - I suppose my imagination is running a little wild, into a siege situation - permitting the police to actually assist the department's officers or any other officers making that entry if it was satisfied that it was required. I do not think it will really happen in the Isle of Man; I certainly hope not. We have seen isolated examples elsewhere. It is an assistance, not a takeover. It is not the police saying 'We're in charge now' and battering their way in; they are assisting in the inspection of the premises, and I would imagine it would be viewed as being conducive towards the establishing of an offence, if a resistance was to be mounted. Clause 99.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 99 stand part of the Bill. All those in favour, please say aye; against no. The ayes have it. The ayes have it. Clause 100, schedule 10.

Mr Cannell: Yes, this concludes part 10 of the Bill. It provides for the making of an education supervision order if a child of school age is not being properly educated, putting him under the supervision of the Department of Education. This replaces powers to make a care or supervision order under the Isle of Man Education Act of 1949. It is on the application of the Education Department, placing children of school age under the supervision of the department. The Department of Education, though, before doing this, must consult the DHSS and obtain its views, and supervision orders for education cannot be made if care orders are already in force. Clause 100 and schedule 10, Mr Speaker.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 100 and schedule 10 stand part of the Bill. All those in favour, please say aye; against no. The ayes have it. The ayes have it. Clause 101.

Mr Cannell: This imposes a duty on the proprietor of an independent boarding school to look after boarders welfare and gives the department power to inspect it. This is additional to the powers of Department of Education to inspect schools under the Education Act of 1949. The department must notify the Department of Education if it seems they have observed a failure to promote the welfare of young people within independent boarding schools. Clause 101.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 101 stand part of the Bill. All those in favour, please say aye; against no. The ayes have it. The ayes have it. Clause 102, sir.

Mr Cannell: This provides definitions for various terms used in the Bill and also enables registers - for example, a childminder's and day care premises - to be kept on a computer. Clause 102, sir.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is clause 102 stand part of the Bill. All those in favour, please say aye; against no. The ayes have it. The ayes have it. Clause 103.

Mr Cannell: This enables the Council of Ministers by order to make reciprocal provision within the United Kingdom or the Channel Islands so that court orders relating to children made in any of those jurisdictions will have the same effect as corresponding orders made in the Isle of Man. Reciprocal arrangements in force at the moment are transfer of care orders from the Isle of Man to England and Wales or Northern Ireland and vice versa or the enforcement of recovery orders. We spoke of this earlier, sir; this is the method of making it happen at clause 103.

Mr Rimington: I beg to second, sir.

The Speaker: Hon. members the motion is clause 103 stand part of the Bill. All those in favour, please say aye; against no. The ayes have it. The ayes have it. Clause 104, sir.

Mr Cannell: This enables the department to make regulations to enable any matter to be prescribed where required under this Bill. Tynwald approval is required for this, for any order or regulations made by the Council of Ministers or any Isle of Man Government department.

Two sub-clauses: one enables the department to make regulations prescribed in any matter required by the Bill to be prescribed, and sub-clause(2) is a standard form provision requiring Tynwald approval for any order or regulations made by the Council of Ministers or any department. Clause 104, sir.

Mr Rimington: I beg to second, sir.

The Speaker: The motion is that clause 104 stand part of the Bill. All those in favour, please say aye; against no. The ayes have it. Clause 105 and schedules 11, 12 and 13, sir.

Mr Cannell: This makes transitional provisions, amendments and repeals. They are self-explanatory and necessary requirements with the introduction of new legislation. Clause 105, sir.

Mr Gelling: I beg to second, Mr Speaker, and reserve my remarks.

The Speaker: Mr Rimington.

Mr Rimington: Thank you, Mr Speaker. Since the introduction of the Rehabilitation of Offenders Bill there are in there various references to care in there and supervision orders under the Children and Young Persons Act which will now need to be consequently amended by this Bill. So the amendments which are before us today are purely consequential ones to bring the Rehabilitation of Offenders Bill into line with the Children and Young Persons Bill. I beg to move:

Schedule 12, page 157; at the end insert -

The Rehabilitation of Offenders Act 2001 (c.)

22. (1) *In section 5(2), for paragraphs (b) and (c) substitute -*

“(b) in any proceedings relating to adoption, the marriage of any minor, the exercise of the inherent jurisdiction of the High Court with respect to minors or the provision by any person of accommodation, care or schooling for minors;

(c) in any proceedings brought under the Children and Young Persons Act 2001 (including proceedings relating to the variation or discharge of a supervision order under Schedule 9 to that Act, or on appeal from any such proceedings);”

(2) *In paragraphs 10(c) and 14 of Schedule 1, after “1995” insert “or under Schedule 9 to the Children and Young Persons Act 2001”.*

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

The Speaker: Mr Rimington, anything further to say? No? Mr Cannell?

Mr Cannell: This is a departmentally approved amendment and of course is accepted as such.

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

The motion is that amended clause 105 and schedules 11, 12 and 13 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 106, sir.

Mr Cannell: Yes, Mr Speaker, this clause gives the Bill its short title, the Children and Young Persons Act 2001 and provides for its commencement. I formally move the last clause of this Bill at clause 106, sir.

Mr Rimington: I beg to second, sir, and would just like to thank the hon. mover of the Bill for taking us through this in such an admirable manner.

The Speaker: The motion is that clause 106 stand part of the Bill. All those in favour please say aye; against no. The ayes have it. The ayes have it. That is the Children and Young Persons Bill 2000 clauses completed. Can I take this opportunity to congratulate the member in charge for his handling of the Bill. (**Members:** Hear, hear.)

Mr Cannell: Thank you, Mr Speaker.

Education Bill — Consideration of Clauses Commenced

The Speaker: We now move, hon. members, to the next item on the agenda, which is item 10, the Education Bill 2000 for consideration of clauses, and I call upon Mr Rodan.

Mr Rodan: Thank you very much, Mr Speaker. Can I begin by thanking members for their contributions at the second reading stage of the Bill and for their general support of the Bill so far.

Clause 1 of the Bill lays down the general duties of the Department of Education and the principles on which to perform those duties. More specifically, the primary duties of the department are, firstly, to promote the education of residents in the Isle of Man, particularly those under 18, and in order to do so, to provide efficient and comprehensive educational services. We should note that it is not the department's job to educate everyone, but to promote education and to provide facilities for that purpose. It is the responsibility first and foremost of parents to educate their children. The department must have regard to the general principle that pupils are to be educated in accordance with the wishes of their parents, but this has to be balanced against the demands of efficiency and the efficient use of resources. The department is required to keep educational facilities in the Island and elsewhere under review and to prepare policy statements which are to be laid before Tynwald. The latter two are new provisions. I beg to move, Mr Speaker.

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

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

Mr Rodan: Thank you, Mr Speaker. Clause 2 requires the department to ensure that there enough primary and secondary schools in the Island, either by providing them itself or by maintaining schools provided by others. This clause lists in schedule 1 the schools which are available for this purpose. The situation on the Island is that most schools are provided and maintained by the department, but the state school system also incorporates church schools provided by the churches, but maintained by the department. The 1949 Act, following the Butler Act of the UK of 1944, embodies the compromise that was agreed between the churches and the state under which church schools keep their special character and status but are maintained by the state. There is a definition of what is meant by sufficient schools and this embraces the number, character and equipment of the schools and requires there to be a

variety of instruction and training available, having regard to the different ages, abilities and aptitudes of pupils and the different lengths of their school careers, including practical instruction and training. We should note that the tailoring of education to the age, ability and aptitude of the pupil was a cardinal principle of education legislation elsewhere in this Bill.

The various sub-clauses set out in turn how the department is to carry out the duties. It sets out the classification of schools used in the Bill, the definition of 'provided schools' and the definition of 'maintained schools', which we would also call church schools, and sub-clause (6) introduces schedule 1, which in fact lists the schools currently maintained by the department. Mr Speaker, I beg to move that clause 2 and schedule 1 stand part of the Bill.

The Speaker: Mr Henderson.

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

The Speaker: Hon. members, the motion is that clause 2 and schedule 1 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 3 and schedules 2 and 3.

Mr Rodan: Mr Speaker, clause 3 sets out the machinery for creating new schools, for changing the status of character of existing schools and for closing schools and dividing schools. It replaces the complicated machinery of the 1949 Act, which has not been legally satisfactory since the merger in 1968 of the Board of Education and the Education Authority.

Sub-clause (1) provides for the department to make an order to do a number of things, such as setting up a new provided or maintained school or to turn a maintained school into a provided school or vice versa. It also provides for closing of such schools and dividing of such schools.

It is sub-clause (2) which provides by order to change the character of a provided school or maintained school in a number of ways: by imposing, changing or removing restrictions as to the age or sex of pupils, or removing or changing selective entry or other changes to the premises including moving to a new site.

Schedule 2, introduced by this clause sets out the procedure for these orders, firstly requiring the department to give public notice of proposals by the department or proposals submitted to the department - for example, by a church school governing body. The schedule also deals for the situation whereby for a new maintained school, the governing body must submit plans of the new premises for approval and provides for giving effect to the proposal in accordance with the plans. The department itself has the job of providing any playing fields or non-school buildings associated with such a maintained school.

Schedule 3, introduced by this clause, imposes legal restrictions on action by the governing body of a maintained school to close the school down, requiring it to give at least two years' notice of such closure to the department, preventing the governing body giving closure at all where the department has incurred capital expenditure on this school, but in that case the department can impose conditions as to repayment or transfer of assets. It also, in schedule 3, enables the department to run a maintained school while a notice under the period of notice of closure is actually running if the governing body are unable to do so.

Mr Speaker, I beg that clause 3 and schedules 2 and 3 stand part of the Bill.

The Speaker: Mr Henderson.

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

The Speaker: Mr Karran.

