

## 2. CONSIDERATION OF CLAUSES

### 2.1. Capacity Bill 2022 – Clauses considered

**The Deputy Speaker:** Okay, if that is no more questions, then we move to Item 2, consideration of clauses of the Capacity Bill.

1115 A number of amendments have been tabled in the name of Dr Haywood. As Dr Haywood is attending remotely, she has asked that her amendments be moved instead by Ms Lord-Brennan. Under Standing Order 3.11A, this can be done with the leave of the House.

Does the House give leave? (**Members:** Agreed.) Then I think we will take that as agreed, and move straightaway to clause 1. I call on Minister Hooper to move.

1120 **Mr Hooper:** Thank you very much, Madam Deputy Speaker.

Hon. Members, I am pleased to move the clauses of the Capacity Bill 2022, a Bill which will create a statutory framework to better enable and support people who lack the capacity to make decisions for themselves, and those who look after and care for them.

1125 Hon. Members, Part 1 introduces the Bill, with clause 1 giving the resulting Act its short title. I beg to move that clause 1 stands part of the Bill.

**The Deputy Speaker:** Hon. Member for East Douglas, Ms Faragher.

1130 **Ms Faragher:** Gura mie eu, Lhiass-loayreyder. I beg to second.

**The Deputy Speaker:** I put the question to the House, if no Member wishes to speak, that clause 1 do stand part of the Bill. All those in favour, say aye; all those against, say no. The ayes have it. The ayes have it.

1135 Clause 2, sir.

**Mr Hooper:** Clause 2 provides for the commencement of the Act on a day or days that the Department of Health and Social Care may appoint, with any transitional provisions that are considered to be necessary.

1140 I beg to move clause 2 stands part of the Bill.

**The Deputy Speaker:** Ms Faragher.

1145 **Ms Faragher:** Gura mie eu, Lhiass-loayreyder. I beg to second.

**The Deputy Speaker:** Mr Thomas.

**Mr Thomas:** Thank you, Madam Deputy Speaker.

1150 I thank the mover and the Department for engaging in a discussion about the commencement provisions in respect particularly of the code of practice. The National Health and Care Act 2016 came through with a commencement provision such that it could not be brought into force until something had happened. In the end, that was very helpful for the Department, because it has not been brought into force, because that thing that had to happen has not happened.

1155 So can the mover advise what plans for implementing this particular Bill the Department has, what the schedule is, and how it will deal in particular with the code of practice, but also with other important regulations? Can he make a commitment here today that they will definitely be in place in a realistic timescale?

1160 I am mindful of things like the Tribunals Act 2006: came into place with the expectation 'There will be tribunal regulations for all the tribunals', and we still do not have regulations made under the Tribunals Act for many of the tribunals. I am mindful of the fact that in 1999 we talked about the section 40 committee to improve planning in respect of many of the issues that still exists today and we do not have a committee.

1165 So there is a habit, tradition even, of things being put in law and then not actually implemented. I would like some reassurance that the mover and the Department has an implementation schedule in place, in particular to deal with a code of practice, but in other things as well.

**The Deputy Speaker:** Minister to reply.

1170 **Mr Hooper:** Thank you very much, Madam Deputy Speaker.

Yes, I can assure the Hon. Member we do have an implementation plan, and my intention is to circulate it to Hon. Members after the sitting.

That is all I have.

1175 **The Deputy Speaker:** I therefore put the question to the House that clause 2 do stand part of the Bill. All those in favour, say aye; all those against, no. The ayes have it. The ayes have it. Clause 3, Mr Hooper.

1180 **Mr Hooper:** Clause 3 opens the first Division of Part 2 of the Bill, setting out the key principles regarding acts done or decisions made under the Act on behalf of a person who may lack the capacity to do so themselves.

1185 Every adult has a right to make their own decisions, if they have the capacity to do so, and this, Hon. Members, is the first and most important principle of the Bill. At all times, capacity is to be presumed, unless or until it is established that the person lacks the capacity to make their own decisions.

Subsection (3) sets out the second principle. It is that everybody must be treated equally and that a lack of capacity should not be assumed simply based on a person's age, appearance, condition or behaviour.

1190 The third principle, described as the supported decision principle, requires all practicable steps to have been taken to help a person make a decision before treating them as being unable to do so.

The fourth principle, set out in subsection (5), clarifies that the making of an unwise decision in and of itself does not mean that a person was unable to make that decision.

1195 The fifth, sixth and seventh principles apply when a person has been assessed to lack the capacity to make a decision. Where this is the case, under principles five and six, an act done or a decision made on their behalf has to be done or taken in their best interests.

Lastly, the seventh principle sets out that the least restrictive option must be taken. This requires the person acting or making the decision to think whether it is possible to do so in a way that would interfere less with the rights and freedoms of the person lacking capacity.

1200 I beg to move that clause 3 stands part of the Bill.

**The Deputy Speaker:** If no Member wishes to speak, then – (*Interjection*) Ms Faragher.

1205 **Ms Faragher:** Gura mie eu, Lhiass-loayreyder.

I beg to second.

**The Deputy Speaker:** Mr Thomas.

**Mr Thomas:** Thank you, Madam Deputy Speaker.

1210 I just wanted to create an opportunity for the mover, the Minister, to lay out any difference between these principles and the principles in the other island. And if he is not able to do that today, would he agree with me that it might be helpful in the other place to actually clarify exactly how, if at all, these principles differ from those in the neighbouring jurisdiction.

1215 **The Speaker:** Minister Hooper.

**Mr Hooper:** Thank you very much, Madam Deputy Speaker.

I am more than happy to have that information circulated, but from my perspective, I am not making legislation and we are not making legislation for another jurisdiction. We are making  
1220 legislation for the Isle of Man and it is important that we are satisfied that what we are doing is right for the Island, not simply copying what exists elsewhere for the sake of it.

So whilst a jurisdictional comparison is always of use, I would always default to looking at what we need on the Island and making a decision on that and that alone.

Thank you.

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**Mr Thomas:** So they are identical?

**The Deputy Speaker:** I put the question that clause 3 do stand part of the Bill. All those in  
1230 favour, say aye; those against, no. The ayes have it. The ayes have it.

Clause 4, Mr Hooper.

**Mr Hooper:** Thank you, Madam Deputy Speaker.

Clause 4 of the Bill explains what a lack of capacity means. Thus, for the purposes of the Bill, a  
1235 person is said to lack capacity in relation to a matter if they have an impairment or a disturbance that affects how their mind or brain functions and that impairment or disturbance means they are unable to make the decision at the time the decision needs to be made.

Subsection (2) clarifies that impairment or disturbance does not have to be permanent and  
1240 subsection (3) sets out the requisite standard of proof in proceedings, where there is a question as to whether a person has capacity, being is it more likely than not that the person lacks the capacity to make the decision in question.

Subsection (4) confirms the Act will generally apply to those age 16 or over.

I beg to move that clause 4 stands part of the Bill.

**The Deputy Speaker:** Ms Faragher.

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**Ms Faragher:** Gura mie eu, Lhiass-loayreyder.

I beg to second.

**The Deputy Speaker:** I put the question that clause 4 do stand part of the Bill. All those in  
1250 favour, please say aye; those against, no. The ayes have it. The ayes have it.

Clause 5, Mr Hooper.

**Mr Hooper:** Thank you, Madam Deputy Speaker.

Clause 5 sets out for the purposes of the Bill the test for assessing whether a person is unable  
1255 to make a decision for themselves. Subsection (1) sets out the four circumstances where a person is unable to do so.

1260 Firstly, a person is unable to make a decision if they are unable to understand the information relevant to that decision. You will note, Hon. Members, that this is caveated by subsection (2), which clarifies that a person is not to be considered as unable to understand the information if they are able to understand an explanation of it given to them in a manner appropriate to their circumstances. For example, maybe through the use of visual aids.

1265 Secondly, a person is unable to make a decision for themselves if they are unable to retain the information for an appropriate period of time. Subsection (4) clarifies what is meant by ‘appropriate’, specifying that retention of information for a short period of time does not by itself mean that they lack the capacity to make the decision.

Thirdly, a person is unable to make a decision for themselves if they are unable to use or weigh that information as part of the decision-making process.

1270 Fourthly, if a person cannot communicate their decision in any way at all, the Bill treats them as though they are unable to make that decision. An example would be where a person is unconscious or in a coma.

Finally, subsection (5) provides the Department with a discretionary regulation-making power to prescribe the steps to be taken to assist a person to make the decision for themselves.

I beg to move clause 5 stands part of the Bill.

1275 **The Deputy Speaker:** Ms Faragher.

**Ms Faragher:** Gura mie eu, Lhiass-loayreyder.  
I beg to second.

1280 **The Deputy Speaker:** Mr Ashford.

**Mr Ashford:** Thank you, Madam Deputy Speaker.

1285 Clause 5(5) allows the Department, as the Hon. Minister has said, to make regulations as to the steps to be taken by a person to make a decision for themselves. I note, and the Hon. Member made reference to it, that it is a ‘may’, rather than a ‘shall’. So can I ask is it the Department’s current intention to make such regulations and, if so, when they would be envisaged to be brought forward?

1290 While I am on my feet, Madam Deputy Speaker, I would like to congratulate the Minister on getting the Bill to clauses stage here today. It is a long overdue piece of legislation. I am sure all of us in this House welcome the fact it is here today.

**Several Members:** Hear, hear.

1295 **The Deputy Speaker:** Minister to reply.

**Mr Hooper:** Thank you, Madam Deputy Speaker.

1300 It is a very good question. Actually, at this stage I do not think the Department has made a firm decision on whether we will need such regulations. The implementation plan does set it out as one of the things that has to be considered next as we progress with the process, so I would very much welcome, actually, the Hon. Member’s thoughts on this. I know he has been quite heavily involved with the Capacity Bill through its early gestation.

1305 **The Deputy Speaker:** Hon. Members, I put the question to the House that clause 5 do stand part of the Bill. All those in favour, say aye; those against, no. The ayes have it. The ayes have it.  
Clause 6, Mr Hooper.

**Mr Hooper:** Thank you, Madam Deputy Speaker.

1310 Clause 6 of the Bill covers best interests, explaining what things a person should and should not consider when trying to work out what is in somebody’s best interests.

Subsection (2) makes it clear that a determination must not be made on the basis of a discriminatory assumption as to a person’s age, appearance, condition or aspect of their behaviour.

1315 Subsection (3) requires a person to consider all the issues that would be most relevant to the individual who lacks capacity and subsection (4) deals with participation, requiring the decision maker to ensure all reasonably practicable steps are taken to encourage the person to participate in the decision.

Subsections (5) and (6) require the decision maker to consider whether the person is likely to regain capacity at some point in the future, for example, after receiving medical treatment, and if they are likely to, to consider whether it would be in their best interests to postpone the decision.

