5.2. National Health and Care Service Bill 2016 – Consideration of clauses commenced

Mr Quayle to move.

The Speaker: We turn now to consideration of the clauses of the National Health and Care Services Bill, and I call on the mover, the Hon. Member for Middle, Mr Quayle. Minister.

Mr Quayle: Thank you, Mr Speaker.

Hon. Members, this Bill is the National Health and Care Service Bill. The Bill's main aim is to replace the provisions of the National Health Service Act 2001 to provide a modern and equitable framework under which the Department can provide quality health and care services for the people of the Isle of Man.

The Bill has intentionally been drafted as a framework under which there will be supporting schemes and procedures describing in more detail the services provided.

This legislation deals mostly with health-related matters, but some relevant adjustments have been made to recognise the fact that the Department now has both health and social care responsibilities, and to support the ongoing development of integrated care.

Turning to the content of the Bill, Mr Speaker, the Bill contains 27 clauses and a schedule, and should the Branches of Tynwald support the Bill it will come into effect on the day on which Royal Assent to it has been announced by the President of Tynwald.

Part 1 of the Bill is introductory. Clause 1 confirms the short title of the Act as the National Health and Care Service Act 2016. The word 'Care' has been included in the title of the Bill to reflect the fact that the Department of Health and Social Care now has a wider care remit and also deals with prevention of illness and with services designated to support the vulnerable groups of our society such as children, young people, older people and adults with learning disabilities.

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

The Speaker: Hon. Member, Mr Peake.

Mr Peake: Thank you, Mr Speaker.

I would like to second that and reserve my remarks.

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

Clause 2, Mr Quayle.

Mr Quayle: Thank you, Mr Speaker.

Clause 2 deals with the commencement of the Act.

I have noted that the Hon. Member for Douglas West, Mr Thomas, has tabled a motion to replace this clause. On the basis that I have spoken with Mr Thomas and I am minded to support his amendment, I will at this point simply move clause 2 as it stands and not speak to this clause, so that we can proceed to consider the amendment.

The Speaker: Mr Peake.

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

The Speaker: The Hon. Member, Mr Thomas.

Mr Thomas: Thank you, Mr Speaker, and to the Minister for those warm, accurate remarks about the dialogue, the excellent communication that I have had with officers, legal drafters, in a very consensual way, to actually do what is right in this very important topic area.

It is quite clear that the Department is seeking capacity and capability to transform the delivery of health and care provision in our Island. I was slightly concerned that this was not sufficiently constrained by legal obligations in primary law and perhaps slightly unfettered in terms of parliamentary process, and I am delighted that it appears the Department has accepted these amendments.

This first amendment to clause 2 has the practical implication of achieving a very sound result, which is that the first scheme, the major scheme, where the public and this House and the other place will see the new, better, modern, caring, quality, equitable – all the words that the Minister just used … They will see that in the scheme, before the substance of this Act comes into force, through this change in the commencement provision.

I beg to move the amendment.

Amendment to clause 2
On page 7, after line 5 substitute the following for clause 2:
'2 Commencement
(1) Subject to subsection (2), this Act comes into operation on such day or days as the Department may by order appoint, and different days may be appointed for different purposes of this Act.
(2) In accordance with subsection (1) the Department may at any time bring into operation Parts 1 and 2, and sections 8, 9, 10, 11, and 12; but the Department shall not bring any other provision of this Act into operation until at least one Scheme required by Part 3 has been approved by Tynwald in accordance with section 8(2).
(3) An order under subsection (1) may make such transitional and saving provisions as the Department considers necessary or expedient.'

The Speaker: Mr Quayle.

Mr Quayle: Thank you, Mr Speaker.

I must thank Mr Thomas for his suggested rewording of this clause, which puts into this legislation the process which the Department was intending to follow anyway, and I am therefore happy to second the motion to amend clause 2 as proposed.

I would just add that it is the Department's intention to bring as much of the Act as possible into operation at the earliest possible time after Royal Assent is announced.

The Speaker: I put the motion then that clause 2 be substituted in accordance with the motion moved by the Hon. Member, Mr Thomas. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 2 as amended: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 3, Mr Quayle.

Mr Quayle: Thank you, Mr Speaker.

Clause 3 deals with necessary interpretations for the Bill and provides a list of definitions including the following.

'Appointments Commission' is defined for the purposes of the appointment of committees.

'Care' is defined to make it clear that the Department's responsibilities under the Act include both the specific provision of health care and services and a wider responsibility to provide care which may include care and services which are set out in other legislation.

'Charter' is defined in accordance with part 2 of the Bill.

‘Department’ is defined as meaning the Department of Health and Social Care.

‘Independent Review Body’ is defined as having the meaning given in section 23(2) of the Bill.

‘NHCS’ is defined as meaning the National Health and Care Service.

‘Publish’ is defined to make it clear that wherever the Bill requires the Department to publish information it must do so in a way which gives the public free and convenient access to it.

Finally, ‘Scheme’ is defined with reference to clause 8 of the Bill.

I beg to move that clause 3 do stand part of this Bill.

The Speaker: Mr Peake.

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

The Speaker: Clause 3: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 4.

Mr Quayle: Thank you, Mr Speaker.

Clause 4 states that the scheme or schemes established under the Act and the care provided under these schemes may collectively be known as the Isle of Man National Health and Care Service.

I beg to move that clause 4 do stand part of this Bill.

The Speaker: Mr Peake.

Mr Peake: I beg to second.

The Speaker: Clause 4: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 5, Mr Quayle.

Mr Quayle: Thank you, Mr Speaker.

Clause 5 deals with the Department’s obligations to prepare and maintain an NHCS charter, and I have again noted that the Hon. Member for Douglas West, Mr Thomas, has tabled a motion to replace this clause.

Mr Speaker, on the basis that I have spoken with Mr Thomas and I am again minded to support his amendment, I will at this point simply move clause 5 as it stands and not speak to this clause, so that we can proceed to consider the amendment.

The Speaker: Mr Peake.

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

The Speaker: Mr Thomas.

Mr Thomas: Thank you very much, Mr Speaker, and again to the Minister and his staff, and the legislative drafters; I think we had a very helpful, productive discussion.

I asked the Minister and the departmental Members during my speech at the Second Reading to advise why an amendment should not be introduced to cause the new charter to be reviewed and approved by Tynwald rather than merely revised and amended by the Department as proposed. The answer I got back was that it should not be approved because the charter itself is not of legal character; it is a very important charter, it is exactly what we need in this situation, but it would be wrong to give it the character of law by having it given legal form through the basis on which this House and the other place when they combine in Tynwald actually approve that charter.

So I move here that the charter will be merely laid before Tynwald, and therefore we will know about it, we can talk about it, we can debate it, but it has got the right character after it finishes its process through the parliamentary process of the other place.

I beg to move:

Amendment to clause 5
On page 8, after line 9 substitute the following for clause 5 —
'5 Department to prepare and maintain a Charter
The Department must prepare a Charter, which it must —
lay before Tynwald; and
publish and maintain, subsequent to laying it before Tynwald.'.

The Speaker: Hon. Member for Douglas South, Mr Malarkey.

Mr Malarkey: I beg to second the clause.

The Speaker: Mr Quayle.

Mr Quayle: If I just may speak, I am delighted Mr Malarkey, the Hon. Member for Douglas South, has seconded.

I am happy to support the amended clause 5 as proposed by Mr Thomas, Mr Speaker. As before, this amendment simply puts into legislation a process which the Department had every intention of following as a matter of good practice.

The Speaker: Hon. Members, I put the amendment in the name of Mr Thomas. Those in favour of the amendment, please say aye; against, no. The ayes have it. The ayes have it.

Clause 5 as amended: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 6, Mr Quayle.

Mr Quayle: Thank you, Mr Speaker.

Clause 6 of the Bill provides for the introduction of the NHCS charter that will set out the Department's general commitments in respect of providing quality care services. The idea for the charter is based on the NHS constitution in England, although we intend to adapt it to reflect the full scope of services offered within the Department.

