

## **1. Public Health (Amendment) Bill 2013 – Second Reading approved**

Mr Turner to move:

*That the Public Health (Amendment) Bill 2013 be read a second time.*

**The President:** Hon. Members, we come to the Second Reading and clauses stage of the Public Health (Amendment) Bill. I call on Mr Turner.

**Mr Turner:** Thank you, Madam President.

The Public Health (Amendment) Bill makes a number of amendments to the Public Health Act 1990.

It provides new health control measures to assist in the prevention and the control of the spread of serious disease caused by infection and contamination from chemicals or radiation. It will empower the Department to give effect in the Isle of Man to new International Health Regulations adopted by the World Health Organisation in relation to the international spread of disease in ways which are commensurate with and restricted to public health risks and which are intended to avoid unnecessary interference with international trade and traffic.

The amendments in the Bill reflect modern concerns about the spread of infectious diseases and ensure that public health inspections may take place in the Isle of Man to address incidences where serious disease, infection or contamination occur. In the modern day of international travel, certainly increased international travel, we must have robust procedures in place to enable the Isle of Man to address any threats that occur in relation to this issue.

The Bill is promoted by the Department of Environment, Food and Agriculture.

Madam President, I beg to move that the Bill be read a second time.

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

**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.

## **Public Health (Amendment) Bill 2013 – Clauses considered**

**The President:** We move to clauses. Perhaps we could take the clauses 1, 2 and 3 together.

**Mr Turner:** Certainly, Madam President.

Clause 1 will give the Act resulting from the Bill its short title.

Clause 2 relates to the commencement of the Act. Sections 1 and 2 of the Bill will come into force automatically on the announcement of Royal Assent, whilst the remaining provisions will come into operation on a day or days stipulated in an Appointed Day Order. Provision is made for the Department to consult the Department of Health prior to making any Appointed Day Order and for any order to contain consequential, incidental or transitory provisions where the Department considers it appropriate.

Clause 3 provides that the resulting Act will expire either on the day following its promulgation or when the final provisions of the Bill have commenced through the Appointed Day Order.

Madam President, I beg to move that clause 1, clause 2 and clause 3 stand part of the Bill.

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

**The President:** The motion is that clauses 1, 2 and 3 do stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clauses 4 and 5.

**Mr Turner:** Clause 4 introduces the amendments to the Public Health Act 1990.

Clause 5 repeals the whole of part II and schedule 2 of the Public Health Act 1990, which concerns control of disease and is being replaced by a new part being inserted into the 1990 Act by this Bill.

I beg to move that clause 4 and clause 5 stand part of the Bill.

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

**The President:** The motion is that clauses 4 and 5 stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 6.

**Mr Turner:** Madam President, this is quite a long clause, so I will...

**The President:** Do you wish to move it in sections?

**Mr Turner:** If I may move a section of it and pause for a moment and see if we wish to carry on?

Clause 6 inserts a new part IIA into the 1990 Act, which is titled 'Public Health Protection' and contains 19 sections, numbered from 51A to 51S, providing new public health control measures to help prevent and control the spread of serious diseases caused by infection and contamination from chemicals or radiation.

The newly inserted part IIA also permits the Department to give effect in the Island to the new International Health Regulations 2005, which were adopted by the World Health Organisation in 2007.

The 2005 Regulations are the means by which the World Health Organisation aims to prevent and control the international spread of disease in ways which are commensurate with and restricted to public health risks and which avoid unnecessary interference with international traffic and trade.

Part IIA makes more flexible provision which enables a response to be made, where appropriate, to a wider range of specific problems in more proportionate ways. By way of example, currently the only action a justice of the peace may order in relation to a person suffering from a specified disease is that they be removed to and detained in hospital. However, to reduce the threat to others, these new provisions will permit a restriction to be made which would simply require the person concerned to stay in their own home, with the appropriate support from the Health Service, until the risk of infecting others has passed.

I will go through some of the sections now, and then we will take a slight pause.

Section 51A expands the scope of the current provisions which concern infectious diseases such as cholera and plague, to take into account risks that can be posed by contamination such as chemicals.