Mr Karran: Vainstyr Loayreyder, this amendment is about the establishment of schools. We have almost seen the total reversal of the linguistic genocide that was in the education system until recently. Manx is now starting to be given the academic recognition that it has long deserved, but this could change easily with a change of government.

I am not making legislation for today or tomorrow, as the rest of this hon. House should realise, just like this Bill. This Bill has been revised after nearly 50 years. I believe that we should have in primary law, in this country, the provision for teaching in schools through the medium of Manx as a right in this nation, and this nation should not be ashamed of its past but be proud of its linguistic heritage. If parents desire their children to be taught through the medium of Manx Gaelic, then that should be a right. It should not be up to the fact that some members in this hon. House can manipulate behind the scenes in order to achieve the situation because it becomes politically expedient.

I do hope this hon. House will support this amendment to give Manx Gaelic the recognition it deserves in primary law. The people have a right to be taught through it.

It always saddens me when I first started trying to work with the different groups within the Gaeldom - that, is the different Manx-speaking communities within the Island. I was acutely embarrassed when I used to go to Scotland and we would see the provisions for Gaelic speech students, although they had no government at the time, and yet we had a government and we had no facilities for our students or those who were wishing to use Manx Gaelic. We have improved the situation out of all recognition but that should not be left to a whim. I believe we must safeguard what we have achieved by making sure through the Education Act that we have legal commitments to the linguistic heritage to the Island as far as our people are concerned. I beg to move:

Page 4, line 20; at the end insert -

“(ba) for providing for the teaching in the school to be, or to cease to be, through the medium of Manx Gaelic;”

Page 4, line 26; at the end insert -

“(3A) If it appears to the Department that the number of parents desiring their children to be taught through the medium of Manx Gaelic is sufficient to enable a school to be maintained for providing primary education or secondary education through that medium the Department shall make either -

(a) an order under subsection (1) establishing such a school, or

(b) an order under subsection (2) altering the character of an existing school so as to provide for the teaching in the school to be through the medium of Manx Gaelic.”

Page 4, line 29; for “(1)(c),” substitute “(1)(ba), (c),”

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

The Speaker: Mrs Hannan.

Mrs Hannan: Thank you, Vainstyr Loayreyder. I think this provision in the legislation is very important. It does not say anyone has to, it says that the base provision is there and I would hope that this amendment can be included in this legislation. The teaching of Manx and the teaching through the medium of Manx is and will be more important as time goes on and the department has made wonderful steps over the last recent years and has kept this going. The interest from the public, parents and children alike is significant, and therefore I would hope that members of this hon. House today would support the amendment as moved by the member for Onchan.

The Speaker: Mrs Crowe.

Mrs Crowe: Thank you, Mr Speaker. Not speaking to the amendment but asking for a note of clarification from the Minister, could you explain if should clause 2 in schedule 1 will apply to the Isle of Man Business School?

The Speaker: We are in clause 3, schedules 2 and 3.

Mrs Crowe: Sorry, clause 3. Sorry, Mr Speaker yes. I made a note earlier.

The Speaker: Right, Mr Karran, will you respond?

Mr Karran: No, thank you, Vainstyr Loayreyder.

The Speaker: Minister to respond.

Mr Rodan: Yes, thank you, Mr Speaker. First of all I would ask the House not to support the amendment in the name of the hon. member for Onchan, not because there is no value in what he has said or the importance to which he rightly attaches the Manx language in terms of education on the Isle of Man, but simply because it is not necessary, and I say it is not necessary because in this Bill, enshrined for the very first time, as part of the Manx national curriculum, is to be a requirement to deliver teaching of Manx Gaelic, history and culture. This is in the later part of the Bill and that is very, very important because that enshrines in statute law recognition of the Manx language.

In addition to that, Mr Speaker, it is not necessary, because we can already establish a Manx Gaelic school. There is a general duty under clause 2(2), as I have previously said, that the department has a duty to make sure that there are sufficient schools of sufficient number and character to offer education according to the aptitude of pupils and requirements of parents. Furthermore, this amendment relates only in fact in clause 3 to the department's power to provide for the alteration of a character of a provided school or maintained school; it does not say anything about establishing a school for delivery of education in Manx Gaelic. That would have been under clause 3 (1) requiring to be amended. The fact of the matter is, the department can and has the power to introduce a Manx Gaelic medium unit as part of an existing school and in fact is in the process of doing so, and it also has the ability to set up a separate school.

These matters, as the hon. member for Peel has rightly drawn attention to, have been in recent years progressing very steadily, with broad general support through the department as a result, really, of Tynwald action that be so. Members will be aware that in 1995 the Department of Education's report to Tynwald on the future development of the Manx language, which was

passed, made provision for the development of Manx medium teaching which has been running for the past 3¹/₂ years at Ballacottier primary school, a class down there, a half day a week, but the report also recommended that when there was a demand for the parents of 10 children in each school year for the establishment of a separate Manx medium school, this should serve as the threshold for introducing such a policy. That has in fact happened and the existing statutory powers under the 1949 Act, as restated in this new legislation, already allow us to establish the sort of facility the hon. member for Onchan wants to see.

The last point, Mr Speaker: the flaw in his proposed amendment is that there is no reference to such wording as 'without unreasonable expense' in his new clause (3A) because without these words it would mean that the department would be legally obliged to provide a Manx Gaelic if enough parents asked for it, even if the expense was so horrific that the department had to cancel education in other areas -

Mr Karran: So there is not a commitment there.

Mr Rodan: - and it does seem to me that for such an amendment to have any hope at all the words 'without unreasonable expense' would have had to be included, but the fact of the matter is the amendment is not necessary because it is already happening, Mr Speaker.

The Speaker: Hon. members, the motion is the amendment standing in the name of Mr Karran. All those in favour please say aye; against, no.

A division was called for and voting resulted as follows:

For: Messrs Rimington, Duggan, Mrs Hannan and Mr Karran - 4

Against: Messrs Gilbey, Quine, Rodan, Mrs Crowe, Messrs Brown, Houghton, Henderson, Braidwood, Shimmin, Downie, Corkill, Cannell, Gelling and the Speaker - 14

The Speaker: The amendment fails to carry, 4 votes in favour, 14 votes against. I now put the motion that clause 3 and schedules 2 and 3 stand part of the Bill. Will all those in favour please say aye; against, no.

A division was called for and voting resulted as follows:

For: Messrs Gilbey, Quine, Rodan, Mrs Crowe, Messrs Rimington, Brown, Houghton, Henderson, Duggan, Braidwood, Shimmin, Downie, Mrs Hannan, Messrs Corkill, Cannell, Gelling and the Speaker - 17

Against: Mr Karran - 1

The Speaker: Hon. members, the motion carries, 17 votes in favour, 1 vote against. Clause 4, hon. member.

Mr Rodan: Thank you, Mr Speaker. Clause 4 lays down special rules for the sharing of the use of maintained schools - that is, church schools - between school purposes and church purposes. The main sub-clauses, by starting with the basic principle, lay down the machinery of how this would happen in practice. I beg to move that clause 4 stand part of the Bill.

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

The Speaker: Mr Karran.

Mr Karran: Vainstyr Loayreyder, I would just like to ask on this clause, how does this change the original Education Act of 1922 when church schools became part of the state system? Do the same clauses to the existing legislation exist where the assets, if any of these properties are sold off, go to the Church for Christian teaching? Could the hon. member tell us whether he is staying with the existing spirit of the present legislation? I must also say, speaking to this clause, that I am quite appalled that when you do move amendments in this hon. House they do try to mislead; they should at least do it when the mover of the amendment has an opportunity to answer any of the red herrings and nonsense that we had in the previous clause in this House, and I am appalled, Vainstyr Loayreyder, and if this is the way the majority want to go in this House then fair enough, we can all play games.

The Speaker: Mrs Hannan.

Mrs Hannan: Could I ask on this clause - it says 'care and use of premises of maintained schools' and these maintained schools are under the schedule - they are listed as St Mary's and St Thomas's - is there a clause in there which says that it should be within a reasonable funding - I cannot find the exact words that the minister used - 'without unreasonable expense'? He commented before on the amendment that was moved by the member for Onchan and he said he should have added into that 'without unreasonable expense'; why is there not in this clause also the rider that having a maintained school is taking into account the actual cost of operating a maintained school? It is exactly the same argument that was used: you have a number of parents that come together and want to provide an education of a particular nature for their children, whether it is with regard to St Mary's or St Thomas's, and the point that the mover was making before of the amendment was, he was saying that parents should be able to come together and say they wish to have their children taught culturally in the language of our birth. The minister said, no, that was not the case because he should have added in this about 'reasonable expense' and 'reasonable cost'; this to my mind is one law for one and one law for another, and I am disgusted that the government of this Island, who must have considered this clause because it has been on the agenda, could reject this clause that the member had introduced in good faith to put before this House. Can we take the rest of this legislation seriously when the minister can get up and make a statement that the mover of the amendment had not made the case for this cost? Then we come to the 'Use and care of premises of maintained schools', and that is two schools for the same purpose that the member for Onchan was suggesting in the last clause.

The Speaker: The minister to reply.

Mr Rodan: Yes, thank you, Mr Speaker. It is all very well for the hon. member for Peel and the hon. member for Onchan to get excited about this. I think the fundamental point that they are missing is that there is a clear difference between the provision of church schools and the provision of general education. The 1949 great compromise that was reached between Church and state whereby the church schools would be absorbed into the state system and the state would maintain them and that there would be attached to that all sorts of provisions for religious instruction and the laying down of the delivery of religious education is precisely because there was then no consensus on the matter. That is why it was necessary to go into this degree of detail and why the provisions are as they are.