1320 Subsection (7) places a duty on the decision maker to consult with others where it is appropriate and practicable to do so. As to whom the decision maker must consult, it includes any donee of a power of attorney and any court-appointed delegate.

Where a person has been consulted, then under subsection (8) the decision maker is required to take account of their views on what would be in the person's best interests and the matters specified in subsection (9), which are: the person's past and present wishes; any relevant written statement made when the person had capacity; the beliefs and values that would be likely to influence their decision *if* they had capacity; and any other factors the person would have taken into consideration if they were able to do so, including factors that were not present at the time when they made an expression of their wishes in relation to a particular matter.

1330 Subsection (10) clarifies that whilst all of the above factors are to be taken into account to work out what is in a person's best interests, those referred to in subsection (9) are to be of paramount consideration.

Subsection (11) deals with decisions concerning life-sustaining treatment, particularly a decision maker must not be motivated in any way by a desire to bring about a person's death.

1335 Lastly, Hon. Members, subsection (12) confirms who best interest duties apply to, and subsection (13) confirms that where a person makes a decision in the reasonable belief that they are doing so in the best interests of the person who lacks capacity, then provided they have followed the checklist in clause 6, they will have complied with the best interests principle set out in clause 3.

1340 I beg to move that clause 6 stands part of the Bill.

**The Deputy Speaker:** Ms Faragher.

1345 **Ms Faragher:** Gura mie eu, Lhiass-loayreyder.  
I beg to second.

**The Deputy Speaker:** Mr Thomas.

1350 **Mr Thomas:** Thank you very much, Madam Deputy Speaker.

Can the mover actually reassure this place that detailed discussions have gone ahead with the regulators of the professionals involved in drawing up these checklists? And that we are not inadvertently causing any difficulties in the future, with any great differences with standard practice to do with capacity by which those people are regulated in other places outside the Isle of Man?

1355 **The Deputy Speaker:** Minister.

**Mr Hooper:** Thank you very much, Madam Deputy Speaker.

1360 In short, as the Hon. Member has already alluded to, large portions of this Bill are very similar, if not identical, to provisions that are included inside the United Kingdom's equivalent legislation and in this case, the policy working groups that were put together to inform these decisions around the checklist, or the requirements set out in the Bill, did include professionals and they were able to obviously make representations in respect of what their professional obligations were. So I am quite comfortable that the Bill is appropriately worded in that respect.

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**The Deputy Speaker:** Hon. Members, I put the question to the House that clause 6 do stand part of the Bill. All those in favour, say aye; all those against, say no. The ayes have it. The ayes have it.

Clause 7.

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**Mr Hooper:** Thank you, Madam Deputy Speaker.

Clause 7 of the Bill provides definitions for the purposes of clauses 8 to 10, defining C as meaning a person who does an act in connection with the care or treatment of another person and that 'another person' being defined as P.

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I beg to move clause 7 stands part of the Bill.

**The Deputy Speaker:** Ms Faragher.

**Ms Faragher:** Gura mie eu, Lhiass-loayreyder.

1380

I beg to second.

**The Deputy Speaker:** Hon. Members, I put the question that clause 7 do stand part of the Bill. All those in favour, say aye; those against, no. The ayes have it. The ayes have it.

Clause 8, sir.

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**Mr Hooper:** Thank you, Madam Deputy Speaker.

Clause 8 of the Bill deals with the protection from liability of those who provide care or treatment for those who lack capacity. Thus if 'C', before doing an act, takes reasonable steps to establish whether 'P' lacks capacity and, when doing the act, they reasonably believe that P lacks the capacity and that it will be in P's best interests for the act to be done, then C will not incur liability in relation to that Act.

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However, subsection (3) makes it clear that this clause does not provide a defence in cases of negligence either in carrying out a particular act or failing to act when necessary. For example, a surgeon would be protected against a claim of battery for operating upon an incapacitated person, if it were in that person's best interest. However, were they to be negligent in the performance of that operation, they are not protected from a charge of negligence.

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Subsection (4) clarifies that this clause does not affect the operation of advance decisions to refuse treatment. Thus, if a person has made a valid and applicable advance decision, then that will take precedence over the rules in this clause.

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I beg to move clause 8 stands part of the Bill.

**The Deputy Speaker:** Ms Faragher.

**Ms Faragher:** Gura mie eu, Lhiass-loayreyder.

1405

I beg to second.

**The Deputy Speaker:** So we put the question to the House that clause 8 do stand part of the Bill. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it.

Mr Hooper, clause 9.

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**Mr Hooper:** Thank you, Madam Deputy Speaker.

Clause 9 of the Bill caveats clause 8, so that where an Act is intended to restrain a person who lacks capacity, two further conditions must also be satisfied. The first condition is there has to be a reasonable belief that it is necessary to do the act to prevent harm to that person and the second condition is the Act must be proportionate to the likelihood of harm being suffered and the seriousness of that harm.

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1420 For the purposes of the clause, subsection (2) defines what is meant by restraint and  
subsections (3) to (5) deal with how clause (8) interacts with decisions made by a donee or a  
delegate. Firstly, with regard to subsection (3), this sets the general rule that clause 8 does not  
operate so as to authorise a person to act in a manner that conflicts with a decision that has been  
made by donee or a delegate. However, subsections (4) and (5) provide for an exception, so that  
where there is a dispute or difficulty over a decision made by a donee or a delegate, for example,  
where a healthcare professional has a concern that the donee is not acting in the person's best  
interests, they can take action to sustain life or prevent serious deterioration whilst any such  
dispute is referred to the courts.

1425 I beg to move clause 9 stand part of the Bill.

**The Deputy Speaker:** Ms Faragher.

1430 **Ms Faragher:** Gura mie eu, Lhiass-loayreyder.  
I beg to second.

**The Deputy Speaker:** I put the question to the House that clause 9 do stand part of the Bill. All  
those in favour, say aye; those against, say no. The ayes have it. The ayes have it.

1435 Mr Hooper, clause 10.

**Mr Hooper:** Hon. Members, clause 10 of the Bill, which is to be read in conjunction with  
clause 8, deals with expenditure. Subsections (1) and (2) clarify that if a section 8 act involves  
expenditure, it is lawful for C to, firstly, pledge P's credit to meet the cost, apply P's money to  
meet the cost or to be reimbursed out of money in P's possession where C has borne the cost.

1440 I beg to move clause 10 stands part of the Bill.

**The Deputy Speaker:** Ms Faragher.

1445 **Ms Faragher:** Gura mie eu, Lhiass-loayreyder.  
I beg to second.

**The Deputy Speaker:** I put the question to the House that clause 10 do stand part of the Bill.  
All those in favour, say aye; those against, say no. The ayes have it. The ayes have it.

1450 Mr Hooper, clause 11.

**Mr Hooper:** Clause 11 of the Bill deals with necessary goods and services. Members may be  
well aware that the general rule under the Island's common law is that a contract entered into by  
a person who lacks capacity to make the contract is not enforceable if the other person knew, or  
must be taken to have known, of the lack of capacity. Clause 11 modifies slightly this general rule  
so that where the contract is for the supply to a person who lacks capacity of necessary goods and  
services a reasonable price must be paid.

1455 Mrs Deputy Speaker, I beg to move that clause 11 stands part of the Bill.

**The Deputy Speaker:** Ms Faragher.

1460 **Ms Faragher:** Gura mie eu, Lhiass-loayreyder.  
I beg to second.

**The Deputy Speaker:** Hon. Members, we put the question that clause 11 do stand part of the  
Bill. Those in favour, say aye; those against, say no. The ayes have it. The ayes have it.

1465 I call on Minister Hooper to move clause 12 and Schedule 1.

**Mr Hooper:** Thank you, Madam Deputy Speaker.

1470 Clause 12 opens the second Division of Part 2 of the Bill; setting out the fundamentals of Lasting Powers of Attorney (LPAs), which means what they are and how they should be used.

1475 Subsection (1) clarifies that the scope of an LPA can extend to both health and welfare decisions and matters concerning property and financial affairs. Subsection (2) deals with the creation of an LPA. Fundamentally, Hon. Members, the donor must follow the correct procedures for creating and registering an LPA, otherwise the LPA may not be valid. These procedures are that: clause 13 must be complied with; the form of the instrument and its registration must be in accordance with Schedule 1; and the donor must be aged 18 years or over and have the capacity to execute the instrument.

1480 Under subsection (3) if an instrument fails to comply with the requirements specified in subsection (2), clause 13 or Schedule 1 the instrument will not be valid and, as such, confers no authority to the donees to make decisions on behalf of the donor.

Finally, subsection (4) makes it clear that a donee must apply the key principles and best interest decision-making principles as set out in clauses 3 and 6. Furthermore, a donee's authority is subject to the conditions and restrictions that the donor has specified in the instrument.

1485 Turning to Schedule 1 which is introduced by this clause and deals with the formalities for LPAs, which include the making, registering of and objecting to an LPA.

Part 1 of Schedule 1 sets out the requirements with regard to the form and execution of an LPA. An instrument which fails to comply with the provisions of Schedule 1 or regulations made under it, will generally not create an LPA and will not confer any powers to a donee.

1490 Paragraph 1 supplements clause 12 and introduces the LPA formalities in respect of making instruments, it also sets out the requirements with regard to form and execution. That is, it must be in the prescribed form, comply with paragraph 2 and any other prescribed requirements in connection with its execution. Paragraph 1 also sets the parameters in which the Department may make regulations, as well as providing the definitions of 'prescribed' and 'regulations' for the purposes of this Schedule.

1495 Paragraph 2 outlines what an instrument must comprise. This includes: the purpose of the instrument, a statement by the donor confirming their understanding, names of the persons to notify, a statement by the donees that they understand their duties, and finally, a certificate by a person of a prescribed description, who is referred to as the 'certificate provider', confirming the donor's understanding that there is no fraud or undue pressure and that there is nothing else preventing the instrument from being created.

1500 To conclude paragraph 2, there is a regulation-making power for the Department to set out the notification procedure, as well as the requirements covering the certificate provider. Paragraph 3 gives the Chief Registrar discretion to accept instruments that differ in an immaterial way, if the court is satisfied that the persons executing the instrument intended for it to create an LPA.

1510 Part 2 of Schedule 1 deals with applications and the procedure for registration. Hon. Members, allow me to point out the distinction between an 'instrument' and an LPA: an LPA does not become an LPA until it has been registered with the Chief Registrar; prior to registration the document completed by the donor is referred to as an 'instrument'. Fundamentally, the powers conferred in an LPA cannot be exercised until the instrument has been registered.