Section 51B enables the Department to make regulations to prevent danger to public health from international travel, and to detain modes of transport and carry out measures to prevent the spread of infection. It imposes duties on persons who have control of transport and points of entry.

Section 51C provides that the Department can, through regulation, control the spread of infection by placing restrictions on members of the public and imposing a duty on medical

practitioners and other persons to notify the Department of suspected cases of infection or contamination.

Section 51D places restrictions on the regulations made under section 51D so that they are proportionate to what is sought to be achieved.

Section 51E provides that regulations made under sections 51B and C may not require a person to undergo medical treatment.

Section 51F provides that health protection regulations made under section 51B or C may confer functions on local authorities and other persons, create offences, provide for the execution and enforcement of restrictions and requirements imposed, as well as provide for appeals, the levying of charges and fines.

I will take a pause at that point, I think. How do I do that?

**The President:** We have got to decide how we are going to handle this. **(Mr Turner: Yes.)** *(Laughter)*.

Perhaps you could move that those parts stand part of the clause, or the section; and then I will deal with this whole section when we have dealt with all the parts of clause 6.

**Mr Turner:** Yes, I will move then that the part of clause 6 from the start of clause 6 up to and including 51F on line... Where are we here?

**The President:** Including 51F?

**Mr Turner:** Including 51F.

**The President:** I think if you say you are including line 23, you need to go to the end of that, please.

**Mr Turner:** Yes, so it will be up to and including line 33 on page 12.

**The President:** Right, okay.

**Mr Turner:** I hope that makes sense to Members.  
I beg to move.

**Mr Butt:** I beg to second those subclauses, Madam President, and reserve my remarks.

**The President:** Right, that is the motion. Does anyone wish to speak?  
Mr Crowe.

**Mr Crowe:** Just on 51A, on radiation, has this been added to the legislation that is currently before us?

And just on 51B, the question of will this lead to more requirements on masters of vessels and pilots of planes requiring any extra duties that they have to perform, or extra form-filling of incidents that happen? Will it create extra bureaucracy, or will it be a simple process of recording infections or contaminations?

**The President:** The Hon. Mr Downie.

**Mr Downie:** I would just like to ask the mover... I can understand the requirement for public health protection. One only has to look at the number of *very* serious diseases which are coming

from places like the Middle East and West Africa. These are really dangerous. We have seen what happens when... recently, in China, there was an outbreak of bird flu – things like that.

I think it would be useful to know... I take it that this Bill now will provide powers where a person who is thought to be suffering from one of those types of diseases can be detained; but what it would be useful to know is – perhaps one of the Members involved in Health could explain – what isolation facilities exist here. When you look at some of these people who have been identified as possibly suffering from some of these diseases, they are kept in almost laboratory conditions, and the staff who are nursing them and looking after them until they actually find what is going on do not even breathe the same air that they breathe. So it would just be useful to know – or for somebody to set the scene – if somebody was identified with one of these obscure diseases, just exactly what we would be doing here.

**The President:** The Hon. Member, Mr Butt.

**Mr Butt:** Thank you, Madam President.

Following on from the last speaker, obviously this part of the legislation deals with very serious incidents where maybe there are mass outbreaks of illness or disease such as bird flu, SARS, or even radiation poisoning – I am presuming this is what it is about – and there are requirements on people not to gather in public places together, children not to attend school etc. So I suspect some of these measures – I would ask the mover – would only be used in a real emergency, where there is a really serious outbreak of some fatal disease.

In response to the previous Member's question, there is an emergency incident plan in place, I know, to deal with bird flu, SARS etc, where they have locations for mortuaries, for isolation wards, for rooms etc; but of course, if it becomes a serious threat, it is quite likely the services will be overwhelmed. This gives, I suspect, a power to the authorities to actually regulate and legislate what is going to happen in those situations. I think the mover might be able to confirm that.

**The President:** The Hon. Mr Coleman.

**Mr Coleman:** Thank you, Madam President.

I refer to 51F(2)(g), where it mentions incentive payments. I think I would appreciate some explanation of how the concept of incentive payments might be applied in this particular situation.

