

#### 4. CONSIDERATION OF CLAUSES

##### 4.1. Abortion Reform Bill 2018 – Consideration of clauses continued and adjourned

Dr Allinson to move.

**The Speaker:** Item 4, consideration of clauses: Abortion Reform Bill 2018.

Hon. Members, I draw your attention to the memorandum that was circulated yesterday as to how we will proceed with this today.

We will start our deliberations with new clause 2 and I call on Mr Robertshaw to move.

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**Mr Robertshaw:** Thank you very much, Mr Speaker.

This obviously is in principle. It may be a new clause but it is not new wording; it is a straight lift from our previous Act. It expresses the essential caring nature of our medical professionals, a humanity, a respect for a woman in very difficult circumstances – surely why people go into medicine in the first place.

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I think I will limit my remarks, Mr Speaker, just to reading new clause 2 out:

Amendment 26

Page 13, after line 21 insert the following new clause—

*«NC2 Duty of medical professional following termination*

*1995/14/6(5)*

*Where a pregnancy is terminated in accordance with this Act —*

*(a) if the child is born alive, the medical practitioner, midwife or nurse attending the woman is under a duty to take all reasonable steps to preserve the life of the child; or*

*(b) if there is no live birth, the foetus must be disposed of —*

*(i) in accordance with the wishes of the pregnant woman; or*

*(ii) in the absence of any direction by the pregnant woman, in accordance with the normal practice of the hospital or other facility where the termination occurs,*

*but neither the foetus nor any part of it may be used or made available for any medical or other experiment or procedure or for any purpose of any description without the express written consent of the mother.».*

Mr Speaker, I beg to move.

**The Speaker:** Mrs Beecroft.

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**Mrs Beecroft:** I beg to second, Mr Speaker.

**The Speaker:** Dr Allinson.

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**Dr Allinson:** Thank you, Mr Speaker.

I would like to thank Mr Robertshaw for stating that this is to look after both the medical profession and also the parents involved.

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When we look at terminations and late terminations where the child could be born alive, we are talking about a very small number, about 2% after 20 weeks. Also, since the 1995 Act I think the medical profession has wrestled with the ethics of decisions about whether to intensive care on extremely premature babies. The Nuffield Council on Bioethics have stated that current practice in most neonatal units in the UK is usually to resuscitate a baby if the outcome is uncertain and provide intensive care until the outlook is clearer. However, as lifesaving

30 treatments can be invasive and may cause suffering, it is difficult to know whether this is the right course of action if the baby is unlikely to benefit.

What I have proposed is an amendment to this to state that if the child was born alive the medical practitioner, midwife or nurse tending the woman is under a duty, after discussion with the mother, to take all reasonable steps, so that we ensure that we are acting in a humane way and not subjecting the newly born baby to unnecessary suffering if the likelihood of a good  
35 outcome is minimal.

I would also like in the amendment to add in the words 'if possible' to (b)(i), so that if there is no live birth the foetus can be disposed of, if possible, in accordance with the wishes of the pregnant woman, so that we do not put the medical professionals at undue pressure to do something they may not be happy with and they may not be agreed is the best idea at that time.

40 Thank you, Mr Speaker. I would like to move the amendment in my name.

**The Speaker:** I just need to say that the new clause would need to be agreed in principle before the amendment can be moved, so we need to get to that stage before anything else.

45 Does anyone else wish to speak on new clause 2? In which case I will call on Mr Robertshaw to reply.

**Mr Robertshaw:** Mr Speaker, as there have been no comments and as I think there is an understanding in the House that it is rational and reasonable, I will say no more than beg to move.

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**The Speaker:** The question is that the new clause be approved in principle. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Now, as Dr Allinson has given an indication that an amendment is coming, if I could just ask Mr Robertshaw, could you move this in detail formally and then we will suspend discussion on it  
55 pending that amendment.

**Mr Robertshaw:** In response to that, Mr Speaker, I beg to move this formally.

60 **The Speaker:** Thank you very much.  
Mrs Beecroft.

**Mrs Beecroft:** I beg to second, Mr Speaker.

65 **The Speaker:** Does any other Hon. Member wish to indicate that they want to move an amendment to new clause 2? In which case we will pause there and come back in April with Dr Allinson's amendment, and that can be dealt with as if it were a normal clause with an amendment to it. Thank you very much.

We turn now to clause 12 and I call on Dr Allinson to move.

70 **Dr Allinson:** Thank you, Mr Speaker.

Clause 12 creates a new criminal offence to deal with unauthorised or what used to be called 'backstreet' abortions, with the relevant penalties for this offence.

I beg to move clause 12.

75 **The Speaker:** Miss Bettison.

**Miss Bettison:** I beg to second and reserve my remarks.

80 **The Speaker:** Mr Hooper.

**Mr Hooper:** I have tabled two amendments to this clause, Mr Speaker. Is now an appropriate time for me to move both of them? (**The Speaker:** Yes.) I will move them both together, if that is okay. (**The Speaker:** Yes.)

85 The first amendment is relatively straightforward. The Act currently states that a person is not guilty of an offence if he or she proves that an act which caused the miscarriage was done in good faith for the purpose only of preserving the health or life of the woman. I, on reading this, felt that 'preserving the health' was quite a low threshold, quite a low bar to be meeting for someone to be taking what is essentially an illegal act, and so the first amendment that has been tabled simply changes 'preserving the health' to 'avoiding grave permanent injury to the  
90 woman's health', which slightly raises the bar, I felt, for someone who is terminating a pregnancy not in accordance with the Act.

I hope we would all agree that if someone feels the need to terminate a pregnancy to save somebody's life, that should not be a criminal offence. It is just making sure that the Act is very clear on exactly what we mean by ... what is an acceptable reason to take the law into your own  
95 hands, for want of a better phrase.

The second amendment is perhaps a little bit more contentious. Just to give Members some background, originally there was a clause in the Bill that made sure it was not a criminal offence for a woman to take pills she bought on the internet, for example. The House decided to remove that protection and so now it is a criminal offence and you potentially could be prosecuted if you  
100 buy pills online and take them yourself.

My concern with this is whatever we put in place, whatever the law says, however we draft this, there will inevitably be people who feel they cannot access these services legally, for whatever reason – cultural pressure, social pressure. They may be in an abusive relationship. It may be as simple as being a teenage individual – and I remember when I was a teenager I made  
105 numerous bad choices based on what I felt was appropriate and valid information at the time, but with hindsight it turned out not to be the case. I think if someone is in this situation and they find themselves, for whatever reason, unable to access services legally, they feel afraid, desperate. They cannot speak to a GP, they cannot speak to a pharmacist, for whatever reason. They then buy these pills online and they take them. That is now an offence. If something goes  
110 wrong, they have to feel confident, they have to feel safe that they can go to a doctor, they can go to A&E and feel 100% safe that they will get medical treatment without being reported to the Police. That is all this second amendment tries to do, to say if you find yourself in these circumstances, if you were desperate and afraid and felt backed into a corner, you have taken these pills and you report yourself – something has gone wrong – you can go to hospital  
115 completely unafraid that the people who are treating you, who are helping you, will not be reporting you to the Police.

That is key here and that is specifically why the reference in the amendment is obliging a relevant professional or pharmacist who is treating a pregnant woman. So there is no obligation on that person to report. This does not have the effect of undoing Mr Cannan's amendment.  
120 That is not the intention of this amendment at all. It is simply just putting down in the Act for clarity there is nothing in this Act that would require a medical professional to report. If someone turns up at hospital seeking help after taking some medication that they have acquired themselves, there is nothing that would require that professional to report that to the Police. Hopefully that is something the House will back today.

125 Mr Speaker, I beg to move both of those amendments:

*Amendment 29*

*Page 13, for line 32 substitute—*

*'and for the purpose only of—*

*(a) saving the woman's life; or*

*(b) avoiding grave permanent injury to the woman's health.'*

*Amendment 30*

*Page 13, after line 32 insert—*

*'(3) For the sake of clarity, nothing in subsection (1) obliges a relevant professional or pharmacist treating a pregnant woman to notify a constable that the woman has taken a relevant product with a view to terminating her pregnancy.'*

Thank you.

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

130 **Mr Ashford:** Thank you, Mr Speaker.

I am happy to second both amendments. In relation to the amendment on people taking medication, I think it is very important that people feel that they can access healthcare when required. I think we unfortunately are setting ourselves up for serious detriment to people if they feel that the reason they cannot seek the relevant healthcare is due to the fact they feel there is going to be a reporting in the background if they do. So I think it is a very sensible amendment from Mr Hooper and I am delighted to second it.

**The Speaker:** Mrs Caine, Hon. Member for Garff.

140 **Mrs Caine:** Thank you, Mr Speaker.

Amendments 27 and 28 are changes consequential upon the earlier change agreed by this House to using the expression 'termination' throughout the Bill.

I beg to move:

*Amendment 27*

*Page 13 lines 23 and 24 for 'the miscarriage of a woman' substitute 'the termination of a woman's pregnancy'.*

*Amendment 28*

*Page 13, line 31 for 'miscarriage' substitute 'termination'.*

**The Speaker:** Ms Edge.

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**Ms Edge:** I beg to second and reserve my remarks.

**The Speaker:** Mr Robertshaw.

150 **Mr Robertshaw:** Mr Speaker, I would like to speak to Mr Hooper's amendment, if I may, which I will support because there is nothing ideal or to be encouraged about buying chemicals, effectively, online but it is a balance of risk and that is what I think the Hon. House needs to take into account.

On the one hand, if we create a sense of threat or imposition on particularly a young girl trying to extricate herself from a difficult situation, if that situation is one she finds herself in she is more likely, in a state of mental turmoil and pressure, to make the wrong choice and to find herself perhaps buying the wrong pills from the wrong site; whereas if we accept it, the degree of risk is reduced because hopefully the pressure is off and that young woman will hopefully feel she has a better chance of finding the right site and buy the right chemicals.

160 So, on the basis of risk, I support the Hon. Member's amendment.

**The Speaker:** Hon. Member for Ayre and Michael, Mr Cannan.

**Mr Cannan:** Thank you. I am happy to support this amendment, Mr Speaker.

165 I think the key word here is 'obliges'. That does not mean to say a medical professional  
should not report if they feel that the circumstances are such that either somebody else has  
endangered the life of the woman or the woman herself has acted in such a way so as to have  
completely gone against the intent of this Bill and in doing so has, for example, decided to  
170 terminate a pregnancy very late in the cycle, to which point the actions would have clearly  
infringed the intent here.

Of course nobody wants to have a Bill that is brought forward that would discourage anybody  
from seeking medical assistance in the event that they had induced a problem by taking some  
sort of substance, but I am happy that the clause does not by itself legalise, effectively, the  
taking of such substances and I am happy that the clause is written in such a way so that a  
175 medical professional may use their judgement to decide whether or not this has become a  
matter for the Constabulary.

**The Speaker:** Hon. Member for Ramsey, Dr Allinson.

180 **Dr Allinson:** Thank you, Mr Speaker.