1515 Paragraph 4 provides that any application for the registration of an instrument by the donor or donees to the Chief Registrar must be in the prescribed form and include the prescribed information and any fee. Sub-paragraph 4 introduces an offence for any person who, in the application to register an instrument, knowingly makes a false statement or representation. Finally, subject to paragraphs 11-14, the Chief Registrar must register the instrument as an LPA at the end of the prescribed period.

Paragraphs 6-9 deal with the notification requirements, this is a safeguarding measure which protects the donor. A notice must be in the prescribed form. Paragraph 10 gives the court the

1520 power to dispense with the notification procedure, if it is satisfied that no purpose would be served by giving notice.

Paragraph 11 deals with the circumstance where instruments are not made properly or contain ineffective information. That is to say that, if an instrument accompanying an application is not made in accordance with Schedule 1, then the Chief Registrar must not register the instrument, unless they have been directed by the court to do so. Paragraph 12 states that if a delegate has already been appointed by the court for the donor, and the powers conferred would conflict with the instrument, then unless instructed to do so, the Chief Registrar must not register the instrument. Paragraph 13 sets out the procedures for objecting to an application to the registration of an LPA instrument.

1530 Sub-paragraph (1) deals with 'factual objections' and applies where a donee or a notifiable person receives a notice of an application to register an LPA and subsequently gives notice to the Chief Registrar of an objection, on the ground that an event pursuant to section 16(3) or (4) has occurred, which has revoked the instrument. Consequently, sub-paragraph (4) would apply and the Chief Registrar must not register the instrument.

1535 Sub-paragraph (2) opens up the category of persons who may submit an objection to people who fall within the sub-paragraph (3) definition of 'qualified person', which is namely a medical person, a constable, the legal profession and any other prescribed person, to make an objection to the Chief Registrar.

1540 Sub-paragraph (4) provides that if the Chief Registrar is satisfied that the grounds for objection is established, then they must not register the instrument. However, the person applying to register the instrument may make a further application to the court, and if the court is satisfied that the ground is not established, the court will direct the Chief Registrar to register the instrument. Similar to sub-paragraph (4), sub-paragraph (5) allows for objections on 'prescribed grounds', which are any matters referred to at clause 18(4).

1545 Paragraph 14 allows for the donor to object to the registration of an instrument. Following receipt of such an objection, the Chief Registrar must not register the instrument unless the court, is satisfied that the donor lacks capacity to object to the registration. Paragraph 15 provides that when an instrument has met all the formalities of this schedule, the Chief Registrar must give notice to the donor, the donees and each notifiable person. Finally, Hon. Members, paragraph 16 sets out provision for post registration formalities.

1550 Part 3 of Schedule 1 sets out the formalities in respect of the cancellation of registration and notification of severance of an LPA. Ultimately the Chief Registrar can cancel an LPA if satisfied the power has been revoked.

1555 Paragraphs 17-20 specify the procedure that the Chief Registrar must follow to cancel or sever an LPA. In accordance with the provisions of this Bill, the Chief Registrar must cancel the registration of an LPA after being satisfied that the power has been revoked by virtue of either the donor's bankruptcy, or the occurrence of a clause 16(4) event. The Chief Registrar must send notification of a cancellation to the donor, the donees and each notifiable person.

1560 Furthermore, the court must direct the Chief Registrar to cancel the registration of an LPA, if it determines that a requirement for creating the power under clause 18(2) was not met, or that under clause 18(2) the power has been revoked, or come to an end, or finally if the court revokes the power under clause 18(3).

Finally, Hon. Members, the court must notify the Chief Registrar if it has severed a provision of the LPA, or direct the Chief Registrar to cancel the registration of the LPA upon which the instrument and any office copies must be delivered to the Chief Registrar.

1565 Part 4 of the Schedule deals with how any alterations in registered LPAs are recorded. Specifically, in relation to a property and financial affairs LPA, if it appears to the Chief Registrar that the donor's bankruptcy has revoked the LPA then a note to that effect must be attached.

Likewise, if an event has occurred which has terminated the appointment of a donee but has not revoked the LPA, if a donee has been replaced under the terms of the LPA, or if the court has

1570 severed a provision in the instrument, the Chief Registrar must attach a note to that effect and give notice of such a note to the donees.

Hon. Members, Part 5 sets out the *vires* that the Department will have for dealing with overseas instruments. Under paragraph 26(2) the Department has a discretionary regulation-making power, which may provide that LPAs, or their equivalent, made under another jurisdiction, 1575 may have effect for that purpose under the law of the Island.

Finally, Part 6 concludes Schedule 1 and supplements clause 20, which provides the Chief Registrar with the function of establishing and maintaining a register of LPAs. Paragraph 28 sets out the terms upon which the Chief Registrar may release any information contained on the register.

1580 Madam Deputy Speaker, I beg to move clause 12 and Schedule 1 stand part of the Bill.

**The Deputy Speaker:** Ms Faragher.

**Ms Faragher:** Gura mie eu, Lhiass-loayreyder, I beg to second.

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**The Deputy Speaker:** I now call on Ms Lord-Brennan to move amendments 8 and 9.

**Ms Lord-Brennan:** Thank you, Madam Deputy Speaker.

I would like to move two minor amendments and propose them to Schedule 1, and that is 1590 amendments 8 and 9 on the Order Paper; and these flow from discussion between the DHSC and the General Registry.

The first amendment is to cite the correct reference to the Registry's fee-making power, that being section 81 of the Interpretation Act 2015, rather than court rules, as are specified currently. The second amendment, number 9, is to remove erroneous wording in paragraph 11 for it being 1595 that applications to the court are made by the applicant for registration rather than the Chief Registrar.

Madam Deputy Speaker, I beg to move:

*Amendments to Schedule 1:*

*8. Page 39, in line 5, for 'court rules' substitute «section 81 of the Interpretation Act 2015».*

*9. Page 40, in line 27, omit '(whether or not on application of the Chief Registrar)'.*

**The Deputy Speaker:** Mrs Barber.

1600 **Mrs Barber:** Thank you. I beg to second.

**The Deputy Speaker:** Does any other Member wish to speak? No. Does the Minister want to reply to the amendment?

1605 **Mr Hooper:** No, thank you.

**The Deputy Speaker:** So I put the question to the House that amendments 8 and 9 be made. All those in favour, say aye; all those against, say no. The ayes have it. The ayes have it.

Now I put the question to the House that clause 12 and Schedule 1, as amended, do stand part 1610 of the Bill. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it.

We move on to clause 13.

**Mr Hooper:** Clause 13 continues with the LPA's provisions, setting out restrictions as to who can act as a donee. For LPAs which relate to health and welfare, the donee must be an individual 1615 who has reached the age of 18 years. For LPAs which relate to property and financial affairs, the

donee must be either an individual who is not bankrupt and has reached the age of 18 years, or a regulated trust company.

1620 Subsection (5) provides that where two or more people are appointed they may be appointed either: jointly; jointly and severally; or where specified, a combination of both. When an instrument fails to specify, the default position is that they are appointed jointly.

1625 Where the instrument specifies that the donees are to act jointly, any breach of the requirements of subsections (1) to (3) hereto, or Parts 1 or 2 of Schedule 1, will prevent a valid power being created. However, where the instrument specifies that the donees are to act jointly and severally, such a breach by one donee will apply only to that particular donee, thus a valid power is created in respect of the other donees.

Finally, Hon. Members, the remaining subsections 9 and 10, respectively, deal with the replacement of donees in specified circumstances and provides the Department with the *vires* to specify who may not be appointed as a donee of an LPA.

1630 Madam Deputy Speaker, I beg to move clause 13 stands part of the Bill.

**The Deputy Speaker:** Ms Faragher.

**Ms Faragher:** Gura mie eu, Lhiass-loayreyder. I beg to second.

1635 **The Deputy Speaker:** If no Member wishes to speak, I put the question to the House that clause 13 do stand part of the Bill. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it.

Clause 14.

1640 **Mr Hooper:** Clause 14 continues to make provision for LPAs and sets out specific restrictions in respect of health and welfare LPAs. Subsection (1) to (4) deal with acts of a donee which are intended to restrain the donor. Such acts are carefully safeguarded and are only authorised acts if the following three specific conditions are satisfied: the donor lacks, or the donee reasonably believes that the donor lacks, capacity in relation to the question or act; it is necessary to do the act to prevent harm to the donor; and the act is a proportionate response to the likelihood of the donor suffering harm and the seriousness of that harm.

1645 Hon. Members, I will briefly refer you back to clause 8. You will recall the indemnity extended to a person acting in connection with the care or treatment of another person. I would just remind Hon. Members that this indemnity does not apply unless these three aforementioned conditions are met. The inclusion of effective and robust safeguarding mechanisms within this Bill has been of utmost importance to the Department.

1650 Subsection (5) defines what is meant by 'restraint' for the purposes of clause 14. Subsection (6) sets out further limitations and provisions in respect of health and welfare LPAs, whilst extending the donee's powers to giving or refusing consent to life sustaining treatment. Crucially subsection (7) acknowledges the precedence of a valid advance decision to refuse treatment (ADRT) in respect of any such decision.

I beg to move that clause 14 stands part of the Bill.

1660 **The Deputy Speaker:** Ms Faragher.

**Ms Faragher:** Gura mie eu, Lhiass-loayreyder. I beg to second.

**The Deputy Speaker:** I put the question to the House that clause 14 do stand part of the Bill. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it.

1665 Mr Hooper, clause 15.

1670 **Mr Hooper:** Clause 15 further supplements LPA provisions in the context of property and financial affairs. Clause 15 serves to limit the power of a donee to make gifts out of the donor's property. Only if the donor is satisfied that it is in the donor's best interest, the donee is permitted to make gifts on customary occasions to people related or connected to the donor or to charity. For the purposes of clause 15, subsection (3) defines what is meant by 'customary occasion'.

Such gifts must be proportionate to the size of the donor's estate and are subject to any restrictions contained in the instrument creating the power.

I beg to move clause 15 stands part of the Bill.

1675

**The Deputy Speaker:** Ms Faragher.

**Ms Faragher:** Gura mie eu, Lhiass-loayreyder. I beg to second.

1680 **The Deputy Speaker:** I put the question to the House that clause 15 do stand part of the Bill. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it.  
Mr Hooper.

1685 **Mr Hooper:** Clause 16 deals with the revocation of LPAs both pre-registration, that means where the donor has executed an instrument with a view to creating an LPA but has not yet registered it, and post-registration, where an LPA has been registered and power has been conferred by the donor to the donee.

