



# LEGISLATIVE COUNCIL OFFICIAL REPORT

RECORTYS OIKOIL  
Y CHOONCEIL SLATTYSSAGH

# PROCEEDINGS

DAALTYN

HANSARD

**Douglas, Tuesday, 1st April 2014**

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**The President of Tynwald (Hon. C M Christian)**

Mr R P Braidwood, Mr D M W Butt, Mr M R Coleman, Mr C G Corkish MBE,  
Mr E A Crowe, Mr A F Downie, Mr J R Turner and Mr Wild  
with Mr J D C King, Clerk of the Council.

**Business transacted**

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## Legislative Council

*The Council met at 10.30 a.m.*

[MADAM PRESIDENT *in the Chair*]

**The President:** Moghrey mie, Hon. Members.

**Members:** Moghrey mie, Madam President.

5 **The President:** The Chaplain will lead us in prayer.

### PRAYERS

*The Chaplain*

### Leave of absence granted

**The President:** Hon. Members, the learned Attorney General is still unable to take his seat, and the Lord Bishop has leave of absence.

## Order of the Day

### 1. Control of Employment Bill 2013 – Third Reading approved

Mr Wild to move:

*That the Control of Employment Bill 2013 be read a third time and do pass.*

**The President:** We move to Item 1, which is the Control of Employment Bill 2013 for Third Reading.

10 I call on the Hon. Member, Mr Wild.

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

Hon. colleagues will be pleased to see I have got my spectacles this week!

15 I am pleased with the progress of the Control of Employment Bill so far, and I would thank Hon. Members for conferring their support on this important piece of legislation.

I am particularly pleased that, in addition to the amendments tabled by the Department, some Members were able to suggest improvements to schedule 1 of the Bill and that all of these were accepted. In my view, the Bill which will go back to another place will be all the better for those

20 amendments, and in particular the exemption of chief officers of Departments and Statutory Boards will be in the Island's best interests.

I am also grateful to Mr Turner for giving this Hon. Chamber the opportunity to debate the very first principles of this legislation and to ask the question as to whether or not it is still desirable to maintain a work permit system. While I am confident that there is a majority support for retention of work permits both here and in another place, as well as with the general public at large, it is clear from the consultation process that many employers would go along with some or all of Mr Turner's views. It is therefore important that the Department continues to listen to what employers have to say and to take steps to deal with any shortcomings and consequently improve the whole system.

25 While all of the clauses now stand part of the Bill, it would probably be fair to say that some Members had reservations about some of the provisions, and of course Mr Turner is of the view that the whole work permit system should be scrapped altogether.

30 There are two factors why particular clauses may not be to everybody's liking. Firstly, the Bill is the product of many different points of view, some of which are difficult to reconcile. Secondly, the Department has attempted to future-proof the Bill to some extent through the provision of some general enabling powers, which may raise some suspicions in some quarters as to the Department's intentions. I will say a little bit more about each of these factors in turn.

35 If we turn to the first factor – that the Bill is a product of many different points of view, some of which are very difficult to reconcile – I would urge Members to reflect on the difficulty facing the Department in bringing forward the legislation. Work permits is one of the most divisive issues and a subject on which many people have a very strong and vastly different opinion. If I were to come up with a wish list of what people want out of the system, it might be a Bill which (1) protects Isle of Man workers, but does not harm the economy; (2) is not bureaucratic, but requires rigorous checks on people who want to work and live here; (3) keeps local jobs for local workers, but allows employers to appoint the best person for the job; (4) gives priority to our unemployed over people who are not Isle of Man workers, but does not prevent employers from being able to recruit the workers they need; and (5) keeps out some of the people with criminal backgrounds or who would be a drain on Government finances, but is not intrusive.

40 The problem with this list of wishes is that it is, of course, exceedingly difficult to reconcile all of the wishes, and a number of them are almost certainly incompatible. So hard choices need to be made, and yet there is very little consensus as to which are the most important wishes to take into consideration. Neither Department Members nor Ministers will be likely to completely agree on any particular measure. Some will see any measures taken to liberalise the system as opening up the floodgates and harming the interests of Isle of Man workers; while equally, any measures proposed to tighten up the system will be rejected by those who see work permits as damaging to the economy and consider that it should be no business of Government who employers choose to employ. Further incompatible views may even come from the same person.

55 Let me illustrate by giving some examples of the difficulties in obtaining any consensus.

One, the Department proposed to grant itself powers to make an exemption in the national interest using Ministers' powers so it could deal with any special cases speedily and efficiently. However, this immediately raised suspicions that the power would be abused, which led to the Bill being amended in another place so that the Department must now report any exemptions in the national interest to Tynwald.

60 Two, more recently an amendment was moved in another place which would have required the Department to maintain a public register of work permits. The Department was unhappy with certain aspects of the amendment, yet wishing to meet the Member halfway put forward its own provision in this Hon. Chamber which would meet the concerns. Again, the revised amendment, which was intended to provide flexible enabling powers, was met with extreme suspicion by some Members in this Chamber.

65 Three, another example is the inclusion of fixed penalties in the Bill, which the Department considered would allow a more flexible range of enforcement possibilities, particularly as the Attorney General's Chambers may not always support a prosecution. The amendment was opposed

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by one Member in another place on the grounds that a breach of the legislation was too serious a matter to be dealt with by way of a fixed penalty, but also by a Member in this Chamber on the opposite ground that any new enforcement powers were unwarranted and should be resisted.

75 In the end, the Bill has been a compromise. There will be no political consensus to abolish work permits, as Mr Turner would have liked; but equally there would have been no consensus to turn the Isle of Man into a fortress manned by Isle of Man workers, and it would have been economic suicide to have done so.

80 At the same time, the Department had to take steps to modernise an Act passed in 1975 which was in urgent need of overhaul and which had last been amended by way of a specific amendment Bill in 1990.

Ultimately, the Bill is evolutionary in approach and attempts to balance the interests of all stakeholders – namely Isle of Man workers, employers, prospective workers and their families, and the Government itself. Its main achievements are as follows.

85 It continues to require that Isle of Man workers who have the right skills be *considered* for most employments.

The criteria on which the Department bases its decision on whether or not to grant a permit will better balance availability and suitability of Isle of Man workers with employers' needs and the needs of the economy.

90 The simple five-year qualifying period and the changes regarding spouse permits will make it more attractive for the workers the Island needs to come here, and make it easier for the employers to recruit.

The Department's powers to exempt particular employments are wider and more flexible, and it will be easier to remove any exemptions that are no longer necessary.

95 A number of loopholes in the existing Act will be removed, which will prevent criminals with unspent convictions from working on the Island without scrutiny.

The enforcement provisions have been strengthened and also made more flexible through the provision of fixed penalties.

100 In line with the decision by the Council of Ministers, the legislation has retained a layer of quasi-residential controls which will continue to allow the Department to continue to take into account the costs of prospective workers and those who would accompany them, and refuse a permit in certain cases of criminality etc.

Madam President, the second factor that Members may have had some reservations about is some of the general enabling powers which are intended to future-proof the Bill and, to some extent, which may raise suspicions in some quarters as to the Department's intentions.

105 An example might be clause 12(3), which deals with criteria the Department may take into consideration when deciding whether or not to grant permits. Paragraph (q) allows the Department to take into consideration any other circumstance which, in the Department's opinion, ought in the public interest to be taken into account. Another example may be the powers in clause 9(5) to extend the right of spouses and civil partners to other persons – perhaps long-term partners who  
110 are neither married nor civil partners. In both circumstances, the intention is to build a degree of flexibility into a piece of legislation which, if the past is to be any guide, may not be amended for another 20 years or more. Any regulations which the Department will bring forward after 2014 may well be subject to the consultation and will be subject to the annulment procedure, so that if Tynwald does not like them the Court can throw them out.

115 Madam President, while some Members may continue to have some reservations about aspects of the Bill, I would in the final analysis say that it will serve the Island a great deal better than the 1975 Act which it will replace. It is intended to be a pragmatic piece of legislation which balances the interests of many parties who, in the end, are unlikely to ever agree on all the contents.

120 I have nothing further to add at this stage, but now beg to move that the Control of Employment Bill 2013 be read for a third time.

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

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

125 **The President:** The Hon. Member, Mr Turner.

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

I will be supporting the Third Reading. As I have said at previous readings, this is a vast improvement on the archaic legislation that is in place.

130 I would like to thank Hon. Members for the debate we had last week. I think it was a worthy debate. I think the legislation is better for it because at least we have had that discussion, which is one that I think had almost been shied away from as it was deemed a bit too politically sensitive to maybe suggest that we should be scrapping work permits. But I think the fact that we have looked at it and had such a lengthy debate on it means that this can at least go back to the other place having had the full scrutiny that it deserves and that point of view put across and debated. Albeit it was not successful in going through, nevertheless it was important we had it.

135 I still do not believe that this is the correct instrument for looking after other areas of the services, such as controlling education, health, criminals, immigration and the numerous other things which the Department says that it will assist with. I do not think work permit legislation is the place to deal with that. It has been no secret over the years that the Control of Employment Act has been a *form* of immigration control. I do not think anybody hides away from that and I am sure it has served its purposes.