I would like to thank my colleague Mr Hooper for bringing this clause, which I think clearly  
states that if this Bill comes into operation women can be open and honest with the healthcare  
professional and get the right treatment and the right care that they need. This is about safety. It  
is also within the legal framework but it is really about the safety of the woman involved, but  
185 also to ensure that those healthcare professionals looking after her know all the facts, know  
what they are dealing with before they start further treatment which may complicate the  
matter. So I would like to fully support this clause, Mr Speaker.

**The Speaker:** Hon. Members, I give the right to reply first of all to Mrs Caine – if you wish to  
190 exercise it?

Mr Hooper.

**Mr Hooper:** I will, just really to say thanks to everyone, to all three of you who have just  
contributed.

195 I think the remarks made by Mr Cannan ... That is exactly the purpose of drafting it in this  
way, to make sure that the medical professional can exercise their judgement in circumstances  
where perhaps it would be appropriate to report, but actually the key thing there is making sure  
that the medical professional as well as the patient, both of them, are aware that there is no  
obligation on them to do so should they feel that that is not necessary.

200 Thank you, Mr Speaker.

**The Speaker:** Dr Allinson to reply to the clause.

**Dr Allinson:** I would like to thank the Members who have taken the time and effort to  
205 provide some very good amendments that clarify some of the issues and bring them up to date.  
With that, I would like to move the clause in my name.

**The Speaker:** Taking first amendments 27 and 28, which are drafting amendments in the  
name of Mrs Caine, those in favour, please say aye; those against, no. The ayes have it. The ayes  
210 have it.

Amendment 29, again a drafting amendment, in the name of Mr Hooper: those in favour,  
please say aye; against, no. The ayes have it. The ayes have it.

Amendment 30, regarding the patient confidentiality, I suppose would be the best way of  
putting it: those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

215 That clause 12 as amended stand part of the Bill: those in favour, please say aye; against, no.  
The ayes have it. The ayes have it.  
Clause 13, Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.

220 Clause 13 imposes a duty on the Department to secure the provision to a woman who has had a termination under the Act of suitable and sufficient counselling and support. Counselling is to comply with the guidelines issued by the Department under clause 6 insofar as they are relevant in the particular circumstances.

Mr Speaker, I beg to move clause 13.

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**The Speaker:** Miss Bettison.

**Miss Bettison:** I beg to second and reserve my remarks.

230 **The Speaker:** Mr Robertshaw.

**Mr Robertshaw:** Thank you, Mr Speaker.

Mine is a very small amendment: the word 'support' appears at the end of the wording, at least in paragraph 1, and I think it is so important that it should appear in the title of the clause. So Mr Speaker, I simply beg to move that it is referred to as 'Post-termination counselling and support':

*Amendment 31*

*Page 13, line 33 at the end insert «**and support**».*

**The Speaker:** Mrs Beecroft.

**Mrs Beecroft:** I beg to second.

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**The Speaker:** Seconded.

Okay, if there is no debate to reply to, we move straight to the vote. I put first amendment 31 in the name of Mr Robertshaw. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

245 Clause 13 as amended: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 14, Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.

250 Clause 14 deals with the relationship of the provisions of Part 2 with other enactments. I beg to move the clause in my name.

**The Speaker:** Miss Bettison.

255 **Miss Bettison:** I beg to second and reserve my remarks.

**The Speaker:** I call Mrs Caine to move her amendment number 32.

**Mrs Caine:** Thank you, Mr Speaker.

260 This amendment makes a similar amendment in respect of the terminology regarding termination.

I beg to move:

*Amendment 32*

*Page 14, line 7 for 'her miscarriage' substitute 'the termination of her pregnancy'.*

**The Speaker:** Mr Perkins.

265 **Mr Perkins:** I second and reserve my remarks.

**The Speaker:** Okay, putting first the amendment in the name of Mrs Caine: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

270 Clause 14 as amended: those in favour please say aye; those against, no. The ayes have it.  
The ayes have it.  
Clause 15, Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.

275 Clause 15 imposes a duty on the Department of Health and Social Care to make regulations in connection with the provision of abortion services. It also mandates the Director of Public Health to keep confidential information on abortion services provided on the Island.

I beg to move clause 15 in my name.

**The Speaker:** Miss Bettison.

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**Miss Bettison:** I beg to second and reserve my remarks.

**The Speaker:** Mrs Caine to move amendments 33, 34, 35, 37, 38 and 39.

285 **Mrs Caine:** Thank you, Mr Speaker.

Just to speak briefly, they are similar to previously.

Amendment 33 is a further amendment inserting the expression 'relevant professional' in place of 'healthcare professional'.

290 Amendments 34 and 35 are required by the need to change 'prescribed' to 'specified' in order to avoid issues with the prescription of drugs.

Amendment 37 flows from discussions between the drafter and the Department of Health and Social Care's pharmacy adviser on what might be required by way of information being given to the Department in a case where a termination followed action by a person other than a registered medical practitioner, such as a nurse, midwife or pharmacist.

295 Amendment 38 is consequent on the amendment at 35(b).

My final amendment to this clause, number 39, replaces a reference to a monetary amount with a reference to a fine of level 5 on the standard scale. The standard scale came into operation on 1st January 2018 and this reference had been overlooked in updating the Bill.

Mr Speaker, I beg to move the amendments standing in my name:

*Amendment 33*

*Page 14, lines 12 and 13 for 'healthcare professional' substitute 'relevant professional'.*

*Amendment 34*

*Page 14, line 19 for 'prescribed' substitute 'specified'.*

*Amendment 35*

*Page 14, after line 19 insert —*

*'(b) requiring any relevant professional or pharmacist who supplies a person with a relevant product, otherwise than in fulfilment of a prescription issued by another person—*

*(i) to record the reasons for the supply and the circumstances; and*

*(ii) to give notice of the supply and such other information relating to it, as may be specified;'.  
Renumber the succeeding paragraph of the subsection.*

*Amendment 37*

*Page 14, line 21 for 'prescribed' substitute 'specified'.*

*Amendment 38*

*Page 14, line 25 for '(1)(b)' substitute '(1)'.*

*Amendment 39*

*Page 14, for line 29 substitute—  
'Maximum penalty (summary) – level 5 fine.'*

300 **The Speaker:** Mr Perkins.

**Mr Perkins:** I beg to second and reserve my remarks.

**The Speaker:** Mr Robertshaw.

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**Mr Robertshaw:** Thank you, Mr Speaker.

This amendment 36 refers to exemptions in relation to the Department's requirement to make regulations and specifically it refers to section 9(2), which concerns as I recall young people below the age of 16. The regulations will be changed for them and also women with disabilities. So it makes exceptions for them in a perfectly rational way.

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I beg to move, Mr Speaker:

*Amendment 36*

*Page 14, after line 19 insert—*

- a. Either (if Mrs Caine's amendment at 35 is not accepted)—  
'(b) requiring a relevant professional under a duty to comply with paragraph (a), except in a case where section 9(2) or (4) (women under disabilities) applies, to record that to the best of the relevant professional's knowledge and belief, the woman freely consents to the termination of her pregnancy and has not been coerced into so doing; and';*
- b. Or (if Mrs Caine's amendment at 35 is accepted)—  
'(c) requiring a relevant professional under a duty to comply with paragraph (a) or (b), except in a case where section 9(2) or (4) (women under disabilities) applies, to record that to the best of the relevant professional's knowledge and belief, the woman freely consents to the termination of her pregnancy and has not been coerced into so doing; and'.*

*Renumber the succeeding paragraph of subsection (1) accordingly.*

**Mrs Beecroft:** I beg to second, Mr Speaker.

**The Speaker:** Seconded, thank you, Mrs Beecroft.

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Mr Hooper.

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

I actually have a question for the amendment being put down by the Hon. Member for Douglas East. I wonder if he could be so kind as to define the term 'freely consents'. We have a term in the Bill already in section 3 which is 'informed consent', which is defined as 'consent by a woman of her own free will'; but 'freely consents' actually has not been defined anywhere. I am

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just wondering what his understanding of that is, and why that would be different from 'informed consent', which is already covered elsewhere.

325 Also, I am a little confused as to exactly what the amendment is trying to achieve, because it is already a requirement under law that the service can only be provided if a woman consents of her own free will, which is the definition in clause 3. So we have already got a law that says you cannot provide the service unless the woman is consenting of her own free will. I am just curious as to what advantage he feels simply making a doctor write that down on a piece of paper will actually achieve.

330 Thank you.

**The Speaker:** Mr Quayle.

**Mr Quayle:** Thank you, Mr Speaker.

335 Can I just clarify that I am okay to discuss amendment 36?

**The Speaker:** Yes.

**Mr Quayle:** I just want to be clear.

340 Mr Speaker, having voted to prohibit sex-selective abortion, I would hope that my hon. colleagues should also be open to supporting amendments prohibiting coercive abortions. Amendment 36 on the Order Paper requires doctors to record the fact that they have checked to the best of their ability that a woman presenting for abortion is not doing so under coercion. Amendment 36 would have the effect of placing the issue of coercion on the face of the Bill, sending out the clear message that coercive abortion is completely unacceptable.

345 The requirement for the relevant professional to record that, to the best of the relevant professional's knowledge and belief, the woman fully consents to the termination of her pregnancy and has not been coerced into doing so. Doing so means that the relevant professional must take steps to assess whether the woman presenting is coerced or not, whilst of course asking questions about coercion would not necessarily reveal the truth. The requirement will help to foster a culture in which coercive abortion is not tolerated. It would also make the Isle of Man legislation better than that of the United Kingdom in the sense that the 1967 Act does not engage with or even acknowledge the risk of coercive abortion.

350 So I feel that amendment 36 is something that people who are pro-choice should be happy to argue for as well as pro-life.

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**The Speaker:** The first right of reply is to Mrs Caine? No.  
Mr Robertshaw.

360 **Mr Robertshaw:** Thank you, Mr Speaker, and can I thank the Hon. Member for Middle, the Chief Minister, for his comments and I concur absolutely with them.

If I can refer specifically to the points raised by the Member for Ramsey, Mr Hooper. With regard to why it is 'freely consent', I cannot, because those words were placed before me for consideration by the drafter and I would have to take his further advice as to their appropriateness or otherwise.

365 With regard to the other matter he raises, why the special circumstances required under regulations concerning very young women under age and also those with disabilities, they have to be treated specially and under specific circumstances because their disability could arrive in connection with an inability to provide consent themselves. So they need very special circumstances and cannot simply be placed in the mainstream regulations and therefore they are taken out and are required to be considered specially and separately.

370 Thank you, Mr Speaker.

**The Speaker:** Dr Allinson to reply to the debate on the clause.

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**Dr Allinson:** Thank you, Mr Speaker.

Again, I would like to thank the various Members for their very useful amendments to the clause. I think when we were discussing abortion, particularly in terms of sex selection abortion, we did raise the whole issue of coercion. By its very definition, we do not know the extent of it. We know anecdotally that some women have felt pressurised into having a termination, but I think that bringing this into the legislation quite clearly does send out this message that this House is aware that a problem may exist and is also doing as much as possible to not only secure the rights of women but also to protect those rights and know that women who are feeling under pressure, for whatever reason, whether it is domestic violence, whether it is termination, whether it is any other form of healthcare, can actually open up to their healthcare professional.

