

REPORT OF PROCEEDINGS OF THE LEGISLATIVE COUNCIL

**Douglas, Tuesday, 4th February 2003
at 10.30 a.m.**

Present:

The President (the Hon. N Q Cringle), The Lord Bishop (the Rt Revd Noël Debroy Jones), the Attorney General (Mr W J H Corlett QC), Hon. C M Christian, Mr D F K Delaney, Mr D J Gelling CBE, Mr J R Kniveton, Mr E G Lowey, Dr E J Mann and Mr G H Waft, with Mrs M Cullen, Clerk of the Council.

The Lord Bishop took the prayers.

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Apologies for Absence

The President: Hon. members, we have just the one apology: apologies from Mr Crowe. I did visit Mr Crowe yesterday afternoon, he is in much better spirits and I am sure you all wish that he will be back to full health.

Members: Hear, hear.

The President: We turn then to our question paper.

Water Pollution – Provision for Action – Question by Mr Waft

Question 1. The hon. member (Mr Waft) to ask the member of the Department of Local Government and the Environment (Mr Lowey):

When will your department be making provision to enable it to take action against water pollution in the harbours and 'controlled waters'?

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

Mr Waft: Thank you, Mr President. I beg to ask the question standing in my name.

The President: Mr Lowey to reply.

Mr Lowey: Thank you, Mr President. I thank the hon. member for his question. Provision for the offence of polluting controlled waters et cetera is contained in section 3 of the Water Pollution Act of 1993. This and the other provisions regarding discharge consents are yet to be introduced by an appointed day order to be made by the department. It is the department's intention for the appointed day order to be made as soon as practicable after the appointment of a suitably qualified and experienced environmental protection officer and I am led to believe that the Civil Service Commission has just recently approved this post. One of this officer's job functions will be to discharge all the provisions of the 1993 Act relevant to the Department of Local Government and the Environment. This work is usually carried out in the UK by the Environmental Agency.

The President: Mr Waft.

Mr Waft: Thank you, Mr President. I find it amazing that it has taken 10 years to pursue this legislation – it has gone from 1993 to 2003. There are genuine concerns within the harbour area at the lack of this legislation coming through. Can he give some definitive date as to when it will be on-line?

Mr Lowey: Yes, Mr President, I too share the member's view that, not for the first time, we passed

legislation without having the resources to actually implement it. I would say that parts of the Acts have been brought into play – not all of the sections of the Act have been brought into play. I will not bore the hon. member, but I have a list here of all the different sections that are in and those few sections that are without, but there is no staff to carry them out. The department has put in bids for these extra officers from time to time, and now we have been successful and hopefully it will not be very long before an officer is in place and it will be covered.

The President: Mr Gelling.

Mr Gelling: Can I just add one supplementary: I was rather puzzled that no action had been taken in the harbours, but I was even more puzzled that there is a river running from the power station to the harbour, so why were they not charged for polluting the river? I could not quite understand that one, when others we hear of – the slightest little bit of farmyard water –

Mr Delaney: That is right.

Mr Gelling: – going into a river and they jump on them. I thought: 'Well, I wonder why they were not charged under the Agricultural Water Pollution Act.'

Mr Lowey: The Water Pollution Act is in place, but that of course is not a matter for the local government department, that is a matter for the agriculture department and I would not dream of answering questions on a department that I have no . . . But again, I think that is a relevant question to pose, but it has been deemed that they are not to be charged under the Water Pollution Act.

The President: It is right to be fairly relaxed, members, but if you both talk at the one time I am sure it does not make it very easy for our *Hansard* people. Mr Lowey.

Mr Lowey: I would say that when this appointed day order bringing in the 1993 Act is in force that particular section of the water Act will be redundant and it will be covered – the section under the 1993 Act is more embracing. That only protects, it deals with fish spawning grounds and the like.

The President: Content, Mr Waft?

Mr Waft: I just thank the member for his reply, I think he has got the point. Thank you, Mr President.

Mr Lowey: I am sure I have.

**IRIS – Douglas to Meary Veg Section –
Question by Mr Lowey**

Question 2. The hon. member (Mr Lowey) to ask the member of the Department of Transport (Mr Kniveton):

In connection with the IRIS scheme –

- (a) when will the main Douglas to Meary Veg sewage pipeline be commissioned;*
- (b) is your department satisfied with the completed sections of the pipeline and associated works to date;*
- (c) have any major faults been identified; and*
- (d) do you anticipate that the Meary Veg section will be completed on time and within budget?*

The President: This time I call on Mr Lowey.

Mr Lowey: I beg leave to ask the question standing in my name, sir.

The President: The member for the Department of Transport, Mr Kniveton, to reply.

Mr Kniveton: Yes, thank you, Mr President. When will the main Douglas to Meary Veg sewage pipeline be commissioned? This section of main comprises five contracts: Loch Promenade to Leigh Terrace along North Quay – this main has been installed and has been successfully tested, the work was undertaken by Charles Brand, the engineer is Harrop's.

Leigh Terrace to the Nunnery gates – this main has been installed and has successfully been tested, the work was undertaken by our own Department of Transport Engineering Works and the engineer for the contract was Harrop's.

Thirdly, the Nunnery gates to White Hoe – the main has been installed and has successfully been tested, the work was undertaken again by our own Engineering Works and the engineer of the contract was Harrop's.

White Hoe to Oatlands Road, Santon – this main has been installed, but has not successfully been tested. The work between Oatlands Road and the railway crossing at Oakhill has been successfully tested, the balance of the main between the railway crossing and White Hoe has not been successfully tested and is the subject of the present works. The work was undertaken by Farrans Construction and the engineer to the contract was Harrop.

Oatlands Road to the sewage treatment plant – this main has been installed and has been successfully tested, the work was undertaken by Island Drainage and Ground Works, the engineer of the contract was Harrop.

The whole main from Loch Promenade through to the sewage treatment will be brought on line towards the end of this year 2003.

'Are we satisfied with the completed sections of the pipeline and associated works to date?' is the question. The department has been very pleased with the IRIS works completed to date. It is extremely disappointing, and indeed sad, that such an important scheme for the department and government should be tarnished by just one element of the works. Clearly the performance of the contractor on the section of main from White Hoe to Oakhill is *totally* unacceptable, Mr President. It is unacceptable to the department, certainly to the residents so very evidently affected and to the engineer responsible for the contract, Harrop. Harrop, the engineer of the contract is driving the main contractor and his two local subcontractors to completion, but I emphasise, Mr President, quite rightly we shall not take possession of the main until Harrop's are satisfied with its integrity.

Going on to the next part, and the hon. questioner refers to major faults: no, there are no major faults. It is a question of extremely poor workmanship on only one of the five contracts which has resulted in an excessive number of leaks.

Finally, he asks about the completion on time and within budget; this question is in two parts. With regard to the first part, clearly the contract from White Hoe to Santon is running behind time. The main contract is presently six months beyond the approved contract completion date, which in itself is seven months beyond the original date for contract completion. Having regard for the date when it is anticipated that the main will be required to be turned on, it is not anticipated that this shall directly effect the commissioning of the sewage treatment plant.

With regard to part 2 of this particular question, the contract budget for each of the five contracts which I have referred to has been agreed, signed and a signed final statement has been made. There are no commercial unknowns with the accounts for each contract agreed.

Finally, Mr President, the value of each contract falls within the sum approved by Tynwald.

The President: Mr Lowey.

Mr Lowey: First of all I thank the hon. member for his detailed reply. Regarding 'no major faults', but then he says there are excessive leaks – would he not agree that with a pipeline, the only fault there really can actually be . . . It is not of its purpose if it is leaking and especially if it is leaking water under pressure. I would say that a pipe that leaks is a major fault. Can I ask the hon. member, does the department have a foreman, a clerk of works on site to look after it? Most of this work is finished and then buried, and therefore I would have thought it was vital that they should have a clerk of works on site looking after the interest, because once it is buried the only time you are going to discover the problem is when it has been commissioned and it actually is seen. So that is the

first question: do you have an on-site clerk of works and what are the reports, explanations of leaking pipes from our clerk of the works?

Secondly, the effects that this is having on the local people – is there any attempt by your department to inform the local community of the problems that are arising and take steps to ameliorate their long-term suffering? I think that is important.

The third question of this supplementary that I have: he did say that from the Nunnery up to the White Hoe was satisfactory, and if that is so, can he explain to me who uses the road on a regular basis, why it is necessary therefore for the road to be constantly dug up to the discomfort of most road users since it has been completed?

The President: Mr Kniveton.

Mr Kniveton: Yes, Mr President. I think there are five supplementary questions there –

Mr Lowey: Or more!

Mr Kniveton: Or more. I do not doubt there will be more to come, Mr President! (*Laughter*) I will take the easy one first: digging up the road between the Nunnery and White Hoe. That has not necessarily been by the Department of Transport for IRIS; it is in fact delayed work by the MEA, who decided after we had finished the road that they had not completed their work.

Mr Waft: That is appalling.

Mr Kniveton: It is appalling, I absolutely agree. We have been dogged by appalling situations from beginning to end. The Nunnery to White Hoe – well that covers that one, doesn't it? With the electricity undertaking.

Local people, Mr President – I am going to hold my hands up on this one and say that I too am appalled at what has gone on. I would agree that it has all been quite unacceptable, and I can only apologise to so many people who are affected or who have been effected. I think, sir, they have been more than tolerant and I can only say – it is not really any form of comfort to them – that the DoT has been let down very, very badly by its contractors and I believe its engineers who have had to oversee the work. There is no other excuse whatsoever.

As I say, my minister and officers are appalled at what has gone on, but once embarked upon by contractors I can only observe the situation as it is. Before a section of transmission main can be taken over by the department – and that is what it is all about in the end – it must successfully pass a pressure test. A failed test indicates a fault in the pipe. If a leak is identified the main has to be drained down, the fault located and repaired, then the main is refilled and retested – all very time consuming and that is what it has all been about too. Now the contractor for the section of sewage main from White Hoe to the railway

crossing Oakhill are Farrans Construction Limited and their subcontractor is Done (Isle of Man) Limited and AA Construction – two local companies. On each occasion the contractor has pressure tested this section of the main, faults have been identified. Now the original contract was due to be completed by January 2002. The contractors were given a six-month extension to 5th July 2002 for legitimate reasons; but the delay from June to date, is due to the *absolute* poor workmanship of the contractors. The contract has overrun its agreed completion date by seven months. The department has not incurred any additional costs as a result of these delays. The contractors, Farrans or their subcontractors, the two local companies, are liable for all the costs of repairing the faulty pipeline. The department has an agreed, signed, final account of the main contractor, Farrans, but certainly not paid.

The President: Mr Delaney –

Mr Kniveton: I was going to answer about the clerk of works, sir, on that note, it was asked. We did have a guy, many of you may have met him, Dave Owen, who was the so-called clerk of works on so many projects of the DoT, and we have had a lot over recent years. Dave Owen, unfortunately, went off ill for one reason and another, and thereupon we had to look around for somebody else to take over. There was an interval, but we do have another person in position.

Mr Lowey referred to major faults. We do not consider a leak a major fault. Major faults are more major than that.

The President: Mr Delaney.

Mr Delaney: I am surprised that on a pipeline a leak is not a major fault when it is underground. That surprised me. Would the colleague of ours, as there is no press here to report the apology he has just given, organise for somebody to put an apology in the paper so that people out there may know of it? There is nobody from the press here.

Secondly, can I understand, you say there are no costs – are you aware that certain of these delays can be delays to the railway that my colleague and myself are responsible for at the department of tourism? Unfortunately there seems to be no compensation going to be paid to the taxpayer through our department for any delays in the trains running down south, besides the concerns of the people down south of any delays that will occur because of the trains not running. And could I ask this: on the Oakhill to White Hoe section how much of the line is actually running under the railway track that has got a leak in it, and is it not true you have got to dig it up to fix the leak?

The President: Mr Kniveton.

Mr Kniveton: Right, sir, thank you. Apology – this morning in another place the minister is answering a number of questions, and I do have a copy of what he will be saying and I can assure the hon. member that

there is a message of apology going out. We also have another meeting on Thursday morning with some residents, and again we will express our apologies to them.

Mr Delaney refers to the railway company – no costs, any delays? As far as I am concerned, Mr President, the work done on the railway line is satisfactory.

Mr Delaney: Is there a delay?

Mr Kniveton: There is no delay and there are no extra costs. Farrans were not concerned with the railway line.

Oakhill to White Hoe – we did not do under the railway line on that section.

Mr Delaney: No, it is all right then.

Mr Kniveton: Is it okay?

The President: Okay, Mr Lowey.

Mr Lowey: Could I just come back to the point of major leaks or major faults and the leak. We are not talking of seepage, where whatever the sealant is, it is seeping out, this is actually eroding the road which allows the road to collapse. Now there is a world of difference from the seepage which will show up under pressure and what I would call a leak, which is actually where the stuff is pouring out. Is the hon. member saying that there are no leaks as opposed to seepage, and is it right that the same people who put these in are the same companies who are now remedying them, and have you confidence that their remedies are going to be any better than the original work that was put in? I come back to the point of the clerk of the works – if the clerk of the works is not there to look at what I would call the pressure points, when these things are going in, the likelihood of a fault appearing in the middle of the pipe is less likely than that where they are joined, and that is the very time where our professional advice should be looking to make sure that it is . . . and I raise these questions. First of all I would like to thank the hon. member and the department for being so frank and open. I know they do not like reporting failure and I appreciate that, but we have this, it is ongoing. There is, at this moment in time, work proceeding further south and so if no lessons are learned from this, then we are in a bad way.

The President: Will you stick to the supplementary, Mr Lowey?

Mr Lowey: Well, the supplementary, Mr President, is: is it true that the same companies that created the problem are being employed to remedy the problem and is that a recipe for success?

The President: Mr Kniveton.

Mr Kniveton: Thank you, Mr President, sir. The company who performed the function, Farrans, through their subcontractors Done (Isle of Man) Limited and AA Construction are responsible for the filling-in or the stopping of these leaks. I understand, hon. member, they have brought in a team from the UK to assist them in that matter.

Furthermore, I can advise this morning that there is only one leak remaining to be repaired. That will be done within the next two weeks and completed, after which date highways will be moving in to start on the road to plane and overlay from end to end.

The President: Mr Gelling.

Mr Gelling: Yes, as I go in and out that road regularly, the pipe does go under the railway line at Oakhill, and Oakhill, Mr President, is the place I think that gives me greatest concern because the hole has never been filled in, and now I see they have got it dug up the other side of the railway line at the bottom of Oakhill, so one would assume that there is a problem in that area. So I just wanted to make clear that it does of course go under the railway line, but I think the concern certainly that I would like the hon. colleague to give me some confidence over is the fact that the people who are doing this work are competent. It would appear from what we were told in the early stages that there would be specialists, not just from Farrans, but from the pipe manufacturers, because there was only a 3 per cent degree of tolerance at these joints that when this subsides, and as sure as eggs it will, what is going to happen then? Does the department have assurances and guarantees into the future?

The President: Mr Kniveton.

Mr Kniveton: Yes, thank you, Mr President. I am glad that we are taking time over this question because it is causing a lot of concern outside and within government. The work was awarded to Farrans, Farrans appointed Done, Done appointed AA Construction to assist them at pipelaying. Now I think the hon. member is referring to Saint-Gobain who provided the ductile iron pipe materials and promised to train and support. That was offered and accepted by everybody else, but Farrans in their wisdom decided they had sufficient expertise and did not require it. (*Interjection*) That, I think, has caused a lot of the problem down the line.

What the hon. member is referring to is these different holes; at the moment we are awaiting a supply of tarmac to cover over for a temporary purpose. I think that just about covers everything.

The President: Yes, Mr Waft.

Mr Waft: Yes, just a quick one, Mr President. I was concerned that the MEA were digging up the rest of the road and considering the cost to the taxpayer of laying these roads – and once they are laid they are

fine – but to have another authority come along and dig it up . . . In this day and age, I thought we would have got over that problem. Has there been communications before and afterwards?

The President: Mr Kniveton.

Mr Kniveton: There are communications, but you do not necessarily get the correct response. MEA as a utility are entitled to go onto any of our roads and dig a hole. I am pretty sure that is the situation; I am sure the Attorney-General will agree.

The President: Right.

Mr Lowey: May I thank the hon. member for the length and the depth of his answers. I am grateful for them.

Matrimonial Proceedings Bill – Consideration of Clauses Commenced

The President: Right, we move on then, hon. members, to item 2 on our order paper, which is the Matrimonial Proceedings Bill. We have reached the stage, hon. members where we are down to clauses. The clauses are in the hands of the Attorney-General and we are proposing at this stage to take clauses 1 to 10.