Unlike Manx language education there is consensus (*Mr Karran interjecting*) over its importance, there is consensus as to the way forward, so that if parents want children

educated that way the general duties in this legislation already enable that to happen, and it is happening. There is consensus in that area and please do not paint a divisive picture that there is not, because the Isle of Man Government recognises that this is an important provision. It is one that parents today want for their children and the department is making the necessary provision and it has the power to do so, but when we are talking about the maintenance of church schools we are in a different historical situation, and in direct response to the hon. member for Onchan, who inquired whether the provisions of clause 4 replicated earlier legislation, I can tell him that certainly as far as the 1949 Act is concerned, this clause 4 reflects the legislative provisions of that time. I would assume that the legislation of 1949 altered the 1922 legislation, but the important thing to note, Mr Speaker, is that this clause 4 retains the status quo on how the shared use of maintained schools, church schools between school purposes and church purposes is actually to be carried out.

The Speaker: The motion is, hon. members, that clause 4 stand part of the Bill. Will all those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 5, sir.

Mr Rodan: Mr Speaker, this clause provides the making of instruments of government, establishing governing bodies for provided schools and maintained schools and articles of government which lay down the rules in accordance with which the school is to be run. It restates the existing law, except that the bodies are all called governors, whereas at present primary schools have managers, and the establishment of governing bodies for provided primary schools becomes optional. Mr Speaker, I beg to move that clause 5 stands part of the Bill.

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

The Speaker: Mr Karran.

Mr Karran: Vainstyr Loayreyder, we have got no problems with the likes of this clause or other clauses; what we were trying to get over is that we have a situation that if you have a particular religious denomination you have a right to be educated through that denomination, but if you want it to be through the Manx language you have no right, it is a matter of a political whim, and that is the point that we have been saying in each of these clauses. I have to say that the Education minister's heart is in the right place as far as the Manx language is concerned, but the Education minister is like me: we could be gone tomorrow. We are dealing with, in this clause and the previous clauses, the Education Bill 2000 to replace a 1940s piece of legislation, and that is what I am concerned about. What I do not want is a situation where some of us have worked unbelievably hard and had to be unbelievably obstinate, awkward and have paid for it dearly to get the Manx language on its feet in this country, but the point is, it should not be up to individuals it should be up to the law of the land. I support this clause as it stands at the present time, but I do think it is wrong when we do not get proper debate on amendments just because they have not been thought up by the executive. This parliament should be above that and I hope members will realise this.

The Speaker: The minister to reply.

Mr Rodan: Mr Speaker, I thank the hon. member for his support for this clause.

The Speaker: Hon. members, the motion is that clause 5 stand part of the Bill. Will all those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 6, sir.

Mr Rodan: Mr Speaker, this clause lays down the rules for such things as the appointment of teachers. Basically they are to be engaged or dismissed by the department, which is also to fix their salaries, but the governing body of a school may have a role in their appointment. I beg to move that clause 6 stand part of the Bill.

Mr Gelling: I beg to second and reserve my remarks, Mr Speaker.

The Speaker: Mr Henderson.

Mr Henderson: Thank you, Mr Speaker. I beg to move an amendment to clause 6 as stated in the order paper under my name, and the reason for this is that the amendment removes inconsistencies in the Bill, which at present refers to both religious education and religious instruction. Instruction is used in the 1949 Education Act but is an outdated term, and we need something more appropriate for this particular new Act, sir. I beg to move:

Page 7, line 15; for "instruction" substitute "education"

Page 7, line 19; for "instruction" substitute "education"

Mr North: I beg to second, Mr Speaker.

The Speaker: Anybody else wish to speak? Mr Karran.

Mr Karran: Vainstyr Loayreyder, I do hope that if the Education Minister has got a problem with any of my amendments he will at least use the facility of talking to the amendment so that we can at least try and be able to have the opportunity to have the debate in here so that we can then argue the points instead of having the sheep factor.

One of the ways to the back door that Manx Gaelic education can be destroyed. . . and what I am trying to do is not allow a situation where, although at the moment we have got a renaissance on so many fronts and as far as Manx Gaelic education is concerned, it can be destroyed through the department not having a positive policy in the training of teachers for the Manx language. I do not believe that it should be left to charity or the whimsical will of the department. If we have sincere commitment to the linguistic heritage of this Island I do not think it is unreasonable to place a responsibility on the Department of Education to provide adequate training facilities for teachers to be able then to be educated so that they can teach through the medium of Manx Gaelic. My amendment says that the department shall make arrangements for teachers in provided schools and maintained schools, if they so wish, to undergo training for the purposes of enabling them to carry out their duties through the medium of Manx Gaelic.

It is not an unreasonable request to put this into statute. What we cannot do and what we are doing is trying to put stuff in to make sure that it is in there so that it is not left to a whim or whatever; it is there as part of the laws of this national government of the Isle of Man, not the devolved government of a United Kingdom, and I believe that if there is sincere commitment in this hon. House we should support the amendment that I am proposing and I do hope this hon. House will do so. I beg to move:

Page 5, line 21; at the end insert -

"(5) The Department shall make arrangements for teachers in provided schools and maintained schools, if they so wish, to undergo training for the purpose of enabling them to carry out their duties through the medium of Manx Gaelic."

The Speaker: Mr Rimington.

Mr Rimington: I beg to second, sir. I do think in supporting this that it will actually give meat to the department's commitments in this direction. Well, I would be interested to hear, obviously, from the minister what his views on the amendment are, but I think this particular amendment does actually make sure that Manx Gaelic is kept to the forefront in our schools and that all proper provision and facilities are available for it.

The Speaker: Minister.

Mr Rodan: Mr Speaker, speaking to the amendment in the name of the hon. member for Onchan, Mr Karran, again I would simply say that such an amendment is not necessary within this Bill. The reason it is not necessary is because the Bill in itself, in the requirements for the national curriculum for Manx Gaelic, will, in order for that statutory requirement to be fulfilled, oblige the department to ensure the teaching provision for that as much as the teaching provision for any other subject, whether it be a compulsory one or physical education or religious education and that there are teachers who are able to deliver that sort of teaching, and that is the case for all the other subjects as well, obviously. It is not necessary to enshrine this in primary law. The requirement for this to happen is implicit in the fact that it is a statutory requirement to have Manx Gaelic taught in schools and I would simply ask: do not tie the department's hands in this way. Let us make the educational provision of resources in the way that is necessary to carry out our statutory duties.

The Speaker: Mrs Cannell.

Mrs Cannell: Thank you, Mr Speaker. My observations in respect of the amendment really follow on from the previous speaker. At second reading I welcomed clause 8, which provides the teaching of Manx Gaelic and the culture and history of the Island and that that should be included in the curriculum. Of course, it starts off by saying 'The department shall by order prescribe' such a curriculum, so if it is going to be prescribed by order and included in the curriculum, it necessarily follows therefore that if it is in the curriculum then there must be a teacher suitably qualified to teach that subject which forms part of the curriculum, and so it really is covered.

What the amendment is actually saying is that if teachers wish to undergo training for the purposes of Manx Gaelic, so subsequently if teachers who are not at the moment suitably qualified to carry out that which was prescribed under the curriculum, being Manx language teaching, then he can, if he wants to, take on additional training and the department will have to make the arrangements for him to do that. But that is not really addressing the question, because that does pose the question do we have sufficient Manx speaking qualified teachers at present enabled to complement the provision in the curriculum? And of course we do not know the answer to that. Therefore I do not really think that a case for the amendment has been made. If, of course, the mover of the amendment was saying 'Well, we only have X, Y, Z of those who are professionally qualified in teaching to enable the study of the Manx language and therefore we have X amount of schools who will also be exercising this extra curriculum activity, then there is going to be a shortfall. That actually has not been said or been covered in the moving of the amendment and I would have thought that, in order to make a case for something as significant as this, that would have to be the first point of research - to find out, is there a shortfall?

Again, the department would not have seriously considered including into the curriculum Manx Gaelic if it did not honestly believe that it can deliver the goods through the curriculum, and so I would have thought all of this has been properly evaluated and properly costed. I personally - and I know it is shared by other members too - really do welcome this being included in the curriculum, because at one time there seemed to be, certainly at officer level from my experience, an unwillingness to include this into the curriculum and at one point I stopped corresponding with the department and began corresponding with the minister himself; he was very positive and very favourable and said he would reconsider and would look at it again, and then we had the green Bill before us and there it is in black and white contained within the legislation. That is a wonderful achievement, in my opinion, for this department to have included it, acknowledged it and also included the culture and the history of the Island. Again, I would have thought if a teacher at the moment - and one would assume it might be a language teacher of German or possibly French in one of the schools, or Spanish or whatever - who is suitably qualified in the teaching of language and who wants to undertake study in relation to Manx Gaelic, would only have to make an approach first to his line manager, who would be the headmaster, and subsequently through the Department of Education to see what could be arranged to fulfil that aspiration. If there is the requirement there because there is a shortfall, then it may well be looked upon favourably. The door is open.

I support the Manx language being taught in schools. I support teachers being in a position to be able to teach appropriately in terms of this language, but I have not heard a case being made; I have not heard that there is a shortfall in teaching. On the contrary, what I have heard is that there is such a take-up in terms of this language that the demand is increasing year on, year in, and that there are more qualified people attaining qualification through the possibility of being able to learn it. Now, my own children undertook Manx language in primary school and one got an award for it and has stuck with it now and he is in a bigger school, and such is the same with other children. So this is being actively encouraged in his second school and he is being taught, as an extra curriculum activity, the Manx language. Obviously this legislation passes, it has appointed day order, it will then become a reality and I welcome that day.

I do not think the case has been made for the amendment. I think the department has more than covered it and I think their door is open in terms of any teacher who wants to pursue additional training to be able to teach, and I think as long as the door is open we should not be forcing it shut.

The Speaker: Mrs Hannan.

Mrs Hannan: Thank you, Vainstyr Loayreyder, I do not think you understand the situation at all. At the moment we do not pay for . . . Well, we do for continuing education, but we do not train Spanish teachers, French teachers, German, whatever, English teachers - yes, there is a grant for some and we pay fees for, but whether they come back to teach here or not, that is a different matter altogether.