1690 Under subsection (2) a donor with capacity has the power to revoke an LPA. This core standard of choice and control by the donor is what underpins the principles of this Bill. Under subsections (3) and (4)(c), the bankruptcy of either the donor or the donee will terminate any financial powers granted. More generally, subsection (4) deals with the events upon which their occurrence terminates a donee's appointment. These events will be: the donee disclaiming the appointment; the death of the donee; where the donee is a regulated trust company, it's winding up or dissolution; or the dissolution or annulment of a marriage/ civil partnership between the donor and donee unless, pursuant to subsection (7), the instrument specifically provides that it is not to do so.

1695 Subsection (5) makes it clear that upon the occurrence of an event referred to in subsection (4), the power to act is revoked and also, but subject to subsection (6), the instrument conferring the power is revoked.

1700 Further, notwithstanding the occurrence of an event under subsection (4), the instrument is not revoked in the event that either the donee is replaced under the terms of the instrument, or the donee is one of two or more persons appointed to act jointly and severally and, after the event, there is a minimum of one donee remaining.

I beg to move that clause 16 stands part of the Bill.

1705

**The Deputy Speaker:** Ms Faragher.

**Ms Faragher:** Gura mie eu, Lhiass-loayreyder. Once again, I beg to second.

1710 **The Deputy Speaker:** Hon. Members, I put the question to the House that clause 16 do stand part of the Bill. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it.

Clause 17, Mr Hooper.

1715 **Mr Hooper:** Thank you, Madam Deputy Speaker.

Clause 17 provides for a protection for a donee and others, if no power is created or that power was created but subsequently revoked.

1720 Essentially, Hon. Members, in such circumstances a donee who acted in purported exercise of the power, that is to say they acted in 'good faith', does not incur a liability – unless they knew the power was not created or were aware of circumstances that would have terminated their authority to act.

Subsection (3) clarifies the position with regard to transactions entered into between the donee and a third party; such transactions are valid unless the third party had knowledge of a matter referred to in subsection (2).

1725 Subsection (4) deals with the interests of a purchaser, where that interest is dependent upon the validity of a transaction between the donor and a third party, the presumption subject to (a) and (b), being in favour of the purchaser.

I beg to move clause 17 stands part of the Bill.

1730 **The Deputy Speaker:** Ms Faragher.

**Ms Faragher:** Gura mie eu, Lhiass-loayreyder. I beg to second.

1735 **The Deputy Speaker:** Hon. Members, I put the question to the House that clause 17 do stand part of the Bill. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it.

Clause 18, Mr Hooper.

**Mr Hooper:** Thank you, Madam Deputy Speaker.

1740 Clause 18 covers the court's powers *vis-à-vis* the validity of LPAs, giving the court a wide power to determine any question about the validity and also the revocation of an LPA.

1745 Under clause 18, the court has the power to direct that an instrument should not be registered or, where the donor lacks capacity, to revoke it on the grounds set out under subsection (4), which are: fraud; undue pressure; misbehaviour on the part of the donee; or acting in a way which exceeds or contravenes the donee's authority. The donor's best interest being at the core of any questions determined by the court.

I beg to move that clause 18 stands part of the Bill.

**The Deputy Speaker:** Ms Faragher.

1750

**Ms Faragher:** Gura mie eu, Lhiass-loayreyder. I beg to second.

**The Deputy Speaker:** Hon. Members, I put the question that clause 18 do stand part of the Bill. Those in favour, say aye; those against, say no. The ayes have it. The ayes have it.

1755 Mr Hooper, clause 19.

1760 **Mr Hooper:** Clause 19 sets out the court's powers *vis-à-vis* the operation of LPAs. Subsection (1) gives the court a general power to determine any question as to the meaning or effect of an LPA or an instrument purporting to create one, and subsection (2) allows the court to give directions to donees where the donor lacks capacity. Further, the court may, where the donor no longer has capacity, give the donee directions as to the rendering of reports, accounts, the production of records and information about their remuneration and expenses.

1765 Under subsection (4)(d), the court has the power to relieve a donee from liability incurred on account of a breach and subsection (5) gives the court the power to authorise gifts which are not covered by clause 15(2) which refers to gifts on customary occasions and charitable gifts.

I beg to move that clause 19 stands part of the Bill.

**The Deputy Speaker:** Ms Faragher.

1770 **Ms Faragher:** Gura mie eu, Lhiass-loayreyder. I beg to second.

**The Deputy Speaker:** Hon. Members, I put the question to the House that clause 19 do stand part of the Bill. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it.

1775 Mr Hooper, clause 20.

**Mr Hooper:** In conclusion of Division 2, clause 20 gives the Chief Registrar the function of establishing and maintaining a register of LPAs. Members will recall that clause 20 is supplemented by the provisions as set out in Part 6 of Schedule 1.

1780 I beg to move that clause 20 stand part of the Bill.

**The Deputy Speaker:** Ms Faragher.

**Ms Faragher:** Gura mie eu, Lhiass-loayreyder. I beg to second.

1785

**The Deputy Speaker:** Hon. Members, I put the question to the House that clause 20 do stand part of the Bill. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it.

Mr Hooper.

1790

**Mr Hooper:** Thank you, Madam Deputy Speaker.

Hon. Members will be pleased to learn we are more than halfway through my speaking notes! *(Laughter)*

1795 Clause 21 of the Bill opens the Third Division of Part 2 of the Bill. Clause 21 defines, for the purposes of this Division, a person who lacks capacity in relation to a matter concerning their health and welfare or property and financial affairs as 'P'.

I beg to move that clause 21 stands part of the Bill.

**The Deputy Speaker:** Ms Faragher.

1800

**Ms Faragher:** Gura mie eu, Lhiass-loayreyder. I beg to second.

**The Deputy Speaker:** Hon. Members, I put the question to the House that clause 21 do stand part of the Bill. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it.

1805

Mr Hooper.

**Mr Hooper:** Clause 22 of the Bill provides the court with a statutory power to: declare whether a person has the capacity to make a decision in relation to either a specific matter or such matters that are specified in the declaration; and declare whether an act that has already happened or is proposed to be done was or would be lawful.

1810 Subsection (2) of this clause clarifies that the court can make a declaration on omissions to act, for example withdrawing medical treatment, and a course of conduct.

I beg to move clause 22 stands part of the Bill.

1815

**The Deputy Speaker:** Ms Faragher.

**Ms Faragher:** Gura mie eu, Lhiass-loayreyder. I beg to second.

1820 **The Deputy Speaker:** Hon. Members, I put the question to the House that clause 22 do stand part of the Bill. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it.

Mr Hooper.

1825 **Mr Hooper:** Clause 23 deals with the court's decision-making powers which includes a power to appoint another person, defined as a delegate, to make decisions for people who lack capacity to make those decisions.

Usually the court would consider exercising this power of appointment where there is a need for ongoing decision-making powers and there is no relevant enduring power of attorney or lasting power of attorney in place.

1830 In the context of the appointment of a delegate, subsection (2) requires the court to have regard to two additional best interest principles, namely: a decision by the court is preferable to appointing a delegate to make a decision; and where a delegate is appointed, the powers conferred on them must be as limited in scope and duration as is reasonably practicable.

1835 Subsection (3) is ancillary to subsection (1). Amongst other things it allows the court to grant a delegate powers or impose upon them duties, the purpose being: to avoid repeated applications to the court; and to enable the court to require a delegate to seek the court's consent prior to taking a specified action.

1840 Subsection (4) provides a statutory power to allow the court to make orders, give directions or make appointments of its own motion where it is considered to be in the best interests of the person lacking capacity.

1845 Finally, subsection (5) deals with the variation and discharge of court orders; subsection (6) acts as a safeguard, allowing the court to revoke or vary a delegate's power if they are not behaving in a satisfactory manner; and subsection (7) confirms that the court's powers under this clause are to be exercised in accordance with the Bill's overarching principles and the person's best interests.

I beg to move clause 23 stands part of the Bill.

**The Deputy Speaker:** Ms Faragher.

1850

**Ms Faragher:** Gura mie eu, Lhiass-loayreyder. I beg to second.

1855 **The Deputy Speaker:** Hon. Members, I put the question to the House that clause 23 do stand part of the Bill. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it.

Mr Hooper, clause 24.

1860 **Mr Hooper:** Clause 24 of the Bill specifically deals with the powers of the court in respect of health and welfare matters. Subsection (1) provides a non-exhaustive, indicative list of matters the court might deal with in the exercise of its powers under this clause.

It is worth highlighting at this point that this is not a list of decisions that must always be dealt with by the court rather those that can where it would be beneficial and appropriate for the court to do so.

1865 Subsection (2) clarifies how this clause is to interact with clause 27; which sets the parameters as to what a delegate can and cannot do.

I beg to move clause 24 stands part of the Bill.

**The Deputy Speaker:** Ms Faragher.

1870

**Ms Faragher:** Gura mie eu, Lhiass-loayreyder. I beg to second.

**The Deputy Speaker:** I put the question to the House that clause 24 do stand part of the Bill. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it.

Mr Hooper.

1875

**Mr Hooper:** Thank you, Madam Deputy Speaker.

Like the previous clause, but in respect of property and affairs, subsection (1) of clause 25 lists matters in respect of which the court may exercise its powers, in relation to property and financial affairs.

1880

Subsection (2) deals with the role of the Attorney General regarding the management of the property and affairs of a person who lacks capacity. Hon. Members will note the Attorney General's role does not change from that currently performed under Part 7 of the Mental Health Act 1998, which is to be repealed.

1885

Subsection (3) mirrors section 18(3) of the Mental Capacity Act in England and Wales. This subsection clarifies the court's discretionary power to act in relation to any other matter that relates to an incapacitated person's property and affairs, even if that person has not reached the age of 16. The court must however be of the opinion that they will still lack capacity in respect of that matter when they reach the age of 18.

1890

Lastly regarding this clause, subsection (4) deals with how this clause is to interact with clause 27. Subsection (5) introduces Schedule 2, which supplements this clause and subsections (6) and (7) allow, should it at some point be necessary, for the transfer of the functions of the Attorney General in this respect.

Schedule 2 supplements clause 25 by making further provisions regarding the court's powers in relation to property and financial affairs.

1895

Firstly, might I draw Hon. Members' attention to clause 25(1)(i) which states that the 'section 23 powers' of the court in relation to property and financial affairs extends in particular to executing a will for a person aged 18 or over.

Paragraphs 1 to 4 of Schedule 2 clarify what provisions are permissible in such a will, the requirements relating to how such a will is to be executed and what the effect is of it being executed.

1900

Secondly, and supplemental to clause 25(1)(h), which covers the settlement of property into a trust, paragraphs 5 and 6 of this Schedule make provision for vesting orders and the variation of settlements.

Lastly, paragraph 7 deals with the vesting of stock, paragraph 8 the preservation of an interest in property that has been disposed of and paragraph 9 improvements and benefits made to a property.

1905

I beg to move that clause 25 and Schedule 2 do stand part of the Bill.

