

# **REPORT OF PROCEEDINGS OF THE LEGISLATIVE COUNCIL**

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**Douglas, Tuesday, 11th February 2003  
at 10.30 a.m.**

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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 E A Crowe, 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.

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*The Lord Bishop took the prayers.*

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## Welcome Back to Mr Crowe

**The President:** Hon. members, may I first say how pleased I am to see Mr Crowe back among us. (**Members:** Hear, hear.) We are pleased to have you back with us, Alan.

**Mr Crowe:** Thank you.

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## Manx Radio – KiK FM – Advertising Rates – Revised Programming Structure – Question by Mr Lowey

Item 1. The hon. member (Mr Lowey) to ask the member of the Council of Ministers (Mrs Christian):

*Further to the approval by Tynwald of additional funding to Manx Radio and the strategy outlined in the report 'The Future Rôle, Structure and Funding of Manx Radio' –*

- (a) *will the KiK FM service be withdrawn on the earliest date possible, after fulfilling any existing contractual obligations;*
- (b) *in the meantime is the policy of actively promoting KiK FM to continue;*
- (c) *is it current policy to undercut competitors on advertising rates, and if so, is that policy to continue; and*
- (d) *when will the revised programming structure be introduced?*

**The President:** We turn, then, to our order paper, and we start with number 1, a question. I call on the hon. member Mr Lowey.

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

**The President:** The member of the Council of Ministers, Mrs Christian, to reply.

**Mrs Christian:** Thank you, Mr President. The answer to the hon. member's first question is that KiK FM is scheduled to close at 8.15 p.m. on Sunday 30th March, with a new Manx Radio weekend schedule starting on Saturday 5th April. I am informed that there are contractual obligations in place until the end of March, and Manx Radio states that, in the interest of maintaining appealing services, the station has to consider closely the programmes that will replace KiK before this service is closed down. The split-channel approach – AM and FM – that has been obtained while KiK has been on air has been directed at two distinct listener groups. On Sunday in particular, this has permitted certain programmes on the AM channel to be more focused on the older listener than would

normally be the case when only broadcasting one service. Without KiK, the range of programme appeal has to be brought back towards the middle ground, and Manx Radio says it is not simply a matter of stopping KiK and what is currently on AM going out on all channels.

Part (b) of the question, Mr President, in relation to the promotion of services: Manx Radio's position is that it should continue to promote the services it is running at any particular time. However, as the time for the introduction of the new weekend service approaches, promotion will switch more to that service.

In respect of part (c) of the question, I am advised that Manx Radio's policy on advertising is the same today as it has been for many years. It is focused on the requirement for Manx Radio to earn considerable revenue from the advertising market to support the station's public service schedule and is not itself influenced by the rates charged by competitors. The station has a wide product range across spot advertising and sponsorship, with special promotions always in the market. Subject to various conditions such as time of day, duration, whether it is run of schedule or time fixed, length of contract et cetera, single advertising spots are currently sold from £3.50 at the lowest end to £38. Sponsorships are also sold over many programmes and features, from flagship programmes like 'Mandate' to daily time checks. They carry differing values depending on the perceived commercial value of the feature and the time of day. In summary, on this part of the question, Mr President, Manx Radio states that it has no policy that is formed around the advertising rates charged by competitors.

With regard to part (d), I have already mentioned, Mr President, that Manx Radio will be introducing its revised weekend programme schedule on Saturday 5th April. So far as enhanced programming generally is concerned, as a result of Tynwald's approval of the recent strategy review report, Manx Radio is currently in the phase of recruiting staff and addressing the station's new organisational structure. Manx Radio will not actually start receiving the additional financial support until March at the earliest, and this naturally affects the pace at which additional services can be introduced. I am informed by Manx Radio that the additional services, generally speaking, will be at the higher end of the skill range as regards production and presentation work. Services to be delivered by new staff will carry an inevitable introduction period and, where they are being delivered by existing staff, there will be inevitably a knock-on effect, with new staff needed to fill existing posts and existing duties. On a practical footing, therefore, Mr President, I believe that Manx Radio is planning to start introducing its new programmes as part of the summer schedule in June.

**The President:** Mr Lowey.

**Mr Lowey:** I thank the minister for her reply. Would the minister not agree that as KiK FM is to finish, as she has announced today, on 30th March, it

does seem strange that the station is still promoting that particular brand over its wavelengths with only six weeks to go? And when we are on advertising, perhaps the radio station could take on board letters that I have received from a number of people regarding the question of advertising in external journals, for example. The radio station does not, I am informed, advertise its programmes in the printed media, and people who have written to me have actually said, 'How can we plan our evenings ahead if we do not know unless we are listening to the radio station, and it is in competition with television and the rest?' I think it is a fair point, and perhaps that is an area the station would be best advised to look at. And is the minister happy? I noticed in her reply the allegation was made in Tynwald Court that the station was undercutting its competitors – it is alleged, anyway – and it is still alleged that they are still doing just that. It would be surprising indeed if the radio station did not know what its competitors were charging, whether it be in the press or on alternative radio stations. I would be very surprised if they did not know the going rate, and it is still alleged that they have a practice of undercutting advertising from their competitors.

**The President:** Mrs Christian.

**Mrs Christian:** Thank you, Mr President. I think I have answered the first part of the supplementaries, in that the radio station has indicated that, whilst they continue to use the KiK FM programmes, they will continue to promote that programme. However, when the time comes for the transfer, as that approaches, then the emphasis will move towards the new scheduling and the new programmes.

With regard to the pricing structures for advertising on Manx Radio, as they have indicated, they do have a requirement to raise revenue from advertising and, presumably, to be market competitive. As to whether or not, in that situation, one is conscious of competitors' rates, if they are commercial then I would expect them to be, though they have indicated that their policy is not driven by their competitors' rates – they have an overall structure of their own. However, I am conscious that some people would question whether or not they have driven down their rates, but I think the structure is a complicated one and perhaps comparisons are not particularly easy to make. I think that covers the supplementaries, Mr President.

**The President:** Mr Waft.

**Mr Waft:** Thank you, Mr President.

**Mrs Christian:** Oh, I am sorry, I did –

**The President:** Sorry. Mrs Christian.

**Mrs Christian:** – omit to comment on the advertising. I will convey your observations on that through the Council of Ministers to Manx Radio, although I am sure they are noting that themselves –

representatives are here this morning. I think that too we should point out to the public that they do not have to wait for a question in here to express any views about Manx Radio, and I am sure the radio station or, indeed, the trustees would be happy to receive observations from the public at any time, but if they have written to you, I am quite sure that your concerns can be conveyed after this morning to the station about advertising in other media.

**The President:** Now, Mr Waft.

**Mr Waft:** Thank you, Mr President. The main complaint I have received is about having to actually switch, not actually KiK FM. That is not the problem, KiK FM; it is having to actually physically switch over to a different programme. The KiK FM listeners and the VHF listeners are different categories of people, and they both have to do that certain thing. I wondered if the minister knew whether there were any thoughts about the legislation and the widening of the listening area for the radio station.

**The President:** Minister, that is a wide question.

**Mrs Christian:** It is a wide question, Mr President. I am not quite sure what the context of it is, whether you are talking about the Isle of Man taking on its own broadcasting legislation. I would be entirely in support of that. We have been trying to do that for decades and have not yet achieved it, but if that is what the hon. member is talking about, I would certainly endorse the principle.

**Mr Waft:** There is nobody looking at it, that is why I am asking.

**Mrs Christian:** Oh, yes, indeed. The Council of Ministers reviews that situation and seeks to make change from time to time.

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### Medicines Bill – Third Reading Approved

**The President:** Hon. members, we turn, then, to item 2 on our order paper, which is the Medicines Bill. It is down for third reading, and it is in the hands of the hon. member Mrs Christian.

**Mrs Christian:** Thank you, Mr President. In moving the third reading, perhaps I could just respond to one or two issues which were raised during the second reading and clauses stages. In particular, I think some concern was raised about the level of fines under the legislation. Members will recall that each part of the Bill has a clause dealing with the offences within that section of the Bill, and these provisions are very much based on the standards and levels of fine applicable in other legislation. A typical offence, for example, under part 1 might be the importation of unlicensed medicinal products or the distribution of medicinal products without a licence. I would point out

that, on each occasion an offence like that is carried out, then the person or company could be liable to a fine of up to £5,000 for each incident. So, I hope that, in the light of that, hon. members will feel that the levels at which these are pitched are appropriate, but of course they can be reviewed in the course of time. I am not aware that there have been many breaches, actually, so maybe that is indicative that there is not a major concern in that area.

I was also asked about quantities of dangerous drugs stored in pharmacies. 'Dangerous drug' is now being replaced by a new term, and that is 'controlled drug'. All medicines are licensed under the Medicines Act, but medicines containing addictive substances are additionally covered by the Misuse of Drugs Act 1976. The department does not set limits on the quantities of controlled drugs which can be imported by pharmacists or veterinary surgeons. We cannot predict the demand for their supplies, and it is considered that any system of control would be administratively burdensome and, indeed, might not allow those practitioners to have the necessary supplies available. So, it is up to them what they import quantity-wise. Obviously, there are controls on maintaining records of what they have brought in and what has been used, and of course there is a requirement for proper secure storage. That is also covered by regulations, and the constabulary have to also approve any exemptions from those requirements. So, the answer is that there is no limit on the quantities, but there are controls in place to record what comes in, what is used and how they are stored in a secure manner.

