

## REPORT OF PROCEEDINGS OF HOUSE OF KEYS

Douglas, Tuesday, 28th November 2000  
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 and Mr T A Bawden, Acting Secretary of the House.

*The Chaplain took the prayers.*

### Apologies for Absence

**The Speaker:** We turn to our order paper and I have to say that I have given leave of absence to Sir Miles Walker, who is indisposed.

### Heysham Port – Ownership and Sale of – Question by Mr Singer

**The Speaker:** Item number 1, questions. I call upon the hon. member for Ramsey, Mr Singer.

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

- (1) *Who is the owner of Heysham port;*
- (2) *are you aware of any proposal to sell the port;*
- (3) *would the Isle of Man Government expect to be consulted were such a sale to be contemplated; and*
- (4) *if the port were sold, how would this affect the Isle of Man Steam Packet Company services to the Isle of Man?*

**The Speaker:** The Chief Minister to reply.

**Mr Gelling:** Mr Speaker, the owner of Heysham port is Sea Containers Limited, and in a news release on the company's third quarter results published earlier this month there is a reference to the possible sale of Heysham. Now, the news release says that the company is also engaged in negotiations to sell the port of Heysham and part of the port of Newhaven and expects to complete these transactions in the coming months. The company feels that port ownership is not a core business and would be best left to others prepared to make the appropriate capital investment to improve the ports.

We would not expect to be consulted on any sale as that would be a purely commercial transaction between the parties, a number of ports of services into Heysham, and it is unlikely that the parties would involve the owners of all those other ports in their discussions. Certainly there is no necessity for them to do so, but I understand from the Steam Packet Company that if the port is sold the company is confident that the agreements they have in place will protect their services through Heysham, and the company says that any sale of Heysham should not constrain in any way their future plans for the Steam Packet business and their network of routes, sir.

**The Speaker:** A supplementary. Mr Singer.

**Mr Singer:** Thank you, Mr Speaker. Can I thank the Chief Minister for that answer. Is the Chief Minister therefore saying that, as a consequence of any sale of Heysham port, there would be the continuation of services to Heysham by the *Ben my Chree*, and are there any guarantees that there would be no redundancies amongst crew of the Steam Packet boats or at the engineering works?

**The Speaker:** The Chief Minister to reply.

**Mr Gelling:** Mr Speaker, certainly indications I have had from the Steam Packet Company are that that is the case. There would be nothing that would affect the services to the Island because they have already in place some agreements with the port of Heysham, and of course we must remember that the user agreement says quite clearly that they have to have specified levels of service to Liverpool and a port in the north-west of England, sir.

**The Speaker:** A further supplementary. Mr Singer.

**Mr Singer:** Can I ask the Chief Minister, under the user agreement is it not a fact, however, that if the present or new owners choose not to sail to Heysham or Liverpool the Isle of Man Government is basically impotent in preventing destinations being set as far away as Holyhead, and therefore it is important that we do get some guarantee from the Steam Packet Company that Heysham and Liverpool will remain despite any possible sale?

**The Speaker:** The Chief Minister to reply.

**Mr Gelling:** I have, as I have already stated, Mr Speaker, been told by the Steam Packet that in the negotiations the actual use of the Heysham port will be part of that particular sale and therefore there is nothing that should affect our Steam Packet sailings, sir.

**Mr Singer:** Can I ask a final supplementary?

**The Speaker:** A final supplementary. Mr Singer.

**Mr Singer:** Is the Chief Minister firstly saying, therefore, that the new owners, whoever they might be, will definitely take over the services as they are at present to Heysham? And would the Chief Minister be consulted at all if there were any projected sale of the Isle of Man Steam Packet Company itself? I ask that in view of the fact that at the moment they are not taking any bookings after January 6th?

**Mrs Crowe:** It is because of the new timetable.

**The Speaker:** The Chief Minister to reply.

**Mr Gelling:** Mr Speaker, the sale of Heysham harbour or port does not mean to say that the boat that sails in there becomes their ownership. The Steam Packet will sail to Heysham port irrespective of they own it or whether someone else owns it, and whoever might own it because the sale is not complete, I would suggest that is what they are negotiating and the contract they will be negotiating.

Now, the hon. member moves on then to the sailings of the Isle of Man Steam Packet, I am sorry, but I have no information with regard to when they are taking bookings or otherwise, sir.

### **Public Transport – Changes to Double-Deck Buses – Question by Mr Singer**

**The Speaker:** Question number 2, Mr Singer.

**Mr Singer:** Thank you, Mr Speaker. I beg leave to ask the Minister for Tourism and Leisure:

- (1) *Has your department completed the changes to the new double-decker buses to reduce their weight to the permitted Isle of Man maximum; and*

(2) *how has this been done?*

**The Speaker:** The Minister for Tourism and Leisure.

**Mr Cretney:** Thank you, Mr Speaker. As hon. members are aware, my department recently placed an order for the purchase of three double-deck stock buses which require modification in order to meet obligatory Island specifications. Those modifications have been completed to two of the vehicles to the extent that they were in operational service with effect from Monday 20th November. The third double-deck is anticipated by the end of December. With regard to the modifications required, the two new double-deck buses were resealed by the supplier free of charge from 78 seats to 74 seats and standing passenger notices changed from 12 standing to two. Such calculations having been made by the body-builder in order to comply with Isle of Man weight restrictions. Following inspection by the vehicle test centre and reweighting four further seats were removed and standing passenger notices changed to zero in order to obtain certification for use. This further modification was undertaken by Isle of Man Transport with minimum cost implications.

**The Speaker:** A supplementary, Mr Singer.

**Mr Singer:** Could I ask the hon. minister, when he says a total of four seats were removed - is that right? Two seats initially and then two more seats? Could I ask for clarification before my supplementary?

**The Speaker:** No, you can ask your supplementary, sir.

**Mr Singer:** Okay, thank you. Assuming that seats for eight passengers were removed, did the hon. minister seek any talks with the Department of Transport as to the possibility of actually allowing the buses as designed to work on our roads, or were there no buses that he could have purchased that would have been suitable for our roads rather than have to lose passenger capacity when the whole principle of buying a double-decker bus was to move as many people as possible?

**The Speaker:** The minister to reply.

**Mr Cretney:** The answer to the first part is that there were eight seats removed, four initially and four after the vehicles had been to the test centre.

The answer to the second part of the question is that throughout the European Union buses now are certificated to take up to 90 passengers. My understanding is that the way the vehicles are designed these days, including the vehicles which we have got, the disruption to roads is not as great as that which applied to buses in the past, in particular certain single deck buses which did cause a greater problem. There have been initial discussions at officer level with the Department of Transport to see whether the present policy remains appropriate. I did say at an earlier time in this hon. House, and I stand by this position, that the roads on the Island are fragile and we have to be very careful about that. However, if we can have a sensible discussion, that is always the policy I try to adopt.

**The Speaker:** A final supplementary. Mr Singer.

**Mr Singer:** Could I ask the hon. minister: these two buses that have been delivered - are they at present running on the roads?

**The Speaker:** The minister to reply.

**Mr Cretney:** I am sorry, perhaps the hon. member did not hear me say that they were running from Monday 20th November.

### **Isle of Man College – Ofsted Inspection – Question by Mr Houghton**

**The Speaker:** Question number 3, the member for Douglas North, Mr Houghton.

**Mr Houghton:** Yes, thank you, Mr Speaker. I beg leave to ask the Minister for Education:

*Are you satisfied with the results of the Ofsted inspection of the Isle of Man College?*

**The Speaker:** The Minister for Education.

**Mr Rodan:** Mr Speaker, I would like to thank the hon. member for his question, and firstly may I clarify that the recent inspection of the Isle of Man College was not one organised within the Ofsted framework. The Ofsted framework applies to schools. The inspection of the Isle of Man College was conducted within the format of the Further Education Funding Council for England, commonly referred to as the FEFC, which was established in 1993 and which has been operating in colleges in England for the past seven years. Whilst the processes do have features in common such as the observation of lessons, there are significant differences in the ways in which the FEFC inspectors report by using grades, conducting a wide range of interviews with students, staff, governors, employers and local representatives and by the emphasis which is placed on a college's own self-assessments.

In response to the question, I think it is fair to say that no-one should be entirely satisfied with the results of any inspection insofar as an inspection will always identify areas of work which can be improved further. I am, however, satisfied that this inspection was conducted well and that the conclusions arrived at by the inspectors will enable the college to develop the quality of its services. Inspections of both schools and the college are commissioned by my department explicitly to have an advisory function so that the staff benefit from being given a clear agenda to work to in developing services over ensuing years. The FEFC inspectors found the Isle of Man College to be 'an improving college' and that 'overall there were more strengths than weaknesses.' The health and social care programme was awarded a grade 1, the highest grade and the engineering and construction, together with art, design, media studies, hairdressing and beauty therapy were all awarded a grade 2. Fifteen full-time inspectors spent a total of 71 days on the inspection and they observed 119 lessons and conducted over 1,000 interviews. The college is now engaged on structuring its action plan to implement the recommendations resulting from the inspection, and it will address the issues for immediate action, short-term action within two years and long-term action within five years.

This report is available to the public free of charge, it is available now and, in an effort to be helpful to hon. members, I have arranged to have placed on the desks of members a copy of the report, sir.

**The Speaker:** A supplementary. Mr Houghton.

**Mr Houghton:** Yes, thank you, Mr Speaker. I thank the hon. minister for his reply and I would also ask the minister to also thank the principal of the College of Further Education who should be congratulated for providing high standards at the college which generally outweigh those within the curriculum offered and the cross-college provision which sadly does require rather urgent attention to the Island's essential faculty of further education, sir.

**The Speaker:** Can we have a question, please?

**Mr Cretney:** Hear, hear.

**Mr Houghton:** Yes, sir. If I may address three such areas which do require improvement, one by one, Mr Speaker, as I am sure the minister will be keen to address these -

**The Speaker:** Can we have a question, please?

**Mr Houghton:** Yes, sir. Turning to the weaknesses - and I detail a few of those, sir, poor outcomes for students on many courses, inadequacies in the provision of provision - May I ask, (**Members:** Hooray!) in view of the important subjects which fall under this particular section of the

report - this is vitally important, sir, for the further education for people on the Island - whether the minister has any comments as to how this situation will be urgently improved, sir? Thank you.

**The Speaker:** The minister to reply to a rather long-winded oration. *(Laughter)*

**Mr Rodan:** Thank you, Mr Speaker. Firstly, I will of course pass on to the principal the positive comments of the hon. member and I do have every confidence in the principal and the vice-principal to carry forward the action plan, which is an essential part of the follow-up to this inspection. The principal himself has described the inspection as 'a most stringent and valuable exercise showing the areas and systems where improvements can be made.' The sum of the specific comments of the hon. member relate to general education which received, members will note in the report, a grade 4, and clearly it is not acceptable to have reported that some 43 per cent of lessons observed by inspectors were awarded a grade 1 or 2, which is below the English average, and in some of the examination results in certain key subjects which the hon. member refers to, examination results have not met accepted benchmarks. So clearly there are a number of areas requiring attention in general education and in basic education and provision for students with learning difficulties. This is spelled out in the report. As to the process, I have had discussion together with department advisers with the inspectors, with the principal and with the chair of college governors as to the process for the action plan, which will take the form in the new year of a report back to the department with clear areas of action planning to follow through in how some of the weaknesses can be best addressed.

**The Speaker:** A supplementary, Mr Karran.

**Mr Karran:** Vainstyr Loayreyder, would the Minister of Education not agree that if it is good enough for the schools to have Ofsted inspections, does he not think that his department should have the same facility placed on them as well?

**The Speaker:** I am not sure that is in the context of the question. The minister to reply if he wishes.

**Mr Rodan:** Mr Speaker, in direct response, not only do I think it is a good idea, I have already publicly indicated in this House that it is my intention at an appropriate stage to have such an inspection of the department's own central services.

**The Speaker:** Mr Houghton, a supplementary.

**Mr Houghton:** Yes, thank you, Mr Speaker. Turning to another area -

**The Speaker:** Hon. member, can we have a question, please?

**Mr Houghton:** Sir, I need to just point into the area that I wish to have examined now, which covers the area of cross-college provision for the support of students. So may I ask why, when are as already exist, a large administration resource such as that in the college has the important area of cross-college provision being allowed to fall down at the expense of students' further education and is there not now a crying need for a real shake-up of the administration section, who should always have the ability to lead and support the college tutors to provide the highest educational results, sir?

**The Speaker:** The minister to reply.

**Mr Rodan:** Yes, Mr Speaker, hon. members will note from page 28 onwards in the report this section on cross-college provision, and there are some key strengths listed and there are some weaknesses outlined. I do not propose to read these out. Members may note these for themselves. Suffice to say that addressing these weaknesses and building on the strengths and following through the recommendations which are on page 30 will be a very key part of the action plan which is to follow.

**The Speaker:** I will only allow two more supplementaries. The member for Peel.

**Mrs Hannan:** Thank you, Vainstyr Loayreyder. Could I ask the minister, how much notice is given for any of these inspections, whether it is at the college or Ofsted?

**The Speaker:** The minister to reply.

**Mr Rodan:** Ten weeks is the period of notice of inspection of schools. I understand it is slightly longer in the case of the college, but I could not be absolutely specific, but I can write to the hon. member with the information.

**The Speaker:** I think we have done enough on this subject. A final supplementary to the original questioner, Mr Houghton.

**Mr Houghton:** Yes, thank you, Mr Speaker. Just turning to one further area of quality assurance, sir, the report details a further number of weaknesses. May I ask, in view of the important subjects which fall under this particular section of the report, whether the minister has any comments as to how this particular situation can be urgently improved as well, sir?

**The Speaker:** The minister to reply.

**Mr Rodan:** Mr Speaker, quality assurance is one of the areas which requires to be worked upon. I think that received a satisfactory grade from the inspectors, but again it would be appropriate within the context of the action plan to ensure that quality assurance, which is a relatively new area of the college's activity, is further developed and I know that the principal himself, who had personally introduced the measures that are currently in place on quality assurance, is very anxious to develop this particular area.

#### **Rockmount – Gabbro Deposits – Question by Mr Karran**

**The Speaker:** Question number 4, the member for Onchan, Mr Karran, to ask the Minister for Transport.

**Mr Karran:** Vainstyr Loayreyder, I beg to ask the Minister for Transport:

- (1) *What quantity of gabbro deposit is there estimated to be in the land at Rockmount and was this known prior to the purchase of the land by the government;*
- (2) *when does the department propose to extract the gabbro; and*
- (3) *why was the small parcel of land on the opposite side of the Poortown Road bought after the purchase of Rockmount itself?*

**The Speaker:** The minister to reply.

**Mr Brown:** Thank you, Mr Speaker. The department estimates there are about 30 to 40 years of gabbro reserves underneath Rockmount. This figure is only approximate and based on similar levels of reserves in adjacent lands. A more accurate assessment will be available after a departmental commissioned geological survey is undertaken. The department plans to commence the survey in the very near future. I can confirm that the department was aware of the estimate at the time Rockmount was purchased. Besides facilitating access to the above reserves, the purchase ensures the land was incorporated into the buffer zone for the quarry. The department intends to secure the option to extract gabbro rock from Rockmount as soon as possible. This is to ensure that we have the security of an adequate supply of rock and thereby avoid the need to import such materials. The small parcel of land on the opposite side of Poortown Road was acquired because it lies in our buffer protection area for the quarry. As this field was also owned by the then owner of Rockmount estate the decision was taken at a late stage in negotiations to include the small parcel of land in the purchase. The delay in recording the conveyance was simply due to the legal process. Thank you.

**The Speaker:** A supplementary, Mr Karran.

**Mr Karran:** Vainstyr Loayreyder, a supplementary. Would the minister not say that this is a rewriting of history as far as this is concerned? Does he not agree that this is now different from the original reason for purchasing this property, which was as a buffer zone; it was not the fact that they did not survey for any minerals under it simply because they wanted to try and keep people quiet as far as any further objections? Can the minister also tell me why we paid twice as much for the land on the wrong side of the road, which has no guarantee of any minerals like the rest of Rockmount, than on the right side of the road, which has been surveyed and we know that there are minerals there? Can he explain why he did that?

**The Speaker:** The minister to reply.

**Mr Brown:** Yes, Mr Speaker, in answer to the last question, the cost of the purchase of the parcel of land on the other side of the road was £4,000 and, as I understand it, was based on the government valuer's valuation. As the hon. member is aware, all purchases that government make are usually based on advice from the government valuer and of course are subject to the independent review of the Treasury in giving approval to that, so I am not sure where the hon. member gets his figures, Mr Speaker.

As far as the purchase of Rockmount was concerned, and I again refer to an answer I gave to the hon. member previously on this issue, in the House of Keys on Tuesday 27th October 1998 I made it clear in answer to a question to the hon. member that the purchase of Rockmount was because it secured a valuable and strategically important natural resource. That was the stone, Mr Speaker.

**Mr Karran:** Vainstyr Loayreyder, a supplementary.

**The Speaker:** A supplementary. The member for Douglas North, Mr Houghton.

**Mr Houghton:** Thank you, Mr Speaker. In respect of the enforced land purchase against Mr and Mrs Frost on the other side of Poortown Road, may I ask the hon. Minister for Transport whether his department is prepared to refund the legal expenses incurred by the landowners in this protracted matter, sir?

**The Speaker:** The minister to reply.

**Mr Brown:** I am not sure what the hon. member means when he says 'enforced land purchase', Mr Speaker.

**The Speaker:** A supplementary, Mr Karran.

**Mr Karran:** Vainstyr Loayreyder, I thought you were supposed to protect the rights of the members in this House. It seems that you spend your time protecting the rights of ministers in this House.

**The Speaker:** A final supplementary. Mr Houghton.

**Mr Karran:** A farce!

**Mr Houghton:** Yes, thank you, Mr Speaker. With respect, the hon. Minister for Transport failed to answer my question, and if he does not have the information may I ask if he would circulate that amongst members as soon as possible, sir? Thank you.

**The Speaker:** The minister to reply.

**Mr Brown:** Mr Speaker, I gave quite a straightforward answer. The hon. member says, and I quote, 'enforced land purchase.' My department has not purchased land, as far as I am aware, of Mr and Mrs Frost.

**The Speaker:** Hon. member, that completes the question paper.

### **Food (Emergency Provisions) (Amendment) Bill – Second Reading Approved**

**The Speaker:** We now move to item 5, Food (Emergency Provisions) (Amendment) Bill, and I call upon Mr Downie.

**Mr Downie:** Thank you, Mr Speaker. Hon. members, in moving the second reading of the Food (Emergency Provisions) (Amendment) Bill I thought it might assist hon. members to give them a little bit of background to the Bill.

The Food (Emergency Provisions) Act 1986, referred to as the 1986 Act, was passed with great speed to deal with the Chernobyl crisis. The Bill was introduced into the Keys on 1st July 1986, was passed by both branches on that day and Royal Assent was given on 15th July. It was closely based on part 1 of the United Kingdom Food and Environment Protection Act of 1985, referred to as the FEPA, and enables the Department of Local Government and the Environment to make emergency orders to prevent pollution arising from an escape of substances - in the case of Chernobyl this was radioactive fallout - from entering the food chain. The UK Ministry of Agriculture, Fisheries and Food, referred to as MAFF, objected to certain provisions of the Bill on the grounds that they gave Isle of Man officers powers outside Manx territorial waters and over foreign vessels which they considered to be unjustified. However, the urgent need to deal with the Chernobyl crisis led the Home Secretary to override MAFF's reservations and advised Her Majesty to assent to the Bill.

Those reservations remained. However, the department sought in 1994 to adopt amendments, which had been made to the Food and Environment Protection Agency by the UK Food Safety Act 1990, section 51, which widened its scope to cover not only an escape of substances but any circumstances which are likely to create a hazard to human health through the consumption of food. In this instance we are linking it to a disease affecting shellfish. When a clause for that purpose was included in the Food Bill of 1994 the Home Office advised that Royal Assent would be refused unless the clause was dropped and it was, therefore, not moved in the clauses stage in the Keys. The Bill became law as the Food Act of 1996.

This Bill seeks to make the same amendment as was sought in 1994, but as a trade-off amends the 1986 Act to remove the extra-territorial elements to which objection was taken in 1986 and 1994, as follows: no act or omission outside the Island and Manx territorial waters can amount to a contravention of an emergency order; powers to board or search a vessel can be exercised only in Manx waters; powers to board or search a vessel other than a Manx vessel can be exercised only if there is reason to suspect that something has been, is being or will be landed from it into the Isle of Man.

Although the Bill is directly related to food, environment and the well-being of our shellfish industry, I am moving it on behalf of the Department of Local Government and the Environment, who have overall responsibility for our food safety.

Over the last few years the biotoxins which cause paralytic shellfish poisoning, referred to as PSP, diuretic shellfish poisoning (DSP) and amnesic shellfish poisoning (ASP) have been spreading close to the traditional Manx fishing grounds in our territorial seas. During the summer of 1999 the marine laboratory at Port Erin reported on a number of occasions that routine water samples taken off the west coast of the Isle of Man indicated a slight trace of dinophyceae species, a toxic algae capable of causing DSP. The Bill will enable the department to prohibit fishing in areas which have become affected with biotoxins. In order to identify that shellfish are infected, regular samples of shellfish will be required to be taken from the fishing grounds identified by the marine laboratory and

sent to the specialist marine laboratory in Aberdeen, as the assays cannot be carried out in the Isle of Man.

The Bill has been accepted by the UK Home Office in conjunction with their Ministry of Agriculture, Fisheries and Food - that is, MAFF - our own Department of Agriculture, Fisheries and Forestry who have responsibility for the management of our fishing and other interested parties, all of whom have given concurrence.

Clause 1 deals with emergency orders and enables the department to make emergency orders in response to any circumstances, not just escape of substances, in consequence of food which may have become polluted. It also removes criminal sanctions for breach of emergency prohibitions outside the Isle of Man and its territorial waters. The effect will be that (a) an area affected by, for example, amnesic shellfish poisoning outside Manx waters could be designated and fishing could be prohibited in that area; but (b) fishing in that area would not be an offence under Manx law, only the landing of fish or shellfish caught in that area in breach of the prohibition order.

Clause 2 deals with enforcement and removes officers' powers of entry in relation to vessels outside Manx waters. It also restricts their powers in relation to a foreign vessel, aircraft, hovercraft or foreign marine structure to apply only in cases where they have reasonable grounds to suspect that something to which an emergency prohibition order relates has been, is being or is about to be landed from any such vessel in the Isle of Man. And finally financial implications: as the powers are only imposed in emergency scenarios the department would only allocate financial resources from other sources in the event that the special powers had to be implemented. Under the circumstances outlined in clause 1(3) dealing with sampling these would be required to be taken on a weekly basis in the summer months - for example, from May to September. This would require the hiring of a boat to dredge for samples in the defined specific areas.

I just want to remind hon. members that the Bill is very important to the well-being and ongoing protection of the Island's shellfish industry. Thank you, Mr Speaker, I beg to move.

**The Speaker:** Mr Henderson.

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

**The Speaker:** Mr Karran.

**Mr Karran:** Vainstyr Loayreyder, I would just like to say that it does rather concern me and maybe vindicates some of us when we are talking about legitimising by paying out money for our territorial sea in the first place after we hear of this pantomime of having to forelock-touch to the adjacent island as far as this important issue of food safety is concerned. I wrote to the Chief Minister in September of this year and, after listening to the hon. member, the minister responsible for agriculture and fishing, I think that we need to seriously look at our own territorial waters; we need to look at buying up all the fishing rights in our own territorial waters whilst we have got an economic boom. As I was saying in the letter to the minister, this might allow that a vital industry of the past could be made viable for future generations.

After listening to the points of the hon. minister, maybe the time has come for us to seriously look at buying up all fishing rights that are in the Isle of Man as far as everybody is concerned and then being able to shut it down and then leaving it shut until times where it can become viable again like other small sea-bound nations around the world. I believe they have done this in several countries, not like Iceland but other countries which the minister knows about. It does concern me, by allowing ourselves to buy our own sea bed back from the British Government in the first place, how much we have weakened our own constitutional position which the previous minister was so keen on. It does concern me and I would like to hear the views of the mover as the minister of the feasibility of this: will

he be investigating this in order that we can control totally our own territorial sea, who fishes in there, who has the right to. . .? I mean, it seems rather crazy if we cannot have powers to protect human consumption without having to go to the British Home Office to protect our corner with the Department of Agriculture and Fisheries in the adjacent island. Something is desperately wrong here. At least we are starting to hear some of the realities of what is happening over the legislative process within this hon. House.

**The Speaker:** Member for Peel, Mrs Hannan.

**Mrs Hannan:** Thank you, Vainstyr Loayreyder. I welcome the legislation. I do think it is a step forward in filling that gap which is there and relates to protection of our food.

I would just comment on the comments made by the member for Onchan who has just resumed his seat, where he talks about buying up our rights. The rights to fish really come down to international conventions, and it is not just the United Kingdom but in respecting international conventions we do play our part in a greater world than just the UK and us, but I am sure the department will take that into account when they are looking at such issues as that. But could I ask: it seems rather strange that legislation is brought forward - and it is obviously emergency provisions, but it relates to the cost that could relate to this, £65,000 in any year, and would be found from existing budgets, and I wonder if the minister could enlighten us as to the availability of £65,000 from an existing budget?

**The Speaker:** Mr Duggan.

**Mr Duggan:** Mr Speaker, I would just like to ask the minister: this shellfish poisoning - have there been cases in other areas and to what extent will it affect the fishing industry? Will it become one day that we will not be able to fish for shellfish whatsoever?

**The Speaker:** Does any other member wish to speak? Minister to respond.

**Mr Downie:** Thank you, Mr Speaker. Dealing first of all with the hon. member for Onchan, Mr Karran, my understanding is that when the Isle of Man Government acquired the rights of the territorial seas they were the mineral rights. The fishing in that area is something which is completely different and, as the hon. member for Peel quite rightly explained, the fishing rights are dealt with partly under the common fisheries agreement under which, whether the hon. member for Onchan agrees or not, we do share our historic rights with our neighbours, and a lot of the waters around the Isle of Man are shared with our neighbours and there are fisheries which go back hundreds of years which we share with Scotland, Northern Ireland and other parts of the United Kingdom.

Now, we as a government would find it extremely difficult to go out and to buy up fishing rights because, as far as I am concerned, with the introduction of the quota system a lot of those historic rights now have been rolled into what is called 'producer organisations', POs, and there is a survey going on at the moment in the department to see whether or not in the not-too-distant-future we can organise the Isle of Man fishery into a producer organisation or a form of a fishermen's co-operative and be able to pool a certain amount of quota or fish resources. I am pleased to say, and I have indicated earlier this year, that the Isle of Man has at last been identified as an entity in fishing terms and there is an entitlement for this Island to seek a quota now in its own right, and that is an area which the department is working very heavily in.

Moving on to just to make a point, the whole issue with regard to fish quotas and the common fisheries policy is going to come under review again in 2002, and you could well find that the whole face of fishing throughout the British Isles in Europe is again changed, so it is very important that for the first time for a number of years this Island is now a player in that and we have access to various organisations involved in fishing and we are working very closely with the Minister for Agriculture,

Fisheries and Food in the UK and we will, along with a number of other people, be staking our claim to what we feel we are entitled to in fishing terms.

The hon. member for Peel, Mrs Hannan, welcomes the legislation. I think, as a person representing the major fishing interests in the Isle of Man in the west in Peel, she is, perhaps more than most, aware of the very valuable contribution that the scallop industry does play in her particular community and how important it is that this industry is protected from outside influences such as amnesic shellfish poisoning, diuretic shellfish poisoning. The legislation actually gives us a lot more control in our own areas. I will circulate this map later, hon. members, which shows some of the areas which have been affected up until 2nd November this year and closed by the various ministries and agencies, and it is to prevent the risk of something being caught in these areas, landed in the Isle of Man and bringing our own shellfish industry into disrepute that we are trying to stop.

Moving on to the question about the costs, the £65,000 per year, if we do have a situation where we have got to start a sampling regime we are quite confident that we can find the money from within our own budget. To date we have only had to carry out fairly minor sampling but the £65,000 a year would be for a full-blown sampling regime and, as I say, we can meet it from within existing funds.