The Attorney-General: Yes, Mr President. Just before I start on the detail of the clauses, I am aware that hon. members are concerned that the clauses be dealt with carefully and I will certainly try to do that. I would, though, mention that, if we get that far, part 2, which is clause 26 onwards, contains a consolidation of legislation which we have only recently considered and therefore hon. members may be content that I do not deal with the clauses in such great detail. Of course it is entirely up to hon. members, but I make that point, Mr President.

So, reverting then to clause 1: clause 1 gives jurisdiction to grant a divorce or annulment or to make a separation order to the high court.

Clauses 2 to clause 10 deal with divorce, and as I mentioned in the first reading a decree of divorce is now called a ‘divorce order’ and a petition for divorce is called an ‘application for a divorce order’. Clause 2 empowers 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 had broken down.

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

Subclause (2) provides that the court is not to find that the marriage has irretrievably broken down unless one of the following facts is proved: firstly that one party has committed adultery and the other cannot bear

to live with him or her; secondly, one party has behaved in such a way that the other cannot reasonably be expected to live with him or her; thirdly one party has deserted the other for two years; fourthly the parties have lived apart for two years and the respondent consents to a divorce; and fifthly the parties have lived apart for five years, unless a divorce would cause the respondent grave hardship.

Subclause (3) requires the court to inquire into the facts as alleged, that is, it is not enough that the court merely accepts the parties’ word that the marriage has broken down.

Subclause (4) requires the court to make a divorce order if it is satisfied that one of the facts I have mentioned is proved, unless it considers on all the evidence that there has not been an irretrievable breakdown.

Moving to clause 3, Mr President, subclause (1) deals with the case where one party seeks a divorce on the ground 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, or to use the old language ‘condoned’, and cannot be relied on as the basis for an application.

Subclause (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 to encourage attempts at reconciliation, which hon. members have spotted as being a very important thread of this legislation.

Subclause (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.

Subclause (4) deals with the case where one party relies on the others desertion, which necessarily involves an intention to remain apart, but the other party has become incapable of intending to desert, for example, Mr President, where perhaps the husband leaves the wife and after 18 months is injured in an accident and goes into a coma. The court then has to ask whether the desertion would have continued if the deserting party had remained capable. If the court is so satisfied, it may treat the period of desertion as not having been effected by the incapacity.

Subclause (5) provides that where the parties live together for up to six months following desertion or separation, that cohabitation is to be ignored in deciding whether they have lived apart continuously for the necessary period, but does not count towards that period. It will have been noted, Mr President, that clause 2(2)(c) requires a continuous period of at least two years desertion, and that 2(2)(d) and 2(2)(e) require two years and five years respectively of continuous living apart.

Subclause (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.

Subclause (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 to prescribe how that consent is to be given.

Moving to clause 4, Mr President, this clause prevents an application for divorce being made within one year after the marriage. Subclause (1) states that.

Subclause (2) makes it clear that this does not prevent an application being based on things which happened during the first year of marriage.

Moving to clause 5, this clause deals with the case where a party has obtained a separation order or a maintenance order on one of the grounds 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.

Subclause (1) provides that a party can apply for a divorce even though a separation order or a maintenance order under part 3, that is under a corresponding enactment elsewhere in the British islands, has been made on the same facts.

Subclause (2) allows the court to treat the order as proof of the grounds without requiring the facts to be proved over again, but the court must receive evidence from the applicant.

Subclause (3) provides that where a separation order granted on the grounds of desertion 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 preceding the application for a divorce.

Subclause (4) allows the court, when 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, that is an occupation order.

Turning to clause 6, this clause gives the court a discretion to refuse a divorce on the basis of five years' separation where a divorce would cause the respondent grave hardship, and this I think is a question that was specifically raised at the second reading, Mr President.

Subclause (1) gives the court a discretion to refuse a divorce on the basis of five years' separation, that is where there is no consent, where a divorce would cause the respondent grave hardship and it would be wrong to impose it on him or her.

Subclause (2) sets out the conditions under which subclause (1) applies and the fact is to be considered by the court. It only applies where 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 the parties and of any children, and if it considers that the respondent would suffer grave financial or other hardship and that it would be wrong to grant a divorce, it is to refuse the divorce.

Subclause (3) provides that hardship covers the loss of a chance to acquire a future benefit as well as a present benefit, for example a widow's pension if the husband dies first.

Clause 7, Mr President, enables the court to adjourn divorce proceedings if it thinks there is a chance that the parties might be reconciled, and subclause (1) provides that should be so.

Subclause (2) saves any other powers of the court to adjourn divorce proceedings.

Clause 8, Mr President, enables provision to be made by rules of court for the High Court in divorce proceedings to consider and express an opinion on any agreement between the parties, for example as to financial provision or arrangements for children.

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

Subclause (1) deals with the case where the respondent has been 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, revoke the divorce order at any time before it has been made final.

Subclause (2) sets out the cases where the court can delay making the divorce final until proper financial provision has been made for the respondent, 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 has been shown.

Subclause (3) requires the court to consider all the circumstances, including the financial provision 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.

Subclause (4) nevertheless allows the court to make the order final or the divorce final if circumstances require it and the respondent gives adequate undertakings to make proper provision.

Clause 10, Mr President, provides that where one party applies for divorce and the respondent makes a cross application for a divorce, the court is to deal with the respondent's application in the same way as if the respondent had been the petitioner.

So, Mr President, I think that deals with the first block of clauses. I beg to move that clauses 1 to 10 form part of the Bill.

The President: Mrs Christian.

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

The President: Everybody content? Mr Kniveton.

Mr Kniveton: There is just one question Mr President, if I may. It went through my mind during those clauses: is it possible, can I ask the Attorney-General – well, I am sure it is possible – that a couple can concoct an arrangement – that is the word today – for a divorce? They can jointly make up evidence or hearsay; does the court require evidence, say, of living apart or is just a statement? Does

evidence have to be produced and who does it come from? Who can they get it from?

The President: Mr Lowey.

Mr Lowey: Could I just ask for a final thing on the general thrust of the first tranche just repeating the existing legislation that is in being and consolidating it: am I right in thinking that he said that the court can make special arrangements for financial hardship? In other words, it seems to me that we are putting finance above personal considerations, and they can make a special case for financial reasons but they cannot make a special arrangement for personal reasons. I think that was covered in clause 5 or 6, I think he mentioned that. Is that correct? Is it just on financial arrangements that the court can defer or are there other reasons that can be taken into account to be given the judgment on?

The President: If I may, Mr Attorney, before you reply, just out of interest: I still have this little personal hang-up about 'his' and 'him' in all our legislation around here, for example, I wonder in clause 3 why we need the words on line 30 'to him'. 'One party to a marriage shall not be entitled to rely for the purposes of section 2(2)(a) on adultery committed by the other if, after it became known that the other had committed that adultery . . .' – there is no need for it in there. Similarly if you go through in (4) and you go right through to clause 9 there are a number of occasions where it could have been taken out. I appreciate that the male embraces the female. Mr Attorney.

The Attorney-General: Yes, thank you very much, Mr President. The hon. member Mr Kniveton has raised an interesting and fundamental point in relation to proof. Certainly the petitioner who is applying for the divorce has to give evidence in support of the facts alleged in the divorce petition and if the matter comes before the court, he or she has to give evidence on oath and all the affidavits are supported by a sworn statement on oath. If there is any suggestion that the parties have connived and concocted a situation then there is power, as we will see later in the Bill, for the matter to be referred to the Attorney-General for investigation. Of course there is always the situation where the court can arrange for the papers to be looked at for perjury. So it is a matter which is not rubber-stamping even if the divorce is taken extremely seriously and sworn evidence has to be provided.

In answer to the hon. member, Mr Lowey: yes, certainly for the most part the clauses I referred to do repeat existing legislation. There is nothing new there really. As I explained, we do have some hopefully more modern terminology to deal with the basic principles.

In relation to the power under clause 6, I think it is, where the court can refuse to make an order, it is not just financial matters which would be appropriate, although I suspect that is likely to be the more common sort of case, but as I think I explained at the

second reading, if the respondent were to fear that he or she was in a very difficult position because of some physical or mental incapacity and it was not possible for adequate financial provision to be made for that particular person, then the court has a discretion to refuse the divorce even though five years have been proved.

Mr President, as always, your questions are particularly demanding. I do accept the point. In my presentation in relation to these clauses I hope I will refer to 'him and/or her' at the appropriate time and I do take on board your point about the drafting. As ever, Mr President, we are following precedents in legislation in other countries. I do take your point though, and I will bring it to the attention of the draftsman.

Mr Delaney: Why was it not the words 'either party'? That surely covers him and her.

The President: Sometimes it does use the words 'either party', but – apologies, members – what grigs me is that sometimes we put in additional words for no benefit. If you look at clause 9, it says: 'the court has made a divorce order on the basis of a finding that the applicant was entitled to rely in support of his application on the fact . . .' In actual fact you do not need 'of his application': 'that the applicant was entitled to rely in support on the fact of two years'. So in my mind you do not need it, but I might be wrong. Mrs Christian.

Mrs Christian: Mr President, if I could just refer to clause 3 which I think you mentioned in your comment, I think the words 'to him' there are critical in the understanding of that particular section, if it was 3(1). If it does not say 'to him', and we accept here it could mean 'to her', the fact of the matter is that where adultery is committed it is largely known by the world and his wife before it is known by the other partner and it is essential here, Mr President, that it refers to the other partner knowing that adultery had been committed. (**Mr Delaney:** Yes.) So it is absolutely essential in that part.

The President: Yes, true –

The Attorney-General: We could put 'the world and his' . . .!

The President: I take your point –

Mrs Christian: (*Laughter*) The world and his whatever!

The President: Mrs Christian would have to look at my little Bill here: I had actually linked (1) and (2) together and instead of using 'to him' I had used the words which you use in (2): 'one party'. Anyway, never mind. Mr Waft.

Mr Waft: Just for clarification on clause 8, consideration of certain arrangements and agreements: for instance, if one of the partners were suffering from a pre-senile dementia, such as Alzheimer's or Pick's or one of the others, and they were confined to a hospital and the husband needed to seek a divorce and payments were due by the nursing home, to what extent would that be taken into consideration with the divorce proceedings?

The President: Mr Attorney.

The Attorney-General: Yes, thank you, Mr President. Well, clause 8, which I think the hon. member refers to, would enable the husband, for example if the wife was disabled, to go to his lawyer and to have an agreement drawn up which made financial provision for hospital care, and the court could say, 'Well yes, I consider that this is as good as you can do', and therefore it would be unlikely that the divorce would be prevented because of the wife's incapacity. In other words, you could use that clause 8 as the wherewithal to have a preliminary ruling by the court that you have done everything which is reasonable in all the circumstances.

The President: Well, hon. members, if we are content, I put to you the motion that clauses 1 to 10 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

So we will turn, then, to clauses 11 to 16.

The Attorney-General: Yes, thank you, Mr President. This section deals with the annulment of a marriage and annulment differs from a divorce in that technically a divorce terminates a marriage whereas an annulment declares that there never was a marriage, either because it was void, that is invalid from the outset, or it was voidable. That is, it has become liable to be declared invalid from the date of the annulment order.

So, clause 11(1) gives the court jurisdiction to make an annulment order on an application for that purpose.

Subclause (2) requires the court to inquire into the facts alleged by the parties.

Subclause (3) requires the court to make an annulment order if it is satisfied as to the grounds alleged, in accordance with clause 12 or 13.

So clause 12, Mr President, states the grounds on which a divorce can be annulled as being void.

Subclause (1) sets out the grounds, firstly that the requirements of the Marriage Act have not been complied with, that is: (i) where the parties are too closely related, that is within the prohibited degrees set out in the Marriage Act; (ii) either party is under 16; or (iii) certain vital formalities have not been complied with: that deals with subclause 1(a); (b) that the marriage would be bigamous or the marriage was bigamous; (c) that the parties were not respectively man and woman, male and female; (d) that the

marriage was polygamous and either party was domiciled in the Isle of Man.

Subclause (2), Mr President, provides that a person domiciled in the Isle of Man is able to enter into a valid marriage overseas even though it is potentially polygamous, provided it is not actually polygamous.

Subclause (3) makes it clear that 1(d) above covers only a marriage where the husband already has more than one wife or vice versa. It does not cover a potentially polygamous marriage.

Mr President, clause 13 sets out the grounds on which a marriage is voidable, that is where it was valid at the outset, but has become invalid. The grounds are listed in the clause as follows: (a) that either party was incapable of consummating the marriage; (b) the respondent has wilfully refused to consummate the marriage; (c) there was no real consent to the marriage on the part of either party, for example 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.

Clause 14 restricts the powers of the court to grant an annulment of a voidable marriage where it would be unjust to allow it.

Clause 14(1) states that the court is not to annul a marriage where the applicant knew that he could have applied for an annulment, but nonetheless led the respondent on to think that he would not do so and it would be unjust to allow him to go back on what he has represented.

Subclause (2) puts a time-bar on an application for annulment on the grounds in clause 13(c), (d), (e) or (f), that is lack of consent, mental illness, venereal disease or pregnancy. The application must be made within three years of the marriage unless leave to apply out of time is given under subclause (4).

Subclause (3) applies to an application for annulment on the grounds in clause 13(e) or (f), that is venereal disease or pregnancy. The applicant must have been aware of the facts at the time of the marriage.

Subclause (4) allows an application which is out of time under clause 2 if the court gives leave on the ground 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.

Subclause (5) enables an application for leave under subclause (4) to be made after the end of the three year limitation period.

Clause 15, Mr President, makes special provision for annulments of overseas marriages where the law of a country outside the Isle of Man or with the common law rules in the Isle of Man about marriage may affect their validity.

Clause 15(1) provides that the court can grant an annulment despite the restrictions we have referred to in clauses 11 to 13 where the validity of a marriage outside 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 party's incapacity, which is determined by the law of that party's domicile or because the proper formalities were not complied with, which is determined by the law of the place where the marriage took place.

Subclause (2) provides that the grounds for annulment of a void marriage in clause 11 do not limit the power to grant an annulment in two cases: firstly where the marriage has been celebrated at a British embassy or consulate overseas and did not comply with the requirements of the Foreign Marriage Act, that is an Act of Parliament; and secondly where a so-called common-law marriage does not comply with any requirements of common law, for example, 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 marriage is recognised in Manx law.

Clause 16, Mr President, provides that whereas an annulment of a void marriage 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 to that date.

Mr President, I move that clauses 11 to 16 of the Bill do stand part of the Bill.

Mr Gelling: I will second, Mr President.

The President: Mr Lowey.

Mr Lowey: Mr President, I really should declare that it is nothing to do with me. *(Laughter)* However, I am fascinated as a layman, and here I am in the hands of my learned friends, the medical profession and the legal profession, regarding 'voidable' in clause 13(e): 'that, at the time of the marriage, the respondent was suffering from venereal disease in a communicable form'. So if I have hepatitis – I do not know whether that is a venereal disease or not but it is communicable – and I am married, that is not a ground for making the marriage void; but if I have one of the more commonly known diseases – syphilis or whatever – I can be divorced because I have got a communicable disease – but I cannot be divorced if I have hepatitis which is not. Is that the standing? Why are we enshrining in here one form of medical condition and not another? Is it historic, and just because it is historic is it right?

The President: Dr Mann.

Dr Mann: Well, first of all, to claim that the marriage is void because intercourse cannot take place – it is of course quite difficult to sometimes prove that. As far as communicable disease is concerned, in relation to this particular aspect of the law we are talking about communicable disease during intercourse, because the whole question is whether intercourse has taken place.

Mr Lowey: Considered consummated.

The President: Mr Attorney.

The Attorney-General: Thank you very much, Mr President. I am delighted that the hon. member Dr Mann has made a contribution. *(Laughter)* For my own part, Mr President, it does seem to me that perhaps this concentration as it were on venereal disease is something which has been brought forward from old legislation and it may very well be that in principle it is wrong to concentrate just on that particular disease –

Mr Lowey: It does not seem right to me.

The Attorney-General: Nonetheless, it is something which is regarded by the parliaments who have considered this legislation as being of particular importance in the context of marriage. Of course the marriage is voidable and there are bars to the relief in clause 14: if you knew that your partner had suffered from the disease and nonetheless went ahead and celebrated the marriage, then you are not entitled to rely on that as a grounds for saying that the marriage is to be set aside, but I do of course defer with respect to the hon. member Dr Mann.

The President: Hon. members, the motion I put is that clauses 11 to 16 inclusive stand part of the Bill. Those in favour please say aye; against no. The ayes have it. The ayes have it.

So we will go on to other matrimonial proceedings, that is section 17 to 20.

The Attorney-General: Thank you, Mr President. Clause 17 restates the High Court's power to make a separation order on the same facts as those on which it can make a divorce order and provides for its effect. The term 'separation order' survives only because some petitioners have a moral or religious objection to divorce, but need financial provision orders which could otherwise only be obtained on a divorce.