There is very little input into Manx from the department. Yes, in recent times the department has been able to encourage teachers to take up teaching Manx and a number of us have worked very hard to get people back here who have got that facility, encouraged people to apply for the line management jobs that the previous member was speaking about, who is not necessarily the head teacher but could be the head of languages or whatever, but there are modern practices with regard to the teaching of the language and I think the department ought

to be congratulated for this new and innovative approach to the teaching of Manx. However, to get teachers to that situation they have to have Manx teaching and nowhere in here does it say that provision will be made for teachers to upgrade or change or develop, and this is what the member for Onchan is suggesting. The member for Onchan is suggesting that the department shall make arrangements for teachers in providing schools and maintained schools, if they so wish, to undergo training for the purpose of enabling them to carry out their duties through the medium of Manx Gaelic. The changes are coming through in how modern languages are taught.

Manx is a modern language. It is our language; we should be supporting it. We should be doing all that we can, and it is no good the minister coming back and saying, 'We are doing it.' Yes, it is down on the curriculum, but how are they going to get to the curriculum? How are they going to get to the culture and history of the Isle of Man if they do not put on training courses, if they do not provide the upgrading for, in this particular case, Manx Gaelic? I would hope the minister will support this. I know he has spoken against it, but I would hope that he can recognise that he is not going to be there for ever. (**Mr Cretney:** Hear, hear.) The officers in the department are not going to be there for ever. This legislation is 50 years old. Things change, and all the member for Onchan is asking is that this enabling power is there so that provision can be made in aiding teachers who wish to teach and who wish to adapt from Manx into a modern way of teaching Manx Gaelic. There are many organisations outside which give people the opportunity to learn Manx, but they then need to transfer that into the actual teaching of Manx Gaelic into this modern form, and I think the department should be congratulated on this new approach, but it does need to be continuing and ongoing and I would hope that the department will make provision for this along with their curriculum. They have to have something to feed their curriculum with.

The Speaker: Mr Shimmin.

Mr Shimmin: Thank you, Mr Speaker. I do not underestimate the sincerity of the hon. members for Peel and for Onchan in moving forward this amendment. However, at present I cannot support it. I will be supporting some of the later amendments in the name of Mr Karran; indeed, I believe his amendment in clause 8 is worthy of support. But this clause, if amended in this way, is too prescriptive to the department. It states that the department 'shall' make arrangements if the teacher wishes.

Now, as a teacher I am aware that there has been a limitation of the amount of training historically for teachers to upgrade their skills for the benefit of the children. This would put a responsibility on the department on request for these facilities to be made available. Now, I believe that the department should make them available, but I do not believe that they would have to make them available under any circumstance because that might not be in the best interests of the children in any school at any given time, so I would urge the minister to express a willingness to support teachers in their added training skills, whether it be Manx language or other areas, but I could not support an amendment which makes the prescriptive, and I am somewhat surprised by that because as a teacher I would normally want to nail down the department but on this issue I believe that there are other ways of moving the issue forward. This, I believe, is too much at this stage and I believe clause 8's amendment would be far better to be supported to actually try and advance the causes of the hon. member for Onchan. I

know it is not as much as he would like, but I do believe that this clause at present would be too prescriptive, sir.

The Speaker: Right, hon. members, I have two amendments to reply. Mr Henderson, do you wish to respond to your amendment?

Mr Henderson: No, sir.

The Speaker: Mr Karran?

Mr Karran: Vainstyr Loayreyder, I think the point is that I understand where the hon. member for West Douglas comes from as far as it being too prescriptive, but what I am saying to him is that we have had to put up with years of positive discrimination against the language. We had the problem of it being at the bottom. When we look at the UK national curriculum, where would the Manx language, where would Scottish, Irish or Welsh be in the English national curriculum? That is basically what you are following when we did it. What I am concerned about is that it is difficult enough to get people to train in the Manx language and I just want something in law to do so, and that is why I hope that the hon. member for East Douglas changes her mind.

The position at the moment is that it is a grace-and-favour thing whether they provide the training for teachers as far as putting the courses on, and that is what I am saying is wrong, in my opinion: the fact that we want something in there to say, 'Yes, I'm a teacher, I want to learn to be able to get sufficient education in Manx in order to be able to be part of the Manx language service', not 'Oh sorry, I've got 15 other priorities within the Department of Education to put in front for the training of teachers'. That is why I have moved this amendment.

I actually understand where the member for West Douglas is coming from, but unless I get some positive, primary legislation discrimination for the language, where will it go? We have to make legislation for the next 50 years. I am not going to be here in the next 50 years and many others are not going to be here - I very much doubt anybody else is going to be here in the next 50 years.

Mr Quine: I intend to be, Peter.

Mr Karran: Well, they say only the good die young so you might be around, hon. member! As I say. . .

The Speaker: Carry on, hon. member.

Mr Karran: Sorry, Vainstyr Loayreyder, but at the end of the day, seriously, the reason why I put this down is there is a problem at the present time: we have not got sufficient people taught to a level in Manx Gaelic to broaden the service to the levels that we want to, and it will never, ever be a priority. If you do not support this amendment, then what you are doing, hon. member for East Douglas, is going to allow it to be left as one of the issues that will never get to the top of the list.

We have heard great debate about the church schools; the difference why Manx was not treated the same in the 1949 Act was the Church had power, the Manx Gaelic speakers did not have power and that was why there was no commitment to the language in the original Act. That was the real reason.

Now, we talk about the Minister for Education. Again, I know he means well and I understand what he is trying to do: he is trying to leave the maximum power to his department to do whatever it wants. But he mentioned clause 8 and he said that in clause 8(2)(b) 'the teaching of Manx Gaelic and culture and the history of the Island' . . . The history of the Island - we were not an Island, we were actually the mainland of a set of islands. That is why you are sitting here today. But he talks about the teaching of Manx Gaelic. I have sat in here with previous Ministers for Education who were actually proud to say, the standard joke was Manx, 'one yessir, two yessir, three yessir', and that is the sort of level that I have seen in this House from previous Ministers for Education who actually took pride in agreeing with that sort of moronic policy - and I am not talking about the hon. member for Peel but before her time.

I have seen it as a non-Tynwald member of the Board of Education, and that is what I am trying to safeguard against. This Island is losing its identity, its way of life, and what I am wanting to do is at least to save what is left? Today I was down in Safeway's because they have a little group that meets there on a Tuesday to brush up on their Manx Gaelic to do conversation, but the situation is that those people should be regarded as part of the community and we should be able to have. . . Some have argued that there is *daa sleih gyn cheer* - there are two people and no country. I have argued that maybe if there is *daa sleih* there is *gyn cheer*; there is *daa sleih, un reiltys*. But the thing is that we have got a government here, and this government here is not just for the 90 per cent of people who cannot speak the language but we are here as a government for the 100 per cent of people in this country. We have not had that in the past, and I just hope that the Minister of Education agrees with me on the fact that in clause 8(2)(b) there are talks of teaching Manx Gaelic and when we have had ministers, chairmen of Boards of Education who would be proud and have said, 'Well, we learnt the "moghrey mie" ', good morning - well, you can bide with the education system of 'one yessir, two yessir, three yessir.' Well, I do not want a situation that that can ever happen again, and that is why I want this in this Bill, because I believe that clause 6 should make special mention as far as Manx Gaelic is concerned and I believe that if we do not put it in this Bill and we do not get positive discrimination, then it will go to the bottom of the list. It is all right at the moment with the present Minister for Education; that is fair enough, he is committed, and I would be committed -

Mr Henderson: So are the rest of us!

Mr Karran: - and the hon. member for Douglas North says he is committed to the language but we are not doing legislation for today, we are doing it for the future so that if we do have the moronic people that have sat in this House and there are still some in this House. . . who would take great pride in rubbishing, belittling and promoting a policy of linguistic genocide towards the language, and I just hope that this hon. House will support that there is an obligation so that if people are keen who are teachers and they want to go on courses for the Manx language, it is not on a grace-and-favour basis or a political whim, it is on a right, and that is all I am asking for. I do not think that is unreasonable, Vainster Loayreyder, and I do hope the House supports the amendment.

The Speaker: Minister to respond.

Mr Rodan: Yes, thank you, Mr Speaker. First of all responding to the debate on clause 6 as a whole, I will, of course, be supporting the amendment in the name of Mr Henderson, my

colleague in the department. That is, of course, a tidying-up exercise as far as the terminology is concerned: 'religious instruction' and 'education'.

I would like very much to thank the members who have contributed to the debate. It has focused, perhaps inevitably, on the amendment of the hon. member Mr Karran, and I do recognise that historically the national language has not been allowed to develop, has not been resourced to develop the way that a number of people would have wished. Those days are now passed and government as a whole, I think, recognises that in a European context and in an international context it is increasingly important (*Mr Karran interjecting*) to support the national language as a symbol of national identity and sovereignty. We all recognise that.

Now, I understand the passions with which the hon. member for Onchan views this subject, and the hon. member for Peel. I could be forgiven for being a bit disappointed in some of the comments that have been made, although they have been qualified, I think, by a recognition of the progress that has been made. I think the main disappointment is that without this amendment the legislation is going to be defective and that what is happening cannot progress or, for the want of it, it will not allow progress to be made in either the teaching of the national language or the delivery of the national curriculum in the national language.

