



ST. HELENA

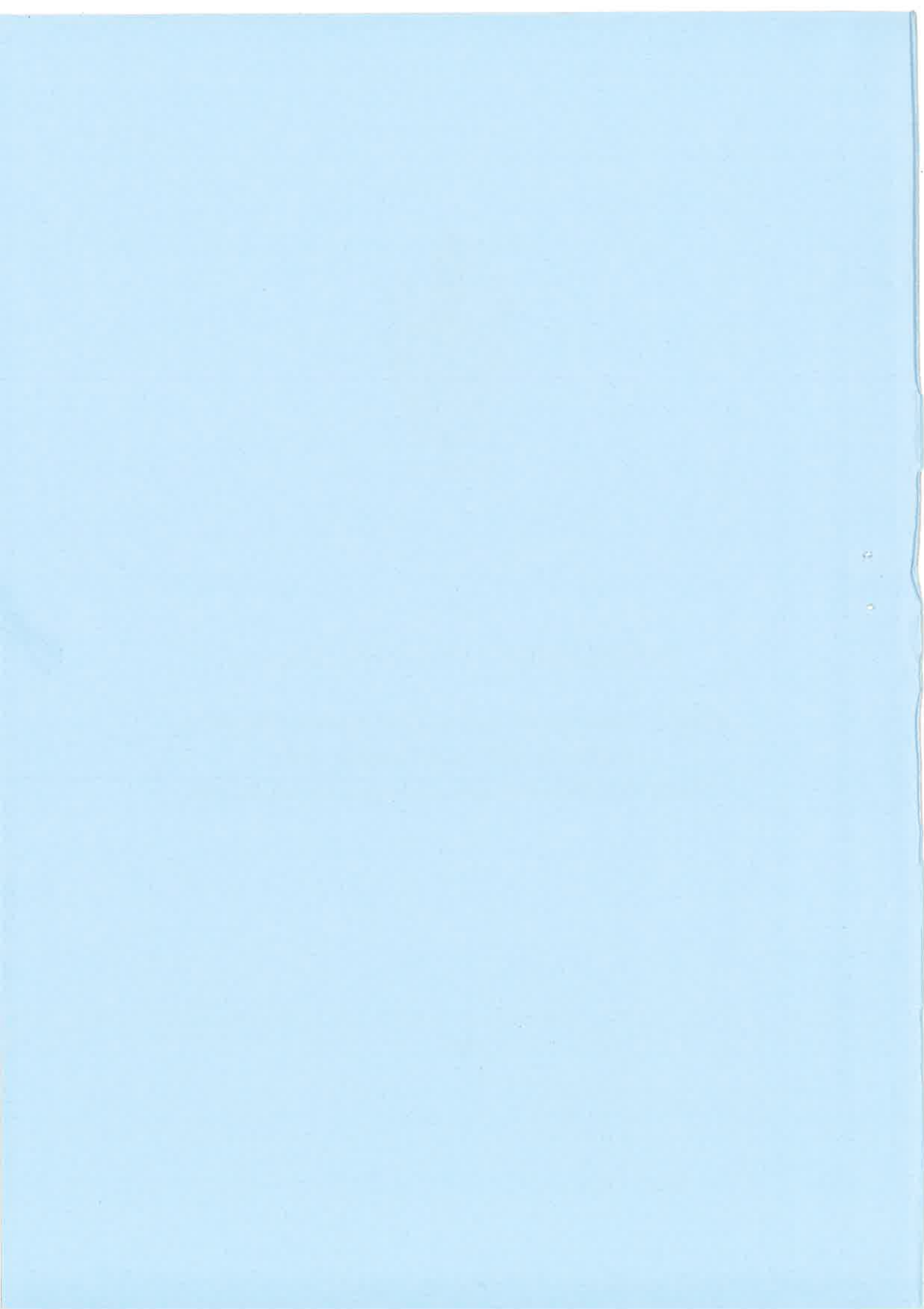
GOVERNMENT OF SAINT HELENA

PROCEEDINGS OF THE LEGISLATIVE COUNCIL

FRIDAY, 13TH NOVEMBER, 2015

FIRST SITTING OF THE ELEVENTH MEETING

Laid on the table - 18 March 2016.



ST. HELENA
LEGISLATIVE COUNCIL

THE SPEAKER

The Honourable Mr Eric William Benjamin

DEPUTY SPEAKER

Mrs Margaret Anne Catherine Hopkins

EX-OFFICIO MEMBERS

The Honourable Chief Secretary	-	Mr Roy Burke
The Honourable Financial Secretary	-	Mr Colin Owen
The Honourable Attorney General	-	Ms Nicola Moore

ELECTED MEMBERS

The Honourable Nigel Dollery
The Honourable Wilson Charles Duncan
The Honourable Gavin George Ellick
The Honourable Cyril Robert George
The Honourable Lawson Arthur Henry
The Honourable Brian William Isaac
The Honourable Bernice Alicia Olsson
The Honourable Christine Lilian Scipio O'Dean
The Honourable Derek Franklin Thomas
The Honourable Pamela Ward Pearce

The Honourable Leslie Paul Baldwin - On leave of absence
The Honourable Dr Corinda Sebastiana Stuart Essex – On overseas
leave

CLERK OF COUNCILS

Ms Gina Benjamin

PROCEEDINGS OF THE LEGISLATIVE COUNCIL

Friday, 13th November, 2015

The Council met at 10.00 am
in the Court House, Jamestown

(The Speaker in the Chair)

ORDER OF THE DAY

1. FORMAL ENTRY OF THE PRESIDENT

2. PRAYERS
(The Rt. Rev. Bishop Richard Fenwick)

3. ADDRESS BY THE PRESIDENT

Please be seated. Honourable Members, ladies and gentlemen, first of all I'd like to remind you if you have mobile phones that they should be switched off in here because the microphones pick up the signals from mobile phones. Thank you very much indeed.

Welcome to this eleventh meeting of the St Helena Legislative Council. May I first thank the Right Reverend the Lord Bishop for leading this Council in prayers today. This act of prayer will, I am sure, assist this Council as it deliberates on the business before this House and help us direct our minds to the fact that we are working in the best interests of our people and not of ourselves.

Secondly, may I welcome back the Honourable Chief Secretary from his well-earned leave which was extended by compassionate leave due to bereavement within the family. Welcome back, Honourable Chief Secretary, I know that all the members of this Council will support me in extending our sincere condolences to you, your wife and your families.

May I also welcome back the Honourable Derek Thomas who has returned from a meeting of the CPA Executive in London of which he is a member. The Honourable Member has reported back on the positive contribution he was able to make on behalf of this Council and I will leave it to him to report, perhaps at Adjournment Debate, the most recent outcome from his attendance abroad. Thank you, Honourable Member.

Our membership is depleted today by two members, namely the Honourable Dr Corinda Essex is on overseas personal leave, but is on her way back at this time and the Honourable Leslie Baldwin who is on leave of absence. The circumstances surrounding this leave of the latter are regrettable but requires no further comment from me at this stage.

The work before this House today includes eleven oral questions, two of which will be asked on the second sitting day; four Bills and one private member's Motion. Additionally, four questions are submitted for written responses. Honourable Members will know that two of the Bills for consideration are rather lengthy so this has given me the long desired opportunity to introduce a slightly different procedure which will enable me to involve the Deputy Speaker who has until now sat in the wings of this Chamber. Today, bearing in mind the requirements of the Constitution and our Standing Orders, I hope to break new ground and delegate authority to the Deputy Speaker to manage the procession of two Bills at the Committee stage. This is likely to be a trend for the future. In order that there will be no conflict with the requirements of the Constitution, I will absent myself from the proceedings of this Chamber at a convenient time to allow the Honourable Deputy Speaker to chair and perform that function. Honourable Members, during that time the Deputy Speaker may be addressed as Madam Deputy Speaker or Madam Chairman. I will return to the Chamber at the end of the Committee stage and the Bills will then be reported in the usual manner.

4. PAPERS

The Hon. Brian Isaac –

Mr Speaker, I beg to present Sessional Paper 19/2015, a Bill for an Ordinance, the Juries (Amendment) Ordinance, 2015.

Ordered to lie on the table.

The Speaker –

Honourable Derek Thomas?

The Hon. Derek Thomas –

Mr Speaker, I beg to present Sessional Paper No. 20/2015, a Bill for an Ordinance, the Mental Health and Mental Capacity Ordinance, 2015.

Ordered to lie on the table.

The Speaker –

Honourable Pamela Ward Pearce?

The Hon. Pamela Ward Pearce –

Mr Speaker, I beg to present Sessional Paper No. 21/2015 entitled The Environmental Protection Ordinance 2015.

The Speaker –

.....on my Order Paper it's 21/15?

The Hon. Pamela Ward Pearce –

I beg your pardon, Sir?

The Speaker –
Is it No. 21/2015?

The Hon. Pamela Ward Pearce –
Yes, Sir.

The Speaker
Okay, thank you.

Ordered to lie on the table.

The Speaker –
Honourable Brian Isaac?

The Hon. Brian Isaac –
Mr Speaker, I beg to present Sessional Paper No. 22/2015, a Bill for an Ordinance, the Employment Rights (Amendment) Bill, 2015.

Ordered to lie on the table.

The Speaker -
Honourable Financial Secretary?

The Hon. Colin Owen –
Mr Speaker, I beg to present Sessional Paper 23/2015, Government of St Helena Financial Statements 2012/2013.

Ordered to lie on the table.

The Speaker –
Honourable Financial Secretary?

The Hon. Colin Owen –
Mr Speaker, I beg to present Sessional Paper 24/2015, St Helena Audit Service Management Letter, Financial Statements 2012/2013.

Ordered to lie on the table.

The Speaker -
Honourable Financial Secretary?

The Hon. Colin Owen –
Mr Speaker, I beg to present Sessional Paper 25/2015, Response to Recommendations following adoption of the PAC Report dated 22nd October 2015.

Ordered to lie on the table.

The Speaker –
Next item of business, please?

5.

QUESTIONS

Question No. 1 – The Honourable Gavin Ellick to ask the Honourable Chairman, Public Health Committee.

The Speaker –
Honourable Gavin Ellick?

The Hon. Gavin Ellick –
Will the Honourable Chairman of the Public Health Committee tell this Council what plans are in place for a recruitment of a second Dental Technician?

The Speaker –
Thank you. Honourable Chairman, Public Health Committee?

The Hon. Derek Thomas –
Thank you, Mr Speaker, I thank the Honourable Member for his question. The requirement for a second Dental Technician post has been included in the Health Directorate's Strategic and Work Plan for 2016/2017 and funding is being pursued for the 2016/17 financial year to enable a trainee Dental Technician to be recruited.

The Speaker –
Thank you, Honourable Member. Is there any other supplementary question? Clerk of Council, call the next item, please?

Question No. 2 – The Honourable Gavin Ellick to ask the Honourable Chairman of the Public Health Committee.

The Hon. Gavin Ellick –
Will the Honourable Chairman of the Public Health Committee tell this Council what incentives are in place to attract and retain Dental Technicians?

The Speaker –
The Honourable Chairman of Public Health Committee?

The Hon. Derek Thomas –
Thank you, Mr Speaker, I thank the Honourable Member for his question. At present the Dental Technician receives a market forces supplement in recognition of qualifications and experience.

The Speaker –
Thank you, Honourable Member. Any further questions? Clerk, call the next item then, please?

Question No. 3 – The Honourable Christine Scipio O'Dean to ask the Honourable Financial Secretary.

The Speaker –

The Honourable Christine Scipio O'Dean?

The Hon. Christine Scipio O'Dean –

Thank you, Mr Speaker. Will the Honourable Financial Secretary give this Council an update on the progress and the total amount of expenditure to date on the ASYCUDA?

The Speaker

Thank you. Honourable Financial Secretary?

The Hon. Colin Owen –

I thank the Honourable Member for her question. All Customs Officers have been trained in the use of ASYCUDA, the automated system for Customs data and a trial period for a number of major importers continues on island. We encountered issues of implementing the system from an IT and managerial perspective hence why officers have recently been sent on training so they can update the system on their return. Training for local staff it's decided of employing a TC Officer to implement the changes. This ensured we promoted local knowledge and upskilled our local staff. The system for all local businesses will come on line from 1st April 2016. All have received training and top up briefing sessions will be provided for all those who require them. We'll be talking further to businesses when the officers return later in November. The aim is to put all importers, i.e. all members of the public and businesses on the system, but this is still under consideration with an aspirational start date of January 2017. To date, over £250k has been spent on the project, the bulk of the cost being £180k on capital items such as IT infrastructure funded by DfID out of the IT Development Programme. Training costs make up the rest with the elements being funded by DfID through training budgets and through the UN. Thank you for that. Just to let you know, for members benefit, I've e-mailed them this morning my response to this question and all the other questions I have today.

The Speaker –

Thank you Honourable Financial Secretary. Clerk?

Question No. 4 – The Honourable Pamela Ward Pearce to ask the Honourable Chairman, Social and Community Development Committee.

The Speaker –

Honourable Pamela Ward Pearce?

The Honourable Pamela Ward Pearce –

Thank you, Sir. Will the Honourable Chairman of the Social and Community Development Committee appraise this House on how the extra £1.2million allocated for Safeguarding has been utilised?

The Speaker –

The Honourable Chairman of Social and Community Development?

The Hon. Brian Isaac –

Mr Speaker, I thank my Honourable Friend for her question and I shall now provide an update in relation to the additional funding of £1.2 million received from DfID towards providing statutory safeguarding and support services for children and young people as well

as victims of abuse. The funding is overseen by the Safeguarding Children's Board whose membership includes the Children's Champion, the Honourable Christine Scipio O'Dean. A significant portion of the funding allocated is being spent on staffing costs and a robust multi-agent training programme which has also seen Saints accessing training overseas with a view to taking on key positions in the future. Legal fees has also accounted for a considerable portion of the budget. In addition to this, a number of support services have been procured that includes a Victim's Support Service, a Grant Scheme for Positive Activities, a Commissioned Service provided by New Horizons, free glasses and hearing aids for children and young people, procurement of the Overseas Territories Regional Criminal Intelligence System has commented and this will provide further safety to our boarders and enable intelligence to be gathered. The Safeguarding Children's Board have agreed to the following: a Child ...?... initiative, an Arts and Crafts-based youth club. As I've already noted, the funding is overseen and managed by the Safeguarding Board and that consists of the Head of Governor's Office as Chair, the Children's Champion, the Chief of Police, the Salvation Army Lieutenant, the Youth Leaders and the Directors from Health and Safety and Safeguarding and Education. The funding allocation was specifically for children and young people and discussions will take place about further support during the Budget Aid Mission. Whereas the focus has been on children and young people, the Safeguarding Directorate has been successful in recruiting specialist adult Social Workers and Mental Health professionals as we must now look to the?.....the vulnerable of the community. Thank you, Mr Speaker.

The Speaker –

Thank you, Honourable Member. Any further questions? Honourable Pamela Ward Pearce?

The Hon. Pamela Ward Pearce –

Thank you, Mr Speaker. Thank you my Honourable Friend. Would the Honourable Chairman indicate if there's been any change in priorities within the Safeguarding budget since the receipt of these monies?

The Hon. Brian Isaac –

Mr Speaker, no, it hasn't, Sir.

The Speaker –

Thank you, Honourable Member. Honourable Pamela Ward Pearce?

The Hon. Pamela Ward Pearce –

Thank you, Mr Chairman. Could the Honourable Chairman say if all of these monies have been now employed?

The Hon. Brian Isaac –

Mr Speaker, I'm quite happy to give my Honourable Friend some further information on how the money has been allocated. In addition to the staff, the following Support Services have or are in the process of being delivered: a commissioning process for local NGO support to deliver service and embed safeguarding has now completed and a one-year service level agreement has been agreed with New Horizons. The Safeguarding Directorate managed the contract. A further commissioning exercise has been commenced for a provider of an arts based activity for young people to access on a weekly basis. Planning approval was obtained for the refurbishment of a property into a safe haven. Multi use funding for a UNDP project specifically tackling domestic abuse has been approved. This will provide safe

accommodation for victims of domestic violence and their children. The procurement of the Intelligence system has commenced and will be completed by February 2016. A visa system is being considered that will require all those entering St Helena to be screened thus identifying predators, sex offenders, prior to their arrival on the island. The Safeguarding grant for organising to access has been completed. Thirty-five were successful with the value of £36k. The focus is around improving resilience, a wider network of support, increasing activities for children and young people and allowing the community to get involved in the safeguarding agenda. A communications plan has been produced and is now being delivered with the re-issue of the E-safety guidance being distributed at Prince Andrew School. The campaign received international recognition for the safebook posters. Legal costs are significant with expert assessment for the Supreme Court matters being funded from the additional project monies. These costs also include adhering to Supreme Court Orders. Work to convene a room at the hospital for prisoners who has completed and will protect victims from coming into contact with their perpetrators. The free spectacles and hearing aids for children and young people are launched as well receiving a good attention. This will be funded for the next two years. The link with the Samaritans continue and may be well used more once the Sasha Inquiry report is published and although the service is free to SURE money has been spent on advertisements. Funding has been allocated to provide confidential victim support for specialist professionals in the UK via Skype and to provide victims with practical support on the island. Training has taken up a large percentage of the budget to ensure that staff have the appropriate qualifications. We also have seen Saints training overseas and we are currently having a very promising social work assistance study, Social Work have a very prominent social care assistance study in the UK. The following training has also been provided and are being procured.

Mr Speaker, the other information I had here I would be quite happy to give this to the members in writing or you would wish for me to continue here today?

The Speaker –

You have to respond to the question, I'm leaving it to you.

The Hon. Brian Isaac –

Would you like me to continue or you would like to have this information in written.....

The Hon. Pamela Ward Pearce –

May I speak, Sir?

The Speaker –

Yes, You may sit down, Honourable Pamela Ward Pearce?

The Hon. Pamela Ward Pearce –

Can I say, laudable though all those projects are, my original question was could you say if all of these monies have now been employed and I believe that was not answered. Thank you.

The Hon. Brian Isaac –

Mr Speaker, I'm happy to answer the question. As Chairman of the Social and Community Development Committee who have political oversight of the Safeguarding Directorate, from the political oversight I'm very much involved with the policy side of the Directorate, we do get monthly reports on the spend within the Directorate.....

The Speaker –

Yes, Honourable Member, I think you were asked a simple question. Will you ask the question again, please, Honourable Pamela Ward Pearce?

The Hon. Pamela Ward Pearce –

Sorry, would you like me to ask the question again?

The Speaker –

Ask the question again and you just give a simple answer.

The Hon. Pamela Ward Pearce –

Okay. Could the Honourable Chairman say if all of these monies have now been employed?

The Speaker –

That's the question.

The Hon. Brian Isaac –

Not all, Mr Speaker.

The Speaker –

Thank you.

The Hon. Pamela Ward Pearce –

Thank you.

The Speaker –

Honourable Pamela Ward Pearce?

The Hon. Pamela Ward Pearce –

All of these projects mentioned, could the Honourable Chairman say if they formed part of the original bid for the £1.2million?

The Hon. Brian Isaac –

Mr Speaker, the bid was put forward, but there were additional bids made within the project. Mr Speaker, if I can help with this one again, the monies within the budget is a rolling over budget and each month the underspent is put before the Children's Safeguarding Board who bids on the allocation of that funding.

The Speaker –

Thank you, Honourable Member. Any further questions, please? Honourable Pamela Ward Pearce?

The Hon. Pamela Ward Pearce –

Can the Honourable Chairman say then is there still some money left from this original sum?

The Hon. Brian Isaac –

Mr Speaker, the £75k underspent will go to the Board this coming Tuesday and they will allocate the funding.

The Speaker –

Thank you, Honourable Member. Any further questions?

The Hon. Pamela Ward Pearce –
No, thank you very much.

The Speaker –
Alright. Anybody else has any question supplementaries? Then Clerk, will you call the next question, please?

Question No. 5 – The Honourable Pamela Ward Pearce to ask the Honourable Chairman of the Social and Community Development Committee.

The Speaker –
Honourable Pamela Ward Pearce?

The Hon. Pamela Ward Pearce –
Thank you, Sir. Would the Honourable Chairman of the Social and Community Development Committee inform this House of what progress there has been with the Sainsbury's recommendations?

The Speaker –
Thank you, Ma'am. Honourable Chairman of the Social and Community Development?