The hon. member for Douglas South, Mr Duggan, asks what the effects were. ASP, CSP and PSP, as I said in my opening remarks, have become quite prevalent in other areas around the UK and the continent; the same situation arises in California, and there is a chain of thought that the poisoning is being brought about by global warming and the biotoxins, because of the increase in temperature, are much more prevalent. To date we have had none of these problems in our own waters, and the closest area to us at the moment which is suffering from any of these poisons is an area up around the Western Isles of Scotland. A lot of that water is semi-sheltered, it does not get exposure to the cold winds and the Atlantic, and in a lot of the waters in that area they also carry out extensive fish farming and salmon farming. There is also a chain of thought that thinks that there could be a link from other fish farming activities that take place. I am pleased to report that our own waters are clear and we want to keep them that way, and we also want this legislation to prevent anybody catching any suspect shellfish and landing them in the Isle of Man to the detriment of our own industry. Mr Speaker, I beg to move that the Food (Emergency Provisions) (Amendment) Bill be read a second time.

**The Speaker:** Hon. members, the motion is that the Food (Emergency Provisions) (Amendment) Bill be read a second time. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

### **Local Government (Miscellaneous Provisions) Bill – Second Reading Approved**

**The Speaker:** Item no 6, Local Government (Miscellaneous Provisions) Bill, the Minister for Local Government, Mr Gilbey.

**Mr Gilbey:** Mr Speaker, this Bill, which is promoted by the Department of Local Government and the Environment, makes minor amendments to certain acts relating to local government and public health, and I will outline what these minor amendments are.

Clause 1 is to fill a gap in the provisions of the Local Government Act 1985, which allows for the alteration of local government boundaries by enabling an order for that purpose to make supplemental and consequential provisions.

Clause 2. This clause enables the present four pence rate limit on expenditure by local authorities on entertainments to be varied by order of the Department of Local Government and the Environment.

By clause 3 local authorities are given power, subject to the approval of the Department of Local Government and the Environment, to provide offices and other premises for the following bodies: other public authorities, any partnership between one or more departments and one or more local authorities, charitable organisations, doctors, dentists, opticians and other health professionals.

Clause 4 gives additional powers to inspect records and to take samples to a person who has power to enter on land for the purpose of enforcing any provision of the Public Health Act 1990.

Clause 5 corrects an error in the Public Health (Amendment) Act 2000.

Clause 6 enables a fixed penalty for dropping litter, which is currently only £10, to be varied by order made by the department subject to Tynwald approval.

Finally, clause 7 gives the Bill its short title.

No provision for commencement is included and accordingly the Bill will come into force on the day on which Royal Assent is announced to Tynwald as in accordance with the Interpretation Act 1976, section 10. Mr Speaker, I hope that this Bill is entirely non-controversial; there has been considerable consultation regarding it and I beg to move.

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

**The Speaker:** Mr Karran.

**Mr Karran:** Vainstyr Loayreyder, I welcome the Bill. I am glad to see the point as far as the fixed penalties for dropping litter are concerned. Maybe the minister can tell us how often the present legislation has worked. With the amendments, will this make it more viable and actually work as far as litter is concerned? I would also like to say that obviously, as a member for Health, I will be supporting this Bill but I have to say that I am disappointed and I will be putting down amendments, if that is still possible and we still have the services in the Attorney-General's department for independent members of this hon. House to put down an amendment, about the likes of building byelaws, as I have tried in the past.

I am disappointed that the minister has looked after his own constituency instead of doing what is right for local government. In my opinion it needs an amendment to this piece of legislation so that, with the likes of building byelaws, if local authorities do not provide those services and other services then your department should charge them a flat rate across the Island for doing so. I think it is an absolute scandal. We talk in double-tongue about wanting local government reform and yet here is an opportunity where the likes of my constituents, the constituents that are in Peel still, Douglas - I am not sure whether Castletown as well - are being penalised because they do their responsible thing as a local authority and they are being penalised for not doing so.

I do hope that hon. members will consider this fact and will use this valuable Bill because, at the end of the day, this Bill is about making minor amendments to certain acts relating to local government and public health, and I do hope that other members who have concerns about local government will use this opportunity. We have heard that certain members have talked about the refuse situation; I hope this Bill will be used as a vehicle in order that the things that should be getting done will be getting done by members of this hon. House. I am just disappointed that the hon. member who has not got one of these local authorities that would lose by my proposal did not put this in in the national interests, in my opinion.

**The Speaker:** Member for Peel, Mrs Hannan.

**Mrs Hannan:** I certainly support the comments made by the previous speaker with regard to local authorities. I do think that we should be encouraging local authorities to take more responsibility,

not less. But with regard to this legislation, could I just ask the minister on clause 2: it enables the limit on the amount the local authorities may spend on entertainments equivalent to the product of a four-penny rate; that obviously varies in different places what can be raised, presumably, so I would ask the mover in relation to that particular area, why is this needed to be changed at this particular time? Do the local authorities not have the provision already to spend money on entertainments, and is this just increasing the amount that local authorities can spend on entertainments? I would like clarification on that, please, Vainstyr Loayreyder.

**The Speaker:** Mr Duggan.

**Mr Duggan:** Mr Speaker, I support the Bill before the House. I would just like to ask Mr Gilbey regarding enforcement over the litter. We have got already legislation where the police, I think, can prosecute for litter offences, but there is very little enforcement so it is no good us passing laws and legislation if there is no enforcement. What would he do in the case, could I ask the minister, where there are children at schools that often go to the tuck shop and the first thing they do - they eat their bun or whatever or their chips and they throw the cartons away? How could he enforce a law against a junior? Is that practical?

**The Speaker:** Mr Rimington:

**Mr Rimington:** Thank you, Mr Speaker, and, like my hon. colleague from Onchan, Mr Karran, I do not believe this legislation should be used as the vehicle for local government reform. Local government reform is required and it is such a sensitive and controversial issue, (**Mr Houghton:** Hear, hear.) it does require slightly more contemplation than add-ons to a little bit of legislation that is going through tidying various matters up, and I would be interested in the future in being involved in looking quite deeply at the question of local authorities, their financing et cetera.

**The Speaker:** Does any other member wish to speak? I call upon the mover to respond.

**Mr Gilbey:** Mr Speaker, I am very glad that the hon. member Mr Karran welcomes the Bill and glad that he agrees with the flexibility in penalties for dropping litter. He then asks, as another member, how often these are enforced, and I regret to say very seldom, because it is first of all very difficult to actually catch people dropping litter, and again I think the police would argue that they have, and rightly so, more important things to do, but nevertheless I am certain it is right that the legislature should have the power to increase these penalties and they should not be left forever at £10.

The hon. member for Onchan then wants amendments regarding the building byelaws et cetera so that the department can charge for services that it provides to local authorities when those services are provided by some local authorities themselves and therefore some are paying and some are not paying for them. In fact, long ago at the request of the legislature the department started looking into the whole of this, because it is not just a question of looking at charges in respect of building byelaw enforcement, there are many other services which the Department of Local Government provides for some local authorities free and the logical thing which is agreed is that all of this should be looked into, and it is being looked into but it will need very careful consideration because we have to get it right; it will also need consultation, because I believe most members of this hon. House believe in consulting local authorities and others before bringing in legislation that will affect them. Therefore this matter is being looked at and I again deplore the crude attempts on personal attacks by the hon. member to say this is not being done just because I happen to represent a sheading which has most of the services provided. It is quite disgraceful to have this kind of unwarranted, untrue and unjustified personal attack, and I would have hoped that the hon. member would have grown up sufficiently by now, having been in this House for some 17 years, to stop such attacks. But, as you will have heard, they are totally untrue and unjustified: the matter is being looked at as requested by the legislature.

Now, returning to the point made by the hon. member for Peel, Mrs Hannan, a four pence rate is naturally different in different areas because it depends on the product of that four pence rate, but the reason for having this flexibility is to enable authorities who want to spend more than the four pence rate on some kind of public entertainment to be able to come to the department and get consent for this. One can think of the kind of occasion such as the Queen's Jubilee year, which comes in 2002, when an authority might wish to do this, and it is surely right they should have the opportunity to come and make their case. I can assure you the department would not agree to anything that was wild or unreasonable, but surely local authorities should at least have the right to ask; even Oliver Twist was given the right to put out his begging bowl!

The hon. member for South Douglas, Mr Duggan, raised the point about litter, and I totally sympathise with him that litter is appalling. It is sad how in the last 25 years the amount of litter all round this Island has increased, when there used to be hardly any 25 years ago. Regarding the litter at school tuck shops, I would not see anyone wanting to go fining children but I would have hoped that the school headmaster or headmistress and the other teachers would use their disciplinary powers to stop pupils from their schools throwing litter about. I would have thought it was a fundamental part of social education that children were taught not to throw litter about, and I would hope the Department of Education and the hon. minister, my colleague, Mr Rodan, would ensure that if this is not being taught in the schools it should be in the future. **(Mr Cretney: Hear, hear.)** It is more difficult to influence the parents, though perhaps the press will report what is being said in this hon. House today -

**Mrs Hannan:** How do you teach the children?

**Mr Gilbey:** - and the feeling that parents should teach their children, which I think this hon. House clearly agrees with.

Regarding the hon. member for Rushen Mr Rimington's point, I totally agree with him that this Bill is not and should not be hijacked as a method of trying to deal with the reform of local government. That is a far bigger and a different matter. This is meant to be an uncontentious Bill to bring in as quickly as possible certain small changes which it is felt are in the public interest, and on that basis I beg to move the second reading.

**The Speaker:** Hon. members, the motion is that the Local Government (Miscellaneous Provisions) Bill be read a second time. All those in favour please say aye; against, no. The ayes have it. The ayes have it.

### **National Health Service Bill – Third Reading Approved**

**The Speaker:** Item number 7, National Health Service Bill for third reading, Mr Karran.

**Mr Karran:** Vainstyr Loayreyder, this Bill replaces the Acts dealing with the National Health Service in the Isle of Man which backdate to 1948. The National Health Services (Isle of Man) Act 1948 was closely based on the United Kingdom Act of 1946, the Beverage Act, which created a National Health Service under central government control out of a number of existing authorities and systems in the United Kingdom. I believe that the new piece of legislation should be supported and I beg to move the third reading.

**The Speaker:** Mr Rimington.

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

**The Speaker:** Mr Quine.

**Mr Quine:** Thank you, Mr Speaker. There are just two matters which I do feel obligated to make a quick comment on before we deal with the third reading. The first relates to clause 2, and I must

restate my reservations in regard to this clause. I do not see a committee comprised of equal numbers of clinical, medical representatives and lay representatives meeting the needs which have been clearly intimated to us as going to be met from this committee. I cannot see them adequately meeting the need to provide advice on medical and clinical matters and I certainly cannot see them adequately representing and meeting the needs of patients. I remain of the view that what is needed is a committee of a truly independent nature comprised solely of lay persons to meet the needs of the patients, and I do not see what is here is going to meet that in any way. It is just a fudge and I am sure we will be revisiting it very soon.

The second matter really arises out of clause 38, which of course is an enabling provision. We now have had, albeit founded on an administrative arrangement, a new complaints procedure circulated to us and I would simply add that I find that deficient in a number of respects, and clearly that has to be revisited by way of a proper debate either in this hon. House or elsewhere. Having placed those two reservations on record, sir, I am content to let the matter rest there for the time being. Thank you, sir.

**The Speaker:** Mr Henderson.

**Mr Henderson:** Thank you, Mr Speaker. I have no problem with supporting updating legislation and any legislation that improves the present situation. If this Bill was not passed, of course, the status quo would remain, people would still be treated and the system would still work in any case. My concern, though, is on the lines of the hon. member for Ayre, which is in relation to clause 38 and the general provisions which have been outlined to us at the minute with regard to the new and emerging complaints procedure, but I am also very conscious of the debate we had in here with regard to competency, and various figures that were thrown into the debate with regard to the number of clinical complaints last year and so forth. I am also very conscious of the response by members from the department in relation to those figures and other issues, and trying to rationalise the same, which caused me a great degree of concern. I feel too that this situation will and must be revisited. It is not right at the minute and, as the hon. mover knows, I have recently written to him again on a another issue of competency and my extreme concerns for public safety; they will remain until we can have this issue further resolved. But, in the main, most of the Bill is reasonable and practical.

**The Speaker:** Mr Brown.

**Mr Brown:** Yes, thank you, Mr Speaker. Whilst there has been concern expressed here about certain components of the Bill, I do not think we should underestimate the important decision that is being made today. The Isle of Man, unlike the rest of the British Isles - that includes Guernsey, Jersey and the United Kingdom - is retaining a free National Health Service for the people of this Island, and that is the vitally important component covered by clause 1 of the Bill and is something I am absolutely sure is the wish of the people of this Island. I do not think we should let that just slip past. It is a provision that was in the 1948 Act, it is a provision we are reaffirming here today, unlike other countries, and I believe that should go on record as being the most fundamental component of this Bill - a free National Health Service for everybody and something we should be very proud of.

**The Speaker:** Mrs Hannan.

**Mrs Hannan:** Yes, just to follow on from the member that has just resumed his seat, the member for Castletown, I obviously support this legislation but I think that we do become rather blasé. We just accept that we have got a health service. Yes it is our health service, we complain about it, and we have heard complaints in this hon. House during the passage of this legislation. But the majority of people are very happy and content (**A Member:** Hear, hear.) with having a National Health Service. They have a service which is available to them and, instead of actual complaints and the service being reduced, the service is actually being increased. I know we in this House expect that to increase; we

have great expectations. We are forever saying this service is not provided, that service is not provided something else is not done, but what is being done is that the services are being increased day on day, and we sit here and we are quite happy to criticise, and I think that we should recognise that there are a lot of people out there that we depend on to operate the National Health Service (**A Member:** Hear, hear.) for us and who work in extremely difficult situations, whether it is the paramedics or the hospital services that go on 24 hours having to deal with people day and night and at weekends, which causes problems, but they are there to deal with people. Therefore I do welcome the continuation of the National Health Service.

I also welcome the commitment, obviously, from the department to look in depth at where the department and the provisions of the health service can be improved for us all. Therefore I do welcome this; I do think it, as the mover has said in his moving this legislation, it is a major piece of legislation since the introduction of the National Health Service. It is saying that we can, in the 21st century, continue to operate a National Health Service for the good of us all, and long may it continue (**Members:** Hear, hear.). Thank you, Vainstyr Loayreyder.

**The Speaker:** Mr Rimington.

**Mr Rimington:** Thank you, Mr Speaker. I think the hon. member for Ayre is slightly confused on the functions of the committee that he is so acerbic about -

**A Member:** Shame!

**Mrs Crowe:** Correct!

**Mr Rimington:** I mean, the committee as proposed - and let us say at this point that it is only proposed and the final nature of that committee will be obviously determined after a further process of consultation - is one which will enable the department to do two things: one is to refer matters to that committee for their perusal, for their study and for their comment, and to gain the advice of that committee, and also for that committee itself independently to take on board and consider matters that they so wish should be placed in front of the department. So it is a two-way process and I am not sure quite what the hon. member for Ayre really wishes to see, whether he wishes to see a committee completely full of medical personnel who are going to sit amongst themselves and give their advice or if he wants a committee which is fully of lay personnel with no medical input. There seems to be some confusion as to the value of any such committee, and he is bringing in in the same process the issue of complaints and wrapping that in the same manner, and possibly losing sight of what an advisory body to the health service can usefully do. It should be noted that within the appropriate part of the legislation is also the commitment and the ability for the department to create other bodies which may advise the department on such other matters as is required, so presumably if there was a matter which required full medical input, then such a body could be created for that very purpose, but that would not be the standing body. You would not have a standing body of medical members telling everybody what should be done, because I think, as the hon. members are already aware, possibly in the past too much of that has taken place before. But what we need is the right balance, and I think what the department is trying to do is create a structure which will provide that balance.

Now, it is fair that we should look at how it operates in the future and that it is not prescribed, it is not cast in stone in the legislation, so that as time goes on, as bodies are created and operate, you find that maybe they do not work exactly how you want them or you find weaknesses, which you are bound to do - in whatever system either the department or the hon. member for Ayre sets up there are bound to be weaknesses - then you can modify them, and it is not useful to try and legislate to cast these things in stone, and I think the department has done a very good job in bringing this legislation forward. I think we do, as the hon. member for Peel and others have said, sometimes lose sight of the fact that we have this rather excellent National Health Service which is working day by day providing an

excellent service to the people of the Isle of Man, and possibly it might be looked from afar how this House is concentrating on certain aspects of this service which are far away, far removed from the reality which most people recognise on their everyday basis, although it is our job to look at these extra bits, but we must place them in that context. I would support, and beg the House to support wholeheartedly, the legislation before us.

**The Speaker:** Mr Singer.

**Mr Singer:** Just briefly, I have been brought to my feet about the comments of the member for Health. We do have an excellent health service and we want to make sure that it continues as an excellent health service, but what he seemed to be saying to us here, and in response to what has been said previously, is: 'Don't worry, we have got some ideas about this body, six lay people, six medical people, but don't worry about it. If necessary, we can create other bodies as we see fit.' I am afraid that is not good enough. What he is trying to say to us is, 'Don't worry, it will be all right on the night.' Well, we are worried whether it is going to be right on the night. We are going to have very little or no further input after today as to what will come forward from the health service. It will come forward either in regulations where we have to say yes or no - it is something we have said here before - and we have had very little guidance as to what the thinking of the health service will be in the future.

Now, we hope that they are going to come forward with the right committees, if necessary, but we will have little input here, and whilst I do support this health service Bill because it is very important - it is very important that we do have the right health service - we have got to look to what the patient's input is going to be within this health service, and we know here there is going to be very little. Certainly under the Human Rights Act I think we have to look very carefully as to who is going to make the decisions on the complaints, when there are complaints, because it seems wrong under the Human Rights Act that the department itself will rule on what the department has been doing, and I think this is something that we must be very careful of, that we do need independent assessment, and we certainly have had no guidance from the department that they are going to come forward in the future with true, independent guidance and independent help for anybody who wishes to seek information, not only complaints about the health service but wishes to seek information about the health service or who wishes to put information into the health service.

So I think we are being put in a difficult position, because despite all the discussion we have had through the various stages of this Bill, the health service have not been prepared to be forthcoming with what their future thoughts are, and I think that is something that does give concern, Mr Speaker. Thank you.

**The Speaker:** Mrs Crowe.

**Mrs Crowe:** Thank you, Mr Speaker. Just picking up from the last speaker, I wholeheartedly support the Bill that is before us at the moment, and when the hon. member for Ramsey, Mr Singer, made complaint that we have had no guidance as to what is in the Bill, we have even had a book from the department. I have never seen so much guidance; it is almost line by line. We heard from the hon. member for Rushen, my colleague. Mr Rimington, that in the United Kingdom there would be two pages of A4. We must have had 40 pages of A4 guidance notes on how a complaint system was to work.

Now, I have experience of many complaints; in fact, my office deals with 8,000 complaints or enquiries per year, (**A Member:** Hear, hear.) and the first line of complaint, for any complaint, is to the provider of the service, be it either tradesperson or a provider of a service, estate agency, health, whatever it might be, but the first line of complaint is to the provider, and that is exactly what will be happening in this Bill.

I think it is an excellent Bill. I think we have had enormous help from the department and I praise them for it. Thank you, Mr Speaker.

**The Speaker:** If nobody else wishes to speak I call upon the mover to respond.

**Mr Karran:** Thank you, Vainstyr Loayreyder. I thank the previous speaker; I am glad that we have tried to get back to reality and away from just political gimmickry.

As far as I am concerned, I think the original Bill was something that society could be proud of. I can remember as an apprentice talking to one chap who lost his little finger before there was a National Health Service. It was six pence to chop his little finger off as a child and half a shilling. *(Interjections)* No, 2/6d - it just shows how young I am! - to save the finger, and isn't it good that these days that is not something. . . and I might not agree with my hon. colleague from Castletown very often, but I totally agree that the highlight of this Bill is the commitment to a free health service where it should be.

I am somewhat disappointed with some of the comments that have been in this Bill. I think the hon. member for Ramsey's input into this Bill - if you were not worried before, you would be after listening to the hon. member for Ramsey. I do get annoyed when I listen to these people who are in the medical profession, like the ex-member of the medical profession, the member for North Douglas - *(Interjection)* when we hear these statements, these throwaway lines, about all the problems and all the things that are happening, and they know today that the medical profession could not get away with a fraction of what they got away with when the original piece of legislation came in, and the only reason that we have the problems today highlighted more is because there is more openness and more commitment in making sure that a first-class service is provided, and I believe that it is wrong the way that they undermine my staff in trying to make out that you live in fear that you go in to hospital, and I think that is bad; it might be a good thing as far as an election coming up -

**Mrs Crowe:** I doubt it.

**Mr Karran:** - but it is bad as far as the morale of the staff they have had to work with over the years themselves.

I thank the point as far as the members for Peel and Castletown are concerned. It is a celebration; it is a celebration of a caring society that we are renewing our commitments that were made 50 years ago as far as making sure that there is an adequate and decent and free health service for our people.

The issue of the hon. member for Ayre - I do get very concerned; we made the clause as flexible as possible so that the regulations can change if clause 2 is not there. As far as clause 38 is concerned I do not know what more I can do. We have put up what we have proposed. There is this misinformation - and I do not know why it is put - that the independent chairman will see all complaints. The complaints will be put down, the complaints might be resolved by the complaints officer, but the chairman will be able to see all complaints that are made where the hospital is concerned. I have offered to some in this hon. House the opportunity of meeting with the independent chairman because he is keen. I believe that we will find that he is no lapdog for the department.

I have tried to make sure that we have a body that reflects all walks of life on this body, because at the end of the day it is not just Mr Houghton's constituents who we have got to worry about, or Mr Quines's or Mr Singer's constituents, or their mums or dads or kids, but all of us in this hon. House are concerned that we want a first-class health service and I just would like to say that as a person who has had many battles with my staff on many issues I do feel that it is important to put down on record that I am happy and I am proud that I am the member for Health with such dedicated and loyal staff but, like every walk of life, there will be some that maybe are not as active or as efficient as others, and that

goes for all walks of life. I do thank hon. members and I do hope that we will receive the third reading for this Bill.

**The Speaker:** Hon. members, the motion is that the National Health Service Bill be read a third time. All those in favour say 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, Henderson, Cretney, Duggan, Braidwood, Mrs Cannell, Messrs Shimmin, Downie, Mrs Hannan, Messrs Singer, Bell, Karran, Corkill, Cannell, Gelling and the Speaker - 22*

*Against: None*

**The Speaker:** Hon. members, there are 22 votes in favour and none against; the National Health Service Bill is therefore read a third time.

### **Adoption (Amendment) Bill – Third Reading Approved**

**The Speaker:** Item number 8, Adoption (Amendment) Bill, the third reading, Mr Cannell.

**Mr Cannell:** Thank you, Mr Speaker. As has been previously outlined, the Bill is based upon the United Kingdom Adoption (Intercountry Aspects) Act of 1999 intended to give effect in Manx Law to the Hague Convention of 1993 on the Protection of Children and Co-operation in Respect of Intercountry Adoption. It amends existing adoption law in respect of this important social reform. It also enables the ratification by the United Kingdom of a new convention on intercountry adoption. It is a general term referring to the adoption of a child resident in one country by adopters who may be resident in others. Intercountry adoptions involving parents living in the Isle of Man are, up to now, not very common; there are currently around three a year, but there is evidence to show it is increasing in frequency both on the Isle of Man and in the United Kingdom, the latter seeing over 300 children per year adopted from overseas. It is therefore important that the Isle of Man should have this proper machinery in place to regulate such adoptions.

The Bill will have no financial or manpower consequences. Consultation has taken place with all the relevant authorities. It strengthens the law relating to adoption, as I have said, and ensures that the Isle of Man complies with best practices in the interests of the children.

I acknowledge the generous support of hon. members of this Court in ensuring the smooth passage of this important protective measure and formally move the Bill's third reading.

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

**The Speaker:** Any member wish to speak? In which case the motion is that the Adoption (Amendment) Bill be read a third time. Those in favour please say aye; against, no. The ayes have it. The ayes have it. The Adoption Bill has received a third reading.

### **Criminal Justice Bill – Council Amendments Agreed**

**The Speaker:** I now move to item 9 on your order paper, Criminal Justice Bill for consideration of Council amendments, Mr Bell.

**Mr Bell:** Thank you, Mr Speaker. Can I first of all apologise to yourself and to members for bringing forward these amendments in the form that they are. They are promoted, in fact, by my department and by the Attorney-General so we are in complete agreement with them. There are a number of what we believe important measures which, if they were left for a new Bill completely, given the pressures which are on legislative time at the moment, it is quite possible we would not be able to

get through, so we have decided to use this process to try and speed things up, so I hope hon. members will bear with us on this.

**The Speaker:** Hon. member, the manner of procedure of these amendments - I will take each particular one as they come: page 12, lines 1 and 2.

**Mr Bell:** Thank you, Mr Speaker. The first amendment is to clause 18. This amendment extends the definition of 'school premises' to include a college or other educational establishment or a youth club provided, maintained or aided under the Education (Young People's Welfare) Act 1944. This means that it will also be an offence in these other educational establishments for anyone to have with them any article which has a blade or is sharply pointed, excluding a pocket knife with a blade of less than three inches. Hon. members may well recall the debate we had when the Criminal Justice Bill was passing through this chamber, when there was some concern about the definition of 'educational premises'. I gave an assurance to the hon. House at that time that we would review the situation and, if an amendment was necessary, we would ensure its moving elsewhere. This is the case. The definition of educational premises was not wide enough to cover the concerns of the hon. members. This amendment now does put that on a firm footing and the prohibition of blades and sharply pointed articles now covers all educational facilities. I beg to move, Mr Speaker.

**Mr Duggan:** I beg to second, Mr Speaker.

**The Speaker:** The motion is that the Council amendment to clause 18 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. New clause 43A, sir.

**Mr Bell:** Mr Speaker, the new clause 43A, B, C and D are proposed to implement suggestions by the Financial Action Task Force, FATF, which will lead to improved monitoring, investigation and prevention of the laundering of the proceeds of crime and the more efficient exchange of criminal intelligence between criminal intelligence agencies. New clause 43A increases the penalty which may be imposed under the anti-money laundering codes made under the Criminal Justice Act 1990. At present the maximum penalty is £5,000 and/or six months' custody. That level is not believed to be sufficient to represent a real penalty against many commercial enterprises. I beg to move clause 43A stand part of the Bill.

**Mr Duggan:** I beg to second, Mr Speaker.

**The Speaker:** The motion is that the Council amendment, new clause 43A, stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. New clause 43B, sir.

**Mr Bell:** Mr Speaker, this new clause will repeal the provisions of the Criminal Justice Act 1990 which require the Attorney-General to give his consent to the release of certain information to criminal intelligence agencies outside the Isle of Man in cases where the information is passed for criminal investigations and criminal intelligence purposes. The repeal provisions apply only to information about suspicious transactions which are reported to the police by financial institutions and others. The consent is viewed as a possible impediment to the proper flow of criminal intelligence. It might be perceived by international criminal intelligence agencies as a provision which indicates a lack of goodwill on the part of the Isle of Man to co-operate in the international effort to fight organised crime. I beg to move that clause 43B stand part of the Bill, Mr Speaker.

**Mr Duggan:** I beg to second, Mr Speaker, sir.

**The Speaker:** The motion is that the Council amendment, new clause 43B, stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. New clause 43C, sir.

**Mr Bell:** 43C, Mr Speaker, creates a new offence connected with laundering of the proceeds of crime. It will require certain persons to provide information to the police in relation to laundering. The

clause imposes the same requirements in respect of suspicion of laundering proceeds of crime as section 8 of the Drug Trafficking Act 1996 does in relation to the proceeds of drug trafficking.

Subsection (1) provides that a person is guilty of an offence if he knows or suspects that another person is engaged in laundering the proceeds of crime, the information or matter on which the knowledge or suspicion is based came to his attention in the course of his trade, profession, business or employment, and he does not disclose the information or other matter to a constable as soon as it is reasonably practicable.

Subsection (2) provides that it is not an offence under subsection (1) for a professional legal adviser to fail to disclose any information or other matter where an item is subject to legal privilege.

Subsection (3) provides the defence where the person has a reasonable excuse for not disclosing the information or other matter.

Subsection (4) provides that a disclosure to the police of any suspicion or belief of money laundering shall not be treated as a breach of any restriction imposed by statute or otherwise.

Subsection (5) provides for a defence in the case of a person in employment at the relevant time of disclosing the information to the appropriate person in accordance with the procedure established by his employer.

Subsection (6) provides that a disclosure in accordance with subsection (5) is not a breach of any restriction imposed by statute or otherwise.

Subsection (7) defines 'laundering the proceeds of crime' as doing any act that constitutes an offence under sections 17A, 17B or 17C, whether in the Isle of Man or elsewhere.

Subsection (8) provides that for the purposes of subsection (7) having possession of any property shall be taken to be doing an act in relation to it.

Subsection (9) defines items subject to legal privilege and subsection (10) will not permit the operation of legal privilege under subsection (9) if the information is communicated to the legal adviser with a view to furthering criminal purposes. Mr Speaker, I beg to move that new clause 43C stand part of the Bill.