Clause 6 also requires the Department to have regard to the charter when it is providing care.

I beg to move that clause 6 do stand part of this Bill.

The Speaker: Mr Peake.

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

The Speaker: I put the motion. Clause 6: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 7, Mr Quayle.

Mr Quayle: Mr Speaker, clause 7 deals with the Department's obligations to revise and amend the charter.

I note that the Hon. Member for Douglas West, Mr Thomas, has also tabled a motion to replace this clause. On the basis that I again am going to support this amendment, I will at this point simply move clause 7 as it stands and not speak to this clause, so that we can proceed to consider the amendment.

The Speaker: Mr Peake.

Mr Peake: I beg to second.

The Speaker: Mr Thomas.

Mr Thomas: Thank you very much, Mr Speaker.

This just makes dynamic the process that we just approved on a static basis. In other words, changes and amendments will be approved in the same way as the original charter.

I just want to say, as I said in the Second Reading, I genuinely believe and passionately hope that this charter becomes an important part of the governance, the parliamentary scrutiny and perhaps even any regulatory regime that emerges in the future, because it has that capacity to serve very many worthwhile purposes.

I beg to move:

Amendment to clause 7
On page 8, after line 15 substitute the following for clause 7 —
'7 Revision and amendment of the Charter
Subject to subsection (2), the Department must review and, if appropriate, revise the Charter at least once every 5 years and may amend it at any time.
Following each revision or amendment of the Charter in accordance with subsection (1), the Department must lay the revised or amended Charter before Tynwald.'.

The Speaker: Mr Malarkey.

Mr Malarkey: I beg to second.

The Speaker: Mr Quayle.

Mr Quayle: Thank you, Mr Speaker.

I am more than happy to support the motion to amend clause 7, as proposed by Mr Thomas. It makes sense, if we are going to be laying the original document before Tynwald, for any amendments to the NHCS charter to follow the same process.

The Speaker: I put the amendment to clause 7 in the name of Mr Thomas. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 7 as amended: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 8, Mr Quayle.

Mr Quayle: Thank you, Mr Speaker.

Part 3 of the Bill deals with the second part of the new legislative framework, i.e. schemes which the Department must make and adhere to when providing care under the NHCS.

The Hon. Member for Douglas West, Mr Thomas, has tabled a motion to replace this clause, which I intend to support, so I will simply move clause 8 as it stands and not speak to this clause, so that we can proceed to consider the amendment.

The Speaker: Mr Peake.

Mr Peake: Mr Speaker, I second that.

The Speaker: Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.

Previously, in the original clause, schemes were controlled by the other parties after they became effective. So, in other words, they led the legislative process. The parliamentary process was one of annulment. This amendment has the simple effect of actually making them subject to positive debate and positive approval, and I commend that.

I am delighted that the Department expressed their point of view, which is that they entirely agree that that is an entirely appropriate way to deal with the bringing into force of such a modern, equitable, forward-thinking but unique Isle of Man Health and Care Service, which might end up being instrumental in changing the way health and care are actually provided throughout the British Isles.

I beg to move:

Amendment to clause 8
On page 8, after line 19 substitute the following for clause 8 —
'8 Department to provide care
Subject to section 9, the Department must ensure that care is provided to individuals to the extent and in the manner set out in one or more Schemes made by the Department.
Schemes will not come into operation unless they have first been approved by Tynwald.'.

The Speaker: Mr Malarkey.

Mr Malarkey: Yes, Mr Speaker, I am happy to second this, but can I have a point of clarification: my understanding, in seconding these clauses, is that a mover of a Bill could not then second a clause coming forward. It may be I am wrong with this, but I would like some clarification. That is why I am seconding the Hon. Member's …

The Speaker: Yes, for the avoidance of doubt, it is not outwith Standing Orders for the mover of the clause to actually second a subsequent amendment. That is permitted under the rules. It has never, or very rarely ever, in my experience been done in practice, but there is nothing in Standing Orders to preclude it. I was aware that Mr Quayle was going to be prepared to second, but you too anticipated that there might be a problem and –

Mr Malarkey: Yes, there might be a problem; that is, Mr Speaker, why I have been seconding … Nothing against the Minister.

The Speaker: Understood. So I hope that clarifies the matter for the House.

Mr Quayle.

Mr Quayle: Thank you, Mr Speaker.

If I could just clarify, each time when I have been proposing to second I have specifically mentioned I did not speak to this clause – I think that was the phrase that neatly covered the perceived breach.

Mr Speaker, I am more than happy to support the motion to amend clause 8 as proposed by Mr Thomas.

On further reflection following the presentation to Tynwald Members and comments before, during and after the Second Reading of the Bill, I am happy to concede that a positive opportunity to debate the schemes, which will contain the detail about how the Department will provide care, is more appropriate than simply dealing with them by negative resolution in Tynwald as long as the

Department can maintain a position of flexibility to develop services quickly and efficiently in the future.

It is anticipated that the first scheme or schemes will set out in detail the current NHS model that we provide and that thereafter the Department will, in accordance with its recently published five-year strategy, look to see how services might be delivered in a better and more efficient way, including through increased integration of health and social care.

The Speaker: I put the amendment to clause 8 in the name of Mr Thomas. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 8 as amended: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 9, Mr Quayle.

Mr Quayle: Thank you, Mr Speaker.

Clause 9 sets out the standards of care which the Department is required to meet in respect of the provision of care under a Scheme.

Firstly, in paragraph 9(a) the Department is required to provide care in accordance with generally accepted standards. The term 'generally accepted standards' is deliberately not defined, given the fluidity of best practice guidelines on the delivery of care. A definition would be unduly restrictive and run the risk of swift obsolescence. In addition to best practice guidelines, the standards contemplated may include professional care standards or legal standards.

Paragraph 9(b) requires, subject to available resources, care to be provided to the highest level of human knowledge and skill necessary to save lives and improve health.

Paragraph 9(c) requires care to be administered with compassion and concern for the wellbeing of the individuals to whom it is provided.

Paragraph 9(d) requires care to be comprehensive and to be provided to everyone on the Island.

Paragraph 9(e) requires care to be designed to improve, prevent, diagnose and treat both physical and mental health conditions with equal regard.

Paragraph 9(f) requires the care provided to support individuals to promote and manage their own health.

Finally, paragraph 9(g) requires care to provide the best value for money by using the resources allocated to a scheme in the most effective, fair and sustainable manner.

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

The Speaker: Mr Peake.

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

The Speaker: Mrs Beecroft.

Mrs Beecroft: Thank you, Mr Speaker.

Whilst I accept that standards do change, I wonder if this could not be addressed in possibly secondary legislation under regulations, or some such, if the Minister is reluctant to put it into primary legislation.

I am particularly thinking of the West Midlands Quality Review Service's report, where they are reporting that we are not complying with generally accepted standards. I just have concerns that it is left being very woolly at this point in primary legislation with nothing else to back it up in secondary, and I wonder if regulations going to Tynwald would provide that assurance that we are actually saying that we are going to comply with generally accepted standards, because we are clearly not doing so at the moment in many areas.

The Speaker: Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.

I want to congratulate the Department. In point (g) of this clause they are actually grasping one of the most difficult concepts in modern government, which is the concept of value for money. Commissioning, procurement, contracting is proving ever so difficult, and it is one of those five general themes that were identified for us back in 2006 in the Scope of Government report.

Value for money is not only about the question of productivity; it is also doing the right thing. It is about choosing what to do as well as how to do it, and I am absolutely sure that the Department is going to need every good wish and lots of assistance, and perhaps even new financial regulations, to enable it to deal with this challenge of bringing forward a scheme that demonstrates value for money.

I also want to comment on point (f), which at the minute says:

supports individuals to promote and manage their own health;

I fully support the principle of encouraging individuals to take ownership of their own health, but in many cases in society individuals are also responsible as carers for other people and I hope when the Department comes forward with schemes it will recognise that and address that inside the schemes it brings forward as well.

The Speaker: Mr Karran.