**The Deputy Speaker:** Ms Faragher.

1910

**Ms Faragher:** Gura mie eu, Lhiass-loayreyder. I beg to second.

**The Deputy Speaker:** Mr Thomas.

1915

**Mr Thomas:** Thank you, Madam Deputy Speaker.

I am making reference particularly to subparagraph (6), the one about transfer of functions. Transfer of functions in the Government Departments Act does not include the Attorney General's Chamber but it does include Governor in Council and the Council of Ministers. In the schedule that applies in the Government Departments Act there is quite explicit reference to the transfer of property rights and liabilities, the continuance of completion by or under one Department of anything begun by or under another Department, the substitution of one Department and any instrument, contract or proceedings compensating officers and so on.

1920

1925 Does the Minister agree with me it might be helpful to have a look to make sure that all of those matters are dealt with satisfactorily in this potential transfer before the Legislative Council considers this matter? Because I just cannot help but notice that there is more detail in the equivalent transfer of functions arrangements for other transfers rather than this one.

Secondly, can the Minister imagine any situation where the Attorney General would have these functions transferred away from it?

1930 **The Deputy Speaker:** Minister.

**Mr Hooper:** Thank you, Madam Deputy Speaker.

At this stage, I *cannot* imagine any circumstances but the purpose of this Court is so that if such circumstances do arise that you have the power to do what is appropriate in those circumstances.

1935 In respect of the question around whether this needs to be made any more specific to cover some of those additional matters listed in the Government Departments Act, it is a very good question, it is not one that has come up through the consultation or the engagement with Members previously, so we will take that away and have a think about it and if it does need to be further clarified we will talk to the Legislative Council about that. But at this stage I am comfortable with the Bill as drafted.

1940 **The Deputy Speaker:** I put the question to the House that clause 25 and Schedule 2 do stand part of the Bill. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it.

1945 Clause 26, Mr Hooper.

**Mr Hooper:** Thank you, Madam Deputy Speaker.

1950 Clause 26 of the Bill deals with who can be a delegate. Subsection (1) states that an individual who has reached the age of 18 can be a delegate with regard to both health and welfare and property and financial affairs.

In addition, a trust corporation can act as a delegate but this is limited to matters regarding property and financial affairs.

1955 With respect to individuals, subsection (2) allows the court to appoint someone who is an office-holder or in a specified position, for example, the Executive Director of Social Care, and subsection (3) clarifies that no-one can be appointed a delegate without their consent.

Subsection (4) provides the court with a power to appoint more than one delegate and to direct how they are to act, for example, altogether, independently of each other or either way depending upon the matter at hand.

1960 Subsection (5) allows the court when appointing a delegate to also appoint a successor. The appointment of a successor delegate, Hon. Members, might well be used if the person appointed is already elderly and wants to be sure someone will take over their duties in the future, if needs be.

1965 Subsection (6) clarifies that a delegate is to be treated as 'the agent' of the person upon whose behalf they act. As a result delegates are subject to the law of agency and have legal duties, for example, the duty not to take advantage of their situation.

Subsection (7) deals with the reimbursement of a delegate's reasonable expenses and remuneration for discharging their functions.

1970 Lastly, subsection (8) enables the court to give a delegate the power to deal with matters concerning the management of the property of the individual lacking capacity, including the power to invest and subsection (9) importantly gives the court a power to ask a delegate to provide some form of security to the Department to cover any loss that results from the delegate's behaviour in carrying out their role.

I beg to move clause 26 stands part of the Bill.

1975 **The Deputy Speaker:** Ms Faragher.

**Ms Faragher:** Gura mie eu, Lhiass-loayreyder. I beg to second.

1980 **The Deputy Speaker:** Hon. Members, I put the question to the House that clause 26 do stand part of the Bill. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it.

Mr Hooper, clause 27.

**Mr Hooper:** Thank you, Madam Deputy Speaker.

1985 Clause 27 lists some restrictions on a delegate's powers. Of particular note, a delegate cannot do any of the following: they cannot make a decision or take action if they think that 'P' has the capacity to make that particular decision for themselves; they cannot settle P's property into a trust or execute a will for P; they cannot refuse the provision, or the continuation, of life sustaining treatment for P, such decisions would have to be taken by the court; and they cannot make a decision that is contrary to a decision made by a donee acting under a lasting power of attorney granted by P before they lost capacity.

1990

I beg to move that clause 27 stands part of the Bill.

**The Deputy Speaker:** Ms Faragher.

1995

**Ms Faragher:** Gura mie eu, Lhiass-loayreyder. I beg to second.

**The Deputy Speaker:** I put the question to the House that clause 27 do stand part of the Bill. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it.

2000

Mr Hooper, clause 28.

**Mr Hooper:** Clause 28 requires the Island's Chief Registrar to set up and keep a register of court appointed delegates.

I beg to move clause 28 stands part of the Bill.

2005

**The Deputy Speaker:** Ms Faragher.

**Ms Faragher:** Gura mie eu, Lhiass-loayreyder. I beg to second.

**The Deputy Speaker:** Ms Lord-Brennan, amendment 1.

2010

**Ms Lord-Brennan:** Thank you, Madam Deputy Speaker.

I would like to move amendment 1 on the Order Paper to clause 28 of the Bill which relates to the register of delegates. The amendment expands this clause which as it stands only requires the Chief Registrar to establish and maintain a register of delegates.

2015

Madam Deputy Speaker, at the Tynwald Members' drop-in session on 13th May, a question was asked as to this register, namely was there provision in the Bill for determining access to the register. Having carefully considered the matter, the Department of Health and Social Care agrees that an amendment to the Bill is desirable to make further provision setting out the process for accessing the register.

2020

Hon. Members, the amendment before the House today mirrors paragraph 28 of Schedule 1 which makes like provision for accessing the register of lasting powers maintained by the Chief Registrar.

Madam Deputy Speaker, I beg to move the amendment standing in my name to clause 28.

2025

*Amendment to clause 28:*

*1. Page 22, for lines 8 and 9 substitute —*

- (1) The Chief Registrar has the function of establishing and maintaining a register of delegates.*
- (2) Any person may, by an application made under subsection (3), request the Chief Registrar to carry out a search of the register.*
- (3) An application must, —*
- (a) state, —*
- (i) the name of the person to whom the application relates, and*
- (ii) such other details about that person as the Chief Registrar may require for the purpose of carrying out the search, and*
- (b) be accompanied by any fee prescribed in regulations made by the Department.*
- (4) The Chief Registrar may require the applicant to provide such further information, or produce such documents, as the Chief Registrar reasonably considers necessary to enable the Chief Registrar to carry out the search.*
- (5) As soon as reasonably practicable after receiving the application, —*
- (a) the Chief Registrar must by certificate notify the applicant of the result of the search, and*
- (b) in the event that it reveals one or more entries on the register, the Chief Registrar must disclose to the applicant all the information appearing on the register in respect of each entry.*
- (6) The Chief Registrar may, upon a request in writing, supply any person with an office copy of a registered instrument if the Chief Registrar is satisfied that the person making the request has a good reason for doing so and it is not reasonably practicable to obtain a copy of the instrument from the delegate.*
- (7) “Office copy” means a true copy of the original marked by the Chief Registrar as being an office copy.’*

**The Deputy Speaker:** Mrs Barber.

**Mrs Barber:** Thank you, Madam Deputy Speaker, I beg to second.

2030 **The Deputy Speaker:** Mr Thomas.

**Mr Thomas:** I fully support the amendment, a very sensible amendment. It is very important to have detail like this about principles on the face of primary legislation rather than having them in secondary legislation and I am glad that the Minister has come back to that way of thinking in respect of this particular piece of legislation.

2035

If anything needs to be changed in respect of what is here, how would that be dealt with? I do not think there is any procedure about amending these procedures and when we get down to registers and things like that it might be helpful to ... If I misunderstand I apologise, but it might be helpful for the Legislative Council to consider some sort of powers to deal with the detail of the register.

2040

**The Deputy Speaker:** Does any other Member wish to speak? Would Ms Lord-Brennan like to respond?

2045 **Ms Lord-Brennan:** No.

**The Deputy Speaker:** Minister.

**The Minister:** Thank you very much, Madam Deputy Speaker.

2050

I would just like to comment on Mr Thomas' question. Clause 53 is a regulation-making power which allows it to modify any provision of the Act. So there is a regulation-making power within the Act already that would allow us to change any of the requirements set out in this clause and

those regulations would be subject, I believe, to Tynwald approval, but we will come to that at clause 53.

2055 Hopefully that gives him the assurance he was looking for.

**The Deputy Speaker:** Mr Thomas?

2060 **Mr Thomas:** I have got no right to speak, have I?

**The Deputy Speaker:** No. I put the question to the House that Amendment 1 be made. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it.

I put the question that clause 28, as amended, do stand part of the Bill. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it.

2065 Clause 29, Mr Hooper.

**Mr Hooper:** Thank you, Madam Deputy Speaker.

2070 Clause 29 deals with the supervision of donees and delegates, giving the Department of Health and Social Care a supervisory role which would include monitoring compliance with the Act itself and receiving reports and security, as the case may be.

Importantly, the Department would be responsible for dealing with complaints, thus anybody with a suspicion that a delegate were abusing their position would contact the Department, who in turn, would carefully consider it.

2075 If there were concerns of course of serious fraud or physical abuse the Police and/or Social Services would also be contacted by the person with the concern.

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

**The Deputy Speaker:** Ms Faragher.

2080 **Ms Faragher:** Gura mie eu, Lhiass-loayreyder. I beg to second.

**The Deputy Speaker:** If no Member wishes to speak I put the question to the House that clause 29 do stand part of the Bill. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it.

2085 Mr Hooper, clause 30.

**Mr Hooper:** Clause 30 gives the Department a power necessary for it to undertake its supervisory functions to institute inquiries; such inquiries could be either general or for a particular purpose.

2090 I beg to move clause 30 stands part of the Bill.

**The Deputy Speaker:** Ms Faragher.

2095 **Ms Faragher:** Gura mie eu, Lhiass-loayreyder. I beg to second.

**The Deputy Speaker:** I put the question to the House that clause 30 do stand part of the Bill. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it.

Mr Hooper, clause 31.

2100 **Mr Hooper:** In addition to the Department having a general power to institute inquiries, clause 31 provides it with a power also, for the purposes of such inquiries, to obtain evidence.

Subsection (2) gives the Department the ability to require a person to provide accounts, statements and documents and to answer questions relevant to the inquiry.

2105 Subsection (3) allows the Department access to records, for example, health records, this of course will be restricted to the extent that the particular record is relevant to the inquiry itself.  
I beg to move clause 31 stands part of the Bill.