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There is also the issue that this sort of legislation sends out a clear message that the medical profession will look at evidence of coercion across the board in terms of healthcare, but also the criminal justice system will also trust women and listen to women when they say they are being coerced or say they are victims of domestic violence, which has got no place in any society, but particularly on the Isle of Man. So I see this as very much aligning with a policy of this Government not to accept domestic violence, not to accept violence against women and to make that statement very clear.

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So after that, Mr Speaker, I beg to move clause 15.

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**The Speaker:** Thank you.

Turning to voting on the amendments, first amendment 33, in the name of Mrs Caine, to substitute 'relevant professional' for 'healthcare professional'. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

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Amendments 34 and 37, in the name of Mrs Caine, to change 'prescribed' substitute 'specified'. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Amendments 35 and 38, in the name of Mrs Caine, regarding the gathering of data. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Amendment 39, regarding the penalty, in the name of Mrs Caine. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

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Amendment 35 having been agreed, we vote on 36b – 36a having fallen because 35 was agreed. So voting on 36b, in the name of Mr Robertshaw. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 15 as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

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Clause 16. Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.

Clause 16 authorises the Department to incur expenditure in connection with the operation of the resulting Act.

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I beg to move clause 16.

**The Speaker:** Miss Bettison.

**Miss Bettison:** I beg to second and reserve my remarks.

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**The Speaker:** The question is that clause 16 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Clause 17, Dr Allinson.

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**Dr Allinson:** Thank you, Mr Speaker.

Clause 17 repeals provisions which are no longer necessary in light of the provisions which will be made by the Act if the Bill passes.

I beg to move clause 17.

430 **The Speaker:** Miss Bettison.

**Miss Bettison:** I beg to second and reserve my remarks.

435 **The Speaker:** The question is that clause 17 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Now Hon. Members, we go backwards to clause 8. Dr Allinson has already moved clause 8 but for the sake of regularity, because the Order Paper has been reprinted, I would like Members to move their amendments, and they can do so formally if they so wish – turning first to Mrs Caine.

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**Mrs Caine:** Thank you, Mr Speaker.

With your permission, I will speak to all of the amendments to this clause in my name – amendments 13, 15, 22, 23, 24 and 25. All save the last relate to the substitution of the term ‘relevant professional’ for the term ‘health care professional’ in the Bill as originally drafted.

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In line 8, ‘health care professional’ is replaced with ‘that person’ because it reads better.

In lines 17, 20 and 23 the term ‘relevant professional or pharmacist’ replaces ‘health care professional’ as this is more appropriate following representations that the scope of conscientious objection was too narrowly drawn.

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My final amendment to clause 8, at line 28, amendment 25, is a drafting improvement to the maximum penalty listed for the offence of failing to act in accordance with subsections (3) or (4). So it would state: ‘(summary) 12 months’ custody or a level 5 fine.’

Mr Speaker, I beg to move the amendments standing in my name:

*Amendment 13*

*Page 11, line 5 for ‘health care professional’ substitute ‘relevant professional or pharmacist’.*

*Amendment 15*

*Page 11, line 8 for ‘the health care professional’ substitute ‘that person’.*

*Amendment 22*

*Page 11, line 17 for ‘health care professional’ substitute ‘relevant professional or pharmacist’.*

*Amendment 23*

*Page 11, line 20 for ‘health care professional’ substitute ‘relevant professional or pharmacist (as the case requires)’.*

*Amendment 24*

*Page 11, line 23 for ‘health care professional’ substitute ‘relevant professional or pharmacist’.*

*Amendment 25*

*Page 11, for line 28 substitute —*

*‘(b) (summary) 12 months’ custody or a level 5 fine.’.*

**The Speaker:** Mr Perkins.

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**Mr Perkins:** Thank you, Mr Speaker.

I beg to second and reserve my remarks.

**The Speaker:** Thank you.  
Mr Robertshaw.

460 **Mr Robertshaw:** Thank you, Mr Speaker.  
I will go slightly slower because there are one or two issues that need to be focused on.  
If I may, Mr Speaker, I would like to move amendments 14 and 16 together.

**The Speaker:** And there is 17.

465 **Mr Robertshaw:** I would like to do 17 separately.

**The Speaker:** But I need them to be on the floor at the same time, so if you can give ... I do not mind if you introduce them separately but I –

470 **Mr Robertshaw:** In that case, I have got amendments 17, 18, 19 and 20 that will be subject to discussion.

If I can first turn to amendments 14 and 16, this has been the subject of a significant degree of discussion between myself and the mover and I hope the mover will signal that he is content with those two amendments. It is simply expanding the understanding of specific areas related to not just the actual treatment but associated matters. Specifically here we are talking about counselling.

475 If I can then turn to amendment 17, amendment 17 and the ones subsequent are trying to tighten up and address an understanding of where employees and the employer stand and define them so that there can be no misunderstandings at a later date which could cause embarrassment or difficulty either for the employer or for the employee concerned.

480 The first one, amendment 17 – and there is going to be an amendment to this from the mover, as I understand it:

Page 11, after line 9 insert –

‘(2) The Department must not—

(a) refuse to employ a person on the ground that the person may refuse to participate in an activity authorised by this Act in reliance upon subsection (1); or

(b) terminate the employment of a person who refuses to participate in such an activity on that basis.’.

485 Mr Speaker, do you want the amendment to the amendment now, or do you want to carry on?

**The Speaker:** No, I would like you to carry on and move all of your amendments so that they are on the floor, please, Mr Robertshaw.

490 **Mr Robertshaw:** Right, thank you, sir.

Moving on to amendment 18, this again concerns itself with clarity of process and reads as follows:

A person who intends to rely upon subsection (1) must, within 14 days of being required for the first time to participate in an treatment or counselling in respect of which the person has a conscientious objection, give notice in writing to that effect to the person who imposed the requirement and (if the requirement was not imposed by the Department) to the Department.

495 Effectively, all that is saying is that if somebody has a conscientious objection they need to make that clear and it needs to be recorded in a way and a procedure that everybody understands from both sides.

Moving on then to amendment 19, this offers further clarity and reads as follows:

In any legal proceedings, a statement in writing and on oath or affirmation by a person that he or she has a conscientious objection to participating in any treatment authorised under this Act is conclusive evidence of that objection.

The reason it might be said that I have laboured this is that I was somewhat concerned about the clarity that exists in section 8 under conscientious objection, and this simply further clarifies it. There are two options. There are 19 and 20 and they only differ simply on the basis as to whether or not the Hon. House accepts amendments 14 and 15, which change the wording from 'treatment' to 'treatment or counselling'.

With that, Mr Speaker, I beg to move the amendments in my name:

*Amendment 12*

*Page 11, line 5 for 'subsection (3) and (4)' substitute 'subsections (2) to (4)'.*

*Note the subsection (2) referred to in this amendment is that proposed to be inserted by amendment 19 or 20 below, and which of them is selected is itself dependent upon whether amendments 14 and 16 are accepted.*

*Amendment 14*

*Page 11, line 7 after 'treatment' insert 'or counselling'.*

*Amendment 16*

*Page 11, line 9 after 'treatment' insert 'or counselling'.*

*Amendment 17*

*Page 11, after line 9 insert —*

*'(2) The Department must not—*

*(a) refuse to employ a person on the ground that the person may refuse to participate in an activity authorised by this Act in reliance upon subsection (1); or*

*(b) terminate the employment of a person who refuses to participate in such an activity on that basis.'*

*Renumber the succeeding provisions of the clause and adjust cross-references accordingly.*

*Amendment 18*

*Page 11, after line 9 (and amendment 17 if successful) insert—*

*'(2) A person who intends to rely upon subsection (1) must, within 14 days of being required for the first time to participate in an treatment or counselling in respect of which the person has a conscientious objection, give notice in writing to that effect to the person who imposed the requirement and (if the requirement was not imposed by the Department) to the Department.'*

*Renumber the subsequent subsections of the clause and adjust cross-references accordingly.*

*Note: only one of the two amendments immediately below will be moved, depending upon the success or failure of the amendments proposed at page 11, line 7 and page 11, line 9 (inserting references to 'counselling' after the references to 'treatment' in both those places in the Bill as printed).*

*Amendment 19*

*Page 11, after line 9 and amendments 17 and 18 if successful insert —*

*'(2) In any legal proceedings, a statement in writing and on oath or affirmation by a person that he or she has a conscientious objection to participating in any treatment authorised under this Act is conclusive evidence of that objection.'*

*In consequence of this amendment, omit subsection (2) of the clause as printed.*

*Amendment 20*

*Page 11, after line 9 (and amendment 17 and 18 if successful) insert—*

*'(2) In any legal proceedings, a statement in writing and on oath or affirmation by a person that he or she has a conscientious objection to participating in any treatment or counselling authorised under this Act is conclusive evidence of that objection.'*  
*In consequence of this amendment, omit subsection (2) of the clause as printed.*

**The Speaker:** Mrs Beecroft.

505 **Mrs Beecroft:** I am happy to second.

**The Speaker:** Thank you very much.  
Can I ask now, Mr Ashford, if you would be willing to move your tabled amendments.

510 **Mr Ashford:** Thank you, Mr Speaker.

Obviously my amendment is dependent upon Mr Robertshaw's two amendments 19 and 20 not succeeding. In the event neither of those do succeed, the amendment I have is that ... Section 8(2) of the Bill currently states:

In any legal proceedings the burden of proof of a person's conscientious objection rests upon the person who claims to rely on it.

515 My amendment seeks to remove 8(2) from the Bill and the reasoning for this is as follows.  
The wording that we have used is a mirror image of what is section 4(1) in the UK Abortion Act 1967 and from what I can gather from speaking to people who were around at that time, the reason for this clause was to ensure that if any legal proceedings were taken to determine who was or was not a conscientious objector, the person claiming to be so had to prove their reasoning. That was because the 1967 Act in the UK did not lay out in what circumstances  
520 somebody was a conscientious objector or what actions that individual must take in order to exercise that right. The main reason for that was at the time it was a very disputed point of view and in fact the then mover of the Bill, David Steel, the then Member for Roxburgh, Selkirk and Peebles, now Lord Steel, even himself admitted that the clause was basically a fudge in order to find something that everyone could support and would not actually doom the Bill. In fact, at the  
525 Third Reading stage of the Bill, on 13th July 1967, when addressing the House he stated:

It is the view of a substantial body of the profession that this clause is unnecessary and raises all sorts of unnecessary complications.

The difference that we have with the Bill in front of us is it does define in what circumstances a person is a conscientious objector and also what steps they must take in order to exercise that objection, namely section 8(4). It also lays out the legal penalty for not meeting the required steps in 8(5). Both of these provisions are not contained in the UK's 1967 Act, which is why the  
530 wording contained within our 8(2), placing the burden of proof on the conscientious objector, was required. However, since our Bill clearly defines what steps are required to be taken, 8(2) to my mind is pointless as it is clear that a conscientious objector could only successfully be taken to court if they had not met the steps required in 8(3) or 8(4). Clause 8(1) also makes clear that no healthcare professional shall be under any legal duty to participate in any treatment  
535 authorised by this Act if this healthcare professional has a conscientious objection to participating in such treatment, apart from obviously those duties laid out in 8(3) and 8(4).