I think they were the main issues, Mr President. I did check on my answer in relation to the British National Formulary – I am sorry I cannot remember which hon. member asked about that. What I did say at the last sitting was correct, so I hope that members are comfortable with the relationship between the formulary and what can be prescribed and so on.

So, in summary, Mr President, in dealing with the third reading, the reason for this Bill, as we have gone through it, has been recognised as setting up a new system under which the manufacture, import, export, sale, supply and advertising of medicinal products can be regulated in the Island, in the areas of both human and animal medicinal products. It has improved on the system of controls which the department was exercising under the 1976 Act and, indeed, recognises the changes which are taking place in Europe and the United Kingdom in relation to the approval and certification and licensing of medicines and so on. Much of it, as we recognised too, was reiteration of earlier legislation in relation to consumer protection, the promotion of sales of medicinal products, enforcement issues, control of pharmacies and so on. That being the case, Mr President, I beg to move the third reading so that we can bring into effect, at an early opportunity, the Medicines Bill 2002.

**Mr Waft:** I beg to second, Mr President, and reserve my remarks.

**The President:** The Bill seconded by Mr Waft, hon. members, the motion I will put to you is that the Medicines Bill 2002 be read for a third time. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

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### **Submarine Cables Bill – First Reading Approved**

**The President:** We will turn, then, to the Submarine Cables Bill, and it is for first reading in the hands of Mr Kniveton.

**Mr Kniveton:** Yes, thank you, Mr President. This Bill is intended to fill a gap in Manx law, as there is currently no legislation covering the laying of cables on the seabed within Manx territorial waters. There is, however, a convention of 1884 on submarine telecom cables outside territorial waters, which is given effect by the UK Submarine Telegraph Act of 1885, which extends to the Isle of Man.

Within territorial waters, there is currently no statutory requirement for those proposing to lay a cable to comply with safety requirements, no other obligations in respect to the initial laying of the cable. This may include such things as the granting of authorisations and the requirement for applicants to provide information such as an environmental impact assessment, survey data, project layout et cetera. At the present time, there is reliance on owners and contractors working voluntarily to establish good practice. The Territorial Seas Committee therefore concluded that submarine cables should be covered by a similar statutory framework as currently applies to pipelines. This would be carried out under the stewardship of the Department of Transport and would provide statutory controls to strengthen the department's ability to control activities and to achieve specified standards in Manx territorial waters. The Bill and the regulations leading from it will achieve this.

For the laying of any submarine cable within Manx territorial waters, the Bill requires an authorisation by the Department of Transport. In the Bill, the procedure for the granting of authorisations is modelled on the Manx legislation applying to the laying of submarine pipelines, that is part 3 of the UK Petroleum Act 1998, which applies to submarine pipelines, as applied to the Isle of Man by order under the Petroleum Act of 1986 of Tynwald. The Bill also enables the department to make safety regulations in order to control operations and vessels in the vicinity of the cables. The 1884 Convention on Submarine Telecom Cables and the United Nations Convention on the Law of the Sea impose corresponding obligations on cable owners, namely to pay compensation for anchors or fishing gear sacrificed to prevent damage to a cable and to pay the cost of repairing damage caused to any other cable or pipeline. There will be no financial implications to the department. The Bill contains provision for regulations, and it would be

possible to include licence or inspection fees in regulations. Sir, I beg to move.

**Mr Delaney:** I beg to second, sir. In saying so, I am delighted to be able to second this, because I always did think, when we had the Pipelines Act, that it covered the cables as well. Obviously it did not, and I am delighted for the environment for the future that we will have some control.

**The President:** Mr Lowey.

**Mr Lowey:** Could I say – and I do not wish to be a spectre at the feast – that the exercise of laying pipes on land under the control of the Department of Transport was not a happy exercise. I wonder how much more confidence we will have with them inspecting the laying of cables and pipes under the sea, where we cannot see what happens. I wish them well. I think the legislation is for the right reasons. It is safety-orientated, and I think it is right that the highest standards should be at least attempted to be put into place. *(Interjection by Dr Mann and laughter)*

**The President:** Do you wish to reply, Mr Kniveton?

**Mr Kniveton:** Yes, very briefly, sir. I thank Mr Delaney for seconding the first reading and for his remarks. And when we come to Mr Lowey, I have to say I am a little bit disappointed that, yes, we have, as I admitted last week, got a problem over a mile or so on the old Castletown road, but I have to say also that 90–odd per cent of the work done is very satisfactory. I beg to move, sir.

**Mr Delaney:** In a pipeline, that is no use. *(Laughter)*

**The President:** Hon. members, the motion I put is that the Submarine Cables Bill be read for a first time. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

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### **Anti-Terrorism and Crime Bill – First Reading Approved**

**The President:** We turn, then, to the Anti-Terrorism and Crime Bill, again for first reading, this time in the hands of Mr Lowey.

**Mr Lowey:** Thank you, Mr President. Hon. members, without attempting to be too melodramatic, on 11th September 2001 the world as we know it was changed forever. As a result of the tragic events in New York and Washington, the governments of the Western world have reacted to the direct threat of terrorism by introducing legislation to protect their citizens – and, as it turned out, quite correctly, because more recent events have underlined that the need for

that was obvious. We would only have to quote Bali and the arrests of alleged terrorists in Spain, Italy, Germany and Sweden in the last few weeks. The United Kingdom, Jersey and Guernsey have already recognised the urgent need to address the increased threat in terrorism and have similar legislation in place to that proposed. This Bill will ensure that the Isle of Man Government not only has the means to protect its people but plays its part in the international arena by ensuring we have measures in place to prevent the Island being used by terrorist organisations in any way to assist them in carrying out atrocities. The Department of Home Affairs has conducted a consultation exercise on the Bill and provided a further opportunity for all members of Tynwald, for example, to ask questions at a presentation held recently.

The Anti-Terrorism and Crime Bill has been drafted as a result of an extensive review of the United Kingdom Anti-Terrorism, Crime and Security Act 2001 and our own existing legislation. This review clearly identified the urgent need to update the Island's outdated preventative laws on terrorism, which currently still rely on the Prevention of Terrorism Acts of 1990 and 1992, which were designed to deal primarily with Irish terrorism. Therefore the government, uniquely in the British Isles, has, in effect, no such additional powers to protect the Island's residents. In addition, the recent visit to the IMF has highlighted the Island's vulnerability to international criticism as a result of the Isle of Man falling behind the world in preventative laws on terrorism. In effect, the Isle of Man is conducting a catching-up exercise to take account not only of recent events but those of the last 10 years to ensure the government is equipped better to face the menace of global terrorism.

The Bill strikes a balance, hopefully, between respecting the Island's fundamental civil liberties and ensuring that they are not exploited by those who would destroy them. It brings specific, targeted and proportionate measures into place, along with extensive checks to ensure the use of additional powers is always terrorist-related and at all times reasonable, while providing enforcement, intelligence and other services with the means to tackle the new terrorist threat. Having said this, it is important to note that much of what is included in the Bill is not new; it re-enacts those provisions of the Prevention of Terrorism Act 1990 which remain necessary, with a number of modifications, for example applying the provisions to all categories of international terrorism and not restricting them to the affairs of Northern Ireland.

In brief, the Anti-Terrorism and Crime Bill updates the Island law by: introducing measures to proscribe terrorist organisations; dealing with fund raising and other means of support for terrorism; providing greater powers for the police to investigate and arrest terrorist suspects; introducing ancillary offences for terrorist weapon training and directing terrorist organisations; providing the Treasury with new freezing order powers, including the power to freeze assets related to terrorism; introducing new

powers in regard to the disclosure of terrorist-related information by public bodies; providing new offences for bomb and substance threats; and dealing with international bribery and corruption. These measures will enhance the Island's anti-terrorist and security capabilities and bring them broadly in line with the international norm.

In summary, Mr President, the terrible outrages committed in the last 15 months have increased our awareness that anywhere in the world is a legitimate target for terrorist outrage. It is therefore our responsibility to act on this awareness by ensuring we protect our people and reduce the chance that the recent events in Bali can never happen in the Isle of Man. Mr President, I move the first reading of the Anti-Terrorism and Crime Bill.

**The President:** Mr Kniveton.

**Mr Kniveton:** Yes, I am very happy to second that, Mr President. This Bill aims to repeal and replace the Prevention of the Terrorism Act of 1990 and then continues to make, as Mr Lowey has told us, further provision about terrorism and criminal justice. Again as Mr Lowey has told us, these are essentially revisions to existing law following the frightening increase in terrorism activities throughout the world – the one most well known to us, of course, is the September 11th 2001 New York attack. Mr Lowey has set out quite clearly the many issues covered. I do not think there is any need for me to repeat them now, but he has covered them thoroughly and, as far as I am concerned, Mr President, we must support this Bill and get it on its way. Thank you.