**The Deputy Speaker:** Ms Faragher.

2110 **Ms Faragher:** Gura mie eu, Lhiass-loayreyder. I beg to second.

**The Deputy Speaker:** Hon. Members, I put the question that clause 31 do stand part of the Bill. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it.  
Mr Hooper, clause 32.

2115 **Mr Hooper:** Clause 32 continues with the Department's powers, ancillary to its supervisory function, making it clear that records pertaining to the appointment of receivers may be examined.  
I beg to move clause 32 stands part of the Bill.

2120 **The Deputy Speaker:** Ms Faragher.

**Ms Faragher:** Gura mie eu, Lhiass-loayreyder. I beg to second.

2125 **The Deputy Speaker:** Ms Lord-Brennan.

**Mr Hooper:** We are not there yet. (*Interjection*)

2130 **The Deputy Speaker:** Ms Lord-Brennan. (*Interjections*)  
We are on clause 32, does any Member wish to speak?  
I put the question that clause 32 do stand part of the Bill. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it.  
Clause 33, Mr Hooper.

2135 **Mr Hooper:** Clause 33 provides the Department with a discretionary regulation-making power in relation to the supervisory functions set out under clause 29. Subsection (2) provides a non-exhaustive list as to what such regulations may cover; and subsection (3) requires the Department to consult with both the Attorney General and the Deemsters before it makes any regulations under this clause.

2140 I beg to move clause 33 stands part of the Bill.

**The Deputy Speaker:** Ms Faragher.

2145 **Ms Faragher:** Gura mie eu, Lhiass-loayreyder. I beg to second.

**The Deputy Speaker:** Ms Lord-Brennan.

**Ms Lord-Brennan:** Thank you, Madam Deputy Speaker.  
The addition of amendment number 2 to clause 33 subsection (3) would provide for the Department of Health and Social Care to not only consult with the Attorney General and the Deemsters, but also to consult with such other persons as it considers appropriate, somewhat extending the duty to consult before the making of any regulations under this clause.

Madam Deputy Speaker, I beg to move:

*Amendment to clause 33*

2. Page 24, line 17, for 'the Attorney General and the Deemsters' substitute «the Attorney General, the Deemsters and such other person as it considers appropriate.».

**The Deputy Speaker:** Mrs Barber.

2155

**Mrs Barber:** Thank you. I beg to second.

**The Deputy Speaker:** I call on the Hon. Member for Douglas North, Mr Ashford.

2160

**Mr Ashford:** Thank you, Madam Deputy Speaker.

In relation to clause 33, if I am reading this correctly, in conjunction with clause 53 – which of course we have not reached yet, but I think this is the appropriate place to raise it – I am wondering if the Minister could advise why the regulations made under this clause relating to clause 29 are subject to the negative procedure in another place rather than an affirmative procedure, and what the thinking was behind that?

2165

**The Deputy Speaker:** No other Member wishes to speak. I will ask the Minister to reply.

**Mr Hooper:** Thank you very much, Madam Deputy Speaker.

2170

Yes, we will come to clause 53 later, there are different Tynwald procedures set out for different sets of regulations. I think from recollection of the conversations that we have had round the table around this, it is to do with the significance of what those regulations can and cannot do. Ultimately everything, as far as I recall from clause 53, will require Tynwald approval of some sort, whether it is approval or the negative procedure. So there will always be the capacity for Tynwald to turn round and make sure that it, itself, has control over what regulations are actually passed and in force.

2175

I do not have any more information as to the specifics of how we made those decisions, but if the Member wants to have a conversation afterwards I will be more than happy to do that, and more than happy to circulate information to Members. But ultimately, it comes down to Tynwald *should* have control over these processes and the particular procedures was just informed, I think, by the seriousness and scale of the potential regulation-making powers.

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**The Deputy Speaker:** Hon. Members, I first put to the House the question that amendment 2 be made. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it.

2185

Now clause 33, as amended. I put to the House that it do stand part of the Bill. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it.

We move on to clause 34, please, Mr Hooper.

**Mr Hooper:** Hon. Members, clause 34 opens Division 5, which deals with advance decisions to refuse treatment. For the purposes of this Division, this clause defines 'a person who at the time of making an advance decision had capacity to do so and had reached the age of 16', as 'A'.

2190

I beg to move clause 34 stands part of the Bill.

**Ms Faragher:** Gura mie eu. I beg to second.

2195

**The Deputy Speaker:** Hon. Members, I put the question to the House that clause 34 do stand part of the Bill. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it.

Clause 35, please, Mr Hooper.

2200

**Mr Hooper:** Clause 35, subsection (1) sets out what 'an advance decision', which is sometimes known as a living will, means – that is a decision made by a person aged 16 or over, while still

capable, to refuse specified medical treatment for a time in the future when they may lack the capacity to consent or to refuse that treatment.

2205 Subsection (2) confirms that such a decision can be expressed in layman's terms and the following subsections (3) to (5) deal with the mechanics as to how an advance decision can be altered or withdrawn.

I beg to move that clause 35 stands part of the Bill.

2210 **The Deputy Speaker:** Ms Faragher.

**Ms Faragher:** Gura mie eu. I beg to second.

2215 **The Deputy Speaker:** Hon. Members, I put the question to the House that clause 35 do stand part of the Bill. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it.

**The Deputy Speaker:** Moving on to clause 36, Mr Hooper.

2220 **Mr Hooper:** Thank you, Madam Deputy Speaker.

2225 Clause 36 deals with the validity and the applicability of advance decisions, with subsection (2) clarifying the circumstances in which such a decision is not to be regarded as valid, and those would be: the person has withdrawn the decision at a time that they had the capacity to do so; or they have, after creating an advance decision, made an LPA authorising the donee to give or refuse consent to the treatment to which the advance decision relates; or they have acted in a manner which is clearly inconsistent with the advance decision, and that decision remaining their fixed decision.

2230 Subsections (3) and (4) deal with the applicability of advance decisions to treatments of a life-sustaining nature imposing certain safeguards to be met in order for one to apply, and these are that the document has to be: verified by a statement that it is to apply to treatment even if life is at risk; it must be in writing; it must be duly signed by the person making the decision in the presence of a witness to the signature; and the witness must sign the document in the presence of the person making the decision.

I beg to move clause 36 stands part of the Bill.

2235

**The Deputy Speaker:** Ms Faragher.

**Ms Faragher:** Gura mie eu, Lhiass-loayreyder. I beg to second.

2240 **The Deputy Speaker:** I put the question to the House that clause 36 do stand part of the Bill. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it. Clause 37, Mr Hooper.

2245 **Mr Hooper:** Clause 37 of the Bill sets out the legal effect of an advance decision and deals with the implications of advance decisions for healthcare professionals.

Subsection (1) confirms that the effect of a valid and applicable decision is as if the person had made it and had capacity to do so at the time when the question arose.

2250 As to the implications for healthcare professionals, subsections (2) and (3) make it clear that if satisfied that a valid and applicable decision exists they would not be held liable for withholding the treatment. Equally, if a healthcare professional is not satisfied that an advance decision is both valid and applicable they can treat the person without fear of liability.

Lastly, in circumstances where there are doubts about the existence, validity or applicability of an advance decision, subsection (5) allows the court to decide. Further, subsection (6) clarifies

2255 that healthcare professionals can continue to provide the necessary and life-sustaining treatment to stop a person's condition getting seriously worse whilst the court comes to a decision.  
I beg to move clause 37 stands part of the Bill.

**The Deputy Speaker:** Ms Faragher.

2260 **Ms Faragher:** Gura mie eu. I beg to second.

**The Deputy Speaker:** I put the question to the House that clause 37 do stand part of the Bill. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it.  
Clause 38, Mr Hooper.

2265 **Mr Hooper:** Clause 38 opens Division 6 of Part 2, specifying certain decisions in respect of family matters that can never be made under the Bill on behalf of a person who lacks capacity. For example, if a birth parent lacks the capacity to consent to the making of an adoption order, the rules as to the dispensing with the requirement for consent in the adoption legislation will apply. Thus, it will not be the case of a donee being able to consent, the Court making an order pursuant to this Bill or appointing a delegate to provide the requisite consent.  
2270 I beg to move that clause 38 stands part of the Bill.

**The Deputy Speaker:** Ms Faragher.

2275 **Ms Faragher:** Gura mie eu. I beg to second.

**The Deputy Speaker:** I put the question to the House that clause 38 do stand part of the Bill. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it.  
2280 Mr Hooper.

**Mr Hooper:** Thank you, Madam Deputy Speaker.

2285 Like clause 38, clause 39 deals with matters outside the remit of the Bill; this time, however, with regard to Mental Health Act matters. Thus, under subsection (1), it is clear that the Bill does not act so as to authorise a patient being given medical treatment for a mental disorder or authorising a person to consent to such a course of action if the patient is, at the time, being treated under the Mental Health Act.  
I beg to move clause 39 stands part of the Bill.

2290 **The Deputy Speaker:** Ms Faragher.

**Ms Faragher:** Gura mie eu, Lhiass-loayreyder. I beg to second.

**The Deputy Speaker:** I put the question to the House that clause 39 do stand part of the Bill. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it.  
2295 Clause 40, Mr Hooper.

**Mr Hooper:** Thank you, Madam Deputy Speaker.

2300 Clause 40 provides that the Act would not apply to decisions on voting.  
I beg to move clause 40 stands part of the Bill.

**The Deputy Speaker:** Ms Faragher.

**Ms Faragher:** Gura mie eu, Lhiass-loayreyder. I beg to second.

2305

**The Deputy Speaker:** I put the question to the House that clause 40 do stand part of the Bill. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it.  
Clause 41, Mr Hooper.

2310 **Mr Hooper:** Clause 41 of the Bill provides a safeguarding framework regarding the carrying out of research involving people who lack capacity.

Firstly, subsection (2) makes it clear that the interests of the person who lacks capacity are greater in importance than those of science and society.

2315 Secondly, subsection (3) introduces subsections (4) and (5) providing that the conditions specified in those subsections must be met in order for research to be carried out. The first of those conditions is one of balancing the benefit and the burden of the research on the individual, stating that it must have either: potential to produce a real benefit to that individual, without imposing on them a burden that is disproportionate; or the aim of contributing, through significant improvement in the scientific understanding of the condition that the individual has, to results  
2320 capable of conferring a benefit on them or someone else with the same or similar condition.

The second condition is set out in subsection (5) and requires any risk to people involved in such research to be minimal; for example, a person should suffer no harm or distress by taking part. It is also a requirement that such research must not affect a person's freedom of action or privacy in a significant way, and it should not be unduly invasive or restrictive.

2325 Subsection (6) deals with objections and how this clause is to interact with advance decisions.

Finally, subsection (7) provides the Cabinet Office with a discretionary regulation-making power regarding research.