Thank you, Madam President.

**The President:** The mover to respond, please.

**Mr Turner:** Thank you, Madam President.

I will deal with the points raised. Regarding the incentive payments, of course that is a provision that may be required in regulations, so the detail of that would come at a later stage, as I understand; and it is permissive that the regulations may provide for those provisions.

Of course, where there have been other cases of compensation, expenses and costs... We have certainly had that in the case of animal health issues, and it may be – and this is just from my own opinion – if an incident occurred where they were to shut down a factory or a business or something, there may be funds to compensate etc; but again, this is all to be dealt with in the regulations.

The Hon. Member, Mr Butt, mentioned the emergency plan which our colleagues at the Department of Health have. Again, we are talking about serious diseases, and if we go back to what Mr Downie was saying, he is quite right that, worldwide, these diseases and infections can travel and appear anywhere through visitors who may not even know that they are carrying some of these problems until they appear at a later stage.

Mr Crowe was asking is this creating a bureaucracy for masters of vessels and pilots. Of course, we are updating our own domestic legislation here with what is already going on around us, so international shipping, depending on the country of origin, is most likely to already have had this WHO regulation in force.

As I said in the opening part in this section, the Regulations were written in 2005 and adopted in 2007 by the World Health Organisation, so what we are doing is extending those provisions here and ensuring that the Department has the relevant powers to be able to deal with instances, should they occur.

That, I hope, answers the questions on that first part of clause 6. Do we move that and then carry on?

**The President:** I will move it as a part of the clause, and then I will move the whole clause, with the Member's agreement.

**Mr Turner:** Okay, yes.

**The President:** The motion before us at the moment is that line 6 on page 8 of the Green Bill to line 33 on page 12 of the Green Bill, embracing part of clause 6, do stand part of that clause. Those in favour, please say aye; against no. The ayes have it, the ayes have it.

We continue then from the end of section 51F at line 34 on page 12.

**Mr Turner:** So we are on to section 51G now, and 51G enables the High Bailiff to make an order imposing certain restrictions or requirements on any person in order to prevent the spread of infection or contamination, provided he is satisfied that the person is so infected or contaminated.

Section 51H enables a justice of the peace to make an order imposing certain restrictions and requirements on a thing if the justice is satisfied that the thing is so infected or contaminated it could present significant harm to human health.

Section 51I permits a justice of the peace to make an order imposing certain restrictions and requirements in relation to premises if the justice is satisfied that the premises are so infected or contaminated that they could present a risk of significant harm to human health.

Section 51J explains how the powers in sections 51G, H and I apply to groups of persons, things or premises.

Section 51K makes further provisions about the orders under the previous three sections which are referred to as 'health measures orders', including, in addition to the restrictions or requirements, such other measures as the person making the order deems necessary, such as the entry of an authorised officer onto any lands to carry out specific actions.

Section 51L provides that a health measures order must specify the period for which the restriction or requirement set down in it remains in force. In the case of a person detained in hospital or other suitable establishment or kept isolated or quarantined, however, that period must not exceed 28 days.

Section 51M provides that, on the application of an authorised officer, a justice has the power to make a health measures order. The justice also has the powers to vary or revoke an order following an application to do so by the affected person, the authorised officer, or any other person who has a function in executing or enforcing the order.

Section 51N permits the Department to make further provisions by way of regulations relating to the discharge of the health measures order, including the type and manner of investigation and liability for costs and compensation.

Section 51O extends powers to authorised officers to enter premises, provided 24 hours' notice has been given. It also provides that such entry can be authorised by a warrant issued by a

justice of the peace if they are satisfied, on sworn application from the authorised officer, of the need to gain such entry.

Section 51P provides that if a person failed, without reasonable excuse, to comply with any restriction or requirement imposed by an order, or obstructed anyone in the execution of an order, they would be guilty of an offence and might be liable to take remedial action or meet any expenses incurred.

Section 51Q provides that public documents must be either approved by Tynwald, if declared by reason of urgency that they are necessary to come into operation before Tynwald approval, or laid before Tynwald at its next sitting, and unless approved will cease to have effect.