The hon. member for Douglas West, Mr Shimmin, of course made the very good observation that the amendment was overly prescriptive, and the hon. member for Douglas East, Mrs Cannell, in her very supportive comments, of course recognised the progress that has been made, and she too recognised that it is not necessary to have this included in the legislation. And the reason I say it is not necessary is because what it is actually saying is that the department shall make arrangements for teachers in schools if they so wish to undergo training for the purpose of enabling them to carry out their duties through the medium of Manx Gaelic. Well, the department and this legislation is actually doing something better than that: it is not making arrangements if teachers wish to undergo training; because of its new statutory duty to teach the language, it is implicit in that that there have to be arrangements in place for the training of teachers of the Manx language, but secondly, in pursuit of the statutory duty to provide education in accordance with the wishes of parents - and that is a statutory duty - if the wishes of a group of parents are that the primary education, for example, of their children, the way they are taught the national curriculum, the core subjects of maths, English and science, for example, be taught in Manx Gaelic - not the teaching of the language but the teaching in the language - if that case is made to the department we have a statutory duty to do it, and that is in the law, so that is why I am saying not only is this unnecessary but, because it is overly prescriptive and says the department shall make arrangements if teachers so wish to undergo the training, we have already gone one better than that: it will have to happen in pursuit of the statutory obligations that are on the department. Therefore again I say it is not necessary to support the amendment, well meaning as it is, and I thank the other comments supportive of this clause. Thank you, Mr Speaker.

The Speaker: Right, hon. members. I have two amendments before me. I will take the first amendment now - that is, the amendment in the name of Mr Henderson. All those in favour please say aye; against, no. The ayes have it. The ayes have it.

I now take the amendment in the name of the hon. member for Onchan, Mr Karran. All those in favour please say aye; against, no. The noes have it.

A division was called for and voting resulted as follows:

For: Mrs Crowe, Mr Rimington, Mrs Hannan and Mr Karran - 4

Against: Messrs Gilbey, Quine, Rodan, North, Brown, Houghton, Henderson, Braidwood, Mrs Cannell, Messrs Shimmin, Bell, Corkill, Cannell, Gelling and the Speaker - 15

The Speaker: Mr Karran's amendment - 4 votes in favour, 15 votes against.

The motion is that clause 6 as amended by Mr Henderson stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 7, sir.

Mr Rodan: Mr Speaker, clause 7 makes special provision for the appointment and dismissal of reserve teachers of religious education in maintained schools - that is, church schools. Sub-clause (1) requires a maintained school with a staff of three or more to have teachers selected to give RE teaching in accordance with the trusts applying to these schools. Other provisions relate to the duties and obligations of foundation governors in respect of employing and dismissing reserve teachers. I beg to move that clause 7 stand part of the Bill.

Mr Gelling: I beg to second, Mr Speaker, and reserve my remarks.

The Speaker: Mr Henderson.

Mr Henderson: Thank you, Mr Speaker. The amendment I am proposing to move for this particular clause is the same as the previous amendment in that it removes inconsistencies in the Bill which at present refers to both religious education and religious instruction. 'Instruction' is used in the 1949 Education Act but is an outdated term and we wish to use something more appropriate to this Bill. I beg to move:

Page 7 line 25, for 'instruction' substitute 'education'.

Page 7 line 32, for 'instruction' substitute 'education'.

Page 7 line 38, for 'instruction' substitute 'education'.

Mr Houghton: I beg to second, sir.

The Speaker: Mr Karran.

Mr Karran: Vainstyr Loayreyder, this is just another classic example of what we were on about before. Because it is religion, because they had such fantastic power it was all right for them to have the situation where we can have something in primary law as far as religion is concerned and protecting different religious groups but we have got to leave it to grace and favour as far as the Manx language is concerned. I just think that it is a sad day in this hon. House that once again there is one law for some in this country and there is another law for others, and I think it is appalling that we cannot have, in primary law, statutory rights as far as the Manx language is concerned. I am fully aware of what has gone on with the Manx language over the last 10 years, as more likely most people realise, but it once again just shows, as I say, that that can be left to the grace and favour and what will happen is that one day - I hope not - we will find that we will have another one of these morons that were totally opposed to the Manx language as a Minister for Education and decimate the lot, and all the good work that some of us in this country have done to try and get people to realise that we are a national government for all our people will be lost again and we will have the situation where we have to educate our people as far as the linguistic heritage is concerned through public bars and

private houses where it should not be done, and I am sorry but this is just another clause of it shows where the real power has been and the fact that we are not treating everybody on the same basis.

The Speaker: Minister to reply.

Mr Rodan: Mr Speaker, I note the hon. members comments but have nothing further to add. I beg to move.

The Speaker: Hon. members, I have an amendment in the name of Mr Henderson. All those in favour of that amendment please say aye; against, no. The ayes have it. The ayes have it.

The motion is that clause 7 as amended now stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 8, sir.

Mr Rodan: Mr Speaker, this clause makes new provision requiring the department to prescribe a curriculum for all provided schools and maintained schools.

Sub-clause (1) requires the department to make an order prescribing a curriculum to be followed by all registered pupils of compulsory school age at provided and maintained schools and that this order is to be laid before Tynwald.

Sub-clause (2) lays down the minimum content of any such curriculum. It must cover RE, Manx language culture and history - that is a new provision, assessment at specified stages and preparation for public exams - for example, GCSEs and A levels, and also physical education.

Sub-clause (3) requires all education at a provided or maintained school to be in accordance with the curriculum except so far as the department makes an exception for a special educational-needs pupil. Mr Speaker, I beg to move.

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

The Speaker: Mr Karran.

Mr Karran: Vainstyr Loayreyder, I do not intend to move the second set of amendments to do with vocational training for persons with little ability of attitude towards academic work on the amendments to do with page 8, line 19 and line 23, but I do wish to amend -

The Speaker: They are withdrawn?

Mr Karran: They are withdrawn, Vainstyr Loayreyder.

The Speaker: Thank you.

Mr Karran: It is the first one that I want to move, and that is that the department 'shall' establish a committee. I just think that again the principle of this piece of legislation is not personalities, it is not about today, it is about primary law and how we want our educational system to work in future, and I thank the Minister for Education for including Manx Gaelic within culture and history of the Island. But it is so wishy-washy, it means everything and it means nothing. The fact of the matter is that we have the history of the Island, but the Island that he is talking about is where we are now; where we have legislative ability to legislate for was the mainland of a greater country. That is why we are sitting here today; that is why we have

institutions such as deemsters, such as Tynwald, such as the breast laws; that is why we are here today, not because of the history of an island, the Isle of Man, but because of what happened. Now, we all know that we were all taught about 1066 but not about the Battle of Largs and the fact that how Tynwald was developed. So this amendment is fundamentally flawed to start off with - that is what I am annoyed about - in that it talks about the Island, the Isle of Man. It does not talk about the fact of how our constitution developed, how we were part of a greater thing; it talks about one thing about the history to start off with.

Now, admittedly there are not many more likely in this House that have a clear understanding of the Isle of Man and its history, which was a greater history and which involved the Inner and Outer Hebrides and it involved pieces of their mainland and the other mainland on the other side. Parts of Ireland and parts of England came under the jurisdiction of this Island. That is all part of the history of the Island, but the problem we have had this piece of legislation has again legislated for, so we have our kids given detailed information about 1066; they do not know about the Battle of Largs or the battle of anything else which had an involvement in the history of this Island that was part of a nation. That is the sort of thing that concerns me.

If we cannot even get that right, we have a situation here that this amendment as it is written worries me greatly, as I have said in clause 6, with the fact of the curriculum. I know people that are in this House that would be quite happy to see the teaching of Manx Gaelic through this clause, and it would be quite acceptable under the primary law: you teach all the kids how to say, 'Moghrey mie', 'good morning', and there is your teaching of Manx Gaelic. Who is going to argue? And I hope the minister can turn around and say that that is not the case, there is no clear thing that teaching Manx Gaelic, and that could quite easily be the case that if we could have the teaching of children to say, 'moghrey mie', 'good morning', and that is enough as far as honouring clause 8 is concerned in the Education Bill 2000 and I believe again that is a disgrace to be left to a whim when we are dealing with the primary law for the next 50 years, and that is what I am concerned about. I know that there are people in this House who actually would support that policy, who are ministers and who have said to me that it is a load of rubbish, the Manx language, and I do not mind them wanting to. . . That is their freedom and I defend their rights, but I believe that our freedom is to want our children to have that ability.

We have fought long and hard, and many of us in this House have no idea of what has had to be done over the last 10 years or so to get Manx on to the footing that it is on today, the skullduggery, but it should not be done through the back door; it should be something of pride. I fought to get, fought with the Manx language people to look towards Scotland where it is regarded as something of worthiness and where the educated elite look towards it. That is where we want them to look to and we want the Manx language valued on the same basis. I believe that we have got the door open with regard to allowing people to have the ability to learn their linguistic heritage, and we must not allow that door to shut. If this amendment does not go through, then that will be the case. You are talking with a forked tongue in this House as far as the language is concerned, because what will happen is that you will see two words, 'Manx Gaelic', in clause 8 but to what level?

I hope this House supports my amendment because I believe it will be a tragedy; if my amendment does not go through it is not worth the paper it is written on in this Bill and it

makes a complete farce of the education system in this Island as far as the laws of the land are concerned. We do not want grace and favour, we want firm legislative commitment. I hope this House will support my amendment. Vainstyr Loayreyder, I beg to move:

Page 8 line 23, at the end insert -

'(4) the department shall establish a committee, which shall include representatives of organisations concerned with the preservation and encouragement of Manx Gaelic, for the purpose of advising the department on -

(a) the provision for the teaching of Manx Gaelic to be included under section 8(2)(b) in the curriculum for provided schools and maintained schools; and

(b) any provision made in a provided school or maintained school for the teaching through the medium of Manx Gaelic.'

The Speaker: Mr Shimmin.

Mr Shimmin: Thank you, Mr Speaker. I would urge the House to disregard some of the comments of the previous speaker because I do not think he sold his case very well, but I think the case is very worthy, so I would like members to actually look again at what he is proposing because, in my view - and I am pleased to second it, Mr Speaker - it is the way forward. It is one where it is not prescriptive, it makes sure that the department has advisory capacity of people with involvement with Manx Gaelic, it means that the department will consult, but there is no compulsion upon the department to have to follow every bit of advice they get.