**Mr Duggan:** I beg to second, sir.

**The Speaker:** The motion is that new clause 43C as presented by the Legislative Council stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. New clause 43D, sir.

**Mr Bell:** New clause 43D, Mr Speaker, is based on provisions of the Drug Trafficking Act 1996 relating to seizure and detention.

Section 23A enables customs and police officers to detain money which is being imported or exported where there are reasonable grounds for suspecting that the money represents the proceeds of crime or is intended to be used for criminal purposes.

Subsection (1) gives police and customs the power to seize cash.

Subsection (2) restricts detention to 48 hours except where the High Bailiff authorises further detention.

Subsection (3) requires reasonable grounds and justification for authorisation of further detention.

Subsection (4) permits the High Bailiff to authorise further detentions for up to three months.

Subsection (5) provides for extended detention of up to two years if authorised by the High Bailiff.

Subsection (6) requires the giving of notice to affected persons when an application for the extension of seizure is made.

Subsection (7) permits the Attorney-General or the police to make applications under the section.

Subsection (8) enables the High Bailiff to direct the release of cash if he is satisfied that the continued detention is not justified.

Subsection (9) enables the Attorney-General and the police to release cash. The High Bailiff must be notified.

Subsection (10) requires continued detention where proceedings are instituted or an application for forfeiture is made.

Subsection (11) requires cash to be kept in an interest-bearing account and for the interest to be added to the cash when returned as forfeited.

Section 23B enables the High Bailiff, if satisfied that the detained cash represents the proceeds of crime, to order its permanent forfeiture.

Subsection (1) permits the permanent forfeiture of cash seized under 23A if the High Bailiff is satisfied that it represents the proceeds of crime or is intended for use in crime.

Subsection (2) limits applications to those made by the Attorney-General.

Subsection (3) applies the same standard of proof as applies in civil proceedings, namely the balance of probabilities.

Subsection (4) enables permanent forfeiture, even where no criminal proceedings are taken.

Section 23C introduces an appeal procedure in respect of permanent forfeiture orders made by the High Bailiff. The appeal is to the High Court.

Subsection (1) declares that the clause will apply where the High Bailiff has made a permanent forfeiture order under clause 40.

Subsection (2) gives all the parties to the forfeiture proceedings except the Attorney-General the right to appeal to the High Court against the order. The appeal must be commenced within 30 days.

Subsection (3) gives the High Bailiff the power to release a portion of the cash to cover the legal expenses of the appellant in connection with the appeal.

Subsection (4) enables the High Court to make such an order in relation to an appeal as it feels appropriate.

Subsection (5) will permit the High Court to order the release of cash plus any interest when it allows an appeal under this clause.

Subsection (6) applies the civil standard of proof to appeal proceedings before the High Court.

Section 23D enables the making of rules of court for the purposes of proceedings under 23A to 23F.

Subsection (1) will enable the deemsters to make rules for procedures in relation to applications to the High Bailiff.

Subsection (2) will enable the deemsters to make rules for the procedures in relation to appeals to the High Court.

Subsection (3) is a drafting provision and is intended to prevent any suggestion that the general enabling powers in the Summary Jurisdiction Act 1989 or the High Court Act 1991 are in any way prejudiced by the specific provisions of this clause.

Section 23E makes provision for dealing with cash which is subject to a forfeiture order but is subject to an appeal or the time limit for appeals has not passed. In such cases the cash may not be paid into general revenue until the appeal is determined or the time limit passes with the commencement of an appeal. In the absence of this clause such cash would have to be paid into the general revenue as soon as the forfeiture order was made by the High Bailiff.

Finally, section 23F provides for the interpretation of terms used in 23A to 23F.

Subsection (1) defines 'cash' and 'exported'.

Subsection (2) ensures that references to importation and exportation include movements between the Island and the United Kingdom. Mr Speaker, I beg to move that new clause 43D stand part of the Bill.

**Mr Duggan:** I beg to second, sir.

**The Speaker:** Hon. member for Peel.

**Mrs Hannan:** While this seems pretty straightforward, Vainstyr Loayreyder, could I ask the mover of the legislation why this was not included in the Criminal Justice Bill? (**A Member:** Hear, hear.) It seems such a short time ago that we were considering this and it moved from this House to the Legislative Council and has come back with all these amendments. My main reason for asking that question is that it seems pretty straightforward that if cash has been used for these purposes and it can be proved, it should be dealt with in this manner, and I would hope that the mover can explain why this has happened at this time.

**The Speaker:** Does any other member wish to speak? The mover to respond.

**Mr Bell:** Thank you, Mr Speaker. I thought I did explain at the outset that a number of these issues were raised as a result of observations by FATF and the Attorney-General himself felt that it would be appropriate to move this particular series of new clauses in this Bill as the quickest way of filling what appeared to be a gap in our anti-money laundering legislation. There is nothing unusual about this; it is simply expedient to attach this particular amendment to the Criminal Justice Bill. As I explained at the outset, it would have been possible to draft a new Bill altogether but, given the pressure that is on the legislative draftsman and our legislative time at the moment, it was felt more appropriate and, I have to say, expedient to try and respond to this particular issue as quickly as possible through this particular process.

**The Speaker:** Hon. members, the motion is that the new clause 43D as proposed by the Legislative Council now stand part of the Bill. Will all those in favour please say aye; against, no. The ayes have it. The ayes have it. Mr Bell, new clause 50A.

**Mr Bell:** Yes, Mr Speaker. Prior to the new clause being inserted, where any offences involved a sexual offence and where the prosecution was relying on information provided by the alleged victim with no corroboration, the Court was required to warn the jury about convicting the accused on the uncorroborated evidence. In other words, the deemster is currently obliged to tell the jury that it is very dangerous to convict in such a case without independent corroboration as there can be many reasons, real or imagined, why individuals make false complaints.

In England the corroboration requirement in sexual cases was abolished by section 32 of the Criminal Justice and Public Order Act 1994. It was considered that the requirement should be purely

discretionary as the direction of the jury was virtually a direction to acquit. This has led in the past to persons being acquitted in the Isle of Man who would probably have otherwise been convicted if the direction had not been given. Because the ordeal of complainants is so traumatic the government prosecutor is currently reluctant to sanction a prosecution in the case of a sexual offence where there is no independent corroboration until the corroboration requirement is abolished. The Isle of Man Constabulary also expressed its concern that cases of this kind would not be prosecuted. It was therefore decided to move this amendment to the Bill.

The amendment will, therefore, remove the requirement for the court to warn a jury about convicting a person merely because that person is an alleged accomplice of the accused or where the offence is a sexual offence and the evidence is provided by the alleged victim. Mr Speaker, I beg to move that new clause 50A stand part of the Bill.

**Mr Duggan:** I second, Mr Speaker, sir.

**Mr Cretney:** Mr Speaker, just to add my support to the measure which is being put forward here, it is significant, in my estimation, and I do thank the hon. member for managing to get this through at the other place. It is very important. I know it will be welcomed in particular by his family protection unit who have had concerns in this regard in the past.

**The Speaker:** Any other member wish to speak? I call upon Mr Bell to respond.

**Mr Bell:** Thank you, Mr Speaker. I thank the hon. member for South Douglas for his comments. He has contacted me on this issue in relation to a constituent of his. I also have had problems in my constituency with a similar situation. I think it is an important step forward in the development of our criminal justice system and it most certainly will give added protection to women on the Island because there has, as I have said in my presentation, been a reluctance on the part of the authorities to initiate certain prosecutions because of the problem of corroboration. I hope this clarifies the situation once and for all and will give once again, particularly in conjunction with our protection from harassment legislation, vulnerable members of our society the knowledge that they are now, from a legislative point of view at least, in a more secure position. I beg to move, Mr Speaker.

**The Speaker:** Hon. members, the motion is that the new clause 50A as proposed by the Legislative Council stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. New clause 56A, Mr Bell.

**Mr Bell:** New clause 56A introduces a new schedule which will have the effect of conferring on the Attorney-General the control and management of all criminal prosecutions with certain minor exceptions - for example, the right of an interested party to commence a private prosecution in a court of summary jurisdiction. This new clause 56A introduces new schedule 8. At this point, if I simply move the new clause 56A would that be sufficient?

**The Speaker:** That is sufficient and then we will move schedule 1 and the new schedule 8.

**Mr Bell:** Right. I beg to move, then, that new clause 56A stand part of the Bill.

**Mr Duggan:** I second, sir.

**The Speaker:** The motion is that new clause 56A as proposed by the Legislative Council stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Mr Bell, schedule 1.

**Mr Bell:** Mr Speaker, it was the department's intention that the sex offenders register should include those persons who are currently in the system - in other words, those persons who are serving a sentence of imprisonment or a term of service of detention or who are subject to a community order

in respect of a sexual offence to which schedule 1 of the Criminal Justice Bill 2000 applies. Prior to the amendment only those sex offenders who were convicted after this element of the Act comes into force would have had to register. This is because, when part 1, section 3, of the 1997 Sex Offenders' Act of the United Kingdom was being transcribed into the Criminal Justice Bill, this section was in error not included. Therefore, to ensure sex offenders who are, for example, in prison can be required to register when they are released, the amendment to schedule 1 was required. This amendment will provide the necessary powers for the police to apply to the courts to require any sex offender who is currently in the system to register. This was the original intention of the department. So I beg to move that amendment to schedule 1 stand part of the Bill, Mr Speaker.

**Mr Duggan:** I second, sir.

**The Speaker:** Mr Karran.

**Mr Karran:** Vainstyr Loayreyder, I would just like to ask the mover on this amendment: when there have been issues of plea-bargaining and things like this, is there a danger that people have allowed themselves to plea-bargain and they are now finding themselves in the situation where they might not have agreed with the court's procedures in order to protect the victim? I am just a little bit concerned that the people who have gone through the system - this was not part of the law and was not the reality of the situation at the time and, whilst I am not trying to protect any child abusers, I do feel that there has to be a question asked whether they might have changed their plea, they might have argued their case stronger if they had thought they were going to end up on some sort of register that would have more effect on them.

**The Speaker:** Any other member? Mr Singer.

**Mr Singer:** Thank you. Could I ask the hon. minister, understanding that those people who are in detention because of sex offences have to register, could the hon. minister tell me about convicted sex offenders who have served their sentence but are not cleared under the new Rehabilitation of Offenders Act; do they have to register in order that the department are aware where they are, where they are living?

**The Speaker:** Mr Bell to respond.

**Mr Bell:** Yes, Mr Speaker. The purpose of the sex offenders register and indeed the Criminal Justice Bill was not in the general sense to introduce retrospective legislation; the intent of this particular clause is not to include people who have committed offences in the past and have completed their sentences and are outwith the system. This really only refers to people who are currently in the system who are either in prison or are affected by a current sentence of some description, and it will be for the police in these particular individual instances to apply to the courts for inclusion on the sex offenders register, and therefore it will be for the courts ultimately to decide the appropriateness or not of the specific instance that the hon. member refers to.

As far as my colleague from Ramsey is concerned, the Rehabilitation of Offenders Bill only applies to those people who have attracted sentences of 30 months or less. In most, if not all, serious sexual offences they will have undoubtedly have attracted sentences in excess of 30 months and therefore will not be considered under any circumstances for rehabilitation. As I say, it is not the intention of the sex offenders register to include people with previous convictions which have now gone through the system and have been spent. That is not to say that the police are not unaware of these individuals within the Isle of Man context, but formally they will not be expected to register and this is in line with the operation of the sex offenders register in the United Kingdom as well which we have tried to mirror as far as possible because of the need for the interchange of information to protect the public. I beg to move, Mr Speaker.

**The Speaker:** Hon. members, the motion is that the amendment to schedule 1 as proposed by the Legislative Council stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. New schedule 8. Mr Bell to move.

**Mr Bell:** New schedule 8, Mr Speaker. This paragraph gives the Attorney-General the conduct and control of criminal proceedings. The proceedings affected by this are criminal proceedings commenced in the summary courts by the police, immigration officers, government departments, government boards, officers of government departments, officers of government boards and other persons which are important or complex. Proceedings commenced by a warrant to enter and seize articles under the Obscene Publications and Indecent Advertisements Act 1907 are also included. The paragraph contains a power to specify classes of proceedings which are to be exempt from this paragraph.

Paragraph 2 enables the Attorney-General to delegate functions to an advocate subject to general or specific conditions imposed by the Attorney-General.

Paragraph 3 ensures that the provisions of the schedule do not prejudice the right of a person to take proceedings which are not included in paragraph 1 - for example, the right for an interested party to commence a private prosecution in a court of summary jurisdiction is preserved.

Paragraph 4 continues the current law under which police officers of the rank of sergeant and above may prosecute in the summary courts. This paragraph repeals and replaces section 30(1) of the Summary Jurisdiction Act 1989.

Paragraph 5 will enable regulations to be made which will require the Chief Constable to provide information for the purposes of criminal cases managed by the Attorney-General.

Finally, paragraph 6 provides for the interpretation of the new schedule. Sub-paragraphs (3) and (4) include as criminal proceedings certain classes of proceedings which might not otherwise have been strictly construed as criminal proceedings. I beg to move, Mr Speaker.

**Mr Duggan:** I beg to second, Mr Speaker.

**The Speaker:** Member for East Douglas, Mrs Cannell.

**Mrs Cannell:** Thank you, Mr Speaker. I would just like to ask on this one and number 5 where it talks about the making of regulations, and then under paragraph 3 it says that the regulations shall be laid before Tynwald as soon as practicable after they are made. I would just ask the hon. minister, when does he envisage that such regulations will actually be made and laid so that we can actually look out for them and ensure that we are happy with them?

**The Speaker:** The minister to reply.

**Mr Bell:** Yes, Mr Speaker. This provision is at this stage an enabling provision and under the wider clause covering the whole of the Bill the department will at various times be introducing appointed day orders for different aspects of this particular legislation. As hon. members will recall, it is a very complex and wide-ranging piece of legislation and not all items will come in at the same time. There are further discussions which are required between my department, the Isle of Man Constabulary and the Attorney-General before this new process can be set up. At this stage I cannot give the hon. member any idea of when these regulations will be coming to Tynwald, but members will be informed in advance of their arrival.

**The Speaker:** Now then, hon. members, the motion is that new schedule 8 as proposed by the Legislative Council stand part of the Bill. All those in favour please say aye; against, no. The ayes have

it. The ayes have it. Therefore the Council amendments to the Criminal Justice Bill are now part of that Bill.

### **Residence Bill – Consideration of Clauses Commenced**

**The Speaker:** We now move on to item 10, the Residence Bill, consideration of clauses, and I call upon the hon. member for South Douglas, Mr Cretney.

**Mr Cretney:** Thank you, Mr Speaker. Clause 1 provides for the establishment of a register under the control of a registrar to be appointed by the Civil Service Commission.

Subsection (1) requires the registrar to maintain a register of individuals who are qualified under this Bill to reside in the Isle of Man. The register must be maintained in accordance with part 1 and part 3 of the Bill.

Subsection (2) requires the register to be a public register available for inspection at the registrar's main office during normal office hours.

Subsection (3) requires the register to contain a name, sex, date of birth and last known residence in the Isle of Man of every individual who is registered.

Subsection (4) requires application for registration to be made in a form set out in regulations to be made by the Council of Ministers under clause 19. Applications must be accompanied by documents and information specified in the regulations.

Subsection (5) permits applications for registration of an individual who is under a disability - for example, a child - to be made by his parents, guardian or other person in whose care or custody he is.

Subsection (6) will enable the registrar to require further documents or information if the registrar believes it is reasonably necessary to establish eligibility for registration.

Subsection (7) provides that a failure to comply with the requirement under subsection (6) within three weeks will enable the registrar to treat the application as withdrawn. He must serve a written notice of that fact on the applicant but may at his discretion extend the three-week period.

Subsection (8) imposes an obligation on the registrar not to register any individual unless the registrar is satisfied that the individual is qualified for registration under clause 2, which is unconditional registration, or clause 3, conditional registration.

Subsection (9) imposes a duty on the registrar to deal with every application. The registrar must either register the individual or refuse to register the individual.

Subsection (10) obliges the registrar to serve a written notice of his decision on the applicant.

Subsection (11) requires the registrar to give reasons for his decision if he refuses an application for registration. Note should be taken that the provision is made in clause 5 for the review of decisions. I beg to move that clause 1 stand part of the Bill.

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

**Mr Cretney:** Thank you, Mr Speaker. This deals with unconditional registration. Clause 2 specifies the circumstances in which persons will be automatically eligible for registration because of their close association with the Isle of Man. No conditions - for example, limit on the period of registration - can be imposed on persons who are qualified to be registered under this clause.

Subsection (1) lists the individuals who are entitled to registration without conditions. They are (a) those resident in the Island immediately before this clause comes into operation; in effect, that means

persons resident at midnight of the day before the Bill comes into operation - and note, please, 'resident' means ordinarily resident and does not include persons who are simply in the Isle of Man at the relevant time. The definition of 'resident' is dealt with under clause 20. (b) An individual with specific residential accommodation, again defined in clause 20, in the Island such as a house or a flat which he or she has established as a permanent home. The individual must continue to maintain the residence as a permanent home. This provision could apply in respect of former residents who have moved from the Isle of Man perhaps because of their employment but intend to re-establish residence at some point in the future. (c) Anyone who was both born in and whose birth was registered in the Isle of Man. (d) Individuals who have been resident in the Isle of Man for an aggregate period of at least 10 years. This is not a single period but could encompass several periods of residence which amount to at least 10 years. (e) The husbands or wives of persons qualified under paragraphs (a) to (d). (f) A widow, widower or divorcee of an individual qualified under paragraphs (a) to (d). And (g) an individual with at least one parent qualified under paragraphs (a) to (f).

Subsection (2) is a transitional provision which prevents a person who was in the Island for the purpose only of receiving medical treatment from claiming that he or she was resident in the Island for the purposes of subsection (1)(a).

Subsection (3) has the effect that when calculating the period of 10 years under subsection (1)(d), any time spent in the Island as an illegal resident contrary to clause 9 of the Bill is not to be taken into account. I beg to move that clause 2 stand part of the Bill, Mr Speaker.

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

**The Speaker:** Mr Cannell, member for Onchan.

**Mr Cannell:** Yes, thank you, Mr Speaker. I am sure the mover will not be surprised to know that I remain unconvinced by many of the provisions of this clause, and I notice him giving me a wry side grin there for (2)(b), which is 'an individual who immediately before the commencement was not resident in the Island but had established his permanent home'. Now, I went along to the presentation about this, raised the same point, raised it at an earlier stage of the Bill in this hon. House, but I just now would like to ask the mover how he intends to apply or how this Bill will apply this legislation. At (2)(d) it says, 'An individual who has at any time been resident in the Island for an aggregate period.'

Now, how is anybody going to prove that? It is rather like the taxationary provision where you have to satisfy residence of the country to prove immunity from taxation regulations. We do not up to now have, to my knowledge anyway, any imposition of how people move in and out of this Island other than the fact that occasionally they have to give their names to the airlines or to the Steam Packet Company, neither of which are actually checked against anything, so you could put any name down; it does not prove a thing. So how in fact is that going to apply? But more of concern to me is how in fact someone is going to qualify for clause 2, unconditional registration, just because they have resided here, and I know my first inquiry was that there might be a rush of people coming to get here; I think the mover is saying now, 'No, they need to have satisfied the authorities that they are resident in the Island rather than just being in the Island.' But in fact what is the description of 'resident' normally in the Isle of Man, and how long do you have to be? And is it worth giving unconditional registration to some fly-by-night who may see an opportunity here to become an unconditionally registered Isle of Man person just for the sake of taking up a minor period of residency? It is discourteous, to say the least - I will not say insulting, but it is certainly discourteous - to those who have earned the right to be here. The people who have earned the right to be here are people who have a genuine interest in the Isle of Man and have satisfied the conditions by proper compliance with the regulations. In other words, you are going to put on a similar basis people who may have a small or minor period of residency in the Isle of Man alongside those who have given their lives to it, and personally I do not think it is good enough.

Now, the individual who has been resident here for an aggregate period - as I say, I do not know how on earth that could possibly operate because it is going to be, if this Bill is now passed, even with the tight schedule which remains for legislation - how is anybody going to prove that they have been living here for an aggregate period totting up to 10 years? I think the hon. mover said in fact that that could cover a whole load of aggregate periods, so presumably it could go back 50, 60, 70 years, and how are you going to say then, 'Oh, yes, I was in the Isle of Man for three months in 1949', and prove it? Or how is it going to be disproven? There is no way of doing it, so you are going to have to take people's word on it. That is fine for the ordinary people; who is going to prove it and how are they going to justify it? Will anybody be actually able to do it? I would doubt it.

Then my other concerns on this clause concern the one where we come down to subsection (f) where not only are we allowing widows and widowers, that is fine, but we are actually allowing divorcees of those people as well, and that captures up all sorts of people more and more and more these days. You are going to have, spreading that net out, the possibility of more than one divorce - it is certainly not unknown for people to have been divorced twice - but you are going to virtually give unrestricted admission to the Isle of Man to all these people. Now, I do not mind if they come under the later clause of conditional registration, but I do object most strongly to the rank and file person, properly qualified, genuine people who have an interest in the Isle of Man and have demonstrated that, and who are Manx born, more particularly, genuine Manx people. I heard, did I not, the other day, and I swooned when I heard it, that someone who is going to be here . . . all people who live in the Isle of Man are Manxmen. You must be joking! But they are not going to satisfy this unconditional registration at the expense of allowing all sorts of Hottentots to come in under these other clauses. It is just not on! There is going to be a whole load of people here who could exploit this. I do not know what they would do to get this right, but I know, if I wanted to go to another country, I would expect to be considerably more grilled than just turning up a couple of weeks before, buying a cottage, claiming residency, and the next thing is, you are off back and you have got that residency for good.

**The Speaker:** Mr Karran.

**Mr Karran:** Vainstyr Loayreyder, whilst I did not agree with much of what the hon. previous speaker was saying, the issue of the divorcee - would the divorcee have to be resident on the Island before the divorce or could the marriage have taken place somewhere else and they have both got divorced before the divorcee has become resident on the Island and is no longer married to the Manx individual?

I would just like to ask, what were the views of the committee as far as grandparents were concerned? One of the problems we have today is that we have an awful lot of people who would like to come back to the Island who are the grandparents of economic refugees from this country when we did not have an economy on this Island. I just wondered whether there were views on that.

I think that the mover is in a very difficult position as far as the residency issue is concerned that my colleague for Onchan raised, but I think the problem we have here today is that too many people are looking for too many excuses as far as trying to make sure that nothing is done about this fundamental issue of residency. I have accepted this Bill and this clause. I have talked to the AG about what I would have preferred to see, but I believe this hon. House should support this clause. I only would like to see the issue of unconditional registration. . . whether we should have gone further and said, 'grandparents.'

The other thing I do think is wrong is this idea that somehow we are some sort of super-breed because we are Manx born and more Manx than anybody. The fact of the matter is, it is what is in people's hearts that is important, and I think it is wrong to try and make out that somehow because you are not Manx born you are somehow not Manx. When I look in this chamber and many places, there

are many people who are Manx born who are more English than the English. So I think that to try and make out that because you are not Manx born somehow you are not Manx and you are not committed to the Isle of Man - it is wrong to give that impression, Vainstyr Loayreyder.

**The Speaker:** Member for Peel, Mrs Hannan.

**Mrs Hannan:** Thank you, Vainstyr Loayreyder. I think it is all very well to question legislation, but I think there is a way to do that. I think this legislation is very sensitive and there are a lot of people outside who have the impression that we are bringing down the drawbridges now at this particular moment and anybody who is not Manx or who has not got a great connection is not welcome, and I think we need to get that balance somehow. The legislation is important; any immigration legislation is important, and while this is not immigration, it does give people rights, should the legislation be applied, to be resident here to be full subjects; none of us can be citizens, but it does give us rights to be subject here.

The legislation will probably be difficult to apply. It will probably lead to the members of this House, should it ever be enacted, making representations on a regular basis to registrars when we feel someone has been treated unfairly because they have had their application for residency turned down, so I think there are a lot of qualifications and I respect that, but it is not just the people that might just have a connection but anyone will have to make an application for residence if the Bill is approved as it is. But I think we should be very careful at the language that we do use when we are moving it. Thank you, Vainstyr Loayreyder.

**The Speaker:** Mr Cretney to reply.

**Mr Cretney:** Thank you, Mr Speaker. The hon. member for Onchan, Mr Cannell, asked, how is anyone going to prove aggregate residence? Can I say that this is something which will be an obligation on the person who is wishing to prove such aggregate residence as a quite clear concept; it is something which happens already in a number of features of legislation which is applied in the Isle of Man - nothing new there. The definition of 'resident' is dealt with under clause 20, and 'ordinarily resident' is again a clear concept in law, I am advised by the Clerk to the House. The hon. member has a genuine concern, which I accept he has and I think we all have; this, as the hon. member for Peel has said, is a delicate balance, it is a sensitive area, it is something which has taken years to get to this stage and yet the most important work, I would suggest, is yet to come in terms of the way regulations are drafted, so this is laying down a skeleton, laying down a stage-by-stage process, and if the hon. member did have a genuine concern, which, as I say, I accept he did, about the categories in unconditional registration, he could have moved an amendment to exclude certain categories, but he chose not to do that.

The hon. member for Onchan, Mr Karran, and the hon. member for Onchan, Mr Cannell, spoke about divorcees. Divorcees qualify under (a) to (d), and that means that they do not just come in at any time when they want to. The situation about divorcees is included in the Bill, and it arose because divorced people would have children and a child would qualify, but it could be that the mother and father would not and families would be separated, so it is a humanitarian ground; that is why it has been included. I beg to move clause 2 stand part of the Bill.

**The Speaker:** Hon. members, the motion is that clause 2 stand part of the Bill, all 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 Singer, Bell, Karran, Corkill, Gelling and the Speaker - 22*

*Against: Mr Cannell - 1*

**The Speaker:** Hon. members, the motion carries, with 22 votes in favour, 1 vote against. Clause 3, Mr Cretney.

**Mr Cretney:** Thank you, Mr Speaker. Clause 3 refers to conditional registration. Clause 3 permits discretionary registration, which will be exercised on humanitarian and economic grounds amongst others.

Subsection (1) will permit the registrar to register individuals who, although not included in the list of qualified individuals in clause 2, may nonetheless be registered. To be registered under clause 3 an individual must satisfy the provisions of the clause and any criteria specified in regulations made by the Council of Ministers under clause 19(2)(a) and (b). In exercising functions under this clause the registrar must comply with directions given by the Council of Ministers under clause 14.

Subsection (2) makes it clear that dependants of any person who is registered under clause 3 are also entitled to conditional registration.

Subsection (3) enables the registrar to impose conditions on the registration of individuals under this clause, and the registrar is obliged to impose conditions required by regulations made by the Council of Ministers. Where the Council of Ministers has issued directions under clause 14, then the registrar may impose conditions in accordance with directions if the registrar considers it appropriate in the circumstances. Where conditions are imposed, there is a right to a review under clause 5.

Subsection (4) deals with the expiry of conditional registration. It will expire on the date set out in conditions attached to the registration or on the date on which the individual concerned ceases to be resident in the Island.

Subsection (5) will enable an individual to apply to the registrar for the variation of a condition imposed under subsection (3). The application will be in the form prescribed under regulations made under clause 19.

Subsection (6) obliges the registrar to come to a decision in respect of every application for a variation of conditions. The registrar must either vary the conditions subject to directions or refuse to vary the conditions.

Subsection (7) requires the registrar to serve a written notice of refusal on an applicant for variation within a reasonable time. The notice must include reasons for the decision. A review procedure is provided by clause 5.

Subsection (8) makes it an offence to contravene a condition imposed under subsection (3) of this clause. The penalty is set out in clause 17.

Subsection (9) enables regulations made by the Council of Ministers under clause 19 to define the expression 'dependants' for the purposes of this clause. I beg to move that clause 3 stand part of the Bill.

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

**The Speaker:** Mr Rimington.

**Mr Rimington:** Thank you, Mr Speaker. One point of clarification which I am sure the hon. mover will be able to help me with: in the explanatory memorandum on the front it says that clause 3 permits discretionary registration which would be exercised on humanitarian and economic grounds amongst others, and then the subsection (1) the registrar may register an individual who satisfies any of the criteria specified in this section', and I was looking for the criteria specified in this section, failed to see any and realised that it must all be in regulations. It seems to me a slight miswording there in that

respect, and it was the humanitarian issue which actually I was interested in and which is my second point and main reason for rising to my feet.