It has also been suggested that 8(2) is required in the case of employment tribunals, but again I would contend that the only reason an employer could legitimately dismiss someone is if they had breached 8(3) or 8(4), as again 8(1) is explicit in the fact that these are the only  
540 provisions under which someone exercising a conscientious objection has a legal duty. The Employment Tribunal Rules 2008 clearly lay out the procedure for employment tribunal cases and section 12 of the Rules makes clear that the chairman of any tribunal may make an order

545 'on his own initiative with or without hearing the parties'. So it is clear that the tribunal itself has wide powers in such cases to decide upon with which party the burden of proof lies, and generally I think it would be very unusual to find an employment tribunal where the burden of proof did not rest with the person bringing the case to prove that they had a case that the employment tribunal could actually rule in their favour.

550 So, again, to me section 8(2) provides nothing extra in the case of employment tribunals occurring. I can understand why it was initially put in the first draft of the Bill, because we were looking at what was there in the UK in relation to the 1967 Act, but I think the very fact that we have got much firmer rules and regulations around conscientious objection means that what was a fudge in the UK in 1967 is not required in our legislation in 2018.

I beg to move:

*Amendment 21*

*Page 11, omit lines 10 and 11 (subsection (2) of the clause in the Bill as printed).*

*Renumber the succeeding provisions of the Clause, and adjust cross-references accordingly.*

555 **The Speaker:** Hon. Member for Ayre and Michael, Mr Cannan.

**Mr Cannan:** I beg to second and reserve my remarks.

560 **The Speaker:** Hon. Members, you all had circulated an amendment to amendment 17 and under Standing Order 4.7(4A) a Member may, with the leave of the House, move without notice an amendment to any amendment that stands on the Order Paper. The leave of the House is therefore required.

565 Is the House content to grant that leave? Those in favour – (**Members:** Agreed.) I will say 'those against, no?' Okay, in which case I will take that leave as granted and I call on Dr Allinson to move the amendment to the amendment as circulated.

**Dr Allinson:** Thank you very much, Mr Speaker.

570 I would like to thank Mr Robertshaw for his various amendments on conscientious objection. I think particularly on a small island with a small workforce it is essential that we look after our frontline staff and we respect their view points; and that is what we have tried to do in law through the Equality Bill as well – ethical or religious viewpoints. But it is also very important that whilst we acknowledge those ethical and religious viewpoints and respect them, we have a functioning Health Service at the same time.

Mr Robertshaw's initial amendment part (a) said that:

The Department must not –

(a) refuse to employ a person on the ground that the person may refuse to participate in an activity authorised by this Act ...

575 I have two slight problems with this: one, it makes the recruitment of staff quite difficult for the Department of Health and Social Care; and secondly, it uses the term 'activity' rather than 'treatment'. There have been cases in the United Kingdom, for instance, where secretaries have not sent out letters for appointments for abortion. If we were to go down that line it could be that we would not have a functioning Health Service and so, whilst I respect people's ethical and religious viewpoints, we also have to have a responsibility that they take part in the  
580 responsibilities that they sign up for.

So what my amendment does is to remove that part (2)(a) in terms of the initial employment of a member of staff; and also in terms of part (b) it changes the word 'activity' to 'treatment' which is defined within the Act. So it makes it quite clear that staff cannot be dismissed due to their religious or ethical viewpoints, but also, with the further amendments, puts the framework

585 there for them expressing those viewpoints so that not only they are protected but also their employer is protected.

So I beg to move the amendment to amendment 17 in my name:

*Amendment to amendment 17:*

*In amendment 17—*

*(a) omit paragraph (a) of the subsection proposed to be inserted by the amendment;*

*(b) in paragraph (b) for the words following ‘participate in’ substitute ‘treatment or counselling authorised by this Act in reliance upon subsection (1)’.*

*In consequence of the omission of paragraph (a), restructure the inserted subsection as a continuous provision without lettered paragraphs.*

**The Speaker:** Mr Hooper.

590 **Mr Hooper:** I am more than happy to second Dr Allinson’s amendment, but actually I would just like to talk briefly about the whole collection of amendments that are in front of us, so bear with me if I lose the plot slightly; this is getting a little bit complicated.

To start with, of the amendments on the table, 17 and Dr Allinson’s, I actually think Dr Allinson’s makes somewhat more sense. I am not convinced either are actually necessary. I think if we are going to include something in the Act, it should be the amended amendment rather than Mr Robertshaw’s original.

The reason, obviously, we have this is it is the similar wording to what was in our original Act, but back then we did not have an Equality Act – the Equality Act actually already covers this. It would be direct discrimination to refuse to employ someone or to dismiss someone for exercising their religious or philosophical beliefs.

600 So really I think it is covered already and I would like some clarity from, I suppose, Mr Robertshaw as to why he feels this is necessary and why the Equality Act does not cover this; because from everything, I understand it is already covered and the only reason we had it – similar to Mr Ashford’s arguments about subsection (2) – the only reason it was in the original Act is because we did not have anything better at the time. Now we do; we have an all-encompassing Equality Act that deals with issues of conscience, of religious belief, of political viewpoints, and so we do not need to keep adding these clauses into every single Bill that we pass. We have an Equality Act that needs to stand on its own and it does and it should.

605 Turning to amendments 18 and 19, I am confused by these, if I am going to be perfectly honest with you. Again, picking up on some of Mr Ashford’s comments, we are putting down in law a process that must legally be followed in order to exercise your conscientious objection. What happens if you do not, for some reason, for whatever reason – if you miss the 14-day deadline? I cannot imagine why you would – maybe you were on holiday, maybe you were off Island, maybe you were ill, there could be a reason – does that then prohibit you from exercising your conscientious objection, if you have missed the 14 days and you say, ‘Actually I still want to exercise my rights under this Act,’ and the Department or the provider will say, ‘Actually you cannot, you now have to participate in this treatment because you did not fulfil the requirements of the Act.’ Exactly the argument Mr Ashford just made.

610 Then if someone fails to exercise their rights in accordance with that section, section 19 says in any legal proceedings, as long as they provide a statement in writing and on oath that will be conclusive evidence of the objection. So why then, if we are then going to accept that if someone is taken to a tribunal or to court, all they have to do is produce a letter on oath or an affirmation and that is conclusive evidence; why then is there a requirement for them to have told the Department within 14 days of being first asked to ... ? The two are completely contradictory, in my mind.

625 Either you say you must do it within 14 days, in which case actually informing the Department should be enough. I should not then have to also go on oath or affirmation. I should



say, 'Well, no, I told my employer about this within the 14-day timescale.' I then should not have to go an extra step and provide an oath to say that what I told them was correct. Or we turn  
630 around and say we do not need to tell the Department within a specific timescale – as long as I have told the Department, that should be sufficient and then if they choose to sack me all I have got to do is swear an oath or affirm that was the case.

Again, it seems contradictory and I am not particularly comfortable putting such a tight timescale requirement on someone exercising their rights to object. I would much rather leave  
635 that open and just say if you want to conscientiously object, simply saying, 'I wish to conscientiously object' should be enough and then if someone chooses to take you to court, take you to employment tribunal over that, as has already been said, it would be up to them to prove that you do not have a conscientious objection.

So whilst I have no real issue supporting amendment 19, the words 'conclusive evidence' do  
640 worry me a little bit but I am happy to accept 19. Amendment 18, I think, whilst the intention is good, it is definitely the right heart behind it, I am not convinced that setting a 14-day timescale which would set a legal obligation on people ... and if they miss that what happens? So I would like an answer to that: what happens if somebody misses the 14-day timescale? Can they still exercise their rights? If they cannot, we really should not be putting that clause in the Bill.

645

**The Speaker:** I give Mr Robertshaw first bite at responding to the amendment to his amendment.

**Mr Robertshaw:** Thank you.

650 First of all, I am happy to acknowledge the mover's amendment to my amendment, because once I had put this amendment down and we engaged in discussions over it, I feel that his contribution is better in the circumstances than that which I put down and what I am going to say now, to some great extent, really acknowledges the special circumstances that the Isle of Man is in.

655 I do not think there is anything contradictory at all between my amendments and the comments and the amendment made by the Minister for Health and Social Care, Mr Ashford, because sections 8(3) and 8(4) particularly concern themselves with the activity of somebody with a conscientious objection in their relationship with the patient or the person they are dealing with.

660 My amendments look in a different direction. My amendments look at the matter, effectively the management issues, relating to the relationship between the employee and the employer. They are very specific on the Isle of Man because we do have a small population with a small hospital and the challenge for me was how one balanced off, in such circumstances that we have here, the issue of the right to conscientious objection on the one hand and the clear need, as  
665 this Bill goes to law, that we have the capacity to deliver the service that we, the House, are saying should be required.

Specifically addressing Mr Hooper's points, I understand what he is saying, but please understand where we are at. We need effectively to protect the employer to make sure that they have the capacity to deliver the service. That is why we are saying, 'Look, if you have a  
670 conscientious objection, you must tell us.' Now, in 14 days, I think that is a reasonable timescale for us to require that person to express that position, because the employer must then construct the shifts and rotas in an appropriate way. Not to do so, I think is unreasonable.

That is separate to the issue of the matter of declaration of oath, because one would hope that the person with a conscientious objection had taken a responsible act and advised the  
675 employer of their position. But it is a murky world, once you get into the legalities of it, as to whether or not somebody has conscientious objection, so that just again clarifies the situation.

I hope that amendment 19 is never required because hopefully the person with a conscientious objection had delivered their advice to their employers in due time, thus not requiring any further action; but that covers it in a very explicit way.

680 I think that covers the comments I have got, Mr Speaker. Thank you.

**The Speaker:** Mr Thomas, Hon. Member for Douglas Central.

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

685 Just two very brief points, the first one is, for the avoidance of any doubt, not only does the Equality Act have Royal Assent, we also have an Appointed Day Order that says, 'From 1st January 2019 this protected characteristic will be in law.' So that is clearly there, no legal doubt about it.

690 The second point is that it has been an Isle of Man tradition that we do not put in place all of management's requirements in law. A management is perfectly capable of making its own management decisions about how things will be operated and not everything that management does is backed up by law. I think that is an important point to remember in this case. We do not need something to be in law for the Hospital and the Health and Social Care Department to be doing it.

695

**The Speaker:** Hon. Member for Middle, Mr Quayle.

**Mr Quayle:** Thank you, Mr Speaker.

700 I rise to discuss the Hon. Member for Ramsey, Dr Allinson's amendment, which is a two-parter. I can accept (b), but I do not think I can accept (a), where he wants to omit the paragraph.

705 It just concerns me: we have had a contradiction here. We have had the mover say that he is moving this amendment to take out 'you can't employ people if they have got a conscientious objection' to help the Health Service recruit people, and then the seconder then contradicted that by saying it is covered under the Equality Act and therefore it is not really needed.

710 So I take the Hon. Member for Douglas East, Mr Robertshaw's amendment as making it clear that we are sending out a message that you can work for the Health Service if you have a conscientious objection. You declare it and that is not going to restrict people. It will send out a clear message that if you have a certain belief, you can work for the Health Service.

715 If we take out, omit paragraph (a) under the amendment to amendment 17 by Dr Allinson, then we are saying to the person who is going for the job, 'Well, if you have a problem, you will then have to rely on fighting your cause, if you have a problem, under the Equality Act.'