The Hon. Brian Isaac –
Mr Speaker, firstly I would like to thank the Honourable Member for her question. I confirm that the Social and Community Development Committee has been working closely with officials to take forward the appropriate recommendations. The Sainsbury Report recommendations have progressed well in the last two years. Of the original twenty-five actions eight have been completed and four have been decided to no longer be appropriate for the island to implement. All other actions remain under review or are being implemented as when the finances allows. Of the eight that have been implemented, some, such as the minimum income standard, which is updated on an annual basis, the introduction of the better living allowance and reforms to the way Basic Island Pensions are paid with costs at approximately an extra £460k in the next financial year compared to when implementation started in 2013. To continue the good work, a Social Protection Review Group has also been established to look into the wider issues around this subject and this has political membership. Whereas the Sainsbury recommendations are welcome, there is also need to ensure that we are able to afford recommendations in the longer term, especially in the light of our elderly population.

Mr Speaker, I also have with me here a programme of proposals that are being continually, has been implemented and the programmes that are planned in the future within.....the portfolio. With your permission could I pass these around to members?

The Speaker –
Alright, can you pass them around later, please?

The Hon. Brian Isaac –
Okay, thank you.

The Speaker –

Honourable Pamela Ward Pearce?

The Hon. Pamela Ward Pearce –

Would the Honourable Chairman indicate if the original recommendations have been revisited and updated and if they're still valid?

The Speaker –

Honourable Chairman?

The Hon. Brian Isaac –

Mr Speaker, all the recommendations are valid, but there were recommendations that the island could implement and there were recommendations that has been put in abeyance, they haven't been thrown out, but they are there as and when funding becomes available to implement. Thank you.

The Speaker –

Thank you, Honourable Chairman. Any further questions?

The Hon. Pamela Ward Pearce –

Thank you, Mr Speaker.

The Speaker –

Would the Clerk call the next question, please?

Question No. 6 –The Honourable Cyril George to ask the Honourable Financial Secretary.

The Speaker –

Honourable Cyril George?

The Hon. Cyril George –

Mr Speaker, will the Honourable Financial Secretary tell this Council what progress to date has been made on the following projects which were funded under the Capital Programme – the prison at Half Tree Hollow, the Fire Station at Alarm Forest, the proposed sewerage works at Half Tree Hollow/Ladder Hill and the extension of Harpers 2 and 3 reservoirs?

The Speaker –

Thank you, Honourable Member. Honourable Financial Secretary?

The Hon. Colin Owen –

Thank you, Mr Speaker, I thank the Honourable Member for his question. With regards to the prison, a contract was awarded to Ambledale in July 2015 to strip out the Sundale site and these works have now been completed, which include the stripping out of fittings, furniture which is no longer required and preparing the site for the main build, specifically fencing the site as well as digging some trial pits which are designed for the main building. Members will appreciate there are a number of levels on this site. With this in mind, it is proposed to carry out a number of work packages which will inform the design and specification and allow SHG to enter into a contract. It is therefore planned to carry out some further excavation works to ascertain what the makeup of the current foundations are. We expect these works to be completed in early 2016 and then a full tender to be issued in April 2016.

Additionally, as part of the detailed cell specifications, it is planned to construct a typical cell using the measurements and materials proposed in the final build. This will allow the design team to make any changes required to the detailed design and specifications prior to works commencing on site and also provide a training facility for the prison staff in advance of the commissioning of the prison proper. The intent would be to build this off site at a location or site that will not interfere with the permanent works.

Regards the new Fire Station. The design for the Fire Station had to be revisited at the request of elected members as the proposed design exceeded the budget available. An outline design has been received, however, this has not been approved by the Project Board as yet. Discussions have now taken place with the Director of Police and Fire Service to ensure that we've captured their requirements in outline design and subject to Project Board approval, the full design details will be developed. The Fire Station at Alarm Forest still, however, requires substantial earthworks. A site investigation will be procured shortly and this will also provide evidence to help determine the type of build needed for the site. We expect the full tender for the main construction to be issued in late May 2016.

Sewerage works at Half Tree Hollow and Jamestown. Consultants were appointed to design suitable sewerage treatment works. Following the technical assessment it was decided to carry out a further investigation into the feasibility of the systems. Given the above and agreed with the Capital Programme Office, the work to be completed during this financial year focuses on a coastal study to determine the feasibility of marine outfall, conduct detailed environmental impact assessments and carry out detailed designs for the sewerage infrastructure. The coastal study has progressed as planned and with further dive surveys being carried out to inform the envisaged concept designs. The EIA will consider recommendations of the coastal study report and the detailed designs of the sewerage treatment infrastructure are scheduled to be carried out during the fourth quarter of 2015/16 financial year.

Extension of Harpers 2 and 3 reservoirs. Consultants were appointed to carry out detailed designs for the enlargement and repairs of Harpers 3 reservoir. This includes storm water drainage measures to protect the reservoir from the surface runoff. The concept designs are currently under review by Connect. The current focus of the consultancy is to prepare detailed designs of the reservoir and associated infrastructure so that the reservoir can be built during the upcoming dry season and completed by the end of March 2016. The same consultants were appointed to carry out the feasibility studies in the development of other potential reservoirs on island, which includes the enlargement of Harpers 2. The feasibility study work will follow once the design work for Harpers 3 is completed. Thank you.

The Speaker –

Thank you Honourable Financial Secretary. Honourable Cyril George?

The Hon. Cyril George –

Mr Speaker, can I ask what impact will this have on the capital programme for this financial year?

The Speaker –

Honourable Financial Secretary?

The Hon. Colin Owen –

As I've said, I've mentioned a number, Mr Speaker, I've gone through each of the schemes. Some of those will have delay costs on that and that could impact on the level of funding that will be spent this year. Any funding that we don't require and that we can't spend will be

returned back to DfID and that will ensure that we can use that spend for the next year's capital programme.

The Speaker –

Thank you Honourable Financial Secretary. Honourable Cyril George?

The Honourable Cyril George –

Mr Speaker, can I ask a question about the prison? I'm surprised to hear that survey work are just now being carried out.....

The Speaker =

Honourable Councillor, you are asking a question or are you making a statement?

The Hon. Cyril George –

Mr Speaker, I'm disappointed that the.....

The Speaker –

You're making a statement, will you ask the question that you want to ask?

The Hon. Cyril George –

Right. When will the plans be approved for the prison?

The Speaker –

Honourable Financial Secretary?

The Hon. Colin Owen –

As I said in my previous statement to the initial question, we expect these works to be complete in early 2016 and for a full tender to be issued in 2016 so the full designs will have to be completed before that to allow the tender to go out.

The Hon. Cyril George –

Thank you, Mr Speaker.

The Speaker –

Thank you Honourable Financial Secretary. Next question, please?

Question No. 7 – The Honourable Gavin Ellick to ask the Honourable Chairman of the Public Health Committee.

The Speaker –

Honourable Gavin Ellick?

The Hon. Gavin Ellick –

Will the Honourable Chairman of the Public Health Committee tell this Council what measures are in place to ensure health and safety and protection of patients and visitors at the General Hospital during the renovation period?

The Speaker –

Honourable Chairman of the Public Health Committee?

The Hon. Derek Thomas –

Thank you, Mr Speaker, I thank the Honourable Member for his question. To ensure the health and safety protection of our patients and visitors all areas of the hospital that are being worked on during the renovation are out of bounds to public. Rooms that are not complete are not used for patient care. Dust sheets and coverings over doors are put in place to minimise the dust and the cleaners are regularly ensuring the environment is as clean as possible. The workmen are very compliant and ensure their tools remain within the designated areas.

The Speaker –

Thank you, Honourable Member. Honourable Gavin Ellick?

The Hon. Gavin Ellick –

Has the Project Manager for the Capital Programme made a report on the hospital?

The Speaker –

Honourable Chairman?

The Hon. Derek Thomas –

Yes, Mr Speaker.

The Speaker –

Thank you, Sir. Any further questions? No further questions, call the next question please, Clerk?

Question No. 8 – The Honourable Christine Scipio O’Dean to ask the Honourable Chief Secretary.

The Speaker –

Honourable Christine Scipio O’Dean?

The Honourable Christine Scipio O’Dean –

Thank you, Mr Speaker. Will the Honourable Chief Secretary give this Council an update on the review of the existence and function of the Highways Authority as per the recommendation of the St Helena Audit Service report of May 2014?

The Speaker –

Honourable Chief Secretary?

The Hon. Roy Burke –

Thank you, Mr Speaker and thank you for the question which raises an important issue. Having investigated the progress on this recommendation, it’s quite clear to me that we have yet to reach a point where recommendations with respect to changes to the Highways Authority can be made. I’m sorry that this work has not been completed but I am advised that there have been a number of discussions at committee and amongst officials and I can assure this House that I will take this matter up following this meeting of the Legislative Council.

The Speaker –

Thank you, Honourable Chief Secretary. Any further questions? No further questions. Clerk?

Question No. 9 – The Honourable Brian Isaac to ask the Honourable Financial Secretary.

The Speaker –

Honourable Brian Isaac?

The Hon. Brian Isaac –

Mr Speaker, will the Honourable Financial Secretary update this Council on the progress with the shipping and freight service for St Helena?

The Speaker –

Thank you, Honourable Member. Honourable Financial Secretary?

The Hon. Colin Owen –

Thank you, Mr Speaker, I thank the Honourable Member for his question. The procurement sea freight service for St Helena is ongoing; as you appreciate, there is little specific details I can provide here today due to the ongoing procurement and contractual discussions. What I can say is the ..?.....Procurement Board is that a draft agreement has been issued to the preferred bidder and there's been a number of meetings with the preferred bidder over the last month to discuss and agree the terms. The security of the service to the people of St Helena is paramount and we are aiming for a replacement service to be in place shortly after the withdrawal of the RMS St Helena.

The Speaker –

Thank you, Honourable Financial Secretary. Honourable Brian Isaac?

The Hon. Brian Isaac –

Mr Speaker, I thank the Honourable Financial Secretary for his reply.

The Speaker –

Right, would the Clerk call the next item of business? Yes, Honourable Christine Scipio O'Dean?

The Hon. Christine Scipio O'Dean –

Thank you, Mr Speaker. Mr Speaker, I beg to move that this House permits a Motion to be considered by this House and that notice for this Motion be dispensed in accordance with Order 10, Rule 2 of the Standing Orders. Mr Speaker, I do note that under Order 4, Rule 1, that Government business comes first than private member's business, so I'm just seeking permission, Mr Speaker.

The Speaker –

Right, I take it that you're asking for permission to move a Motion here, is it?

The Hon. Christine Scipio O'Dean –

That's correct, Mr Speaker.

The Speaker –

And it's a private member's Motion, is it?

The Hon. Christine Scipio O'Dean –

That's correct, Mr Speaker, so I'm seeking permission for the notice period to be dispensed.

The Speaker –

Okay. There is provision under Order 10 for that and have you circulated to the other members the nature of the Motion?

The Hon. Christine Scipio O'Dean –

Mr Speaker, yes, I have.

The Speaker –

Right, so the Standing Orders require that for a Motion that no notice has been given it has to be approved by the members of this Council here to move the Motion in the Council. I haven't said at this time at what stage it's going to be moved, but the question has been asked, a proposal has been made that notice is dispensed with. If you have your Standing Orders, that's Order 10, Standing Order 2, it says, notice may be dispensed with in respect of any proceedings for which notice is required only with the consent of the President and the assent or the agreement of the majority of the members present at the time. Will you read the Motion, please?

The Hon. Christine Scipio O'Dean –

Yes, Mr Speaker. Mr Speaker, the Motion is – that this House has no confidence in the Honourable Les Baldwin and moves that he tenders his resignation as a member of the Legislative Council forthwith.

The Speaker –

Honourable Members, it's been proposed that you grant permission for this Motion to go ahead at this session because no notice has been given of this Motion.

Question put and agreed to.

The Speaker –

Did I hear a No? Can I take a division on this, please, I'd like to know, it's only about the Motion going ahead, that's all it is, nothing else, can a Motion go ahead?

Division claimed.

The Hon. Christine Scipio O'Dean –

Can I raise for a point of clarification, Mr Speaker. As we were only asking permission for the Motion to go ahead and dispensing of notice period, my understanding in the Standing Orders is that the three ex officio members have a right at this particular time of the Motion to cast a vote as well, is that correct, can I ask for clarification, Mr Speaker?

The Speaker –

Usually, it's normally the elected members who have a power of vote, nobody else.

The Hon. Nicola Moore (Attorney General) –

Mr Speaker, a point of information. In relation to the relevant Order that we are speaking about, which is Order 10, Rule 4, it specifies that notice may be dispensed with in respect of

any proceedings for which notice is required only with the consent of the President and the assent of the majority of the members present at the time. And if one moves to the definition sections, which is at Order 1, Rule 2, Interpretation, member means member of the Council, including, for the avoidance of doubt, the Speaker, the Deputy Speaker and the ex officio members mentioned in section 48 (b) of the Constitution, that's, of course, the Chief Secretary, the Financial Secretary and myself, the Attorney General. Now, an elected member refers to the members elected pursuant to section 48 (b) (1) of the Constitution, so as a point of information, I would urge this House to adopt the interpretation which is specified in the Standing Orders and apply the Order as it is specifically drafted, which means that there has to be the assent of the majority of the members, being those included the ex officio members.

The Speaker –

That's a fair point, but is that not in conflict with the Constitution?

The Hon. Nicola Moore –

Well, the Standing Orders were made by Council in accordance with section 68 of the Constitution.

The Speaker –

But Standing Orders cannot exceed the powers of the Constitution?

The Hon. Nicola Moore –

They can't, but presumably the Attorney General at the relevant time cast his mind to whether or not that was in breach of the Constitution..... I read it as it appears, it appears quite clearly that in relation to, there is a difference between members and elected members. We're not, of course, speaking to the Motion itself, we're speaking as to whether or not notice can be waived.

The Speaker –

Yes, but my interpretation is if the ex officio members do not have any authority to vote on a Motion, why should they have authority to vote on the procedure?

The Hon. Nicola Moore –

Well, Mr Speaker, of course, Sir, you are the President of this House and, of course, you would need to rule upon the matter if a point of information was raised, which has been raised at this stage.

The Speaker –

Yes, I do think that the Standing Orders conflict here, otherwise if I allow this, it would mean to say ex officio members might be able to vote on how the Motions, so my ruling on this is whilst the Standing Orders are referred to in this way, it's not in keeping with the procedure of this Council and it's left to the elected members to vote. Can I take a count on the votes, please? Clerk of Council, elected members only?

Division

Ayes

Hon Lawson Henry
Hon Christine Scipio O'Dean
Hon. Pamela Ward Pearce

Noes

Abstentions

Hon. Derek Thomas
 Hon. Brian Isaac
 Hon. Nigel Dollery
 Hon. Wilson Duncan

Hon. Gavin Ellick

Hon. Cyril George
 Hon. Bernice Olsson

The Speaker –

Since there's a majority of people who voted in favour the Speaker, the President will allow the Motion.

The Hon. Christine Scipio O'Dean –
 May I speak, Mr Speaker?

The Speaker –
 You may speak.

The Hon. Christine Scipio O'Dean –

Just for information again, I'd like to thank the members for their support in dispensing the notice period that is required, but can I also ask for clarification, Mr Speaker, I know we do have a Order Paper in front of us and we do have five Motions as already laid out on the Order Paper, may I now ask when do I need to start raising my, bringing my Motion into the House, do I do it at the end of Motion 5 or do I wait until we do Adjournment Debate, I need your guidance on this, Mr Speaker? Thank you.

The Speaker –
 What's the urgency of the Motion?

The Hon. Christine Scipio O'Dean –

At the moment, Mr Speaker, it isn't urgent, I'm just looking for some advice and guidance, because I wouldn't want to be sitting here and not knowing when to stand up to do my Motion.

The Speaker –

Well, if it's an urgent Motion then I can take it right now, if it's urgent, if it's not that urgent, it's a private member's Motion, then it should fit in its place with the private members business.

The Hon. Christine Scipio O'Dean –

Mr Speaker, my understanding of urgent is matter of life and death, I don't see this as a matter of life and death so on that basis I would say it's not urgent.

The Speaker –

Thank you very much indeed. Can it then fall in its place? We will accept the Motion, it will fall into its place with private members business.

The Hon. Christine Scipio O'Dean –

Thank you Mr Speaker for that clarification.

The Speaker –

Thank you very much indeed. Clerk, call the next item, please?

6.

MOTIONS

Motion No. 1 – The Hon. Brian Isaac, Chairman, Social and Community Development Committee.

THE EMPLOYMENT RIGHTS (AMENDMENT) BILL, 2015

The Speaker –

Honourable Brian Isaac?

The Hon. Brian Isaac –

Mr Speaker, I beg to move that the Employment Rights (Amendment) Bill, 2015, be approved in principle and referred to a Committee of the whole Council.

The Speaker –

Thank you, Honourable Member. Is there a seconder for the Motion?

The Hon. Derek Thomas –

Mr Speaker, I beg to second.

The Speaker –

Thank you, Honourable Member. Honourable Mover?

The Hon. Brian Isaac –

Thank you, Mr Speaker. I would like to thank the Attorney General and her Chambers for the support in drafting the amendments to the Employment Rights Ordinance and the support of the Social and Community Development Committee. The Ordinance, which aims to protect the rights of women to equal pay and to make provisions for complaints procedures. It also removes orders for the reinstatement, re-engagement and the provisions for a cap on the level of compensation payable in claims relating to unfair dismissal. It has become necessary to amend the Employment Rights Ordinance to enable St Helena to comply with the requirements of the United Nations Convention for the Elimination of Discrimination against Women, known as CDOR, and to ensure equality by prohibiting the discrimination of women by reason of pay. There are other CDOR requirements to meet through changes in the other legislation and amending the Employment Rights Ordinance is the first step in addressing matters in equality in the treatment of women in society. The proposed changes to the legislation should result in a positive reaction from women, especially any who may be discriminated against in terms of pay at this time. There may be some negative reaction from employers who discriminate against women at the moment, but it's important to ensure that pay equality for women employees takes precedence. The Bill has been supported by the Social and Community Development Committee and at a meeting of the Legislative Council. Thank you, Mr Speaker.

The Speaker –

Thank you, Honourable Member. I put the question that the Employment Rights (Amendment) Bill, 2015, be approved in principle and referred to a Committee of the whole Council. The question is now open for debate. Honourable Derek Thomas?

The Hon. Derek Thomas –

Thank you, Mr Speaker. Mr Speaker, I rise in support of the Employment Rights (Amendment) Bill, 2015. It makes provision for complaints procedures for female employees to enforce the right to equal pay for women in that an employer shall not remunerate any female employee at a rate which is lower than the rate at which a male employee in a similar position and with equal skills and experience is or would be remunerated. Such provision is only right and proper as we strive as a nation who supports and recognise the importance of human rights. Mr Speaker, I support the Bill.

The Speaker –

Thank you, Honourable Member. Honourable Lawson Henry?

The Hon. Lawson Henry –

Thank you, Mr Speaker. I, too, rise in support of this Bill as not only does it provide for equal pay for women, but it also provides provisions to female employees to enforce the right to equal pay for women. In addition, the Bill removes the current provision for orders of reinstatement and re-engagement and also removes the cap for level of compensation payable to claims relating to unfair dismissal. The proposed changes to the Employment Rights legislation is a positive step forward for women, especially any who may be discriminated against in terms of pay at this time. Mr Speaker, I support this Motion and commend my Honourable Friend the Mover and his Committee for bringing it forward to the House today, it is way overdue.

The Speaker –

Thank you, Honourable Member. Honourable Christine Scipio O'Dean?

The Hon. Christine Scipio O'Dean –

Thank you, Mr Speaker. Mr Speaker, the Convention of elimination of all forces of discrimination against women, as we all know as CEDOR, provides the basis for realising equality between women and men through ensuring women's equal access to and equal opportunities in political and public life. The Bill presented today makes provision for a complaints procedure for female employees which enforce the right to equal pay for women, which is a huge step, Mr Speaker, in addressing matters of inequality in the treatment of women in our society. Mr Speaker, I believe that the Human Rights and Equality Commissioners are being appointed who will work towards elimination of discrimination and I look forward to having future discussions on new legislation or policies that will address this. Mr Speaker, I would like to thank the Human Rights Office, especially Catherine Turner for her hard work and dedication ensuring that this Bill is presented today. Also, Mr Speaker, I'd like to thank the Social Community and Development Committee for driving this for it to be presented today as well. So, Mr Speaker, I support this Bill.

The Speaker –

Thank you, Honourable Councillor. Honourable Pamela Ward Pearce?

