

**REPORT OF PROCEEDINGS OF
HOUSE OF KEYS
(LEGISLATION AND OTHER MATTERS)**

**Douglas, Tuesday, 28th May 2002
at 10.00 a.m.**

Present:

The Speaker (the Hon J A Brown) (Castletown); Mr D M Anderson (Glenfaba); Hon A R Bell and Mr L I Singer (Ramsey); Mr J D Q Cannan (Micheal); Mrs H Hannan (Peel); Mr P Karran, Hon R K Corkill and Mr A J Earnshaw (Onchan); Mr G M Quayle (Middle); Mr R W Henderson (Douglas North); Hon D C Cretney (Douglas South); Hon R P Braidwood and Mrs B J Cannell (Douglas East); Hon A F Downie and Hon J P Shimmin (Douglas West); Hon J Rimington, Mr Q B Gill and Hon Mrs P M Crowe (Rushen); with Mr M Cornwell-Kelly Secretary of the House.

The Chaplain took the prayers.

Leave of Absence

The Speaker: Hon. members, I have granted leave of absence to the hon. member for Garff, Mr Rodan, the hon. member for Malew and Santon, Mr Gelling, and the hon. member for Douglas North, Mr Houghton, and part-absence for a period this morning to the hon. member for Ayre, Mr Quine. Mr Duggan, the hon. member for Douglas South, has advised that he is unwell and therefore will not be joining us today.

Procedural

The Speaker: Also, can I advise hon. members that, due to the TT practices, it is my intention to conclude the proceedings at 5.00 p.m. this evening so that members living inside, or who are affected by, the TT course can get back to their residences.

Welcome to Visitors

The Speaker: Before we proceed with the first item on the order paper, can I acknowledge the children who are with us this morning, who have come all the way from Ramsey, from Albert Road School - and it is Year 3. Welcome. I hope you find the proceedings interesting, although I am sure you might find it a little bit different from what you are used to. However, you are privileged that in the Isle of Man we have a legislature which you can easily come to see, and we do welcome and enjoy having children from the schools and students visiting us at our proceedings.

Questions were taken at this point and concluded at 11.20 a.m. They are published separately.

Bill to Amend Provisions in the Interpretation Act 1976 — Leave to Introduce Granted

The Speaker: We now move on to item 2 on our order paper, and I call on the hon. member for Peel, Mrs Hannan, to move for leave to introduce.

Mrs Hannan: Thank you, Vainstyr Loayreyder. In seeking leave to introduce a Bill to amend the provisions of the Interpretation Act 1976, I do so in light of the fact that this Act has been amended over the years, most recently in 1992, under the Transfer of Governor's Functions Act, but down through the years there have been other amendments, additions and removals as part of the legislation, without causing the Act any major problems.

My main concern is with clause 35, which states - and I quote - 'Persons or male persons shall include male and female persons when it relates to legislation'. After 70 years of women

playing a part in law-making and of Man being so proud of being the first Commonwealth country, and possibly the first country in the world, to give women the vote, I would suggest that we should at least be trying to write legislation which is inclusive as opposed to being male in origin, leaving out half of the population - or more than half of the population - women. In 2002, I believe that legislation should be written so as to recognise the very important part that women play in our society. Women are educated to the highest level, as are men, work in the home, raise families, work outside the home and, in some instances, all at the same time. They even pay taxes, the same as men do. I hope that members will support me and allow me to amend the 1976 Interpretation Act so as to have legislation that is inclusive, not exclusive and, in fact, so that we can have a mature legislation and a mature legislature. I beg to move the motion standing in my name.

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

Mrs Cannell: Thank you, Mr Speaker. I am very honoured to get to my feet today - as one would expect, I daresay - to second the motion to give the hon. member the leave to introduce. The perplexing issue from the female perspective has come up in this place and another place - and, I daresay, other places around the Isle of Man - for quite some considerable time. In legislation, the terminology that is used is 'he': 'he' does this; 'he' can do that; 'he' can acquire that; 'he'; and so on. Of course, the Interpretation Act which the hon. member spoke of does explain that 'he' is the same as 'she' when interpreted in a court of law, but when putting the question to the hon. Minister for Treasury a couple of weeks ago in terms of this issue, I was able to advise him that if, of course, we had the terminology 'she' in legislation as opposed to 'he', it would have no standing in law. And I think that is where the problem lies.

We can pride ourselves that we were probably the first place in the world to give women the vote. I think we can also pride ourselves that we have a lot of very established businesswomen in the Isle of Man, and politicians over the years - although too few in my view, Mr Speaker. (*Laughter*) Bearing in mind that the Isle of Man has the oldest continuous parliament in the world and has celebrated over 1,000 years of parliamentary history, we have only had 10 or 11 women elected in all of that time. Eleven women. (**A Member:** Quality.) Nevertheless, quality is important for both male and female in this place and another place, and hopefully that is what the people consider when electing. I think it is important.

An important principle needs to be changed in the Isle of Man to recognise, in law and for the administration of law, that 'he' is 'he' and 'she' is 'she', and that 'she' could stand alone and does not need 'he' in interpretation. We have passed sexual discrimination legislation. We have lots of debates. We have had lots of debates over the last six or seven years in terms of equality for both men and women. Indeed, we had the Matrimonial Proceedings Bill in 2001, which brought in, for the first time, pension sharing - again, an equality issue - and recognising the inequality of that situation as it was. When the Sex Discrimination Bill, of course, is all working and running - and it has not brought in any major problems for employers or employees - hopefully hot on its heels will be equal opportunities legislation, which is in the legislative programme. So we are, as a mature House, concerned with equality across the board.

We are also concerned with human rights issues and we passed that legislation, and I think the time now is appropriate to allow the hon. member for Peel to bring in a private member's Bill in order to change and put right - put a balance in - the Interpretation Act, to introduce the concept of women and of a woman being able to be interpreted in the court of law, in terms of whatever piece of legislation is being applied at the time, as a woman in her own right and not being described as a 'he' and 'Well, it covers 'her' as well.' It is not good enough, hon. members. The time is now and I hope that all of our male members here today, Mr

Speaker, will support and recognise the inequality of the present situation and allow the hon. member to bring forward this piece of legislation to correct this anomaly. Thank you.

The Speaker: Hon. member for Douglas West, Mr Downie.

Mr Downie: Thank you, Mr Speaker. I do not have any problem, personally, in supporting the member's wish to introduce a Bill. I would just like to ask the hon. member if she could clarify for me what the situation is in, say, the European Union and how their particular law is couched. Are we then going to be talking about legislation where we are referring to 'the person' or are we going to have a situation in the Isle of Man where every piece of legislation is going to be 'he or she' or 'she or he'? It would also be interesting to see what is going to happen when we deal with, as the previous hon. member just said, matrimonial issues. If there is an inequality, who takes precedence in this? Is it 'he' or 'she', or is it 'the person'? Someone has to come first.

Issues regarding sex discrimination are another area that, I think, will cause one or two problems, and when we are talking about 'businessmen' or 'businesswomen', are we going to be talking about 'businesspeople'? (*Interjection by Mr Cretney*) No? If that is the situation, well, fine. Let us give the hon. member permission for leave to introduce and let us see what she comes forward with. But I think, in fairness, that whatever we do decide on has to dovetail in with all the existing legislation, and I hope that we do not provide a system which is so complicated it makes it very, very difficult for the ordinary person to follow and that it does not lead to difficulties in time to come. But as far as the principle goes, I have no problem: I like to think that I treat everyone with an equal status, no matter what their sex or gender. Thank you.

The Speaker: Hon. member for Onchan, Mr Karran.

Mr Karran: Vainstyr Loayreyder, I think that unless there is some real, fundamental objection, anybody seeking leave to bring in a piece of private member's legislation should be supported, and I think that the principle that has been supported in the past should be supported in the future. I will be more than happy to support the hon. member as far as her piece of legislation is concerned. When we see the detail of the legislation, we will see what needs to be done. It seems quite a reasonable request, in the year 2002, for what the hon. member is alluding to to be the main part of a piece of legislation. I believe it would be wrong of this House not to give the hon. member the right to come forward and let us debate the principle that she is moving in her piece of primary law as a private member's Bill.

The Speaker: Hon. member for Rushen, Mrs Crowe.

Mrs Crowe: Thank you, Mr Speaker. As you can imagine, I am pleased to support the hon. member for Peel bringing forward this legislation. I have always considered that I was superior to most men, so I hope the legislation may enforce that.

The Speaker: Hon. member for Onchan, Mr Corkill.

Mr Corkill: Thank you, Mr Speaker. I, too, will be supporting the motion before us today. Quite fundamentally, I am simply interested in good legislation being drafted appropriately, and I understand that this particular issue is in the Interpretation Act to try to help that. Nonetheless, I am happy for the hon. member to come forward with some way to equalise this situation regarding gender.

I apologise because prior to this debate I had hoped to do a bit more research. I understand that there was a Bill drafted, or an Act passed, which did actually accommodate this problem, but I think it did create problems. I do not know which piece of legislation it was. Maybe the hon. member is aware of it, but if not, certainly I will be doing some research to produce a

particular piece of legislation which was drafted in a way to overcome this problem so that, in fact, the Interpretation Act was not required; it dealt with it within the Bill itself. I just make that point and wonder if the hon. member has got any information on it. If not, I will seek to find out which piece of legislation it was.

The Speaker: Hon. member for Douglas South, Mr Cretney.

Mr Cretney: Yes. I am more than happy to get to my feet and support the leave of the hon. member to introduce. I think we have a way to go in this House as very often - or not very often; it is perhaps less often these days, but on occasions - for example, the hon. member for Peel or the hon. member for East Douglas or the hon. member for Rushen is referred to as a 'lady'. They are not a 'lady' in here; they are an hon. member, and we are all equal. I am not referred to as the 'gentleman'. I know I am not. *(Laughter)* We are hon. members in here, and perhaps we have a way to go ourselves just recognising that. I have to say that I think the hon. member for East Douglas this morning made a mistake when she referred to 'businesswomen'. They are 'businesspeople'; whether they are male or female does not matter. I think we should promote equality in all aspects.

The Speaker: Hon. member for Peel to reply.

Mrs Hannan: Thank you, Vainstyr Loayreyder. I would like to thank Mrs Cannell for seconding the motion before us today. It is true that few women, really, have had the honour to serve in the House, and I am not sure why that is. We should maybe be looking at improving on that and trying to encourage more women to stand for the House, but I take this opportunity of moving this today in the hope that we in the House can recognise the place that women play already in this House and in the community as a whole.

I thank Mr Downie for his support. He does come back to this 'Who is first?' I am not looking at who is first; I am looking for equality. If we were looking at who is first, we would just leave the legislation as it is, but I would hope that *(Interjection by Mr Downie)* -

Mr Singer: Adam was before Eve.

Mrs Hannan: Well, that is what I am suggesting here, because the majority of the people in this House would want to maybe remain first, and I am surprised that he would raise it today when we are looking for equality. As the member for Douglas East, and, I think, Mr Karran, mentioned about human rights legislation that has been going through, we are recognising people - and people who have had rights over the years - and this is just to be able to legislate and include women in the legislation.

I would like to thank Mrs Crowe and also Mr Corkill for their support. There is, in every Act, an interpretation sector, where words that have not been used in the Interpretation Act are interpreted in the legislation. Some other words are not and they are just used because of common usage. I am not aware of a Bill that has created problems where you would equalise gender, because this has been done in other places, and I do not see why it cannot be done here.

Mr Downie asked about the European Union. The European Union does not necessarily pass legislation which affects everyone; they pass legislation which is then passed on to their countries to be written up as law, and therefore I do not see that we would have to even look to the UK, the European Union or whatever. We can act on what their thinking is when we are bringing legislation forward, and maybe I can look at it in different ways so that whoever is writing the legislation could, in actual fact, approach it from a particular area.

There is a move afoot in many places to produce user-friendly legislation so that people picking up legislation can understand it straight off, without having to refer to somebody else for clarification, and that is another area that I think maybe the executive could be looking at. But I think that within this particular motion that I have this morning it is the Interpretation Act that I am looking at amending, principally to look at the gender issue, and I would hope that members will support me. Thank you, Vainstyr Loayreyder.

The Speaker: Right, hon. members, the motion before the House, standing in the name of the hon. member for Peel, Mrs Hannan, is 'that leave be given to introduce a Bill to amend the provisions in the Interpretation Act 1976, with special regard to the provision as to gender, and for connected purposes.' All those in favour say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

For: Messrs Anderson, Quayle, Rimington, Gill, Mrs Crowe, Messrs Henderson, Braidwood, Cretney, Mrs Cannell, Messrs Downie, Shimmin, Mrs Hannan, Messrs Bell, Singer, Corkill, Earnshaw and the Speaker — 17

Against: None

Mr Quine: I think I have been forgotten, Mr Speaker.

The Speaker: You have.

Mr Cannan: Yes.

A Member: Impossible!

The Clerk: Mr Quine?

Mr Quine: For. *(Laughter)*

A Member: How could anyone forget you? *(Interjections)*

Mr Shimmin: Wishful thinking. *(Laughter)*

The Clerk: That is Mr Quine, Mr Speaker.

The Speaker: I would advise hon. members that the hon. member for Onchan, Mr Karran, was unable to vote because the motion had been put to the House before he entered the House. Just in case members wonder why.

Mr Karran: Thanks for that.

The Speaker: That is an important fact. Therefore, hon. members, the motion is carried, with 18 votes for and no votes against.

Data Protection Bill — Third Reading Approved

The Speaker: Hon. members, we now move on to the order paper, item 3, and I call on the hon. member for Ramsey, Mr Bell, to take the third reading of the Data Protection Bill.

Mr Bell: Mr Speaker, the Data Protection Bill consolidates and extends the régime created by the Data Protection Act of 1986, which it largely replaces. In particular, the Bill applies to certain structured manual records which are not covered by the 1986 Act, as well as to computerised personal data. It introduces conditions which must be satisfied if personal data are to be processed, with additional conditions for sensitive data. It strengthens individuals' existing rights and creates some new ones, and brings within its scope existing access rights created by the Access to Health Records and Reports Act of 1993. The Bill renames the registrar the 'Isle of Man Data Protection Supervisor' and replaces registration with new

arrangements for notifying the supervisor. It introduces new rules for the transfer of personal data to other countries.

Mr Speaker, the passing of this Bill will ensure that the Isle of Man fully complies with the European directive on data protection, to ensure adequate protection for individuals and thus permit the free movement of personal data between data controllers in member states and the Island. Mr Speaker, there are no outstanding questions still to be answered from the previous clauses and second reading stage, and therefore I beg to move the third reading of this Bill.

The Speaker: Hon. member for Onchan, Mr Corkill.

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

The Speaker: Hon. members, the motion before the House is that the Data Protection Bill 2002 now be read a third time. All those in favour say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

*For: Messrs Anderson, Cannan, Quine, Quayle, Rimington, Gill, Mrs Crowe, Messrs Henderson, Braidwood, Shimmin, Mrs Hannan, Messrs Bell, Singer, Corkill, Earnshaw and the Speaker
- 16*

Against: Mr Karran - 1

The Speaker: Hon. members, that motion carries, with 16 votes for and 1 vote against. Therefore the Data Protection Bill is now read a third time.

Transfer of Deemsters' Functions Bill — Clauses Considered

The Speaker: I now move on to item 4 and Bills for consideration of clauses. I call on the hon. member for Onchan, Mr Earnshaw; Transfer of Deemsters' Functions Bill.

Mr Earnshaw: Thank you, Mr Speaker. Before I move to the clauses, if I may just briefly remind the hon. members of the background to this Bill. In November 2000, the then Clerk of Tynwald raised with the Treasury the question of whether the deemsters were the appropriate authority to make orders setting fees for witnesses' allowances and to exercise other legislative functions. The Council of Ministers referred the question to its Constitutional and External Relations Committee, which last year recommended that, although there was no case for divesting the deemsters of legislative functions in general, their powers to fix fees, rates of interest and other financial amounts should be transferred to the Treasury. Those powers were either created before the Treasury existed, when there was no other suitable authority, or had previously been exercised by the Governor and were transferred to the deemsters at such a time.

I move on to clause 1, Mr Speaker, which, taken with the repeal in the schedule, transfers from the deemsters to the Treasury the power to fix fees and commissions percentages in bankruptcy proceedings, for example, those payable to trustees in bankruptcy, such as accountants and advocates. The power will be exercisable by order, subject to Tynwald approval. Mr Speaker, I beg to move clause 1.

The Speaker: Hon. member for Onchan, Mr Corkill.

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

The Speaker: Hon. members, I put before you the motion that clause 1 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Hon. member for Onchan, Mr Earnshaw, clause 2, please.

Mr Earnshaw: Thank you, Mr Speaker. Clause 2 transfers from the deemsters to the Treasury the power to fix the allowances payable to witnesses in various civil and criminal proceedings, and abolishes their obsolete power to fix the fees payable to constables for executing civil process. The power will be exercisable by order, subject to Tynwald approval. As a consequence of this, the Constables' fees and Witnesses' Allowances Act 1947 is renamed the Witnesses' Allowances Act 1947. Mr Speaker, I beg to move clause 2.

The Speaker: Hon. member for Onchan, Mr Corkill.

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

The Speaker: Hon. members, the motion before the House is that clause 2 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Hon. member for Onchan, Mr Earnshaw, clause 3, please.

Mr Earnshaw: Thank you, Mr Speaker. Clause 3 transfers from the deemsters to the Treasury the power to fix the fees payable to coroners for serving summonses, executing judgments, et cetera. The power is exercisable by order, subject to Tynwald approval. Mr Speaker, I beg to move clause 3.

The Speaker: I call on the hon. member for Onchan, Mr Corkill.

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

The Speaker: Hon. member for Onchan, Mr Karran.

Mr Karran: Vainstyr Loayreyder, I wonder whether the mover can tell us what the thought process was for not looking at maybe broadening the issues concerning the Coroners Act of 1983. In recent years, there have been a number of anomalies that have come up as far as the coroners are concerned, and I would be interested to know why the Council of Ministers has not taken the opportunity to broaden that.

The Speaker: Hon. member for Onchan, Mr Corkill.

Mr Corkill: For the information of hon. members, there is an insolvency Bill in the legislative pipeline which will, in fact, have quite a lot of impact on the functions of coroners. Some members from the last administration - the last House - may recall that there was a report to another place with regard to the functions of the coroners. A subcommittee of the Council of Ministers looked at that in depth. The report was approved by Tynwald. Included in that are issues to do with insolvency and the potential for the Island to have an official receiver, so that would have an impact on the legislative basis on how coroners function. I just bring to hon. members' attention that, in fact, there is a broader issue here, rather than just this one clause in this Bill.