Although the issue obviously will come up in regulations, I would like the hon. mover's comments and thoughts that if we are going to put conditional registration on, have this and at some point bring this Bill into being, then I would hope that we would not use this Bill to discriminate on humanitarian grounds. We are a small but quite prosperous society and I believe we should play our part, however small that may be, in humanitarian assistance where there are problems in other parts of the world, so where the adjacent isle may, for whatever reason, take on board a number of refugees from another part of the world where there is a particular problem in alliance with other nations of the world, I would like to think that our small Island would be able to play its appropriate part in respect of that and that the existence of this Bill, when it becomes law and then actually brought into regulation, would not stand as an impediment for our doing our part on a humanitarian basis.

**The Speaker:** Mr Cannell.

**Mr Cannell:** Yes, thank you, Mr Speaker. I speak on a similar vein, in that I repeat my assertion that I am worried about the fact that discretion can be exercised but in regard to another matter, and that is the mention or the notion that someone might be able to buy their way into the Isle of Man. I am sure that there are very many worthy people who we would be very glad to have here because they have vast wealth but not all of them reflect what we want out of the Isle of Man even though, again, they are taxes. Many of them have spelt great difficulties to the Isle of Man by their presence here. One individual in particular thought that the whole Isle of Man could stand to ransom because he had such vast wealth and caused great distress to many employees that he took on to complete various schemes, and we would be well advised to make sure that any discretionary powers which are available for the admittance of people purely because they could satisfy the fact that they might be able to produce some income to the Isle of Man is not a criterion that I am happy with, particularly if it might be at the expense of someone who is on the borderline to qualify under other conditions.

**The Speaker:** Mr Karran.

**Mr Karran:** Vainstyr Loayreyder, I echo the points of my colleague as far as this is concerned, but the reality is at the moment the work permits only stop the poor crooks, they do not stop the rich crooks. At least we have some device here. It will be up to making sure that we have a body that implements this legislation to realise that it is a balance that we want as far as this country is concerned, a long-term balance, but at the present time the reality is that all we do at the moment is stop the poor crooks from coming to this country, not the rich ones, and even then we cannot even do that simply because of the fact that we have no right of deporting them without their consent at the present time because there is no legislation to treat them differently from anybody else.

**The Speaker:** I ask the mover to reply.

**Mr Cretney:** Thank you, Mr Speaker. I would like to thank the members for their contribution. Humanitarian, when spoken of in this context, has to go along with the existing immigration laws, which obviously will remain in place once this legislation, hopefully, is passed and brought into being, and I think, principally, when we are talking about that we are talking closer to home than necessarily refugees; we are talking about, for example, elderly, sick or dependent relatives who would not otherwise qualify but they would be granted registration on humanitarian grounds. Also I am advised that if we look in the Bill, although at this stage it is only a very brief reference, there are certain criteria in the Bill, namely residents.

However, the most important part about all this will be in the regulations as I have said earlier, hon. members, and if we look at the economic criteria, for example, I would agree with the hon.

member for Onchan, Mr Cannell; My preference, if I was the adjudicator, would not be for an Isle of Man full of millionaires; however, if there are people who can make an economic contribution on the basis of their entrepreneurship or in terms of helping to develop the economy of the Isle of Man, I think that is something which is a gateway which I would support rather than the mistakes I believe others have made. I beg to move that clause 3 stand part of the Bill.

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

**Mr Cretney:** Clause 4, variation of register. Clause 4 deals with the variations to the register to take into account changing circumstances.

Subsection (1) permits the registrar to vary the register where there are reasonable grounds for supposing that (a) a registered individual has died, (b) an individual has been born in the Island, (c) an entry in the register is incorrect for any reason, or (d) registration has expired or otherwise come to an end.

Subsection (2) obliges the registrar to give written notice of a variation to the individual concerned or in respect of persons under a disability, to the parent, guardian or other person in whose care or custody he is. A right to a review is contained in clause 5.

Subsection (3) permits the registrar to exercise his powers to vary the register on the basis of information made available to him from any source.

Subsection (4) defines 'vary' to include cancellation or the addition of an entry to the register. I beg to move, Mr Speaker, that clause 4 stand part of the Bill.

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

**The Speaker:** The motion is that clause 4 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 5, Mr Cretney.

**Mr Cretney:** Thank you, Mr Speaker. Clause 5 establishes a review procedure in relation to decisions of the registrar. The review tribunal will be chaired by the High Bailiff.

Subsection (1) permits a person to seek a review of decisions by the registrar. These decisions are (a) a refusal of registration, (b) the imposition of conditions on the application for a conditional licence, (c) a refusal to vary the conditions attached to a conditional registration, (d) a variation of the register under clause 4(1)(b) to (d). The application for a review of the decision must be made to the tribunal in the manner prescribed in the regulations.

Subsection (2) requires hearings of the tribunal to be held in public unless the applicant for the review requests that it be held in private.

Subsection (3) enables applicants to appear before the tribunal in person or by their appointed representative, not necessarily an advocate.

Subsection (4) obliges the tribunal to take account of directions issued to the registrar by the Council of Ministers under clause 14 when reaching a decision.

Subsection (5) permits the tribunal to confirm, vary or reverse any decision of the registrar.

Subsection (6) requires the registrar to make alterations to the register to give effect to a decision of the tribunal.

Subsection (7) deals with the constitution of the tribunal. The chairman must be the High Bailiff and there are two other members appointed by the Council of Ministers.

Subsection (8) limits the term of office of the appointed members of the tribunal to three years. Under subsection (10) retiring members are eligible for reappointment.

Subsection (9) permits the Council of Ministers to rescind the appointment of the tribunal member and appoint a replacement.

As I say, subsection (10) enables retiring members to be reappointed.

Subsection (11) permits the Council of Ministers to appoint deputy members to the tribunal in the absence of members of the tribunal.

Subsection (12) prevents decisions of the tribunal being undermined by a defect in the appointment of members of the tribunal, and subsection (13) defines the expression 'person aggrieved' as used in subsection (1) of this clause. It is the individual to whom the application of registration relates. Where that individual is under a disability the parent, guardian or other person in whose care or custody he is may make the application for a review on his behalf. Mr Speaker, I beg to move clause 5 stand part of the Bill.

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

**The Speaker:** Mr Quine.

**Mr Quine:** Thank you, sir. Two small points, just to put a marker down, so to speak, sir. In sub-clause (6) we are dealing with the appointment of members to the tribunal, and I would just make the point that they are, of course, to be appointed by the Council of Ministers. Now, how this is going to fit with the human rights legislation is a matter, I think, yet to be finally determined, but that is a matter I am sure the Attorney will be casting his mind to. The second point - again, not a matter that I would call a fatal flaw or a fatal omission, but I do know that whereas members of the tribunal are appointed for a period not exceeding three years - that is under sub-clause (8) - under sub-clause (9) there is a power for the Council of Ministers for good cause to rescind the appointment of a member. Now, over the page, of course at sub-clause (11), we are dealing with the appointment of deputy members of the tribunal to exercise the functions of members in their absence. I do not see any provision for the rescinding of the appointment of a deputy member. I did look in the list of interpretations to see if there was an embracing of 'deputy member' but I do not see it, and perhaps this is a point that at some point along the line that we could seek some reassurance on, sir.

**The Speaker:** Mr Singer.

**Mr Singer:** Thank you. Could I briefly ask the mover, is there any right of appeal against a tribunal decision and if so to whom would this appeal be directed?

**The Speaker:** Mr Bell.

**Mr Bell:** Just a small point, Mr Speaker, which I may have missed in the presentation. Sub-clause (4) says the tribunal shall take account of directions in reaching a decision. Sub-clause (7) says the tribunal shall consist of the High Bailiff as chairman and two members. I am not quite clear where these directions are likely to come from to the tribunal in the first place.

**The Speaker:** Mrs Cannell, member for Douglas East.

**Mrs Cannell:** Thank you, Mr Speaker. Very similar to the comments made by the hon. member for Ayre, I come from a slightly different angle in relation to clause (5) here. Although we assume that the independent tribunal as described in the explanatory memorandum at the front, although 'independent' falls when it comes to the actual clause. We assume that it is a Council of Ministers appointment. There is nowhere that I can find within this Bill written that the tribunal shall be established by the Council of Ministers, only that it will be established. Following on from that, the only reference to

the Council of Ministers is in respect of the making of regulations under this piece of legislation and also, of course, for the rescinding of an appointment of a tribunal member as described under (7)(b). So I take the comment from the hon. member for Ayre in terms that the deputy appointment is not covered by (7)(b) and perhaps the hon. minister might take some advice on that, because there might be a shortcoming there. But really my question is, who does appoint the independent tribunal? Although the term of office for the members, of which there shall be two, appointed by the Council of Ministers, they shall not exceed an office of more than three years, but they are eligible to reapply. Now, under (6)(b), of course, the two members are appointed by the Council of Ministers. The chairman shall be the High Bailiff, but the two members on their own do not constitute, I would suggest, an independent tribunal, which would only come into play with all three members being in position here, and in respect of the High Bailiff, in the absence of the High Bailiff for whatever reason - it could be illness, absence from the Island somewhere else - who would actually fill in for the High Bailiff and is there or will there be provision within the regulations to actually change the appointment of the chairman and perhaps have somebody else of legal expertise and equal standing in the position of the chairperson for the tribunal?

Finally, I take note that under subsection (5) it states that the decision of the tribunal shall be final, and it really does rather cut off the comments and concern expressed by the hon. member for Ramsey in terms of, 'is there an appeal mechanism for taking it anywhere else if you are not satisfied with the decision of a tribunal?' Bearing in mind, when we look at planning, it is not dissimilar in some respects in that we do have a series of steps that a member of the public can go through and ultimately, of course, from review there is appeal where an independent person comes in and assesses the situation and makes recommendations, then a final decision is taken by the minister. So there is a three-stage situation whereas it appears to me that the registrar will make a decision. If the person is not satisfied with that, it then goes to the tribunal and that is it. I would suggest that unless the regulations are going to be very, very precise and very tightly maintained, this particular aspect in respect of 'the tribunal decision shall be final' may be subject to challenge in the courts of law. So I would just like the hon. mover to consider those points. Thank you.

**The Speaker:** The member for Castletown, Mr Brown.

**Mr Brown:** Yes, thank you, Mr Speaker. Just to try and help members with the legislation - and I am sure the hon. mover who is dealing with the Bill will also confirm - as far as directions are concerned, that is covered by clause 14.1 and that is the Council of Ministers who will give general directions, and as far as the High Bailiff, if the High Bailiff is missing, under the Interpretation Act of 1976 it is covered in there, and I quote: 'The High Bailiff includes a Deputy High Bailiff.' So automatically the deputy acts in the High Bailiff's not being available. As far as the point, I think, that was raised about deputy members, my understanding of that - and again it is an important issue - is that deputy members are what they are, just deputies, and only attend on the tribunal in the absence of a member. They do not become full members of the tribunal in terms that they are appointed to the tribunal. I think the mover, I hope, will be able to respond to that, but that is my understanding from the time of looking at this.

**The Speaker:** Any other member wish to speak? Mr Cretney to respond.

**Mr Cretney:** Yes, thank you, Mr Speaker. As we know, the deputy members are only appointed to sit in if the normal member of the tribunal is not present for a particular hearing. However, it has been commented that there is no power to dismiss deputy members on the grounds of good cause. Well, my advice is that there is always a power to dismiss where a statute confers a power of appointment. There is therefore power to dismiss members and deputy members even when the statute is silent. The good cause provision is not a power to dismiss, but a safeguard to avoid

interference in a full-time member's role, and deputy members will be appointed on a short-term contract to which the good cause provisions are not strictly relevant.

In terms of the question relating to the right of appeal to the tribunal, my understanding is that once a decision has been made, if the person is unhappy with the decision they have got right to seek their own separate legal advice. There has to be at the end of the day a conclusion to these matters.

The rules in regard to tribunal work are standard. There have not been any particular problems which have not been overcome in other such tribunals; that is the advice I have had, and in terms of directions, which was raised by a number of members and, I think, answered by the hon. member for Castletown, he is correct: a general direction from the Council of Ministers can be given under clause 14(1) and in terms of who appoints a tribunal and what happens if the High Bailiff is not present, well, the High Bailiff - and it is again the hon. member for Castletown, who has the benefit over me of spending years on the Social Issues Committee looking at this particular matter - under the Interpretation Act 1976 - this defines the Deputy High Bailiff - that is what it means: if the High Bailiff is not available, then it means that the Deputy High Bailiff can sit in.

I think I have answered the points and I beg to move that that clause stand part of the Bill.

**The Speaker:** 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.

I now call upon the hon. member for Onchan, Mr Karran, to put his new clause.

**Mr Karran:** Vainstyr Loayreyder, I believe that it should be a privilege to get registration as far as living in this country is concerned. I believe that this new clause strengthens this Bill because is it not taking away residency, we are not giving them residency in the first place; they are on probation, they are on conditional registration. I believe it strengthens this piece of legislation. It would be far more beneficial to have it in there to add to the Bill, and I am disappointed that the government is not keen on my proposals because I believe that if we do not put it in now it will be put in at a later date. We have heard mention of the human rights legislation; I believe that what we will see is that it will make it much more difficult to police conditional registration if you have already given them registration as far as residency is concerned.

I have looked into the issue that this issue would have to be done through the judiciary. I believe that this hon. House should support this amendment. It strengthens the Bill, it should be in the Bill, and unless there is a real good reason for it not being put in the Bill, then I hope this hon. House will break ranks and will support it as this is the sort of thing that should be in the legislation, in my opinion. I beg to move:

***Cancellation of conditional registration on conviction of offence.***

[]. (1) *This section applies if an individual who is the subject of conditional registration is, within the 2 years immediately following first registration under section 3, convicted of an offence which is triable on information.*

(2) *When sentencing the individual for such an offence, the court before which the individual is convicted may, if it is satisfied that -*

(a) *it is conducive to the public good; and*

(b) *the circumstances are such that the order will not be in breach of any international obligation of the United Kingdom which has effect in relation to the Island; and*

(c) *the circumstances otherwise justify the making of the order,*

*order that the registration of that individual under section 3 shall be cancelled.*

*(3) A court, which makes an order under subsection (2), shall cause a copy of the order to be sent to the Registrar.*

*(4) The Registrar shall, on receiving a copy of an order under subsection (3) cause the entry concerned to be removed from the register and the registration of the person concerned shall thereupon cease to have effect.*

*(5) An order under subsection (3) shall not prevent the person who is the subject of the order from making a fresh application for registration.*

*(6) An order under subsection (2) shall be treated as a sentence for the purpose of any enactment providing an appeal against sentence.”*

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

**The Speaker:** Mr Cretney.

**Mr Cretney:** I do not know about breaking ranks. I sometimes think such language is unhelpful. We are trying to get what is best for the Isle of Man here. As I have said already earlier, this is a very delicate balance. The important thing is to get the framework in place, then we will all, or those of us, or anybody who is in a position in the future to examine the regulations - that is the important time, and I appreciate the good intentions of the hon. member for Onchan behind this amendment. I would do anyway, because he is a friend of mine and has been for many years. I know where he is coming from, but this provision in theory, whilst it sounds promising, would, I believe, be ineffective in practice. Legal advice taken both recently and previously by the Social Issues Committee during its long deliberations on the Bill indicates that if a person who had been granted conditional registration was asked to leave the Island under the terms of the amendment proposed, there is a very grave danger that that would be in contravention of their human rights. Now, the Residence Bill already contains provision for the deportation of any individual with conditional registration who commits an offence under the terms of the Bill and obtains registration unlawfully, so we have had situations, we are aware of situations where people have forgotten they have done a murder when they were applying for a work permit. So we are aware that this thing can go on and that not everybody in the world is perfect.

In addition, Mr Speaker, we have the Criminal Justice (Exclusion of Non-Resident Offenders) Act which contains provision for the deportation of an individual for an offence punished by custody. This legislation is already in operation, although I am aware that the hon. member has concerns that this legislation is not actually used. However, both the High Bailiff and the Deputy High Bailiff have administered the provisions of this Act based on the evidence before them.

Furthermore, the hon. member's comments in respect of individuals appearing before the courts being given a choice of whether or not to accept deportation is also incorrect. Such decisions are a matter for the courts alone.

Mr Speaker, the terms of this amendment require that somebody who is the subject of conditional registration - and who commits an offence within the two years of their registration, would have their conditional registration revoked if they committed an offence. The person would then be required to leave the Island. Legal advice indicates that once an individual is granted conditional registration for whatever period - it may be one, two or three years or longer - that person has the right to reside on the Island for that period. Whilst I appreciate what the hon. member is saying, it is not realistically possible to give temporary conditional registration during which the individual concerned is not technically a resident. Registration either has to be for a defined period through unconditional registration; in addition there will also be short-term workers who are here on short-term contracts and who will not be regarded as resident. Therefore, if they commit an offence during their time working on the Island, the provisions of the Criminal Justice (Exclusion of Non-Resident Offenders) Act would

apply. However, I would repeat, Mr Speaker, that if somebody came to the Island on conditional registration, no matter for what period, and then committed an offence, it would be very difficult to deport them or conceal their registration without the highly likely danger of breaching that person's human rights. Difficult though that concept may be, I appreciate again appreciate what the hon. member is saying, but I hope what we are trying to get through is legislation that is workable.

Mr Speaker, there is also the additional scenario of an individual with conditional registration committing an offence where the entire family might also have to leave or the offender being sent off the Island resulting in the separation of families, and if the families are divided it is also a breach of human rights and not a position in which I feel the Island should put itself. At the conclusion of a period of conditional registration the individual will have to leave the Island anyway without the upset of having their conditional registration cancelled or creating a legal bureaucracy to examine such cases. I do not believe that it is worth the challenge of contesting the individual's human rights when all the evidence indicates that a decision to deport someone with conditional registration would be in conflict of such rights. It is, I believe, also worth mentioning that many of those who offend on our Island will qualify under unconditional registration and cannot be deported - we need to remember that from time to time; it is not just those that come to the Island, we have our share sadly of people as well.

I believe, then, that conditional registration should be considered as the mechanism to deal with this problem rather than introducing a new provision which appears to be an ideal way of dealing with offenders but which is not, in my opinion, a realistic or practical option and, as I say again, I do respect the hon. member's intent. To get to this stage the Social Issues Committee of the Council of Ministers has taken a number of years. They have, on a number of occasions when they have sought consultation and points have been raised, needed to seek legal advice, and this is one point upon which such advice has been sought in the past and that is why the Bill has been drafted in the manner in which it has, and I ask that it be left in that way.

**Mr Gilbey:** Hear, hear.

**The Speaker:** Mr Quine.

**Mr Quine:** First of all I have to say I have a great deal of sympathy for what the member is trying to achieve here. At the same time I think the hon. mover has made it quite clear that there are decided difficulties. But looking at the amendment it would appear that. . . Well, one point about the amendment and one point about the law in general: if we look at the clause as it is drafted, it would appear to me from what the hon. mover has said and what we understand that this clause would not be used, because (2)(b) says 'the circumstances are such that the order will not be in breach of any international obligation of the United Kingdom which has effect in relation to the Island', and from what we are told, it would appear that it would be in breach, so it is an amendment which would have a face value, a paper value, but in practice, unless the hon. mover of the amendment can clarify that point I do not see it would really help us.

But on the other hand, looking at the law as has been explained to us and very well by the hon. mover, we are saying in regard to this situation this is an unacceptable condition, an unacceptable amendment, because it would be in breach of our international obligations, more specifically of course the Human Rights Convention, but at the same time it would appear to me that we have in being legislation, albeit related to conviction for imprisonment, in relation to which you could draw parallel to what is proposed here, and one must therefore ask, what is the difference between the two? If we have existing legislation that allows us to send people off the Island on conviction for an offence which carries imprisonment, then why is that different from what is proposed here? It just seems to me that there is some lack of clarity here or I have a lack of understanding, and perhaps if the hon. mover - I

know it is asking a great deal in these complicated areas - has an answer to that, I think it would ease some of our minds to have it put before this hon. House.

**The Speaker:** Mrs Cannell.

**Mrs Cannell:** Thank you, Mr Speaker. I rise in support of the amendment. I have more than just a little sympathy of what the mover of the amendment is trying to achieve. I think there has to be provision laid down within this legislation for the consideration of a cancellation of conditional registration, and it is quite clear within the new clause which is being proposed that it is the court who would decide, and the court would have to be satisfied when convicting the individual that it was conducive to the public good, that it did not breach any international obligations and that in circumstances otherwise justified the making of such an order, so there are certain provisions in which a court would have to be ultimately satisfied. Indeed, a court would also have to be satisfied that in honouring such a provision, if it were to be contained within this Bill, it would not be in breach of human rights. So what it does provide for is a little bit of flexibility and it is particularly in respect of the 'conducive to the public good' aspect that I can see the merit of this particular new clause. It was mentioned by the hon. mover of the Bill that we had a situation where a previously convicted murderer had applied and was granted a work permit, and it was only after further investigation et cetera that action was taken and the individual was removed from the Island.

But we could be open to all sorts of things. Earlier on the hon. mover of the Bill. . . and there was comment made, right from the very beginning, from clause 1, about the fact that we are not being particular enough and the fact that it has to be sensitively balanced; I agree with all of that, but because we are considering it, there is a view that is going out that we are going to be shutting the gates. Equally, there is a strong message that is going out and being received that if we want to get in now we had better get in now because this legislation is being considered. On top of that we have wonderful tax incentives which are going to come in in February, and so there could be a big rush. I already know that there are people considering moving here because of the provisions we are making, particularly over the last 18 months, so we could be swelling the numbers in one fell swoop and then all of a sudden, having gone through the stages, we will want to enact this piece of legislation. We may have to enact this piece of legislation sooner rather than later if we have a huge influx of new people coming into the Island. Those new people, of course, will be subject to conditional registration and, as such, they may commit an offence, which may be a series of offences following on from other offences they have committed elsewhere, which they may have got away with relatively easy in other jurisdictions but which we may not want them to get away with quite so lightly here. Equally, we may not want to maintain their existence on the Isle of Man if the crime is of such a nature that there is a public outcry regarding it, and so we might want to have a flexibility like this where we are giving the discretion and the power to the courts in using their discretion in relation to the individual, all of the circumstances surrounding the crime and their conviction and everything else, to be able to say 'Right, well, apart from wanting to get rid of you off this Island because the Isle of Man does not want to tolerate individuals such as you because of your crime and because of the public good which would be maintained by your departure, equally we do not want to enable you to maintain your registration and your right to live in the Isle of Man.'

I would feel more confident if we had support by hon. members for this clause and perhaps not get side-tracked by who is moving the clause, because we all know the hon. member for Onchan is very active in this area. Sometimes he is successful with his amendments and sometimes he is not, but, generally speaking, there is a good heart behind his amendments, although not always appropriately worded to everybody's satisfaction. In this particular case, however, I feel it is appropriately worded, sufficiently to find our general acceptance of it, because it is up to the court to be satisfied and that is our safety clause within this new clause, that it would be up to the court to be

satisfied, and who better than the court to be aware and to be satisfied that there are no breaches against human rights?

I would ask hon. members to seriously consider putting in some comfort by supporting the clause moved by the hon. member. Thank you.

**The Speaker:** The member for Castletown.

**Mr Brown:** Yes, thank you, Mr Speaker. There is sympathy for the amendment that is moved by the hon. member for Onchan, Mr Karran, and I suppose we all can sympathise with that, but if hon. members look at the Bill before them, there is adequate provision within the Bill to deal with persons who falsify - because that is what members are talking about - their application to come into the Island

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**Mrs Cannell:** It is not falsifying, it is committing a crime.

**The Speaker:** Hon. member, can you address the House, please?

**Mr Brown:** I did not address anybody else, Mr Speaker, somebody else addressed me. Anyway

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**The Speaker:** Carry on.

**Mr Brown:** If I can say that to falsify their application for residency, the reason we have conditional residency is to actually cover these very points. There will be regulations made which will be approved by another place, and if members look in terms of clause 17, it gives powers to the courts: it covers any offences under this legislation and therefore a person can be actually fined 'not exceeding £5,000 or to custody not exceeding six months or to both', but also, under 17(2), it makes it clear that 'The court before which a person is convicted of an offence under this Act may, if it is satisfied that the person is not entitled to reside in the Island, make an order requiring that person to leave the Island.' Now, not being entitled is if they falsify their form; if they do not, for example, say that they have committed an offence. Now, if you are saying somebody who comes here commits an offence and is then to be deported, then I would suggest you are certainly infringing human rights, because what happens if in the same court there is a Manxman who commits an offence exactly the same and then there is a person who has got an unconditional registration who commits an offence, and then there is a person who has a conditional who commits the same offence, all three dealing with the same offence and one is told you have to get off the Island? Now, I am sorry, we are here to protect the rights of people, and people do get into trouble sometimes, but there is other legislation to deal with offenders in the Island.

The other thing I would say is that we need to be clear that the criminal justice provisions that the hon. mover of the legislation, the member for South Douglas, Mr Cretney, referred to applies to non-resident persons. We are not talking about persons who have set up a house and are living with their family on the Island. I can suggest to hon. members that the hon. member for Onchan and others in this House, including myself, would be the first to be shouting from the rooftops if somebody had committed an offence and they were told 'Right, you have got to get off the Island,' and they had been living here, let us say, 18 months. Whatever we may feel, I do not think we can all accept that is the sort of society we wish to live in. We are supposed to live in a fair society which balances up all these issues, and all I would say to hon. members, is that you need to be very careful in regard to this. I believe that the Bill contains adequate protections and provisions, and do not forget the regulations are yet to come; I know the hon. member for Onchan, Mr Karran, may well argue, 'Well, we have not got the regulations,' but that is not unusual, regulations are there for a purpose, and I would say to hon. members that this new clause is likely, in my opinion, to cause us problems in terms of our obligations re human rights, which we should be accepting anyway, but that is a matter for the House to determine.

I accept that. All I would say is, I believe more importantly that the Bill provides provisions to cover aspects of what is being said, and the important bit, Mr Speaker, is you need to look at the consequences of actions if you are to support the amendment before us. There are provisions in the Bill which will provide provision to deal with persons who falsify or mislead in their application to come here to reside on the Island. I hope members oppose the amendment.

**The Speaker:** Hon. members, I think this is an appropriate time to adjourn. The first speaker after lunch at 2.30 will be the hon. member for Onchan, Mr Cannell. Thank you.

**Mr Cannell:** Thank you, very much, Mr Speaker.

*The House adjourned at 1.02 p.m.*

### **Residence Bill – Consideration of Clauses Concluded**

**The Speaker:** Hon. members, we will now continue with the new clause and I call upon the hon. member for Onchan, Mr Cannell.

**Mr Cannell:** Thank you, Mr Speaker. Unless I am much mistaken, rather unusually the hon. member for Castletown seemed to be off the pace with his speech preceding lunch because he spoke of the fraudulent declaration of claims for residency in the Isle of Man, and yet the new clause which we are debating here does not really concentrate on that element of it, because my hon. colleague from Onchan here is not talking about where people might be deported, run out of the Island, whatever the expression is going to be, because they proved to have an application which was later fraudulent, because that in fact is catered elsewhere in the Bill. But my hon. colleague here puts forward his new clause based on a premise that if an offence is committed after registration has been granted, then certain actions which he proposes might be taken through this Bill could indeed be on the statute book.

Now, there does not seem to be anything unreasonable to me about what he is proposing here, although I do agree with the hon. mover of the Bill that if we start adding all these bits and pieces on it will become probably a great mishmash. I am not certain that I hold out great hope for the progress of this Bill right through as it is in any case, because in fact I never realised it would come so early we would be talking about human rights, because if there is one thing we are all going to get heartily sick of in the next few years it is reference to anything anybody does in any regard, starting from switching a light on to putting the cat out, infringing human rights, because in fact all we are hearing already before we ever get going on it is, 'You won't be able to do that', 'you won't be able to do this', 'you cannot do that', 'you shouldn't do that' because of your human rights. It reminds me of the general election where we here about the girl called 'Laura' and she will be coming out shortly, 'Laurandorder' and it is human rights that is going to the election thing, so I took the trouble of going home at lunchtime to get my consultative document and I see in the text of the Human Rights Bill as advocated by the Council of Ministers declaration, the first principle of article 5, Right to Liberty and Security, 'Everybody has the right to liberty and security of person', so what do we need a Residence Bill for if we are going to rely on that premise? In fact if everything is going to be referred to human rights legislation it will easily supersede anything that we imagine we can do in this Residence Bill. I do not think that is the case, but in actual fact that will be the claim of every Tom, Dick and Harry who feels the remotest bit disenfranchised by anything that gets done. Any figment of the imagination in law, every possible cause you have ever heard - and those of us who spent long winter Friday afternoons in the High Bailiff's Court have heard the lot for excuses and for reasons why they should not be punished, fined, put down or anything worse than that. In fact, you hear the lot; it was the most marvellous training for in fact just such an eventuality as we appear to be going to address now, because every old lag in the country will be dragging this document out and will be saying, 'You can't do that to me, you can't deal with me this way, it infringes my human rights.'