The Hon. Pamela Ward Pearce –

Thank you, Mr Speaker. I rise in support of this amended Bill which will protect the rights of women to equal pay, but it also provides other submissions for them ensuring that in this, the twenty-first century we move towards a truer sense of the word equality. Thank you very much to my Honourable Friends for bringing this Bill to the House and for the Committee work that's been done on it and for the Human Rights Commission who has had the strength to bring this as well. Thank you.

The Speaker –

Thank you, Honourable Pamela Ward Pearce. Any other Member wishes to speak to the Motion? Honourable Wilson Duncan?

The Hon. Wilson Duncan –

Mr Speaker, I rise in support of this excellent Bill, I believe it is long overdue and I don't only support it for wages, I support it in everything, equality for women.

The Speaker –

Thank you, Honourable Member. Honourable Gavin Ellick?

The Hon. Gavin Ellick –

I stand in support of this Motion and thank my colleagues on the Social and Economic Development for getting it done. Thank you.

The Speaker –

Thank you, Honourable Councillor. Honourable Cyril George?

The Hon. Cyril George –

Mr Speaker, I rise in support of this Bill, it's long overdue and it's pleasing to see that we've got now a Bill which gives the women human rights issues. Thank you very much, Mr Speaker.

The Speaker –

Thank you very much, Honourable Member. Any other member wishes to speak to the Bill? Honourable Mover, would you like to reply, please?

The Hon. Brian Isaac –

Mr Speaker, I would just like to thank the Honourable Members for their support in this Motion. Thank you, Mr Speaker.

The Speaker –

Thank you, Honourable Member.

Question that the Bill be approved in principle and referred to a Committee of the whole Council, put and agreed to.

The Speaker –

Honourable Mover ?

The Hon. Brian Isaac –

Mr Speaker, I beg to move that this Council do resolve itself into a Committee to consider the detailed provisions of the Bill.

The Speaker –

Is there a seconder?

The Hon. Derek Thomas –

Mr Speaker, I beg to second.

The Speaker –

Thank you, Honourable Member.

Question that the Council do resolve itself into a Committee, put and agreed to.

Council in Committee.

The Speaker –

I put the question that the Title, Enacting Clause and Clause 1 do stand part of the Bill.
Would you like to explain it?

The Hon. Nicola Moore (Attorney General) –

Citation, the interpretation and a brief explanatory note as to the amending provisions of the Ordinance which have been spoken to by the Honourable Elected Members.....?.....

Title, Enacting Clause and Clause 1.

Question put and agreed to.

The Speaker –

Clause 2. Right to equal pay.

The Hon. Nicola Moore =

Yes, this amends the principal Ordinance to insert a number of sections which relate to the provision of the right to equal pay, not only the provisions of the right to it, but the right to enforce it and so it inserts 26(a) which requires that a female employee shall not be remunerated in any lesser fashion than a male employee who's employed in a similar position with the skills and experience and 26(b) which allows a female employee who becomes aware of the fact that she is employed in a similar position to a male, but paid at a lower rate, provides for provisions to allow her to make the application to the Regulator, the Regulator can investigate her claim, require such records as are necessary for him to come to his conclusion and ultimately to grant not only equal pay going forward but also to grant pay from the time that she was first employed and first unequally paid.

The Speaker –

Thank you. Any questions on Clause 2, please?

Clause 2.

Question put and agreed to.

The Speaker –

Can we take Clause 3 and 4?

The Hon. Nicola Moore –

We can indeed. So fairness of dismissal brings us into line with the common law which permits the Labour Regulator to take into account all relevant considerations in deciding on the fairness of dismissal, including the conduct of the employee and that's Clause 3.

The Speaker –

Any questions.....

The Hon. Nicola Moore –

Oh, sorry, you also wished Clause 4, Mr Speaker, I do apologise. It's referring to a complaint for unfair dismissal that repeals section 41 of the principal Ordinance and that allows, that deletes the reinstatement and re-engagement provisions but allows for compensation in place of that.

The Speaker –

Thank you very much. Any questions on that?

Clauses 3 and 4.

Question put and agreed to.

The Speaker –

Clauses 5 and 6.

The Hon. Nicola Moore –

Yes, thank you, Mr Speaker. 5 refers to the provisions in the original Bill which are now deleted which made provision for reinstatement and re-engagement and section 6 deals with a penalty which was payable in the original Ordinance in the event that the employer failed to comply with an order from the Regulator to reinstate or re-engage and so that obviously deletes that part of the section.

The Speaker –

Any questions?

Clauses 5 and 6.

Question put and agreed to.

The Speaker =

Clause 7.

The Hon. Nicola Moore –

Yes, this provides that, in the original Ordinance there can be an appeal by an employee in relation to various matters including compensation; this simply allows a female employee who has had an order made in respect of equal pay to also appeal or avail herself of the appeals process.

The Speaker –

Any questions on the appeal?

Clause 7.

Question put and agreed to.

The Speaker –

Clause 8 – Enforcement of Regulator Order.

The Hon. Nicola Moore –

Yes, this deals with essentially deleting enforcement of orders in respect of reinstatement and re-engagement and it also inserts failures to comply with Regulator orders in relation to equal pay.

The Speaker –

Any questions?

Clause 8.

Question put and agreed to.

Council resumed.

The Speaker –

Honourable Member, the Bill is to be reported.

The Hon. Brian Isaac –

Mr Speaker, I beg to report that the Employment Rights (Amendment) Bill, 2015, passed the Committee with no amendments and to move that this Committee approve the said Bill and recommends to the Governor that it should be enacted. Thank you, Mr Speaker.

The Speaker –

Thank you, Honourable Member. Is there a seconder to that Motion?

The Hon. Derek Thomas –

Mr Speaker, I beg to second.

The Speaker –

Thank you, Honourable Member. Mover, you may speak again to the Motion?

The Hon. Brian Isaac –

Mr Speaker, once again, I would just like to thank my Honourable Colleagues, the Honourable Members, for their support in this Bill and I would also like to make an apology to Mrs Catherine Turner, the Human Rights Office, an oversight of not making a mention in my earlier presentation for her support in this piece of work. Thank you, Mr Speaker.

The Speaker –

Thank you, Honourable Member. I put the question that this Council approves the Employment Rights (Amendment) Bill, 2015, and recommends to the Governor that it should be enacted. Any other Member wish to speak?

Question that Council approves the Bill and recommends to the Governor that it should be enacted, put and agreed to.

The Speaker –

Thank you, Honourable Members. Next item, please

Motion No. 2 – The Honourable Brian Isaac, Chairman, Social and Community Development Committee.

THE JURIES (AMENDMENTS) BILL, 2015

The Speaker –

Honourable Brian Isaac?

The Hon. Brian Isaac –

Mr Speaker, I beg to move that the Juries (Amendments) Bill, 2015, be approved in principle and referred to a Committee of the whole House.

The Speaker –

Thank you, Honourable Member. Is there a seconder for the Motion?

The Hon. Derek Thomas –

Mr Speaker, I beg to second.

The Speaker –

Thank you, Honourable Member. Honourable Mover, would you like to speak to the Motion?

The Hon. Brian Isaac –

Mr Speaker, I would first like to thank the Attorney General for raising the need to amend the Juries Ordinance, Cap 20, and for the support of her Chambers in drafting the amendments to the current Ordinance which are outdated and the amendments are to take account of that. The Bill seeks to allow for jurors to separate after they have retired to consider their verdict. This is a provision which has been in force in the UK since 1994 when the UK Juries Act was amended. It also allows for the majority direction making the likelihood of a hung jury significantly less, thus sparing the expense of a retrial and the uncertainty and pressures on defendants. The death penalty has been removed and also allow for jurors to be aged eighteen years and upward. This is consistent with the UK legislation and the local Elections Ordinance. The draft Bill includes an amendment to the Criminal Procedures Ordinance, Cap 23 increasing the minimum number of jurors to nine having previously being set as eight. The introduction of more modern legislation for juries should have a positive social impact as should the provisions to allow the majority verdict. The changes to the Juries Ordinance have been agreed by the Social and Community Development Committee and has also been discussed at informal LegCo meetings of the Legislative Council. Honourable Members have

also made a mention of the proposed changes at constituency meetings. Thank you, Mr Speaker.

The Speaker –

Thank you, Honourable Member. I put the question that the Juries (Amendment) Bill, 2015, be approved in principle and referred to a Committee of the whole Council. The question is now open for debate. Honourable Derek Thomas?

The Hon. Derek Thomas –

Thank you, Mr Speaker. Mr Speaker, I rise in support of the Juries (Amendment) Bill, 2015. The Bill is designed to add value to our Judiciary System. It provides for a provision to extend the age of jurors between the age of eighteen and seventy, providing for a greater pool of persons who will be eligible to perform the role of jurors in a small community. It makes provision for a majority rather than unanimous verdicts which will add great value to decision making in criminal proceedings. In support of this, the Criminal Procedure Ordinance is also amended to increase the minimum number of jurors from eight to nine. Mr Speaker, these are all sensible amendments in the interest of justice. I support the Bill.

The Speaker –

Thank you, Honourable Member. The Honourable Lawson Henry?

The Hon. Lawson Henry –

Thank you, Mr Speaker. I, too, rise in support of the Bill to amend the Juries Ordinance. The principal Ordinance I note was enacted some thirty-six years ago. More complex cases are coming before our Courts, the Courts are sitting more frequently and due to population demographics our jury pool is constantly shrinking. It is becoming more difficult to field sufficient members from society to maintain a reasonable jury register. The Bill also seeks to amend unanimous verdicts to majority verdicts; other jurisdictions have done this many years ago. I also support the proposed amendment to lower the age for jury service from twenty-one to eighteen and to increase the age from sixty-five to seventy before a person can be exempt from jury duty. I therefore support this Bill before the House today. Thank you.

The Speaker –

Thank you, Honourable Member. Any other Honourable Member, Honourable Nigel Dollery?

The Hon. Nigel Dollery –

Mr Speaker, when we were discussing this as members together I was very much against having a ceiling of seventy and felt that as I got older and older and older my wisdom would improve. My colleague, Councillor Lawson Henry, disagreed with me strongly and I must admit as each day goes on I think I'm delighted that I should not be on a jury over the age of seventy. Thank you, Sir.

The Speaker –

Thank you, Honourable Member. Any other Honourable Member wish to speak to the Juries Bill? Honourable Wilson Duncan?

The Hon. Wilson Duncan –

Mr Speaker, I rise in support of this Bill.

The Speaker –

Thank you, Honourable Member. Honourable Cyril George?

The Hon. Cyril George –

Mr Speaker, I rise in support of this Bill. To begin with I did have reservations on the age, but now I realise that I won't be called upon. Thank you very much, Mr Speaker.

The Speaker –

Thank you, Honourable Member. Any other Honourable Member wish to speak? Honourable Pamela Ward Pearce?

The Hon. Pamela Ward Pearce –

Thank you, Mr Speaker. I welcome and support the amendments to the Juries Bill which makes provision for a majority verdict rather than a unanimous and it increases the number of jurors, the minimum number of jurors available from nine and extends the age of the juror. While I recognise that some Honourable Members might feel that they have served their society at the age of retirement or to be able to be excused from jury service I would argue that the older person has so many life experiences that would bring a great wealth of experience and is invaluable to jury service. Thank you, Sir.

The Speaker –

Thank you, Honourable Member. You want a second bite as a point of information.

The Hon. Nigel Dollery –

I note my colleague's comments; wisdom does tend to fade as you get older. Thank you.

The Speaker –

Alright. Anybody else wishes to speak? Honourable Mover, you may wish to reply?

The Hon. Brian Isaac –

Mr Speaker, once again I would like to thank the Honourable Members for their support to this stage. Thank you, Mr Speaker.

The Speaker –

Thank you, Honourable Member.

Question that the Bill be approved in principle and referred to a Committee of the whole Council, put and agreed to.

The Speaker –

Honourable Mover?

The Hon. Brian Isaac –

Mr Speaker, I beg to move that the Council do dissolve itself into a Committee to consider the detailed provisions of the Bill.

The Speaker –

Thank you. Is there a seconder?

The Hon. Derek Thomas –

Mr Speaker, I beg to second.

The Speaker –

Thank you, Honourable Member.

Question that Council do resolve itself into Committee, put and agreed to.

Council in Committee.

The Speaker –

Right, Honourable Members, we're now in Committee of the whole Council and we are supposed to work through the details of the Bill.

I put the question that the Title, Enacting Clause and Clause 1 do stand part of the Bill.
Honourable Attorney General?

The Hon. Nicola Moore –

Mr Speaker, the short explanatory note citation and interpretation at this section.

Title, Enactment Clause and Clause 1.

Question put and agreed to.

The Speaker –

Clause 2.

The Hon. Nicola Moore –

Mr Speaker, well, perhaps in light of my, of the remarks made by a number of Honourable Members we should be saying, not calling qualification for jury service we should be calling it eligibility for jury service but nonetheless the original law says qualification and so this clause gives the qualification being now between the age of eighteen and seventy, previously between twenty-one and sixty-five to mirror, in fact, the current thinking in the United Kingdom where judicial service has now been extended from sixty-five to seventy mandatory retirement, so clearly it's considered that wisdom does improve with age.

The Speaker –

Any questions on that?

Clause 2.

Question put and agreed to.

The Speaker –

Separation – Clause 3.

The Hon. Nicola Moore –

Thank you, Mr Speaker. To amend section 12, previously the jury could only separate up until the time at which they retired to consider their verdict. This permits the Judge, in certain circumstances, to allow jurors to, for example, go home at the end of a day's deliberations and then to come back the following morning to reconvene and consider their verdicts further.

The Speaker –
Any questions or comments?

Clause 3.

Question put and agreed to.

The Speaker-
Clause 4.

The Hon. Nicola Moore –
Clause 4 amends the principal Ordinance, in fact, there should an amendment to it, it reads currently, it allows for where a juror either dies or discharged or for various reasons jurors cannot continue, it permits the loss of two, in fact, from nine to not less than seven and, in fact, the Ordinance should read, the amending section should read in the penultimate line, “for all the purposes of that trial properly constituted” not “property” constituted, so I would move to amend the amending section so that it reads “properly” not “property”.

The Hon. Colin Owen – ?
I’m happy to second that.

The Speaker –
Is there a seconder for that? Thank you very much indeed.

The Hon. Christine Scipio O’Dean –
I beg to second, Mr Speaker.

The Speaker –
It’s been seconded.

The Hon. Christine Scipio O’Dean –
I didn’t hear him.

The Speaker –
Any comments and any further questions on that?

Question on amendment, the word “property” to be amended to the word “properly”, put and agreed to.

Clause 4 (as amended).

Question put and agreed to.

The Speaker –
Clause 5 – Majority Verdicts.

The Hon. Nicola Moore –
Thank you, Mr Speaker. It allows for, essentially, in brief, once, if section 6 is adopted, it allows for verdicts of 7 to 2 or 8 to 1 where the jurors and that a majority verdict should be

reached if at all possible, but there may come a time after at least two hours deliberation where the Judge considers he can give an appropriate direction to the jury.

The Speaker –

Any questions on that?

Clause 5.

Question put and agreed to.

The Speaker –

The final clause, Clause 6.

The Hon. Nicola Moore –

Yes, this is a, what's called a consequential amendment. Because of the amendment to majority verdicts it amends section 185 of the Criminal Procedure Ordinance which specifies the number of jurors required in a criminal trial and it increases the number from eight to nine.

The Speaker –

No questions?

Clause 6.

Question put and agreed to.

Council resumed.

The Speaker –

Bill to be reported. Honourable Mover?

The Hon. Brian Isaac –

Mr Speaker, I beg to move that the Juries (Amendment) Bill, 2015, passed the Committee with one amendment and to move that this Council approves the said Bill and recommends to the Governor that it should be enacted.

The Speaker –

Is there a seconder?

The Hon. Derek Thomas –

Mr Speaker, I beg to second.

The Speaker –

Honourable Mover, you may speak to the Motion.

The Hon. Brian Isaac –

Mr Speaker, again I would like to Honourable Members for their support in passing this very important Bill. Thank you, Mr Speaker.

The Speaker –

Thank you. I put the question that this Council approves the Juries (Amendment) Bill, 2015, as amended, and recommends to the Governor that it should be enacted. Any Member wish to speak on the principles? No?

Question that the Council approves the Bill, as amended, and recommends to the Governor that it should be enacted, put and agreed to.

The Speaker –

Thank you, Honourable Members. Clerk, call the next item of business, please.

Motion No. 3 – The Honourable Derek Thomas, Chairman, Public Health Committee.

THE MENTAL HEALTH AND MENTAL CAPACITY BILL, 2015

The Speaker –

Honourable Derek Thomas?

The Hon. Derek Thomas –

Mr Speaker, I beg to move that the Mental Health and Mental Capacity Bill, 2015, be approved in principle and referred to a Committee of the whole Council.

The Speaker –

Thank you, Honourable Member. Is there a seconder?

The Hon. Brian Isaac –

Mr Speaker, I beg to second.

The Speaker –

Thank you, Honourable Member. Honourable Mover, would you like to speak to the Motion?

The Hon. Derek Thomas –

Mr Speaker, Honourable Members, the Mental Health and Mental Capacity Ordinance, 2015, is very important and a necessary piece of legislation. As a nation, we have human rights obligations to those persons who lack mental capacity when it comes to their detention, care and treatment. The Bill provides for such human rights obligations to mentally disordered persons. The Bill also makes provision for a guardian to be appointed to act for such persons who lack mental capacity and it also makes provision for mental, for hospital medical staff, sorry, for the treatment and care of mental persons to be able to properly discharge their duties in relation to their detention, treatment and care for such persons. Mr Speaker, the Bill provides for greater rights and greater protection to those persons who lack mental capacity. Mr Speaker, in closing, I would just like to thank Mr Ian Rummery from the Health Service for the high level of commitment and research he has put into this Bill in putting a draft forward to the Public Health Committee and also assisting Councillor Cyril George with the public consultation exercise during my absence.

Mr Speaker, finally, I would also like to thank the Attorney General's Chambers for the work they've done in putting this Bill together to enable it to be presented here today and treating it as a high priority when it comes to human rights obligations on mentally disordered persons. Thank you, Mr Speaker.

The Speaker –

Thank you, Honourable Member. I put the question that the Mental Health and Mental Capacity Bill, 2015, be approved in principle and referred to a Committee of the whole Council. The question is now open for debate. The Honourable Lawson Henry?

The Hon. Lawson Henry –

Mr Speaker, I rise in support of the Motion with the Mental Health and Mental Capacity Bill. The existing legislation, the Mental Health Ordinance was enacted some twenty-nine years ago and whilst in some respects it mirrors UK legislation, it does not comply with deprivation of liberty considerations as required by our Constitution. The Bill updates provisions which allow for independent oversight of the detention of patients or continuation orders under which treatment is administered. These Mental Health Tribunals comply with principles of natural justice and allow for oversight, scrutiny and representation of patients to ensure human rights compliance. The Bill also makes provision for guardianship for the care of those under sixteen who have mental disorders. Equally important, the Bill makes new provisions for the care and treatment of those who suffer from mental disorders who are within the Criminal Justice system which ensures treatment and detention if necessary to protect the community from risk or harm. It provides for it to be a criminal offence to mistreat those who have mental disorders or lack capacity thus protecting those who cannot otherwise participate within the Criminal Justice system when they are victims. The Bill will help to protect those most vulnerable members of our community and bring St Helena into the modern age in regard to mental health. I commend it to the House and fully support its passage. Thank you, Mr Speaker.

The Speaker –

Thank you, Honourable Member. Honourable Brian Isaac?

The Hon. Brian Isaac –

Mr Speaker, I support the Mental Health and Mental Capacity Bill, 2015, which repeals the current Mental Health Ordinance Cap 57. The Bill makes provisions for care of those under the age of sixteen years and suffers from mental disorder. It also makes provision which allows for independent oversight of the detention of patients and provides for guardianship and care for those under sixteen who have mental disorder. A very important provision is that it provides for it to be a criminal offence to mistreat those who have mental disorder and provides protection for those who suffer mental disorder within the Criminal Justice System. The Bill offers a lot of other protections for those suffering from mental disorder and if passed today it will enhance the future lifestyle of many of our people for years to come. Mr Speaker, I support the Bill.

The Speaker –

Thank you, Honourable Member. Does any other Honourable Member wish to speak to the Bill? Honourable Pamela Ward Pearce?