**The President:** Mr Gelling.

**Mr Gelling:** Yes, Mr President. In supporting the Bill and obviously the priority it has been given to hold up the legal draftsman for quite some time in other Bills having to go to one side, I was just a little concerned to read in the actual Bill itself that 'there will be a manpower implication, but this very much depends on which parts of the Bill are implemented'. I was rather concerned, Mr President. If this is so important, are we then saying that it is going to be passed through all the branches and then go on a shelf? It concerned me that, perhaps, we are then going to say, 'Well, we are only going to implement the little bits here or there.' The other question really was regarding the new hospital, about the police advising the health service on how they should, in future, be looking after these dangerous items that they do store. Does this mean that they have not been advised and the new hospital will perhaps be altered in some way to make them secure?

**The President:** Mr Delaney.

**Mr Delaney:** I welcome this Bill. I think anybody would be very foolish not to welcome it. The problem some members will have is whether it is strong enough

or it is too strong, I would suggest, but until terrorism touches you or yours, everybody seems to think it is somebody else's problem. I can tell you quite clearly that the Isle of Man, like a number of islands, is a soft target. If they want to get out of the Bali situation and bring it back into the European frame, anywhere that has seagoing craft carrying large amounts of civilians travelling is a soft target, because the manpower implications, which have been mentioned, of searching everything and everyone that goes on the boat is so horrendous that that is the reason it cannot be done. I honestly think that, as our colleague Mr Gelling says, the situation is that we have to do something now, because once there is a terrorist outrage, God forbid, the same situation that members see straightaway on the television – 'Who knew?' 'Who knew what?' 'When did they know?' 'Why didn't they do something?' is the situation we will find ourselves in. And I honestly believe that the implications of terrorism are unfinished now. I believe it is going to get worse over the years, and the situation will be that we have got to be ready for it, because when it happens, everyone will be pointing the finger and somebody will say, 'Why didn't you do something?' I think this Bill is necessary, and I personally do not think it goes far enough, but that is only my independent view.

**The President:** Mr Waft.

**Mr Waft:** Thank you, sir. I fully support the Bill. When you say both Jersey and Guernsey have progressed similar Bills, I just wondered where the similarity begins and ends, whether they are over and above what we are putting through or, indeed, less. And is the member fully cognisant of the views of the full Council of Ministers as to the progression of this Bill? Was there unanimity from the Council of Ministers? Thank you, Mr President.

**The President:** Lord Bishop.

**The Lord Bishop:** Yes, Mr President. I naturally support the Bill. I wondered about part VI, the implications of 42: would it have any impact on our cadet forces? I am sure that there will be hedges around the various things, but on a straightforward reading of the clause I wonder if it would have any impact on weapons training in a more innocent capacity. I just wondered if that had been thought of.

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, I would like just to respond to comments from my hon. colleague, Mr Gelling. I am not aware of any additional costs on security being required in the new hospital. The preface to the Bill does say 'some of the financial implications of the proposed Bill could be'; we do not know, in the future, whether the precautions and the security issues which we embody now would be deemed to be inadequate depending on how terrorism

develops, but currently I am not aware of any additional expenditure being required.

**The President:** Right. Mr Lowey to reply, please.

**Mr Lowey:** Thank you, Mr President. First of all, can I thank hon. members for their general support of the principles underlying the introduction of the Bill in the knowledge that it is regrettable, but very necessary, for us to have in place an updated Bill that can be used for now and, as Mr Delaney says, in the future. It is the intent, I am assured by the department, to introduce the Bill in its fullness from the earliest opportunity, so although it is actually setting out the realities of the situation, their intent is to introduce the Bill in its full implications.

Mr Delaney and the practical application of ships: the Isle of Man is an international finance centre and will attract attention by these people, who are experts in transferring money and personnel, so I think it is inevitable that the Isle of Man, directly or indirectly, could very well be targeted by international terrorism.

Mr Waft says: was there unanimity? I think we know the answer to that, and I thank Mrs Christian for her reply, really, and her contribution, because I think it did enter.

This does bring civil liberties into question, but I think I did say, in my opening remarks, that they were dealt with in a . . . I actually said the Bill strikes a balance between respecting the Island's fundamental civil liberties and ensuring that they are not exploited, and that is the point: it is the balance. As Mr Delaney said, some would say it is not going far enough, some would say it is about right, and when you are in the middle you get attacked from both sides, so I think if the Bill has been attacked, then I think it has got about the right balance. We have to protect certain civil liberties, but what I do not want is the authorities to be fighting an enemy that knows no boundaries (**Mr Delaney:** Hear, hear.) with one hand tied behind their backs. This Bill, as amended in another place – and I am sure members will have read the amendments – has to be renewed every five years. So, we can see how it is in operation. We can review it every five years, and I think that has given the signal that we are concerned about civil liberties and we will only use this when it is necessary for the protection of the people of the Isle of Man.

I am delighted with the Council's response to this Bill. It is a serious piece of legislation, and I think it is right that the Isle of Man should not be seen as the weakest link in the fight against global terrorism. It knows no boundaries, we know it is there, we know it is active, and I think it is right and proper that this legislation should be placed before the branches, and I am pleased to be taking it through this particular branch. I beg to move the first reading.

**The President:** The motion, hon. members, is that the Anti-Terrorism and Crime Bill 2002 be read for a first time. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

## **Matrimonial Proceedings Bill – Consideration of Clauses Continued**

**The President:** We will turn, then, to Matrimonial Proceedings, hon. members, and last week in our deliberations we had completed clause 56, so we will start this morning at clause 57. Mr Attorney, clauses 57 to 63, I think, is as far as we are going, is it?

**The Attorney-General:** Yes, that would be the first tranche, Mr President.

**The President:** Thank you.

**The Attorney-General:** Yes, Mr President, we had got as far as part 3 of the Bill, and so if I can just say a few introductory words about part 3. The part re-enacts part 1 of the Domestic Proceedings Act 1983, which contains a code of provisions under which application can be made to a court of summary jurisdiction by a party to a marriage for a maintenance order against the other party.

Clause 57 confers jurisdiction on courts of summary jurisdiction and states who may apply to such a court.

Subclause (1) defines 'court' in this part as a court of summary jurisdiction, but this is subject to the rule in the 1989 Act that, to hear domestic proceedings, such a court is to consist of the High Bailiff or not more than three justices, including, as far as is practicable, both a man and a woman.

Subclause (2) gives the court jurisdiction under this part where one of the parties is ordinarily resident in the Island, and subclause (3) makes it clear that the domicile of the parties is irrelevant to jurisdiction under this part.

Clause 58 allows a court of summary jurisdiction to refuse to deal with an application if it thinks it would be more suitable for the High Court but also allows the High Court to refer the case back to the lower court.

**The President:** It took me a while to work that out.

**The Attorney-General:** Clause 59, Mr President, enables a party to a marriage to apply for a maintenance order against the other on specified grounds, namely: a failure to provide reasonable maintenance for the applicant; a failure to provide or contribute to reasonable maintenance for a child of the family; unreasonable behaviour; and desertion. But it should be noted that, in this part, there is no requirement to show a minimum period of desertion. Desertion by itself would be sufficient.

Clause 60 enables the court to make a maintenance order for periodical payments or a lump sum on an application under clause 59.

Subclause (2) of the clause makes it clear that lump sum orders can be made to cover expenses incurred before the making of the order, but subclause

(3) limits the amount of the lump sum to £1,000, although that figure can be increased by a Treasury order.

Subclause (4) requires Tynwald approval to the Treasury order.

Clause 61 specifies the matters to which the court is to have regard in deciding whether to make a maintenance order, and if so, of what kind and amount. The list is similar to those applicable in the case of maintenance on divorce under clause 61.

Subclause (1) requires the court to consider all the circumstances, putting first the welfare of any child of the family up to the age of 18, and then we have the other matters listed, which will be familiar to hon. members. Mr President, in another place an amendment was made so as to add a new subclause (5), and that states that, as regards the exercise of its powers under subclause (2)(g), the court shall, in particular, have regard to any allegation of abuse against a child, made by one of the parties against the other, which is found to have been made maliciously or without any reasonable or probable basis.

Clause 62 provides for the duration, generally until death or remarriage, of an order for periodical payments in favour of the party to the marriage.

Subclause (1) gives the court a discretion as to the term of an order for periodical payments in favour of a party, except that it cannot be backdated beyond the date of the application, and furthermore it must expire on the death of either party.

Subclause (2) deals with the case where, after an order for periodical payments in favour of a party to the marriage is made, the parties are divorced or the marriage is annulled but the order remains in force. The order must expire on the remarriage of either party, although any unpaid arrears may be recovered.

Finally in this section, clause 63 limits, generally to the age of 18, the duration of a maintenance order for periodical payments in favour of a child of the family.

Subclause (1) prevents a maintenance order for periodical payments or a lump sum being made in favour of a child who is already 18 or over, except as is allowed by subclause (3), which we will examine.