I beg to move clause 41 stands part of the Bill.

2330 **The Deputy Speaker:** Ms Faragher.

**Ms Faragher:** Gura mie eu. I beg to second.

**The Deputy Speaker:** Ms Lord-Brennan.

2335

**Ms Lord-Brennan:** Thank you, Madam Deputy Speaker.

I rise to move an amendment to clause 41, notably subsection (7), which deals with the discretionary powers of the Cabinet Office to make regulations on the matter of intrusive research included in the Bill. The reason why this is Cabinet Office is because that is the departmental home  
2340 of the Public Health Directorate. The amendment clarifies the basis upon which Cabinet Office would use its regulation-making powers. That is with the concurrence of Public Health.

Hon. Members may be aware that originally under the draft Bill, which went out for consultation, it was instead the Department of Health and Social Care that was given the powers to make such regulations. However, due to the transfer of Public Health to the Cabinet Office on  
2345 1st April 2021, it was determined that the responsibility for making regulations should more appropriately sit with the Cabinet Office due to the Public Health link, as that is where the expertise regarding research and its governance now lies within the Public Health Directorate.

The purpose of the amendment I am proposing today, Hon. Members, is to make it clear on the face of the Bill that while Cabinet Office may make regulations under this section Public Health is required to concur to any regulations made pursuant to subsection (7) of clause 41.  
2350

I beg to move:

*Amendment to clause 41*

*3. Page 28, line 10, after 'may' insert «, with the concurrence of the Director of Public Health,».*

**The Deputy Speaker:** Mrs Barber.

2355 **Mrs Barber:** I beg to second.

**The Deputy Speaker:** Mr Thomas.

**Mr Thomas:** Thank you.

2360 'With the concurrence of the Director of Public Health' – this is quite a strong word to use, 'concurrence'. Normally, Treasury has to do concurrence before financial expenditure and if it does not concur, Council of Ministers or somebody can direct Treasury to approve some expenditure. Concurrence is a very strong word. I am just mindful of the fact that conceivably there are instances when we do not have a Director of Public Health, or there are instances when we have a Director of Public Health who might be out of line with the thinking in things like the  
2365 Medical Ethics Committee or the DHSC.

So I just think it might be helpful for the Department and all those others involved, to reflect on really that what we are talking about here is the concurrence of the Director of Public Health without any other possibilities. I stand here as somebody who tried to move during the emergency powers period for the Director of Public Health to be surrounded with a public health board –  
2370 unsuccessfully. I tried in this place to take the power away from one person but to put in place a public health board for public policy reasons; and I also stand here as the person who worked with others to make sure that we actually had advice coming through from professionals during the emergency period.

2375 So I just want to put on record that I do hope the Department and Legislative Council will consider further whether we actually really want to put all this down on to one person, rather than the other professionals involved and the established Committees and bodies who I think could feed into this.

2380 **The Deputy Speaker:** Ms Lord-Brennan, do you wish to reply? No.  
Or Minister Hooper?

**Mr Hooper:** Thank you very much, Madam Deputy Speaker.

2385 My understanding is the Director of Public Health is a statutory position, so there will always be a postholder or somebody acting in that capacity. So I do not think there is a risk there of having the post being vacant for a period of time in respect of regulation-making under this Act.

2390 This amendment actually was driven by conversations held with Members. A backbencher has actually proposed this amendment; it came from several different Members individually actually, and it was felt by the Department that this was quite sensible to require that the Cabinet Office as a body does not actually have the public health expertise in and of itself to make these kinds of regulations, but the Director of Public Health should actually perform this function.

**The Deputy Speaker:** Will you give way?

2395 **Mr Hooper:** I will, yes.

**Mr Thomas:** It is just that there is another word to concurrence, it could be 'taking into account the views of' or there are lots of other words that we could use in legislation rather than concurrence – that I hope the Minister and the Legislative Council will consider.

2400 **Mr Hooper:** Thank you, Madam Deputy Speaker.

2405 Yes, the Hon. Member is well aware that there are different words we can use. This is the word the Department has chosen to use after consulting and engaging with Hon. Members of this Hon. House. The Member was perfectly capable of bringing his own amendment if he had a different word he would have preferred that we use, but this is the word we have settled on. Actually the Department is quite content that the Director of Public Health has this influence and

ability to essentially control or have a veto over regulation-making powers in respect of intrusive research into people who may lack capacity.

Thank you, Madam Deputy Speaker.

2410 **The Deputy Speaker:** I put the question, then, that amendment 3 be made. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it.

I put the question now to the House that clause 41, as amended, do stand part of the Bill. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it.

Mr Hooper, clause 42.

2415

**Mr Hooper:** Clause 42 sets out the new criminal offences of ill-treatment and wilful neglect of a person who lacks capacity to make relevant decisions. Subsection (1) sets out to whom the offences may apply, namely: anyone caring for a person lacking capacity; a donee appointed under an LPA or an EPA; or a delegate appointed for the person by the court.

2420 Subsection (3) sets out the potential penalties for a person found guilty of ill-treating or wilfully neglecting a person lacking capacity. The penalties range from a fine to a sentence of five years imprisonment, or both.

I beg to move clause 42 stands part of the Bill.

2425 **The Deputy Speaker:** Ms Faragher.

**Ms Faragher:** Gura mie eu. I beg to second.

2430 **The Deputy Speaker:** Hon. Members, I put the question to the House that clause 42 do stand part of the Bill. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it.

Mr Hooper, clause 43.

2435 **Mr Hooper:** Hon. Members, Division 7, the last Division of Part 2, states the requirement for a code of practice to accompany the Act. Generally speaking, the purpose and the need for a code of practice is to explain how the Act is to be used and to provide those who care for and work with people who lack capacity with examples of best practice. Clause 43 opens Division 7, defining, for the purposes of the Division, what is meant by 'code'.

I beg to move clause 43 stands part of the Bill.

2440

**The Deputy Speaker:** Ms Faragher.

**Ms Faragher:** Gura mie eu. I beg to second.

2445 **The Deputy Speaker:** I put the question to the House that clause 43 do stand part of the Bill. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it.

Mr Hooper, clause 44.

2450 **Mr Hooper:** Hon. Members, clause 44 provides the substantive provisions of the Bill with regard to codes of practice. Subsection (1) requires the Department to do one of two things: to either prepare and issue a code itself or, alternatively, apply to the Island a code that has been made under the Mental Capacity Act 2005 of Parliament.

2455 Subsection (1) also details who, and in respect of what, the code is to act as guidance to and for. This includes those assessing whether another person has capacity, those acting in connection with the care or treatment of another person, donees of powers of attorney and court-appointed delegates and receivers.

Subsection (2) gives the Department a discretionary power to include in a code additional guidance on matters dealt with by the Act that it thinks is necessary.

2460 Finally, I wish to address the status of the code, given that a number of queries have been raised in this regard. Generally speaking, this clause does not act so as to impose a legal duty for people to comply with the code. That said, it is not there to be treated merely as advice, but rather, and as referenced above, the code is there for guidance. By virtue of subsection (5), however, the code for certain categories of persons is to have statutory force. They are legally required to have regard to relevant guidance in the code.

2465 What this requires of them in practice is for them to be aware of the code when acting on behalf of somebody who lacks capacity to make a decision and being able to explain how they have had regard to it.

Pursuant to subsection (5), the categories of people required to have regard to the code include donees of lasting powers of attorney and court-appointed delegates.

2470 Finally, subsection (6) allows for any provision of a code or failure to comply with a provision of the code to be taken into account in deciding the question at hand.

I beg to move clause 44 stands part of the Bill.

**The Deputy Speaker:** Ms Faragher.

2475

**Ms Faragher:** Gura mie eu. I beg to second.

**The Deputy Speaker:** Mr Thomas.

2480 **Mr Thomas:** Thank you, Madam Deputy Speaker.

The professional bodies that regulate a great number of professions apply the code across as part of their relationships with the people who have that professional competence. Does the Minister agree with me it is quite likely that the code, either in its Isle of Man version or its UK version, will be used as part of those professional regulatory standards and professional regulatory ones? So therefore, that is quite important to put down in this place, at this stage. Whatever the law says, in other words, the Law Society, the General Medical Council and all those sorts of people are quite likely to upgrade the code to something that is required as part of their professional standing.

2490 Secondly, pretty much, this code is identical to that across, except that across it is the Lord Chancellor who has the power to make this code, and then Lord Chancellor has the powers to delegate that to somebody else; and, as I understand it, normally they delegate it to the Department of Health across. Can the Minister explain the Department's thinking in not using somebody like the Governor in Council in the Isle of Man as the perhaps equivalent to the Lord Chancellor to have the powers in respect of this code, given the Department's other responsibilities for supervision, for organising Manx Care, which employs these people and the like? Why was it decided to give the Department the powers directly, rather than to actually have them somewhere else, given the potential conflicts that some people might perceive in respect of the Department actually making the code that is then used by lots of other people.

2495 I know the Department has prepared detailed answers for me about all of these points in email correspondence.

2500

**The Deputy Speaker:** Mr Hooper.

**Mr Hooper:** Thank you very much, Madam Deputy Speaker.

2505 The last time I checked we did not have a Lord Chancellor on the Isle of Man, which is the primary reason I think, but actually the Department in its new form and function is entirely responsible for regulation and oversight. That is essentially the purpose of the code, and so it

makes perfect sense, actually, that the Department, which does no longer provides medical services directly, is actually the one responsible for the development of the code.

2510 In respect to professional bodies, obviously I cannot speak on behalf of what they may or may not do in respect of the code. Some may very well choose to include our code in their guidance and their requirements, they may not do. Ultimately, that will be a matter for the professional bodies concerned.

2515 **The Deputy Speaker:** Hon. Members, I put the question to the House that clause 44 do stand part of the Bill. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it. Clause 45, Mr Hooper.

2520 **Mr Hooper:** Hon. Members, clause 45 of the Bill deals with procedural matters for a code, namely consultation, Tynwald procedure and publication. I beg to move clause 45 stands part of the Bill.

**The Deputy Speaker:** Ms Faragher.

2525 **Ms Faragher:** Gura mie eu. I beg to second.

**The Deputy Speaker:** Ms Lord-Brennan.

2530 **Ms Lord-Brennan:** Thank you, Madam Deputy Speaker. I beg to move three minor amendments to clause 45 numbered 4, 5 and 6 on the Order Paper, the purpose being to ensure procedural consistency, whether a code is prepared and issued, applied to the Island, or revised.

2535 Hon. Members, subsection (1), as it currently stands, places a requirement on the Department of Health and Social Care to consult such persons as it considers appropriate before preparing or revising a code. It does not, however, require the same when applying a code of practice to the Island. The amendments proposed will remedy this. Thus, if the Department of Health and Social Care seeks to apply a code to the Island, it must, in that instance, also consult such persons as it considers appropriate.