The Hon. Pamela Ward Pearce –

Mr Speaker, I rise in support of this Bill as it provides a framework of protection and support for some of society's most vulnerable, people with mental health problems. It also makes provision for advanced decisions to refuse treatment which allows one to exercise the ultimate control of one's own body especially when capacity diminishes. I support this Bill. Thank you.

The Speaker –

Thank you, Honourable Member. Any other Honourable Member wishes to speak to the Bill? Honourable Mover, would you then like to reply?

The Hon. Derek Thomas –

Thank you, Mr Speaker. I'd just like to thank those Honourable Members who spoke in support of the Bill.

The Speaker -

Thank you, Honourable Member.

Question that the Bill be approved in principle and referred to a Committee of the whole Council, put and agreed to.

The Speaker -

Mover?

The Hon. Derek Thomas –

Mr Speaker, I beg to move that the Council do resolve itself into a Committee to consider the detailed provisions of the Bill.

The Speaker -

Is there a seconder?

The Hon. Brian Isaac –

Mr Speaker, I beg to second.

The Speaker -

Thank you, Honourable Member.

Question that the Council do resolve itself into a Committee, put and agreed to.

Council in Committee.

The Speaker -

Honourable Members, at this stage of the proceedings I propose to absent myself from the Council to enable the Deputy Speaker to chair the Committee of the whole Council as the Council considers the detailed provisions of the Bill. Thank you, Honourable Members.

Deputy Speaker –

Please be seated, Honourable Members. I put the question that the Title, Enacting Clause and Clause 1 do stand part of the Bill. Does any Honourable Member wish to speak?

The Hon. Nicola Moore –

Madam Deputy Speaker, thank you. The short explanatory passage and citation amendment are included there.

Deputy Speaker –

Honourable Christine Scipio O'Dean?

The Hon. Christine Scipio O'Dean –

Thank you, Madam Chair. Under Section 1, Attorney General, it just says “shall come into force on” and there is no date.

Deputy Speaker –

Attorney General?

The Hon. Nicola Moore –

Madam Deputy Speaker, that’s absolutely correct. As a matter of interpretive form it comes into force on the date it’s published and that’s the date which will be inserted on the date of publication.

The Hon. Christine Scipio O'Dean –

Thank you.

Deputy Speaker –

Any other questions?

The Hon. Nicola Moore –

Unless, of course, this House wishes to give a specific date in which case the citation and commencement clause can be amended to give a particular date upon which this House would wish it to come into effect.

Deputy Speaker –

The Honourable Derek Thomas?

The Hon. Derek Thomas –

Thank you, Madam Chairman, I’d just like to comment I’d like the Bill to come into force as soon as possible.

Deputy Speaker –

And do I take it, in that case, perhaps you’re suggesting there should be a date inserted as an amendment, I’ll be guided by the Honourable Attorney General?

The Hon. Nicola Moore –

Madam Deputy Speaker, as a matter of law it can’t come into force until such time as it is published because otherwise it would not be available for persons to know that?.....so the earliest date would be the date on which it’s published, which we would hope would be shortly after this House approves it in whatever form it’s approved.

The Hon. Derek Thomas –

Thank you.

Deputy Speaker –

Thank you.

Title, Enacting Clause and Clause 1.

Question put and agreed to.

Deputy Speaker –

I put the question that Clause 2 do stand part of the Bill. Interpretation. Attorney General?

The Hon. Nicola Moore –

Thank you. This is the interpretation section giving all of the interpretations which are used within the Bill itself.

Deputy Speaker –

Any questions or comments from Members?

Clause 2.

Question put and agreed to.

Deputy Speaker –

I put the question that Clauses 3, 4 and 5 do stand part of the Bill, Application of Chapter and Approval of Practitioners and Medical Centres. Attorney General?

The Hon. Nicola Moore –

Madam Deputy Speaker, this is Part II which deals with the application of the chapter to the reception, care and treatment of mentally disordered persons, it deals with the manner in which the Governor by order approves medical practitioners who are specified within the Ordinance to have particular tasks and it allows for designation of approved medical sentence for the detention or treatment of those who suffer from mental disorder.

Deputy Speaker –

Any questions or comments, Honourable Members?

Clauses 3, 4 and 5.

Question put and agreed to.

Deputy Speaker –

I put the question that Clauses 6, 7, 8 and 9 do stand part of the Bill, we're looking at compulsory detention in hospital.

The Hon. Nicola Moore –

Madam Deputy Speaker, this deals with the detention for assessment for a period of seventy-two hours. Subsequently in section 7 the detention and treatment within hospital and the provisions which apply to that. Section 8 deals with detention by a registered nurse for a very short period of time, not more than six hours, where an approved medical doctor is not present, but only in certain circumstances and that's where it's necessary for the health and safety or protection of others and 9 deals with the effect of the hospital treatment order which is effectively to discharge any previous order so that it's only the new order that's in force.

Deputy Speaker –

Thank you. Any questions or comments, Members?

Clauses 6, 7, 8 and 9.

Question put and agreed to.

Deputy Speaker –

I put the question that Clauses 10, 11, 12 and 13 do stand part of the Bill.

The Hon. Nicola Moore –

Thank you, Madam Deputy Speaker. 10, 11, 12 and 13 at the requirement to keep patients under review the requirement for a Duty Manager, Ward Manager to give information to a patient as to their rights, their right to independent examination, legal practitioners, codes of practice and the like, there's a right of a patient to be independently examined and a right of a patient to have right of an access by statute to a legal practitioner.

Deputy Speaker –

Any questions or comments?

The Hon. Christine Scipio O'Dean –

Just a observation, Deputy Madam Chair, I know it won't make any difference to the actual Bill, but just seem a little tidying up exercise, because I note on 6 (a) the line has dropped and again on section 12 (1) where you have a line saying qualified and professional persons on the next side, it's just a tidying up exercise, it's just an observation.

The Hon. Nicola Moore –

Yes, Madam Deputy Speaker, there seems to be some formatting difficulties in the manner in which this Bill has been printed which has led to some odd layout, but we will ensure the correct printing of the document that those lines have been ironed out.

The Hon. Christine Scipio O'Dean –

Thank you.

Deputy Speaker –

Thank you.

Clauses 10, 11, 12 and 13.

Question put and agreed to.

Deputy Speaker –

I put the question that Clauses 14 and 15 do stand part of the Bill.

The Hon. Nicola Moore –

Yes, 14 and 15 deal with the discharge of a patient either from a community treatment or from a detention treatment in hospital and the requirement upon discharge to inform the nearest relative of the patient's discharge, but not if that's against the wishes of the patient.

Deputy Speaker –

Any questions or comments? Could I just ask a question?

The Hon. Nicola Moore –

Yes, Madam.

Deputy Speaker –

Thank you. When it refers to the patient's nearest relative, does that also include if there's a guardian for that particular patient?

The Hon. Nicola Moore –

The nearest relative, thank you, Madam Deputy Speaker, the nearest relative is defined in fact later in the Ordinance at.....if you'll forgive me.....

Deputy Speaker –

At 93, Detention?

The Hon. Nicola Moore –

I'm sorry, Madam Deputy Speaker?

Deputy Speaker –

Clause 93?

The Hon Nicola Moore –

93, I'm grateful.

Deputy Speaker –

I'm not sure if I have got the right one.

The Hon. Nicola Moore –

Yes, 92 is the definition section, I'm grateful to the Financial Secretary, 92 includes life partners, son, daughter and so forth, but wouldn't immediately include a guardian. Obviously if a guardian is appointed in respect of a particular patient they have specific duties in respect of the care and supervision of the patient and that's dealt with later, particularly in respect of those who lack capacity, mental capacity in the Chapter II of the Bill.

Deputy Speaker –

Thank you, thank you, Members.

Clauses 14 and 15.

Question put and agreed to.

Deputy Speaker –

I put the question that Clause 16 do stand part of the Bill.

The Hon. Nicola Moore –

Thank you, Madam Deputy Speaker. This requires the Senior Medical Officer to consider any representations made by a person who's been detained either for assessment or treatment and it requires certain steps to be taken in respect of those representations and from whom the information is sought, it also requires that if a Senior Medical Officer has been involved in the patient's treatment that he undertakes a review by another approved doctor to ensure that the detention is for no longer than is necessary.

Deputy Speaker –

Any questions, Honourable Members?

Clause 16.

Question put and agreed to.

Deputy Speaker –

I put the question that Clauses 17 and 18 do stand part of the Bill.

The Hon. Nicola Moore –

Thank you, Madam Deputy Speaker. 17 and 18 deal with absence from hospital for those who have been detained for treatment and also those who have failed to return there after a period of leave or who've absented themselves without leave and what steps can be taken to return the patient to the approved hospital or medical centre.

Deputy Speaker –

Thank you. Any questions, Members?

Clauses 17 and 18.

Question put and agreed to.

Deputy Speaker –

I put the question that Clause 19 do stand part of the Bill.

The Hon. Nicola Moore –

Thank you, Madam Deputy Speaker. The transfer to hospital. This allows for a patient who has been detained for assessment somewhere other than the hospital or an approved medical centre for the Senior Medical Officer to arrange transfer to the hospital as soon as practical.

Deputy Speaker –

Any questions?

Clause 19.

Question put and agreed to.

Deputy Speaker –

I put the question that Clause 20 do stand part of the Bill.

The Hon. Nicola Moore –

Yes, thank you, Madam Deputy Speaker. We could in fact, yes, Clause 20 deals with a warrant that can be obtained from the Chief Magistrate in respect of if there are reasonable causes to suspect that a person who is suffering from mental disorder is, in fact, being ill treated, neglected or is unable to care for themselves or is dangerous to himself/herself or others. It allows the Chief Magistrate to examine the evidence and to give a warrant and that warrant to be executed by a Police Officer as necessary.

Deputy Speaker –

Any questions or comments, Honourable Members?

Clause 20.

Question put and agreed to.

Deputy Speaker -

I put the question that Clauses 21, 22 and 23 do stand part of the Bill. AG?

The Hon. Nicola Moore -

Thank you, Madam Deputy Speaker. These clauses deal with dealing with those mentally disordered persons who've been found in public places for detention, custody and conveyance to hospital for an assessment, time limits therein and retaking those who have escaped from custody in the circumstances that they were taken to the hospital.

Deputy Speaker -

Any questions, please?

Clauses 21, 22 and 23.

Question put and agreed to.

Deputy Speaker -

I put the question that Clauses 24 to 32, rather than saying them individually, do stand part of the Bill, we're looking at Community Treatment Orders.

The Hon. Nicola Moore -

Thank you, Madam Deputy Speaker. These clauses in their entirety with Community Treatment Orders and conditions which can be applied to those Community Treatment Orders, the duration of them, what effect that has on a patient, the duty to give information to those Community patients and a power of recall to hospital and what powers there are in respect of patients who have been recalled to hospital if they're on a Community Treatment Order. There's also provisions relating to the effect of both provoking and the expiry of the Community Treatment Order and what effect that has in respect of any particular assessment or ongoing treatment.

Deputy Speaker -

Any questions, Honourable Members?

Clauses 24 to 32.

Question put and agreed to.

Deputy Speaker =

I think perhaps it's just worth mentioning for the listening public that, of course, particularly the Public Health Committee have been through this in some detail at Committee stages and also that the Councillors have been through it as a body in informal Council, so it's understandable why perhaps they're not asking questions at this stage.

The Hon. Nicola Moore -

Point of information, Madam Deputy Speaker, the Honourable Elected Members have, in fact, been through this clause by clause in quite some detail, and we had some very detailed

discussions at an earlier date and some amendments were performed so perhaps that's the reason for the haste in going through several sections at once.

Deputy Speaker –

If any Member feels that we're going to quickly you can always just indicate and we'll go slightly slower, but I have taken the advice from the Attorney General in terms of how to group the clauses to make them make sense as we go through.

I put the question that Clauses 33 to 40 do stand part of the Bill and we're looking at Guardianship, perhaps I should have looked there before asking my earlier question. AG?

The Hon. Nicola Moore –

These sections deal with a patient who's attained the age of sixteen, but not eighteen, or a patient over sixteen would be received into guardianship, under sixteen of course would be the responsibility of the person having parental responsibility or *qui qua* parental responsibility for the child, so over sixteen a guardianship order can be made under section 33, the application is made, not without assessment by a doctor, they have to be seen within twenty-eight days of the application and it can be made to the Tribunal and if a guardianship order is made then there are various effects so that the effects are at 34, in other words, the guardianship order confers on that person the power to say where a patient resides, where they go, for example, for time specified for treatment or training or education, a power to require access to the patient to be given at any place to any approved practitioner. There's also a duty to give patients who are under guardianships under review, a continuing review and that's the underlying principle within this whole Bill, is that everything has to be under review, it has to be subject to scrutiny both from the Courts and also the Tribunal, but ultimately, if necessary, the public guardian who's referred to later. The Senior Medical Officer has to give information to patients and there can be a transfer of guardianship, for example, if somebody's incapable through illness or absence, that can be transferred. Powers under 38 discharge the guardianship so that can be by application of the person who's subject of the Guardianship Order or by the guardian themselves or any other interested party if it's necessary for the welfare or protection of the person. And the Senior Medical Officer must consider representations on the Guardianship Order and a patient who is subject to guardianship can be considered to be absent without leave if they are in a place where they have not been directed and that would obviously have certain consequences to ensure their safety.

Deputy Speaker –

Thank you. Any questions, Members?

Clauses 33 to 40.

Question put and agreed to.

Deputy Speaker –

I put the question that Clause 41 to 48 do stand part of the Bill. We're now looking at the Mental Health Tribunal. AG?

The Hon. Nicola Moore –

Thank you, Madam Deputy Speaker. These sections, 41 to 48, deal with the composition of the Mental Health Tribunal which is an oversight body for those who suffer from mental disorder and are subject to treatment orders. It gives the constitution of them, it allows for an

appeal against a Hospital Treatment Order, an appeal against Community Treatment Orders and steps that can be taken. It can be an appeal against the revocation of a Community Treatment Order, in other words, if somebody has been subject to a Community Treatment Order but it's revoked and they're given a Hospital Treatment Order which has deprivation of liberty consequences, there can also be an application to the Tribunal for, or there has to be a renewal of the Hospital Treatment Order, that has to happen every six months and if the Hospital Order goes on for that period of time and each of those steps requires certain multi disciplinary teams and reports to be provided to the Tribunal. It also requires there to be the same for the renewal of the Community Treatment Order. The Tribunal, under section 47, can regulate its own procedure but it must make arrangements for the presentation of written or all evidences the patient requires, that the patient can be represented if they wish by a legal practitioner and the reports that are provided must be provided to the legal practitioner in order that that person can properly represent them. Also in that section, which is 47, a patient is entitled to make either written or oral submissions and other information is required to be considered by the Tribunal and there are provisions to ensure that the patient can also have information provided by the relative if that person so consents. And then, finally, the Tribunal has to give reasons, well, that's under section 48, and that's in order to, within seven days of the hearing the Tribunal must issue its decision together with a statement of its reasons and that must be sent both to the Medical Officers, the patient and the patient's practitioner, legal practitioner, that gives the transparency and that allows the patient to know the basis upon which a decision has been made for a Treatment Order...?....

Deputy Speaker –

Thank you. Any questions?

Clauses 41 to 48.

Question put and agreed to.

Deputy Speaker –

I put the question that Clauses 49 to 57 do stand part of the Bill. Patients concerning criminal proceedings or under sentence.

The Hon. Nicola Moore –

Madam Deputy Speaker, 49 to 57 deal with the important clauses relating to powers to detain or remand for treatment or powers to treat after conviction or after a finding of fact that those who are not fit for a trial, 49 is a remand to a hospital for a report to be made, so either before or after conviction a remand of an accused person to hospital for treatment, so if it's going to be better in hospital rather than in custody and there are time limits within which they must comply or the maximum period which they can be remanded for treatment. There's a power of the Court under 51 to order detention in hospital or guardianship, that's where an offender is convicted of an offence punishable with imprisonment, but not one which is fixed by law, which is the only one we have in our statute book, which is murder, and then there is also the ability for a Court to place somebody under a Guardianship Order either if a f..?.... or a suitable person, this is to ensure the safety of that person and others, it can be interim detention orders under section 52 where a person has been convicted of an offence punishable by imprisonment?.....satisfied on the written or oral evidence of an approved doctor that?.....has to give evidence and they are Interim Detention Orders in order that the patient can be assessed, but there can be further information requested under section 53 where they're considering making a Criminal Guardianship Order of an offender, it may

request the Crown to inform the Court of whether a person would take guardianship and give such information as is necessary to make the Order. The effect of Criminal Guardianship Orders is specified under section 54 and it essentially means it has the same powers as we previously saw under Part 6 for those who are subject to guardianship in relation to mental disorder but not convicted by the Court. There can be a restriction order, section 55, this is only in respect of an offender, i.e. somebody convicted, where it is necessary for the protection of the public from serious harm and this is an order without limit of time, until such time as the medics can prove that that person no longer poses a danger or harm to the community. There's powers of the Governor in respect of a patient subject to restriction orders and if the Governor is satisfied on the advice of the Advisory Committee that the patient is no longer required detention for the protection of the public, that mirrors the United Kingdom Secretary of State provisions in relation to patients who are contained under the UK section 41 Restriction Orders. And Section 57 is a power to discharge patients subject to Restriction Orders so they can apply to a Tribunal, so essentially there's also an independent oversight on those Restriction Orders. And 58?

Deputy Speaker –

You left 58 separate, so I dealt with 49 to 57.

The Hon. Nicola Moore –

I'm sorry.

Deputy Speaker –

Any questions on Clauses 49 to 57?

Clauses 49 to 57.

Question put and agreed to.

Deputy Speaker –

And the Honourable Attorney General suggested that I put Clause 58 separately, so I put the question that Clause 58 do stand part of the Bill. AG?

The Hon. Nicola Moore –

Yes, thank you, Madam Deputy Speaker. This deals with, it's simply for applications relating to conditionally discharged patients so it's where the order by the Court is for a conditional discharge only and there can be a, if a patient's been conditionally discharged it may be subject to a restriction order, then the patient may apply to the Tribunal for a absolute discharge.

Deputy Speaker –

Any questions?

Clause 58.

Question put and agreed to.

Deputy Speaker –

I ought perhaps to ask Members if you had some silent agreement with the Honourable Speaker about what time you would wish to have the Sitting suspended for your lunch break,

unless anybody's otherwise inclined, I'm inclined to continue and see if we can't get through the Committee stage and then have our lunch break, but I will be guided by you.

The Hon. Christine Scipio O'Dean –

Thank you, Madam Deputy Speaker, yes, I would prefer if we could continue at the Committee stage and then break for lunch. Thank you.

Deputy Speaker –

Everybody alright? Thank you.

I put the question that Clauses 59 to 62 do stand part of the Bill.

The Hon. Nicola Moore –

Thank you, Madam Deputy Speaker. These three deal with transfers of prisoners to hospital from prison for those who are serving terms of imprisonment. It also permits for transfer overseas where there is no suitable treatment for that patient here.

Deputy Speaker –

Any questions?

Clauses 59 to 62.

Question put and agreed to.

Deputy Speaker –

I put the question that Clause 63 do stand part of the Bill.

The Hon. Nicola Moore –

Thank you, Madam Speaker. Section 63 deals with the, a requirement of the Court can require information in relation to an overseas hospital before it makes the transfer order.

Clause 63.

Question put and agreed to.

Deputy Speaker –

I put the question that Clause 64 do stand part of the Bill.

The Hon. Nicola Moore –

Madam Deputy Speaker, this deals with the detention orders and overseas removal orders where a patient is to be moved from St Helena somewhere else, it can only occur if the Court is satisfied on oral or written evidence of the Senior Medical Officer that there is appropriate treatment for that patient elsewhere.

Deputy Speaker –

Thank you.

Clause 64.

Question put and agreed to.

Deputy Speaker –

I put the question that Clause 65 do stand part of the Bill. AG?

The Hon. Nicola Moore –

Thank you, Madam Deputy Speaker. This deals with the possibility of conflict of interest where the approved practitioner is giving evidence in relation to a patient who's a relative of theirs or has been in a relationship, this provides an obvious transparency so that there's no possibility of conflict in relation to the recommendation of the Court.

Deputy Speaker –

Any questions?

Clause 65.

Question put and agreed to.

Deputy Speaker –

I put the question that Clauses 66 to 69 do stand part of the Bill, Removal of patients from St Helena.

