

Regulation of Care Bill 2012 Second Reading approved

1. Mr Butt to move:

That the Regulation of Care Bill 2012 be read a second time.

The President: We move to the Regulation of Care Bill, Second Reading.
I call on Mr Butt.

Mr Butt: Thank you, Madam President.

I would like to thank Members for their support during the First Reading and for their contributions during the First Reading of this Bill.

Madam President, the Department of Social Care presently has a team of Registration and Inspection officers who inspect, monitor and regulate personal care. At present, the legislation allows them to inspect only nursing agencies via the Nurses and Midwives Act, private nursing homes and private residential homes via the Nursing and Residential Homes Act 1988, and inspection of children's homes via sections of the Children and Young Persons Act 2001.

Obviously, there are many other areas of personal care which are not regulated or inspected, and these have grown in recent years. It is important that vulnerable people are protected and recent cases in the UK have shown the terrible consequences of providers not acting as they should and the lack of proper monitoring and inspection.

We are, unfortunately, behind the UK in terms of such legislation, and it is important that we learn the lessons of what has happened there, and that we have the legislation in place to avoid such things happening here. This legislation has been very carefully prepared over a few years and should avoid many of the mistakes experienced in the UK.

Many more services are now provided by the private and third sectors. These are growing and need to be encouraged, and their standards need to be consistent and up to date to take account of developments both in law and in recent practice.

This Bill does several things and introduces new elements in addition to the current legislation. For the first time, the work and practices of the Department itself will now be inspected and monitored with the same requirements and standards as for the independent sector. Also, details of inspection of all providers and premises will be made available to the public. Also, social care workers who visit the homes of vulnerable people will now be registered. An agency to provide staff will be regulated, and so will several new services which provide care to the vulnerable.

The services currently registered and inspected are incorporated into this Bill, and much of this Bill is a replication of current legislation.

If I can turn to some of the comments made at the First Reading, Madam President, last week, firstly, Mr Turner raised the point about negative Tynwald procedure. This Bill fulfils the criteria of giving more control to Members by placing most of the essential information in the primary legislation, so it is open to parliamentary scrutiny at these stages. This means that it is anticipated that fewer regulations will be required. Those regulations could potentially have an impact on businesses, and therefore, rather than just being laid before Tynwald, they will be subject to approval of Hon. Members.

The following regulations are anticipated on introduction: regulations concerning fees; regulations defining subcategories of main categories – for example, the registration of a residential home can also have a subcategory of nursing; services that will be a part of new independent clinics; services that will be a part of independent hospitals; information that is to be kept on the register.

In terms of the consultation for this Bill, I think it has been in genesis since about 2007, but the consultation was an extended consultation because there were a large number of stakeholders who would be impacted by the legislation. The consultation was launched on 21st February 2012 and ran for 13 weeks. In addition to this, the Department of Social Care wrote to 350 stakeholders and held 19 meetings to give further details on the Bill. The meetings were held across the Island to try to maximise attendance. The Department of Social Care also held two drop-in sessions for the public to ask questions and to get further information on the draft Bill. In order to ensure that service users and their carers and relatives were aware of the consultation, information leaflets were available and distributed. The consultation was also publicised via third sector networks and the media.

The consultation received 107 responses in total, and the majority of respondents chose to complete the online questionnaire in order to submit their comments. Overall, the responses were very positive, with 100% of respondents agreeing that care services should be regulated to protect people using those services. There were some concerns raised, but the majority of these were focused on the fees to be charged. The Department ran a separate consultation on this to set out the proposed fees and fees structure.

Overall, the Department was encouraged by the response from the majority of care service providers. Those currently regulated anticipated little change. Those new to regulation were positive about how being registered and receiving inspections would be beneficial to their staff and in advertising their services.

I was also queried about the cost of this Bill. There has been an impact assessment made, and this shows that the cost of introducing this legislation will be £126,931, but there will be approximately £41,000 recoverable through registration charges. However, this should be considered alongside the wider benefits of this legislation: it will improve the protection of service users; it should encourage the growth of a safe care service market; and it will improve the Department's service to service users and providers by focusing the actions of the Registrations and Inspections team on where they can be most effective in improving services and protecting service users and promoting dignity and independence. This will ensure that the inspection is cost effective.

There will be very few changes overall in terms of the registering or the powers of the inspectors, and in some cases bureaucracy will be reduced by including definitions – 'adult care homes', for example, means that homes do not have to register twice as nursing homes and registered homes, as care homes, but can be in one category.

Mr Lowey questioned the use of the tribunal. I can inform him that, in the last five years... The current system is before the High Bailiff. There have been no cases in the last five years before the High Bailiff. However, because we have new services coming online, it is expected that there may be up to two cases a year which will go before the tribunal.

The inspection service do have continual engagement with providers under the Bill and it is hoped that there will be very few requirements to appeal under this legislation.

Madam President, this is a lengthy Bill, but to a large extent it does replicate functions of the previous Acts, and the functions of the previous Acts will apply to the new services. There are few major changes.

The functions of registration, inspection and monitoring are now extended to care services, many of which are new and have come about in recent years, and to date have had only voluntary inspection or no inspection at all.

Madam President, I have in the Council Mrs Diana Gordon and Miss Sam McCauley, who are here to give us any expertise we need, if that is required. They have spent a lot of time on this Bill and I am impressed with their expertise so far, so if we do need to call on their services – if that is acceptable, Madam President – we may do so.

The President: Yes, that will be acceptable.

Mr Butt: Madam President, I will now move the Second Reading of the Regulation of Care Bill 2012.

The President: Hon. Member, Mr Lowey.

Mr Lowey: I beg to second.

Could I thank the hon. mover for his response to some of the queries I raised last week.

I give warning now that... not warning... Having read the Bill properly for the second time – having read it last week for the... speed reading, there are just two queries. They may seem academic, but I give them now because they are in the clauses at clauses 43 and 50, so I am giving a little bit of warning to our friends who may be able to assist you when we get to them.

One is in regard to the wording in clause 43, where it says 'British Islands', which differs somewhat from the legislation we get at the moment, which says 'British Isles'. With the devolution that is happening in the UK, care and health are matters that are devolved to what I would call the Scottish Parliament and the Welsh authority – I hope I have got them in the right order. 'British Islands' – does that include the Channel Islands, and does it also include the Republic of Ireland? When I look at the thing, I think of the British Islands as a group.

The second point I wanted to make was in clause 50, which is a technical one again. It is the criteria for suitability to manage or supervise, and I wonder, where it says:

'(1) A person is suitable to manage, or supervise the management of, a care service only if —
(a) the person is physically and mentally fit enough...'

– I can understand somebody physically being assessed as suitable to do it – if they are frail or they are disabled in some way, looking at them you could see that – but mentally? How do you judge somebody who is mentally fit to do it, and are those skills available to the people who will be saying, 'Yes, you can manage the home,' or not?

So I give notice on those two: how or where does that fit into the thing? I am not being finicky, but I think...

The mover of the Bill has assuaged my concerns that we had not consulted people widely enough. I am not

surprised there were not more people applied, because this is complex, but most people are concerned with the outcomes, not the detail. So I am not surprised, but I do think that the Department has taken every reasonable step to get that information into the public domain, and I applaud them for that. I am quite satisfied that every effort has been made for the consultation to take place and I am grateful to the Department for that. It is now in the public domain, so as far as I am concerned, I am satisfied with that.

The Bill is right and proper, and I will be supporting it.

The President: The Hon. Member, Mr Callister.

Mr Callister: Thank you, Madam President.
It has been seconded, I take it?

Mr Lowey: Yes, I did second it.

The President: Mr Lowey did second it.

Mr Callister: Thank you.

As the hon. mover said, there are few major changes, but there is a certain amount – probably a fairly large amount – that is new here. It would be useful, going through the clauses, if we get some indication that something is new that is particularly of interest to Members.

It carries, as far as I can see, in excess of 150 definitions, so that must be a record for any legislation that has come forward here. I would call it a belt-and-braces Bill, or even perhaps you would be wearing two pairs of braces and two belts with this, because it tries to cover every possible area, and there will always be something somewhere that did not quite work out right with it. It is trying to do a lot of things.

I would be interested to know what ideas they have for the actual cost of registration. We have been given these round figures and the fact that the cost of the Bill itself might be recovered through the registration fees, but what will that mean in terms of the individual groups who will want to be registered?

I do believe it will create new posts eventually, because I cannot see... If this is all to be dealt with in the way they have described in the Bill, they will need more manpower to do it, and I just wondered if any thought had been given to having some local authorities have some responsibility in this area, rather than leave it all to the Department.

With that, I am happy to support the Bill, Madam President.

The President: Hon. Member, Mr Downie.

Mr Downie: Thank you, Madam President.
I will be supporting the Bill today.

Perhaps the complexities of the Bill are because there are some quite complex situations that we have had to deal with.

I will just briefly explain to Hon. Members a situation I had to deal with a couple years ago. There was an elderly lady who was receiving care at home through an agency, and there were some bills being racked up that were brought to my attention, to do with transport and travel and all kinds of other things. When I went to investigate the matter and I went to the Department, it appeared that the agency which was looking after this old lady also had access to her bank account, and I think that is wrong.

There have to be checks and balances in the system, and when a person is deemed not to be fit to look after their affairs any more, to my mind it is right and proper that we have some legislation in place that actually deals with that. Otherwise, rightly or wrongly, somebody could be accused of doing something.

There a lot of elderly people now who have dementia, or similar conditions, where they will swear blind that a person has taken money. So there is a two-way traffic here: we have got to provide a safety net for people who work within the care organisations, and particularly when dealing with the elderly; but we have also got to make sure that the vulnerable are protected as well.

I went into the old legislation in some depth with Mrs Mellor, and I am very grateful for the time that was given. I now see that this Bill will actually deal with the queries that I raised, and I think I have got some satisfaction in that, so that is one of the areas where I think the Department have been very quick to realise that there was a safety net required and they have brought in the legislation.

Thank you.

The President: The mover to reply.

Mr Butt: Thank you, Madam President.

Thanking Mr Lowey for seconding the Second Reading and his support, on clause 43, which concerns being disqualified from being registered because of insolvency, and I think the reference to British Isles will include Eire and the other islands as well. British Isles is a geographical term, rather than a country.

Mr Downie: Common Travel Area.

Mr Butt: Common Travel Area, yes. So if there is insolvency in the Republic of Ireland, that will apply also to this reason for being disqualified.

Section 50, about the mental and physical ability to actually run a premises or be part of a premises – I think this is a straight lift from the original Act, in the Nursing and Residential Homes Act. The same criteria applied under the previous Act about being mentally and physically able to deal with it. I will try to find out before the Third Reading how they actually judge they are mentally fit. I think the inspection service will probably have the expertise and skills to assess people, but I will check on that. So thank you for your support, Mr Lowey.

Mr Callister... When you read the Bill, it is quite an interesting Bill. It is quite a leap away from the way Bills are normally worded. It is quite colloquial, in places, and it is trying to be user friendly, and I think some of the phrases in it are quite... For the lay person, it is an easy read, and I think that is why there are perhaps so many definitions in there, compared to what we normally see.

You mentioned the costs. I understand, from my conversations, that the inspections team will be much more focused on providing unannounced visits to those where they feel there is most need to provide them, rather than at present... they used to have annual or twice-yearly visits to every premises, regardless of whether they needed them or not, and now they are going to have to focus their resources onto making sure they regulate what needs to be regulated and inspected and monitored. So I think there are increased costs, but not as much as we perhaps would have thought, reading the complexity of this Bill and the number of new premises that will be inspected.

Mr Downie, thank you for your support as well. You make the very point, I think, which indicates the need for this Bill. Under the previous legislation, there were agencies that could not have been regulated. The staff they employed could not have been regulated or inspected or registered in any way. This Bill will answer all those problems and your argument actually points out the need for this Bill, so I thank you for your support as well.

I beg to move the Second Reading, Madam President.

The President: The motion is that the Bill be read a second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Regulation of Care Bill 2012 **Consideration of clauses commenced**

The President: Clauses. We have had a schedule from the Department, indicating how they would like clauses to be grouped. I am happy to comply with that, but I did feel that the first couple could have been grouped as well. However, we will take clause 1.

Mr Butt: Thank you, Madam President.

If you have the note of the clauses grouping, where numbers are not mentioned they will be dealt with individually as a single clause, but where they are mentioned, they are, in fact, grouped.

Clause 1 gives the Bill its short title, and I beg to move that clause 1 do stand part of the Bill.

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

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

Clause 2, commencement.

Mr Butt: Thank you.

Clause 2 provides for the commencement of the Act, the majority of which comes into effect on Royal Assent.

Three clauses commence by Appointed Day Order. They are clause 52, which is the offence of carrying on or managing without registration. This clause starts the process of the registration of care services under the Bill. Bringing this clause in by Appointed Day Order will allow the Department to structure the registration process

to a more exact timescale.

Also, clause 5. This part starts the process of the registration of specified social care workers. Again, this is being brought in under an Appointed Day Order to allow for a staged approach and engagement with the professional body undertaking the registration.

Also, clause 4. This clause launches the registration of existing unregistered social care staff.

Madam President, I beg to move that clause 2 do stand part of the Bill.

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

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

Clause 3.

Mr Butt: Madam President, clause 3 is the ‘Purpose of the Act’, which is probably quite an important clause. The Act, at clause 3, says the purposes are to protect people who need services, to regulate how they are provided, to standardise how they are regulated, and to promote transparency.

Madam President, I beg to move that clause 3 stand part of the Bill.

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

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

Clause 4.

Mr Butt: Clause 4, Madam President, is how those purposes will be achieved, and provision is included to make the Bill more user friendly to the average reader. It allows a reader to quickly find out what the Bill is generally about.

As you can see, in clause 4 there are (a) to (g) listed. These are to give the Department regulatory and monitoring functions; to empower the Department to make minimum standards for those who provide social care; requiring those who carry on or manage care services to be registered; disqualifying certain types of person from registration or prohibiting them from being involved with or employed or engaged at care services; subjecting care services carried on by a Department to the same inspection requirements standards as those that apply to independent care services, so that for the first time the Department itself will now be inspected and monitored; providing for the appointment of inspectors to help the Department perform its functions; and requiring those who perform certain types of social work to be registered, as provided under part 5, and that is the first time that social care workers will be registered.

Madam President, I beg to move that clause 4 stand part of the Bill.

Mr Lowey: I beg to second.

Could I just comment, Madam President, that really this shows some of the differences that we have in the Isle of Man. In the United Kingdom, of course, a lot of these services are provided by the local authorities with money circumvented from it. We do it differently here. It is done centrally – like the Police part of that is paid for by the local ratepayers. I use the word ‘ratepayers’... They would be given another title now, wouldn’t they – poll tax payers and whatever the community charge is. But anyway, there is a difference there. We do things centrally here. The Police... we do not put it onto the local authority. A lot of these services are provided by local authorities; they are done here by central Government, but the end result is exactly the same. It is the people who are being attended to and those who attend them, so it is dealing with the same group of people, only it is done in a different way in the adjacent island from what we do here in the Isle of Man.

The President: The Hon. Member, Mr Callister.

Mr Callister: Thank you, Madam President.

In clause 4(f), it says:

‘providing for the appointment of inspectors...’

Could I ask what inspectors they now have in the Department, and does this also mean that these would be new, or would it mean new appointments, in fact, and an increasing in staff numbers?

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Madam President.

Just to note that clause 4(e) gives a level playing field for the standards to apply.

Mr Lowey: In Government and in the private sector.

Mr Crowe: Yes. Thank you.

The President: The mover to reply.

Mr Butt: Thank you, Madam President.

In response to Mr Lowey, about the local authorities taking over some of the work – and Mr Callister mentioned that at the Second Reading – I think that is probably a question for the scope of Government. I suspect that is a move too far in an Island of this size. (**Mr Lowey:** A leap too far.)

The system we have generally works well, and this should actually help to improve matters, particularly for those who are using the care services. They will now, after this Bill, be able to actually read reports on each care home or individual place to see what their standards are and how well they are thought of. So they will be able to choose their service perhaps with more information than before.

Mr Callister asked about the inspectors needed. There are, later in the Bill, transition clauses to allow the current inspectors to just move into the new Bill, maintaining their current jobs. At the moment, there are not anticipated to be more inspectors. I do not know the number at the moment who actually work, but I can find out for you. At the moment, it is anticipated there will be no further inspectors required to be employed at this stage, but of course, if they are needed they will be.

Mr Crowe, yes, we now have a level playing field. The Department itself will now be monitored and inspected, and reports on the Department's care services will be provided as well to the public, which I think is a good move. There are certain members of our political system who keep saying we should have more independence and more inspection of what Government actually do as well, and I think this will go some way towards that.

I beg to move that clause 4 stand part of the Bill, Madam President.

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

Clause 5.

Mr Butt: Thank you, Madam President.

This clause gives a clear definition of 'social care' for the purposes of this Bill. This is not defined elsewhere in Manx legislation. The focus here is providing personal care, practical assistance or personal support – for example, bathing and dressing, or assistance with these tasks.

Clause 5 has, again, a list of individuals this will apply to. It applies to them because of their young age; abuse, neglect or risk of harm; past or present illness; past or present dependency on alcohol or a drug; or mental disorder, physical disability or infirmity. This covers the majority of people who are currently within residential and nursing homes. Social care also includes childminding.

Madam President, I beg to move that clause 5 stand part of the Bill.

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

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

Clause 6.

Mr Butt: Thank you, Madam President.

Clause 6 explains that the definition of a 'care service' means an agency which provides services, an establishment where services take place, or childminding. For the purposes of this Bill, those are the three particular areas.

Regulations may provide for subcategories for which a care service can be registered. For example, if the category registered is adult care home, the subcategory may be mental illness. This would allow a care home to take on service users with mental health needs. Care services can have more than one subcategory, but will need to demonstrate in each case that their staff have the competence and skill to care for such service users – for example, having qualified nurses if a service is registered with nursing as a subcategory.

This is a change to the current legislation, whereby homes have to register more than once if they provide

different types of care. There will now be one single registration with subcategories for a particular category.
Madam President, I beg to move that clause 6 stand part of the Bill.

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

The President: The Hon. Member, Mr Callister.

Mr Callister: Thank you, Madam President.

