

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

**Douglas, Tuesday, 12th November 2002
at 10.00 a.m.**

Present:

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

The Chaplain took the prayers.

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Leave of Absence

The Speaker: Hon. members, leave of absence has been granted to the hon. member for Douglas South, Mr Duggan, the hon. member for Rushen, Mrs Crowe and the hon. member for Middle, Mr Quayle, who is given leave of absence for the early part of the sitting.

Questions were taken at this point and concluded at 10.53 a.m. They are published separately.

Matrimonial Proceedings Bill – Third Reading – Motion to Debate Delayed for Consideration of Standing Orders

The Speaker: Hon. members, item 3 on the order paper is a Bill for third reading. I call on the hon. member for Douglas East, Mrs Cannell, to take the Matrimonial Proceedings Bill.

Mrs Cannell: Thank you, Mr Speaker. Members may recall at the last stage of this Bill when we completed the clauses. I did circulate to all hon. members a letter that had been sent to the Attorney-General's chambers by His Honour Deemster Kerruish, outlining particular concerns he had in respect of two amendments which were successfully moved by the hon. member for Rushen, Mr Gill, and secured a majority vote in this House.

I feel it is important to report to hon. members on this particular situation that a meeting was convened yesterday at the Attorney-General's Chambers and involved the hon. member for Rushen, Mr Gill, the Chief Minister, myself and the Attorney-General himself, where we went through the letter that hon. members have. The Attorney-General explained the circumstances and the concerns as outlined in that particular letter. He informed us at the meeting that he concurred with the view of His Honour Deemster Kerruish that the amendments which the House had in fact adopted by majority vote were not appropriate to be contained within this particular piece of legislation, and I think it is important that the record should show what the deemster's concerns were and, just with a little bit of latitude, please, Mr Speaker, I will refer to his letter that members have, in particular the wording of the subject matter. I am quoting from his letter: 'The wording of the subject matter amended also causes considerable concern. Whilst I have concerns relevant to the potential width of the phrase "to any allegation of abuse against a child" my main concerns are relevant to the words "which is found to be made maliciously or without reasonable or probable basis."' Now, those were the main components of the successful amendment moved in this place which

attracted majority support. He has concern with the actual wording, not the subject matter – we all have concerns about allegations of child abuse and particularly if they are heard in respect of matrimonial proceedings – but where the first amendment falls and the relevant clause, that relevant clause in a series of clauses like it are to enable the court to deal fairly with the distribution of the assets of the couple who are seeking divorce – in other words, the financial property aspects et cetera. The amendment falls within that section and so, for all intents and purposes, if it is to remain there, one can envisage therefore that if such an allegation were made at that stage of the proceedings of a divorce, then the deemster so presiding would have to stay proceedings, would have to alert the police and the relevant authorities and an inquiry would have to be undertaken.

Now, his concern is that the meat of the amendment is dealing with a potential criminal matter whereas this piece of legislation is a civil matter, and he is concerned that we would have a hearing within a hearing. That is not unreasonable when you are talking of a civil matter hearing contained within a civil matter hearing but it is quite a different matter if you have a criminal matter hearing contained within a civil matter hearing, and that is where the problem lies. This Bill is civil legislation. The amendments potentially have a criminal aspect to them.

But the deemster then went on that 'If malice is alleged in civil proceedings, then the current and well-established practice is that it must be specifically pleaded. If, within the context of family division matters, malice is specifically pleaded, then I have no doubt that such particular allegation would lead to trial within a trial.' He then goes on to say, 'It is, however, the words "without any reasonable or probable basis" which cause more concern' and he goes on to say, 'What is the test to be applied to the words reasonable and probable? Is it subjective, objective or subjective/objective? What would be the requisite standard of proof? Is it the civil balance of probabilities or a higher proof, bearing in mind that matters under the Matrimonial Proceedings Bill 2002 will be within the Family Division of the High Court? Are there any concerns as to the jurisdiction the court will be required to exercise to determine whether any allegation of child abuse has been made without any reasonable or probable basis?'

Now, we had quite a lengthy meeting yesterday, Mr Speaker, and, as I have advised hon. members, the Attorney-General agreed with the views and the feelings of the actual deemster and we did explore whether or not a form of wording might be selected at some point during the passage of this piece of legislation in order to take on board the concerns that were raised by the hon. member for Rushen, Mr Gill, and explore we did indeed. The Attorney-General's view, however, was that, because it is primarily a civil legislation vehicle that we are considering, anything to do with allegations in this context do not sit comfortably within this particular piece of legislation;

in fact, they ought to be contained within a criminal justice legislation. There is, however, provision within criminal justice legislation to deal with the situation. It was felt, though, by the hon. mover of the successful amendments that that is not always applied, despite the fact that we have law there to cover it and that the wording and the intention of the wording, as honourable as it is, was as a warning, that for anybody who was seeking divorce the purpose of his intention was that they would be warned by their legal advisers, 'Do not go making irresponsible accusations and allegations about this sort of thing because it is contained within the Bill.' Potentially you could be if a hearing had taken place and the court or the agency found that they could not prove either way whether there had been malice or without probable cause; then a penalty could be applied because the amendment sits within the financial settlement aspects of the particular Bill.

So there are all sorts of problems. I felt, Mr Speaker, fairly convinced and satisfied by the explanation by the Attorney-General and the concerns by the deemster. However, as it is not my Bill but a government Bill of which I am merely the messenger, I have been asked by the hon. Chief Minister to take the third reading today, which I will take, but I think it is incumbent upon me, Mr Speaker, to say and to state for the record that we may expect the Bill to be returned to us after the Legislative Council have given it scrutiny, and indeed the Attorney-General did advise us yesterday that he has already asked a member of the Legislative Council to move such amendments to reinstate the Bill to its original wording in respect of the two amendments that were successfully carried in this place. I think, as I say, it is incumbent upon me to advise hon. members that there is a likelihood that that may happen. I feel it is regrettable that we have got to this stage where we might anticipate it returning, bearing in mind that the provisions contained within this Bill in respect of domestic violence issues and the family home – we do have people and I have constituents living in refuges at the moment with their children whilst their allegedly violent spouse occupies the matrimonial home, and therefore their divorce is stayed whilst the investigations are taking place in respect of the violent abuse of one spouse against the other.

This Bill, if ever it gets enacted and becomes law, will help that situation because there are provisions in this legislation that would enable the situation I have described to hon. members with that woman and her three children to, by the ruling of the court, occupy the matrimonial home instead of having to live in a refuge whilst the alleged abuser occupies the detached five-bedroomed family home, and so I felt there was a degree of urgency in order for us to get this piece of legislation through. We have been delayed by the summer recess, Mr Speaker. I would have thought that the deemster might have been a little bit more helpful in making his concerns known to us a little earlier, but equally I feel that we were old enough and grown up

enough here today to have considered reinstating the Bill as originally worded in the knowledge of the information and advice and guidance and legal opinion that we have obtained as of yesterday's meeting, but I reluctantly have to accept the request by the hon. Chief Minister to merely take third reading and we move ahead.

So I will now begin to take the third reading which will be very short and very brief, because I think the importance of what I have just outlined has taken most of my time here this morning and I felt it was important to give a proper explanation.

Can I advise, in respect of the two queries that came up at the clauses stage with clause 132 there was a query by the hon. member for Peel, Mrs Hannan and also the hon. member for Rushen, Mr Gill. Mrs Hannan wanted to know why the Bill continued to use the terminology 'husband and wife?' Why could it not be 'wife and husband' or why could there not be some other kind of terminology to include both? I was advised by the Attorney-General himself, as the legal draftsman is still away off-Island, that he was pleased to report to me that the Commonwealth Parliamentary Association – they stand in committee of that – is considering this very issue where they too are looking for a terminology that can embrace both husband and wife, wife and husband, and he is quite excited about the consequence of that coming forward and I thought it might interest the hon. member because I know how she, too, follows the Commonwealth Parliamentary Association issues. She perhaps might be able to follow it through that way. His explanation to why it is contained within this piece of legislation was that we have to have a certain degree of reciprocity in certain pieces of legislation – and I know that the hon. member will understand this – particularly when it comes to things like matrimonial proceedings, because it incorporates perhaps a partner who might be living across in the United Kingdom or elsewhere where we have reciprocity with.

With regard to the query made by the hon. member for Rushen, Mr Gill, he wanted to know what 'necessaries' are. Well, necessaries are things like food, fuel and lighting in modern terminology, but it might interest him to know that in the original terminology 'necessaries' were regarded as the husband had to provide sustenance and protection for his wife and to provide her with a house to live in and furniture et cetera; that still stands in the old law, but because we are going for equalisation or getting rid of discrimination aspects, equally now the wife has to sustain and protect her husband and provide a house for him to live in and furniture to be put in to the house, so the idea of clause 132 was to get rid of any aspects of inequality there and that is where it comes through. So 'necessaries' also, of course, extends to children under 18 years, who can make a claim for necessaries for any aspect of living or education that they need from one or the other of his or her parents.

Mr Speaker, when I agreed to take this piece of legislation I was told it was not controversial; although

complicated, it was mainly consolidation, which it is. We have had all sorts of amendments tried and tested in respect of this piece of legislation, the majority of which have been unsuccessful. One has been very successful: it has transferred the responsibility for certain elements of reconciliation from the Department of Health and Social Security onto the Department of Home Affairs. That has been an amicable arrangement and I feel that hon. members will wish it well.

The two amendments I referred to at the beginning of my presentation, Mr Speaker, but basically this piece of legislation consolidates the Married Women's Property, Dower and Widowright Act of 1921, which deals with equality as respects property rights, the Judicature (Matrimonial) Causes Act 1976, which deals with divorce and annulment, the Matrimonial Homes Act 1971, which deals with occupation of matrimonial homes, the Domestic Proceedings Act 1983, which deals with claims for maintenance during marriage, and the Matrimonial Proceedings Act 2001, which deals with claims for maintenance et cetera following divorce or annulment including overseas divorce. This piece of legislation is an attempt to consolidate all the existing legislation on matrimonial proceedings and property, and the Bill therefore re-enacts all the Acts to which I have referred including the 2001 consolidation in a single measure with one major set of reforms and a few minor changes of substance.

The major changes in part 4 contains a new code relating to domestic violence and the matrimonial home, and it is therefore replacing the Matrimonial Homes Act 1971 and the various provisions relating to domestic violence. It is for this main reason that I agreed to take this Bill. The whole idea is intended to secure greater consistency and effectiveness in measure against violent spouses. The minor changes are in certain clauses in part 7 of the Bill and are intended to remove the few remaining inequalities in the treatment of husbands and wives and wives and husbands as respects property matters, and there have also been a few changes in name to bring it up to more modern terminology.

As I intimated, I would have hoped we would have dealt with it finally here once and for all, sent it onto another place for further consideration and then that it would go off for Royal Assent to the Home Office so that we could have it as an Act of this land as soon as we possibly could to deal with the very serious issues that I have mentioned.

I do not believe that we have finished with it today. I will be very surprised if it does not come back to us – very, very surprised indeed, but I feel honour-bound to inform hon. members, who have been very patient throughout the various readings of this particular Bill, to let them know that they might expect it to come back and as the rules are – and I will be corrected by Mr Speaker if I am wrong – as I understand it, if it comes back and the Keys continues to accept the Bill as written but insists upon continuing their support for the amendments moved by the hon.

member for Rushen, Mr Gill, then when we take it back to the Legislative Council for a second look they can bounce it back again to us. That, in my view, is unacceptable delay in putting in place in law in this land important provisions particularly in domestic violence situations, and I do not think it bodes well for the public in respect of the government's position – because it is their legislation I am moving for them – I do not think it looks well for government in the knowledge that it could be bounced backwards and forwards like a hot political potato when it is *not* a hot political potato at all. The intention of the hon. member for Rushen, Mr Gill, is a laudable one and I do not think any of us would disregard it or say that it was not, but the fact of the matter is, Mr Speaker, it does not fit within this particular legislation. I did make a suggestion – I felt a reasonable suggestion – yesterday during our meeting to the hon. member for Rushen, Mr Gill, that because the issue he had raised is such an important one he might consider coming forward to this place and ask for leave to introduce a private member's Bill to put this aspect into law. That may well happen, I do not know, but I have now finished with my third reading and my delivery to hon. members on the outcome of yesterday's meeting and I beg to move, sir.

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

Mr Corkill: Mr Speaker, I beg to second the third reading in this Bill, and I would just like also to take the opportunity to thank the hon. member for the hard work she has put into the moving of this Bill. I think I did say to her that it was an uncontroversial Bill and I still believe it is an uncontroversial Bill, but it is complicated. I do not believe I said it was uncomplicated because this type of legislation is by its nature. These things that are civil law and have such an impact in social terms are always complicated. So I would just like, on behalf of the government, to thank everybody who has had their input into this Bill because it is basically consolidation legislation but there are some important measures in it, particularly as the hon. mover has referred to the issues with regard to violent spouses, and the hon. mover made example reference to women's refuge and so, from a government perspective and I am sure from all our perspectives, we are quite keen to make sure that this Bill does progress to Royal Assent as soon as possible. But, of course, with the process that we have another place, Legislative Council, could well send the Bill back on some other minor amendment anyway, so we have to expect, I think, from time to time that legislation will drop back down to us for further scrutiny. It is frustrating because as regards this particular element to do with violent spouses I know the hon. member is very keen to make sure it becomes 'the law of the land', as she puts it.

We had a successful meeting, I believe, yesterday in advance of the sitting, looking at the impacts of the

hon. member, Mr Gill, from Rushen's amendment which, as things stand, is a successful amendment as part of the Bill as it stands. I suppose it would have been open to government to perhaps try to suspend standing orders and go back to the clauses stage; I think that would have been perhaps a messy way of dealing with the situation we are at, certainly from Mr Gill's point of view. He is very strongly supportive of the element of discussion that he has introduced through his amendment, and I would certainly hope that what is contained in his amendment does not drop out of sight if, indeed, another place does decide that it could be better in another part of legislation. The hon. mover is right: this is civil legislation, and the issue the hon. member has raised with his amendment really does cut straight into criminal law and may well sit better in a short Bill or some criminal justice legislation. I gave the hon. member an undertaking that, if the amendment does drop out at the end of the day, certainly I would be supportive of helping him introduce that measure in that way.

I hope that hon. members will see this as a practical way forward and not necessarily wish to go back to the clauses stage because, after a long and detailed discussion, as the hon. mover said, with the Attorney-General, we could not actually come up with a form of words whilst dealing with this Bill that fits comfortably in any particular clause to deal with the amendment, and it has been the will of this House to accept that amendment, so I think a little bit of time while the scrutiny goes on in the Legislative Council, which is, in fact, still progressing the Bill. I would not wish to see as a delay in the Bill. The Bill is progressing in the normal way. It will give us our opportunity to revisit Mr Gill's amendment which, the more I have read it, the more I think is an important element to what we are trying to achieve but, the hon. mover is quite right, it does fit awkwardly within this Bill at the moment and that is reflected in the deemster's letter.

So I would ask hon. members to support the third reading of this Bill and let us see what another place does. It is in *Hansard* now, they will pick up on the issues and certainly, from executive government's point of view, we will be promoting the hon. mover's comments in relation to this Bill in another place. Hon. member for Rushen, Mr Gill.