Section 51R makes provision for part IIA to apply to the territorial sea adjacent to the Island.

Section 51S provides for further definitions specific to this part of the Bill.

That is the remaining parts of clause 6. I beg to move that those parts... I will, just for clarity, give you the line numbers and page numbers...

**The President:** Line 34, page 12.

**Mr Turner:** Line 34, page 12 through to line 20 on page 24.

**Mr Butt:** I beg to second that, Madam President, and reserve my remarks.

**The President:** Hon. Member, Mr Wild.

**Mr Wild:** Thank you, Madam President.

Just one point of clarification and one question, if I may, please. Maybe I missed it in the detail, but if we take 51G and the High Bailiff makes an order, presumably the High Bailiff is working – or any of our legal people are working – with the Department of Health in terms of coming to that conclusion, because presumably the High Bailiff would not have the necessary knowledge to perhaps make that decision.

The only other question I had was, under 51O(2), is 24 hours' notice too long? If there was a real, genuine problem in a building – taking the definition of a thing which could be dangerous to people – shouldn't there be immediate access to remedy the problem?

Thank you.

**The President:** The Hon. Member, Mr Crowe.

**Mr Crowe:** It is interesting that the Public Health department, which is under the Department of Health, is... that the Bill is being promoted by the Department of Environment. Has the Public Health department been involved? Mr Butt may be able to answer this. Are they fully engaged with all of this? A lot of the administration will fall on the Public Health department for, shall we say, human illnesses, whereas animal illnesses and diseases brought in through pets or livestock would fall under the Department of Environment, Food and Agriculture.

So it is just a general question as to how this would work in practice, how the Departments would work together or who would have responsibility for various things. Perhaps the hon. mover could just outline the working procedures on this, please.

**The President:** The Hon. Mr Butt.

**Mr Butt:** Thank you, Madam President.

These are very wide-ranging and strong powers and obviously will be necessary should there be a real emergency on the Island, and I suspect – hopefully – this will never be used. Normally,

you would have quite a lot of concerns about powers of this nature, but they are obviously for a real emergency.

From my knowledge, Public Health have been involved with this, along with Environmental Health, who work at DEFA. I think some of the genesis of this came from the bird flu scare about three or four years ago, when it was realised that there were not enough powers to actually make people behave in the way that was necessary should there be a real contamination or infection emergency.

I believe that Public Health have been very much involved in the make-up of this Bill, along with Environmental Health officers. I am sure the mover can confirm that, perhaps.

**The President:** The mover to reply.

**Mr Turner:** Thank you, Madam President.

I think the Hon. Member, Mr Butt, is right: some of the powers in here – which virtually give the Department powers to shut the town down after seven o'clock at night, if there was an outbreak, to prevent people congregating and all these things, (**Mr Butt:** Stop the boats.) stop the boats, flights – do sound quite extreme powers; but of course they are sensible provisions if you get an outbreak of something.

We remember, and I think this was during Mr Downie's day at DAFF, we had the spread of foot-and-mouth disease and there were measures put in place there to help prevent the spread to the Isle of Man. There were obviously powers under various animal health Acts to enable things to happen. Whether we look back and say they had sufficient powers had it been a lot worse is for a different debate, but of course what we are talking about here is... it is the same principle, but health dangers to humans, so it is quite important they have these powers for that potential problem that may occur.

There are other issues in here, as we mentioned. For example, there could be radiation issues. There are lots of devices that contain radioactive substances at low levels. (**A Member:** In schools.) There are issues... I think fire sensors and all sorts of things that are a part of our everyday lives. I think people do take fright when they hear the word 'radioactive', but this is to deal with instances where there could be a danger – something could be identified and the inspectorate needs to go in.

A bit of background for Mr Crowe, who questioned about DEFA, the Department of Health and where this all sits. The environmental health and safety directorate used to sit in the Local Government and the Environment Department. When the structure of Government was redefined, the Environmental Health people and the Health and Safety Inspectorate split. The Health and Safety Inspectorate went to Infrastructure and Environmental Health – food hygiene, the vermin control – all sat under Environmental Health. That particular part went to DEFA.