There is an element of this clause which impacts on clause 21, but I bring it up at this point on the definition of ‘childminding’. Can the hon. mover tell us that it means that babysitting would be the same sort of thing? In other words, in a private residence, if a family member or a friend or relative, or whatever, is doing what is normally currently called ‘babysitting’, is that childminding? Does it come under that definition? It certainly does not figure in the definitions.

The President: The mover to reply.

Mr Butt: Thank you, Madam President.

I think, under section 21, which we are coming to, there is a definition of who is a relative, what a ‘relative’ actually means, and it has been widened a bit to include:

‘... a person connected to the child or children by whole blood, half blood or by marriage, civil partnership or some affinity other than kinship;’

– so that does allow for the babysitting function to continue under those terms.

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

Clauses 7 and 8.

Mr Butt: Thank you, Madam President.

These clauses define what care services are agencies and which are establishments.

‘Agencies’ means that inspection will be of the agency premises and records, not individual arrangements. However, in inspecting an agency, interviews, surveys etc will be conducted with service users and their families to assess the service being inspected.

Some examples of agencies which will now be included in this Bill are adult placement agencies, of which there are none currently in the Isle of Man at the moment, although the Department is piloting one; a child care agency and child care agency’s supplier introduced to parents, a child carer who looks after a child or children – there is potentially one agency operating on the Island which would fall under this definition; a domiciliary care agency – there are currently none regulated but there are believed to be 23 known operating on the Island at the moment, none of them are regulated, they include agencies such as Manx Home Care and Complete Care, and six of those agencies did attend the stakeholder meetings as part of this consultation.

There is then also a fostering agency. Fostering First is run by the Children’s Centre, and they are an agency under this Bill.

There then will be an independent medical agency. An example of this would be an agency providing private medical practitioners or medical advice to private clients. There are none of those on the Island at the moment.

There are nurses agencies, which are currently regulated under the Nurses and Midwives Act, and there is one operating here at the moment on the Island.

There is another category, of voluntary adoption agency, and the Manx Churches Adoption and Welfare Society, which is trading as the Isle of Man Adoption Service, is the current provider in the Isle of Man.

In clause 8, ‘establishments’ means that an inspection will be of a specific premises and the staff working there. There will be definitions of these from clause 16 onwards, Madam President.

The type of establishments we are talking about in this Bill are adult care homes, which are now presently covered under the regulations of the Nursing Homes Act. They will cover both nursing and residential care under one definition in future.

There are adult day care centres, which are not currently regulated. These are premises such as those run by Age Concern or Age Isle of Man at Southlands and at Derby Square, and the Meadow View Day Care Centre and Praxis, who run mental health day care centres. This is where people – elderly people, usually – attend a centre for the day.

There are also child day care centres, which are currently regulated under the Children and Young Persons Act, and they include such things as nurseries – the Beehive and Hopes & Dreams establishments, and other playgroups.

Children's homes are currently regulated under the Children and Young Persons Act. Where children are in care, currently the legislation provides that they must be a premises with three or more children in place. This Bill will allow for it to be any number of children. There are occasions where there are houses run by the Children's Centre or Isle of Man St Christopher's, where there is only one child in a children's home. This will allow those to be regulated to the same extent.

Also, the secure accommodation for children – which is the premises at White Hoe, which is currently run by St Christopher's – that is currently legislated for.

Independent clinics – at the moment, there are no independent clinics which would fit this Bill, but the definition may be extended to include provision of botox, for example, and there are provisions within the Bill to actually extend the definition as required, depending what sort of clinic comes along.

Also, independent hospital is another type of premises.

An offender accommodation service – currently there is one, the David Gray House, in the Isle of Man, which will be regulated.

Residential family centres – currently, there are no residential family centres on the Island, but if there were, they would provide residential services for parents and their children to monitor and assess parents' ability to respond to children's needs and to safeguard their welfare.

This provision has been included so we can ensure that we can quickly adapt to the changing care services as they expand and as they develop, Madam President.

I beg to move that clauses 7 and 8 stand part of the Bill.

Mr Lowey: I beg to second.

Could I just ask the mover... He only mentioned one adoption agency, which was, I think, the Children's Centre. I remember – and I look to my Lord Bishop here; he could help – the Church certainly had an adoption service, because I know what wonderful work they have done in the past. I have seen it in practice and I have seen the results, which were excellent. I just wondered whether that was an all-inclusive list, or maybe I have missed something – but I support the clause.

The President: The Lord Bishop.

The Lord Bishop: Thank you, Madam President.

The Isle of Man Adoption Agency is a body which originated in the churches. At their last annual general meeting they asked to be dissolved and they are in conversation with the Department now about what the future will be.

Mr Lowey: It is a great shame.

The President: Mr Turner.

Mr Turner: Thank you, Madam President.

The hon. mover mentioned that nurses agencies are currently regulated under the Nurses and Midwives Act. Will that regulation wholly transfer, or will there be two levels of regulation with this provision coming in?

The President: Before the mover replies, perhaps I could ask him why hospitals are being dealt with under this Bill, rather than through the Health Service?

The mover to reply.

Mr Butt: Thank you, Madam President.

Mr Lowey's point about adoption... I actually said the fostering service is provided by the Children's Centre. The Adoption Society was the Manx Churches' Adoption and Welfare Society, which has become the Isle of Man Adoption Service, so it was a Church-based service originally. It still is at the moment, I think, until changes are made.

Mr Lowey: Thank you.

Mr Butt: To Mr Turner, the Nurses and Midwives Act is going to be totally repealed. All its elements are now included within this Bill and they will be subject to the same inspection levels as every other service in the Bill.

Hospitals, Madam President – the only hospital currently operating which would fit into this Bill, which is non-NHS, is actually the Hospice, which is regulated now with this Bill. Should there be any independent hospitals coming into being in the future, they will be subject to this care as non-NHS premises, in effect. I hope

that is sufficient.

The President: Thank you.

Mr Butt: I beg to move that clauses 7 and 8 stand part of the Bill.

The President: The motion is that clauses 7 and 8 stand part of the Bill. Those in favour, please say aye; and against, no. The ayes have it. The ayes have it.

Clause 9.

Mr Butt: Clause 9, Madam President, defines a 'Department care service' for the purposes of this Bill.

This includes a Department of Social Care service carried on by another Department under another Act. This is to capture services such as offender accommodation.

One of the new features of this Bill is that it will allow Departments' care services to be inspected, monitored and reported upon.

Madam President, I beg to move clause 9 stand part of the Bill.

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

The President: The motion is that clause 9 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 10.

Mr Butt: Thank you, Madam President.

Clause 10(1) defines an 'independent care service' for the purpose of this Bill.

Subsection (2) clarifies that if a care service is jointly carried out by a Government Department and the independent sector, then the independent sector care service will be registered and regulated. This means the independent sector will require registration. However, if the Department is undertaking some tasks, as opposed to merely providing finance or acting as an agent, then the Department's part will be monitored and inspected as any other full Department care service would be under this Bill. So this relates to where there is part service between Departments and private sector.

I beg to move, Madam President, that clause 10 stand part of the Bill.

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

The President: The motion is that clause 10 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 11.

Mr Butt: Thank you, Madam President.

Clause 11 defines 'non-NHS health care service' for the purposes of this Bill, and it includes independent clinics, independent hospitals, independent medical agencies and a nurses agency.

Madam President, I beg to move that clause 11 stand part of this Bill.

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

The President: Just to comment that I still find it strange that you would be monitoring hospitals, as such.

The motion is that clause 11 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 12.

Mr Butt: Clause 12, Madam President, relates to child-related care services. It defines the various care services for the purposes of the Bill, and it is required to allow specific disqualifications for people providing care services for children.

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

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

The President: The motion is that clause 9 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 13.

Mr Butt: Clause 13, Madam President, a further definition. This is for who carries on a care service.

This clause states the owner of the business is the person who carries on the care service. If the care service is run jointly between the Department and the independent sector, then the independent sector is the owner of the business.

Madam President, I beg to move that clause 13 stand part of the Bill.

Mr Lowey: I beg to second.

Could I just query, would this, or a previous clause, actually deal with a private school that has a medical wing? Would that be classified as a non-NHS medical centre, and would it have to be inspected; or would that come under the Education Act? I do not know; I just pose the question.

The President: The mover to reply.

Mr Butt: In the very later stages of the Bill, there is a section that deals with private schools, like King William's College, which at the present is voluntarily inspected, but will in future, under the Education Acts amended by this Bill, be able to be inspected by these inspection teams.

The President: The motion is that clause 13 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 14.

Mr Butt: Clause 14, Madam President, is another definition as to who manages a care service.

This clause defines the person who manages a care service, and that is the person who is directly and indirectly responsible for the day-to-day operation. This can be either the same person who owns the business, or can be a separate person.

It is a matter for Registration and Inspection to decide whether or not the person carrying on the service can also be the manager of the service. This depends on two criteria: firstly, the qualifications and experience of the person; and secondly, whether the person carrying on the service has other services and premises for which he is responsible.

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

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

The President: The motion is that clause 14 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 15.

Mr Butt: Clause 15, Madam President. This clause is required to clarify the use of the term 'care service' in parts of the Bill without requiring a specific care service to be detailed in every part of the Bill.

Madam President, I beg to move that clause 15 stand part of the Bill.

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

The President: The motion is that clause 15 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 16.

Mr Butt: Clause 16, Madam President, concerns 'adult care home'.

This clause defines an adult care home as providing certain care based on criteria such as illness. The definition excludes certain establishments from the definition and allows for further exclusions to be prescribed via regulations.

Adult care homes are presently regulated under the Nursing and Residential Homes Act, and the reason why a new definition is being included is to bring nursing and residential care together under the term 'adult care home'. In fact, in the amendments later on in the Bill, there are many amendments to various Acts which change the definition from 'nursing and residential care' to the one term, 'adult care home'.

Madam President, I beg to move that clause 16 do stand part of the Bill.

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

The President: The motion is that clause 16 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 17.

Mr Butt: Clause 17, Madam President, defines an ‘adult day care centre’. It defines it as providing certain care because of the same criteria set out in clause 16.

The definition states that they must be provided for more than four hours a day.

The definition excludes certain establishments from the definition and allows for further exclusions to be prescribed by regulation.

Adult day care services are a new addition to regulations. The definition covers day centres for adults which are providing care services such as Praxis and Age Isle of Man, what was Age Concern. This does not include centres that provide things like lunch clubs. The definition seeks to capture those providing personal care.

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

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

The President: The motion is that clause 17 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 18, adult placement agency.

Mr Butt: Yes, Madam President.

This clause defines an adult placement agency and they are a new addition to regulation.

Adult placement agencies are usually operated by a local authority. That is not quite accurate, Madam President, but they operate in a similar way to fostering for children.

The Department is looking at developing an adult placement agency to potentially reduce reliance on community homes and residential homes by providing care for vulnerable adults within a family setting.

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

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

The President: The motion is that clause 18 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 19.

Mr Butt: Clause 19, another definition, Madam President, of a ‘child care agency’.

This clause defines a child care agency, but a business can be excluded by regulations. Childcare agencies are a new addition to regulation.

This is not about people caring for the children; this is about the agency supplying or introducing them to parents. They are similar to a domiciliary care agency, but for children – generally, an agency organising care for children in their own home, or transport to and from day centres. The regulation is of the agency itself and their procedures.

I beg to move, Madam President, that clause 19 do stand part of the Bill.

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

The President: The motion is that clause 19 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 20.

Mr Butt: Clause 20 – another definition, Madam President – defines a ‘child day care centre’.

This clause only applies to day care for children under eight years of age.

Child day care centres are currently regulated under the Children and Young Persons Act 2001 and there is no change to the definition. The definition covers nurseries, playgroups, after-school clubs and crèches.

Madam President, I beg to move that clause 20 do stand part of the Bill.

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

The President: The motion is that clause 20 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 21.

Mr Butt: Clause 21, Madam President, defines ‘childminding’ and a ‘childminder’.

It excludes some persons from the definition, including nannies, which is spelt out in subclauses (2)(b) and (c). These are nannies people employ to work for them.

The clause only applies to childminding for children under eight years of age.

Childminders are currently regulated under the Children and Young Persons Act 2001. The only significant change to the definition is that ‘relative’ has been expanded from the previous legal definition to:

‘... a person connected to the child or children by whole blood, half blood or by marriage, civil partnership or some affinity...’

This was to capture the different relationships that now exist within families – for example, step-parents and step-grandparents etc.

I beg to move, Madam President, clause 21 do stand part of the Bill.

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

The President: The Hon. Member, Mr Callister.

Mr Callister: Yes, thank you, Madam President.

This takes me back to babysitting again. If you have, in a private residence, shall we say a five-year-old being looked after in a babysitting situation by an 18-year-old non-relative, are we looking at an offence here?

This clause deals purely with relatives in one form or another or a responsible person who is a relative. It will happen that people are cared for, children are cared for, by friends, by other children and so on. How does that relate to this particular clause, Madam President?

The President: The Hon. Mr Downie.

Mr Downie: Yes, in a slightly similar vein, there are people in the Isle of Man, to my knowledge, who are wealthy enough to afford an *au pair*. Some people might be wealthy enough to afford a nanny. Does that mean that these people have to be registered, (**Mr Braidwood:** No, they are excluded.) or is that allowed within this particular clause?

From time to time, I know families who, where they have some older children, they actually encourage students to come and stay with them, and on occasions they do babysitting and baby-minding and so on. So, as Mr Callister said, we need to make sure this is quite clear here and we are not building up a problem that is going to cause some uncertainty.

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Madam President.

Is there a limit on the number of children a childminder can look after? I think, in the UK, they recently introduced something, that it was four children for a childminder. I am not sure if there is a guide or a limit on this.

Mr Lowey: You would not get away with that number at the NSC.

The President: The Hon. Member, Mr Turner.

Mr Turner: Yes, thank you, Madam President.

I am just wondering how wide this provision goes. It is certainly quite common for children who finish school to go home with other parents, because parents are working. It is happening every day. Is the legislation wide enough so it does not, by error, then start putting provisions on that? Because it is a form of childminding for a couple of hours maybe. Are we confident that everything is still covered so that we do not, by unintended consequences, put provisions in that are too far-reaching?

Mr Lowey: As interpreted.

Mr Turner: That is the problem, interpretation.

The President: The mover to reply.

Mr Butt: Thank you, Madam President.

For Mr Turner's point, I think the point of 21(1)(b) is it has to be for reward, if it is not a relative etc. So I think, in the case of looking after somebody's children as they come home from school, if there is no reward involved, it would be perfectly allowable under this section.

Similarly, Mr Downie talks about the *au pair* and the nanny. Again, section 21(2)(b) and (c) actually excludes them. They are not part of this Bill. If they are employed by somebody privately to look after their children, they do not become part of this regulation and inspection process, so they are excluded, in effect, by this section.

Mr Braidwood: Because they are employed?

Mr Butt: Because they are employed, yes.

Mr Callister: Do we see that exclusion within this Bill here?

Mr Butt: Yes. Section 21(2) says:

'... childminding does not include any of the following —'

– and then it defines (a), (b) and (c).

Mr Lowey: It only deals with children under eight.

Mr Callister: Right.

Mr Crowe: Employed.

Mr Braidwood: Not cash in hand.

Mr Downie: Can I just come back on that? What happens, then, when you get things like the Beach Mission, when you get a religious organisation which effectively performs a childminding role for two or three hours and gets them all together on the beach and looks after them? Is that going to be covered here, or is that something that...?

Mr Lowey: Not for reward. Not for financial reward; it is for spiritual reward.

Mr Downie: It is only when there is financial reward. *(Laughter)*

The President: I think the mover has replied – unless you want to add anything further?

Mr Butt: Just one query that Mr Callister had, that was about the 18-year-old babysitter who comes and babysits and is paid for the evening to babysit –

Mr Callister: No, I did not say paid.

Mr Lowey: They do not do it for nothing.

Mr Callister: Yes, of course they would do it for nothing, and many do. An 18-year-old – not a relative, not being paid – who is simply a friend of the family, they are not covered under this, as far as I can see.

Mr Butt: Yes, because this Bill says it has to be for reward, so in that case they would not be covered. They would be allowed to do –

Mr Callister: So if it was for reward, then we are into another area.

Mr Butt: If it was for reward... This is where I might turn to my assistants here, Mrs Gordon and Miss McCauley. I wonder, could they –

The President: For the purposes of *Hansard*, then, I think we would need to use the microphone, and I

would ask whoever is going to respond to assist Mr Butt, to tell us their names, please, for the purpose of *Hansard*.

Mr Butt: The query from Mr Callister, Madam President, is that if an 18-year-old or some friend of the family babysits for reward for more than two hours in a day, would they need to be regulated under this Bill?

Mrs Gordon: Diana Gordon, Registration and Inspection.
I believe that clause 21(2)(b) would cover that eventuality:

‘a person who is employed to look after a child by a responsible person for the child;’

I would believe that ‘employed’ does not necessarily mean it could be for no reward, or reward. They are employing that person to look after their child. Babysitters are excluded. The definition has not changed from the previous legislation.

Mr Callister: Okay, thank you.

Mr Butt: Thank you.

The President: It is a little hard to understand what the difference is between that and (1)(a), (b) and (c).

Mr Turner: Could I, Madam President...

The President: If we could perhaps just have the response to that.

Mr Turner: It was related to that, so –

The President: Could you advise us what the difference is, then, between (1)(a), (b) and (c), and (2)(b), because a childminder is presumably looking after a child under eight at a private dwelling for reward for more than two hours, which could be this 18-year-old babysitter?

Ms McCauley: Sam McCauley, Policy and Legislation Manager for the Department of Social Care.

In the first definition, it is capturing where it could happen. A childminder is at a private dwelling, so it could be the childminder’s own dwelling. Babysitting does come under the second, because obviously 21(2)(c) specifies that it is:

‘... wholly or mainly in the private dwelling of either of the person’s employers.’

That is when babysitting is happening in the child’s own home, so that is where the difference is there. It is that childminding is trying to capture, obviously, where a business is being carried out, and the majority of those are carried out in the childminder’s own home. Obviously, what it is excluding is where the care is being delivered in the person responsible for the child... so the parent or step parent’s home.

The President: I am satisfied with regard to (2)(c), which deals with:

‘a person who is so employed by 2 different employers looking after any or all of the children... in the private dwelling...’

What if there is only one employer?