Mr Gill: Thank you, Vainstyr Loayreyder. I rise also to support the progression of the Bill to Legislative Council, but if I could perhaps just mention a few points that have not been given, for understandable reasons, the weight that I would have sought them to have been, first of all, the points that we have agreed in this House overwhelmingly: we do recognise that there are incidents of malicious allegations; we do recognise that largely, even when they are accepted and recognised, there is in practice very little in criminal law which is actually done against the perpetrator of those malicious allegations, and it may be that, as the hon. mover suggested, they

can be dealt with in a criminal court. The fact is that, as the Attorney-General and everybody at the meeting yesterday accepted, that does not happen. It is not that it happens occasionally; it just does not happen. The Attorney-General – admittedly it was a point put to him directly, but he was unable to accept that there were incidents, and my experience would be that actually there are very, very few, if any at all.

So we accept we have a problem; we have not got a remedy. It may be that this is uncomfortable; the smoothest passage of dealing with civil law is to actually put these amendments as I have suggested and as have received overwhelming support in these clauses, but frankly, if you are not going to get a criminal proceeding against somebody, then the only alternative is to hit them in the pocket and I hope that that principle has been considered and has been accepted. I appreciate, when we consider the second amendment on the basis of the advice that we received from the deemster's letter, hon. members had less than an hour to consider his letter dated 1st October; that is really not a matter for me, but they were considered and there was still overwhelming support, though it may be, as we agreed at that time, that the Legislative Council will come back and voice some disquiet or some reservations about these amendments. I fully accept that, but I also hope that it is clear, and that *Hansard* will reflect, that this House has extreme concerns about this practice that we are trying to flag up and do something about, and that, if this is not the method that is accepted in due course – and that is a big 'if' because we cannot second-guess what Legislative Council will say – the House will accept that there is a problem and it will accept any methods subsequent to that to actually address this in a fuller manner.

I would say that the offer of incorporating these amendments or of some similar form into a forthcoming criminal Bill is genuine made, but the Attorney-General was also candid enough to accept that there is no criminal Bill coming through on the legislative programme that would marry into that, so it may be that it will fall to a private member's Bill if – and I say 'if' because there is a lot of uncertainty still to be resolved – it is that we are in that position, then it may be that the private member's Bill is the method to actually progress this. Time will tell, but I would say to this House that I thank them for their support on this important matter and I would undertake that, if we get to that, I would seriously consider taking that private member's Bill myself if I was given leave to do so. Thank you, Mr Speaker.

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

Mr Singer: Thank you, Mr Speaker. I wish to move the following amendment that the third reading of the Bill be adjourned for four weeks to enable the clauses stage to be reopened again on 3rd December. I must say – I do not know if other members feel the

same – I feel very, very uncomfortable with what has gone on in here this morning and what we have heard and what the Chief Minister has said. I think the House does need a chance to reflect on the issues but I do not think it is right to say, ‘We will pass it even though we do not particularly think it is right and it is not in mind with the Attorney-General’s advice’ and, as the Chief Minister said, ‘We will pass it and let us see what’ – I think his words were – ‘Let’s see what another place does.’ I do not think that is our job here in the House of Keys. We often face the accusation that we send legislation up to the Legislative Council which is faulty here, which we should perhaps have looked into to a greater extent and that then they have to send it back to us, and here we are, saying we know that further discussion needs to take place, we know that the amendments will probably be sent back to us. Well, it is not our job, as I see it, for us to wait for the Legislative Council to send the jobs back. I think we are here to do the job as best we can, and we know from what we have heard today that we can do it better. Therefore I believe that we should send the legislation up to the upper House in what we believe is the right form, and therefore, as I say, I feel very uncomfortable if this is a precedent to send it up expecting it up to come back amended by the upper House. So I would move the amendment:

That the third reading of the Matrimonial Proceedings Bill be adjourned to enable the clauses stage to be reopened on 3rd December.

Thank you, Mr Speaker.

The Speaker: Hon. members, before we proceed I would just advise you that we are now in an adjournment debate; standing orders 84, 85 and 86 cover this area and hon. members who wish to speak are to speak about the adjournment and not the third reading and are limited to a five-minute maximum time of speaking. Hon. member for Peel, Mrs Hannan.

Mrs Hannan: Thank you, Vainstyr Loayreyder. I rise to second the motion before us, because I do feel that we have a responsibility and that responsibility has been spelt out quite clearly to us by the Second Deemster. The Second Deemster does not, I would put it to this hon. House, take his responsibilities or, you might say, interfering in the legislative process lightly. He was concerned to write to the Attorney-General and he said – and the mover of this legislation did not quote from this, but it is on the last paragraph of the second page – ‘Whilst I have sympathy for the assumed concerns of Mr Gill, the moving member, I respectfully consider that the amendment, by the addition to clause 32(5) carried in the House of Keys, will not achieve the perceived desired objective. I consider that the considerable potential detrimental consequences if the amendment becomes law have not been fully considered. I most strongly urge you to consider opposing the same in the Legislative

Council.’ So we know that if this goes to the Legislative Council the legislation are going to take notice of the Attorney-General when he moves this, and I would imagine the Attorney-General will also circulate this to the Legislative Council.

Even if it got through Legislative Council, if you look on page 116 of the legislation, it says, ‘This Act shall come into operation on such day as the Council of Ministers may by order appoint.’ The Council of Ministers are going to be advised by the Attorney-General. So this legislation is not going to come into law unless the Attorney-General says it is okay to. Therefore it should not leave this House until these concerns have properly been considered within this particular piece of legislation which, I understood from the comments made by the mover today, was an invitation to this House to sort it out prior to going. I thought that was the reason why she had made it quite clear that it had been spelt out what the contents of the meeting were and that it was purely up to this House to sort it out, but she was also moving it for the government and therefore I think it is for the government to consider what has been said in this hon. House, to take note of that, and to also come back to this House with recommendations of how it should proceed.

What I am saying to the government is that it cannot bring in this legislation if the Attorney-General advises against it and therefore we have wasted our time, and surely this legislation is important, as the mover has suggested, it should be right and it should be placed before the Council of Ministers from both legislative houses in a way that it can be used.

So I would hope that the Council of Ministers would accept this adjournment to allow them the time to get it right.

The Speaker: Now, hon. members, before I call any other hon. member, I just wish to consult with the Secretary.

Now, hon. members, just before I move on, can I just make a point to hon. members? We cannot anticipate what the Legislative Council may or may not do, and I think that we as a House have to decide what we want, and that is the issue before the House. We are in an adjournment debate but I do wish to make it clear, because I think there is a presumption that the Legislative Council will do this. We cannot anticipate what they will do. I call on the hon. member for Michael, Mr Cannan.

Mr Cannan: On a point of order, Mr Speaker, the mover wanted an adjournment for the reconsideration of the clauses. Well, surely that requires then a suspension of standing orders; it is not simply an adjournment we are asking for for the third reading?

The Speaker: That is the very question I asked the Secretary of the House which I was consulting on. Could I ask the Secretary of the House to clarify that position for hon. members as he just has to me.

The Secretary: Mr Speaker, I have looked at the standing orders. I cannot see that there is any order that prohibits a further consideration of clauses stage if the House so wishes. It does not seem to me that there is a standing order that requires to be suspended. If the House wishes to continue with clauses it can do so by a simple majority. That is the conclusion I have so far come to, but I may be wrong if the hon. member has a standing order in mind.

The Speaker: Hon. member for Michael.

Mr Cannan: With respect, sir, we have completed the clauses stage so all the clauses have been passed, so what the hon. member for Ramsey is doing is seeking to reopen the clauses – in other words, for the redebate of the clauses if I am correct in what he is saying, and I am. Therefore if you have passed the clauses it would require suspension of standing orders, sir, to redebate the standing orders that have already been approved. I do not believe, Mr Speaker, that it is just a simple case where hon. members can pass standing orders one week and then decide they want to change them the following week without suspension of standing orders, sir.

The Speaker: Just to clarify that, I did ask the Secretary of the House whether or not there was a need to suspend standing orders, because my initial reaction was that there would be to actually debate again the issue of the clauses after the finish of that stage. Clearly the House has to be very clear on what it can and cannot do, and I just wonder, so we do not get ourselves into a bit of mess, whether or not hon. members would be willing to return to this matter later today and to proceed with the Medicines Bill to give the Secretary of the House time to check this matter out so that we can actually ensure that we have an appropriate motion before the House and we can just return to the adjournment debate that is before us at this stage. I do think it is important we do not get ourselves into a mess over this issue, and if members are happy with that I would move that we proceed at this stage with the Medicines Bill and return to the Matrimonial Proceedings Bill later today for the adjournment debate. Are members agreed to that? Is that agreed?

Members: Agreed.

The Speaker: Thank you, hon. members. We will return to that today.

Medicines Bill – Clauses Considered

The Speaker: So if I can call on the hon. member for Glenfaba to take the consideration of clauses of the Medicines Bill, hon. member for Glenfaba, Mr Anderson. Clause 1.

Mr Anderson: Thank you, Mr Speaker. I realise that it can raise hon. members' concerns when a member states that this Bill is not controversial. (*Laughter*) However, I will restate this, for this is the case in the Medicines Bill. I am going to give a short introduction to the various parts of the clauses so that members have an overview of the section before proceeding to individual clauses.

Part 1 deals with medicinal products. This part of the Bill gives the department powers to set out in regulations a scheme of control for medicinal products. The 1976 Act gave the department powers to operate a complex regulatory régime controlling all aspects of the trade in medicinal products. A comprehensive scheme of control of this type has never been required and is recognised that such a scheme would be a resource-intensive exercise and would duplicate work already carried out in other jurisdictions. The present Bill is drafted in a manner which allows the department to regulate the trade in medicinal products on the Island whilst recognising authorisations and certificates issued under corresponding UK or European legislation. This will provide balance between having a creditable scheme of regulation without having to dole out significant resources to achieving this.

In order to give effect to this requirement the Bill provides the department with powers, subject to regulations approved by Tynwald, to recognise authorisations for medicinal products and manufacturers issued under European or UK legislation. Powers are also required to the department to classify medicinal products so they can be made available either on prescription only from pharmacies or available for general sale. The department will, however, have powers to make exemptions from this classification for certain classes of healthcare professionals. This will allow continuation of nurse prescribing allowed by the 1976 Act and give the department the ability to extend this to other professionals subject to Tynwald approval.

Clause 1 contains introductory provisions requiring the department, in exercising its powers under part 1, to have regard to the systems of control of medicinal products for human use operated in the United Kingdom. It also defines the terms 'medicinal product', 'Community authorisation' and 'UK authorisation' which are fundamental to those systems.

Subclause (1) requires the department in exercising its powers under part 1, i.e. its regulation-making powers under clauses 2 to 5, to have regard to the systems of control of medicinal products for human use which operate in the United Kingdom. This does not oblige the department to follow those systems to the letter except as required by clause 2, subclause (4) and subclause (3) below, and it could introduce different systems of control if appropriate but it must take those systems as a benchmark. They are identified by reference to the legislation under which they operate: (a) The EC directive containing the community code harmonising national systems of

medicine control; (b) the EC regulations of 1993 which set up the central procedures under which community-wide marketing authorisations for medicinal products are granted and which is gradually replacing national approved procedures; (c) the UK Medicines Act 1968 so far as that Act has not been superseded by EC legislation; and (d) any legislation amending or replacing any of the above. This is to ensure that the Island can keep up to date with new EC and UK legislation in this field without having to pass new primary legislation. This is a new provision.

Subclause (2) defines 'medicinal product', a concept fundamental to the Bill. It is dealing in medicinal products that the Bill is intended to regulate although there are powers under clause 50 to apply provisions of the Bill by order to other articles or substances. The definition has two main concepts: (1) it covers any substance or combination of substances which (2) either is presented for treating or preventing disease or maybe administered for diagnostic purposes or in order to effect physiological functions. It follows the definition in the EC directive and is substantially similar to that in the 1976 Act, section 122. This applies only to products for human use. Veterinary medicines are dealt with in part 5.

Subclause (3) defines the terms 'community authorisation' and 'UK authorisation', which are also fundamental to the Bill. Community authorisation is a marketing authorisation granted under the European approval system allowing a medicinal product to be marketed in the EC. The principal EC bodies in this area are the European Agency for the Evaluation Of Medicinal Products and its committee for proprietary medicinal products. 'UK authorisation' is an authorisation licence or certificate granted in the UK under the specified legislation. The main type of UK licence is also a marketing authorisation granted by the MCA under the harmonisation EC system.

Subclause (4) enables the department to amend the definitions in clause 3 by regulations to ensure that the Island can keep up to date with new EC and UK legislation without having to pass new primary legislation, and therefore the regulations would require Tynwald approval. Mr Speaker, I beg to move that clause 1 form part of the Bill.

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

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

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

Mr Anderson: Clause 2. This clause is the main plank of the system of control introduced by the Bill. This enables the department to make regulations

controlling the marketing, manufacture, distribution, import, export and presentation of medicinal products.

Subclause (1) gives the department powers to make regulations controlling various activities and concerns connected with medicinal products (a) sale or supply otherwise placing on the market; (b) manufacture or assembly – for example, mixing or putting in solution; (c) distribution – an example of that will be wholesale distribution or transport; (d) procuring sale, supply or marketing otherwise than by the actual sale, supply marketing or distribution; (e) import or export; and (f) possession with a view to sale, supply or marketing.

Subclause (2) enables regulations under (1) to include requirements as to labelling and marketing of medicinal products, the supply of leaflets with such products and standards of containers for the purposes specified in subclause (3).

Subclause (3) specifies the purpose which the requirements under subclause (2) can be imposed (a) identification (b) information (c) safety and (d) quality control. That is in relation to containers.

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

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

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

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

Mr Anderson: Mr Speaker, clause 3. This clause requires the department to make regulations giving exemptions from controls imposed under clause 2 to some activities by health professionals and pharmacists and enables them to give further exemptions.

Subclause (1) requires the department to make regulations, giving exemptions from the controls imposed under clause 2 to activities, which are specified in the regulations by (a) a practitioner or (b) in a pharmacy. Practitioner is defined by schedule 2 as a doctor, a dentist or subject to conditions and qualifications, a registered nurse, midwife or other health professional for pharmacies. Tynwald regulations would need approval for that as well.

Subclause (2) allows the department to make regulations giving further exemptions from the controls imposed under clause 2.

Moving onto clause 4, this clause provides that regulations under clause 2 must require that certain medicines be sold by retail at pharmacies only.

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

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

Then we move on to subclause (3), which makes it clear that subclause (2) above does not affect the wider powers of clause 2.

Then we move on, Mr Speaker, to clause 5. This clause provides that regulations under clause 2 must require certain medicines be sold by retail on prescription only.

Subclause (1) specifies the medicinal products which may be sold by retail on prescription only under this clause. There are those which under the terms of their community or UK authorisation are not to be sold except in that way. At present a prescription-only list is prescribed by order in the UK 1968 Act. Under the new system now being introduced in the UK a prescription-only product will be determined by the conditions of the marketing authorisation applicable to it.

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

Subclause (3) makes it clear that this does not affect the wider powers of clause 2. Mr Speaker, I beg to move that clause 3, clause 4 and clause 5 form part of the Bill.