The Hon. Nicola Moore –

Thank you, Madam Deputy Speaker, this, it mirrors, for those who have not necessarily been convicted by a Court but are the subject of treatment, it allows a Tribunal, the Mental Health Tribunal to make an order for the removal of a patient to somewhere else outside of St Helena in the event that it's necessary for the patient's interest or for the protection of the public; it makes orders under section 67 for steps that can be taken in respect of that patient whilst in transit either in terms of medication or restraint and it also makes further provisions under section 68 for those overseas removal orders and to specify either the aircraft or ship which the patient is to be removed from and this will allow the receiving agents to take appropriate steps and section 69 requires, on the making of an overseas removal order that the Tribunal must send copies both to the Governor and to the Chief Immigration Officer.

Deputy Speaker –

Any questions?

Clauses 66 to 69.

Question put and agreed to.

Deputy Speaker –

I put the question that Clauses 70 to 76 do stand part of the Bill. Medical Treatment.

The Hon. Nicola Moore –

Yes, thank you, Madam Deputy Speaker, sections 70 to 76 deal with the person who is liable to be detained for treatment or a community patient and when consent is not required for the treatment under those orders or when treatment does require consent or a second opinion to do so, it also requires plans for treatment and the permission, or the provision that the patient may withdraw consent to treatment at any stage within the treatment, within the treatment order even if Detention or Community Treatment Order. There's also provision for urgent

treatment to be given where it's necessary to save the patient's life, prevent serious deterioration of his or her condition, to immediately alleviate suffering and it's no more than is necessary; the minimum ...?...is necessary to prevent the patient from behaving violently or being a danger to himself or others, that's where treatment can be provided without consent. There are lists of prohibited treatments which are self evident.

Deputy Speaker –
Any questions?

Clauses 70 to 76.

Question put and agreed to.

Deputy Speaker –
I put the question that Clauses 77 to 86 do stand part of the Bill.

The Hon. Nicola Moore –
Yes, thank you, Madam Deputy Speaker. These are miscellaneous sections, it gives powers of entry and intervention in relation to premises where a patient is living, welfare of hospital patients, children, codes of practice which the Senior Medical Officer must draft to ensure there's guidance for approved practitioners in respect of their duties under this Ordinance and also who must be included, must also respect patients, past and present, wishes and feelings in respect of a whole range of their interests, religion, carers and the like, there is general protection in detained patients if a Senior Medical Officer must exercise functions to make sure that the patients are not being ill treated and he must investigate any complaint by a person, if there's also a complaint to the Tribunal that must be investigated, there may be informal admission of patients and there must be accommodation for children. There is no duty to make further enquiries on the basis that a document speaks for itself if it purports to having been signed by the appropriate medical practitioners and there can be no conflict of interest in relation to practitioners treating their own relatives and there is a protection for acts done in pursuance of the chapter, in other words, there'll be no civil liability if the medical practitioners are acting in accordance with the Ordinance in relation to deprivation of liberty or issues surrounding criminal offences for assault?.....

Deputy Speaker –
Any questions?

Clauses 77 to 86.

Question put and agreed to.

Deputy Speaker –
I put the question that Clauses 87 to 90 do stand part of the Bill.

The Hon. Nicola Moore -
Thank you, Madam Deputy Speaker. This deals with offences, an offence to forge documents, make false statements in relation to acts in pursuance of the Ordinance, it's a criminal offence to ill treat a patient with a mental disorder, it's an offence to assist patients to absent themselves without either leave or to obstruct any person who is acting in accordance with their statutory duties which have been conferred by the Ordinance.

Deputy Speaker –
Any questions?

Clauses 87 to 90.

Question put and agreed to.

Deputy Speaker –
I put the question that Clauses 91 to 93 do stand part of the Bill.

The Hon. Nicola Moore –
Madam Deputy Speaker, there needs, I move to amend this, it should read the Governor in Council may make regulations.

Deputy Speaker –
So it's 91, sub....

The Hon. Nicola Moore –
91 (1), I'll deal with it, 91 on its own at this stage.

Deputy Speaker –
Right. Is there a seconder to the amendment, please?

The Hon. Christine Scipio O'Dean –
I propose to second.

Deputy Speaker –
Thank you, Councillor Scipio O'Dean. I put the question that Clause 91 (1) should be amended to read "The Governor in Council", so we're inserting the words "in Council".

Question on amendment, put and agreed to.

The Hon. Nicola Moore –
Thank you, Madam Deputy Speaker. We were dealing with 91 to 93, so I'll deal with 92 and 93. 92 is a very long definition of the relative or nearest relative, 93 deals with the appointment via the Court of acting nearest relative and that would cover, in the event there was a guardian, could also be appointed as an acting nearest relative.

Clauses 91 to 93.

Question put and agreed to.

Deputy Speaker –
We move now to Chapter II and I put the question that Clause 94, Interpretation, do stand part of the Bill.

The Hon. Nicola Moore –
Madam Deputy Speaker, this deals with interpretation of matters which are dealt with solely with Chapter II, i.e. the mental capacity provisions of this Ordinance.

Deputy Speaker –
Any questions?

Clause 94.

Question put and agreed to.

Deputy Speaker –

I put the question that Clause 95 do stand part of the Bill and we're looking at the principles now.

The Hon. Nicola Moore –

Thank you, Madam Deputy Speaker. 95 deals with the principles which must be applied in relation to those who lack capacity. I'll take this in a little more detail. This is the first time that we've had provisions in this jurisdiction relating to those who lack capacity and a person is assumed to have capacity unless it's established that he or she lacks capacity. A person is not to be treated as unable to make their decisions unless all practical steps have been taken to help him or her do so and those steps have been taken without success. A person is not to be treated as unable to make a decision merely because he or she makes an unwise decision and an act done or a decision done under this chapter 4 on behalf of a person who lacks capacity must be done with the best interests test, and that is the test for all steps in relation to those who lack capacity. And before an act is done or a decision is made regard must be had to whether the purpose for which it is needed can be effectively achieved in a way that is less restrictive of the person's rights and freedoms actions.

Deputy Speaker –

Thank you. Any questions?

Clause 95.

Question put and agreed to.

Deputy Speaker –

I put the question that Clause 96 do stand part of the Bill.

The Hon. Nicola Moore –

Thank you, Madam Deputy Speaker. This deals with the, for the purpose of the chapter, what is deemed to be a person who lacks capacity in relation to a particular matter, being a person lacks capacity if he or she is unable to make the decision him or herself because of an impairment of or a disturbance of the functioning of the mind or brain. It doesn't matter whether the impairment or disturbance is permanent or temporary and a lack of capacity cannot merely be established by reference to a person's age, appearance, condition of the person or aspect of their behaviour which might lead others to the unjustified assumptions about such capacity. And in relation to proceedings under this chapter, any question about whether a person lacks capacity is taken on the balance of probabilities, in other words, more likely than not and in relation to section 116, which appears later, no power which a person may exercise in relation to a person who lacks capacity or a person who reasonably thinks that a person lacks capacity is exercised but in relation to any person below sixteen and that's

because the steps which are taken are taken on behalf of that person by those who have parental responsibility.

Deputy Speaker –

Any questions?

Clause 96.

Question put and agreed to.

Deputy Speaker –

I put the question that Clause 97 do stand part of the Bill.

The Hon. Nicola Moore –

Thank you, Madam Deputy Speaker. This is test as to whether somebody lacks capacity in relation to a particular decision and a person is considered unable to make a decision for themselves if they are unable to understand the information relative to the decision, to retain that information, to use or weigh that information as part of the process of making the decision, or, these are descriptive, to communicate his decision, whether talking by using sign language or other means. A person is not to be regarded as unable to understand the information relevant to a decision if he or she is able to understand an explanation that is given in a way appropriate to his circumstances, for example, simple language, visual aids or other means, so every effort has to be made to allow a person to make decisions on their own and the fact that a person is able to retain the information relevant to a decision for a short period only does not prevent him or her from being regarded to be able to make the decision; that essentially echoes the provision which is dealing with the principles under section 95 which is a person is deemed to have capacity unless the opposite is proven.

Deputy Speaker –

Thank you. Any questions.

Clause 97.

Question put and agreed to.

Deputy Speaker –

I put the question that Clause 98 do stand part of the Bill.

The Hon. Nicola Moore –

Thank you, Madam Deputy Speaker. This deals with the best interest test in determining any decision for somebody who lacks capacity. The person making the decision must make it merely on the basis, must not make it merely on the basis of a person's age or appearance or condition of the person and the person making the examination must consider the best interest test so whether or not that person may have capacity at some stage, what stage they may get that, they may have capacity, and he or she must, so far as reasonably practical permit and encourage the person to participate or improve such person's ability to participate as fully as they can within the decision and whether determination relates to life saving treatment the person who is making the decision must not, in considering whether the treatment is in the best interests of the person concerned,?.....motivated by a desire to bring about such person's death and they must consider all of the matters which were reasonably ascertainable,

for example, a person's past and present wishes and feelings, beliefs and values that would be likely to influence that person's decision making if they had capacity and such other factors as that person would think would be likely to be considered by the person if they had capacity.

Deputy Speaker –
Any questions?

Clause 98.

Question put and agreed to.

Deputy Speaker –
I put the question that Clauses 99 to 102 do stand part of the Bill. We're looking at acts in connection with care or treatment.

The Hon. Nicola Moore –
Yes, thank you, Madam Deputy Speaker. This deals with where a person does an act in relation to somebody in relation to treatment or care that that person must take reasonable steps to establish whether the person lacks capacity in relation to it and when doing the act if they lack capacity that it's in the person's best interest for that act to be done and if they do that then they don't attract civil or criminal liability. There are limitations on it and that's in section 100 and that's where the act is not proportionate to the likelihood of p....?.....suffering harm, in other words, deprivation of liberty or deprivation of movement, provided that nothing stops a person providing life sustaining treatment if it's necessary to prevent a serious deterioration in the person's condition. And it's deemed that a person who lacks capacity will pay a reasonable price for the goods and services which are provided to that person. And under section 102, in relation to each of the acts which were previously specified, it's deemed, the expenditure is borne by the person on whose behalf the acts are taken.

Deputy Speaker –
Any questions?

Clauses 99 to 102.

Question put and agreed to.

Deputy Speaker –
I put the question that Clauses 103 to 110 do stand part of the Bill and we're now looking at Lasting Powers of Attorney.

The Hon. Nicola Moore –
Madam Deputy Speaker, these sections deal with the formalities and requirements and who can hold lasting powers of attorney taken at a time when you have capacity in relation to when you were likely not to have capacity, that allows for who can hold them, how they hold them, when they can be revoked, protections of donees or powers of attorney if it hasn't been properly done so or properly executed and it also allows the Court to intervene in relation to decisions or validity of lasting powers of attorney and also in relation to the operation of those powers of attorney.

Deputy Speaker –
Any questions?

Clauses 103 to 110.

Question put and agreed to.

Deputy Speaker –
I put the question that Clauses 111 to 113 do stand part of the Bill.

The Hon. Nicola Moore –
Madam Deputy Speaker, this provides for the formalities in relation to advanced decisions to refuse treatment, it deals with the validity and applicability of those advanced decisions and it also the effect of them, and so essentially it allows an individual to ahead of time make decisions as to what treatment will be provided to them in certain circumstances.

Deputy Speaker –
Any questions?

Clauses 11 to 113.

Question put and agreed to.

Deputy Speaker –
I put the question that Clauses 114 to 120 do stand part of the Bill.

The Hon. Nicola Moore –
Thank you, Madam Deputy Speaker. These sections deal with the very important role, which has hitherto not been provided for in St Helena. It allows for the Court to make certain declarations and to appoint deputies, deputies being people who are able to manage the affairs of those who don't have capacity, so if you haven't given a lasting power of attorney but lose capacity it allows the Court to appoint suitable persons to deal with questions concerning personal welfare and property and affairs and that can include, for example, assisting with housing and so forth. There's also the powers to make decisions and appoint deputies for minors who lack capacity and under section 117 there are the powers, which are to be executed as regards personal welfare include where a person is to live, contact they have with specified persons, any prohibited orders in that respect, it allows property and affairs to be dealt with, it also allows, it also specifies that a deputy, what characteristics the deputy must have and how they execute those powers. There's also restrictions on those who may be deputies and this is to avoid any possibility that those who lack capacity may be taken advantage of, so those who may be likely to benefit under a will and the like, cannot be appointed as deputies and thus provides transparency in the dealings with property of that person who lacks capacity.

Deputy Speaker –
AG, I think there's a typo at the top of, above clause 117, it's got section 115 powers, is that a typo at the top of my page?

The Hon. Nicola Moore –

Thank you, Madam Deputy Speaker. I think there's, in fact, a typographical error in fact at the top of section 118, because section 117 refers, cross refers to the section 115 powers, that's personal welfare, 115(a), so it allows, section 115 allows the appointment of a deputy, section 117 cross refers to section 115 and says "the powers under section 115 as respect ...?...personal welfare".....in fact that's wrong, it should be "in respect of" p...?...personal welfare, it cross refers.

Deputy Speaker –

Okay, so do we just need an amendment to the wording of 117 (1)?

The Hon. Nicola Moore –

Yes, we do. We also need an amendment to the head of Section 118.

Deputy Speaker –

Okay. Can we deal with the 117 (1) first? Would you propose an amendment?

The Hon. Nicola Moore –

Yes, I propose an amendment, the wording of Section 117(1) should read "powers under section 115 in respect of p...ss personal welfare".

Deputy Speaker –

So we're deleting "as respects" and inserting "in respect of".

The Hon. Nicola Moore –

Because it seems to be a

Deputy Speaker –

Oh, we've got it again in 118.

The Hon. Nicola Moore –

It's in all the sections, it's just a drafting.....either they all have to be amended or not at all. It appears in 116, 117 and 118.

Deputy Speaker –

Yes, I think members will have to be guided by you, Attorney General, as to whether they're all amended or not.

The Hon. Nicola Moore –

Yes, Deputy Chair, I, on balance, it appears that that's the drafting style as it's been done, so "as respects" remains.

Deputy Speaker –

You'll leave it, remains, so there's no amendment, thank you. And then you were suggesting there was an amendment to remain with the heading?

The Hon. Nicola Moore –

Yes, in fact, I do suggest an amendment to the header of Section 118. It should say "Section 120, not 20 powers, no, it should say section 115 powers, Property and Affairs.

Deputy Speaker –

Are we taking that as a typo or are we taking that as a proper amendment?

The Hon. Nicola Moore –

It's a proper amendment.

Deputy Speaker –

Okay. So if you propose that amendment.

The Hon. Nicola Moore –

I propose an amendment to the title of Section 118 to read Section 115.

Deputy Speaker –

Thank you. Is there a seconder? Thank you, Councillor Thomas. I put the question that the header to Section 118 be amended to read Section 115 powers, property and affairs.

Question on amendment, put and agreed to.

Deputy Speaker –

Thank you. I'm not sure, yes, I think you have explained all of the sections, haven't you now, 114 to 120?

The Hon. Nicola Moore –

Thank you, Madam Deputy Speaker, I think I have.

Deputy Speaker –

You have. Are there any questions, please?

Clauses 114 to 120.

Question put and agreed to.

Deputy Speaker –

I'm laughing gently because the Attorney General's numerical order has gone slightly scatty on her list, in which case, I put the question that Clauses 121, 122 and 123 do stand part of the Bill.

The Hon. Nicola Moore –

Thank you, Madam Deputy Speaker. Never knowingly called scatty, but indeed we had left these out, so 121 to 123, these list the excluded decisions from anything that can be done on behalf of a person who lacks capacity and those decisions are that nobody can consent to marriage on their behalf, consent to touching of a sexual nature, consent to a decree of divorce, consent to a child being adopted, cannot discharge parental responsibility, adoption or renouncing of a religion or the making or revoking of an advanced medical directive or such other matter as may be prescribed in due course and nothing in the chapter authorises a person to give a patient medical treatment for mental disorder if at the time when it was proposed to treat the patient his treatment was regulated under another, under Part I or Chapter I which deals with hospital or community treatment orders, and, of course, nothing in the chapter permits a decision on voting at any election on behalf of that person.

Deputy Speaker –

Any questions?

Clauses 121 to 123.

Question put and agreed to.

Deputy Speaker –

I put the question that Clauses 124 to 126 do stand part of the Bill.

The Hon. Nicola Moore –

Thank you, Madam Deputy Speaker, this deals with the appointment and the functions of the public guardian. The public guardian has functions in relation to establishing and maintaining the powers of attorney, establishing and maintaining registers of orders of deputies, overseeing all of those persons who give care to and support and are appointed on behalf of those who don't have capacity and it is a public function and it has an important oversight in relation to those who suffer from mental disorder or lack of capacity.

Deputy Speaker –

Any questions?

Clauses 124 to 126.

Question put and agreed to.

Deputy Speaker –

I put the question that Clauses 127 to 131 do stand part of the Bill.

The Hon. Nicola Moore –

Thank you, Madam Deputy Speaker. This just deals with supplementary powers and practice and procedures of Court, interim orders and directions that can be made by the Court. The Court has the power to call for reports from the public guardian and there could be applications, and it deals with applications in the exercise of any functions under the Ordinance in relation to persons who lack capacity. It also permits for Court rules, the Chief Justice to make Court rules which should be known as Rules of the Court to Protection and it gives the Court powers to make orders for costs, freedom, legal practitioners or for the Crown or waives the costs as appropriate.

Deputy Speaker –

Any questions?

Clauses 127 to 131.

Question put and agreed to.

Deputy Speaker –

I put the question that Clause 132 do stand part of the Bill.

The Hon. Nicola Moore –

Thank you, Madam Deputy Speaker. This allows for the Governor in Council to issue Codes of Practice for the guidance of persons assessing those who may or may not have capacity,

the guidance of persons acting in connection with the care or treatment of other persons, all guidance for those who hold the power of attorney or are deputies appointed by the Court and the Governor may revoke or revise any of those Codes of Practice as necessary and those Codes of Practice will bind the relevant officers.

Deputy Speaker –

Any questions? Could I ask a question?

The Hon. Nicola Moore –

Sorry, Madam Deputy Speaker, I thought we were dealing with 133 at the same time.

Deputy Speaker –

No, you've separated them, Attorney General. If I might just ask a question, these Codes of Practice, are we to assume that they're already drafted ready to be brought into place on the enactment of this legislation?

The Hon. Nicola Moore –

Thank you, Madam Deputy Speaker for that very well placed question and I'm afraid to say they haven't, in fact, been drafted, but presently there will not be anybody who holds a lasting power of attorney under this Ordinance and there will not yet be a deputy appointed, because deputies have not previously been appointed and we have never had any people who have been assessing persons who lack capacity because we haven't been dealing with these matters except through the inherent jurisdiction provisions in the Supreme Court and so obviously they will need to be drafted before any deputies are appointed.

Deputy Speaker –

Thank you.

Clause 132.

Question put and agreed to.

Deputy Speaker –

I put the question that Clause 133 do stand part of the Bill. AG?

The Hon. Nicola Moore –

Thank you, Madam Deputy Speaker. This deals with the fact that it is a criminal offence to ill treat, subject to physical or sexual abuse or wilfully or unreasonably do anything that would endanger the safety of a person who lacks capacity, be likely to cause them any unnecessary physical pain, suffering or injury, any emotional injury or any injury which would be injury to his health or development. And it's also an offence to wilfully or unreasonably neglect, abandon, expose such a person and it's also a duty upon persons who are caring for them or charged with their care to, it makes it an offence to unreasonably neglect to provide food, clothing, medical aid, lodging, care or other necessities for the person who lacks capacity and that is punishable on conviction with a fine or imprisonment up to five years.

Deputy Speaker –

May I ask a question?

The Hon. Nicola Moore –
Yes, Madam Deputy Speaker.

Deputy Speaker –
I just wonder why it says upon conviction to a fine, but there's no specification of what that fine might be.

The Hon. Nicola Moore –
Yes, Madam Deputy Speaker, that's an unlimited fine.

Deputy Speaker –
Right, thank you. Any questions, Members?

Clause 133.

Question put and agreed to.

Deputy Speaker –
I put the question that Clause 134 do stand part of the Bill.

The Hon. Nicola Moore –
Madam Deputy Speaker, this deals with if a person knows or has reason to suspect that a person who lacks capacity is in need of care or protection, they can make a notification to the public guardian, that includes a health worker and it requires therefore that information is provided about that person in order that their care can be taken care of and that also there's no civil or criminal liability in respect of that notification.

Deputy Speaker –
Any questions?

Clause 134.

Question put and agreed to.

Deputy Speaker –
I put the question that Clauses 135 to 138 do stand part of the Bill.