There is a view that some of their functions overlap. There is still a view that maybe splitting the Health and Safety Inspectorate from the Environmental Health people was a bad move, because you have got officers who were able to do dual roles who now cannot – they have got to phone up a colleague – but like any of these situations where we have a crisis or emergency, there is always working with the other agencies.

I actually have responsibility for the Environmental Health Directorate at DEFA and I know there is close working with the Government Laboratory, which is also in DEFA, which will do a lot of tests on various things, and there is a lot of communication with the Public Health Division of the Department of Health.

So this Bill has certainly been worked up in full consultation with them, because as Hon. Members can see, there is a huge part to play from the Department of Health in the operation of this Bill, should it be required.

The High Bailiff was mentioned and Mr Wild mentioned about would the High Bailiff have the necessary knowledge. It is the checks and balances, really. The High Bailiff and all High Court

judges will not have the expertise in every particular subject, but they are presented with the case and have to make a sound judgment based on the information they are presented with. It is an important check, I think, for the confidence of the public that a Department cannot just go off on its own whim and start incarcerating people into – *(Interjection by Mr Corkish)* Exactly.

So I think it is important for public confidence. I think it is also important for the officers operating these functions that they have the necessary backup of that system as well, because they are the people on the front line who are going to have to go and present the case.

Is 24 hours too long? Again, I would imagine it depends on the urgency of the situation. If they were going to enter property and it was more urgent, you would hope there would be the full co-operation of everybody concerned in order to deal with the incident, but that is the provision that they have put into this Bill. I hope we have answered all the questions on that section.

I beg to move the remaining sections – and the entire clause?

**The President:** I will just deal with this section first.

**Mr Turner:** We will do this first, right okay. I am cross-referencing two pieces.

**The President:** Hon. Members, what is before you is those elements of this clause which lie between line 34 on page 12 and line 20 on page 24. Oh, I am sorry –

**Mr Corkish:** Sorry, can I just seek clarification, just on the bottom of that page, about the 24 hours' notice – would that preclude action being taken before 24 hours, because it is...? *[Inaudible]*

**The President:** It is unusual to come back after he has wound up, but just for clarification, could you take us to the section you are talking about, please.

**Mr Corkish:** I am sorry to be late there. That is at the bottom of page 21:

'Admission to any premises must not be demanded as of right unless 24 hours'...'

**Mr Turner:** Yes, Madam President, happy to answer that.

That is the provision that is in there under this, if it becomes law. However, of course, entering by consent could be at any time, if consent is given; but the Bill, as it stands, does say that entry must not be demanded unless 24 hours' notice has been given to the occupier.

**The President:** This is very unusual, Mr Corkish, but carry on.

**Mr Corkish:** It begs the question should that be amended before we go too far **(Mr Wild:** Hear, hear.) down this road.

**The President:** You can move an amendment at Third Reading stage, sir, if you wish, if you are not prepared with an amendment now.

**Mr Butt:** Madam President, can I just comment on this? These are quite usual words and maybe the Attorney General might be able to help, but 'must not be demanded as of right' – I have never seen that before. It usually says entry shall not be permitted unless there is a warrant. There is a thing about demanding as of right. It is different to the normal wording that you find in powers to use a warrant, so there must be some sort of get-out there, I suspect.

**The President:** Would you care to comment?

**The Acting Attorney General:** Yes, Madam President.

If I could possibly help Members, my reading of this was that this creates, as it says, the right to gain access on giving the notice. So you have got to give at least 24 hours' notice and then be able, as of right, to gain access. But when you look at the whole Bill, we will later be coming on to consider the investigative powers which enable, on cause being shown, the investigators to actually gain access on warrant, and that of course would be immediate.

So you are balancing here two things: firstly, as my understanding, the right of access on giving notice, which we might say is the friendly approach; or alternatively, where there are reasons where more immediate steps need to be taken, then there is the warrant route which can be taken to gain access quicker. That will come later on. That is under the Police Powers and Procedures Act where these new provisions are going to be introduced. I think that is the balancing act, but I will certainly clarify that in advance of the Third Reading.