Tomorrow afternoon I think we have been invited to a private seminar on human rights, and I am going to see that because as far as I am concerned that is going to supersede three-quarters of the work we are doing here, because as soon as you put down that we want to do something, out will come this and they will say, 'No, you cannot.'

Now, in this new clause which we are considering here by my hon. colleague from Onchan it says here in new clause 2(b), 'the circumstances are such that the order will not be in breach of any international obligation of the United Kingdom which has effect in relation to the Island;'. So that is more or less rolling over and dying and saying, 'Yeah, we might be able to do all this Residence Bill but on the other hand, if it falls foul of the legislation of another country, then in fact that is what will happen. The United Kingdom, an international obligation - okay, we subscribe to that, we subscribe to that treaty, and an international obligation of the United Kingdom, until the day that this nation is independent - we will have to comply with that; I accept that entirely. But the hon. member for Onchan, my colleague, Mr Karran, is not for a moment saying that anybody is going to suffer difficulties through this if in fact they have done nothing. It is like complaining that you do not really care for prison food. There is an easy alternative to it: you do not actually go there to start with.

So what is the problem? The problem is that in fact people are already saying now, 'You won't be able to do this because once you've been granted residency for the Isle of Man for whatever reason, it is irrevocable except under the few conditions we have here.' In other words, once a resident always a resident, and, as I pointed out earlier on in some of my remarks, are we going to say, 'Right, once you are established there, you come over, buy a cottage a fortnight before the appointed day, get your residency, sell the cottage immediately after and you are a full-blown Manx resident unconditionally?' Mr Karran is saying here, 'Yes, but you have to serve your time' - that is what it amounts to, is it not? - 'Put some in,' as they used to say, 'Let's see the state of you, let's see if you are worthy of being on our lands.'

Now, it has already been made the point, 'Well, what is the difference between someone committing an offence who has come from away and we are sending them back? You can not do that because you are Manx people or your qualified residents may commit an offence and may be treated more favourably.' Well, quite right too - what is wrong with that? It is a sound principle. If someone comes to another land and offends the laws of that land they get treated by the laws of that land and they receive the punishment accordingly. You do not go to Saudi Arabia and set up a brewery because you come from the Isle of Man. You know dash well what will happen to you if you even remotely entertained a notion of that. Now, that is not as far as this but the principle is exactly the same. We are deciding what we will and what we will not accept, and we hear all this wish-wash about the fact, 'Oh well, take no notice of it, this is only enabling legislation.' Well, it is either enabling legislation or it is not. Either we are going to do it or we are not. If we are not going to do it there is not a lot of point in going in now with a high Residence Bill application if in fact we are not going to bring it about, because we may as well wait, spend a few million pounds on our lawyers' fees and make sure it complies with the Human Rights Bill which will easily overtake it.

So do not chuck this new clause out lightly. It only picks up a few people who may offend and be very unacceptable as residents of the Isle of Man to go alongside people who have a blameless record and who live their lives properly, pay their taxes and honour all their other obligations. It is no different to what we are going to do: we are going to not be in breach of any international obligation of the United Kingdom which has effect in relation to the Island. That is not so much different. It is a deterrent, apart from anything else, because we ran here with just such a situation for years - in fact, until very recently, where we had a law which was totally incapable of being carried out - that was the degrading punishment, or allegedly degrading punishment for serious offences, of carrying out the sentence of birching. Now, we ran under that premise for years and years and years. We pretended people still

talked about it. It is not long since we had the debate on it and the hon. member for Ramsey, Mr Bell, was able to point out that never again will we return to the days where we will be able to do that, but it worked for quite a number of years where people thought it did, and if you have this on the books - *(Interjection)* No, but this is actually a new law; this is one that is capable of being carried out. This is a very good reason for us taking people in and saying, 'Providing you play the game, then in fact we will allow you to continue this registration, but if you unduly step out of line. . .' and this does not say, when sentencing the individual for such an offence, that his traffic indicators were out; it says here that it is for two years only, and we have already heard that in fact you can get a 10-year qualification without the slightest idea of proving you have been here. There is not anybody in the world can bring me forward a system that says when you say, 'I've been here for an aggregate period of 10 years in the Isle of Man,' they can prove whether you have or whether you have not. It is not possible. It is okay saying, 'Oh, well, I signed it and I was an honest broker and I signed and I mean it, sir' - there is no way of knowing whether you are there or whether you are not. It is the same with bringing cars over here and you have to change registration plates after a certain time because you can prove they have been here all the time. You do not know whether they have been back home or not, there is no check through the Steam Packet of the registration numbers and they do not match up to the drivers necessarily anyway, so do not give me the guff that in fact anybody is going to know that they have been in the Isle of Man for 10 years prior to that. So all we are saying is, 'Yes, but within two years immediately following first registration, under section 3, if you are convicted of an offence triable on indictment on information, that is a degree of serious offences'. That is not parking on yellow lines; those are presumably High Court offences where the deemsters would deal with them. The hon. clause mover will tell us what he has in mind.

So I would commend this. I think it is a good back stop and I think we should actually pass this new clause and then see how it works, but let us not go for the full monty to start with where virtually everybody is going to come in at the drop of a hat.

**The Speaker:** Mr Singer.

**Mr Singer:** Thank you, Mr Speaker. Following on from the previous speaker, I think what we tend to forget - and I do not know why we tend to forget - when we talk about human rights is that we have got to look after the human rights of the law-abiding citizens. We tend to be looking at the human rights too frequently of the offenders rather than those offended against, and I will be supporting this amendment because it seems clear to me that anybody who is granted conditional registration will be aware when they come here that if they break the rules, if they commit a serious offence, then they will be liable to have their registration cancelled. Now, that is quite clear to anybody who applies for the registration, or it will be made quite clear to them, so they can have no excuse under human rights or whatever to say 'I wasn't aware of that,' because they will be aware of that.

Now, as far as the wording is concerned, I think the wording is correct, because Mr Karran's wording says that the court has to be satisfied that to cancel registration 'it is conducive to the public good', so quite clearly, as the previous speaker said, it does not mean parking on yellow lines, but it means a serious offence that is likely to cause danger to those people who have residence on this Island. So I do not think there is any doubt in the mind of anybody who comes to this Island, or there would be any doubt, if this is adopted that if they commit a serious offence which the court considers is serious enough to cancel their registration, it will not be done. and I think that is the way of looking after our citizens and that is the way to ensure that they benefit by the Human Rights Act and Bill.

**The Speaker:** Member for Peel, Mrs Hannan.

**Mrs Hannan:** Thank you, Vainstyr Loayreyder. For almost 50 years we have been signed up to the European Convention on Human Rights. This is not something new; it is not something that

suddenly landed on our doorstep because we have taken legislation through this place and another place. We have had this to protect individuals in the Isle of Man, and this is what we are here to do; we are supposed to be here to protect individuals in the Isle of Man, and I think it is a jolly good thing that we do have the courts to make sure that the laws that we pass are disposed of in the right way when it comes to justice, because some of the guff that you hear that has come out of people this afternoon, and some of it this morning, is really very worrying.

The Convention on Human Rights was brought about for the simple reason that individuals needed to be protected and needed to be protected from their government and their parliament, and it is for this reason that I think people should be allowed to have mitigation when they appear before the courts. It used to be years ago that nobody represented anyone in the courts, and the people that complained about that were members of the House of Keys, and now it seems everybody has got to be put in their little cubby-hole out of the way and nobody takes any notice of them because we judge them to be less than human because they should not have human rights. It is that very convention that has protected a lot of people and given them the right to freedom of speech and to some of the comments that we have heard in this House this afternoon.

I looked at this amendment and I thought, 'Yes, it is quite reasonable' but after some of the comments I have heard this afternoon I am not supporting it. *(Laughter)*

**A Member:** So there!

**Mrs Hannan:** There is legislation which deals with exclusion and it deals with people who have no residence and no connection with the Isle of Man, and I would have thought that that would still be the case (**A Member:** Hear, hear.) when this legislation is brought in. And when people say that 10 years cannot be proven, I would have thought anyone to get this has to go before the registrar, has to have documentation to prove that, and if they cannot they do not get registration; it is as clear as that. They can then appeal if they wish. I would have thought that the legislation is quite straightforward, but I do hope that members will stop bashing human rights when we have been signatories for the last almost 50 years.

**The Speaker:** Mr Gilbey.

**Mr Gilbey:** Mr Speaker, I think the important thing about this is that we do nothing that could delay or hold up this Bill. I am one of those in this hon. House who urged that this Bill be brought forward and who wants to see it come onto the statute book, who wants to see it put into effect, and just for an amendment like this I would not want to do anything to risk it. I am very surprised that the hon. member for Onchan, who I always thought shared my view on this - perhaps it is one of the few things we do agree on - would also not want to delay this Bill.

What are we delaying it for? First of all I think there will be very few people eventually caught under this amendment. I do not see that there will be many people to whom the court is going to say, 'You are going to leave the Island.' But there is a further point: do not forget, these people - you are talking not about fining them or putting individuals in prison; you are effectively saying that the family home is to be given up, and this is not just a punishment on the person; it is a punishment to their family and dependents, because it says that any person who has got conditional registration and that the dependants of any person who is registered under this section should be entitled to conditional registration, so presumably if you remove the conditional registration from the person, his dependants - wife or children - will also lose it. Surely that cannot be what we intend, that because one member of the family has offended that the others should lose their conditional registration? That seems to me absolutely wrong. You are punishing people who may have done nothing criminal themselves at all and for the reason that (1) I think this will be used very little, (2) because I think it will be immensely unfair on innocent families, and (3) because I believe it would be totally wrong to do anything at all that would

endanger the passage of this Bill however slight that danger is, I shall certainly vote against this amendment and I hope other hon. members will do the same.

**The Speaker:** Member for Rushen, Mrs Crowe.

**Mrs Crowe:** Thank you, Mr Speaker. Since I caught your eye the hon. members for Peel and Glenfaba have actually said what I was going to say, but what I would like to point out is that we constantly hear from the mover of this amendment, 'justice for all'; that is the normal cry. If you are from 'Pully' you are a vandal, if you are from 'King Bill's' you are a scamp, but that is just what we want in this amendment: we are going to have a law for one and not for the other, because that is what it is - discriminatory. And that is the reason, I think, that the hon. mover of the Bill has suggested most articulately that it would be against human rights. It is just discriminatory. That is what we are trying to get rid of in all the laws that we pass in this House and you are saying that it will be a law for one. . . In fact, the hon. member for Onchan, Mr Cannell, said those who have got a blameless record and pay their taxes, presumably the Manx that we were talking about then - what happens if one of those with registration offends? What do we do then? Do we say, 'Right, you now have to leave the Island, pack your bags, take your family'? Because that would be fair. We cannot have one lot saying, 'You've got to go' and the others saying, 'Well you can stay.' It is discriminatory. The hon. member for Onchan, Mr Karran, cannot recognise that the amendment as it is worded is just discriminatory and I think that is the reason it will fall foul, as the hon. members for Peel and Glenfaba has said. Thank you, Mr Speaker.

**The Speaker:** Anybody else wish to speak? Right, I call upon the mover, Mr Karran, to reply.

**Mr Karran:** Vainstyr Loayreyder, I think that the last input is just typical of what I said at the beginning as far as this is concerned - the misinformation. You have a situation where you have people who are citizens in this land and you have people who are not citizens in this land -

**Several Members:** No!

**The Speaker:** Hon. members, please!

**Mr Karran:** - and the point is this: at the end of the day you have people who are here who have a right to be here out of the fact that they were born here or they have the conditions under the clauses of this legislation. You have another condition of giving conditional registration for other people who have no rights to be here, and at the end of the day it is about whether we want this place to be . . . what we have seen here today is a situation where we have heard from the hon. member here - it is a classic of what has happened; we have heard another classic of the hystericalism that we hear from the government when they are in danger of losing that somehow, if we put this forward, it will delay the Bill, hold the Bill up, you know. The truth is - and the hon. member for Glenfaba knows it, he is not daft, he knows it - *(Mr Gilbey interjecting)*

**Mr Brown:** Can we have a vote on that? *(Laughter)*

**Mr Karran:** Well, maybe the jury would be out on that, *(Laughter)* but there is no way that there is any guts or backbone to bring any regulations in to bring this legislation in, and if you are going to bring it in it should be brought in right.

I have heard so much twaddle about this. The reason why I went for two years was as a probationary period for the conditional registration of the rest of it is that if we do not do it in those first two years you could have an argument as far as human rights are concerned. I have gone to the nth degree, and whilst I must say to my dear friend, the hon. member for Peel, I have not joined the hanging, flogging and birching brigade even though I have to say that her partner next door has turned into one of these pinko socialists - mind you, what a difference it makes when you become a minister!

as I say, the fact of the matter is, what I am trying to do is say that we should have a probationary period. You come into this country and as part of the condition of your conditional registration you know that if you get into a court situation scenario on a serious offence it could jeopardise your probationary two-year period of your conditional residency. Now, this can be done, it should be done, but the fact is once again we have a situation where the Manx Government, this government, are making laws, they should be making laws for the Manx Government, not for the UK Home Office, and that is what should be done today as far as that is concerned.

I am disappointed with the hon. member for Rushen and I am absolutely disappointed with the hon. member for Glenfaba to try and make out that this is a device to hold up this piece of legislation. It is a bit like the hon. member for Castletown here, in that I honestly believe in this hon. House that if we were a radio station we suddenly turn from long wave to short wave to FM in this House when it suits. We just cannot seem to pick up what is being moved when it is not the right people.

I appreciate what the mover of the Bill said about before - and he was very polite - talking about lines, but we have only seen in this legislation in this House, as the mover of the Health Services Bill I had two rubbish amendments, one from the member for Ayre and another one from the member for Castletown, but I was supposed to vote for the one from the member for Castletown, and this is what upsets me. I get annoyed that then I get criticised by the hon. member for West Douglas of being that nasty, horrible, opportunist little person (*Laughter*) when he does not even understand - (*Interjection*)

**The Speaker:** Hon. member, just keep to the response to your clause in principle.

**Members:** Hear, hear.

**Mr Karran:** Vainstyr Loayreyder, I am keeping to my reply. The hon. member was talking about the fact of how I was trying to make out there was different criteria for different people in this hon. House, and I have just said there is a fact that I was moving the Bill.

But what I am concerned about is that I believe - and I have been in the legal draftsman's department and I know he has to follow the party line, but at the end of the day, if it was breaking the law, he would not have moved this clause in the first place. I have tried to make sure that we have covered every eventuality with sub-clause (b) of sub-clause (2) as far as that is concerned. The fact of the matter is that what we should be doing is having some pride in this piece of legislation. It is an honour to come and live in this country; that is what it should be, but this doormat mentality of, 'Oh, well, we should be grateful that people come from the mainland to see us.' This is not the attitude that we should have, but that is the attitude that I feel has come over from this piece of legislation.

As far as I am concerned, this new clause should be accepted. I believe that what we should have is a situation where you are told when you come in here for conditional residency you understand that, under the new clause in this piece of legislation, if you break the probationary period of two years then you are in danger that you lose your residential qualification here. Now, I cannot understand how other countries can do it but we cannot. It seems that we run away. At the end of the day I hope that people will see the face value of this, will realise there is work being done on it and forget who is moving this amendment and get down to producing good law for this Bill. This Bill is seriously deficient in this proposal and in, I believe, in the other amendment that I put before it.

I hope this hon. House will support this amendment. Do not allow this nonsense that somehow that it is going to break all human rights legislation and that; I have even put that in as a saving caveat within this new clause just to cover because I do not want to be the party that wants to break the human rights legislation. I believe this House is losing a valuable opportunity here and I believe that this piece of legislation, as I have discussed it - that is why we went for two years; we thought if we go for more than two years then we would more likely end up in the Court of Human Rights. I believe that we would

not end up in the Court of Human Rights; I am led to believe that this is the fact as far as this is concerned. It might not be what the British Home Office wants but we are not here for what the British Home Office wants, we are here for what the people of the Isle of Man need for their people.

**The Speaker:** Right, hon. members, the motion is that the new clause be accepted in principle. Those in favour please say aye; those against, no.

*A division was called for and voting resulted as follows:*

*For: Messrs Quine, Rimington, Henderson, Mrs Cannell, Singer, Karran and Cannell - 7*

*Against: Messrs Gilbey, Rodan, North, Mrs Crowe, Messrs Brown, Houghton, Cretney, Braidwood, Shimmin, Downie, Mrs Hannan, Messrs Bell, Corkill, Gelling and the Speaker - 15*

**The Speaker:** Hon. members, the motion fails, 7 votes in favour, 15 votes against. Clause 6, Mr Cretney.

**Mr Cretney:** Thank you, Mr Speaker. Clause 6 specifies cases where individuals are required to notify the registrar of certain changes.

Subsection (1) requires notification by the registered individual within three weeks of any change in the information contained in the register. Notification must be in writing to the registrar.

Subsection (2) deals with cases where the registered individual is under a disability. In such a case his parent, guardian or other person in whose care or custody he is must comply with the obligation to provide notice of change of particulars.

Subsection (3) makes it an offence to contravene subsection (1). The penalty is contained in clause 17.

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

**Mr Brown:** I beg to second and reserve my remarks.

**The Speaker:** Does anybody wish to speak? In which case I put the motion clause 6 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Mr Cretney, clause 7, sir.

**Mr Cretney:** Clause 7, Mr Speaker, gives the registrar access to certain information held by official bodies in order that the register may be kept up to date.

Subsection (1) obliges the Chief Registrar to supply quarterly returns for births and deaths to the registrar.

Subsection (2) permits the Assessor of Income Tax and the Department of Health and Social Security to disclose information to the registrar to assist him in performing his duties under this Bill.

I beg to move Clause 7 stand part of the Bill.

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

**The Speaker:** Any member wish to speak? The motion is clause 7 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 8, Mr Cretney, sir.

**Mr Cretney:** Clause 8 ensures that, except for the purposes of the Bill, non-registration does not place an individual at any disadvantage under the law of the Isle of Man.

Subsection (1) declares the notice of registration under clause 1 (10) is evidence that the requirements of the Act in respect of registration and of other matters precedent and incidental thereto

have been complied with. This will avoid the possibility of subsequent argument over the status of a person who has received a certificate of registration.

Subsection (2) prevents the Bill from affecting the status, rights or duties of any person by reason of their inclusion in or omission from the register. Registration is only relevant for the purposes of the Bill and any proceedings taken under the Bill. For other purposes the question of whether a person is or is not resident in the Isle of Man will be decided on the particular circumstances of the case and not by reference to registration under the Bill.

I beg to move that clause 8 stand part of the Bill.

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

**The Speaker:** The motion is that clause 8 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 9, Mr Cretney.

**Mr Cretney:** Clause 9, Mr Speaker, restricts residents in the Isle of Man to persons who are registered or exempt from the operation of the Act.

Subsection (1) declares that an individual is not entitled to reside in the Island unless he is registered or is an exempt person defined in clause 20.

Subsection (4) of this clause defines persons who are treated as exempt persons under the clause and regulations made by the Council of Ministers under clause 19(2)(e) may grant exemptions.

Subsection (2) declares that a person is not to cause or permit another person to reside in the Island unless that other is registered or is an exempt person.

Subsection (3) declares contravention of subsections (1) or (2) of this clause to be an offence. A penalty can be found in clause 17.

Subsection (4) provides two circumstances in which a person is to be exempt for the purposes of clause 9. Firstly, a person is exempt if he was resident in the Island immediately before this clause comes into operation but exemption lasts only for so long as the person resides in the same residential accommodation. Secondly, a person is exempt if he is in the Island undergoing full-time education but only for so long as the course of education lasts.

Mr Speaker, I beg to move that clause 9 stand part of the Bill.

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

**The Speaker:** Mr Cannell.

**Mr Cannell:** Yes, Mr Speaker, I would like the hon. mover of the Bill to tell me once and for all how he proposes to impose this under the terms of the human rights legislation and free movement of people wherever they may go within the requisite territories.

**The Speaker:** Mr Cretney to respond.

**Mr Cretney:** I think the question of imposing the Bill will not be a matter for me; the question of imposing the Bill will be a matter for others. However, the Bill which is before the hon. members today has been certified as in compliance with human rights, and human rights provide for the matters which he has spoken of, and we understand there are no concerns in that regard. I beg to move.

**The Speaker:** The motion is that clause 9 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 10, Mr Cretney.

**Mr Cretney:** Clause 10 provides for the issue of certificates of registration. Certificates will not be issued in the ordinary course of events because a notice under clause 1 (10), which is notification

of registration, will normally be all that is required. To obtain a certificate of registration a special application will need to be made to the registrar.

Subsection (1) enables the registrar to certify that the applicant for the certificate, a child of the applicant or any person under a disability who is in the care or custody of the applicant, is registered. The certificate of registration will be in the form prescribed in regulations made under clause 19.

Subsection (2) recognises that certificates of registration will be issued for specific purposes and that the certificate itself will be valid only for the periods specified in the certificate. I beg to move that clause 10 stand part of the Bill.

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

**The Speaker:** The motion is that clause 10 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 11, Mr Cretney, sir.

**Mr Cretney:** Clause 11 requires persons transferring residence or taking up residence to produce a certificate of registration to the person providing the new accommodation.

Subsection (1) applies to circumstances where a person is about to commence to reside in any residential accommodation. Before the commencement of residence, which may include a person moving from one residence to another within the Island and a person moving to the Island from outside the Island, a certificate of registration must be produced to the person providing the residential accommodation.

Subsection (2) deals with compliance with subsection (1) where the registered individual is under a disability.

Subsection (3) imposes an obligation on a provider of accommodation to require the production of a certificate of registration before allowing a person to commence to reside in the residential accommodation.

Subsection (4) explains who the person providing accommodation is. In effect, it means a vendor of premises, a landlord where there is a lease and a person granting a licence to occupy.

Subsection (5) makes it an offence to contravene subsections (1), (2) or (3). The penalties are contained in clause 17.

Subsection (6) provides a statutory defence where it is alleged that a person has failed to produce a certificate of registration to a person providing accommodation. The defence arises if it was not practical in the circumstances to produce the certificate before the date on which residence commenced.

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

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

**The Speaker:** Mr Karran.

**Mr Karran:** Vainstyr Loayreyder, I would just like to ask: does this include people who live in these mobile homes, in tents or in garages, in cars, as far as this legislation is concerned? Does it cover every option as far as residency? I know we do not have anybody living in caves yet as far as housing problems. I would just like to know, does it include caravans and the like?

**The Speaker:** Mr Cannell.

**Mr Cannell:** Yes, Mr Speaker, I would like to ask the hon. mover of the Bill if he is fully content, as I imagine he is, but just to draw to the hon. House's attention that what we are doing here is imposing

upon people who presumably, having run the gauntlet of all the preceeding legislation and managed magically to finally obtain their permission to actually live on this sceptred Isle, when they want to move from one house in a street to the next house down the street, in actual fact have to prove that they are allowed to do it. That is what we are doing here. Is that not the case - that in actual fact we are going to get permission to shift down the street? That is what we are doing here - a sad day!

**The Speaker:** Mr Cretney to respond.

**Mr Cretney:** Mr Speaker, it may be a sad day and it may be that people will have concerns about this element. I accept that, and I have said from day one that we have to balance that out against the advantages of living in such a lovely island that we have the privilege to do. (**Mr Gilbey:** Hear, hear.) We have to also measure and look to the future. This is forward planning legislation. This is legislation which enables us not to make the mistakes that have been made in other locations. If you look at other islands - and I got into trouble for this last time so I will be careful how I say it - the population quantity is six times as dense in one of the islands of the Channel Islands and eight times as dense in one of the other Channel Islands as we have in the Isle of Man. We have a wonderful place here, and this piece of legislation is to manage that situation into the future, so I do not believe it is a sad day. I believe this is an important day and this legislation has been a long time coming.

Now, with regard to the question raised by the hon. senior member for Onchan, Mr Karran, the residential accommodation means as in clause 20 - 'any premises, vehicle or vessel, or any part of any premises, vehicle or vessel; and (b) any other place, used for the purposes of human habitation.' It is clarified in clause 20. I beg to move.

**The Speaker:** The motion is that clause 11 stand part of the Bill. All 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, Cretney, Mrs Cannell, Messrs Shimmin, Downie, Mrs Hannan, Messrs Singer, Bell, Karran, Corkill, Gelling and the Speaker - 19*

*Against: Mr Cannell - 1*

**The Speaker:** Hon. members, the motion carries, 19 votes in favour, 1 vote against. Clause 12, Mr Cretney.

**Mr Cretney:** Clause 12, Mr Speaker, provides investigative powers and rights of entry for the registrar and other authorised persons.

Subsection (1) declares an authorised person, which is defined in clause 20, may make such investigations as may be necessary to ascertain compliance with the Bill.

Subsection (2) enables a justice of the peace to issue a warrant permitting entry for the purposes of an investigation. The application for the warrant requires the information to be given on oath.

Subsection (3) limits the period of operation of a warrant to seven days.

Subsection (4) enables an authorised person entering residential accommodation under the warrant to take other authorised persons with him and constables as necessary. When leaving unoccupied accommodation, the authorised person shall leave it as secure against trespasses as he found it.

Subsection (5) enables the registrar to serve a notice on an individual stating that there is reasonable cause to believe that the person is residing in the Island in contravention of clause 9(1).

The notice will require the individual concerned to satisfy the registrar that he is not in contravention of that section, within seven days.

Subsection (6) deals with circumstances where an individual has failed to satisfy the registrar within seven days of a notice under subsection (5). If there is a subsequent prosecution for an offence under section 9(1) the registrar may certify the failure. Until the contrary is proved, the court is to take the certificate as sufficient evidence to prove that the individual is in contravention of section 9(1).

Subsections (5) and (6) are based on the premise that without evidence from the individual it may prove impossible or at least impractical to prove that the individual was not qualified to reside in the Island because that evidence will, on occasions, be known only to the individual concerned.

I beg to move that clause 12 stand part of the Bill.

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

**The Speaker:** Mr Cannell.

**Mr Cannell:** So, Mr Speaker, not only are we actually telling people in the Isle of Man that if they wish to move their premises down the street they will have to have a certificate, but in fact if they decline to do it we are now going to send in the armed guard to make sure they do - another sad day!

**The Speaker:** Anybody else wish to speak? Mr Cretney to respond.

**Mr Cretney:** Mr Speaker, I do not think any response is necessary to that rhetoric.

**The Speaker:** Hon. members, the motion is that clause 12 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, Cretney, Mrs Cannell, Messrs Shimmin, Downie, Singer, Bell, Karran, Corkill, Gelling and the Speaker - 18*

*Against: Mr Cannell - 1*

**The Speaker:** The motion carries, hon. members, 18 votes in favour, 1 vote against. Clause 13, Mr Cretney.

**Mr Cretney:** Thank you, Mr Speaker. Clause 13 creates offences in cases where false information is given to the registrar or the registrar is obstructed in the exercise of his functions under the Act.

Subsection (1) makes it an offence to provide information knowingly or recklessly which is false in a material particular when purporting to act in compliance with this Act or a requirement imposed under the Act. The penalties are contained in clause 17.

Subsection (2) creates an offence of obstructing an authorised person in the exercise of any power under the Bill. The penalties are set out in clause 17.

Subsection (3) enables a court to cancel registration where a person is convicted of an offence of making a false statement. It is anticipated that a court might use this power where registration could not have been effected without the false statement being made.

Subsection (4) requires the registrar to cancel registration where a court makes an order under subsection (3).

Subsection (5) commits a person who had his registration cancelled under this section to make a fresh application for registration.

Mr Speaker, I beg to move that clause 13 stand part of the Bill.

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

**The Speaker:** The motion is that clause 13 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 14, Mr Cretney, sir.

**Mr Cretney:** Clause 14 enables the Council of Ministers to give the registrar general directions as to the exercise of his powers under the Act. The power to issue directions gives the Council of Ministers an element of fine tuning in respect of the administration of the Act by the registrar. The registrar is obliged to comply with the directions.

Subsection (2) requires directions to be laid before Tynwald.

Subsection (3) obliges the registrar to supply a copy of any directions to members of the public on request at a reasonable charge.

I beg to move that clause 14 stand part of the Bill.

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

**The Speaker:** The motion is clause 14 stand part of the Bill. All those in favour please say; against, no. The ayes have it. Clause 15, Mr Cretney, sir.