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

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

The Speaker: Hon. members, I will put before the House that clauses 3, 4 and 5 stand part of the Bill. All

those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 6, sir.

Mr Anderson: Mr Speaker, clause 6 enables regulations under this part to create criminal offences or to set up a registration or licensing system and impose conditions that a person shall be entered on a register for the whole of a licence or certificate in order to carry on a specified activity. It also requires the department to consult with any professions and other interests affected before making regulations.

Subclause (1) enables regulations under part 1 to create offences that can be summary offences carrying a fine of up to £5,000, and that is the usual limit for courts of summary jurisdiction, but indictable offences carry up to two years and/or unlimited fine.

Subclause (2) enables regulations to impose conditions that a person shall be entered on a register for the whole of a licence or certificate in order to carry on a specified activity, or (b) to impose conditions for registration or to issue licences or certificates including registration or licence fees; and (c) procedures for application and registration or licensing, including appeals.

Subclause (3) requires the department to consult with any profession and other interests affected before making regulations. It applies to the NHS Act 2001, section 41, which provides for consultations with doctors, dentists, opticians and pharmacists through the relevant Isle of Man representative body. Mr Speaker, I beg to move that clause 6 form part of the Bill.

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

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

The Speaker: Hon. members, the motion before the House is that clause 6 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Hon. member for Glenfaba, clauses 7 and 8, please.

Mr Anderson: We move, Mr Speaker, on to part 2 of the Bill. If I can just give a brief introduction, part 2 of the Bill re-enacts the consumer protection provisions contained within the Medicines Act 1976. It contains the offences of adulteration of medicinal products, sale of a product not of the nature or quality demanded, sale of a product with a recognised name which does not comply with the recognised specification and supply of medicine with misleading label or leaflet, and there are also powers within this section for the department to regulate the information provided on automatic machines.

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

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

Subclause (1) makes it an offence to purchase prejudice to sell medicinal products not of the nature or quality demanded.

Subclause (2) makes it an offence to sell or supply a medicinal product not of the nature or quality prescribed.

Subclause (3) exempts the inclusion of a medicinal product of a substance which is an inevitable by-product of its manufacture.

Subclause (4) exempts the inclusion or exclusion from a medicinal product of something whose presence or absence does not harm it, and it is clearly identified on the container or package.

Subclause (5) makes it clear that the purchaser is nevertheless prejudiced where the product is bought for purposes of analysing or other enforcement purposes. Now, this clause will still apply even if the sample is not purchased but taken by compulsion under clause 20, subclause (2). Mr Speaker, I beg to move that clauses 7 and 8 form part of the Bill.

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

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

The Speaker: Hon. members, the motion before the House is that clauses 7 and 8 stand part of the Bill. All those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 9, hon. member.

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

Subclause (1) makes it an offence, in the course of a business where a medicinal product is asked for or prescribed by a particular name, to sell or supply a product which does not comply with a specification attached to that name in the relevant monograph.

Subclause (2) makes it an offence in the course of a business, where a medicinal product has been offered for sale by a particular name, to sell or supply a product which does not comply with the specification attached to that name in the relevant monograph.

Subclause (3) deals with the case where a product is sold or supplied as containing an ingredient with a particular name. An offence under subclause (1) or subclause (2) is committed if the ingredient does not comply with the specification attached to that name.

Subclause (4) explains what is meant by 'the relevant monograph' in relation to a named product. It is usually the appropriate current monograph, and subclause (5) defines 'appropriate' and 'current monograph', i.e. the article about the product with the name in the current issue of one of the listed publications.

Subclause (6) defines reference to current and other editions of the publications listed in subclause (4) which are regularly updated and less often replaced by new editions, other than the European Pharmacopoeia as in subclause (7), and subclause (7) defines reference to current and other editions of the European Pharmacopoeia. Mr Speaker, I beg to move that clause 9 form part of the Bill.

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

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

The Speaker: Hon. members, the motion before the House is that clause 9 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 10, sir.

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

Subclause (1) makes it an offence to sell or supply a medicinal product in the course of a business in a misleading container or package.

Subclause (2) makes it an offence to sell or supply a medicinal product in the course of a business with a misleading leaflet. Mr Speaker, I beg to move that clause 10 form part of the Bill.

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

Mrs Hannan: Vainstyr Loayreyder, I beg to second and reserve my remarks.

The Speaker: Hon. members, the motion before the House is that clause 10 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clauses 11 and 12, sir.

Mr Anderson: Mr Speaker, clause 11 enables regulations to impose requirements as to the display of information on automatic machines selling medicinal products; currently there are no such machines on the Island to my understanding.

Subclause (1) enables the department to make regulations imposing requirements as to the display of information on automatic machines selling medicinal products, and these regulations would require Tynwald approval.

Subclause (2) makes contravention of regulations under subclause (1) an offence for which there is a penalty.

Moving on, Mr Speaker, to clause 12, this clause specifies the penalties for offences under clauses 7 to 11.

Subclause (1) provides that offences under clause 7 to 10 carry, on summary conviction, a fine of up to

£5,000 or, at a Court of General Gaol Delivery, up to two years and/or an unlimited fine.

Subclause (2) provides that offences under clause 11 carry a summary conviction of a fine of up to £1,000. Mr Speaker, I beg to move that clauses 11 and 12 form part of the Bill.

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

Mrs Hannan: Vainstyr Loayreyder, I beg to second and reserve my remarks.

The Speaker: Hon. members, the motion before the House is that clauses 11 and 12 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 13, sir.

Mr Anderson: Mr Speaker, we move on to part 3 of the clauses. This section re-enacts the sections of the Medicines Act 1976 which regulate the advertising and promotion of medicinal products. It restates the offence of publishing misleading advertisements and claims and also places restrictions on the advertising of medicinal products.

Advertisements for prescriptions, medicinal products must comply with the marketing authorisation and must not be directed to the public. Where a product is promoted to a health care profession, a copy of that product summary must be supplied to them in advance of any advertising or promotion.

The regulation of advertising on the Island is in need of revision as it is based on the UK legislation that is over 20 years old. The current UK legislation is based on the relevant European directive, and it is the intention of the department to bring forward legislation to recognise the high standards of regulation contained within this directive. When drafted the regulations controlling the advertising and promotion of medicinal products will be subject to Tynwald approval.

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

Subclause (1) makes it an offence for a commercially interested party or anyone else, at his request or with his consent, to issue a false or misleading advertisement of a medicinal product, and for the penalty we have that in subclause 10.

Subclause (2) makes it an offence for a commercially interested party or anyone else, at his request or with his consent, to issue an advertisement recommending the use of a medicinal product for a purpose which is outside the purposes for which it can be recommended under the relevant community or UK authorisation.

Subclause (3) makes it an offence for anyone carrying on a relevant business, i.e. a business involving the sale or supply of medicinal products, or anyone else at his request or with his consent, to make a false or misleading spoken claim about medicinal products when selling it.

Subclause (4) makes it an offence for anyone carrying on a relevant business or anyone else at his request or with his consent to make a false or a misleading spoken claim about any class of medicinal product (a) to a practitioner in order to get him to prescribe them, or (b) to a patient in order to get him to ask a practitioner to prescribe them, or (c) to a patient to get him to buy them for the penalty that is in subclause (10).

Subclause (5) makes it an offence for anyone carrying on a relevant business, or anyone else at his request or with his consent, to issue an advertisement recommending the use of medicinal products for a purpose which is outside the purposes for which it can be recommended under relevant authorisation. An example is the community or UK authorisation.

Subclause (6) gives a due diligence defence to a charge under this clause. If the accused proved that he did not know and could not reasonably have found out that the advertisement or claim was false or that the recommendation was not allowed by the relevant authorisation, he is to be acquitted.

Subclause (7) gives a publisher of an advertisement a defence if (a) he is in the advertising publishing business; (b) he either took the advertisement in the ordinary way and published it unaltered or he took the information and produced the advertisement from that information in the ordinary way; or (c) he did not know and had no reason to suspect that the publication would be an offence.

Subclause (8) provides that an advertisement or spoken claim is to be treated as false or misleading if, and only if, the description is false or it is likely to mislead the product's nature, quality, use, or effects; an accurate description of the composition of the product, can still be an offence by that test.

Subclause (9) defines the term 'unauthorised recommendation'.

Subclause (10) provides for the penalty for offences under subclauses (1) to (5) on summary conviction, a fine for up to £5,000 or a Court at General Gaol Delivery up to two years and/or an unlimited fine. Mr Speaker, I beg to move that clause 13 form part of the Bill.

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

Mrs Hannan: Vainstyr Loayreyder, I beg to second and reserve my remarks.

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

Mrs Cannell: Thank you, Mr Speaker. In respect of subclause (8)(b) on page 14, where it states that it is an offence if 'it is likely to mislead as to the nature or quality of medicinal products of that description or as to their uses or effects,' I just wonder whether or not this kicks in where we receive – and I seem to receive an awful lot of it and I do not know why, through the

letter box – all sorts of advertisements describing the wonderful effects if you take this and if you take that and marvellous slimming things and things for this and things for that, and they give and cite examples of the success stories, photographs of people who were this size and then they are that size, and we seem at the moment to be getting an awful lot of this type of advertisements through the letter box, and I just wonder whether or not this misleading information and particularly the nature of the quality of what it is they are trying to sell is actually covered by this particular clause.

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

Mr Gill: Thank you, Mr Speaker. I think this clause should make it clear about the issues of commission in advertising, i.e. what it says on the tin is actually what it does, and we would all welcome that. I wonder if I could ask the hon. mover for some reassurance about issues that are not necessary to be clearly made acts of omission, i.e. what side effects or what warnings might have to be flagged up, and could he reassure me that this would be the relevant place for those issues to be addressed?

The Speaker: Hon. member for Glenfaba to reply.

Mr Anderson: Thank you, Mr Speaker. The regulations are in place currently in the Medicines Act of 1976, and this is just restating those: if there are products that are termed as medical products, they can be challenged and when the claim is made for those products. I know some years ago there was an element of our population had a concern about baldness. Of course, as we have moved on in the last 20 years it is not an issue any longer because people recognise that it was only a phase that people went through. Hair was fashionable in the 1970s and it is not any longer, (**A Member:** Hear, hear.) (*Laughter*) but at that stage there were many companies claiming to sell products that would reinstate people's hair and quite clearly they did not work – not that I tried them, (*Laughter*) but these sorts of companies would no longer be able to make those claims if they could not substantiate them, but this would only apply to medicinal products. Any medicinal products that did have, moving on to the hon. member for Rushen's comment, that did have side-effects quite clearly would have to satisfy the regulations before they would be introduced and they would not get a licence if they had side-effects that were unacceptable to the UK authorisation or the EC authorisation, Mr Speaker.

The Speaker: Right, hon. members, the motion before the House is that clause 13 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clauses 14, 15 and 16, hon. member.

Mr Anderson: Clause 14, this restricts the issue of advertisements about medicinal products which are the subject of a community or UK authorisation.

Subclause (1) makes it an offence where a medicinal product is the subject of a community or UK authorisation for (a) a commercially interested party other than the holder of the authorisation to issue an advertisement about it. It also (b) makes it an offence for any other person to issue an advertisement about it without the holder's consent.

Subclause (2) provides that offences under subclause (1) carry a summary conviction of a fine of up to £1,000.

Moving on to clause 15, this clause enables the department to make regulations prohibiting advertisements or representations relating to certain medicinal products or making certain kinds of claims about medicinal products.

Subclause (1) gives the department powers to make regulations prohibiting advertisements (a) relating to particular medicinal products, or (b) likely to lead to a medicinal product treating, preventing, or diagnosing a particular disease, identifying a particular condition or interfering with a particular function, e.g. conception, or inducing a particular condition, or (c) likely to lead to the use of a class of medicinal product or any other substance for any purpose within (b); or (d) relating to medicinal products and using a particular word or phrase which is likely to mislead the public about them.

Subclause (2) enables regulations under subclause (1) to cover not only advertisements but also spoken claims likely to lead to the use of medicinal products for a purpose within subclause (1)(b) or containing a word or phrase within subclause (1)(d) if a claim is made in connection with the sale of such a product, or (2) is made to a person with a view to him buying it from a retailer, or (3), in the case of medicinal products only, is made to a practitioner to get him to prescribe them.

Subclause (3) enables the department, for the purpose set out in subclause (4) below, to make regulations requiring advertisements relating to medicinal products to contain certain information to be in a particular form and for how long they can be shown, and that is in relation to cinema or TV advertisements. The regulations can also prohibit particular kinds of advertisements or particular products.

Subclause (4) sets out the purposes for which regulations can be made under subclause (3) to ensure (a) that adequate information is given, and (b) misleading information is not given, and (c) in the interests of safety.

Subclause (5) enables the regulations under subclause (4) to create offences, which can be summary offences carrying a fine of up to £5,000. Mr Speaker, I beg to move that clause 14 and clause 15 form part of the Bill.

The Speaker: And 16, hon. member?

Mr Anderson: Clause 16 prohibits advertisements sent and claims made to practitioners about a medicinal product unless an approved product summary can be supplied.

Subclause (1) prohibits a commercially interested party or anyone on his behalf sending an advertisement about a medicinal product to a practitioner unless the conditions in subclause (3) are fulfilled.

Subclause (2) prohibits a person carrying out a relevant business, i.e. a business involving the sale or supply of medicinal products as seen in clause 17(4), or anyone else at his request or with his consent from making a spoken claim, as in clause 17(4), to a practitioner about a medicinal product unless the conditions in subclause (3) are fulfilled.

Subclause (3) sets out the circumstances in which an advertisement or claim can be made without contravening subclause (1) or subclause 2: (a) a product summary is supplied at the same time or has been supplied in the last 15 months and (b) the advertisement or claim does not conflict with the product summary.

Subclause (4) makes contravention of subclause (1) or (2) an offence, and note the advertisement or claim conflicting with the product summary is a more serious offence.

Subclause (5) defines 'product summary' by reference to the summary of product characteristics, which article 11 of the directive requires to be included in every application for a marketing authorisation.

Subclause (6) enables the department to vary subclauses (1) to (5) in relation to any particular case. Mr Speaker, I beg to move that clauses 14, 15 and 16 form part of the Bill.

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

Mrs Hannan: Thank you, Vainstyr Loayreyder, I beg to second and reserve my remarks.

The Speaker: Hon. members, the motion before the House is that clauses 14, 15 and 16 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Now, before I call on the hon. member to take clause 17, if I could advise hon. members that on page 19, line 20 states in brackets (6) but it should in fact read (5). I am sure the hon. member will clarify that when he moves the Bill, so I call on the hon. member for Glenfaba, clause 17, please.

Mr Anderson: Thank you, Mr Speaker. There is a typographical error: it is subclause (5) that is in there; it is down as (6) for some reason, but that is the only difference.

This clause 17 defines terms used in clauses 13 to 16.

Subclause (1) defines 'advertisement' in the wider terms.

Subclause (2) excludes spoken words except where recorded or on radio or TV from the definition of 'advertisement', but they would constitute a representation as in subclause (4). Subclause (3) provides that the packaging of medicinal products or the issue of a leaflet with it does not count as an advertisement except for the purposes of clause 15(1)(b)(c) and (d).