The Speaker: Hon. member for Onchan, Mr Earnshaw, do you wish to reply, sir?

Mr Earnshaw: I thank the hon. member for Onchan, the Chief Minister, Mr Corkill, who seconded this, for his answer. I think what we have got to recognise here is a simple transfer of functions from the deemsters to the Treasury. Agreement has been sought, via the first deemster, to these functions being transferred, and I am comfortable with that, Mr Speaker.

The Speaker: Hon. members, the motion before the House is that clause 3 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. We move on to clause 4, and I call on the hon. member for Onchan, Mr Earnshaw.

Mr Earnshaw: Thank you, Mr Speaker. Clause 4 transfers from the deemsters to the Treasury the power to alter the rate of interest, which is currently eight per cent, payable on an

execution order, for example, an execution granted by the High Court, except one relating to a maintenance order or one which is expressed to include interest. The power will be exercisable by order, subject to Tynwald approval. Mr Speaker, I beg to move clause 4.

The Speaker: Hon. member for Onchan, Mr Corkill.

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

The Speaker: Hon. member for Onchan, Mr Karran.

Mr Karran: Vainstyr Loayreyder, I am delighted to hear that there is an Insolvency Bill coming before the branches in the near future, and I hope that people from the likes of the Bankruptcy Association will be able to give representation. I am glad to see in this clause 'unless a deemster otherwise orders, as far as execution orders are concerned for debt and the like so that he has the flexibility, but at the present time I do not want to shield people who use the law to abuse the position. The problem I have is that the people who generally get into these sorts of messes are quite ignorant of what the law entails, and I believe that what we should be doing is having the basic rate at a more recognisable rate at the present time. We are trying to pull people up, not push people down, and that is why I have substituted four per cent for the eight per cent at the present time. The flexibility is there for the deemster if he believes that people are doing it to abuse the position, and I believe that it would be far more sensible to have it at that lower rate. At the end of the day, we are trying to pull people up, not push people down as far as this unfortunate affair is concerned. I am glad to see that there was a movement away from the original Bill, which said it was going to be 15 per cent, which would have been absolute extortion if that had been the situation. So I do hope this hon. House will see this amendment as a help as far as they are concerned, because I think what we should be doing is having it at a realistic level in terms of what we would see outside at the present time. I do hope this House will support this amendment, because, at the end of the day, under sub-clause (1) of this clause, the deemster has the flexibility anyway, so I do beg to move the amendment standing in my name:

Clause 4, page 2, line 31 -

Delete '8' and insert '4'.

The Speaker: Hon. member for Ramsey, Mr Singer.

Mr Singer: I beg to second, Mr Speaker.

The Speaker: Hon. member for Douglas West, Mr Downie.

Mr Downie: Mr Speaker, I think this amendment is unnecessary, and I think when you are asking the deemster to be an arbiter and a judge in these matters, it is fair and proper that he should have discretion, and we should not be tying this legislation - and this legislation for years to come - and putting interest rates in. Interest rates can go up and down, and I think that the man who makes the decision in all this, who is the deemster, should have as free a hand as possible to utilise what powers are available to him, and you should not be tying his hands - that is what we have courts for, that is why we delegate authority of the courts, and I think it is totally improper to try and fix interest rates when we know that these issues are subject to a great amount of fluctuation over a number of years.

The Speaker: Hon. member for Peel, Mrs Hannan.

Mrs Hannan: I am rather confused now. The mover has suggested that it should be four per cent instead of eight per cent, a minister has just got up and said there should be flexibility, and the legislation says eight per cent. So I am rather confused. I would agree with the member

for Douglas West: I think that there should be some flexibility there and that the deemster should be able to take each individual case, within a reasonable band, to say that that should be the prescribed rate. But the legislation actually says eight per cent, so that is rather confusing. I think if the executive want to come back with another proposal to say that it should be flexible and that the deemster can weigh up each individual case, then I would be happier than with the eight and the four per cent, taking into recognition the point that the member made about interest rates going up and down and different parts of the actual hearing itself being taken into account.

The Speaker: Hon. member for Ayre, Mr Quine.

Mr Quine: Yes, Mr Speaker. I find myself in a somewhat similar position to the hon. member for Peel. I think where we are at a loss, perhaps, in trying to take a valued judgement of this is that it is not clear what the rationale behind this rate is. Is it a question of a rate that is going to compensate somebody for some loss of earnings on money, in which case what is it to be judged against? Is it against an average return of some sort - is that the case? Is it the case that there is, within this rate, intended to be, in whole or part, some kind of a punitive element? I think that for us to judge this, we really need to know what lies behind. What is the rationale which determines the setting of this rate? I appreciate, of course, that it relates to the Administration of Justice Act 1981, and perhaps we should have that in front of us to look at this in greater detail, but at the moment, I am inclined to the view taken by the hon. member for Onchan that if it is necessary to prescribe a rate, then it should be a bottom-line rate, because that would, by and large, I think, cater for the majority of these cases. I do not think that driving them into a further financial burden would necessarily help in most of these cases, but where I am at a loss is that I am not sure what this rate is intended to be driven by. If we understood the rationale behind it, perhaps we could judge it more readily.

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

Mrs Cannell: Thank you, Mr Speaker. I do not share the same sort of confusion, perhaps, as other members, because, looking at the explanatory memorandum - and I had two sets of explanatory memorandum, but looking at my first set here - it says clause 4 'transfers from the deemsters to the Treasury the power to alter the rate of interest, which is currently eight per cent.' So that is where the eight per cent has come from, because it is currently eight per cent. The clause is actually transferring the power to alter the rate of interest, payable on an execution order, which is currently eight per cent, to Treasury. An example of that is 'any execution granted by the High Court, except one relating to a maintenance order or one which is expressed to include interest. The power will be exercisable by order, subject to Tynwald approval.' In the legislation, in clause 4, interest on judgment debts 'shall carry interest at the "prescribed rate" ' which, as we know, is currently eight per cent. 'The "prescribed rate" means (a) eight per cent, or (b) such other rate as the Treasury may by order prescribe.' So the flexibility is there in 4(1)(a) and (b).

Mrs Hannan: Not in a court.

Mrs Cannell: My reading of it is that it is there, that the Treasury can alter the amount from eight per cent to whatever percentage; they may well drop it at some point in time, but that has to be prescribed by order and it has to come to Tynwald for approval. That is my reading and my interpretation. I cannot see that we have got a problem with it. What we do not know, of course, is why the current rate of interest has been set at eight per cent. There may well be a foundation for that, and the hon. mover might have some background information to that, but we are merely reflecting what is a present-day situation, so I do not have a problem, Mr Speaker.

The Speaker: Hon. member for Rushen, Mr Rimington.

Mr Rimington: Yes. Just in reading the legislation, it would appear to me that possibly the weakness in there is actually putting a percentage in in the first place and that we should really have a prescribed rate which the Treasury sets with Tynwald approval on a yearly or five-yearly or six-monthly basis, depending on the movements in interest rates, so that the interest rate placed on these orders keeps in line with what is appropriate in the outside world. To set an interest rate in primary legislation is actually, I think, inappropriate, and it would therefore be better, in my view, if at some later point this was amended and that eight per cent figure was taken out and it was just left as a prescribed rate. But meanwhile, given, in the existing situation, that the interest rates are low and we are putting in an interest rate which is high, I would be tending to support the hon. member Mr Karran, in that we should go for the lower interest rate and then, in due course, perhaps, that particular clause can be readdressed in another place.

The Speaker: I call on the hon. member for Onchan, Mr Karran, to reply to his amendment.

Mr Karran: Vainstyr Loayreyder, I think that the hon. member for West Douglas needs to read the pieces of legislation again if he has a problem as far as that is concerned. The situation is that a large section of this community who find themselves in this position will not know that in sub-clause (1) there is a flexibility as far as the deemsters are concerned, and I believe that what we should be doing is making the base rate at a reasonable level in order to help people up, not push people down, and that is the reason why I have put this amendment in here.

I thank the hon. member for Peel for her support, and she is right: one of my original concerns about this piece of legislation was the judiciary's flexibility. But again, unless representation is made by the individual, the rate would be prescribed at eight per cent, which is way over and above the rate, at the present time, that it should be. We have to put into primary law a rate at the present time, and I think it should reflect what interest rates are at the present time.

As far as Mr Quine is concerned, I appreciate his support and the support from the hon. member for East Douglas.

As far as the hon. member for Rushen is concerned, if there was no rate prescribed in this primary legislation, then there would be no rate for this mechanism or for this piece of legislation, so there has to be a rate actually in primary law until an order is put in Tynwald at a later date. What I hope we will see here is that this piece of legislation reflects the interest rates that are about at the present time.

I would hope that this hon. House would support this as an improvement in the drafting of the primary law at the present time. It is no good saying that under sub-clause (1) the individual who is in dire straits can ask for a lower rate because of his circumstances; I believe that what we should be doing is keeping it in relation to interest rates at the present time, and if the deemster feels there is a problem or there is an abuse there, he can raise the rate with this sub-clause (1). So, I do hope this hon. House will support this amendment, as I believe it reflects what it should be at the present time, and it is open to the Treasury to amend this rate as and when interest rates go up. I beg to move.

The Speaker: I call on the hon. member for Onchan, Mr Earnshaw, to reply.

Mr Earnshaw: Thank you, Mr Speaker. Perhaps I can help to clear up some confusion here, because my understanding of the rate that is charged at the moment - the eight per cent - is that this is of an historical nature and it is a fixed rate; it is not a variable rate. The deemster does not go into court on Wednesday and charge eight per cent and give somebody a discount on Thursday in his court and pay a premium on Friday. It is a set rate which they operate to, and

it can be varied. So Mrs Cannell, the hon. member for East Douglas, was accurate in her comments as far as I am concerned. To disarm the situation, I am comfortable with the amendment that my hon. colleague for Onchan, Mr Karran, is proposing, and after consultation with the Treasury, I am aware that they are comfortable with that as well. So, given that situation, I accept the amendment and wish to move.

The Speaker: Right, hon. members. The motion before the House is that clause 4 stand part of the Bill. To that we have an amendment in the name of the hon. member for Onchan, Mr Karran. I therefore put the amendment in the name of the hon. member for Onchan before the House. All those in favour of the amendment say aye; against, no. The ayes have it. The ayes have it. I now put the clause as amended. All those in favour say aye; against, no. The ayes have it. The ayes have it. Hon. member for Onchan, Mr Earnshaw, we now go on to clause 5.

Mr Earnshaw: Thank you, Mr Speaker. Clause 5 transfers from the deemsters to the Treasury the power to alter the fixed amount, which is currently £7,500, which can be claimed as damages for bereavement by a wife or husband of the victim of an accident, or the parents of an unmarried victim if that person is under 18. The power is exercisable by order, subject to Tynwald approval, and, Mr Speaker, I beg to move clause 5.

The Speaker: Hon. member for Onchan, Mr Corkill.

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

The Speaker: Hon. members, I put before the House the motion that clause 5 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Hon. member for Onchan, Mr Earnshaw, clause 6, please, and the schedule.

Mr Earnshaw: Thank you, Mr Speaker. Clause 6 and the schedule make supplemental provisions, giving the Bill its short title, providing for it to come into force on an appointed day or days to be fixed by the Treasury by order, and making mainly consequential repeals. However, one substantive repeal is included of section 50 of the Judicature (Matrimonial Causes) Act 1976, which enables fees and matrimonial proceedings to be fixed by order of the deemsters. Such fees are now set by the Treasury under the Fees and Duties Act 1989, and section 50 can safely be repealed. Mr Speaker, I beg to move clause 6 and the schedule.

The Speaker: Hon. member for Onchan, Mr Corkill.

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

The Speaker: Hon. members, the motion before the House is that clause 6 and the schedule stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. That concludes the consideration of clauses of the Transfer of Deemsters' Functions Bill.

Matrimonial Proceedings Bill — Consideration of Clauses Commenced

The Speaker: We now move on to the next item, item 2 on the order paper of Bills for consideration of clauses, and I call on the hon. member for Douglas East, Mrs Cannell, to take clause 1, please.

Mrs Cannell: Thank you, Mr Speaker. Just before commencing on clause 1, I feel it is incumbent upon me to report back to the House following the debate to approve in principle this piece of legislation. There was criticism that certain people had not been consulted, and I did arrange a presentation for members, together with the legal draftsman, Mr Gumbley. That meeting did take place; a list of consultees was drawn up and provided to me by the hon. member for Rushen, Mr Gill; and I have contacted each and every consultee, namely the

probation/court welfare/mediation services, the social services, Women's Aid and Relate, and I have to say that they were all fully aware of the legislation that is before hon. members and that it has been in the wings for some years. Most of them were fairly *au fait* - and, indeed, all of them are quite happy - with the provisions as laid out in the Bill, so I hope that will help to clarify that situation.

Clause 1 gives jurisdiction to grant a divorce or annulment, or to make a separation order, to the High Court. This was established in 1976, and there is no change. I beg to move clause 1, Mr Speaker.

The Speaker: Hon. member for Onchan, Mr Corkill.

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

The Speaker: Hon. member for Onchan, Mr Karran.

Mr Karran: Vainstyr Loayreyder, has the mover had any inclination or any knowledge of any moves to try and get divorce away from such a formal footing as the High Court? I believe that there are countries that have a way of developing divorce so it is on a less confrontational basis, and I just wondered whether, with taking this piece of legislation for the Council of Ministers, any work has been done - or whether the mover has been told of any recommendations of work being done - to try and find ways of getting it away from such a confrontational basis as the High Court. We have a situation where you have two lawyers, and often common sense is thrown out of the window as each lawyer is highly paid, and we have the situation where madness can quite easily reign because of the fact that it has gone to the High Court. And will the mover of the Bill make representations to the Council of Ministers over the fact that this issue should have been addressed before it was drafted here? I do not believe this piece of legislation has had the real thought and revolutionary thought process of not just using it as a piece of consolidation legislation. We have a major problem as far as marriage is concerned in our society and a major problem with divorce, and I would have liked to have seen this piece of legislation being more revolutionary than just a matter of consolidation.

The Speaker: I call on the hon. member for Douglas East to reply.

Mrs Cannell: Thank you, Mr Speaker. I appreciate the hon. member's concerns, but this particular consolidation has been in the pipeline since 1989 and it has been in the Policy Review, produced by the Council of Ministers, since 1992-93.

Unfortunately, when a couple enter into a formal marriage, they take out a legal contract, and in order to get out of that legal contract by way of separation - or annulment if the marriage did not get off to a good start - or divorce, it has to be processed through a court of law. That is the way things are and that is the way things have always been, other than when the churches dealt with the issue. I have to say it is unfortunate when you get two advocates who both obviously want to represent the best interests of their client at the time and at times - and because of the nature, sometimes, of divorce - it can be quite contentious, and obviously each advocate wants to get the best deal for his client. But I have to say, having spoken at some great length with Relate, who provide a wonderful service in terms of turning a marriage around, if they can get to the couple or the individual in time - and I dare say improvements could be made in respect of that - they usually know within six weeks whether or not a marriage is to survive. It is known within six weeks, and if it is not to survive then it is obviously, at some point, going to separate, and at some point is going to break down, and a divorce may or may not be required. But that is the nature of human beings when partnerships break down.

I have gone into this in some great detail - into the background and into the whys, the wherefores and what more we could do to prevent it from coming to this point in time where they

are going for a divorce - and I can explain as we go further through. I am quite happy to discuss it with the hon. member if he still has concerns in respect of that, but today we are primarily concerned with consolidating the existing legislation with some new very important provisions here for domestic violence and property, and my aim is to strive to try and get all of this through. Mr Speaker, I beg to move.

The Speaker: Hon. members, the motion before the House is that clause 1 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Hon. member for Douglas East, we now take clauses 2,3,4,5 and 6 please.

Mrs Cannell: Thank you, Mr Speaker. Clauses 2,3,4,5 and 6 are all similar, in that they deal with a decree of divorce, which is now called a divorce order, and a petition for divorce - an application for a divorce order.

Clause 2 requires the court to grant a divorce on proof that the marriage has irretrievably broken down, and sets out the circumstances in which it is presumed that the marriage has broken down. Now, this reflects the compromise struck in the United Kingdom Act of 1969, under which irretrievable breakdown of the marriage is the only grounds for divorce, rather than a matrimonial offence, but nevertheless either such an offence, or else a long period of separation, has to be proved before the Court is to be satisfied that it has broken down.

Sub-clause (1) enables an application to be made by the husband or wife to the court for a divorce order on the grounds that the marriage has irretrievably broken down.

Sub-clause (2) provides that the court is not to find that the marriage has irretrievably broken down unless one of the following facts is proven: (a) that one party has committed adultery and the other cannot bear to live with him or her; (b) one party has behaved in such a way that the other could not reasonably be expected to live with him or her; (c) one party has deserted the other for two years; (d) the parties have lived apart for two years and they both consent to a divorce; or (e) the parties have lived apart for five years.

Sub-clause (3) requires the court to enquire into the facts as alleged. An example of that is that it is not just to accept the parties' word for it; it is not, in theory at least, 'divorce on demand'.

Sub-clause (4) under (2) requires the court to make a divorce order if it is satisfied that one of the facts in (2) is proved unless it considers, on all the evidence, that there has not been an irretrievable breakdown. There is no change except for terminology in clause 2, and that has been the case since 1976.

Clause 3: 'Facts raising presumption of breakdown'. This clause supplements clause 2, mainly by dealing with the circumstances where the parties have lived together for a time after the events relied on as grounds for divorce. It seeks to balance the need to encourage attempts at reconciliation against the need to prevent a party seeking a divorce by reviving an old grievance. It also deals with other special cases arising on divorce.

Sub-clause (1) deals with the case where one party seeks a divorce on the grounds of the other's adultery. If they have lived together for over six months after the applicant first knew of the adultery, it is treated as forgiven and cannot be relied upon.

Sub-clause (2) provides further that if the parties lived together for not more than six months after the applicant first knew of the adultery, that period is not to be used to show that the applicant cannot bear to live with the other. This is in order to attempt, and encourage attempts at, reconciliation.

Sub-clause (3) makes similar provision in the case of unreasonable behaviour. If the parties lived together for not more than six months after the behaviour relied on, that period is not to be used to show that the applicant cannot be expected to live with the other party.