The Hon. Nicola Moore –
Thank you, Madam Deputy Speaker, 135 just simply indicates that if you're acting in pursuance of a advanced treatment directive that it doesn't affect the law in relation to criminal offences surrounding hastening death; amendment of schedules, the Governor in Council may by order amend the schedules and can make regulations for the better or necessary carrying out of the, anything within the chapter that's required, it also repeals and gives transitional provisions in relation to the current Mental Health Ordinance and any patients who are currently being treated under that Ordinance.

Deputy Speaker –
Thank you. Any questions?

Clauses 135 to 138.

Question put and agreed to.

Deputy Speaker –

Honourable Attorney General, how do you want to take the Schedules?

The Hon. Nicola Moore –

Thank you, Madam Deputy Speaker. We can take the first Schedule in its entirety if that suits.

Deputy Speaker –

I put the question that the first Schedule do stand part of the Bill.

The Hon. Nicola Moore –

Thank you, Madam Deputy Speaker. It deals with the formalities in relation to how to make lasting power of attorney to ensure that it complies and is registered ahead of time so that there is clarity and transparency in the provision of those services for a lasting power of attorney and gives provisions for the cancellation of the registration and any alterations thereto.

Deputy Speaker –

Thank you. Any questions from Members? Councillor Scipio O'Dean?

The Hon. Christine Scipio O'Dean –

Thank you, Madam Deputy Speaker. Could I ask the Attorney General in section 1 (b) it complies with paragraph 2, should that say it complies with section 2, can you direct me to the paragraph 2?

The Hon. Nicola Moore –

Thank you, Madam Deputy Speaker, I'm just reading through, if I may. Yes, I'm grateful to the Honourable Councillor Scipio O'Dean, in fact, it should say complies with section 2, no, paragraph 2 of the Schedule, that is correct, because otherwise it would be comply with section 2 of the Ordinance, so it is paragraph 2, but I'm grateful for the question.

The Hon. Christine Scipio O'Dean –

Thank you.

Deputy Speaker –

Any other questions about the first Schedule?

The First Schedule.

Question put and agreed to.

Deputy Speaker –

I put the question that the Second Schedule do stand part of the Bill.

The Hon. Nicola Moore –

Yes, thank you, Madam Deputy Speaker. The Second Schedule deals with dealing with property and affairs in respect of whether there's questions as to the validity of wills which

have been executed by those who may or may not have a capacity at the time at which they are signing the wills and it deals with variation of settlements, vesting the property and the like, so the formality surrounding what happens in relation to having made a will if there hasn't been capacity at the time.

Deputy Speaker –
Any questions?

The Second Schedule.

Question put and agreed to.

Deputy Speaker –
I put the question that the Third Schedule do stand part of the Bill.

The Hon. Nicola Moore –
Yes, thank you, Madam Deputy Speaker. The Third Schedule deals with transitions and savings so what happens if somebody has been subject to an order under the current Mental Health Ordinance, what steps need to be taken, how long their current treatment order exists for and what, if anything, what happens in relation to those who have not had capacity immediately before the commencement of the Ordinance and also in relation to orders and appointments which had previously made under the Mental Health Ordinance and whether those appointments are transferred to being approved practitioners under the current Ordinance.

Deputy Speaker –
Any questions, please?

The Third Schedule.

Question put and agreed to.

Deputy Speaker –
Honourable Members, I think this is a sensible time for me to suspend the Sitting and allow everybody an hour for their lunch break, so we will reconvene, according to that clock, just before a quarter to one, according to my watch at twenty to two, sorry, depends which clock you wish to go by, we go by that one, we'll say it's a quarter to two. Thank you and thank you to the Attorney General for her very clear explanations.

Council suspended.

Council resumed.

The Speaker –
Please be seated. Good afternoon, Honourable Members, ladies and gentlemen and I thank the Deputy Speaker for taking you through the process of the Committee of the whole Council, thank you very much indeed.

I have given permission for the media to take photographs if they wish to do so here at the moment, so that's alright. Remember not to use your cell phones, please. Make sure they're switched off. Thank you. I'll call on the Clerk to announce the item.

THE MENTAL HEALTH AND MENTAL CAPACITY BILL, 2015

Resumed Debate.

The Speaker –

Thank you. Mover, please, report the Bill.

The Hon. Derek Thomas –

Mr Speaker, I beg to report that the Mental Health and Mental Capacity Bill, 2015, passed the Committee with two amendments and to move that this Council approves the said Bill and recommends to the Governor that it should be enacted.

The Speaker –

Thank you, Honourable Member. Is there a seconder?

The Hon. Brian Isaac –

Mr Speaker, I beg to second.

The Speaker –

Thank you, Honourable Member. Mover, you may be entitled to speak.

The Hon. Derek Thomas –

Mr Speaker, I'd just like to thank Honourable Members for their support to this Bill, a very important Bill. Thank you.

The Speaker –

Thank you, Honourable Member. I put the question that this Council approves the Mental Health and Mental Capacity Bill, 2015 and recommends to the Governor that it should be enacted. The Motion is open for anyone to speak to. Right, no-one wishes to speak to it. Mover, do you want to say anything at this stage?

The Hon. Derek Thomas –

No, Mr Speaker, there's nothing to respond to.

The Speaker –

Thank you very much indeed.

Question that Council approves the Bill, as amended, and recommends to the Governor that it should be enacted, put and agreed to.

The Speaker –

Clerk?

Motion No. 4 – The Honourable Pamela Ward Pearce, Chairman, Environment and Natural Resources Committee.

THE ENVIRONMENT PROTECTION BILL, 2015.

The Speaker –

Honourable Member?

The Hon. Pamela Ward Pearce –

Thank you, Mr Chairman. Mr Speaker, I beg to move that the Environment Protection Bill, 2015, be approved in principle and referred to a Committee of the whole Council.

The Speaker –

Thank you, Honourable Member. Is there a seconder to this Motion?

The Hon. Christine Scipio O'Dean –

I beg to second, Mr Speaker.

The Speaker –

Thank you, Honourable Member. Honourable Mover, you may speak to the Motion.

The Hon. Pamela Ward Pearce –

Mr Speaker, I wish to present to the House the Environmental Protection Ordinance 2015. This Environmental Protection Ordinance introduces provisions dealing with the protection of the Environment and conservation of biodiversity, but also regulates trade in endangered species and control of pollution, hazardous substance, litter and waste. As St Helena moves towards a financially independent tourism driven economy which is dependent on the environment, we need to ensure that we deliver National Goal 3 of our Sustainable Development Plan – Effective Management of the Environment. In doing so, we will ensure we meet not only the islands goals for sustainable development, but also our international obligations regarding environmental management and safeguarding of our endemic species and internationally protected species on both land, sea and air. The Environmental Protection Ordinance will move us closer to managing our environment in a more responsible manner to ensure that we can enjoy long-term economic development, have access to clean water, air and land and protect our habitats and biodiversity. The draft Ordinance has been out for consultation with relevant stakeholders and the public and has been endorsed by the Environmental and Natural Resources Committee and approved by Executive Council. Thank you, Mr Speaker.

The Speaker –

Thank you, Honourable Member. I put the question that the Environmental Protection Bill, 2015, be approved in principle and referred to a Committee of the whole Council. The question is now open for debate. The Honourable Lawson Henry?

The Hon. Lawson Henry –

Thank you, Mr Speaker. I rise in support of this Bill, the Environmental Protection Ordinance, it is, of course, St Helena's first comprehensive piece of environmental legislation that provides the legislative framework for the protection of our environment, including the conservation of biodiversity, the regulation of trade in endangered species and the control of pollution, hazardous substances, litter and waste. The need for the creation of a comprehensive piece of environmental legislation was identified and agreed as part of the institutional review of environmental management that was done in 2011 as part of the MOU reform process. With air access eminent and the potential for development on the island to

increase a legislative mechanism is needed to ensure that the island's unique environment upon which all residents and visitors depend is not damaged or destroyed. This legislation was, I understand, developed with the input of stakeholders both on and off island. It is also recognised that this legislation will require additional costs for the Directorate which it falls under. The Ordinance also includes provision for the issuing and charging of licenses and permits and the provision of advisory and technical services. The ultimate aim of this legislation is to protect St Helena's environment through protecting our natural environment. We will be safeguarding a large part of St Helena's tourism product for the future enjoyment of residents and tourists. Through implementing and enforcing environmental best practice, residents can be more confident that they live in a clean and unpolluted environment that will also be more attractive to inward investors and tourists. The passing of this legislation will be of great interest to many of our overseas donors, not least the UK Select Committee for Environment. It would give me immense pleasure if I was, on behalf of this Council, able to report on the success of this Bill through the House when I appear before the Select Committee later this year during my attendance at the Joint Ministerial Conference. Mr Speaker, I support this Bill. Thank you.

The Speaker –

Thank you, Honourable Member. Honourable Derek Thomas?

The Hon. Derek Thomas –

Mr Speaker, I rise in support of the Environmental Protection Bill 2015. The Bill is very comprehensive and is designed for the protection of our environment. It is very essential as we strive to develop our economy through economic growth in the tourist industry and encourage both local and inward investors. It also regulates for endangered species, control of pollution, hazardous substances, litter and waste. Mr Speaker, we have seen good progress and development in our environmental section and this Bill will only add value in support of their achievements. Mr Speaker, I support the Bill.

The Speaker –

Thank you, Honourable Member. Any other Honourable Member wishes to speak? The Honourable Brian Isaac?

The Hon. Brian Isaac –

Mr Speaker, I rise in support of the Environmental Protection Bill. As mentioned by my Honourable Colleagues, it is the first piece of comprehensive legislation of the environmental for St Helena. It provides a legislative framework for the protection of the environment, including the conservation of biosecurity, the regulation of trade in endangered species and the control of pollution, hazardous substances, litter and waste. The Environmental Protection Ordinance ultimately aims to protect St Helena's environment, its people, the future enjoyment of those currently living on the island and for generations to come. I support the Bill, Mr Speaker.

The Speaker –

Thank you, Honourable Member. Is there any other Honourable Member who wishes to speak to the Bill? Honourable Nigel Dollery?

The Hon. Nigel Dollery –

Mr Speaker, I'm delighted to see some legislation to deal with litter, we are appalling with it and it needs sorting and this is a really good step to get a grip of something which is an embarrassment to us all. Thank you, Sir.

The Speaker –

Thank you, Honourable Member. The Honourable Wilson Duncan?

The Hon. Wilson Duncan –

Mr Speaker, I rise in support of this Bill. This has been very well put together and very well supported by every one of us in this House, so I support it.

The Speaker –

Thank you, Honourable Member. Honourable Cyril George?

The Hon. Cyril George –

Mr Speaker, I rise in support of this Bill, I wish to thank the officials in ENRC and the AG Chambers in preparing this Bill for us today. Thank you, I support the Bill.

The Speaker –

Thank you, Honourable Member. The Honourable Gavin Ellick?

The Hon. Gavin Ellick –

I rise in support of this Bill. I hope it takes care of all our traditional rock fishing as well, so don't leave us out in the cold and safeguard everything for years to come and for all the hard work what everybody put in to getting it done. Thank you.

The Speaker –

Thank you, Honourable Member. Any other Honourable Member wishes to speak to the Bill? Honourable Mover, would you like to respond?

The Hon. Pamela Ward Pearce –

Thank you, Mr Speaker. Mr Speaker, I would like to thank my Honourable Colleagues for their support of this Bill and I'm aware that some of us have sat through for at least four sessions, because that was how many Committees that this had to go across and it wasn't just us, I thank the Attorney General, she was at each of these presentations and she did most of the talking, so quite a lot of work has gone into this and I'd like to raise a thanks there. I'd also like to thank the environmental team at ENRD for their really hard work and for their help and support in delivering the impossible. This will go towards protecting our environment and ensuring that the legacy we leave for future generations of St Helenians is sustainable. Thank you all for your help and support. Thank you, Sir.

The Speaker –

Thank you, Honourable Member.

Question that the Bill be approved in principle and referred to a Committee of the whole Council, put and agreed to.

The Speaker –

Honourable Mover?

The Hon. Pamela Ward Pearce –

Mr Speaker, I beg to move that the Council do resolve itself into a Committee to consider the detailed provisions of the Bill.

The Speaker –

Thank you, Honourable Member. Is there a seconder?

The Hon. Christine Scipio O'Dean –

I beg to second, Mr Speaker.

The Speaker –

Thank you, Honourable Member.

Question that Council do resolve itself into a Committee, put and agreed to.

The Speaker –

Honourable Members, like before, I will propose to absent myself from this Council to enable the Deputy Speaker to chair the Committee. I wish you well in your deliberations. Thank you, Deputy Speaker.

Council in Committee

Deputy Speaker –

I put the question that the Title, Enacting Clause and Clause 1 do stand part of the Bill. AG? Any questions? In the interests of me not freezing, I've asked if we can just do something about the air conditioning because sitting here there's just a very cold draught blowing right across the Clerk and myself. Councillor Scipio O'Dean?

The Hon. Christine Scipio O'Dean –

Thank you, Madam Deputy Speaker. I note, Madam Deputy Speaker, that you went to Section 1, but I note in the arrangements of the sections, which is on page 5, there is a typo, I'm not sure how you bring that in to, maybe I should ask AG how do we bring that in to making an amendment to page 5?

Deputy Speaker –

Oh, yes, Schedule I twice over?

The Hon. Christine Scipio O'Dean –

Yes. Do we do that before we go into section by section, clause by clause?

Deputy Speaker –

I'll be guided by the AG.

The Hon. Nicola Moore –

Thank you, Madam Deputy Speaker. Technically speaking, the arrangement of the sections doesn't form part of the Bill, but perhaps we should deal with it before we go to the explanatory note, citation of commencement and I understand there's a move to amend the Schedule I on Page 5 to Schedule 2 and I second that.

Deputy Speaker –

Thank you and I put the question then that on Page 5, the second of the Schedule 1's should read Schedule 2.

Question on amendment, put and agreed to.

Deputy Speaker –

Thank you, Honourable Member. I put the question that the Title, Enacting Clause and Clause 1 do stand part of the Bill. AG?

The Hon. Nicola Moore –

Madam Deputy Speaker, the explanatory note and citation of commencement are part of the Bill.

Deputy Speaker –

Any questions?

Title, Enacting Clause and Clause 1.

Question put and agreed to.

Deputy Speaker –

I put the question that Clause 2 – Interpretation, do stand part of the Bill.

The Hon. Nicola Moore –

Madam Deputy Speaker, the Interpretation section giving the definitions for those terms which are used within this Bill.

Clause 2.

Question put and agreed to.

Deputy Speaker –

I put the question that Clause 3 do stand part of the Bill.

The Hon. Nicola Moore –

Thank you, Madam Deputy Speaker. The application of the Ordinance is within territorial waters which are specified for the avoidance of doubt which extends 200 nautical miles from the baselines as established.

Clause 3.

Question put and agreed to.

Deputy Speaker –

I put the question that Clauses 4, 5 and 6 do stand part of the Bill.

The Hon. Nicola Moore –

Thank you, Madam Deputy Speaker. 4, 5 and 6 are the objectives and principles which are required to be taken into account by all public bodies and there is a general duty regarding the environment and those are that in forming any function the public authority must have the

The Hon. Nicola Moore –

Thank you, Madam Deputy Speaker. That deals with the incorporation of international obligations, international law.

Deputy Speaker –

Any questions? Yes, Councillor Ellick?

The Hon. Gavin Ellick –

Can we remove our jackets, please?

Deputy Speaker –

I'm happy for you to do so, but I suspect that before the Speaker returns, the Honourable Speaker returns, you will need to put your jacket back on again. Thank you.

The Hon. Gavin Ellick –

Thank you.

Clause 17.

Question put and agreed to.

Deputy Speaker –

I put the question that Clauses 18 and 19 do stand part of the Bill.

The Hon. Nicola Moore –

Thank you, Madam Deputy Speaker. 18 and 19 set out that the Chief Environmental Officer shall promote measures in order to carry out the functions of the Ordinance and that includes the protection of biodiversity generally.

Deputy Speaker –

Any questions?

Clauses 18 and 19.

Question put and agreed to.

Deputy Speaker –

I put the question that Clauses 20 and 21 do stand part of the Bill.

The Hon. Nicola Moore –

Thank you, Madam Deputy Speaker. This deals with the prohibitions in relation to dealing with protected animals or plants as specified within the later Schedules and makes it an offence to do certain acts in relation to those plants and animals.

Deputy Speaker –

Yes, Councillor Scipio O'Dean?

The Hon. Christine Scipio O'Dean –

Madam Deputy Speaker, can I ask for clarification, section 21 does say anyone who has possession of any protected plant, protected plant, I just wonder if the AG could give us an explanation about that and also section 20 refers to hunts, collects, kills, wounds and has possession of different species of animals, so.....people that already have, you know, when you go out and have animals, protected species, will it have an impact?

The Hon. Nicola Moore –

Thank you, Madam Deputy Speaker, If I understand the question correctly, and please do correct me if I've misunderstood, in relation to both of these sections, they are subject to an overriding defence under, which we get to later, section 28, which deals with whether or not steps have been taken in relation to Codes of Practice, so the Codes of Practice will obviously spell out, for example, if somebody may have previously, for example, been in possession of a Gum Tree, for example, or, more importantly, and I know this was discussed at quite some length in our various stages in Committee, for example, if one was inadvertently, whilst not going out to fish a species which is a protected species, one inadvertently caught one that would technically be an offence because it would be, but if it's not wilful for recklessly and, indeed, the Codes of Practice will make it clear that where one doesn't target that as a species that would be a defence if you've taken into account those steps. So they are subject to the overriding condition that you must take into account the appropriate Codes of Practice which are drafted.

Deputy Speaker –

Thank you. Councillor Dollery and then Councillor Ellick?

The Hon. Nigel Dollery –

20 (1) (e) do we need the “or” at the end of that line, I don't think we do?

Deputy Speaker -

Sorry, 20 (1)?

The Hon. Nigel Dollery –

20 (1)(e)

Deputy Speaker –

Sorry, (e), got you.

The Hon. Nicola Moore –

Thank you, Madam Deputy Speaker, we do need the “or” and the reason for that is, thank you for the question, it shows that the sections 20 subsection (1) (8) (f) are disjunctive, in other words, each of them constitutes a separate offence. I hope, Madam Deputy Speaker that answers the question.

Deputy Speaker –

Yes?

The Hon. Nigel Dollery –

.....wilfully or recklessly disturbs, damages or destroys that habitat of any protected animal commits an offence. I note your comment, but I'm not convinced.

The Hon. Nicola Moore –

Well, Madam Deputy Speaker, I'm grateful to the Honourable Councillor Dollery for his observation. It is a standard form of statutory drafting that if you put an "or" at the end they're disjunctive, if you put an "and" at the end it means that each of the previous sections has to be satisfied before the offence is committed.

The Hon. Nigel Dollery –

I will withdraw my comment.

Deputy Speaker –

Councillor Ellick, I think you had a question?

The Hon. Gavin Ellick –

Yes, I just wanted to know in 20 and 21, how does that fit in with our traditional rock fishing, because, I mean, whatever you do, whenever you throw your line out you don't know what's gonna come on your hook and so if you catch a green fish, that's an endemic species, so I want to know how that will impact on our traditional rock fishing, how it will be interpreted within this legislation?

The Hon. Nicola Moore –

Madam Deputy Speaker, I'd like to thank the Honourable Gavin Ellick for his question. How it fits in with traditional fishing from the rocks as opposed to from a boat, for example, which should require a licence, is as follows: you have to act either wilfully or recklessly, so if you go out to catch a particular protected species, for example, then you would be committing an offence, if you do it recklessly, so, in other words, if you don't take appropriate steps to avoid catching one of the particular species which ends up on your hook, so to speak, but also, as I specifically said, under section 28, which we'll get to later, there is a general defence which says that if you have taken all reasonable steps and exercised due diligence to avoid committing an offence then that's a general defence and, of course, the Code of Practice which is also drafted will also allow for inadvertent by catch which will require you, for example, if you do catch such a species, as, of course it will be a matter for the Chief Environmental Officer, but there would be a requirement potentially to throw back or rather than to keep it and use it as bait for example. I trust, Madam Deputy Speaker, that answers the question.

Deputy Speaker –

Yes?

Clauses 20 and 21.

Question put and agreed to.

Deputy Speaker –

I put the question that Clause 22 do stand part of the Bill. Councillor Scipio O'Dean?