Mr Karran: Vainstyr Loayreyder, following on from my good friend, the Hon. Member for South Douglas, I do feel that it is important that we do have some way of readily seeing what the statement is as far as the standards of care.

I think the problem we have at the present time is we in this House, the vast majority of us, are well meaning as far as these issues are concerned, but the reality is that without that secondary legislation and it being readily revised I really do think that the standards can drop.

When we initiated the original Residential and Nursing Homes Act 1988 one of the things that really forced the issue with the establishment of that time in this Hon. House was the issue of elderly people being tied up in residential homes. It is concerning when that sort of issue has been revisited on these shores again.

And so I think that whilst it is the opposition, or what is an opposition in this system, I hope that the Hon. Minister takes on board the legitimate concerns of the Hon. Member for South Douglas, because we are talking about some of the most vulnerable people in society and we need to make sure that we do readily visit these standards, because what we end up with is the lhiam-lhiat situation of with thee, with me, and end up being with nobody who is actually of real concern – the individuals who need these services.

I understand the Minister cannot do anything at this time, but I do hope that he will consider the issue, what has been brought up about standards being in secondary legislation, because I believe that we can pass this legislation, but if we do not have it policed properly it just will become worthless.

The Speaker: The mover to reply. Mr Quayle.

Mr Quayle: Thank you, Mr Speaker.

I, first of all, thank the Hon. Member for Douglas West, Mr Thomas, for his kind words, especially regarding points he raised in 9(f) and 9(g).

If I then move on to my hon. colleague, Mrs Beecroft, the Member for Douglas South, she had concerns on the standard of care. I just want to reassure her this is done with the best of intentions. The standards of care are dynamic and therefore do change frequently to keep pace with changes of

practice. We have responded to the West Midlands Quality Review when they raise risks etc. and we do follow good practice in our work. Best value has to be considered.

Instead of having to change legislation every five minutes because a new standard of care has come along, this is an enabling legislation, and the details of each of the schemes describing what will happen will be coming to be voted on by another Court once it has been out for consultation. So I hope that reassures the Hon. Member that this just enables more modern standards to be reacted to straight away, rather than having to go and change the legislation each time.

If I move on to my colleague, Mr Karran, the Hon. Member for Onchan, who also supported the viewpoints of the Hon. Member for Douglas South, Mrs Beecroft, we are putting into this legislation the requirement for the Department to have its services externally revised. Up until now, that would be discretionary, so that is a big change in this legislation.

The Speaker: I put the motion that clause 9 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 10.

Mr Quayle: Thank you, Mr Speaker.

Clause 10 requires the Department, when making a scheme, to determine what care will be provided, how and under what terms and conditions. The Department must also determine how the scheme is to be administered.

It is expected that there will be full and open consultation about any new or amended schemes before the schemes are submitted to Tynwald for approval.

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

The Speaker: Mr Peake.

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

The Speaker: I put the motion that clause 10 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 11, please.

Mr Quayle: Thank you, Mr Speaker.

This clause continues the existing provision whereby the Department can make charges in respect of NHCS care.

Firstly, subsection 11(1) states that a scheme must provide for the charges, if any, to be paid for the provision of care and the use the Department's facilities. Current charges include prescription and dental charges and charges to overseas visitors. It is likely that charges will continue to be made for these.

Subsection 11(1) also states that a scheme must include details about how charges are to be calculated.

Subsection 11(2) makes it clear that the Department does not have to make a charge.

Subsection 11(3) states that the Department must have due regard to the funds and other resources available to it when setting a charge. This recognises that the Department must be fiscally aware of the cost implications of providing care.

Subsection 11(4) continues the existing provision whereby the Department can exempt individuals from a charge for care or reduce the amount of the charge.

Subsection 11(5) sets out that a charge is a debt due to the Department or to the person providing the care, unless a scheme states otherwise.

Finally, subsection 11(6) confirms that the Department must pay any moneys it receives into general revenue.

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

The Speaker: Mr Peake.

Mr Peake: I beg to second.

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

Mr Singer: Thank you.

Could I ask the Minister, on this 'overseas visitors', is there a specific policy, because this has been a question that has been asked for 20 or 30 years. Some people come across here and they are automatically accepted at the Hospital, and they are treated and they are not asked to pay. People come on to the Island who are not covered by any health insurance.

Here the Minister has said they can decide either to charge or not to charge. What actually is the policy and what will the policy be?

The Speaker: Mr Quayle to reply.

Mr Quayle: Thank you, Mr Speaker.

The Hon. Member raises a point on which I had negotiations in my early days as a Minister, and one of the reasons was we mentioned the GP surgery in the north of the Island regarding non-EU citizens coming to the Island and, with various loopholes, obtaining medicines from the Isle of Man. Going forward, this will be something where those loopholes, when the schemes come – because this is purely enabling legislation – will be properly blocked.

The Speaker: I put the motion that clause 11 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 12.

Mr Quayle: Thank you, Mr Speaker.

Subsection 12(1) allows a scheme to include provision for the Department to make payments in respect of specified care-related costs which have been incurred or may be incurred in respect of an individual's care. Existing payments include contributions towards the travel and accommodation costs of people travelling to the United Kingdom for NHS care.

Subsection 12(2) states that the Department must also have due regard to the funds and other resources available to it when making contributions.

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

The Speaker: Mr Peake.

Mr Peake: Thank you, Mr Speaker.

I beg to second and reserve my remarks.

The Speaker: I put the motion. Clause 12: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 13.

Mr Quayle: Thank you, Mr Speaker.

Clause 13 firstly confirms that persons other than Department employees can provide care under a scheme.

Subsection 13(2) then states that all or any part of the care may be provided by a person who has been commissioned by, or on behalf of, the Department, or who has entered into a contract with the Department.

An example of commissioning would be the arrangements the Department currently has with the North West Regional Commissioning Group whereby arrangements are made with the hospital trusts in the region on behalf of the Department for patients who need to be transferred for treatment not available on the Island.

This is also the provision which specifically allows the Department to continue with the existing contracts it has with general practitioners and general dental practitioners for the provision of NHS primary care services.

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

The Speaker: Mr Peake.

Mr Peake: Thank you, Mr Speaker.

I beg to second and reserve my remarks.

The Speaker: Clause 13: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 14, please.

Mr Quayle: Thank you, Mr Speaker.

Clause 14 continues the existing provision whereby the Department must keep a list of the names of persons on the Island that it is satisfied are qualified to provide care via commissioning or contractual arrangements.

Subsection 14(2) provides that the list may also include the names of individuals who are providing care on behalf of the Department. The need to be on a list is a requirement for certain healthcare professions, such as GPs, in order to maintain their licence to practise. This does not mean that every single NHCS care provider must be on the list, but the option for an individual to seek to be added to the list must be available.

Subsection 14(3) states that the Department may publish the list either in full or to such extent as it considers appropriate, and subsection 14(5) provides that the Department can keep the list in any form it considers appropriate.

Subsection 14(4) states that the Department must publish details of the application process for persons wanting to be added to the list.

Subsections 14(6) and (7) establish the appeals process.

I beg to move that clause 14 do stand part of this Bill.

The Speaker: Mr Peake.

Mr Peake: I beg to second.

The Speaker: Mr Karran.

Mr Karran: Can I just ask, Vainstyr Loayreyder, about the issue of subclause (3): why 'may' as far as publishing the list either in full or to such extent as the Department considers to be appropriate in the particular case?

Why, again, in subclause (5), 'may' keep a list in any form it considers appropriate?

Why not 'shall' as far as this issue? What is the rationale behind this if we believe in transparency and we believe … These people are going to be dealing with some of the most vulnerable people in our society, and I just wonder why it should not be automatic that they *will* be, so that people know … who are actually doing this job.

The Speaker: Minister to reply.

Mr Quayle: Thank you, Mr Speaker.

I am led to believe that certain parts of the information may be confidential about the individuals on the list, and that is why we are not proposing in those circumstances to provide all of the evidence that is provided, just the relevant names etc.

The Speaker: I put the motion. Clause 14: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 15.

