

6. CONSIDERATION OF CLAUSES

**6.1. Adoption Bill 2021 –
Consideration of clauses commenced**

Mr Ashford to move.

The Speaker: We turn now to consideration of clauses and first up is the Adoption Bill. We left off at that point where clauses 7 to 9 had been moved and then adjourned. I now call on Mrs Barber to move her amendment.

2350

Mrs Barber: Bear with me. Thank you, Mr Speaker. I do not know what has happened to my notes! Oh, I have got everything. I have found it now.

2355

I beg to move an amendment to clause 7 – I think I had gone back in time, I was back at clause 1! This is to change the reference to ‘registered adoption agency’ at line 19 to ‘registered adoption society’, as adoption agency includes the Department and clause 7 relates to the cancellation of an adoption society’s registration. Therefore, technically the correct reference should be registered adoption society. I would like to thank Mr Hooper for bringing this to the Department’s attention and working with us to come up with something that we are comfortable with now and resolves the issues as raised.

2360

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

Amendment to clause 7

1. Page 27, line 19, for ‘agency’, substitute «society».

The Speaker: Thank you.

Hon. Member for Arbory, Castletown and Malew, Mr Moorhouse.

2365

Mr Moorhouse: Thank you, Mr Speaker. I would like to second.

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

Putting to you clauses 7, 8 and 9, as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

2370

Mr Ashford to move clauses 10, 11 and 12, please.

Mr Ashford: Thank you, Mr Speaker.

2375

In moving clauses 10, 11 and 12, can I start by thanking the Hon. Member for Ramsey, Mr Hooper, for his contribution at, and subsequent to, the consideration of clauses on 30th March. I am pleased that helpful amendments, including one we have just had moved by my hon. colleague, Mrs Barber, have been worked up as a result and will be considered as we go through the Bill today. So I just want to put on record my thanks for the Hon. Member’s engagement.

2380

Clause 10 provides the Department with a regulation-making power relating to the exercise by adoption agencies of their functions in relation to adoption.

Clause 11 provides a non-exhaustive, indicative list as to what regulations under section 10 may provide for in relation to the management and general operation of adoption agencies.

2385

Clause 12 allows regulations to be made in relation to charging and payment of fees. This includes fees an adoption agency may charge in relation to services it provides to those providing facilities as part of the Adoption Service and for fees which may be paid by adoption agencies to persons providing, or assisting in providing, facilities.

Mr Speaker, I beg to move that clauses 10, 11 and 12 do stand part of the Bill.

2390 **The Speaker:** Thank you.
Mrs Corlett.

Mrs Corlett: Thank you, Mr Speaker; and I beg to second clauses 10, 11 and 12.

2395 **The Speaker:** Thank you.
I call on Mrs Barber to move amendment number 2.

Mrs Barber: Thank you, Mr Speaker.
This amendment will change the title of the clause, which currently reads, 'Management etc. of registered adoption agencies'. As it stands, this is potentially confusing, given the Bill deals with registered adoption societies and adoption agencies. Clause 11 deals with adoption agencies, and thus I propose that 'registered' be omitted from the title so that it reads, 'Management etc. of adoption agencies'.

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

Amendment to clause 11
2. Page 28, line 33, omit 'registered'.

2405 **The Speaker:** Mr Moorhouse.

Mr Moorhouse: Thank you, Mr Speaker. I would like to second.

2410 **The Speaker:** Thank you.
Mr Hooper, Hon. Member for Ramsey.

Mr Hooper: Thank you very much, Mr Speaker.
I would like to thank the Minister for working with me through some parts of this Bill. Some of the responses his Department provided however did really answer some of the questions, and he is aware of some of these. I have left them in the document I sent him to give him the heads up.

2415 Around these clauses, the question I have is this Bill is providing the general power to regulate adoption agencies, so these clauses here are actually the regulation-making powers. Now, the Regulation of Care Act also provides the Department with a set of powers to regulate care services of which an adoption society or an adoption agency would be considered a care service. So if the Minister could just outline perhaps how the powers under this Bill will actually work alongside the powers his Department already has under the Regulation of Care Act. The reason I ask is because things like the appeal process are different, depending on whether the action was taken under this Act or the Regulation of Care Act. The Regulation of Care appeals process is quite robust and robustly independent, whereas the appeals process this Bill sets out is not anywhere near as robust and is not anywhere near as independent.

2425 So again, I would just like some clarity from the Minister on actually when these powers are suitable, when the Regulation of Care powers are suitable, how the two Bills will work together, because I would hate for there to be any confusion further down the line.

2430 **The Speaker:** Mrs Barber, to respond to her amendment. No?
Mr Ashford, to respond to the debate on the clauses.

Mr Ashford: Thank you very much, Mr Speaker.
I fully agree with the Hon. Member for Ramsey. As he said, we have had long communication over this Bill and moving it forward, and it is important that there is not a conflict between the Regulation of Care Act. The definitions of course are all contained within clause 126 in terms of

2440 'society' and 'agency'. In terms of the different powers within the Department to deal with various different things, the feeling was that within the Adoption Bill itself, the procedure that needed to be in place did not necessarily need to follow exactly what was in the Regulation of Care Act, but the way that they interact, we have gone away and we have spoken to Registration and Inspections to make sure that they are content with the way the powers interact and they say that they believe it is appropriate. But with this Bill we are legislating something slightly different to what we were when the Regulation of Care Act came in in 2013, but we have been out to the relevant people who it would have to apply to and they are perfectly content with the powers in place.

2445

The Speaker: Putting to you first, Hon. Members, amendment number 2 in the name of Mrs Barber to clause 11. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

2450 Putting to you then clauses 10, 11 and 12, as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 13 and 14, Mr Ashford.

Mr Ashford: Thank you, Mr Speaker.

2455 Clause 13 sets out what is meant by 'adoption support services', this being defined as counselling, advice and information plus any other service prescribed by regulations in relation to adoption. This clause further provides that the Department, when requested to do so, must assess the needs of those specified in subsection (3) in relation to adoption support services. Any person not included in that list can also seek support but the Department is not obliged, but may choose, to provide that support in that instance.

2460 Further, clause 13 makes it clear that where, following an assessment, the Department's opinion is that the person requires support services, it must decide whether or not to provide them. Crucially, if the Department decides not to provide those services for any reason, that decision cannot be based on financial reasons alone.

2465 Lastly, this clause provides the Department with a regulation-making power in relation to adoption support.

Clause 14 provides that the Department must provide information about adoption support services and assessments to specified persons.

Mr Speaker, I beg to move that clauses 13 and 14 do stand part of the Bill.

2470 **The Speaker:** Mrs Corlett.

Mrs Corlett: Thank you, Mr Speaker. I beg to second clauses 13 and 14.

The Speaker: Thank you.

2475 I call on Mrs Barber to move amendment number 3 to clause 14.

Mrs Barber: Thank you.

2480 I beg to move the amendment to clause 14. Subsection (1) of this clause lists to whom the Department must provide the information specified in subsection (2). Subsection (2)(b), as it stands, states that the Department must provide:

information about the right to request an assessment under section 13, and the agency's duties under that section and regulations made under it

The reference in subsection (2)(b) states 'agency's' duties. Whilst the Department is an adoption agency and the current reference to agency is technically correct, this minor amendment to

Department ensures that the language of Department is used throughout and is consistent within clause 13.

2485 Mr Speaker, I beg to move the amendment standing in my name:

Amendment to clause 14

3. Page 32, line 32, for 'agency's', substitute «Department's».

The Speaker: Mr Moorhouse.

Mr Moorhouse: Thank you, Mr Speaker. I would like to second.

2490 **The Speaker:** Putting to Hon. Members first amendment number 3 in the name of Mrs Barber. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Putting to you then clauses 13 and 14, as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 15 and 16, Mr Ashford.

2495

Mr Ashford: Thank you, Mr Speaker.

This moves us on to Part 3 of the Bill, which deals with the considerations and matters which the court and adoption agencies must have regard to when making decisions.

2500 Clause 15 introduces Part 3 and clause 16 sets out the overarching principle that will apply whenever a court or agency makes decisions relating to the adoption of a child.

Subsection (2) of clause 16 makes the paramount consideration of the court or agency the child's welfare throughout the whole of that child's life. Crucially this will bring the Island's adoption legislation into line with the Children and Young Persons Act 2001 with the important addition that the impact on the whole of the person's life must be considered, thereby acknowledging the lifelong implications of adoption.

2505

Subsection (3) provides that the court or agency must have in mind that any delay is likely to prejudice the child's welfare.