140 I am certainly not happy with the provision in there for the Department to maintain a register of Isle of Man workers. I am content that the provisions in there to maintain a register of work permit holders may be more appropriate; but as we discussed at the previous reading, 'Isle of Man workers' actually encompasses people who have no connection and are completely exempt from these provisions – people who are born on the Island, have lived on the Island, been schooled and who then go into work – so why they should be on a register... and I know it is only enabling, but nevertheless, there is a provision there. A register that is open for viewing by the public I think is a step too far and I do intend to refer this matter to one of the Policy Review Committees to see if they would be willing to look at that and investigate it and report accordingly. Again, it will be in that Committee's gift as to whether they wish to investigate, but nevertheless I will be referring it to them.

145 It is interesting that last week on LBC Radio there was the Farage-Clegg debate, and the discussion came up about work permits in the United Kingdom. So again it is, as you said, something that has cropped up in other jurisdictions. They of course, as part of their European Union membership, are bound by certain rules; but nevertheless it is a debate that is being had across the water.

160 One further point I would like to make about this is that the annulment process for the regulations I do not think is as robust as the positive resolution, so it is disappointing that these regulations... or some of them are not going to be actually placed on the Tynwald Order Paper for approval, because as we know, the annulment will rely on them being presumably picked up and a Member actually placing them at the next sitting of the Court and saying, 'We should abolish these'; rather than the other way round, which I think... I know it should not do, but I think it gets more scrutiny when it is actually focused on the Order Paper that Members have to positively vote, or indeed they may wish to vote against a regulation. I think that is the best method for something so important.

165 But as I said, I will be supporting this Bill because it is a vast improvement on what has gone before.

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

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

I will be supporting the Third Reading because I think this is a Bill which has become much more flexible and has modernised the current legislation.

I think one of the main original intents of the legislation was to protect manual workers in the days when we had a large influx of workers from off Island at a time when there was a bit of a building boom, and that was the main intent. Of course, things have moved on since those days.

I can remember, in those days when this legislation first came in, that it was not always adhered to by employers as well as it should have been. I can remember a couple of times going to large building sites in pursuit of criminals in criminal inquiries, and as we walked on the site the workers mistook us for DHSS work permit inspectors and they ran to all corners of the building site and over surrounding hedges into the fields and away, and we encountered empty building sites. I think the DHSS inspectors had the same problem as well. But that was 40 years ago and things have changed considerably in terms of our methods of employment.

This Bill has become flexible, it is modernised, and it still protects the manual workers – I think that is still in place – but we now have a Bill which is fit for the future and can be, as we can see from the amendments, modernised to actually cope with changing employment requirements.

I think the most telling part of this debate I noticed was when Mr Coleman talked of his experience of coming over here to try to set up a company and he found the work permit system worked well. So the debate about should we abolish it altogether... I think perhaps his contribution has helped to convince me that we still need, or we can still use, a work permit system for the betterment of the Isle of Man and its workers.

Thank you, Madam President.

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

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

I too will be supporting the Third Reading of the Bill and I concur with the comments made by previous speakers on this.

The top and bottom of it is we cannot afford to let go of the reins and we need to have some control on who comes in and takes a position in the workplace. Alright, the legislation might be a bit of a blunt instrument, but the right of abode is different from the right to work, and if we can strike a balance here we can protect our own jobs market and make sure that local people have a fair crack of the whip at the jobs market.

At the same time, I think we have eased up on the reins in another area to allow more flexibility at the top end, where the Department now has discretions for people who are creative, people who are coming in and making a major contribution to the economy, and we have applied that now to senior civil servants, chief officers, people involved in major positions on Statutory Boards, and of course the Chief Fire Officer.

So I think we have amended the Bill considerably and I just hope that the work that we have gone to and the discussions we have had will stand the Bill in good stead when it goes back to the other place, and that they support the time and effort that has been put in both by the mover and the seconder of the Bill – and the Department; they have been back and revisited this during its passage through here. I think we have finished up with a Bill that is workable and will hopefully stand us in good stead for another 15 or 20 years.

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

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

I too will be supporting the Third Reading, but I would just like to respond to Mr Turner's query on the amendment I moved last week.

It seems perfectly logical to keep some information as to some Isle of Man workers. In order to administer work permits, the Department must keep information as to people who are working on

225 the Island and work permits. What then should the Department do at the end of a five-year period  
when a permit holder becomes an Isle of Man worker? One option would be to shred the record  
completely. However, were the worker to go away and then return to the Island it would mean that  
he or she might have to gather information to prove that he or she was an Isle of Man worker,  
230 whereas if the work permit office had maintained a record of his or her being an Isle of Man worker  
on some kind of register, then proving he or she was indeed an Isle of Man worker would be much  
more straightforward.

I would also add – and I would emphasise this point – that there is no intention to keep a register  
of all Isle of Man workers, but I really think it would be useful, for example, to keep a record of those  
workers who have been subject to a permit in the past. I would remind Members that information to  
235 be kept about persons on a register would be prescribed in regulations. I hope this will reassure Hon.  
Members as regards the Department's intention.

Thank you, Madam President.

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

240

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

I think this has been a very useful debate and process over the last three weeks. I thank all my  
hon. colleagues for their contributions and for all the comments of support.

I think, in fairness to my hon. colleague, Mr Turner, it is right to challenge. It is easy enough just  
245 to keep legislation in place and tweak it and adapt it and evolve it. I think when you look at strategy  
you start from the extreme position, and the extreme position is to abolish something altogether. So  
I and the Department thank him for initiating such a debate, which I think was worthwhile and very  
useful.

In my own view, if we did not have this legislation it would lead to further unemployment on the  
250 Isle of Man. I think it provides a very practical balance, as Mr Downie pointed out, in terms of  
protecting perhaps Manx workers at the lower end of the job marketplace while giving the flexibility  
to bring in expertise – particularly in emerging sectors, where sometimes we do need to bring in off-  
Island skills which are not here at the moment until we can develop the education system further to  
produce more local engineers or ICT specialists, for example.

255 Thank you to my hon. colleague, Mr Crowe, for his support and for seconding the motion, and for  
clarifying the position with the record of work permits. I think, at this stage, there is no intention to  
keep a record of local workers; but actually, if we were being practical, sometimes that type of  
information can be very useful in terms of ongoing economic strategic planning. But there is no  
intention at this stage; it is to do with work permit holders only.

260 Those are my comments and I beg to move.

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

## 2. Representation of the People (Amendment) Bill 2013 – Third Reading approved

Mr Corkish to move:

*That the Representation of the People (Amendment) Bill 2013 be read a third time and do pass.*

265 **The President:** We turn to Item 2 on our Order Paper, Representation of the People  
(Amendment) Bill 2013.

I call on Mr Corkish to take the Third Reading.



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

270 The Representation of the People (Amendment) Bill has two main purposes. Firstly, it puts into legislative form resolutions made by Tynwald for the 24 seats in the House of Keys to be divided into 12 constituencies of two Members each. This provides equality of voting for and representation in the House of Keys. The Third Report of the Boundary Review Committee includes maps which set out the new boundaries of the constituencies, and this report was approved by Tynwald on 18th June 2013. Secondly, the Bill also ensures that there will be a regular review of the number and boundaries of constituencies in the future, through the appointment from 2021 and every second election thereafter of an electoral commission. The electoral commission will also be able to consider such other matters relating to elections as Tynwald may by resolution direct.

275 This Bill will come into effect in time for the General Election of 2016 and not before.

A lot of time and thought have been invested over the past three years in a sincere attempt to end inequalities in elections to the House of Keys and in the levels of representation of the House. Madam President, this Bill, if enacted, will result in the most far-reaching constitutional change our parliamentary system has achieved in decades.

280 Madam President, I thank Hon. Members for their support given so far and beg to move that the Representation of the People (Amendment) Bill 2013 be read a third time.

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

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

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**3. Law Officers Bill 2014 –  
Second and clauses stage –  
Motion not made**

**The President:** Item 3 will not be moved today, Hon. Members.

**4. Terrorism and Other Crime (Financial Restrictions) Bill 2014 –  
Second Reading approved**

Mr Coleman to move:

*That the Terrorism and Other Crime (Financial Restrictions) Bill 2014 be read a second time.*

295 **The President:** We turn to Item 4 on the Order Paper, the Terrorism and Other Crime (Financial Restrictions) Bill 2014.

I call on Mr Coleman for the Second Reading and clauses stage.

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

300 I outlined in my First Reading speech last week the three main reasons why this Bill was being moved.

In terms of the wider picture, the international community expects every responsible jurisdiction to play its part in countering the threat to both global and personal security posed by terrorists and terrorism in general. Even terrorists need money to further their aims by means of propaganda, threats, weaponry and logistics required for the propagation and execution of violence. This is why

305 legislation to counter the financing of terrorists and terrorism is necessary; and the legislation the  
Island has, which is re-enacted through this Bill, is important.

The Bill makes certain changes to the Anti-Terrorism and Crime Act 2003, which we will come to  
in clause 71 and schedule 3; and to the Proceeds of Crime Act 2008, which is how the Bill got the  
310 words 'and other crime' in its title and will be encountered in clause 72. All these changes are  
designed to ensure the Island's legislation combating terrorism and other crime is kept in step with  
developments.