Clause 17(1) enables an application for a separation order to be made on the same facts as for an application for a divorce order and the same rules for determining whether the marriage had broken down apply. However, Mr President, it is not necessary to prove and claim that the marriage has irretrievably broken down.

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

Subclause (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 in subclause (2) is proved. Of course it does not, as I say, refer to the proof of irretrievable breakdown.

Subclause (4) applies clauses 7 and 8 to these proceedings.

So I move to clause 18, Mr President. Clause 18 restates the High Court's power to declare a party to a marriage to be dead and to dissolve the marriage.

Subclause (1) enables the party to apply for an order of presumption of death and dissolution of

marriage if the court is satisfied that reasonable grounds exist for making such an order.

Subclause (2) provides that seven year's absence without any reason to believe that the other party is alive raises a presumption that that party is dead.

Subclause (3) provides that the rules as to collusion, which in certain cases prevent the court granting a divorce, do not apply to proceedings under this clause.

Clause 19 gives the High Court power to grant a declaration that a marriage or an overseas divorce, annulment or separation is or was valid or invalid.

Subclause (1) enables an application to be made for a declaration that a marriage was valid at the outset, but note, not *invalid*; that a marriage was or was not in force at a particular date; or that an overseas divorce, annulment or separation is or was valid or invalid. Application may be made by anyone, that is not only the parties, provided that that person has a sufficient interest and subject to the limits on the court's jurisdiction in clause 21(5) which we will look at in a moment.

Clause 20 makes further provision supplementing clause 19. It enables the court to hear any part of the proceedings in camera.

Subclause (2) requires the court to make the declaration applied for if it is satisfied on the facts, unless public policy demands otherwise – and there I think public policy refers to some offence of the concept of natural justice as we understand it in the Island.

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

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

Subclause (5) precludes the court making a declaration other than the one applied for; for example, if you apply for a declaration that an overseas divorce was valid the court cannot declare that it was invalid, but must instead dismiss the application.

Subclause (6) precludes any court, including the High Court, making a declaration that could be made under clause 19, otherwise than under that clause.

Subclause (7) precludes any court under clause 19 or otherwise making a declaration that a marriage was invalid at the outset – that can only be done in proceedings for an annulment order under clause 11 – or that a person is or was illegitimate because a declaration that a person was legitimate can be made only under the Legitimacy Act.

Subclause (8) saves the court's powers to make an annulment order under clause 11.

So, Mr President, with that I move that clauses 17 to 20 do stand part of the Bill.

The President: Mr Gelling.

Mr Gelling: I beg to second, Mr President.

The President: Mr Lowey.

Mr Lowey: Sorry to be pedantic; I hope I am not appearing to be pedantic. In clause 18(2) seven years is the figure for presumption of death. Is there any particular reason why it is seven years? I noted by the other clauses in the Bill I can get a divorce on separation of five years. Is there a legal necessity for it to be seven years? I can understand if it is seven years in other bits of legislation and it marries up with that, but I would have thought that if you have five years' separation as a grounds then five years' presumption – because it is only presumption of death, it is not proven that you are dead if you have not been living together for seven years . . . I just wondered why the seven years is placed in the particular legislation?

The President: Mr Attorney.

The Attorney-General: Thank you, Mr President. As ever, the law does have to draw the line somewhere and it may be of some comfort to the hon. member to know that seven years is the period which is required in other contexts, not only matrimonial. So if it is required to establish that someone is dead, not just for the purposes of divorce, but for other purposes, the court does allow that presumption to arise where the party in question has not been heard of for seven years and it would be presumed that he ought to have been in contact with somebody.

Mr Lowey: That is fine.

The President: Shades of Lord Lucan.

The Attorney-General: Yes!

The President: Hon. members, I put to you that clauses 17, 18, 19 and 20 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

We turn to clauses 21 to 25 and schedule 1.

The Attorney-General: Yes, thank you, Mr President. Clause 21 imposes various limits on the jurisdiction of the court and is mainly dependent on the concept of domicile and habitual residence. The same tests apply in the United Kingdom and the Channel Islands to the common rules apply throughout the British islands.

So you will see there in clause 21(1) that an application for a divorce or a separation order 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.

Subclause (2) provides that an application for an annulment order can only be made where one of the parties is domiciled in the Island or has been habitually resident 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 for a year.

Subclause (3) enables the court to make a divorce order, annulment order or separation order in any proceedings where it has jurisdiction, even though it

would not otherwise have jurisdiction. Mr President, that is a complex clause, but by way of example if the husband and wife are domiciled in England and the husband applies for a divorce order on the basis of his one year's residence in the Isle of Man and he then does not proceed with the case and leaves the Island, that actually enables the wife later on to make a cross-application for a separation order in the same proceedings in the Isle of Man. The court has jurisdiction even though at that time neither party is qualified by domicile or residence.

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

Subclause (5) provides that an application for a declaration of the marital status can only be made where one of the parties to the marriage is domiciled in the Island or habitually resident 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.

Subclause (6) introduces schedule 1 which hon. members will see at page 117 of the Bill. Schedule 1 lays down the rules under which divorce or similar proceedings must or may be stayed where proceedings are pending outside the Island. Mr President, I am conscious that hon. members have a heavy agenda this morning. I am not sure whether hon. members wish me to go through schedule 1. Perhaps I can come back to that if hon. members wish me to do so.

If I move, therefore, to clause 22 of the Bill. This clause enables the court to ask the Attorney-General to argue a point in certain matrimonial proceedings and enables him to intervene if he considers that the process of the court is being abused, and this I think triggers off the concern by the hon. member Mr Kniveton earlier this morning.

Subclause (1) enables the court to ask the Attorney to argue a point in proceedings for a divorce or annulment or for a declaration that the party is dead.

Subclause (2) allows anyone to inform the Attorney-General if he suspects something wrong in proceedings, for example, that the parties are in collusion or that evidence given is false and the Attorney can take any necessary steps, for example, investigation or intervention to show cause why an order should not be made final.

Subclause (3) makes similar provision to subclause (1) in the case of proceedings for a declaration as to marital status.

Subclause (4) enables the Attorney-General to intervene in proceedings and argue any point.

Subclause (5) enables the court to make an order for costs in favour of the Attorney-General.

Clause 23 requires a divorce or annulment or declaration of death to be made by a provisional order in the first instance, and that is to be made final later and these provisions replace the reference currently made to decree nisi and decree absolute.

Clause 24 makes provision for the parties to divorce and other proceedings under part 1.

Subclause (1) requires the alleged adulterer to be joined as a party, that is a co-respondent, where divorce or separation proceedings are taken on the grounds of adultery unless the court otherwise directs.

Subclause (2) enables rules of court to exclude subclause (1) where the adulterer is not named.

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

Subclause (4) enables rules of court to provide for a third party alleged to be involved in allegations of adultery and other improper conduct to be joined as a party to the proceedings.

Subclause (5) enables the court to allow an alleged adulterer or other person whose interest or reputation is affected to intervene in the proceedings.

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.

Subclause (1) requires the court in proceedings 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 Person's Act 2001, that is a residence order or a contact order.

Subclause (2) enables the court in an exceptional case, and where to do so would be in the interests of the child, 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 the Children and Young Person's Act, but does not yet know whether it should do so.

Subclause (3) sets out the children of the family to which this clause applies, that is those under 16 and those 16 or over to whom the court thinks it should apply, for example, because they are disabled.

So, Mr President, with that I move that clauses 21 to 25 and schedule 1 do stand part of the Bill.

The President: Mr Gelling.

Mr Gelling: Yes, I will second, Mr President, but in so doing perhaps I could just ask Mr Attorney if he could make it a little clearer in my mind as to why the co-respondent is named at all. If adultery is proven why are some not named and some are named?

The President: Mr Waft?

Mr Waft: Yes, just on clause 25 with regard to the provision for children and subsection (3)(b), 'any child of the family who has reached that age at that date and in relation to whom the court directs that this section shall apply', and it mentions in the previous paragraph with regard to the child reaching 16. I just wondered whether the court would take provision of a child for instance with learning difficulties who could be a problem to the family or indeed either partner who is left to look after that child for a long time in the future. Would the court take cognisance of that fact and make direction?

The President: Mr Attorney.

The Attorney-General: Yes, thank you, Mr President. In answer to the question raised by the hon. member, Mr Gelling, I have to say that that is a point which has always concerned me. I think it probably boils down to this: there are cases where a respondent agrees that there has been adultery and is prepared to admit that and does not require strict proof that he or she has committed adultery with a third party, whereas there are other cases there the respondent says, 'No, I did not commit adultery', and it is therefore necessary for the petitioner to actually join in to name Mr X or Mrs Y or whoever it may be and prove against that party that adultery has taken place. I think it rather depends on the circumstances, but again I would have thought in these days the way things are that the naming of co-respondents is going to become increasingly uncommon. It is bound to be a matter of concern for people who are named as co-respondents, but that I think must be the justification for it.

Insofar as the question raised by the hon. member Mr Waft: yes, clause 25 contains a general restriction so the court must, under clause 25, consider the children of the family, and as the hon. member says, if you look at 25(2), if it appears to the court that there are exceptional circumstances which make it desirable in the interests of the child that the court should give a direction, it may direct that the divorce is not to be made final until the court orders otherwise. I think, Mr President, the hon. member has raised a good example if there were to be a child or children with grave learning difficulties it may be that the court would pay particular care to ensure that those children were looked after, financially and otherwise, before making a divorce order. Perhaps learning difficulties would not be sufficiently serious, but one can envisage other cases where it would be sufficiently serious.

The President: Mr Lowey.

Mr Lowey: But the law says 'the child'. If that child, that person, was 18 or 19 at the time, would that definition 'the child' still be covered? I take it that if the person was an 18-year-old, whatever the difficulty is . . . Under the law as printed it says 'the child' and isn't a child defined as somebody up to 16? This person does not qualify although it is in effect part of the case that that is an exceptional circumstance that should be taken into account. Where does the law cover that eventuality?

The Attorney-General: Yes.

The President: Before Mr Attorney, Mrs Christian.

Mrs Christian: Yes, is that not covered under 3(b), 'any child of the family who has reached that age' – i.e. 16 – 'at that date and in relation to whom the court directs that this section shall apply.' So there

is scope there for the court to take into account any child who is 16 or over, one assumes from reading that, and can direct.

The President: Mr Kniveton.

Mr Kniveton: Just the same with subclause 3(b): what about the child who is still attending full-time education? Does that not come into reckoning of this case? I am talking about universities, colleges and things.

The President: Mr Attorney.

The Attorney-General: Thank you, Mr President. I am very grateful to the hon. member Mrs Christian, she is absolutely right in saying that 25(3)(b) does enable the court to consider particularly a child who has reached 16, but in respect of whom a specific provision has to be made. We are, however, only referring to children here and I think we will see later on in clause 41 that we have a cut-off age of 18, and between the age of 16 and 18 we have to be concerned to know that the child is undergoing educational or vocational training, and it is only where the child is undergoing that training that the court can make an order for a child. So 16 and under is the usual case; between 16 and 18 you have to be undergoing training; above 18, despite the particular difficulties you have raised, hon. member, the court does not have jurisdiction in relation to a child.

The President: Mr Waft.

Mr Waft: Just a point of clarification with regard to the chronological age and the mental age sometimes are quite different, and it states categorically 16 in the legislation.

The Attorney-General: Yes, I accept that.

The President: Okay, hon. members, I put to you then that clauses 21 to 25 inclusive, along with schedule 1, do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

We turn then to clauses 26 to 37. Mr Attorney.

The Attorney-General: Yes, thank you, Mr President. As I mentioned in my introduction, we are now concerned with part 2 of the Bill, 'Financial orders', and this part actually restates without amendment part 1 of the Matrimonial Proceedings Act 2001, which we dealt with fairly recently. Therefore, Mr President, whilst of course I am more than happy to go through the clauses, it may be that hon. members will be content if I just introduce them very briefly, or do you want me to deal with the clauses at all?

The President: I think we do need particularly to deal with clause 32; that one was amended in the Keys

and I understand that Mrs Christian has an amendment which she wishes to place before us on that one.

The Attorney-General: Yes.

The President: Failing that I would be content with a brief introduction.

The Attorney-General: Yes, Mr President. Well, if I can go through just an introduction for each clause: clause 26 lists the orders which the High Court can make against either spouse and specifies the provisions of part 2 under which they are made. There is no change from the 2001 Act in that respect.

Clause 27 gives the court power to award one spouse maintenance pending suit, that is an interim order for maintenance against the other – again no change.

Clause 28 gives the court general powers to make financial provision orders, that is for maintenance or lump sums, on making a divorce, annulment or separation order or at any time thereafter – again, no change except in relation to the terminology which is used.

Clause 29 enables the court to make property adjustment orders on divorce, nullity or separation. Again it makes no change in the present law.

Clause 30 enables the court in certain circumstances to make an order for the sale of property to realise capital for making other kinds of financial provision – again no change.

Clause 31 gives the court powers to make pension sharing orders in divorce or nullity proceedings. We did look at the concept of pension sharing orders quite carefully when considering the 2001 legislation – again no change from the existing law.

Clause 32 is the clause where we have the amendment. I might just look at that in some further detail, Mr President: clause 32 lists the matters which have to be taken into account by the court in making financial orders, so we are concerned with financial matters.

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

Subclause (2) lists specific matters which the court is to take into account when making orders in favour of a spouse.

Subclause (3) lists specific matters which the court is to take into account when making an order in favour of a child of the family: the child's needs; the child's resources if any; any disability he has; how he has been and is expected to be educated, and the matters listed in subclause (2)(a) to (d). Again there is no change from the 2001 Act.

Subclause (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, that is whether and to what extent and for how long he has assumed any responsibility for the child, whether he did so knowing

that the child was not his and thirdly, any other person's liability to maintain the child.

There is also an amendment made in another place which is brought forward as subclause (5) as regards the exercise of the courts powers under 2(g) and that relates to the conduct of the parties. The amendment is that the court must, 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. Mr President, as the person in charge of the Bill it is my duty to move the clause as it is from that other place.

If I move to clause 33, the clause requires the court when making financial orders on divorce or annulment to consider whether to do so in a way which secures a clean break between the parties – again no change except in terminology.

Clause 34 gives the power as an alternative to making a pension sharing order under clause 31 to earmark a share of one spouse's pension entitlement for the benefit of the other and require the pension fund to pay it to that other – again no change from the existing law.

Clause 35 makes special provision in relation to the earmarking of lump sums due under pension schemes.

Clause 36 makes supplemental provision in relation to pension sharing orders and orders under clause 28, which is earmarking pension rights.

Finally, Mr President, for this section, clause 37 deals with procedural matters relating to applications for financial orders.

Mr President, with that I move that clauses 26 to 37 with the amendment at clause 32(5) do stand part of the Bill.

Mr Gelling: I wish to second, Mr President.

The President: Mrs Christian.

Mrs Christian: Mr President, thank you. I have tabled an amendment to clause 32 which in effect removes the insertion which was added in another place. Now the reason for doing that is that after it was approved in the other place representation was made by His Honour Deemster Kerruish in respect of that amendment, and if I may quote from *Hansard* in the other place, it may give members a background as to why he had concerns about the changes that had been accepted in the other place.

If I can quote from the letter of His Honour, he says that, first of all, he did not believe that that particular amendment was appropriate within this particular piece of legislation and the mover of those particular clauses has pointed out that this deals with financial arrangements. However, the amendment deals with other matters, particularly with regard to abuse, and His Honour was very concerned that we are getting two types of legislation mixed up here. Indeed he said that the wording of the subject matter of the amended clause also caused considerable concern. He

has very considerable concerns about the potential width of the phrase ‘to any allegation of abuse against a child’ and he says, ‘my main concerns are relevant to the words “which is found to be made maliciously or without reasonable or probable basis.”’

It was recognised in the other place, after this amendment had been accepted and before the third reading that the subject matter is one which everyone has concerns about – everyone is concerned about child abuse and particularly if such an allegation is made in a matrimonial proceeding – but this particular part of the Bill deals with distribution of the assets of the couple who are seeking the divorce. It was suggested that if such an allegation were made at that stage in the proceedings, it would be necessary for the deemster presiding to stay proceedings. He would have to alert the police and the relevant authorities and an inquiry would then have to be undertaken. There was an expression of concern that the amendment is dealing with potentially a criminal matter, whereas this piece of legislation is a civil matter and there was great concern expressed about having a hearing within a hearing.