2510 Subsection (4) sets out the matters that the court or agency must have regard to which includes: the child's wishes and feelings, in light of their age and understanding; their particular needs; the likely effect of being adopted throughout the whole of their life; the child's age, sex, background and any of the child's characteristics that are considered relevant; any harm the child is at risk of suffering; the relationship the child has with relatives, prospective adopters or any other relevant person; and the child's religious persuasion, racial origin and cultural and linguistic background, known as their 'heritage'.

2515 Subsection (5) adds further considerations regarding the child's relationship with other people.

Subsection (6) provides that whilst the child's heritage is to be considered, it is *not* an overriding consideration. This is to allow for the adoption of a child living on the Island to be adopted off Island, where it is appropriate to do so.

2520 Subsection (7) sets out the 'no order' principle, which provides that an order under the Act must only be made where the making of the order would be better than not doing so.

Mr Speaker, I beg to move that clauses 15 and 16 stand part of the Bill.

The Speaker: Thank you.

Mrs Corlett.

2525

Mrs Corlett: Mr Speaker, I beg to second clauses 15 and 16.

The Speaker: I put the question that clauses 15 and 16 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

2530 Clauses 17 to 21, Mr Ashford.

Mr Ashford: Thank you, Mr Speaker.

Clause 17 introduces Part 4, which deals with the adoption process, and clause 18 aids the interpretation of this Part.

2535 Clause 19 sets out placements for adoption by agencies and when an adoption agency can place a child.

2540 Clause 20 provides for the placement of children with parental consent. Provision is made to allow an agency to place a child for adoption where consent has been given and that consent has not been withdrawn. Consent can be given to prospective adopters identified by the birth parents or to ones that the agency will choose. This clause also states that the provisions in relation to consent do not apply where a care order application under the Children and Young Persons Act 2001 is pending or a care order has been made after the consent was given.

2545 Clause 21 deals with advance consent to adoption and enables a parent who consents to their child being placed for adoption by an adoption agency to also give their consent to the making of a future adoption order, known as 'advance consent'. Consent may be withdrawn by notice in writing to the agency or in the form prescribed.

Mr Speaker, I beg to move that clauses 17 to 21 do stand part of the Bill.

The Speaker: Mrs Corlett.

2550

Mrs Corlett: Mr Speaker, I beg to second clauses 17 to 21.

The Speaker: Thank you.

I call on Mrs Barber to move amendment number 4, please.

2555

Mrs Barber: Thank you, Mr Speaker.

2560 I beg to move an amendment to clause 19, which deals with the placement of a child for adoption by adoption agencies. Again, as in the previous amendment, this is a technical amendment to replace the reference to 'Department' in line 23 with 'adoption agency', so that it also covers those circumstances where a registered adoption society places a child.

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

Amendment to clause 19

4. Page 35, line 23, for 'the Department' substitute «an adoption agency».

The Speaker: Mr Moorhouse.

Mr Moorhouse: Thank you, Mr Speaker. I would like to second.

2565

The Speaker: Mr Hooper, Hon. Member.

Mr Hooper: Thank you very much, Mr Speaker.

2570 I have a question for the Minister around the advance placement consent. So the Department is in the Bill creating provision for a parent to provide advance consent so at some point in the future this may happen, but then there is a restriction, a very specific restriction that a child less than six weeks old may not be placed for adoption, which seems a bit strange, seeing as that consent can be withdrawn at any point. So if someone does provide advance consent and then subsequently changes their mind, they can at any point just say, 'No, I withdraw that consent'.

2575 So I am just curious as to what the rationale is for that extra six-week protection being in the Bill, because it does seem to undermine the idea of advance consent from the outset.

Just for clarity as well, I did not hear the Minister mention fostering to adopt in his remarks. I may have missed it, but just for clarity, does this also apply, this inability to provide advance consent, to fostering to adopt or is that process actually perfectly acceptable from birth?

2580

The Speaker: Mrs Barber, you wish to reply, no?
Mr Ashford to reply.

Mr Ashford: Yes, thank you, Mr Speaker.

2585

A very good point raised by the Hon. Member for Ramsey. The reason for this is that, obviously, after childbirth, it can be a traumatic time for the mother concerned, particularly if all these different proceedings have been going on as well. So the feeling is that from a medical perspective, in the six weeks immediately following, that there should be that pause before the child is actually placed for adoption. So it is around validating the decision, ensuring it is still the correct decision.

2590

Now, in the vast majority of cases, it is likely that the decision will still stand and it will still go ahead, but I think it is sensible in that pause for people to have that opportunity, and, in fact, I actually know of a personal case – in the UK, this is – where that has actually happened. Where the mother upon the birth has actually changed her mind and decided that she no longer wishes the child to go forward for adoption.

2595

In terms of the foster to adopt situation, the child could be placed in a foster to adopt situation at birth. That is perfectly acceptable and allowable by this.

The Speaker: Now, I put the question first that amendment 4 in the name of Mrs Barber be approved. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

2600

Clauses 17 to 21, as amended, stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 22 to 24, Mr Ashford.

Mr Ashford: Thank you, Mr Speaker.

2605

Moving to clauses 22 to 24, clause 22 introduces placement orders and states that a placement order is an order made by the court authorising the Department to place a child for adoption. A placement order can only be made where the child is subject to a care order, the court is satisfied that the conditions in section 31(2) of the Children and Young Persons Act 2001 are met or the child has no parent or guardian. Subsection (5) of this clause deals with dispensing with parental consent, which the court can do if it is satisfied that the parent or guardian cannot be found, they lack capacity to give consent or the welfare of the child requires such consent to be dispensed with.

2610

Clause 23 deals with applications for placement orders setting out the circumstances in which the Department must apply for such an order.

2615

Clause 24 deals with the revocation of placement orders setting out who can revoke such an order and the circumstances in which the leave of the court is necessary. Leave, under this clause, is only granted where there has been a change in circumstance.

Mr Speaker, I beg to move that clauses 22 to 24 do stand part of the Bill.

2620

The Speaker: Mrs Corlett.

Mrs Corlett: Mr Speaker, I beg to second clauses 22 to 24.

The Speaker: Mr Hooper.

2625

Mr Hooper: Thank you very much, Mr Speaker.

This is a question that comes up a few times in the Bill where the Department is acting. So in this case, in clause 22, for example, it talks around a child being placed for adoption with

2630 prospective adopters who may be chosen by the Department. So we are moving away from the situation where the Department is acting and that Manx Care would be acting, or in this case the Adoption Service, which may be an outsourced function, would be acting.

2635 So is the Minister able to outline why it is that some functions are being reserved solely for the Department in this Bill, whereas, it may very well be the case that, for example, the Adoption Service may be the one actually performing some of the tasks through a registered adoption society as a partner or via Manx Care. How does that work, really, in the context of some of these powers that have been very specifically reserved for the Department?

The Speaker: I call on the mover to reply, Mr Ashford.

2640 **Mr Ashford:** Thank you, Mr Speaker.

In relation to the Hon. Member's question, and again it is a *very* good question, the reason for reserving the powers is the Department can, if it wishes, depending on the circumstances, transfer those powers over to such as Manx Care or an adoption society.

2645 One of the things we have tried not to do with this Bill is be too prescriptive in who might exercise various different powers, because I think this is where, certainly within DHSC for many decades, we have gone wrong, if I have got to be perfectly honest, Mr Speaker. We have been too prescriptive in the definitions and times change; times have moved on. I think if I had actually turned round and asked Members of this House, if I had a time machine five years ago, would we have an organisation like Manx Care in place now, I probably would have got a variety of views and I think I know which way most of the views would have gone.

2650 So we have got to try and future-proof this as well. There is nothing within these provisions that prevents the Department taking those powers and actually handing them out, say, to an adoption society, to another organisation, to Manx Care, should that be the appropriate structure in which they should be placed.

2655 **The Speaker:** I put the question that clauses 22, 23 and 24 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 25 to 28, Mr Ashford.

2660 **Mr Ashford:** Thank you, Mr Speaker.

Clause 25 sets out the period of time in which a child can live with applicants before an adoption order can be applied for.

Clause 26 states that a report must be submitted to court when an adoption order is applied for.

2665 Clause 27 provides for the notice of intent to adopt which must be given in a non-agency case.

Clause 28 sets out the factors that must be considered when determining suitability to adopt. This clause also provides the Department with a regulation-making power to make further provision in relation to the suitability of adopters.

2670 Subsection (8) enables a panel constituted in the Island to have regard to a British Isles adoption panel decision, where the decision has been to adopt a child on Island, to consider the current and future needs of the child and whether those needs can be met on the Island. This clause has been included in the Bill to ensure that when a child is placed for adoption on the Island, that the appropriate adoption support is available when it is needed.