Subclause (2) enables the court to specify any term in a periodical payments order in favour of a child of the family, except that it cannot begin earlier than the application and must not, in the first instance, extend beyond compulsory school age, unless the court thinks that the child's welfare requires that it should, and in any case, subject to subclause (3), it is not to extend beyond his 18th birthday. However, subclause (3) does allow the court to make or extend a periodical payments 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, with that I move that clauses 57 to 63 inclusive do stand part of the Bill.

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

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, I have tabled an amendment in respect of clause 61. As the learned Attorney has indicated, this clause was subject to an amendment in another place, and the purpose of my amendment is to delete that amendment which was inserted in the other place for the same reasons as outlined in respect of an earlier clause, in that it is deemed inappropriate for the court to have regard to allegations of abuse at this point in the proceedings. These are matters which are dealing with financial disbursements, maintenance payments and so on, and where abuse is alleged, one would expect that to have been dealt with in terms of divorce or separation and not in terms of the financial arrangements. So, in order to regularise this situation, Mr President, I beg to move the amendment standing in my name:

*Clause 61, Page 52, line 5:  
omit subclause (5) (inserted by the Keys).*

**The President:** Mr Waft.

**Mr Waft:** I beg to second, Mr President.

**The President:** Mr Waft, do you wish to continue?

**Mr Waft:** On clause 59, with regard to 59(d), where the party has deserted the applicant for maintenance, what efforts are made to pursue the party if they have left the Island? Is it left to another jurisdiction to pursue it or what does the person who is in difficulties have to rely upon? Does the court pursue that situation?

**The President:** Mr Attorney.

**The Attorney-General:** Yes, thank you, Mr President. The position is that if the respondent moves to another country and fails to honour his or her obligations to pay maintenance, it is up to the applicant to pursue the respondent. There is legislation which enables the court to give assistance on a reciprocal basis in relation to certain countries so that, for example, if, in a simple case, the respondent were to flee, as it were, to the United Kingdom, then the United Kingdom court could certainly give assistance on a reciprocal basis to the Isle of Man court. However, it must be said that there are many gaps and there are many countries with which we do not have a reciprocal arrangement, and therefore I am afraid that there will be cases where the applicant will be left effectively without a remedy if the respondent is determined not to honour his or her obligations.

**The President:** And you first have to know where they are.

**The Attorney-General:** Indeed you do, sir.

**Mr Waft:** I think, Mr President, with respect, if I might come back, with your permission. (**The President:** Yes.) The national insurance number would surely find them if a private detective or someone was put on them, but I am a bit concerned that the Attorney-General feels it is down to the applicant to pursue that. The court has directed that payment be made, but then when they leave the Island it is up to the applicant to pursue it, which I think is a bit unfair.

**The President:** Mr Attorney.

**The Attorney-General:** Yes, Mr President. That would, however, not be a unique situation. If a person has an order made in his or her benefit, it is for that person to bring the matter to the attention of the court. The court certainly will assist the applicant in every way, and I cannot think of the precise name of the statute, but there certainly will be assistance given by the clerk of the court in pursuing the order with his or her counterpart in the other country.

**The President:** Hon. members, having dealt with that, I will put to you the motion that clauses 57 to 63 inclusive do stand part of the Bill, acknowledging, hon. members, that there is an amendment moved by the hon. member Mrs Christian to clause 61, which we will deal with first off, which would delete subclause (5).

So, those in favour of the amendment to clause 61 please say aye; against, no. The ayes have it. The ayes have it.

Accepting then, hon. members, that clause 61 has been amended, I put to you that clauses 57 to 63 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clauses 64 to 67, Mr Attorney, please.

**The Attorney-General:** Yes, thank you, Mr President. Clause 64 enables a court of summary jurisdiction, where a party has agreed to pay maintenance, to make an order confirming his obligations under the agreement.

Subclause (1) enables either party to apply to the court for a so-called 'agreement order' for payment of periodical payments or lump sums already agreed to be paid by the same or the other party. The court need only be satisfied that the agreement exists and is not unjust. It reflects an existing provision in the 1983 legislation.

Clause 65 enables a court of summary jurisdiction, in a case where the parties have separated for more than three months, to make an order requiring maintenance which has been paid over the past three months to continue to be paid.

Subclause (2) enables the court, if it is satisfied that maintenance has been paid, to make a so-called 'continuance order', providing for periodical payments to the applicant or the children of the family of

amounts and for a term specified in the order. Again, Mr President, it reflects existing legislation.

Clause 66 requires the court to consider whether to exercise any of its powers relating to children under the Children and Young Persons Act 2001, for example to make residence or contact orders before it finally disposes of an application for an maintenance order, an agreement order or a continuance order.

Clause 67 enables the court to adjourn an application for a maintenance order if there is a chance of reconciliation and to call for a social worker to mediate.

Subclause (1) enables the court to adjourn proceedings to allow the attempt at reconciliation if it thinks that there is a chance that the parties might be reconciled, and subclause (2) enables the court to ask the Department of Home Affairs, following upon an amendment made in another place, to arrange for a social worker to try to reconcile the parties and to report back to the court.

Mr President, I move that clauses 64 to 67 do stand part of the Bill.

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

**The President:** Mr Delaney.

**Mr Delaney:** I have just got a little query on this one, on clause 67. In relation to the third party getting involved with the matrimonial side, is there any reference anywhere to the qualifications that this person is going to have to get involved in this sort of social work?

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, I just observe that it is requesting the Department of Health and Social Security 'to arrange for a suitable person to attempt'. That is a matter for judgement; they would presumably pick someone who has some skills or training in this particular area.

**Mr Delaney:** It is a very skilled job. (*Interjections*)

**The President:** We are dealing with clause 67, Mrs Christian, and in clause 67(2), the 'Department of Health and Social Security' actually reads 'the Department of Home Affairs'.

**Mrs Christian:** Yes, I apologise, Mr President, but the point of it is that it is the Probation Service who, I think, produce people who deal with reconciliation matters.

**The President:** Right, yes. Mr Gelling.

**Mr Gelling:** Mr President, it is only a very small point, but under 65, where it says 'Where – (a) the parties to a marriage have been living apart for a

continuous period exceeding 3 months, neither party having deserted the other', is the word 'deserted' only used in the basis of someone having left and gone and disappeared, or does not 'desertion' also mean leaving the person unaided and financially lacking? Perhaps the Attorney-General could clarify that. (*Interjection by Mr Lowey*)

**The President:** Mr Waft.

**Mr Waft:** Mr President, just to elaborate some married couples have to live apart because of housing difficulties and the size of the family.

**The President:** Is that desertion? (*Interjections*)

**Mr Waft:** No, it is not desertion.

**The President:** Mrs Christian.

**Mrs Christian:** I just feel that, in the context of the Bill, that situation does not apply, because they still wish to be a couple and married. This applies to people who do not wish to be, and are, separate. I would be interested in the learned Attorney's comments, but I imagine 'desertion' means not supporting, financially or in any other way.

**The President:** Right, I think, Mr Attorney, we will see if we can throw some light around here.

**The Attorney-General:** Yes. As ever, Mr President, challenging questions. The essence of 'desertion' is that there is the fact of living apart, but with the intention that the person who leaves is deserting the other, in other words has no intention to resume cohabitation with the other party. It is more than the mere fact of living apart; it is coupled with an intention to desert the other. I could, perhaps, with a little time, just come back with a more precise definition of that, but it is, as I recall it, as I say, the fact of living apart, coupled with an intention to desert, in other words to abandon obligations to the person who is left behind and to abandon obligations to the children of the family.

**Mr Lowey:** A trial separation for three months: I have heard the phrase used 'We are splitting for three months to see if we can sort ourselves out.' That is not desertion.

**The Attorney-General:** That would not, Mr President . . . There has to be a settled intention on the part of the person who is leaving to say, 'That is it. I have truly severed my links with the family.'

**Mr Gelling:** Yes, if I could, Mr President, just follow that through, because then in clause 67 we have got reconciliation. In other words, are you deeming that, after three months, reconciliation is not possible?

**The Attorney-General:** Clause 67, Mr President, says that if at any stage of the proceedings there is a reasonable possibility of reconciliation; in other words, it may very well be that the party who had deserted, who had the intention, shall we say, in January to abandon his family, decides in May that, while there is a chance of reconciliation, 'I made a terrible mistake.' If that was apparent to the court, then the court can say, 'Well, I am not going to allow there to be a financial order. I think you ought to think about it twice' and can call in the assistance of the Department of Home Affairs to employ a social worker.

**The President:** Mr Delaney.

**Mr Delaney:** That is why I raised this question, you see. Under 67 they have already got to the stage in the marriage where one party or the other – it is usually the wife, with the children possibly – is looking for financial assistance with keeping the family. It has got to the stage of virtual breakdown then; it has to have if it has got to the court looking for maintenance orders. That is why I am a bit concerned that then we bring in the Department of Health and Social Security to effect a possible reconciliation when they have already got a problem with the finances of the household.