So, Mr President, there are avenues by which one can deal with the issues of claims of child abuse, but it is felt that this is not the appropriate place for this particular amendment to have been inserted and so I seek the support of the Council to remove that insertion. There are mechanisms by which allegations of abuse can be dealt with, but it is irrelevant in the context of determining distribution of assets. I therefore beg to move, Mr President, the following:

clause 32, page 25, line 2 –

omit subclause (5) (inserted by the Keys)

The President: Mr Kniveton.

Mr Kniveton: I am happy to second the amendment, Mr President.

The President: Mr Lowey.

Mr Lowey: I will be supporting the amendment (**Mr Delaney:** Hear, hear.) of Mrs Christian, but that does not mean to say that I did not think it was right. Having read the debate in another place of the mover of the amendment in his professional capacity, I think he was right to raise the matter, as he has seen it in operation. So I think the subject is right. It is very rare indeed for the learned deemsters to actually comment on the legislation when it is going through the parliament, but I, on this occasion think His Honour has done us all a favour (**Mr Delaney:** Hear, hear.) by drawing attention to it in such a constructive way (**Mr Delaney:** Yes.). So once again where we try to keep the legislature and the judiciary apart, this is a classic example where their experience and their comments actually enable us to come up with the right decision for both parties. I take note of the comments and the quotes by the mover of the amendment from

His Honour and I will be supporting the Bill, but I think it was right that the mover of the amendment will not be put off from attempting to get legislation right in the light of his own professional experience. I think the allegation of child abuse is a weapon that sometimes . . . We have mentioned in this Bill that bitterness does creep in and there are threats that can be used quite easily with devastating results. I think it is a difficult position, but I think it is absolutely right in this piece of legislation to keep it civil, and there are avenues for dealing with the criminal part. I think the mover of the amendment has got it right.

The President: Mr Waft.

Mr Waft: Yes, it is just to clarify the actual amendment as was made in the other place with regard to the allegation of abuse. The last line says: ‘the allegation has been made maliciously and without any reasonable or probable basis’ – not actually abuse, but I take on board what the member has said and I would agree to the amendment.

If I could just mention another item – I am sure that will come to us back again in another form perhaps in the future – with regard to pension rights, I am just going to clarify something for myself with regard to the earmarking of pensions. I had a thought: when the original divorce takes place and the pension is split between the two people, I take it that the recipient who gets the portion of the pension rights is the spouse who is living with the partner at the time that he or she was paying the relevant subscription to the pension scheme. Now if that person subsequently remarries, I take it that no proportion will be deducted from the original pension of the first wife or the first husband, and the second would have to take a proportion of that proportion of the pension which was paid during her or his partnership with the second spouse.

The President: Mr Delaney.

Mr Delaney: Actually that is the point which I have been asked to raise. First of all, on the amendment I agree with our colleague here and I am delighted this is going to happen. I am sure she will have no problem getting agreed with it down in the other place. My points are similar to Mr Waft’s points and I would like to know where a person has a multiplicity of marriages . . . At one time it was keen to marry a millionaire and then another millionaire and another millionaire and you could get very well ahead in life doing it, either male or female, but now it seems to be a trend to marry two or three times and you can pick up a nice little earner by the pension schemes. I would like to know: can a person go back to court if the original partner married again and readjust the pension agreement that has been put in place? Can it be on a divorce that the other pensions that may be in being from previous marriages can be taken into consideration in a court before the settlement is made

on the pension sharing? That is the question, if that is clear enough.

The President: Well, Mr Attorney, we will now find out. Is it clear enough?

The Attorney-General: Yes. I think actually we might be coming on to this section later on in relation to (**Mr Delaney:** Yes.) variation of orders on pensions, but can I just give my provisional answers to those points and perhaps I can follow them up at the next stage. I think the thrust of the questions from both the hon. members Mr Waft and Mr Delaney is that where there is, as Mr Delaney said, a multiplicity of marriages, the person who has contributed to a pension arrangement is going to be left with nothing, insofar as he is going to be attacked on all sides by several claiming spouses. I think it is clear from the Bill, and I will spot the precise provision in a moment, that only one order can be made in relation to a particular pension. In other words, you cannot have more than one pension sharing order or more than one earmarking order in relation to a pension, so it really only applies, as I understand it, to the first marriage. To take the hon. member's question, where you have husband and wife who have lived together and during that time the husband has contributed to a pension fund, that fund is available to that first wife on the divorce and not to subsequent claims, but can I perhaps check that, Mr President? It is perhaps a complex point and I can clarify it at another time.

The President: Right. Okay, hon. members? Mr Gelling.

Mr Gelling: Can I just ask again for some clarification: I can quite understand and I accept the hon. colleague's amendment to remove this, but it has been emphasised that it is because it is in the wrong place. It is in a part of the proceedings in which we are dealing with finance. Can I just ask: is it not therefore that it should be in some other part of this Bill? Should that amendment be in an earlier part of the Bill or if not, if either the mover of the amendment or the mover of the Bill could just clarify as to where that particular area is covered?

The President: Yes, it would be a separate measure. Dr Mann.

Dr Mann: I think we all accept that this amendment in another place is in the wrong place, but it clearly identifies a weakness of the law of one sort or another and if we are going to say this is in the wrong place, then I would be happy if there was an undertaking on the part of somebody to ensure that it is corrected. I will support it on the legal arguments, but there is an issue that has been pinpointed and brought to public notice.

The President: I think the indication given in the Keys *Hansard* is that it would be picked up by the original mover again. Anyway, Mr Attorney.

The Attorney-General: Thank you, Mr President, a very interesting point raised by the hon. members. We will have seen from clause 2 – if we can just take you back to clause 2(2)(b) – that one of the grounds for divorce is that 'the respondent has behaved in such a way that the applicant cannot reasonably be expected to live with the respondent'. Now just looking at the factual situation, I suppose one could very readily mount a case if one was acting for a petitioner who said, 'Well, my husband', or 'my wife', 'has alleged against me that I have been abusing our children; that is something which I think is intolerable and it is conduct of a kind which makes me believe that I cannot now be expected to live with my partner.' So in other words, a malicious or unreasonable allegation of child abuse could, I think, fall within the existing law and would enable a petitioner to ground a divorce on 2(2)(b), but I do feel that the objections which have been raised by His Honour and particularly in relation to the concept of a trial within a trial, where we would have to hold a criminal investigation within the context of divorce proceedings, is such a powerful point that I do not feel that the law requires to be amended. I do not think that an undertaking would be appropriate to correct the Bill. As I say, I think that the Bill as drafted at 2(2)(b) would enable a petitioner to bring proceedings on those facts.

The President: Right, hon. members, although we have before us in place the whole of part 2, 'Proceedings for Maintenance Etc. – High Court', I will put it to you separately so that we have clarity on the clause which carries the amendment by Mrs Christian. So I will put clauses 26 to 31 inclusive. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Now clause 32 with the amendment moved by the hon. member, Mrs Christian. Those in favour of the amendment please say aye; against, no. The ayes have it. The ayes have it.

So the clause as amended, hon. members and we will be absolutely clear. Those in favour please say aye; and against, no. The ayes have it. The ayes have it.

Then we will pick up on clauses 33 to 37, again inclusive. Those in favour please say aye; against, no. The ayes have it.

Clauses 38 and 39, Mr Attorney.

The Attorney-General: Yes, thank you, Mr President. As I have said earlier, many of these provisions replicate the existing law. Clause 38 gives the High Court power to grant one spouse maintenance or a lump sum in the case of a failure by the other to provide reasonable maintenance for him or her or a child of the family. There is no change to the existing law.

Clause 39 contains provisions which are supplemental to clause 38 and provide that the court must for example look at all the circumstances and all the matters mentioned in clause 32(2), but the welfare of any child is paramount where the child is under 18. Again there are other provisions there in clause 39 which replicate the existing law and no change is made to it.

I move, Mr President, that clauses 38 and 39 do stand part of the Bill.

The President: Mr Gelling.

Mr Gelling: I beg to second, Mr President.

The President: Mr Waft.

Mr Waft: Just on the collection of the financial provision for failure to maintain: in the UK they have had an agency for many years to undertake this. Is the Attorney aware of the situation in the Island? Is it any better than the UK and do we need any further provision than what we already have?

The President: Mr Attorney.

The Attorney-General: Mr President, we shall see in the Bill that there is a provision that collections are to be through the General Registry and although I quite understand that there are criticisms of that method of collection, nonetheless that is what is provided for in our legislation. I do consider that this is something which has to be enforced and kept very much under review.

Mrs Christian: Mr President, is it not the case that the UK system came under considerable fire and disrepute and did not really work very well? So I think whatever the shortcomings of our system it is still as effective as anything that they have to offer.

The President: Okay. hon. members. I put to you that clauses 38 and 39 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

‘Additional provisions with respect to financial provision and property adjustment orders’ – clauses 40, 41 and 42.

The Attorney-General: Yes, thank you very much, Mr President. Clause 40 limits generally to death or remarriage the duration of periodical payments in favour of a spouse.

Clause 40(1) enables the court to specify any term in a periodical payments order or secured periodical payments order in favour of a spouse, except that periodical payments cannot begin earlier than the application and must not extend after either spouse’s death or the remarriage of the payee, and a secured periodical payments order cannot begin before the application and must not extend after the death or

remarriage of the payee. It is not affected by the death of the other spouse.

Clause 40(2) enables the court in the case of an order made on divorce or annulment to prevent the payee from applying for an extension of the term of the order as part of the clean break provisions.

Subclause (3) provides that a periodical payments order or secured periodical payments order made otherwise than on divorce or annulment, for example on a separation order, it does not terminate on divorce or annulment and is to come to an end on the payee’s remarriage.

Clause 41 limits generally to the age of 18 the duration of periodical payments in favour of a child – perhaps if I just deal with this in some further detail.

Subclause (1) prevents any financial provision order or transfer of property order being made in favour of a child of the family who is already 18 or over, except as allowed by subclause (3).

Subclause (2) enables the court to specify any term in a periodical payments order or secured periodical payments order in favour of a child of the family, except that it cannot begin earlier than the application and (a) must not in the first instance extend beyond compulsory school age unless the court thinks that the child’s welfare requires that it should; and (b) in any case is not to extend beyond his 18th birthday, subject to subclause (3).

This is the clause, Mr President: subclause (3) allows the court to make or extend an order in favour of a child over 18 if he is or will be in education or training or there are special circumstances, for example, he may be disabled.

Subclause (4) provides that a periodical payments order in favour of a child always terminates on the death of the payer.

Mr President, I am sorry, I may have mislead hon. members earlier when I suggested that we cannot make provision under 18. I had overlooked that. There are provisions in clause 41 so that if a child is over 18 he is entitled to an order if he is or will be in education or training or there are special circumstances. So I am sorry for that.

Clause 42 provides that the court may direct that a mortgage settlement or conveyance et cetera may be drawn up to give effect to a secured periodical payments order or a property adjustment order and to defer a decree until it has been executed.

Mr President, I move that clauses 40 to 42 do stand part of the Bill.

Mr Gelling: Yes, Mr President, I beg to second.

The President: Mr Gelling seconds. Mr Delaney.

Mr Delaney: Yes, I was just about to do that. Just to raise a point with the Attorney on this new addition, which I am happy to see under clause 40. It is the point again, rehashed, not dealing here with pensions, but dealing with moneys paid to a party who then enjoys their future with a person who could be the co-respondent of the breakdown of the first marriage. It

upsets an awful lot of people of either party after a marriage breaks down. So this brings into it the fact that, as I understand it, once the remarriage takes place the payments that are made by the other party can be annulled, stopped or cancelled because of the change of circumstances; is that right, Mr Attorney?

The Attorney-General: Yes, if I can just refer, Mr President, to clause 40(3) where a periodical payments or secured periodical payments order in favour of a party is made otherwise than on or after the making of a divorce or annulment order. So in other words that is where there has been a separation order, not a divorce or a nullity, and then the marriage is subsequently dissolved or annulled – so in other words there is a divorce then – and the maintenance order under the separation order is still in force. Then it comes to an end on the remarriage of the party. So it is a complicated clause; it means that if parties have not divorced but they have a separation order and under that order maintenance is paid, then if one of the parties remarries, that arrangement under the separation order comes to an end.

Mr Delaney: Can I then ask a supplementary on that one, now that is clear: is it that if it is found afterwards that the person who is one of the parties had assets that were not disclosed at the time of the original separation or divorce and this comes to light, can the other party go back to court again?

The President: Mr Attorney.

The Attorney-General: Well, Mr President, we will see as we consider the Bill that there are provisions which will impose penalties on spouses who do not make full disclosure of their assets, but if, to take your example, the party who would have been entitled to claim more remarries, then he or she is debarred from making a claim –

Mr Delaney: That is fine, that clears the rest of it. Thank you very much.

The President: Mr Waft.

Mr Waft: I am still concerned, Mr President, about the collection of payments. Now it has been mentioned about the registry collecting these and the history, as we have seen and heard in another place, of the outstanding moneys owed to the registry. No matter what we say in here, if there is not an enforcement policy carried out sufficiently expeditiously then it comes to naught at the end of the day, and it needs to be very carefully looked at.

The President: Mr Attorney.

The Attorney-General: Yes, I entirely agree, Mr President, we will see that provision is made in clause 45 for the Chief Registrar and I think we are aware of the arrears which are due. So it is something which needs to be looked at very carefully.

The President: Okay, hon. members, I put to you that clauses 40, 41 and 42 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

So we turn to 43 to 47 inclusive.

The Attorney-General: Thank you, Mr President. Clause 43, Mr President, gives the court wide powers of varying and revoking financial orders which we have just looked at under part 2. I just see there that clause 43(1)(h) does enable the court to vary a pension sharing order which is made at a time before the divorce order or annulment order has been made final. So, it might be appropriate, Mr President, if I just look at this clause in some further detail.

Subclause (1) specifies the orders to which the court's powers apply. They are all kinds of financial order, except a transfer of property order and it also does not apply where the pension sharing order has been made on or after the decree absolute.

Subclause (2) provides that on the death of either spouse the court's powers cease to apply to an order relating to a lump sum payable on death under a pension scheme.

Subclause (3) gives the court general powers to vary, revoke, suspend or revive an order.

Subclause (4) enables the court to vary, revoke et cetera any instrument made pursuant to an order, for example a settlement made under an order for settlement of property.

Subclause (5) lays down the general rule that the court is to look at all the circumstances, but is to put first the welfare of any children of the family under 18.

Subclause (6) explains how that subclause (5) applies in particular cases. First of all the court must consider any change in circumstances. It must also apply the same clean break principles as in clause 33(2) and it must also consider a change in circumstances including the death of the person against whom the order was made.

Subclause (7) enables the court to defer the operation of any variation or revocation of a periodical payments order or secured periodical payments order.

Clause 44, Mr President, makes supplemental provision relating to variations of financial orders. Again reflecting the existing law and no change is made so I will not look into that in any greater detail unless there are specific questions.

Clause 45 requires payments under a periodical payments order normally to be made through the General Registry and applies the same machinery to such payments as applies to payments ordered to be made by a court of summary jurisdiction.

Clause 46 requires the leave of the court to enforce claims for maintenance which are more than 12 months in arrears.

Finally, Mr President, in this block, clause 47 enables the court to order repayment of periodical payments due under an order where it thinks they are excessive because of a previous change of circumstances – again replicating the existing law.

So, Mr President, I move that clauses 43 to 47 stand part of the Bill.

The President: Mr Gelling.

Mr Gelling: I second, Mr President.

The President: Mr Delaney.

Mr Delaney: I did look at this one very closely before. That is why I asked the original question to you, Mr Attorney, to get a clarification why here there are no variation powers by the court to take into consideration any remarriage situation of the pension sharers? Do you follow my point?

The Attorney-General: Yes. Mr President, can I undertake to look into this and I do not want to give –

Mr Delaney: I would be happy.

The Attorney-General: – an answer which is not entirely accurate, so if I can look into it and come back to the hon. member at the final reading.

Mr Delaney: That is fine.

The President: If I may, Mr Attorney, in relation to 43(5) it is quite definitive there where it says, ‘who has not attained the age of 18’. Where does that leave the handicapped person which Mr Waft referred to at an earlier clause?

The Attorney-General: Right, thank you. Mr President, clause 43(5) certainly sets out the general rule that the court has to have regard to all the circumstances, but paramount importance being given to the welfare of a child who has not attained the age of 18. However, as we have seen, there are other clauses –

The President: This would not debar somebody over the age of 15 who is handicapped being taken into consideration? That is the point I am making.

The Attorney-General: Yes, I am just trying to find the specific clause, Mr President –

A Member: Clause 41?

The Attorney-General: We have seen that where there are children who are undergoing full-time education or training or if they suffer from a particular impairment –

The Lord Bishop: It is 25(3), isn't it?

The Attorney-General: – then it is open to the court to go beyond the age of 18, Mr President.

The President: Right. Mr Kniveton.