Sub-clause (4) deals with the case where one party relies on the other's desertion, which necessarily involves an intention to remain apart, but the other party has become incapable of intending to desert. An example of this is where H leaves W and after 18 months is injured in an accident and goes into a coma. The court has to ask whether the desertion would have continued if the deserting party had remained capable.

Sub-clause (5) provides that where the parties lived together for up to six months following desertion or separation, that cohabitation is to be ignored in deciding whether they have been apart for the necessary period but does not count towards that period.

Sub-clause (6) explains what is meant by 'living apart' and 'living with each other'. A couple are treated as living apart, even though they are under one roof, as long as they are living as separate households or householders.

Sub-clause (7) requires rules of court to ensure that the effect of consent to a divorce sought on the grounds of two years' separation has to be properly explained to the respondent and prescribes how that consent is to be given. There is no change, Mr Speaker, in this particular clause except in terminology, and it reflects the 1976 and 1993 Matrimonial Causes Rules Act.

Clause 4, Mr Speaker, prevents an application for divorce being made within one year after the marriage. Sub-clause (1) prevents an application for divorce being made within one year after the marriage. Sub-clause (2) makes it clear that this does not prevent an application being based on conduct during that year. Now, there is no change, again, from the 1976, substituted by the 1986, Act. There is no change in clause 4.

Clause 5 deals with the case where a party has obtained a separation order or a maintenance order on one of the grounds specified in clause 2. A divorce can still be sought on the same grounds. It also makes special provision for calculating the period of desertion in certain cases.

Sub-clause (1) provides that a party can apply for a divorce even though a separation order or a maintenance order under part 3 of the Act has been made on the same facts. An example of that is that W, who has religious objections to divorce, obtains a separation order on the grounds of five years' separation. H, his partner, can subsequently apply for divorce on the same grounds.

Sub-clause (2) allows the court to treat the order as proof of the grounds without requiring the facts to be proved over again.

Sub-clause (3) provides that where a separation order is granted on the grounds of desertion and then an application for divorce is made on the same grounds, the period of desertion on which the separation order was based is treated as immediately before the application for divorce.

Sub-clause (4) allows the court, where an application is based on desertion for two years, to include in the two-year period any period during which the respondent has been excluded from the matrimonial home by an injunction or an order under part 5 of the Bill. There is no change here, Mr Speaker; they reflect legislation that is already in.

Moving on to clause 6: this clause gives the court discretion to refuse a divorce on the basis of five years' separation where a divorce would cause the respondent grave hardship.

Sub-clause (1) gives the court discretion to refuse a divorce on the basis of five years' separation - that is without the consent - where a divorce would cause the respondent grave hardship and it would be wrong to impose it on him or her.

Sub-clause (2) sets out the condition under which one applies and the factors to be considered by the court. It only applies where only five years' separation is proved and the court would otherwise grant a divorce. In that case, the court is to look at all the circumstances, including the party's conduct and the interests of parties and of any children. If it thinks that (a) the respondent would suffer grave financial or other hardship and (b) it would be wrong to grant a divorce, it is to refuse it.

Sub-clause (3) provides that 'hardship' covers the loss of a chance to acquire a future benefit as well as of a present benefit, and that covers widows' pension if the husband dies first, but of course is less important now that a pension sharing order can be seen and is provided for in clause 31, but is still important when the pension fund is overseas.

Mr Speaker, that is clauses 2, 3, 4, 5 and 6, and I beg to move, sir.

The Speaker: Hon. member for Onchan, Mr Corkill.

Mr Corkill: I beg to second those clauses and reserve my remarks, sir.

The Speaker. Hon. member for Onchan, Mr Karran.

Mr Karran: Vainstyr Loayreyder, we have heard that this Bill has been around since 1992. I am concerned with clause 2. When does a divorce become totally. . . I am concerned about a couple of points. One, obviously, in this legislation, in this clause, is that I am sorry that we have not managed to get away from such a formal setting, and I do hope that the Council of Ministers will look at this. We have the absurd situation at the moment that, if one partner or the other can get legal aid, the other partner is in the position of finding it very difficult because of the costs that are involved, so, unfortunately, instead of being a cornerstone of society, it almost becomes a game of poker, in the fact that you have a situation where one can take it all the way because they are on legal aid and the other side is not on legal aid. I know where divorces have been allowed to go through simply because the other party could not face the crippling financial costs as far as legal aid is concerned, and I do hope that the mover will make representation to the Legal Aid Commission that is reviewing legal aid at the present time, because that is something that I think is fundamentally wrong. And that is why I said in clause 1, and I say now in clause 2, that I would have liked to have seen, if this Bill has had such a period of sitting around ready to go, if this issue could not have been looked at. At the moment, we have these areas between (a) and (e) in clause 2, and the fact is that you have a situation where one of the parties, if they are on legal aid, can afford to push it as far as possible, and the other party has the ridiculous situation that because they are working but they are not on large amounts of money, they cannot afford to defend themselves as far as (a) to (e) are concerned because they cannot afford the legal representation to do so. I know people say that you can make representation on your own behalf, but when many of these individuals have never seen the inside of a courtroom the thought of doing that is just too daunting, and I am disappointed as far as that clause is concerned.

I am somewhat surprised that clause 3 has to be six months, and whether it should have been longer. . . I would be interested to know why the mover thinks it should only be six months.

I am also concerned about sub-clause (5) of clause 3, and that is why I am moving an amendment to a later clause about the issue of consulting with both parties and getting them around the table to try to get it away from a war footing and back to a common-sense approach.

I am interested, Vainstyr Loayreyder, in the 'same household', especially now that many find themselves in the absurd situation where they have the matrimonial home but neither of them can afford to have the house sold because, due to the equity that would have to be given to the other party, neither of them can afford to purchase a home. I wonder whether the Department of Local Government and the Environment is looking at both local authority housing and maybe a mortgage scheme, because this is something that is becoming an increasing problem. People who bought a home maybe twenty years ago or even less and who now are divorced: we need to be looking at ways of helping these people because it is an intolerable situation. I know that it is almost like the Iron Curtain in a house that I have been in; I have been to individuals in this situation. I would be interested to know if the Department of Local Government has considered this issue.

Clause 4 talks about there being a bar on a marriage for a year. I take it that that is not including a marriage under clause 13, so it would have no bearing on clause 13, but I do think that if you find within three months that it is a disaster zone, why a year? I just wonder why we have gone for a year as far as that is concerned.

On clause 5, I am a bit surprised at this issue. Why just in any part of the British Isles? I am interested to know. And also in sub-clause (2) of clause 5, it talks again about any adultery and evidence, and again the problem you have got is this issue of legal costs. If you have one party who is entitled to legal aid and the other party is not, it is very, very difficult, and I would have liked to have seen, in this review that has been so long coming, that there was a way of balancing it up, taking it away from the court system so that we can have the parties there arguing the case on their own behalf.

I would just like to say on clause 6, especially with the motion that the mover seconded today, that we talk about 'other hardship to him' instead of 'to him or her'. I would imagine that the hardship would be more on the 'her' than on the 'him', even allowing that, maybe with the way things have gone on the employment front nowadays, many males become the house-husband because the wife can earn far more than the husband can, especially if he is a labourer and she can work in the finance industry. But I just wondered why we have allowed that sort of sexist amendment in this piece of legislation. These are the few points I have as far as those clauses are concerned.

The Speaker: I call on the hon. member for Douglas East, Mrs Cannell, to reply.

Mrs Cannell: Thank you, Mr Speaker. The hon. member made a number of questions and suggestions. In respect of clause 2, he was talking about the fact that this Act has been around since 1984, I think he said. In fact, this particular piece of legislation under part 1 of this consolidation Bill that is before us has been around since 1976 and some of it was actually changed in 1984, so it has been the law of the land for a considerable period of time.

He floated the issue of legal aid and one half of a couple, perhaps, being able to afford legal representation whilst the other suffers. Of course, there is provision later on in this piece of legislation to acknowledge the importance of the costs of housekeeping if you have a relationship that has broken down and where the husband has worked but the wife has always stayed at home - the other partner has always stayed at home - made the home, made the nest and raised the children. That was never acknowledged before as a party to the working process; later on, within the provisions of this Bill, it is acknowledged, it is recognised and it is rewarded. I think the problem we have with legal aid is the fact that there are very few advocates in the Isle of Man who are prepared to take on civil cases. They are reluctant to take on civil cases. They go for legal aid for criminal matters because it is a lot more lucrative for them, faster moving and always ends up in court, whereas civil matters do not necessarily end up in court, but

nevertheless they can take a lot of time, and so there are very few advocates in the Isle of Man who will service such requirements, let alone about one being perhaps strapped for cash and being able to make representation. But I note his concern and it is something that concerned me too, but I think our present Chief Minister, in his former capacity as Treasury minister, also acknowledged the disparity there and the civil legal aid benefit was raised so it was on an equal footing with criminal legal aid, but nevertheless it has not made an awful lot of advocates out there take it up and take on more civil cases, and that is what we need, hon. member. That is what we need.

In terms of clause 3, he questioned the six months. Again, this has been in place since 1976, so it is proven that it works. There has not been a problem with it, but I will give him an example, Mr Speaker. I will call them H and W, and you can ascertain who is the male and who is the female here because I am not going to split between the two. The example is that H and W separate for six months; they come together again for three months; they separate again for six months; they come together again for three months - so this is a turbulent affair; and then they finally separate for over twelve months. W seeks a divorce on the grounds of two years' separation with H's consent. The two periods of cohabitation do not exceed six months in total, so they are ignored in deciding whether H and W have lived apart for a continuous period of at least two years. The periods of separation of six months, six months and twelve months are added together to make two years in total, and this is deemed to be the continuous period. So that is where the six months rule comes in: you can start the ball rolling, if you like, once six months have elapsed, but then, hopefully, couples get back together again and they give the marriage, or the partnership, a second chance. But again we have to focus on the provisions within the legislation, which are administered by people who preside in courts, and that is why it is worded in such a way. Fortunately, it does not form any basis for a handbook to be given out to such individuals for guidance, because it would frighten the life out of them, quite frankly.

I think the hon. member also made a point in respect of clause 6 and, again, this is to consider the factors in the refusal of an order in five years' separation cases on hardship grounds. He took exception to one particular sub-clause in this, but he was not specific, other than 'grave financial or other hardship'. There always has to be a backstop situation here so that you do not get a situation where one partner divorces and abandons the other and then claims everything that would provide hardship for that family. You could be talking about a young person, an offspring of the relationship, who has an interest in some future trust or deed or even business that may not kick in until he or she has attained the age of 16, 18, 21 or whatever, and the applicant may well be wanting to sever all those sorts of connections in order to maximise on the divorce proceedings and being able to live a separate life. The court has to be mindful of those, and they have to really take cognisance of anything that would cause grave financial or other hardship. Other situations can arise where one partner is very active and very successful in their work and their income is good, but the other partner has not been so successful - the other partner could be suffering with a debilitating condition, for instance - and the marriage has broken down as a consequence of all sorts of things, but that has not helped. That person has not got any assets other than the family matrimonial home, has not got any money and basically has not got anywhere to go. Again, there has to be provision there to acknowledge that type of situation. I hope that answers some of the hon. member's concerns. I beg to move, Mr Speaker.

The Speaker: Thank you, hon. member. Now, hon. members, as concern has been raised on a couple of the clauses, I intend, although accepting the clauses being presented en bloc, to present them to the House for voting on individually, so therefore we go to clause 2. The motion before the House is that clause 2 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

I now put the motion before the House that clause 3 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

I now put before the House the motion that clause 4 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

I now put clause 5 before the House. All those in favour say aye; against, no. The ayes have it. The ayes have it.

And finally I put before the House that clause 6 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Hon. member for Douglas East, I now call on you to move clause 7, please.

Mrs Cannell: Thank you, Mr Speaker. Clause 7 enables the court to adjourn divorce proceedings if it thinks that there is a chance that the parties might be reconciled. Sub-clause (1) enables the court to adjourn divorce proceedings to allow an attempt at reconciliation if it thinks there is a chance that the parties might be reconciled. Sub-clause (2) saves any other powers of the court to adjourn divorce proceedings.

I understand that there is an amendment to this particular clause, Mr Speaker; I do not intend to speak then, but if I may speak just now, merely to say that I believe -

The Speaker: You cannot speak until it has been moved because we do not know if it will be moved, hon. member.

Mrs Cannell: Okay, thank you, Mr Speaker. I think the terminology that is expressed and used within clause 7 is the correct terminology to be used. It is giving the courts the flexibility to attempt a reconciliation. A bit further on in the legislation it goes into what type of reconciliation or who it can be referred to, in terms of maintenance orders - that is where children are involved - but nevertheless, the court does have the discretion, when they are in court, to be able to see that one partner is wanting to effect divorce but the other partner is somewhat reluctant, and whoever is presiding at the time has the flexibility, under clause 7, to stay proceedings and to adjourn proceedings. I beg to move, sir.

The Speaker: Hon. member for Onchan, Mr Corkill.

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

The Speaker: Hon. member for Onchan, Mr Karran.

Mr Karran: Vainstyr Loayreyder, I move this amendment to this clause in order to put more flexibility in, to give the executive the opportunity to have this enabling piece of legislation for when they do have a working party and it does come up with recommendations, and so that they can go to Tynwald to bring in an order to try and help the parties over their marriage. I am appalled at the Department of Health and Social Security on the fact that we have this 'dog-in-the-manger' approach as far as this circular is concerned especially when I am told that this piece of legislation has been around since 1992. I know, as a former member of the department, that we have almost reached crisis point as far as problems with children and the issues that that has brought about within Social Services are concerned. What I was hoping that we would see here was to give what should have been done before this piece of legislation came to this House: the ability for the executive to use this amendment to develop the flexibility of coming back with orders, without having to go back into primary law, to try and address the issue of reconciliation in order that we could maybe come up with a more practical way than we have. I had mentioned in previous clauses the absurdity that we have - the imbalance we have got - because of the fact that we have not looked at it.

I hope this House will support my amendment because this helps to try and give the opportunity - the flexibility - for the Council of Ministers and the departments relevant to this to come back, after they have had a working party, with orders to Tynwald in order that we can do what needs to be done. This is a cancer within our society as far as divorce is concerned, and we should be trying to minimise divorces, especially where children are involved. Fair enough, things have changed from when I first got elected and the then Marriage Guidance Council got £250 a year to exist on, and things have improved. I would hope that someone would second this amendment in order for the hon. mover to argue why the executive should throw this piece of enabling legislation that should be looked upon as helping the situation, not hindering the situation, in order that when they do have their working party, they can come back with an order in Tynwald without having to bring a piece of legislation with all the requirements of first, second and third reading in this hon. House. I am disappointed that we have such a response from the Department of Health and Social Security, as I believe that this amendment will help, not hinder. In fact, there is only one other thing that I believe is more common sense and that should have been looked at with some of the other amendments that I have got here at the present time, but whatever can be done to help keep marriages afloat and to try and help them so that they can get away from a war footing and back to a situation where sanity reigns needs to be looked at.

I hope that this amendment will be supported in order that we can give the flexibility in primary law, so that if we do see a working party come about on the issue, they will be able to have orders in Tynwald. I just happen to have a friend who called this weekend and who has got divorced, and if there had been some way of getting both parties together, that marriage more than likely would not have ended up in divorce, but at the time they were one of the first of my friends to get divorced. If there had been a possibility, I think they would have both been married today and their children would have been in one unit, rather than being in two units as is the case at the present time because there was not that facility there to get both parties together and because one was seeing the other party was being totally irrational. If there had been some independent input, I think we would not have seen the situation where the demise of that marriage happened, because people might have seen that there might have been some post-natal depression that was party to that divorce and somebody might have recognised that fact and both parties might have been able to work around that situation, but because there was not that, they divorced into separate units, with all the complications.

This issue should not be fudged. I believe that it is appalling that we have had this piece of legislation here since 1992, sitting around there, and there has not been the priority given as far as reconciliation is concerned. If there had been a package of measures put forward that was originally recognised in the 1976 Act and then taken out in the 1986 Act because there was no structure as far as that was concerned, I believe that it would have been the case. So I do hope that somebody will second this proposal and then let it be debated.

The Speaker: I call on the hon. member for Douglas East to reply.

Mrs Cannell: Thank you, Mr Speaker. As the amendment has not been seconded, sir (*Interjections*) -

The Speaker: Hon. members.

Mrs Cannell: Mr Speaker, as I understand it, the amendment to clause 7 has not been seconded, so there is no comment to be made on it. As there are no other questions or queries, I beg to move that clause 7 stand part of the Bill, sir.

The Speaker: Hon. members, the motion before the House is that clause 7 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. We now go on to clauses 8, 9 and 10. Hon. member for Douglas East.

Mrs Cannell: Thank you, Mr Speaker. Clause 8 enables provision to be made by rules of court for the High Court, in divorce proceedings, to consider and approve any agreement between the parties. An example of this is financial provision or arrangements for children. There is no change in the way in which clause 8 is set out, except in terminology, and it has been *in situ* since 1976. I beg your pardon, Mr Speaker, I was talking of clause 8. I will start again.

The Speaker: We are dealing with clauses 8, 9 and 10.

Mrs Cannell: Yes, we have done 7. I was looking for more notes, sir, on clause 8, but there are none, so I shall go through the Bill as we have it written. I was waiting on the legal draftsman providing me with some more, but they did not arrive.

Clause 8 deals with the consideration of certain agreements or arrangements enabling the parties to a marriage, or either of them, on application made either before or after the making of an application for a divorce order, to refer to the court any agreement or arrangement made or proposed to be made between them, being an agreement or arrangement which relates to, or arises out of, or is connected with, the proceedings for divorce which are contemplated or, as the case may be, have begun.

Clause 8(b) enables the court to express an opinion, should it think it desirable to do so, as to the reasonableness of the agreement or arrangement and to give such directions, if any, in the matter as it thinks fit.

Clause 9 makes special provision for the protection of the respondent where a divorce is granted on the basis of a two- or five-year separation.

Sub-clause (1) deals with the case where the respondent was misled by the applicant into giving consent to a divorce based on two years' separation and no other ground for divorce has been shown. The court may, on an application by the respondent, cancel the divorce at any time before it has been made.

Sub-clause (2), with paragraphs (a) and (b), sets out the cases where the court can delay making the divorce final until proper financial provision has been made for the respondent. An example of that is where the respondent makes an application for the purpose and the divorce is based on either two years' separation with consent or five years' separation and no other ground for divorce having been shown.

