

5. CONSIDERATION OF CLAUSES

**5.1. Income Tax Legislation (Amendment) Bill 2019 –
Clauses considered**

Mr Cannan to move.

The Speaker: Item 5. Consideration of clauses, Income Tax Legislation (Amendment) Bill 2019, and I call on Mr Cannan to move.

1460 **Mr Cannan:** Mr Speaker, this Bill contains five clauses. It amends and confirms two Temporary Taxation Orders and confirms a third Temporary Taxation Order without amendment. It also makes three amendments to the Income Tax Act 1970.

Turning to the Bill – if I can get my fat fingers to open the piece of paper in front of me – clause 1 provides the short title of the Act.

1465 I beg to move that clause 1 stand part of the Bill.

The Speaker: Mr Shimmins.

Mr Shimmins: I beg second.

1470 **The Speaker:** I put the question that clause 1 stand part of the Bill. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

Clause 2, Mr Cannan.

1475 **Mr Cannan:** Clause 2 confirms three Temporary Taxation Orders that were approved as part of the 2018 Budget.

1480 The first of these is the Income Tax (Nursing Expenses) (Temporary Taxation Order) 2018. If a person is severely disabled physically or mentally, they or a relative can claim tax relief for certain nursing expenses in respect of that person. This Temporary Taxation Order (TTO) amends section 39AA of the Income Tax Act 1970 to extend the scope of this relief so that it can also apply to some or all of the costs of a qualified physiotherapist providing treatment to the same person.

1485 The second Temporary Taxation Order to be confirmed by this Bill is the Income Tax (Pensions) Temporary Taxation Order 2018. This Order introduces a new part 5A into the Income Tax Act 1970 that allows for a new type of flexible pension scheme to be offered by pension providers. The new scheme must be approved by the Assessor of Income Tax and can take the form of either a personal or occupational pension. A person may only be a member of one such scheme at any one time and the member will be able to access their funds from the age of 55, although in special circumstances it will be possible to access them before this date. On reaching 55, a member can access their entire funds in one lump sum, 40% of which will be paid tax free. 1490 The alternative option is for the member to take an initial lump-sum payment of at least 40% of the funds, which will be paid tax free. The member can then take further payments of such amounts and at such times as they specify, and these payments will be taxed as income in the normal way. Tax relief is allowed on contributions made into the scheme up to an annual maximum of £50,000 and, on the death of the member, any of the member's funds that remain 1495 are commuted and paid free of tax.

1500 The new Part 5A also provides for a charge on unauthorised payments made from a new scheme, a supplementary charge on those payments and for a charge on excess contributions. It also includes provisions addressing the recycling of funds transferred from other approved pension schemes and makes it an offence for a person to knowingly make false statement or representation to obtain relief or repayment of tax under this part.

1505 In addition, the new part contains a reporting requirement for single payments of more than £10,000 made by an employer to one of the new schemes and introduces a similar reporting requirement into the Income Tax (Retirement Benefits Schemes) Act 1978 and the Income Tax Act 1989 for schemes approved under those Acts. It also provides that if funds are withdrawn from a scheme approved under either of those Acts and paid into a new scheme, then tax relief will not be allowed on those contributions into the new scheme as they will have already received tax relief.

1510 The new part allows a pension scheme currently approved by the Assessor under sections 50B or 50C of the 1970 Act or the Income Tax (Retirement Benefits Schemes) Act 1978, or the Income Tax Act 1989 to be transferred into a new scheme following the payment of a 10% transfer fee.

The confirmation of this Temporary Taxation Order is subject to the amendments set out in clause 3 of the Bill.

1515 The third Temporary Taxation Order to be confirmed by this Bill is the Income Tax (Non-Corporate Taxpayers) Temporary Taxation Order 2018. Before I describe what this Order does, I would like to briefly remind Members why the amendments it makes are considered to be necessary.