Madam President, I beg to move the Second Reading of the Terrorism and Other Crime (Financial  
Restrictions) Bill. 2014.

315 **Mr Downie:** 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.

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**Terrorism and Other Crime (Financial Restrictions) Bill 2014 –  
Clauses considered**

**The President:** We turn now to the clauses, but before we come to clauses we have an  
amendment tabled in the name of Mr Downie to change the long title of the Bill.

325 **Mr Downie:** Yes, Madam President. In respect of the tabled amendment in my name, numbered  
1, I move:

*Amendment to long title*

*Page 11, line 4 after 'bail' (which was inserted by the Keys at Clauses stage in that Branch) insert  
' , sexual offences and the enforcement of fines and other financial penalties; '.*

330 The purpose of this amendment is to permit two new clauses, 70AA and 70AB, to be inserted into  
the Bill, which addresses a minor issue to do with ensuring the enforcement of the collection of  
existing fines can use new procedures as well as fines imposed on or after today, and repeal the last  
elements of the old sexual offences legislation which prohibited homosexual activity that had been  
omitted when the main provision had been repealed many years ago.

Madam President, I beg to move the amendment to the long title of the Bill standing in my name.

335 **The President:** Mr Braidwood.

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

340 **The President:** The motion is that the amendment in the name of Mr Downie be approved. Those  
in favour, please say aye; against, no. The ayes have it. The ayes have it.

I will take the long title as amended as the substantive motion. Those in favour, please say aye;  
against, no. The ayes have it. The ayes have it.

We will move then to clauses, Mr Coleman, parts 1 to 5, as this is an amalgamation of existing  
legislation.

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**Mr Coleman:** Madam President, I propose to move clauses 1 through 5 together as they are  
about the introductory provisions.

Clause 1 gives the title of the Act.

350 Clause 2 says the Act will come into operation by Appointed Day Order. Sections or parts of the Act may be brought into operation at the same time or on different days.

Clause 3, 4 and 5 provide interpretation.

Clause 3 provides general interpretation for the terms used in the Act.

Clause 4 specifically defines 'financial services'.

355 Clause 5 defines a resident as a person who is ordinarily resident in the Island. The term 'ordinarily resident' is not further defined and so takes its dictionary meaning. Bodies incorporated or constituted or limited liability companies, partnerships or other unincorporated associations formed under the law of the Island are also resident.

Madam President, I beg to move that clauses 1 to 5 inclusive do stand part of the Bill.

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

**The President:** The motion is that clauses 1 to 5 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Part 2, clauses 6 to 12 and schedule 1.

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**Mr Coleman:** Madam President, clauses 6 to 12 deal with the financial restriction known as a 'direction' and I propose to move them together.

370 These clauses contain provisions drawn from the Terrorism (Finance) Act 2009, which is to be repealed in its entirety, and deal with the power to make or issue a direction to a person or business.

Clause 6 empowers the Treasury to give a direction to a relevant person, subject to one or more of the following conditions being met.

The first condition is the Financial Action Task Force has advised that action should be taken.

375 The second condition is the Treasury reasonably believes there is a risk that financing of terrorism or money-laundering activities are being carried on.

The third condition is the Treasury reasonably believes proliferation in the country or anything that facilitates proliferation poses a significant risk to the national interests of the Island.

All these conditions relate to activity or proliferation in the country by the government of a country or by persons resident in the country in question. 'Proliferation' is defined in clause 3 as:

380

'the development or production of nuclear, radiological, biological or chemical weapons or systems for their delivery;'

385 Clause 7 sets out the power to give what is called an 'interim direction' to a relevant person if the Treasury has reasonable suspicion either that there is a risk that financing or terrorism or money-laundering activities are being carried on, or that proliferation or the facilitating of proliferation poses a significant risk to the national interests of the Island. The key difference is the lowering of the evidential level from reasonable belief to reasonable suspicion. Subsection (4) restricts the giving of an interim direction to once if the evidence is the same or substantially the same.

390 Clause 8 introduces schedule 1, which sets out the requirements that may be contained in the directions and the persons to whom they may be given. Schedule 1 broadly replicates the requirements that were in the schedule to the 2009 Act.

Clause 9 provides that the Treasury may give a direction to a particular person, any description of persons, or all persons acting in the course of a business in the regulated sector... which businesses set out in schedule 4 to the Proceeds of Crime Act 2008.

395 Subsection (2) enables a direction to contain different requirements in relation to different persons.

Subsection (3) enables the Treasury to amend the section by order.

Clause 10 provides that directions must be contained in an order made by Treasury.

Clause 11 requires the Treasury, in the case of directions to a particular person, to give notice of a specific direction to the person concerned.

400 Subsection (3) states that an interim direction is valid for 30 days and a final direction is valid for a year. The period is effective in each case from the day in which the direction is given.

Subsection (4) empowers the Treasury to vary or revoke the direction at any time.

Subsection (5) requires the Treasury to notify the person of the variation or revocation.

405 Clause 12 requires the Treasury to publicise the making of the order containing directions. The Treasury must also publicise the fact that an order has expired.

Subsection (1) applies the section to directions under clause 10.

Subsection (3) provides that a revocation order, or one varying the order to make it less onerous, must be laid before Tynwald as soon as practical after it has been made.

410 Subsection (4) states that an order, if not previously revoked, expires one year after the day on which it was made, but this does not limit the power of the Treasury to make a further order.

Madam President, I beg to move that clauses 6 to 12 inclusive and schedule 1 do stand part of the Bill.

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

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

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

420 I just have a general query, and I cannot see it anywhere else in the Bill. If somebody objects to the direction of this being issued and wants to challenge it, what mechanism do they have to challenge a direction – if that information is possible to be revealed?

**Mr Coleman:** This does come up later on in the Bill, yes.

425 **Mr Butt:** Thank you.

**The President:** The motion is that clauses 6 to 12 inclusive and schedule 1 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 13 to 17 and schedule 2, Mr Coleman.

430 **Mr Coleman:** Madam President, clauses 13 to 17 inclusive concern the general freezing of funds through freezing orders, and I intend to move them together.

435 Clause 13 is extracted from existing section 50 of the Anti-Terrorism and Crime Act 2003. The difference is that in this Bill the definition of ‘funds’ is set out in clause 3. Further requirements that may be set out in a freezing order are set out in schedule 2 to this Bill.

Clause 14 is extracted from section 51 of the 2003 Act and provides for the making of final freezing orders. The only difference is that, instead of referring to country or territory, it refers only to country. This is because in clause 3 of the Bill ‘country’ includes territory.

440 Clause 15 is extracted from section 51A of the 2003 Act and provides for the making of interim freezing orders.

Clause 16 provides that an interim freezing order may be given for 30 days and a final freezing order may be given for one year from the date on which the respective orders were made. This is the same as in sections 51A and 50 of the 2003 Act and the earlier clauses of this Bill relating to directions. Subsection (3) requires the Treasury to keep a freezing order under review.

445 Clause 17 empowers the Treasury to make a freezing order and specifies that it must be laid before Tynwald; and if at that sitting or the next following sitting Tynwald resolves that the order must cease to have effect, it will cease to have effect using the negative Tynwald procedure.

Madam President, I beg to move that clauses 13 to 17 inclusive and schedule 2 do stand part of the Bill.

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

**The President:** The motion is that clauses 13 to 17 inclusive and schedule 2 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 18 to 23.

455

**Mr Coleman:** Madam President, I propose to move clauses 18 to 23 together as they relate to the freezing of terrorist assets and are currently found in the Order in Council applying the UK Terrorist Asset-Freezing etc. Act 2010.

Clause 18 sets out the conditions under which the Treasury may make a final designation.

460

Subsection (1) specifies that Treasury may make a designation if they reasonably believe a person is or has been involved in terrorist activity; is owned or controlled, whether directly or indirectly, by the first person; or that the person is acting on behalf of or at the direction of the first person. Additionally, the Treasury must consider it necessary, for the purposes of public protection from terrorism, to place financial restrictions on the person. Involvement in terrorist activity is defined in subsection (2).

465

In respect of clause 19, the power to make interim designations is similar to the power in clause 18, except that Treasury need only have a reasonable suspicion concerning a person's involvement in terrorist activity in order to make the interim designation.

Clause 20 requires the Treasury to notify the designated person and publicise the designation. If the Treasury believes the designated person is under the age of 18 or that the designation should not be disclosed by reason of national security, the prevention or detection of serious crime, or in the interests of justice, then it need not publicise the designation generally but only to such persons as it considers appropriate.

470

Clause 21 provides that a final designation expires one year after the day on which it was made, unless it is renewed. The requirements for renewal of a final designation are that the conditions in clause 18(1) continue to be met.

475

Subsection (5) indicates that, where a final designation expires, the Treasury must notify the designated person in writing and take reasonable steps to bring that fact to the attention of other persons who were informed of the designation.