Sub-clause (3), with paragraphs (a) and (b), requires the court to consider all the circumstances, including the financial position of the parties, especially in the event of the applicant's death. It must then defer making the divorce final until it is satisfied that proper provision has been made for the respondent or no such provision is necessary.

Sub-clause 4(a) and 4(b) allows the court to make the divorce final if circumstances require it and the respondent gives adequate undertakings to make proper provision.

Clause 10, Mr Speaker. This clause provides that where one party applies for divorce and the respondent makes a cross-application for divorce, the court is to deal with the latter in the same way as if the respondent had made an application in the ordinary way. An example of that is where the husband applies for divorce on the grounds of the wife's adultery and the wife makes a cross-application for divorce on the grounds of the husband's unreasonable

behaviour. There is no change except in terminology, and this has been an Act of the land since 1976. Mr Speaker, I beg to move clauses 7, 8, 9 and 10.

The Speaker: I would just clarify that it is clauses 8, 9 and 10, hon. member.

Mrs Cannell: Sorry, 8, 9 and 10.

The Speaker: Hon. member for Onchan, Mr Corkill.

Mr Corkill: I beg to second clauses 8, 9 and 10, sir, and reserve my remarks.

The Speaker: Hon. member for Onchan, Mr Karran.

Mr Karran: Vainstyr Loayreyder, in clause 9 I am bit concerned about the situation of financial obligations and financial resources. The issue that concerns me is that I know it is contempt of the court, but you have this absurdity where you can get people who can 'dispossess' themselves of financial assets or claim not to own financial assets, and then suddenly they 're-own' them again once the divorce has gone through. I believe that the big problem as far as this clause is concerned is the fact that basically, if I was married and my wife did such a thing, I would have to take civil action and not criminal action. I think it is wrong, and this is another glaring example, in this piece of legislation, of where there has been no real input reflecting the real problems that we are having today in matrimonial proceedings, and I am concerned about this. I have not tried to put any amendments to this because I was hoping that somebody else's amendments would have been able to reflect this, but it did not happen.

I do feel that if the hon. mover can maybe clarify why this sort of glaring anomaly that we see far too often in divorce, where we have a situation where a party to the divorce can hide, mislead and misrepresent a High Court divorce case, often on . . . Again, it is the situation where one party is not entitled to legal aid, but the other party can afford to use the legal system and afford the lawyers and they get away with it. I believe that this should have been made a criminal offence; it is wrong. This is why, in future amendments to this Bill, I am trying to make it fair and equitable as far as pension provision is concerned, but I do believe that the hon. mover maybe can explain why that anomaly has not been made criminal in this special protection as far as clause 9 is concerned.

The Speaker: I call on the hon. mover to reply. Hon. member for Douglas East.

Mrs Cannell: Thank you, Mr Speaker. Again, the provisions provided for by clause 9 are in terms of a separation, and it has to be coupled with the respondent's consent to an order being made. This is in terms of the special protection for a respondent in a two- or five-year separation case. The hon. member for Onchan said it is awful that someone can hide or misrepresent in a High Court case, et cetera, et cetera and that there is no reprimand for such, but there are provisions within this legislation for the court to decide whether or not misrepresentation has taken place - whether there has been incorrect or inaccurate information - and the other party to the proceedings can then make play on that. It does not necessarily have to involve again the services of an advocate, and I personally, in this hon. place, would advocate to anybody that if you go to court, represent yourself, because you actually get a lot more latitude by doing it that way than paying for an advocate to represent you. I do not believe this is the place to be issuing penalties. This is not the place, in this piece of legislation, to be putting in penalties for telling porky-pies when you get into court; there are other mechanisms in place that exist in other pieces of legislation. This primarily is putting the framework in and consolidating legislation in terms of all matrimonial proceedings. I beg to move clauses 8, 9 and 10, Mr Speaker.

The Speaker: Thank you, hon. member. Now again, as a member has expressed concern about a clause, I will put them separately so that the freedom is there to vote on each clause individually.

So, I put before the House that clause 8 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

I now put that clause 9 stand part of the Bill. All those in favour say aye; against, say no. The ayes have it. The ayes have it.

I now put that clause 10 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Hon. member for Douglas East, we now move on to clause 11, please.

Mrs Cannell: Thank you, Mr Speaker. This section of the legislation deals with annulment and also talks in terms of voidable situations. Mr Speaker, for clarification, are we just moving clause 11? Or are we moving more than. . .

The Speaker: No, just clause 11, please.

Mrs Cannell: Just clause 11. Right, sir. It deals with the annulment of marriage. A 'decree of nullity' is now called an 'annulment order' and a 'petition for a decree of nullity' an 'application for an annulment order' under the provisions laid out here. This clause gives the High Court jurisdiction to make an annulment order on an application and requires it to enquire into the facts and, if satisfied that the grounds are proved, to make the order. It does not consolidate existing legislation but restates the rules of church law applicable to annulment proceedings, which the High Court inherited from the Ecclesiastical Court in 1884. Sub-clause (1) gives the court jurisdiction to make an annulment order on an application for the purpose; sub-clause (2) requires the court to enquire into the facts alleged by the parties; and sub-clause (3) requires the court to make an annulment order if it is satisfied as to the grounds alleged in accordance with clauses 12 and 13, which I am hoping we will touch on later, Mr Speaker. Clause 11(1), 11(2) and 11(3) are all new provisions, sir. I beg to move clause 11.

The Speaker: Hon. member for Onchan, Mr Corkill.

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

The Speaker: Hon. members, the motion before the House is that clause 11 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Hon. members, that is an appropriate time to adjourn until 2.30 p.m. this afternoon.

The House adjourned at 1 p.m. and resumed its sitting at 2.30 p.m.

Matrimonial Proceedings Bill — Consideration of Clauses Continued

The Speaker: Right, hon. members, we continue our consideration of the Matrimonial Proceedings Bill 2002, and I call on the hon. member for Douglas East, Mrs Cannell, to move clause 12, please.

Mrs Cannell: Thank you, Mr Speaker. Clause 12 specifies the grounds on which a marriage can be annulled as being void.

Sub-clause (1) rectifies the grounds on which a marriage is void - for example, invalid from the outset: paragraph (a) the requirements of the Marriage Act 1984 have not been complied with, or where the parties are too closely related, either party is under 16 or certain vital formalities have not been complied with; paragraph (b) the marriage was bigamous; paragraph (c) the parties are not man and woman; paragraph (d) the marriage was polygamous and either

party was domiciled in the Isle of Man. This legislation has been in place since 1976 and there has been no change. I beg to move clause 12.

The Speaker: Hon. member for Onchan, Mr Corkill.

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

The Speaker: Hon. member for Onchan, Mr Karran.

Mr Karran: Vainstyr Loayreyder, I would like to move an amendment but, before doing so, I would be interested to know from the hon. mover: it does seem rather anomalous that we have a situation where one of the most adult things that you can do in your life is get married at 16 and why we have an age of majority at 18 and a marriage being legal at 16? Maybe we should be looking at bringing the age of majority, as far as being an adult is concerned, down to the age of what is the most adult thing that an individual can do. Obviously there would need to be more input than this Bill has had in the past, but it is interesting to know why there is such an anomaly - you are old enough to get married and be an adult but you are not old enough to vote until you are 18. There seems to be something wrong with the system and maybe we should be looking at the age of majority.

I move this amendment because I believe that we already accept the fact that individuals. . . and we pay for it as taxpayers in order to give individuals the right where they have, by surgical means and hormone treatment, undergone a sex change by the taxpayer. I honestly believe that the time has come that we accept that they are allowed to do so. We pay through the taxes for this process to happen. I do not see why, simply because it is a very, very small number in our society, we should not allow them, as long as that is put in the following clause that the individual knew of their past, to get married.

I would hope that this issue would receive a seconder and we would be able to debate this on the basis of the rights and wrongs of the issues and not on the prejudices that we all have when we talk about this very small section in our community. I know there will not be any votes in it but I think the subject should be debated. It is important in my opinion, and I beg to move:

Clause 12, page 8, line 12 -

At the end insert -

“(2A) For the purposes of subsection (1)(c) a party to a marriage who has by surgical means and hormone treatment undergone an apparent change from the male to the female sex shall be treated as female (and vice versa).”

The Speaker: Hon. member for Peel, Mrs Hannan.

Mrs Hannan: I am not sure about the legal situation with regard to how somebody is after they have had a male or female sex change but I will support it to allow a debate to take place on this particular one. I am concerned about some of the issues -

The Speaker: Are you seconding it?

Mrs Hannan: I am seconding it, yes, sorry. I second Mr Karran's amendment. I am concerned when a marriage could be void for a number of reasons, and obviously we go onto the grounds on which a marriage is voidable, and I just think we should be concerned that we are actually taking legislation through that is just re-enacting legislation. It is a huge piece of legislation that we are taking through today and I know I have commented on it before but some of this legislation has only just been through the House last year, and to re-enact and spend a lot of time re-enacting legislation which is just consolidation - it is just that it is reprinted so it is all together - I do not think is the best use of time. As the mover has mentioned, since 1992 it

has been on the cards to be done and I would have thought that something should be done along the way to gradually update this so when it came to the House some of these issues have actually been addressed prior to re-enacting the legislation, because we will find in the next year or the year after we will be upgrading this legislation and I am not sure whether that is the best way to make law. Thank you, Mr Speaker.

The Speaker: Member for Douglas East, do you wish to speak to the amendment?

Mrs Cannell: Yes, Mr Speaker.

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

Mrs Cannell: Thank you, Mr Speaker. As the amendment has been moved and seconded and it is on the floor for debate, I felt obliged to give a little bit more information on this aspect. Fairly recently there have been two cases taken to the Court of Human Rights in Strasbourg.

One was in 1998 where it covered the issue of *Horsham v United Kingdom*. The judgment date was 30th July 1998. This person was registered at birth as a male but after 1986 began to live as a woman and underwent gender reassignment surgery and changed her name. Whilst she was able to obtain a passport and driving licence in her name, her birth certificate and other official documents still recorded her original name and gender. Now, she took this to the Courts of Human Rights and basically asserted that the UK had failed to take account of new research on the causes of transsexualism and increased legal recognition of a transsexual's new gender in other Council of Europe states. The case was dismissed and it was held by 11 votes to 9 that there had been no violation of article 8 on the human rights legislation. The court was not satisfied that the detriment suffered by this person in having to disclose her original gender in some situations was so serious that the UK was no longer entitled to rely on its margin of appreciation to continue to deny transsexuals' legal recognition of their new gender. That was in 1998.

There have been subsequent cases, the latest of which the judgment date was 17th July 2001. A transsexual female appealed against a decision refusing her petition for a declaration that her marriage to a male was valid and subsisting. But again, the Court of Appeal went against her and the finding was, and I quote, 'It was necessary, for obvious reasons, to choose the gender of a child at birth and a person's status was one of those reasons. The legal recognition of marriage was a question of status, and status was important for the purposes of registration of births, adoptions, marriages, divorces and deaths. Status had to be recognised by society and could not be assigned by the individual alone. The recognition of a change in gender assigned to a person at birth was a matter for parliament and could not be properly decided by the court, and so the case lodged by this particular individual was thrown out.'

Now, there has been a lot of coverage in the newspapers over the last couple of years and there are other pending situations that are about to go to court. It would appear to me, Mr Speaker, that the Strasbourg court accepted Goodwin's argument that her rights under articles 8, 12 and 14 of the European Convention on Human Rights had been breached. The UK Government would be under tremendous pressure to act to recognise the transsexual's post-operative sex if that was the case, and this article goes on, 'It is hoped that the case will force the UK to give legal status to transsexuals.' The only other countries in the Council of Europe that still do not recognise sex changes as legally valid are Andorra, Albania, United Kingdom, Ireland and the Isle of Man, and so there is a great deal of anomaly at the moment.

But, having said all of that, I am wanting to put on record my sympathy with the hon. mover and the seconder in getting this on the floor for debate. It is an issue that will need to be addressed at some point in the future. The United Kingdom Parliament are presently looking at

this whole issue. They have brought into being a voluntary registration of partnerships, which is one step towards recognising the situation, and I daresay and I do know that there is a draft Bill out for consultation at the moment in the United Kingdom, but it is early for the Isle of Man, I would purport, to actually to even consider today because we have to reciprocate in certain instances, particularly in terms of this for divorce proceedings et cetera, also for pension payments and so on. I think it is too early for the Isle of Man; it would be a very bold step if the Isle of Man were to take this amendment to the clause and include it into the legislation. Like all things, it is well intentioned by the hon. mover but again, like all things, he tends to be premature with his good intentions, looking at *Hansard* from previous debates when he has come forward in this hon. place and another with some very, very good ideas and good moves but his timing has not always been as perhaps it could have been, and so I would suggest that this is a little early and premature at the moment. In fact, the House only gave permission in principle for one hon. member to come forward with a piece of legislation in order to get the female sex recognised in law, and so that has to be reconciled first; we have still yet to see that Bill in its green form and to also have the issue explained and the principle debated here.

So, although I have sympathy, I do not feel it is appropriate at this point in time but on a negative point, just to finish my contribution here, whilst it is well intentioned, the wording in particular gives me concern because it limits such notification or recognition of a marriage between two individuals, one having, by surgical means and hormone treatment, undergone a change from male to female, it does not acknowledge the individual who perhaps only has a surgical operation or only has hormone treatment. So in that way it is actually discriminating against another group of people who feel similarly trapped, perhaps, in the wrong body from birth and is really just cherry-picking particular classification of individuals and saying, 'Well, for you we will make an exception and acknowledge your marriage in law but if you have not had both an operation and treatment, then I am sorry, you do not qualify.' Now, that gives me concern because, whilst wanting to help one group of individuals it discriminates against another, and so I will be opposing the amendment, Mr Speaker, on that basis. Thank you.

The Speaker: Hon. member for Onchan, Mr Corkill.

Mr Corkill: Mr Speaker, I would just like to thank the mover of the Bill for explaining the background that she has done on the implications of this proposed amendment. When we discussed this at the Council of Ministers last week, our view was that we perhaps would have liked to see a committee established to look at some of these new principles in relation to how it impacts on this legislation, but then we are torn two ways because we do not want this Bill held up in any way beyond the normal processes, because there are things within the Bill that we would like to deliver sooner rather than later and we were very conscious of the fact that, as the hon. mover of this clause has said, perhaps some of these ideas are just a bit premature for this particular Bill, which is consolidation - and we keep saying that, but one of the main reasons why the Bill is here is that we would like to see the legislation in all of these areas brought together under one heading.

Certainly as an access to the reference to do with these issues, the legal profession for one will find it much easier to have a consolidated Bill before them, so we set about thinking about how we might have some sort of committee to look at these new issues, not just this amendment but the other amendments that are on the order paper to see how we might incorporate that into thinking in the not-too-distant future.

It seems to me that the only way you can really do that is to have a stand-alone Bill come forward with the benefit of some sort of committee looking at these issues with consultation with the relevant bodies. That led us into a complication because obviously these are amendments

and we can either vote for them or vote against them; we cannot actually send them to a committee as such in the way in which we were seeking to get clarity. I did mention to the hon. mover earlier that I certainly hope that certainly I will not be supporting this clause, but I did not want the hon. mover of the amendment to think that we were just the dead hand of the executive government again. We have considered these issues quite carefully in the time that has been available to us. There needs to be some commitment somewhere, I think, that these issues will be picked up and examined but certainly, as the clause stands, Mr Speaker, I would ask hon. members to vote against it as something which is premature, because I do not think we quite know yet where the adoption of these sorts of issues will lead us in legalistic terms.

I can well understand the moral argument going on here and the human aspects of what is suggested, but we are dealing with a highly technical and legal area here and I do not feel confident enough to support this amendment just on those grounds alone, because things do get complicated. The best of intentions in legal terms turn out the opposite way sometimes, and certainly in terms of the wording of the amendment I think the hon. mover of the Bill, Mrs Cannell, has said there are surgical means and hormone treatments. I think that is worth dwelling on for a moment or two, because there are those who have one or the other but not necessarily both and so you are setting up a discriminatory scenario by adopting this, and that would lead us to another complication, so I think at this stage, hon. members, bearing in mind it is a consolidation measure, this Bill, that we should vote against. That would be by my understanding of what is best for the progression of the whole Bill, Mr Speaker.

The Speaker: Hon. member for Ramsey, Mr Singer.

Mr Singer: Thank you. Mr Speaker, I shall certainly be voting against this resolution as it is now. I think, if we are just talking about changing it in the Isle of Man, many individuals on this Island and certainly people with religious views would find this quite abhorrent, because there are many people who do not accept that persons of the same sex can have their relationship recognised as equal to that of a natural male and female relationship and I think that is also a fact as well, because the next thing we would have would be a step to the persons of the same sex, as they have looked for in the United Kingdom, adopting children. That is something that will be the next step. I think it is a very dangerous precedent to set here, certainly without, as the Chief Minister says, a very in-depth discussion and a discussion that will come to a conclusion having taken into account the views of everybody - people who, I admit, would like it and people who do not want it - but I think it needs a long, long discussion before any decision is made, so I would agree with Mrs Cannell that this certainly is premature and I think that perhaps even in the future, after it has been discussed, I personally hope that it would be rejected.

The Speaker: Hon. member for Rushen, Mr Rimington.

Mr Rimington: Thank you, Mr Speaker. I am just brought to my feet, very briefly, to thank the hon. mover of the amendment for bringing this issue forward and raising it as an issue which needs to be addressed and discussed, and without that it may have just lain and not come forward at all. These are important social issues which I realise there is a divergence of views on but they are important social issues which we, in the fullness of time, do need to address. Secondly, I would like to thank the hon. mover of the Bill for the actual work she has done and the clarity with which she has brought to this particular item, and I think it has been very informative. Thank you.

The Speaker: I call on the hon. member for Onchan, Mr Karran, to respond to his amendment.

Mr Karran: Vainstyr Loayreyder, I thank my seconder for giving me the opportunity to get this issue debated on this floor, which I think is important, and it is important that we should do these issues now and not allow ourselves to forget our oath of addressing issues without fear of favour. I would just inform her that I have taken notice of her concerns in clause 13. If this was to go through it would be a voidable fact if the partner did not know that their partner had actually had a sex change operation.

I am fully aware of the situation there from the hon. mover of the Bill. I thank her for her input into this. She is quite right as far as the information she has given to this hon. House but the argument over the human rights was not over the issue of the right to marry, which has been left to individual sovereign governments to do that when it wants to; there was an issue of the right to privacy and the fact that one's medical records would then be made available showing that they have had an operation in order to change sex, and that was an issue that was brought up as far as human rights and the rights of privacy are concerned. But at the end of the day the Court of Human Rights said that it was up to national governments to decide on its matrimonial law, and what I put here today is an opportunity to let the hon. members in this hon. House debate the issue.