The Attorney-General: I will list those for you.

Mr Kniveton: Yes, this is just one point that comes to mind, Mr President: a divorced woman – and we were just talking about remarriage – does not remarry, but she takes up permanent residence with a partner, and I am talking about not just a few months, I am talking about even years. What is the position then – instead of remarriage a partnership affair?

The President: Mr Attorney.

The Attorney-General: Mr President, this of course is not an uncommon situation and –

Dr Mann: Social security.

The Attorney-General: Yes, and I think that there are divorced spouses who take great care not to remarry so that they can, as it were, have the best of both worlds. I think, Mr President, and I just venture this, it would be open to the court to vary an order which had been made in favour of such a person, if the payer was having particular difficulty in coping with the order if his financial position did not allow him to pay for this lady who was living with another man or vice versa. It would be open to that person, I believe, to go to the court for a variation, but again could I just come back to that at the final reading and get an entirely accurate response?

The President: Yes. In that case, hon. members, I put to you that clauses 43 to 47 inclusive do stand part of the Bill. Those in favour please say aye; and against, no. The ayes have it. The ayes have it.

Then on to clause 48 to 51.

The Attorney-General: Yes, thank you, Mr President. Clause 48 is concerned with consent orders and this enables the court to make a financial order by consent without hearing the parties or any evidence. So if the parties reach an agreement then the court can endorse the agreement and there is no need for the matter to be fought as it were between the parties.

Clause 49 makes provision in relation to maintenance agreements. A maintenance agreement or separation agreement is valid and enforceable, except so far as it restricts the right of the parties to apply for a financial order.

Clause 50 enables the High Court or a court of summary jurisdiction to alter a maintenance agreement.

Clause 51 enables the court to alter a maintenance agreement after the death of either party.

All those provisions, Mr President, are contained within the existing law and there are no changes. I therefore move that clauses 48 to 51 do stand part of the Bill.

The President: Mr Gelling.

Mr Gelling: I beg to second, Mr President.

The President: Hon. members, I put to you the motion that clauses 48 to 51 do stand part of the Bill. Those in favour please say aye; and against, no. The ayes have it. The ayes have it.

'Miscellaneous and supplemental', clauses 52 to 56.

The Attorney-General: Thank you, Mr President. Again replication of the existing law, clause 52 gives the High Court the power to strike down transactions which are entered into by a spouse in order to defeat claims for maintenance or other financial provision. There are wide powers there enabling the court to look into reviewable dispositions and to make necessary consequential orders and directions.

Clause 53 makes special provision for repayment of maintenance which should have ceased on the remarriage of the spouse, for whose benefit it is made, but has continued to be paid. The court has a discretion whether or not to order a repayment and gives protection to certain payees. So that I think, to a certain extent, deals with the point raised by one of the hon. members.

Clause 54 provides that even though a settlement or transfer of property is made, pursuant to a transfer of property order, an order for a second property or an order for a variation of a settlement, it is still capable of being cancelled if the transferor or settlor becomes bankrupt.

Clause 55 enables a payment or transfer of property due to a mental patient to be made to a person in charge of him, for example a member of the family, unless alternative provision, for example the appointment of a receiver, has been made under the Mental Health Act.

Clause 56 limits the power of an appeal court to allow an appeal against a pension sharing order where the pension managers or the DHSS have already acted in reliance on the order – again replicating the existing law.

I therefore move, Mr President, that clauses 52 to 56 do stand part of the Bill.

Mr Gelling: I beg to second, Mr President.

The President: Mr Lowey.

Mr Lowey: I know this is replicating existing legislation, but can I just draw attention to 52(6): we are talking there of people willfully getting rid of their assets to deprive people, and yet I see in 6(b) it excludes any provisions contained in a will or codicil. So it means that I cannot give money away or get rid of it in a variety of ways to prevent me paying it to my partner who is suing me, but then I can write it in a will after that, that I give all my goods to the old horses' home or whatever in a will and if I die next week there is nothing there for the party to receive. It just seems to be a get-out in the long term. It is obviously existing law, but it does seem to me rather a

glaring example of where you can legitimately, from the grave, have the last laugh. Perhaps that is the way it should be for a single fellow (*Laughter*), but it does seem rather strange that there is a provision in the law –

Mr Delaney: It is a hard way to go though, isn't it?

Mr Lowey: Yes, it is a long way to go to prove your point.

The President: Hon. member Mrs Christian.

Mrs Christian: Can we have clarification on that. Something which is expressed in a will does not take effect until you are dead so it really does not –

Mr Lowey: I could deprive my partner of something which I have tried to in life, I can do it after I die and I can write that will after the separation.

Mrs Christian: Presumably even if you do not have a divorce, so . . .

Mr Lowey: Yes, it does seem strange, maybe, it just seems glaringly obvious to me.

Mr Delaney: I understand, Mr President, that you can contest a will. A partner can go up to the High Court and contest the contents of the will anyhow under that circumstance.

The President: Mr Attorney.

The Attorney-General: Mr President, the general rule is that financial orders cease on death anyway. That is the usual order so I suppose the theory of this provision is that although you must not do anything during your lifetime which is going to deprive a claim against your assets, it is open to you on your death, by your will, to do whatever you wish with your remaining assets. Having said that, there is of course a provision that if the court has directed that your former wife or former husband should have a secured provision against your estate then that direction – in other words that there be a charge on your shares or on your house – you cannot avoid that by your will. That is going to prevail against the will, but generally speaking Mr President, I think that the provision is understandable.

The President: Hon. members, I put to you then that clauses 52 to 56 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Now, hon. members, I think it is our intention to travel thus far with the Matrimonial Proceedings Bill and we will pick part 3 up at our next sitting.

**Medicines Bill –
Consideration of Clauses Commenced**

The President: We can turn now to the Medicines Bill and I call on Mrs Christian to take clause 1.

Mrs Christian: Thank you, Mr President. The Bill is to a very great extent a re-enactment of the Medicines Act 1976, but part 1 is new and I wish to deal with the new clauses in a more detailed manner than the rest. It introduces the regulation making powers under which the sale, supply and manufacture, import, export et cetera of medicinal products for human use can be controlled.

Clause 1 contains introductory provisions requiring the Department of Health and Social Security in exercising its powers under part 1 to have regard to the system of control of medicinal products for human use operating in the United Kingdom.

Subclause (1) requires that the department has regard to, as I say, the United Kingdom controls. It does not oblige the department to follow the systems to the letter and it could introduce different systems of control if it felt appropriate, but it must take those systems as a benchmark, and they are identified by reference to legislation under which they operate. They include EC directives, the UK Medicines Act 1968 where that Act has not been superceded by EC legislation and any legislation amending or replacing any of those measures so that the Island can keep up to date with new EC and UK legislation without having to pass new primary legislation.

Subclause (2) defines a 'medicinal product'.

Subclause (3) defines the terms 'community authorisation' and 'UK authorisation'.

These definitions can be amended under subclause (4) which enables the DHSS to amend the definitions by regulations, to ensure that the Island can keep up to date. Such regulations would require Tynwald approval, Mr President. I beg to move that clause 1 stand part of the Bill.

The President: Mr Gelling.

Mr Gelling: I beg to second, Mr President.

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

Clause 2.

Mrs Christian: Clause 2 is the main plank of the system of control introduced by the Bill. It enables the DHSS to make regulations controlling the marketing, manufacture, distribution, import, export and presentation of medicinal products.

Subclause (1) gives the department the powers to make these regulations and such regulations again require Tynwald approval.

Subclause (2) enables regulations under subclause (1) to include requirements as to labelling, the marking of medicinal products, the supply of leaflets with such products and the standards of containers which must be used.

Subclause (3) specifies the purposes for which requirements under subclause (2) can be imposed, they are: identification, information, safety and quality control in relation to the containers.

Subclause (4) sets out one of two kinds of provision which regulations *must* make. They must give effect to community authorisations and UK authorisations. They may give effect to other licences and consents issued under EC legislation. In either case the regulations may impose conditions limiting the effect of such authorisations. Again this is a new provision. I beg to move, Mr President, that clause 2 stand part of the Bill.

Mr Gelling: I beg to second, Mr President.

The President: Mr Lowey.

Mr Lowey: Mr President, in the light of the answer I gave earlier this morning to a question from my hon. friend, Mr Waft, about the river and water protection, who is going to enforce this? I see we are going to make regulations and it is going to place a lot of onus on us to make it work. Has the department got the manpower in place now to do it or are they proposing to introduce it in the future? Has application been made for this? It is all right us saying that we are going to do this and we are going to be very good and yet we do not have the wherewithal to actually deliver the promises contained in the Bill.

The President: Mrs Christian.

Mrs Christian: Mr President, there are staff already in the departments and in the past they have been scattered around a number of departments monitoring both medical and veterinary products, so we do have staff in place. The essence really of the change in this Bill from what we have had previously is that we are very much more clearly setting out here that we will rely to a great extent on United Kingdom authorisations and EC authorisations so that the people we already have in place do not have to start from scratch. If anyone made a licence application here, we would simply say they have got to comply with the United Kingdom standards. So I believe that we do have the staff in place to monitor this.

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

Clause 3.

Mrs Christian: Clause 3 requires the DHSS to make regulations giving exemptions from the controls imposed under clause 2 to some activities by health

professions and pharmacists and it enables them to give further exemptions.

Subclause (1) requires the DHSS to make regulations giving exemptions which are in relation to activities which are prescribed in the regulations by a practitioner or in a pharmacy. 'Practitioner' is defined by schedule 2 as a doctor or a dentist or, subject to conditions and qualifications, a registered nurse, a midwife or other health professional.

Subclause (2) allows the DHSS to make regulations giving further exemptions from controls in powers under clause 2. This is a new provision Mr President. I beg to move.

Mr Gelling: I beg to second, Mr President.

The President: The motion, hon. members, is that clause 3 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clause 4.

Mrs Christian: Clause 4, Mr President, provides that regulations under clause 2 must require certain medicines to be sold by retail at pharmacies only.

Subclause (1) specifies the medicinal products, the sale of which must be restricted under this clause. They are all medicinal products, except those which, under the terms of their community or UK authorisation, may be sold by retail at places other than pharmacies. At the moment, a general sale list is prescribed by order under the UK 1968 Act. Under a new system now being introduced in the UK, whether a product can be put on general retail sale or must be restricted to sale at pharmacies will be determined by the conditions of the marketing authorisation applicable to that product.

Subclause (2) requires regulations under clause 2 to prohibit, except as provided by the regulations, the retail sale of medicinal products within subclause (1) in the way of business otherwise than at a pharmacy. This covers three circumstances: sale in the course of lawfully conducting a retail pharmacy business; sale at a registered pharmacy; and sale by or under the supervision of a pharmacist.

Subclause (3) makes it clear that subclause (2) does not effect the wider powers of clause 2. This is a new provision, Mr President. I beg to move.

Mr Gelling: I beg to second, Mr President.

The President: The motion, hon. members, is that clause 4 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clause 5.

Mrs Christian: Clause 5 provides that regulations under clause 2 must require certain medicines to be sold by retail on prescription only.

Subclause (1) specifies the medicinal products which may be sold by retail on prescription only under

this clause, and they are those which under the terms of their community or UK authorisations are not to be sold except in that way. Under a new system now being introduced in the UK, whether a product is prescription only will be determined by the conditions of the marketing authority applicable to it. So this is really an echo of clause 4, but dealing with prescribable medicines.

Subclause (2) requires regulations under clause 2 to prohibit, except as provided by regulations, the retail sale of medicinal products within subclause (1) in the way of business otherwise than on prescription issued by a person holding qualifications and complying with conditions which are prescribed i.e. set out in regulations under schedule 2. This is a new provision.

Subclause (3) makes it clear that subclause (2) does not effect the wider powers of clause 2. I beg to move this new clause, Mr President.

Mr Gelling: I beg to second, Mr President.

The President: Mr Lowey.

Mr Lowey: Mr President, perhaps the minister can confirm that these regulations will be laid before Tynwald, in other words there will be some scrutiny of those particular regulations, because a lot of this work is to be enabling legislation. The crux of it will come within the regulations. How it operates will actually be by regulation, and referring back to clause 3, the department – that means the minister or the member delegated with that authority – will be making the regulations. So as long as the regulations are subject to Tynwald scrutiny I have no difficulty at all with the legislation.

The President: Mrs Christian.

Mrs Christian: Mr President, I can confirm that all these regulations, as mentioned by the hon. member, will require endorsement by Tynwald.

The President: The motion, hon. members, is that clause 5 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

We will turn to clause 6, general provisions on regulations. Mrs Christian.

Mrs Christian: Mr President, clause 6 enables regulations under this part to create criminal offences or to set up a registration or licensing system and impose conditions that a person shall be entered onto a register or be the holder of a licence or certificate in order to carry on the specified activity. It also requires the DHSS to consult with any professions and other interested parties affected before making regulations. Again Tynwald approval would be required to any regulations made under this clause. I beg to move.

Mr Gelling: I beg to second, Mr President.

The President: Mr Lowey.

Mr Lowey: Could I just ask the minister, again I do not wish to appear pedantic, but it says 'a licence or certificate', but a licence or a certificate of what? I may have a certificate for swimming, but it would not do me much good if I am prescribing drugs or what have you.

Mr Delaney: I thought you walked on water!

Mr Lowey: No, I do not! (*Laughter*)

The Lord Bishop: You are not that old, are you?

The President: Mrs Christian.

Mrs Christian: Mr President, at the moment . . . Certainly licences are needed to be held in respect of pharmacies and so on. I would have to go through and check what nature of certificate, but it may be, for example, a person is a certified practitioner in certain areas, but I will try and get a more precise answer –

The Lord Bishop: It says, 'a prescribed person or authority'.

Mrs Christian: Yes.

The President: Okay, hon. members, the motion I will put is that clause 6 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

We turn to part 2 dealing with consumer protection; clauses 7 to 12, Mrs Christian.

Mrs Christian: Yes, Mr President. Part 2 is the section of the Bill which contains consumer protection provisions and none of this is new, it is a re-enactment of earlier legislation so I will perhaps not go into the same measure of detail, but will be happy to answer any questions.

Clause 7 makes it an offence to adulterate any medicinal product or to sell or supply an adulterated product.

Clause 8 makes it an offence to sell a medicinal product not of the nature or quality demanded or prescribed.

Clause 9 makes it an offence in the course of a business to sell a medicinal product by a recognised name if it does not comply with the recognised specification for that product.

Clause 10 makes it an offence to sell or supply a medicinal product in the course of a business, either in a misleading container or package or with a misleading leaflet.

Clause 11 enables regulations to impose requirements as to the display of information on automatic machines selling medicinal products.

Clause 12 specifies the penalties for offences under clauses 7 to 11. They are: on summary conviction a fine up to £5,000, or at a Court of General

Gaol Delivery up to two years and/or an unlimited fine, except under clause 11 where on summary conviction a fine of up to £1,000 applies.

I beg to move clauses 7 to 12 do stand part of the Bill.

Mr Gelling: I beg to second, Mr President.

The President: The motion, hon. members, is that clauses 7 to 12 inclusive do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Part 3, clauses 13 to 17.

Mrs Christian: Part 3, Mr President, regulates the advertisement of medicines. Only clause 17 is new and I will refer to that in more detail.

Clause 13 makes it an offence to publish various kinds of misleading advertisements or claims relating to medicinal products.

Clause 14 restricts the issue of advertisements about medicinal products which are the subject of a community or UK authorisation.

Clause 15 enables the DHSS to make regulations prohibiting advertisements or representations relating to certain medicinal products or making certain kinds of claim about medicinal products. This supplements the general prohibitions under clauses 13 and 14.

Clause 16 prohibits advertisements sent and claims made to practitioners about a medicinal product unless an approved product summary has been supplied.

Clause 17 provides interpretation. It is a new clause and it is based on the Copyright Act 1991. This clause defines the terms used in clauses 13 to 16.

Subclause (1) defines 'advertisement' in wide terms.

Subclause (2) excludes spoken words except where recorded or on a radio or TV programme from the definition of 'advertisement', but those words would constitute a representation, which is dealt with later.

Subclause (3) provides that the packaging of a medicinal product or the issue of a leaflet with it, does not count as an advertisement, except for the purposes of parts of clause 15 relating to misleading advertisements.

Subclause (4) defines other terms used in clauses 13 to 16 including a commercially interested party.

Subclause (5) defines certain terms by reference to the Copyright Act 1991.

I beg to move that clauses 13 to 17 do stand part of the Bill.

Mr Gelling: I beg to second, Mr President.

The President: Mr Waft.

Mr Waft: On part 17, interpretation with regard to the advertising, advertisements, et cetera, subclause (f) says, 'in any other way' – I take it that would include products sold on the internet?