Now, as a teacher I fought long and hard to try and get representation from the professional teaching associations with the department, and I remember, when the minister was the hon. member for Peel, we had some interesting meetings, but what it did was to take a lot of the conflict out of the issues of teachers being dissatisfied and moaning because they had the platform there where they could be a voice that could be listened to within the highest area of the department.

Now, surely the support that members give to Gaelic speaking is already being evidenced. The hon. seconder of the clause is somebody who constantly makes representation for people to have consultation. That is all this clause does: it enshrines within primary legislation the compulsion upon the department to discuss on an area which I think this House genuinely supports, and I would urge the minister and his seconder to actually embrace this and show the commitment that, yes, the department is serious, it will put in primary legislation and it will actually consult with those bodies who have fought long and hard as a minority on the Island to get their voices heard. It would give them a voice at the table, it will allow them to influence and continue the good work which the mover of this amendment has put in this House with others and I do believe that this Court should support it.

The Speaker: Mr Rimington.

Mr Rimington: Thank you, Mr Speaker. If I could speak to move my own amendment and also everything else that is on the table at the present moment in time, I would like to thank the department for the discussions that I had on this particular issue. Believe it or not, the hon. member for Onchan, Mr Karran, had similar thoughts completely independently, but in discussion with the department realised that it would be improper or impractical to put in

something on vocational training at this point in the curriculum; it was not the appropriate framework in primary law to be prescriptive on the different elements of the curriculum.

The amendment before you, puts into primary law that there is an obligation to consult, which I would hope the House will agree is quite a reasonable one and is not prescriptive to the department. It does not say it should be this or that or the other. They have the wider ability to consult with whoever they think is appropriate besides the obvious body of people actually delivering the service - the teachers.

Like the hon. member for Douglas West, Mr Shimmin, I was not quite clear what the hon. member for Onchan was talking about when moving his amendment. He spoke to the issues in a great generality but did not actually address the amendment which he had put down on the order paper, which is one that I would also support for the same reasons as mentioned by the previous speaker, in it does not prescribe the department unnecessarily; it does - and I am sure that the department would have to do such a thing anyhow - actually bring a body of people together to give them that sort of advice so that they can put their desires under subsection (2)(b), the teaching of Manx Gaelic and culture and history, forward. I think it is a very sensible amendment.

In respect of (2)(b), the teaching of Manx Gaelic and the history and culture of the Island, yes, I am very grateful that is in there and I was one of the probably many members who put the motivation in that direction in the process of consultation on this Bill.

I would just, if I may, Mr Speaker, like to put a little bit more emphasis on the culture and history side, not to denigrate the Manx Gaelic side, but that has been and continues to be well promoted. But I believe that we ought to look more carefully at the history and culture side through our schools, because I believe that is very important in the way that children relate to the society they live in. If history is an abstraction and it is something beyond their own experience completely, then it has little relevance, but if it relates to the society and physical environment that they live in, then that starts to mean something to them. I should think it is important in terms of what I would call our wider social policy of trying to retain some idea of community in society and give that identification to people. It is there irrespective of whether they are Manx born and bred or whether they have just come over from Liverpool on the last boat. It is that actual identification: 'This is where I am, this is what has happened here.' I think that is ever so important. I have in recent years encountered quite a bit of Manx history and culture and it is absolutely fascinating, but that 'quite a bit' is actually only a mere fraction of what is out there to be learnt. Through our own history and our culture, you can see the culture and history of others. It does not isolate you from the outside world; it is in fact just the eyes from which you look at the outside world, and if these the eyes and glasses do not become too clouded the vision makes sense because you can relate it to your place of being. That culture goes back from the potato riots in the nineteenth century and all that social history going right back to the prehistoric times. Everything is changing in that field: dates that were thought to be 1500 BC are now slipping back a few thousand years. It is a very fascinating area. Our whole history is there to be learned and understood and to give meaning to people. I think at least initially the body that the hon. member is suggesting that we set up should encompass that as well and not just be restricted to the language itself, but to provide material in order to draw that information together, because you need to do that from an educational point of view. You cannot just say to the schools, 'Off you go, we are going to teach you all about that'; you have

actually got to provide resources and help them on their way. You do not have to restrict them and say, 'You have only got to teach that.' Obviously you have got to make some help to the schools for teachers who are busy enough as it is and cannot necessarily draw up new curricula and new ideas at the drop of a hat. So that is something that the department could have a great role in doing. The teaching of culture and history is in the schools at the moment is there but is a hit and miss affair. It depends upon the teachers who are in a particular school and their enthusiasm. So we do need to improve in that area and, as a medium-to-longer-term project, it would be very good to see if the department would consider getting accreditation for a Manx history course up to GCSE level. I know that cannot be done at the drop of a hat and would take quite a considerable bit of work and organisation, with many factors involved. That would be a beneficial target to be working towards.

If I may just move on, Mr Speaker, to the first part of the clause, which is the notion of the curriculum which will be by order prescribed, fortunately curriculum is not described in the supplemental section in clause 59, so we do not have a clear definition of that, but what we do know is that in clause 58, under sub-section (2), orders will be laid before Tynwald, and following on the discussions we had at the second reading, there is this question mark over what is in the middle between the many boxes of syllabuses and the small piece of pink paper that represented the Manx national curriculum at the last point of asking. The curriculum is a body of knowledge and it is a quite wide body of knowledge and people write books about the curriculum, and there are newspaper articles about the curriculum. It is not just a little piece of paper; it is a very important thing. In my own area, the secondary school has just changed its timetable. That is not a neutral thing. That represents curriculum change, because you are changing the nature of the lessons. In this case you added on a certain amount of teaching in the day, took that off the lunchtime. There is less sport being taught. Now, I am not wishing to go into the details of whether the curriculum change was a good or bad thing, I do not think that is the issue, but when you do change a timetable, a simple mechanical thing like that, it actually reflects a change in the curriculum, because there are winners and losers when you do that, and that is very important.

Why might a timetable change? Could it be because there are targets set by the department? Perhaps the department is saying 'We want this, we want so many passes at such and such a grade in such and such a subject' and whatever and the schools, therefore, have to follow and therefore other things follow from that in the organisation of the school day. So it is what is coming in under this clause 8, by order, to be laid before Tynwald. It is really at this point in time an unknown quantity which I would like to see some sort of framework that we are moving towards. There is a body of knowledge there, the direction that you want education to go in, when you could say you want to be all grammar or want equality of opportunities for all, nothing but comprehensive to the extreme - there is a whole variety of viewpoints and thoughts that can be taken. Even within my own subject or one of my past subjects, in mathematics, which you would think would be the cleanest and simplest subject to say, 'oh, well, it is just this,' it is not. There are huge varieties of thought within in it about whether you start teaching people more for life skills and less on the algebraic side and so forth. There is a huge number of areas which have to be addressed in the balance of things, and what has never come before this House as far as I understand, or another place, is what that body of knowledge is, and that is what I would like to see the minister, not say what that body of knowledge is but how he

intends to bring it forward in relation to this clause 8 and clause 58, subsection (2). Thanks. I beg to move my amendment:

Page 8, line 23; at the end insert -

“(4) Before making any order under subsection (1) the department shall consult such organisations representative of teachers, and such other persons and bodies, as it considers appropriate.”

Mrs Crowe: I beg to second the amendment from my hon. colleague for Rushen. I think we have lost track on both amendments, actually, at the time of speaking. I thought we were looking at the implementation of a consultative process which maybe should be in primary legislation. I would be amazed to hear from the minister that there was not such a consultative process, but I do take the point that on occasions it is perhaps better to have this process outlined in primary legislation.

The Speaker: Mr Braidwood.

Mr Braidwood: Thank you, Mr Speaker. Nobody can deny that progress has been made in teaching Manx Gaelic in the schools since 1991, but I will support the amendments standing in the name of Mr Karran, because if we look at clause 12 on religious education and worship, it says there ‘The department shall establish a committee for the purposes of exercising a function specified in subsection (4)’ and that is on the syllabus of religious education required by the department for use in provided schools and maintained schools. I do believe that because it is still in its infancy for Manx Gaelic and culture and history, then I can see nothing wrong with the department establishing a committee to include representatives of all organisations who have that knowledge. Therefore, I will be supporting the amendment standing in the name of Mr Karran.

The Speaker: Mr Rodan speaking to the amendment.

Mr Rodan: Speaking to the amendment, firstly an amendment of the hon. Mr Rimington, Mr Rimington has had some discussion with the department and I would like to say that we see merit in his amendment and we think it is a useful thing to have included in primary law and I will be supporting it. The reason I say that is not necessarily because it is introducing something new, because there are appropriate levels of consultation with the teaching profession and others over the curriculum and over curriculum development and new subjects going into the curriculum. Having it in primary law provides a convenient opportunity as well to address perhaps some of the matters and the issues raised in those who advocate a committee to be set up for the purposes of developing the Manx Gaelic and culture and history new statutory provision.

Now, Mr Speaker, speaking to the amendment of the hon. member, Mr Karran, he wishes the department to establish a committee along the lines of the Religious Education Advisory Committee. Indeed, the hon. member Mr Braidwood made reference to that to advise on the Manx Gaelic element in the ordinary curriculum and in the teaching of Manx Gaelic. The question I would ask is, why then should not music or drama or physics or English or maths also demand its own statutory advisory committee? Now, the Religious Education Advisory Committee which is a staffed committee, is not a valid precedent because, as I have previously said, that is required because it embodies the great compromise on religious education that

underlay earlier legislation, reflecting the fact that there was no consensus on the subject of religious education. That is why you need an advisory committee: to spell out in detail how religious education should be addressed in state schools.