**Mr Butt:** So there is no need for the Member to.

**The President:** Hon. Members, I think we have set a hare running here, but just to make sure that Members understand it, Lord Bishop.

**The Lord Bishop:** I can see that point, and I understand that if that is the case, is the word 'must' or 'may' here... because this implies that the gentle rule must not be used, whereas 'may' would suggest that, if the person played up difficult, then okay, that person would have the right to say no. In other words, it actually probably hangs on that word 'must'.

**Mr Butt:** I think, Madam President, if there is a clause about having a warrant later on, this does not need to be changed particularly because it becomes irrelevant. In an emergency, this becomes irrelevant.

**The President:** Are Members clear enough to decide whether they want to move an amendment at Third Reading? *(Laughter)*

**The Acting Attorney General:** Again, Madam President, if I may – I will certainly look at that, Lord Bishop, because I take the point. It often happens where you have legislation where effectively you have civil remedies and criminal remedies – and I am not using that in the context of what you are looking at here – where there is this clash of when does an investigation become a criminal matter where you have got to use more extreme powers, or alternatively just simply go through the process, as what you are considering at the moment. But I will certainly look at 'may' or 'should' and address that at the Third Reading, if I may.

**The President:** Hon. Members, what I am asking you to consider now is whether or not you approve line 34, page 12, to line 20 on page 24 standing part of this clause. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

In order to give us certainty and surety, I would like Mr Turner to move clause 6 in its entirety in the ordinary way, partly because in approving it line by line it gave you the opportunity to discuss it, but it is not the normal way to note what we are approving, and indeed there are some lines in there, next to words in italics, which will not appear as part of the clause, such as line 23 on page 8 at the beginning and so on.

So, Mr Turner, would you just formally care to move clause 6, please.

**Mr Turner:** Yes, thank you, Madam President.

I thank Members for their patience in this. There was a lot of content in that clause, so for clarity I formally now move clause 6 in its entirety.

**Mr Butt:** I beg to second, Madam President.

**The President:** Does anyone want to discuss any part of it further?

**A Member:** No. *(Laughter)*

**Mr Downie:** I will wait for the Attorney to come back.

**The President:** The motion before Council is that clause 6 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
We turn now to clause 7.

**Mr Turner:** Clause 7 replaces section 92, which applies to parts I, IIA, VI and VII in relation to aircraft and vessels. This includes vessels in the Island's ports or lying in territorial waters adjacent to the Island or aircraft in the Island or in those waters.

I move that clause 7 stand part of the Bill.

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

**The President:** The motion before Council is that clause 7 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
Section 8, which introduces part VI.

**Mr Turner:** Clause 8 inserts a new part VI into the 1990 Act, containing sections 92A through to 92H, and which concerns investigative powers when undertaking a public health inspection.

Section 92A provides that a public health inspection means an inspection to determine whether there has been any contravention of the Act. It provides that any inspection may be carried out by an authorised officer and what an authorised officer may do in relation to an investigation under the Act.

Section 92B concerns powers in relation to the entry to premises and empowers an authorised officer to enter premises. An authorised officer may take a constable with them if they suspect that access to premises will be obstructed and to take any necessary equipment or materials to assist entry. An authorised officer is expected to leave any premises they have entered effectively secured.

Section 92C enables an authorised officer to take measurements, photographs and recordings considered necessary for the purpose of a public health inspection. It also makes provision for taking samples from the premises, in addition to samples of air, water or land in the vicinity of premises. Any sample taken from premises can be detained for as long as necessary in relation to examination and for use as evidence. Powers are extended to an authorised officer to require the production of records and the taking of copies of those records. Provision is made for any document that is privileged to be withheld by any person.

Section 92D enables an authorised officer to ask questions of any person whom that authorised officer has reason to believe has information relevant to a public health inspection. A person to whom questions are levelled may nominate another person to be present when those questions are asked. Any answer given by a person in these circumstances is not admissible in evidence against that person in any criminal proceedings.

Section 92E contains supplementary provisions in relation to a public health inspection. It requires an authorised officer to produce a document showing their authority. The Department may make regulations conferring such powers on authorised officers for the purposes of a public health inspection with such regulations able to modify any enactment, including the 1990 Act.