Mr Quayle: Thank you, Mr Speaker.

Clause 15 covers the provision of private facilities and private care by firstly allowing the Department's facilities to be used to deliver private care. This reflects the current situation and the use of the private wing at Noble's Hospital.

It also provides for the Department in future to look at using any of its facilities in a more flexible way, so that should the demand arise for facilities to be used more extensively for private care this could be accommodated.

Subsection 15(2) requires such provision to be subject to terms and conditions determined by the Department. This will allow the Department to ensure that the use of facilities for private care would not impact on the overall provision of National Health and Care services.

I beg to move that clause 15 do stand part of this Bill.

The Speaker: Mr Peake.

Mr Peake: Thank you, Mr Speaker.

I beg to second.

The Speaker: I put the motion. Clause 15: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 16, Mr Quayle.

Mr Quayle: Thank you, Mr Speaker.

Clause 16 introduces a new provision whereby the Department can address the ongoing issues of 'stranded patients'. Stranded patients are patients who have been deemed fit for discharge but for one reason or another remain on wards at Noble's Hospital and thus reduce the number of available beds, and intolerably add to staff workloads.

An acute hospital ward is not the best place for people to live. However, over several years the acute services have seen an increase in the number of 'stranded patients'.

Subsections 16(1) and (2) allow the Department to facilitate the movement of stranded patients through a charging regime when either they or their relatives or carers refuse to make provision to relocate them to more suitable accommodation.

The Department has a comprehensive discharge process which includes careful assessments by both health clinicians and social care professionals of an individual's care needs and their ability to fund those needs.

These assessments are done with the full involvement of the individual and their family, and it is only where everyone concerned in the assessment process is content that it would be in the best interests of the individual to move to an alternative facility, and they or their family still refuse to leave, that the Department may resort to making a charge.

Subsection 16(5) defines who can be deemed to be an 'appropriate person' for the purposes of communicating with an individual or their family about the final decision that they should vacate a facility.

Subsections 16(3) and (4) allow the Department to determine the level of charge to be levied, having regard to an individual's means available from private sources to fund the individual's care, and states how the charges can be collected.

It is important to remember that at all times we have a duty of safeguarding vulnerable people and therefore in some instances we may be dealing with vulnerable individuals who do not have capacity to make decisions about where they should live.

Subsection 16(5), therefore, also defines who can act as the 'individual's representative' for the purposes of discussing and taking decisions on a person's accommodation needs.

I beg to move that clause 16 do stand part of this Bill.

The Speaker: Mr Peake.

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

The Speaker: I put the question. Clause 16: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 17 and 18 together, Mr Quayle.

Mr Quayle: Thank you, Mr Speaker.

I would like to take clauses 17 and 18, which make up part 4 of the Bill, together, and I thank you for your acceptance.

Part 4 of the Bill deals with committees and firstly allows the Department to establish a committee to provide it with scrutiny and advice. In conjunction with regulations to be made under paragraphs (h) and (i) of clause 23, paragraph (a) of clause 17 provides the basis for the retention of the Health Services Consultative Committee (HSCC) from the National Health Service Act 2001. Crucially, paragraph (a) of clause 17 ensures that the scope of the HSCC includes the work of the whole Department and not just health services.

Paragraphs (b) and (c) of clause 17 allow the Department to establish other committees to exercise its functions and to co-ordinate the provision and delivery of care under the Schemes. For example, the Clinical Recommendations Committee prioritises services in order of effectiveness, based on the needs of the population of the Isle of Man, and makes recommendations about the most pressing clinical needs to be progressed by the Department and those clinical interventions which are of a low priority.

Clause 18 states that the Department may seek advice from any of the committees it has established, and must take account of any advice it receives, but is not bound by that advice.

I beg to move that clauses 17 and 18 do stand part of this Bill.

The Speaker: Mr Peake.

Mr Peake: Thank you, Mr Speaker.

I beg to second.

The Speaker: Mr Thomas.

Mr Thomas: Thank you very much, Mr Speaker.

I just rise to congratulate the drafters and the Department for the form of words used in clause 17, which says the Department *may* by regulations establish a committee. This seems to be a very

helpful way forward and might be useful in lots of other pieces of legislation to avoid some of the controversy and contested situations that have been apparent in the past.

Secondly, I just wanted to thank the officers for very comprehensive responses to the Written Questions this week about the Health Services Consultative Committee and the development of the committees, and the part that is being played by committees at the minute, because I am sure that will be very helpful for the committee members themselves and also for others who are concerned with the governance, the accountability, the scrutiny, the regulation, perhaps, of the provision of health and care services.

Finally, I just wanted to make the point that there does seem to be a slight overlap between the matter covered in clause 18 and the existing provision in the Government Departments Act whereby Ministers can always overrule anybody else in respect of the exercise of the functions. I hope at some time in coming years Government gets the chance to put together a new piece of legislation governing the delegation of functions and the exercise of functions, so it is entirely clear what is going on and what powers people have and what challenges people can make to the exercise of those functions, so that eventually everybody can be satisfied about not only there being decisions that are valid until they are successfully challenged, but also that the legal basis for those decisions is complete and absolutely certain.

The Speaker: Mr Karran.

Mr Karran: Vainstyr Loayreyder, I would just like to ask the Minister to consider bringing in what we used to have as far as a Hospital Administration Committee so many years ago, before it was politicised and really made into a farce. As a person who sat on the Noble's Hospital Committee many years ago, it was a useful vehicle as far as to help management. It was also useful for the politicians because one of the problems that we have got, as we have always said, it is not the lack of resources we have got in the Health Services, it is the time to get the effective, efficient management in order to use those resources rightly and properly to maximise the status of the Hospital and the Health Service in the future.

My concern is the fact that, when we had the euphoria of bringing in the ministerial system, we had Ministers of the time who caused irreparable damage, not just to Health Services but to other services, by doing away with all these things. We need to find some way of getting the Hospital Administration Committee back, where people are on it from different sections of society, where the employees feel that they can freely and confidentially say how to improve the services and stop the logjam of stuff that simply is not being addressed – not just now. I am not having an attack at this Minister; many of the things that this Minister has to do are things that we tried as Department Members to achieve. But of course the very point that the Member for West Douglas raises is the fact that at the end of the day we are only there to nod if we are on a Department, because at the end of the day the Department is the Minister and the Minister is the Department.

I do hope with this piece of legislation he will think about restructuring and really think about … We had a *wonderful* Health Service in the past. They were not blessed with terribly good resources but by God they hit above their weight as far as when it came to providing the services for the Manx nation.

I do hope the Minister will take it on board, because you have a big problem with disenfranchised staff at the moment who are not there or feel frustrated that they want to help you provide the Health Service that we should be proud of. I hope he does take on board that now he has this power, he will actually use this power and not just *may* but *shall* do that.

The Speaker: The Minister to reply. Oh, sorry, Mrs Beecroft.

Mrs Beecroft: Thank you, Mr Speaker.

It is really a similar vein to the previous speaker. I am just wondering what consideration has been given to the governing board which was recommended by Beamans? Would it actually fall under this section referring to committees if it is a governing board? Legally, is it allowed to come under this? What consideration have you given to that while you were drafting this legislation?

The Speaker: The Minister to reply.

Mr Quayle: Thank you, Mr Speaker.

First of all, I would like to thank Mr Thomas again for his kind words and acknowledging the skill of the legal drafter and the officers who have taken part in drawing this up. This really is a very complex and innovative Bill. Well, I suppose I am bound to say that, Mr Speaker, aren't I? I think it is very well put together.

Mr Karran, the Hon. Member for Onchan, mentions the Hospital Administration Committee and would I consider bringing it back. All I can assure him is that the political Members of the Department are constantly looking at ways of improving the service, and if we felt in the future there was a need for it, then I am sure we would revisit. However, just to reassure him, I would like to point out that we do have a Noble's executive team that meets weekly, and this has lay people on it and the HSCC sit on it too.