I believe that, unlike the argument of Mr Shimmin who says that it should be supported because it actually is not prescriptive, a committee would be prescriptive. It is not necessarily the best way to do it, so I shall spell out how it would be done without a committee. Because now we have a statutory obligation to teach Manx language, culture and history the progression of the syllabus on how that curriculum is to be developed will require specialist input. Unless we have that, it will not happen. We need specialist input and that input will come about through processes of consultation, the way it happens now on other subjects in the curriculum, and we would envisage very close liaison with Manx National Heritage, the Manx Heritage Foundation for the working up of the new materials that will be necessary, the new CD Roms, the new Manx language textbooks, the developing of texts in culture and history including the distinctive history of the island, Mr Karran - it is not necessarily British mainland so-called history; that will have to be part and parcel of this curriculum. We will need specialist input, but we do not need a committee; what we need is the teaching profession and the Department of Education to work this way up in the way that they work up the curriculum development of other subjects. Another example: we cannot teach these subjects successfully to our young people if teachers themselves have no knowledge of Manx history and culture and so on. If members are not aware I will tell them now that for the past two years the Department of Education has had in place an induction course for new teachers principally aimed at teachers new to the Isle of Man, to give them background into the culture and distinctive history of the Isle of Man which makes this a different place than any other local education authority in which they might be happening to take up employment. That has been done successfully for the past two years and I would see that as a step that we can usefully build on. But that is not in statute law; That level of detail is not in statute. One of Mr Karran's complaints was, to quote him - he was criticising the lack of detail and leaving it 'to a whim'. And he said it was wishy-washy to say that the curriculum must include the teaching of Manx Gaelic and culture and history. Well, it is not wishy-washy to say that. It cannot be that the level of detail he is referring to cannot be put into primary law.

Mr Speaker, I would ask in respect of the amendment of Mr Karran that hon. members are not prescriptive on how this is done. Other subjects do not require their own statutory advisory committee, nor should Manx be singled out. I want to see it become a standard subject so it does not require special treatment. It stand or falls on its own merits. (**Members:** Hear, hear.) Why are you singling it out for treatment that it does not require to have? Let us have it seen as part of the mainstream, (**Mr North:** Hear, hear.) a subject in its own right as important as maths, English and other core subjects and as important as other languages. Then, when it is part of the mainstream, it will surely get wide acceptance. It does not require to be singled out in this way.

Again, because it is in statute law that it shall be taught, it obliges the department to have in place structures to ensure that for the syllabus for different levels of education, for different ages right through the compulsory age of 5 to 16, there is appropriate teaching at appropriate levels. Leave it to the department and the teaching profession via this new amendment, this new statutory obligation to consult. If you had any doubts about the department doing what I say has to do, you have this safety of Mr Rimington's amendment which obliges the department to

consult teachers and other appropriate bodies over the curriculum, and that is the key to it. If that was not in I would say that you could be forgiven for going for Mr Karran's amendment, but it is in and that, together with what I have said, the department will have to do in pursuit of its statutory obligations, should be quite sufficient.

The Speaker: Mr Shimmin to Mr Rimington's amendment.

Mr Shimmin: Thank you, Mr Speaker. Having taken your guidance, sir, I will be supporting both amendments, which I believe is in order. I am grateful that the minister has at least accepted the principle on Mr Rimington's amendment. However, within that amendment it does only say 'as it considers appropriate', and speaking loosely to Mr Rimington's amendment, which I will support, I do feel that there is a need to kick-start and prove the validity of the words of the minister by supporting both amendments; if it is not enshrined within the primary legislation, the department will not necessarily consult to push forward the Manx Gaelic. If it does not consider it appropriate, it would not need to do so. I therefore believe there is merit in supporting both of them, and the fine words for the support for the Manx language - I believe a bit of positive discrimination within this primary legislation would be very beneficial for this House to show publicly that it stands by the commitment that it has made verbally.

The Speaker: Mrs Hannan, then Mr Henderson.

Mrs Hannan: Thank you, Vainstyr Loayreyder. The minister moving the legislation asked, why should Manx be singled out? I think I would like to answer that. At the moment, all of the subjects that are taught with regard to the curriculum under eight are covered by education in general throughout. People go off to university to train in colleges to take teachers' courses in how to teach these subjects. What we have got with Manx and, to a certain extent, culture and history - although people do learn history and they can read history and they can disseminate it once they have a history background - when it comes to Manx Gaelic, this does not have that background, and I feel that Manx Gaelic should be give that background. You have got all sorts of curriculum studies going on in the UK which we can use and we can get that information and use it. There are studies going on in the teaching and how things can be taught better.

All that the member for Onchan is suggesting is with this that a group of professional people with regard to the language should be consulted with the way forward. Where you have not got that background anywhere else, it does not exist. The member for Onchan talked about looking to Scotland. Yes, Scotland are doing it but they do not have the blueprint on Manx Gaelic; they do not have the background of Manx Gaelic. They do not have the cultural background and the depth to Manx Gaelic, and unless you have actually learnt Manx Gaelic you do not understand what I am talking about. It is the mentality; it is the whole of the situation of learning the language; it is the thinking, everything. It is not just learning the language; it is all of the former that you have to understand and the background. It is for that reason that the amendment moved by the member for Onchan must be supported. Every other subject which is being taught it has got this curriculum back-up, but the Manx language has not got that curriculum back-up. In the UK they have curriculum bodies set up to look at how these things are taught, and therefore that is the reason why this amendment should actually be supported so that the department have a professional body to refer to, to get that professional information from this body.

I would hope that the minister will support this particular area, because without it you have not got the depth, the understanding that we have of English, French, Spanish, maths and the sciences, and why should we not be doing our little bit in support of the curriculum, support which is actually written in the legislation? Therefore, we do need this in-depth support which you have in every other subject everywhere else.

The Speaker: Mr Henderson.

Mr Henderson: Thank you, Mr Speaker. In speaking to the amendments and particularly that of hon. member Mr Karran, I just have a few points to make. The first thing that I would like to say is, the only disgrace that he mentions is that of using something in our national culture as a political football here this afternoon. The worst thing that can be done here today is to highlight the Manx language, our culture and our rich heritage in the fashion it has been done. That is the first thing. They are not doing themselves any favours as far as I can see whatsoever at this point in time.

Secondly, I would like to point out that there seems to be an impression of non-consultation, big, bad department which does not like Manx nor its own history, et cetera. That is not true. The consultative process which you have all been lambasted with this afternoon and told that it does not exist and that nobody talks to anybody and the big bad department does not like Manx - that is not true.

Mr Karran: Nobody said that.

Mr Henderson: The consultative process is ongoing at the minute and I have been part of it. What I would say again is to err on the side of caution when we are going down these roads of exploding myths and legends into the public arena in front of the press, giving certain impressions and making certain innuendos that things are not happening, or this is not happening or A, B and C. Things are happening and they are at a very tentative stage. As I say, I have been part of them, and I want it to go on public record that any of the Manx language groups can make contact with our department at any time. We are only a phone call away, and if Mr Karran has not been bothered to find that one out, he has made some serious omissions here this afternoon in his delivery during this debate, because I can go on public record as clearly stating that the groups can and have and do ring our department and we respond. I have gone and negotiated with them and talked with them and picked up their concerns. Not only that - the hon. minister, I am sure, may confirm his own consultations as well, without all the shenanigans of 350 amendments and all the rest of it. We have done it off our own bat. We recognised the worth of this.

Mrs Hannan: Is 'shenanigans' a proper parliamentary term to use in the House?
Interjections and laughter

The Speaker: Carry on, hon. member, please.

Mr Henderson: I did not swear, Mr Speaker. We are very supportive of our culture. In fact, it has been omitted that there are two full-blooded Celts sitting in the department very much in favour of the heritage and so on and supportive of the Manx language. What we have heard this afternoon is a disgusting carry-on - that somehow it is going to be sidelined, shoved away. Far from it, and as long as the political members that are present are on the department it will get the support it justly deserves (*Interjections*) There is no question of that. It has been embedded

into our way of thinking in the department now and I am sure, with the roll it is on now, it is not going to come to a stop, Mr Speaker; it will only grow. But what I would like to reiterate is, exploding it into the public arena in the hysterical fashion that it has been is going to spoil it. You have taken the gloss off something that is historical, rich in heritage and it is a unique part of the Isle of Man's identity, and this kind of thing is not going to help. We need to progress on the lines that I have talked about: the consultations, the meetings that have gone on in the background. I would like all members to be aware that that has happened and that is the level of support from this department and from its political members and senior officers.

Mr Rimington's amendment is fine in what it seeks to do as a consultative process, if we must. Mr Karran's amendment - bin it! (*Laughter*)

The Speaker: The member for Ayre, Mr Quine.

Mr Quine: Yes, thank you, Mr Speaker. I mean I think this whole debate on this clause 8 is becoming somewhat farcical. One is claiming that 'I am more Manx than you and therefore I should have credit for progressing' X, Y and Z.

The issue is really, as I see it, quite straightforward. We are taking a huge step forward in this legislation. (**Mr Henderson:** Hear, hear.) In clause 8 we are prescribing - not over-prescribing - that the teaching of Manx Gaelic and the culture and history of the Island, shall be part of our curriculum. We go on to say that in bringing forward, or putting meat on the bone, it will be done through orders which, the department will bring, so there is going to be some meat on the bone again when we come to that stage. So far as consulting goes, I think it has been made quite clear by the minister that they can and they do consult. I do not think that has been disputed.

But then we reach a point where we have got two amendments, which come at this from a different angle. We have a subject-specific amendment in the name of Mr Karran, which I do feel is over-prescriptive, and we have an amendment in the name of Mr Rimington, which I think is quite sensible because that is simply putting into a statutory form what happens now to a very large extent and is in any case, if you look at it, broad enough to cover any consultation or to put in place a requirement in a statutory form, for consultation on Manx Gaelic because it is part of the curriculum. If you read Mr Rimington's amendment, it uses the term 'and any other body': 'Before making any order under subsection(1), the department shall consult such organisations, representatives of teachers and such other persons and bodies as it considers appropriate.' That is what it is required to do in relation to advancing the curriculum, and Manx Gaelic and history and culture is part of that.