I think that the hon. mover of the Bill said there has not been enough time, but this Bill has been around since 1992, and I think it is not really good for this hon. House to say, because the United Kingdom has not done it, that we should not do it. I actually think it would do the image of this government and this small nation the world of good to show that we are not intolerant. As I have said before, we have put up with the English using us as a doormat for 800 years, but outside the Island we have this image of being totally and utterly intolerant. I think that would be wrong and I think it is wrong for us to say because it has not been done in the United Kingdom.

Also, about timing, I think I must remind the hon. mover of this Bill that often what happens is somebody has to put their head above the curb or, as somebody described to me several years ago, someone has to be the gardener who actually gets down there and starts sowing the seeds to make things acceptable in order that these things become a reality. So I think, whilst it was very gracious of the hon. mover to tell me about timing and about *Hansard*, I think many people who read *Hansard* will see and do see it is the right time to discuss this issue whilst this Bill is here, and I must say that this Bill is not purely consolidation; there are new parts to this piece of legislation, and that is wrong.

I saw one or two members smiling at this, and I think that is the sadness as far as this important issue is concerned. The hon. Chief Minister - I was very grateful for his proposal that he would look at these things maybe at his Social Issues Committee, and I have to say that that is a step forward. It is just a tragedy that the real important one of my amendments, which was for clause 7, which gives the enabling legislation for his executive not to have to go through the primary law basis, did not even get an amendment. That is very sad and it is a reflection on us all that this sort of thing happens. I am glad he has taken that on board but I do think that he is wrong when he says that I am discriminating. I think that, at the end of the day, if an individual has not had a surgical operation and hormone replacement, they cannot be a female as it is not purely a surgical or a hormonal position and they have got to have both, so I think both the mover and the Chief Minister are wrong on that subject.

I understand the concerns of the hon. member for Ramsey but I think he tries to be too much of a Christian at times in this hon. House. He forgets the most important thing in this hon. House about Christianity, and that is that you have to try to help the poor souls, and I believe that if any poor soul would want to go through this most painful operation and all the problems that they must have to face, then -

Mr Singer: A personal explanation: I never mentioned anything to do with that, Mr Speaker. I did not say that I opposed them having the operation; In fact, I support them having the operation. I was talking about the principle of recognising a relationship. That was all.

The Speaker: Hon. member for Onchan.

Mr Karran: All I am saying is that this very small section of the community - I think there are about three on the Island - do not do it lightly and we understand that, and I think that people need to realise that.

I will go onto Mr Rimington. I appreciate his input. I believe that it would always be too premature to address these sorts of issues because there will be more that will shout loudest against this small minority than will shout for this small minority. I have taken the situation and I have looked into the legal situation. That is why I have moved in the next clause so that you do not end up with the situation where you could marry somebody who appears to be female and find out that you married an Alison and it turned out to be an Alec! So I have tried to do that but I think it is wrong to give this idea that this should be done on a human rights ground; it is a matter of what sovereign parliaments see, and the bottom line is that we recognise that there is such a horrendous suicide rate with this small section of the community that, so long as their partner knows about it and are happy about it and they have gone through all the surgical and hormone replacement treatment to do so, I cannot see what is wrong with allowing this small section of the community to do so, and just because the UK - I would hate to say it - which is some people's mainland - have not done it does not mean that we should not do it.

Mrs Hannan: Hear, hear.

The Speaker: Hon. member for Douglas East, Mrs Cannell to reply.

Mrs Cannell: Thank you, Mr Speaker. There were no queries on this particular clause so there is nothing to reply to. Thank you.

The Speaker: Thank you. Right, hon. members, the motion before the House is that clause 12 stand part of the Bill. To that we have an amendment in the name of the hon. member for Onchan, Mr Karran. I therefore put the amendment in the name of the hon. member for Onchan before the House. All those in favour of the amendment say aye; against, no. The noes have it.

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

For: Mrs Hannan and Mr Karran - 2

Against: Messrs Anderson, Cannan, Quine, Quayle, Rimington, Gill, Mrs Crowe, Messrs Henderson, Cretney, Braidwood, Mrs Cannell, Messrs Downie, Singer, Corkill, Earnshaw and the Speaker - 16

The Speaker: Hon. members, the amendment fails to carry, with 2 votes for and 16 votes against. I therefore put the clause before the House. All those in favour of clause 12 standing part of the Bill say aye; against, no. The ayes have it. The ayes have it.

Right, hon. members, the hon. member for Douglas East, we go on to clause 13, please.

Mrs Cannell: Mr Speaker, may we move clauses 13, 14, 15 and 16?

The Speaker: I wish to keep those that have amendments separate, please, if I may, just for ease for everybody to deal with.

Mrs Cannell: Thank you. Mr Speaker. Clause 13. This clause sets out the grounds on which a marriage is voidable. An example: where it was valid at the outset but has become invalid because it was not consummated or was apparently valid but ought to be declared

invalid. The grounds are, in 13(a), that either party was incapable of consummating the marriage; (b) the respondent has refused to consummate the marriage; (c) there was no real consent to the marriage on the part of either party - and an example of that is because it was a forced marriage or one party believed that the other was someone else or one party was mentally ill; (d) one party was mentally ill and unfit to marry although capable of consenting to the marriage; (e) one party was suffering from an infectious venereal disease; and (f) the respondent was pregnant by another man. I beg to move clause 13, Mr Speaker.

The Speaker: Hon. member for Onchan, Mr Corkill.

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

The Speaker: Hon. member for Onchan, Mr Karran, can I just clarify before you move your amendment, sir, that the amendment on page 8, line 33, 'after paragraph (f) insert. . .' is no longer now relevant.

Mr Karran: Yes.

The Speaker: So you will be moving all the others except that.

Mr Karran: That is covered under another piece of legislation. Yes, Vainstyr Loayreyder.

The Speaker: Thank you. Hon. member for Onchan.

Mr Karran: Vainstyr Loayreyder, I would just like to know, when we talk about voidable marriages, how long after does it take for the individual (f) if it comes to be revealed at a later date? How long does that (f) come into it? If it happens that in 10 years' time you find out that the child was not, does it mean that you still have a voidable marriage even if you have two or three kids after the date of that?

I put these down because I think we need to reflect certain changes in social habits. There are a number of people who are getting married for the second time with several children, and I think that if we are to reflect - obviously this should have been done beforehand - but I believe that we should have this in, and that it is unreasonable for a partner to marry somebody and not to know that the partner is on the likes of a sex offenders register. I know that this has happened, and if we are reflecting the move in marriage and the issue of accepting the fact that there are more divorces and more second and third marriages today, I believe that that amendment should be in the primary law as in a voidable marriage, because I believe that it is crazy that you could end up marrying somebody and then you find out that you have actually married somebody who is on the sex offenders register and then you have got to spend the next couple of years getting an expensive divorce from that individual because you cannot trust them with your children. At the end of the day, obviously your children must come first whilst they are of a young age.

The second one that I feel is totally irrelevant today is the issue in (e); if somebody is suffering from a venereal disease, they are lucky compared to some of the other diseases that are about today, and I believe that my amendment would be far more sensible, especially diseases that can be transmitted sexually which can lead to the applicant's death. I find it incredible that we have allowed ourselves to re-enact antiquated, out-of-the-way legislation that really should have been amended before it became a Bill in front of this hon. House.

I believe that these two amendments to this clause should be accepted as a recognition of the change in habits and social structure as far as marriage is concerned and I do hope that somebody will second it in order to debate the issue to see why we cannot have common sense prevail. I beg to move:

Clause 13, page 8, line 16 -

After '13.' insert '1'.

Clause 13, page 8, line 29 -

At the end insert -

'(da) that, at the time of the marriage, he was subject to the notification requirements of schedule 1 (sex offenders) to the Criminal Justice Act 2001 and had not, before the marriage, informed the applicant of the fact;

Clause 13, page 8, line 33 -

After paragraph (g) insert -

'(2) For the purposes of subsection (1)(e) "venereal disease" includes any sexually transmitted disease which could lead to the applicant's death.'

The Speaker: Hon. member for Ramsey, Mr Singer.

Mr Singer: Thank you, Mr Speaker. Can I refer to item 13(c) which says that either party to the marriage did not validly consent to it, whether in consequence or duress, mistake and soundness of mind or otherwise? Could I ask the hon. mover about arranged marriages, which are marriages which take place in several religions, and whether that can be interpreted as duress and whether, then, one of the partners would be permitted to seek that that marriage is annulled under duress and not only if it took place within the Isle of Man but if somebody came in here from another country where arranged marriages were accepted, could they then come here and, under the law of the Isle of Man, seek to have that marriage annulled because it was an arranged marriage and they felt they were under duress?

The Speaker: Hon. member for Douglas South, Mr Cretney.

Mr Cretney: Yes, just to allow the opportunity for debate, I would like to second the amendment of the hon. member for Onchan, Mr Karran. I think, contrary to the amendments which were unsuccessful previously, I think there is a great deal of merit in what is being said here and I think it should be considered.

The Speaker: Hon. member for Peel, Mrs Hannan.

Mrs Hannan: Thank you, Vainstyr Loayreyder. Yes, I would like to support the amendments moved by the member for Onchan. I do think that we really should be supporting the first amendment for the reasons that he stated that there are men who do prey on women with children because they are paedophiles, and I think we ought to recognise that women can be taken in by these men. They can be very attentive and what they are doing is actually grooming the children for the future, whether these children are male or female, and therefore I think that we should actually support that amendment (da). On the other, line 33, 'after paragraph (g) insert (2)', I also believe that this is another area that should be totally discussed freely. People do get married when they have sexually transmitted diseases but it should be in the openness of a relationship that both partners understand the problems should they enter into a marriage knowing that one partner has got a sexually transmitted disease which could lead to the applicant's death. I look at it purely from the other way: that, yes, it could be a reason if that person has not made it quite clear to the partner when they are getting married that they have got a sexually transmitted disease. I do not see the sexually transmitted disease as being a bar to getting married, because people can get married within a relationship and can actually have a very supportive and sustaining relationship even if they have got some of these diseases. But that is not to get away from the point that you can have a venereal disease and it can lead to the

applicant's death; syphilis and gonorrhoea are examples that, over a longer period of time, can lead to quite considerable suffering in the long run.

On (f) I would have thought that (f) should have had - this is in the main Bill itself - a clarification there, that at the time of the marriage the respondent was pregnant by some other person other than the applicant. Now, I would have thought that if that was made clear to the applicant before the marriage took place, then that should not be the grounds for a divorce or voiding the marriage. What I am talking about, EIGHTYRANE, is entering openly into a marriage situation where people know these things beforehand. That should, then, not be a bar to the marriage continuing or for the grounds for voiding the marriage. There are other reasons we have obviously covered today, where people can get out of a marriage, and I would have suggested that these other areas should be used as opposed to voiding a marriage under clause 13. But I support the amendment so I think they are a major step forward in relation to this legislation and I would hope members will support it.

The Speaker: Hon. member for Douglas East, you wish to speak the amendment?

Mrs Cannell: Yes, I do, Mr Speaker.

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

Mrs Cannell: Thank you, Mr Speaker. I have a problem with both of the amendments that remain to clause 13 moved by the hon. member for Onchan. The first part, which has not been touched upon by members yet, is that the member wishes to include, as a voidable cause, the fact that at the time of the marriage he was subject to the notification requirements of schedule 1, Sex Offenders to the Criminal Justice Act 2001, and had not, before the marriage, informed the applicant of the fact. Now, this is going backwards, in my view, because it propounds the view in the public that every sex offender is potentially a paedophile and every sex offender is not a potential paedophile or is ever likely to be. It also ignores the fact that anybody under schedule 1 of the sex offenders list is continually monitored by the probation service, and they are subject to a particular coding so they are, in fact, monitored. What this is suggesting is that anybody who has had or has been convicted under the Criminal Justice Act of a sexual offence and therefore is covered under schedule 1 has to inform the prospective partner of the fact prior to the marriage, and if he or she does not, then that marriage could be voidable when the individual finds out that the person did in fact have a sex offence.

We have to examine here the rehabilitation of offenders legislation also, because those sex offenders under schedule 1 - the more serious offences are subject to quite a degree of time inside, others are not so. They are more modified and, of course, after a period of time they are resettled; they have rehabilitation. They may often be living with a new family and trying to settle into a new life. By earmarking a classification of people irrespective of what the offence was other than it came under the title 'sex', I think is inappropriate, because it propounds the sometimes ignorant view by the public, 'Oh, a sex offence - must be a paedophile,' and so I have a concern about that. Indeed, I did run these amendments by the Probation Service. This is something, Mr Speaker, I think we ought to be looking at at some point in time in standing orders. Whilst a Bill generally goes out to consultation and consultations are held - and I did, in fact, go out and consult on this - amendments that are moved, albeit two weeks in advance, do not go out to consultation and so the members, specialist services, et cetera, do not have any input but I did take the opportunity to float this one with the Probation Service under the Home Affairs department and they were not pleased at all; in fact, they were most displeased at the idea of this.

But looking to the remainder of the amendment - down the bottom, (2) here - 'for the purposes of subsection (1)(e)' under clause 13 ' "venereal disease" includes any sexually transmitted disease which could lead to the applicant's death,' the hon. member for Peel has mentioned, too, gonorrhoea and syphilis. In the days of King Henry V things like that were killers. Yes, they could kill them; they did not have cures for them. Today there is a cure and a control for such venereal diseases because those are the only two examples that have been floated in this hon. place. What other example of a venereal disease is of such significance that it can actually kill you? Whatever happened to the words when one takes up a partnership of marriage with somebody: 'to love and honour, in sickness and in health, till death you do part?' Clearly it is already covered in the clause that at the time of the marriage the respondent was suffering from venereal disease in a communicable form, so if it was something that could be passed on and was so severe and so serious and the newly wedded partner had no idea until shortly after the marriage and then became aware of it, then it is cited as a reason to apply for a divorce to have it voidable - annulled in other words. But to say that a venereal disease which could lead to the applicant's death, I would hope - God forbid that it be the case - that any one of the hon. members here today, and the public outside, could be harbouring some kind of venereal disease that they have picked up by other than sexual contact and they could be harbouring that for years and years and then eventually it manifests itself and it comes out in a full-blown disease. Is that a reason to go for a voidable marriage? We will start looking at people who develop cancer next. We can carry cancer cells for years and years. They may or may not develop, but is that a reasonable excuse to void a marriage? I would suggest it is not.

I would ask the hon. House to reject the amendment, Mr Speaker.

The Speaker: Hon. member for Ayre, Mr Quine.

Mr Quine: Thank you, Mr Speaker. Just speaking to 13(e), it seems to me quite clear that, at the time of marriage the respondent was suffering from venereal disease in a communicable form. That is no problem; I can understand that. You can take a fairly clear judgement on that matter and it creates no problem for me, but then if we go to the amendment, the amendment says ' "venereal disease" includes. . . I am not sure why we need to expand upon (e) by making a qualification that something which transparently is included by (1)(e) should need amplification in that form. Why do we need to say 'includes?' If as (1)(e) says, at the time of marriage he was suffering from venereal disease in a communicable form, that is clear, but then to add on 'includes any sexually transmitted disease', you know, that just causes further confusion. So I really cannot follow that. If it adds something it has escaped me. I think, if anything, it just causes ground for further argument as to whether a particular situation is inside the law or outside of the law.

The other aspect of this - I am talking now about the amendment - which says, 'which could lead to the applicant's death' - well, at any point in time with a particular disease it may be of course that that is not apparent until years after the marriage, and then it may not be in itself the direct cause. There are direct causes, there are indirect causes, and I just do not see how this helps the situation. The amendment which is proposed there to me causes confusion, and I will be much happier staying with 13(e), which seems to me to be clear-cut, because I can see at least two aspects of the proposed amendment which I am sure are well intentioned but I do not think it would help in any respect. I think it will just cause or provide grounds for argument and dispute, so I am not happy at all. I shall listen carefully to what the mover of the amendment says, but my current reading of that by way of advocacy of (e) is that it is not going to help one iota.

The Speaker: Hon. member for Rushen, Mr Rimington.

Mr Rimington: Thank you, Mr Speaker. I have enjoyed listening to the various comments of the members on the issue on 13(e) and (f) in particular. What strikes me from listening to the debate and reading the clauses is that it is crying out for some time in the future for some further work and clarification on these issues, because I see problems with the amendment that is proposed extending the description of venereal disease - immense problems with that. I also see problems with (e) as it stands as itself as a useful thing in modern legislation. If we were going to include an element in relation to a disease that a person may have at the time of marriage, then I do not think it was expressed so well in the Act at the moment. I realise that this is a consolidation Act and we are bringing things from many different parts and putting them into a new piece of legislation, but these issues have come forward in debate and I would hope that in the future we, or appropriate persons, can look at these particular issues and see that there actually is need to tidy up this little bit of legislation. There are other diseases out there which, if you knew about them at the time of marriage, you might want that option not to marry. If you did know about them at the time of marriage, that is not actually made clear in the piece of legislation, you might well be happy to continue with that marriage and work around the situation and have a perfectly good, loving relationship in the knowledge of those diseases, and I do not think that the legislation as it stands meets that. So I think in the future, whereas I am happy to see it go forward at the moment, there must be some opportunity for careful examination of those issues.

The Speaker: I call on the hon. member for Onchan, Mr Karran, to reply to his amendment.

Mr Karran: I thank the previous speaker. I must point out to him that this is not purely a consolidation piece of legislation. There are new parts to this legislation so it is not just about consolidation. The hon. member is quite right: there are diseases which I believe, if you have, that your partner should have a right to know about them before you go into the arrangement of marriage, and I think it is not unreasonable.

I think that for my good friend at the back here, the member for Ayre - the issue includes any sexually transmitted disease that could lead to the applicant's death. The situation today is - we are not talking about the days of George III, as the mover was talking about - yes, syphilis was fatal until about the 1930s, but today that has been sorted out. But we are making legislation here for the future, and I think that diseases that your partner has, knows he has, and knows that he can sexually transmit onto you and it can lead to the death of either of you because of that disease - I think of the likes of hepatitis B and I think of HIV - I think that that is not unreasonable to be included today in this clause of voidable marriages. I think it is more relevant than anything and that it is crazy for this hon. House, and if there are any problems which I have not seen here in front of us today I think that you have got the opportunity in the upper House; you have the Minister of Health up there and to amend anything that is wrong with this draft, and I do have to say, Vainstyr Loayreyder, it does concern me whether it is a fact or not. . . and sometimes one complains that we have a different level of support for legal draftsmen for members that are outside the executive than inside the executive, but if there is something wrong with this piece of legislation, then maybe we should have a look at our legal draftsmen if there is something wrong.