1520 In my Budget speech last year I advised that the Assessor had informed me that although our Income Tax system for companies is simple and very generous, some individuals are abusing it and adopting aggressive planning measures to reduce their personal tax liabilities. This commonly involves using Isle of Man companies to convert taxable income into capital, which is not taxable. The method most commonly seen by the Assessor involves individuals selling either goodwill or unquoted shares to their own companies in order to extract profits as non-taxable capital loan repayments. These repayments are made using money that is the taxable profit of the company and enables that money to be extracted in a non-taxable form rather than as a taxable dividend.

1525 Turning now to the Order, this TTO amends section 2PA(1) of the Income Tax Act 1970 to clarify that any income distribution is taxable. It also amends section 2PA(5) to clarify that the meaning of the term 'distribution' in that section includes a payment made on the winding up, liquidation, cessation or dissolution of a corporate taxpayer.

1530 The Order goes on to insert a new section 2PB into the Income Tax Act 1970 and this is the anti-avoidance measure. Under this provision, if an individual has sold unquoted shares or goodwill to their own company after 6th April 2011 but before the coming into effect of this Order and the sale creates a debt to the individual, then any repayment of that debt made after the Order has come into effect will be taxable dividend. The size of the dividend is limited to whichever is the smaller of the amount of the debt or the total debt at the date the Order came into effect and cannot exceed the amount of undistributed taxable profits of the company. If the sale of goodwill or shares occurs after the Order came into effect, the sale will be treated as a dividend taxable on the owner, the amount of the dividend being whichever is the smaller of the total sale price or the undistributed taxable profits of the company at the end of the accounting period in which the sale occurred.

1535 The Order also addresses the situation in which debt repayments are made to a number of individuals during an accounting period and the repayments exceed the undistributed profits. In such a case it provides a calculation to be used for prorating the tax charge. In addition, the Order provides that if a repayment took place before the Order came into effect but the Assessor is not satisfied that it physically took place before that date, then the repayment can be charged to tax under the new section. In addition, if the Assessor believes someone has taken measures to avoid Income Tax under the new part, then an assessment or additional assessment can be raised on that person.

1550 The final provision of the TTO amends section 105AA of the Income Tax Act 1970. This section concerns the appointment by the Assessor of suitably qualified officers to perform certain functions as authorised officers, including functions delegated by the Assessor. The TTO

1555 inserts a new subsection (2A) which clarifies that the Assessor can, in writing, delegate any of the Assessor's functions to a suitably qualified authorised officer. It also substitutes subsection (3) to provide that the role of the authorised officer is subject to any conditions set down in regulations or in the officer's notice of appointment or the Assessor's written delegation. A new subsection (5) provides that any previous delegation of the Assessor's powers is unaffected by the section. The TTO also takes the opportunity to change a reference to a civil servant to reference to an employee of the Public Services Commission.

1560 The confirmation of this Temporary Taxation Order is subject to the amendments set out in clause 4 of the Bill.

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

The Speaker: Mr Shimmins.

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

The Speaker: I put the question that clause 2 stand part of the Bill. Those in favour, please say aye; against, no. We will call a division on clause 2, please, Mr Secretary.

Electronic voting resulted as follows:

FOR

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

AGAINST

Mr Speaker

1570 **The Speaker:** With 22 for and 1 against, the ayes have it. The ayes have it. Clause 3, Mr Cannan.

Mr Cannan: Clause 3 sets out a number of amendments to the pensions TTO if that Order is to be confirmed.

1575 Mr Speaker, before I go into these amendments in more detail, I would like to inform Members that this new flexible pension scheme has been very successful already. The new scheme has encouraged more of the large providers into the pension market and I hope it will help more of our population save towards their retirement. However, these amendments will ensure that this new scheme is easy to use and even more flexible.

1580 All of the amendments address Article 3 of the TTO, which is the Article that inserts a new Part 5A into the Income Tax Act 1970, providing for a new, more flexible type of pension scheme

to be offered in the Island. The amendments are directed at the legislation forming the new Part 5A, which consists of sections 61G to 61X.