So I have no problem with supporting the amendment in the name of Mr Rimington. I think that is reasonable, it is fair logic and it is of general application, but to go along with the specific one in the name of Mr Karran and, more ludicrous still, to have what is proposed by Mr Karran sitting alongside of what is proposed by Mr Rimington - well, I think that really is farcical. As far as I am concerned, sir, I am happy to support the amendment in the name of Mr Rimington and, in doing so, it is my belief - and I think I am right in saying this - that that in itself imposes, in a statutory form an obligation for the department to consult in relation to Manx Gaelic and all the other aspects of the curriculum.

Members: Hear, hear.

The Speaker: Right, can I ask those who made the amendments to respond? Mr Karran.

Mr Karran: Vainstyr Loayreyder, I seem to see that there is a bit of amnesia in this hon. House for the hon. member. I know how it is -

The Speaker: Would you like to address the chair, sir?

Mr Karran: Vainstyr Loayreyder, maybe the Minister for Education will remind the hon. member that it is not so long ago I was saying in this House that you do not have to be Manx-born to be Manx. It is Manx in your heart as far as that is concerned, and I do find it rather annoying once again the rubbishing and the misrepresentation of myself within this House. I find that it is unbelievable that somehow he is trying to make out that I am trying to make out to be more Manx than anybody else; it is not a matter of that. We are talking about primary law today and I am sorry that the hon. member finds he is embarrassed, but then I think he should be embarrassed like most of you in this hon. House. You are dealing with an Education Act and you are not even putting into the primary law of the Education Act the rights of the linguistic heritage of this Island.

We hear from the hon. member for North Douglas. Well, I just wonder sometimes. I pat the hon. member on the head now and again, but when I think of some of the things that I could say in this hon. House. . . but I will not, because I would not lower myself, Vainstyr Loayreyder. Quite frankly, I am appalled. I am appalled at some of the senior members in this hon. House aiding and abetting the nonsense that came out from the member about that. (*Mr Henderson interjecting*)

Now, the situation is, we heard from the minister and obviously the minister has not been here very long, (**Members:** Oh!) so he does not understand the situation of what happened with the language, and he asks, why treat Manx Gaelic any different than maths or English or science? Well, I will tell you why, and why I topped the poll in Onchan, because people come up to me who are members of this House and whose wives come up to me and say, 'Yes, you are right, you keep on it, son.' I can remember as a child being told to stand on a chair and put a dunce's hat on my head for using the Manx language, and that woman is still alive; it is not the dead language, as my colleague says, that nobody knows. That is the reason why I want. . . Because when the minister can turn around to me and say that people can be caned for doing the right language - and I am not against corporal punishment, but I believe in fairness and justice, and that is why I am looking towards the Manx language.

One point that I will say of the amount that came from the hon. member for Douglas North - he was talking about his personal stance on the Manx language. I was not on about his stance, or the minister's stance. What I am on about is the law of the land, in this country. This language should not be left to the whim. . . because I am afraid he had more likely not even left school when this argument started on the language and he certainly would not have any political aspirations when we started on this road. I believe that it should not be left to political whims as far as the language is concerned. That is why I believe that the minister is wrong. If the minister can tell me of anybody who has punished in any way for using maths or science or English, then fair enough, I will understand, but in this lifetime, in our education system, the Manx language has been positively forced down.

The point the hon. member for East Douglas asked, about the religious committee - he asked why there is a religious committee and there was not any input for the Manx language.

Well, you know the answer: they had power. That is the answer and that is the truth. Now, many in this House may not like what I say in this House, but the fact is what I say in this House is the truth and what is really happening outside.

The last point I would make before I sit down: we heard from the Minister of Education about it being left to the teaching profession. That is nonsense and he knows it. It will be left to his officials in his department. It will not be left to the teaching profession as regards the curriculum. That is why you have got civil war there at the moment. It will be left to his officials, and who will pull the strings of his officials? It will be the members of the Department of Education. It will not be left to the teaching profession and it is all right, my hero over here, of Illiam Dhone, about how he is more Manx than the rest of us, but he is not going to be here forever, no more than I am (*Interjection*) and no more than the Minister for Education, Vainstyr Loayreyder. This debate today is about the laws of the land and all I am looking for is the right to have in primary law that it should not be grace and favour and we should not allow a situation in years to come, when we have somebody else who thinks that it is smart to say, 'We've got Manx Gaelic, you have learnt 'moghrey mie', that is all you have to do.' That is what you are doing if you do not put my amendment in with the amendment for Mr Rimington. That is why we have got civil war within education at the moment, not just in this country and the country next to us because there is no consultation.

This hon. House can choose what it wants and history will prove it, but what I want is one nation, one people and one government that looks after everybody and looks after everybody's rights. So I do hope that the Minister of Education tells me, when he gets up, of anybody he knows in the Isle of Man who has actually, when they were child, had to stand there in school because they did their maths or their science or whatever. I know I can bring you to one member in particular whose wife said to me - and it is not that long ago, and that is what I want to do with this new Education Act - that it should not be the language of the dispossessed. It should not be left to grace and favour because it is a good vote winner. It should be part of the thing, and if you can do it for religion, then you should be able to do it for us, as part of the society in this country. You make your decision what you want to do, but I hope you will be proud of it in years to come when you have pushed it back into the hands of the extremists that some of us in this hon. House have fought to make sure that it is part of the education system.

Vainstyr Loayreyder, I beg to move my amendment and I hope common sense does prevail. The only people who should be in the bin is may be some of these people who are too blind to see what is trying to be achieved here today, which is common sense and putting it on the basis of not grace and favour.

The Speaker: Mr Rimington to respond to his amendment.

Mr Rimington: No, thank you, Mr Speaker.

The Speaker: Minister to respond.

Mr Rodan: Yes, thank you, Mr Speaker - an interesting debate on the Manx national curriculum. All I can say is, I hate to think what would have happened and what sort of debate we would have had if there had not been in clause 8 reference to the teaching of Manx Gaelic, culture and history, (*Interjections*) because if we have had this sort of debate when it is a new statutory requirement in the Isle of Man that the curriculum shall include provision, for the very

first time on a statutory basis, along with RE and PE, I dread to think. Anyone would think that there is a battle raging.

There has been for some time a meeting of minds. There has been an acceptance. It is now establishment thinking that the Manx language, the national language, culture and history are not only delivered and there are proper syllabuses worked out to deliver them, but actually they are now enshrined in law. Well, you would not have thought so if you had heard today's debate. I wonder what have we been arguing about.

The hon. member for Peel - and I will be brief, Mr Speaker because it has all really been said (**A Member**: Hear, hear.) - talks of the need for curriculum back-up and the sort of in-depth support that every other subject has, she says, and she quoted English, French, Spanish, sciences. Mr Speaker, those subjects do not have the support of primary legislation and advisory committees for them in primary law. They can only be delivered, of course, if there is proper support, but it is not in primary law.

I thank Mr Henderson for restoring some balance to the debate and for highlighting the consultation that is of necessity going on now, with language and cultural heritage groups which meet and discuss how we can progress all this, not because law tells us to do so but because it has to be done as a matter of policy and it will have to continue if we are to deliver what the law says we have to deliver. That is why it has to be done and we do not need to set up a committee in order for it to happen.

I come back again and thank Mr Quine for setting the context again of Mr Rimington's amendment. It, if you are in any doubt, is broad enough to include and necessitate the consultation on the language, history and culture, the consultation with the teaching profession - and that is the safeguard for Mr Karran if he does not trust the department in which he alleges civil war is waging at the moment and it is all being left in the hands of officers. Mr Rimington's amendment is the one that will oblige consultation between the department and the profession because it says so. That will embrace the specific of Mr Karran.

There has been a massive advance in the curriculum with this legislation. I am very disappointed at some of the language that has been employed and some of the sentiments that have been expressed. It has not been helpful; it has been quite unnecessary (**Mr Henderson**: Hear, hear.) I am sorry the department has not been given credit for having advanced the way we have to this point, to this historic day, (**Mr North**: Hear, hear.) to have in statute law the national language taught as part of the national curriculum. (*Mr Karran interjecting*) I am sorry that there are some members, not all, but a minority of members who do not trust the department or the education specialists to work up the right way of doing it and to think they need recourse to primary law to have it happen. It is not necessary. Please support clause 8 as amended by Mr Rimington. Thank you, Mr Speaker.

The Speaker: Hon. members, the motion is, first of all, the amendment standing in the name of Mr Karran. Those in favour of Mr Karran's amendment please say aye; against, no. The noes have it.

A division was called for and voting resulted as follows:

For: Mrs Crowe, Messrs Rimington, Duggan, Braidwood, Shimmin, Mrs Hannan and Mr Karran - 7

Against: Messrs Gilbey, Quine, Rodan, North, Brown, Houghton, Henderson, Cretney, Mrs Cannell, Messrs Downie, Bell, Corkill, Cannell, Gelling and the Speaker - 15

The Speaker: Hon. members, the amendment fails, 7 votes in favour, 15 votes against.

I will now put the amendment standing in the name of Mr Rimington. Those in favour please say aye; against no. The ayes have it. The ayes have it.

I now put the resolution that clause 8 as amended stand part of the Bill. Those in favour please say aye; against no. The ayes have it.

A division was called for and voting resulted as follows:

For: Messrs Gilbey, Quine, Rodan, North, Mrs Crowe, Messrs Rimington, Brown, Houghton, Henderson, Cretney, Duggan, Braidwood, Mrs Cannell, Messrs Shimmin, Downie, Mrs Hannan, Messrs Bell, Corkill, Cannell, Gelling and the Speaker - 21

Against: Mr Karran - 1

The Speaker: Hon. members, the motion carries, 21 votes in favour, 1 vote against.

Hon. members, the House now will stand adjourned to Tuesday next in Tynwald Court at 10.30. Thank you.

The House adjourned at 6.00 p.m.