Section 92F sets down the two conditions for entry into properties that are occupied dwellings. The first condition requires 24 hours' notice to be given in respect of any entry, with the second condition being that consent has been given by the occupier or entry is effected under authority of a warrant.

Section 92G concerns inspection warrants and provides for the issue of a warrant where an authorised officer has been refused entry or anticipates that refusal. This section also makes provision where the premises are unoccupied or the 24 hours' notice would defeat the object of the public health inspection. The section sets down the criteria to be met for a warrant to be issued by a justice on the application of an authorised officer.

Section 92H provides for offences where failure to comply with requirements, intentional obstruction, or failure to provide facilities or information takes place, amongst other things. A defence is also provided in respect of this particular section.

I beg to move that clause 8 stand part of the Bill.

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

**The President:** If there are no questions, the motion is that clause 8 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
Clause 9.

**Mr Turner:** Clause 9 inserts a new cross-heading constituting a new part VII, which will contain sections 93 to 98 of the 1990 Act.

I beg to move that clause 9 stand part of the Bill.

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

**The President:** The motion is that clause 9 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
Clause 10.

**Mr Turner:** Clause 10 amends section 97 of the 1990 Act, which deals with the application of provisions of the Local Government Act 1985 for the purposes of the 1990 Act. Some of the provisions of the 1985 Act no longer need to apply to the 1990 Act as a consequence of other amendments made to this Bill.

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

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

**The President:** The motion is that clause 10 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
Clauses 11 and 12.

**Mr Turner:** Clause 11 amends schedule 4, which specifies penalties for offences under the 1990 Act. Reference to those penalties relating to the repealed part II of the Act are removed and new provisions made in respect of the newly inserted parts IIA and VI are made.

Clause 12 repeals section 4 of the Local Government (Miscellaneous Provisions) Act 2001, which is now spent as the amendments it made to the 1990 Act are repealed in this Bill.

I beg to move that clause 11 and clause 12 stand part of the Bill.

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

**The President:** The Hon. Member, Mr Crowe.

**Mr Crowe:** Thank you, Madam President.

Can I just ask if the fees shown in clause 11 are an increase on the previous fees, or are they new?

**Mr Braidwood:** Fines.

**Mr Downie:** Fines, they are.

**Mr Crowe:** Sorry, the fines. Are they greater than what there was previously, or are these for new offences?

**Mr Braidwood:** Just one small point as well, Madam President.

Normally, on summary conviction it can be a fine or a prison sentence or both, and I am just wondering – this normally is up to six months' imprisonment – why that has been removed?

**Mr Corkish:** A good point.

**A Member:** He cannot answer that.

**The President:** The mover to reply.

**Mr Turner:** Yes, the level of fines is something... I am not quite sure whether... I do not think they have been increased, but I will have to have to check on that.

**Mr Crowe:** The Third Reading will be time enough to tell us.

**Mr Turner:** Yes. I am sorry, I was discussing with the Clerk then – I did not hear what Mr Braidwood said. I do apologise. *(Laughter)*

**Mr Braidwood:** In other fines, in other Acts, on summary conviction, normally you can have a six-months', say, prison sentence, a fine, or both; and I am just wondering why it is just a fine.

**The President:** Does the mover know, or would you like to...?

**Mr Turner:** No. The Department has deemed that this is the provision they wish to put in.

**Mr Braidwood:** I think, Madam President, it would be better if the mover comes back at the Third Reading.

**Mr Turner:** I will find out, Madam President, why the –

**The President:** Perhaps the Clerk has some information from the original Act.

**Mr Turner:** Yes, as I suspected, in the Public Health Act 1990 there is a whole array of offences and fines, ranging from £1,000 upwards, so I think it would be more beneficial if I maybe circulate a copy of that to Hon. Members and get them a more definitive answer on why the Department did not deem it necessary to include a custodial sentence at the next reading.

**The President:** Hon. Members, the motion before you is that clauses 11 and 12 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
That concludes Item 1 on our Order Paper.