I would also say to Mr Quine, where is the interpretation as far as venereal disease is concerned? There is no interpretation in this Bill at the present time, but I hope he will reconsider venereal disease, because I believe and we are talking about voidable marriages today; we should not just be including venereal diseases but diseases where the one party knew they had that disease, knew that it was sexually transferable, and I believe that the other party should have the right to know that and, if that comes about. . . You know how I feel, Vainstyr Loayreyder: I would try to make it a criminal offence to knowingly infect somebody. I think it is

absolute wickedness of the extreme to know that you have got such complaints and that you can quite maliciously do that. It is as bad as somebody taking a knife and stabbing it in you as far as I am concerned, and I think it is very concerning.

Now, the hon. mover of the Bill - as you will be aware, I believe that the sex offenders goes on for 10 years so there is a 10-year list. I think we are making legislation today that reflects marriage of today. So many people are today getting married for the second or the third time with children, and I believe that, if it is not a serious offence, you are supposed to share your problems with your partners - that is what I am told as an old bachelor. The situation is that what I am trying to do here is safeguard children, and I believe that it is not unreasonable and I am mortified to be tried to be made out to be some sort of opportunist who is trying to attack these people who have this problem. Nobody has fought in this House in the past about getting better facilities for these individuals and has stood up there and been able to say it, but this is more important than the executive winning or me winning; This is about the protection of children and I believe in this thing. It is crazy if you were to find out that you have taken on, especially if it is a woman, a new husband and you have got three or four children and then you find out that that person is in the sex offenders register. If it is not a serious crime then surely they would tell their partner, and I think that I would be the last one wanting to stick the boot in on any of the people in any of these categories, but I think it is wrong for the hon. member to try and make out that I am trying to be bad on this section of the community. At the end of the day, openness is the most important thing as far as I have been told about marriage, and I think that it would be crazy for you then to find that out. You have got married the second time with children and then you have got to go to all the great expense and heartache going for the long, drawn-out procedures. I believe that if we can have the items from (a) to (f) down in this legislation, we should accept the two amendments, because what I am trying to do is reflect modern times and reflect the issue.

I think it might help, also, that any arranged marriage that is not done through free will is covered under basic common law, so there was no need to put that as a voidable marriage as far as this piece of legislation is concerned when that issue was raised, but I thank the hon. member for South Douglas for standing up and putting his head above the curb and seconding this important thing for it to get debated here.

I believe that it would be wrong of this House to be quoting George III for reasons why we have venereal disease, in a communicable state. We are now in the year 2002 and we have to make this legislation reflect 2002, and that is why I have put the first amendment in to recognise children from a previous marriage and a partner that does not tell his new partner that he is a sex offender. The second one is the fact that I believe, if you end up with syphilis or gonorrhoea or herpes, they are not the real issues that I think that should be a justifiable reason for a voidable marriage. I believe that if you knowingly have HIV and hepatitis B and knowingly have unprotected sex with your partner and not tell your partner of the dangers of a life-threatening disease, then I believe that that partner has the right; if you have the right because of syphilis because you have not told your partner, I certainly think you should have the right as far as having the likes of hepatitis B or HIV or anything like that, those sort of diseases that becoming more apparent now in the community, and I hope that this hon. House will see these amendments as reflecting the changes in the modern legislation. I beg to move.

The Speaker: Hon. member for Douglas East, Mrs Cannell, to reply to the debate.

Mrs Cannell: Thank you, Mr Speaker. There was just one query from the hon. member for Ramsey in terms of the reasons for voidable duress, the question of duress. There was a case in 1983 called the Hussain case who the corresponding English provision dealt with, a case where an unmarried man, domiciled in England and Wales, married in Pakistan, according to

Moslem law, a woman domiciled in Pakistan. She sued for judicial separation but he argued that the marriage was void. The English court decided that the new provision really meant that because the man was domiciled in England and Wales he could not validly take a second wife, therefore the marriage was not potentially polygamous - in other words, he could not take a second wife. If a woman domiciled in England and Wales married in Pakistan, according to Moslem law, a man domiciled in Pakistan, the marriage would nevertheless be void in English law, so there was an anomaly there. The Law Commission and Scottish Law Commission in 1985 looked at this and they recommended that men and women domiciled in England and Wales or Scotland should not be incapable of contracting a marriage which is in fact monogamous merely because it is celebrated in polygamous form, and that recommendation was given effect by part 2 of the Private International Law (Miscellaneous Provisions) Act 1995 of Parliament. Clause 12, which we have approved and subsequently clause 136, which I hope we might get to, make similar provisions for men and women domiciled in the Isle of Man. Therefore, an arranged marriage, provided that it could be proven it was taken or under duress and provided the person who is applying for the voidable aspect in terms of divorce lives in the Isle of Man, is domiciled here, and the application is made within three years, then I would imagine the answer is yes from the literature that I have been given. Mr Speaker, I beg to move clause 13.

The Speaker: Thank you, hon. member. Now, hon. members, can I make it absolutely clear where we stand with the amendments? If hon. members will look at their page which lists them, there are four components to the amendments to clause 13 in the name of the hon. member Mr Karran. The proposed amendment which reads 'page 8, line 33, after paragraph (f) insert. . .' has not been moved as it is now irrelevant. As far as the other amendments are concerned, I intend to put before you first the amendment page 8, line 29, and if hon. members will look at the bottom, page 8, line 33, 'after paragraph (g) insert. . .', we now replace '(g)' with '(f)'. Everybody clear? So I put before the House the amendment standing in Mr Karran's name, which is 'page 8, line 29, at the end insert. . .'. All those in favour say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

For: Messrs Anderson, Cannan, Quine, Quayle, Henderson, Cretney, Mrs Hannan, Mr Karran and the Speaker - 9

Against: Messrs Rimington, Gill, Braidwood, Mrs Cannell, Messrs Downie, Shimmin, Singer, Corkill and Earnshaw - 9

The Speaker: Hon. members, there are 9 votes for and 9 votes against. I therefore put my casting vote to keep the status quo, which means that the amendment fails. I now put to the House the amendments which are page 8, line 16 and page 8, line 33 'after paragraph (f) insert. . .'. All those in favour say aye; against, no. The noes have it.

A division was called for and voting resulted as follows:

For: Messrs Anderson, Cannan, Quine, Henderson, Cretney, Mrs Hannan and Mr Karran - 7

Against: Messrs Quayle, Rimington, Gill, Braidwood, Mrs Cannell, Messrs Downie, Shimmin, Singer, Corkill, Earnshaw and the Speaker - 11

The Speaker: Hon. members, those amendments fail with 7 votes for and 11 votes against. I therefore put the motion before you, which is that clause 13 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Now, hon. member for Douglas East, Mrs Cannell, can we take clauses 14, 15 and 16, please?

Mrs Cannell: Thank you, Mr Speaker. Clause 14 restricts the court's powers to grant an annulment of a voidable marriage where it would be unjust to allow it.

Sub-clause (1) applies to all the grounds in clause 13. The court is not to annul a marriage where the applicant knew that he could have applied before an annulment but led the respondent to think that he would not do so and it would be unjust to allow him to go back on that.

Sub-clause (2) puts a time bar on an application for annulment on the grounds expressed in clauses 13 (c),(d),(e) or (f) and it must be made within three years of the marriage unless leave to apply out of time is given under subsection (4), which I am coming to.

Sub-clause (3) applies to an application for annulment on the grounds in clause 13 (e) or (f). The applicant must have been aware of the facts at the time of the marriage.

Sub-clause (4) allows an application which is out of time under (2), as I mentioned above, if the court gives leave on the grounds that the applicant was mentally ill at some time during the three years since the marriage and it would be just to allow the application.

Sub-clause (5) enables an application for leave under (4) to be made after the end of the three-year limitation period. This has been the law of the land since 1976 and there is no change here.

Clause 15. This clause makes special provision for annulments of overseas marriages where the law of the country outside of the Isle of Man or the old common law rules about marriage may affect their validity. Subsection (1) provides that the court can, nevertheless, grant an annulment despite the restrictions in clauses 11 to 13, where the validity of a marriage outside of the Isle of Man depends on the law of another country. A marriage may be held to be void in Manx law on the grounds of a parties incapacity or because the proper formalities were not complied with.

Sub-clause (2) provides that the grounds for annulment of a void marriage in clause 11 do not limit the powers to grant an annulment in two cases: (a) where a marriage celebrated at a British embassy or consulate overseas did not comply with the requirements of the Foreign Marriage Acts of Parliament; and (b) where a common law marriage does not comply with any requirements of common law - these are persons domiciled in the Isle of Man - in a place where no local marriage law exists can marry by simple promises to each other and their marriages recognised in Manx law.

Clause 16. This clause provides that where as an annulment of a void marriage under clause 12 declares the marriage to have been void from the outset, an annulment of a voidable marriage operates only from the date of the final order and the marriage is treated as having been valid up until that date. Mr Speaker, I beg to move clauses 14, 15 and 16, sir.

The Speaker: Hon. member for Onchan, Mr Corkill.

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

The Speaker: Hon. members, the motion before the House is that clauses 14, 15 and 16 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Hon. member for Douglas East, Mrs Cannell, clause 17, please.

Mrs Cannell: Thank you, Mr Speaker. This clause re-states the High Court's powers to make a separation order on the same facts as those on which it can make a divorce under clause 2 and provides for its effect.

Sub-clause (1) enables an application for a separation order to be made on the same facts as for an application for a divorce under clause 2(2) and the same rules for determining whether the marriage has broken down, but it is not necessary to claim that the marriage has irretrievably broken down.

Sub-clause (2) states the effect of a separation order. It removes the legal obligation of the applicant to live with the respondent.

Sub-clause (3) requires the court to inquire into the facts as alleged and to make a separation order if it is satisfied that one of the facts is either proved, but does not have to be satisfied that there has been an irretrievable breakdown, as in the case of divorce.

Sub-clause (4) applies clause 7, which deals with adjournment if there is a chance of reconciliation, and clause 8, which makes reference of separation agreements for approval, as in the case of divorce. Since 1976 this has been the law of the land and there is no change. I beg to move clause 17, Mr Speaker.

The Speaker: Hon. member for Onchan, Mr Corkill.

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

The Speaker: Hon. member for Onchan, Mr Karran.

Mr Karran: Vainstyr Loayreyder, all I would just like to say is that obviously we cannot do anything now about the likes of separation orders, but it would have been nice to have seen in this legislation a situation where we could have been more progressive in trying to get the likes of this out of a court basis and try to get people sitting around a table and hammering this out amongst themselves with concerned parties not interested in the legal parties of lawyers and the likes (*Laughter*) as far as that is concerned. And obviously it is a piece of consolidation to a degree, like the hon. member was concerned, but I do hope the Chief Minister does take on the likes of this as one of the greatest effects on child poverty has to be the splitting up of family units. This does deserve more attention, and maybe it is a bit hard coming from one of two batchelors in this hon. House saying this, but we do see the importance. But this is where I believe that there should have been the mechanism in this legislation to get it out of the formal process of court procedures and get it back so that we can get this common-sense viewpoint and maybe save a few more marriages from divorce.

The Speaker: Hon. member for Douglas East, Mrs Cannell, to reply to the debate.

Mrs Cannell: Thank you, Mr Speaker. I note the hon. member's concern. I beg to move, Mr Speaker.

The Speaker: Hon. members, the motion before the House is that clause 17 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Hon. member for Douglas East, Clause 18, please.

Mrs Cannell: Thank you, Mr Speaker. This clause re-states the High Court's power to declare the party to a marriage to be dead and to dissolve the marriage.

Sub-clause (1) enables a party to apply to the court for an order declaring the other party to be dead and to dissolve the marriage and enables the court to make such an order if reasonable grounds exist.

Sub-clause (2) provides that seven years' absence without any reason to believe the other party to be alive raises a presumption that the party is dead.

Sub-clause (3) provides that the rule as to collusion, et cetera, which in certain cases prevent the court granting a divorce do not apply to proceedings under this clause. This has been the law of the land from 1976 and I beg to move, Mr Speaker.

The Speaker: Hon. member for Onchan, Mr Corkill.

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

The Speaker: Hon. member for Onchan, Mr Karran.

Mr Karran: Vainstyr Loayreyder, I move this amendment because I think it is crazy and I think it really arose more when we were discussing the *Solway Harvester* situation; if the bodies could not be retrieved, they could not prove that they were dead, so they would have to wait seven years. To be honest with you, I tried to compromise, once again, with this piece of legislation in the fact that I have reduced it to five years. I think that what members should look at is clause 2, sub-clause (3) on the grounds of desertion that you can have a divorce on those grounds and if you look under clause 2, paragraph (c) you can have the situation where the respondent has deserted the applicant for two years. But if the applicant tells the truth and says they do not know whether they are alive or dead, they have got to wait seven years. It seems nonsense. I have tried to make it more realistic, but if it was to be consistent with the law, as it is at the present time, it should be if you can be abandoned for two years, you can go for a divorce. The fact that if the person is presumed dead you have got to wait for seven years before you can remarry seems a little bit inconsistent, to put it mildly, and I think that the hon. mover has any reason why that should be the case. . .

I hope that this amendment will be seconded because I think it is important. We do need to know why there is a complete contradiction as far as common sense is concerned, because I believe that this clause is back to the George III sort of mentality in this hon. House. This is something that was brought in before divorce became a way out, and I do think anybody in this House reading and understanding the legislation will find it very inconsistent to have a situation where, if you claim that your husband has deserted you, you can get a divorce after two years, but if you claim that you do know whether your husband is dead or alive, you have got to wait seven years. Now, I have tried to bring it down to five years. Personally speaking, I believe that it should be on the same basis of two years if you allow for a desertion or whether the individual is dead or alive, but I think that at least it is a step in the right direction with it being five years, and I do hope that the hon. House will second this and let us have it debated.

The Speaker: Hon. member for Douglas West, Mr Downie.

Mr Downie: Thank you, Mr Speaker. I am prepared to second the hon. member for Onchan's amendment merely just to put another perspective. I actually support the seven-year period because I understand that is statutory. A lot of jurisdictions as well as ours have the seven-year period. What members have to bear in mind is that, if another person goes missing from the marriage or is, perhaps, presumed dead after seven years, there could be involved a lot of investment, property, title, land - these are issues of some importance and I think this all has to be borne in mind. People go off from a marriage or from a relationship for a number of reasons or purposes. I think that we need to keep the seven-year period in line with other jurisdictions. I think there is a commonality in the law in this particular area, but I regret that the hon. member for Onchan fails to realise that when a person does enter into a marriage he enters into a very tight legal contract, and it is not just whether one person is compatible with the other; you have got the issue where all the various possessions and, as I say, land and title, are all shared to some extent and the whole situation can become extremely complicated and convoluted, and I would maintain that if this is the case that we are referring to in this clause, it

could well take seven years to sort it out! Some of these issues are very complex. I am happy with the clause as written and I would urge members not to support the amendment unless you are absolutely certain that we are not leaving a time bomb ticking away for people for the future.

The Speaker: Hon. member for Onchan, Mr Karran, to reply to the amendment.

Mr Karran: Vainstyr Loayreyder, if the hon. member feels that it is so important for the sanctity of marriage that we should keep the seven-year at the present time, maybe the hon. member should have moved a seven-year on desertion in the first place in clause 2(3) if that was his position as far as that is concerned. The issue is not the issue of the inheritance - that is a separate piece of legislation; the issue is that if the individual is then proven to be presumed dead after seven years it would knock in from when the individual went missing as far as when the death occurred, and that the then wife was the wife at that time. What I am trying to do is get some sort of consistency in this piece of legislation.

The reason why we have this contradiction in this clause is the fact of the George III situation that we had in the previous one, where venereal disease was a death sentence. Today we have situations where divorce, when it was brought out, when this legislation was originally intended divorce was only for the elite in the community and that is the reason why you have got the contradiction in terms as far as this is concerned, and that is why I believe that you have the anomaly here.

As far as the inheritance side is concerned, that is under a separate piece of legislation and I think this House is being misled as regards that. This is to do with the simple principle that if you can claim that your husband has deserted you and lie, or you could say, 'I do not know whether he is alive or dead.' If you say he has deserted you, you wait two years; if you say, 'Oh well, I think he is dead' you have got to wait seven. Now, I have tried to be a little bit flexible here and say that if it has to be a reasonable timescale, why seven years? We are making legislation here today for the future, not the past. I think five years is more than reasonable and would have thought this hon. House would support this move so that it is down to five years. It will not affect other statutes. I do hope that this hon. House will support the amendment. I beg to move:

Clause 18, page 11, line 12 -

Delete '7' and insert '5'.

The Speaker: Hon. member for Douglas East, Mrs Cannell, to reply to the debate.

Mrs Cannell: Thank you, Mr Speaker. The reason it is seven years is because it also reflects the same provision in the United Kingdom. In the United Kingdom it is seven years. It covers the issue of prisoners of war and in those days, and I say 'in those days' because we still have, unfortunately, today wars going on in certain countries, so it could still apply today.

The only point I would make is that the seven years' absence is not essential if there are other grounds for believing the party to be dead but it is enough to raise the presumption that that person is dead. We are talking about a presumption and the court's power to consider the presumption that he or she has probably 'popped off' somewhere along the line because they have not seen them for seven years. It is there for a very good reason. If members were to support the amendment to five years it would throw this out of sync with the United Kingdom, which we are trying to reciprocate in terms of these matters. I beg to move, Mr Speaker.

Mr Karran: 'The mainland'!

The Speaker: Hon. members, the motion before the House is that clause 18 stand part of the Bill. To that we have an amendment in the name of the hon. member for Onchan. I therefore

put the amendment in the name of the hon. member for Onchan before the House. Those in favour of the amendment say aye; against, no. The noes have it.

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

For: Messrs Anderson, Gill, Mrs Hannan, Messrs Karran and Earnshaw - 5

Against: Messrs Henderson, Cretney, Braidwood, Mrs Cannell, Messrs Downie, Shimmin, Bell, Corkill and the Speaker - 9

The Speaker: Hon. members, that amendment fails with 9 votes against and 5 votes for. I now put clause 18 before the House. All those in favour say aye; against, no. The ayes have it. The ayes have it. Hon. member for Douglas East, Mrs Cannell, clauses 19 and 20, please.