Mr Butt: Madam President, this is just a subclause to allow a nanny to work in more than one place – to look after two families, in effect. I think that is the reason for that clause, Madam President, separate to the other issue.

The President: Mr Turner, you wanted some clarification?

Mr Turner: Yes, Madam President, thank you.

Am I right, then, in thinking that part (1) of this clause is if I am a parent and I go and commercially look for somebody and pay them, they are covered under the first part? But if I know my next-door neighbour, and say, ‘Could your daughter look after my child, and I will give her £10?’ – or £20, whatever – that is covered under (2)? Those are the differences? Am I right in my interpretation on that?

The President: Could you say 'yes', for the purpose of the record, please?

Mrs Gordon: Yes, that is correct.

Mr Turner: Thank you, Madam President, that has answered it for me.

The President: Thank you.

Mr Butt: I think it is about premises – one is premises they own, home, where you actually bring people in to babysit them; one is where you go and babysit at somebody else's home.
Thank you, Madam President.

Mr Crowe: There was the number of... How many can a childminder look after at one time? The question I put to you.

Mr Butt: Yes, sorry, Mr Crowe, you did.
Could I ask for clarification of that as well, please?

Mrs Gordon: Yes, sir. The guidance has been, since the introduction of the Children Act in 1993... and it follows England's guidance, which is no more than six children, and no more than three can be under the age of five.

It is interesting because England are in the process of changing their numbers to seven.

Mr Crowe: Thank you.

Mr Lowey: The von Trapps, I think, had seven children, didn't they? *(Laughter)*

Mr Butt: That change in England is quite controversial, I believe, isn't it?

Mr Braidwood: It is.

The President: The motion is that clause 21 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 22.

Mr Butt: Clause 22, Madam President, defines a children's home and excludes certain establishments from the definition. The definition excludes certain establishments from the definition, including boarding schools, and allows for further exclusions to be prescribed via regulations.

Children's homes are currently regulated under the Children and Young Persons Act 2001. The only change in this clause is that it will now include the regulation of any size of children's homes, whereas, with the current regulation, it is for only those with three or more children.

As I have stated before, Madam President, for children's homes where children are in care, it used to be three or more were regulated, but there are, in fact, children in care homes of only one or two per home. Now they can be regulated whatever number of children are there.

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

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

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

Mr Butt: Clause 23, Madam President, 'secure accommodation' for children. This is not a new addition. It covers the secure unit which is at White Hoe, which is already regulated under the Children and Young Persons Act 2001 as a children's home.

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

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

The President: The motion is that clause 23 stand part of the Bill. Those in favour, please say aye; against,

no. The ayes have it. The ayes have it.
Clause 24.

Mr Butt: Clause 24 defines 'domiciliary care agency'.

This is a new addition to regulation. We currently know of 23 domiciliary care agencies operating on the Island.

This is again about providing personal care and does not include cleaners. It does not include one person independently employing another person to care for them through personal arrangements.

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

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

The President: The motion is that clause 24 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 25.

Mr Butt: Clause 25, Madam President, defines 'fostering agency'.

This is a new addition, as fostering services are not currently regulated. Fostering has received voluntary inspections in the past when it was a private organisation dealing with it. These ceased when the Department took it back in house, and it has now been recommissioned to the Children's Centre, who now do fostering services.

The Children's Centre do have fostering standards to work to, and this should not mean a major change in their practice, but they will now be regulated and inspected.

Madam President, I beg to move that clause 25 stand part of the Bill.

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

The President: The motion is that clause 25 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 26.

Mr Butt: Clause 26 defines an 'independent clinic' and excludes certain services from the definition.

Because independent clinics can cover a large number and variety of services, it was decided to make this a gateway clause. Regulations will specify which services will be included. Consultation will take place with relevant parties before a service is included by regulation.

This is not a new addition, as we currently regulate some clinics that provide treatment using class 4 and class 3B lasers. This is for hair removal, Madam President. These services come under the existing Nursing and Residential Homes Act 1988. There are two clinics currently operating that will come under this new definition.

I beg to move, Madam President, that clause 26 stand part of this Bill.

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

The President: Hon. Member? No?

Mr Callister: Just a humorous remark, Madam President. I see, as I look around here, several people who have made use of the hair removal service.

Mr Lowey: Cruel!

Mr Downie: I want the transplant service!

Mr Lowey: The Member is cruel!

Mr Butt: Not by choice!

The President: The motion is, Hon. Members, that clause 26 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 27.

Mr Butt: Clause 27, Madam President, defines an 'independent hospital'.

This excludes certain establishments from the definition and allows for other exclusions to be prescribed via regulation.

As a result of the consultation, a final definition of an independent hospital has been simplified. This allows the Department to expand the definition by regulation. Consultation will take place with relevant parties before another type of service is included in the definition.

Some services that are liable to be registered as a nursing home or mental nursing home under current legislation will transfer to this category. The only one on the Island at the present is the Hospice.

This clause could potentially cover, in the future, any private hospital or establishment providing overnight non-NHS healthcare services in the future.

Also, any service taking patients detained under parts 2 and 3 of the Mental Health Act for assessment and treatment would have to be registered as an independent hospital.

Madam President, I beg to move that clause 27 stand part of the Bill.

Mr Lowey: I second, and in doing so, could the mover tell me, would this include alternative medicines that are now more and more being practised? I use the words 'holistic', 'herbal' and 'acupuncture', and things of that nature. Would they have to be defined as medical in that sense?

The President: Mr Downie.

Mr Downie: Madam President, I think I am correct in saying that there is a chiropractors Bill that is either being worked up at the present time or in the process of being moved forward.

In a similar vein to my hon. colleague, Mr Lowey, we have got clinics here which are providing Chinese medicine, acupuncture, a whole host of other types of facilities, and I take it they will be dealt with under the homoeopathic... or the other piece of legislation that is coming in to follow this up. Is that correct?

The President: The Hon. Member, Mr Callister.

Mr Callister: Under this clause, then, it would be possible, though I do not see it frequently happening, for an unannounced inspection of the Hospice. Under what grounds is that likely to happen?

The President: The mover to reply.

Mr Butt: Thank you, Madam President.

Mr Lowey and Mr Downie make almost the same point. There is a new Bill in gestation with the Department of Health. This Bill we are talking about today concerns personal care, not health matters or otherwise.

The new Bill... if I can just refer to an answer given in the Keys by the Minister a week or two ago, an extended definition of health services is proposed, so that the provision of any service which affects the physiology of an individual can be included under the remit of the Act. So podiatry and chiropractic and other matters will be dealt with under the new Bill that is coming through. This will allow the Department to regulate services such as cosmetic surgery, which may affect physiology but do not constitute treatment or diagnosis of illness. So the new Bill will cover those other fringe areas, including, presumably, acupuncture and other matters as well; *this is a care Bill*.

Mr Callister mentions the Hospice. Yes, the Hospice could be subject to inspection anyway, and unannounced inspection visits as well. The circumstances would be... If the inspection team are focused properly, if they have a complaint or cause for concern, there is no reason why they should not have an unannounced visit at any premises to see if there is any abuse taking place or any concerns that need to be addressed.

Mr Callister: Thank you.

The President: The motion is, Hon. Members, that clause 27 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 28.

Mr Butt: Clause 28 defines an 'independent medical agency'. The definition excludes certain establishments from the definition and allows, again, for further exclusions to be prescribed via regulations.

An example of an independent medical agency would be an agency providing private medical practitioners or medical advice to private clients. There is currently no independent medical agency on the Island; however, as a number are in operation in neighbouring jurisdictions, this clause has been included.

Madam President, I beg to move that clause 28 stand part of the Bill.

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

The President: The motion is that clause 28 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 29.

Mr Butt: Clause 29, Madam President, is a nurses agency. This defines an agency, but again an agency can be excluded by regulations.

There are two types of nurse agencies: those that only provide an introductory service and simply give you a list of those who offer a more in-depth service – for example, placing nurses in a person's own home, which would be similar to a domiciliary care agency.

This is not a new addition. The nurses agencies are currently operated and regulated under the Nurses and Midwives Act. There is currently one nurses agency operating on the Island.

I beg to move that clause 29 stand part of the Bill.

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

The President: Mr Downie.

Mr Downie: Just for clarification, then, the nurses who work for Angels and Macmillan, do they come under the Hospice, or are they linked to some other agency?

The President: The Hon. Member to reply.

Mr Butt: Thank you.

If there is an agency providing nursing care to, say, the Hospice, or even the Isle of Man Hospital, that is an agency which is regulated currently under the Nurses and Midwives Act and would be directly transposed into this Bill and would be operated and regulated in the same way as it has been in the past.

Mr Downie: Right, good.

The President: The motion is that clause 29 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 30.

Mr Butt: Yes, Madam President.

This defines 'offender accommodation service', and again there is an exclusion clause to exclude premises, if necessary.

This is not a new addition. Offender accommodation services are already regulated under the Nursing and Residential Homes Act, and there is currently one on the Island, I believe – the David Gray House.

Madam President, I beg to move that clause 30 stand part of the Bill.

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

The President: The motion is that clause 30 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 31.

Mr Butt: Madam President, this clause defines a 'residential family centre', and again, regulations can exclude certain premises, if required. This is a new addition to regulation.

The Children's Centre currently run family centres, but they only operate during the day. There are no residential family centres on the Island at the moment and no immediate plans for any. There are too few cases coming through for this to be viable at this time.

Where there has been need for off-Island places to be utilised, which there are occasionally, they will be regulated in the jurisdiction where the people are residing. However, including this definition in the Bill allows for the creation of an on-Island service in the future.

Madam President, I beg to move that clause 31 stand part of the Bill.

Mr Lowey: I beg to second.

Could I just point out I think if I want to put my cat or dog in a residential home, they are regulated. I can see no reason why this should not be in the law already for us more senior people.

Mr Butt: Thank you.

The President: I just would like... if the mover could give an example. In several of these clauses, there is a power to prescribe what appears to be a certain thing not to be that thing – for example, it is not a residential home if it is deemed not to be. Could the mover give us any example of the sort of circumstances where that might be applicable?

Mr Butt: I think every clause, Madam President, has this. All these definitions have that in there.

I cannot give any examples, Madam President. I suspect if there was a service which came along, which did not appear to need to be regulated, they could actually be excluded.

I wonder, would our assistants have any examples for me? I can think of none. It is there as a get-out in case there needs to be an exclusion for any reason. Could I ask Mrs Gordon to comment?

Mr Lowey: If they cannot now, I would give it on the Third Reading.

Mrs Gordon: I cannot really make much addition to that, in terms of residential family centres. It is a general clause because things sometimes do come along that do not appear to warrant regulation.

A current example at the moment that we will be looking at, not to do with residential family centres, will be to do with a child care agency. My colleague mentioned that we have got one on the Island possibly that may, but it is likely that they will be excluded. They only appear to provide a babysitting service, as opposed to anything else, so it may be that we would look at that and exclude them. So, it depends, really, on what they are providing.

I hope that that is a reasonable explanation.

Mr Lowey: It is a get-out-of-jail card.

The President: Thank you.

Mr Butt: I think, Madam President, it is making it future-proof if anything comes along and we do not actually know or understand –

The President: Which category to put it in.

Mr Butt: Yes.

The President: Right.

The motion is that clause 31 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 32.

Mr Butt: Clause 32 defines a ‘voluntary adoption agency’. This is a new addition to regulation. They were not previously regulated.

There is currently one adoption agency on the Isle of Man – the Isle of Man Adoption Service, which has been referred to previously, Madam President.

I beg to move that clause 32 stand part of the Bill.

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

The President: The motion is that clause 32 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 33 and the schedule.

Mr Butt: Clause 33, Madam President, explains that the schedule defines words that are used in part 9 of the Bill.

It also explains the various uses of the word ‘function’ and the use of examples and notes. Importantly, it states that the use of an example or of an operation of a provision may extend the meaning of a provision.

These clauses have been added because there are a few uses in the Bill – which is quite an unusual Bill, in a

way – of notes and examples.

The examples are to try and make the Bill more user friendly to the average reader, and in some places simplify the provision by making the text shorter.

The notes point the reader in the direction of something else in the Bill that is relevant or useful, without expressing any opinion.

The drafters were content that they heeded all drafting principles and were consistent, and to avoid any doubt, clauses 33(3) and (4) were added to clarify that the examples and notes are part of the Bill and that an example is not exhaustive and may extend, but does not limit, the provision. I hope that is clear, Madam President.

I ask that clause 33 and the schedule do stand part of the Bill.

Mr Lowey: I beg to second.

I understand and I accept the mover's resolution for number (4), which gave me a little concern because it does... If it is operated for the purpose explained by the mover, fine, as long as it is not used then as an excuse in the future to say, 'Ah, but we did not mean that.' In other words, a get-out-of-jail card. I do not believe for one second it is – it is put in for practical purposes for the future, and I am accepting it on that basis.

Mr Butt: I think, Madam President, it is to make the Bill function more efficiently. (**Mr Lowey:** Yes, absolutely.)

You will find later on, in clauses where there are penalties mentioned, it does not go through the normal routine of saying 'on information so-and-so, and on summary...' It actually just lists it there as a note, in effect.

I beg to move the schedule and clause 33 stand part of the Bill, Madam President.

The President: We are seeing new-wave drafting here in the way that the schedule is presented.

The motion is, Hon. Members, that clause 33 and the schedule do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We move to part 2.

Mr Butt: Part 2, Madam President.

The President: Clause 34, general functions.

Mr Butt: Yes, clause 34, Madam President.

Part 2 of the Bill, the part we are coming to now, states the Department's specific functions, including the regulation of care services and the making of minimum standards for care services.

Clause 34(1) states the key Department functions in relation to care services.

Subsection (2) states the Department's monitoring function.

Subsection (3) states that the Department also has the function of promoting high standards for social care workers and their training.

I beg to move, Madam President, that clause 34 do stand part of the Bill.

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

The President: The motion is that clause 34 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Now we come to a grouping: clauses 35 to 37.

Mr Butt: Yes, Madam President.

These relate to the power to make and effect minimum standards.

These clauses state that the Department may make minimum standards for each care service listed after consultation, the standards of public documents must be accessible to the public, and the Department must consider the standards when performing its function.

Madam President, I beg to move that clauses 35, 36 and 37 do stand part of the Bill.

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

The President: The motion is that clauses 35 to 37 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Part 3, clause 38.

Mr Butt: Thank you, Madam President.

Part 3 requires persons who provide and manage a care service to be registered. It states the disqualification criteria; it states conditions of registration; and the procedures for changing registration.

Clause 38 defines the terms of the title of 'provider registration' and 'registered provider'.

Madam President, I beg to move that clause 38 stand part of the Bill.

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

The President: The motion is that clause 38 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 39.

Mr Butt: Clause 39, Madam President, relates to 'manager registration' and 'registered manager', and the clause defines those terms in the title.

Guidance notes will state when separate registrations will be required for the provider and the manager.

Madam President, I beg to move that clause 39 stand part of the Bill.

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

The President: The motion is that clause 39 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 40.

Mr Butt: Clause 40, 'registered person'.

This clause defines the term in the title and it should be clear that references to a registered person throughout the Bill means either a registered manager or a registered provider.

A registered provider can be an individual, or a partnership, or a company, or a committee.

Madam President, I beg to move that clause 40 stand part of the Bill.

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

The President: The motion is that clause 40 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 41.

Mr Butt: Clause 41 is 'registration concerning children'.

This clause defines 'childminder registration', 'registered childminder' and 'child-related' registration.

Madam President, I beg to move that clause 41 stand part of the Bill.

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

The President: The motion is that clause 41 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 42.

Mr Butt: Clause 42 concerns general references to registration in the Bill.

Subsection (1) states that the term 'registration' on its own means any active provider registration or manager registration.

Subsection (2) states:

'A reference to a person's registration includes a reference to the registration conditions and any details of the registration.'

Madam President, I beg to move that clause 42 stand part of the Bill.

Mr Lowey: I beg to second.

Could I ask the mover, where it says they are registered, where would the general public get a view of this register? In other words, is there a defined place? Is it a public document? I could imagine there is some sensitive information in these, but is it a public document and can the general public get access to it?

The President: The Hon. Mr Downie.

Mr Downie: In a similar vein, I would have thought in this day, and with the facilities that are available, all those who are registered would be published on the internet, on the Department's website.

The President: Perhaps the mover could respond.

Mr Butt: Yes, I can. It will be a public document. I think, later on in the Bill, there is a... regulations can be made to actually state the type of the register, where it is kept, how it is formulated and how it is made available. That is later in the Bill. I think that is correct.

Mr Downie: And maybe corporate service providers...

Mr Butt: One of the main tenets of the Bill is that the public will be able to read the inspection reports of each premises, so they will be able to actually decide on what value there is in using each premises. So the registration list will be public, as will the reports on each premises. *(Interjection by Mr Downie and laughter)*

The President: The motion is that clause 42 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 43.

Mr Butt: Clause 43, Madam President, relates to disqualification from registration.
Clause 43 is an establishing clause for later clauses 44 to 46.

Part (1) of this clause details the types of disqualification. It must be noted that part (d) of 43(1) does not relate to childminders. They can still operate if they have been made insolvent, as they do not work in the same way as other care service businesses. They work from home and normally charge on a weekly or monthly basis, so financial solvency and security is not relevant in the case of childminders working from home.

Subsection (2) states that the disqualifications apply unless the person has been exempted in a clause which we deal with later, which gives the Department power to provide exemption from disqualification if very precise criteria are met and if the exemption has not been withdrawn.

Madam President, I beg to move that clause 43 stand part of the Bill.

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

The President: The Hon. Member, Mr Braidwood.

Mr Braidwood: Thank you, Madam President.

Under the Rehabilitation of Offenders Act, some offences are expunged, and I am not sure if that qualifies for such as insolvency. Could the mover just... Will everything have to be disclosed, even if it has been expunged? I know the Police still have regulations, under the Criminal Records Bureau, for that person... to be recognised that they have committed an offence, although it has been expunged.

The President: The mover to reply.

Mr Butt: I cannot give a specific answer to that question, but if you look at clause 44, which we are coming to, that details the offences which can be committed – and clause 45 as well – which actually show why a person would be disqualified and what offences they relate to.

The Rehabilitation of Offenders Act, I am not sure how this would actually affect that, but I will endeavour to find that out.