Mr Speaker, I beg to move that clauses 25 to 28 do stand part of the Bill.

2675 **The Speaker:** Mrs Corlett.

Mrs Corlett: Thank you, Mr Speaker. I beg to second clauses 25 to 28.

2680 **The Speaker:** Thank you.

Now, I call on Mrs Barber to move amendment number 5.

Mrs Barber: Thank you, Mr Speaker.

2685 This amendment to clause 28 inserts a provision as to the constitution and the functioning of the panel referred to in subsection (8). Therefore, this amendment will insert a new subsection (9) into clause 28 to provide the Department with a regulation-making power in relation to the constitution and functions of that panel, as this power is currently missing.

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

Amendment to clause 28

5. Page 45, after line 28, insert —

«(9) The Department may by regulations prescribe the constitution and functions of the panel referred to in subsection (8).»

The Speaker: Mr Moorhouse.

2690

Mr Moorhouse: Thank you, Mr Speaker. I would like to second.

The Speaker: Putting to you first amendment number 5 in the name of Mrs Barber. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

2695 Putting to you clauses 25, 26, 27 and 28 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 29 to 34, Mr Ashford.

Mr Ashford: Thank you, Mr Speaker.

2700

Clause 29 defines an adoption order and explains that it gives parental responsibility for the child to the adopters, removes parental responsibility from the birth parents and extinguishes any order made under the Children and Young Persons Act 2001.

Clause 30 sets out the conditions that must be met before the court makes an adoption order.

2705 Clause 31 provides that where a person's application to adopt has been refused, then a change of circumstances or other reason is required before another application can be made.

Clause 32 provides for who can make an adoption application, importantly including a couple, which is defined in clause 126 as a married couple, civil partners or two people whether of the same sex or different sexes living as partners in an enduring family relationship.

2710 Adoption by a couple is subsequently dealt with in clause 33 and adoption by one person in clause 34.

Mr Speaker, I beg to move that clauses 29 to 34 do stand part of the Bill.

The Speaker: Thank you.

Mrs Corlett.

2715

Mrs Corlett: Mr Speaker, I beg to second clauses 29 to 34.

The Speaker: Thank you very much.

I call on Mrs Barber to move amendments number 6 and 7, please.

2720

Mrs Barber: Thank you, Mr Speaker.

2725 The amendment to clause 29, currently ... With regard to clause 29, currently subsection (6) states that the court, before making an adoption order, 'must consider whether there should be arrangements for allowing any person contact (including indirect contact) with the child'. Later on in the Bill, clause 54 deals with post-adoption contact and provides that only indirect contact can be awarded by the court. Therefore, for the avoidance of doubt, I propose an amendment to

clause 29(6) so that it reads, 'the court must consider whether there should be arrangements for allowing any person indirect contact with the child,' to avoid the impression being given that direct contact can be awarded.

2730 Secondly, clause 30 sets out the conditions for making adoption orders. Subsection (9) of this clause states that:

The court cannot give leave under subsection (3) or (5) unless satisfied that there has been a change in circumstances ...

The cross-reference to subsection (3) or (5) should read subsection (5) or (7). This amendment therefore amends subsection (9) to insert the correct cross-reference here.

Mr Speaker, I beg to move the amendments to clause 29 and clause 30 standing in my name:

Amendment to clause 29

6. Page 46, lines 20 and 21, for 'contact (including indirect contact)' substitute «indirect contact».

Amendment to clause 30

7. Page 47, line 26, for '(3) or (5)', substitute «(5) or (7)».

2735 **The Speaker:** Mr Moorhouse.

Mr Moorhouse: Thank you, Mr Speaker. I would like to second.

The Speaker: Mr Hooper.

2740

Mr Hooper: Thank you very much, Mr Speaker.

Apologies to the Minister, I missed clause 28. I just wanted to double check if there are any intentions to add the Domestic Abuse Act into that list. It probably should be.

2745 The question I have for the Minister around these clauses, so clause 32 makes reference to two different types of residency criteria. One of them being an individual who is domiciled in the Island, and one is someone who is habitually resident in the Island. I am not clear that on the Isle of Man we have clear definitions of what habitually resident and domicile mean in the different context. I know it is lifted from the UK. The UK obviously do have a better understanding of this than perhaps we do. I just want to check is the Minister content that a single person being ... with a couple that the lowest threshold in order to adopt a child on Island is that one member of that

2750 couple is only required to be domiciled here and not habitually resident on the Island as well. I just want to double check that.

In relation to Mrs Barber's amendments, amendment to clause 29 removing the option of direct contact. I am quite confused about this. Originally with the Department, I raised the concern that clause 54 only allowed for the application of a contact order that applied for indirect contact only, so it seems that the court is not able to grant an order that allows for direct contact between a parent or a family member and an adopted child. It may very well be that that is appropriate. It may very well be that direct contact between an adopted child and their birth family is an appropriate means of contact.

2755

2760 So just for clarity, if the Member or the Department can advise why it is that they are explicitly ruling out any form of direct contact between an adopted child and their birth family, because that, to my mind, seems entirely inappropriate.

The Speaker: Mrs Barber, do you wish to reply to the issues raised around your amendments?

2765

Mrs Barber: Thank you, yes.

As I said, the point here is around regularising the Bill. Direct contact simply cannot be enforced. There has to be an agreement around that. It is felt that it would be more appropriate. The only thing that can be enforced within the legislation is indirect contact and therefore that is the piece that is being retained and consistently applied across the piece of legislation.

2770

Thank you, Mr Speaker.

The Speaker: Mr Ashford to reply.

2775

Mr Ashford: Thank you, Mr Speaker.

I am happy to go back to clause 28 for the Hon. Member for Ramsey in this regard. In relation to the Domestic Abuse Act, I think that is something that should be considered, personally, and I am pretty certain it will be considered in another place at another time, should we say. In relation to the habitual residents and domiciled, yes, the Hon. Member for Ramsey raises a very good point again, Mr Speaker. It actually broadly means a person's permanent home and is different from other legal concepts such as residency, ordinary resident and nationality.

2780

A person's domicile will generally be determined on the facts of the case. There will be lots of case law, especially UK case law, in relation to this, and the threshold in terms of domicile is no different to its counterpart provision, which is section 49, 'Applications for adoption', of the Adoption and Children's Act 2002. It is exactly the same. The Department's view is we do not consider the requirement of only one member or couple to be domiciled in the Island as being too low. We believe that is appropriate.

2785

Just following on from Mrs Barber's amendment, if I may, Mr Speaker, if direct contact is necessary during the period, then we have to question is adoption the appropriate route to have gone down in relation to it, and a court cannot give direct contact. The other routes all have to be by agreement, Mr Speaker.

2790

The Speaker: Now, putting to you first amendment number 6 in the name of Mrs Barber. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

2795

Putting to you amendment number 7 in the name of Mrs Barber. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Putting to you then clauses 29 to 34, as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 35 to 40, Mr Ashford.

2800

Mr Ashford: Thank you, Mr Speaker.

Clauses 35 to 40. Clause 35 introduces Part 5 with clause 36 stating what happens to parental responsibility when an agency is authorised to place a child for adoption or where a placement order is in force.

2805

Clause 37 sets out what orders cease to have effect when a child is placed for adoption. A court may make an order for contact with specified persons when placed for adoption.

Clause 38 makes supplemental provision in relation to contact and sets out when an agency can stop any contact.

2810

Clauses 39 and 40 deal with further consequences of placement such as leave of the court being required to cause a child to be known by a new surname unless the written consent of the birth parents or guardian has been given. There is also the ability to take the child off Island for up to one month.

Mr Speaker, I beg to move that clauses 35 to 40 stand part of the Bill.

2815

The Speaker: Thank you.
Mrs Corlett.

Mrs Corlett: Mr Speaker, I beg to second clauses 35 to 40.

2820 **The Speaker:** Mr Hooper, Hon. Member for Ramsey.

Mr Hooper: Thank you very much, Mr Speaker.

Sorry, I am just a little bit thrown by the Minister's previous comments around a court not being able to order direct contact. I am reasonably sure that courts can order direct contact and especially in the context of custody arrangements, for example. So it is new information I am still trying to process.

The question I have here around these clauses specifically is around some of the language. So for example, clause 36, 'Parental responsibility', talks around:

The adoption agency may determine that the parental responsibility of any parent or guardian, or of prospective adopters, is to be restricted to the extent specified in the determination.

So it gives an adoption agency, the Department or a registered society in this context, a power to make a decision to do something, but there is not a very clear appeals process.