2540 The second amendment I am proposing is to subsection (2) and this requires the DHSC to lay a copy of the code that was being applied to the Island before Tynwald, whilst the final amendment to subsection (3) requires that any code that has been revised or applied to the Island is published in a manner that is appropriate for bringing it to the attention of the concerned parties.

Madam Deputy Speaker, I beg to move the amendments to clause 45 standing in my name:

*Amendments to clause 45*

*4. Page 30, line 19, for 'or revising' substitute «, revising or approving».*

*5. Page 30, line 21, after 'issue' insert «or approve».*

*6. Page 30, line 23, after 'issued' insert «, revised or approved».*

2545 **The Deputy Speaker:** Mrs Barber.

**Mrs Barber:** Thank you, Madam Deputy Speaker. I beg to second.

2550 **The Deputy Speaker:** If no Member wishes to speak, I put the question to the House that amendments 4, 5 and 6 be made. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it.

I put the question to the House that clause 45, as amended, do stand part of the Bill. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it.

We move on to clause 46, please, Mr Hooper.

2555 **Mr Hooper:** Thank you, Madam Deputy Speaker.

Clause 46 opens Part 3 of the Bill, which deals with matters of the court. This clause provides the court with a power to make orders or give directions pending the determination of an application.

I beg to move clause 46 stands part of the Bill.

2560

**The Deputy Speaker:** Ms Faragher.

**Ms Faragher:** Gura mie eu. I beg to second.

2565 **The Deputy Speaker:** Hon. Members, I put the question to the House that clause 46 do stand part of the Bill. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it.

Mr Hooper.

2570 **Mr Hooper:** Clause 47 gives the court a power to request reports, the purpose being to assist in the consideration of a question before it in relation to a person who lacks capacity. Of note, subsection (3) of this clause also permits the court to request a medical examination for the purposes of any proceedings.

Madam Deputy Speaker, I beg to move clause 47 stands part of the Bill.

2575 **The Deputy Speaker:** Ms Faragher.

**Ms Faragher:** Gura mie eu. I beg to second.

2580 **The Deputy Speaker:** I put the question to the House that clause 47 do stand part of the Bill. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it.

Mr Hooper.

2585 **Mr Hooper:** Clause 48, Hon. Members, opens Division 2 of Part 3, making provision as to who may apply to the court as of right. Subsection (2) clarifies that, subject to court rules, for anyone else, the court's permission would be required to apply. As to the matters the court must have regard to in deciding whether to grant permission, these are set out in subsection (3).

I beg to move clause 48 stands part of the Bill.

2590 **The Deputy Speaker:** Ms Faragher.

**Ms Faragher:** Gura mie eu. I beg to second.

2595 **The Deputy Speaker:** I put the question to the House that clause 48 do stand part of the Bill. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it.

Mr Hooper.

2600 **Mr Hooper:** Hon. Members, for the purposes of the court's practices and procedures, clause 49 makes provision for court rules. Subsection (1) makes it clear proceedings of the court are to be conducted in accordance with such rules and subsections (2) and (3) list matters that the rules may make provision for. Subsection (4) provides that court rules may refer a matter to be dealt with by way of a practice direction, rather than in the rules themselves.

I beg to move clause 49 stands part of the Bill.

**The Deputy Speaker:** Ms Faragher.

2605

**Ms Faragher:** Gura mie eu. I beg to second.

**The Deputy Speaker:** I put the question to the House that clause 49 do stand part of the Bill. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it.

2610

Clause 50, Mr Hooper.

**Mr Hooper:** Clause 50 makes provision regarding a person's right to appeal a decision of the court made pursuant to or in respect of a person who lacks capacity.

I beg to move clause 50 stands part of the Bill.

2615

**The Deputy Speaker:** Ms Faragher.

**Ms Faragher:** Gura mie eu. I beg to second.

2620

**The Deputy Speaker:** I put the question to the House that clause 50 do stand part of the Bill. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it.

Mr Hooper, clause 51.

**Mr Hooper:** Clause 51 opens the final Part, Part 4, of the Bill.

2625

Generally speaking, Hon. Members, this clause affords the Department the ability to apply UK mental capacity legislation to the Island. Subsection (1) gives the Department a power, when doing so, to make modifications, adaptations and exceptions to the legislation that is being applied, to make sure it is fit for the Island.

Subsection (2) clarifies that as a consequence of applying UK legislation to the Island, any provision, other than a provision of this Bill, inconsistent with the legislation being applied can be amended or repealed.

2630

Subsection (3) adds detail, setting out what an applying order under subsection (1) may do, and subsection (4) sets out which UK legislation this clause covers, specifically: the Mental Capacity Act 2005; any Act of Parliament relating to or concerning mental capacity or capacity legislation; any amending legislation which makes changes, either directly or indirectly, to either of the above; and any statutory instrument made or having effect as if made under a parliamentary Act that relates to, or is concerned with, mental capacity.

I beg to move clause 51 stands part of the Bill.

2640

**The Deputy Speaker:** Ms Faragher.

**Ms Faragher:** Gura mie eu. I beg to second.

**The Deputy Speaker:** Ms Lord-Brennan.

2645

**Ms Lord-Brennan:** Thank you, Madam Deputy Speaker.

Hon. Members, the purpose of amendment 7 as tabled is to permit the Department of Health and Social Care to apply to the Island, not only Acts passed by the UK Parliament, but also Acts passed by the devolved legislatures of Scotland, Wales and Northern Ireland.

2650

Madam Deputy Speaker, I beg to move the amendment to clause 51:

*Amendment to clause 50*

*7. Page 34, after line 32 insert the following —*

*«(5) In this section —*

(a) "Act of Parliament" also includes an Act of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly; and

(b) "the United Kingdom" also includes a part of the United Kingdom.».

**The Deputy Speaker:** Mrs Barber.

**Mrs Barber:** Thank you, Madam Deputy Speaker. I beg to second.

2655 **The Deputy Speaker:** If no Member wishes to speak, I will put the question to the House that amendment 7 be made. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it.

I now put the question to the House that clause 51, as amended, do stand part of the Bill. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it.

2660 Mr Hooper, clause 52.

**Mr Hooper:** Clause 52 provides definitions for the purposes of the Bill. I beg to move clause 52 stand part of the Bill.

2665 **The Deputy Speaker:** Ms Faragher.

**Ms Faragher:** Gura mie eu. I beg to second.

2670 **The Deputy Speaker:** I put the question to the House that clause 52 do stand part of the Bill. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it. Mr Hooper.

2675 **Mr Hooper:** Clause 53 is permissive, setting out what regulations under the Bill may do and, secondly, it sets out the Tynwald procedure for regulations seeking to modify sections 3, 4, 5 or 6 of the Act. The approval of Tynwald will be required. The Tynwald procedure applicable to all other regulations is the negative procedure.

2680 Just to provide a bit more context in respect of Mr Ashford's question from earlier, the type of procedure has been determined in connection with the significance of the extent of the powers set out in the regulations, as I talked about earlier. So the sections that specifically require Tynwald approval will deal with some of the more core sections of the Bill, such as what is meant by a lack of capacity, what is meant by an inability to make decisions, what is meant by the best interests test. Those things are required to have Tynwald approval.

2685 The negative procedure for the remaining items still does afford Tynwald a degree of control, which allows a motion to be passed to annul the documents before they come into force. So there is an element of Tynwald control there covering all of the regulations.

With that, Madam Deputy Speaker, I beg to move clause 53 stands part of the Bill.

**The Deputy Speaker:** Ms Faragher.

2690 **Ms Faragher:** Gura mie eu, Lhiass-loayreyder. I beg to second.

**The Deputy Speaker:** Mr Thomas.

2695 **Mr Thomas:** Thank you, Madam Deputy President – Deputy Speaker! (*Interjection*)

My understanding then is that clause 53 is traditional, in the sense that if there is a power to make regulations somewhere in this Bill, whether it is positive approval or negative approval is actually then laid out inside clause 53. We do not here have a power to amend any part of the Bill using regulations, as the powers are not explicitly stated in the Bill as existing.

2700 **The Deputy Speaker:** Minister.

**Mr Hooper:** Thank you, Madam Deputy Speaker.

No. Clause 53 states explicitly they may modify any provision of this Act. To my understanding, that means the regulations made under this clause could modify any provision of this Act. It is relatively self-explanatory, I would have thought.

2705 **The Deputy Speaker:** Hon. Members, I put the question that clause 53 do stand part of the Bill. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it. Clause 54 and Schedule 3, please, Mr Hooper.

2710 **Mr Hooper:** Thank you very much, Madam Deputy Speaker.

Clause 54 deals with existing mental health receivers and enduring powers of attorney. Part 7 of the Mental Health Act 1998 is to be repealed and subsection (2) confirms no enduring powers of attorney made under the Powers of Attorney Act 1987 can be created after this Act becomes operational.

2715 Subsection (3) introduces Schedule 3, which provides transitional provisions and savings in relation to existing receiverships and court proceedings that are pending.

I beg to move clause 54 and Schedule 3 stand part of the Bill.

2720 **The Deputy Speaker:** Ms Faragher.

**Ms Faragher:** Gura mie eu. I beg to second.

2725 **The Deputy Speaker:** Hon. Members, I put the question to the House that clause 54 and Schedule 3 do stand part of the Bill. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it.

Mr Hooper, clause 55 and Schedules 4 and 5.

**Mr Hooper:** Thank you, Madam Deputy Speaker.

2730 Lastly, clause 55 introduces Schedule 4, which contains amendments to a number of existing Acts of Tynwald on the statute book, and Schedule 5, which lists those Acts being repealed and the extent of the repeal as a consequence of this Bill becoming operational.

2735 Whilst I am on my feet, Madam Deputy Speaker, I would like to congratulate you on your handling of your very first sitting of the House of Keys and this Bill. (**Members:** Hear, hear) I would like to thank my seconder for her constitution – I am sure she has had a good workout this morning – and Ms Lord-Brennan for moving all of the amendments on behalf of the Department.

With that, I beg to move clause 55, Schedule 4 and Schedule 5 stand part of the Bill.

2740 **The Deputy Speaker:** Ms Faragher.

**Ms Faragher:** Gura mie eu. I beg to second.

2745 **The Deputy Speaker:** Hon. Members, I put the question to the House that clause 55 and Schedules 4 and 5 do stand part of the Bill. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it.

Well, I think that concludes the business of the House for today. The House now stands adjourned until next Tuesday, 21st June at 10.30 a.m. in Tynwald Court.

*The House adjourned at 12.27 p.m.*