720 I just see Mr Robertshaw's amendment as reinforcing the right of a person, so maybe it is splitting hairs but I think I will not be supporting this amendment – or certainly not the amendment to 17(a).

**The Speaker:** Hon. Member for Ayre and Michael, Mr Baker.

**Mr Baker:** Thank you, Mr Speaker.

725 I rise to speak in respect of the comments made by Mr Hooper and Dr Allinson's amendment.

730 In terms of Mr Hooper's comments, his position appears to be that the Equality Act will give adequate protection and therefore we do not need to take the step advocated in the amendment proposed by the Hon. Member for Douglas East. I am not a lawyer and we do not have a drafter with us. I do not know whether the Equality Act provides that adequate protection or not. I do not know whether the protected characteristics that are within the Equality Act would necessarily deliver an outcome for somebody who may have a conscientious objection which may be on religious grounds, which I think would be a protected characteristic, but it may be for other reasons – they may just have a conscientious objection but they may not have a faith.

735 So I do not think that we should just say the Equality Act, we think, provides adequate protection. I think if we believe that the principle is right, then we should make the statement,

as we have made with gender selection and as we made in earlier discussion today, that these are points of principle and we are making that position clear as an Island that these things stand. And if there is a bit of overlap with the Equality Act, then I do not see that as an issue, and by accepting the amendment it does deal with the fact that the Equality Act may not correctly deal with it.

So I would encourage Hon. Members to support the amendment. I think it is really important that we are seen to protect our valued healthcare workers in their employment situation. Because of the change, compared to the previous legislation it does look as though we are watering down the protection for those healthcare workers and I think by accepting that amendment we will make the position very clear that they are adequately protected.

Turning to the amendment raised by Dr Allinson, I think that the Chief Minister makes a very fair point. Stepping back from the issue, we know it is very difficult to recruit healthcare professionals to the Island and we know that it is key that we get high-quality staff working here who want to be here. My view is that we should not be putting barriers into that exercise that make it more difficult for the Hon. Minister for Health to build the team that he needs to deliver the healthcare that this Island deserves, and therefore I think the point made by the Chief Minister is well worthy of consideration.

Therefore, I would, on balance, tend to support the amendment by Mr Robertshaw as opposed to the amendment from Dr Allinson.

Thank you, Mr Speaker.

**The Speaker:** Hon. Member for Douglas East, Miss Bettison.

**Miss Bettison:** Thank you, Mr Speaker.

It does worry me that we are discussing also here whether the Equality Act is actually going to function in the way that we intended. My understanding was absolutely that this should protect against all those protected characteristics that were discussed at length in this Hon. House. (**A Member:** Hear, hear.)

I also think there is another aspect to this, and while I recognise that we absolutely do not want to discourage any healthcare professional or any ancillary staff in the Hospital from coming and seeking employment on this Island and taking up some excellent opportunities that we have within our hospital services, (**A Member:** Hear, hear.) what I do think we need to recognise is that were a job to be advertised that was very specifically dealing only with abortion services, I think we would find ourselves in somewhat of a fix if we were unable to refuse someone who was not willing to engage in abortion services and we employed them into that role. So while I recognise that we are very willing, and in fact there is a lot of case law and there is precedent set and the Nursing and Midwifery Code and the General Medical Council certainly have guidance with regard to what aspects of the care the individual can refuse to participate in, I think what we do need to be careful of is exactly what we might end up with by putting this in its entirety, and for me that is where Dr Allinson's amendment just enables us to make that a more cautious and sensible approach to what is, I think we all agree, a very sensitive issue.

Thank you.

**The Speaker:** Mrs Beecroft.

**Mrs Beecroft:** Thank you, Mr Speaker.

There is just one part that is actually confusing me slightly and I have reservations about reliance on the Equality Act, and it is what Mr Baker said. The Equality Act covers an awful lot of things, but what about people who object but do not have a faith? I do not think the Equality Act would work for those people, would it? I would need a ruling on that, I suppose, a legal ruling whether it would or not, but I do not see how, if you have not got a faith, you are protected by the Equality Act in this particular instance.

**The Speaker:** If no other Hon. Member wishes to speak, we will start the right to reply.

785 I suppose first if I could ask Dr Allinson, would you like to reply to the amendment on the amendment?

**Dr Allinson:** Thank you, Mr Speaker.

790 I would like to thank people for the quality of debate. It is a difficult subject because we are trying to balance here the right of somebody to have an ethical or religious viewpoint with also the rights of the National Health Service to provide the service.

795 What I would say to the Hon. Member, Mrs Beecroft is that certainly in terms of the Equality Act it will guarantee protection for people with religious but also quite profound philosophical beliefs as well. I think we spent a lot of time trying to get the Equality Act as good as possible for these sort of eventualities. If somebody were to come for a job, whether it be abortion or anything else in the Health Service, and they have been refused that for a particular belief that they have, that would be unlawful if that was the only reason. What I am trying to do with the amendment is not just deal with employment but also deal with the term 'activity', which I do have some problems with as it is not defined in the Act and not defined anywhere else that I can find, and so by omitting (a) but quite clearly saying that terminates the employment of  
800 somebody who refuses to participate in treatment, and again defining treatment, I think sends out a very clear message to those staff we have – and staff that are coming into the service in the future with the excellent vacancies that the Hon. Member, Miss Bettison has talked about – that they are protected, that their rights and their viewpoints are protected and actually  
805 acknowledged as well.

So thank you very much for all your comments. I beg to move.

**The Speaker:** Mr Ashford.

810 **Mr Ashford:** I do not think there was much comment on my amendment, really, Mr Speaker, so I will just emphasise again the fact that I think that by keeping subsection 8(2) in the Bill we would effectively be repeating the same fudge and the same mistake that the UK did in 1967.

**The Speaker:** Mrs Caine? Okay.

815 Mr Robertshaw.

**Mr Robertshaw:** Thank you, Mr Speaker.

My amendment, either 19 or 20, does in fact say 'In consequence of this amendment, omit subsection (2)', so it is in line with the Minister's comments.

820 I have taken on board everything that Hon. Members have said and it is clearly a very delicate area balancing equality law off with our proposed abortion law. Here Hon. Members may be surprised that the mover of the amendment to the amendment and myself are in complete agreement in terms of opposition because what we are trying to do here is recognise – and I hope I am not repeating anything he has said – on the one hand the absolute right people have to conscientious objection with the fact that we have a small hospital in a small jurisdiction  
825 where there are very specific needs on the part of the Hospital to be able to deliver the service which we are defining here. Therefore it is a set of special circumstances that we find ourselves in, which is why we are lawmakers in our own right in a small jurisdiction, that we have to address that. And so sections 8(3) and 8(4) concern themselves in the relationship between the provider of the service and the recipient of it, and amendments 18, 19 and 20 concern  
830 themselves with – in fact, as does 17 – the relationship between the conscientious objector and the Department and tries to find a sensible balance.

I hope that we do not throw away our responsibilities this morning into a more opaque world of 'somebody else or another Bill can sort this out'. I think we need to define where we stand

835 and make it clear to those with conscientious objections and to the Department what is required of everybody.

Mr Speaker, I beg to move.

**The Speaker:** Dr Allinson to reply to the clause.

840 In which case, we will turn to the voting and I am going to take things quite slowly so that we all know where we are up to, because there are quite a few complicated co-dependencies in these amendments.

Taking first amendments 13, 15, 22, 23 and 24 in the name of Mrs Caine – they are the drafting amendments largely in line with those which we have previously agreed. Putting those  
845 to you first, those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Putting to you next amendments 14 and 16, which are joined, in the name of Mr Robertshaw, which are after ‘treatment’ insert the words ‘or counselling’. Those in favour of amendments 14 and 16, please say aye; against, no. The ayes have it. The ayes have it.

850 Turning to amendment 17, and there is an amendment to that. I take it from the Chief Minister’s comments that he would like parts (a) and (b) to be dealt with separately, so I will deal first with part (a) of the amendment to the amendment. That would omit paragraph (a) of the subsection proposed to be inserted by the amendment. Those in favour of part (a) of Dr Allinson’s amendment, please say aye; against, no. The ayes have it. (**A Member:** Divide.) Division called. Just to remind Members, this is part (a) of the amendment to the amendment.

*Electronic voting resulted as follows:*

**FOR**

Dr Allinson  
Mr Ashford  
Miss Bettison  
Mrs Caine  
Mr Callister  
Mr Cannan  
Mrs Corlett  
Mr Cregeen  
Ms Edge  
Mr Hooper  
Mr Malarkey  
Mr Moorhouse  
Mr Peake  
Mr Perkins  
Mr Robertshaw  
Mr Shimmins  
Mr Skelly  
Mr Speaker  
Mr Thomas

**AGAINST**

Mr Baker  
Mrs Beecroft  
Mr Boot  
Mr Harmer  
Mr Quayle

855 **The Speaker:** With 19 votes for and 5 against, the ayes have it. The ayes have it.

Putting to you then part (b) of the amendment to the amendment, those in favour of that, please say aye; against, no. The ayes have it. The ayes have it.

Putting then the amendment to the amendment in its entirety, those in favour, please say aye; against, no. The ayes have it. The ayes have it.

860 Now turning to amendment 17 as amended, those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We now turn to amendment 18, in the name of Mr Robertshaw, regarding registration of a conscientious objection. Those in favour of amendment 18, please say aye; against, no. The noes – (**A Member:** Divide.) Division called. We are voting on amendment 18.

*Electronic voting resulted as follows:*

**FOR**

Mrs Beecroft  
Mr Callister  
Mr Cregeen  
Ms Edge  
Mr Harmer  
Mr Moorhouse  
Mr Peake [\*]  
Mr Perkins  
Mr Quayle  
Mr Robertshaw  
Mr Skelly  
Mr Speaker

**AGAINST**

Dr Allinson  
Mr Ashford  
Mr Baker  
Miss Bettison  
Mr Boot  
Mrs Caine  
Mr Cannan  
Mrs Corlett  
Mr Hooper  
Mr Malarkey  
Mr Shimmins  
Mr Thomas

865 **The Speaker:** With 12 votes for and 12 votes against, you have landed me in a right spot, Hon. Members. *(Laughter)*

[\*] **Mr Peake:** Excuse me, Mr Speaker, I did vote incorrectly there; I should have voted against.

870

**The Speaker:** Well, that solves the problem. *(Laughter)* Mr Peake, you voted for, you meant to vote against, (**Mr Peake:** I did.) in which case the noes have it. The noes have it.

875 Amendments 14 and 16 having been agreed, we then vote on amendment 20 in the name of Mr Robertshaw regarding legal proceedings, 'a statement in writing and on oath or affirmation by a person that he or she has a conscientious objection' etc. Putting to you then amendment 20 in the name of Mr Robertshaw, those in favour, please say aye; against, no. The ayes have it. The ayes have it.

880 As amendment 20 has been agreed, we therefore turn to amendment 12. Amendment 12 basically changes the numbering to the clause, and so it is a technical amendment. I therefore put to you amendment 12. Those in favour, please say aye –

**Mr Robertshaw:** Did we actually move 12?

**The Speaker:** Pardon?

885

**Mr Robertshaw:** Have we actually moved that as an ...? We have?

**The Speaker:** We have, yes.

890

**Mr Robertshaw:** Thank you.

**The Speaker:** So, amendment 12: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

As amendment 20 has carried, amendment 21 falls.