So the appeals process that the Bill sets out further down talks about an independent review of decisions. The Regulation of Care Act actually provides that decisions made under that Act are appealable to a tribunal, which is an independent, properly constituted public function. The independent review mechanism in this Bill, however, is much more flexible. It talks about an adoption agency being able to employ its own independent reviewer, set the terms for any review, set the pay for any review, and then charge a fee to the person seeking that review. That is not an independent, impartial process that the Regulation of Care Act sets out. It is a ... I do not even know what to describe it. It is not an independent review process, however much the Bill tries to call it such.

So I would just like some clarity from the Minister, really, on why it is felt that some of these determinations, which can have real, life-changing consequences for children and families, both birth families and adoptive families, why these decisions he does not feel actually should be subject to a robust, independent appeals process and why it is that the appeal process the Bill does set out is actually quite weak in that regard.

2845 **The Speaker:** Mr Hooper, if I could just ask, is it your intention that the clauses be voted on separately in this instance?

Mr Hooper: No.

2850 **The Speaker:** It was not clear. Thank you.
Mr Ashford to reply.

2855 **Mr Ashford:** Yes, thank you, Mr Speaker, and again the Hon. Member for Ramsey raises a very valid point.

Clause 36 makes provision for the parental responsibility, with subsection (4) stating that it is for the agency to determine the extent to which 'the parental responsibility of any parent or guardian, or of the prospective adopters, is to be restricted'. Like section 12, the 'Independent review of determinations' of the Adoption and Children Act 2002, this Bill also includes clause 68, which provides for the establishment of a review procedure in respect of qualifying determinations made by adoption agencies. That clause 68(2) places a statutory duty on the Department to 'make provision as to the description of determinations' that are qualifying determinations.

2865 The Department is content with these provisions and notes that, crucially, ultimately that decision can be challenged. So it is open to challenge through the normal court process. So it does

follow precisely what is in place with the UK Adoption and Children Act 2002 and we are content that it mirrors.

Thank you, Mr Speaker.

2870 **The Speaker:** I put the question that clauses 35 to 40 inclusive stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, that seems an appropriate point to pause for lunch. I remind Hon. Members there is a presentation about the Licensing Bill consultation in the Barrool Suite.

With that, the House is suspended until half past two. Thank you.

*The House adjourned at 1.03 p.m.
and resumed its sitting at 2.30 p.m.*

**Adoption Bill 2021 –
Consideration of clauses concluded**

2875 **The Speaker:** Fastyr mie, good afternoon, Hon. Members. (**Members:** Fastyr mie.) Please be seated.

We resume our consideration of the Adoption Bill and I call on Mr Ashford to move clauses 41 to 49.

Mr Ashford: Thank you, Mr Speaker.

2880 Clause 41 imposes restrictions on the removal of a child who has been placed for adoption and makes it an offence to remove a child in contravention of this clause.

Clause 42 adds restrictions on removal, making it an offence to remove a child in contravention of this section, with clause 43 providing that once an adoption order has been made, the removal of a child by a person with parental responsibility does not apply.

2885 Clause 44 sets out provisions in relation to the removal of a child who has been placed with foster parents.

Clause 45 applies if the child's home is with a partner of a parent and the partner gives notice that they intend to adopt, with clause 46 setting out what happens in non-agency cases.

2890 Clauses 47, 48 and 49 deal with the recovery of children, with clause 47 providing for the recovery of a child by the parent where the child has not been placed for adoption.

Clause 48 provides for the recovery of the child by the parent where the child has been placed and consent has been withdrawn.

Clause 49 provides for the recovery by a parent where the child has been placed and the placement order has been refused.

2895 Mr Speaker, I beg to move that clauses 41 to 49 do stand part of the Bill.

The Speaker: Thank you.
Mrs Corlett.

2900 **Mrs Corlett:** Mr Speaker, I beg to second clauses 41 to 49.

The Speaker: I call on Mrs Barber to move amendments 8 and 9 to clauses 47 and 49.

Mrs Barber: Thank you, Mr Speaker.

2905 With regard to clause 47, the title of this clause is 'Recovery by parent, etc. where child not placed or is a baby'. However, given that the clause does not reference babies, I propose that such reference be omitted from the title.

2910 With regard to clause 49, this clause refers to a child being placed by the Department. However, technically and in light of the other amendments I brought before the House today, for consistency, I propose 'adoption agency' should replace 'Department' in subsection (1)(a), given that clause 20 of the Bill deals with placements by adoption agencies.

Mr Speaker, I beg to move the amendments to clauses 47 and 49 standing in my name:

Amendment to clause 47

8. Page 57, line 33, omit 'or is a baby'.

Amendment to clause 49

9. Page 60, line 4, for 'the Department' substitute «an adoption agency».

The Speaker: Mr Moorhouse.

2915 **Mr Moorhouse:** Thank you, Mr Speaker. I would like to second.

The Speaker: Putting to you first the two amendments in the name of Mrs Barber. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

I put the question that clauses 41 to 49, as amended, stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

2920 Clauses 50 to 52, Mr Ashford.

Mr Ashford: Thank you, Mr Speaker.

2925 Clause 50 sets out various scenarios where a placement order is in force or is being revoked and what must happen in relation to the return of the child and creating an offence to act in contravention of this section.

Clause 51 deals with the return of the child where the prospective adopters have given notice that they wish to return the child or where the agency is of the opinion that the child should not remain with the prospective adopters.

2930 Clause 52 sets out what must happen where a person has failed to comply with any order relating to the recovery of a child and provides the orders a court can make as a consequence. For example, the court can by order direct a person to produce the child or authorise a constable to enter premises and search for the child.

Mr Speaker, I beg to move that clauses 50, 51 and 52 stand part of the Bill.

2935 **The Speaker:** Mrs Corlett.

Mrs Corlett: Thank you, Mr Speaker. I beg to second clauses 50 to 52.

2940 **The Speaker:** I put the question that clauses 50, 51 and 52 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 53 and 54, Mr Ashford.

Mr Ashford: Thank you, Mr Speaker.

2945 Clause 53 introduces Part 6, with clause 54 setting out post-adoption contact. This clause provides that indirect contact only can be ordered and lists who can be named in any indirect contact order. 'Indirect contact' is defined as typically an ongoing exchange of correspondence – so letters, cards and photographs – facilitated by an adoption agency, acting as an intermediary and conducted at agreed intervals, but does not include face-to-face video link or telephone contact. The intention here is to provide for letterbox contact. That is not to say that direct contact cannot take place but it cannot be ordered by the court.

2950

Mr Speaker, I beg to move that clauses 54 and 54 stand part of ... 53 and 54 stand part of the Bill. *(Laughter)* I am so keen on clause 54 I tried to move it twice, Mr Speaker!

2955 **Mr Robertshaw:** Agreed, agreed!

The Speaker: Mrs Corlett.

Mrs Corlett: Thank you, Mr Speaker. I beg to second clauses 53 and 54.

2960 **The Speaker:** Mr Hooper.

Mr Hooper: Thank you very much, Mr Speaker.
It is clause 54 that I would just like to get some clarity on! *(Laughter)*

2965 **Mr Ashford:** Thought it might be!

2970 **Mr Hooper:** Earlier on when we were discussing adoption contact orders, the Minister made reference to that contact orders generally are only indirect; you cannot make a direct contact order. Well, Part 2 of the Children and Young Persons Act 2001 would disagree with the Minister there, which actually specifically enables a court to make a contact order requiring a person with whom the child lives or is to live, or 'to allow the child to visit or stay' with a person, 'for that person and the child otherwise to have contact with each other'. So the courts have the power to grant a direct contact order under the Children and Young Persons Act.

2975 So the answer really that I need from the Minister is: why does he consider it the case that, in the circumstances of an adoption, it would never, *ever* be the case that a court may need or may determine that it is in the child's best interests to have a direct contact order granted? The Bill as presented prohibits the court from doing that and I have not yet heard a good reason why you would not want the court to have this ability for those rare circumstances where it may be determined that it is in the best interests of the child.

2980 **The Speaker:** I call on the mover to reply.

Mr Ashford: Thank you very much, Mr Speaker.

2985 In relation to that direct contact with the child, we have to take into account that, generally, most of these things will be done by agreement. We know with grandparents' rights, we had a long discussion in another place, Mr Speaker, about grandparents' rights and the possibility of potentially there being court orders in that regard. It was felt, and there have been many studies into this, that that is not necessarily the route to go down, and enforced contact can actually cause its own problems and particularly so within adoption scenarios as well.

2990 So we do not feel that would be the correct route. There are other legal routes open, such as special guardianship orders, etc. and we just feel that trying to enforce direct contact, going down that legal route, when the court might decide it is appropriate for the child, but it turns out not to be in the longer term, we just do not feel is correct.