**Mr Cretney:** This clause imposes obligations of confidentiality on the registrar and authorised persons.

Subsection (1) prevents the disclosure of information received for the purposes of or in the discharge of functions under the Bill. Information can be disclosed with the consent of the person from whom it was received or the individual to whom it relates.

Subsection (2) specifies certain circumstances in which information may be passed to others: (a) to the person whom it relates, (b) by order of a Manx court, (c) for the purposes of a criminal investigation and criminal proceedings, (d) for the purposes of a tribunal review under clause 5, (e) if the information is already in the public domain, (f) as statistical information which does not identify the individuals concerned.

Subsection (3) creates an offence contravening subsection (1). The penalty is set out in clause 17, and I beg to move that clause 15 stands part of the Bill.

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

**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. Mr Cretney, clause 16, please.

**Mr Cretney:** Clause 16 contains supplementary provisions as to time limits on the taking of proceedings and deals with offences by bodies corporate.

Subsection (1) prevents proceedings for an offence without the consent of the Attorney-General.

Subsection (2) deals with the time limits for the commencing prosecutions. Proceedings must be commenced within six months after the commission of the offence or within three years if sufficient information about the offence came to the prosecutors' knowledge not more than two months before the commencement of the proceedings.

Subsection (3) allows for a certificate to be accepted by a court as evidence of the date on which information sufficient to warrant proceedings came to the knowledge of the prosecutor.

Subsection (4). This provision imposes personal liability on certain officers of the company where the company commits an offence with their consent or is attributable to their neglect.

Subsection (5) deals with cases involving bodies corporate which are managed by its members rather than a board of directors. In such cases the managing members can attract personal liability in the same manner as directors.

Subsection (6) deals with the position of limited liability companies. They have some of the attributes of a body corporate and some of the attributes of a partnership. The members, manager and registered agent of a limited liability company can attract personal liability in respect of offences in the same manner as the director of a body corporate.

Subsection (7) provides a statutory defence in respect of all offences under this Bill. A person who satisfies the court on the balance of probability that he took reasonable precautions and exercised all due diligence to avoid the commission of the offence will have a defence.

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

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

**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, Mr Cretney, sir.

**Mr Cretney:** This clause provides a maximum penalty of £5,000 and/or six months' custody for offences under the Bill.

Subsection (1) of the clause introduces the maximum penalties for offences committed under the Bill. All criminal proceedings will be heard before the Court of Summary Jurisdiction - that is, the High Bailiff's Court or a Magistrates' Court.

Subsection (2) enables the convicting court to order that a person leave the Island.

Subsection (3) contains the arrangements to be made for enforcing an order under subsection (2). The court will arrange for a constable or other appropriate person to enforce the order and to take all necessary steps for procuring the conveyance of the convicted person to the country where such person previously last resided.

Subsection (4) requires the registrar to report to a court on the steps taken to enforce the court's order under subsection (2).

I beg to move that clause 17 stand part of the Bill.

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

**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, Mr Cretney, sir.

**Mr Cretney:** Clause 18 ensures that a breach of the Bill will not affect any property transaction or any property rights. A conveyance of land to a person who is not qualified to reside in the Isle of Man will not be invalidated by the provisions of the Bill.

I beg to move that clause 18 stand part of the Bill.

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

**The Speaker:** Hon. members, 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 19, sir.

**Mr Cretney:** Clause 19, Mr Speaker, is the regulations. This clause gives the Council of Ministers the power to make regulations. Regulations are subject to Tynwald approval.

Subsection (1) is a general power for the Council of Ministers to make regulations to carry the Bill into effect.

Subsection (2) sets out more specific matters which may be included in regulations. These include (a) The criteria for conditional registration, (b) conditions which may be imposed on a grant of conditional registration, (c) and (d) the forms of the register and certificate of registration, (e) exemptions, (f) variation of the criteria for unconditional registration, (g) circumstances in which a person will not be treated as being resident in the Island, (h) the imposition of duty on public authorities and educational or training establishments to keep information about persons residing in residential accommodation or attending courses. Returns may be required to be made to the registrar.

Subsection (3) requires regulations to be approved by Tynwald.

I beg to move that clause 19, the regulations, stand part of the Bill.

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

**The Speaker:** Mr Karran.

**Mr Karran:** Vainstyr Loayreyder, I believe that we should be up front as far as this legislation is concerned. We have seen with work permits how we had an unwritten rule for many years that anybody who had more than five children could not get a work permit in the Island. I believe this is not a new avenue; I believe that we should have the flexibility that should be in the regulations as far as whether medical certificates should be specified as part of the regulations. I think this House should support this. I think it is all right people saying that it is terrible and it is an awful thing to say, but we have been very fortunate. As a member of the DHSS from 1986 to 1991 I was mortified to hear of certain local health authorities in the United Kingdom in this period and the King's Fund justifying to us that certain local authorities had age limits as far as who got dialysis and who did not get dialysis in the adjacent isle. Fortunately, in this country we do not have that situation and long may it continue, but I do feel that we should have the flexibility in the primary legislation that regulations should be allowed to be drawn up to take account of this as far as this issue is concerned.

Whether the Council of Ministers decides to use these regulations will be up to them. I believe it would be wrong not to put it in the legislation. No-one wants to be the mean and terrible one, but I think we have to act responsibly. We take some people; many countries will not take you if you have got certain diseases such as HIV and other diseases, hepatitis B and other things like that, and I believe we should have the facility in this legislation to be able to propose certain medical requirements as far as this is concerned, and if we do not support this proposal, I think we are not living in the real world. I beg to move:

*Page 12, after line 15: insert -*

*“(b) the production of such medical certificates as may be specified in respect of applicants for conditional registration and their dependants (within the meaning of section 3(9));”;*

*and re-number the subsequent paragraphs.*

Mrs Cannell: Mr Speaker, I am happy to second to actually get this amendment on the floor and to be properly debated. In so doing, I suppose we will hear all the old chestnuts and red herrings coming out about ‘it is against human rights’, ‘it is against common decency’, ‘it is a backward step’, et cetera, et cetera. Again, I see merit in this particular amendment in that it is quite obviously geared towards preventing people from coming in to, as the hon. mover of the amendment would put it, this country, and being a burden upon the state in terms of requiring National Health Service treatment of one sort or another. In addition, of course, the hon. mover also talked about the fact that there are countries within the world that prevent people from coming in and settling in that country or even entering that country if they are HIV-positive, and I have to say that, having sat up rather late last night

watching a documentary on HIV and the prevalence of it throughout certain countries within the world, I am inclined to agree in respect of that that we should, when required and if required and if desired, be able to screen individuals in terms of certain medical conditions and particularly into such serious diseases as HIV and others. Equally, of course, where this is being proposed to be placed after line 15, of course, in reading clause 19 it is that 'Without prejudice to the generality of subsection (1) regulations may provide for. . .' Now, the 'may', of course, covers (a) right the way down and would also cover the proposed insertion here of medical certificates, 'may be specified in respect of applicants for conditional registration.' Equally, of course, I would make the observation which I have often made before: equally they may not, so again it is a degree of flexibility. This whole clause, to me, is a degree of flexibility contained within the legislation we are considering, and I think that we ought to properly, without any shenanigans and rubbishing of each other and individual members and ministers, please, let us just focus on the issue.

I had the opportunity - although not so much an opportunity, but I was ill last week and I lay in bed ill listening to Question Time in Tynwald, and I was horrified at some of the arrogance portrayed. Let us not see any more arrogance, please, in this chamber. Let us be reasonable. When members propose amendments or new clauses to legislation they do so because that is one of the reasons why they are elected. If they feel that legislation can be improved or they feel that it should be changed, then it is, each one of us, our right to propose such changes, to promote such changes and support others in trying to promote such changes. (**Mr Henderson:** Hear, hear.) We all have a difference of opinion and that is what makes this House a democracy. Some of us believe in some of the amendments and some of us do not. Some of us throw red herrings and others do not. That is the nature of politics, but please let us not get personal any more, at least today. Let us focus on the issue, focus on the amendment and please give it proper consideration without anybody getting upset or offended unnecessarily in my view. Thank you.

**The Speaker:** Mrs Crowe for Rushen.

**Mrs Crowe:** I really would not like to listen to this recording whilst I was laying in bed. (*Laughter and interjections*) However, I was just going to actually, before the previous speaker got to her feet, ask the hon. mover of this amendment: does this mean that if we are blind or disabled or you have some kind of disease you may or may not be allowed into our Island? Is that the kind of society we want to live in? We talk about HIV - are we going to exclude those, then, with any sexually transmitted diseases, because I now believe that one in 12 of 16 to 25-year-olds have the far more serious sexually transmitted disease called chlamydia, but no-one seems to bat an eyelid about that, but HIV - that brings out all the emotion, doesn't it? Well, I cannot believe that we are looking to exclude from our Island people who may or may not have a disease that they may or may not have been burdened with. I think it is incredible, I really do! I am sorry, I was going to, as I say, ask the hon. mover if that is what he meant, because I really could not believe what I was hearing.

**The Speaker:** Mr Cretney.

**Mr Cretney:** Thank you, Mr Speaker. I will try to be up front. I will try not to be aggressive. (**A Member:** Hear, hear.) I always do.

**Mrs Cannell:** It was arrogance that was the problem last week.

**Mr Cretney:** All right. Well, I will try not be arrogant, because we are all placed here on the same basis -

**Mrs Cannell:** Yes.

**A Member:** Hear, hear.

**Mr Cretney:** - and we are all here in this parliamentary setting, trying to do what we think is right (**A Member:** Hear, hear.) and I saw a documentary on the television, I think, last night - if it was not last night, it was the night before - and that was about HIV AIDS; that was particularly in the former Eastern bloc in Russia, and the problem there was - (*Mrs Cannell interjecting*) Well, I did not see the one about Zambia; I have just heard my colleague talking about that. (*Interjections*) Well, the one I saw -

**The Speaker:** Come on, come on! Thank you.

**Mrs Hannan:** Through the chair!

**Mr Cretney:** The one I saw illustrated that because of ignorance and because of lack of education people then have real difficulties -

**A Member:** Hear, hear.

**Mrs Crowe:** Exactly.

**Mr Cretney:** - over those situations in those countries, and it must be much better to be up front about the situation, as the hon. member has just said, because you do not get HIV or AIDS by a number of things that the people thought in those countries they might get them by, and I would suggest it is not me chucking chestnuts or red herrings in but somebody else. Also I have obviously prepared a response to the hon. member who has moved the amendment here and I looked and I made sure that there was no reference to human rights, and I am pleased to say there is no reference to human rights in what I am about to say, so I hope that pleases the hon. member.

This amendment proposes that new residents applying for conditional registration should provide a medical certificate in a prescribed form. I am aware that the hon. member's concern is that an influx of new residents in the future might well be a drain on our health service if the reciprocal agreement between the Isle of Man and the UK was to come to an end. However, it is impossible to foretell what arrangements we may or may not have in the future, and I do not feel at this stage that the provisions of this Bill should be amended to take into account the situation which in my opinion is unlikely to come about in the future.

I am also concerned at the implications of having such a provision in this Bill for the image of our Island as a caring community. For example, it could well be in the future that we would need to draw tight boundaries to control our population and we could find that we refuse conditional registration to a member of a family who is suffering from an everyday illness such as epilepsy, diabetes or asthma. Furthermore, I do not think that the Island would be portrayed as a caring society if someone was turned down on these grounds alone, and this could happen if this clause was included. If it was a matter of taking an AIDS test or being tested for HIV and the failure to pass such a test would on its own result in conditional registration not being granted, I believe this would be very difficult to justify.

Finally, as mentioned earlier, it is envisaged that one of the gateways for which conditional registration could be granted would be under humanitarian terms. It is likely a number of applications under such a gateway would come from elderly, sick or dependent relatives seeking to enter the Island as part of a family unit who would be unlikely to qualify on health grounds. I do not believe that the separation of families, even with our need to control our population, is desirable or in the best interests of the Island.

As I said when my friend, the hon. member for Onchan, moved his earlier amendment, I recognise his sincerity; I recognise where he comes from, but on this question I have to say I do not believe that would be the right way for the Isle of Man to go: down a route of only wanting blonde-haired and blue-eyed people.

**The Speaker:** Mr Downie.

**Mr Downie:** Thank you, Mr Speaker. I will not be voting for the amendment, and the main reason for not voting for the amendment is I do think that it does send out the wrong signal and, however well intentioned the hon. member for Onchan, Mr Karran, is, one cannot get away from the fact that similar criteria to this were applied in the late 1930s -

**Mr Cretney:** Hear, hear.

**Mrs Crowe:** Yes, the holocaust.

**Mr Downie:** - in Nazi Germany where there was an attempt there to create a *Herrenvolk* or a master race, (**A Member:** Hear, hear.) as previous speakers have said. Would the failure to produce a proper medical certificate mean that we were going to turn people away who were suffering from diabetes or blind or . . .? People now who are man and wife, for instance - it can be quite easily determined, the risk factor, in involving those people in giving birth to a Down's Syndrome child. So medical technology has moved along. The area that would cause me concern: if somebody applied to come to the Island and the medical certificate said that they were prone to a disease like sickle-cell that one could only get if they were from a Caribbean background, could we then be branded as being racist?

**Mrs Crowe:** Of course we could.

**Mr Downie:** So it is a thing I do not think we should be supporting. However, on the other hand, if you look at the amendment and what the member is trying to do, although I cannot support it, there are occasions, I think, when people do come into the Island from other jurisdictions who have never made a contribution to our health services either here or in the UK, and I think when the regulations have been drawn up to cover the Residence Bill one of the conditions that they do look at where people come in from abroad is that they have to provide suitable health care insurance so that a major drain is not put on our own facilities. I think that would be the right way forward.

I would just like to remind hon. members that - and I am not saying anything derogatory - we have a figure between somewhere and 60 girls working on the Island at the moment from the Philippines. They are involved both in private health care and in our own health services. One of these already, I know, has got married and had a child in the Island and she has some of her family living with her. So one has to make very certain that when we are writing legislation these sorts of people can be properly catered for and accommodated. Now, I am not suggesting that we should be inviting people in who probably have never made a contribution to our health services, but these are areas that I think in years to come are going to cause problems, and they are avenues which I think need to be addressed in the regulations, but basically I am not in favour of the hon. member's amendment of clause 19 and I think, if it was supported, other people outside this House would show us in a very bad light.

**The Speaker:** Mr Singer.

**Mr Singer:** Just briefly to add one or two things to what has been said, I feel that I cannot support this amendment because I think what we are doing here is looking to turn away people on cost and cost to the health service. It cannot be right, that. To turn round and say 'Well, what is your problem?' 'Well, I have got asthma.' 'How much is it going to cost you?' 'Well, it is only going to cost us. . .' so much. 'Well, that is okay but if you need dialysis you cannot come in' - that is totally wrong because then you are going to make a judgement on what is wrong with them or what is wrong with their children, and I do not think that is a caring society at all. If we go on then, what happens if we find out that we allow someone in, we give them registration and then we find out after six months or 12 months that they discover to have a serious complaint? Do we then come round at some time to then cancel the registration - say it is within two years? This is a case where I do not think we can do that.

Then we could also turn round if we wanted to and say, 'How big is your family? How many children have we got to educate?' 'Oh, three children', 'Four children.' 'We cannot let you in then, because that is going to cost us money.' I think we are definitely going onto dangerous ground and opening the doors to greater problems if we accept this amendment. And of course there is the opposite way of people who are Manx residents who have registration and wish to go across to the United Kingdom to live for whatever reason; are they then going to turn round and say, on the very same grounds, 'Well, no, you cannot come and live here because of any particular condition that you have' - any disease or whatever? I think that we must resist this particular amendment because of those particular grounds.

**The Speaker:** Mr Rimington.

**Mr Rimington:** Yes, thank you, Mr Speaker. I have to break ranks with the hon. member for Onchan, Mr Karran, and my colleague in the department. I do understand fully what he is trying to do and sympathise with his protection of funds for the Manx taxpayer. We have seen, I suppose, in recent times only on a very small scale, but increasingly so, increases in small numbers of people who are possibly coming to the Isle of Man because we do actually provide some very good services in areas which are not well provided for in the adjacent isle, and that has been one of the prime motivations for some individuals to come here to take up employment, for the facilities are there for, say, their more unfortunate members of their family, and I can see the background to that reflected in the amendment put forward today, but unfortunately that is something we are going to have to live with. That is just a fact of modern life. People will go to where services are better in the way that, certainly in the adjacent isle, people move houses to become adjacent to certain schools so their children can be better educated. That is the way of the world. But I cannot support the amendment because I think it would be very dangerous territory to go down to try and isolate individuals because of their health problems or whatever, and it would open up such huge complexities that I think we would quite quickly get lost in a quagmire of, say, who or who should not be allowed in for treatment for this or that or the other.

There is just one point - it is from the speaker who has already stood up, the hon. member for Douglas West - regarding people coming in from other jurisdictions who have not contributed to our health service or to the health service in the adjacent isle and wondering if they would then be a burden and we should put private health insurance, or a request for private health insurance, on them. This argument was quite prevalent in the adjacent isle a couple of decades ago when there was a great quite significant influx of immigration from the Indian subcontinent, and the argument was placed then that these people were a drain on the resources of the state in the adjacent isle and it was quite accurately pointed out that people, economic immigrants really, coming in from such areas or from wherever in the world are not, on balance, a drain on the resources of the area that they come into because they are coming in as an economic unit and contributing to that society, individual households maybe, but in balance, as a body of people, economic immigrants do contribute and are a plus to the society that they join in terms of the contribution that they make towards health care and other services. Thank you, Mr Speaker.

**The Speaker:** Anybody else wish to speak? I call on Mr Karran to respond.

**Mr Karran:** Vainstyr Loayreyder, I think that the hon. member at least has been more courteous as far as this one than some other members who I have found quite offensive talking about blue eyes and blonde hair - real nonsense, emotive stuff to try and . . . The reality, as the hon. member will know, is you have the likes of in the United Kingdom, where you have post-code prescribing, you have the situation where you live in one health authority, your family lives in another health authority, you need dialysis and you have got all the problems if you go from one health authority to another one in the United Kingdom. I think we have got to wise up and start living in the real world. I am not saying that we

need to do it but what I am saying is, the facility should be there and it should not be done on a backdoor situation. I heard from the hon. member for Ramsey; he said about how many kids there were. Well, the reality is that for years if you had more than five kids you could not get a work permit. That is the reality of the situation.

I do get annoyed in this hon. House when I hear people trying to make out these great revelations and trying to distort things. I am not trying to emulate Germany and I find that offensive. I have lived under siege being a member of this House, and other members, when we have been trying to stand up for certain pieces of legislation. I find that offensive listening to some members. It might be because of the things that they might want to do about blue eyes and blonde hair, but it certainly is not the thing that I want to do as the member for Onchan.

The reality is that this sort of situation happens in not just big countries like the US but it happens in small countries like Turks and Caicos and other countries like that, where the health implications are brought into question. They actually bring it into their work permit legislation. Now, I am not saying you have got to bring it in today, you have got to bring it in tomorrow, but I honestly believe that you should be up front about it if you are going to end up bringing it in.

We heard other members saying that somehow we want to try and create some sort of master race like the hon. members for Douglas were on about. This is not so. This is something that is accepted in lots of legislation today as far as this is concerned; if you want to take up residence here in these places we want to have a first-class health service. As I said in my opening remarks, this country does not say, 'I am sorry mate, you are 57, we do not pay for your dialysis, we do not pay for this, we do not pay for that,' but that does happen in other countries not so far away from us. They even bragged about it when I was member for social services back in the 1980s in the Thatcher years. What I believe is that this should be put in the piece of legislation. I believe that we should be up front about it and we should sensibly debate it and, when the regulations come along, let us not have a 'nudge, wink, how's your father' and we do not really do that, but I would not put it in because there is a question mark. If we are going to do it we should have regulations that are clear and definable as far as I am concerned.

I do not like the comments saying that somehow we want to try and make a master race. What I do want to do: I do get tired when I listen in this hon. House, complaints to me about the waiting lists and waiting for this and the services here and the services there, and then I get complaints from over this side that the health services can only have so much of the cake and we have got too much of the cake now and so on. I just think that this amendment should be put in this piece of legislation. Then it is up to the members or the government of the future to make the criteria, but make the criteria honestly, not the slimy way that we see so much stuff done. We wring our hands and 'Oh, isn't this awful?' and 'Isn't that terrible?' when the reality is we are the architects of many of the problems that we are now trying to claim we have got nothing to do with.

I understand this hon. House. I am not here to be popular; I am here to do what I believe is right, and I believe this House, like the previous new clause, is a missed opportunity and I believe that history will prove that we should have addressed this at this time because I think it should be addressed as far as this is concerned, but I think it would be awful if people outside this House thought we were trying to emulate something from the Nazis. We are not; we are trying to emulate the likes of what other countries do, big and small countries throughout the world, and that is to try and safeguard the high standards and the commitment of a first-class health service to the citizens that are in the country in the first place, and that is what we have got to try and do.

I hope that the rest of the members realise that because at the end of the day, on this proposal, it says at the beginning of it, 'The Council of Ministers may make such regulations as they consider

necessary or expedient to carry into effect the provisions of this Act'. They may decide they do not want to do this, but I think at least let us have it up front in black and white so people know where they stand, not hidden behind things, and I think my hon. colleague from Rushen is being a little bit more honest about the situation we have had over certain things where people have seen this is a good place to come and it is starting to have an effect on the local residents. I am the member who has fought to get two supernumerary places on nurse training for training people from the Third World. I am all for helping the world, but I do believe that we have a responsibility to help our people first and to do our best for the people outside, and I think that this amendment should be accepted in this piece of legislation because it is no great revelation; it is reality. It is just about being a bit honest about it.

**The Speaker:** Mr Cretney to respond to clause 19.

**Mr Cretney:** Mr Speaker, I do not know that I have a great deal to say. We have heard the hon. member's comments about his proposed amendment. I have already said what I feel about that amendment. I do not believe that it would be the right thing, whether or not my choice of words in retrospect at the end of my contribution were as thought out as they should have been. I accept that that might be the case. However, the concept of it is something which I find difficult to handle and I apologise to the hon. member if I went further than I should have done. I beg to move the clause as it stands.

**The Speaker:** Hon. members, clause 19, and to that we have an amendment by the hon. member for Onchan, Mr Karran. Those in favour of the amendment please say aye; against, no. A division was called for and voting resulted as follows:

*For: Mrs Cannell and Mr Karran - 2*

*Against: Messrs Gilbey, Quine, Rodan, North, Mrs Crowe, Messrs Rimington, Brown, Houghton, Henderson, Cretney, Braidwood, Shimmin, Downie, Mrs Hannan, Messrs Singer, Bell, Corkill, Cannell, Gelling and the Speaker - 20*

**The Speaker:** Hon. members, the amendment fails to carry, two votes in favour and 20 votes against.

I now put the motion 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, Mr Cretney, sir.

**Mr Cretney:** Thank you, Mr Speaker. This clause provides for the interpretation of terms used in the Bill.

Subsection (1) contains definitions which are largely self-explanatory, but in the definition of 'child' the expression 'marital child' is used and means a child whose parents were married to each other at the time of the birth or, if the marriage has been terminated before birth, at the time of the active intercourse resulting in the birth, and includes an adopted child. 'Resident' is defined as meaning ordinarily resident. The words 'ordinarily resident' are taken to refer to a person's abode in a particular place or country which that person has adopted voluntarily and for settled purposes as part of the regular order of his life for the time being, whether of short or long duration. It has also been defined as meaning presence in the place where, in the settled routine of a person's life, he regularly, normally and customarily lives. The definition is qualified in respect of persons who are present in the Island for a total of six months in any 12 consecutive months. The mere fact that a person regularly spends time on the Isle of Man for a period of up to six months in any 12 months will not automatically mean that the person is treated as ordinarily resident. This can cover people who might have a holiday home in the Island which they frequently use but have their normal, settled home in another country. Such persons will not be in breach of clause 9(1) if they spend up to six months in any 12 at that place. If they exceed six months in any 12 it will nonetheless have to be shown that they had adopted the Isle of Man as their

settled normal residence for there to be a breach of clause 9(1). The definition of 'residential accommodation' is intended to cover any place, premises, vehicle or vessel used for human habitation.

Subsection (2) specifies when, for the purposes of the Bill, an individual is to be treated as under a disability. Essentially it is when that person is under 18 years of age or is incapable of managing and administering his property and affairs.

Subsection (3) prevents a person claiming that he is resident in the Island by reason only of his serving a term of custody on the Island. I beg to move that clause 20, the interpretation clause, stand part of the Bill.

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

**The Speaker:** Mr Singer.

**Mr Singer:** I am not being pedantic, Mr Speaker, but could the hon. mover explain: where you get a definition of a person's residential accommodation as no fixed abode when they are actually moving around on a regular basis, are they going to be affected at all by this Bill?

**The Speaker:** Mr Cretney to reply.

**Mr Cretney:** I am sorry, I am not able to answer at the moment, so I will come back if I come to the third reading and give you more clarification there, if that is all right with the hon. member. I am sorry about that.

**The Speaker:** Right, hon. members. 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.

**Mr Cretney:** Mr Speaker, this clause provides for the expense necessary, in the administration of the Bill, to be paid out of money provided by Tynwald.

I beg to move that clause 21 stand part of the Bill.

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

**The Speaker:** The motion is that clause 21 stand part of the Bill. Those in favour please say aye. Clause 22 and schedule.

**Mr Cretney:** Clause 22, Mr Speaker, as you say, introduces the schedule. The schedule amends section 2(3) of the Control of Employment Act 1975. That section specifies persons to whom the Act does not apply. These persons will not need a work permit under that Act. To the exempted categories there are added (c) persons who are registered unconditionally or are qualified to be registered unconditionally under the Residence Bill 2000, (d) any person who is registered conditionally but only while such registration is enforced, (e) persons who are exempted from the Residence Bill 2000, or (f) any person who is exempted from registration under the Residence Bill 2000.

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

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

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

**Mr Cretney:** Clause 23, Mr Speaker, makes it clear that the Bill is not to affect the operation of the Immigration Act 1971 or the Data Protection Act 1986.

I beg to move that clause 23 stand part of the Bill.

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

**The Speaker:** The motion is that clause 23 stand part of the Act. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Finally, clause 24.

**Mr Cretney:** Mr Speaker, clause 24 provides a short title and commencement.

Subsection (1) provides a short title for the Bill.

Subsection (2) enables the Council of Ministers to bring the Bill into operation by appointed day order.

I beg to move that clause 24 stand part of the Bill.

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

**Mr North:** What remarks?

**The Speaker:** The motion is that clause 24 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. That completes the clauses stage of the Residence Bill.

### **Matrimonial Proceedings Bill – Clauses Considered**

**The Speaker:** We now move to item 11 on your order paper, the Matrimonial Proceedings Bill, consideration of clauses, Mrs Hannan.

**Mrs Hannan:** Thank you, Vainstyr Loayreyder. Clause 1. this clause is introductory and specifies the kinds of financial orders which the High Court may make in matrimonial proceedings. These are mainly available on granting a decree of divorce or nullity of marriage, but some orders can also be made on judicial separation and in proceedings for failure to maintain.

Sub-clause (1) lists the orders which the High Court can make against either spouse and specifies the provisions of part 1 under which they may be made: a periodical payment order in favour of the other spouse or a child of the family, usually called a maintenance order; a secured periodical payment order, in favour of the other spouse or a child of the family - these are rare today, and the payment of maintenance is secured by a charge on property or on a fund in the hands of trustees, its main advantage being that it can outlast the death of the payer; A lump sum in favour of the other spouse or a child of the family; a transfer of property order, for example requiring one spouse to transfer his interest in the matrimonial home to the other; an order for the settlement of property or the variation of settlement; the sale of property order; a pension sharing order providing a percentage of one spouse's rights under the pension scheme to belong to the other.

Sub-clause (2) provides for references in the Bill to any of these kinds of orders to be read in accordance with table 1.

Sub-clause (3) introduces the terms 'financial provision order' and 'property adjustment order', defined by reference to the kind of order in table 1.

Vainstyr Loayreyder, I beg to move that clause 1 form part of the Bill.

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

**The Speaker:** The motion is that clause 1 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 2, Mrs Hannan.

**Mrs Hannan:** I wonder if I could take the next two clauses together, Mr Speaker?

**The Speaker:** Certainly.

**Mrs Hannan:** Thank you. Clause 2. This clause gives the court power to award one spouse maintenance pending suit - for example, an interim order for maintenance against the other.

Clause 3. This clause gives the court general powers to make financial provision orders - for example, in maintenance or lump sums on granting a decree of divorce, nullity or judicial separation or at any time after. It makes no change in the present law.

Sub-clause (1) enables the court to make a financial provision order against one spouse in favour of the other, or a child of the family, in granting a decree of divorce, nullity or judicial separation or any time after.