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

Subclause (5) defines certain terms by reference to the Copyright Act of 1991. Mr Speaker, I beg to move that clause 17 form part of the Bill.

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

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

The Speaker: Right, hon. members, you are all clear that on line 20, page 19, where it has the figure (6) it should in fact read the figure (5). Therefore I put it that clause 17 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 18, sir.

Mr Anderson: Mr Speaker, we move on to part 4 of the Bill. The part restates the statutory powers contained within part 7 of the Medicines Act 1976. It allows the department to carry out its obligations within clause 18 to enforce the provisions of the Bill. The powers given to the department have cleared a right of entry and rights to inspect, take samples and to test or analyse medicinal products; there is also a right to seize goods and records where they relate to possible offences concerning the trade in medicinal products. Part 4 also contains an offence of obstruction and providing false information and provides a defence of due diligence.

Clause 18 imposes a legal duty on the department to enforce the Bill. This clause in the 1976 Act has never actually had to be put into effect. Mr Speaker, I beg to move that clause 18 form part of the Bill.

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

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

The Speaker: Hon. members, the motion before the House is that clause 18 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 19, hon. member.

Mr Anderson: Mr Speaker, clause 19 gives the authorised persons a right of entry to enforce the Bill, which can be backed up by a search warrant if necessary.

Subclause (1) gives a person authorised by the department power to enter any premises to see if there has been any contravention of the Bill or any regulations or order under it otherwise for the purpose of exercising other relevant functions of the department.

Subclause (2) gives a person authorised by the department power (a) to board any ship, aircraft or hovercraft to see if anything is being imported in contravention of the Bill; or (b) to enter any other vehicle, or any other place, apart from those premises listed in (1), or any home-coming ship for any purpose within subclause (1)(a) and (b).

Subclause (3) precludes an entry under subclause (1) or (2) except with the occupier's consent or after 24 hours' notice.

Subclause (4) enables a search warrant to be obtained from a JP where (a) admission has been or may be refused and the occupier has had notice of intention to apply for a warrant; (b) request for admission or notice of the application would defeat the object; (c) the case is urgent; or (d) the premises are unoccupied or the occupier is absent.

Subclause (5) applies subclause (4) to ships or aircraft, with suitable modifications.

Subclause (6) limits the operations of a warrant under subclause (4) to one month.

Subclause (7) enables a person exercising powers of entry to take persons and equipment with him and requires him to leave empty property as secured as he found it.

Subclause (8) defines 'home-coming ship', i.e. a coasting or fishing vessel and property as in subclause (7). Mr Speaker, I beg to move that clause 19 form part of the Bill.

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

Mrs Hannan: I beg to second, Vainstyr Loayreyder, and reserve my remarks.

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

Mr Anderson: Mr Speaker, clause 20 with schedule 1 gives authorised persons powers to inspect medicinal products, their packaging and any relevant plant or equipment used to their manufacture or testing, with power to take and test samples and seize goods and records.

Subclause (1) gives a person authorised by the department power to (a) inspect medicinal products (b) their packaging and (c) any relevant plant or equipment used for their manufacture or testing to see if there has been any contravention of the Bill or any regulations or order under it.

Sub-clause (2) gives an authorised person power for the same purpose to take a sample of any medicinal product or ingredient off a medicinal product.

Subclause (3) gives an authorised person power for the same purpose, to require anyone carrying on or employed in a business of making, assembling, selling or supplying medicinal products to produce any records and to take copies of any such records.

Subclause (4) extends the power of subclause (3) to cover computer records; it gives the power to access the records and to require assistance in accessing them.

Subclause (5) gives an authorised person the right to seize and detain substances or articles as evidence of an offence, and documents which may be required to be put in evidence.

Subclause (6) extends the power under subclause (5) to enable the authorised person to require any container or vending machine to be opened.

Subclause (7) requires the authorised person to notify the appropriate person of any seizure under subclause (5).

Subclause (8) prohibits any authorised person exercising powers under this clause if he is asked to produce his credentials and fails to do so.

Subclause (9) applies schedule 1 to the Bill, Mr Speaker. I beg to move that –

The Speaker: Subclause (10).

Mr Anderson: Sorry, Mr Speaker, it is not in my speaking notes. Subclause (10), as is in the Bill, is 'The department shall regulate and prescribe any matter which is under schedule 1.' So, Mr Speaker, I move that clause 20 with schedule 1 be made part of the Bill.

The Speaker: May I have a seconder, please? Hon. member for Peel, Mrs Hannan.

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

The Speaker: Hon. members, the motion before the House is that clause 20 and schedule 1 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. They ayes have it. Clause 21, hon. member.

Mr Anderson: Mr Speaker, clause 21 prescribes a modified version of the sampling procedure under schedule 1, where an authorised person seizes anything under clause 20(5).

Subclause (1) is introductory. The clause applies where an authorised person seizing anything except a record under clause 20(5) rather than taking a sample under clause 20(2).

Subclause (2) enables the person who, under clause 20(7), is entitled to be notified of any seizure to demand at the time or up to 21 days later either that a sample be set aside whatever has been seized be

treated as a sample. The authorised person is to decide which.

Subclause (3) provides that subclause (2) above does not apply where the authorised person does not think it is reasonably practical to comply.

Subclause (4) requires the authorised officers to divide the sample into three sealed parts and supply one part to the person making the demand.

Subclause (5) applies the relevant provision of schedule 1 to the sample with suitable modifications. Mr Speaker, I beg to move that clause 21 form part of the Bill.

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

Mrs Hannan: I beg to second, Vainstyr Loayreyder, and reserve my remarks.

The Speaker: Hon. members, the motion before the House is that clause 21 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 22, hon. member.

Mr Anderson: Mr Speaker, this clause creates offences of obstruction and giving false information.

Subclause (1) makes it an offence (a) to obstruct an authorised person acting on behalf of the department; (b) to fail to comply with requirements under clause 20; or (c) to fail to give assistance or information when required.

Subclause (2) makes it an offence with higher penalties to give false information when required under clause 20.

Subclause (3) is the saving for the right not to incriminate oneself or one's husband or wife. Mr Speaker, I beg to move that clause 22 form part of the Bill.

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

Mrs Hannan: Vainstyr Loayreyder, I beg to second and reserve my remarks.

The Speaker: Hon. members, the motion before the House is that clause 22 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 23, hon. member.

Mr Anderson: Mr Speaker, this clause enables a private person who has bought a medicinal product to have it analysed and prescribes a modified version of the sampling procedure under schedule 1.

Subclause (1) entitles a private person who has bought a medicinal product to have it analysed by the public analyst.

Subclause (2) applies the relevant provisions of schedule 1 with suitable modifications, and subclause (3) enables the public analyst to require the fee to be

paid before analysing the sample. Mr Speaker, I beg to move that clause 23 form part of the Bill.

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

Mrs Hannan: Thank you, Vainstyr Loayreyder. I beg to second and reserve my remarks.

The Speaker: Hon. members, the motion before the House is that clause 23 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 24, hon. member.

Mr Anderson: Mr Speaker, this clause enables medicinal products illegally imported or exported to be made liable to seizure and forfeit by customs.

Subclause (1) enables the department to make an order designating specified medicinal products so that, if they are imported to the Isle of Man, in specified circumstances they will be treated as illegally imported and thus liable to seizure and forfeit by customs under the Customs and Excise Management Act 1986. This order requires Tynwald approval.

Subclause (2) enables the department to make an order designating specified medicinal products so that, if they are exported from the Isle of Man, in specified circumstances they will be treated as illegally exported and thus liable to seizure and forfeit under the Customs and Excise Management Act 1986. This order also requires Tynwald approval.

Subclause (3) limits the goods which can be designated under subclause (1) or subclause (2) to medicinal products.

Subclause (4) requires Tynwald approval to an order under subclause (1) or subclause (2). Mr Speaker, I beg to move that clause 24 form part of the Bill.

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

Mrs Hannan: I beg to second, Vainstyr Loayreyder, and reserve my remarks.

The Speaker: Hon. members, the motion before the House is that clause 24 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. They ayes have it. Clause 25, hon. member.

Mr Anderson: Mr Speaker, clause 25 makes it an offence for a person entering a premises under clause 19 to disclose any trade secret or otherwise acquire information under this Bill to disclose the information except in accordance with his duty. Mr Speaker, I beg to move that clause 25 form part of the Bill.

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

Mrs Hannan: I beg to second, Vainstyr Loayreyder, and reserve my remarks.

The Speaker: Hon. members, the motion before the House is that clause 25 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 26, hon. member.

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

Subclause (1) enables a person to be charged with an offence under the provision specified in subclause (4) below where he is responsible for that offence being committed by another person, even if the latter is not charged.

Subclause (2) gives the defence of due diligence where a person has been charged with an offence under a provision specified in subclause (4) where it was someone else's fault, for example his agent, and he has done his best to prevent it happening.

Subclause (3) requires seven days' notice of his defence under subclause (2) to be given to the prosecutor.

Subclause (4) lists the provisions to which subclause (1) and subclause (2) apply. Mr Speaker, I beg to move that clause 26 form part of the Bill.

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

Mrs Hannan: Vainstyr Loayreyder, I beg to second and reserve my remarks.

The Speaker: Hon. members, the motion before the House is that clause 26 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 27, hon. member.

Mr Anderson: Mr Speaker, this clause gives a special defence for a person who is charged with a consumer protection offence if he honestly bought the product in question in reliance on a written statement that its sale was legal.

Subclause (1) gives a defence where a person is charged with an offence under provisions specified in subclause (2), that (a) he bought the product in question in reliance on a written statement that its sale was legal, that (b) at the time of the offence he had no reason to think it was not legal, and that (c) the product was in the same state as when he bought it.

Subclause (2) specifies the offence to which subclause (1) applies.

Subclause (3) requires three days' notice of defence under subclause (1) to be given to the prosecutor and to the person who gave the warranty.

Subclause (4) extends the protection of subclause (1) to employees where the employer has relied on a warranty within subclause (1)(a).

Subclause (5) gives the person alleged to have given a warranty within subclause (1)(a) the right to appear at the hearing of the charge as he may otherwise be liable under clause 28(2).

Subclause (6) provides that simply to give a name or description of the product in an invoice – for example, 500 tablets naproxen – counts as a warranty that the buyer can resell the product by that name without contravening a provision mentioned in subclause (2). Mr Speaker, I beg to move that clause 27 form part of the Bill.

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

Mrs Hannan: I beg to second, Vainstyr Loayreyder, and reserve my remarks.

The Speaker: Hon. members, the motion before the House is that clause 27 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 28, hon. member.

Mr Anderson: Mr Speaker, this clause makes it an offence to associate a written warranty or certificate of analysis to a product other than in respect of which it was originally given or to give a false warranty in respect of a product.

Subclause (1) makes it an offence to associate a written warranty or certificate of analysis to a product other than in respect of which was originally given.

Subclause (2) makes it an offence to give a false warranty in respect of a product. The accused has a defence if he has reason to think it was accurate, but the burden of proof is on him.

Subclause (3) specifies the penalties for an offence under subclause (1) and subclause (2). Mr Speaker, I beg to move that clause 28 form part of the Bill.

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

Mrs Hannan: Vainstyr Loayreyder, I beg to second and reserve my remarks.

The Speaker: Hon. members, the motion before the House is that clause 28 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 29, hon. member.

Mr Anderson: Mr Speaker, this clause provides an extended time limit for prosecutions for summary offences under the Bill and enables the official responsible to be prosecuted for an offence committed by a company.

Subclause (1) enables the prosecution for a summary offence under the Bill to be brought within 12 months of the offence.

Subclause (2) enables the official responsible to be prosecuted for an offence committed by a company. Mr Speaker, I beg to move that clause 29 form part of the Bill.

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

Mrs Hannan: Vainstyr Loayreyder, I beg to second and reserve my remarks.

The Speaker: Hon. members, the motion before the House is that clause 29 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Hon. member, clause 30.

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

Subclause (1) provides that where offering a medicinal product for sale an offence under clause 7 (b) adulterated products or regulations under clause 2, products restricted to sale at pharmacies or on prescription, a medicinal product found in a vehicle from which such products are sold is presumed to have been offered for sale from that vehicle unless the person in charge shows otherwise.

Subclause (2) provides that where having a medicinal product in one's possession for sale or supply is an offence, a medicinal product found in premises where a person carries on a business of selling or supplying such a product is presumed to have been in his possession for sale or supply unless he shows otherwise.

Subclause (3) makes a similar provision to subclause (2) in the case of a leaflet supplied with a medicinal product. Mr Speaker, I beg to move that clause 30 form part of the Bill.

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

Mrs Hannan: I beg to second and reserve my remarks, Vainstyr Loayreyder.

The Speaker: Hon. members, the motion before the House is that clause 30 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 31, hon. member.

Mr Anderson: Thank you, Mr Speaker. We move on to part 5 of the Bill. This contains a definition of 'veterinary medicinal products', which is the same as that applicable in the UK and throughout the European Community and applies parts 1 to 4 of the Bill to these products. This allows the department to bring forward a scheme of regulation that is equivalent to that available in other member states of the European Community. The department wishes to ensure

equivalence between Manx and European law in this area so it is possible for livestock producers on the Island to comply with requirements of European Community law. The Island's having a different regulatory environment may lead to the European Community to refuse imports of meat from the Island. This section also contains powers for the department to regulate the manufacture of medicated animal feeds on the Island. Whilst this activity rarely occurs on the Island, it is necessary to have safeguards in place to ensure that where animals are treated with medicinal products, this is carried out to the highest standards.

Clause 31. This clause defines 'veterinary product', and note parts 1 to 4 of the Bill, as I said earlier are limited to medicinal products but this will extend it to veterinary products. Mr Speaker, I beg to move that clause 31 form part of the Bill.

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

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

The Speaker: Hon. members, the motion before the House is that clause 31 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 32, hon. member.

Mr Anderson: Clause 32. Mr Speaker, applies to parts 1 to 4 veterinary medicinal products modifications.

Subclause (1) applies parts 1 to 4 to veterinary medicinal products in the same way as they are applied to medicinal products subject to modifications in subclauses (2) to (6).

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

Subclause (3) sets out specific modifications of clause 1. A reference in clause 1(1) to the main consolidating EC medicines directives is replaced by reference to the corresponding veterinary directive; (b) the definition of medical product is omitted; and (c) the definition of UK authorisation is replaced with one referring to the corresponding machinery dealing with veterinary medicinal products; (d) the power to amend definitions in clause 1(3) to take account of changes in the EC and UK law applies to substitute definition in (c).

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

Subclause (5) substitutes reference to 'British Veterinary Codex' for reference to 'British Pharmaceutical Codex'. Mr Speaker, I beg to move that clause 32 form part of the Bill.

The Speaker: Hon. member for Peel.

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

The Speaker: Hon. members, the motion before the House is that clause 32 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clauses 33 and 34, hon. member.

Mr Anderson: Mr Speaker, clause 33 enables the regulations to be made to control the addition of veterinary medicinal products to animal feeding stuffs and the supply or import of medicated feeding stuffs.

Subclause (1) enables the department to make regulations controlling the addition of veterinary medicinal products to animal feedstuffs and the supply or import of medicated feeding stuffs.