Clause 22 states that an interim designation expires 30 days after the day on which it was made or on the making of a final designation in relation to the same person, whichever is earlier. When an interim designation expires, similar notice must be given as for the final designation. Where the interim designation expires on the making of a final designation, the steps in relation to notification and publicity in respect of the expiry of one and the commencement of the other type of order may be combined.

480

485

Clause 23 empowers the Treasury to vary or revoke a designation at any time. Written notice must be given to the designated person and reasonable steps must be taken to let persons informed of the designation know about the variation or revocation.

Madam President, I beg to move that clauses 18 to 23 inclusive do stand part of the Bill.

490

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

**The President:** The motion is that clauses 18 to 23 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

495

Clause 24.

**Mr Coleman:** Madam President, clause 24 addresses the situation where a freezing order or a designation is made or a direction is effected by the United Kingdom Treasury based on security-sensitive material, and it is considered in the interests of the Island to be in step with the United Kingdom in these matters.

500

Subsection (1) relates to freezing orders or designations and provides that they will have effect in the Island as if made under provisions of this Act.

505 Subsection (2) provides that the fact that the United Kingdom has effected a direction is to be taken as sufficient for the Treasury to form the same reasonable suspicion or reasonable belief and consequently may likewise effect a direction.

Subsection (3) provides that if a direction made by the United Kingdom is set aside, ceases to have effect or is revoked, then any direction made by the Treasury in reliance on the action of the United Kingdom Treasury is treated likewise.

510 Subsections (4) and (5) empower the Treasury to amend this section by order, subject to the approval of Tynwald.

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

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

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

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

520 Just a query on a section of clause 24. I would imagine the purpose of this is to future-proof the Bill so that any orders made by the UK government, the UK Treasury, would be implemented by the Isle of Man Treasury and the order would come to Tynwald by secondary legislation. Is that how it would work in practice, hon. mover?

**Mr Coleman:** Yes –

525 **The President:** Can we just see if anyone else wishes to speak before you reply.  
The Hon. Member, Mr Butt.

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

530 I would just like to comment that all the decisions made in part 2 by the Treasury I note can be challenged. Clause 57 onwards of part 4 actually provides for all the challenges which I was asking about before, (**Mr Coleman:** On the appeals.) so I would like to clarify that.

Thank you, Madam President.

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

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

The orders will come back to Tynwald for approval. Could I perhaps give you a little bit of background on this. This came about after extensive discussions with the UK. I have here:

540 ‘These notes are confidential on the grounds of national interest. For your information only’.

This is really going to be intelligence-led in most cases. I really cannot say much more about it because it is, in red, emblazoned on my notes here.

545 **Mr Crowe:** Madam President, can I just comment? I was not wanting private and confidential memos issued. I just wanted to know the procedure through Tynwald, that was all – that it follows Treasury in the Island... Treasury UK, Treasury Isle of Man. I think you have confirmed what I was asking, Hon. Member.

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

Part 3, clauses 25 to 35.

**Mr Coleman:** Part 3 of the Bill deals with the enforcement provisions relating to financial restrictions measures, and I propose, Madam President, to move the provisions in three groups, which in the Bill before us are described as divisions.

555 The first group, division 1, consists of clauses 25 to 35 inclusive, which deal with the disclosure and enforcement of disclosure requirements common to all three types of financial restriction. These clauses do not contain anything not already in operation in either the 2003 Act, the 2009 Act or the Order in Council.

560 Clause 25 empowers the Treasury to require a financially restricted person to provide it with information about funds or economic resources owned, held or controlled by or on behalf of the financially restricted person. The obligation may be stated as requiring the person to keep the Treasury informed as circumstances change or at such intervals as it may require.

565 Clause 26 provides that a notice requiring information under clause 25 may include a requirement to produce certain documents or documents of a specified description. Where documents are produced, the Treasury is empowered to take copies or extracts and require a person to give an explanation in relation to the document.

Clause 27 makes it an offence to fail to comply with a requirement to give information or provide documents.

570 Clause 28 is extracted from section 6 of the 2009 Act and empowers an enforcement officer to enter and inspect premises, other than domestic premises, at any reasonable time. The enforcement officer may observe business, inspect or take copies of documents and require an explanation in relation to any matter relevant to the financially restricted person.

575 Clause 29 is extracted from section 7 of the 2009 Act and empowers an enforcement officer to apply for a warrant where there are reasonable grounds for believing certain conditions have been met.

Clause 30 imposes reporting obligations on the relevant institutions defined in clause 3 where they have knowledge or reasonable cause for suspicion in relation to financially restricted persons.

Clause 31 empowers the Treasury to disclose any information or evidence it obtains in the exercise of its functions to the persons or bodies set out in subsection (1).

580 Clause 32 provides for disclosure of information or evidence to the British intelligence services.

Clause 33 provides that if the Treasury informs only certain persons of a designation, then it may specify that the information they are given is to be treated as confidential.

Clause 34 requires the Treasury to co-operate with any investigation in the Island or elsewhere relating to the funds etc of a financially restricted person.

585 Clause 35 clarifies that nothing done under clause 25 to this clause is to be treated as a breach of any legal or other restriction.

Madam President, I beg to move that clauses 25 to 35 inclusive do stand part of the Bill.

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

**The President:** The motion is that clauses 25 to 35 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 36 to 38.

595 **Mr Coleman:** Madam President, division 2 consists of clauses 36, 37 and 38, which relate to the power of the Treasury to impose a civil penalty in respect of failure to comply with directions.

Clause 36 provides that a civil penalty may be imposed by the Treasury on a person who fails to comply with a requirement of a direction or a condition of a licence issued under paragraph 7 of schedule 1.

600 Clause 37 sets out the procedure where the Treasury determines to impose a civil penalty on a person for breaching a direction.

Clause 38 makes provision for appeal against the decision of the Treasury under clause 37.

Madam President, I beg to move that clauses 36, 37 and 38 do stand part of Bill.

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

**The President:** The motion is that clauses 36 to 38 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
Clauses 39 to 56.

610 **Mr Coleman:** Madam President, division 3 consists of clauses 39 to 56 and is divided into four sub-divisions. These set out the offences relating to the three types of financial restriction and deal with general provisions in relation to offences. I propose to move these clauses together.

Sub-division 1 consists of clauses 39 to 41 inclusive, which relate to offences in relation to directions.

615 It is an offence to contravene a requirement of a direction under clause 39 and to circumvent a requirement of a direction under clause 40.

Clause 41 provides that it is an offence to provide false information, or be reckless as to whether information is false in order to obtain a licence under paragraph 7 of schedule 1.

620 Sub-division 2 consists of clauses 42 and 43, which concern offences in connection with freezing orders.

Clause 42 makes it an offence to contravene a prohibition imposed by a freezing order, or indeed to engage in an activity knowing or intending that it will facilitate contravention by another person.

Clause 43 provides a defence.

625 Sub-division 3 consists of clauses 44 to 52, which relate to offences in connection with designations and are drawn from the Order in Council applying the UK Terrorist Asset-Freezing etc. Act 2010 to the Island.

Clause 44 makes it an offence to deal with funds or economic resources owned, held or controlled by a designated person.

630 Clause 45 makes it an offence to make funds or financial services available, whether directly or indirectly, to a designated person.

Clause 46 is similar, but makes it an offence for a person to make any funds or financial services available to any person for the benefit of a designated person.

Again, similarly, clause 47 makes it an offence to make economic resources available, whether directly or indirectly, to a designated person.

635 Under clause 48, it is an offence to make economic resources available to any person for the benefit of a designated person.

Clause 49 makes it an offence to participate in any activity the purpose or effect of which is to either circumvent any of the prohibitions in clauses 44 to 48, or to enable or facilitate the contravention of such a prohibition.

640 Clause 50 sets out exceptions to the prohibitions.

Clause 51 states that the prohibitions in those clauses do not apply to anything done under the authority of a licence granted by the Treasury.

Clause 52 sets out the penalties for prohibition offences under clauses 44 to 49.

Sub-division 4 consists of clauses 53 to 56 and sets out general provisions in respect of offences.

645 Clauses 53 and 54 set out the liability of officers of bodies corporate and deal with the proceedings against unincorporated bodies.

Clause 55 deals with the liability of residents or businesses associated with the Island where the offence takes place wholly or partly outside the Island, and enables the offence to be treated as having been committed in the Island for the purposes of proceedings.

650 Clause 56 imposes a time limit for the instigation of summary-only proceedings.

Madam President, I beg to move that clauses 39 to 56 inclusive do stand part of the Bill.

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



655 **The President:** The motion is that clauses 39 to 56 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 57 to 62.

660 **Mr Coleman:** Madam President, part 4 of the Bill consists of clauses 57 to 62 and provides for supervision by the court of the exercise of powers by the Treasury.

In moving these clauses together we can see clause 57 provides the right of appeal to the High Court to set aside any decision of the Treasury in relation to its functions under the Al-Qa'ida and Taliban (United Nations Measures) (Isle of Man) Order 2002, or a financial restriction under part 2 of this Act other than a matter described in clause 24(2).

665 Clause 58 provides for the review of any other decision of the Treasury under part 4, other than a decision to which clause 57 applies. Any person affected by a decision of the Treasury under part 4 may apply to the High Court to have that decision set aside.