Sub-clause (2) enables a financial provision order to be made after a decree nisi of divorce or nullity. It need not wait for the decree absolute.

Sub-clause (3) enables the court to make a financial provision order against one spouse in favour of a child of the family, not only as in (1), but also before a decree of divorce nullity or judicial separation or even where the petition is dismissed and no decree is made.

Sub-clause (4) enables successive orders to be made in favour of a child of the marriage before, or on granting a decree.

Sub-clause (5) similarly enables successive orders to be made in favour of a child of the family at any time after granting a decree.

Sub-clause (6) provides that a financial provision order in favour of the spouse is not to come into force until the decree is made absolute; the same applies to any settlement made to give effect to the order.

Sub-clause (7) provides that the lump sum order can be made to defray expenses occurred by the applicant, or in respect of a child of the family before the application was made. It can also be made payable by instalments.

Sub-clause (8) provides that where a lump sum is made payable, at a later date or by instalments, it can carry interest until payment.

Sub-clause (9) makes it clear that the powers to make orders in favour of a child of the family are subject to the restrictions in clause 16 on orders in favour of children over 18.

Vainstyr Loayreyder, I beg to move that clause 2 and clause 3 stand part of the Bill.

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

**The Speaker:** Mr Cannell.

**Mr Cannell:** Yes, thank you, Mr Speaker. I would like to ask the hon. mover of the Bill if she is content that the provisions contained in these two clauses satisfy the queries which I made at a preceding sitting, where it appears that frequently the lump sum payments which are made under these orders do not, in fact, go as far as they might to make sure that the partners in these most unfortunate break-ups are actually treated equally. There appears, as I mentioned once before, to be a number of cases where people who are found to be, or even proven to be or even cited to be, legally in the parties actually tend to be on the side of innocence and are unable to satisfy the courts that in fact they have liabilities to fulfil in respect of the marriage which they are coming out of.

I did mention previously that I thought that ignored, in general, a tendency of the courts to give custody of children to the mother. I maintain that position as my opinion. But there are many cases which I am sure hon. members have encountered along the way, where innocent victims of either sex of the marriage are left with considerably higher outstanding liabilities than in fact might be viewed to be

a completely split, if in fact complete notice is taken of the liability of both parties. In other words, sometimes people who have had nothing whatever to do with the split-up of the marriage in fact come out the worst. I am afraid I have to say that that up to now appears to be, quite frequently, the preserve of the male - not always, of course, but what sometimes happens is those males then, for no fault of their own, are left with considerable amounts of liabilities. If they then move on to try to actually get remarried they still have the liability, rightly so of course, of their children, but not always is notice taken of the individual circumstances where in fact a vexatious woman or indeed, I suppose, to make it balanced for the hon. mover who I know has strong views on this, it could be the other way around: it could be the man insists on the marital home being sold up and the proceeds from that carved up. That then leaves the outstanding partner with quite insufficient money to actually purchase somewhere else, particularly indeed if they are older, where they are unable to get a decent length of mortgage or afford property which might even bring them remotely similar circumstances to that which they enjoyed up till the break-up of the marriage.

So it is a plea, really, for the hon. mover to tell me, or reassure me if she can, that in fact every notice will be taken of legitimate claims of people of either sex who would be disenfranchised by something that they might not have contributed to in any way whatever.

**The Speaker:** Mrs Hannan to respond.

**Mrs Hannan:** I thank the member for his comments, I think expressed today a little bit more conciliatorily. The position with this legislation is that it does not actually make a change to the present law. What happens is we pass the laws, these laws, then, are used in these circumstances where a marriage has broken up, where there is a breakdown of relationship, so it can be divorce, nullity or judicial separation and therefore it is up to the courts to listen to the case and to rule on that. That is what the court is there to do, so I cannot give a guarantee that people will get what the member is stating - equality of treatment before the court, because, as he says, everything is taken into account by the court, everything is considered by the court. We might say the person who feels treated badly or aggrieved might feel that the court has not listened to their case, but the court has listened to both sides of the case and has decided how it should be.

The member for Onchan states that sometimes the children go with the mother and the court might ignore certain comments made to the court. I think the court always tries to be fair. I think the court always tries to take into account the very close interest that the family has with the children and then react where that is concerned. However, I think where some of us would say, yes, the males are always worse off, I think some of would say that the women are always worse off: they have actually brought up the children, they could have been at home looking after the children, they might even have been at work balancing everything, and suddenly there is a breakdown in the relationship and they have lost the companionship, they stand a chance of losing their home, they stand a chance of losing everything that they have worked for in the same way as the other partner does, but maybe that other partner has someone else to turn to - it might be the woman, it might be the man - and so the one that is aggrieved maybe could be aggrieved for different reasons. But the one who has been at home raising the family or has been juggling all these things then finds that what they have been working for has been lost, and I think it is all that that the court has to take into consideration. So whether or not someone remarries - we will come to it later - the actual payee, the person who gets the pension sharing and all - that actually goes if that person remarries. So there is a lot to be said there, for if that person remarries then their circumstances change, so it is not something that is written for life by any means; it depends on their situation. So I cannot give the mover - that is what I am trying to get round to - the clarification which he seeks but I still consider that clauses 2 and 3 should stand part of the Bill and I hope members will support it.

**The Speaker:** Hon. members, the motion is that clauses 2 and 3 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 4, Mrs Hannan.

**Mrs Hannan:** This clause enables a court to make property adjustment orders on divorce, nullity or judicial separation, and it also makes no change in the present law.

Sub-clause (1) enables the court to make a property adjustment order against one spouse in favour of the other, or a child of the family, on granting a decree of divorce, nullity or judicial separation, or at any time after. 'Property adjustment order' includes a transfer of property order, an order for a settlement of property or an order for variation of a settlement.

Sub-clause (2) enables a property adjustment order to be made after a decree nisi of divorce or nullity. It need not wait for the decree absolute.

Sub-clause (3) provides that an order can be made varying a settlement even if there are no children of the family.

Sub-clause (4) provides that a property adjustment order in favour of a spouse is not to come into force until the decree is made absolute; the same applies to any settlement made to give effect to the order.

Sub-clause (5) makes it clear that the powers to make an order in favour of a child of the family are subject to the restrictions in clause 16 on an order in favour of children over 18.

Vainstyr Loayreyder, I beg to move that clause 4 stand part of the Bill.

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

**The Speaker:** The motion is that clause 4 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 5, Mrs Hannan.

**Mrs Hannan:** Thank you, Vainstyr Loayreyder. If I could take clause 5 and clause 6?

**The Speaker:** Certainly.

**Mrs Hannan:** This clause enables the court in certain circumstances to make an order for the sale of property to realise capital for making other kinds of financial provision. It makes no change in the present law.

Sub-clause (1) enables the court to order the sale of property in which either or both parties have an interest.

Sub-clause (2) enables the order to contain any other necessary provisions - for example, as to the manner of the sale, private treaty or auction.

Sub-clause (3) provides that the sale of property order made on divorce or nullity is not to come into force until the decree is made absolute.

Sub-clause (4) enables the court to defer the coming into force of the sale of property order until the children have left school.

Sub-clause (5) provides that where an order requires the proceeds of sale to be used to secure the payment of maintenance in favour of one spouse - for example, setting up a trust fund, the income of which is to pay the maintenance - it only last for as long as the spouse is alive and does not remarry.

Sub-clause (6) introduces (7) below and applies where one spouse and a third party both have beneficial interests in the property. This is where a house has been left to the wife for her life and then to her children by a previous marriage.

Sub-clause (7) requires the third party in that case to be given an opportunity to be heard before an order for sale is made, and requires the court to have regard to any representations they make.

Clause 6. This clause gives the courts new powers to make pension-sharing orders in divorce or nullity proceedings.

Sub-clause (1) enables the court to make a pension-sharing order on or after granting a decree of divorce or nullity. A pension-sharing order is an order which provides that the shareable rights under a specified pension arrangement or the shareable state system rights of a party to the marriage be subject to pension-sharing for the benefit of the other party, and specifies the percentage value to be transferred.

Sub-clause (2) enables a pension-sharing order to be made before or after decree absolute but cannot come into force before decree absolute.

Sub-clause (3) prevents more than one pension-sharing order being made in respect of the same pension arrangement - for example, an occupational pension or personal pension scheme.

Sub-clause (4) prevents more than one pension-sharing order being made in respect of state scheme rights - that is, SERPS.

Sub-clause (5) similarly prevents a pension-sharing order being made in respect of an occupational scheme or personal pension scheme where there is already an order in force under clause 10 or 11 earmarking pension rights under the scheme.

Vainstyr Loayreyder, I beg to move that clauses 5 and 6 stand part of the Bill.

**Mrs Crowe:** Mr Speaker, I am delighted to second and reserve my remarks.

**The Speaker:** The motion is that clauses 5 and 6 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 7.

**Mrs Hannan:** This clause lists the matters to be taken into account by the court in making any financial order under part 1. It makes no change in the present law except in adding references to pension-sharing orders.

Sub-clause (1) lays down the general rule that the court is to look at all the circumstances, but is to put first the welfare of any children of the family under 18.

Sub-clause (2) lists specific matters which the court is to take into account when making orders in favour of the spouse: (a) the existing and foreseeable resources of each spouse, (b) the existing and future needs of each spouse, (c) the parties' standard of living before the breakdown, (d) their ages and how long the marriage has lasted, (e) any disability of either spouse, (f) the past and future contributions of each spouse to the welfare of the family, (g) the parties' conduct, but only if it would be unjust to disregard it, (h) any potential loss to either party caused by the divorce or annulment - for example, loss of widow's pension; this does not apply to judicial separation.

Sub-clause (3) lists specific matters which the court is to take into account when making an order in favour of a child of the family: (a) the child's needs, (b) the child's resources, if any, (c) any disability he has, (d) how he has been and is expected to be educated, and (e) matters listed in sub-clause (2)(a) to (d) above.

Sub-clause (4) lists specific matters which the court is to take into account when deciding whether to make an order against one spouse in favour of a child of the family who is not his child; (a) whether, to what extent and for how long he has assumed any responsibility for the child, (b) whether he or she did so knowing that the child was not his or hers, (c) any other person's liability to maintain the child.

Vainstyr Loayreyder, I beg to move that clause 7 stand part of the Bill.

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

**The Speaker:** The motion is that clause 7 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 8, madam.

**Mrs Hannan:** If I could move 8 and 9, Vainstyr Loayreyder?

**The Speaker:** Certainly.

**Mrs Hannan:** This clause requires the court to make financial orders on divorce or nullity to consider whether to do so in a way which secures a clean break between parties, except in relation to provision for children of the family. It makes no change in the present law except in adding references to pension-sharing orders.

Sub-clause (1) requires the court, when making financial orders on divorce or nullity in favour of the spouse, to consider whether to do so in a way which secures a clean break between parties.

Sub-clause (2) makes specific provision for periodical payments - that is, maintenance orders - in favour of the spouse. The court must consider whether to put a time limit on the payments with a view to allowing the payee to adjust to a break between them while preventing undue hardship in the meantime.

Sub-clause (3) deals with the case where a former spouse applies to the court for maintenance on or after divorce, but the court thinks that the clean break principle demands that the respondent should not be under a continuing obligation. It cannot only dismiss the application but also order that he or she should not be able to apply again for maintenance.

Clause 9. This clause gives the court power, as an alternative to making a pension-sharing order under clause 6, to earmark a share of one spouse's pension entitlement for the benefit of the other and require the pension fund to pay to the latter. This re-enacts provisions of the Law Reform Act 1997 with minor amendments following the Welfare Reform and Pensions Act of the UK parliament.

Sub-clause (1) requires the court to take pension rights into account, the resources of a spouse are to include pension rights and benefits lost by the other.

Sub-clause (2) is introductory; (3) to (9) apply where the court makes a financial order.

Sub-clause (3) enables the court to earmark all or part of one spouse's pension in favour of the other, requiring the pension managers to pay it to the latter when it falls due.

Sub-clause (4) requires the order to specify the percentage of the payments which are to be made to the other spouse.

Sub-clause (5) provides that payment, in accordance with the order, discharges both spouses' liability under the order and the pension manager's liability under the pension scheme.

Sub-clause (6) enables the court to order a party with pension rights to exercise any power he has under the scheme to commute his entitlement - for example, to convert to a lump sum - and the order can earmark the resulting lump sum in a certain way as any other entitlement under the scheme.

Sub-clause (7) precludes the power under (6) being used to commute a pension payable to the spouse with pension rights into a lump sum payable to the other spouse.

Sub-clause (8) precludes any power under this clause being used in relation to a pension which is already subject to a pension-sharing order.

Sub-clause (9) widens the definition of 'benefit' which can be the subject of earmarking under this clause.

Vainstyr Loayreyder, I beg to move clauses 8 and 9 form part of the Bill.

**Mrs Crowe:** Thank you, Mr Speaker. I beg to second clauses 8 and 9 and reserve my remarks.

**The Speaker:** Hon. members, the motion is clauses 8 and 9 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 10, Mrs Hannan.

**Mrs Hannan:** If I can take 10, 11, and 12 it would be helpful.

**The Speaker:** Certainly.

**Mrs Hannan:** This clause makes special provision in relation to earmarking of lump sums due under pension schemes. It re-enacts provision of the Law Reform Act of 1997.

Sub-clause (1) is introductory.

Sub-clause (2) covers three cases: (a) where the pension managers have a discretion as to the person to whom a lump sum is to be paid; the order can direct them to pay it to the other spouse; (b) where the spouse with pension rights has the right to nominate the person to whom it is paid, the order can direct him to nominate the other spouse; (c) in other cases the orders can direct the pension managers to pay it to the other spouse instead of the person to whom it would otherwise be paid.

Sub-clause (3) provides that payment, in accordance with the order, discharges the pension-manager's liability under the pension scheme.

Sub-clause (4) precludes any power under this clause being used in relation to a pension which is already subject to a pension-sharing order.

Clause 11. This clause makes supplementary provision in relation to pension-sharing orders and orders under clause 3 earmarking pension rights. The provisions relating to pension sharing are new.

Sub-clause (1) deals with the case where a person whose rights under one pension scheme have been the subject of earmarking transfers to another pension scheme. Notice can be given by the managers of the new scheme, the effect of which is to transfer the earmarking to a new scheme. Regulations made by the DHSS will make provisions for such notices.

Sub-clause (2) provides that regulations made by the DHSS will require a pension-sharing order to come into force after a specified period after it is made to enable an appeal to be brought against the order before it comes into force.

Sub-clause (3) enables a pension-sharing order to include provision for the sharing between the parties of any charge due to the pension managers for implementing the order.

Sub-clause (4) gives the DHSS power to make regulations dealing with the details of the earmarking pensions under clause 9 (a) to whom and on what terms the payment is made, (b) what is to happen where payments are made in mistaken reliance on an order which has ceased to have effect, (c) discharging the pension managers from liability in specified circumstances, (d) as to notices of changes to the parties' circumstances - for example, remarriage; (e) valuation of pension rights to enable the court to exercise its powers.

Sub-clause (5) makes further provision in relation to valuation of pension rights for earmarking purposes and regulations may (a) require calculations to take into account guidance issued by a person specified in the regulations; and (b) include references to regulation under part 4 of the Welfare Reform (Pensions) Act.

Sub-clause (6) provides definitions of various terms used in connection with pension-sharing and earmarking.

Sub-clause (7) states that it is the person responsible for a pension arrangement - for example, the pension scheme trustees or managers.

Sub-clause (8) explains that references to Acts of Parliament - that is, the Welfare Reform (Pensions) Act of 1999, are to the Act as it applies in the Isle of Man - for example, applied by orders under the Pension Schemes Act 1995.

Sub-clause (9) requires Tynwald approval for any regulations under this clause.

Clause 12. This clause deals with procedural matters relating to applications for financial orders. It makes no change to the present law.

Vainstyr Loayreyder, I beg to move that clauses 10, 11 and 12 stand part of the Bill.

**Mrs Crowe:** I beg to second, Mr Speaker.

**The Speaker:** The motion is that clauses 10, 11 and 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.

**Mrs Hannan:** If I can take 13, 14 and 15 I think it would be helpful, Vainstyr Loayreyder.

**The Speaker:** Certainly.

**Mrs Hannan:** This clause gives the High Court power to grant one spouse maintenance or a lump sum in cases of neglect by the other to provide reasonable maintenance for her or him or for a child of the family. It makes no change in the present law.

Sub-clause (1) enables one spouse to apply to the Court for an order where the other has failed to maintain the applicant or a child of the family.

Sub-clause (2) provides a residential qualification for an application under this clause. The applicant must be domiciled in the Isle of Man or have been permanently resident here for 12 months or else the respondent must be resident here. This is similar to the qualification for divorce proceedings.

Sub-clause (3) gives the court power on such an application to make a financial provision order.

Sub-clause (4) enables the court to make an interim order for maintenance if the applicant or a child of the family is in immediate need.

Sub-clause (5) enables the court to revive an order in favour of a child of the family which has lapsed on the child's 16th birthday or after then, but before the child's 18th birthday if the child would be in education or training or there are special circumstances - for example, the child is disabled. It may also vary or revoke a revived order under clause 18.

Sub-clause (6) provides that a lump sum order can be made to defray the expenses occurred by the applicant or in respect of a child of the family before the application was made. It can also be made payable by instalments.

Clause 14. This clause contains provisions supplemental to clause 13. It makes no change in the present law.

Sub-clause (1) provides that the court, in considering an application under clause 13 for neglect of maintenance of a spouse, is to look at all the circumstances and all the matters mentioned in clause 7, but it is to put first the welfare of any children of the family under 18 where an application is also made in respect of that child.

Sub-clause (2) modifies clause 7(2) in relation to an application under clause 13. The court is to take into account the party's standard of living before the failure to maintain.

Sub-clause (3) provides that the court, in considering an application under clause 13 for neglect to maintain a child of the family, is to look at all the circumstances and all the matters mentioned in clause 7(3) and those in clause 7(4) where the child is not the respondent's child.

Sub-clause (4) makes a similar modification of clause 7(2)(c) in the case of an applicant within (3) to that in (2) above.

Sub-clause (5) enables an application for variation of an order in favour of a child of the family to be made by the child if he is 16 or over.

Sub-clause (6) makes it clear that the powers to make an order in favour of a child of the family or subject to the restriction of clause 16 on orders in favour of a child over 18.

Clause 15. This clause limits generally on death or remarriage the duration of periodical payments in favour of a spouse. It makes no change to the present law.

Sub-clause (1) enables the court to specify any terms in a periodical payments order or secured periodical payments order in favour of a spouse except that (a) a periodical payments order cannot begin earlier than the application and must not extend after either spouse's death or the remarriage of the payee, and (b) a secured periodical payment order cannot begin before the application and must not extend after the death or remarriage of the payee. It is not affected by the death of the other spouse.

Sub-clause (2) enables the court in the case of an order made in divorce or nullity to bar the payee from applying for extension of the terms of the order as part of a clean break.

Sub-clause (3) provides that a periodical payments order or secured periodical payments order made otherwise than on divorce or nullity, if it does not terminate on divorce or nullity, is to come to an end on the payee's remarriage.

Sub-clause (4) prevents a former spouse applying for any kind of financial order based on the divorce if that spouse has remarried.

Vainstyr Loayreyder, I beg to move that clauses 13, 14 and 15 stand part of the Bill.

**Mrs Crowe:** I beg to second clauses 13, 14 and 15, Mr Speaker.

**The Speaker:** Mr Singer.

**Mr Singer:** Mr Speaker, could I ask the hon. mover of the Bill: under section 13(3) it talks about one or more financial provision orders. Are these one or more depending on the number of children, one for each child, or could it be several for one child - say, monthly or quarterly or whatever - and do these then fall if the respondent leaves the Island?

**The Speaker:** Anybody else wish to speak? Mrs Hannan to reply.

**Mrs Hannan:** Under clause 13 it gives the court power on an application to make a financial provision order. This is either maintenance or a lump sum and it refers to clause 1(3) in favour of the applicant or a child of the family. What it does is, it is just that one order can be made with regard to the spouse and it might be a lump sum but it is made for the spouse and a child or children of the family. I hope that clarifies it for the member. It is the applicant and also the child or children of the family. So it will be one order that is made for the named children of the family. I beg to move that clauses 13, 14 and 15 are part of the Bill.

**Mr Singer:** Can I possibly say that I did not get a full answer to my question?

**The Speaker:** Sorry, the mover of the Bill has answered. The motion is that clauses 13, 14 and 15 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Mrs Hannan, clause 16.

**Mrs Hannan:** Thank you, Vainstyr Loayreyder. This clause limits generally to age 18 the duration of periodical payments in favour of a child of the family. It makes no change to the present law.

Sub-clause (1) prevents any financial provision order, a periodical or payments order, secured periodical payments order or lump sum order or transfer of property order being made in favour of a child of the family who is already 18 or over except as allowed by (3) below.

Sub-clause (2) enables the court to specify any term in a periodical payments order or secured periodical payments order in favour of a child of the family except that it cannot begin earlier than the application and (a) must not in the first instance extend beyond compulsory school age unless the court thinks that the child's welfare requires that it should, and (b) in any case is not to extend beyond his or her 18th birthday.

Sub-clause (3) allows the court to make or extend an order in favour of a child over 18 if he or she is or will be in education or training or there are special circumstances - for example, he or she is disabled.

Sub-clause (4) provides that a periodical payments order in favour of a child always terminates on the death of the payer.

I beg to move, Vainstyr Loayreyder, that clause 16 stand part of the Bill.

**Mrs Crowe:** I beg to second, Mr Speaker. Thank you.

**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. Mrs Hannan, clause 17.

**Mrs Hannan:** If I could take 17 and 18 please, Vainstyr Loayreyder?

**The Speaker:** Certainly.

**Mrs Hannan:** This clause enables the court to direct a mortgage, settlement, conveyance, et cetera to be drawn up to give effect to a secure periodical payments order or a property adjustment order - for example, a transfer of property order, an order for a settlement of property or an order for variation of a settlement - and to defer a decree until it has been executed.

Clause 18. This clause gives the court wide powers of varying and revoking financial orders under part 1. Except so far as it covers pension-sharing orders it makes no change in the present law.

Sub-clause (1) specifies the orders to which the court's powers apply. They are all kinds of financial order except transfer of property order, pension-sharing orders made on or after decree absolute and simple lump sum orders.

Sub-clause (2) provides that on the death of either spouse the court's powers cease to apply to an order relating to a lump sum payable on death under a pension scheme.

Sub-clause (3) gives the court general powers to vary, revoke, suspend or revive an order within (1) above.

Sub-clause (4) enables the court to vary, revoke et cetera any instrument made pursuant to an order - for example, a settlement made under an order for settlement of property.

Sub-clause (5) lays down the general rule that the court is to look at all the circumstances but is to put first the welfare of any children of the family under 18.

Sub-clause (6) explains how (5) applies in particular cases: (a) the court must consider any change in circumstances; (b) it must apply the same clean break principles as in clause 8(2); and (c) change in circumstances includes the death of a person against whom the order was made.

Sub-clause (7) enables the court to defer the operation of any variation or revocation of a periodical payments order or secured periodical payments order but subject to limits in clause 15(1) and (2).

Vainstyr Loayreyder, I beg to move that clauses 17 and 18 stand part of the Bill.

**Mrs Crowe:** Mr Speaker, I beg to second clauses 17 and 18 and reserve my remarks.

**The Speaker:** The motion is that clauses 17 and 18 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 19, Mrs Hannan.

**Mrs Hannan:** If I could take 19, 20 and 21, Vainstyr Loayreyder?

**The Speaker:** Certainly.

**Mrs Hannan:** This clause makes supplemental provision relating to the variation, revocation et cetera of financial orders. Except so far as it covers pension-sharing orders, it makes no change to the present law.

Sub-clause (1) restricts applications for the variation of orders for settlement of property. They can only be made in proceedings to rescind a decree of judicial separation or for divorce.

Sub-clause (2) restricts applications for the variations, revocations et cetera of pension-sharing orders made before decree absolute. They can only be made before the sale has taken place and before the grant of a decree absolute. Also an application for variation et cetera suspends the operation of the pension-sharing order until it has been dealt with.

Sub-clause (3) limits the operation of any variation of a pension-sharing order. It cannot take effect before the grant of a decree absolute.

Sub-clause (4) provides that regulations made by the DHSS will require a variation of a pension-sharing order to take effect after the specified period after it is made to enable an appeal to be brought against the order before it comes into force.

Sub-clause (5) requires Tynwald approval for any regulations under (4).

Sub-clause (6) precludes any property adjustment order - for example, the transfer of property order, order for settlement or order for a variation of a settlement being made on an application for a periodical payments order or secured periodical payments order made on divorce, nullity or judicial separation.

Sub-clause (7) precludes any property adjustment order - that is, the transfer of property order - order for settlement or order for variation of a settlement being made on an application for a periodical payments order or secured periodical payments order made on divorce, nullity or judicial separation.

Sub-clause (8) deals with the case where a person against whom a secured periodical payments order was made has died. Such an order can survive that person's death. (a) An application for variation can be made by the payee or by the personal representatives - that is, the executors or administrators of the deceased. This applies also to the sale of property order for raising the capital on which the payments are secured. And (b) no application can be made more than six months after the grant of probate or administration of the estate except with the court's leave.

Sub-clause (9) protects executors and administrators who have distributed a deceased's estate more than six months after the grant of probate or administration and then the court gives leave to

make an application out of time to vary a secured periodical payments order made against the deceased. The executors, administrators, are not personally liable for any payments due under the variation and the payee must claim against the persons to whom the estate has been distributed.

Sub-clause (10) defines the date when the grant of probate or administration is taken out for the purposes of (9) and date of a grant limited to settled land or property or trust property is ignored and a grant limited to real or personal estate is ignored unless a grant limited to the rest of the estate has been granted or is granted at the same time.

Clause 20. This clause requires payments under a periodical payment order normally made through the General Registry and applies the same machinery to such payments as applies to payments orders to be made by a court of summary jurisdiction and makes no change to the present law.

Sub-clause (1) requires a court to order payments under a periodical payments order to be made through the general registry unless the payee requests otherwise and the court agrees.

Sub-clause (2) applies the same machinery for recovery of payments made through the General Registry as applied to payments made under orders made by courts of summary jurisdiction in domestic proceedings.

Clause 21. This clause requires the leave of court to ensure claims for maintenance et cetera which are more than 12 months in arrears to make no change in the present law.

Sub-clause (1) requires leave of the High Court to take proceedings in that court to enforce payments of arrears of maintenance or a lump sum or instalments of a lump sum which are more than 12 months in arrears.

Sub-clause (2) enables the court to refuse leave or to grant leave subject to conditions.

Sub-clause (3) requires an application to be made in accordance with rules of court.

Vainstyr Loayreyder, I beg to move that clauses 19, 20 and 21 stand part of the Bill.

**Mrs Crowe:** I beg to second those clauses and reserve my remarks, Mr Speaker.

**The Speaker:** The motion is that clauses 19, 20 and 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.

**Mrs Hannan:** If I could take the next three clauses, Vainstyr Loayreyder?

**The Speaker:** Clauses 22, 23 and 24.

**Mrs Hannan:** Thank you. This clause enables the court to order repayment of periodical payments due under an order where it thinks they are excessive because of a previous change in circumstances. It makes no change to the present law.

Sub-clause (1) lists the orders to which the clause applies: maintenance pending suit, clause 2; interim maintenance, clause 13; periodical payments orders and secured periodical payments orders. Sub-clause (2) enables the court on an application for the purpose to order repayments of any payments made under such an order where it thinks they are excessive on account of any change in circumstances including the death of the person against whom the order is made - for example, where the payee has inherited a fortune but the payer does not get to know of it until later, the court can not only vary or revoke the order but also for repayment of some or all of the maintenance paid since that time.

Sub-clause (2) enables an application to be made by the person against whom the payments were made or his executors or administrators against the payee or his executors or administrators.

Sub-clause (4) enables such an application to be made on proceedings for variation or revocation of an order or for an enforcement or leave to enforce.

Sub-clause (5) enables an order to be made for repayment by instalments.

Clause 23. This clause enables the court to make a financial order by consent without hearing the parties or any evidence. Except so far as it covers pension-sharing orders it makes no change in the present law.

Sub-clause (1) enables the court to make a consent order for any kind of financial relief on the basis of information supplied by the parties unless it considers that it ought to inquire further, for example, to see whether provision for children is adequate. The information to be supplied is to be laid down by rules of court.

Sub-clause (2) gives the court the same power in relation to an application for variation or revocation of any financial order.

Sub-clause (3) defines terms used in this clause.

Clause 24. This clause makes a maintenance agreement or separation agreement valid and enforceable except so far as it restricts any rights to apply for a financial order. It makes no change in the present law.