Mr Braidwood: Please.

The President: The motion is, Hon. Members, that clause 43 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 44.

Mr Butt: Yes, Madam President. This is total disqualification.

Subsection (1) lists the qualifying circumstances for total disqualification from being registered or involved.

Subsection (2) states that, for a body corporate, the disqualifying circumstance is that a member or officer of the body is totally disqualified.

Subsection (3) defines definitions for this clause and which offences result in disqualification. Total

disqualification is required for the most serious offences, whereby it would be unsuitable for an individual to work with vulnerable care service users.

Madam President, I beg to move that clause 44 stand part of the Bill.

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

The President: The motion is that clause 44 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 45.

Mr Butt: Clause 45, Madam President, deals with the disqualifications for children, which are additional and more onerous.

Subsection (1) states that the following subsections provide for the disqualifying circumstances for disqualification for children.

Subsection (2) lists all the disqualifying circumstances, and I think, Madam President, these are the same as were in the previous Acts.

Subsection (3) states it is also a disqualifying circumstance for an individual if the individual lives in the same private dwelling as a person disqualified for children, or any part of premises in which a person disqualified for children is employed or engaged.

Subsection (4) explains that, for a body corporate, the disqualifying circumstance is that a member or officer of the body is disqualified for children.

Subsection (5) provides definitions for this clause.

This clause has been included because of the higher vulnerability of children and the requirement to have a higher level of protection.

I beg to move, Madam President, that clause 45 stand part of the Bill.

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

The President: I can quite well see why some of this comes in, but is it unfortunate if someone who is disqualified moves into the building that you are operating in? Does this immediately stop you from operation?

Mr Butt: Under subsection (3), Madam President, it is a defence if the person did not know or could not have believed that they lived in the same private dwelling as the person disqualified for children, so they did not know if they are excluded from that.

The President: But if they move in after they have started their operation, they have to stop? It seems difficult; however...

Mr Butt: I have got an example. For example, there could be a cleaner in the building. He was working and he has been disqualified, but nobody knows that he has actually been disqualified, so there is a defence.

The President: But once they become aware?

Mr Butt: Yes, once they become aware, there is no defence.

The President: You have to shut down your caring business?

Mr Braidwood: Or get rid of the person.

Mr Butt: Could I refer to Mrs Gordon, please?

Mrs Gordon: Yes, Mrs Gordon speaking.

There are a number of strands to this. I will give you some examples. If a day nursery employs a childminder who was previously considered to be disqualified because she wanted to childmind at home and her husband, or someone who lived with her, was disqualified, and so she would not be able to childmind, she would automatically be disqualified from caring for children. The nursery owner must ask for an exemption from that disqualification, which is fairly reasonable because there is no reason why a childminder who has not done anything herself cannot work in a nursery. So that is one side of disqualifications.

Another issue is if – and I do not think there are any on the Island – a private nursery operates from a building where there are other private dwellings or other businesses being carried on, and someone within that

part of the building has been disqualified from caring for children. Once they know about that, they have to tell the Department and the Department will have to make the decision as to whether, for the purpose of what that individual is doing in the building, their disqualification is lifted for that particular purpose.

So it does not necessarily follow that an operation would have to close down because somebody who is disqualified is living in the building.

The President: Thank you.

Mr Butt: I think also, in a later clause, they can apply for exemption if they need to, if they can...

The President: The Lord Bishop.

The Lord Bishop: Thank you, Madam President.

I may be barking up the wrong tree here, but in so many areas of life nowadays... We used to talk about the Criminal Records Bureau; we now talk about the Disclosure and Barring Service. There does not seem to be any kind of reference to that in here.

The President: Would the mover care to comment?

Mr Butt: Yes, the Lord Bishop is right, there is no mention. I think this Bill just lists the offences and the reasons for disqualifying people. I think that refers back to an earlier point about the Rehabilitation of Offenders Act, and when do these offences expire, when do they have to be disclosed etc, so I will come back on that at the Third Reading, if I can.

Mr Braidwood: Some do not; some do. Insolvency could.

The President: The motion is, Hon. Members, that clause 45 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 46.

Mr Butt: Clause 46, Madam President, provides additional specific disqualifications.

Subsection (1) states that the following subsections provide for disqualifying circumstances for specific disqualification for a category of care service – for example, an adult care home.

Subsection (2) lists the disqualifying circumstances for a category of care service – for example, registration cancelled, or registration refused.

Subsection (3) states the recipient of a disqualification notice as an unregistered childminder is disqualified from childminding until either one year after the notice is given, or the notice is earlier withdrawn. Further detail on this matter is contained in clause 138.

Subsection (4) explains that, for a body corporate, the disqualifying circumstance is that a member or officer of the body is specifically disqualified for the category.

Subsection (5) provides definitions for this clause.

This clause allows for more specific disqualifications, rather than overall disqualification. So they can be disqualified, Madam President, for one particular category rather than an overall total disqualification.

Madam President, I beg to move that clause 46 stand part of the Bill.

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

The President: The motion is that clause 46 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 47.

Mr Butt: Clause 47, Madam President, provides for exemptions from disqualification.

Subsection (1) explains that a person who is disqualified under section 43 may apply for an exemption from that disqualification.

Subsection (2) explains that if an exemption has been refused, they can only reapply under specified circumstances.

Subsection (3) explains the application requirements.

Subsections (4) and (5) state the criteria for the Department in considering the application for exemption.

Subsection (6) states that, if the Department refuses an exemption application, it must give the applicant an appeal notice for the decision. An example of when a disqualification might be lifted is if a childminder is

disqualified by virtue of someone in the household being unsuitable to be in the proximity of children. If that person then leaves the household, or a childminder goes to work in another childcare setting – for example, at a child day care centre – the disqualification would be lifted. I think that was referred to, in effect, before.

Madam President, I beg to move that clause 47 stand part of the Bill.

Mr Lowey: I beg to second.

Could the mover just clear my mind... Subsections (4), (5) and (6):

‘(4) DSC must consider and decide each exemption application.’

– so far so good –

‘(5) In deciding an exemption application DSC may consider any relevant registration criteria.’

– fair do’s –

‘(6) If DSC decides to refuse an exemption application, it must give the applicant an appeal notice about the decision.’

Does that mean they have to tell them why?

I can think of, say, a whistleblower giving some specialist information which was relevant to the Department, and that was not to go on the public website, but does the applicant have to be told they have had this information given through?

It is, again, one of those balancing acts, which I think is more prevalent today than ever.

The President: The mover to reply.

Mr Butt: Madam President – and I need to be corrected, perhaps – this only gives them the notice that they can appeal.

Mr Braidwood: They can appeal against the decision.

Mr Butt: So, notice that they can appeal against that decision.

Mr Lowey: Yes, the point I am making is –

Mr Butt: And then, at the appeal hearing, the detail of the appeal would come out about what the allegations are etc.

Mr Lowey: At the appeal. So you would go into the appeal not knowing why they had refused you. That is the point I am making.

Mr Butt: Right, yes.

Mr Lowey: If that is the case, you do not go... In most legal cases, the prosecution have to give the case why they are prosecuting, don’t they, to the defence? This way, you would go in blind, and that does not seem to be...

Mr Butt: I think there is probably a stage beyond that. This is purely, as far as I understand it, to say there should be a notice of appeal given to them. They have the right to appeal.

Mr Lowey: Yes, maybe I am being too finicky.

Mr Butt: There will be a process after that for the appeal. Thank you.

The President: The motion is, Hon. Members, that clause 47 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 48.

Mr Butt: Clause 48, Madam President, follows on from the exemption. This is when it can be withdrawn. Subsection (1) states the criteria for the Department to withdraw a disqualification exemption.

Subsection (2) states that, if the Department withdraws a disqualification exemption, it must again give the applicant an appeal notice for the decision. So, again, similar – they have the right to then put an appeal.

Madam President, I beg to move that clause 48 stand part of the Bill.

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

The President: The motion is that clause 48 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Now we take a grouping, clauses 49 to 51.

Mr Butt: Thank you, Madam President.

This is about the suitability for registration, about who is suitable etc.

These clauses set out who is suitable to manage or supervise a care service and what criteria are taken into account. For example, someone may be suitable to manage a small residential unit for physically frail or elderly people, but may not have the knowledge and skills to manage a large unit accommodating service users with multiple needs, including dementia. So, suitability is very important.

Please note, suitability to be a childminder is a separate definition, as a childminder plays all roles – provider, manager and supervisor.

Madam President, I beg to move that these three clauses, 49, 50 and 51, stand part of the Bill.

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

The President: Mr Callister.

Mr Callister: Could I just ask which body or person decides on the suitability?

Mr Turner: Yes, I was going to ask the same.

The President: The mover to reply.

Mr Butt: Thank you, Madam President.

The Registration and Inspection team will be able to assess the suitability of the person providing... and I think this currently applies in the Nursing Homes Act at the moment and the Children and Young Persons Act as it stands at the moment. The Inspections team will have the experience and expertise to be able to do that.

The President: The motion is, Hon. Members, that clauses 49, 50 and 51 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Division 2, clause 52.

Mr Butt: Yes, Madam President.

This actually details offences, or an offence. It is an offence to carry on a service without a registration.

Subsections (1), (3) and (4) state it is an offence to carry on or manage an independent care service, or carry on as a childminder, unless the person has appropriate registration and the registration is not suspended.

Subsection (2) states the maximum penalty for the offence is £20,000, but if the offence was committed in circumstances of aggravation, the maximum penalty is six months' custody or a fine.

Subsection (5) provides the definitions for the clause of the circumstances of aggravation. They are self-explanatory, Madam President, in the clause.

I beg to move that clause 52 stand part of the Bill.

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

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Madam President.

You mentioned transition provisions would apply to certain parts of this Bill, and I think you mentioned an Appointed Day Order would allow some transition in this clause. Is that correct?

The President: The mover to reply.

Mr Butt: Yes, Madam President, there are several clauses later in the Bill, which take up some 15 pages,

which make transitions put in place for three months or more, depending on the circumstances, so that people will not be prosecuted for failing to be registered if they are still in the process of being registered, if they are a new service, or a service transferring over from the old Acts into the new Bill. So the transition is quite generous. In fact, in the United Kingdom, apparently, they had a sudden abrupt changeover, which caused lots of problems, and this Bill has been designed so that the transition is much smoother, and I think the Department are confident that the transition period will be enough to make sure there will be no lapses in registration between old and new and the old Acts and the new Bill.

Mr Crowe: Thank you very much.

The President: The motion is, Hon. Members, that clause 52 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Subdivision 2: we will take clauses 53, 54 and 55 together.

Mr Butt: Thank you, Madam President.

These clauses deal with the exemptions from registration, which include a personal representative carrying on a care service after the sole provider's death, and that is referred to in clause 102; a specified child day care establishment, such as a hospital or a school; an occasional child day care, if the day care centre operates for five days or less a year – in this instance, a notice will need to be given to the Department to confirm the situation.

I think, Madam President, that last clause concerns people where they... Some establishments may take in children for a day out or a day of exercise, or even the NSC might take people in for the odd day during the summer holidays to give some sort of entertainment or sporting exercise.

Madam President, I beg to move that clauses 53, 54 and 55 do stand part of the Bill.

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

The President: The Hon. Member, Mr Callister.

Mr Callister: Thank you, Madam President.

On clause 54, one of the areas referred to is a school, and in subsection (2) it says:

'... "school" means an institution for providing primary education or secondary education, or both...'

Where will this leave the bodies who are currently providing pre-school education, which to my mind is not primary education in the form that we now have it, but will there be a requirement for these groups to be registered and inspected, if necessary?

The President: The mover to reply.

Mr Butt: Those groups are currently registered and inspected by the Department, and that care will just move straight into this Bill here. In the later clauses you will find there is a transition from that to this. They will be inspected as they are at the moment, and there will be no change in their circumstances.

Mr Callister: So, can I ask then... The Member accepts that they are getting primary education at the present time?

Mr Butt: They are being provided with a service of care. That is as far as I will go on that.

The President: I think this clause exempts schools giving primary education, but the current groups are not exempt. They are registered.

The motion is, Hon. Members, that clauses 53, 54 and 55 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Division 3, clauses 56 and 57.

Mr Butt: Yes, Madam President.

Clause 56 details who can apply for registration, apart from the exemptions listed. These include disqualifications dealt with under clauses 44, 45 and 46.

This clause clarifies that an individual can be both a provider and a registered manager, but that childminders only need to apply as a provider, as they fulfil both roles.

Clause 57 clearly states the requirements for a registration application and includes the need for corporate bodies to have a qualified nominee to avoid situations where the Department has to chase for information, or where the Department has no specific point of contact for the body.

Madam President, I beg to move that clauses 56 and 57 do stand part of the Bill.

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

The President: The motion is that clauses 56 and 57 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 58.

Mr Butt: Clause 58, Madam President, defines the registration criteria. Some criteria vary, depending on the application. It also details that the applicant must comply with the mandatory conditions set out in the Bill and other prescribed criteria, and that the premises are suitable for the service being provided.

I beg to move, Madam President, that clause 58 does stand part of the Bill.

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

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

I note in subclause 58(5), it says about complying with the mandatory conditions. Presumably, those are the ones laid down in this Bill.

Where it says ‘any other prescribed criteria’, where will that be laid down? Will that be in the form of regulations or policies, and how will that be conveyed to the applicants?

The President: The Hon. Mr Callister.

Mr Callister: Madam President, can I just ask, on registration, if it is a one-off matter or if there is an annual registration required with a fee to be paid annually; and is there any indication now of what that fee is likely to be?

The President: The mover to reply.

Mr Butt: Yes, Madam President.

Subsection (5), ‘other prescribed criteria’ – you will find through the Bill there are often comments that there will be regulations made to prescribe other criteria. There will be fewer regulations in this Bill than in most Bills, but there will be regulations that will prescribe the criteria, which will be before Tynwald and which the public will get to know about.

Mr Callister’s question... There is one registration, and inspections follow on from that, but there will be annual fees to be paid. I do not know the level of fees at the present time. There are currently fees paid for nursing homes and residential homes, and I am going to assume, unless I hear otherwise, that they may be of a similar level, but if I could ask Ms McCauley to comment, Madam President?

The President: Yes.

Ms McCauley: I am Sam McCauley, Policy and Legislation.

The Department did go out to consultation on the fees, so I can stipulate just at the moment what the present fees currently are, and obviously, having received the feedback from that consultation, we are obviously looking at how we will set the fees structure, once the Bill comes into operation.

If I can give a couple of examples... There are differences in the current fees structure between children’s services and adult services, so one of the things that the Department is looking at, in terms of policy, is creating more consistency between those services. Currently, the childminders’ registration fee is £25 per year; a child day care centre’s is £50; for an adult residential home, currently the registration fee is £1,511, with an annual fee of £45 per number of places that the home has.

Those are just a few examples around the present fees that I can give, but obviously, if there is any further detail required, then Hon. Members are welcome to come and seek the information from the Department.

The President: The Hon. Member, Mr Braidwood.

Mr Braidwood: Thank you, Madam President.

I think the hon. mover – when he started with the clauses stage, or the Second Reading and the clauses – mentioned the cost of the Bill and that there would be fees round about £41,000. Generally, now, we are looking that additional administration costs are covered by the fees, so there is going to be quite a shortfall. With the fees which are going to be proposed, is it going to increase so that the difference between the cost of implementing all the registration will be closed?

The President: The mover to reply.

Mr Butt: Yes, Madam President, I think it was accepted, in my reading of the Second Reading, that there would be a loss. The income was £41,000 and the expenses were £126,000, I think it was, but it was a price worth paying to make sure that we do actually regulate these services, in particular these extra services which have previously not been regulated and which do need to be regulated. So I am sure the Department is aware that they will have to pay costs and are allowing for that within their budget.

The President: The motion is, Hon. Members, that clause 58 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 59.

Mr Butt: Yes, Madam President.

This clause states the Department must consider and decide on each registration application, and in doing so meet the procedural fairness requirements, but that the Department may only grant an application if it is satisfied the specified criteria have been met.

Madam President, I beg to move that clause 59 stand part of the Bill.

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

The President: The motion is that clause 59 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 60.

Mr Butt: Yes, Madam President.

This clause imposes registration conditions, in particular a phrase ‘deciding conditions’. Before any deciding condition is imposed, the Department must have complied with the procedural fairness requirements, unless the conditions have been agreed with the registered person. These will be rare, but an example could be, in a childminding situation, if the outside area is not suitable for children, Registration and Inspection may still register them, subject to a condition that states that the children must not have access to the outside area until it is made safe or free from hazards. So, there can be conditions placed within a registration, although the registration is granted as long as they are then complied with.

Madam President, I beg to move that clause 60 do stand part of the Bill.

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

The President: The motion is that clause 60 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 61.

Mr Butt: Clause 61, Madam President, confirms the arrangements for when the Department of Social Care grants a registration in relation to who receives the notice of the decision, that the notice must include any decided conditions as detailed on the previous clause, and the circumstances in which an appeal notice is required.

Madam President, I beg to move clause 61 of the Bill.

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

The President: The motion is that clause 61 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 62.

Mr Butt: Clause 62, Madam President, simply details when a decision to grant a registration application

takes effect.

I beg to move that clause 62 stand part of the Bill.

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

The President: The motion is that clause 62 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 63.

Mr Butt: Thank you, Madam President.

This clause states the Department's obligations when a decision to grant a registration is made, including recording the registration and the responsible person, where applicable, and giving a registration certificate.

Madam President, I beg to move that clause 63 stand part of the Bill.

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

The President: The motion is that clause 63 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 64.

Mr Butt: Clause 64 concerns the duration of the registration and states that the registration continues until it is surrendered, suspended or cancelled, or if the sole person is an individual, the person dies.

Madam President, I beg to move that clause 64 stand part of the Bill.

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

The President: The motion, Hon. Members, is that clause 64 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Division 4, clause 65.

Mr Butt: Yes, Madam President.

This details the imposition of mandatory conditions. The clause states that, as well as any decided conditions, a person's registration is subject to mandatory conditions contained in this division of the Bill or prescribed by the Department.

I beg to move, Madam President, that clause 65 stand part of the Bill.

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

The President: The motion is that clause 65 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 66 and 67.

Mr Butt: Yes, Madam President.