**The Attorney-General:** Mr President, if I may, I think it is quite common, though, for parties, even at that very drastic stage of their life together, to realise that a mistake has been made, and I think it is one of the themes which was spotted by, I think, the hon. member Mr Lowey when we looked at the first reading. It is one of the themes which is preserved in this legislation that the court must do its best to effect a reconciliation. So, there have certainly been cases where, in the midst of a most acrimonious financial dispute, the parties suddenly realise that they want to try again to have a reconciliation, often, of course, for the welfare of the children.

**The President:** Hon. members, if we are all content, I will put to you the motion that clauses 64, 65, 66 and 67 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, then, to Interim Orders, clause 68, and take it up to clause 77, please.

**The Attorney-General:** Thank you, Mr President. Clause 68 deals with interim orders. It empowers a court of summary jurisdiction or the High Court to make interim orders in proceedings for a maintenance order, agreement order or continuance order.

Subclause (1) enables a court of summary jurisdiction to make an interim maintenance order before disposing of an application for a maintenance order, agreement order or continuance order. It also enables the High Court to make a similar order when it refers a case back to the lower court. The order can be for maintenance for the applicant or a child of the

family under 18 or both. Again, it reflects the existing law.

Clause 69 provides for the variation, revival and revocation of maintenance orders for periodical payments.

Subclause (1) enables the court, on application, to vary or revoke a maintenance order for periodical payments and enables it, at the same time, to make a lump sum order.

Subclause (2) enables the court, on application, to vary or revoke an agreement order and enables it, at the same time, to make a lump sum order in favour of the other party or any child of the family, and subclause (3) enables the court, on application, to vary or revoke a continuance order.

Subclause (4) enables the court, on application, to vary or revoke an interim order, but not so as to extend it. That can only be done under clause 68(5).

Turning to clause 70, this makes supplemental provisions as to the variation or revocation of orders under clause 69.

Subclause (1) sets out the matters to be taken into account by the court in exercising the powers under clause 69. The court should give effect to any agreed terms if it thinks they are just. If there is no agreement, it is to consider all the circumstances, putting first the welfare of any child of the family up to the age of 18. Again, the clause reflects existing legislation.

Clause 71 provides that, where the court makes a lump sum order and orders it to be paid by instalments, it can, on an application for the purpose, vary the number or amount of instalments or the dates of payment.

Clause 72 makes special provision for variation of an order where a party is outside the Island.

Subclause (1) makes it clear that the powers of clause 69 to vary, revoke or revive an order can be exercised even though any party is outside the Isle of Man.

Subclause (2) enables an application under clause 69 to be heard even though the respondent has not been served if it is proved that he has been off the Island since at least a month before the date of the application. Rules of court can make further provision in this case.

Subclause (3) prevents the court increasing the amount of periodical payments under an order unless the payer either appears at the hearing or the requirements of section 44(3) of the 1989 Act are satisfied – that is, either it is proved that notice of the hearing was served on him or he appeared at a previous hearing.

Clause 73 enables orders under this part to be enforced even though the parties are living together, but they are to lapse in certain cases if the parties do live together.

Subclause (1) allows an order for periodical payments to a party to the marriage to be enforced even though the parties are living together when the order is made or subsequently begin to live together, but the order will lapse if they live together for six months continuously.

Subclause (2) allows an order for periodical payments to a child of the family to be enforced even though the parties are living together when the order is made or subsequently begin to live together. However, the court can direct that the order is to lapse if they live together. Again, the clause reflects existing legislation.

Clause 74 enables the High Court to revoke an order under part 1.

Subclause (1) sets out the circumstances in which the clause applies, namely that an order has been made by a court of summary jurisdiction under this part and proceedings in the High Court relating to the parties' marriage, for example for divorce, subsequently begin.

Subclause (2) enables the high court to revoke the lower court's order from a specified date, except in the case of a lump sum order.

Clause 75 enables an adjourned hearing, with the parties' consent, to include justices who were not sitting at the original hearing.

So, subclause (1) allows a court of summary jurisdiction to continue hearing an application for a maintenance order after an adjournment even though it is differently constituted, provided the parties agree and at least one justice who was sitting at the earlier hearing is there.

Subclause (2) requires the court to ensure that any justices who were not at the earlier hearing are given sufficient information as to the facts to enable them to deal with the case efficiently.

Clause 76 makes provision for repayment where maintenance has been paid in ignorance of the payee's remarriage.

Subclause (1) prevents ordinary High Court proceedings being brought for the recovery of any maintenance which was paid because the payer did not know that the payee had remarried. Instead, an application can be made to the High Court for an order under subclause (2).

Subclause (2) enables a special provision to be made: the High Court, on an application, can order the payee to repay the sums overpaid or, if it thinks that would be unjust, order the payee to repay a lesser amount, or indeed the court can dismiss the application.

Clause 77 provides for the interpretation of part 3, and in particular it defines the term 'living together': 'Reference in this Part to the parties to a marriage living with each other shall be construed as reference to their living with each other in the same household.'

Mr President, with that I move that clauses 68 to 77 do stand part of the Bill.

**Mr Delaney:** Yes, Mr President. I beg to second, but I ask a point of clarification, which is one which has been raised many times – and times are moving on. Under clauses 76 and 77, where a divorce is in being and one party is maintaining the other party, am I understanding now that if one of the parties is being reciprocated financially by the other and is now living with a person for a fixed period that is a common-law marriage, therefore the benefits of the original marriage – financial – go? That was not the situation

for quite a long time, because I am aware of a couple of cases I have worked on with problems of maintenance, and the situation is that until that person was actually married under the law, they would still be getting maintenance.

**The President:** Maintenance continues.

**Mr Delaney:** They were living 'over the brush', to use a slang word, but now that has changed.

**The President:** Mr Gelling.

**Mr Gelling:** Mr President, I hate to bring this up, but when I was taking the Transfer of Deemsters' Functions, I was put on the spot by Mr President, yourself, into why there was no interest being charged on periodical payments. Finally, after a great deal of research, I came to the 1983 Act and was assured that it was because we could not actually administratively perform that at that time. I just wondered whether perhaps Mr Attorney could explain: has this rectified that situation? Although it says 'vary', it does not say charging interest; it just says that a court has made a maintenance order for the making of periodical payments and it could be varied. I think it is clause 70. I just wondered whether that can be picked up at some other time.

**The President:** Mr Waft.

**Mr Waft:** A similar situation: when a wife or husband is receiving pension rights from a deceased partner from his superannuation. If she becomes a cohabitee with a third party, do those pension rights which she subsequently received from her partner cease until that association is dissolved and it returns back to the original? That might have a similarity with regard to this with a remarriage when it is not a remarriage but just a cohabitation taking place, but the partner is still receiving benefits under the order.

**The President:** Mr Attorney.

**The Attorney-General:** Yes, thank you, Mr President. The question raised by the hon. member Mr Delaney I think centres on clause 76, and if I may just read that clause, clause 76(1): 'Where – (a) a maintenance order, agreement order or continuance order has ceased to have effect by reason of the remarriage of the party in whose favour it was made, and (b) the person liable to make payments under the order made payments in accordance with it in respect of a period after the date of that remarriage in the mistaken belief that the order was still subsisting', then it goes on to say that the court, the High Court, can exercise its powers under subclause (2). So, in other words, the clause is making it absolutely clear, is it not, that we are not concerned here with the so-called 'common law marriage'; there has to be remarriage in the formal sense. In other words, if we take a situation where a husband is ordered to pay maintenance to his

wife and the wife then goes to live with another but does not remarry that other, the husband's obligation to pay maintenance continues. There is no doubt about that (*Interjections*)

**The President:** If I may, Mr Attorney – and I do not wish to cut across at all: in that case, the husband would have the right, would he not, to go back to the court to ask for a variation?

**The Attorney-General:** He could, indeed, ask for a variation, (*Interjection*) but there is no –

**The President:** There is no right.

**The Attorney-General:** I think the question, as I understood it, was: does the fact that someone is living with another justify the husband, in my example, saying, 'Well, I am not going to pay maintenance any more'? That does not trigger off that event. It would be for the aggrieved party – the husband in this situation – to go to the court and ask for a variation, because he would say that the circumstances had changed, but it does not trigger off a right for the husband to refuse to pay maintenance.

**Mr Lowey:** It would have done if the lady had remarried –

**The Attorney-General:** If the lady had remarried –

**Mr Delaney:** That is what I am saying. That is the point made by Mr President. So we have a situation here – and I did mention this at an earlier clause – on the Island that I am aware of, where somebody has actually had two marriages and is living with a third and is getting maintenance against two marriages and is living very comfortably 'off the back of the hog', if you like, on the situation, and –

**The Lord Bishop:** They should go to the court.

**Mr Delaney:** Yes, but then unfortunately that is the –

**The President:** Okay, I think we have cleared that one.

**The Attorney-General:** In relation to the question raised by the hon. member Mr Gelling, again that is a very good point, but I think that the advice given – I think it was by His Honour the First Deemster at the time – is still correct. There is no provision, under the existing legislation, for the person who is out of his or her maintenance to apply for interest. There is no provision under the existing law. The point, of course, made by the hon. member is: would this not be a good opportunity to create some sort of machinery to allow interest? That, perhaps, is a good point. It certainly has not been taken up at this stage. If hon. members would wish, I could certainly

look at that before the next reading. Certainly, no amendment has been moved thus far.