Sub-clause (1) makes void any term in a maintenance agreement or separation agreement which restricts any right to apply for a financial order but otherwise makes any financial arrangements and agreements in an agreement binding and enforceable.

Sub-clause (2) defines terms used in (1) and in clauses 25 and 26.

Vainstyr Loayreyder, I beg to move that clauses 22, 23 and 24 stand part of the Bill.

**Mrs Crowe:** I beg to second, Mr Speaker.

**The Speaker:** The motion is that clauses 22, 23 and 24 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Mrs Hannan, clause 25.

**Mrs Hannan:** Clauses 26 and 27, Vainstyr Loayreyder?

**The Speaker:** Certainly.

**Mrs Hannan:** Thank you. This clause enables the High Court or a court of summary jurisdiction to alter a maintenance agreement.

Sub-clause (1) enables either party to a maintenance agreement to apply to the High Court or a court of summary jurisdiction for an order under this clause. The court only has jurisdiction if each party is either domiciled or resident in Mann.

Sub-clause (2) sets out the grounds for making an order under this clause. The court must be satisfied (a) that a change in the party's circumstances makes the arrangements in the agreement inappropriate or inadequate; or (b) that it does not make proper provision for any child of the family.

Sub-clause (3) gives the court power to alter the agreement by varying or revoking any financial provision in it or including new financial provision for either party or a child of the family. The court is to take account of all the circumstances including the degree to which either party has accepted responsibility for a child not his or her own. The alteration is to be legally binding as if it had been in a binding contract.

Sub-clause (4) limits the powers of the court of summary jurisdiction. (a) It may act only if both parties are resident in Mann; and (b) it may only add a provision requiring the payment of maintenance, periodical payments, or vary or remove such a provision.

Sub-clause (5) requires any new or increased periodical payments required by the order to be payable for a term specified in the order.

Sub-clause (6) prevents any periodical payments in favour of a spouse, if not secured, running beyond death or remarriage of either party.

Sub-clause (7) prevents any secured periodical payments in favour of a spouse running beyond the death of either party or the remarriage of the payee.

Sub-clause (8) requires the court to apply the same age limits as in clause 16 in the case of periodical payments in favour of a child of the family.

Sub-clause (9) makes clear the court's powers to make financial orders or the right of either party to apply for such orders.

Clause 26. This clause enables the High Court to alter a maintenance agreement after the death of either party; it makes no change in the present law.

Sub-clause (1) deals with the case where a maintenance agreement continues to have effect after the death of one of the parties. The other party or the executors or administrators of the deceased can apply to the High Court for an order altering the agreement under clause 25.

Sub-clause (2) provides that no application can be made more than six months after the grant of probate or administration of the estate except with the court's leave.

Sub-clause (3) provides that the alteration is to be legally binding as if it had been a binding contract made between the parties just before death.

Sub-clause (4) protects executors or administrators who have distributed a deceased's estate more than six months after the grant of probate or administration, and then the court gives leave to make an application out of time to vary a maintenance agreement. The executors or administrators are not personally liable for any payments due under the variation and the payee must claim against the persons to whom the estate has been distributed.

Sub-clause (5) defines the date when the grant is treated to have been taken out for the purposes of (2) above and by applying clause 19(10) above.

Clause 27. This clause gives the High Court power to strike down transactions entered into by a spouse in order to defeat claims for maintenance or other financial provision. Except so far as it covers pension-sharing it makes no change in the present law.

Sub-clause (1) defines terms used in this clause: (a) 'financial relief' covers anything that is done under any kind of financial order except an order for variation of an order or agreement after the death of the person liable; (b) 'defeating a claim' covers preventing or reducing any relief or stopping or impeding its enforcement.

Sub-clause (2) enables a court to make special orders on the application of the applicant for any financial order: (a) an injunction restraining any disposition of property, transfer of property out of the jurisdiction or other dealing with it, for example a gift; (b) an order setting aside any reviewable disposition made by the respondent, the setting aside of which would enable the court to make a financial order or a different order where a financial order has been made setting aside any reviewable disposition made by the respondent. In any case the court must be satisfied that the respondent has made or intends to make disposition with the intention of defeating the claim for relief.

Sub-clause (3) enables the court to give consequential direction to make a payment or sell property where it makes an order under (2) setting a disposition aside.

Sub-clause (4) enables a reviewable disposition. . . It is any transaction except one made for value in favour of a person acting in good faith and without notice of the respondent's intention - for example, a bona fide purchaser for value without notice.

Sub-clause (6) raises a rebuttable presumption that a disposition which has the effect of defeating a claim for financial relief it is proposed took place less than three years ago and is made with the intention of defeating such a claim. Sub-clause (6) defines 'disposition'; it covers any transaction *inter vires* - that is, between living persons - but not a will or codicil.

Sub-clause (7) prevents disposition before 21st August 1969 being set aside.

Vainstyr Loayreyder, I beg to move that clauses 25, 26 and 27 stand part of the Bill.

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

**The Speaker:** The motion is that clauses 25, 26 and 27 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses 28, 29, 30 and 31.

**Mrs Hannan:** Thank you, Vainstyr Loayreyder. This clause makes special provision for repayment of maintenance which should have ceased on the remarriage of the spouse for whose benefit it is made, but has continued to be paid giving the court a discretion whether to order repayment and gives protection to certain payees - for example, under attachment of earnings order. It makes no change to the present law.

Sub-clause (1) specifies the case covered in (2) to (5) below. A periodical payments order or a secured periodical payments order in favour of a spouse ceases on her or his remarriage and a person liable under the order or his executors or administrators continue to pay believing that it is still in force.

Sub-clause (2) prevents a person liable suing to recover the overpayments but allows him or her or his or her executors or administrators to make an application to the court.

Sub-clause (3) specifies the powers of the court on such an application. It can order the payee to repay all overpayments unless it thinks it unjust to do so, in which case it can either order repayment of part only or dismiss the application.

Sub-clause (4) enables an application to be made in proceedings for leave to enforce arrears under the order or to recover the arrears.

Sub-clause (5) enables an order for repayment to require repayment by instalments.

Sub-clause (6) exempts the payee under a periodical payments order; for example, the Chief Registrar under clause 20 from any liability where he pays money over in ignorance that the order has ceased on remarriage or only where sub-clause (8) applies.

Sub-clause (7) exempts the payee under an attachment of earnings order made to enforce a periodical payments order from any liability where he pays money over in ignorance that the order has ceased on remarriage but only where (8) applies. And we now come to clause (8), which specifies the circumstances in which (6) and (7) apply, where the payment would have been required by law if the periodical payments order had not lapsed and the payee had not been notified in writing of the remarriage.

Clause 29. This clause provides that even though a settlement or transfer of property is made pursuant to the transfer of property order or an order for settlement of property or an order for variation

of a settlement, it is still capable of being cancelled on the transferor's or settler's bankruptcy. It makes no change to the present law. Clause 30. This clause enables payment or transfer of property due to a mental patient to be made to a person in charge of him - for example, a member of the family - unless alternative provision - for example, appointment of a receiver has been made under the Mental Health Act 1998; it makes no change to the present law.

Clause 31. This clause is a new provision limiting the power of an appeal court to allow an appeal against a pension-sharing order where the pension managers or DHSS have already acted on the order.

Sub-clause (1) specifies the circumstances in which the clause operates - for example, where an appeal is made against a pension-sharing order, clause (6), on or after the date when it takes effect.

Sub-clause (2) prevents the appeal court varying or setting aside an order relating to an occupational or personal pension if the pension managers have already acted on the order.

Sub-clause (3) prevents the appeal court varying or setting aside an order relating to state scheme rights if the DHSS has already acted on the order.

Sub-clause (4) enables the court to vary or set aside the order, even where the pension managers or DHSS have acted on it, if the detriment to them is negligible.

Sub-clause (5) enables the appeal court, if it is prevented from varying or setting aside the order, to make instead any other orders it thinks appropriate, including a pension-sharing order.

Sub-clause (6) disapplies Clause 11(2), which requires the coming into force of a pension sharing order to be deferred for a prescribed time in the case of an order under subsection (5) which is not itself subject to appeal.

Sub-clause (7) defines the reference to the person responsible for a pension arrangement - that is, the pensions managers.

Vainstyr Loayreyder, I beg to move that clauses 28, 29, 30 and 31 stand part of the Bill.

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

**The Speaker:** Mr Singer.

**Mr Singer:** Thank you. Could I ask the hon. mover: under clause 28 does the recipient of a payment have a duty to inform the court or the payee when a remarriage takes place, particularly if we accept that later on in the Bill reciprocal orders are made with other jurisdictions? It appears from what I am reading that they are not obliged to notify anyone and can in fact continue to receive payments to which they are not entitled, so is there a direction anywhere that the notice of remarriage must be given? And I also cannot see here any penalty to be placed on the recipient who remarries and continues to accept money they are not entitled to. Surely there should be some penalty on that person if they are receiving this money illegally?

**The Speaker:** Mrs Cannell, member for Douglas East.

**Mrs Cannell:** Thank you, Mr Speaker. Just a query, really, on clause 3 - this is where the court makes an order under this part requiring a payment to be made or property to be transferred to a party to a marriage to someone, for example, who had either a mental illness or a mental disability; what would happen in the situation where you had a couple who were married, one died, and the estate, being the property and any moneys that came with it, were left to the remaining partner who was covered under the Mental Health Act 1998 being someone who was being cared for by the state but nevertheless they were still legally married? I assume that somebody would be appointed to look after the estate, transfer as and when required certain sums of money or to sell the property or whatever to

provide for the partner still remaining, but what happens when that partner dies, say within a very short space of time, say two years, so you have still got an estate, you have still got property and potentially you have still got money that has been set aside with someone else appointed by the court under the Mental Health Act 1998 has been administering on behalf of its client or the person it is looking after them and that person then dies; what happens with the property and any remaining moneys if there are no family members for it to pass on to? What happens to that money? Does the state absorb it? I am just curious because there have been one or two cases over the last few years which have been subject to dispute in certain circumstances when a relative has been discovered perhaps living abroad and has come back and has made a claim to the estate but is having to go through the courts to fight for it after it has already been absorbed or whatever. There seems to be a question mark over that and I just wonder what happens to it. Thanks.

**The Speaker:** Any other hon. member? I call upon Mrs Hannan to reply.

**Mrs Hannan:** I wonder if I could come back to the member for Ramsey with regard to the offence if they do not state whether they have remarried or not? It might come later on, I am not sure. If I could come back to that at the third reading?

With regard to the point raised by the hon. member for Douglas East in those circumstances that the member describes, I think it is the case that if anyone dies and they do not have a next of kin, that is absorbed by the state after being through, obviously, the legal process of the court, probate, administration, executors and the like. It is absorbed by the state but obviously, if there is a next of kin, the next of kin, however distant, can make a claim on the estate and it would be quite right for them to do that, as happens in many cases, so it depends as well whether there is a will made by either party. If the person has made a will before they become mentally disabled, that will would be made when they are in the right state of mind and the will would hold good whereby they could pass it on to the cats' home, the dogs' home or whatever. That could still then be challenged by a next of kin but that would again be for the court under other legislation to deal with.

I am not sure whether I have covered all of those points made by the member for East Douglas but I thank her for her comments. I beg to move that clauses 28, 29, 30 and 31 stand part of the Bill and I will come back to the member for Ramsey later.

**The Speaker:** Thank you. The motion is that clauses 28, 29, 30 and 31 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 32, Mrs Hannan.

**Mrs Hannan:** I can do 32, 33, 34, 35 and 36.

**The Speaker:** Very good.

**Mrs Hannan:** This clause allows the court to make a financial order even though the parties' marriage was polygamous or potentially polygamous; it makes no change in the present law.

Sub-clause (1) allows the court to make a financial order even though the parties' marriage was polygamous or potentially polygamous. Manx law does not normally recognise a marriage entered into under a law which allows polygamy - for example, that of certain Muslim countries, but this is an exception.

Sub-clause (2) defines the financial orders which are allowed above.

Sub-clause (3) makes it irrelevant whether the husband has a wife or wives apart from the applicant.

Sub-clause (4) enables rules of court under clause 54 to require notice of any proceedings under part 1 to be given to any other wife and giving her a right to be heard.

Clause 33. This clause enables a designation order to be made by the Council of Ministers allowing financial orders made in any part of the United Kingdom or any of the Channel Islands to be recognised in the Isle of Man provided reciprocal provision is made for recognising Manx orders. This is a new provision.

Sub-clause (1) enables an order to be made by the Council of Ministers allowing financial orders made in any part of the United Kingdom or any of the Channel Islands on divorce, nullity or judicial separation to be recognised in the Isle of Man provided reciprocal provision is made.

Sub-clause (2) applies the following provisions of part 2 in relation to designated territory in relation to orders of any description specified in the order. This is a new provision.

Sub-clause (3) requires Tynwald approval to a designation order.

Sub-clause (4) defines terms used in part 2. Note the financial order is a Manx order of any kind which can be made on divorce, et cetera, under part 1 but not an interim order or a maintenance order under the scope of the Maintenance Order (Reciprocal Enforcements) Act 1995 part 1 which already provides for reciprocity in the United Kingdom and Channel Islands.

Clause 34. This clause provides for an order of a specified kind in a designated territory.

Sub-clause (1) provides that an order of a specified kind made in a designated territory that is an overseas order is to be recognised in Mann as if it had been made by the High Court within its jurisdiction. This is a new provision based on the Child Custody Act 1987.

Sub-clause (2) excludes from (1) any provision of the overseas order providing for its enforcement - that is, it is to be enforced according to Manx law.

Sub-clause (3) provides, even though recognised under (1), that an overseas order is not to be enforced unless it is registered under clause 35 and proceedings for enforcement are taken under clause 37 - this is a new provision under the Child Custody Act 1987.

Clause 35. This clause provides for an overseas order to be recognised by the High Court where a certified copy is sent officially to the Chief Registrar. The way in which it is to be registered will be prescribed by Rules of Court under clause 33.

Clause 36. This clause deals with the cancellation or variation of the registration of an overseas order where the order is revoked or varied in its home territory.

Sub-clause (1) requires the Chief Registrar to cancel the registration of an overseas order where he is officially notified that it has been revoked in its home territory to vary the registration where the registrar is officially notified that the order has been varied. This is a new provision under the Child Custody Act 1987.

Sub-clause (2) enables the High Court to order the total or partial cancellation of a registration where the overseas order is wholly or partly ceased to have effect - for example, with the expiry date or remarriage of the payee.

Vainstyr Loayreyder, I beg to move that clauses 32, 33, 34, 35 and 36 stand part of the Bill.

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

**The Speaker:** Hon. members, the motion is the clauses 32, 33, 34, 35 and 36 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses 37, 38, 39 and 40, hon. member.

**Mrs Hannan:** Thank you, Vainstyr Loayreyder. This clause provides that a registered overseas order is enforceable in the same way as an order made by the High Court, and sub-clause (1) provides that a registered overseas order is enforceable in the same way as if it has been made within the jurisdiction of the High Court.

Sub-clause (2) makes a provision similar to clause 20. The court can direct that periodical payments are to be made to the Chief Registrar and then the enforcement scheme of the Summary Jurisdiction Act 1989, part 7, which applies to the orders made by courts of summary jurisdiction will apply. This is a new provision.

Sub-clause (3) makes it clear that the provision in the overseas order relating to its enforcement is not itself enforceable by virtue of this clause. The Manx system of enforcement will apply instead. This is a new provision based on the Child Custody Act 1987.

Clause 38. This clause enables the High Court to stay proceedings for enforcement of an overseas order if it shown that the person liable has taken or intends to take proceedings to vary or revoke the order.

Sub-clause (1) enables any person interested to apply to the High Court to stay proceedings for enforcement of an overseas order because he has taken or intends to take proceedings to vary or revoke the order.

Sub-clause (2) enables the court to stay the enforcement proceedings on an application under (1).

Sub-clause (3) enables the court to remove a stay granted under (2) if (a) the proceedings to revoke or vary the overseas order have been unreasonably delayed, or (b) they have finished and the order is still in force, and sub-clause (4), it is a saving for any other power of the court to stay proceedings. These are new provisions based on the Child Custody Act 1987.

Clause 39. This clause provides for enforcement proceedings to be dismissed where the overseas order has ceased to have effect.

Sub-clause (1) enables any person to apply to the court in which enforcement proceedings are taken to have the proceedings dismissed because the overseas order has ceased to have effect in its home territory - for example, has revoked or expired.

Sub-clause (2) requires the relevant court to dismiss the proceedings wholly or in part if it is satisfied that the order has ceased to have effect. This is a new provision under the Child Custody Act 1987. This clause deals with the converse situation of a Manx financial order which is to be enforced in the United Kingdom or the Channel Islands under reciprocal legislation and provides machinery for sending the order for enforcement to the relevant territory.

Sub-clause (1) enables a person having rights under a Manx financial order, which is enforceable under reciprocal arrangements, to apply to the High Court for the necessary steps to be taken for that purpose.

Sub-clause (2) requires the application to be in accordance with the prescribed procedure - for example, prescribed by rules of court.

Sub-clause (3) requires the court or a prescribed officer, probably the Chief Registrar, to send the necessary documents to the appropriate authority in the jurisdiction in question and take any other steps prescribed by rules of court.

Sub-clause (4) requires a Manx court which varies or revokes an order which has been sent to the UK or the Channel Islands for enforcement to notify the appropriate authority there in accordance with the rules of court. These are new provisions based on the Child Custody Act 1987.

Vainstyr Loayreyder, I beg to move that clauses 37, 38, 39 and 40 stand part of the Bill.

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

**The Speaker:** The motion is that clauses 37, 38, 39 and 40 stand part of the Bill. All those in favour please say aye; anybody against say no. The ayes have it. The ayes have it. Clause 41, Mrs Hannan.

**Mrs Hannan:** Clauses 41, 42, 43, 44 Vainstyr Loayreyder?

**The Speaker:** Certainly.

**Mrs Hannan:** Thank you. This clause enables a party to a marriage to apply to the High Court for a financial order where there has been a divorce, annulment or judicial separation outside the British Isles.

Sub-clause (1) enables a party to a marriage to apply to the High Court for a financial order where there has been a divorce, annulment or judicial separation outside the British Isles - that is, Mann, the United Kingdom or the Channel Islands. The application is to be made in accordance with rules of court. Note that the court's leave is required under clause 42 and that its jurisdiction to make the order is limited.

Sub-clause (2) prevents any application being made under (1) by a party who has remarried, and sub-clause (3) defines 'order for financial relief' in sub-clause (1) by reference to clause 46 below.

Clause 42. This clause requires the leave of the court to an application made under 41. It makes no change to the present law.

Sub-clause (1) requires a person wishing to apply under clause 41 to apply first for the leave of the court, which is not to be given unless the court thinks he or she has a good cause.

Sub-clause (2) enables the court to grant leave even though there may already have been a maintenance order or order for transfer of property made outside Mann including the UK or Channel Islands in favour of the applicant or a child of the family.

Sub-clause (3) enables leave to be granted subject to conditions.

Clause 43. This clause enables the court to make an interim order for maintenance when granting leave under clause 42. It makes no change to the present law.

Sub-clause (1) enables the court to make an interim order for maintenance when granting leave under clause 42.

Sub-clause (2) excludes the court's powers under (1) where the only ground for the application is that there is a former marital home on the Island.

Sub-clause (3) enables interim maintenance to be granted subject to conditions.

Clause 44. This clause specifies the cases in which the court has jurisdiction to make an order under clause 41: (a) either party was domiciled in the Isle of Man when the application for leave under 42 was made and when the foreign divorce, annulment or separation took place; (b) either party has been habitually resident in Mann for 12 months up to the date when the application for leave under 42 was made or the date when the foreign divorce, annulment or separation took effect; (c) either party or

both has an interest in the former matrimonial home in Mann at the time when the application for leave under clause 42 was made. It makes no change to the present law.

Vainstyr Loayreyder, I beg to move that clauses 41, 42, 43 and 44 stand part of the Bill.

**Mrs Crowe:** I beg to second, Mr Speaker.

**The Speaker:** The motion is that clauses 41, 42, 43 and 44 stand part of the Bill. All those in favour please say aye; against no. The ayes have it. The ayes have it. Mrs Hannan, clauses 45, 46, 47.

**Mrs Hannan:** Thank you, Vainstyr Loayreyder. This clause requires the court to consider a Manx order should be made in the particular case, and lists the factors to be taken into account for this purpose. It makes no change in the present law.

Sub-clause (1) requires the court to be satisfied that it is right that a Manx order should be made in a case before it makes an order and to dismiss the application if it is not satisfied.

Sub-clause (2) lists the factors to be taken into account for this purpose: (a) the parties' connection with Mann; (b) the connection with the country where the divorce, annulment, or separation took place; (c) their connection with any third country; (d) any benefit available under the maintenance or separation agreement or under foreign law; (e) if a foreign financial order has been made in terms of the order and the likelihood of its being complied with; (f) any right of the applicant to apply for relief in any other country and, if there is such a right, why it has not been used; (g) whether there are any assets in Mann in respect of which the order has been made and how far any order could be enforceable; (i) the time which has passed since the divorce, annulment or separation.

Clause 46. This clause lists the kinds of orders which can be made under 41.

Clause 47. This clause requires the court to have regard to the same factors in considering an application under 41 as it must consider under part 1. Except so far as it relates to pension-sharing orders, it makes no change to the present law.

Sub-clause (1) requires the court to consider the matters listed in this clause when considering to make an order under clause 46.

Sub-clause (2) lays down the general rule that the court is to look at all the circumstances but is to put first the welfare of any children of the family under 18.

Sub-clause (3) requires the court to take into account the same factors when considering an order in favour of a former spouse as it must consider under clause 7(2) and 8.

Sub-clause (4) requires the court in particular to take into account a party's pension rights and any possible loss of pension rights - that is, a widow's pension. Sub-clause (5) requires the court to take into account the same factors when considering an order in favour of the child of the family as it must consider under clause 7.

Sub-clause (6) requires a court to take into account the same factors when considering an order in favour of a child of the family who is not the respondent's own child as it must consider under clause 7 (4).

Sub-clause (7) requires the court, when considering any parties or child's financial resources, to have regard to whether any existing foreign financial order in his or her favour has been made or is likely to be complied with. Vainstyr Loayreyder, I beg to move that clause 45, 46, 47 stand part of the Bill.

**Mrs Crowe:** I beg to second the clauses. Thank you, Mr Speaker.

**The Speaker:** Hon. members, the motion is that clauses 45, 46 and 47 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses 48 and 49.

**Mrs Hannan:** This clause enables the court to make a financial order by consent without hearing the parties or any evidence. Except in so far as it covers pension sharing orders, it makes no change to the present law.

Clause 49. This clause limits the court's powers where its jurisdiction is based solely on the existence of a former matrimonial home in Mann, and it can only make orders relating to the parties' interests in that property. It makes no change to the present law.

Sub-clause (1) defines that where the court's jurisdiction is based solely on the existence of a former matrimonial home in Mann it can only make orders relating to the parties' interests in that property or proceeds of sale.

Sub-clause (2) limits the amount payable under the lump sum order to the net proceeds of sale or the value of the interest in that property of the person liable under the order.

Sub-clause (3) makes it clear, where the property is owned jointly or in shares, that the sale of property order can be made as respects the whole of the property, not just the parties' interests in it, and a lump sum order is limited to the value of that party's share or interest in the proceeds of sale.

Vainstyr Loayreyder, I beg to move that clauses 48 and 49 stand part of the Bill.

**Mrs Crowe:** I beg to second the clauses, Mr Speaker.

**The Speaker:** Hon. members, the motion is that clauses 48 and 49 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it.

Now, hon. members, I seek your guidance. Standing order 7 states that the House will terminate its business at 5.30 in the afternoon. Does the House wish to finish this Bill?

**Mr Shimmin:** There is an amendment from Sir Miles Walker, sir.

**The Speaker:** I understand arrangements have been made to move it. Would anybody like to put a motion?

**Mr North:** I propose, Mr Speaker:

*That the House do conclude consideration of the clauses of this Bill.*

**Mr Duggan:** I second that, sir.

**The Speaker:** All those in favour say aye; against, no. The noes have it.

*A division was called and voting resulted as follows:*

*For: Messrs Gilbey, Quine, Rodan, North, Mrs Crowe, Messrs Rimington, Brown, Houghton, Henderson, Cretney, Duggan, Braidwood, Downie, Mrs Hannan, Messrs Bell, Karran, Corkill, Cannell, Gelling and the Speaker - 20*

*Against: Mrs Cannell, Messrs Shimmin and Singer - 3*

**The Speaker:** Hon. members, the motion carries, 20 votes in favour, 3 votes against. Clause 50, Mrs Hannan.

**Mrs Hannan:** This clause applies various provisions of part 1 to orders under this part except in so far as it covers pension sharing orders and other provisions relating to pensions. It makes no change in the present law.

Vainstyr Loayreyder, I beg to move that clause 50 stand part of the Bill.

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

**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.

**Mrs Hannan:** If I could take clauses 51, 52, 53 and 54, Vainstyr Loayreyder?

**The Speaker:** Very good. Clauses 51, 52, 53 and 54.

**Mrs Hannan:** Thank you. This clause, 51, gives the High Court power corresponding to its power under clause 27 to strike down transactions entered into by a spouse in order to defeat applications under part 3. Except in so far as it covers pension-sharing orders it makes no change to the present law.

Clause 52. This clause enables the High Court to grant a protective injunction to stop a former spouse acting to defeat an application for an order under part 3 by making a gift or transferring assets out of the jurisdiction before the other spouse has become qualified to start proceedings for such an order - for example, being resident here for 12 months. It makes no change to the present law.

Clause 53. This clause provides definitions of terms used in part 3.

Clause 54. This clause applies provision of a 1976 Act relating to rules of court and fees to proceedings under this Bill.

Vainstyr Loayreyder, I beg to move that clauses 51, 52, 53 and 54 stand part of the Bill.

**Mrs Crowe:** I beg to second all those clauses. Thank you, Mr Speaker.

**The Speaker:** The motion is, hon. members, that clauses 51, 52, 53, and 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.

**Mrs Hannan:** This clause deals with the interpretation of terms and phrases used throughout the Bill.

Sub-clause (1) defines the various phrases.

Sub-clause (2) provides the interpretation of various phrases, and sub-clause (3) makes clear the reference to remarriage to include references to void or voidable marriages.

Vainstyr Loayreyder, I beg to move that clause 55 stand part of the Bill.

**Mrs Crowe:** I beg to second, Mr Speaker.

**The Speaker:** Mr Brown.

**Mr Brown:** Mr Speaker, as the hon. member for Rushen, Sir Miles, is not available today I have been asked to move the amendment in his name. The amendment applies to page 48, lines 2 and 3, which relates to the definition of a child, and the amendment removes the terminology of 'an illegitimate child' and replaces it with wording where it says, 'is not a marital child', and it is an updating of terminology in legislation which I fully support. Members have the amendment before them and I beg to move the amendment standing in the name of Mr Walker:

*Page 48, line 1, for the definition of "child" substitute -*

*" " child", in relation to one or both parties to a marriage includes a child of that party or of both parties, as the case may be, who is not a marital child;"*

**Mr Duggan:** I beg to second, sir.

**Mrs Crowe:** I am sure, like the hon. mover of the Bill, Mr Speaker, we would both be delighted to accept this amendment.

**Mrs Hannan:** Yes, I am delighted to accept this amendment and I would thank the member for Rushen, Sir Miles Walker, for drawing it to my attention.

**The Speaker:** Right, hon. members, the motion is that clause 55 to which we have an amendment. . . Those in favour of the amendment please say aye; against, no. The ayes have it.

The motion is therefore that clause 55 as amended stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. Clause 56 and schedules 1 and 2 and clause 57.

**Mrs Hannan:** Thank you, Vainstyr Loayreyder. Clause 56. This clause introduces schedules 1 and 2 and makes consequential amendments and repeals.

Clause 57. This clause makes provision for the Bill's short title and for its commencement on an appointed day or days.

Vainstyr Loayreyder, I beg to move that clauses 56 and 57 stand part of the Bill.

**The Speaker:** And schedules 1 and 2.

**Mrs Hannan:** And schedules 1 and 2.

**Mrs Crowe:** Thank you, Mr Speaker. I beg to second both the clauses and the schedules. Thank you.

**The Speaker:** The motion is that clauses 56 and 57 and schedules 1 and 2 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. That completes the clauses stage of the Matrimonial Proceedings Bill.

Hon. members, with your permission, that completes the business for today. The House will now stand adjourned until Tuesday next at 10 o'clock in this chamber. Thank you, hon. members.

*The House adjourned at 5.38 p.m.*