Subclause (2) enables the department to make regulations controlling the sale or import of feeding stuffs containing a particular veterinary medicinal product or particular medicated feeding stuffs.

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

Subclause (4) provides that regulations under subclause (3) are not to conflict with any labelling or similar requirements under the Fertilizers and Feeding Stuffs Act 1975.

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

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

Subclause (1) enables the department to make regulations applying the specified enforcement provisions of part 4 to medicated animal feeding stuffs.

Subclause (2) enables the department to make regulations making special provision for sampling of medicated animal feeding stuffs, and subclause (3) enables the department to make regulations making special provisions for analysis of medicated and animal feeding stuffs for the evidence of such analysis. Mr Speaker, I beg to move that clause 33 and 34 form part of the Bill.

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

Mrs Hannan: I beg to second, Vainstyr Loayreyder, and reserve my remarks.

The Speaker: Hon. members, the motion before the House is that clauses 33 and 34 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 35, hon. member.

Mr Anderson: Mr Speaker, we move on to part 6 of the Bill, and this re-enacts part 4 of the 1976 Act where it relates to the regulation of retail pharmacy businesses. The Bill defines the term 'lawfully conducting a retail pharmacy business' and sets out the conditions which must be complied with by an individual, partnership or company to comply with requirements of the Act. The Bill requires the department to maintain a register of retail pharmacy premises and requires an annual return from registered persons. It also gives the department powers to disqualify a company or individual from conducting a retail pharmacy business with any appeal to this decision to be made to the High Bailiff.

Clause 44 of the Bill also replaces restrictions on titles and descriptions that may be used, including the title 'chemist' and 'pharmacist'.

Clause 35 defines the expression 'lawfully conducting a retail pharmacy business', which is fundamental to the system of control of pharmacies under part 6.

Subclause (1) provides that a person is lawfully conducting a retail pharmacy business in three different sets of circumstances, more fully explained in clauses 36 to 38: (a) a person is a pharmacist, i.e. a registered pharmacist, chemist, or partnership of pharmacists and the conditions in clause 36 are fulfilled; (b) the person is a company, for example Boots, and the conditions in clause 37 are fulfilled; (c) the person is a representative of a deceased, bankrupt or mentally ill pharmacist and is running the business for a limited period in accordance with clause 38. This is subject to any exemption regulations under clause 39.

Subclause (2) provides that where a business is carried out in separate parts of the building they are treated as separate premises in order to ensure that the personnel control requirements of clauses 36 to 38 are complied with in respect of each of those parts of the building.

Subclause (3) provides that 'medicinal product' in clauses 36 to 38 and 43 includes a veterinary medicinal product. The controls of pharmacies apply to animals as well as human medicines. Mr Speaker, I beg to move that clause 35 form part of the Bill.

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

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

The Speaker: Hon. members, the motion before the House is that clause 35 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clauses 36 and 37, hon. member.

Mr Anderson: Mr Speaker, clause 36 sets out the conditions which must be complied with if an individual pharmacist or partnership or pharmacist is lawfully conducting a retail pharmacy business within

clause 35(1) at any premises. They are that on any premises where medicinal products other than those on general sale are sold, the retail sale or supply of medicinal products, including those on general sale, is under the personal control of him or one of his partners whose name and certificate registration must be displayed on the premises.

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

Subclause (1) sets out the conditions applicable to a company conducting a retail pharmacy business: (a) the keeping, preparing and dispensing of medicinal products; (b) the retail sale or supply of medicinal products including those on general sale must be under the personal control of that person or of another pharmacist whose name and certificate of registration must be displayed on the premises.

Subclause (2) sets out the qualifications for the superintendent referred to in subclause (1) above, and he must be (a) a pharmacist, (b) a statement identifying him and whether he is a member of the board of the company must be filed with the registrar; and (c) he must not act as superintendent for any other company. Mr Speaker, I beg to move that clauses 36 and 37 form part of the Bill.

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

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

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

Mr Quine: Yes, this matter of drugs being provided under the direct control of the pharmacist – I am just wondering how far this extends. If we have a situation where you go to a chemist's shop, you present your prescription and they tell you to call back in an hour or whatever to collect the drugs, you get there and you discover that yes, your drugs have been prescribed and they are sitting there on the shelf at the back of the counter, and they say, 'Well, yes, they have been prescribed but the pharmacist is not here so you cannot have them.' However, they said, 'If you leave your name and address we will send them on to you.' It just seems to me that there is some lack of clarity or understanding as to the extent that this control should be exercised, and I appreciate this is a little unfair asking the mover for this at this stage but perhaps we could have a better understanding as to how embracing this requirement for the pharmacist to be present extends, because it does seem a little bit ludicrous that you have got your prescription, it is prescribed, it is sitting there and when you come back, 'Yes, that is mine' but they say, 'But you can't have it because the

pharmacist won't be back for an hour. However, we'll send it to you through the post; you can have it through the post.' Somebody else, then, presumably shoves it in an envelope and sends it to you through the post. I am just wondering how expansive this issue of control is.

The Speaker: Hon. member for Garff, Mr Rodan.

Mr Rodan: Mr Speaker, in relation to the last comment, if it will help the hon. mover just to clarify in fact what happens, the law is quite clear that the supply must be made under the personal control. Clearly, if the pharmacist is not there on the premises, he is not in a position to give advice about the product or to deal with any queries that the patient to whom the medicine has been prescribed might have, whereas on his return, albeit that the patient may no longer be there, he will be in a position to determine whether the patient ought to be contacted in relation to the supply by post with further advice on matters of this sort. They are quite deliberately for the protection of the public and so that the public can have access to advice at the time of collecting medications. I think it is accepted that it can be inconvenient at times, particularly during lunch-hour periods, but the rules are there for a very good reason in the event that there is any query or verbal advice that needs to be given to accompany the supply of the medicine.

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

Mrs Cannell: Thank you, Mr Speaker. Very interesting to hear the comments by the previous speaker in respect of this. I accept that if any advice or any questions that might arise from the patient who is going to be utilising the medication it is important that the pharmacist is there in order to provide the guidance, advice and information, but if you are dealing with a patient who has a repeat prescription for a drug that he or she has been taking for some considerable time, unless there has been a change in the application, manufacture or dosage of that, I do not believe the argument really holds water that if a pharmacist is not present on the premises, then the patient cannot collect their prescription which might have been administered and been sitting there waiting for collection. I do not accept that argument, because there are other areas that kick in where it does not actually cover and I just wonder: I do not expect the hon. member to be conversant with this because this issue did arise in the House during the last legislative term in respect of this particular issue, but perhaps he might seek some information for hon. members and come back at the conclusion of clauses if we do not conclude today, which I feel sure we probably will, or at the third reading stage as to how the department regards this and whether or not there should be some realism coming in here in respect of certain situations: if it is a repeat prescription, for instance, and if

someone is going in who has heart problems or who has heart bypass surgery and has to maintain an application of an aspirin a day in order to keep his or her blood thin; that is a repeat prescription, and I cannot see any reason why that patient should not be able to pick up their aspirin as and when they call in, irrespective of whether the licensed pharmacist is there or on his or her lunch. It does seem a little bit unreasonable and I just wonder whether or not the hon. mover could look into this further and just perhaps take a little bit more information from his department on whether or not we can extend or relax to a small degree to deal with those sorts of situations, because it is a nonsense.

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

Mr Singer: Wishing also to be extremely helpful to the mover in reply to her last question, it is not just a simple case of coming in and saying, 'Can I have my repeat prescription?' because there are many ramifications of this; for example, the one I would bring to mind is that, whilst a person comes and gets a repeat prescription, they may well, in between that repeat prescription, have had a prescription from the doctor for another particular item and there may well then be some kind of contra-indication between that extra item they have had and the medication. Now, that may well have been pointed out to them before, but if it has not been it certainly would be the responsibility of the pharmacist to point out any contra-indication of the medicines they are taking, changes in dosage, and I think, whilst one may well want to relax the conditions in order to make it slightly easier for collection, I think it is the responsibility of the pharmacist to ensure that the person is taking that medicament in the safest environment. That is what they are trained for, and I think that with any relaxation you will relax a bit more and relax a bit more, and then why have a pharmacist there in the first place? You have dispensers there who know how to dispense medicines, but it is the actual knowledge of the pharmacist that should be imparted to the patient at all times, and I think that to do anything other than that would be irresponsible.

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

Mrs Hannan: Thank you, Vainstyr Loayreyder. I do think that the issues that have been raised under this particular clause – while they relate to the pharmacist, the person going in to get their prescription also has a responsibility, and if they are desperate for their medication then I think they ought to respect the responsibilities of the pharmacist as well, and if the pharmacist is not there they should be prepared to wait and they should be prepared to wait on that particular day. If someone needs an aspirin, someone can actually purchase an aspirin, but the pharmacist giving that aspirin out over the counter has a responsibility.

As the member for Ramsey quite clearly states, these are practitioners in their own right, and I do believe that, after we spend quite a considerable sum of money employing them, we should actually employ them in the right way within the health services. They do have responsibility. Their responsibility is to advise patients and they can actually come before the DHSS appeal body if they do not perform properly. So they do have a responsibility not only to their patients, the people who are receiving medication, but also to the DHSS.

The Speaker: Hon. member to reply to the debate.

Mr Anderson: Thank you, Mr Speaker. I would like to thank the hon. members for their contribution.

I am sorry Mr Quine has been inconvenienced waiting for his prescriptions. (*Laughter*) I will look further into this area. Obviously it is a sensitive area and I can understand members of the public being frustrated in certain areas, but I am thankful to those learned members of this hon. House that have given me the benefit of their wisdom in this area –

Mr Quine: We have got to keep them employed!

Mr Anderson: Exactly, and as Mr Quayle just mentioned, jobs for the boys! (*Interjections and laughter*) But I will look into this and come back to the hon. members that have raised the genuine concerns and difficulty this does create when patients are waiting for their prescriptions. However, Mr Speaker, I do propose that clause 36 and clause 37 form part of the Bill.

The Speaker: Right, hon. members, the motion before the House is that clauses 36 and 37 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clauses 38 and 39, hon. member.

Mr Anderson: Mr Speaker, clause 38 sets out the conditions which must be complied with if a representative of a deceased, bankrupt or mentally ill pharmacist is lawfully conducting a retail pharmacy business. The keeping and dispensing of medicinal products must be superintended by a pharmacist; their retail sale must be under the personal control of him or another pharmacist and at the time for which the representative can act is limited.

Subclause (1) sets out the circumstances in which clause 35(1) applies to a representative of a deceased, bankrupt or mentally ill pharmacist in carrying on his business.

Subclause (2) sets out the conditions applicable to a representative carrying out a retail pharmacy business: (a) the representative's name and address and the name of the deceased et cetera pharmacist must be notified to the registrar; (b) at all premises when medicinal products other than those on general sale are sold by retail or the supplier of medicinal products,

including those on general sale, must be under the personal control of a pharmacist whose name and certificate of registration must be displayed on the premises.

Subclause (3) sets out the maximum period for which a representative can act: (a) five years from death; (b) three years from bankruptcy; (c) three years from the date of appointment of the trustee of other creditors; (d) three years from the appointment of a receiver in the case of a mental disorder; or (e) an extended period allowed by the department.

Subclause (4) defines representative as (a) the executor or administrator of a deceased pharmacist for up to three months from death without an executor willing to carry on the business, a beneficiary office or a beneficiary of his estate; (b) the trustee in bankruptcy for the creditors (c) the receiver in the case of mental disorder.

Clause 39 enables the department to make regulations altering the conditions in clauses 36 to 38 or giving exemptions from requirements of clause 35.

Subclause (1) enables the department to make regulations altering the conditions in clauses 36 to 38 either (a) modifying or replacing those conditions, or (b) providing alternative conditions. Regulations are required with Tynwald approval.

Subclause (2) allows regulation under subclause (1) to apply generally or in particular cases.

Subclause (3) regulations under subclause (1) to give exemptions from requirements under clause 35, and subclause (4) provides that references to clause 35 in other legislation are to be read as references to clause 35 as modified by regulations under subclause (1). Mr Speaker, I beg to move that clauses 38 and 39 stand part of the Bill.

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

Mrs Hannan: Vainstyr Loayreyder, I beg to second and reserve my remarks. Hon. member for Douglas East, Mrs Cannell.

Mrs Cannell: Thank you, Mr Speaker. Just a quick one on this; it follows on from what came out of consideration of the short discussion that we had on other clauses, but it is applicable here in terms of the registration and also the fact that the pharmacist might become disabled or mentally ill or in fact might die. Can I ask the hon. mover: bearing in mind that we have been advised here today that it is incumbent on and the responsibility of a pharmacist to advise a patient who might be about to take a contrary drug to that which he or she may have taken in the past which has been prescribed by the general practitioner. If it is incumbent on and part of the responsibility of the pharmacist to advise but the pharmacist does not so advise and there is a reaction from taking a drug that works against another drug which he or she has previously taken or is presently taking, can an individual therefore claim against the pharmacist for

not issuing the advice when administering whilst on the premises the drug?

The Speaker: Hon. member to reply.

Mr Anderson: Mr Speaker, I am not sure about that point, but I shall find out about it and get back to the hon. member on that particular point.

The Speaker: Hon. members, the motion before the House is that clauses 38 and 39 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Hon. members, that is a good time to conclude this morning's deliberations. The House will stand adjourned until 2.30 this afternoon.

The House adjourned at 1.01 p.m. and resumed its sitting at 2.30 p.m.

Medicines Bill – Consideration of Clauses Concluded

The Speaker: Hon. members, we continue with our consideration of the Medicines Bill 2002 and I call on the hon. member for Glenfaba to move clauses 40 and 41.

Mr Anderson: Thank you, Mr Speaker. Clause 40 provides a register of premises where retail pharmacy businesses are lawfully carried on.

Subclause (1) requires the registrar, i.e. the person appointed by the department as registrar, to keep a register and to enter premises in it on an application under subclause (2) provided the fee prescribed by the regulation is paid.

Subclause (2) requires an application for registration to be in form prescribed by regulations to specify the premises and to contain other particulars specified in regulations.

Subclause (3) requires the registrar not to register the premises unless he is satisfied that the applicant is lawfully conducting a retail pharmacy business and that he will be doing so on those premises if they are registered.

Clause 41 makes supplemental provisions as to registration under clause 40.

Subclause (1) requires a retention fee to be paid each year for the continued registration of premises.

Subclause (2) enables the department to deregister the premises if the retention fee is unpaid after at least two months' notice, but they are to be reregistered on payment of the fee before the end of the year and the reregistering can then be backdated.

Subclause (3) provides for registration to lapse three months after the death of the person carrying on the business or one of the partners if it is carried on by a partnership or 28 days after any other change of ownership.

Subclause (4) enables the owner of the business to apply for the restoration to the register on payment of a fee equal to the retention fee.

Subclause (5) provides for a certificate of the register as to registration of premises to be evidence.

Subclause (6) defines here the purpose of this clause. Mr Speaker, I beg to move that clauses 40 and 41 form part of the Bill.

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

Mrs Hannan: Thank you, Vainstyr Loayreyder. I beg to second and reserve my remarks.