The Hon. Christine Scipio O'Dean –

Thank you, Madam Deputy Speaker. I notice that 22 (1) refers to a subsection (3), but Madam Deputy Speaker there is no subsection (3) in section 22, so I'm proposing an amendment to remove the reference to subsection (3), so I'm assuming that the wording will say subject to subsection, not subsections to any person who wilfully.

The Hon. Nicola Moore –

Yes, seconded, that's a drafting error.

Deputy Speaker –

Thank you. Okay, so we're proposing to delete the words "and (3)" from 22 (1), subject to subsection, deleting the "s" and "(3)".

Question on amendment, put and agreed to.

The Hon. Christine Scipio O'Dean –

For clarification, Madam Deputy Speaker, assuming there's just one amendment, although it's asking to delete "s" of subsections?

Deputy Speaker –

Yes, it's one amendment, we've deleted the "s" and "and (3)".

The Hon. Christine Scipio O'Dean –

Thank you for the clarification.

Deputy Speaker –

Thank you. Right, AG, were you just going to explain that section?

The Hon. Nicola Moore –

Yes, indeed, thank you, Madam Deputy Speaker. Section 22 makes it an offence to wilfully introduce and release or allow to escape into the wild an animal not ordinarily present or an animal the importation of which is prohibited under another Ordinance or to introduce plants or otherwise cause to grow in the wild any particular plant which is not ordinarily resident.

The Speaker –

Any questions?

Clause 22 (as amended).

Question put and agreed to.

Deputy Speaker –

I put the question that Clause 23 do stand part of the Bill.

The Hon. Nicola Moore –

Thank you, Madam Deputy Speaker. Section 23 makes it an offence to sell, offer or expose for sale or transport for the purposes of sale animals or plants which are referred to in subsection (4) that is animals which are either within 22 non native species and it's a live animal or live plant. It doesn't, of course, apply to any person acting within authority and in accordance with a licence issued by a Public Authority. So, for example, seeds that are brought in to grow a particular thing, so long as they are authorised under the Public Authority that would bethat would be.....

Deputy Speaker –

Any questions, Honourable Members?

Clause 23.

Question put and agreed to.

Deputy Speaker –

I put the question that Clause 24 do stand part of the Bill.

The Hon. Nicola Moore –

Thank you, Madam Deputy Speaker. This deals with the discovery of any new species in St Helena which I'm informed by the team at ENRD occurs on a relatively regular basis and where that person makes a discovery there's a requirement to notify the Chief Environmental Officer in order that appropriate steps can be taken in relation to that new biodiversity.

Deputy Speaker –

Any questions?

Clause 24.

Question put and agreed to.

Deputy Speaker –

I put the question that Clauses 25, 26 and 27 do stand part of the Bill. Licences.

The Hon. Nicola Moore –

Thank you, Madam Deputy Speaker. This deals with licences to permit you to do anything in respect of biodiversity, animals or plants which might otherwise be prohibited under this Ordinance. It provides for the licensing of them, for the Chief Environmental Officer to either give advice or to grant licences both for scientific research, education and recreational and commercial purposes.

Deputy Speaker –

Any questions?

Clauses 25, 26 and 27.

Question put and agreed to.

Deputy Speaker –

I put the question that Clause 28 do stand part of the Bill.

The Hon. Nicola Moore –

Yes, well, this has been previously referred to, Madam Deputy Speaker, this is the general defence in respect of any offence committed under the Ordinance and it's a defence to prove that you took reasonable steps and exercised due diligence to avoid committing an offence, so it wouldn't cover the accidental act.

Deputy Speaker –

Thank you.

Clause 28.

Question put and agreed to.

Deputy Speaker –

For some reason Clause 29 isn't mentioned on my list of numbers, but I'm quite happy to add it. I put the question that Clauses 29 to 34 do stand part of the Bill. Sorry, Councillor Scipio O'Dean?

The Hon. Christine Scipio O'Dean –

Thank you, Madam Deputy Speaker, I note that section 31 refers to the Governor in Council may designate by notice in the Gazette any area in the sea to be a Marine Protected Area, I propose an amendment, Madam Deputy Speaker to delete the words "by notice in the Gazette" so that it will read "the Governor in Council may designate any area in the sea to be a Marine Protected Area."

The Hon. Nicola Moore –
Seconded.

Deputy Speaker –

Could I just have that wording again, please?

The Hon. Christine Scipio O'Dean –

The Governor in Council may designate any area in the sea to be a Marine Protected Area, so delete the words "by notice in the Gazette".

Deputy Speaker –

So it

The Hon. Christine Scipio O'Dean –
Section 30, subsection (1).

Deputy Speaker –

Oh, 30, okay.

The Hon. Christine Scipio O'Dean –
Sorry, Madam Deputy Speaker.

Deputy Speaker –

It's alright, we were looking at 31, my apologies.

The Hon. Christine Scipio O'Dean –

To make myself clear, section 30, subsection (1).

Deputy Speaker –

Okay. So we are amending Clause 30, subsection (1), just read your amended version for me again, I'm sorry. The Governor in Council may designate?

The Hon. Christine Scipio O'Dean –

Any area in the sea, so deleting the words....

Deputy Speaker –

By notice in the Gazette.

The Hon. Christine Scipio O'Dean –

That is correct.

Deputy Speaker –

Can I just ask the reason for removing the words “by notice in the Gazette”?

The Hon. Christine Scipio O'Dean –

Because notices not normally signed by the Governor in Council, it's normally the Governor, we don't designate by Gazette notice.

Deputy Speaker –

Okay, so. Councillor Ellick?

The Hon. Gavin Ellick –

I was just listening to what Christine was saying and I thought that whatever she say, could it be added “within reason” that the Governor in Council may, any area in the sea to be protected area within reason.

Deputy Speaker –

I believe I'd be right in saying the conditions then are laid out below in subsection (3), it is conditional, it's not that they can just, yeah? Okay, so shall we deal with the proposed amendment, which has been seconded, yes? So that Clause 30, subsection (1) shall read – The Governor in Council shall designate, delete “by notice in the Gazette” any area in the sea to be a Marine Protected Area etc. Yes?

Question on amendment, put and agreed to.

Deputy Speaker –

Right, AG, would you like to just take us through?

The Hon. Nicola Moore –

Yes, Madam Deputy Speaker, thank you. 29 to 34 deal with National Conservation Areas. The ones which are in relation to land are already defined in the earlier definition section at section 1 and that's why the only definition within this part is for a marine protected area, but then there are required to be management plans and review, amendment and revocation of those management plans and enforcement in relation to those national conservation areas both terrestrial and marine and those are covered within sections up to 33 and then regulations may be made in relation to those conservation areas under section 34.

Deputy Speaker –

Thank you. Any questions, Members?

Clauses 29 to 34.

Question put and agreed to.

Deputy Speaker –

I put the question that Clause 35 do stand part of the Bill.

The Hon. Nicola Moore –

Thank you, Madam Deputy Speaker. Section 35 deals with the definitions in relation to the trade in endangered species section of this Ordinance which is our international obligations under the Convention on International Trade in Endangered Species, commonly known as CITES.

Deputy Speaker –

Any questions?

Clause 35.

Question put and agreed to.

Deputy Speaker –

I put the question that Clauses 37 and 38 do stand part of the Bill.

The Hon. Nicola Moore –

Thank you, Madam Deputy Speaker. Sections 37 and 38 deal with the application of certain Appendices which are appended to, that's not thought logical, the CITES Convention.

Deputy Speaker –

Any questions?

Clauses 37 and 38.

Question put and agreed to.

Deputy Speaker –

I put the question that Clauses 39 to 42 do stand part of the Bill.

The Hon. Nicola Moore –

Thank you, Madam Deputy Speaker. This deals with the Management Authority which is a requirement under CITES for the enforcement of various functions in relation to the prohibition on the trade in endangered species, it nominates the Chief Environmental Officer as the Management Authority unless other person is designated, gives them the powers and functions, allows a scientific authority to be authorised and that is in relation to identification of whether a specimen falls within the appendices previously referred to and gives the powers and functions to that scientific authority.

Deputy Speaker –

Any questions?

Clauses 39 to 42.

Question put and agreed to.

Deputy Speaker –

I put the question that Clauses 43 to 47 do stand part of the Bill.

The Hon. Nicola Moore –

Madam Deputy Speaker, this deals with the import, export and re-export of specimens, specimens as referred to in the appendices of the international convention. It deals with what certificates and entry requirements you need in relation to the import of those specimens, whether there are any exemptions and what you do in respect of pre-convention specimens, i.e. those that were gathered prior to the implementation of the CITES Convention which was signed in 1973.

Deputy Speaker –

Any questions?

Clauses 43 to 47.

Question put and agreed to.

Deputy Speaker –

I put the question that Clauses 48 to 60 do stand part of the Bill.

The Hon. Nicola Moore –

Thank you, Madam Deputy Speaker. This deals with permits, certificates and licences in significant depth and detail in respect of specimens which are referred to in the appendices, it deals with alterations to the certificates, breach of conditions, revocation thereto, replacement and conditions within those licences.

Deputy Speaker –

Any questions?

Clauses 48 to 60.

Question put and agreed to.

Deputy Speaker –

I put the question that clauses 61 and 62 do stand part of the Bill.

The Hon. Nicola Moore –

Madam Deputy Speaker, thank you. Deals with the specimens may only enter or exit from approved places and it makes it an offence to possess, sell, purchase or transport specimens which are designated under the CITES Convention.

Deputy Speaker –

Any questions, Honourable Members?

Clauses 61 and 62.

Question put and agreed to.

Deputy Speaker –

I put the question that Clauses 63 to 74 do stand part of the Bill and I know there's going to be an amendment to one of them as we go through.

The Hon. Nicola Moore –

There is. Perhaps we could deal with the amendment before I go through them. Section 72 (3) should say, oh, page 38, section 72, subsection (3), I propose an amendment to delete from the penultimate line of that paragraph the words “or depreciation”.

Deputy Speaker –

Is there a seconder for the amendment, please? Councillor Scipio O’Dean? Thank you. The amendment is that in section 72, subsection (3) penultimate line we delete the words “or depreciation”.

Question on amendment, put and agreed to.

Deputy Speaker –

And now I’ll ask you to take us through, please?

The Hon. Nicola Moore –

Yes, thank you, Madam Deputy Speaker. Sections 63 to 74 deal with pollution control and hazardous substances, it deals with general duties in relation to them, the Chief Environmental Officer’s duty to make regulations to control them, to designate pollutants, to control permits, to make pollution charges and it’s an offence to unlawfully pollute, also permits for the making of regulations in relation to hazardous substances and powers to obtain information, there’s powers in relation to spills and accidental releases and pollution from construction, mechanical plant, equipment or machinery which includes noise pollution, makes provision for (a) an interim period during which time equipment can be replaced. There is liability for historical pollution, the general principle of the polluter pays is enforced and there is a provision for data planning research so the Chief Environmental Officer can gather information in order to assist in the execution of their functions.

Deputy Speaker –

Any questions, Members?

Clauses 63 to 74 (as amended)

Question put and agreed to.

Deputy Speaker –

I put the question that Clauses 75 to 78 do stand part of the Bill. Litter.

The Hon. Nicola Moore –

Thank you, Madam Deputy Speaker. Well, this will please the Honourable Councillor Dollery, it makes it much more expensive for the tossers amongst the community, I use his words I might add, I’m not using them in the vernacular, and it makes it now an offence punishable with a maximum penalty of a fine of £1,000 and it also prohibits that dreadful piece of littering of chewing gum which causes so much difficulty for people if it gets on our shoes. It also makes provision for the provision of maintenance of bins in order that all of the tossers out there can reform their ways and become citizens who put it in the bins.

Deputy Speaker –

I can see various smiles around the table. Any comments or questions?

Clauses 75 to 78.

Question put and agreed to.

Deputy Speaker –

I put the question that Clauses 79 to 85 do stand part of the Bill. We move to Waste, having dealt with Litter.

The Hon. Nicola Moore –

Thank you, Madam Deputy Speaker. This deals with Waste. The Chief Environmental Officer can specify categories of waste, how they're to be generally dealt with, penalty for unlawfully depositing waste, so, for example, fly tipping, dumping and the like, powers to require the removal of the waste, so the person who commits the offence has to pay, there are continuing fines of a hundred pounds a day for not complying with the notice from the Chief Environmental Officer and there are powers for waste management so that the Governor in Council can make regulations to deal with the handling of waste, the collection, transport, storage and the like and there is also provision for trans-boundary waste which may in due course may become appropriate where, for example, matters go, material goes off to either hazardous waste or material to go off for recycling and there's also the powers to make regulations in relation to establishing the standards and procedures for handling waste, for re-using and so forth.

Deputy Speaker –

Any questions?

Clauses 79 to 85.

Question put and agreed to.

Deputy Speaker –

I put the question that Clauses 86 to 96 do stand part of the Bill.

The Hon. Nicola Moore –

Thank you, Madam Deputy Speaker. 86 to 96 Control and Enforcement, it's the teeth to the stick, it allows enforcement officers with various powers to enter, search, seize, inspect objects, powers to seize specimens, powers to stop, detain and board vehicles, vessels and aircraft because that is usually how prohibited items are carried into the jurisdiction or out for that matter, there's a forfeiture to the Government, so for example, in relation to any material that's brought in which is a prohibited specimen, powers to deal with the specimen, sampling and testing, it's an offence to give false statements in relation to questions made by the officer, it's an offence to hinder an enforcement officer and it's also an offence to alter a mark in relation to any animal where, for example, an enforcement officer has exercised his function in that regard.

Deputy Speaker –

Thank you. Any questions?

Clauses 86 to 96.

Question put and agreed to.

Deputy Speaker –

I put the question that Clauses 97 to 101 do stand part of the Bill.

The Hon. Nicola Moore –

Thank you, Madam Deputy Speaker. Having had teeth and stick, this is information, environmental protection notices, the Chief Environmental Officer under 97 to 101 has the power to give environmental protection notices, to require individuals to do or take necessary steps in relation to environmental issues, there are emergency environmental protection notices, it specifies what shall be in those notices and it specifies what is an offence in relation to a notice, it also has miscellaneous provisions in relation to the notices and what they might specify or what they can refer to.

Deputy Speaker –

Thank you. Any questions?

Clauses 97 to 101.

Question put and agreed to.

Deputy Speaker –

I put the question that Clauses 102 to 108 do stand part of the Bill.

The Hon. Nicola Moore –

Thank you, Madam Deputy Speaker. This just deals with general provisions as to notices, appeals against notices, service of notices, when they come into effect what happens if you don't comply with them and information that you have to give in order to comply with the notices.

Deputy Speaker –

Any questions?

Clauses 102 to 108.

Question put and agreed to.

Deputy Speaker –

I put the question that Clauses 109 and 110 do stand part of the Bill.

The Hon. Nicola Moore –

Madam Deputy Speaker, this deals with offences and liability, it makes it offences to procure licences or provide information in compliance with environmental notices, also it makes the polluter liable without any prejudices or remedies to the Government for any costs incurred in detecting, apprehending or investigating an offence or seizing property or, indeed, remedying, mitigating or repairing any environmental damage or loss or damage to the biodiversity habitats or ecosystems.

Deputy Speaker –

Any questions?

Clauses 109 and 110.

Question put and agreed to.

Deputy Speaker –

I put the question that Clauses 111 to 116 do stand part of the Bill.

The Hon. Nicola Moore –

Madam Deputy Speaker, this deals with Miscellaneous items, jurisdiction evidence and procedures, it specifies all the necessary requirements in relation to scientific evidence, it allows for a private party action to enter proceedings against a person if they consider there's a violation and allows the Attorney General to intervene in those proceedings and take them over if appropriate, there's liability for company officers so where a company has committed an environmental offence the officers take the rap, if you forgive the colloquialism, there's a reservation for civil remedies, in other words you can still sue just because the Act allows you to recover. There is nothing in the Ordinance which prevents anyone being prosecuted under any other law just because there is also an offence here; under all Acts no person authorised to do anything under the Ordinance who performs those acts in good faith shall be held liable in relation to the discharge of their function or duty.

Deputy Speaker –

Any questions?

Clauses 111 to 116.

Question put and agreed to.

Deputy Speaker –

I put the question that Clauses 117, 118 and 119 do stand part of the Bill.

The Hon. Nicola Moore –

Thank you, Madam Deputy Speaker, it deals with service of documents other than notices, it states that this ...?.....Ordinance binds the Crown and it deals with the repeal, savings and consequential amendments to other Acts that may be affected by this new Ordinance, or new Bill to become Ordinance.

Deputy Speaker –

Any questions?

Clauses 117, 118 and 119.

Question put and agreed to.

Deputy Speaker –

We move now to the Schedules and I put the question that Schedule I do stand part of the Bill.

The Hon. Nicola Moore –

Thank you, Madam Deputy Speaker. Schedule I lists all the multilateral environmental agreements that have been extended to St Helena.

Deputy Speaker –

I take it there are no questions?

Schedule I.

Question put and agreed to.

Deputy Speaker –

I put the question that Schedule II do stand part of the Bill and I do hope that nobody is going to discover any typographical errors in the Latin names that are listed down here.

The Hon. Nicola Moore –

Well, Madam Deputy Speaker, I regret to say that there are some typographical errors in the Latin names.

Deputy Speaker –

We need to correct them?

The Hon. Nicola Moore –

We do, Ma'am.

Deputy Speaker –

We do.

The Hon. Nicola Moore –

So may I deal with Schedule II and the errors. In relation to Crustaceans at page 59, the brown spiny lobster, which is his common name, should read spiny, no 'e'.

Deputy Speaker –

And I've got bracket when in.

The Hon. Nicola Moore –

And that is, again, this has been corrected, but it should read in the final version, "when in berry" b e r r y.

Deputy Speaker –

Ah, thank you. Okay, end of bracket.

The Hon. Nicola Moore –

Close brackets.

Deputy Speaker –

Okay, is there a seconder, are there more amendments and can we take them all in one go for this particular schedule?

The Hon. Nicola Moore –

Yes, there's more than one amendment.

Deputy Speaker –

Okay, so we've got that one. Thank you.

The Hon. Nicola Moore –

So we've got two more, in fact. Page 60, **bicetariidae**, which is the bottom two, the pygmy sperm whales, should read pygmy sperm whale and the Latin name should be a e, not e a.

Deputy Speaker –

Okay, does it apply to both of them?

The Hon. Nicola Moore –

It applies to both of the bottom lines and it should be singularpygmy sperm whale, so they will be..... Can we deal with each line as an amendment or are you going to deal, Madam Deputy Speaker, with these three amendments?

Deputy Speaker –

I was going to take the three together if I could.

The Hon. Nicola Moore –

Thank you.

Deputy Speaker –

Is that alright, Councillor Scipio O'Dean?

The Hon. Christine Scipio O'Dean –

I second the amendments.

Deputy Speaker –

Thank you. Okay. Have you got them. So, Honourable Members, I put the question that Schedule II be amended. Crustaceans, the Brown Spiny Lobster should read Brown Spiny without the 'e' and (when in berry) and on page 60, **bicetariidae** should be a e and not e a both times the species is mentioned and in each occasion it's a singular whale, pygmy sperm whale as opposed to pygmy sperm whales and dwarf pygmy sperm whale. Yes, Councillor?

The Hon. Nigel Dollery –

Madam Chair, at this point I'd like to say how pleased I am that those things I spotted have been done.

The Hon. Nicola Moore –

Yes.

The Hon. Nigel Dollery –

I reported those spelling mistakes, I can't believe it.

The Hon. Nicola Moore –

Well, Madam Deputy Speaker, I'm grateful that I have improved the quality of the Honourable Councillor Dollery's ...?....

The Hon. Nigel Dollery –

Thank you.

The Hon. Nicola Moore –

But I take no credit for it, because in fact they were pointed out to me by the Honourable Councillor Scipio O'Dean.

Deputy Speaker –

There we go, who perhaps did not study Latin at school, but on the other hand she spotted the mistakes.

Question on amendments, put and agreed to.

Deputy Speaker –

Thank you.

The Hon. Nicola Moore –

So, can we deal with Schedule II, Madam Deputy Speaker? We dealt with the amendments but we haven't dealt with the

Deputy Speaker –

We haven't dealt with the Schedule yet, no, so we've now got, the amendments are sorted and I take it there are no questions from members about the Schedule?

The Hon. Nicola Moore –

So Schedule II, Madam Deputy Speaker, for the eager listeners, lists all the animals and plants, terrestrial and marine, which are restricted species for the purposes of this Ordinance.

Deputy Speaker –

Thank you. I find it very disappointing that some of them don't have a local name, they only have a Latin name. Sorry, Councillor Ellick?