1585 The first amendments address section 61H which largely concerns the Assessor's approval of a pension scheme to qualify for tax relief. The first amendment substitutes subsection (4)(b) with a broader condition that requires the scheme to provide benefits not only for the member but also for a surviving spouse or civil partner, or a child, dependant or personal representative.

The second amendment substitutes subsection (5)(b) to make a similar change to the conditions for approval of an occupational pension scheme.

1590 The third and final amendment to this section removes subsection (8) which currently prevents a person from being a member of more than one scheme of this type at any one time, regardless of whether it is a personal or occupational scheme. This will make the new pension much easier to administer.

1595 The next amendment affects section 61L. This provides the member with another option for accessing their funds. The first allows them to access their entire pension fund in one lump sum while the second allows them to take an initial lump sum of at least 40% of the funds and to take the remainder in such amounts and at such times as they specify. The amendment introduces a third option to improve the flexibility of the scheme, which allows the member to specify any size of payment at any time until the funds are exhausted. It also amends the wording of the two existing options to clarify that they refer to funds in the pension scheme to which the member is entitled.

1600 The introduction of a third withdrawal option requires a number of consequential amendments to be made to other sections. The first of these is section 61N which concerns the tax treatment and calculation of the lump sum payments. Three amendments are made to this section, the first of which addresses subsection (1). This subsection currently provides that if the entire funds are withdrawn in a single lump sum then 40% of that amount will be tax-free. It also provides that if the member chooses instead to take an initial lump sum of at least 40% of the total funds, then that 40% will be paid tax-free, anything more being taxed in the normal way.

1605 Following the addition of a third withdrawal option in section 61L that has just been described, subsection (1) is substituted in order to also include the tax treatment of the new option. This amendment will allow 40% of each payment to be made to the member under the new withdrawal option to be tax-free. The new subsection also amends the wording of the second of the two existing options to clarify that it refers to funds in the pension scheme to which the member is entitled.

1610 The second amendment made to section 61N concerns subsection (3). This subsection ensures that any funds that are transferred into one of the new pension schemes from any other approved pension scheme after a tax-free lump sum has been paid out of that approved scheme are not taken into account when calculating the tax-free lump sum taken from the new scheme. The amendment to this subsection ensures that this treatment is extended to the new withdrawal option.

1620 The final amendment made to section 61N substitutes subsection (4). This subsection requires the administrator of a scheme to notify the Assessor within 30 days of a lump sum being paid to a member. However, this now needs to be amended to reflect the introduction of the third withdrawal option. The amended subsection requires the Assessor to be notified within 30 days of a lump sum being paid or within 30 days of a first payment being made under the new option.

1625 The next section to be amended is 61P which concerns the treatment of any of the member's funds which remain after their death. This currently requires any remaining funds to be commuted within two years of the member's death and provides that those funds will not be taxable. The Bill amends subsection (1) to extend it to cover the scenario where a pension comes into payment under the new withdrawal option and funds remain after the member's death.

1630 The Bill also substitutes subsection (2) to reflect the broadening of the condition in section 61H to require the pension to also provide benefits to surviving dependants. The new subsection

(2) provides that where there is no surviving spouse or civil partner, or child, dependant or personal representative, any remaining pension funds should still be commuted in full within two years of the member's death.

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However, where there is no such surviving person, the commutation can still take place, in accordance with pension scheme rules, but a second option will also be available. The second option will allow an appropriate surviving individual to claim and receive payments from the remaining funds of the member. If this option is chosen, the payments made to the surviving individual will be treated, for tax purposes, in exactly the same manner as they were treated for the member.

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The next amendment inserts a new section 61PA into Part 5A. This provides Treasury with the power to make regulations to restrict the level of exit and transfer fees that can be charged by pension providers for this particular type of pension scheme.

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As well as making amendments to the pensions TTO, clause 3 also ensures that any pension schemes that have already been approved by the Assessor under Part 5A of the Income Tax Act 1970 when the amendments come into operation will not need to be re-approved by the Assessor in order to continue to qualify for tax relief after implementing the amendments. Normally, if an approved scheme is amended after approval has been given, it needs to receive further approval in order for relief to continue to apply.