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

Mr Singer: Could I ask the hon. member: whilst the department has the powers to raise the registration fee as it so wishes each year, is there any limit as to the way that this will be done and the limit to the increase, or is it just up to the department to almost pluck a figure out of the air? Can you tell me what guidance will be used to decide what the fee shall be and how increases shall be decided?

The Speaker: Hon. member for Glenfaba to reply.

Mr Anderson: Mr Speaker, in answer to the hon. member's question, all I can say is that these regulations in this part of the Bill are as in the 1976 Act and these are mirrored from UK legislation. I would think it would be unlikely if we were to vary considerably from that position, but I will check that out for the hon. member.

The Speaker: Hon. members, the motion before the House is that clauses 40 and 41 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 42, hon. member.

Mr Anderson: Mr Speaker, clause 42 provides for an appeal to the High Bailiff against refusal by the registrar to register the premises under clause 40.

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

Subclause (2) specifies the grounds of appeal.

Subclause (3) requires the registrar to give effect to the High Bailiff's decision. Mr Speaker, I beg to move that clause 42 form part of the Bill.

The Speaker: Hon. member for Peel.

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

The Speaker: Hon. members, the motion before the house is that clause 42 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 43, hon. member.

Mr Anderson: Mr Speaker, clause 43 requires a person carrying on a retail pharmacy business to file an annual return.

Subclause (1) requires a person carrying on a retail pharmacy business to file an annual return with the registrar every January specifying the premises at which medicinal products are sold by retail, the name of the pharmacist under whose person or control medicinal products are sold.

Subclause (2) makes contravention an offence. Mr Speaker, I beg to move that clause 43 form part of the Bill.

The Speaker: Hon. member for Peel.

Mrs Hannan: Vainstyr Loayreyder, I beg to second and reserve my remarks.

The Speaker: Hon. members, the motion before the House is that clause 43 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 44, hon. member.

Mr Anderson: Mr Speaker, clause 44 restricts the use of titles such as 'chemist' and 'pharmacist' and other misleading descriptions. Note the power to remove or add these restrictions under clause 45.

Subclause (1) prohibits a person using one of the specified titles or using the title 'chemist' in connection with any retail business unless the conditions in subclause (2) are fulfilled and the penalty is in subclause (9).

Subclause (2) sets out the conditions for use of titles in subclause (1):(a) an individual must be lawfully conducting a retail pharmacy business, and if the use of the title is in connection with any premises they must be a registered pharmacy; (b) a company must be lawfully conducting a retail pharmacy business, and if the use of the title is in connection with any premises they must be a registered pharmacy and the superintendent of the business must be a member of the board.

Subclause (3) prohibits the use in connection with any retail business of the word 'pharmacy' in respect of any premises unless they are a registered pharmacy or the pharmaceutical department of a hospital or health centre.

Subclause (4) prohibits the use of the specified titles except by a pharmacist.

Subclause (5) prohibits the use of the title specified in subclause (4) in connection with any retail business at any premises unless they are a registered pharmacy or a hospital or a health centre.

Subclause (6) prohibits the use by any person in connection with business of any title, emblem et cetera

suggesting that he or an employee of his holds a qualification which he has not got.

Subclause (7) makes it clear that the use of the term 'pharmacy' is in connection with the business at any premises within subclause (6) by suggesting that an individual carrying on or in personal control of the business is a pharmacist.

Subclause (8) gives an exemption in the case of a representative of a deceased, bankrupt or mentally ill pharmacist.

Subclause (9) specifies the penalty for a contravention of this clause. Mr Speaker, I beg to move that clause 44 stand part of the Bill.

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

Mrs Hannan: I beg to second, Vainstyr Loayreyder, and reserve my remarks.

The Speaker: Hon. members, the motion before the House is that clause 44 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 45, hon. member.

Mr Anderson: Mr Speaker, clause 45 enables the department by regulation to remove or relax a restriction under clause 44 or to create new restrictions.

Subclause (1) enables the department by regulation to remove or relax restriction under that clause 44. Regulations would be required by Tynwald.

Subclause (2) enables the department by regulation to create new restrictions on the use of titles.

Subclause (3) specifies the penalty for a contravention of regulations under subclause (2). Mr Speaker, I beg to move that clause 45 stand part of the Bill.

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

Mrs Hannan: I beg to second, Vainstyr Loayreyder, and reserve my remarks.

The Speaker: Hon. members, the motion before the House is that clause 45 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clauses 46 and 47, hon. member.

Mr Anderson: Mr Speaker, clause 46 enables the department to disqualify a company or a representative from conducting a retail pharmacy business and from registration on grounds of a conviction or misconduct.

Subclause (1) enables the department, after an enquiry to disqualify a company carrying on a retail pharmacy (a) if it is convicted of an offence under legislation specified in subclause (5), or (b) a director or officer of the company is convicted of an offence or is guilty of misconduct which renders him unfit to be a pharmacist. The effect of the disqualification is that the

company cannot lawfully conduct a retail pharmacy business and so its premises cannot be a registered pharmacy.

Subclause (2) provides that, where subclause (1) applies, the department may do one of two things: (a) if it disqualifies the company it can direct the registrar to cancel the registration in respect of all its premises; or (b) if it does not disqualify the company it can direct the registrar to cancel its registration in respect of some only or all of its premises.

Subclause (3) enables the department to disqualify the company or cancel its registration for a limited period only, in which case the registration is to be restored at the end of the period.

Subclause (4) enables the department, after an enquiry, to disqualify a representative carrying on a business on behalf of a deceased, bankrupt or mentally ill pharmacist if he is convicted of an offence or is guilty of misconduct which renders him unfit to be a pharmacist.

Subclause (5) defines the relevant acts.

Moving on, Mr Speaker, to clause 47, this clause specifies the grounds on which the department can order disqualification under clause 46 on the grounds of an offence or misconduct by an individual i.e. a director of a company, or the representative of a deceased et cetera pharmacist.

Subclause (1) provides that the department cannot order disqualification under clause 46 on the grounds of defence or misconduct by an individual, i.e. a director or a company or the representative of a deceased et cetera pharmacist except where (a) a fact within 2(a) or (2)(e) is proved to its satisfaction and (b) the board of the company or the representative is to be regarded as responsible for the offence or misconduct.

Subclause (2) sets out the alternative sets of facts to be proved: (a) the board or the director of the representative instigated or connived at the offence or misconduct; (b) a director or officer of a company had been guilty of a similar offence or misconduct in the previous 12 months and the new board knew or ought to have known of it; (c) the representative or an employee of his had been guilty of a similar offence or misconduct in the previous 12 months. In the case of an employee the representative knew of it or ought to have known of it. (d) In the case of continuing offence or misconduct the board or representative knew of it or ought to have known of it; and (e) in the case of an offence under one of the relevant Acts the board or representative had not taken care to ensure that the Act was complied with. Mr Speaker, I beg to move that clauses 46 and 47 form part of the Bill.

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

Mrs Hannan: Vainstyr Loayreyder, I beg to second and reserve my remarks.

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

Mr Gill: Vainstyr Loayreyder, could I ask for some reassurance from the mover in section 47 – I think perhaps (2)(b), but if you could guide me to it – about a warning notice to anybody who commits an offence but does not warrant being immediately struck off the register. So is there any mechanism for somebody to receive a warning which would be recorded against him for a certain period?

The Speaker: Hon. member for Glenfaba, Mr Anderson, to reply.

Mr Anderson: Mr Speaker, once again this part of the Bill is re-enacting the part that is already in the 1976 Act, so it will be doing nothing more that has been in place previously and there is a form of procedure laid down from which there would be due care given to and representation made by a party that is coming up for. . . What I am trying to say is there will be a procedure where the pharmacist can defend himself and he also has the right of appeal if he is found guilty in that respect.

The Speaker: Hon. members, the motion before the House is that clauses 46 and 47 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 48, hon. member.

Mr Anderson: Mr Speaker, clause 48 gives a right of appeal to the High Court against a disqualification or a direction to deregister under clause 46.

Subclause (1) suspends the operation of a disqualification or a direction to deregister under clause 46 for three months or, if an appeal is brought, until it is disposed of or withdrawn.

Subclause (2) gives a right of appeal to the High Court against a disqualification or a direction to deregister under clause 46.

Subclause (3) provides for the department to be respond to an appeal under subclause (2) even if it does not appear so that costs can be awarded against it in any case.

Subclause (4) enables the court to give directions on an appeal and the department and the registrar are to comply with them.

Subclause (5) makes the decision of the court under subclause (4) final. Mr Speaker, I beg to move that clause 48 form part of the Bill.

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

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

The Speaker: Hon. members, the motion before the House is that clause 48 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 49, hon. member.

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

Subclause (1) enables the department to revoke a disqualification or a direction to deregister under clause 46 of its own motion or on an application for the purpose.

Subclause (2) gives a right of appeal to the High Court against a refusal to revoke under subclause (1).

Subclause (3) applies the relevant provisions of clause 48 to an appeal under subclause (2). Mr Speaker, I beg to move that clause 49 form part of the Bill.

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

Mrs Hannan: Vainstyr Loayreyder, I beg to second and reserve my remarks.

The Speaker: Hon. members, the motion before the House is that clause 49 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Now, clause 50, hon. member.

Mr Anderson: Mr Speaker, we are on to the part 7, the supplemental part of the Bill enabling powers that are here to give the department to bring other products into the scope of the Act where they not included within the definition of medicinal products; the power to draft regulations subject to Tynwald approval and the interpretation of terms used within the Bill.

We also will have an amendment on this by my hon. colleague from Peel, which is due to a change in definition of 'registered' with the nurses and midwives since the start of the drafting of this Bill. UK definition of 'registered' has changed and this is reflected in the Nursing and Midwifery Order 2002, which applies this change in Manx law.

Clause 50 enables the department by order to extend the application of the Bill to things which are not medicinal products or veterinary medicinal products but which may be used with such products or are used as ingredients of such products or may harm the health of humans or animals.

Subclause (1) enables the department by order to extend the application of the Bill to things which are not medicinal products or veterinary medicinal products but which may be used with such products. The order requires Tynwald approval.

Subclause (2) enables the department by order to extend the application of the Bill to things which are not medicinal products or veterinary medicinal products but which are used ingredients of such products or may harm the health of humans or animals. Once again, this order would require Tynwald approval.

Subclause (3) allows an order under subclause (2) to apply to a class of substances provided in conditions

in subclause (2) are fulfilled as respects all substances in that class and not merely some of them.

Subclause (4) requires Tynwald approval to an order in subclause (1) or subclause (2). Mr Speaker, I beg to move that clause 50 stand part of the Bill.

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

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

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

Mr Singer: Could the hon. member please give me a better description of what is meant by 'not medicinal products or veterinary medicinal products'? Is he taking into account items such as health foods, which are not subject to the same kind of rigorous testing or level of proven efficacy? Certainly they are not evaluated as normal medicines. Do health foods come under this particular section?

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

Mrs Cannell: Thank you, Mr Speaker. The previous speaker raised a similar concern to the one that I have. The very fact is that clause 50(1)(a) does say, 'specify any description or class of articles or substances appearing to it to be those which are not medicinal products' as specified in this piece of legislation. I think I did raise it at second reading the 'in principle stage', in respect of alternative medicines which are usually sold within health food stores and which again, as the previous speaker said, have not been through the same sort of testings as the chemical counterparts with which this Bill primarily deal. I would hate to see it impacting upon those sorts of opportunities that people very often go for; many people actually go for the alternative natural remedy as supplied by a health food store rather than go to the doctor and be issued with a chemical to deal with the problem in hand, and I would hate to think that by supporting this particular clause we are giving a blanket signal for the department to apply anything that the UK might apply which may be being given the test or the push in Europe as the case is at the moment, so if he could perhaps give us a little bit more reassurance in respect of that?

The Speaker: Hon. member for Glenfaba to reply.

Mr Anderson: Thank you, Mr Speaker. I will try and cover both hon. members' queries in my answer. Concern was raised in the last stage of this Bill by the hon. member for East Douglas. Homoeopathic medicines are regulated currently through the 1976 Medicines Act. There is nothing new here that is not in

place already; that applies UK legislation covering these products. The UK legislation is based on European legislation and therefore it can be said that the European legislation concerning homoeopathic medicine already applies to the Island. The Medicines Bill will not change the current regulatory environment for homoeopathic products on the Island. European legislation regulating these products has been in effect since the mid-1990s, and since that time the business of manufacturing, distributing and the sale of homoeopathic products has increased greatly. It would, therefore, appear that the European regulation of homoeopathic products has not reduced their availability.

Just moving on to the hon. member for Ramsey, Mr Singer, to cover the area he was concerned about, products containing vitamins, minerals and food supplements are generally regulated by legislation covering foodstuffs and are the responsibility of the Department of Local Government and the Environment. However, some food supplements also make up medicinal claims and these are subject to regulation under the Medicines Act 1976. The department understands that a recent European Union directive may have the effect of bringing additional food supplements within the scope of medicine legislation. There is a higher standard of regulation of medicinal products, and it may be a costly exercise for manufacturers to comply with the increased regulation. In the case of some food supplements it may not be possible to find sufficient evidence of their safety and effectiveness to satisfy current medicines legislation. There is continual reassessment of products on the borderline between food supplements and medicines using existing legislation, but this new directive will bring some Europe-wide consistency into classification of products. This would appear to be the main issue causing concern amongst manufacturers of food supplements and complementary therapists. It should be noticed that the directive provides a framework and it is our understanding that specific proposals have yet to be developed. In particular there has been no determination on the basis of which of these food supplements will be assessed. It is the department's view that it will be some time before any specific proposals will be developed. If there are manufacturers of food supplements on the Island who make products covered by the directive, then they may be affected by these changes as it is the intention of the department to define medicinal products in the same manner as is applicable in the European Union. Manufacturers within the European Community will feel the main effect of any proposals under the new directive. The majority of food supplements used by consumers on the Island are purchased from companies manufacturing within the European Community. This indirect effect will mean that any changes made in the European Union will have the same effect on the Island.

The Speaker: Right, hon. members, the motion before the House is that clause 50 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Hon. member, clause 51, please.

Mr Anderson: Mr Speaker, this clause allows any document to refer to the addition of one of the specified publications which is in force from time to time so it does not have to reissue or amend every time that publication is updated.

Subclause (1) lists the publication to which the clause applies.

Subclause (2) enables an authorisation et cetera under the Bill to refer to the current edition of a publication within subclause (1) which is in force from time to time, not just the edition in force at the time the authorisation et cetera is given.

Subclause (3) sets out the circumstances in which subclause (4) applies where a document made under a statutory provision could refer to a specified publication but could not, apart from subclause (4), refer to the edition of that publication in force from time to time.

Subclause (4) will not apply in any case of a statutory provision made after 1985 which provides to the contrary, and subclause (4) enables the document within subclause (3)(a) to refer to the current edition of a publication from within subclause (1) which is in force from time to time and not just the edition in force at the time the document is made, which would otherwise be the case.

Subclause (5) explains the terms used in subclauses (1) to (4). Mr Speaker, I beg to move that clause 51 form part of the Bill.

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

Mrs Hannan: I beg to second, Vainstyr Loayreyder, and reserve my remarks.

The Speaker: Hon members, the motion before the House is that clause 51 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 52, hon. member.