2995 I think this is a policy point where the Department and Mr Hooper actually fundamentally disagree, so it is not one I think we are going to be able to resolve today, because the issue is actually also around enforcement in relation to this, and it would be enforcing an order on someone. So I think we are coming from very different policy point of views, where Mr Hooper feels the powers should be there, but the Department feels that they should not.

3000 **The Speaker:** I put the question that clauses 53 and 54 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 55 to 60, Mr Ashford.

Mr Ashford: Thank you, Mr Speaker.

3005 Clauses 55 to 60: clause 55 introduces Part 7, which deals with the disclosure of information.

Clause 56 provides that regulations made under section 10 may require adoption agencies to disclose specified information to prospective adopters.

3010 Clause 57 adds detail around what such section 10 regulations may in relation to information prescribe, including the information which an agency must keep, the form and manner in which it must be kept, and the transfer of information to another agency.

Clause 58 defines 'protected information', this being information kept by an agency which is about an adopted person or any other person, and includes identifying information about the person in question. This information can only be disclosed in accordance with this Part of the Bill.

3015 Clause 59 deals with disclosing protected information to adults, with clause 60 applying where protected information about children is being disclosed.

Mr Speaker, I beg to move that clauses 55 to 60 stand part of the Bill.

The Speaker: Mrs Corlett.

3020 **Mrs Corlett:** Thank you, Mr Speaker. I beg to second clauses 55 to 60.

The Speaker: Mr Hooper.

Mr Hooper: Thank you very much, Mr Speaker.

3025 In respect of clause 58, disclosure of information, it makes a very particular restriction on protected information being disclosed, but then it goes and makes this an offence, if an agency ... Sorry, it allows for the creation of regulations which may allow for this to be an offence, if an adoption agency discloses information in contravention of this section, so the agency itself would be committing an offence.

3030 Actually, there is nothing in here that provides that an individual would be committing an offence. If I worked for the Department, which is an adoption agency in this context, and I off my own bat disclose protected information, I could not be prosecuted for that. The Department could, as my employer. The Department has helpfully responded to my query on this, outlining that well, I would then be in breach of contract, and I would probably get sacked and I could probably have a civil case taken against me under duty of confidentiality or what have you. None of that is an offence. None of that is an offence with a maximum level 5 fine.

3035 The Department feels that protecting disclosure of this information is so important that it must impose a criminal sanction of a level 5 fine on an agency that breaches this law, but not on an individual; I am really unclear as to why that is. I am really unclear why it is felt that the criminal standard should not apply to an individual who breaches this information disclosure. This information disclosure clause is vital when you are dealing with some of this very sensitive, very personal information around adoption, and I am just a little bit unclear as to why the Department does not feel it necessary to make it an offence for anybody to disclose this information in contravention of the law.

3045

The Speaker: Mover to reply.

Mr Ashford: Thank you, Mr Speaker.

3050 Clause 58(7) gives the Department a regulation-making power to provide that an adoption agency which discloses information in contravention of this clause, as the Hon. Member says, is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale. This provision, Mr Speaker, is based on a like provision – section 59 in the Adoption and Children Act 2002 of Parliament – and the Department is aware that under that section of the Adoption and Children Act 2002, the Disclosure of Adoption Information Regulations 2005 were

3055 made, creating such an offence. The Department is satisfied that the provision is adequate. Any employee would be subject to their terms of contract and the company's disciplinary process and, more generally also the common law duty of confidentiality. There may even be things in relation to GDPR in play as well, if people are disclosing information that they have no permission to do so.

3060 So the Department is reassured of itself that this clause is appropriate, and again we thank the Hon. Member for Ramsey for raising this matter.

The Speaker: I put the question that clauses 55 to 60 inclusive stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

3065 Clauses 61 to 65, Mr Ashford.

Mr Ashford: Thank you, Mr Speaker.

3070 Clauses 61 to 65: clause 61 makes provision for the disclosure of information held by adoption agencies and courts to adopted adults, unless the court orders that due to the exceptional circumstances of a particular case, this cannot occur.

Clause 62 applies to information which is not protected information. Disclosure of any such information must be in accordance with the prescribed arrangements set out in regulations.

3075 Clause 63 makes provision for counselling and states the circumstances an adoption agency must give information about the availability of counselling. There is also provision for those seeking counselling outside of the Island, as well as a list of who may provide counselling on Island.

Clause 64 provides a regulation-making power in relation to the performance by adoption agencies of their functions, the manner in which the information can be received and the matters mentioned in this Part of the Bill. This clause also provides for the balancing of the rights of the individual and the operation of new duties for adoption agencies and the Registrar General.

3080 In relation to the disclosure of information by the Registrar General, clause 65 states that the Registrar General's approval is required for regulations that are to make provision as to the manner in which an application is to be made for the disclosure of information by the Registrar General.

Mr Speaker, I beg to move that clauses 61 to 65 do stand part of the Bill.

3085

The Speaker: Mrs Corlett.

Mrs Corlett: Thank you, Mr Speaker. I beg to second clauses 61 to 65.

3090 **The Speaker:** I put the question that clauses 61 to 65 inclusive stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 66 to 70, Mr Ashford.

Mr Ashford: Thank you, Mr Speaker.

3095 Clause 66 introduces Part 8, which is entitled 'Supplemental and Miscellaneous', with clause 67 dealing with the inspection of premises where a child is living with a person with whom the child has been placed by an adoption agency, or a child in respect of whom a notice of intention to adopt has been given under section 27 is or will be living. An inspection under this clause in relation to the Department must be carried out by a person authorised by the Council of Ministers.
3100 An inspector may visit the child at the premises, examine the state of the premises and the treatment of the child. An inspector may also inspect records and a person who obstructs an inspector commits an offence.

3105 Clause 68 provides for the establishment of an independent review procedure regarding qualifying determinations made by adoption agencies. This includes the constitution of a review panel by regulations, with such regulations also there specifying what counts as a qualifying determination.

Clause 69 makes it clear that only an adoption agency or person acting in pursuance of a court order may take the steps listed in that clause in relation to the adoption of a child.

3110 Clause 70 provides that if a person contravenes clause 69, that person is guilty of an offence and if the offender is a registered adoption society, the person managing the society also commits an offence.

Mr Speaker, I beg to move that clauses 66 to 70 do stand part of the Bill.

The Speaker: Mrs Corlett.

3115

Mrs Corlett: Thank you, Mr Speaker. I beg to second clauses 66 to 70.

The Speaker: Mr Hooper.

3120 **Mr Hooper:** Thank you very much, Mr Speaker.

3125 Clause 68 is the independent review process that I have already mentioned a few times today. I am quite concerned by this. To start with it, it says regulations 'may' establish a procedure; not the Department must go ahead and establish one. So I would like some confirmation from the Minister that, despite the wording in the Bill, it is definitely his Department's intention to establish a review procedure.

3130 I would also like him to give us an outline of what sort of descriptions of determinations would qualify, because the Bill, unlike other regulatory Bills, does not actually set out which decisions and determinations under the Act would be subject to an appeal process. So can he confirm that, for the avoidance of doubt, any decision made under the Act would be subject to an appeal, unless it is considered wholly inappropriate for it to do so? And if he could perhaps give us an indication of what those inappropriate determinations might be.

Can he also explain some of the language in the Bill around the fees? So clause 68(4) says that the regulations:

may impose a duty to pay to an adoption agency a sum determined by it.

3135 So the adoption agency can set its own fees for appeals. The only limitation on those fees are, and this is very strange wording:

taking one financial year with another, the aggregate of the sums which become payable to it under regulations made ... [do] not exceed the cost to the agency of performing its independent review functions.

3140 Whatever that means is open to debate. What does 'taking one financial year with another' mean? Does it mean that as long as they eventually balance out, that is okay? Does it have to be a year-on-year basis, where the money they take in in any one year offsets the cost in that particular year? Is it on an appeal by appeal basis, so a person has to pay the cost of their entire appeal? It is really unclear and I am really uncomfortable actually letting an adoption agency determine its own fee for an appeal process. That seems quite inappropriate.

The next section of the Bill reads that:

An adoption agency may make an arrangement with an organisation under which independent review functions are performed ...

So actually, the agency itself gets the pick its reviewer and also gets to set the terms of that, because the very next bit says:

Where an ... agency makes an arrangement with an organisation, the organisation is to perform its functions under the arrangement in accordance with any general or special directions given by the agency.

3145 So the agency can set up its own review panel, can charge you a fee that it determines, can employ the review panel it wants and can direct the review panel on how it operates. The only thing the Department seems able to do is to set out a procedure in regulations. Everything after the procedure is entirely up to the agency.