Mr Kniveton: That is the first one.

Mrs Christian: Sorry, I am trying to find the clause from my notes, 17 –

Mr Waft: Clause 17(f) – it says, ‘in any other way’.

Mr Gelling: A film, a broadcast, sound –

Mr Delaney: Any other way.

Mrs Christian: Yes, ‘in any other way’. (A **Member:** Catch-all.) Yes, I would suspect that to be the case.

Mr Waft: It is just that it says, ‘film, sound recording, broadcast or cable programme’, it does not mention the internet there, so I think it is covered under –

Mrs Christian: It is very catch-all for any future developments in technology.

Mr Waft: Clause 17(f) would cover it all, wouldn’t it?

The President: In (2) I have a wonderful picture of the cowboy films and the doctor going round advertising by speaking; I see he is excluded from that particular piece.

Mrs Christian: He is making a representation, which is covered under another clause. (*Laughter*)

The President: Hon. members, Mr Attorney is just pointing out to me that there is actually a numbering error in clause 17. We go (1), (2), (3), (4) and then to (6), so it should actually be (5). I am not sure whether we could pick that up as a numbering error without putting it back to the Keys, but I think we ought to make it right. It has been pointed out that it is a numbering error, and I think we ought to have it right, so if we are aware of that and I am sure that we can . . . It is notified on *Hansard* and notified to the Clerk and we will deal with it in the proper manner so that when it becomes an Act it is rightly numbered.

Mr Lowey: It makes it interesting: what was number (5)? (*Laughter*)

The President: The motion I put to you is that clauses 13 to 17 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Hon. members, I think it is an appropriate time at which we adjourn. I am happy to come back this afternoon. Dr Mann is giving apologies for this afternoon. Subject to that, hon. members, we will resume our deliberations of the Medicines Bill at part 4 at 2.30 p.m. Thank you, hon. members.

The Council adjourned at 1.03 p.m. and resumed its sitting at 2.30 p.m.

Medicines Bill – Consideration of Clauses Concluded

The President: When we broke off for our lunch we had reached part 4 of the Medicines Bill, clauses 18 to 21 along with schedule 1. Mrs Christian, please.

Mrs Christian: Yes, thank you. Part 4 deals with the enforcement of parts 1 to 3 and none of this is new, Mr President.

Clause 18 imposes a duty on the DHSS to enforce the Bill.

Clause 19 gives authorised persons a right of entry to enforce the Bill which can be backed up by a search warrant if that is necessary.

Clause 20 along with schedule 1 gives authorised persons powers to inspect the medicinal products, their packaging and any relevant plant or equipment used for their manufacture or testing with power to take a test sample and seize goods and records.

Clause 21 prescribes a modified version of the sampling procedure under schedule 1 where an authorised person seizes anything under clause 20(5), that is where substances, articles or documents relate to evidence of an offence.

I beg to move clauses 18 to 21 along with schedule 1 do stand part of the Bill.

Mr Gelling: I beg to second, Mr President.

The President: Mr Waft.

Mr Waft: Could I just ask through you, Mr President: with regard to schedule 1 and the people that are allowed to prescribe drugs, are there at the present time instructions taking place for the nursing side to prescribe and are their instructions going to qualify them to be able to prescribe drugs?

Mr Lowey: Could I ask: the mover says that clauses 18 and 19 are the enforcement – in enforcing it what are the penalties that are appertaining to the enforcement, because there has to be . . . I only notice in the next clause, which I am pre-empting, £1,000 is quoted and that seems to me to be totally inadequate as a deterrent in this day and age. I notice there is no fine or figure in the clauses that we are dealing with. Perhaps there may be later, I do not know.

The President: Mr Kniveton.

Mr Kniveton: Yes, just following straight on from what Mr Waft has just said, he has taken the point I was going to take. I was reading in the UK that some of the qualified nursing staff are going to be allowed to prescribe, but in return they will have quite

a considerable uplift in their salaries. Are there moves afoot in the Isle of Man for similar arrangements?

The President: Mrs Christian, just a little query of my own in relation to 21(2): where an authorised person picks up some medicines or whatever and takes a sample, the person who is the owner of that sample apparently has 21 days in which to . . . Is that not an unreasonable time – 21 days after he is informed of the seizure he can call for a separate sample to be held? It seems a long period of time if he is informed when the sample was taken.

Mrs Christian: Right, if I could answer those points, Mr President. First of all, yes, steps are being taken to allow certain nurses within certain parameters to prescribe. Clearly that is a general trend which we would seek to follow in the Island, but as I say, it will not be general prescribing, it will be within closely defined parameters.

With regard to enforcement, we have covered a number of clauses which set out penalties and I did refer this morning to certain of the offences set out here being subject to a fine of up to £5,000 or two years' imprisonment and/or a fine. There were other circumstances where the fine was only £1,000 where there was a lesser offence involved. So there are, within the body of the Bill in many places, these provisions –

Mr Lowey: They are not mentioned in these particular clauses. They say regulations and all the rest and you mentioned the word 'enforcement' and I do not see where they are actually . . .

Mrs Christian: I think, Mr President, that this is telling us that the DHSS is the department which has to look to enforcing the Bill. It will be up to the courts to determine the fines, and the fines and the punishments are set out in the various clauses of the Bill at relevant levels according to what the provisions of the clause are. (**Mr Lowey:** Okay.)

The hon. member, Mr Kniveton has referred to publicity given in the United Kingdom to the fact that there are proposed to be new orders of nurses who may obtain uplifts in salaries according to their prescribing skills. I think the situation at the moment is that those are not yet determined. (**Mr Kniveton:** Right.) It is the case that broadly speaking in the Island we would tend to follow the sort of structures, indeed are ahead of the salary structures in nursing in most cases. So we would be looking to the examples of salary scales in relation to the development of those skills. Though I have seen some very high levels mentioned and I am not quite sure whether ultimately they will be adopted or not. That remains to be seen.

With regard to the point raised by Mr President, as to whether or not 21 days is too late after the event, I can only say that this is an existing provision. It has been an existing provision from 1976 and presumably has been found to be acceptable, otherwise I think we would have been seeking to amend it at this particular

time, though I do accept that in most cases I am sure if I were the practitioner or if I were the owner of those drugs and accused of some wrongdoing and had a sample taken from my premises, I would be looking to have a sample from the enforcing authorities much sooner than that.

The President: Yes, it was in schedule 1 which we are also dealing with – it actually divides a sample into three and the person is given the sample at the time. I wondered why the 21 days was then necessary.

Mrs Christian: Clause 20(7) to which that refers, Mr President, deals primarily with the requirement for the authorised person who is taking the samples to notify the appropriate person of any seizure under (5). I am afraid I cannot perhaps be very much help on that, except to say that in practice I do not think there has been any difficulty raised. In fact, I do not think that there have been many cases where this sort of legislation has needed to be enforced because we do not generally manufacture in the Isle of Man and I am not aware of any great development of any situation where people purport to sell a drug to be something else other than what it is. I take the point that it does seem like a long period of time to wait for the sample to be produced when they are required to subdivide it into three at the first stage and hand one back.

The President: Hon. members, I put to you that clauses 18 to 21 and schedule 1 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

We will go to clauses 22, 23, 24 and 25.

Mrs Christian: Mr President, clause 22 creates offences of obstruction and giving false information.

Clause 23 enables a private person who has bought a medicinal product to have it analysed and prescribes a modified version of the sampling procedure under schedule 1.

Clause 24 enables medicinal products illegally imported or exported to be made liable to seizure and forfeiture by customs and excise.

Clause 25 makes it an offence for a person entering premises under clause 19 to disclose any trade secret or otherwise acquiring information under this Bill to disclose the information except in accordance with his duty.

I beg to move that clauses 22 to 25 stand part of the Bill

Mr Gelling: I beg to second, Mr President.

The President: Mr Lowey.

Mr Lowey: Yes, it is in clause 22 and perhaps the minister can explain to me really what I conceive to be an anomaly anyway. Perhaps I am reading it wrong, but in the first part it says, 'is guilty of an offence and liable on summary conviction to a fine not exceeding £1,000'. So if I am guilty of the offence I can get fined

£1,000. In part (2) if I tell lies to try and protect you I will be guilty of an offence that carries a fine of £5,000, plus two years in gaol. We must be the only place where by trying to cover up it is a bigger crime than the actual offence that I am trying to cover up?

The President: Mrs Christian. If you would like to reply?

Mrs Christian: Thank you, Mr President, yes. The first part deals with intentional obstruction, with a fine not exceeding £1,000 and then if you further compound your offence as in 1(c) by giving false information on top of the obstruction then you are liable to this heavier fine.

Mr Lowey: It says, 'if any person'.

Mrs Christian: 'If any person, in giving any such information as is mentioned in subsection (1)(c)', i.e. the person who has obstructed under (1)(c) – there may be more than one person who obstructed in (1)(c). For example, if an inspector went into a pharmacy and asked to claim samples of a medicine which they suggested was adulterated or improperly labelled or purporting to be something that it was not, there may be two people who might obstruct under (1)(c). It may be that one of them further tells lies in the course of trying to avoid the officer in the course of their duty, in which case they are compounding their offence under paragraph (2) and are then subject –

Mr Lowey: If it says, 'if any person' that could be the person you have described, that I can accept, but I could have somebody lined up to assist me in deception to try and cover the offence and under this clause it seems that I could be punished up to these maximum fines.

Mrs Christian: If you are telling lies in addition to the obstruction –

Mr Lowey: I was not involved in the obstruction in the first place, but I am covering up to assist the person who is doing it.

Mrs Christian: I think, Mr President, and perhaps I can look to the Attorney for advice, but it seems to me that if you have not committed the offence under 1(c), (2) does not apply to you; (2) only applies to you . . . 'If any person, in giving any such information as is mentioned in subclause (1)(c) makes a statement which he knows to be false, he is guilty of an offence'. So you have got to have been involved in (1)(c) for (2) to take effect.

Mr Lowey: Okay.

The President: Hon. members, the motion I put is clauses 22 to 25 inclusive. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clauses 26 to 30.

Mrs Christian: Clause 26 enables a person to be charged with any of certain offences under the Bill where he is responsible for the offence being committed by another person. It also provides a defence of due diligence against a charge of any of those offences.

Clause 27 gives a special defence where a person is charged with a consumer protection offence if he honestly bought the product in question in reliance on a written statement or a warranty that its sale was legal.

Clause 28 makes it an offence to associate a written warranty or certificate of analysis to a product other than that in respect of which was originally given or to give a false warranty in respect of a product.

Clause 29 provides an extended time limit for prosecutions for summary offences under the Bill and enables the official responsible to be prosecuted for an offence committed by a company.

Clause 30 provides that where medicinal products and related documents are found in certain places, the prosecution does not have to show that they were sold or supplied there, but for the accused to show that they were not.

I beg to move clauses 26 to 30, which are already embodied in existing legislation, stand part of the Bill.

Mr Gelling: I beg to second, Mr President.

The President: The motion, hon. members, is that clauses 26 to 30 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

We turn then to part 5, 'veterinary medicinal products and animal feeding stuffs'. Clauses 31 and 32 please, Mrs Christian.

Mrs Christian: Thank you, Mr President. Part 5 extends parts 1 to 4 to medicinal products for animal use and regulates medicated animal feed stuffs.

Clause 31 defines 'veterinary medicinal product'.

Clause 32 applies parts 1 to 4 to veterinary medicinal products with modifications.

Clause 32 has some new provisions in it, Mr President, so I will go through that in some detail.

Subclause (1) applies parts 1 to 4 to veterinary medicinal products in the same way as they apply to medicinal products, subject to the modifications which are set out further down in the clause.

Subclause (2) makes a general modification by substituting references to veterinary medicinal products for references to medicinal products.

Subclause (3) sets out specific modifications of clause 1. You will remember that clause 1 set out the various lists of standards applying to medication in the United Kingdom which we are proposing to accept in the Isle of Man. This modifies that list in respect of veterinary products.

So at subclause (3)(a) the reference in clause 1 to the main consolidating EC medicines directive is replaced by a reference to the corresponding veterinary directive.

In subclause (3)(b) the definition of medicinal product is omitted.

In (c) the definition of 'UK authorisation' is replaced with one referring to the corresponding machinery dealing with veterinary medicinal products.

The power in (d) to amend the definitions in clause 1(3) to take account of changing EC and UK law applies to the substituted definition in (c). In other words the mechanisms we are accepting in clause 1 for medicinal products we are now applying to veterinary medicinal products.

Subclause (4) requires the DHSS to consult with the Department of Agriculture, Forestry and Fisheries as well as with relevant professions and other interested parties when making regulations relating to veterinary medicinal products.

Subclause (5) substitutes references to the 'British Veterinary Codex' for references to the 'British Pharmaceutical Codex' in clause 9.

All of this is new. I beg to move, Mr President, that clauses 31 and 32 do stand part of the Bill.

Mr Gelling: I beg to second, Mr President.

The President: Section 9(4) and (5)(d) for 'British Pharmaceutical Codex' substitute 'British Veterinary Codex.' I think it is the other way round, Mrs Christian, from what you actually said.

Mrs Christian: No, I said it substitutes references to the 'British Veterinary Codex' for references . . . Oh, yes, you are quite right. I should have said –

The President: I think it was the opposite way from what you said.

Mrs Christian: – for references to the 'Pharmaceutical Codex' substitute 'Veterinary Codex'. Right.

The President: That is better. That is the way it reads.

Mrs Christian: My 'fors' and 'tos' are getting the wrong way round.

The President: I was following and I thought it was reversed and if it was reversed we needed to straighten it out; but it is not, it is okay, fine.

Mrs Christian: It depends how you read it.

The Bishop: I think you said it correctly.

Mrs Christian: I do too, but we know what we mean! *(Laughter)*

The Bishop: I think we will find you did.

The President: Hon. members, the motion I put to you is that clauses 31 and 32 do stand part of the

Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clause 33 and 34.

Mrs Christian: Clause 33 enables regulations to be made to control the addition of veterinary medicinal products to animal feeding stuffs and the supply or import of medicated feeding stuffs. In this clause subclauses (3), (4) and (5) are new.

Subclause (3) applies clause 2 to medicated feeding stuffs so that regulations under that clause can be made for them as they can be made under clause 32 for veterinary medicinal products.

Subclause (4) though provides that regulations under subclause (3) are not to conflict with any labelling or similar requirements under the Fertilisers and Feeding Stuffs Act.

Subclause (5) applies the extended regulation making powers of clause 6, that is the power to create offences, to regulations under this clause.

Clause 34 enables the DHSS to make regulations applying certain enforcement provisions of part 4 to medicated animal feeding stuffs and making special provision for sampling and analysis.

I beg to move that clauses 33 and 34 do stand part of the Bill.

Mr Gelling: I beg to second, Mr President.

The President: Hon. members, the motion I put to you is that clauses 33 and 34 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clauses 35 to 39, 'Pharmacies'.

Mrs Christian: Yes, Mr President. Part 6 of this Bill is a fairly extensive part of the Bill comprising 15 clauses and deals with pharmacies. Of those clauses only clause 42 is new.

Clause 35 defines the expression 'lawfully conducting a retail pharmacy business' which is fundamental to the system of control of pharmacies under part 6. This is more complicated than the usual schemes of regulation of health professionals because retail pharmacy is not just a profession, but is also a commercial business.

Clause 36 sets out the conditions which must be complied with if an individual pharmacist or partnership of pharmacists is lawfully conducting a retail pharmacy business within clause 35(1)(a) at any premises. They are that any premises where medicinal products other than those on general sale are sold, the retail sale or supply of medicinal products, including those on general sale, is under the personal control of the pharmacist or one of the partners whose name and certificate of registration must be displayed on the premises.

Clause 37 sets out the conditions which must be complied with if a company is lawfully conducting a retail pharmacy business within clause 35(1)(b). The keeping and dispensing of medicinal products must be superintended by a pharmacist and their retail sale

must be under the personal control of the pharmacist or another pharmacist.

Clause 38 sets out the conditions which must be complied with if a representative of a deceased, bankrupt or mentally ill pharmacist is lawfully conducting a retail pharmacy business within clause 35(1)(c). The keeping and dispensing of medicinal products must be superintended by a pharmacist. Their retail sale must be under the personal control of him or another pharmacist and the time for which the representative can act is limited.

Clause 39 enables the Department of Health and Social Security to make regulations altering the conditions in clauses 36 to 38 or giving exemptions from the requirements of clause 35.

I beg to move that clauses 35 to 39 do stand part of the Bill.

Mr Gelling: I beg to second, Mr President.

The President: Hon. members, the motion I put is that clauses 35 to 39 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clauses 40, 41 and 42.

Mrs Christian: These clauses deal with registration of pharmacies and clause 40 provides for a register of premises where retail pharmacy businesses are lawfully carried on.