**Mr Gelling:** I think, Mr President, there were two Acts quoted to me. This was one – the 1983 Act – but there was another Act which I was told about, and it could very well be that that is something that needs amendment, but I have to allow this to continue its passage without interruption.

**The Attorney-General:** Yes. I am not sure, Mr President, how you would like me to carry that forward.

**The President:** Well, we would be happy for you to come forward with any advice at third reading, but I think we have to treat the Bill at this stage as amendments. But perhaps if you come back with the advice, you would consider also the interest not only on the maintenance but possibly on lump sum payments which are outstanding, which could be of a sizeable amount.

**The Attorney-General:** Yes. And, Mr President, I think, in answer to the question raised by the hon. member Mr Waft, that the same comment I made to the hon. member Mr Delaney applies. It is not the fact of living together which triggers off any alteration to the orders; it is actually remarriage.

**The President:** Hon. members, noting that, in fact, there must be remarriage otherwise the only recourse is to go back to the court, I put to you the motion that clauses 68 to 77 both inclusive do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

That completes part 3. We turn, then, to part 4 of the Bill and clauses 78 to 90.

**The Attorney-General:** Yes, thank you very much, Mr President. Part 4 re-enacts part 3 of the Matrimonial Proceedings Act 2001. Those provisions enable financial orders similar to those which can be made under part 2 on an Isle of Man divorce, annulment or separation order to be made following a foreign divorce. These powers may be useful where the parties have been divorced abroad but one or other has assets or income or there is a matrimonial home on the Island.

Clause 78 enables a party to a marriage to apply to the High Court here for a financial order where there has been a divorce, annulment or judicial separation outside the British Islands.

Subclause (1) enables a party to apply for a financial order where there has been such a divorce, annulment or judicial separation, but subclause (2) prevents any application being made under subclause (1) by a party who has remarried.

Subclause (3) defines the 'order for financial relief' by reference to clause 83.

Clause 79 requires the leave of the court for any such application, so subclause (1) requires a party

wishing to apply under clause 78 to apply first for the leave of the court, which will not be given unless the court thinks that there is a good case for so doing.

Clause 80 enables the court to make an interim order for maintenance where granting leave under clause 79.

Clause 81 specifies the cases in which the court has jurisdiction to make an order under clause 78, namely: either party was domiciled in the Isle of Man, where the application for leave under clause 79 was made, or where the foreign divorce, annulment or judicial separation took effect; secondly, either party has been habitually resident in the Isle of Man for 12 months up to the date when the application for leave is made or the date when the divorce, annulment or separation in a foreign country took effect; and thirdly, either party or both had an interest in a former matrimonial home in the Isle of Man at the time when the application for leave was made.

Those three alternatives give a sufficient connecting factor to the Isle of Man to enable the court to exercise jurisdiction.

Clause 82 requires the court to consider whether a Manx order should be made in the particular case and lists the factors to be taken into account for this purpose. It makes no change in the present law.

Subclause (1) requires the court to be satisfied that it is appropriate that a Manx order should be made in the case before it makes an order, and it will dismiss the application if it is not satisfied that it is appropriate to make a Manx order.

Clause 83 lists the kinds of orders which can be made under clause 78, namely any order which could be made under part 1, after a Manx decree of divorce, nullity or separation, but it should be noted that the power to make a sale of property order is restricted.

Clause 84 requires the court to have regard to the same factors in considering an application under clause 78 as it must consider under part 2. Again, those various factors are reflected in existing law and there is no change from the 2001 Act.

Clause 85 enables the court to make a financial order by consent, without hearing the parties or any evidence.

Subclause (1) enables the court to make a consent order for any kind of financial relief on the basis of information supplied by the parties, unless it considers that it ought to enquire further, for example to see whether provision for the children is adequate. The information to be supplied is to be prescribed by rules of court.

Clause 86 limits the court's powers where its jurisdiction is based solely on the existence of a former matrimonial home in the Island. Naturally enough, the court can only make orders relating to the parties' interests in that property.

Subclause (1) provides that where the court's jurisdiction is based solely on the existence of a former matrimonial home, it can only make orders, for example, that a lump sum order or a transfer of property order or an order for settlement or variation of

a settlement or an order for sale relating to an interest in the property be made. Again, there is no change from the existing legislation.

Clause 87 applies various provisions of part 2 to orders under this part. For example, subclause (2) excludes provisions relating to the earmarking of pensions where the court's jurisdiction is based solely on the existence of a former matrimonial home in the Island. Clearly, a pension order will not have any relevance to the Isle of Man in those circumstances.

It might be noted that subclause (4) enables the regulation-making powers of the DHSS under clause 36 – which, it will be recalled, related to earmarking of pensions – to cover orders under part 4.

Subclause (5) requires Tynwald approval to those regulations.

Clause 88 gives the High Court power, corresponding to its power under clause 52, to strike down transactions entered into by a spouse in order to defeat applications under part 4. For example, subclause (2) enables the court to make special orders on the application of the applicant for any financial order. Once leave has been granted under clause 79, it may make an injunction restraining any disposition of property or an order setting aside any so-called 'reviewable disposition'. Again, there is no change from existing law.

Clause 89 enables the High Court to grant a protective injunction to stop a former spouse acting to defeat an application for an order under part 4.

Subclause (1) enables the court, on an application by a former spouse, to grant an injunction restraining any action to defeat a claim under part 4 where there has been a foreign divorce, annulment or separation, the applicant intends to apply under clause 79 for leave to make an application under clause 78 as soon as she has been resident there for 12 months and the former spouse is about to make a disposition or transfer of property out of the jurisdiction to defeat the claim. Clearly, Mr President, in those circumstances it is appropriate that the High Court should be able to protect and preserve the powers of the applicant until she has been resident for the full 12 months.

Finally, clause 90 provides definitions of terms used in part 4.

Mr President, I move that clauses 78 to 90 inclusive do stand part of the Bill.

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

**The President:** Mr Lowey.

**Mr Lowey:** Could I just say, Mr President, that I would think it would be a good idea – and I look at my Lord Bishop when I say this – that if anybody contemplates getting married and comes to the church and says, 'Will you marry me at 3 o'clock on a Saturday afternoon?', they should get a copy of this Bill (*Laughter*) presented to them at that early stage before they tie the knot, because this is what they have got to go through if they want to untie the knot. That is

just an aside, really, (*Interjections*) but could I just say, regarding clause 78, that I must congratulate the Attorney; he has got me defeated.

Subclause (3): I know I should really have the full Act of 2001, and it should be fresh in our minds because we have not long passed that, but part (3) has got me completely flummoxed. I could not make head nor tail of that, and I will have to try and see if he can lead me through it slowly. 'In this Part except sections 85, 88 and 89, 'order for financial relief' means an order under section 83 of a description referred to in that section.'

**The President:** So you are dealing with part 4?

**Mr Lowey:** Part (3) of clause 78.

**The President:** Yes, but it is referring, is it not, to the whole of part 4 of the Bill?

**Mr Lowey:** Yes.

**The Attorney-General:** Yes.

**Mr Lowey:** Of the 2001, I take it.

**The Attorney-General:** Mr President, part 4 of this Bill deals with the power of the court to make a financial order where there has been a divorce et cetera outside the Island, and perhaps we can go through the whole of the clause, Mr President. So, 78(1)(a), where the marriage has been dissolved et cetera in a foreign country and 1(b) the divorce et cetera is entitled to be recognised as valid in the Island, either party may apply to the High Court for an order for financial relief under this part. So, there has to be a foreign divorce, the court has to have jurisdiction and then it says that either party can apply for financial relief.

**Mr Lowey:** Yes, that is fine.

**The Attorney-General:** If, after the marriage has been dissolved or annulled in a foreign country, one of the parties to the marriage remarries, that party shall not be entitled to make an application.

**Mr Lowey:** Yes, I am fine up to that.

**The Attorney-General:** And then clause 78(3) tells us what the financial relief is that you can apply for, where there has been a foreign divorce. It says that –

**Mr Lowey:** Except for 85, 88 and 89.

**The Attorney-General:** –“order for financial relief” means an order under section 83 of a description referred to in that section.’ So, we see that, subject to the exceptions, which we will come back to in a moment, the orders for financial relief listed in clause 83 are financial provision order, property adjustment order, pension sharing order, secured

periodical payments order, and so on. They are all there listed, but if you are proceeding under 85, 88 or 89, those clauses actually set out a precise definition; they create a self-contained definition of what 'financial relief' means. Is that –

**Mr Lowey:** I am sorry. I follow now what it means, yes. It has been resolved. I congratulate the Attorney for taking me through the minefield. I could not make head nor tail of it – no use pretending I could – but with the way it has been presented now, it makes sense to me the way you have spelt it out that these are exceptions under part 4 which we were discussing. That is fine.