3150 I know this is lifted from the UK legislation. That does not necessarily mean it is the right thing to do. The comparable appeals process under the Regulation of Care Act simply says, the Regulation of Care Act, the Care Services Tribunal deals with appeals. I am really unclear why the Department has decided not to use that mechanism and method for determining appeals for this care service, when it is considered appropriate for the other care services.

3155 So this clause, I think – and the Minister is well aware of my concerns around this clause – probably needs a bit more thought as to how this is actually going to work in practice, because it may be very well that this process set out is going to work, but there is so little information, I think, because it is all going to be contained in those regulations – is it going to be enough? Is it going to be adequate? Is it going to instil confidence in people using the service?

3160 I do not know the answer to those questions, Mr Speaker, but I am sure the Minister will hopefully go away and actually think about this clause a little bit more.

3165 Clauses 69 and 70: again I have raised this before. Clause 69 makes it an offence for someone who is neither an adoption agency nor someone acting in pursuance of a court order. So if you are not a registered adoption – in fact, you do not have to be a registered adoption agency; you can just be an adoption agency – but if you are an adoption agency, or you are acting in pursuance of a court order, you cannot commit these offences because these offences are for people who are not an adoption agency.

3170 But then the very next clause says that if a person is a registered adoption society, the person who manages the society is also guilty of the offence. It is not possible to be a registered adoption society and commit an offence, because the offence specifically requires that you not be an adoption agency. It does not really make a lot of sense. I do not understand how you can be an adoption agency and then break the law that says, ‘Unless you’re an adoption agency, you cannot do these things.’ So it specifically sets out the stuff that an adoption agency is allowed to do and then goes on to say, ‘But if you are not an adoption agency ... oh, by the way, if you are ...’ It does not make sense. It really does not.

3175 The language in the UK Bill is very similar. It is almost identical. The UK Bill, on the other hand, removes the word ‘registered’, so it just says in the UK version of the Bill, ‘if P is an adoption society, the person who manages ...’ So the UK is making a clear distinguishing line there between if you are a registered society, you can do these things; if you have not registered, you are not allowed to do these things – oh, and by the way, if you are not registered and you try and do these things, you are personally liable as well as the society you work for. I think, somewhere along the line, some additional wording has slipped into this draft that does not accurately reflect the UK version.

3185 I have raised this with the Department a few times, but the answer keeps coming back and it does not really make a lot of sense, so if the Minister could just clarify under what circumstances a registered adoption society could be convicted of not being an adoption agency, that would be great.

Thank you very much.

The Speaker: Mover to reply.

3190

Mr Ashford: Thank you, Mr Speaker.

Quite a lot to pick up in there, so I hope Hon. Members will bear with me as I work my way through.

3195 The first thing I need to say is that it is going to be absolutely key to this section, of course – the regulations. Mr Hooper has mentioned that and the regulations will be subject to the usual Tynwald procedure, so they will come through the other place for approval.

3200 Turning first of all: Mr Hooper, of course, said, quite rightly, that this refers back to a previous
clause, where we have just had a recent debate, and that is clause 36, where there is the
opportunity to appeal against a determination by an adoption agency restricting parental
responsibility, Mr Speaker. So clause 36 does make provisions for parental responsibility within
subsection (4), stating that for the agency to determine the extent to which the parental
responsibility of any parent or guardian or the prospective adopters is to be restricted – like
section 12, independent review of determinations, of the Adoption and Children Act 2002 of
3205 Parliament. That includes, as I have mentioned before, clause 68, which provides for the
establishment of a review procedure in respect of qualifying determinations made by adoption
agencies.

3210 That clause 68(2) places a statutory duty on the Department to make provision as to the
description of determinations that are qualifying determinations. The Department is content with
these provisions and notes, ultimately, that decision can be challenged through the normal court
process as well.

I want to state absolutely categorically for the Hon. Member now, despite the wording in the
Bill, it most certainly is the Department's intention to bring forward regulations and we most
certainly will do.

3215 Turning to the fees, I know it might seem odd language in the way that they can actually do
the crossover with years. I have been back and we have had this checked with the Attorney
General's Chambers and they are satisfied that it is appropriate, 'taking the one with the other'.
It is an averaging out on the year, whereas with a single year you could have an exceptional year,
Mr Speaker. That is the problem, and that is why that provision is there: it is to try and balance
things out. Maybe it is a bit of a blunt tool for doing so, Mr Speaker, and I will be honest on that ...

3220 For instance, there are 40-plus instances of it being used in primary legislation, in various other
formats, I believe, and in relation to the fees, the amount of any fee would have to be reasonable
and proportionate. There are general legal principles around rationality and proportionality that
would equally apply to this. So I think the key to a lot of the queries that the Hon. Member has
raised is going to be those regulations themselves, Mr Speaker, when they actually come forward.

3225 If people are dissatisfied with the process as well, Mr Speaker, we must not forget, they also
have access to the Tynwald Commissioner and it does not necessarily require a tribunal or legal
process. So the independent review mechanism is very specific and is also linked to the adoption
panel decisions, Mr Speaker.

3230 **Mr Robertshaw:** Mr Speaker, when we come to vote, could we possibly vote on these clauses
individually? (*Interjection*)

The Speaker: Yes. And that is exactly where we move to. I put to you first, then, clause 66 stand
part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

3235 Clause 67. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 68. Those in favour, please say aye; against, no. (**Mr Robertshaw:** No. Division.) The
ayes have it. The ayes have it. (**Mr Robertshaw:** Divide.) Oh, we are a bit late now for a division.

3240 **Mr Robertshaw:** I did call it, Mr Speaker.

Mr Ashford: He did call it.

The Speaker: Right, sorry. In which case we will run a vote. Clause 68.

Electronic voting resulted as follows:

FOR
Mr Ashford

AGAINST
Ms Edge

Mr Baker
Mrs Barber
Mr Boot
Mrs Caine
Mr Callister
Mr Cannan
Mrs Christian
Mrs Corlett
Mr Cregeen
Mr Harmer
Mr Hooper
Mr Moorhouse
Mr Peake
Mr Perkins
Mr Quayle
Mr Quine
Mr Shimmins
Mr Skelly
Mr Speaker
Mr Thomas

Mr Robertshaw

The Speaker: With 21 for, 2 against, the ayes have it. The ayes have it.

3245 Clause 69. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 70. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clauses 71 to 74, please. Mr Ashford.

Mr Ashford: Thank you, Mr Speaker.

3250 Clause 71 states that a person who is not of a prescribed description may not in prescribed circumstances prepare a report in connection with adoption.

Clause 72 creates the general rule that payments or rewards in connection with the adoption of a child are prohibited, with an offence being committed if such prohibitions are contravened.

Clause 73 provides which payments may be expected from clause 72: for example, reasonable expenses incurred by an agency in relation to an adoption.

3255 Clause 74 aids the interpretation of clauses 69 to 73.

Mr Speaker, I beg to move that clauses 71 to 74 stand part of the Bill.

The Speaker: Mrs Corlett.

3260 **Mrs Corlett:** Mr Speaker, I beg to second clauses 71 to 74.

The Speaker: I put the question that clauses 71 to 74 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

3265 Clauses 75 to 80, Mr Ashford.

Mr Ashford: Thank you, Mr Speaker.

Clauses 75 to 80: clause 75 provides that court proceedings may be heard and determined in private.

3270 Clause 76 provides for a document signifying consent to be admissible in evidence, with clause 77 allowing the use of any document used as evidence in the British Isles to be able to be used as evidence of that matter in the Island.

Clause 78 enables the making of regulations to provide for orders made by a court in the United Kingdom that appear to correspond to orders made under a provision of the Act to be given effect in the Island.

3275 Clause 79 imposes an obligation on the court where it is dealing with a placement or adoption order to draw up a timetable to determine the matter without delay and give directions to ensure the timetable is adhered to.

Clause 80 provides that the service of any notices under the Act may be given by post.
Mr Speaker, I beg to move that clauses 75 to 80 stand part of the Bill.

3280

The Speaker: Mrs Corlett.

Mrs Corlett: Mr Speaker, I beg to second clauses 75 to 80.

3285

The Speaker: I put the question that clauses 75 to 80 inclusive stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 81 to 85, Mr Ashford.

Mr Ashford: Thank you, Mr Speaker.

3290

Clause 81 adds detail to the regulation-making powers in clause 10, providing that such regulations can make provision for, amongst other things, the purpose of assisting a person before the appointed day – this being the day appointed for the commencement of clauses 58 to 65 – who has attained the age of 18 to obtain information about that person’s adoption.