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Finally, clause 3 provides that the amendments will be considered to have come into operation at the same time as the pensions TTO itself came into operation in 2018 and to have been in operation since that time.

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

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The Speaker: Mr Shimmins.

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

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The Speaker: Mr Hooper.

Mr Hooper: Thank you very much, Mr Speaker.

Firstly, I would like to say that I am very supportive of the changes that are being laid out here to the pensions TTO contained in clause 3, especially as they address some of the concerns that I raised when the pension TTO was originally brought last year. So I would like to thank the Minister and the Treasury for addressing some of those issues.

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I would also like to thank the Minister for clarifying in his opening remarks the tax treatment of pension payments to surviving dependents. At Second Reading I asked whether or not the pension freedoms rules under this TTO would allow schemes that were approved in accordance with this TTO to be able to meet the qualifying criteria as registered overseas pension schemes with HMRC.

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I appreciate the Minister's comments that individual schemes will obviously have to be assessed on a case-by-case basis by HMRC and we cannot comment on those. But my question really was around whether or not the rules would enable a scheme to meet those criteria or whether there is anything in the rules that would explicitly bar a scheme, I suppose is the question. I would appreciate it if the Minister could clarify that for me.

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I have an area of concern in respect of one of the sections in here and that is section (j). That is the insertion of a new part 61PA in respect of exit and transfer fees. This section is proposed to give Treasury the power to make regulations to set fees charged by pension trustees and administrators in respect of exit and transfer fees from these approved schemes.

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To my mind, ordinarily it should be the regulator that deals with things like fee caps, not the Treasury. So my question to the Minister – the first question, I suppose is – is Treasury bringing this on behalf of the regulator? If so, why is the section not giving the regulator these powers instead of Treasury?

1685 But I think before we even get there – to ask the question who should rightly have these powers – the question really is why does Treasury need these powers at all? Why is it necessary that Treasury have the powers to restrict these types of fees? Does Treasury have this power in respect of other types of pension schemes? Does Treasury have this power in respect of other products on offer by regulated entities? Can they, for example, restrict the fees charged by banks or life insurance companies? I suspect the answer to that question is, no, they cannot, but I would appreciate some clarity on why it is felt that pension schemes of this nature need to be treated differently to pretty much everything else that exists on the Isle of Man.

1695 When we debated the Dormant Assets Bill, the issue of Treasury regulating or restricting the fees that banks could charge was brought up, was mentioned as a suggestion, and this was rejected outright by Treasury. The Hon. Member for Middle, Mr Shimmins, in rejecting the suggestion that Treasury should regulate the fees on that scheme, responded that:

... each bank will have its own range of tariffs and they will apply a reasonable charge ... it would be wrong, I would suggest, for this House or Treasury to determine what a particular bank should charge for a particular service.

That was Treasury's view in respect of bank charges.

1700 So in respect of banks it is wrong for Treasury to determine fees and charges, but in respect of this particular type of pension scheme it is not wrong. Are pensions administrators of these schemes somehow less trustworthy than banks? Are they less likely to apply only reasonable charges? Are they any less regulated than banks? Are their customers substantially different in makeup to banks? I suggest this approach by Treasury is somewhat incoherent and this proposal to regulate exit and transfer fees, I think, has come a little bit out of the blue. I do not recall seeing it before this set of clauses was tabled.

1705 So, Mr Speaker, Hon. Members, if it is wrong for Treasury to set fees and charges in one area of the marketplace without any evidence that such interference is warranted, then surely it is wrong for Treasury to set fees and charges in any area of the marketplace without evidence that such interference is warranted.

1710 So I would urge Members to vote against this part of the clause – not the whole clause, just this particular part of the clause – on the grounds that it does not really make a lot of sense and as yet we have not had a proper justification of why Treasury feels it needs this particular power.

So, to that end, Mr Speaker, I would request that this particular part – that is clause 3, section (2)(j) – be voted on separately in accordance with Standing Order 3.1(2).

Thank you.

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The Speaker: Is there a seconder for the proposal?