Mr Anderson: Mr Speaker, this clause enables regulations under the Bill to prescribe various matters and apply any UK medicines legislation to the Island, and requires Tynwald approval to any regulations.

Subclause (1) enables the department to make regulations prescribing anything which is to be prescribed under the Bill.

Subclause (2) requires Tynwald approval to any regulations under the Bill.

Subclause (3) enables regulations to apply corresponding UK medicines legislation and may apply the UK legislation as amended from time to time not just the legislation in force at the time the regulations are made.

Subclause (4) enables regulations to amend or appeal any legislation which is inconsistent with or made redundant by the regulations.

Subclause (5) enables regulations which apply (a) UK legislation under subclause (3) or (b) correspond to UK legislation to be backdated to the commencement of the UK legislation. Subclause (6) provides a statement in regulations that they correspond to UK legislation is to be conclusive. Mr Speaker, I beg to move that clause 52 forms part of the Bill.

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

Mrs Hannan: Vainstyr Loayreyder, I beg to second and reserve my remarks.

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

Mrs Cannell: Thank you, Mr Speaker. It is just a minor observation, but is the hon. member aware that there is actually a typographical error in the opening line of clause 52? It reads, 'The department may by regulations may prescribe anything.' I would have thought that it should read, 'The department may by regulation prescribe anything which is to be prescribed' but it seems to me that 'prescribe' and 'prescribed' is mentioned twice and 'may', as in the first sentence and I just wonder: is that intended or is it actually an error?

The Speaker: Hon. member for Glenfaba to reply.

Mr Anderson: Thank you, hon. member. I had not spotted that myself and I am not sure if that is meant to be in or not, but I will certainly make sure to find the answer out for you.

The Speaker: Right, hon. members, the motion before the House is that clause 52 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 53, hon. member.

Mr Anderson: Mr Speaker, clause 53 defines 'retail sale' and related expressions.

Subclause (1) defines 'retail sale' as a sale of something to a person who buys it for a purpose other than sale or supply or administering to a human being in the course of that person's business. So sale to a retailer or therapist is not retail sale, but sale to a first-aidier is.

Subclause (2) provides a similar definition of supply in circumstances corresponding to retail sale, and subclause (3) makes it clear that NHS services count as a business under subclause (1), so supply to an NHS body is not a retail sale or supply. Mr Speaker, I beg to move that clause 53 form part of the Bill.

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

The Speaker: Hon. members, the motion before the House is that clause 53 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Hon. member, clause 54 and schedule 2.

Mr Anderson: Mr Speaker, clause 54 and schedule 2. Schedule 2 sets out definitions of various terms used in the Bill, including those defined elsewhere. Mr Speaker, I beg to move that clause 54 and schedule 2 form part of the Bill.

The Speaker: Hon. member for Onchan, Mr Earnshaw. Are you going to second this clause?

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

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

Mrs Hannan: Thank you, Vainstyr Loayreyder. In this Bill where it relates to 'registered midwife' on page 57 under schedule 2 and 'registered nurse', I wonder if I could move an amendment to that, Vainstyr Loayreyder? The definition of registered nurse and midwife has changed following approval by Tynwald of the Nursing and Midwifery Order 2002. This order recognises the change of regulatory body in the United Kingdom from the UK cc to the new registration body of the Nursing and Midwifery Council. I beg to move:

Page 57 Schedule 2 –

For the definitions of "registered midwife" and "registered nurse" substitute –

"registered in relation to a nurse or midwife, has the same meaning as in the Nursing and Midwifery Order 2002"

Mr Shimmin: I beg to second, sir.

The Speaker: Hon. member for Douglas West, Mr Shimmin, to second. Hon. member for Glenfaba, do you wish to respond to the amendment?

Mr Anderson: No, I just thank the hon. member for her helpful contribution.

The Speaker: Okay, thank you. I presume the hon. member who moved the amendment is happy? Right, hon. members, the motion before the House is that clause 54 and schedule 2 stand part of the Bill. To that we have an amendment in the name of the hon. member for Peel, Mrs Hannan. All those in favour of

the amendment say aye; against, no. The ayes have it. The ayes have it.

I now put forward the clause and schedule 2 as amended. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 55 and schedules 3 and 4, hon. member.

Mr Anderson: Mr Speaker, clause 55 and schedules 3 and 4 make transitional provisions and introduce the schedules of consequential amendment and repeals.

Subclause (1) preserves existing licensing proficiency of the 1976 Act as if they were regulations under part 1 until regulations to replace them are made.

Subclause (2) enables the commencement order under clause 56(2) to include further transitional provisions if required.

Subclause (3) introduces schedule 3, which makes consequential amendments.

Subclause (4) introduces schedule 4,, which makes consequential repeals. Mr Speaker, I beg to move that clause 55, schedules 3 and 4 form part of the Bill.

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

Mrs Hannan: I beg to second and reserve my remarks, Vainstyr Loayreyder.

The Speaker: Hon. members, the motion before the House is that clause 55 and schedules 3 and 4 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 56, hon. member.

Mr Anderson: Thank you, Mr Speaker. Clause 56 gives the Bill its short title and provides for its commencement on an appointed day or days.

Subclause (1) gives the Bill its short title and subclause (2) provides the Bill's commencement on day or days. Mr Speaker, I beg to move that clause 56 stand part of the Bill.

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

Mrs Hannan: Vainstyr Loayreyder, I beg to second and reserve my remarks.

The Speaker: Hon. members, I put the motion before the House that clause 56 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

That concludes the reading of the Medicines Bill and I congratulate the hon. member on his first Bill in the House. (**Members:** Hear, hear.) I hope he found it a rewarding experience.

Mr Anderson: Very rewarding! (*Laughter and interjections*)

**Matrimonial Proceedings Bill –
Resumption of Debate to Reconsider
Clauses – Motion Lost –
Third Reading Approved**

The Speaker: Now, hon. members, if we could revert to our earlier proceedings in relation to the Matrimonial Proceedings Bill and, as hon. members will remember, we adjourned consideration of this until we sought a clarification from our standing orders. I have now had an opportunity to do that with the Secretary of the House and, just to clarify the position, firstly we have had an amendment circulated in the name of the hon. member for Ramsey, Mr Singer, which clarifies his amendment to adjourn. Just so that it is clear for hon. members, under standing order 158, after a Bill has finished its clauses stage the question for third reading is put. If the question for third reading is adjourned, as has been proposed here, then the clauses are still open for debate. However, standing order 70 would require 16 votes if a specific change to a clause is then to be moved. So to actually adjourn we do not have suspension of standing orders but in fact if the House then decided it wished to make amendments to the clauses it would have to suspend standing orders. Is that clear for everybody? (**Members:** Yes.) Okay, thank you, hon. members. So if we can continue then, and the next person who wished to speak to the adjournment – as I say, it is limited to five minutes contribution by members for an adjournment debate – is the hon. member for Onchan, Mr Corkill.

Mr Corkill: Thank you, Mr Speaker. I think I can well appreciate the intent behind the hon. member for Ramsey Mr Singer's attempt to adjourn this, because it is from the simple basis that the House of Keys should let go of legislation in the way that it sees it to be in the right form before it moves on to the next scrutiny stage. I can well understand that, but obviously the position we have arrived at, as you have intimated, Mr Speaker, is that to change a clause at this stage would require 16 votes. Now, in our deliberations yesterday, which we spoke of at the third reading stage, Mr Gill, Mrs Cannell, myself and the Attorney-General looked to find a form of words so that perhaps we might revisit clauses, but then I also looked at the practicalities of where we are at and I am very conscious of the fact that from a government position and also from the mover of the Bill's position – I think she made it very clear this morning during the third reading stage – we were quite keen that this Bill makes progress. There are some important aspects in it, as the hon. mover mentioned this morning, particularly with regard to domestic violence, and so I am very loath to support a four-week suspension or adjournment, because even at that point, in order to go into the clauses, we are then going to have to suspend that standing order and get 16 votes, and I know in my deliberations over this in my collective responsibility

rôle that the mover of the original amendment, Mr Gill, is very firm in his opinion about the issue within it.

Now, there may well be a majority of members, perhaps, who would at this stage seek to defeat that amendment at the second attempt, but, as things stand, it is a part of the Bill and hon. members supported it and I know we have had advice from the deemsters et cetera since.

There seems to be this concern also expressed that somehow we are predicting what the Legislative Council may or may not do with the Bill, and certainly I was concerned to hear that because my comments this morning were straightforward: that if this Bill gets to the Legislative Council and it receives its third reading – we are in the process of the third reading – it will be government's position to attempt to remove that amendment. That is straightforward. That is what we think is the right thing. At the same time I think it is the right thing that the hon. member who moved that seeks leave to introduce a private member's Bill to deal with this criminal law aspect.

Now this Bill, having gone to Legislative Council could well end up back here anyway. There may be other minor amendments that the Council have lined up. I am not aware of any but, by the same token as we should not predict that they may take this amendment out, we should not predict that they have not got any other amendments either and so I would say that we are very much involved in the normal scrutiny of a Bill and at this stage I think it is more untidy to go back, have a four-week delay, then try and suspend standing orders, because it is going to end up in more delay and I am keen that the Bill progresses.

I would be very interested to know what other hon. members have got to say with regard to this because we are engaged, at this point, in a debate on a procedural way forward.

Now, I know the hon. mover of the Bill would feel more comfortable with the amendment removed, but it is really a question of practicalities. I made an assessment yesterday and this morning that it would be difficult to achieve 16 votes in this hon. House today to actually go back to clauses and so, in order to speed the delivery of this Bill, which from a government perspective is what we are about, we think the best way is to let it go forward to the Legislative Council and, if they do seek to amend it, it will come back and can be dealt with fairly quickly. As we know, in the upper House Bills sometimes have more than one reading on the same day and therefore there is that opportunity to have speedy resolution of it.

So it really is, obviously, a matter for members with regard to this adjournment, and I do know the hon. member for Ramsey is trying to be helpful in terms of delivering a Bill that the Keys is happy with, but I think it assumes that we are all of a mind to remove that amendment at this stage because of the deemster's letter and I am not too sure, looking around this House, that that is actually the case, in which case we would struggle to get the 16 votes. Now, I do not

know whether it is the hon. member's intention to try to suspend standing orders at some stage, but to be in limbo for four weeks, I think, is not helpful to the progress of this Bill.

The Speaker: Hon. member for Michael, Mr Cannan.

Mr Cannan: I just really want to reinforce the words of the Chief Minister and the fact that it seems to me that if you adjourn today what chance is there, what absolute certainty is there that that there are going to be 16 votes to open the clauses on 3rd December? Even if you do get the 16 votes as the Chief Minister says, and then the Bill goes to the Legislative Council, what absolute certainty is there then that the Legislative Council might not have amendments and it comes back and then you are well into the end of January, if not the beginning of February? And that is right, because there is the December-January recess of sittings of Legislative Council. Whereas, if you let it go today – and we can all see from the Legislative Council they have virtually nothing on their agenda because no legislation has come forward from here – this Bill would be on their agenda on 26th November and they would have two weeks – 26th November and 3rd December – to look it and at that time the amendment could come down from the Legislative Council. The amendment could then be cleared and sorted by this House at the first sitting in January and the Bill then would complete its passage in both Houses, but to go around the course of waiting to 3rd December without a certainty of 16 votes without a certainty that the Legislative Council, when it then got the Bill on 10th December and again on fourth week in January, would not then find amendments to then come forward to the House some time in February and the Bill goes on, whereas I am of the opinion the tidy way is now, bearing in mind all that is said, is to let it go to the Legislative Council scrutinising body. That is their purpose. They will have seen the deemster's letter, they will have a copy and presumably, with the guidance of the Attorney-General, they will do the right thing and presumably by 3rd December the amendment will come to this hon. House for clearance from the Legislative Council. So I would really, for practicality and procedural purposes without the certainty of everybody saying, 'Well, I am going to get 16 votes for this next time on 3rd December' – there is no certainty in life like that – not support the amendment but let the Bill go through on its third reading and leave the Legislative Council, with the guidance of the Attorney-General, to do what is necessary.

The Speaker: Hon. members, I call on Mr Singer to reply to the adjournment debate.

Mr Singer: Thank you, Mr Speaker. Can I first of all thank the hon. member for Peel for her detailed

comment and her support. I think the case she put was extremely valid.

I think it also came out quite clearly at the commencement of this third reading that the mover of the Bill herself, the hon. member for Douglas East, is unhappy at the methods that have been adopted by the Chief Minister and the government, certainly after considering the advice of the deemster supported by the learned Attorney-General.

The hon. Chief Minister said that he had looked at the practicalities. I think we all wish to see the Bill make progress, but at any stage of any Bill it would be practical to move a third reading on the day of the clauses et cetera but this has got to be resisted and is often mostly resisted because of parliamentary reasons, and I think this concern I expressed was out of parliamentary concern.

The Chief Minister did say originally, in seconding the Matrimonial Bill third reading, 'Let's see what another place does.' Yes, the Bill could end up back here but, there again, on the other hand it may not and, whilst I think the last speaker, the hon. member for Michael, said, 'The Legislative Council have seen the deemster's letter and therefore they can make a decision on the deemster's letter,' the fact is that we also know what is in the deemster's letter and therefore we should be making our decisions according to the recommendations from the deemster and the Attorney-General, I believe, not leaving it to the Legislative Council.

So what I have heard in this debate has not removed from me what I felt was the uncomfortable feeling about the way that this was being handled. I believe the amendment is helpful to government to help them to get this through in the right way and as soon as possible, and certainly I would not wish to withdraw the amendment, Mr Speaker, but I would wish to move it.

The Speaker: Hon. members, before us we have a motion for adjournment and the motion is that the third reading of the Matrimonial Proceedings Bill be adjourned to enable the clauses stage to be reopened on 3rd December 2002, and that stands in the name of the hon. member for Ramsey, Mr Singer. All those in favour of the adjournment say aye; against, no. The noes have it.

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

For: Mr Houghton, Mr Henderson, Mrs Hannan, Mr Singer – 4

Against: Mr Anderson, Mr Cannan, Mr Quine, Mr Rodan, Mr Quayle, Mr Rimington, Mr Gill, Mr Cretney, Mr Braidwood, Mrs Cannell, Mr Shimmin, Mr Bell, Mr Corkill, Mr Earnshaw and the Speaker – 15

The Speaker: Hon. members, the motion fails to carry, with four votes in favour and 15 votes against.

We therefore revert to the third reading. The members who have spoken on the third reading so far are the hon. member for Douglas East, Mrs Cannell, the hon. member for Onchan, Mr Corkill, and the hon. member for Rushen, Mr Gill. Hon. member for Peel, Mrs Hannan.

Mrs Hannan: Thank you, Vainstyr Loayreyder. I was rather disturbed, when the mover was moving the third reading, to state that the situation had changed with regard to clause 67. This relates to reconciliation. I do not believe the situation has changed at all. I believe my amendment just retained the status quo. The legislation was drawn up to say that the Department of Health and Social Security should be involved in the reconciliation. The Department of Health and Social Security has never been involved in reconciliation, but the Department of Home Affairs, under the court welfare service officers who are trained for such, has been involved in reconciliation down the ages. Now, I do not want to go over the amendment but the amendment was accepted by the House; I am just wanting to make the situation straight that my amendment has not changed anything. My amendment just makes the status quo within the legislation.