Clause 82 introduces Part 9, which deals with the status of adopted children.

3295

Clause 83 defines what is meant by adoption in this Part.

Clause 84 defines the status conferred by adoption, stating that the child is to be treated as if they were born as the child of the adopters.

Clause 85 provides that a relationship that exists due to the adoptive status may be referred to as an adoptive relationship. An adopter may be referred to as an adoptive parent and so on.

3300

Mr Speaker, I beg to move that clauses 81 to 85 do stand part of the Bill.

The Speaker: Thank you.

Mrs Corlett.

3305

Mrs Corlett: Thank you, Mr Speaker. I beg to second clauses 81 to 85.

The Speaker: I put the question that clauses 81 to 85 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 86 to 92, please.

3310

Mr Ashford: Thank you, Mr Speaker.

Clause 86 contains the rules of interpretation that apply to any instrument relating to the disposition of property.

3315

Clause 87 provides that adoption does not affect the descent of any peerage, dignity, title or honour or the deferred devolution of any property. However, exceptions may apply in the instrument itself.

Clause 88 provides for the protection of trustees or personal representatives who convey or distribute property in ignorance of the making or revocation of an adoption order.

Clause 89 defines disposition and the power of appointment.

3320

Clause 90 provides that clause 84 of the Bill, being the treatment of an adopted person as a child of the adopters, does not apply for the purposes of the prohibited degrees of relationship in a marriage or to incest; that person remains part of their natural family.

Clause 91 provides that the payment of any pension which is payable at the time of the person’s adoption is not affected.

3325

Clause 92 concerns insurance and funeral payments in relation to any rights under an insurance policy that a natural parent has effected for the payment on death of that parent’s child. Those rights and liabilities under the policy are transferred by virtue of the adoption of that child to the adoptive parents, and the adoptive parents are treated as if they had taken out the policy themselves.

3330 Mr Speaker, I beg to move that clauses 86 to 92 do stand part of the Bill.

The Speaker: Mrs Corlett.

Mrs Corlett: Thank you, Mr Speaker. I beg to second clauses 86 to 92.

3335

The Speaker: I put the question that clauses 86 to 92 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 93 to 99 and Schedules 1 and 2, Mr Ashford.

3340 **Mr Ashford:** Thank you, Mr Speaker.

Taking clauses 93 to 99 plus Schedules 1 and 2: clause 93 introduces Part 10, entitled 'The Registers', with clause 94 aiding the interpretation of this Part.

Clause 95 provides for the continued operation of the Adopted Children Register. Once an adoption order is made, an entry is added to the register. No entries can be made unless it is directed to be made by an adoption order or required under Schedule 1.

3345

Schedule 1 deals with the registration of adoption orders and entries made following the making of an adoption order in the Adopted Children Register by the Registrar General. It also sets out the making of entries for a child who has been readopted or where adopted outside of the Island.

3350

The continuation of an index of the Adopted Children Register is provided for by clause 96, with the ability for a person to search the index and obtain a certified copy of an entry, except where that person has not reached the age of 18.

Clause 97 places a duty on the Registrar General to make traceable the connection between any entry in the registers of live-births or other records which have been marked 'Adopted' and any corresponding entry in the Adopted Children Register. Where a person is adopted before the appointed day, the provisions in Schedule 2 apply in relation to the provision of information.

3355

Schedule 2 deals with the disclosure of birth records by the Registrar General, providing for information to be given by the Registrar General to enable the applicant to obtain a certified copy of the record of the applicant's birth. It also provides for the notification of counselling services to the applicant.

3360

Clause 98 introduces an Adoption Contact Register, with the Registrar General to establish and maintain that register. The contact register will facilitate contact between the adopted person aged 18 and over and their birth relatives, should they wish for contact. Regulations can be made to make further provision in relation to the contact register.

3365

Clause 99 adds that the Adoption Contact Register is not open to public inspection or search.

Mr Speaker, I beg to move that clauses 93 to 99 and Schedules 1 and 2 stand part of the Bill.

The Speaker: Mrs Corlett.

3370 **Mrs Corlett:** Thank you, Mr Speaker. I beg to second.

The Speaker: Thank you.

I call on Mrs Barber to move amendment 10.

3375 **Mrs Barber:** Thank you, Mr Speaker.

This amendment is purely technical to change the reference to the section number in subsection (3) so that it correctly cross-references section 98(8)(a) rather than 98(6)(a).

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

Amendment to clause 99

10. Page 89, line 26, for '98(6)(a)' substitute «98(8)(a)».

The Speaker: Mr Moorhouse.

3380

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

The Speaker: Putting to the House first amendment 10 in the name of Mrs Barber. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

3385

Putting to the House that clauses 93 to 99 and Schedules 1 and 2 stand part of the Bill, as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 100 to 105, please, Mr Ashford.

Mr Ashford: Thank you, Mr Speaker.

3390

Clause 100 introduces Part 11, which deals with 'Adoptions with a Foreign Element'.

Clause 101 provides for restrictions on bringing children into the Island with the ability for the Department to make regulations dealing with this.

Clause 102 gives the Department the power to charge a fee for services provided in relation to this section.

3395

Clause 103 permits the court to award parental responsibility for the child to persons intending to adopt a child under the law of a country or territory outside of the Island. Those persons have to be domiciled or habitually resident in the Island.

Clause 104 states that a child who is a citizen of the Republic of Ireland or habitually resident in the British Isles must not be removed from the Island to be adopted unless certain conditions are met. If a child is removed in contravention of this clause an offence is committed.

3400

Clause 105 provides a power to modify clause 102, the power to charge, and clause 104, restriction on taking children out.

Mr Speaker, I beg to move that clauses 100 to 105 stand part of the Bill.

3405

The Speaker: Thank you.
Mrs Corlett.

Mrs Corlett: Thank you, Mr Speaker. I beg to second clauses 100 to 105.

3410

The Speaker: Thank you.
Mrs Barber to move amendment number 11.

Mrs Barber: Thank you, Mr Speaker.

3415

Currently, clause 104 states that a child who is a citizen of the Republic of Ireland or habitually resident in the British Islands must not be removed from the Island for the purpose of adoption unless the condition in subsection (2) is met. Like the Adoption and Children Act 2002 of Parliament, this amendment would provide that a child who is a Commonwealth citizen also cannot be removed from the Island for the purposes of adoption unless those stated conditions are met.

3420

I would like to extend my thanks to Mr Hooper for pointing this omission out and with that I beg to move the amendment standing in my name:

Amendment to clause 104

11. Page 92, line 32, after 'Ireland' insert «or a Commonwealth citizen».

The Speaker: Mr Moorhouse.

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

3425

The Speaker: Putting first then amendment 11 in the name of Mrs Barber: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 100 to 105, as amended: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

3430 Clauses 106 to 111, please, Mr Ashford.

Mr Ashford: Thank you, Mr Speaker.

3435 Clause 106 provides that overseas adoptions are those specified by regulations describing adoptions effected under the law of any country or territory outside the British Islands but which are not Hague Convention adoptions.

Clause 107 sets out that section 84, the status conferred by adoption, for Hague Convention adoptions does not apply to the extent specified in a court direction.

Clause 108 provides that the court may annul a Convention adoption or Convention adoption order on the grounds that the adoption is contrary to public policy.

3440 Clause 109 adds supplementary information to the previous clause and states that an application must be made in the prescribed manner and period.

Clause 110 makes further provision in relation to overseas determinations and orders.

3445 Clause 111 enables the application of UK adoption legislation to the Island. This will enable, for example, any orders in the UK in connection with the Hague Convention or any orders in relation to the recognition of overseas adoptions in certain countries to be recognised here.

Mr Speaker, I beg to move that clauses 106 to 111 do stand part of the Bill.

The Speaker: Mrs Corlett.

3450 **Mrs Corlett:** Thank you, Mr Speaker. I beg to second clauses 106 to 111.

The Speaker: I put the question that clauses 106 to 111 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 112 to 117, Mr Ashford.

3455

Mr Ashford: Thank you, Mr Speaker.

Clause 112 introduces Part 12. This Part modifies and amends the Children and Young Persons Act 2001.

3460 Clause 113 provides for the acquisition of parental responsibility by a step-parent. This can be by agreement or by court order. That means that a step-parent does not have to adopt their step-child to acquire parental responsibility. It also does not require the severance of parental responsibility from the other birth parent.

3465 Clause 114 amends section 13(2) of the 2001 Act to state that if a person applies for a section 11 order and they were a foster parent within the past six months, then the court shall not grant leave for that application unless satisfied that the person has the consent of the Department, they are a relative or the child has lived with that person for at least 12 months.