895 Now we only have left amendment 25, in the name of Mrs Caine, regarding the penalty. Those in favour of amendment 25 in the name of Mrs Caine, please say aye; against, no. The ayes have it. The ayes have it.

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

900 Hon. Members, we are making good progress and we turn now to the proposed change to the long title in the name of Mr Peake. I call on Mr Peake to move.

**Mr Peake:** Thank you, Mr Speaker.

905 I would like to bring forward a change to the amendment to the long title. I beg to move the amendment to the long title in principle:

*Amendment 1*

*Page 7, line 1, after ‘amendments;’ insert ‘to make provision about access zones for premises where abortion services and related counselling are provided and for premises occupied by those providing such services and counselling;’.*

**The Speaker:** Just moving the amendment to the long title.

Mr Ashford.

**Mr Ashford:** I beg to second, Mr Speaker.

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**The Speaker:** If nobody wishes to speak on the change to the long title I will put the question that it be approved. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

915 We then turn to new clause 3, and that is amendment 40 on your Order Paper if you are following things that way, and I call on Mr Peake to move new clause 3.

**Mr Peake:** Thank you, Mr Speaker.

New clause 3 defines seven key terms for the purposes of the new Part, of which the new clause forms part.

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It is to be noted that, unlike the previous versions, in the clause ‘pavement interference’ is specifically defined as occurring on a highway, thereby obviating many of the difficulties with previous versions.

Mr Speaker, I beg to move new clause 3 in principle:

*Amendment 40*

*Page 14, after line 29 insert—*

*«PART 3 — ACCESS ZONES FOR ABORTION SERVICES*

*NC3 Interpretation for this Part*

*RSBC<sup>2</sup>/1996/1/1 (part) and drafting*

*In this Part—*

*“access zone” means an access zone established under section NC4, NC5 or NC6;*

*“counselling” has the same meaning as in section 6;*

*“highway” means a highway, carriageway, footpath or footway for the purposes of the Highways Act 1986;*

*“patient” means a person (“P”) who is in an access zone in the course of seeking, or using, abortion services or seeking or receiving counselling, and includes any other person, except a person providing such services, or counselling who is accompanying P for the purpose of giving P emotional support;*

*“pavement interference” means the activity of a person on a public highway who seeks, by any means, including in particular oral, pictorial or written means, to—*

*(a) advise or persuade a patient to refrain from availing herself of abortion services or receiving counselling;*

*(b) dissuade a person providing abortion services or counselling from doing so; or*

*(c) inform a patient about issues related to abortion services;*

*“protest” includes the carrying out of any act of disapproval with respect to issues related to abortion services, by any means including, in particular, oral, pictorial or written means; and*

*“provide” includes facilitate.*

<sup>2</sup> i.e. the Revised Statutes of British Columbia.

**The Speaker:** Mr Ashford.

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**Mr Ashford:** I beg to second, Mr Speaker.

**The Speaker:** Mr Robertshaw.

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**Mr Robertshaw:** Mr Speaker, just to advise you that I wish to submit an amendment to the whole of this Part 3 in one clause. Is this the appropriate moment?

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**The Speaker:** I think it will be important to, in terms of where we are having a debate on the principle, so this is not the time to give notice of the amendment but I think it is important that you explain that reason at this point because we are talking about the principle.

**Mr Robertshaw:** Thank you.

My amendment specifically relates to new clause 9(3) –

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**The Speaker:** We are on new clause 3.

**Mr Robertshaw:** Oh, I see. Right, I beg your pardon. I will withdraw.

945

**The Speaker:** Right, as long as we are all on the same page.  
Mr Cannan.

**Mr Cannan:** Thank you, Mr Speaker.

Yes, I want to indicate my intention to bring some minor amendments to this clause if approved in principle today, and specifically I just refer to NC4, NC5 and NC6 –

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**The Speaker:** In which case, Mr Cannan, can we wait until we get on to NC4, NC5 and NC6.

**Mr Cannan:** I am sorry, Mr Speaker –

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**The Speaker:** We are on NC3 at the minute.

**Mr Cannan:** I thought you wished to talk about Part 3. Sorry.

960

**The Speaker:** It is not all of Part 3. We are taking these as new clauses, so we are on new clause 3 at the moment, which is the interpretation for the Part.  
Mr Baker.

**Mr Baker:** Mr Speaker, I wish to indicate that I will feel the need to bring some amendments to new clause 3.

965

New clause 3 is the definition section which applies to the whole of this Part and I do not think it would be appropriate for us to proceed on the basis of new clause 3 unamended given that it might be that the definitions will need tightening up and there are also likely to be amendments to a number of the other clauses within Part 3 which will impact on new clause 3.

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**The Speaker:** Does any other Hon. Member wish to speak to new clause 3 regarding the interpretation? In which case I will ask Mr Peake to sum up this debate on the question that new clause 3 be approved in principle. Mr Peake.

**Mr Peake:** Thank you, Mr Speaker.



975 Well, I did have a speech prepared about how we all work together, so I was quite surprised to hear that – (*Laughter*) ... talk around these words. It is a shame we could not have got together before this, but I would, Mr Speaker, like to move this in principle – new clause 3:

**The Speaker:** The question is that new clause 3 be approved in principle. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Now, new clause 3 having been agreed in principle and having had that notification that an amendment will be coming, we move on and I call on Mr Peake to move new clause 4.

**Mr Peake:** Thank you, Mr Speaker.

985 New clause 4 provides that the Department must by order establish access zones for any NHS hospital in which abortion services may be provided. It is intended to prevent the recurrence of the sort of behaviour we saw around Noble's Hospital at an earlier stage (**Mr Ashford:** Hear, hear.) of the passage of the Bill.

It also permits the Department to establish access zones around other premises where abortion services or counselling are provided.

990 Mr Speaker, I beg to move new clause 4 in principle:

*NC4 Access zones — hospitals and other premises in or from which abortion services are provided*

*RSBC1996/1/5*

*(1) For the purpose of facilitating access to abortion services, the Department must by order establish an access zone for any national health service hospital in which abortion services may be provided under Part 2.*

*Tynwald procedure— approval required.*

*(2) If requested to do so by a person providing abortion services or counselling at any premises, the Department must by notice establish an access zone for the premises.*

*(3) An access zone established under subsection (1) or (2) includes the land on which the hospital or other premises stand and any public highway within the area designated by the order or notice.*

**The Speaker:** Mr Ashford.

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

995 Happy to second and in doing so I would just like to say I think the debate that we had in this Hon. House a couple of weeks ago was very helpful to the progression of this new clause and all the other parts associated as well, and I think what we have come back with is a much firmer and better definition than what was there before.

1000 **The Speaker:** Thank you.

Mr Cannan.

**Mr Cannan:** Yes, thank you, Mr Speaker, I do want to indicate my intention that if these clauses ... NC4, but if you do not mind I am just going to refer briefly to NC5 and NC6 because it is exactly the same principle that I wish to apply to all three.

1005 I will be seeking to substitute the word 'must' with 'may'. I think that there should be proportionate response to any form of protest and that the word 'must' gives absolutely no legroom whatsoever for a judgement decision to be made.

I think the Department should have the ability to determine what response is appropriate to the circumstances. Clearly we have all, I think, pretty much agreed that any form of protest seeking to deter or identify or film or carry on behaviour that is offensive in any form is unacceptable, but by the same token I think that the definition that applies with the word 'must'

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should be altered to the word 'may', which gives the Department and the Minister, I hope, more flexibility in determining a proportionate response to any form of these protests.

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**The Speaker:** If no other Member wishes to speak to new clause 4, I call on Mr Peake to reply to the debate on new clause 4 in principle.

**Mr Peake:** Thank you, Mr Speaker.

1020

I do thank the Treasury Minister for his comments. The word 'must' is just for the area around Noble's Hospital. We have separated that out, so it is just 'must' around the Noble's Hospital area. In the other areas the Department 'may' once either a doctor or – (*Interjections*) I was just ... Thank you very much, Minister, I was just coming on to that. Mr Speaker, the Department 'may' on request ... Sorry, once they actually request the Department to do it, the

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Department must do it. It is on that request. But in the first instance we do want Noble's Hospital ... They must put this access zone in place. That is part of this Bill.

Thank you, Mr Speaker. I beg to move new clause 4 in principle.

**The Speaker:** The question is that new clause 4 be approved in principle. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

1030

Now, we will not move on to the detail because we have had notification of amendments and I will take that notification as having been given for new clauses 5 and 6 as well. However, I do call on Mr Peake to move new clause 5 in principle.

1035

**Mr Peake:** Thank you, Mr Speaker.

New clause 5 provides that if requested to do so by a registered medical practitioner whose surgery it is, the Department of Health and Social Care must by notice establish an access zone around the surgery of a medical practitioner providing abortion services.

Mr Speaker, I beg to move new clause 5 in principle:

*NC5 Access zones — surgeries*

*RSBC/1996/1/7 (adapted)*

*(1) If requested to do so by the registered medical practitioner whose surgery it is, the Department must by notice establish an access zone around the surgery of a medical practitioner providing abortion services.*

*(2) An access zone established under subsection (1) includes the land on which the surgery is situate and any public highway within the area designated in the notice.*

**The Speaker:** Mr Ashford.

**Mr Ashford:** Happy to second, Mr Speaker.

**The Speaker:** Notice having been given of a potential amendment, Mr Harmer, do you wish to speak?

**Mr Harmer:** Yes, I thought a potential amendment on the 'must' to 'may' on clause 5.

**The Speaker:** You also wish to move an amendment?

**Mr Harmer:** No, I thought because that was spoken in clause 4, had it been taken forward officially?

**The Speaker:** As I say, I will be taking, in terms of new clause 5 and 6, that notification.

**Mr Harmer:** Okay, I just wanted to clarify that.

**The Speaker:** Okay, in which case, Mr Peake, do you have anything to sum up with?

**Mr Peake:** Thank you, Mr Speaker, I will leave it at that.  
I beg to move new clause 5 in principle.

1040 **The Speaker:** Hon. Members, the question is that new clause 5 be agreed in principle. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
New clause 6 in principle, Mr Peake.

**Mr Peake:** Thank you, Mr Speaker.  
New clause 6 provides that if requested to do so by a medical practitioner, midwife, nurse or pharmacist providing abortion services or a person providing counselling, the Department of Health and Social Care must by notice establish an access zone around the home of a person making the request.

I would emphasise, Mr Speaker, that such zones focus on the highways to avoid any complications which may arise in respect of a previous version of this clause.

Mr Speaker, I beg to move new clause 6 in principle:

*NC6 Access zones — homes of persons providing abortion services or counselling  
RSBC/1996/1/6 (adapted)*

*(1) If requested to do so by a medical practitioner, midwife, nurse or pharmacist providing abortion services or a person providing counselling the Department must by notice establish an access zone around the home of the person making the request.*

*(2) An access zone established under subsection (1) includes the land comprising the home of the person making the request and any public highway within the area designated in the notice.*

1050 **The Speaker:** Mr Ashford.