The Hospital, as part of the Department, has to answer to the Department, both politically and operationally, and then of course to Tynwald. The Hospital has always had good staff and continues to have, but I agree that staff morale is low for a number of reasons, which we are all striving to address.

The Speaker: I put the motion that clauses 17 and 18 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 19 and 20 together, Mr Quayle.

Mr Quayle: Thank you, Mr Speaker.

As I say, I would like to take clauses 19 and 20 together, if that is acceptable.

Part 5 of the Bill is concerned with complaints and clause 19 confirms that complaints can be made by individuals about any element of care provided under a Scheme, whether that care is provided by the Department or by a commissioned or contracted service provider.

Subsection 19(2) lists the type of complaint that may be raised and addressed through this provision.

Clause 20 states that the Department must publish the procedure for both making a complaint and considering a complaint, and the procedure must ensure that the rules of natural justice are followed.

I beg to move that clause 19 and clause 20 do stand part of this Bill.

The Speaker: Mr Peake.

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

The Speaker: I put the motion. Clauses 19 and 20: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 21.

Mr Quayle: Thank you, Mr Speaker.

Clause 21 firstly extends the existing provision that a complaint which is not resolved under the Department's internal complaints procedure, established under clause 20, may be referred to the health Independent Review Body (IRB) by either the complainant or the Department.

Subclauses (2), (3) and (4) of clause 21 explain how the IRB will consider and deal with a complaint, and that if an individual is not satisfied with the outcome of this process they can seek any other remedy they see fit.

I beg to move that clause 21 do stand part of this Bill.

The Speaker: Mr Peake.

Mr Peake: Thank you, Mr Speaker.

I beg to second that and reserve my remarks.

The Speaker: Mrs Beecroft.

Mrs Beecroft: Thank you, Mr Speaker.

I apologise that I had not noticed this earlier or I would have tabled something about it, but I wonder if the Minister could just comment.

There is nothing in this that says that when the Independent Review Body has considered a complaint and reported, if it finds some sort of failure or omission by the Department, that the Department has to act to correct that or at least has to take that into consideration.

I know in the past there have been complaints where the Independent Review Body has reported something, found that the Department was wanting in a certain area, but then it just carries on. There is nothing; there has been no comeback from the Department saying, 'We have read this, we have acted on it, we have done this.' I think it is an area that could maybe do with some structure, some mechanism whereby the circle was completed, because it is actually left with a blank. You start off with a complaint, it goes to that point of the circle and then it just falls into a void.

I wonder if the Minister could comment on that.

The Speaker: The mover to reply.

Mr Quayle: Thank you, Mr Speaker.

I think it is fair to say that the reports do come to the Department and the Department, when directed to, does take action and will do. I am happy to state that for the record now.

The Speaker: Clause 21: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 22, Mr Quayle.

Mr Quayle: Thank you, Mr Speaker.

Part 6 of the Bill deals with final and supplemental provisions.

Firstly, subclause (1) confirms that the Department may enter into a contract with any person for the use of its facilities, for any purpose whatsoever, and must pay any proceeds into general revenue. This provides the Department with the ability to ensure that its facilities are used to full effect and to give best value for money.

Subclause (2) states that the Department must ensure that the provisions of a Scheme are regularly and independently monitored and reviewed in respect of what care is to be provided and how; what facilities, equipment and resources are made available and how the Scheme is administered.

This is a new provision but it reflects the existing position whereby the Department has commissioned an external review of its health services.

Subclause (3) requires the Department to make sure that it receives and publishes a report of the findings of any review.

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

The Speaker: Mr Peake.

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

The Speaker: I put the motion. Clause 22: those in favour, say aye; against, no. The ayes have it. The ayes have it.
Clause 23.

Mr Quayle: Thank you, Mr Speaker.
Subclause (1) empowers the Department to make any regulations which are necessary or convenient for the administration of the Act.
Subclause (2) then lists certain regulations which the Department might wish to make. These include regulations covering the appointment, constitution and scope of the Health Services Consultative Committee and the Independent Review Body.
Provision is included for both the IRB and the HSCC to be given functions in addition to their basic roles. Such a provision could be used in respect of either body if, for example, it was decided at some point in the future that it would be appropriate to appoint an NHCS ombudsman.
Subclause (2) also provides for regulations to be made to stipulate a particular committee or body as being responsible for hearing and determining appeals by persons aggrieved by the exclusion or removal of their names from the list of qualified care providers referred to in clause 14.
Subclause (3) requires regulations made under the Act to be approved by Tynwald.
I beg to move that clause 23 do stand part of this Bill.

The Speaker: Mr Peake.

Mr Peake: I beg to second.

The Speaker: Mr Karran.

Mr Karran: Vainstyr Loayreyder, could the Shirveishagh tell us, under (h)(ii):

the Department must respond to on such questions as the Health Services Consultative Committee may refer to it;

who actually appoints the Health Services Consultative Committee in the first place?

The Speaker: Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.
I noted and welcome the reference to the ombudsman in the Minister's remarks and I value that.
I also note that these regulations, as drafted, do two things. First of all they allow, through regulation, for changes to enhance communication and consequently delivery throughout the complaints process with those that might come to be created outside the Health Department, and I welcome that.
The second thing is that it is very clear that the regulations that will be made will come back to Tynwald to be approved, so as long as we are mindful and attentive inside Tynwald we are going to have plenty of chance to work with the Department to encourage them to actually get the benefits of integration and co-ordination between Health and Care and other parts of Government.
I also wanted to say to the Minister that I note in these regulations that the IRB report will come back to Tynwald but the Health Services Consultative Committee annual report – which I have found very helpful – is only actually covered in the regulations that constitute that Committee, and we

have not systematically looked at it, as far as I can tell, in our scrutiny process under Tynwald or in this House. I would welcome the chance from time to time to actually review some of the things that body – if it is an important body – are actually telling us, as the public and as the representatives of the public, about what is going on in Health and perhaps more generally in Care.

Secondly, to answer the question that Mrs Beecroft asked the Minister earlier, I think it is clear from the Written Answer that is given in today's sitting that the board was actually created in November 2015, and if that board is going to work systematically and to make reports, to me it would be helpful for us to receive those reports in the other place, and I would welcome that if that is what the Department intends to do.

The Speaker: The mover to reply.

Mr Quayle: Thank you, Mr Speaker.

In answer, first, to my hon. colleague, the Member for Onchan, Mr Karran, the HSCC Committee is appointed through the Appointments Commission, for his information.

In answer, further, the HSCC report comes to the Department but is published to everyone. The board is a board of directors; it is an internal mechanism – just for clarification.

The Speaker: I put the motion. Clause 23: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 24.

Mr Quayle: Thank you, Mr Speaker.

Clause 24 provides for various regulations made under the National Health Service Act 2001 to continue in force as if they were made under the new Act.

There is significant work to do on the back of this Bill and this will include the reviewing and replacing – including by Schemes – of a number of existing sets of regulations to ensure they are modernised and fit for purpose, and support the Department's five-year strategy for Health and Social Care.

The regulations to be saved are: the National Health Service (Appointment of Consultants) Regulations 2003; the National Health Service (General Ophthalmic Services) Regulations 2004; the National Health Service (Pharmaceutical Services) Regulations 2005; the National Health Service (Optical Payments) Regulations 2004; the National Health Service (Charges for Drugs and Appliances) Regulations 2004; the National Health Service (Dental Charges) Regulations 2006; the National Health Service (Overseas Visitors) Regulations 2011; the National Health Service (Expenses in Attending Hospital) Regulations 2004; the Health Services Consultative Committee Constitution Regulations 2012; the National Health Service (Independent Review Body) Regulations 2004 and the National Health Service (Complaints) Regulations 2004.

Subclauses 24(2) and (3) repeal certain provisions from the NHS (Independent Review Body) Regulations and the Health Services Consultative Committee Constitution Regulations which will no longer be required as a consequence of this Act.

Subclause 24(5) provides for a Scheme made under this Act to amend or repeal any of the regulations saved under this clause.

I beg to move that clause 24 do stand part of this Bill.

The Speaker: Mr Peake.