Clause 59 is supplementary.

670 Clauses 60 and 61 provide general provisions about rules of court and specific provision about rules of court regarding disclosure.

Clause 62 relates to the appointment of a special advocate.

Clauses 60, 61 and 62 are drawn from sections 25, 26 and 27 respectively of the 2009 Act.

Madam President, I beg to move that clauses 57 to 62 inclusive do stand part of the Bill.

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

**The President:** The motion is that clauses 57 to 62 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 63 to 70 – or do you wish to include 70A?

680

**Mr Coleman:** We will include 70A.

**The President:** Clauses 63 to 70A.

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

I would like to move clauses 63 to 70A inclusive of part 5 together, and deal with clauses 71, 72 and 73 separately. Mr Downie has some amendments to the Bill he will wish to introduce before clause 71 and in relation to clauses 72 and 73.

690 Clause 63 enables the Treasury to delegate its functions under this Act, other than the power to make orders to any organisation in the Island responsible for the prevention or investigation of financial crime and of the financing of terrorism.

Clause 64 is about the giving of notices as required under the Act to the person or business, or the last known address of the person or business.

695 Clause 65 requires the Treasury to provide an annual report to Tynwald on the exercise of its functions; or to state that it has not exercised any of its functions, if that is the case. Where it differs from similar provision in section 19 of the 2009 Act is that if the Treasury has delegated any of its functions to an organisation in the Island it should include in its report the exercise of its functions by that organisation.

700 Clause 66 provides for the supervision of businesses in the regulated sector for the purposes of securing compliance with the requirements of any direction. A relevant supervisory body is one set out in paragraph 2 of schedule 4 to the Proceeds of Crime Act 2008, and this provision is drawn from section 20 of the 2009 Act.

705 Clause 67 requires the Treasury to assist a relevant supervisory authority or other appropriate body drawing up guidance that would be relevant guidance when issued and published for the purposes of the Act. This is drawn from section 21 of the 2009 Act.

710 Clause 68 provides for codes of practice for the purposes of preventing and detecting the financing of proliferation and terrorism, and is drawn from section 27A of the 2009 Act. The difference is that it now refers also to the financing of proliferation. The addition of the power to make codes in relation to proliferation as well as the financing of terrorism is another element in the Island, as a responsible jurisdiction, ensuring its legal powers and standards meet international expectations.

715 Clause 69 empowers the Council of Ministers to apply to the Island with such modifications as it considers appropriate any Order in Council made under the United Nations Act 1946 (of Parliament). This is in relation to the implementation of United Nations resolutions dealing with international terrorism, conflict, crime against humanity and related matters. Any order made by Council is subject to the positive Tynwald procedure.

Clause 70 applies the Act to the Crown.

720 Clause 70A is about an amendment in the Keys to correct a drafting error in the Bail Act made to the Police Powers Bill.

Madam President, I beg to move that clauses 63 through to 70A inclusive do stand part of the Bill.

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

725 **The President:** The motion is that clauses 63 to 70A inclusive do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

I now call on Mr Downie to move the amendment to the Bill listed at Item 2 – an amendment to introduce clause 70AA.

730 **Mr Downie:** Yes, thank you, Madam President.

Firstly, I would like to thank Hon. Members for agreeing to amend the long title of the Bill to enable the insertion of the two new clauses.

The clauses are very short and straightforward but deal with entirely separate matters, so I propose to move them separately.

735 Tabled amendment number 2 proposes the insertion of a new clause 70AA and relates to a new provision inserted into the Summary Jurisdiction Act 1989 by the Summary Jurisdiction and Miscellaneous Amendments Act 2013.

740 As it happens, by virtue of an Appointed Day Order [*SD 406/2013*], the new provision came into operation today. The problem – and it is only a minor one, but nevertheless worth resolving – is that it contained words that mean it is only possible to apply the provisions designed to enforce the effective collection of fines by means of an attachment of earnings or application for benefit deductions in relation to those imposed on or after today.

745 In order to solve the problem, the new clause 70AA standing in my name amends section 94A(5) of the Summary Jurisdiction Act 1989 by omitting the words ‘on or after the commencement of this section’. The effect of this amendment, therefore, is that in any case before the court relating to non-payment of a fine, whenever imposed, the court may make an order using this provision to secure effective payment of moneys due.

Madam President, I beg to move that the insertion of new clause 70AA is accepted and do form part of this Bill.

*Insertion of new clause*

*Page 49, after clause 70A (inserted by the Keys at Clauses stage in that Branch) insert —*

*‘70AA Amendment to the Summary Jurisdiction Act 1989*

*(1) The Summary Jurisdiction Act 1989 is amended as follows.*

*(2) In section 94A(5)1 omit ‘on or after the commencement of this section’.*

750

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

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

755 **The President:** The motion is that clause 70AA, the amendment standing in the name of Mr Downie, be accepted. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

A further amendment to be moved by Mr Downie, 70AB.

760 **Mr Downie:** Yes, thank you, Madam President.

The amendment number 3 proposes the insertion of a new clause 70AB, and is promoted in order to remove subsections (3) and (4) from section 10 of the Sexual Offences Act 1992.

765 When homosexual activity was decriminalised a number of years ago, a regrettable oversight occurred when making consequential amendments with the result that we have suffered and continue to suffer some reputational damage. The acceptance of this new clause will mean that homosexual activity on a Manx-registered merchant vessel is decriminalised.

Madam President, I beg to move that the insertion of the new clause 70AB is accepted and do form part of the Bill.:

*Insertion of new clause*

*Page 49, after clause 70AA (inserted by the preceding amendment) insert —*

*'70AB Amendment to the Sexual Offences Act 1992*

*(1) The Sexual Offences Act 1992 is amended as follows,*

*(2) In section 10 omit subsections (3) and (4).'*

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

770

**The President:** The motion is that clause 70AB be accepted and do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 71 and schedule 3.

775 **Mr Downie:** Another one yet.

**The President:** Sorry?

**Mr Braidwood:** 70B. It was an amendment made by the Keys.

780

**The President:** Sorry, I have got three versions of it all here – 70B, right.

**Mr Braidwood:** Amendment to the Police Powers and Procedures Act 1998.

785 **The President:** I call on Mr Coleman.

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

Clause 70B corrects a drafting error in the Police Powers and Procedures Act 1998 with reference to bail.

790 I beg to move that clause 70B is accepted and do form part of the Bill.

**The President:** Do we have a seconder?

**Mr Butt and Mr Crowe:** I beg to second.

795 **The President:** The motion is that clause 70B do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
Clause 71 and schedule 3.

800 **Mr Coleman:** Madam President, clause 71 refers to schedule 3, which sets out the amendments to the 2003 Act.

Paragraph 1 of the schedule slightly amends the definition of terrorism set out in section 1 of the 2003 Act in order to take into account helpful observations by MONEYVAL. Section 1 will now be clear that the commission of a Convention offence is of itself terrorism, whether or not it is carried out with the intention or purpose set out in subsection (a).

805 Paragraph 2 amends the requirement in section 2 of the 2003 Act to publish amended lists of proscribed organisations so that they must be published electronically rather than in two newspapers published and circulating in the Island.

Paragraphs 3 and 4 deal with the offences of facilitating funding and money-laundering.

810 In relation to the offence of facilitating funding, it is currently an offence to fail to exercise due diligence or adequately investigate whether the money is or will be used for terrorist purposes. It is recognised that the exercise of due diligence is sufficient and is a realistic expectation on business.

In the case of money-laundering, the defence of neither knowing nor having responsible suspicion that property is terrorist property has been reinserted into section 10.

815 Paragraph 5 amends sections 11 and 14 of the 2003 Act so that they refer to section 4 of the Proceeds of Crime Act 2008 in respect of the definition of business in the regulated sector. This amendment will ensure that the same definition of business in the regulated sector applies both in respect of terrorism offences and ordinary criminal offences.

820 Paragraph 6 amends references to the disclosure of information so that they now refer to information or evidence. This takes account of a legal opinion in a matter which identified that there can be a difference in law between the two.

Paragraph 7 inserts a considerable amount of material designed to place further safeguards on the police power of stop and search in relation to terrorism. Safeguards include the requirement to make a code about the exercise of the power, and the new schedule 8B is inserted to control the power to search in specified areas or places.

825 Paragraph 8 clarifies the provisions relating to search warrants by limiting the life of search warrants under schedule 5 of the 2003 Act to three months.

Paragraph 9 substitutes section 82 of the 2003 Act.

Madam President, I beg to move that clause 71 and schedule 3 do stand part of the Bill.

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

**The President:** The motion is that clause 71 and schedule 3 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 72.

835 **Mr Downie:** The tabled amendments, Madam President.

**The President:** I will take the amendments when it has been moved. Thank you.

840 **Mr Coleman:** Madam President, clause 72 makes a number of amendments to the Proceeds of Crime Act 2008.

In formally moving this clause, Members will see there are amendments numbered 4 and 5 relating to subsection (1), as printed in the green copy of the Bill. I will nevertheless highlight the other provisions in this clause.