Clause 115 extends the period in which residence orders can remain in force until the age of 18.

3470 Clause 116 relates to the provision of accommodation by the Department and inserts a new paragraph in section 25(1) of the Children and Young Persons Act 2001 to cover the situation where a child is ordinarily resident outside of the Island and adds a timescale in which the relevant local authority must take over that provision of accommodation for the child. This will apply to cross-border placements.

3475 Clause 117 inserts a new subsection into section 26(3) of the 2001 Act to allow a child to be placed with foster carers who have already been approved as prospective adopters. This aims to reduce the amount of time a child will be moved between homes, thereby achieving permanency and stability more quickly.

Mr Speaker, I beg to move that clauses 112 to 117 do stand part of the Bill.

The Speaker: Mrs Barber.

3480

Mrs Barber: Thank you, Mr Speaker.

I stand to second and I just wanted to declare a slight interest, actually, in clause 113. As a very, very proud step-parent, but as someone who cannot have parental responsibility for her children at the minute, this will make a huge difference to people's lives.

3485

Thank you.

Several Members: Hear, hear.

The Speaker: I put to the House the question that clauses 112 to 117 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

3490

Now, we turn to amendment 12, with regard to the cross-heading and Mrs Barber to move.

Mrs Barber: Okay. Thank you, Mr Speaker.

I beg to move amendments to Part 13, clause 126 and Schedule 3. (**The Speaker:** No.) No, I do not.

3495

The Speaker: If I direct you, Hon. Member, to the Order Paper, there is a cross-heading that just needs removing between clauses 122 and 123. It is in the list as amendment number 12.

Mrs Barber: I beg to move the amendment to remove the cross-heading, Mr Speaker. Thank you.

3500

Amendment to Part 13

12. Page 102, omit lines 24 and 25.

The Speaker: Mr Moorhouse.

Mr Moorhouse: Thank you, Mr Speaker. I would like to second.

3505

The Speaker: I put the question that amendment 12, the removal of the cross-heading, be agreed. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Mr Ashford, clauses 118 to 127 and Schedules 3 and 4.

Mr Ashford: Thank you, Mr Speaker.

3510

Clauses 118 to 127 and Schedules 3 and 4: clause 118 introduces Part 13, with clause 119 restricting adverts in relation to the adoption of a child, with the offence of breaching this restriction in clause 120.

Clause 121 provides for the submission of information to the Adoption and Children Act Register. This is a UK register and contains details of children suitable for adoption.

3515

Clause 122 provides for the minor and consequential amendments in Schedule 3 and the transitional and transitory provisions in Schedule 4 to have effect.

Clause 123 deals with the Tynwald procedure for secondary legislation.

Clause 124 permits Deemsters to make rules of procedure in relation to the adoption matters dealt with at court.

3520

Clause 125 provides that the Department when making regulations can also make any supplementary, incidental or consequential provisions, as well as any transitional or saving provisions.

Clause 126 assists in the interpretation of the Bill, with clause 127 repealing the Adoption Act 1984.

3525

As I have stated, Mr Speaker, Schedule 3 makes minor and consequential amendments and Schedule 4 is the transitional and transitory provisions and savings.

Mr Speaker, I beg to move that clauses 118 to 127 and Schedules 3 and 4 stand part of the Bill.

3530 **The Speaker:** Mrs Corlett.

Mrs Corlett: Thank you, Mr Speaker. I beg to second.

3535 **Mrs Barber:** I have got these bits – I do not know what happened to the last one, I still cannot find it!

The Speaker: Mrs Barber.

3540 **Mrs Barber:** Thank you, Mr Speaker.
I beg to move amendments to Part 13, clause 126 and Schedule 3.
Firstly, after clause 122, but before clause 123, there is an erroneous reference to Part 3, final provisions –

The Speaker: That is the one you were looking for before.

3545 **Mrs Barber:** Oh!

Mr Ashford: That's the one!

3550 **Mrs Barber:** Well, I do not know – it was in the wrong place. What can I say? My apologies!

The Speaker: We have dealt with that.

3555 **Mrs Barber:** There is the detail everyone. (*Laughter*) Hon. Members, there are no Parts 1 and 2: there is the spoiler!

Regarding clause 126, I beg to move two amendments. The first amendment inserts a definition of 'adoption society' into the general interpretation clause of the Bill to clarify what an adoption society is for the avoidance of any doubt.

3560 The second amendment I propose is to subsection (2) of clause 126. The current clause 126(2) provides that references to 'adoption agency' include both the Department and registered adoption societies.

The amendments I believe will help to clarify what is meant, and it further provides that the definition mirrors the definition of adoption agency in section 2(1) of the Adoption and Children Act 2002 of Parliament.

3565 Regarding Schedule 3, as it is introduced by clause 122, I am proposing two amendments. The first amendment relates to paragraph 7, which consequentially amends the Regulation of Care Act 2013. This amendment seeks to omit sub-paragraphs (2) and (3). These sub-paragraphs would otherwise amend the references in sections 7 and 12 of the 2013 Act of 'voluntary adoption agency' to 'registered adoption society'. Those references should, however, remain as voluntary adoption agency, given that the Act deals with and defines such agencies at section 32 of that Act.
3570 Therefore, those sections do not as a consequence of this Bill require amendment.

3575 Secondly, I propose minor consequential amendments to the Regulation of Care Act to reflect the fact that this Bill will repeal and replace the Adoption Act 1984. Section 45(5) of this Act provides the definition for 'disqualifying offence for children'. Paragraph (a), however, is no longer relevant in that it references a provision of the Adoption Act 1984, which in turn referred to provisions of the Children and Young Persons Act 2001 which has been repealed.

Further, section 45(5) of the Regulation of Care Act, defines 'old removal order'. This definition needs updating as a consequence of the definition of Adoption Act being updated from the Adoption Act 1984 to the Adoption Act 2021.

3580 Finally, the Schedule of the Regulation of Care Act 2013 provides a definition for 'adoption society offence'. Rather than this definition linking to the Adoption Act 1984, it should instead link to the new Act.

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

Amendments to clause 126

13. Page 104, after line 17, insert –

«“adoption society” means a body whose functions consist of or include making arrangements for the adoption of children;».

14. Page 105, for lines 31 and 32 substitute –

«(2) In this Act the Department or a registered adoption society may be referred to as an adoption agency.»

Amendments to Schedule 3

15. Page 116, omit lines 8 to 12 (inclusive)

Re-number following provisions accordingly

16. Page 116, after line 16 insert–

«(5) In section 45(5), in the definition of –

(a) “disqualifying offence for children”, omit paragraph (a);

(b) “old removal order” for “the repealed section 24 of the adoption Act” substitute «section 24 of the repealed Adoption Act 1984».

(6) In the Schedule (definitions), in the definition of “adoption society offence” for “14(4) (adoption service)” substitute «section 10(3)»

Re-number inserted provisions as necessary.

The Speaker: Mr Moorhouse.

3585 **Mr Moorhouse:** Thank you, Mr Speaker. I would like to second.

The Speaker: Mr Hooper.

Mr Hooper: Thank you very much, Mr Speaker.

3590 Just a very quick question for the Minister on the definitions in clause 126. The original Adoption Act referenced the High Court only. These new definitions actually extend that definition to now any court of summary jurisdiction, so these proceedings may be held much more broadly. I am just curious as to the rationale behind that and also as to whether or not adoption proceedings will be considered domestic proceedings for the purposes of the Summary Jurisdiction Act, in that they will be held in private, no press, that kind of thing. I cannot see any reference to that here, and I also cannot see any reference to adoption inside the Summary Jurisdiction Act. So I would just like some clarity.

Thank you.

3600 **The Speaker:** Mover to reply.

Mr Ashford: Thank you, Mr Speaker.

3605 If I am not mistaken, I think there is one of the earlier clauses that allowed for court hearings in private, and you would expect adoption hearings in private. They would not be public hearings. I think it is important that we ... Again, I would like to thank the Hon. Member for Ramsey, Mr Speaker, and put that on record, because he has engaged very well with the Department over

3610 this Bill, and I think one of the things that came to light as we went through the various issues and concerns that Mr Hooper raised was around was it too restrictive and should it be wider in relation to the court process. That is one of the things that has actually driven the change. So although it was not one of the issues Mr Hooper raised directly with the Department, it was something that got driven off the back of us looking again, in light of the concerns that he had raised.

So I would like to thank him for that, Mr Speaker.

3615 **The Speaker:** Putting to Hon. Members first amendments 13, 14, 15 and 16 in the name of Mrs Barber. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Putting then clauses 118 to 127 and Schedules 3 and 4. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.