**The Attorney-General:** I think, Mr President, the hon. member is being very generous to me, but I am very grateful to him –

**Mr Lowey:** I am suffering from post-Benlyn fatigue, I think.

**The President:** Mr Waft.

**Mr Waft:** Thank you, Mr President, just on clause 89(c): 'that the other party to the marriage is, with the intention of defeating a claim for financial relief, about to make any disposition or to transfer out of the jurisdiction or otherwise deal with any property.' That would be fine provided that you knew about the transaction taking place, but it does not give any solace to somebody who is on the receiving end of getting a nominal sum for a property which has been sold just to defeat paying the other party the 50/50 split or whatever. They need to know in order to place an injunction on the sale, but, as I say, if they do not know about the sale, perhaps, unless it has been sold, what happens then? Is there any recourse at all?

**The President:** Mr Attorney.

**The Attorney-General:** Well, Mr President, I think in those circumstances the court would be able to exercise its powers under the preceding clause, because clause 88 enables the court to make orders setting aside dispositions, even though they have been made. So, in other words, if it turns out, for example, that a husband has sold his house to an innocent third party with a view to defeating the claim of the wife, the court can set aside that transaction and can order that the husband should account to the wife for the proceeds of sale or, indeed, could even set aside the whole transaction. So, I quite agree that there will be circumstances where an injunction is not appropriate because the deal has already taken place, but there will be many other circumstances where, as I say, there has been a sale of a house or there has been a sale of shares and the court can look at the transaction and say, 'Well, it is quite clear he did that to defeat the claim of his spouse' and the court can make an order setting aside the disposition.

**The President:** The disposition thus referred to as straightforward, could you perhaps tell us why, in the disposition part of section 88(8), it excludes any provisions contained in a will or codicil? Why specifically, because a will could have left even before the marriage had broken up? Why that exclusion specifically?

**The Attorney-General:** Yes. Mr President, the position is that, of course, the general theme in this legislation is that when somebody dies, his obligations to his former spouse come to an end. What we are concerned about here, therefore, is to preserve and protect dispositions made during the lifetime of somebody. So if, as it turns out, you are a good person in so far as your obligations to your spouse are concerned during your lifetime but you save up all the hidden assets in your will and you then leave them in your will, this legislation does not bite, but there may be other legislation – family provision orders, which I think we have referred to in earlier sittings – which will take effect.

**The President:** Thank you. Hon. members, with those explanations, I put to you the motion that clauses 78 to 90 inclusive do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

We move on to part 5, Family Homes and Domestic Violence, and we come to clauses 91 to 94 and include schedule 2, I think.

**The Attorney-General:** Yes, thank you, Mr President. Part 5 creates a new code relating to domestic violence and the matrimonial home. It replaces the Matrimonial Homes Act 1971, which was the primary legislation, and it also replaces various provisions relating to domestic violence. It is based on part 4 of the Family Law Act 1996 of the UK Parliament. If I may, I will try and go through this section in some greater detail, although I can hear you inwardly groaning.

Clause 91 gives jurisdiction under this part to both the High Court and courts of summary jurisdiction. However, the High Court can transfer a case to a lower court if it wishes, and conversely a court of summary jurisdiction can transfer a case to the High Court if it thinks it is a more suitable forum.

Subclause (1) defines 'court'.

Subclause (2) precludes a court of summary jurisdiction determining any question as to property rights in exercising any powers under this part because those property rights are reserved to the High Court.

Subclause (3) enables the High Court to stay proceedings on an application and to transfer them to a court of summary jurisdiction.

Subclause (4) enables the court of summary jurisdiction to refuse to deal with an application if it thinks it would be more suitable for the High Court, for example because difficult questions of law are involved.

Subclause (5) enables the High Court, where a case has been referred to it, to transfer the case back to the lower court.

Subclause (6) deals with the power to enforce an order under this part by imposing a fine or committal to custody.

Subclause (7) deals with an order under this part made by the High Court on an appeal from a court of summary jurisdiction. That order is to be enforced and can be varied, revived or revoked as if it had been made by the lower court.

Clause 92 restates section 1 of the Matrimonial Homes Act 1971, giving a husband or wife rights of occupation in a matrimonial home which is owned by the other.

Subclause (1) sets out the circumstances in which the clause applies: firstly, one spouse is entitled to occupy a dwelling house by virtue of a property or contractual right – for example, he or she may be the owner or tenant under a lease; and the other qualification is that the other spouse has no such right.

In respect of the spouse without the property or contractual rights – that is, matrimonial home rights – subclause (2) gives those rights against the other spouse. Those rights will enable him or her not to be evicted or excluded from the property without a court order and, secondly, a right to enter and occupy the property, if not in occupation, with a court order.

Subclause (3) provides that if the spouse with matrimonial home rights pays, or offers to pay, any mortgage instalment, rent, rates et cetera due on the property, that is as good as payment by the other spouse.

Subclause (4) provides that a mortgagee may treat the payment of mortgage instalments by a spouse with matrimonial home rights as payment by the other spouse, but that does not affect any right of the spouse with matrimonial home rights to use the payment to support a claim against the other spouse who is sharing the property.

Subclause (5) deals with the case where one spouse is occupying the property because he has a beneficial interest under a trust. In that case, any rights against that spouse arising under subclauses (3) and (4) are also rights against the trustees of the trust.

Subclause (6) excludes a property which has never been, and was never intended to be, the matrimonial home.

Subclause (7) provides a spouse's matrimonial home rights last only as long as the marriage unless an order preserving those rights has been made under clause 95(4) and, secondly, only as long as the other spouse is entitled to occupy the property.

Subclause (8) ensures that a spouse who has an interest in the home or its proceeds of sale under a trust has the same matrimonial home rights in it as a spouse who has no interest in it at all.

Clause 93 reproduces most of section 2 of the 1971 Act, making a spouse's matrimonial home rights a charge on the property so that they will be enforceable not only against the other spouse but also a purchaser from him.

Subclause (1) makes the spouse's matrimonial home rights a charge on any property interest the other spouse owns in the home – that is, the rights are themselves a property right enforceable against other persons, not just the other spouse. They are, however, categorised as equitable rights only – that is, they are enforceable only against persons who know, or ought to know, that they exist and have priority only over other persons' interests which were created after the latest of the dates which are mentioned in paragraph (b). To give an example, if person A, a bachelor, buys a house with a mortgage to a bank and then A later marries B and the house becomes their matrimonial home, B has matrimonial home rights in it, but those rights are subject to the bank's prior mortgage.

Subclause (2) of clause 93 deals with the case where the other spouse's interest in the home is an interest under a trust. Provided there are no other beneficiaries or potential beneficiaries, the matrimonial home rights are a charge not only on that spouse's interests but also on the trustees' interests, and the trustees cannot override or extinguish those rights by exercising a power of sale under the trust.

Subclause (3) explains how to determine whether there are any other beneficiaries under such a trust. You have to ignore a so-called general power of appointment which is exercisable by a spouse alone, under which that spouse could create new beneficiaries and therefore defeat the rights under subclause (2).

Subclause (4) provides for the spouse's charge to terminate on the other spouse's death or on divorce or annulment unless an order is made under clause 95(4) which continues the rights.

Subclause (5) makes a further exception to a charge under subclause (1); it is void on the bankruptcy or other similar procedure of the other spouse.

Clause 94 introduces schedule 2, which provides for the registration of matrimonial home rights as a charge on the property and re-enacts other provisions of the 1971 Act. Mr President, I can certainly go through the various provisions of schedule 2, which hon. members will have seen is concerned with the procedures for registering, in the General Registry, the charge on the property and deals both with registered and unregistered land. As I say, I can go through that with hon. members if you so wish, but subject to that I would move that clauses 91 to 94, including schedule 2, do stand part of the Bill.

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

**The President:** In the schedule, Mr Attorney, it does say that a spouse can actually release in writing the matrimonial home rights. Under what circumstances would a party wish to relinquish their matrimonial rights?

**The Attorney-General:** Mr President, one can anticipate or envisage a situation where, for example, a wife believed that her only rights to financial provision

concerned a share in the matrimonial home. She might say, for example, that she has contributed to the home because she has done lots of work to it, she has looked after the children, thereby enabling the husband to do work to the property and so on, and she would say, 'Well, I have thereby obtained an interest in the matrimonial home even though I do not have a legal interest in it.' Her lawyers may have said to her, 'Well, register your matrimonial home rights in the General Registry so that your husband cannot sell the property without having to cater for your interests.' However, it may be that the husband has some other free or available assets. He might have a very substantial bank account, he might have shares and so on, and he might agree with the wife, 'Well, if you release your share in the matrimonial home, that will enable me to let you have half of my Barclays Bank account or let you have my ICI shares', and the wife might say, 'Well, that being so, I am perfectly happy to release my interest in the matrimonial home.'