Mrs Cannell: Thank you, Mr Speaker. Clause 1 gives the High Court power -

The Speaker: Hon. member, just a minute. Could I ask the hon. member for Glenfaba to take his seat again, please, otherwise we are inquorate. Hon. member.

Mrs Cannell: Mr Speaker. Clause 19 gives the High Court power to make a declaration that a marriage or an overseas divorce, annulment or separation is or was valid or invalid.

Sub-clause (1) enables an application to be made to the court for a declaration that (a) a marriage was valid at the onset but not valid as of clause 20, when we get to that; that a marriage (b) was, or (c) was not in force on a particular date or that an overseas divorce, annulment or separation is or was valid or invalid. Application may be made by anyone provided he has sufficient interest and subject to the limits on the court's jurisdiction in clause 21(5).

Sub-clause (2) limits the court's jurisdiction to hear an application made by someone other than a party to the marriage who must have sufficient interest in the outcome. An example of that is a person whose entitlement under a will or intestacy depends on the validity of a marriage or a divorce, et cetera. This has been the law of the land since 1976 and little has changed.

Clause 20, Mr Speaker. This clause makes further provision as to the declarations under clause 19 and it does, in fact, introduce schedule 1.

Clause 21 introduces schedule 1.

Sub-clause (1) enables the court to hear any part of the proceedings in camera.

Sub-clause (2) requires the court to make the declaration applied for if it is satisfied as to the facts unless public policy demands otherwise.

Sub-clause (3) provides that a declaration is binding as against the world, not just as between the parties.

Sub-clause (4) provides that a declaration cannot alter the effect of a final order already pronounced by a competent court.

Sub-clause (5) precludes the court making a declaration other than the one applied for. An example of that is if application is made for a declaration that an overseas divorce is valid, the court cannot declare that it was invalid but must dismiss the application.

Sub-clause (6) precludes any court, including the High Court, making a declaration which could be made under clause 19 otherwise and under that clause.

Sub-clause (7) precludes any court under clause 19 or otherwise making a declaration (a) that a marriage was invalid at the outset, which can only be done in proceedings for an annulment order under clause 11, or (b) that a person was illegitimate. The declaration that a person was legitimate can be made under the Legitimacy Act 1985, section 10(a).

Sub-clause (8) saves the court's powers to make an annulment order under clause 11. Mr Speaker, I beg to move clauses 19 and 20.

The Speaker: Hon. member for Onchan, Mr Corkill.

Mr Corkill: I beg to second clauses 19 and 20 and reserve my remarks.

The Speaker: Hon. member for Onchan, Mr Karran.

Mr Karran: On clause 20, I would just like to know why they did not try to change the procedure round so that it would be the exception that they were not held in camera for privacy.

Why, in sub-clause (3), are they building on Her Majesty and not the Lord of Mann?

And the other one that I queried was: we have seen some of the other crazy bits of legislation - especially in schedule 4, to do with epilepsy, which, all right, is marriages before 1976 - but what does this 'illegitimate' mean? What exactly do we mean by a person being 'illegitimate' I hope it is nothing to do with the fact of whether they are married or not. I think it would be interesting to know, for this hon. House, what it actually means. I would hate hon. members here to have not taken the time and effort to have gone through all these clauses like myself and not to know what they are passing.

The Speaker: Hon. member for Peel, Mrs Hannan.

Mrs Hannan: Yes. Could I also follow on from the comments made by the member? I am not sure, either, about clause 20(7)(b). Maybe the mover can explain why illegitimacy is. . . Because that is one that I have missed; I think it should be amended in another place. We have moved away from using this term because people are people, whether they are deemed to be lawful or not, and we seem to be saying here that some people are unlawful, and therefore I want to know why this particular term has been left in, if the mover can clarify the situation, please?

The Speaker: Hon. member for Douglas West, Mr Downie.

Mr Downie: I would just like to make comment on this. I think it is important that the legislation does make reference to a person who is perhaps born within the arrangement - within the marriage - because I think it is important that these people, whether we agree with the terminology or not, are clearly identified. I support what the previous speaker says - that they do exist - but we need to call them something to comply with the law, because if we do not recognise them it will be very, very difficult to apportion support from them when the marriage is actually devolved and maintenance or other orders come into being. So it is important. My understanding was that the word 'illegitimate' was one that was no longer used, and perhaps the mover of the legislation can indicate for us whether the word 'illegitimate' is appropriate in this particular situation or, in fact, there is an opportunity to replace the title with something of the same meaning.

The Speaker: Hon. member for Douglas East, Mrs Cannell, to reply to the debate.

Mrs Cannell: Thank you, Mr Speaker. I think we have to recognise that this particular clause - clause 20 - became law in the Isle of Man in 1976. It was further amended and substituted by the Family Law Act 1991, section 17 in particular. We are dealing here with the declaration by people. When we talk about 'illegitimacy', it may or may not be acceptable or palatable these days because we are a lot more socially aware of other people's intolerances and we are, in general, becoming a more liberal society, but nevertheless it is recognised in law, and again we are talking about the application of law if it arrives in a court. A declaration that a person was legitimate can be made under the Legitimacy Act 1985, section 10(a), and therefore, equally, the

declaration that a person was illegitimate could be clarified under the Legitimacy Act 1985. So, if they are legitimate, it can be made under that Act; if they are illegitimate, of course, they would not be covered. And we are talking here about the application for the High Court to have the power to make a declaration that a marriage or an overseas divorce, annulment or separation is or was valid or invalid before judgments can be taken.

I take the point that members do not feel the wording in 20(7)(b) is appropriate these days; there are a number of descriptions that may feel, to some members, unpalatable in this day, but I am concerned about consolidating the existing legislation to make it easier to apply to the land and for cases pending. This being consolidated, I would like to see the commitment perhaps given by the executive somewhere throughout the proceedings to actually review with reform this type of legislation in the future. And it is not an easy thing to do - it will take, I would suggest, three or four years to do that - but it does need to be done, and there are certain parts that need to be modernised, but we can say that about all sorts of pieces of legislation. Mr Speaker, I beg to move.

The Speaker: Hon. members, the motion before the House is that clauses 19 and 20 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. *(Interjection by Mr Karran)* Hon. members, can I go on to clause 21 and schedule 1, and clauses 22 and 23, please? I would say to hon. members that if they wish to have a division they should shout clearly, please.

Several Members: Hear, hear.

The Speaker: Hon. member for Douglas East.

Mrs Cannell: Thank you, Mr Speaker. Clause 21 introduces schedule 1. Clause 21 imposes various limits on the jurisdiction of the High Court under this part, which is part 1, mainly dependent on the domicile of the parties to the proceedings. These correspond to limits applying in the United Kingdom and the Channel Islands so that common rules apply throughout the British Isles.

Sub-clause (1) provides that an application for a divorce order under clause 2 or a separation order under clause 17 can only be made where one of the parties is domiciled in the Island or has been habitually resident in the Island for a year up to the date of the application.

Sub-clause (2) provides that an application for an annulment order under clause 11 can only be made where one of the parties is domiciled in the Island or has been habitually resident in the Island for a year up to the date of the application or is dead and, at the date of death, either was domiciled in the Island or had been habitually resident in the Island for a year.

Sub-clause (3) enables the court to make a divorce under clause 2, annulment under clause 11 or separation under clause 17 in any proceedings where it has jurisdiction under (1) or (2) above, even though it would not otherwise have jurisdiction.

Sub-clause (4) provides that an application for an order presuming death and dissolving a marriage under clause 18 can only be made where the applicant is domiciled in the Island or has been habitually resident in the Island for a year up to the date of the application.

Sub-clause (5) provides that an application for a declaration as to marital status under clause 19 can only be made where one of the parties to the marriage is domiciled in the Island or had been habitually resident in the Island for a year up to the date of the application or is dead and, at the date of death, either was domiciled in the Island or had been habitually resident in the Island for a year.

Sub-clause (6) introduces schedule 1, Mr Speaker, which lays down the rules under which divorce or similar proceedings must or may be stayed where proceedings are pending outside the Island. In the case of proceedings in the United Kingdom or Channel Islands, similar rules apply in those territories.

Paragraph 1 of schedule 1 is introductory.

Paragraph 2 obliges anyone applying for an order in matrimonial proceedings to state whether any other proceedings relevant to the marriage are pending in any other jurisdiction.

Paragraph 3 provides that the court must stay divorce proceedings in the Isle of Man where divorce or annulment proceedings are pending in a related jurisdiction - a 'related jurisdiction' is the United Kingdom, which is England, Wales, Scotland, Northern Ireland, Jersey and Guernsey including Alderney and Sark - and that the parties last lived together, and either party was habitually resident for a year, in that jurisdiction before those proceedings began.

Paragraph 4 of schedule 1 provides that the court may stay matrimonial proceedings in the Isle of Man where matrimonial proceedings are pending in another jurisdiction such as I have listed and the court thinks that the balance of fairness requires those proceedings to be disposed of first.

Paragraph 5 of schedule 1 enables the court to lift a stay under paragraph 3 or 4 if the other proceedings are stayed or have finished or if they have been unreasonably delayed.

Paragraph 6 provides that the court cannot make an order for maintenance pending suit or a financial order, residence order, et cetera relating to children where divorce, annulment or separation proceedings are stayed because of similar proceedings pending elsewhere except in case of urgency, and an existing order lapses after three months. Also, any existing order and any power to make a new order are cancelled by a new order made in the other proceedings, and any related sale of property order also lapses.

Paragraph 7 of schedule 1 covers the case where proceedings in the Isle of Man are partly affected and partly unaffected by a stay.

Paragraph 8 of schedule 1 saves the court's powers to vary, revoke or enforce an order within paragraph 6 or to make such an order where a stay of proceedings is lifted. That completes the provisions laid down in schedule 1 under clause 21, Mr Speaker.

Clause 22 enables the court to ask the Attorney-General to argue a point in certain matrimonial proceedings and enables him to intervene if he or she considers that the process of the court is being abused.

Sub-clause (1) enables the court to ask the Attorney-General to argue a point in proceedings for a divorce or an annulment or for a declaration that a party is dead as specified under clause 18.

Sub-clause (2) allows anyone to inform the Attorney-General if he or she suspects something is wrong in proceedings, and the Attorney can take any necessary steps.

Sub-clause (3) makes similar provisions to (1) in the case of proceedings for a declaration as to the marital status under clause 19.

Sub-clause (4) enables the Attorney-General to intervene in proceedings within (2) and argue any point.

Sub-clause (5) enables the court to make an order for costs in favour of the Attorney-General. Mr Speaker, since 1976 these have been law of the land and nothing has changed.

Clause 23 requires a divorce or annulment or declaration of death under clause 18 to be made by a provisional order in the first instance, to be made final later. These terms replace the current *decree nisi* and *decree absolute* as specified in clause 2.

Sub-clause (1) requires any divorce order, annulment order or declaration of death to be made by provisional order - currently a *decree nisi* - in the first instance, which is not to be made final - which is currently the 'absolute' description - until after that time fixed under (2) above.

Sub-clause (2) fixes the period after which a provisional order can be made final: it is six weeks, but the court can fix a shorter period, either generally or in that particular case.

Sub-clause (3) allows any person, after a provisional order has been made, to show cause why it should not be made final. An example of that could be because the court has been misled as to the facts of the case. The court can then make the order final or cancel it, or call for further inquiries by the Attorney-General, for example, or take action as appropriate.

Sub-clause (4) allows the respondent to apply for a provisional order of three months after the end of the period specified in (2) if the applicant had not applied within that time, and the court can take one of the courses listed in (3) above. There is no change since 1976, Mr Speaker, except for terminology. I beg to move clause 21, schedule 1, and clauses 22 and 23, Mr Speaker.

The Speaker: Hon. member for Onchan, Mr Corkill.

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

The Speaker: Hon. members, the motion before the House is that clause 21 and schedule 1, clause 22 and clause 23 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. We now take clauses 22, 23 and 24, hon. member.

Mrs Cannell: Mr Speaker, we have moved 21, 22 and 23.

The Speaker: I am sorry; my apologies. Clauses 24 and 25: if we can take those two together, please.

Mrs Cannell: Thank you, Mr Speaker. Clause 24 makes provision for the parties to divorce and other proceedings under part 1 of the Bill.

Sub-clause (1) requires the alleged adulterer to be joined as a party - in other words, a co-respondent - where divorce or separation proceedings are taken on the grounds of adultery unless the court otherwise directs. This is to ensure that he or she has an opportunity to disprove any such allegation.

Sub-clause (2) enables rules of court to exclude (1) above where the adulterer is not named.

Sub-clause (3) enables the court to dismiss the co-respondent from proceedings if the allegations against him or her are not proved.

Sub-clause (4) enables rules of court to provide for a third party alleged to be involved in misconduct other than adultery to be joined as a party to the proceedings.

And sub-clause (5) enables the court to allow an alleged adulterer, or other persons whose interest or reputation is affected, to intervene in proceedings. There is no change in clause 24, Mr Speaker, except for terminology.

Clause 25 requires the court to consider the welfare of any children of the family and allows it to delay the order unless their interests are safeguarded.

Sub-clause (1) requires the court, in proceedings for a divorce, annulment or separation order, to consider whether there are any relevant children of the family and, if so, whether it should make any order under part 2 of the Children and Young Persons Act 2001.

Sub-clause (2) enables the court, in an exceptional case, to direct that the divorce or annulment order is not to be made final, or that the separation order is not to be made, if it thinks that it may have to act under an order under the Children and Young Persons Act part 2 but does not know yet whether it should do so.

Sub-clause (3) sets out the children of the family to whom this clause applies: those under 16, and those 16 or over to whom the court thinks it should apply. An example of that is that the court may think it should apply because, perhaps, those particular children are disabled in some way.

Mr Speaker, there is no change here, except that the Children and Young Persons Act 2001, schedule 12, paragraph 8 was incorporated in sub-clause (1), and terminology was changed in sub-clause (2). There was no change in sub-clause (3). I beg to move clauses 24 and 25, Mr Speaker.

The Speaker: Hon. member for Onchan, Mr Corkill.

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

The Speaker: Hon. members, the motion before the House is that clauses 24 and 25 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 26, please. Hon. member for Douglas East, Mrs Cannell.

Mrs Cannell: Thank you, Mr Speaker. Clause 26 introduces part 2 of the Bill, which restates, without amendment, part 1 of the Matrimonial Proceedings Act 2001, which relates to the High Court proceedings for maintenance and other financial provision. It is included in this Bill so that all the legislation relating to matrimonial proceedings will be in one Act. Clause 26, in particular, is introductory and specifies the kinds of financial orders which the High Court may make in matrimonial proceedings. These are mainly available on a divorce or annulment, but some orders can also be made on a separation order and in proceedings for failure to maintain under clause 38, which we will get to, Mr Speaker.

Sub-clause (1) lists the orders which the High Court can make against either spouse and specifies the provisions of part 2 under which they may be made, which are: a periodical payments order in favour of the other spouse or a child of the family; a secured periodical payments 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 order in favour of the other spouse or a child of the family; a transfer of property order; an order for the settlement of property or for variation of a settlement; a sale of property order; or a pension sharing order, providing for a percentage of one spouse's rights under a pension scheme, et cetera to belong to the other, as specified in clause 31.

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

Sub-clause (3) introduces the terms 'financial provision order' and 'property adjustment order', defined by references to the kinds of order in the table as specified in (1). Mr Speaker, I beg to move clause 26 and part 2 of the Bill.

The Speaker: Hon. member for Onchan, Mr Corkill.

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

The Speaker: Hon. member for Onchan, Mr Karran.

Mr Karran: Vainstyr Loayreyder, on the orders of payment for lump sum, has there been any discussion about whether these should be free from tax? Would they be classed as capital gains? Is this part slightly wrong in the fact that when individuals get these orders through, they can then end up losing a large chunk of this order if they are on benefits? Should we have done something about that in this piece of legislation?

On the order for the settlement of a property, can the mover tell us: do they value the property when the separation happened, or do they value it and give a settlement when it is finished and the final divorce goes through?

I see that in sub-clause (3), 'the court' means the High Court. Well, I have already expressed my concerns as far as this is concerned, but I do think that these things would have been far better if we had come up with some system that is less formal.

On clause 28. . . Have I got it right? Are we moving clause 28? No?

The Speaker: We are on clause 26, hon. member.

Mr Karran: 26. These are the only issues that I would like to raise on this clause.

The Speaker: Hon. member for Douglas East, Mrs Cannell, to reply, please.

Mrs Cannell: Thank you, Mr Speaker. In terms of whether or not the property can be divided during separation or following a divorce, it really is for the couple to organise some sort of agreement and come to a settlement and, in fact, it is often within their own particular interests to come to a settlement without it having to be taken to court. Therefore in terms of any assets shared between them - property or anything else that might be thought to be jointly-owned and for which there is a joint responsibility - the sooner they get to some kind of settlement the better. Of course, when the settlement breaks down and one party is disagreeing with the other, then it usually ends up in the divorce court, in which case it is settled later as opposed to sooner.

In terms of the order for a payment of a lump sum, this is only in particular cases, and it is mentioned later on in the Bill. I cannot find any information in respect of whether it is subject to tax or whether someone receiving benefit would have their benefit cut if they were to receive a lump sum. A lump sum is only applied for, in general terms, if it is really needed, and it is usually to help with the welfare and the upbringing of a child, or children as the case may be. It is usually a one-off and, in fact, the lump sum is only £1,000 at any one time, but then the applicant can keep going back if the case can be made for a further lump sum from the divorce partner. But I have no idea whether or not it would be subject to tax or prejudice benefit. I beg to move, sir.

The Speaker: Thank you, hon. member. Hon. members, the motion before the House is that clause 26 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Hon. member, can we take clauses 27 and 28, please?

Mrs Cannell: Thank you, Mr Speaker. Clause 27 deals with ancillary relief in connection with divorce proceedings and with maintenance pending suit. It gives the court power to award one spouse maintenance pending suit, which is an interim order for maintenance against the other. It has been the law since 2001 and there is no change.

Clause 28 gives the court general powers to make financial provision orders. This is for maintenance or lump sums on making a divorce, annulment or separation order, or at any time thereafter.

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, on granting a decree of divorce, nullity or judicial separation, or at any time thereafter. 'Financial provision order' includes a periodical payments order, a secured periodical payments order or a lump sum order as specified in clause 26(3) above.

Sub-clause (2) enables a financial provision order to be made after a provisional divorce or annulment order. It need not wait for the final order.