**Mr Ashford:** I beg to second, Mr Speaker.

1055 **The Speaker:** Mr Baker.

**Mr Baker:** Thank you, Mr Speaker.

1060 I would like to thank the mover of the new clause for reflecting on the debate from when we discussed this in this House two weeks ago and I want to acknowledge that the revised plans that have been brought forward – revised proposals – do move things forward significantly in terms of some of the unintended consequences of the access zones, and I very much welcome that.

1065 I do, however, have a concern around this particular clause and it is actually one of the potential unintended consequences in terms of the people it is seeking to protect. I do appreciate that these access zones are only going to be activated on the request of the medical practitioner etc.; however, if somebody does feel the need to request an access zone around their home it is going to be very clear that they are effectively disclosing their residence, which I think will be a significant disincentive to the person actually requesting that access zone.

1070 I wonder whether this is actually going to work and whether there are other things that we should be considering if we need to protect those people who are listed in this clause. We have not had the benefit of any input from the Police in terms of the proposals that are in front of us and I do wonder whether it would be beneficial to consider their input.

1075 We are very much focusing on protecting space in terms of this draft legislation, but actually it is the behaviour that we need to prevent, and it is clearly unacceptable for women who are in a very difficult situation of needing an abortion, for them to have to suffer further difficulties in what is a very difficult situation already. Therefore we are right to bring protection in, but I do have a concern that actually what we have got here may not necessarily deliver the outcomes that the mover is intending. It is the same with the needs of the medical practitioners, etc. They are different but equally their needs need to be thought through.

So I really just want to flag that up and, with that, I will sit down.

1080 Thank you, Mr Speaker.

**The Speaker:** Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.

1085 I would like to thank the mover for bringing these clauses forward. I am saddened that we have to discuss new clause 6 because I hope this will never have to be brought in at all. However, we live, unfortunately, in a time where people do have strong views and are not frightened to make those known, and my concern, as well as many others, is if we bring in an access zone around the Hospital, as I think most of us have agreed that is the right thing to do, that some protesters may go for other targets and we have already seen that at the Hospital where previously a member of staff was heckled going to work – and that is completely unacceptable.

1090 The reality is that presently we do have some legislation; we have a Protection from Harassment Act 2000 and a Public Order Act 1998. But neither of them, I think, adequately deal with protests and what can be seen as intimidation; they deal very much with violence and repeated harassment.

1100 So that is why I think having this clause is very important in terms of the Abortion Reform Bill, because if we are going to provide these services staff who take part in it have to know that they will be doing so safely and free of harassment, as well as women accessing those services have to know that they will not face a barrage of criticism as they try to do so.

In terms of the police input, from Mr Baker, absolutely, these will not be moved, unfortunately, until after Easter and I will try to make sure that we do have some input from the Chief Constable about the operational application of these.

1105 Thank you, Mr Speaker.

**The Speaker:** Mr Malarkey.

**Mr Malarkey:** Thank you, Mr Speaker.

1110 I would like to agree with the mover of the Bill that what this does is it gives you instant protection for those who need it. As somebody in the past said, who has had to have a harassment order put on somebody that was stalking in an area where I lived, it takes time to go to court, you have to get all sorts of things to do. This does not happen instantly.

1115 What we are given here is if one particular individual is harassing a medical professional with regard to abortions in their area, by doing this you could implement instantly a zone around that person's house to exclude that person. Rather than going down the road of, if we do not do this, applying to a lawyer who goes to a court with the Police and it could take a week or so for this to happen. So let's all hope that this does not actually need to happen and it is just a protection for the future and it is not something that is going to be permanently in place, but it is something that could be implemented instantly.

1120 I think that is the point you have to take on board here, rather than going through a legal court appearance trying to get an exclusion zone put round one particular person's house because one particular person is harassing them, for whatever reason it might be.

So I would urge you to support this part of the clause.

**The Speaker:** I call on Mr Peake to reply.

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**Mr Peake:** Thank you, Mr Speaker.

I would like to thank the Minister for Home Affairs for his support there. It is to enable the Police to carry out duties and have an instant zone around a home – if required; that is the point.

1130

Thank you, Dr Allinson, for your support as well. It is important that we do protect staff as well, to allow them to go to work without fear of harassment.

Touching on my hon. friend for Ayre and Michael, Mr Baker, I am glad that you acknowledge that; I listened, I listened to what you and other Hon. Members said. Yes, I am disappointed that we did not get everything agreed in this timescale, but we will work harder on that. It is not something that we are going to give up on.

1135

It is important that this protection is offered, when requested to do so – and that is the whole point here: when someone feels they want to reach out to their employer, the Department, to get some protection around where they live, it is important that we can back that up and provide them with an access zone on the highways – not on other properties, on the actual public highways, to allow them to live with access to their home.

1140

So, Mr Speaker, with that, I would like to beg to move new clause 6 in principle.

**The Speaker:** The question is that new clause 6 be agreed in principle. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

1145

Mr Peake, new clause 7.

**Mr Peake:** Thank you, Mr Speaker.

New clause 7 establishes the dimensions of an access zone being on land which the Hospital, surgery, home or other premises stand, and the land comprises of any public highway within such distance not exceeding 100 m of the boundary of that land.

1150

Mr Speaker, I beg to move new clause 7 in principle:

*NC7 Access zones — maximum dimensions*

*Drafting*

*(1) An access zone established under section NC4, NC5 or NC6 includes—*

*(a) the land on which the hospital, surgery, home or other premises stand; and*

*(b) the land comprised in any public highway within such distance of the boundary of the land referred to in paragraph (a), not exceeding 100m, as the order or notice (as the case requires) creating the access zone may specify.*

*(2) The Department may by order amend the maximum distance referred to in subsection (1)(b).*

*Tynwald procedure for an order under subsection (2) — approval required.*

**The Speaker:** Mr Ashford.

**Mr Ashford:** I beg to second, Mr Speaker.

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**The Speaker:** The question is that new clause 7 be agreed in principle. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Mr Peake, I give you the option: new clauses 3, 4, 5 and 6, having been agreed in principle, but being held over for detail, would it be your intention to hold all of these over for agreement in detail at a future date together so that any interrelated amendments could be dealt with at the next sitting?

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**Mr Peake:** Mr Speaker, I would like to hold them all and bring them together, please.

1165 **The Speaker:** That is great. In which case, then we turn to new clause 8 in principle. I call on Mr Peake to move.

**Mr Peake:** Thank you, Mr Speaker.

1170 New clause 8 refers to the prohibited conduct while in an access zone and provides that person, having been warned by a constable in a uniform, must not engage in such conduct in order to dissuade a person providing, or a patient accessing, abortion services.

It also makes such conduct an offence punishable with a fine and 12 months' custody. It contains a defence for a person who was providing such services within an access zone or a patient seeking to access the services. It makes it clear that nothing in this clause prevents a constable from performing his or her duty.

1175 Mr Speaker, I beg to move that new clause 8 be approved in principle:

*NC8 Access zones — prohibited conduct*

*RSBC/1996/1/2*

*(1) While in an access zone a person, after being warned not to do so by a constable in uniform, must not—*

*(a) engage in pavement interference;*

*(b) protest about abortion services or counselling with the intention of dissuading anyone from providing, or a patient from using, abortion services or receiving counselling;*

*(c) observe, continuously or repeatedly, any premises —*

*(i) in or from which abortion services are provided, or*

*(ii) where counselling is provided,*

*for the purpose of dissuading anyone from providing, or a patient from using, abortion services or receiving counselling;*

*(d) place himself or herself close to, and importune—*

*(i) a person providing abortion services or counselling for the purpose of dissuading that person from doing so; or*

*(ii) a patient for the purpose of dissuading the patient from using abortion services or receiving counselling;*

*(e) harass or intimidate—*

*(i) a person providing abortion services or counselling for the purpose of dissuading that person from doing so; or*

*(ii) a patient for the purpose of dissuading the patient from using abortion services or receiving counselling.*

*(2) A person who contravenes subsection (1) commits an offence.*

*Maximum penalty (summary) – 12 months' custody or a level 5 fine.*

*(3) For clarity, nothing in subsection (1) prevents a constable from performing the constable's duties as such.*

*(4) In a prosecution under subsection (1)(a) it is a defence for the accused to show that he or she was—*

*(a) a person providing abortion services or counselling; or*

*(b) a patient seeking or receiving such services or counselling.*

**The Speaker:** Mr Ashford.

**Mr Ashford:** I beg to second, Mr Speaker.

1180

**The Speaker:** Mr Harmer.

**Mr Harmer:** Thank you.

1185 Just one thing that does ... and I need further debate and perhaps with the mover, because it does refer to pavement interference, and I know it depends on the definition of 'pavement interference', but it is something I do have some concerns on.

When it talks about informing a patient or advising in those sort of matters, I am uncomfortable with the phrase 'pavement interference'. I am likely to move an amendment depending on the definition.

1190

**The Speaker:** Thank you.  
Mr Peake, do you wish to reply to that?

1195 **Mr Peake:** Thank you, Mr Speaker.  
The Hon. Member for Peel, is he going to move an amendment to this?

**The Speaker:** I am taking it as notice at this point.

1200 **Mr Harmer:** Great, thank you.

**Mr Peake:** Thank you, I beg to move new clause 8 be approved in principle.

1205 **The Speaker:** The question is that new clause 8 be approved in principle. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

New clause 9, Mr Peake.

**Mr Peake:** Thank you, Mr Speaker.

1210 New clause 9 creates other offences within access zones, namely that having been warned not to do so by a constable in uniform, a person must not photograph, film, videotape, sketch or in any other way graphically record a person providing abortion services or a patient as is in an access zone for the purposes of dissuading any person from providing or using abortion services.

Mr Speaker, I beg to move new clause 9 in principle:

*NC9 Access zones — other offences*

*RSBC/1996/1/2-4 and drafting (subs (4)).*

*(1) Having been warned not to do so by a constable in uniform, a person must not photograph, film, videotape, sketch or in any other way graphically record a person providing abortion services or a patient while the person providing those services, or the patient (as the case requires) is in an access zone, for the purpose of dissuading any person from providing or using abortion services.*

*(2) Having been warned not to do so by a constable in uniform, a person must not do any of the following for the purpose of dissuading another from providing abortion services, or dissuading a woman from availing herself of those services—*

*(a) repeatedly approach, accompany or follow the other person, or a person known to the other person;*

*(b) continuously or repeatedly observe—*

*(i) a person providing abortion services;*

*(ii) a patient; or*

*(iii) a building in or from which abortion services are provided;*

*(c) place himself or herself close to, and to importune, a person providing abortion services or a patient; or*

*(d) engage in threatening conduct directed at the other person or a person known to the other person.*

*(3) A person must not repeatedly communicate by letter, telephone, facsimile or electronic means with another person without their consent for the purpose of dissuading a provider of abortion services from providing abortion services.*

*(4) A person who contravenes any provision of subsections (1) to (3) commits an offence.  
Maximum penalty (summary) — 12 months' custody or a level 5 fine.*

**The Speaker:** Mr Ashford.

1215 **Mr Ashford:** I beg to second.