845 Subsection (2) ensures the penalty for breaching the provision of a code of practice in respect of money-laundering is the same as applies for breaching a code of practice in respect of the countering of the financing of terrorism or proliferation.

Subsections (3) and (4) are about ancillary money-laundering offences.

850 Subsection (5) inserts subsection (5) into section 223 so codes of practice are made subject to the negative Tynwald procedure.

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

**The President:** Do we have a seconder?

855 **Mr Wild:** I beg to second, Madam President.

**The President:** We have amendments tabled in the name of Mr Downie.

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

860 The tabled amendments numbered 4 and 5 standing in my name relate to the provision in subsection (1) of clause 72, as printed in the green copy of the Bill.

865 Taking the amendment numbered 5 first, it has the effect of omitting the amendments to subsection (1) of section 140 of the Proceeds of Crime Act 2008. Whilst the Department had placed this provision in the Bill in good faith, it has considered the matter once more and taken further counsel and accepts that at this time the change it had set out in the Bill to section 140 should not be made. Accordingly, I invite Hon. Members to support my amendment, which will mean section 141 of the Act remains as it is.

870 The amendment numbered 4 reflects the drafter's view that, from a drafting perspective, subsection (1) should have been in line 29 and introduced the amendments that follow in subsections (2) to (5). The amendment is therefore tidying up the drafting in the Bill.

Madam President, I beg to move the amendments to clause 72, numbered 4 and 5, standing in my name.

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

875 **The President:** Hon. Members, just for clarity, the amendment tabled number 5 has an error in it. It should read 'line 4', I believe, not 'line 3', if you are taking out the whole of clause (1). (*Interjection by Mr Braidwood*).

If we understand that, Hon. Members, I will be happy to take both amendments together. I think the intention is clear but the wording is wrong.

**Mr Downie:** Yes, happy with that. Absolutely right, Madam President, yes.

880 **The President:** So it is 'line 4' not 'line 3'.

**Mr Downie:** Yes. I beg to move:

*Amendments to clause 72*

*Page 49, line 29. Renumber the text as subsection (1) of the clause.*

*Omit page 49, line 30 to page 50, line 4 (subsection (1) in the Bill as originally printed).*

**The President:** Hon. Members, the motion is that the amendments numbered 4 and 5, tabled in the name of Mr Downie, be approved and do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

885 I will now take the clause as amended, Hon. Members. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We turn now to clause 73 and schedule 4.

**Mr Coleman:** Madam President, clause 73 deals with the expiry of certain provisions of this Act and repeals the provisions set out in schedule 4.

890 These include the repeal of the 2009 Act in its entirety and part VII, relating to freezing orders, of the 2003 Act, as their provisions are now incorporated in this Bill.

Madam President, Mr Downie has an amendment to this clause, and so with that in mind I formally beg to move that clause 73 and schedule 4 do stand part of the Bill.

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

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

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

900 I am grateful to Hon. Members for agreeing to amend the long title of the Bill and to the insertion of new clauses 70AA and 70AB.

As a consequence of these amendments, the list of repeals in clause 73 needs to be amended to include sections 70AA and 70AB as well as the new clauses introduced in the other place in sections 71 and 72.

905 The drafter of my amendments concluded it would be better to reword line 1 on page 51 as set out in the last amendment numbered 6 standing in my name.

Madam President, I beg to move that clause 73 be amended in accordance with the amendment standing in my name.

*Amendment to clause 73*

*Page 51, line 1 leave out the words from 'This section' to 'Schedules' and substitute 'This section, sections 70A to 72 and Schedules'.*

910 **Mr Braidwood:** I beg to second, Madam President.

**The President:** The motion is that clause 73 be amended in line with the proposal from Mr Downie. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

915 I will now move the amended clause along with schedule 4, Hon. Members, as the substantive motion. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, that concludes consideration of the clauses stage of the Bill.

## 5. Health Care Professionals Bill 2014 – Second Reading approved

Mr Butt to move:

*That the Health Care Professionals Bill 2014 be read a second time.*

**The President:** We now turn to Item 5 on our Order Paper, the Health Care Professionals Bill 2014.

I call on Mr Butt to move.

920

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

I now move the Second Reading of the Health Care Professionals Bill.

There are two main aims for this Bill. The first is to prescribe the way in which some health care professionals, including doctors, nurses and midwives, and some allied health professionals are

925 required to be registered. This now includes such health care professionals as chiropractors and  
osteopaths, who were not previously registered but who are registered under UK legislation.

It is important that the registration and ultimately the supervision and regulation of our health  
care professionals is in line with the registration and standards of the United Kingdom, not only for  
the assurance of the public but also so that such professionals can move to and from our Island and  
930 maintain their professional status. It is also important for our recruitment that we have the same  
registration standards.

The other main aim of the Bill is to facilitate new arrangements for doctors' validation. Our new  
revalidation needs to start as soon as possible, and that does give this Bill some degree of urgency.  
All doctors, whether they be consultants or GPs, need to have their professional skills and standing  
935 validated, and this Bill provides that the Island will be a health organisation which can validate our  
doctors.

Doctors will be validated at least every five years and this Bill provides power to a senior doctor,  
known in the Bill as a 'responsible officer', to have the legal authority to undertake the revalidations.  
The responsible officer will normally be the Medical Director and our current Medical Director in our  
940 Health Service has the necessary skills and qualifications to be the responsible officer.

The Isle of Man is inextricably linked to the United Kingdom in the area of regulating its health  
care professionals and the Department of Health is therefore obliged to closely follow the United  
Kingdom if it is to be able to continue to employ the services of qualified registered health care  
professionals on the Island. This Bill gives the opportunity to bring the Island into line with the  
945 United Kingdom and add the professions of chiropractic and osteopathy to the professions which are  
regulated on the Island.

A public consultation on the Bill received almost universal support and the British Medical  
Association (BMA), which is the representative body for most doctors in the UK, has specifically  
indicated that it is happy that the Bill establishes an equivalent regulatory system to the United  
950 Kingdom and that therefore the Association has no objections to this Bill. The Isle of Man Medical  
Society, the local branch of the BMA, has also indicated support for this Bill.

The Bill contains 16 clauses and, if the branches of Tynwald support this Bill, it will come into  
operation on the day on which Royal Assent to it has been announced by Tynwald.

955 Madam President, I move the Second Reading of the Health Care Professionals Bill to pass.

**Mr Downie:** 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.

#### Health Care Professionals Bill 2014 – Clauses considered

960 **The President:** We turn to clauses.

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

As I go through the clauses there will be some answers to queries that were made last week,  
which will become evident.

965 Clause 1 in part 1 of the Bill is introductory and clause 1 confirms the short title for the Act as the  
Health Care Professionals Act 2014.

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

970 **Mr Downie:** I beg to second, Madam President, 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.

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

Clause 2 allows for all sections of the Act, apart from this clause and clause 1, to be brought into operation using Appointed Day Orders and allows an Appointed Day Order to also make transitional or saving provisions.

980 It is the Department's intention to progress an Appointed Day Order at the earliest possible juncture after Royal Assent is announced so that the Act can come into operation as soon as possible.

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

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

**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.

990 **Mr Butt:** Thank you.

Clause 3, Madam President, contains the interpretation for the Bill and, in particular, introduces the term 'health care professional' to mean any of the following.

995 Firstly, a registered medical practitioner – that is a person who is a fully registered doctor and holds a licence to practise as such. Some terms in the interpretation are further defined as having the same meaning as in UK legislation – for example, in respect of doctors in the United Kingdom Medical Act 1983. This is deliberate, as the imperative now is for Manx legislation in this area to mirror the United Kingdom as closely as possible so that the Island can react swiftly to changes in practices and standards and continue to attract a good quality of professionals. The existing legislation around the regulation of doctors is contained in the Medical Act 1985, which is to be  
1000 repealed by this Bill in clause 15.

Secondly and thirdly, fully-registered chiropractors and fully-registered osteopaths are defined as health care professionals. Although the Chiropractors Act and the Osteopaths Act were introduced in the United Kingdom in 1994 and 1993 respectively, no equivalent legislation has been introduced in the Isle of Man.

1005 It is believed that in the 1990s this omission was a political decision within the then Department of Health and Social Security, but in more recent times the professions of chiropractic and osteopathy have been more widely accepted as mainstream health care professions. The Department has, for the last few years, been looking for an opportunity to correct this omission and this Bill provides that opportunity.

1010 Fourthly, nurses and midwives are included in this Bill. The existing legislation covering nurses and midwives is contained in sections 39A to 39D of the National Health Service Act 2001. The equivalent UK legislation is in the Nursing and Midwifery Order 2001.

1015 Finally, clause (e) refers to numerous small professions, most of which are currently regulated under the Health Professions Order 2002 as amended, and they are brought into this Bill under the umbrella title of 'relevant professionals'.

By referring to the UK legislation – the Health and Social Work Professions Order 2001 – the list of professions will be updated in line with the United Kingdom, and for the information of Members this does include such occupations as art therapists, biomedical scientists, chiropodists and podiatrists, clinical scientists, dieticians, hearing-aid dispensers, occupational therapists, operating  
1020 department practitioners, orthoptists, paramedics, physiotherapists, practitioner psychologists, prosthetics and orthodontists.