Mr Peake: I beg to second.

The Speaker: I put the motion. Clause 24: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 25.

Mr Quayle: Thank you, Mr Speaker.

Clause 25 provides for contracts that were entered into under the National Health Service Act 2001 in respect of the provision of services to continue under the new Act as if they were entered into in accordance with a Scheme that complies with clause 13(2)(b). Examples of such contracts are the arrangements for general practitioner and general dental practitioner services.

I beg to move that clause 25 do stand part of this Bill.

The Speaker: Mr Peake.

Mr Peake: I beg to second.

The Speaker: Clause 25: those in favour, say aye; against no. The ayes have it. The ayes have it.

Clause 26 and the schedule, Mr Quayle.

Mr Quayle: Thank you, Mr Speaker.

I would like to take clause 26 and the schedule together, if that is acceptable.

Clause 26 provides that the schedule, which makes amendments to other legislation as a consequence of this Act, has effect.

For the most part, the amendments simply change references to the National Health Service or previous NHS Acts to refer to the National Health and Care Service Act 2016 in the following Acts: the Law Reform (Personal Injuries) Act 1949; the Children and Young Persons Act 1966; the Dental Act 1985; the Design Right Act 1991; the Sexual Offences Act 1992; the Access to Health Records and Reports Act 1993; the Termination of Pregnancy (Medical Defences) Act 1995; the Video Recordings Act 1995; the Mental Health Act 1998; the Children and Young Persons Act 2001; the Education Act 2001; the Medicines Act 2003; the Employment Act 2006; the Public Sector Pensions Act 2011; the Social Services Act 2011 and the Regulation of Care Act 2013.

References to the term ‘hospital’ are also removed or amended as the term is not used in the new Act.

The Access to Health Records and Reports Act is also amended to insert a new definition of ‘general practitioner’ with reference to both the Health Care Professionals Act 2014 and the National Health and Care Service Act 2016.

The Medicines Act 2003 is also amended to remove the term ‘health centre’, which is not used in the Bill, and to refer to ‘premises provided … under the National Health and Care Service’.

I beg to move that clause 26 and the schedule do stand part of this Bill.

The Speaker: Mr Peake.

Mr Peake: Thank you, Mr Speaker.

I beg to second.

The Speaker: I put the motion that clause 26 and the schedule do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 27.

Mr Quayle: Thank you, Mr Speaker.

Finally, clause 27 repeals the National Health Service Act 2001 which will be replaced by the new Act.

I beg to move that clause 27 do stand part of this Bill.

The Speaker: Mr Peake.

Mr Peake: Thank you, Mr Speaker.
I beg to second.

The Speaker: I put the motion. Clause 27: those in favour, say aye; against, no. The ayes have it. The ayes have it.

We turn now to the new clause in the name of the Hon. Member for Douglas South, Mrs Beecroft, which in effect is in three parts. I understand you would like to move, in effect, these three new clauses together, but vote on them separately, Mrs Beecroft.

Mrs Beecroft: Yes, if that is okay, Mr Speaker. I think it is just more time-efficient to address everything all in one go, if that is okay with Members.

Firstly, I would like to congratulate the Minister on bringing this legislation forward. There is a lot in it that is going to bear a lot of good fruit in the future, I am sure. But I do feel that it is deficient in one area, and that is the area of an independent health regulator.

I know that some Members do not consider this as being as important as I do, but we are way behind our neighbours. Many people, both members of the public and medical professionals, do consider it of the utmost importance.

In England they have the Care Quality Commission; Scotland has the Healthcare Improvement Scotland; Wales has Care and Social Services Inspectorate for Wales; Northern Ireland has Regulation and Quality Improvement Authority; Ireland has Health Information and Quality Authority; Jersey has recently passed a law requiring an independent Health and Social Care Commission to be set up. We are lagging behind in this area.

When people look to relocate anywhere, the main areas that they look at are education, health, crime and property prices. We cannot be seen to lag behind our competitors and our neighbours if we are serious in our commitment to attract inward investment, as well as the health professionals that we need and that we are currently having problems recruiting. Maybe they find it strange that they, as individual professionals, are governed by their regulatory bodies: the BMA and the Nursing and Midwifery Council etc. but the organisation that they would be working for, if they came here, is subject to no statutory regulation, inspection or standards.

We have the unusual situation of healthcare workers on the Island being bound by good practice standards set in the UK, but the Island's Department of Health and Social Care not being bound by those same standards. This is a situation that warrants explanation and justification. In the same way that healthcare practitioners on the Island are held accountable for providing care to good practice standards, the Island's health care facility should be working to the same standards and being held accountable to do so.

I know that we have just agreed this morning to accept general best practice in these areas, but there is still no departmental accountability. There is no one going in and saying, 'You are not sticking to these.' We have seen, by the West Midlands Quality Review reports, that we are far from compliant with the basic standards in many areas. These reports are fine as far as they go; they give us a lot of information, but they have no statutory basis and no matter what they find, they do not have the power to enforce any necessary change. They can only make recommendations.

I truly believe that it is necessary to have a regulatory body to provide the oversight and quality assurance that ensure that best practice is followed and maintained, and this legislation and new clause that I am proposing will provide just that.

I think Members need to know as well that the Law Commission, whilst it was strictly outside of their remit, were so concerned that they commented on our situation in both 2012 and 2014. And they said in 2012 that the:

> … the legislative framework for health and social care professionals regulation in the Channel Islands and the Isle of Man is formally outside the remit of our review.

However, concerns have been brought to our attention that for example certain health and social care professions are left unregulated in these jurisdictions, and that the fitness to practise regimes are insufficiently comprehensive and robust in order to protect the public in the islands, who in most cases will be British citizens.

They also said that they would

welcome views on how the legal framework could address the interface between the regulatory systems in the UK and the Channel Islands and the Isle of Man. For example, it might be possible to encourage the regulators to cooperate or enter into partnership arrangements.

The report went out to consultation with the following questions being asked, obviously amongst others; one of the questions was:

Would there be any benefits in the same regulatory arrangements applying in the Channel Islands and the Isle of Man? If so, would the best way to achieve this be parallel legislation or a single statute?

The other question they asked was:

How could the new legal framework address the interface between the regulatory systems in the UK and the Channel Islands and the Isle of Man?

And the consultation responses: they reported that a large majority felt that there would be benefits in the same regulatory arrangements applying in the Channel Islands and the Isle of Man as in the UK and these benefits, they continued:

We have provided the relevant Island departments with a full analysis of the consultation responses on these issues. Any further work on the matters raised would be a matter for the Island Governments. In our view, there are many advantages in the same regulatory arrangements applying across the British Isles. We also think this is an area where the Professional Standards Authority could play an important role by, for example, developing memoranda of understanding between itself and the Island Governments and encouraging joint working arrangements between the regulators and the Island Departments.

This clause is not saying that we need to do that, but it is saying that we do need an independent regulator. And I would suggest if the Law Commission find it of such concern – because they are concerned for all British citizens – that they report on this twice, that we really should be taking some notice of it. This Government may indeed ignore suggestions made by MHKs like myself but why would it not listen to and look into comments made by the Law Commission?

We have to ask ourselves what are our priorities. Only yesterday we had an excellent presentation from the FSA, and the FSA regulates thousands of organisations. We know that there are a lot of other areas that are heavily regulated over here, so why do we place so much emphasis on other areas and regulate those, and particularly anything to do with money, but we are reluctant to provide statutory oversight to our health services. That is a question that I cannot answer, I really cannot see the logic of our thinking. We have to value our health more than anything else. Certainly more than money, certainly more than gas prices, certainly more than telecoms!

Hon. Members, there is a lot of public and professional support for this – an independent regulator that is legally empowered to enforce standards. Standards that are aimed at safeguarding the health and safety of the public and support the role of the health care workers.

I am not going to go into detail of all the different … line by line, but this is the principle of why we need something. I really hope Hon. Members will support this today because it will be a step forward in the right direction for everybody.