**The Speaker:** Mr Robertshaw.

**Mr Robertshaw:** Thank you, Mr Speaker.

1220 I would like to congratulate the mover on all the work he has done since we had that very recent and quite extended protracted discussion where there were anxieties. In an ideal world I do not believe we should have to deal with this within the Abortion Bill, but in reality – and I concur with the mover of the Bill as a whole – that there are areas of concern with regard to our Public Order Act and Harassment Act as they stand. Therefore we need to do something.

1225 So in broad terms I am now very supportive of the work that the mover of these clauses has put in in the short time available to him ... to be congratulated for that.

My particular amendment, which I wish to give notice of, relates to the imbalance which occurs between subsections (1) and (2) compared to subsection (3), where in subsection (1) if a person is acting unreasonably, for the reasons given in that subsection, that person will be warned by a constable. The same then applies to subsection (2), where there is a due warning before charges related to potential criminal activity are then enacted. However, when you look at subsection (3) where we talk about communications, harassment etc. related to letters, telephones and very specifically online, there is no such warning given before action is taken.

1235 I have had discussions with the mover of this clause and I hope and intend to come forward with an amendment which balances the three out, so there is an element and degree of warning equal in measure to subsections (1) and (2) when somebody acts inappropriately in subsection (3).

Particularly in there we are talking about, for example, online electronic means and somebody in those circumstances could hold a strong view which they disseminate through a particular audience which could coincidentally, perhaps unintentionally, arrive in the remit of somebody who would be offended by it. It is important to give that person the opportunity to say, 'Cease and desist, do not do it, otherwise ...' and that really is the intention behind my amendment.

1245 Thank you, Mr Speaker.

**The Speaker:** Mr Baker.

**Mr Baker:** Thank you, Mr Speaker.

1250 Mine really follows on from the point made by Mr Robertshaw in terms of consistency within this new clause 9, which is headed 'Access zones – other offences' and clearly (1) explicitly states that the patient, or as the case requires, is in an access zone; item (2) does not and nor does item (3). That may be absolutely fine but for clarity I think we need to make that situation extremely clear because there is nothing about (2) or (3) that is to do with access zones, it is to do with the behaviour that I touched on earlier.

1255 So I am not commenting on whether or not those elements of the clause are required, but they are not consistent with the concept of the access zone. I will pick up with the hon. mover in terms of drafting some amendments collaboratively to try to address those concerns, but I just wanted to flag that now.



Thank you.

1260

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

**Mr Malarkey:** Thank you, Mr Speaker.

1265 Just some wording I have just picked up on in new clauses 8 and 9 – ‘constable in uniform’. Why specifically a constable in uniform? Not all constables wear uniforms. Something just to give notice ... I will check with the Chief Constable if he is happy with this wording within it and talk to the mover before the next clauses stage.

**The Speaker:** Hon. Member for Arbory, Castletown and Malew, Mr Cregeen.

1270

**Mr Cregeen:** Thank you, Mr Speaker.

I just wondered if the mover could clarify a point for me on (d):

engage in threatening conduct directed at the other person or a person known to the other person.

1275 Clearly, threatening somebody is in breach of the law anyway. When it comes to offences, is it equitable, the offence you have got down here, to an offence that they would have done by threatening somebody anyway?

I am just wondering about how that sits legally, because this comes under the Abortion Bill and you threaten somebody, or a person that is known to them ... if he can clarify what he means by this, I would be grateful.

1280 **The Speaker:** Hon. Member for Ramsey, Mr Hooper.

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

1285 I just really want to comment on what the Hon. Member for Douglas East was talking about, trying to have some consistency with regard to being warned by a constable. I agree with the principle there; it has just made me think about the wording that is currently down. Because the requirement is you must be warned not to do something by a constable, until they have been so warned, what they are doing is not wrong. The Act implies that it is okay to protest, to harass someone, until a policeman tells you not to.

1290 To my mind, I think we should be looking at, if we are going to be rewording this anyway, rewording it in such a way so that it states a person must not do these things, but it only becomes an offence after the constable has told you to stop, because otherwise you are kind of implying that I am going to go and harass someone, which is fine, I have been told to stop, that is still not an offence, then I call the police and the police turn up and tell me to stop; at that point, if I do it again it becomes an offence.

1295 I think that series is a bit long for me. I would much rather say, ‘No actually what you are doing is wrong but we are not going to prosecute you for it if you stop now. If you stop now before I call the police it is not going to be an offence.’ Whereas what we are saying here is actually it is correct; the Act is basically implying everything is fine until a policeman tells me not to do it any more.

1300 So if we are going to be rewording it, it is something to bear in mind and consider; it probably also applies to new clause 8 as well, in fairness.

**The Speaker:** If no other Member wishes to speak I will ask Mr Peake to respond to the debate on new clause 9.

1305

**Mr Peake:** Thank you very much, Mr Speaker.

Thank you, Mr Robertshaw, for supporting this and I do agree with the amendment you are going to bring through; we are going to align those up together so we will look forward to working together on that.

1310 It is trying to make it clear that if you have been approached by a constable, asked not to do it, then that is committing the offence. It does not make it right in the first instance but it is just trying to be clear in this instance. So I take it on board and I am glad that the Minister for Home Affairs can just check with the Chief Constable – that is really good.

1315 The threatening behaviour – it is again the access zone; it is trying to identify the access zone. If you carry out these things in the access zone it will be under this legislation; if you carry out ... known or unknown person in other areas you are covered by other law. This whole section is about access zones; it is headed ‘access zones’.

We have got a few weeks now to get more clarity around it, so, Mr Speaker, I beg to move new clause 9 in principle.

1320

**The Speaker:** The question is that new clause 9 be agreed in principle. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We turn then to new clause 10, Mr Peake.

1325 **Mr Peake:** Thank you, Mr Speaker.

New clause 10 provides that on application by the Attorney General, the High Court may grant an injunction to restrain a person from contravening a provision of this Part.

Mr Speaker, I beg to move new clause 10 be approved in principle:

*NC10 Injunctions*

*RSBC/1996/1/10 (adapted)*

*(1) On application by the Attorney General, the High Court may grant an injunction to restrain a person from contravening a provision of this Part.*

*(2) A contravention may be restrained under subsection (1) whether or not it constitutes an offence under this Part, or constitutes—*

*(a) incitement of,*

*(b) procurement of,*

*(c) aiding or abetting, or*

*(d) a conspiracy to commit,  
an offence under this Part.*

**The Speaker:** Mr Ashford.

1330

**Mr Ashford:** I beg to second, Mr Speaker.

**The Speaker:** The question is that new clause 10 be agreed in principle. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

1335

We turn now to new clause 11 in principle, Mr Peake.

**Mr Peake:** Thank you, Mr Speaker.

New clause 11 describes the methods by which the Department of Health and Social Care must communicate to the public the existence and extent of access zones created by this Part.

1340

Mr Speaker, I beg to move new clause 11 in principle:

*NC11 Access zones— notices*

*The Department must, by means of notices and such other methods of communication*

*(including electronic communications within the meaning of the Electronic Transactions Act*

2000) as it considers necessary, draw the attention of the public of the existence and extent of access zones created by this Part.

Renumber the following Part of the Bill as Part 4, renumber the following Clauses and adjust cross-references accordingly.

**The Speaker:** Mr Ashford.

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

1345 I am happy to second. I will speak to the mover because I have just noticed there may need  
to be an amendment to this Part because I notice throughout the entire new Part there is  
provision for access zones to be introduced but there does not seem to be provision for the  
Department to rescind them once they have been introduced. So, for instance, where you have  
got the surgery requesting that a zone be introduced, if further down the line the surgery wishes  
it to be removed there is not really clarity within it, I have just noticed, so that may need to be  
1350 an amendment to new clause 11.

**The Speaker:** I hesitate to give legal advice but I understand it is a general legal principle that  
if a power is given to do something the power is also implicit there to undo it.

1355 **Mr Harmer:** Hear, hear.

**Mr Ashford:** I think it may need clarifying, Mr Speaker.

**The Secretary:** Yes, that is correct, but actually Mr Ashford makes an interesting point, which  
1360 may in practical terms be rather useful.

**The Speaker:** Mr Baker.

1365 **Mr Baker:** Given that there is going to be a need for an amendment on this NC11, I think we  
also need to make it clear that it needs to be a bit stronger than just the Department considering  
necessary, i.e. the methods of communication, they need to be reasonable and they need to be  
effective as well. So it cannot be just left at the discretion of the Department to say yes, we  
published it in this way and therefore that is communicated, it needs to be reasonable and  
effective as well so that people do know that the access zone has been created. Because the  
1370 implications of the behaviour within that access zone are serious, this is a criminal offence, and  
therefore we need to make it clear that the access zone is there if we are going to criminalise  
people for these things, particularly given the definition of 'pavement interference' which my  
hon. friend from Peel and Glenfaba mentioned, which talks about advising or persuading. This is  
very broad stuff, and we are almost dealing with a Bill in its own right here, as an add-on to  
1375 something which is very important in terms of the Abortion Act. I think we have set our own  
path here but there is a lot of complexity and this deserves to be properly thought through  
because we must make sure this legislation is fit for purpose and there is some debate to be still  
had around this subject.

Thank you.

1380

**The Speaker:** Dr Allinson.

**Dr Allinson:** Thank you, Mr Speaker.

1385 I would like to thank everyone else for their contributions and also for the mover to bring  
what is quite a bold move. What this new Part of the Bill is about is not about freedom of

speech, it is about access. It makes a mockery to provide a service but then women not being able to access it due to protests.

1390 In terms of access zones what we had at the previous Committee of the House was a lot of people worried that it might identify people and identify where they lived. This new draft quite clearly states that what we are advertising is the zone, the boundaries of that zone, which can be up to a maximum of 100m, but obviously will be locally introduced where they are more applicable.

1395 Also, I think, there does seem to be this misconception that protestors are randomly walking around the Isle of Man with large placards and might completely by accident do something illegal. Surely if you are an organised protestor you would talk to the Police beforehand to make sure – due to the Public Order Act if nothing else, and perhaps common decency – that where you are protesting you are legal to do so. So surely there should be some emphasis on those people who want to exercise their democratic rights to liaise with the Police and make sure that where they are going they are allowed to do so and they will not be harassing and intimidating women.

1400 So I would like to support new clause 11, but also the rest of this quite interesting but very important bit of legislation.

Thank you, Mr Speaker.

1405 **The Speaker:** Mr Peake.

**Mr Peake:** Thank you, Mr Speaker.

And I do look forward to the next few weeks working with Hon. Members who are prepared to work to make this a better piece of legislation.

1410 Thank you, Dr Allinson, once again for your support. We will make this better and we will then end up with a vote with strong support for this.

So Mr Speaker, I beg to move new clause 7 in principle. (**The Speaker:** Clause 11.)  
Mr Speaker, I do apologise, new clause 11.

1415 **The Speaker:** I put the question that new clause 11 be agreed in principle. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Hon. Members, just to remind you, that means that new clauses 3 to 11 are now open for amendment. Those amendments need to be lodged with the Secretary of the House by 16th April, and someone had better tell Mr Connell that his Easter holidays are cancelled!

1420 Clause 3 will not be moved today, that will be taken at the conclusion of the new clauses and the new Part but I think, on the whole, Hon. Members, it is fair to say we have made good progress with that today.