Social workers are explicitly excluded from the list of relevant professionals as they are already regulated under the Regulation of Care Act 2013, which we took through Council last year.

The Health Professions Order 2002 is to be repealed under clause 16 of this Bill.

1025 Madam President, I beg to move that clause 3 do stand part of this Bill.

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

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

1030

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

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

1035

It is merely, I suppose, a question of interest or clarification, but would there be any plans to extend the definition of what a health care professional is to practitioners of complementary medicine, as that certainly is an area which is becoming much more prolific on the Island in particular?

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

1040

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

The Regulation of Care Bill may cover it of course, but much on the same line as my hon. friend, Mr Wild, homoeopathy is very much to the fore and I do not know whether that extends to 'health care professional' or not.

1045

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

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

1050

Could the hon. mover just clarify the transition process as to will all people operating as health care professionals now be able to continue in their present roles and validation will occur periodically or on the renewal of the time limit on their current working situation? It is really the transition, how it will work in practice, which is the query I have, Hon. Member.

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

1055

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

1060

The mover said, when he was moving the clause, that there was a list here provided for us of relevant professionals, and that would be by and large in line with what the situation is in the UK. The question I ask is if there are new professional bodies being formed and therefore accepted onto the list, would there be a requirement for the Department to bring that to Tynwald so that we would know that such an order had gone through under this legislation?

1065

I think if that was to be done it would clarify some of the issues raised by my other colleagues here. I know there is a great concern that lots of people will become registered, in some way or other, who are not exactly accepted by the body of the major health service professionals as they are at the moment.

1070

I know some forms of homoeopathy are not. (**Mr Wild:** Aromatherapy.) Aromatherapists and so on. There are new things coming on all the time. Likewise, I am sure we have acupuncturists on the Isle of Man who operate. I think they are licensed, but I am sure that as knowledge of the Chinese culture and other alternative forms of medicine come more to the fore there will be a push for some of these people to become registered practitioners in their own right. So I think we need to be absolutely clear, if we are bringing people on, that Tynwald or the public in general know that the people they are dealing with are properly approved and accredited.

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

1075

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

I will reply to the last point first, from Mr Downie.

1080

This Bill does give flexibility to always follow the UK procedures, and in clause 12 there is the power under 12(2) to amend the definition of 'health care professional' at any time. But under part (5) of clause 12, that has to come before Tynwald so they are aware of any changes in the order to change the definition of 'health care professional'.

1085

In regard to the other comments, in terms of homoeopathy, complementary medicine etc, the purpose of this Bill, and with the use of clause 12 in effect, is that whenever the UK change their legislation to actually incorporate a new procedure or a different procedure which is not currently listed, such as acupuncture, we would have the power under this Bill to immediately be flexible enough to align with the UK to make sure we have reciprocity with them; and then, of course, the procedures under clause 12(5) to go before Tynwald will come into operation.

1090

On Mr Crowe's point in regard to transition, there will be no need for transition. Validation does go on at the moment; it is just that it has to be done now by the local health authority. We now become a local health authority with our own power to revalidate doctors and we have to have this legislation to provide the validation locally, which is done every five years. There is also, for information, an appraisal every year of every doctor to see are they competent as well – an internal appraisal. At any time within the five years, if there are any problems they can be raised and dealt with by other processes.

1095

I beg to move clause 3, Madam President.

**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.

1100

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

Clause 4. Part 2 of the Bill deals with matters specifically relating to registered medical practitioners.

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Clause 4(1) is a modernised rewording of section 1 of the existing Medical Act 1985 and the equivalent section from the UK Medical Act 1983, and simply confirms that if a person who is not a registered medical practitioner tries to recover a charge for providing medical advice or attendance or for performing a surgical operation, they would not be able to do so through a court of law.

1110

As in the UK, it is not actually illegal for any person to provide medical advice or attendance or to perform a surgical operation – which may be as simple as applying a bandage or a plaster or suggesting that someone takes a paracetamol for a headache – as long as they do not claim to be or give the impression that they are a qualified medical practitioner. This is covered in clause 6 under the offences under the Bill.

1115

The aim of clause 4(1) is to take away any incentive that someone might have to set up a business to undertake these functions; but would allow though, for example, charitable organisations to undertake the functions at no charge.

1120

Clause 4(2) states that 4(1) only applies to medical practitioners in that where certain other professionals are allowed, through their own professional qualifications and registration, to provide medical advice or attendance or perform surgical operations, they are not restricted from pursuing charges through the courts by this Act. Those organisations include the General Medical Council, the General Dental Council, the General Optical Council, the General Osteopathic Council, the General Chiropractic Council and members of the Royal Pharmaceutical Society of Great Britain and Northern Ireland.

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

1125

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

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

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

1130 Clause 5.

**Mr Butt:** Madam President, clause 5. In the autumn of 2012, the United Kingdom introduced a new system for the General Medical Council to review the performance of doctors and to confirm their registration and licence to practise. This is known as revalidation.

1135 The first full year of a five-year cycle of revalidation started in the United Kingdom early in 2013. Although the Island did not have to start operating the scheme at the same time as the United Kingdom, it does need to start as soon as possible to allow all doctors to be revalidated within the first five years of the scheme.

1140 Within our Health Service there is an existing annual appraisal process for doctors which will continue alongside revalidation, and the Department will continue to have the option to refer a doctor for further action by the General Medical Council if there are any concerns at any time within the five years.

1145 As part of the new scheme, all health bodies in the United Kingdom are required to appoint responsible officers to manage the process locally, and clause 5(1) will give the new Department of Health and Social Care the legal authority to act as such a body.

The role of responsible officer is a new one. Each doctor in the Island will be linked to a responsible officer whose responsibility it will be to make a recommendation to the General Medical Council as to whether the doctor should be revalidated as fit to practise.

1150 Clause 5(2) requires the Department to appoint one or more responsible officers in accordance with the UK Responsible Officers Regulations.

Subclause (5) defines the UK Responsible Officers Regulations. The Department has taken the view that, because of the desire to mirror the UK as closely as possible in this important area, it is more appropriate to adopt the UK regulations and avoid the need to constantly update our own regulations.

1155 The responsible officer will be responsible for ensuring that appropriate systems of clinical governance and appraisal are in place to enable revalidation to take place for all of the doctors in the Island. This includes private doctors as well as those employed or contracted by the Department, so they need to have enough influence to make sure that organisations, including the Department of Health and GP practices, meet the requirements of the scheme. The appointee is therefore usually a senior licensed doctor and it is anticipated that the Department's Medical Director will fulfil the role here. Our responsible officer will be re-validated by a senior doctor from the United Kingdom, so he will be covered as well.

1160 Clause 5(3) confirms that our responsible officer will have the same functions as a responsible officer in the United Kingdom and must co-operate with the General Medical Council in the same way.

1170 The GMC have made it clear that appointing responsible officers other than via legislation would be unacceptable to them and the Island would be considered as having not met the standards set for the revalidation scheme. Under these circumstances, the General Medical Council would not then renew doctors' registrations, thus removing their licence to practise. Whilst in theory a doctor could still work in the Isle of Man, it has been made very clear to the Department that no self-respecting doctor would come to work on the Island if we did not have this legislation. This is because, if the Island was not recognised by the General Medical Council, any work done here by a doctor would not then count towards their revalidation and they would risk their registration being compromised or possibly even withdrawn. Any doctors who might come to the Island under these circumstances would most likely be doctors who were not interested in maintaining their registration due to imminent retirement or perhaps because of a chequered past. Without the links

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to the GMC, which revalidation will facilitate, we would have great difficulty checking on a doctor's history. The Department does not consider this as an acceptable alternative.

1180 Madam President, I did say 'he' when I referred to the responsible officer; it could equally be a female doctor, as we have somebody qualified within the Department who could take on that role.

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

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

1185 **Mr Coleman:** I beg to second and reserve my remarks, Madam President.

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

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

1190 Just out of interest, in terms of this process, from a Government perspective will it be evidenced by certification and continual professional development logs?

Thank you.

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

1195

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

I do know that the annual appraisal has those elements in it – personal development and training etc.

1200 The revalidation on the five-year cycle is really for the General Medical Council and for their benefit to make sure that they are able to confirm that our doctors are suitable to practise here, but the annual appraisal does provide local development and training, which is the element I think you are concerned about.

**Mr Wild:** Thank you.

1205

**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.

1210 **Mr Butt:** Madam President, clause 6, which is part 3, deals with offences and evidence in relation to all the various health care professionals defined in part 1.

The Department has decided that, in the first instance, the penalties for various offences in this part should remain as they are set out in both the existing Manx legislation and in the equivalent United Kingdom legislation – that is, in all cases on summary conviction a fine not exceeding £5,000.

1215 Clause 6 creates the offence of falsely representing oneself as a health care professional with intent to deceive either expressly or by implication. In order to remove any doubt that this might only apply to registered professionals, the clause goes on to say that any person who describes himself or herself by any name that implies that they are a health care professional is also guilty of an offence.

1220 Subclauses (3) and (4) also make it an offence for another person to falsely represent a person as a health care professional.