Thank you, Mr Speaker. I move:

New Clause
On page 8, after line 8 insert —
'PART 2 - ESTABLISHMENT OF REGULATORY AUTHORITY FOR HEALTH AND SOCIAL CARE
5 Establishment of the Authority
(4) This section establishes the Regulatory Authority for Health and Social Care ("the Authority"), which is a Statutory Board to which all the provisions of the Statutory Boards Act 1987, except paragraphs 1, 3(2)(a), 6 and 7 of Schedule 2, apply.

(5) The Authority must —
(a) be engaged in the regulation of health services in the United Kingdom or have the capacity to do so; and
(b) be appointed by resolution of Tynwald on the recommendation of the Department.

6 Functions of the Authority
(1) The Authority must —
(a) periodically monitor and review every aspect the care provided under Schemes made by the Department under this Act;
(b) give mandatory directions to the Department aimed at improving the care provided under Schemes; and
(c) report to Tynwald on the findings of its periodic monitoring and review.
(2) In order to perform its duties under subsection (1), the Authority has the power to —
(a) visit unannounced and procure access to any of the Department's facilities;
(b) procure access to any necessary documents or other information;
(c) interview persons engaged in the provision of care under Schemes;
(d) interview persons receiving or who have received care under Schemes; and
(e) do such other things and take such other action as it considers necessary.

7 Duty of the Department to comply with the Authority's directions
(1) Subject to subsection (2), the Department must comply with all directions given by the Authority.
(2) The Department may appeal to Tynwald in any case where it believes that a direction given to it by the Authority is impracticable, infeasible or unreasonable.'.

The Speaker: Mr Karran, Hon. Member.

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

The Speaker: Could I have an indication how many Members might wish to speak, please? Mr Quayle, you, sir.

Mr Quayle: Thank you, Mr Speaker.

I do not support the new clause proposed by Mrs Beecroft, my hon. colleague for Douglas South, as it fails to recognise the strength and scrutiny and review processes I have already included in the existing clauses within the Bill, which I did to address some of her earlier concerns, that were debated at length in Tynwald in July and November last year. I would remind Hon. Members that a similar move to introduce an independent regulator for health services was overwhelmingly rejected at that time.

My hon. colleague mentions the Law Commission, and can I just point out that the Law Commission is not recommending a fully independent health and social care regulatory authority.

This Bill will put in place statutory requirements for the health and care services to be reviewed. Since my appointment as Minister for Health and Social Care I have championed the scrutiny of our services by both internal and external bodies. The Bill includes powers relating to the commissioning of independent monitoring and review of health services, similar to that currently being provided by the West Midlands Quality Review Service. We have the Health Services Consultative Committee, a statutorily constituted review body, which submits an annual report to the Department and Members of Tynwald on the discharge of its functions, and again, I have within the Bill strengthened the role of that Committee to enable it to review all of the Department's services, not just health services.

There is no dispute, Mr Speaker, that we do not at this time have an independent regulator of the health and care services in the Isle of Man comparable to the United Kingdom. However, as I have said before, the cost of introducing oversight by bodies such as or similar to the Care Quality Commission is, in my view, prohibitive.

It is also worth pointing out that England has a population of 64 million plus, Scotland, Wales, Northern Ireland and Ireland are in the four million to five million category. The Isle of Man is 85,000 people and we need to be conscious that we have the right processes and functions in place proportionate to its size, which I believe are contained within the current framework of the Health and Care Services Bill.

The Speaker: Mr Karran.

Mr Karran: Vainstyr Loayreyder.

I am disappointed about this because I think it is about the fundamental deficit in the whole system that we brought about when we brought about ministerial government.

It is no good having these bodies coming along, as we do at the moment, where the stuff is not followed up. I am sorry, Minister, but I have to say that you need somebody independent outside the Island. You do not have to create the infrastructure of a massive body, but what you do have to do, Vainstyr Loayreyder, is you do need somebody that is independent of the present power circle as far as this Island is concerned.

I am disappointed with the Minister not to be brave enough to actually address the issues that many of his staff – on a weekly basis – complain to me about things that should be done that cannot get done, the things that happen that are not good process.

Vainstyr Loayreyder, obviously the party lines are drawn, but the thing is that it is not us that are going to suffer from this. This is something that needs to be addressed as far as the health service is concerned; it is something that is desperately needed as far as social services is concerned. As the person who actually set up social services many years ago, and this way that we were not allowed to do certain things because the Minister was the Department, we have watched millions of pounds being lost through bad process. We have watched children's lives being ruined and parents lives being lost as far as that is concerned. How much pain do we have to inflict on our own citizens before we have something that is independent outside the power structure we have at the present time?

I have to say, Mr Speaker, the Minister has to realise that sometimes he has got to let go in order to make sure that he is providing the right services. This will save money, it will not cost money. Our problem has been over the years not the lack of money for the health services – we have a proud record of what we provided for health services. Our problem has been that we have been paying champagne prices for generally brown stout. That has been the problem as far as Government is concerned because of the lack of independent audit, and it is endemic on so many fronts.

I hope Hon. Members will support the principle of what the Hon. Member for South Douglas is bringing about. This is not about personalities. It is about good governance – something that you want to go outside and talk to your constituents about – good governance. I hope Hon. Members will support the Hon. Member because the fact is we cannot afford not to do this. There has not been a problem, Vainstyr Loayreyder, as far as finance is concerned for health services or social services; we have a very good record. But what we do not have a good record for is independent audit and getting value for money as far as the taxpayer's money is concerned so I do hope this House will support the Hon. Member for South Douglas.

The Speaker: Hon. Members, I thought we might get finished before lunchtime but another Member does wish to speak.

Mr Karran: Could I propose that we finish the item that is on –

Mr Shimmin: Could I oppose that, Mr Speaker. We have an external speaker coming to the Island and it is obviously another manoeuvre to delay things.

The Speaker: That was my thought precisely. There is a lunchtime presentation and I do not want to rush this important debate, so we shall adjourn until 2.30 p.m.

The House adjourned at 1.12 p.m.
and resumed its sitting at 2.30 p.m.

National Health and Care Service Bill 2016 –
Consideration of clauses concluded

The Speaker: We are dealing with the National Health and Care Service Bill and the new clause in the name of Mrs Beecroft. I invite any other Hon. Member who wishes to speak on the new clause of Mrs Beecroft.

Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.

I would like to be consistent with myself, and having previously made comments about how difficult regulation is – something that has been amplified in our lunchtime presentation – when you bring in a regulatory regime it has got to mesh with the governance regime, it has got to mesh with the parliamentary scrutiny regime, it has got to take into account the costs, it has got to be clear about what is being regulated and whether is the product the person, the pricing, the delivery. You have also got to be very mindful of how you are going to work with others in the regulatory process, because there are already many regulators involved in all of this, it is actually a difficult task, regulating.

So even if you agree with the principle of this clause it is difficult. Having just persuaded this House that we ought to step back and make sure that we have got the appropriate regulatory regime for what we might be doing in terms of corporatising public sector entities, I have to say, to be consistent with that we have to say that this is actually a huge undertaking we would be making with this clause.

I also want to say I am minded that there could be some flaws legally in various parts of this clause as presented. For instance, in section 5(5)(b) there is discussion of the Authority being appointed by resolution of Tynwald on the recommendation of the Department. Having recently moved some amendments from the Home Affairs Department, because we wanted to establish that something was truly independent to get round that very statement, I am actually worried already, by having the appointment on the recommendation of the Department. This is not actually an independent regulatory authority that it actually sets out to be according to the current interpretation by Government of the procedure.

Also, I worry that in section 6(1)(b) there is actually a requirement that the Authority must give mandatory directions to the Department after its reviews and monitoring, which to me is a bit excessive, because I would like to imagine the possibility that there was not any need for any directions. I would like to have seen that clause drafted in a way where it created a *capacity* to do something, not an instruction that it must do something and there are some other things that I worry about in some of the other draftings.