**Mr Delaney:** And that would go for both parties?

**The Attorney-General:** Yes, sir.

**The President:** Hon. members, I put to you, then, the motion that clauses 91 to 94 both inclusive, along with schedule 2, do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

We are up to the Occupation Orders: 95, 96 and 97.

**The Attorney-General:** Yes, Mr President. If I may, after this 95 to 97, I may just conclude my consideration of the clauses. Clauses 95 to 97 are concerned with occupation orders.

Clause 95 is the first of a series of clauses – which goes up to 101 – enabling the court to make an occupation order declaring, restricting or regulating the rights in relation to the home of two persons. They need not be married, although of course they may be married. They may be cohabitants, they may be relatives or they may simply live together in the same household. So, it is a very wide scope to this type of order.

Subclause (1) gives a right to apply to the court for an order in the specified circumstances: first of all, the applicant must have a legal right to occupy a property, either as owner, tenant or by virtue of the matrimonial home rights which we have just examined; secondly, the property must be, or have been, or be, or have been intended to be the home of the applicant and a person with whom the applicant is associated. Clause 115(3), which we will look at later, defines 'association' for this purpose, and it covers not only persons who are or have been married but also persons who are cohabiting or have cohabited. They may be living together, or have lived together, in the same household or they may be relatives or they may be, or have been, engaged or they may be the parents of, or have parental responsibility for, a child or be

party to the same family proceedings. So, one can see, Mr President, that the scope of 'association' for this purpose is equally very wide.

Subclause (2) of clause 95 sets out the kinds of orders which the court can make, and it may be interesting just to briefly refer to those orders, which are listed: the applicant's legal rights may be enforced in relation to the occupation of the property; the court may order the other person to allow the applicant to go into and remain in the property; the court may regulate the occupation of the property, for example allocating particular rooms to each party; if the other person is an owner or tenant, the court may prohibit, suspend or restrict his rights as such to occupy the property; if the other person has matrimonial home rights, those rights may be prohibited, suspended or restricted; the court may order that a person should leave the property or part of it; and finally, the court may order a person to stay away from a defined neighbourhood of the property.

Subclause (3) may also declare what the applicant's rights are in relation to the property, for example where he or she claims an interest by reason of financial contributions to the property or household or matrimonial home rights.

Subclause (4) enables the court to order that, despite clause 92(7)(a), which provides that matrimonial home rights continue only as long as the marriage lasts, the applicant's matrimonial home rights will not end on the spouse's death or on divorce but are to continue.

Subclause (5) sets out the criteria to be taken into account by the court in considering whether to make an order under subclause (2). All the circumstances must be taken into account, but in particular the housing needs and resources of the parties and any children, the parties' financial resources, the effect of the decision on the health, safety and wellbeing of the parties and any children, and of course the parties' conduct.

Subclause (6) deals with cases of violence or abuse. If the court considers that the other party may cause significant harm to the applicant and any children, it must make an order unless it thinks that the applicant may cause the respondent and any children greater harm if it is made. So, the court has to apply a so-called 'balance of harm' test.

Subclause (7) sets out the basic criterion for deciding whether to make a declaration, namely: is it just and reasonable to make the order?

Subclause (8) prevents an order being made after either party's death and provides for it to lapse on death, except in the case of an order under subclause 4(a).

Subclause (9) enables an order to be made, either for a fixed term until a specified event, for example – and typically – on divorce, if there is a divorce pending, or until further order – that is, the court will make the order until either party applies to the court to vary or revoke the order.

Clause 96 makes special provision where the person in whose favour an order under clause 95 has

been made has matrimonial home rights which are a charge on the property.

Subclause (1) applies where the person in whose favour an order under clause 95 has been made has matrimonial home rights which are a charge. In that case, the order under clause 95 also operates as a charge on the property unless the court otherwise orders and is likewise binding on, for example, the purchaser from the other party, and secondly, an order declaring his or her rights as against any successor of the original respondent or any trustees and providing for them to continue after divorce or death. Those orders may be made so as to ensure that a payment of rent, mortgage instalments et cetera by the party with the benefit of an order under clause 95 is as valid as if made by the other party.

Finally, Mr President, under that clause, subclause (2) specifies the same criteria to be applied by the court as under clause 95(7), that is: is it just and reasonable to make the order?

Finally, Mr President, clause 97 makes provision for occupation orders for a limited period only in favour of a former spouse who has no existing right to occupy the former matrimonial home and the other former spouse is entitled to occupy.

Subclause (1) sets out the circumstances in which the clause applies, that is, of course, a couple are divorced and one of them is entitled, as owner or tenant, to occupy the home and the other is not.

Subclause (2) enables that former spouse to apply for an occupation order.

Subclause (3) deals with the case where the applicant is living in the former home. The order will give him or her the right not to be turned out by the other and forbid the other to do so, but only for a limited period.

Subclause (4) deals with the case where the applicant is not living in the former home. The order will give him or her the right to go in and stay in and require the other to allow this, but again only for a limited period.

Subclause (5) sets out extra provisions which can be included in an order.

Subclause (6) sets out the criteria again to be applied by the court in deciding whether to make an order. They have the same four factors as we looked at under clause 95(5), plus three additional criteria which are relevant where the parties are already divorced. The three criteria are in (e), (f) and (g): How long has it been since the parties separated? How long has it been since the divorce? And finally, are there any proceedings which are pending for a property adjustment order?

Subclause (7) sets out the criteria to be applied by the court in deciding whether to include any provision under clause 5 in the order.

Subclause (8) deals with cases of violence or abuse. If the court considers that the other party may cause significant harm to the applicant and any children if it does not include a provision under clause 5, it must include such provision unless it thinks the applicant may cause the respondent and any children

greater harm if it is included. Again, the 'balance of harm' test to which I referred earlier.

Mr President, I move that clauses 95 to 97 do stand part of the Bill.

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

**The President:** Mr Waft.

**Mr Waft:** Thank you, Mr President. I think we are straying, with this clause 95, into the rights of a cohabitee, which we have not dealt with in the preceding part of the Bill. When we do stray into this area and their entitlement to be housed after the other partner has died, we have all heard of the cases in the past of cohabitees living with each other for 20 or 30 years and then the daughter comes along and takes the house from the surviving partner. That situation, I take it, is catered for within these parts of the Bill. I just wondered, with regard to the cohabitee and the length of time for which that situation has taken place: when does a cohabitee become entitled to a say in what happens to the house's future? Is it six months or six years? It says the court shall have to be aware of the time that they have lived together. I just wondered if we are perhaps straying into this area, which we have not done before, and whether there are any time limits on that association. Thank you, Mr President.

**Mr Lowey:** Could I just ask – it may be an awkward question: I know it is matrimonial, but what about same-sex cohabitees? Does this touch them? Is the principle the same?

**The President:** Mr Attorney.

**The Attorney-General:** Can I just try to deal with that second question first, Mr President? As I think we saw, the definition of 'association' is going to be the critical point here, I think. If we look at clause 115, we see first of all, in clause 115(1), that 'For the purposes of this part – 'cohabitants' are a man and a woman who, although not married to each other, are living together as husband and wife; and 'former cohabitants' is to be read accordingly? I could be wrong, but I am not aware that our existing legislation recognises the relationship between a couple, as it were, of the same sex, although it has to be said again that the trend in the United Kingdom is certainly to allow rights –

**Mr Lowey:** Human rights?

**The Attorney-General:** – yes, indeed – to a couple of the same sex, provided that the relationship is a well settled relationship. But we are not dealing with that in this particular piece of legislation. It may be that that is something for the future.

In relation to the question raised by the hon. member Mr Waft, he is quite right, of course, that we are looking here at rights of cohabitants, subject to the qualification we have just mentioned, which really

have not been recognised before. This is quite a novel development and, I think, one which recognises modern trends. The court has very wide powers, as we have seen under the clauses. There are no particular time limits, I believe, which would define whether a person has cohabitation rights or not. I think that generally the court will look at all the circumstances of the case and will say, for example, that in relation to a fleeting relationship it would be totally unjust to say that a person has acquired cohabitation rights or rights of occupation. Equally, however, one can envisage a situation where a couple have lived together for many years and it would be terribly unjust if those rights of occupation were not preserved and enforced by the court. So, I am afraid, rather a lawyer's response: it all depends on the circumstances.

**The President:** Hon. members, I put to you the motion that clauses 95, 96 and 97 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Now, Mr Attorney, I understand that is as far as you wish to travel this morning.

**The Attorney-General:** Well, Mr President, I am afraid that is as far as I have been able to prepare for today. Hopefully we can finish the clauses at the next sitting.

**The President:** Right, okay. Accepting, hon. members, that we will conclude this morning therefore at clause 97, having concluded at clause 97, that actually brings us to the end of our order paper this morning, so we will adjourn to the sitting of Tynwald on 18th February and thereafter to 25th February to our full sitting, when we will try to conclude the Matrimonial Proceedings Bill.

I am sure, hon. members, before I do leave you, it would be remiss of me if I did not congratulate Ed Lowey on becoming an old age pensioner tomorrow and catching me up. Many happy returns! *(Interjections)* Thank you, hon. members.

*The Council adjourned.*

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