These include the supervision of management duties. They deal with the registered providers' responsibilities in ensuring their care service has a registered manager who continues to manage it. If the registered provider is a body corporate, then the care service's responsible person must continue to supervise its management. If the responsible person dies, or otherwise ceases to so supervise, the body corporate must make an amendment application as soon as possible.

While a person continues to be a registered manager, the person must, unless the Department otherwise agrees, continue to manage the care service. However, these conditions do not affect a leave entitlement of a responsible person or registered manager.

Clause 67 further clarifies that these conditions do not apply during a period of leave if the total leave taken is no more than the maximum leave prescribed and the registered provider has made arrangements to ensure the care service is suitably supervised and managed when they are on leave.

Maximum leave can be prescribed, even if it is less than the entitlement under the Employment Act. This clause is not about reducing the leave, but prescribing conditions in regulations of where certain extended periods of leave may mean that having appropriate arrangements in place is not adequate and the provider may have to have a new registered manager or responsible person. Examples of this may be during a period of long-term sick leave or maternity or paternity leave, or secondment to another post, so it does ensure that the post is covered during leave periods or long-term absence.

Madam President, I beg to move clauses 66 and 67 stand part of the Bill.

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

The President: The motion is that clauses 66 and 67 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 68.

Mr Butt: Clause 68 sets out the requirements about the necessary skills and training required to be a suitable manager or supervisor.

Subsection (1) states a registered provider that is a body corporate must ensure the care service's responsible person continues to be a suitable supervisor and has appropriate training. The specifics of suitability will be set out in the minimum standards applicable to each service. Examples of these could include taking steps to maintain knowledge of developments in child care, or they should also continue to be physically and mentally fit, which I think was raised by Mr Lowey earlier on. They must ensure their fitness to carry on.

Madam President, I beg to move that clause 68 do stand part of the Bill.

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

The President: The motion is that clause 68 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 69.

Mr Butt: Thank you, Madam President.

This concerns the duty of care and competences and skills. This clause deals with ensuring a registered person supervises and manages or carries out a care service with sufficient care, competence and skill. This is in addition to clauses 49 to 51, which relate to the suitability of registration.

Guidance on care, competence and skill will be included in the minimum standards specific to each care service. Examples would include not leaving children alone and ensuring that risks and hazards are eliminated, maintaining continuous professional development to ensure competence and skills are up to date, and maintaining training.

Madam President, I beg to move that clause 69 stand part of the Bill.

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

The President: The Hon. Member, Mr Braidwood.

Mr Braidwood: Thank you, Madam President.

I presume that, under such as clause 68 – how we are following on with clause 69 – if additional training is required through the Department, the care provider is notified. Do the Department have training for those individuals, or do they have to go somewhere else?

Mr Lowey: It is a body corporate. It is their responsibility, surely.

The President: The mover to reply.

Mr Butt: Yes, Madam President.

I know the inspections team do work closely with the care services at the present and do more than just inspect, and they do liaise with them.

If any issues with training are revealed in the inspection, then of course it will be part of the report by the inspectors back to the Department and back to the homes themselves as to what is needed in terms of improving their skills and qualities, and if that includes training, that will be part of the report and then the service provider will be bound to actually implement those and provide the training themselves. I am sure they will get assistance from the Department, where suitable and where it is appropriate, but it will be the responsibility of the service provider.

Mr Braidwood: Madam President, just coming back, I can understand that; it is just that if additional provisions are required by the Department, will the care providers have to go out and do additional training?

The President: I think the mover has just said that.

Mr Braidwood: Right, sorry.

Mr Butt: I think, initially, there are minimum standards which they will have to meet, and they will know at registration what the minimum standards are, and they will have to train and be competent to those minimum standards.

Mr Braidwood: Yes, I understand that.

Mr Butt: If those standards are found to be inappropriate from inspection, they will then be asked to make sure they perform to the minimum standards. The standards will be specific to each particular type of care service, so they will vary from care service to care service and the care providers will know at registration what those services will be and what is required. Those, of course, who are transferring from current legislation to this legislation will already be operating under those standards.

Mr Braidwood: So, if the standards are raised by the Department, they will have to increase their training.

Mr Butt: Which will be obvious at registration.

The President: The motion is, Hon. Members, that clause 69 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 70.

Mr Butt: Yes, Madam President.

Clause 70 is a simple clause which concerns the suitability of premises and the equipment. The clause states the continuing requirements in relation to care services, premises and equipment. Guidance on continuing suitability of premises and equipment will be included in the minimum standards. Examples will be meeting electrical safety standards, maintaining lifts, general maintenance of the building, electrical appliance testing, etc. This clause should ensure that those do continue, as a minimum standard.

Madam President, I beg to move that clause 70 do stand part of the Bill.

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

The President: The Hon. Member, Mr Callister.

Mr Callister: Thank you, Madam President.

Could I just ask, if the premises that are currently being used by these various suppliers are regarded as suitable, as they are now – because we are talking about bringing in new measures here to examine future premises – are we up to speed on the condition of the premises that we have existing? The new terms that will be coming in: will they be stronger, will they be different from the examination requirements at the present time?

The President: The mover to reply.

Mr Butt: Thank you, Madam President.

The current providers who are regulated, of course, will just transitionally move over to this new Bill and carry on with the inspection regulation that they have now. For new providers, of course, there is the transitional period of three months or more, where they can register and then be given the minimum standards and then have time to conform to those standards.

So if there are premises now not being regulated and the inspectors at registration find them not suitable or needing improvement or change, that is the period when that will be done, which is why there needs to be this leeway of time to make sure the transition moves smoothly.

These minimum standards will be set by the Department, by the inspectors, and there will be time for that to be done prior to registration. If they are not met, of course, the registration will not take place.

The President: The motion is, Hon. Members, that clause 70 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 71.

Mr Butt: Clause 71, Madam President, concerns annual fees and recovery of costs. It states the requirement

to pay annual fees and specifies that a recipient of a cost recovery notice must be the required amount within 14 days.

I beg to move that clause 71 stand part of the Bill.

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

The President: The motion is that clause 71 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 72.

Mr Butt: Clause 72 relates to inspections, Madam President.

This clause specifies that a registered person must allow an inspector to enter and inspect the premises at which the care service is provided. If the inspector meets the specified criteria – that is, he is an inspector carrying the correct card, etc and is registered to be an inspector.

Madam President, I beg to move that clause 72 do stand part of the Bill.

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

The President: The motion is that clause 72 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 73.

Mr Butt: Clause 73 relates to improvement notices.

This clause states that the recipient of an improvement notice must comply with the notice. The improvement notices are listed in clauses 132 to 134, Madam President, and the offence of not complying with them is detailed in clause 105.

Improvement notices, Madam President, are a new addition to the current regulation in that if there is a report which has some adverse aspect, the Department can issue an improvement notice for the care provider to improve matters, rather than going through to the process of being penalised and punished for an offence.

I beg to move clause 73 stand part of the Bill.

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

The President: The Hon. Member, Mr Turner.

Mr Turner: Yes, thank you, Madam President.

Just a comment, really: I think this is a sensible provision to have in there, because there may be situations where the areas of concern are not to a level where it would warrant the sledgehammer to crack a nut and this is sensible, because then there can be a proper trail of seeing the issue flagged up, the improvement and then a reassessment of that situation. Then of course down the road, if there are repeat instances of these, one assumes then the Department would be able to pursue under the more stringent provisions.

Mr Butt: Yes, Madam President, this is an extra new clause which actually does provide another chance to get things right. It gives them an extra opportunity to sort matters out, rather than going through any more Draconian measure. So Mr Turner is correct in what he says.

I beg to move.

The President: The motion is that clause 73 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Division 5, we will deal with clauses 74 to 77, please.

Mr Butt: Yes, Madam President, clause 74 deals with when a registered person, provider or a manager may apply to amend an application and what they can and cannot amend.

Clause 75 details how to apply for the amendment.

Clause 76 states the Department must consider and decide each application.

Clause 77 details what the Department must do if it grants an amendment, including issuing a new certificate or issuing an appeal notice if the amendment is denied.

I beg to move, Madam President, clauses 74, 75, 76 and 77 do stand part of the Bill.

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

The President: The motion is that clauses 74, 75, 76 and 77 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 78.

Mr Butt: Clause 78, Madam President, concerns surrendering by notice.

This clause states that a manager or registered childminder may surrender their registration by notice to the Department. However, this can only take place if no cancellation notice has been issued by the Department. This is to avoid any surrender of a registration before any proceedings have taken place.

Madam President, I beg to move that clause 78 stand part of the Bill.

Mr Lowey: I beg leave to second.

Could I ask the mover: I am reminded that... What happens if a company had been registered, gone through all the... and it decided to sell on the company to another company? Would the new company have to get a new licence?

I am worried about them being able to sell on the licence as a licence plate or like a bookie's, selling on the licence, as opposed to the building. Does that come into this or would they have to surrender it and then the new applicants apply?

The President: The Hon. Member, Mr Downie.

Mr Downie: Madam President, on a similar vein to Mr Lowey, we know the problems that have been made in the past with taxis and all kinds of other issues. What I have a little bit concern about is that some years ago, in the construction industry, companies were registered and those were registered in the person's name who was the tradesman. You had Joe Bloggs who was a fully qualified painter and decorator, he was on the Government's approved list of contractors, he was registered and so on. Now, that business was sold on, but it does not necessarily mean that the people who are buying it can tick the same boxes, because at the end of the day, that type of business is based on (**Mr Lowey:** Reputation.) reputation and what the end product is.

Slightly different in this case: now, I would assume – correct me if I am wrong – that if a person calls herself, for example, the Helen Jones Residential Care Home or a childminder's home – whatever you want to call it – and that person sells that on, then there would have to be, in my opinion, a fresh application made on the behalf of the person who was requiring that business. You would have to go through all the criteria again or failing that, the person who bought the business would have to convince the Department that she had properly qualified people in to run it. That person might not come from a background that had anything to do with care or childminding; they may just want to administer a business, which lots of people can do very, very capably, but they are not necessarily on the front end, dealing with the clients, as it were – a bit like running a hotel.

The President: I think previous clauses have dealt with this, but the mover may reply.

Mr Butt: Yes, I think first of all, for a simple name change – say you needed to change from the Helen Jones to the Alex Downie Care Home, you can actually use the amendments in the previous clauses to actually amend a simple thing like that.

But if we are talking about the registration of a business or a person, that would have to be – unless I hear otherwise – to be started off again with a new registration, if there are new people.

Sorry, I am getting a shaking head on that!

The President: Do you wish to take advice from your advisers?

Mr Butt: I wish to take advice, because I was going to say that I presumed that if there were new people involved in it, you would need a new registration, because it is based on the person and their abilities and skills.

Mr Downie: Yes, that is the point I was making.

Mr Lowey: It is the point I was making too.

Mr Butt: So I would ask Mrs Gordon if she has any comments on that.

Mrs Gordon: Company registrations are different, because the company is an individual in law, and if the name remains the same of the company, they would not be required by law to register to make a fresh application to register. So if they sell the company on and the company name stays the same, the company

remains registered. But what we do – and we do it now – is we vet the individuals that are within that company. (Mr Downie: Right.)

Under this legislation, they also have to have this responsible person and that is new. It is the responsible person that has the pivotal role in the company and if they change, it is written – it was missed out of the English law, but it is written into this legislation – that a responsible person change must be notified and must go through the full procedures of us vetting and accepting them.

Mr Callister: Madam President, can I just ask then, if someone did purchase one of these, call them companies if you like, but did not have these qualifications, but could appoint a responsible person, they could still be the owners, could they?

Mrs Gordon: Anyone can own a business and operate a care home. If they do not have the correct qualifications, they have obviously got to appoint somebody who has and that is usually the managing day-to-day control and the responsible person who will have some knowledge, skill and expertise in that field.

Mr Callister: Thank you.

Mr Butt: Thank you.

So I think, Madam President, the basis is, no matter what the company is or how it changes, the persons responsible for the supervision must be the right person and be registered.

Mr Lowey: Qualified.

The President: We have strayed slightly, because this is to do with surrender of notices!

Mr Butt: It is, isn't it? Yes, that's true! (*Laughter and interjections*)

The President: The motion is, Hon. Members, that clause 78 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Surrenders by registered providers other than childminders, clauses 79 to 84.

Mr Butt: Thank you Madam President.

All these clauses deal with the surrender of registration by a registered provider other than childminders, who are under clause 78.

These clauses deal with the criteria and process for a surrender of an application by a registered provider. The provisions here are stronger, because when it is a provider who wishes to surrender registration, it usually means that they want to close down the service. In these circumstances, they must meet certain conditions, specified in clause 83.

For example, they should be having discussions with service users, their families, social workers and any other professional and interested parties, to ensure that individuals are moved to another service that meets their needs and that all are given sufficient time to prepare for the move and be involved in the decision.

Again, there are restrictions to avoid any surrender of a registration before any proceedings have taken place.

Madam President, I beg to move that clauses 79, 80, 81, 82, 83 and 84 do stand part of the Bill.

Mr Lowey: I beg to second.

I think these clauses actually put a capital 'C' to 'Care'. They are all-important.

I beg to second.

Mr Butt: Thank you, Madam President.

The President: The motion is, Hon. Members, that clauses 79 to 84 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 85 and 86.

Mr Butt: Thank you, Madam President.

Clause 85 states that the Department may make minor corrections to a registration, as long as it does not adversely affect the interests of the person or anyone else and they are given notice of the change. This is included to ensure that any administrative errors can easily be rectified.

Clause 86 allows for more general amendments and therefore the Department must ensure it complies with procedural fairness requirements.

I beg to move, Madam President, that clauses 85 and 86 do stand part of the Bill.

Mr Lowey: I beg to second.

I think the mover, in earlier comments on the Bill, says that this is a new way of presenting legislation. It will be interesting to see how the new way will actually fit in, but this is practical, and I welcome this. I have been shouting for a long time, it is either black and white or it is too cumbersome really to deal with minor... which we all know we would have to deal with primary legislation to alter. This gives the get-out, and I think it is an important constitutional... can I say 'experiment'? I do not know whether it is an experiment or not, but if it is, it is one that I would welcome, anyway.

Mr Butt: Yes, I agree. I find it quite an interesting Bill to read, actually. It is different.

Mr Lowey: Yes, it is. It is great.

The President: If no other Member wishes to comment, the motion is that clauses 85 and 86 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 87.

Mr Butt: Clause 87, Madam President, deals with suspensions in a general way. It details the criteria when a Department can suspend the registration. This is a new and important power under the Bill.

Under the current law, where there are significant concerns about how a service operates or something comes to light about a registered person, there are frequently further investigations to be done, sometimes by the Police. Until such times as these are complete, the Department is unable to either serve a cancellation notice, or legally require a person to absent themselves from the service. It has often been the experience for people to remain registered for up to two years before the whole process is gone through and a person's registration is then cancelled. The only other course of action open to the Department in these circumstances is to apply for an urgent cancellation order. For this to be approved, there has to be evidence of serious risk to life, health and well-being.

The Department may not have access to that evidence or it may not be gathered until well into the proceedings. Urgent cancellation is the action of last resort. This additional power to allow for suspension of registration will be used when serious concerns come to the attention of the authorities or the regulatory authority, and this is sometimes preferable to cancellation of registration, although it is possible that cancellation may eventually follow.

A good example of this is if there are concerns about a registered manager or a childminder who works alone. Registration can be suspended until further investigations and resolution.

So, Madam President, it could be that if it was cancelled overall immediately, the business could not be revived, if the person was then found to have committed no offence, shall we say. So this is a useful addition to have in for the Department.

Madam President, I beg to move that clause 87 stand part of the Bill.

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

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

Again, a sensible provision, but of course, there have got to be some safeguards in there, because he mentioned that there may be allegations made that are subsequently found to be unfounded and the business can then continue.

Obviously, once certain allegations are made, it can be very damaging, so can we have assurances that matters such as these, whilst they need to be taken extremely seriously, are also handled very sensitively, because of the damage that could be done in cases that are proved to be not so?

The President: Mover to reply.

Mr Butt: Yes, I think this is actually, I suppose in a way, a slightly more sensitive way of dealing with a matter: a suspension rather than a cancellation. Cancellation really does mean the end of the business and perhaps the end of the person's career in that area. Suspension will allow, in effect, a halfway house, and I am sure the Department will, in consultation with everybody concerned, handle these matters sensitively.

The President: The motion is, Hon. Members, that clause 87 stand part of the Bill. Those in favour, please

say aye; against, no. The ayes have it. The ayes have it.
Clause 88.

Mr Butt: Thank you, Madam President.

This clause states that the Department may cancel a registration on specified grounds. Cancellation is only ever a last resort, and the Department would need to comply with procedural fairness requirements throughout.

The specified grounds include a care service that has not operated for three years or more. This is to allow cancellation for, say, childminders who have not operated for some time, because unless this happens, the Department are still required to inspect them, even though they are not actually in business.

So, Madam President, I beg to move that clause 88 do stand part of the Bill.

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

The President: The Hon, Member, Mr Crowe.

Mr Crowe: Thank you, Madam President.

I would imagine that subclause (2)(m) would cover a situation where a business, say a company and a business, and it ceases trading, becomes insolvent and it goes into liquidation. This would be covered under that clause, the 'any other prescribed ground'. Is my reading correct?

Mr Butt: Yes, it is.

The President: The Hon. Member, Mr Turner.

Mr Turner: Yes, one would assume also that if they had not been trading or providing the service, they would not have been paying the annual fee. Would that also be grounds for cancellation of registration?

The President: The mover to reply.

Mr Butt: Yes, firstly, the prescribed grounds: there is a comprehensive list here of reasons why it could be cancelled. There is always going to be something we have not thought about. So again, this is another future proofing in the Bill to make sure that it does catch everything.

Mr Turner's point is on the cancellation, could it be cancelled because of fees, yes under (2)(c), unless they comply with the annual fees and cost recovery, that bit does apply in that case.

The President: The motion is, Hon. Members, that clause 88 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 89.

Mr Butt: Madam President, this concerns urgent amendment or suspension or cancellation. This clause states what the Department can do in relation to an urgent amendment and urgent suspension or an urgent cancellation of a person's registration, if there is an exposure to risk.

For an urgent amendment or suspension, there has to be a risk of harm. For an urgent cancellation, there needs to be a serious risk to life, health or wellbeing. Procedural fairness requirements do not apply in this instance.