I think it might be the best solution actually for the mover of this amendment to take it away and set up a process, working with Government and with legal drafters, to actually put together something that really might work. In line with the new Board and in line with the new Health Services Consultative Committee, linking in with what is going in with the IRB process and the

complaints process, and coming back with something that actually is affordable and will be effective to achieve the purpose that many of us here today share, I am sure.

The Speaker: The Hon. Member, Mr Malarkey.

Mr Malarkey: Thank you, Mr Speaker.

I was not minded to speak on this. I very much was supporting the Member bringing this forward, because obviously the more independence we have in monitoring what is happening the better. But there are no cost implications actually being brought forward by the mover of this today, and having spoken to the Minister during the break, I believe to go ahead along this road would have great cost implications and where are we going to find that type of money for it? I would be interested to know has the mover gone into any depth with regard to cost.

The principle behind what she is trying to do today is 100%, and having just listened to my colleague from West Douglas, and one or two of the points he has picked up in the clauses, I am minded that this is not really in its best state to go forward today, Mr Speaker.

The Speaker: The Hon. Member, Mr Peake.

Mr Peake: Mr Speaker, as Member of Health in the Department of Health and Social Care, I am speaking against Mrs Beecroft's proposed amendment this afternoon, Hon. Members. I would agree with Minister Quayle that the Bill, as it stands, does address the key weaknesses identified last year within the existing scrutiny and review process.

In response to Mr Karran's remarks that our staff and care practitioners are without scrutiny or accountability, I would draw to his attention the fact that all of the Island's doctors and nurses are required to revalidate with their national bodies in order that they can practice. So we are linked closely to the UK for this purpose alone and that the standards of care that are provided by our practitioners have to be to the standards required by these national monitoring bodies. Similarly, the majority of qualified care workers working in the Island are registered with their professional bodies who again, are predominantly UK based, but serve the same purpose as the General Medical Council (GMC) or the Royal College of Nursing, which is to hold practitioners to account for delivering services to recognised standards.

I am concerned that Mrs Beecroft does not feel that the Department has taken the outcomes of the West Midlands Quality Review process seriously, as this is far from the truth. When we receive a report from the West Midlands Review process we do a number of things which include responding to any immediate risks that have been identified and on full receipt of the report ensuring that any recommendations are evaluated and built into the programme of work, this we call the QIP, to deliver them and this is monitored by the Department. I am confident that the clauses, as they stand without this amendment, will enable the Department to continue to improve these important scrutiny processes.

Thank you.

The Speaker: I call on Mrs Beecroft to reply.

Mrs Beecroft: Thank you, Mr Speaker.

Firstly, I would like to thank everyone who has taken part in this debate today, because it is a very serious matter whether you think it is important and we could have it or whether you think it is actually too expensive and we should not have it. At least more people have actually shown themselves to have an opinion this time than as at some other previous times when people were remarkably quiet on this.

I would like to actually correct something that the Minister said. He said I ignored the strengthening of the review process that was in the legislation that we have been debating – I have

not, I did not ignore this. I actually congratulated him on bringing this legislation forward and for the improvements that he had made in the effect that it would have going into the future, so I have not ignored that at all. I was very glad to see it.

Several Members have mentioned the cost, which obviously has to be a consideration. But he says the cost of the CQC would be prohibitive and I would ask him, has he asked the CQC what it would cost? Because I would remind him that a previous Minister said that the CQC was not prepared to carry out our requested reviews, but this was proved to be incorrect.

Also, there are millions set aside in the medical indemnity fund, and I would suggest that we probably would not need as much money set aside to compensate people for when things went wrong, rather than spend that money in insuring that things did not go wrong in the first place, by maintaining standards and having the requisite benchmarks and everything else so those standards could be easily identified if they were slipping.

We were told that Freedom of Information was going to cost us a huge amount of money, and recently it has been admitted that actually it has not cost us as much as we were all told. So sometimes these are just scaremongering.

I am being criticised today for not being able to bring forward costing of this; I do not have a Department at my behest to actually do all the sums involved in this, *(Interjection by Mr Karran)* whereas Ministers do, and can easily obtain this. So if there was a figure for cost I would have expected the Department to actually be saying, 'This is what it would cost to do this,' rather than criticise me for not having a figure.

I would ask Members to consider, as well, why do all our neighbours place so much importance on this that they all have one? Our neighbours and our competitors – they all have an independent health regulator. Why would that be if it is not necessary? Why are they wasting all their taxpayers' money when it is not necessary to do so? I would think that, if that is actually correct that it is not necessary for this sort of scrutiny and regulation to be carried out, their taxpayers could actually find them, shall we say, derelict in their duties in some way for spending taxpayers' money unnecessarily.

Again, Mr Peake – obviously he is going to vote against it, he is in the Department – but he is saying that I said that they do not take the West Midlands Quality Review Services Report seriously. I did not say that, and I do wish people would not twist words that I have not said. I said that the West Midlands did not have any statutory right to force us to uplift our standards or force us to comply with any of their recommendations – that is what I said.

I did not say the Department did not take it seriously, because I know they do. But a Department *choosing* to take a report seriously is *very* different from where basic, good, standard practice is not being adhered to, having a regulator say, 'You have *got* to do this, you have got to raise your standard, you have got to comply with basic requirements.' Do we not think our citizens deserve basic care standards? That is all that a regulator asks for – he is not asking for something all singing, all dancing – he is asking for basic standards. I really cannot see how we can deny that to our citizens.

I agree with Mr Thomas that any regulatory body would have to mesh with anything in existence, and that is why the legislation I would propose is saying that either a UK regulator or somebody who can comply with that, because all our medical professions are already governed to UK standards; that is what they have, so why would we want anything different to something that is going to come in and govern to a different thing? You could not have it, it would not work. Our doctors, our nurses are governed by their statutory bodies, so we would need a regulator who was able to regulate to those standards.

Mr Peake also said that doctors etc. are required to revalidate, they certainly are. And I know it was before his time, but is he aware that we very nearly lost this revalidation in the Isle of Man because of our lack of standards? (**A Member:** Hear, hear.) It is not that long ago either, and it is issues like that –

Mr Karran: Two or three times in the last 15 years.

The Speaker: Order.

Mrs Beecroft: It is issues like that that make me want to bring legislation, motions, whatever, to try to persuade people this is what we need, this is what our citizens deserve.

I do hope that Members will think long and hard before pressing the 'no' to this today, because it is something that is not going to go away. It is something that we will end up doing. Why do we have to have this process where we are forced to do things, because we look dreadful because we have not done them? Why not just do it, and be the same as everybody else? We *need* this regulation. As I say, everybody else has got it. Please do not let us be the only ones that do not consider our citizens enough to warrant this.

Thank you, Mr Speaker.

The Speaker: Hon Member, the motion is that the new clause do form part of the Bill. It is in three parts and we shall vote on each part separately. The second and third parts of the new clause are dependent, however, on the first.

So I shall take that part of the new clause numbered 5, Establishment of the Authority. Those in favour, please say aye; against, no. The noes have it.

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

FOR	**AGAINST**
Mrs Beecroft	Mr Boot
Mr Hall	Mr Cannan
Mr Houghton	Mr Cregeen
Mr Karran	Mr Gawne
Mr Malarkey	Mr Harmer
	Mr Joughin
	Mr Peake
	Mr Quayle
	Mr Quirk
	Mr Robertshaw
	Mr Ronan
	Mr Shimmin
	Mr Singer
	Mr Skelly
	Mr Teare
	The Speaker
	Mr Thomas

The Speaker: There are 5 votes for, 17 against. The motion therefore fails to carry.

We turn to the new clause in the name of the Hon. Member for Onchan, Mr Karran.

Mr Karran: Vainstyr Loayreyder, I do not see the purpose in moving it, so I do not wish to move it. Thank you.

The Speaker: It is not being moved.

Mr Karran: It is a waste of time in this place.

The Speaker: Your decision, sir.

Hon. Members, that concludes the business of the House today. The House will now stand adjourned until the next sitting which will take place at 10.30 a.m. on 19th April in the Tynwald Chamber.

The House adjourned at 2.50 p.m