Clause 41 makes supplemental provision as to the registration under clause 40.

Clause 42 is new. Subclause (1) gives a right of appeal to the High Bailiff against a refusal by the registrar to register premises under clause 40 to be brought within 14 days of notification of the refusal.

Subclause (2) specifies the grounds of appeal.

Subclause (3) requires the registrar to give effect to the High Bailiff's decision.

Clause 43 requires the person carrying on a retail pharmacy business to file an annual return with the registrar.

I beg to move clauses 40 to 43 do stand part of the Bill.

Mr Gelling: I beg to second, Mr President.

The President: Mr Lowey.

Mr Lowey: Clause 42, Mr President, 'any person' – could it be that a member of the public who would object to either the granting or non-granting of a licence could appeal to the High Bailiff?

Mrs Christian: 'Any person who is aggrieved by the refusal of the registrar' –

Mr Lowey: So if I feel aggrieved that the chemist shop has not been opened in my locality I can appeal. I live there, but I work in the vicinity and I need to pop out for headache tablets or whatever. So under that I can appeal?

Mrs Christian: I think, Mr President, if you read further down in subclause (2) it sets out the grounds on which you might appeal. 'The High Bailiff may uphold an appeal under this section if he considers that the registrar erred in law; or based his decision on any incorrect material fact.' So I think –

Mr Lowey: But before he can adjudicate he has to be able to sit and therefore again, can I come back to the point, anybody can appeal against the refusal of a thing, which seems to me a little bit open-ended. Any person who has been refused a licence, I would have thought, should have been able to appeal, but any person? It seems a little open-ended.

The President: Yes, to help Mr Lowey: if I apply for a licence and I am refused and I do not wish to take it to appeal, can Mr Lowey take it to appeal?

Mrs Christian: I think possibly he could when I read 'any person,' but I would defer to the learned Attorney for some advice on the interpretation of subclause (1).

The Attorney-General: Yes. Well, I think, Mr President, the hon. member Mr Lowey, on a literal interpretation of the clause could be correct, but I am quite sure that is not the intention. I would have thought –

The President: Ah!

Mr Lowey: Can I . . .

Mrs Christian: Mr President.

The Attorney-General: Yes, I realised the folly of my words as soon as I said them. (*Laughter*)

Mrs Christian: If we look at the third line: 'Any person who is aggrieved by the refusal of the registrar of an application under section 40 may within 14 days of the notification of it to him appeal to the High Bailiff'. The hon. member as a third party and not an applicant, is unlikely to be notified. In which case the wider ability to appeal does not appear to be there.

The Attorney-General: I think that is a very ingenious way of putting it, Mr President! (*Laughter and interjections*)

Mrs Christian: You are making me work hard!

The President: Well, well done!

Mr Lowey: I have to say that in passing the legislation I think we have literally got to look at it as written, because I have been told repeatedly that when the law has been passed then it is not what you thought it meant, it is what it is. That is why I am saying, 'any person should be', and I think it is important that if that is the case then it does open it wide to what I would

call vexatious appeals, which seems to me not what is in the best interest of the public either. Anyway, I am appreciative of the skill of the mover of the Bill and I will take her word for it on this occasion! (*Laughter*)

The President: I am very happy to concur with Mr Lowey's remarks and equally say that I am very pleased that members are doing their work.

Hon. members, I put to you that clauses 40, 41 and 42 do stand part of the Bill. Those in favour please say –

Mrs Christian: Mr President, with respect I apologise. I also moved 43; I think the list I gave to you did not include 43, but 43 falls within the same section.

The President: It does.

Mr Kniveton: I have something, if I may –

The President: Sorry.

Mr Kniveton: In relation to retail pharmacy businesses do we still have on the Island a maximum number of such businesses? Is it controlled or is it wide open these days?

Mrs Christian: Mr President, we have a list. People have to apply to go on to the list to provide NHS services. Anybody can open up a pharmacy, a private pharmacy business, but if they want to provide NHS services they must apply to go on the list. It is not a restricted number, but there is wording within the subordinate legislation and the regulations, I think, which requires the department to give consideration to the availability of services either in the area for which they seek to be listed or in the Island in general.

Mr Kniveton: Right, I have got the situation. Thank you.

The President: Right okay, hon. members. If I reverse back to where I was and I put to you that clauses 40, 41, 42 and 43 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Okay. We will turn then to clause 44 and 45.

Mrs Christian: Clause 44, Mr President, restricts the use of titles such as 'chemist' and 'pharmacist' and other misleading descriptions.

There is a power to remove or add to these restrictions under clause 45. The DHSS can under clause 45 amend the lists by amending the regulations which in turn would require Tynwald approval.

I beg to move clauses 44 and 45 stand part of the Bill.

Mr Gelling: I beg to second, Mr President.

The President: Mr Lowey.

Mr Lowey: Again, it is with regard to the penalties, and they are dealing with wholesale and with drugs generally: it does seem rather small that if I contravene them I can be fined a maximum of £1,000 and is the minister confident that the . . . Nobody ever gets the maximum anyway – well I would not have thought so and I think practice will prove me right – but having said that, does £1,000 not seem rather small as a deterrent penalty? Is she happy with it?

Mrs Christian: Mr President, the penalty under this subclause is for using a title inappropriately. I think there are under other pieces of the legislation further penalties, for example for illegally conducting a retail pharmacy business. One imagines that that might follow on – I call myself a pharmacist in order that I can purport to run a retail pharmacy business, for example. If I am not a legal retail pharmacy business under other clauses then I am subject to penalties there as well.

Mr Lowey: Another £1,000, because that is the one before, clause 43, and it is £1,000 in this one. I note the minister does not disagree that it is perhaps a bit on the small side, but when we are putting them in legislation form we are hardly likely to revisit these for a little while, therefore I think they should reflect what I would call modern day figures, and I think £1,000 is rather small. However, if the minister is satisfied, then who am I? But I do think it is a bit on the small side in dealing in this sensitive area.

The President: Hon. members, I put to you that clauses 44 and 45 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

We will turn to 46 to 49, please.

Mrs Christian: Clause 46 enables the Department of Health and Social Security to disqualify a company or a representative from conducting a retail pharmacy business and from registration on grounds of a conviction or misconduct.

Clause 47 specifies the grounds on which the DHSS can order disqualification under clause 46 on the grounds of an offence or misconduct by an individual, for example, a director of a company or the representative of the deceased pharmacist.

Clause 48 gives a right of appeal to the High Court against a disqualification or a direction to deregister under clause 46.

Clause 49 enables the DHSS to revoke disqualification or direction to deregister under clause 46 and gives the right of appeal against a refusal to do so.

There is nothing new in these, Mr President. I beg to move clauses 46 to 49 do stand part of the Bill.

Mr Gelling: I beg to second, Mr President.

The President: Mr Waft.

Mr Waft: Could I ask through you, Mr President, with regard to pharmacists and the different druggists et cetera, are there limitations into the amount of dangerous drugs of addiction they are allowed on the premises or are they at liberty to purchase from the wholesaler as much as they want?

Mrs Christian: I cannot answer that, Mr President, without advice.

The President: Okay, in that case, hon. members, I put to you that the clauses 46 to 49 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

We will take clauses 50 to 53. Minister, please.

Mrs Christian: Part 7 sets out supplemental matters.

Clause 50 enables the Department of Health and Social Security by order with Tynwald approval to extend the application of the Bill to things which are not medicinal products or veterinary medicinal products, but which may be used with such products or are used as ingredients of such products or may harm the health of humans or animals.

Clause 51 allows any document to refer to the addition of one of the specified publications which is in force from time to time so that it does not have to be reissued or amended every time the publication is updated.

Clause 52 enables regulations under the Bill to prescribe various matters and to apply any UK medicines legislation to the Island and requires Tynwald approval to any regulations.

Clause 53 defines retail sale and related expressions.

I beg to move clauses 50 to 53 do stand part of the Bill.

Mr Gelling: I beg to second, Mr President.

Mr Waft: Mr President, with regard to the updating of the British National Formulary, we tend to go along with the United Kingdom and their rules and regulations wholeheartedly and change the listing of prescribed drugs and non-prescribed drugs straight out of their legislation. Is there any conduit by which general practitioners can make recommendations to have other drugs put on the list or not?

Mrs Christian: Shall I answer that, Mr President?

The President: Mrs Christian.

Mrs Christian: There are two issues here I think: first of all we are talking about whether or not drugs are approved under any of the codes, whether it is EC or UK; and secondly we are talking about the formulary which is generally the list of drugs which are used under the NHS, and they may be different. The drugs which there is a mechanism for doctors to prescribe medication which is not on the formulary at

their own risk, and doctors are free to prescribe drugs outside of the parameters for which they are used in the NHS, at their own risk. There are mechanisms by which doctors may make recommendations to those who compile the formulary with regard to changes in the formulary. So you can have a drug which may be approved by the EC and by the UK as being an appropriate medicine, but it may not be approved for use under the NHS. I am not sure whether that answers the point which the hon. member was making.

Mr Waft: Just for information then: a GP could prescribe a drug which his patient has to pay for at the chemist. Is that what you are saying?

Mrs Christian: Yes.

Mr Waft: Yes, fine.

The President: He can prescribe any drug, but does not have the protection of the formulary list.

Mrs Christian: That is right.

The President: Right. Hon. members, I put to you that clauses 50, 51, 52 and 53 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Now, clauses 54 to 56 and the schedules 2, 3 and 4, bearing in mind, I think, that there was an amendment to schedule 2.

Mrs Christian: Clause 54 introduces schedule 2 which sets out the definitions of various terms used in the Bill. To that there is an amendment made in relation to the definition of a registered midwife and a registered nurse. That is because since the Bill was drafted there have been changes in the legislation relating to nursing and midwifery and it is no longer appropriate to have the wording in this Bill. It has therefore been amended in another place to bring the reference to registered nurses and midwives up to date in line with other legislation.

Clause 55 makes transitional provisions and introduces schedules 3 and 4 which deal with consequential amendments and repeals, Mr President.

Clause 56 gives the Bill its short title and provides for its commencement on an appointed day or days.

I beg to move clauses 54 to 56 with schedules 2, 3 and 4 stand part of the Bill.

Mr Gelling: I beg to second, Mr President, and in so doing would ask: is that change from the Keys from 'midwife' to 'registered nurse' because we now have *midmen*?

Mrs Christian: Mr President, as far as I am aware, male midwives are still called 'midwives' (*Laughter*). The change in another place is because of the definition of 'registered' in relation to those professions nursing in midwifery. So we have not got

equality there yet, nor neutrality nor political correctness – right.

The President: Neutrality. Right, hon. members, I put to you that clauses 54 to 56 and the remaining schedules 2, 3 and 4, noting that there was an amendment made in the Keys to schedule 2, do stand part of the Bill. Those in favour please say aye; and against, no. The ayes have it. The ayes have it.

That takes us on then to completion of the Medicines Bill for today.

**Property Service Charges
(Amendment) Bill –
Clauses Considered –
Third Reading Approved**

The President: We turn to the Property Service Charges (Amendment) Bill and it is in the hands of Mr Delaney. Clause 1, sir.

Mr Delaney: Thank you, Mr President. I will be going through clauses individually because it is new legislation, changing the Bill of its same name from 1989. They are all new clauses so I am going through them individually.

This clause provides new machinery by way of an application to Isle of Man Rent and Rating Appeal Commissioners under which the tenant can speedily and cheaply get a ruling on whether any works or expenses are reasonable, any works are of a reasonable standard or an amount payable in advance is reasonable.

Subclause (1) inserts new subsections (2A), (2B) and (2C) in section 2 of the 1989 Act, which prevents the landlord imposing a service charge in respect of any relevant expenses unless they are reasonably incurred and the services on works in question were of a reasonable standard.

Subsection (2A) enables a landlord or tenant to apply to the Isle of Man Rent and Rating Appeal Commissioners for a ruling on whether any of the expenses were reasonable incurred, service or works are of a reasonable standard or an amount payable in advance of expenses being incurred is reasonable.

Subsection (2B) enables a landlord or tenant to apply to the commissioners for a ruling whether, if expenses were incurred, they would be reasonable or, if the services or works were to a particular specification, they would be a reasonable standard, or what amount payable on account of expenses would be reasonable.

Subsection (2C) prevents an application being made under subsection (2A) and (2B) if a landlord and tenant have already agreed or the matter has to be referred to an arbitration under the lease or tenancy agreement or has already been decided by a court or arbitrator.

Subclause (2) brings into line the tenant's existing right where he is required to insure with an insurer

nominated by the landlord to challenge the choice of insurer. It replaces paragraph 8 of the schedule of the 1989 Act.

Paragraph 8(1) is introductory. The paragraph applies where the tenant is required to insure with an insurer nominated by the landlord.

Paragraph 8(2) enables the tenant to apply to the commissioners instead of the High Court to challenge the landlord's choice on the ground that the cover is unsatisfactory or the premiums are too high.

Paragraph 8(3) is a new provision whereby the tenant would not be able to apply to the commissioners in certain cases, for instance where the matter has already been agreed by the landlord and tenant, the matter has been referred to arbitration under the lease of tenancy agreement or has already been decided by the court or an arbitrator.

Paragraph 8(4) enables the commissioners instead of the High Court to substitute a different insurer.

Paragraph 8(5) is a new provision enabling the commissioners' decision to be enforced as if it were in the High Court.

Paragraph 8(6) is a new provision preventing the tenant's right under this paragraph being indirectly excluded or limited by a term of the lease.

Subclause (3) substitutes from section 5 of the 1989 Act. Its effect is to extend to proceedings before the commissioners or by way of arbitration the existing right of the tenant to apply for an order preventing the landlord including his cost of proceedings in a service charge.

The new section 5(1) enables a tenant in proceedings in the High Court or before the commissioners or an arbitrator to apply an order preventing the landlord including his legal costs of the proceedings in the service charge.

The new section 5(2) provides that an application can be made to the High Court in High Court proceedings; to the commissioners in proceedings before them; to the arbitrator in a current arbitration; or to the High Court when an arbitration is concluded.

The new section 5(3) provides that the court, commissioners or arbitrator can make whatever order it thinks fit or just on the applications.

Subclause (4) inserts a definition of 'the commissioners' in section 13(1) of the 1989 Act.

Subclause (5) amends section 3(3) of the Rent and Rating Appeals Act 1986 by allowing the Council of Ministers to make rules for regulating the practice and procedures of the commissioners, so that it will now cover the exercise of the commissioners' jurisdiction under any enactment.

I beg to move that clause 1 stand part of the Bill.

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

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

Clause 2.

Mr Delaney: This clause, Mr President, restricts the landlord's rights to forfeit a release or tenancy for non-payment of a service charge unless the charge has been agreed or adjudicated to be payable. It inserts new sections 9A and 9B in the 1989 Act.

The new section 9A(1) provides that the landlord cannot terminate a lease or tenancy of the premises let as a dwelling by exercising his rights under a forfeit if for a breach of the tenant's covenant in the case of non-payment of a service charge, unless it has been agreed to be payable or a court or arbitrator has decided that it is due, thus bringing the lease or tenancy to an end.

The new section 9A(2) provides that where a court or arbitrator has decided that the service charge is due, the right cannot be less than 14 days after the date of that decision.

The new section 9A(3) provides that the date of the decision is the date it is given even though there may be an appeal against that decision.

The new section 9A(4) defines 'premises let as a dwelling'. It includes a dwelling which is part of a business tenancy or agricultural tenancy.

The new section 9A(5) provides that a right of forfeiture on other grounds than the non-payment of a service charge is not affected.

The new section 9B(1) supplements section 11 of the Conveyancing (Leases and Tenancies) Act 1954 which requires a landlord to give the tenant notice of a breach of covenant or condition before he can rely on it as a ground for forfeit in such lease.

The new section 9A does not effect the requirement of section 11, but in the case of a non-payment of a service charge in respect of premises let as a dwelling, the notice must clearly state that section 9A applies and set out the effect of 9A(1).

The new section 9B(2) applies the same definition of 'premises let as a dwelling' as in section 9.

I beg to move clause 2 of the Bill.

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

The President: The motion I put, hon. members, is that clause 2 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clause 3.

Mr Delaney: Clause 3, Mr President, enables the tenants' association to appoint a surveyor to advise on works and expenses with the right to inspect the landlord's documents and the property.

Subclause (1) of the new section 10A in the 1989 Act – section 10A(1) will enable a recognised tenant's association to appoint a surveyor to advise on matters relating to a service charge of a recognised tenant's association, which is one which the landlord has agreed to recognise or which the Department of Local Government and the Environment has ordered him to recognise under the section 13(2) of the same said 1989 Act.

Section 10A(2) introduces a new schedule 2 giving the surveyor rights of inspection.