The Hon. Gavin Ellick –

Just making reference to rock fish. Rock fish is one of the main fish what we, as locals, catch of the rocks, you have to target them to catch them, because they only take crabs to catch them, it's been a part of our tradition for the past several hundred years, how do we interpret that there from the rock fishing side of things?

Deputy Speaker –

AG, I'm not quite clear of the question.

The Hon. Gavin Ellick –

Well, it says here that Rock Fish comes under endangered species or endemic species.

Deputy Speaker –

Yes.

The Hon. Gavin Ellick –

And that is one of our main fish that we catch and eat; Rock Fish chutney is one of our delicacies.

Deputy Speaker –

Which particular rock fish are you referring to?

The Hon. Gavin Ellick –

They're just called Rock Fish, local name Rock Fish

Deputy Speaker –

Okay, sorry, got you, okay, page 59?

The Hon. Gavin Ellick –

Yes.

Deputy Speaker –

Scary day.

The Hon. Gavin Ellick –

It's about now they'll be in big schools at the moment.

The Hon. Nicola Moore –

I'm sorry, Madam Deputy Speaker, I'm not throwing the Honourable Gavin Ellick....

Deputy Speaker –

Gavin Ellick's question, could you rephrase so that the AG understands what it is you're asking.

The Hon. Gavin Ellick –

We got protected marine species, we got all these lists of all these different fish, but I have not seen no mention why we have Rock Fish included

Deputy Speaker –

You're asking why it's included?

The Hon. Gavin Ellick –

Yeah, because it's included, it's plentiful and you only can catch it when you have crab, so I'm wondering why, like lot of these species are things what we catch as Rock Fishermen or fishermen from the island and we see that now under this law we won't be able to catch these things?

The Hon. Nicola Moore –

Yes, Madam Deputy Speaker, I'm grateful for the clarification on that question from the Honourable Gavin Ellick. That's correct, it is listed as a species which is endemic and which is protected so if you were to commit an act in which you were to deliberately went to catch it, so, as I understand the Honourable Gavin Ellick, you require crab to catch it, if you were to set out to do that that would be an offence.

The Hon. Gavin Ellick –

But then, this is our traditional thing in fishing and these are not endangered or running out, in short supply and it is a delicacy.

The Hon. Nicola Moore –

I'm very grateful to the Director, thank you, Madam Deputy Speaker, I'm informed that, as previously referred to, the Codes of Practice, the Codes of Practice are going to make provision for the maintenance of traditional fishing and traditional habits in terms of what particular items are caught and, for example, whether or not they may be prohibited in certain times when they're breeding or whether there'll be a limit to the number of fish which can be caught, but as I understand it from the Director, that will be a step that's taken through the Codes of Practice. I hope, Madam Deputy Speaker, that that answers the question.

Deputy Speaker –
Yes?

The Hon. Gavin Ellick –
Yes.

Deputy Speaker –
Thank you. Are there any other questions about Schedule II?

Schedule II (as amended).

Question put and agreed to.

Deputy Speaker –
Just trying to find where Schedule III starts?

The Hon. Nicola Moore –
Madam Deputy Speaker, there isn't a Schedule III.

Deputy Speaker –
There isn't? Wonderful. Is that it? We've got there? Thank you very much. Thank you, Members.

Deputy Speaker –
I suspend the sitting for ten minutes.

The Hon. Nicola Moore –
I'm sorry, Madam Deputy Speaker?

Deputy Speaker –
I'm suspending the sitting for ten minutes. Thank you.

Council suspended.

Council resumed.

The Speaker –
Thank you, Honourable Members, thank you, Deputy Speaker, for going through that lengthy process in Council, in Committee of the Council, so I'll ask the Clerk now to call the Bill.

THE ENVIRONMENTAL PROTECTION BILL, 2015

Resumed Debate.

The Speaker –
Honourable Mover?

The Hon. Pamela Ward Pearce –
Mr Speaker, I beg to report that the Environmental Protection Bill, 2015, passed the Committee with six amendments and to move that this Council approves the said Bill and recommends to the Governor that it should be enacted.

The Speaker –
Thank you, Honourable Member. Is there a seconder?

The Hon. Christine Scipio O'Dean –
I beg to second, Mr Speaker.

The Speaker –
Thank you. Honourable Mover, you may speak to the Bill, to the Motion.

The Hon. Pamela Ward Pearce –
Mr Speaker, I would just like to reiterate my thanks to my Honourable Colleagues for their support in this Bill, to the AG and her Chambers for all their hard work, but especially to the Environmental Team at ENRD. I would also like to reassure my Honourable Friend, Gavin Ellick, that our aim is to predict traditional pursuits and so work is underway with the Codes of Practice to ensure such pursuits as rock fishing will continue. Thank you, Honourable Sir.

The Speaker –
Thank you, Honourable Member. I put the question that this Council approves the Environmental Protection Bill, 2015, and recommends to the Governor that it should be enacted. Any Member wishes to speak on the principles? No Member wishes to speak, I take it you won't want to respond again?

The Hon. Pamela Ward Pearce –
No, thank you, Mr Speaker.

The Speaker –
No, happy with that, okay, thank you.

Question that Council approves the Bill, as amended, and recommends to the Governor that it should be enacted, put and agreed to.

The Speaker –
Thank you. Now, perhaps at this stage, before I ask the Clerk to call the next item, it's now a quarter past three and I'm not sure how long the other two items are going to take, we have to come back on Monday to do another session, the adjournment Bills, I am taking your advice on this, how far you want to proceed today? Honourable Christine Scipio O'Dean?

The Hon. Christine Scipio O'Dean –

Thank you, Mr Speaker. My preference, Mr Speaker, would be to continue and complete the Motions and then come back on Monday to finish off the questions and the adjournment debate.

The Speaker –

Okay. Is that the wish of everybody, is there anybody against that, it could take you up to five o'clock maybe, I don't know? You're happy? Alright, I don't hear any objection. Right, we'll proceed. Clerk?

Motion No. 5 – The Honourable Brian Isaac.

The Speaker –

Honourable Mover?

The Hon. Brian Isaac –

Mr Speaker, that this House urges Government to review the Leisure Area at Ruperts Beach with a view to putting in place a maintenance programme to ensure that the area can continue to be enjoyed as a recreational space by the community.

The Speaker –

Thank you, Honourable Member. Is there a seconder?

The Hon. Derek Thomas –

Mr Speaker, I beg to second.

The Speaker –

Thank you, Honourable Member. The Motion then is that this House urges Government to review the Leisure Area at Ruperts Beach with a view to putting in place a maintenance programme to ensure that the area can continue to be enjoyed as a recreational space by the community. Honourable Members, the Motion is open to debate. Honourable Mover?

The Hon. Brian Isaac –

Mr Speaker, the Motion before the House today urges Government to review the Leisure Area at Ruperts Beach with a view to putting in place a maintenance programme to ensure that the area can continue to be enjoyed as a recreational space by the community. Ruperts Beach area has always been part of the island's local culture for recreational purposes and it's now become a more focal point to relax and socialise. It is the most popular beach area used by young, elderly and disabled. It offers opportunity to those who wish to try their luck at fishing and for those who wish to swim safely in the open sea. With the construction of the jetty, we are now able to see that the sand has returned to the beach area giving the opportunity for all to have the pleasure to relax and for children to build their sandcastles. I've always been a strong advocate during the early days for the development of Ruperts that the beach area should remain as a recreational area. Following requests from some constituents to have some form of lighting in the area I was able to secure funding to have two solar lights erected and supported the upgrading of the shelters and the barbecue pits through the Tourism Development Programme at the time. I also recall the donation of the recycled glass picnic furniture which was donated by the late Michael Benjamin, but sadly much of this furniture and related facilities has been vandalised leaving the area in a dilapidated state which presents some health and safety hazards. Over the years we have seen

the neglect of the toilets and the shower facilities where vandals has placed this very important facility unfit to use. How sad this is for the island and visitors. How long can this continue with irresponsible persons who have no respect for fellow family and friends are allowed to destroy the hard work of others. Despite the vandalism of the toilet and shower facilities this facility has been neglected over the years by the appropriate Directorate and under the proposed review of a maintenance programme would be expected to provide the maintenance and upgrading of this facility. Mr Speaker, I understand that a review will incur a cost and there are already high demands being made on the current and capital budgets as Directorates submit their submissions for the next financial year. What I seek from this House is the support for a review to be undertaken which will support a plan which will provide what can be achieved such as the upgrade of the shower and toilet facilities. With these measures in place, the formulation of a small working group to seek the support of donor funding to improve the leisure area would be the second phase. This will not be an easy task, but it will give the joint ownership and responsibility to the community. As mentioned, a recreational area is intended to be supported and managed by a small working group, but for all this to be achieved, proper planning needs to be put in place under a maintenance programme. Mr Speaker, I stand here today seeking the support of this Honourable House to support a review for the Ruperts Leisure Area and ask Honourable Members to support this Motion as it is the first step to improve the Leisure Area that is widely used by the community and it also supports our strategic objective to preserve and cherish our culture. Mr Speaker, I beg to move.

The Speaker –

Thank you, Honourable Member. I am just putting the Motion again that this House urges Government to review the Leisure Area at Ruperts Beach with a view to putting in place a maintenance programme to ensure that the area can continue to be enjoyed as a recreational space by the community. Any Member wishes to speak to the Motion? Honourable Derek Thomas?

The Hon. Derek Thomas –

Thank you, Mr Speaker. Mr Speaker, the Ruperts Beach area is a recreational area which my Honourable Friend alluded to and we all know how it's been well used by the general public for many years. Although the area is being developed into a cargo port facility, there has been political will for the beach area, when safe to do so, to continue to be enjoyed for general recreational purposes. In view of this, Mr Speaker, it will be extremely necessary for a maintenance programme to be in place for the general facilities. I recently visited Ruperts and I found the toilets to be in a most appalling state and, Mr Speaker, if we are encouraging people to continue to enjoy the facilities and the area at Ruperts Beach then such things like the public toilets and other general facilities will need to be maintained. Therefore, Mr Speaker, I support the Motion.

The Speaker –

Thank you, Honourable Member. Any other Honourable Member wishes to speak to the Motion? Alright, lady first, Honourable Pamela Ward Pearce?

The Hon. Pamela Ward Pearce –

Thank you, Mr Speaker. Thank you my Honourable Friend for bringing this Motion and I support this Motion, I'm not sure where we're going to get the money from or who's going to do the maintenance, but I do support it. I believe my Directorate don't have the money to do it, but we'll discuss that later. Ruperts development is an ongoing project, work is still

happening there, so while there is a will to do something about it, at the moment I don't think that we can, there's no capacity there to build it in. I recognise the importance of it as a traditional recreational area and we do need to have facilities that's fit for purpose and for those reasons I support my Honourable Friend's Motion. Thank you.

The Speaker –

Thank you. The Honourable Lawson Henry?

The Hon. Lawson Henry –

Thank you, Mr Speaker, I, too, rise in support of the Motion, it's always been the intention through the political process of the development that when possible and when no ships are in port that it could be used as a recreational area and having that political will I do think that we should be making some provision for its upkeep. Thank you, Mr Speaker.

The Speaker –

Thank you, Honourable Member. Does any other Honourable Member wish to speak to the Motion? Honourable Mover?

The Hon. Brian Isaac –

Mr Speaker, I would like to thank my Honourable Members who supported the Motion and it's a very beneficial proposal and I know my Honourable Friend, Councillor Ward Pearce, talks about money, but sometimes things can be done with very limited resources and especially the second phase of the proposal is to have a working committee where it is a shared responsibility between the community and Government, so I do hope that this gets some support to enable this process to materialise. Thank you, Mr Speaker.

The Speaker –

Thank you, Honourable Member. The Motion is that this House urges Government to review the Leisure Area at Ruperts Beach with a view to putting in place a maintenance programme to ensure that the area can continue to be enjoyed as a recreational space by the community.

Question on Motion, put and agreed to.

The Motion is carried.

The Speaker –

Next item, please?

Motion No. 6 – The Honourable Christine Scipio O'Dean.

The Speaker –

The Honourable Christine Scipio O'Dean?

The Hon. Christine Scipio O'Dean –

Thank you, Mr Speaker. Mr Speaker, that this House has no confidence in the Honourable Les Baldwin and moves that he tenders his resignation as a member of the Legislative Council forthwith.

The Speaker –

Is there a seconder?

The Hon. Lawson Henry –
Mr Speaker, I beg to second.

The Speaker –
Honourable Mover?

The Hon. Christine Scipio O'Dean –

Thank you, Mr Speaker. Mr Speaker, as an Honourable Member of this Council, I feel that it is important that we uphold the law and maintain highest possible standards of behaviour as elected leaders of our community. Mr Speaker, as Children's Champion my responsibility as a member of the Legislative Council is to facilitate in promoting St Helena Government's responsibility towards children and to campaign for protecting children from violence, exploitation and abuse. The exploitation of children in any form should not be condoned or permitted by this Legislative Council nor St Helena Government. The most vulnerable in our society are those who do not have a voice of their own and it is the responsibility of those tasked with passing the laws for St Helena and for developing the policies which are implemented by the Government must ensure that we uphold the highest standard and demonstrate that we both understand the issues which concerns children and that we act accordingly to deal with those issues. Mr Speaker, in support of this Motion, I commend to this House the Code of Conduct by which elected members must abide. The duty of members is to uphold partnership values. This includes upholding the rule of law and abiding by international conventions. Mr Speaker, the Committee which has overall responsibility for safeguarding in St Helena, the Governor having delegated his responsibilities to this Committee, is the Social and Community Development Committee. The Honourable Member was, at all relevant times, the Chairperson of this Committee. The Safeguarding Children's Board is responsible for ensuring that the rights of children and young people are safeguarded from exploitation of any sort. In order to do this, the members of the Legislative Council must ensure that the appropriate understanding is in place which is used to lead on the issues and drive work forward ensuring effective cooperation between agencies and professionals.

The HMG document "Working Together to Safeguard Children" which has been reviewed in March this year is the basis for the standards applied in St Helena Safeguarding. This document defines child sexual exploitation as including involving production of sexual online images. The purpose is to keep children safe and to commit to take action against those who intend on abusing or exploiting children. As Children's Champion, Mr Speaker, this House must take notice that the circumstances in which this Honourable Member finds himself, the conduct which he has admitted which was committed at a time when his role was the Chairperson of the Social and Community Development Committee who has overall responsibility in this Legislative Council for the safeguarding of children and using a computer issued to him in his capacity as an elected member at the expense of St Helena Government. In doing so, this Honourable Member has failed to uphold the requirement of section 4.2 of our Code of Conduct which states that "Members should at all times conduct themselves in a manner which will maintain and strengthen the public's trust and confidence in the integrity of the Council". He has conducted himself in a way which brings this Council into disrepute. In the circumstance I move that this House resolves that it has no confidence in the Honourable Councillor.

The Speaker –

Thank you, Honourable Member. The Motion is that this House has no confidence in the Honourable Les Baldwin and moves that he tenders his resignation as a member of the Legislative Council forthwith. The Honourable Lawson Henry?

The Hon. Lawson Henry –

Mr Speaker, it is with great sadness that I stand before the House today to speak to such a Motion. I wish to be clear, however, I did so because as a serving member of this Council I believe the events that has led to this Motion demand no less a response and I have a public duty and have done so and so have every other member of this House. The Code of Conduct for members of the Legislative Council was approved by resolution of the Legislative Council on 19th day of March 2010 sets out the standards expected of us as we hold this important office. The Code of Conduct requires the member to act in the interest of the people of St Helena which includes upholding the seven principles of public office. The seventh of those is that we demonstrate by leadership and example in order to maintain and strengthen the public's trust and confidence in the integrity of the Legislative Council and its members. We must uphold the rule of law and to act in compliance with applicable international obligations. I support this Motion from the Honourable Christine Scipio O'Dean. If we turn a blind eye to upholding the standards of those who by leadership and example should be demonstrating principles of safeguarding on St Helena then we do so not act in the best interests of the people and most importantly the children of St Helena for whom we act. I am grateful to the Children's Champion, the Honourable Christine Scipio O'Dean, for her careful consideration and identification of these issues. The use of a computer which have been provided from public funds for the use of the Honourable Councillor was used for an act which undermines leadership and examples in safeguarding. The House cannot condone this, to do so would be an abuse of the public's trust in us, the elected members. In doing so, he abused the public's trust in him as the Chairman of the Committee with responsibility for safeguarding. We should, as members of this Honourable House, support a Motion to show that we no longer have confidence in him as this will show the public that they can trust that we do not condone anyone as being above the standards entrusted in us. I therefore support this Motion and beg to move. Mr Speaker.

The Speaker –

Thank you, Honourable Member. Does any other Honourable Member wish to speak to the Motion? Honourable Pamela Ward Pearce?

The Hon. Pamela Ward Pearce –

Thank you, Mr Speaker. I stand in support of the Honourable Christine Scipio O'Dean's Motion and the important remarks that she has made in relation to her duty as the Children's Champion and our duty as members of this House to support the Children's Champion and the policies which she represents. At this time, when we wait for the world's spotlight in relation to the outcome of the Wass Inquiry we as members should offer our support to upholding these standards, these standards cannot be compromised and we should not be seen to permit such compromise. For these reasons, I support this Motion. Thank you, Mr Speaker.

The Speaker –

Thank you, Honourable Member. Does any other Honourable Member wish to speak to the Motion? Honourable Derek Thomas?

The Hon. Derek Thomas –

Mr Speaker, I stand to give my support to this Motion. I offer my support because I feel we should, as elected leaders, set by example, the highest standards. We should demonstrate to the people of St Helena the conduct we would wish them to aspire to. We should understand the boundaries of our conduct and duties under the Code of Conduct. Mr Speaker, I give my full support to this Motion.

The Speaker –

Thank you, Honourable Member. Is there any other Honourable Member who wishes to speak to the Motion? Then I put the question.

The question is that this House has no confidence in the Honourable Les Baldwin and moves that he tenders his resignation as a member of the Legislative Council forthwith. Yes, sorry, I almost cut the.....thank you very much, that's the beauty of having a Clerk on the spot. Honourable Christine, I almost cut you out for.....Honourable Christine Scipio O'Dean, Mover?

The Hon. Christine Scipio O'Dean –

Thank you, Mr Speaker. Mr Speaker, I thank my Honourable Colleagues for their support in this Motion. These members recognise the importance of safeguarding in our society and the important steps we have taken. I am disappointed in those who have not felt able to stand up in support of this Motion and hope that they will by their vote in favour of the Motion which will demonstrate that they do, indeed, have the courage to uphold the values which they have sworn to uphold and that they do not shy away from demonstrating the leadership which comes with the office which the people have entrusted in them. Mr Speaker, I beg to move.

The Speaker –

You can only give a point of information, Sir, at this stage, you've lost your chance for speaking, a point of information?

The Hon. Nigel Dollery –

A point of information. I saw no need to repeat comments that had already been made, Sir.

The Speaker –

Thank you. The Motion then, standing in the name of the Honourable Christine Scipio O'Dean, is that this House has no confidence in the Honourable Les Baldwin and moves that he tenders his resignation as a member of the Legislative Council forthwith.

Question on Motion, put and agreed to.

The Speaker –

Yes, Christine?

The Hon. Christine Scipio O'Dean –

Thank you, Mr Speaker. In accordance with Order 17, Rule 2, I would like to claim a division, is that possible that permission can be given for a division, Mr Speaker?

The Speaker –

Well, you don't need a division really, it's positively a yes vote, but I leave it to you. Can you take a division then please Council?

The Hon. Christine Scipio O'Dean –

Mr preference would be a division, Mr Speaker, thank you.

Division Claimed.

Ayes	Noes	Abstention
The Hon Lawson Henry		
The Hon Christine Scipio O'Dean		
The Hon Pamela Ward Pearce		
The Hon Derek Thomas		
The Hon Brian Isaac		
The Hon Nigel Dollery		
The Hon Wilson Duncan		
	The Hon Gavin Ellick	
The Hon Cyril George		
The Hon Bernice Olsson		

The Speaker –

The Ayes have it, the Ayes have it. Thank you.

Right, it's a quarter to four. Maybe this is a convenient time to adjourn until Monday.

The Hon. Roy Burke (Hon. Chief Secretary) –

Mr Speaker, I beg to move that this House do now adjourn until Monday, 16th November at 10.00 am.

The Speaker –

Thank you very much indeed.

Question on adjournment, put and agreed to.

The Speaker –

Council is adjourned.

Council adjourned.