The Department can give the registered person a notice verbally, but this does need to be also given in writing as soon as possible and contain the action taken, the reasons for the notice for urgent suspension, the suspension period and a notice of the appeal procedures.

This power would only be used in particularly grave circumstances and is an important addition to the legislation.

Madam President, I beg to move that clause 89 do stand part of the Bill.

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

The President: The motion is that clause 89 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 90.

Mr Butt: Clause 90, Madam President, concerns the effect of suspension or cancellation. It clarifies the effect of a suspension or cancellation subject to the tribunal's powers of appeal. These are contained in part 6 of

the Bill which I will come to in due course.

Madam President, I beg to move that clause 90 do stand part of the Bill.

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

The President: The motion is that clause 90 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 91.

Mr Butt: Clause 91 concerns the effect of non-urgent decisions under this part of the Bill.

This clause states that the Department must give notice of a decision to the stated person for an amendment, except a minor correction, a suspension or a cancellation. It states it must be accompanied by an appeal notice and clarifies when the decision notice takes effect.

Subsection (5) of the clause states that if a suspension or a cancellation is due to a care offence, it does not take effect until the period to appeal against the conviction ends for that offence, or if convicted and an appeal is made, the appeal is finally ended.

If a conviction is quashed on appeal, the suspension or cancellation has no effect.

Madam President, I beg to move clause 91 stand part of the Bill.

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

The President: The motion is that clause 91 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 92.

Mr Butt: Clause 92 relates to the recovery of expenses by the Department in some cases. This clause determines the circumstances in which the Department may decide to give a person a cost recovery notice due to their non-compliance with the Act. If the person does not comply, then the amount may be recovered summarily as a debt.

Madam President, I beg to move that clause 92 do stand part of the Bill.

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

The President: The motion is that clause 92 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

I think, Hon. Members, that is a suitable point at which to adjourn. The adjournment will be until 2.30.

*The Council adjourned at 1.02 p.m.
and resumed its sitting at 2.30 p.m.*

Happy Birthday to Mr Lowey

The President: Fastyr mie, Hon. Members.

Members: Fastyr mie, Madam President.

The President: Before we proceed, I would just like to extend congratulations to the Hon. Member, Mr Lowey on the occasion of his birthday (*Laughter*) (**Several Members:** Hear, hear!) which he kept quiet from us! (**Mr Lowey:** Tried to!) (*Interjections and laughter*) A special number, yes!

Mr Lowey: A special number!

Regulation of Care Bill 2012 Consideration of clauses concluded

The President: Well, we will proceed with special number 93! Clauses 93 to 95 on the Regulation of Care Bill.

Mr Butt: Thank you, Madam President.

We are perhaps more than half way through, in terms of size – not numerically, but in size, I think we are more than half way.

Madam President, I will take clauses 93, 94 and 95 together. These clauses give the Department powers to refuse non-compliant applications, request additional information and refuse an application if that requested information is not received or still fails to meet the requirements.

There is currently no express power in the Interpretation Act 1976 to reject non-compliant applications that do not substantially comply with the form. So this will actually amend that situation. There will always be continued engagement with applicants. Where there are continuing issues, it does give the Department additional powers to ensure scarce resources are appropriately targeted.

I beg to move clauses 93, 94 and 95 do stand part of the Bill.

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

The President: The motion is that clauses 93 to 95 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 96 to 99.

Mr Butt: Yes, Madam President.

These provide the fairness requirements. The clauses specify what decisions are required to comply with the procedural fairness requirements, details of the notice the Department must give to an interested person, their duty to consider written submissions and to issue a withdrawal notice if they do not proceed with a proposal.

I beg to move, Madam President, that clauses 96, 97, 98 and 99 do stand part of the Bill.

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

The President: The motion is, Hon. Members, that clauses 96 to 99 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 100 to 102.

Mr Butt: Yes, Madam President.

These relate to the death of a registered provider. They only apply if a registered provider, other than a childminder, for a care service is an individual and they die. Specified persons have a responsibility to notify the Department and state what their intention is regarding the future of the service. If they fail to do so an offence is committed.

In these circumstances, a personal representative may carry on the care service for a limited time without holding provider registration, but they must comply with registration conditions which applied to the deceased provider and the other conditions stated in this Bill or an offence is committed.

I beg to move, Madam President, that clauses 100, 101 and 102 do stand part of this Bill.

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

The President: The motion is that clauses 100 to 102 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clauses 103 to 106.

Mr Butt: Yes, Madam President, thank you.

These relate to registration offences. These clauses detail the offences under this part in relation to registration. They include making false statements, failing to display a registration certificate, breaking a registration condition and falsely describing the scope of registration conditions.

The first three offences apply only to the applicant or registered person, but the last applies even if the person is not a registered person for a care service. This is because there may be occasions when senior staff or administrators will be responsible for talking to prospective clients or producing advertising material.

An example of a false description could be that the service purports to be able to provide care for people of a specific category, say dementia, but are not registered for that category or do not have the skilled staff to provide that service.

Madam President, I beg to move clauses 103, 104, 105 and 106 do stand part of the Bill.

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

The President: The motion is that clauses 103 to 106 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clauses 107 and 108.

Mr Butt: Thank you, Madam President. I think we are numerically half way now!

These clauses state the Department's requirements to keep a register and the role regarding the access to and the fees in relation to information from the register.

Madam President, I beg to move that clauses 107 and 108 do stand part of the Bill.

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

The President: The motion is that clauses 107 and 108 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 109.

Mr Butt: This relates to service of documents or notices to registered persons. This clause states that if the Department gives a registered person a notice or other document, then their usual or last known place of abode or business is taken to be the address of the care service.

Madam President, I beg to move that clause 109 stand part of the Bill.

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

The President: The motion is that clause 109 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 110.

Mr Butt: Thank you, Madam President.

This clause details the circumstances in which a disclosure notice can be given and to whom. This includes an authority under a corresponding Act with similar functions to the Department of Social Care, for example, the Department of Health in England.

Madam President, I beg to move that clause 110 do stand part of the Bill.

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

The President: The motion is that clause 110 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Part 4, clauses 111 to 113.

Mr Butt: Yes, Madam President.

These clauses relate to the monitoring and enforcement by the inspectors. I would emphasise that

considerable work has been undertaken to ensure that the Bill does not give inspectors unnecessary powers.

The Bill contains a number of safeguards and qualifications which were included to address the concerns in this area and ensure powers are only used when warranted.

The powers are expressed in more detail in this Bill than in other less recent Manx legislation. This is because, in this Bill, inspectors have much more human interface, going into childminders' homes etc and meeting vulnerable people. These clauses state the criteria for the Department to appoint appropriately qualified persons to help with performance monitoring and regulatory functions.

Inspectors must be issued with an identity card which contains specified information, which must be shown before or displayed during the exercise of inspector's monitoring and regulatory powers.

Madam President, in clause 11, I think there may have been a misprint in the section where it refers to an 'education Act', with a small 'e'. I am not sure – that comes a few times in the Bill. It may be the way the Bill is worded. I would just point that out.

I beg to move, Madam President, clauses 111, 112 and 113 stand part of the Bill.

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

The President: The motion is, Hon. Members, that clauses 111 and 113 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Subdivision 2, inspectors' entry powers, clause 114.

Mr Butt: Yes, Madam President.

As outlined under clause 72, this clause explains the inspectors' general rights of entry. These are the premises if agreed by the occupier or under the warrant.

Madam President, I beg to move that clause 114 do stand part of the Bill.

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

The President: The motion is that clause 114 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 115.

Mr Butt: thank you, Madam President – quite an important clause.

This clause states the Department may make guidelines for inspectors to enter and inspect care premises. An example of what will be contained in these guidelines as the frequency of and the details of which will be announced and unannounced inspections.

The guidelines do not take effect until they have been laid for information before Tynwald. They are a public document and each registered provider will have access to a copy.

The clause also specifies that there are certain circumstances where inspectors have no right of entry. This is a restriction designed to meet the requirements of the Human Rights Act 2001. Examples of this would be attending a childminder's house at times other than when childminding is being carried out or is reasonably suspected of being carried out. Other occupiers of the house, such as the childminders' husbands, can legitimately deny entry.

Another example might be in a nursery where part of the premises is privately occupied as domestic premises, such as the provider's own accommodation or a tenancy arrangement.

Madam President, I beg to move that clause 115 do stand part of the Bill.

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

The President: The motion is that clause 115 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 116.

Mr Butt: Thank you, Madam President.

This clause is subject to the following clause 117, but it does allow the inspector to enter premises if the inspector reasonably suspects the entry is necessary for the performance of the Department's monitoring function.

The clause only relates to premises where an inspector reasonably suspects or has been given information that a care service is being provided without registration.

Madam President, I beg to move that clause 116 do stand part of the Bill.

Mr Lowey: I beg to second.

Could I just ask the mover of the Bill if the... I am sure it has got to apply now but I just want some reassurance that if the inspector reasonably suspects, who does he have to report that to, or is it just to himself? In other words, the inspector has reason to believe, and I would say, as the owner, he has no reason to believe. How is his judgement evaluated; or is it not evaluated, only other than through the power of the inspector?

Do I make myself clear? The inspector decides, 'I have got suspicions here', [*Inaudible*] 'I am spotless.' Is there any...?

Mr Butt: Yes, this power does currently exist under the current Acts. It is a phrase which is used quite often throughout legislation, 'reasonable suspicion'. There will be safeguards in that when they do, for example, a report about a premises, the report cannot just be based on their opinion; it has to be backed up by corroborative evidence from at least two other sources. So the report is always fair. Should it go to a tribunal, of course, he will have to explain his reasons for suspicion, or should there be a criminal offence disclosed, again, he will be required to explain what his suspicion was.

Mr Lowey: That is fine.

Mr Butt: I beg to move, Madam President.

The President: The motion is, Hon. Members, that clause 116 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 117.

Mr Butt: Yes, Madam President.

This is procedure for entering without consent or by warrant. The clause relates to scheduled inspections only, made an inspection guidelines, as stated in the previous clause 115. Such premises are already registered and therefore have an obligation to facilitate inspections. Therefore, the inspector does not formally have to either request permission to enter or seek a warrant to do so. However, this does not negate the requirement for an inspector to properly identify himself for having the required ID clearly displayed. There may be times, for example, if there is a complaint that staffing was low during the evening period, that inspection would take place at a time when there are staff in charge who do not know the inspector and are not familiar with the process. This would be the sort of scenario where the inspector might have to explain to the person in charge that the law gives the power as described under this clause.

A warrant would only be applied for if, after explaining the powers conferred by the Act, the occupier continues to refuse entry.

I beg to move clause 117 stand part of the Bill.

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

The President: The Hon. Member, Mr Callister.

Mr Callister: Yes, I thought that we were looking at a conflict here between this and clause 114, where it says:

'An inspector may enter –
(a) premises if its occupier consents to the entry or the entry is authorised under a warrant.'

Yet, here in clause 117, the inspector can tell the occupier that he may enter the premises without consent or a warrant. That is not strictly true, is it, if you look at clause 114, as the general entry power?

Mr Braidwood: Madam President –

The President: The Hon. Member, Mr Braidwood.

Mr Braidwood: It is exactly the same point I was going to raise as the Hon. Member of Council, Mr Callister. I presume under clause 117, this is if the inspector feels that the care that is being carried out is to the detriment of the people there, he could go in. That I do not know, but if the mover could clarify that?

Mr Butt: Yes, there does appear to be conflict which I have raised as a matter of interest. Clause 117, I think, provides for premises which are registered already and which are due to have inspections. Part of the registration process is that they are obliged to allow access to the inspectors and so they should, therefore, let

people in to do the inspection. If there is still refusal, then they need to get a warrant, but they have a right to enter premises which are registered. That is part of the registration process to say, if you are registered, you do give access to inspectors to inspect.

Whilst there may be cases, of course, where there are people who are not registered and then you would need power to enter and you would need a warrant to go in, to enter as well, but that is another –

Mr Braidwood: That is not clear, Madam President.

Mr Callister: Sorry, Madam President, that is not clear. Surely if the owner of the premises denies entry, then a warrant will have to be achieved.

The Clerk: Madam President, it might be worth –

The President: Going back to clause 114.

The Clerk: – observing that clause 114 talks about premises. Clause 115 talks about *care* premises. It is a different category altogether. Clause 114 would enable you to enter any old premises – is that right? (**Mr Butt:** Yes.) Whereas clause 115 is care premises.

Mr Braidwood: For care premises.

The President: Clause 114, the occupier has to give consent.

Mr Butt: Would you like clarification from Mrs Gordon on this?

The President: Would any Member wish to have further clarification?

Mr Callister: Well, I think I would, actually. It is a premises, whether it is care or whatever. It is a premises described under ‘general entry powers.’

The President: Right well, we will ask for some... Could we have the microphone, please?

Ms McCauley: Thank you – Sam McCauley.

This did come up, because obviously Mr Butt, the Member taking forward the Bill, did raise it as an issue. The clauses do have to be considered alongside each other. As the Clerk has outlined, the general entry powers are to any premises and in those circumstances, if the owner of those premises did not consent, then we would have to seek a warrant.

The further clauses are in relation to care services that are either registered or where, like clause 116 outlines, it is of reasonable belief that a care service is being carried out from there. So that is where the difference applies. Obviously, in those circumstances, the inspector would have to state who they were and would have to state that they do have powers to enter the premises, but if it is legitimately denied by the occupier of those care premises, then obviously in those circumstances, we would need to seek a warrant.

Mr Callister and Mr Butt: Thank you.

The President: Member to reply – do you want to reply any further?

Mr Butt: I thank Ms McCauley for that explanation. I think she is right in that – and clause 117, again, is similar – these are premises which are already registered which have a duty, under the registration, to provide entry.

So I beg to move clause 117 stand part of this Bill.

The President: The motion is, Hon. Members, that clause 117 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 118.

Mr Butt: Clause 118 is an establishing clause which states that the following subdivision applies only if, under subdivision 2 or a warrant, an inspector has entered particular premises.

I beg to move that clause 118 stand part of the Bill.

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

The President: The motion is that clause 118 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 119.

Mr Butt: Thank you, Madam President.

Clause 119 defines the ‘role’ for the premises being entered. This clause lists who has a role for the premises, which is important as the inspector can require anyone with a role to give access to information or documents under a later clause, 122.

I beg to move clause 119 stand part of the Bill.

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

The President: The motion is that clause 119 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 120.

Mr Butt: Clause 120, Madam President, gives, once entry has been gained, what powers can be used. These are not new as they are contained in the current legislation but they are more clearly stated in relation to being able to take photographs and to copy information.

I beg to move, Madam President, clause 120 stand part of the Bill.

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

The President: The motion is that clause 120 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 121.

Mr Butt: Thank you, Madam President.

This clause states the criteria for an inspector requesting a medical practitioner or a nurse to medically examine a service recipient, if the inspector reasonably believes a person is not receiving proper care. This must be done with the consent of the person, unless they do not have the capacity to make that decision, in which case the examination must be in the person’s best interest.

As the Island currently has no capacity legislation, ‘best interest’ will be set out in guidelines, which will be made available to the public.

Madam President, I beg to move that clause 121 do stand part of the Bill.

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

The President: The motion is that clause 121 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 122.

Mr Butt: Thank you, Madam President.

This gives the power to require documents or information. This clause states that when the inspector can request documents or information from the person who has a role for the premises, as detailed in clause 119.

Before making a request, the inspector must confirm that failure to meet a request may be an offence under a later clause, 123.

Madam President, I beg to move that clause 122 do stand part of the Bill.

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

The President: The motion is that clause 122 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 123.

Mr Butt: This is the clause which gives the offence of failing to provide reasonable help. This clause states the inspector may require a person with a role for the premises to give the inspector reasonable help to perform their functions. Unless the person has a reasonable excuse, then failure to provide reasonable help is an offence and can result in a maximum penalty of £2,500 on summary conviction.

Madam President, I beg to move that clause 123 do stand part of the Bill.

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

The President: The motion is that clause 123 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Subdivision 4, clause 124.

Mr Butt: Yes, Madam President.

This relates to warrants, which is similar to the previous legislation. It is a standard clause relating to procedure for warrants in relation to this Bill.

I beg to move clause 124 stand part of the Bill.

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

The President: The Hon. Member, Mr Callister.

Mr Callister: Can I just ask if that would include removing computers in their entirety, rather than just documents?

The President: The Hon. Member, Mr Downie.

Mr Downie: I would just like the mover to clarify why he needs to apply to the High Bailiff for a warrant. Why can he not just apply to a Justice of the Peace for a warrant, as would be the normal circumstances out of hours, as it were? You might not get the High Bailiff over the course of the weekend.

The President: The mover to reply.

Mr Butt: The High Bailiff was the person issuing warrants in the previous Acts, and I think that is a higher level, in effect, than a JP. That has been continued through to this Bill.

As relates to moving documents and information, I think that comes in a previous section, under section... Oh, that is just general powers of entry.

The ability to take away evidence and information could be covered under section 127, which provides that a person must produce a document reproducing the material in a form capable of being understood, even if it is from a computer record.

Mr Braidwood: I think, Madam President, under clause 124(5)(b), it says:

‘seize a document or another thing (the “seized thing”)...’

So that could be all computers.

Mr Butt: Which section is that, Mr Braidwood, sorry?

The President: Clause 124(5)(b).

Mr Butt: It is in here somewhere, Madam President, I know, because I have – *(Laughter and interjections)*
Yes, you are right. It is in the future – I knew it was in the future.

The President: Right, are we clear, then, about the powers?

Mr Butt: Yes, it is in clause 124. Thank you.

The President: Right, okay. Do you wish to add anything, Mr Butt?

Mr Butt: No, thank you.

The President: No, okay. The motion is that clause 124 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 125.

Mr Butt: Yes, this creates an offence of obstructing an inspector. It details that it is an offence to intentionally obstruct an inspector from exercising a power under this division.
I beg to move clause 125 stand part of the Bill.

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

The President: The motion is that clause 125 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 126.

Mr Butt: Thank you, Madam President.

This clause gives the inspector the power to request, within a reasonable time period, information that is necessary for the inspector to perform the monitoring function. This can include medical records, but they can only be considered by a medical practitioner or a nurse.

In making the requirement, the inspector must state that it is an offence for the registered person not to comply.