Section 10A(3) requires the surveyor firstly to be registered and accepted as FRICA, ARICS, FSAV or ASVA or secondly to hold some other qualification to be specified in regulations made by the Department of Local Government and the Environment.

Section 10A(4) provides for the appointment to be effective for the purpose of the 1989 Act on notification to the landlord.

Section 10A(5) provides for the appointment to cease for the purposes of the 1989 Act on notification to the landlord or if the association ceases to exist.

Section 10A(6) enables a notification under section (4) or (5) to be given to the landlord's agent.

Section 10A(7) requires Tynwald approval for the regulations under section (3)(b) to be brought in.

Subclause (2) inserts a new schedule (2) in the 1989 Act.

Paragraph 1 is introductory: a surveyor appointed under section 10A(1) is given the rights under paragraph 2(5).

Paragraph 2 enables the surveyor to appoint assistants who have the same rights under this schedule as he has.

Paragraph 3 gives the surveyor the right to inspect documents of the landlord and take copies. This also applies to documents or other relevant persons, e.g. the landlord or the managing agents. The surveyor is to give a notice requiring production of the documents to the landlord, agent, et cetera. If the notice is given to an agent a copy must be given to the landlord and notice to be given to a person who receives the rent on behalf of the landlord is treated as given to the landlord, but he must forward it to the landlord as soon as possible. The landlord must, within one week, give the surveyor access to documents free of charge.

Paragraph 4 gives the surveyor the right to inspect any common parts of the property in respect of which such service charges are to be payable by the members of the tenants association and any other property in respect of which service charges are payable. Common parts include the structure of a block of flats and common facilities such as staircases, fire escapes and gardens et cetera. The landlord is to provide access on request, but is not to charge the surveyor for access, but he can include the cost of providing access in the service charge. A request may be given to the landlord's managing agents, if any, to a person who receives rent on behalf of the landlord or agent, but he must notify the landlord of the request as soon as possible.

Paragraph 5 provides for the right under paragraphs 3 and 4 to be enforced by order of the High Court on an application made within four months of the notice or request. Disobedience would be punished as a contempt of court.

Paragraph 6 covers the case where documents required under paragraph 3 are in control of the superior landlord. The landlord must notify the surveyor that this is so and the surveyor can then serve notice on the superior landlord.

Paragraph 7 provides that where the landlord disposes of his interest in the property, whether by sale or lease, he and the transferee are liable to perform such of the obligations of the landlord as are within their respective powers to fulfil.

Paragraph 8 provides similarly that where someone, the managing agent, ceases to be a relevant person under the terms of paragraph 3, he remains liable to provide documents which are still in his control.

Subclause (3) is consequential and reference to 'the schedule' in section 10 is now as 'schedule 1'.

I beg to move clause 3.

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

The President: Mr Waft.

Mr Waft: Just a small point, Mr President. Under 10A it states the right to appoint a surveyor – it seems to be just a recognised tenant's association is able to take up this situation with a surveyor. Often there is not a full group of people willing to form an association and a lot of individuals from their own areas of living are not keen on joining groups. Are you disenfranchising them because they are not a member of an association or have they got the same rights?

Mr Delaney: As I understand this Bill, it is as the 1989 Act which covers an individual tenant as well as a group, a recognised tenant's association or body which is recognised by the Department of Local Government and the Environment. So it is not disenfranchising an individual on those grounds at all.

Mr Waft: It is just a right to appoint a surveyor that . . .

Mr Delaney: I will ask that to be confirmed by the Attorney-General just to make sure there is no doubt in that.

The President: I do not know if the Attorney will be able to help or not.

The Attorney-General: I think, Mr President, to go back to the first part of the Bill, clause 1 amends the 1989 Act and it enables a tenant, so that is an individual tenant or a corporate tenant, to apply to the commissioners for a determination that a service charge is unreasonable. So that preserves the right of the individual tenant, and under the new clause (2B) which is added the tenant can also ask for a determination if expenses were incurred reasonably and so on and so forth. So all those additional rights are given to the individual tenant as well as a corporate tenant. I think what the new clause is doing – this is at page 5 of the Bill, we are adding a new clause 10A – is that a recognised tenants' association is given additional rights to appoint a surveyor to determine the things there. It would not, I think, prevent an

individual tenant also applying for the appointment of a surveyor if he wanted to under the first part of the Bill in clause 2.

Mr Delaney: Thank you, Mr Attorney.

The President: Mrs Christian.

Mrs Christian: I just have a further query in relation to clause 3 and the right here is created for a tenants' association to appoint a surveyor, presumably to look at such matters as relate to the service charges payable to the landlord. Could the mover confirm that that would be at the tenants' association's cost? If indeed the surveyor found that the landlord was somehow in breach of his obligations in respect of services provided, would the tenants' association have any way of clawing back their expenses?

The President: Okay, Mr Delaney?

Mr Delaney: Yes. As I understand it, they have the right to appoint a surveyor at their cost to the association, but the fact of it is that the landlord then, as I understand it, cannot, when he picks one, put his charges against the costs of the service charge and neither can the tenant's association claim back from the landlord the legal costs or the costs to get the surveyor.

Mrs Christian: Thank you.

The President: Okay. Hon. members, I put to you that clause 3 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

We will take clause 4, Mr Delaney.

Mr Delaney: Clause 4 follows on from clause 1 by transferring to the Isle of Man Rent and Rate Appeal Commissioners certain functions of the High Court under the 1989 Act and allowing the High Court to refer any questions falling within the commissioner's jurisdiction to them for a decision.

Subclause (1) transfers functions of the High Court under section 3 of the 1989 Act to the commissioners.

Section 3(6) enables the High Court in any proceedings relating to a service charge to dispense with the requirements as to estimates and consultations if it is satisfied that the landlord has acted reasonably, e.g. if an emergency happened, where delay in obtaining estimates would have significantly increased to the cost of works. This is extended to cover proceedings before the commissioners for example under section 2(2A).

Subclause (2) transfers to the commissioners the power of the High Court under schedule 1 paragraph 7, where the tenant's service charge includes the cost of insurance by the landlord to order that the landlord reduce or increase the cover under the policy if it thinks it excessive or inadequate.

Subclause (3) is a transitional saving for the High Court proceedings pending when the powers referred to in subclause (2) come into force.

Subclause (4) inserts a new section 10B in the 1989 Act enabling the High Court in any proceedings relating to a service charge to refer to the commissioners any question falling within their jurisdiction.

Section 10B(1) enables the High Court in any proceedings relating to a service charge, for example an action by a landlord to recover unpaid arrears to refer to the commissioners any question falling within their jurisdiction, such as a question whether services or works in question were made of reasonable standard under section 2(2A). The court can either dispose of the rest of the proceedings or adjourn the case pending a decision by the commissioners.

Section 10B(2) provides for the commissioners' decision to be embodied in an order of the High Court.

Section 10B(3) provides that such an order is to be treated as a decision of the High Court for the purposes of 9A.

I beg to move clause 4.

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

The President: Hon. members, the motion that I put to you is that clause 4 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clause 5, Mr Delaney.

Mr Delaney: Mr President, this clause enables the tenant of a flat to apply to the commissioners for an appointment of a manager of the block of flats where unreasonable service charges have been or may be imposed.

Subclause (1) inserts a new section 10C in the 1989 Act, introducing a new schedule 3.

Subclause (2) inserts a new schedule 3.

Paragraph 1 is introductory defining terms used in the schedule, but in it the landlord is not a resident landlord in the case of a purpose built block of flats.

Paragraph 2 defines the premises to which the schedule applies. They are a building or part of a building containing two or more flats except one where the landlord is a resident landlord or a public authority or which is occupied by a charity for charitable purposes.

Paragraph 3 gives the tenant or tenants of a flat the right to apply to the commissioners for an order under paragraph 6 appointing a manager of the block.

Paragraph 4 requires prior notice of an application under paragraph 3 to be served on the landlord. The notice must specify the matters of which the application will apply and require the landlord to take specified steps within a specified time to remedy them if they are capable of being remedied. The commissioners can dispense with notice if service would be impracticable, for example, where a landlord

cannot be traced, but require other notices to be served instead.

Paragraph 5 precludes an application being made where the time for a compliance with the requirements of a notice under paragraph 4 has not expired. It also requires procedural rules to be made as to service of the notice of the application.

Paragraph 6 enables the commissioners to appoint a manager of the block of flats with such functions relating to management, including repair, maintenance and insurance of the property and on such functions of a receiver, to receive rents and service charges and to pay outgoings as he thinks fit. An appointment can only be made where unreasonable service charges have been or are likely to be imposed for excessive amounts or for service of works of too high or too low a standard. The appointment can be for a fixed term or indefinite and can provide for a manager's remuneration. The order of appointment must be registered as a deed or in the land registry if it is to be binding on the landlord's successors in title.

Paragraph 7 enables an appointment to be varied or revoked.

I beg to move clause 5.

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

The President: Hon. members, the motion I put is that clause 5 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clause 6.

Mr Delaney: This clause enables the landlord to obtain a charging order in respect of a dwelling in order to recover unpaid service charges, for example, some of the tenants of a block of flats wish the landlord to undertake repairs or decorations, but he is unwilling to do so because one or more of the flats have been sublet to weekly tenants and he has difficulty recovering the service charge from the owners. This enables the landlord to apply to the High Court for an order in relation to a flat from which service charges are or will become due, giving him the right to step into the owner's shoes and receive the rents of the flat, or if it is empty to let it in order to recover his charges. The clause inserts a new section 11A in the 1989 Act.

Section 11A(1) enables the landlord of a dwelling to apply to the High Court for a charging order imposing on the tenant's interest in it a charge, in other words a type of mortgage, to secure the payment of part of the future service charges.

Section 11A(2) precludes the charging order being made unless the court is satisfied that without it service charges cannot be recovered from the tenant without unreasonable difficulty or expense.

Section 11A(3) enables the charging order to be made subject to section 11A(4) and it specifies the effect of the charging order. The landlord is given the same rights as he would have if the tenant had given

him an equitable charge on the property, i.e. to apply to the court for an appointment of a receiver who can receive rents or let the property, an order the sale or foreclosure.

Section 11A(5) enables the landlord or tenant or a mortgagee or other person effected, to apply to the court for the discharge or variation of the charging order.

Section 11A(6) makes it clear that the other remedies of the landlord are unaffected, for example an action for recovery of arrears or forfeiture of the lease.

I beg to move clause 6.

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

The President: The motion, hon. members, is that clause 6 do stand part of the Bill.

Finally clause 7, Mr Delaney.

Mr Delaney: This clause, Mr President, provides for the short title of the Bill, its interpretation and its commencement on appointed day or days.

Subclause (1) gives the Bill its short title.

Subclause (2) defines the term of the 1989 Act.

Subclause (3) provides for the commencement of the Bill on one or more appointed days.

I beg to move.

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

The President: The motion, hon. members, is that clause 7 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Mr Delaney: Mr President, can I crave the indulgence of my hon. colleagues by asking if they will be prepared to take from me the third reading of this Bill?

Mrs Christian: Mr President, point of order. We did not actually vote on clause 6.

The President: Did I not? (**Mrs Christian:** No.) I apologise most sincerely, hon. members, if I did not. I admit I was running down a thought in my mind in relation to business tenancies and why they are exempt. That is what was taking my mind away, and I apologise if I did not put to you clause 6 formally. Thank you, Mrs Christian for raising that to me; I shall, hon. members, so that it is as a matter of record that we have approved clause 6. Those in favour of clause 6 standing part of the Bill, please say aye; and against, no. The ayes have it. The ayes have it.

Now, Mr Delaney is seeking the indulgence as to whether or not we should take the third reading, hon. members?

Mr Lowey: I would support Mr Delaney on this occasion. I believe that although the Bill has only been short in its gestation through the branches, it has highlighted and we have brought out a history that was a long-running affair. I believe it is social legislation that would be welcomed. It has no effect in my view on what I would call the vast majority of sensible landlords and running apartments. Socially in the Isle of Man we are now seeing more and more people living in apartments/flats and I think this is relevant legislation. I believe the quicker it is on the statute book the better, and a big comfort it will be too to both landlords and tenants. I would support the suspension of standing orders today to take it through.

The President: Mr Waft.

Mr Waft: Mr President, the devil is in the detail and we will have to wait and see how this Bill progresses and becomes an Act, the furtherance of it and how it actually works out in practicalities. If there are any shortfalls that are identified, I think it is incumbent on us to bring them quickly through the legislature again rather than have anybody suffering because of this.

The President: Well, hon. members, I put to you that we suspend standing orders in order to take the third reading. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Mr Delaney, crack on.

Mr Delaney: Mr President, I am grateful to my colleagues for this. At the moment, as my seconder has said, the situation is that we might not be talking of large amounts of people, but it does affect ordinary people in ordinary situations and I cannot fail to feel responsible for part of the problems that occurred from the original 1989 Bill, as I was the mover and the understanding I had of it was wrong. This Bill, I believe, will rectify some of the errors that were made, and I have no doubt whatsoever that in the future it will be back in front of the people who sit in my place pretty quickly if we have a situation occurring again. I would move the third reading in the knowledge that the people that come after me will judge this difficult piece of legislation between landlord and tenant in the same way they look at the need to look after our own people in houses provided by the state.

I beg to move the third reading and in so doing I would like to answer a query here that, although it was said in court, I understand, that the maximum may be a £1,000 fine that could be levelled, I have had it clarified as I thought it was under the original 1989 Bill: £2,500 is the maximum fine applicable on this. I am quite sure in future that when a fines Bill or an amending Bill comes through to increase fines, this will be looked at because it is not a lot of money to a person who is making a lot of money in the flat business, as I call it, from people who, in most cases, cannot afford to pay charges on properties, letting multi-occupation flats. I beg to move the third reading.

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

The President: Mr Gelling.

Mr Gelling: Could I just raise one point at the third reading, because actually your remark that you said you were just running your eye down the exemptions got my mind going, being connected with a charity. It says: 'The Bill seeks to improve the protection given to tenants.' Can I then ask, perhaps, for clarification – as I say, being connected with a charity that owns two apartments within a block of six, we have had great problems in finding out who managed the rest of it and who is responsible for the repairs – do I take it that this is purely and simply for tenants and nothing whatsoever to do with those who actually buy an apartment within a block?

The President: My thought going down business tenancies is that I noticed that they were exempt under the 1971 business applied tenancies and the thought was crossing my mind in relation to a shop premise with maybe flats above or whatever. Mr Delaney.

Mr Delaney: That is a question I addressed myself to in part with the charities. I must admit my mind was concentrating on charitable purposes where flats are given to the homes, for example. That is what I was looking at and I understood that the charity organiser had the same right as a landlord to be able to act as if they were living in the flat.

Mr Gelling: Right.

Mr Delaney: That was my understanding of it, but the Attorney-General, I am sure, can clarify that. I concentrated on the person who was in the flat rather than the charity itself, but I understand the charity is treated like a tenant.

The President: Or, in Mr Gelling's case, the charity, if they were the owner of the block of flats, would be treated as the landlord.

Mr Gelling: I think here just a little explanation: six apartments, the charity has purchased two, to which they, then at a very much reduced tenancy, put handicapped people. So I was just trying to figure out with the landlord and the tenancy and the ultimate responsibility of the block, where the division is between them?

Mr Lowey: You are the tenant. You are the landlord to the tenant in your property, but then you are the tenant to the landlord of the major property. So you then –

Mr Gelling: If the Attorney-General would care to –?

The President: Do you wish to comment, sir?

The Attorney-General: Well, Mr President, I am sorry, I am trying to find reference to 'charitable purposes' in the new schedule 3. I am certainly more content with the Tenancy of Business Premises Act point, because of course that legislation gives particular protection to business tenants in the same way that the Agricultural Holdings Act gives protection to agricultural tenants, but I am just trying, as I say, to find reference to the charitable purposes in the schedule 3. Sorry to hold everyone up.

Mrs Christian: Page 11.

The Attorney-General: Page 11 defines charitable purposes, but I am trying to find reference to it in the schedule itself.

Mr Gelling: I am still very supportive of the Bill, Mr President. (*Interjections*) I just thought it could be a complication.

The President: I think in reality, if Mr Delaney does not wish to add to that, Mr Waft came up with the suggestion that may be the devil is in the detail and it will unfold as it goes forward.

Mr Gelling: Regulations.

The President: I do not know. Nevertheless, hon. members, the motion that I will put to you in line with your suspension of standing orders is that the Property Service Charges (Amendment) Bill 2002 be read for a third time. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Now, hon. members, having worked our way through our order paper for today, our adjournment will be until Tuesday next, 11th February, when we will sit again at 10.30 a.m., and in the interim I would be grateful if members will stay briefly for a few minutes in private. Thank you.

The Council sat in private.