I do believe this is an important piece of legislation but I do see that it is a failed opportunity to get this right in this particular House before it goes anywhere else. I accept that the Legislative Council are there in a revising manner and, as a revising chamber, they go through it and they make sure that it is legislation that will work. I hope that they do bring it back to this hon. House, Vainstyr Loayreyder, because that means that they are working properly, but government should have accepted that in the first instance, because the amendment moved by the member for Ramsey, Mr Singer, was just trying to be helpful, not trying to impose anything on this hon. House or government, and I think the Chief Minister himself speaking recognised this amendment as being helpful but does not want to hold up the legislation, and I would have thought that if four weeks was too long to sort it out, then we could have dealt with it on the floor of this House but that is not to be.

It is an important piece of legislation but I am concerned that we, the House of Keys who are responsible for legislation, are handing a faulty piece of legislation over to the Legislative Council for them to put right, especially when we know it is wrong. Thank you, Vainstyr Loayreyder.

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

Mrs Cannell: Thank you, Mr Speaker. I would like to thank my seconder, the Chief Minister, for seconding the third reading and also for the observations made by the hon. member for Ramsey,

Mr Singer, in particular the hon. member for Peel, Mrs Hannan, and also the contribution made to the debate by the hon. member for Michael, Mr Cannan.

I am very pleased that members have acknowledged the concern that I had in moving the third reading in respect of the amendments which may or may not find favour with the Legislative Council, and I just appreciate the concern that members have shown, like me, in respect of the principle of sending a potentially defective piece of legislation for scrutiny by another branch. It is very risky, in my view, because if they do not scrutinise it the way we would want them to scrutinise it and bring it back, having removed the two amendments, then what we will end up with, which was observed by the hon. member for Peel prior to lunch, is a piece of legislation which cannot be used utilised in force to become an Act of the land, because it will contain still within it a criminal aspect contained within a primary civil piece of legislation and as such it will be totally unworkable. So if the Legislative Council do not pick up on it and act accordingly, amend it accordingly, bring it back to us and ask us if we are happy with that and they just nod it through, which I do not think they will, but they could do because the uncertainties are there whether or not they can come forward with more amendments, indeed the converse is that they may not amend at all, in which case we have dealt with a very tricky situation, we have evaded our responsibility, in my view, by sending it to another place in the knowledge that a couple of amendments that are in that have been endorsed and supported by the House are going to make the legislation defective, so I sincerely hope that the Legislative Council do pick up on it. Clearly they will have to hand the deemster's view, they will have the Attorney-General's view and I would hope they will have at least unedited *Hansard* of the members of this House's view so that they can call upon that the tenor of debate, the observations made and the concern expressed particularly today, and before, at least by myself in trying to advise members that they ought to be careful in supporting the amendment, because it was not going to sit comfortably, but I am pleased to get this support. I sense their support today and I thank them for that. I also acknowledge the hon. member Mrs Hannan's point regarding clause 67. Of course, as worded it did put the onus on the Department of Health and Social Security to arrange for a suitable person, but her amendment gladly restored the status quo, the working practice, and so therefore, as I said at the beginning, that was a good amendment, it carried weight and it is contained within the Bill. I am ready to move and I just hope that it does come back, Mr Speaker. Thank you.

The Speaker: Right, hon. members, just before I put the third reading to the House, I would wish to make it absolutely clear that what is determined by this House is determined by this House, and if that is what continues to be the content of the Bill when it goes to another place for signature, that is how the Bill will

stand and the Act will become law. I think we should keep that in mind. It is the responsibility of this House to consciously decide what it is doing and I would just remind all hon. members that at the sitting when we considered the clauses hon. members were fully aware of the information before them, consciously determined to proceed with the Bill and consciously determined to approve that amendment. We do not know now, if this passes at third reading, what will happen in another place and we should not pass legislation on the hope that they may or may not change laws that we pass.

Hon. members, the motion before us is that the Matrimonial Proceedings Bill be read a third time. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Leave of Absence

The Speaker: Now, hon. members, before I move on to item 2 of section 4 of our order paper I just wish to make two points clear. One is that the hon. member for Douglas West, Mr Downie, has leave of absence; I did not mention that this morning for which I apologise. Also the hon. member for Onchan, Mr Karran, has advised me via a message that he is not well and he may or may not return this afternoon.

Property Service Charges (Amendment) Bill – Clauses Considered

The Speaker: Hon. members, we now move on to the Property Service Charges (Amendment) Bill and I call on the hon. member for Douglas North, Mr Houghton.

Mr Houghton: Thank you, Mr Speaker. At the end of the second reading stage two weeks ago I did endeavour to come back to inform hon. members of certain issues that were complementary to this legislation that I was seeking to find from the legal draftsmen's department. The principle legal draftsman is off on leave at this point in time. I have been unable to get that information. It has nothing whatsoever to do with this particular Bill anyway but, if I have your permission, sir, I will endeavour to bring that back hopefully by the third reading. It was just to clarify a few points that were complementary to what I hoped to bring forward in this Bill, sir.

Clause 1 provides new machinery by way of an application to the Isle of Man Rent and Rating Appeal Commissioners under which the tenants can speedily and cheaply get the ruling on whether any works or expenses are reasonable. Any works are to a reasonable standard, or an amount payable in advance is reasonable.

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

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

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

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

Subclause (2) brings into line the tenant's existing right where he is required to ensure with an insurer nominated by the landlord to challenge the choice of that insurer. It replaces paragraph 8 of the schedule to the 1989 Act.

Paragraph 8(1) is introductory. The paragraph applies where the tenant is required to ensure with an insurer nominated by the landlord. Paragraph 8(2) enables the tenant to apply to the commissioners instead of the High Court to challenge the landlord's choice on the grounds that the cover is unsatisfactory or the premiums are too high.

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

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

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

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

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

The new section 5(1) enables a tenant in proceedings in the High Court, as at present, or before the commissioners or an arbitrator – this is new – to

apply for an order preventing the landlord including his legal costs of the proceedings of a service charge.

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

The new section 5(3) provides that the court, commissioners or arbitrator can make whatever order it thinks just on the application, which is no change, sir.

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

Subclause (5) amends section 3(3) of the Rent and Rating Appeals Act 1986 by allowing the Council of Ministers to make rules for regulating the practice and procedure of the commissioners so that it will now cover the exercise of the commissioner's jurisdiction under any enactment. I beg to move that clause 1 stands part of the Bill, sir.

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

Mr Henderson: I beg to second, sir.

The Speaker: Hon. members, the motion before the House is that clause 1 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Hon. member for Douglas North, Mr Houghton, clause 2.

Mr Houghton: Thank you, sir. Clause 2 restricts the landlord's right to forfeit a lease or tenancy for non-payment of a service charge unless the charge has been agreed or adjudged to be payable. It inserts new sections (9A) and (9B) in the 1989 Act.

The new section (9A)(1) provides that the landlord cannot terminate a lease or tenancy of premises let as a dwelling by exercising his right to forfeit it for breach of tenants covenant in the case of non-payment of a service charge unless it has been agreed to be payable or a court or arbitrator has decided that it is due. A lease or tenancy agreement usually includes a forfeiture clause entitling the landlord to re-enter and take possession of the property, thus bringing the lease or tenancy to an end.

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

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

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

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

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

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

The new section 9B(2) applies the same definition of 'premises let as a dwelling' as in section 9A. I beg to move that clause (2) stand part of the Bill, sir.

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

Mr Henderson: I beg to second, sir.

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

Mr Houghton: Thank you. This clause enables a tenants' association to appoint a surveyor to advise on works and expenses with the rights to inspect the landlord's documents and the property.

Subclause (1) inserts a new section 10A in the 1989 Act.

Section 10A(1) will enable a recognised tenants' association to appoint a surveyor to advise on matters relating to service charges. A recognised tenants' association is one which the landlord has agreed to recognise or which the Department of Local Government and the Environment has ordered him to recognise under section 13(2) of the 1989 Act.

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

Section 10A(3) requires a surveyor firstly to be appropriately qualified or, secondly, to hold some other qualification to be specified in regulations laid down by the Department of Local Government and the Environment.

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

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

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

Section 10A(7) requires Tynwald approval for regulations under subsection (3)(b).

Subclause (2) inserts a new schedule 2 in the 1989 Act, renaming the original schedule as schedule 1.

Paragraph 1 is introductory. A surveyor appointed under section 10A(1) is given rights under paragraphs 2 to 5. Paragraph 2 enables a surveyor to appoint

assistants who have the same rights under this schedule as he has. Paragraph 3 gives the surveyor the right to inspect documents of the landlord and take copies. This also applies to documents of other relevant persons – for example, the landlord’s managing agents. The surveyor is to give a notice requiring production of the documents to the landlord, agent et cetera. If the notice given to an agent, a copy must be given to the landlord. A notice given to a person who receives rent on behalf of the landlord is treated as given to the landlord, but he must forward it to the landlord as soon as possible. The landlord must, within one week, give the surveyor access to the documents free of charge.

Paragraph 4 gives the surveyor the right to inspect any common parts of the property in respect of which service charges are payable by the members of the tenant’s association and any other property in respect of which service charges are payable. Common parts include the structure of a block of flats and common facilities – for example, staircases, fire escapes and gardens et cetera. The landlord is to provide access on request but is not to charge the surveyor for access, but he can include the cost of providing access in the service charge. A request may be given to the landlord’s managing agents, if any, or, if none, to a person who receives rent on behalf of that landlord; an agent et cetera, must notify the landlord of a request as soon as possible.

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

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

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

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

Subclause (3) is consequential. The reference to the schedule in section 10 is now to schedule 1. Mr Speaker, I beg to move that clause 3 and the new schedules 1 and 2 do stand part of the Bill, sir.

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

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

The Speaker: Hon. members, the motion before the House is that clause 3 and the schedules stand part

of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 4, hon. member.

Mr Houghton: Thank you, Mr Speaker. This clause follows on from clause 1 by transferring to the Isle of Man Rent and Rating Appeal Commissioners certain functions of the High Court under the 1989 Act and allowing the High Court to refer any question falling within the commissioners’ jurisdiction to them for a decision.

Subclause (1) transfers functions of the High Court under section 3 of the 1989 Act to the commissioners. Section 3(6) enables the High Court in any proceedings relating to a service charge to dispense with the requirements as to estimates and consultation if it is satisfied that the landlord acted reasonably, for example in an emergency or where delay in obtaining estimates would have significantly increased the cost of works. This is extended to cover proceedings before commissioners for example under section 2(2)(a).

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

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

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

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

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

Section 10B(3) provides for such an order to be treated as a decision of the High Court for the purposes of section 9A. Mr Speaker, I beg to move that clause 4 stand part of the Bill.

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

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

The Speaker: Hon. members, the motion before the House is that clause 4 stand part of the Bill. All

those in favour say aye; against, no. The ayes have it. The ayes have it. Hon. member, clause 5.

Mr Houghton: Thank you, Mr Speaker. This clause enables a tenant of a flat to apply to the commissioners for the appointment of a manager of the block of flats where unreasonable service charges have been or may be imposed.

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

Subclause (2) inserts a new schedule 3.

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

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

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

Paragraph 4 requires prior notice of an application under paragraph 3 to be served on the landlord. The notice must specify the matters on which the application will rely, and require the landlord to take specific steps which are within a specified time in order to remedy them. If they are capable of being remedied, the commissioners can dispense with notice where service would be impracticable, for example where the landlord cannot be traced, but would require other notices to be service instead.

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

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

Paragraph 7 enables an appointment to be varied or revoked. Mr Speaker, I beg to move that clause 5 stands part of the Bill.

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

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

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

Mr Quine: Yes, could we just clarify who is responsible for the manager's remuneration?

The Speaker: I call the hon. member for Douglas North, Mr Houghton, to reply.

Mr Houghton: Thank you, Mr Speaker. My answer to that is that the person made responsible would be in the appropriate cases more likely to be the tenants association of that particular block, sir.

Mr Quine: Thank you.

The Speaker: Hon. members, the motion before the House is that clause 5 stand part of the Bill. All those in favour say aye; against no. The ayes have it. The ayes have it. Clause 6, hon. member.

Mr Houghton: Thank you, Mr Speaker. This clause enables a landlord to obtain a charging order in respect of a dwelling in order to recover unpaid service charges. For example, some of the tenants of a block of flats wish the landlord to undertake repairs or redecorations, but he is unwilling to do so because one or more of the flats have been sublet to weekly tenants and he has difficulty recovering service charges from the owners. This enables the landlord to apply to the High Court for an order in relation to a flat from which service charges are or will become due, giving him the right to step into the owner's shoes and receive the rents of the flat or, if it is empty, to let it in order to recover the charges. The clause inserts a new section 11A in the 1989 Act. Section 11A(1) enables the landlord of a dwelling to apply to the High Court for a charging order imposing on the tenant's interest in it a charge, a kind of mortgage, to secure the payment of past or future service charges.

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

Section 11A(3) enables the charging order to be made subject to conditions.

Section 11A(4) specifies the effect of a charging order. The landlord is given the same rights as he would have if the tenant had given him an equitable charge on the property – for example to apply to the court for the appointment of a receiver who can receive rents and let the property, an order for the sale or foreclosure.

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

Section 11A(6) makes it clear that the other remedies of the landlord are unaffected – for example, an action for recovery of arrears or forfeiture of the lease. Mr Speaker, I beg to move that clause 6 stand part of the Bill, sir.

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

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

The Speaker: Hon. members, the motion before the House is that clause 6 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it. Clause 7, hon. member.

Mr Houghton: Thank you, Mr Speaker. This is the final clause, sir, of the Bill. This clause provides for the short title of the Bill, its interpretation and its commencement on an appointed day or days order, sir.

Subclause (1) gives the Bill its short title.

Subclause (2) defines the term 1989 Act as used in the Bill.

Subclause (3) provides for the commencement of the Bill in one or more appointed days. Mr Speaker, I beg to move that clause 7 stand part of the Bill.

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

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

The Speaker: Hon. members, the motion before the House is that clause 7 stand part of the Bill. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Procedural

The Speaker: Now, hon. members, before I conclude the proceedings for the day, I wish to advise that the Secretary of the House received an approach from the Chief Registrar on behalf of His Honour the First Deemster proposing that a new procedure should be adopted in relation to the swearing-in of a new member of the House selected at by-election. The proposal is that the new member for Malew and Santon should be sworn in within the House. I have agreed to this new procedure and have also advised his honour the First Deemster that the House will sit for the swearing-in ceremony. I have agreed that His Honour the First Deemster and the Chief Registrar shall have seats set aside for them within the floor of the House to my left and therefore hon. members, I wish to advise the House will sit at 9.45 a.m. on Tuesday next, 19th November, prior to Tynwald sitting in our chamber for the swearing-in ceremony of the newly elected member for the House of Keys for Malew and Santon. A formal order paper will be, and may already be with some hon. members who picked them up in line with out standing orders. Finally, I would ask all hon. members to be in their seats to enable proceedings to start promptly at 9.45 a.m. next Tuesday.

Hon. members, the House will now stand adjourned until Tuesday, 19th November 2002, at 9.45 a.m. in our own chamber.

The House adjourned at 3.56 p.m.