I beg to move, Madam President, that clause 6 do stand part of the Bill.

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

1225

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

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

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

1230 Looking at the offences, the fines and penalties seem ridiculously low when in another place today they have been debating a Bill where failure to register as a landlord is a fine of £25,000 or six months in prison. Given that a person could be impersonating a health care professional on a private basis and picking up fees for this, does the mover think that this is a severe enough penalty, or should we be looking at the penalties?

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

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

1240 In a very similar vein to Mr Downie, if I recollect, there was an individual in the Isle of Man – and I am sure Mr Butt would know that person – who was pretending to be a doctor and in actual fact went to prison. I was just looking at the penalty, which only gives a fine and does not give any imprisonment as a deterrent.

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

1245

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

1250 Again, on a similar vein, I was going to ask the mover whether or not the penalty is sufficient to deter people from ‘having a go’ at being a health professional, because I do recollect the case that my hon. colleague refers to in terms of the person – I think pretending to be an anaesthetist – who ended up in prison, but seriously put people’s lives at risk.

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

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

1255 It is interesting this is raised because this was raised with the Department and within the Department as being perhaps insufficient a penalty to deter people. However, we decided we have to stay with the United Kingdom and mirror it as closely as possible. That is the whole point of this Bill in a way: to mirror the UK regulation standards.

1260 I remember the particular case from many years ago. The person went to prison because the charge was actually not a charge under these regulations; it was a charge of obtaining money by deception, obtaining employment by deception – a criminal charge, probably under the Theft Act. It would be deception and therefore they would be able to go to prison.

1265 So, if there was a breach of the other criminal laws, in terms of theft or deception or obtaining employment by deception, they could be charged under those as well. This is purely the medical health care professionals regulations, which we have to have in line with the United Kingdom – including the penalties, I am informed.

**Mr Wild:** Thank you.

1270 **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.  
Clause 7.

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

1275 Clause 7 relates to practising while suspended. It makes it an offence for a health care professional to carry out or give the impression that they are prepared to carry out the functions of a health care professional if their registration is suspended.

I beg to move that clause 7 do stand part of the Bill.

1280 **Mr Coleman:** I beg to second, Madam President, and reserve my remarks.

**The President:** The motion 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.

Clause 8.

1285 **Mr Butt:** Thank you, Madam President.

Clause 8 creates the offence of falsely representing oneself as holding a licence to practise as a health care professional.

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

1290 **Mr Coleman:** I beg to second, Madam President, and reserve my remarks.

**The President:** 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.

1295

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

Clause 9 creates the offence of performing the functions of a midwife without being registered as such.

1300 Subclause (2) does create exceptions for registered medical practitioners; medical practitioners and midwives whilst they are undergoing specific midwifery training; and fortunately, persons who are required to carry out the functions of a midwife because of a sudden and urgent necessity.

1305 No offence is committed under this clause by an unqualified person who is present at a birth, as long as they do not assume responsibility for the birth by assisting or assuming the role of a medical practitioner or registered midwife. An unqualified person may include an unregistered midwife, a labour coach, a nurse, a woman's partner, a relative or a friend. They are non-medical people who assist women before, during and after childbirth by providing information, physical assistance and emotional support.

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

1310 **Mr Coleman:** 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.

1315

**Mr Butt:** Clause 10, Madam President, relates to provision of evidence to undertake prosecutions and it confirms that certificates mentioned in the Acts and Orders referred to in this Bill are to be taken as evidence of the matters they are certifying.

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

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**Mr Coleman:** 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.

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Clause 11.

**Mr Butt:** Clause 11, Madam President, moves onto part 4, which contains the final provisions of the Bill.

1330 Clauses 11 states that a registration suspension does not automatically terminate any employment or appointment held by a health care professional. However, the professional must not carry out the functions of their employment or appointment during the period of suspension.

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

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

1335 **The President:** The motion is that clause 11 do 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:** Thank you, Madam President.

1340 This clause refers to matters referred to earlier. Under the National Health Service Act 2001, the modification of the regulation of certain professions in England can be applied to the Island by order, but only if the changes in England have been made using an Order in Council under the United Kingdom Health Act 1999.

1345 Clause 12 extends this provision so the Department can use an Order to apply any legislative changes to the Island which have been applied in England in relation to the health care professionals covered by this Bill.

1350 The extended provision will avoid the need for us to introduce amending primary legislation every time there is a change in the United Kingdom. This should speed up the whole process of keeping up to date with England, which in this area is imperative. For example, the new English provisions relating to revalidation could have been implemented on the Island by now if this provision had already been in place.

1355 The professions regulated by the Dental Act 1985 and the Opticians Act 1996 have been included in this provision as they were included in the previous provision under the NHS Act 2001. Dentists and opticians could also have been brought into the other provisions of this Bill, but it was identified that their respective existing Acts, which contain legislation which extends beyond simple regulation, may need more significant update, which could cause delays. Because of the urgency to implement the revalidation, the Department decided not to risk a delay and to leave progressing the updating of these Acts to a later date.

1360 Subclause (2) of clause 12 will allow the Department by order to add additional types of health care professional to the list contained in the definition of health care professionals in clause 3. Given the way in which the Act is constructed, an additional type of health care professional would only be added if the United Kingdom decided to regulate a health care profession which is not covered in the existing definition. Notwithstanding the above, the United Kingdom Health and Care Professions Council regularly reviews which professions it should be regulating, and if a new provision, such as acupuncture or Chinese medicine, was added to the UK Health and Social Work Professions Order, this profession will also then be regulated in the Isle of Man.

Subclause (3) allows an Order to also make any necessary statutory changes.

Subclause (4) states the Department must consult representatives of any relevant professions before making an Order.

1370 Subclause (5) states that any changes made by an Order under this clause must be approved by Tynwald – the point that was made earlier.

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

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

1375 **The President:** The motion is that clause 12 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
Clause 13.

1380 **Mr Butt:** Clause 13 makes amendments to the NHS Act 2001 as a consequence of this Bill by repealing sections 39A to 39D and section 40, and amending the definition of ‘medical practitioner’ in that Act to reflect the meaning in this Bill.

1385 Sections 39A to 39D contain provisions relating to the regulation of nurses and midwives which will no longer be needed; and section 40 contains the wording, which has now been amended and included in clause 12 of this Bill.

I beg to move that clause 13 do stand part of this Bill.

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

1390 **The President:** The motion is that clause 13 do 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:** Thank you, Madam President.

1395 Clause 14 contains all the amendments to other legislation which are required as a consequence of this Bill.

The definition of 'medical practitioner' in the schedule to the Access to Health Records and Reports Act 1993 is amended as a consequence of the Medical Act 1985 being repealed.

1400 Wording in schedule 1, paragraph 6, of the Control of Employment Act 1975 is amended as a consequence of the Medical Act 1985 being repealed.

The definition of 'registered' in section 3(1) of the Interpretation Act 1976 is extended to include reference to any professions mentioned in this Bill.

1405 Definitions of 'doctor' in schedule 2 of Medicines Act 2003, section 38(1) of the Misuse of Drugs Act 1976 and section 9(2) of the Poisons Act 1979 are amended as a consequence of the Medical Act 1985 being repealed.

Wording in section 2(1)(c) and (e) of the Veterinary Surgeons Act 2005 is amended as a consequence of the Medical Act 1985 being repealed.

1410 Wording in section 8(11) of the Video Recordings Act 1985 is amended as a consequence of the Medical Act 1985 being repealed and as a consequence of the Nurses and Midwives Act 1947 having been repealed by the Regulation of Care Act 2013.

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

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

1415 **The President:** The Hon. Member, Mr Crowe.

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

1420 Just on the amendment to the Control of Employment Act 1975, schedule 1, paragraph 6: this actually is covered by my colleague Mr Wild's move of today for the Third Reading of the Bill in schedule 1, clause 5 of the Control of Employment Bill 2013. So it will follow through logically.

**Mr Downie:** Doctors are exempt anyway.

**Mr Crowe:** Yes, but the reference to it there has an exemption.

1425

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

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

1430 Yes, it is quite an amazing coincidence that these two complex things have intermingled on the same day.

I beg to move, Madam President.

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



1435 It is rather unusual to see a table of legislative amendments included actually in the clause, rather than in a schedule.

**Mr Butt:** It does make it simpler though, I think.

1440 **The President:** We turn to clauses 15 and 16.

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

Clause 15 repeals the Medical Act 1985, which is no longer required as a consequence of this Act.

1445 Clause 16 revokes the Health Professions Order 2002, which is no longer required as a consequence of this Act.

I beg to move that clauses 15 and 16 do stand part of the Bill.

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

1450 **The President:** The motion is that clauses 15 and 16 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 clauses of the Health Care Professionals Bill, Hon. Members.

**6. European Union (Amendment) Bill 2014 –  
Motion not made**

**The President:** Item 6 will not be moved today, and therefore that concludes our business this morning, Hon. Members.

1455 I would just like to remind you that a Council photograph will be taken in this Chamber at one o'clock next Tuesday.

We will now adjourn until Tynwald Court on Tuesday, 8th April, and thereafter to our own Chamber on 15th April.

*The Council adjourned at 12.28 p.m.*