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 divorce, annulment or separation order, or even where the application is dismissed and no order is made.

Sub-clause (4) enables successive orders to be made in favour of a child of the family before or on making a divorce order, et cetera.

Sub-clause (5) similarly enables successive orders to be made in favour of a child of the family at any time after making a divorce order, et cetera.

Sub-clause (6) provides that a financial provision order in favour of a spouse is not to come into force until the divorce order, et cetera is made final. The same applies to any settlement made to give effect to the order under clause 42.

Sub-clause (7) provides that a lump sum order can be made to defray expenses incurred 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 41 on orders in favour of children over 18. These are all new provisions that came in in 2001. Mr Speaker, I beg to move clauses 27 and 28.

The Speaker: Hon. member for Onchan, Mr Corkill.

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

The Speaker: Hon. member for Onchan, Mr Karran.

Mr Karran: Vainstyr Loayreyder, clause 28: the issue of financial provision orders in connection with divorce proceedings. This is one of the places where we definitely have a loop-hole as far as the law stands at the moment. If you knowingly give false information about your financial ability, it is a civil matter as far as the court . . . Yes, it is perjury, but it cannot be brought through the criminal system, and I think it is wrong. And I think we need to address this issue. It is wrong that we can have a situation where one party has not got the resources or the ability to be able to take the other party on, and we can have a situation where the financial provisions of that party can be incorrect and the situation can be that all of a sudden the individual has got no assets and then he has all these assets after the divorce. Whilst it is not a complaint about the hon. mover of this Bill - she is only doing her job as a member of the House of Keys for the executive - I do think it is wrong. This is another example of where we need to be looking not purely at consolidation, because, fair enough, this is only for the initial separation, but if you can prove that there is inaccuracy, you have got to prove that the other party is acting with malice, and

it is sometimes very, very difficult because it is a civil matter and not a legal matter. That is the thing that concerns me, and I think this House should be aware of it since the Chief Minister is going to be looking at any issues that are raised from this piece of legislation.

The Speaker: Hon. member for Douglas East, Mrs Cannell, to reply.

Mrs Cannell: Thank you, Mr Speaker. I take note of the hon. member's comments, sir. I beg to move.

The Speaker: Hon. members, the motion before the House is that clauses 27 and 28 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. We will take clauses 29 and 30, hon. member for Douglas East.

Mrs Cannell: Thank you, Mr Speaker. Clause 29 enables the court to make property adjustment orders on divorce, nullity or separation. It 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 making a divorce, annulment or separation order, or at any other time. '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 the property adjustment order to be made after a provisional divorce or annulment order. It need not wait for the order to be made final.

Sub-clause (3) provides that an order can be made varying the 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 divorce order is made final. 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 41 on orders in favour of children over 18 years.

Clause 30, Mr Speaker, enables the court, in certain circumstances, to make an order for the sale of a property to realise capital for making other kinds of financial provision.

Sub-clause (1) enables the court to order the sale of property in which either or both the parties have an interest in order to raise capital to finance a secured periodical payments order, a lump sum order or a property adjustment order.

Sub-clause (2) enables the court to contain any other necessary provision, for example as to the manner of sale - private treaty or auction - approval of the price, et cetera. In particular, it can require payment of a lump sum out of the proceeds of sale and require the property to be offered to a particular person or persons.

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

Sub-clause (4) enables the court to defer the coming into force of a sale of property order.

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, it only lasts for as long as that spouse is alive and does not remarry.

Sub-clause (6) introduces (7) below. It applies where one spouse and a third party both have beneficial interests in property. An example of that is where a house has been left to the wife for her life and then to her children by her 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 he makes. Mr Speaker, I beg to move clause 30.

The Speaker: Hon. member, that is clauses 29 and 30 that we took. (*Interjection by Mrs Cannell*) Yes, thank you. Hon. member for Onchan, Mr Corkill.

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

The Speaker: Hon. members, the motion before the House is that clauses 29 and 30 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Right, hon. member for Douglas East, can we take clause 31, please?

Mrs Cannell: Yes, thank you, Mr Speaker. Clause 31 gives the court 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 making a divorce or annulment order. A pension sharing order is an order which provides that the shareable rights under a specified pension arrangement, or the shareable state scheme rights of a party to the marriage, be subject to pension-sharing for the benefit of the other party and specifies the percentage value to be transferred. The terms 'shareable rights under a pension arrangement' and 'shareable state scheme rights' are defined in clause 138 by reference to the United Kingdom Welfare Reform and Pensions Act 1999.

Sub-clause (2) enables a pension sharing order to be made before or after the divorce or annulment is made final, but it cannot come into force before the final order.

Sub-clause (3) prevents more than one pension sharing order being made in respect of the same pension arrangement.

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

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 35 or 36 earmarking pension rights under that particular scheme.

All of these provisions, Mr Speaker, are new and they came in in 2001. The only difference here is that there is a slight change in terminology. I beg to move clause 31.

The Speaker: Hon. member for Onchan, Mr Corkill.

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

The Speaker: Hon. member for Onchan, Mr Karran.

Mr Karran: Vainstyr Loayreyder, I move this amendment because I was one of the ones who were in the vanguard of supporting the original proposals as far as pension sharing orders in connection with divorce proceedings are concerned. I found it quite scandalous that you could have a situation where the wife had stayed at home and looked after the children for 25 to 30 years of her life and had given up the best part of her life to end up in the situation where she was too old to be able to go out and get to a level in a profession at which she could keep herself and get the pension rights for when she retired.

But I do think there is an imbalance with this clause at the present time, and my amendment states that pension rights should depend on the length of the marriage. I find it incredible now that if a person decides to get married late on in life, or divorces one person and marries another, they can find that they have lost half their occupational pension and, if the

marriage lasts a year or 18 months or 2 years, half the pension rights of the person's working life can be taken away for what was, effectively, a short period in the life of that individual who contributed to that marriage. I personally feel the time has come for us to accept that we do not want to discriminate against the older married woman who has worked all her life in the home and brought up the children, and we should recognise that, but I find it unfair and unjust that we can have the absurdity now that a marriage that can be very short-term can have a situation where that individual's pension rights can be halved, especially if that individual then goes on to get married a second time and has children to the second marriage later on in life and finds that there is a massive, unfair and unjust liability to the first wife from a marriage which was for a comparatively short period of the individual's life.

No-one is wanting to attack the fact that this legislation was brought in to recognise the value of home-makers, but I do believe that the balance has got out of kilter, and I do hope that someone will second this proposal in order that this issue can be debated. This is another issue which is relevant to today and this House debating a Matrimonial Proceedings Bill of 2002, not a Matrimonial Proceedings Bill of 40 or 30 years ago. It is of today. I do think that this is another anomaly that should be sorted out as far as this piece of primary legislation is concerned, and I beg to move:

Clause 31, Page 23, line 16 -

Insert -

'(6) A pension sharing order may not be made in relation to the rights of a person under a pension arrangement which are referable to any period before or after the subsistence of the marriage.'

The Speaker: Hon. member for Rushen, Mr Rimington.

Mr Rimington: I beg to second for the purposes of debate.

The Speaker: Hon. member for Onchan, Mr Karran, do you wish to reply?

Mr Karran: There is nothing to reply to, sir.

The Speaker: Hon. member, I still have to ask you. Hon. member for Douglas East, Mrs Cannell, to reply to the debate.

Mrs Cannell: Thank you, Mr Speaker. I think we have to appreciate that when the hon. member for Peel, Mrs Hannan, came forward in 2001 with the matrimonial proceedings legislation - the Bill, as it was then - the main focus of that was to bring in some kind of equality to iron out some anomalies in terms of pension provision and, in fact, this particular pension-sharing aspect of that legislation at that time - which is only a year ago - provided the main thrust of that particular piece of legislation and it was very, very important.

But the hon. member is suggesting that a spouse only get a slice of that pension. That would completely revert and turn upside down the provision that has already been made, and I do not think we should forget that when a woman has married and she has spent all her married life, or that part of the married life to that partner that survived, looking after the marriage and raising children and did not work, she has, in fact, sacrificed a potential single pension. That was the anomaly we wanted to get rid of: women in those situations were coming out without anything, and yet the husband had all of the pension rights, despite the fact that the marriage had dissolved and he had moved on. What the hon. member is suggesting here is that, in future, such individuals will only be entitled to a slice of the pension in terms equivalent to that part of the marriage to which they were both party. That would completely reverse the present situation that we have. What we are trying to achieve with this, and what has been going

on, is the reciprocal arrangement in terms of this with the United Kingdom, which is really essential and very, very important.

I am surprised that the amendment was seconded by a member of the Council of Ministers. As we seem to be having free and fair debate, Mr Speaker, I will go along with that, but I would be very surprised if hon. members were to support this, because it would completely reverse what this hon. House approved - and was proud to approve - only a year ago. I beg to move, sir.

The Speaker: Hon. members, the motion before the House is that clause 31 stand part of the Bill. To that we have an amendment in the name of the hon. member for Onchan, Mr Karran. I therefore put the amendment before the House in the name of the hon. member. All those in favour of the amendment, say aye; against, no. The noes have it.

A division was called for and voting resulted as follows:

For: Mr Karran - 1

Against: Messrs Anderson, Cannan, Quayle, Rimington, Gill, Mrs Crowe, Messrs Henderson, Cretney, Braidwood, Mrs Cannell, Messrs Downie, Shimmin, Mrs Hannan, Messrs Singer, Corkill, Earnshaw and the Speaker - 17

The Speaker: Hon. members, the amendment fails to carry, with 17 votes against and 1 vote for. I now put the motion that clause 31 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 32, please, hon. member for Douglas East.

Mrs Cannell: Thank you, Mr Speaker. This clause lists the matters to be taken into account by the court in making any financial order under this part, which is part 2.

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 the age of 18.

Sub-clause (2) lists specific matters which the court is to take into account when making orders in favour of a spouse: (a) the existing or 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; and (h) any potential loss to either party caused by the divorce or annulment.

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 or she may have; (d) how he has been, and is expected to be, educated; and (e) the matters listed in 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 and to what extent and for how long he has assumed any responsibility for the child; (b) whether he did so knowing that the child was not his; or (c) any other person's liability to maintain the child.

These are the provisions, Mr Speaker, that were in place, and have been in place, since the year 2001, and there has been no change. I beg to move clause 32, sir.

The Speaker: Hon. member for Onchan, Mr Corkill.

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

The Speaker: Hon. member for Rushen, Mr Gill.

Mr Gill: Thank you, Mr Speaker. I rise to seek the indulgence of the House to move an amendment to this clause which should have been on the order paper, but is not, because of my misunderstanding. To do so, I must ask for a suspension of standing orders in order to move an amendment of which due notice has not been given to the Secretary.

For ease of reference, I have circulated the amendment which I seek to make to this clause, but members will see that it is in exactly the same terms as the amendment already listed in my name for clause 61. The difficulty is simply that the amendment in my name to clause 61 on the order paper needs logically to be moved in relation to this clause as well. The point of principle is the same and, if it were to be accepted in connection with this clause, it would save having the debate we would otherwise have to have anyway at clause 61.

The question concerns the regard which the court has, when making financial orders, to the conduct of the parties. The purpose of my amendment is to ensure that the court does take into account the very unpleasant tactic, which some parties to a divorce engage in, of accusing the other party of having abused the children of the marriage. If that accusation is well-founded, it is, of course, a very serious matter, but I am afraid that, in my experience, it is often made irresponsibly and out of spite, with the result that the party accused is given a harrowing time while under suspicion of being a child abuser. I will go into the arguments further, of course, if I have consent to move this amendment. In this clause, the amendment relates to the cases in the High Court, and in clause 61, as we shall see when we get there, it relates to the cases in the lower courts. Apart from that, there is no difference.

Mr Speaker, I therefore beg to move the suspension of standing order 154(2)(b), about notification of amendments to the Secretary six days in advance, in order to allow the amendment to this clause, which I have circulated, to be debated.

The Speaker: Hon. member for Douglas North, Mr Henderson.

Mr Henderson: I beg to second, sir.

The Speaker: Thank you. Now, we are debating whether or not to suspend standing orders, and we require 16 votes for standing orders to be suspended. Does any member wish to speak to whether or not we suspend? If not, then I will put the motion before the House that standing order 154(2)(b) be suspended. All those in favour say aye; against, no. The ayes have it. They ayes have it. Hon. member, Mr Gill, do you wish to move your amendment, please?

Mr Gill: Yes, thank you, Vainstyr Loayreyder. I beg to move the amendment standing in my name, and in doing so I would like to put my reasons for believing this is a necessary addition to this legislation. Increasingly, it has become more and more common for malicious allegations of abuse to be cited in divorce or separations. This practice certainly has become a part of the family law system in the United States of America and, like many less attractive facets of American life, soon found its way across the Atlantic. I can tell hon. members that, from my own professional experience as a court welfare officer and from my recent research, it is a sad fact that there have been cases on the Isle of Man, and there will continue to be cases unless action is taken to address this disgraceful practice.

Now, it may be that some hon. members might feel that all is fair in love and war and that, in an adversarial legal system such as ours, one might expect such things as fact of life or might further expect the courts or the social workers or court welfare officers to recognise such attempts to unfairly influence proceedings and deal with them accordingly. Sadly, this invariably

proves not to be the case, and it is rare - indeed, almost unheard of - for any person making such a malicious or vexatious allegation to have any action taken against them. Clearly, this is totally unacceptable, and I hope this amendment will go some way towards addressing this.

There are several positive outcomes I would envisage if this amendment is accepted. Firstly, I believe this provision would act as a deterrent to any party contemplating making malicious, improbable or unreasonable allegations. It would lead advocates to advise against their clients taking such a course of action, and it would lend against an escalation of the adversarial process. Additionally, I believe it would be in the best interests of the child or children, and this must, of course, be the paramount consideration. It would protect children from the emotional distress of unwitting involvement in unnecessary investigation. In no way does this detract from the statutory protection all children must have. There can be no ambiguity about this: this measure is designed to protect children, and any suggestion that it would be a mechanism which would deter someone from making a genuinely-held concern known to the relevant agencies is one I would refute firmly. As I have said previously, there is no case that, in specifically recognising and addressing one area of concern, it excludes another.

Hon. members, I believe this amendment to be a measure which will provide an additional mechanism to protect children and lead to an equitable process of divorce or separation. I beg leave to move:

Clause 32, Page 25, line 1 -

Insert -

(5) As regards the exercise of its powers under subsection (2)(g) above, the court shall in particular have regard to any allegation of abuse against a child made by one of the parties against the other which is found to have been made maliciously or without any reasonable or probable basis.'

The Speaker: Hon. member for Glenfaba.

Mr Anderson: I beg to second, Mr Speaker.

The Speaker: Hon. member for Peel.

Mrs Hannan: Yes. I will support the amendment, but I wonder that the mover makes such a statement that it is there to protect the child. I firmly believe that he believes that, but it must be very difficult for a parent if, because they have made an allegation of abuse by the other party, that could be seen as being malicious or without any reasonable or possible basis. I can understand taking this into account, and I can understand it being used in other places and we are concerned that it is not used here, but I would just like him to explain, when he is winding up on this amendment, how he refutes it firmly. If we are looking at the best interests of the child, any allegation has to be investigated, but if this sword of Damocles is held over one of the parties - that, if you bring forward an allegation of abuse against the child, you could possibly lose that child to the person that you accused of abusing that child - it could be that that parent actually believes that the other parent has done something to that child. Therefore, while I understand the concerns and I am supporting it, I would like an explanation, because I think it needs to be made quite clear, in moving this legislation, what is actually considered when this is before the courts, because I believe the court can then use what is said during the movement of this legislation.

I am deeply concerned about child abuse - that is why I supported the amendment moved by the member for Onchan in relation to void marriages and declarations - and I see this as being another area that could also protect children, but I am concerned that it might also work

against children, and I think it is beholden on the mover of this amendment to explain the situation that because one party makes an allegation that they firmly and truly believe, it is not going to be held against them. Thank you.

The Speaker: Hon. member, Mr Gill, to reply to the amendment.

Mr Gill: Thank you, Mr Speaker. If I could begin by thanking Mr Anderson for his kindly seconding my amendment.

The point that Mrs Hannan raises about the protection of children and how I would justify refuting firmly any suggestion that, in proposing this amendment, it would in any way lend against legitimate allegations of abuse by one parent against the other: I would simply say that the 'good faith test' really is the matter at hand. There is nothing in here which should deter parents - in fact, quite the opposite - even though they have the consideration that the court will have specific regard for these matters, and if they still maintain those concerns, then that would suggest that those concerns are held in good faith. I would welcome that; that would be an additional safeguard. If the court determines that they were not made in good faith, that is a separate matter, but the point that I am trying to stress is that, really, this is an additional mechanism to protect children and it in no way diminishes the scope for parents to act in good faith to make allegations if they are firmly and truly held, as you quite rightly make the point. I hope that answers the reservation of Mrs Hannan, and I hope that it conveys the principle that I am trying to convey in this matter, Mr Speaker.

The Speaker: I call on the hon. member for Douglas East, Mrs Cannell, to reply to the debate.

Mrs Cannell: Thank you, Mr Speaker. There were no particular concerns raised in relation to this particular clause. I beg to move, sir.

The Speaker: Thank you, hon. member. Hon. members, the motion before the House is that clause 32 stand part of the Bill. To that we have an amendment in the name of the hon. member for Rushen, Mr Gill. I therefore put the amendment in the name of the hon. member for Rushen before the House. All those in favour of the amendment say aye; against, no. The ayes have it. The ayes have it.

I now put the clause as amended - that is clause 32 as amended - before the House. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Procedural

The Speaker: Now, hon. members, I am to conclude the business of the House here because members do have to get home via the TT course. Before I do, could I raise an issue with hon. members? Hon. members, I wish the House to conclude its sitting on 25th June, which is our last sitting, at 1.00 p.m., and under standing orders, I seek your approval for that. Is that agreed?

Members: Agreed.

The Speaker: Thank you, hon. members. The House will now - (*Interjections*)

Mrs Cannell: Point of order, Mr Speaker. We are only just coming up to a third of the way through this piece of legislation and we have others. Our next sitting is our last, is it not, before the summer recess?

The Speaker: It is, but if I can also remind the hon. member that the Legislative Council does not sit on any day after that date either, so they cannot deal with legislation after that date.

The House has agreed to the motion I put. The House will now stand adjourned until 18th June at 10.30 a.m. in Tynwald Court. Thank you, hon. members.

The House adjourned at 5.05 p.m.