I beg to move clause 126 stand part of the Bill.

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

The President: The motion is that clause 126 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 127.

Mr Butt: Yes, Madam President.

This clause states that if the information required under clause 126, the previous clause, is on a computer, then the person must reproduce the material for the inspector to take away or supply it electronically. This is one we tried to head off before, Madam President.

I beg to move clause 127 do stand part of the Bill.

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

The President: Mr Callister.

Mr Callister: It seems then that an inspector can remove documents or information that is within a computer but that in order to take a computer, a ‘seized thing’, away, there needs to be the presence of an inspector or constable at the same time.

As in clause 124, that one is where the warrant authorises a constable to help the inspector.

The President: The mover to reply.

Mr Butt: Yes, section 124 gives the power to take away any ‘thing’ which would include a computer with its contents, but this section says that if a person does keep documents, a production agreement can be made to ask them to produce a written version of what is on the computer. That is an extra power, in effect. That may be then that you would not need to take away the computer and they could carry on with their business, but just

give the information which is required.

The President: The motion is that clause 127 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 128.

Mr Butt: Clause 128 states that a person to whom a production requirement is made must comply with the requirement unless the person has a reasonable excuse, or it becomes an offence. So if they are asked to produce a written record from a computer, and they refused to comply with the requirement they would commit an offence.

So I beg to move that clause 128 do stand part of the Bill.

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

The President: The motion is that clause 128 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 129.

Mr Butt: This clause addresses when an inspector requires a document in order to carry their functions and specifies it is not a defence that it cannot be supplied because in doing so you would incriminate yourself. The clause specifies that the only crimes you could be prosecuted for by incriminating yourself are ill treatment or neglect.

However, if the document itself is false or misleading, then you can be prosecuted, even if it is not for an ill treatment or neglect offence. This clause then defines the term ‘incriminating evidence’.

So I beg to move, Madam President, that clause 129 stand part of the Bill.

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

The President: The motion is that clause 129 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 130.

Mr Butt: Thank you, Madam President.

This is quite an important clause, I feel, and I am sure the Department does too. It states that the Department’s powers to prepare and publish inspection reports. This is a change, as under current legislation, the Department cannot publish its inspection reports of services. Currently, it is up to the individual providers if they wish to publish their inspection reports. It would give people information before they make a choice as to which service they prefer to use.

This clause specifies the information which may not be published. Information that may not be published is: personal details, i.e. addresses of certain establishments like children’s homes. The report may be made available in a way the Department considers appropriate. This is to allow the Department to publish reports in different formats.

There are some safeguards in the way that the reports are completed, Madam President, as I mentioned earlier. Inspection reports must be based on evidence gained and reported at the time of the inspection. In addition, events throughout the year that are a matter of record can also be included in the report and form part of the evidence for judgements made about how the service is performing. The evidence must be factual and not just the opinion of the inspectors.

Madam President, I beg to move that this clause stand part of the Bill.

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

Mr Braidwood: Just one small point, Madam President.

The President: Yes, Mr Braidwood.

Mr Braidwood: What happens if the report is not given within one month – a copy to the registered person?

The President: Mover to reply.

Mr Butt: I would hope they would be given within one month!

Mr Braidwood: Yes, but circumstances might arise...

Mr Butt: Yes. The only excuse for the Department not getting it is if it might be detrimental to an individual's welfare, but I do not think... I think they should have to comply with the month stipulation. There is no let-up or leeway for that.

The President: Lord Bishop, you wanted to query something.

The Lord Bishop: Madam President, just one little thing, here. What happens if the registered person, having received a report, thinks that there is an error or errors in it? It gets published, and if that person is right, then –

Mr Braidwood: No appeal.

Mr Butt: The Lord Bishop...

The President: Yes, please reply – if that is the extent of your query?

The Lord Bishop: Yes, that was it.

Mr Butt: Yes, you make a valid point: there is no appeal against the report. There is no appeal procedure to actually complain about what the report says.

I have got several notes here about how the evidence that is in the reports has to be... The evidence that is in the reports has to be... the phrase being used is 'triangulated'. It means the inspector can only reach a judgement when three sources confirm that judgement – these being what the inspector read; what they observed; and what they were told.

For example, if a visitor said there was insufficient staff on duty, this would only be upheld as being correct if there is evidence from observation of rotas and staff records and the inspector's observations on the day of the inspection or subsequent visits, and if staff or residents provided information which concurred with that. If a provider disputes the evidence the inspector is relying on, then this will be re-examined, firstly by the inspector and then if not satisfied, by the manager of the registration and inspection team. Inspectors cannot give personal opinion. All evidence has to be based on professional opinion that is based on accepted standardisation of good and best practice.

So the actual compiling of the reports has to be very thorough in terms of its evidence-based judgements. There is no appeal by the operator against what the report says.

Mr Callister: Madam President, sorry, we had the reply there I think, didn't we?

The President: Well, it is important...

Mr Callister: I was just wondering if there is such a thing as a draft report involved here or is it just simply a report?

Mr Butt: I think I said that term if a provider disputes the evidence the inspector is relying on, then this will be re-examined. So there obviously is some consultation that goes on before it is finally issued. I think that is correct.

The President: Can you confirm that happens before it is published?

Mr Butt: Yes. That is correct, yes.

Mr Callister: Thank you.

The President: The motion is that clause 130 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 131.

Mr Butt: Yes, this relates to the previous clause and perhaps confirms some of the concerns.

This clause clarifies the law of defamation in relation to production of inspection reports under clause 130. All inspection reports must be made on evidence, not hearsay or the opinion of the inspector.

I beg to move that clause 131 stand part of the Bill.

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

The President: The motion is that clause 131 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 132 to 134.

Mr Butt: Yes, Madam President.

These concern improvement notices which were mentioned earlier in the clauses. These clauses allow an inspector to give the registered provider an improvement notice, requiring the provider to make the improvement within a stated reasonable period. They specify the contents of the improvement notice and to whom copies of the notice must be given. An improvement notice must include an appeal notice, if required.

An example of an improvement notice could be an improvement to premises and equipment, for example renewal and replacement of broken or worn items of furniture, redecoration, toys and equipment in childcare services. This is an extra power to give premises and service providers time to get things correct before any further action is taken.

I beg to move the clause 132, 133 and 134 together stand part of the Bill.

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

The President: The Hon. Member, Mr Downie.

Mr Downie: Thank you, Madam President.

I think this is a good provision. It is not new; it already exists in some of the building control legislation, Health and Safety. I think it also appears in some of the tourist premises legislation. It gives an opportunity for an inspector to go in. If there are some relatively minor issues to be dealt with, and which can be dealt with quite quickly and practically, they can be done and carried out, and it is using what we always do in the Isle of Man, to our best. We do not take a sledgehammer to crack a walnut. We put people on notice, give them an opportunity and then, if they do not heed the warning, that is when you go in a bit harder.

So I think this is a good provision to have within here. It cannot be easy, running some of these establishments. Accidents do happen, patients do spill things or make a mess sometimes. So it has got to be this way, I think.

Mr Butt: Thank you for that, Mr Downie is right. Currently, the procedure would be an adverse report, then you go straight to either suspension or cancellation. With this actual extra power, the improvement notice can actually short-term fix things before they need to go any further. So thank you for that.

The President: The motion is that clauses 132, 133 and 134 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 135 to 137.

Mr Butt: Thank you, Madam President.

These relate to compliance notices. The inspector may give the registered person the compliance notice, requiring the person to, within a reasonable stated period, take stated steps to remedy an offence against the Bill or an adoption society offence or prevent it from happening or happening again.

The contents of a compliance notice are detailed, including an explanation of that, under section 137. It is an offence to not meet the notice and an appeal notice.

The recipient of a compliance notice must comply with the notice. If they do not, it is an offence.

Madam President, this is another stage that goes beyond the improvement notice: improvement, compliance, then suspension, then cancellation. So this is another section which is used in current legislation.

I beg to move causes 135, 136 and 137 stand part of the Bill.

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

The President: The motion is that clauses 135 to 137 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 138.

Mr Butt: Yes, Madam President.

This is about disqualifying unregistered childminders. This clause applies to a childminder who is not registered and has therefore contravened the registration requirement. In those circumstances, the inspector may give the person a disqualification notice which states they must stop childminding; that because they have been operating without registration, they are disqualified from childminding registration for a year or until the disqualification is lifted; that during this time, they cannot apply for registration. If after the year they commence childminding without registration, they are again committing an offence.

Every other service that is registered is either an establishment or an agency and it is highly improbable that this type of service could operate undercover. However, registration and inspections are frequently called out to suspected illegal childminding. The clause only says they may give a disqualification notice.

The usual scenario is that either the person is not childminding within the definition or agrees to register as a childminder, and in that case, the process of registration begins and the childminder is asked to cease childminding until registered.

A disqualifying notice would only be given in the circumstances where it is discovered that the person has continued to childmind after being asked to cease.

I beg to move that clause 138 stand part of the Bill.

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

The President: The motion is that clause 138 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Part 5, clause 139.

Mr Butt: Yes, Madam President.

Part 5 is a new innovation, in that it defines what is 'social care work' and what a 'social care worker' is.

This is about personal care, for example helping or giving advice or support with bodily functions like washing and dressing. It also covers personal support, for example counselling and emotional support as part of a planned programme of care. This can be combined with other tasks offering practical assistance.

Madam President, I beg to move that clause 139, defining these 'social care work' and 'social care worker' do stand part of the Bill.

Mr Lowey: I beg to second.

Can I just say that – I have referred to it once before; I think I will do my afternoon performance – I like the way that the wording is put in everyday language. I know you highlighted again. It is performing social work. I noticed in another clause, it said something about 'you must not *hinder*'. I much prefer the word 'hinder' to the Latin expressions that have been used in past bits of legislation, which I could not even get my tongue round: 'hinder' I can do! This one, again, spells it out in language that ordinary people will be able to understand. I think that is a big plus of this Bill.

Mr Butt: Yes. Thank you.

The President: The motion is, Hon. Members, that clause 139 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 140

Mr Butt: Yes, Madam President.

This defines who is a 'social worker'.

I beg to move that clause 140 stand part of the Bill.

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

The President: The motion is that clause 140 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 141.

Mr Butt: Madam President, clause 141 states that a person other than a registered social worker must not with intent to deceive use the title 'social worker'. If they do, an offence is committed.

A registered social worker means under a UK care Act or regulations made under this Bill to perform social work. 'To use' means implying or stating that you are a social worker.

The registration means with an appropriate professional council and the Department has negotiated a memorandum of understanding with the newly merged Health Care Professions Council in the UK to continue registering Isle of Man social workers.

This section will have a separate Appointed Day Order to ensure the necessary arrangements are in place, both in relation to Department staff and social workers operating in the private and third sectors.

I beg to move that clause 141 stand part of the Bill, Madam President.

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

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Madam President.

Again, this is subject to an Appointed Day Order. So, anybody now working as a social worker, if they are a registered social worker, in the future, they have to meet certain criteria and they would be given a title of 'registered social worker', not just 'social worker'? (**Mr Butt:** Yes.) They would have to take an exam, presumably, and meet certain criteria – that is the question.

Mr Butt: Yes, this will give them time in the transition period to become registered with the UK body, which is the registering body for social workers, and also social care workers will also be registered at some stage under this Bill as well. So this is the first time that they have to be registered compulsorily under legislation in the Isle of Man.

The President: The Hon. Member, Mr Downie.

Mr Downie: Thank you, Madam President.

I think we will have to be a little bit careful here, and as long as it is explained to the wider public and other organisations, I do not think there will be a problem, but we often use the title 'social worker' when we are talking to the lady who comes round representing Manx Blind Welfare or SSAFA or the Royal British Legion. They have their own network of social workers: they are not social workers under the UK legislation, but that is what they actually are. Of course, they have had that name for years, so people normally associate that title with them.

So as long as it is quite clear, when the Appointed Day Order comes out, and from that time forward, the only person who is able to call themselves a social worker will be one who is registered under the particular part of the Act.

Mr Butt: Yes, and there is a difference between a social *care* worker and a social worker. A social care worker can be the person who comes into your house to look after you and give you some care. At the moment, they are not registered in any way, have no professional body to report to. That is going to change under this Bill: there will be registration of those people as well in the future.

Mr Downie: Right.

The President: The motion is that clause 141 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 142.

Mr Butt: Yes, Madam President.

This creates the offences of working without registration. You will note the clause is worded slightly differently to the offence for social workers. This is because currently the Health Care Professions Council is just registering social workers, not social care workers, though they have set out that social care workers may be added into the future. So there is the difference between social workers and social care workers. The Health Professions Council in England will at some stage register social care workers.

Having the offence for social care workers allows us to follow the UK in any rolling programme of registration of social care workers. Therefore, this second event has been added but will only come into operation after three months have passed since the UK have brought in any new regulations to give social care workers time to register.

So I beg to move that clause 142 do stand part of the Bill.

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

The President: The motion is that clause 142 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Part 6, appeals, clauses 143 to 147.

Mr Butt: Thank you, Madam President.

As I have stated before, presently the appeal system is through the High Bailiff, but now it will be through the Care Services Tribunal, which we set up under the Tribunals Act.

The Bill states that the composition of the tribunal is set out in the Tribunals Act 2006. The rules may be made under section 8 of that Act for appeals under this Bill. A further appeal can only be made on a question of law from the decision of that tribunal.

There is a further development, as appeals are currently heard by the High Bailiff, whereas under this part an independent tribunal will be set up to hear appeals about registration and inspection decisions.

I beg to move, Madam President, clauses 143, 144, 145, 146 and 147 do stand part of the Bill.

Mr Lowey: I beg to second.

Can I just say that, for the future, I know the Tribunals Bill... the High Bailiff is dealing with legal matters and therefore it is ideally the High Bailiff, but this will allow the tribunal, which is an independent body set up, no doubt, by the Appointments Commission. But in our legislation for tribunals, we still have encapsulated the idea that the only person who can be a chairman is a practising lawyer. I still believe, myself, that that is a requirement that is played... It is too much of a closed shop, if I can be the 'Antichrist' – sorry, my Lord Bishop! – in daring to say that lawyers seem to be well catered for in the appeals procedures. I just feel myself that we have many competent people who could administer the tribunal as opposed to a strictly legal man sitting in as chairman. (**Mr Turner:** Absolutely.)

So I just put that forward as a general... You might get a lot of that from me in the next fortnight and after that, I swear to you, I shall be as silent as the grave! (*Laughter*)

Mr Butt: Thank you for your comments on tribunals! (*Laughter*)

As I stated before, under the current legislation, there have not been any appeals before the High Bailiff for the last five years. We think there may be a few more now, because certain new services have come forward, but it will not be a tribunal that will be used very often. So whoever the lawyer is in charge of that tribunal will not be earning much money! (*Laughter*)

I beg to move.

Mr Lowey: Show me one that has not made money!

The President: The motion is that clauses 143 to 147 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Part 7, clause 148.

Mr Butt: Thank you, Madam President.

This is being involved with care services, if you are disqualified. This clause states the offences if you are involved with a care service and fall under any other different categories of disqualification. The punishments are six months or £20,000 on summary conviction or two years or a fine on information.

I beg to move that clause 148 stand part of the Bill.

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

The President: The motion is that clause 148 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 149.

Mr Butt: Yes, Madam President.

A similar clause: this clause states the offence and defence for a person who carries on or manages a care service and employees or engages a specific disqualified person of a care service. The defence is that they did not know or could not have reasonably believed they were disqualified.

I beg to move that clause 149 do stand part of the Bill.

The President: Do we have a seconder?

Mr Crowe: Mr Lowey.

Mr Lowey: I beg to second and reserve my remarks. *(Laughter)*

The President: It can be anybody! *(Laughter and interjections)*

Mr Lowey: Yes, feel free!

The President: The motion is that clause 149 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 150.

Mr Butt: Yes, Madam President, a short clause which confirms the persons to whom this part of the division applies. Because the clause is about disqualification, they do not have to be registered for the offence to apply. I beg to move clause 150 stand part of the Bill.

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

The President: The motion is that clause 150 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 151.

Mr Butt: Thank you, Madam President,
This clause specifies that it is an offence to, with intent to deceive, state that a business is registered or it is a Department care service, if it is not. It is an offence to state that a premises has a registered provider or manager if they do not have them.
I beg to move that clause 151 stand part of the Bill.

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

The President: The motion is that clause 151 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 152.

Mr Butt: Yes, Madam President.
This is an important offence created by this section in relation to ill treatment or neglect of anyone receiving care from a social care provider – that is, anyone who provides care services a registered provider or manager, a responsible person, anyone supervising or anyone else subject to a registration requirement. This includes a manager, officer or employee of any of the above.
This list is extensive, because this is an extremely serious offence and anyone involved in the offence should be able to be prosecuted.
I beg to move clause 152 stand part of the Bill.

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

The President: The motion is that clause 152 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 153.

Mr Butt: Madam President, this clause explains that if a registration-related offence or a care offence is committed by a body corporate and it is proved an officer of the body authorised, permitted or participated in, or failed to take all reasonable steps to prevent the offence, then the officer as well as the body commits the offence.
Again, this is an important addition, giving the powers to ensure officers of a body corporate could be held properly responsible for offences.
I beg to move that clause 153 stand part of the Bill.

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

The President: The motion is that clause 153 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 154.

Mr Butt: Yes, Madam President, clause 154 states the registered provider of an independent care service, other than childminding, is taken to be exercising a function of a public nature in carrying out the care service. The consequence of this clause is that a contravention of Convention rights within the meaning of the Human Rights Act 2001 by the registered provider will be unlawful, and proceedings and remedies under this Act will be available. It actually defines them as being a public service of a public nature, so therefore comes under this Act.

I beg to move that clause 154 do stand part of the Bill.

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

The President: The motion is that clause 154 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Part 8, clauses 155 to 157.

Mr Butt: Yes, Madam President, these clauses deal with the way prosecutions are handled. They include the requirement for the Attorney General's consent for specified prosecutions, the meaning of the 'maximum penalty' as used in this Bill and details of a time limit for proceedings for a summary offence under this Bill.

I beg to move, Madam President, that clauses 155, 156 and 157 do stand part of the Bill.

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

The President: The motion is that clauses 155 to 157 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 158.

Mr Butt: Madam President, these clauses detail that in proceedings under or relating to this Bill, a person's appointment as an inspector and the Department's or an inspector's powers to do anything under this Bill must be presumed, unless proof is required. They also state the general evidentiary provisions applying to a proceeding under or relating to this Bill.

I beg to move that clauses 158 and 159 do stand part of this Bill.

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

The President: The motion is that clauses 158 and 159 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Part 9, clause 160 to 162.

Mr Butt: Yes, Madam President, these clauses detail the regulations that can be made and how they can be made. It gives the Department power to make forms for use under this Bill and regulations for the purposes of this Bill.

The topics on which regulations can be made are detailed and include: the registration of social care workers, which we have just discussed; consequential, incidental and supplemental matters; applying, adopting or incorporating provisions of a UK care Act, with or without change where relevant; regulations for imposing fees and regulations for creating offences with the maximum penalty of £5,000.

However, these are not exhaustive and do not limit the general powers in making regulations. All regulations must be approved by Tynwald and are subject to the negative procedure.

I beg to move that clauses 160, 161 and 162 do stand part of the Bill.

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

The President: The motion is that clauses 160 to 162 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 163.

Mr Butt: Yes, Madam President, clause 163 repeals two Acts: the Nurses and Midwives Act 1947; and the Nursing and Residential Homes Act 1988. They now become adult care centres, which we detail later on in the Bill, where they have many amendments to other Acts, which change that.

I beg to move that clause 163 stand part of the Bill.

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

The President: The motion is that clause 163 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 164.

Mr Butt: Thank you, Madam President.

This clause provides several definitions. Importantly, it contains the definition of a 'registration grace period'. This is a period of grace which is given to allow registration and inspections and service providers the time to register. Until that time, they are required to meet certain basic regulatory provisions, so they are not unregulated.

The period of grace only starts when clause 52, which imposed the general registration requirement, begins under Appointed Day Order. For childminding, care homes, child day centres and nurses' agencies, the period of grace ends six months after the registration requirement commences or longer, if prescribed by regulations.

For other care services, the period of grace does not end until the prescribed day under regulations. This is to ensure that Registration and Inspections could handle a registration process with current resources and still continue to undertake inspections.

I am informed, Madam President, that the whole new system will require one extra member of staff in the Inspections team.

I beg to move clause 164 do stand part of the Bill.

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

The President: The Hon. Member, Mr Braidwood.

Mr Braidwood: I think the hon. mover has already stated, this is a very pragmatic use of the registration grace period, considering the problems which I believe arose in the UK, when the registration was brought in.

The President: Mover to reply.

Mr Butt: I think, as often happens with Manx legislation, waiting a little while to see what happens in the UK is often quite useful. The Department, I know, have put a lot of work into making sure that this is going to function smoothly. I am quite sure that transition will be fairly smooth.

Thank you.

The President: The motion is that clause 164 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 165 to 170.

Mr Butt: Yes, these are to do with the transition provisions, Madam President.

These clauses determine the existing care services that are carried across and translated into the new Act. Converting existing registrations significantly reduces cost as a full re-registration, as was done in the UK, is not required. It allows existing providers to continue to operate as long as they meet the conditions specified in the subsequent clauses.

Madam President, I beg to move that clauses 165, 166, 167, 168, 169 and 170 do stand part of the Bill.

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

The President: The motion is, Hon. Members, that clauses 165 to 170 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 171.

Mr Butt: Yes, Madam President.

This clause sets out how the Act applies to converted registrations. The converted registered provider or registered manager registration is subject to this Bill, including the mandatory conditions.

A care service need not have a registered manager or a responsible person, if the manager was not required under the relevant repealed care law, but this is only for the registration grace period.

The conditions of the regulation under the regulated repealed care law, for which the person became a registered provider become decided conditions of the provider registration. However, if any of the conditions

conflict with a mandatory condition, the mandatory condition prevails to the extent of the inconsistency.
I beg to move that clause 171 do stand part of the Bill.

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

The President: The motion is that clause 171 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 172.

Mr Butt: This again refers to the grace period. This clause states that until the end of the registration grace period, the Department may continue to keep registers under a repealed care law to record the registration under this Bill of converted registrants.

Until the Department gives a converted registrant a registration certificate under this Bill for the provided registration, any certificate issued under a repealed care law continues in force for the registration under this Bill.

I beg to move that clause 172 do stand part of the Bill.

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

The President: The motion is that clause 172 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 173.

Mr Butt: Madam President, this clause states, in the following subdivision, it applies to a provider or a manager of a care service who is not a converted registrant of the care service. This section is for newly regulated care services who will come under the new Act and states what they must do during the registration grace period.

I beg to move that clause 173 stand part of the Bill.

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

The President: The motion is that clause 173 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 174.

Mr Butt: Madam President, this clause requires the provider and manager, after the registration grace period for the care service begins, to give the Department a care service notice as soon as practical. The care service notice provides the Department with the necessary information about what the service will provide, what registration category they wish to register for and in respect of that category, that the service meets mandatory conditions and minimum standards, as specified in clause 178. If a care service does not give a care service notice, it is an offence.

So in effect, a new provider in the grace period needs to tell the Department what sort of prior service they are going to provide.

I beg to move that clause 174 do stand part of the Bill.

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

The President: The motion is the clause 174 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 175.

Mr Butt: Madam President, this clause details that a provider or manager's registration can be deferred during the registration grace period as long as a care service notice has been given, under the previous clause. Therefore, they can operate, whilst waiting for Registration and Inspections to come and register them. However, as detailed previously, they must still meet the provider and manager requirements under the Bill. This clause ceases to apply if the person becomes registered for the care service or is refused registration for a care service.

I beg to move clause 175 do stand part of the Bill.

Mr Lowey: I beg to second.

Can I have an assurance from the mover that it is a bit like when we... This is going back! When you had a provisional licence, lots of people drove on a provisional licence for a long time, let me put it that way, just using the provisional licence. How many referrals back can there be on this? In other words, it cannot be used as a long-term option, just deferring it and deferring it.

I can see, if I was with a company and I had somebody that was not quite meeting the Act, to get rid of them after, say, six months and on the referral to say, 'Well, I've got a new person in', I just want to make sure that he is alright for another six months', and move them...

I am being the devil's advocate here. There has to be a time, and somebody has to make a decision. It cannot be an open-ended...

A Member: Six months.

Mr Butt: Thank you. The deferral is from the Department itself, rather than the provider, I think. They are the ones that do the deferring. But your knowledge about the driving lessons is quite good, because all these clauses here say that even though you are not licensed or registered, you have to behave as if you were and comply with the rules, even though you are not party to them as yet.

Mr Lowey: So it is from the Department that the deferral is being given, as opposed to the person asking for a deferral.

Mr Butt: Yes.

The President: The motion is that clause 175 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 176.

Mr Butt: Thank you, Madam President.

This clause clarifies that during the registration grace period for a care service, the provider and manager must comply with the mandatory conditions and the minimum standards as if they were a registered provider or manager. In other words, if they have a provisional licence, they drive on the right side of the road!

If they do not comply with those minimum standards and conditions, they commit an offence. This offence does not apply if they have then become registered.

I beg to move clause 176 stand part of the Bill.

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

The President: The motion is that clause 176 do stand part of the Bill those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 177.

Mr Butt: Thank you, Madam President.

This clause states that if a person wishes to make a registration application during the registration grace period before regulations have been made by the Department, then the Department can decide the information, the documents and the fee. The Department may also decide or defer considering the application until the registration grace period ends. However, it is not anticipated the Department will need to use this clause, as all the required regulations should be in place in time. However, it has been added, just in case there is any delay and they need to proceed without regulations.

I beg to move that clause 177 stand part of the Bill.

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

The President: The motion is that clause 177 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 178.

Mr Butt: It was disclosed that is for vacation states that consent was given by the Department for a disqualified person to be employed for a category of care service under the Children and Young Persons Act 2001, then it will be taken to be an exemption under this Bill for that care service category.

In other words, if they have been given exemption under the old Act, it would apply to this Act.

Subsections (2) and (3) relate only to the registration grace period under this Act as previously described.

They confirm that there is a defence available for disqualification under this Act, if it did not amount to a disqualification under the Children and Young Persons Act. This provides certainty during the transition.

I beg to move that clause 178 do stand part of the Bill.

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

The President: The motion is that clause 178 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 179.

Mr Butt: This concerns converter conditions. This clause states that an amendment of the registration conditions under a repealed care law is taken to be necessary or desirable if the Department wishes to amend them to make them compatible with this Bill or impose deciding conditions to make the carrying on of the care service compatible with this Bill.

Madam President, I beg to move that clause 179 stand part of the Bill.

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

The President: The motion is that clause 179 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 180.

Mr Butt: Madam President, this clause concerns where there are ongoing applications, decisions and appeals which are currently going through the process in between the two Bills.

This clause states how registration applications and appeals are dealt with, if they have been made but undecided before the enactment of this Bill. Also, a decision made under a repealed care law about a converted registrant continues in operation, but as the corresponding decision under this Bill.

I beg to move that clause 180 stand part of this Bill.

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

The President: The motion is that clause 180 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 181.

Mr Butt: Yes, Madam President, another transitional clause: this clause states that a previously appointed inspector for the Department becomes an inspector under this Bill, subject to the terms and conditions of the old authorisation. Their identity card will be valid until they are issued with a new card under this Bill or the card expires.

I beg to move that clause 181 do stand part of this Bill.

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

The President: The motion is that clause 181 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 182.

Mr Butt: Another transitional clause, Madam President: this clause explains a reference to a repealed care law is taken to be a reference to this Act. In addition, the revision of a repealed care law is taken to be a reference to a provision of this Act that is corresponding to it.

I beg to move that clause 182 do stand part of the Bill.

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

The President: The motion is that clause 182 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 183.

Mr Butt: Madam President, this is concerning the interim appeal rules. This clause applies if no appeal rules have been made. The version of the draft model rules electronically numbered 140508 and held by the

Department of Home Affairs will be taken to be the rules.

However, if appeal rules are made before the enactment of this Bill as defined in the clause 166. This clause will expire on the enactment of this Bill. Otherwise, the clause will expire when the appeal rules are made. There may be some changes to the interim appeal rules which are currently in draft and any final version, but these are a matter for the Chief Secretary's Office, as they are applicable to all tribunals and not just care services.

So I beg to move that clause 183 do stand part of the Bill.

Mr Lowey: I beg to second.

I do not know whether this is the case, but it is the first time that I can recall – but then, my memory is fading a bit – it is the first time I have seen 'an electronically numbered 140508' installed into primary legislation, so if it is a first, congratulations to the mover!

Count me out!

Mr Butt: It will disappear fairly soon, though!

I beg to move, Madam President.

The President: The motion is that clause 183 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 184.

Mr Butt: Thank you.

This clause states that if immediately before clause 142 comes into operation, if a person was employing or engaging a person to perform social care work, then clause 142, which has created an offence, does not apply to the person until three months after the enactment of this Bill.

Also, if within the three months the social care worker of a person applies for registration, then this clause does not apply to the person until the application is finally decided or withdrawn. This clause is to take it into consideration that the registration process can take some time, hence the clause refers to applying for registration within three months of being registered.

Madam President, I beg to move that clause 184 do stand part of the Bill.

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

The President: The motion is that clause 184 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 185.

Mr Butt: Clause 185, Madam President, states a regulation may provide for a matter relating to the transition from a repeal care law to this Bill or the coming under this Bill of a newly regulated care service, about which the Department considers this division does not make provision or sufficient provision. As the transitional provisions have been properly thought through and drafted into the Bill, the normal provision about an Appointed Day Order, providing for transitional arrangements is unnecessary. However, in case there are any consequential issues, this transitional regulation-making power has been added.

Madam President, I beg to move that clause 185 do stand part of the Bill.

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

The President: The motion is that clause 185 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 186.

Mr Butt: Madam President, this clause will remove quite a large chunk of this Bill, eventually. It states that most of this division, except for clauses 178 to 185; expires on the day on which other newly regulated care services have been prescribed under paragraph (b) of the definition of 'registration grace period' under clause 164.

As stated in my explanation of clause 164, the registration grace period is prescribed by regulations. The expiry of this part reduces the Bill by 14 pages when it comes in.

I beg to move clause 186 do stand part of the Bill.

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

The President: The motion is that clause 186 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Part 10, clauses 187 to 189.

Mr Butt: Yes, Madam President, this relates to amendments to the Adoption Act and these clauses make minor amendments to the Adoption Act.

I beg to move that clauses 187, 188 and 189 do stand part of the Bill.

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

The President: The motion is that clauses 187, 188 and 189 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 190 to 200.

Mr Butt: Thank you, Madam President.

All these clauses relate to the Children and Young Persons Act 2001 and the amendments which have been made by this Bill. It makes a number of amendments and repeals to that Act. In particular, the Department has made one new insertion of the Department to provide or secure a fostering service and specify that the Department must ensure no child is fostered under the service to someone who, under section 58 – which is a disqualifications list – of the Act is disqualified from fostering a child privately. This was required to allow fostering inspection and regulation to be covered under this Bill, which it was not before. The repeals are because the topics are now covered under this Bill.

I beg to move, Madam President, that clauses 190 to 200 do stand part of the Bill.

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

I would just like to comment again historically –

The President: That is not reserving your remarks! *(Laughter)*

Mr Lowey: I think it is, because it deals with adoption, Madam President, and I do think we should learn from factual things and experiences that we have all had.

There was a lady in Ballasalla that fostered children for many, many years. In today's circumstances, she would not qualify for any of these things – she was not registered, she was not qualified – but she did have an important ingredient, which was called home love. She fostered children from days old to teenagers, and not one of those children were the worse for having gone through her care. I often think, looking backwards, have we advanced any in the modern world. I sometimes doubt it.

Those are the only comments I am making, Madam President. I understand the world we live in now and it has got to be regulated much more, but I think the magic ingredient is loving care and that is required in fostering in my view. This is an old bachelor talking and that disqualifies me, I know, but there you are, Madam.

The President: Not at all.

Mr Butt: These amendments actually provide that they will be properly inspected in future and it actually emphasises the disqualification of people who should not be involved in fostering. It has actually put it in legislation now, so that is the –

Mr Lowey: I have no difficulty with the legislation; I just say the world we live in and inhabit now is different from the one that we had before; but yet the magic ingredient is missing from today's.

Mr Butt: There is still some out there, I am sure.

Mr Lowey: Do you want her name? I will tell you later!

Mr Braidwood: It's the old Beatles' song – 'All you need is love'!

The President: The motion is, Hon. Members, that clauses 190 to 200 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clauses 201 to 204.

Mr Butt: Thank you, Madam President.

These deal with the amendments to the Education Act. They deal with situations where a child is accommodated at a school or college. It deals with the inspector's functions in carrying out inspections of those services; the provisions for the Department of Social Care to meet minimum standards for the service; the situations where the Department can notify the Department of Education about inspections; and the power to impose a fee for inspection.

King William's College is already inspected by agreement and has been working to an agreed set of minimum standards for boarding schools. This will continue but under this regulation.

Madam President, I beg to move that clauses 201, 202, 203 and 204 do stand part of this Bill.

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

The President: Hon. Member, Mr Callister.

Mr Callister: Just a comment, Madam President.

It seems to me that we have a Department of Education and Children, which now would appear to have no responsibility towards children, because it all seems to have moved over to the social areas of life. I wonder if that title is still applicable.

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

It is a very good point raised by the Hon. Member, Mr Callister. Indeed, it is a discussion we have had – speaking as an individual, not particularly as a Member of the Department, but it was discussion we had in the Department – and maybe with progress in matters like this, they should possibly consider renaming because the core function of the Department of Education and Children is education, but not just of children; of the entire population.

So maybe something to think about when they are renaming Departments again.

The President: The mover to reply.

Mr Butt: Thank you that – interesting comments! I think in fact we have gone the opposite way and most education departments comprise now the social care as well. So in the UK, the directors of children’s services are actually the directors of education as well, because they feel it is important to combine the two areas together. This is what we felt some years ago on the Isle of Man, which is why it was named the Department of Education and Children. I think that might be a backward step – but that is a different discussion.

So I beg to move, Madam President.

The President: The motion is that clauses 201 to 204 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 205.

Mr Butt: Thank you, Madam President.

This clause states the consequential amendments and revocations. These are all minor amendments, for example, changing of any references to previous Acts in other pieces of legislation and having new definitions.

I beg to move that clause 205 do stand part of the Bill.

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

The President: Yes, Mr Downie

Mr Downie: A quick observation really: on section 39D, attendance by unqualified persons at childbirth, I take it that is an unregistered medical practitioner who assists at the birth, rather than someone who is present at the birth. My understanding is that it is not unusual for husbands or –

Mr Braidwood: Yes, it is all the time now.

Mr Downie: – partners to be present, but that could be read two ways. The way I read it is that the person attending is there attending on a professional sort of a basis and there is no inhibitor to having a person present with the mother’s consent or as part of the family.

Mr Callister: Well, if I might, Madam President, if childbirth occurs in a taxi, which it has done in previous times, and the child has to, under the circumstances, be delivered by the taxi driver, he would be liable to a fine of £5,000 for that!

Mr Lowey: He deserves a reward!

Mr Braidwood: He would probably charge for the additional passenger! *(Laughter)*

The President: The mover to reply.

Mr Butt: The Hon. Member may have a valid point, but I just point out that every prosecution under this Act more or less has to be given consent of the Attorney General. I think the Attorney General will perhaps not agree to that being a prosecution!

The President: Hon. Members, the motion is that clause 205 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Finally, clause 206.

Mr Butt: Thank you, Madam President.

This clause states that clause 163 and this part expire on the day after the promulgation of the Act. When this part expires, the Bill will reduce by another further 12 pages, reducing its size.

I beg to move that clause 206 do stand part of the Bill.

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

The President: The motion is that clause 206 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

That concludes consideration of the Second Reading and clauses. I congratulate the mover.

Members: Hear, hear.

Mr Butt: Can I, Madam President, thank for their attendance, Mrs Gordon and Ms McCauley, for their time and assistance.

The President: For their assistance, I am sure we have valued that, thank you.

The Lord Bishop: There are 207 definitions in this Act plus 13 duplicates.

The President: Is there a definition of 'attend'? It is probably in the Nurses and Midwives Bill!

The Lord Bishop: No, there isn't one! (*Interjections and laughter*)