Mr Baker: I will second Mr Hooper's proposal.

1720 **The Speaker:** Now that proposal is debatable – I mean that in the technical sense! (*Laughter*) – in that Members can debate the motion put forward by Mr Hooper and that question will be put at the end before the clause is put.

We turn now to Mr Robertshaw.

1725 **Mr Robertshaw:** Thank you, Mr Speaker.

1730 Just one specific point, and I would understand if the Minister cannot answer it now and I would be content with a circulated note later. There has been much talk now about the pension fund enjoying an upfront tax free cash payment and the 40% has been regularly mentioned, but I would be grateful if the Minister or the officers could advise me what happens if the reverse situation occurs where if somebody chooses to take out, for example, an annuity for a given period of time, with say 60% of the fund, with a cash payment at the end of that period would that, say, for example, if a total fund 60% of it was taken as an annuity leaving a 40% amount in

1735 a fund to be considered later. Could that 40% be released as a cash free sum or does it only work when the lump sum is paid at the beginning? A technical point and I would be grateful for an answer by note form if it cannot be provided now.

Thank you, Mr Speaker.

The Speaker: Hon. Member for Middle, Mr Shimmins.

1740 **Mr Shimmins:** Thank you, Mr Speaker.

I rise to my feet just to respond to some of the comments made by the Hon. Member for Ramsey, Mr Hooper, and perhaps provide a bit of context to section (j) which relates to charges.

1745 Hon. Members may not be aware but the question of pension drawdown fees and other charges has been quite a concern for many people in the United Kingdom, which is slightly ahead of us in terms of these arrangements. So much so that the *Daily Telegraph* ran a campaign for a number of years and this was then followed up by *Which?*, the Consumers' Association magazine, and as a result of that the UK Financial Conduct Authority conducted a two-year investigation, which concluded last summer. They found that some people were being charged as much as four times as much in fees than others for the same amount of pension drawdown or changes. In its findings the Financial Conduct Authority in the UK stated that charges were opaque and it introduced a number of requirements in terms of increasing the transparency of charges but also critically stated that if it did not see an improvement and charges becoming more appropriate then it would force pension providers to get their house in order by introducing a price cap. So it is in this context that clause (j) needs to be seen.

1750 In terms of the comparison between a bank fee for closing an account and the drawdown of a pension, I would strongly suggest to Hon. Members that this is a lifetime event which can involve very substantial sums of money rather than a small fee being applied for a small transaction. When the Consumers' Association investigated this matter last year they found a differential in terms of a pension pot which, even at levels of £250,000, the differential was often over £10,000 in fees.

1755 So I would suggest, Hon. Members, that that is the reason why the clause has been inserted. It builds on best practice elsewhere and it would be sensible for us to retain that clause. I would also suggest that Tynwald approval is clearly required, and the mere fact that we have that clause there which would enable it to be implemented, subject to obviously a Tynwald vote, but also hopefully act as a kind of sensible indication to the industry that the fees should not be excessive.

1760 Thank you, Mr Speaker.

The Speaker: I am conscious that some of the questions that we have had here today have been somewhat technical in nature and the provision is open Hon. Members to move into a Committee of the Whole House to take evidence from our expert witnesses, who I see are in the Gallery.

1775 **Mr Robertshaw:** I propose such an act, Mr Speaker, to go into Committee of the Whole House.

The Speaker: Is there a seconder for that?

1780 **Mr Callister:** I am happy to second that, Mr Speaker.

The Speaker: I will put the question to the House that the House resolves into a Committee of the Whole in order to take evidence from the witnesses. Those in favour, please say aye; those against, no. The ayes have it. The ayes have it.

In Committee of the Whole House

1785 **The Speaker:** Mr Martin, I noticed you there in the Gallery, are you content to provide the House with a few answers to some of the questions that have been raised thus far? But if I could just ask you to wait while our Messenger brings you the microphone to ensure that your responses are heard and able to be put on the record.

So, just for the benefit of *Hansard*, if you would state your name and position.

1790 **Mr Martin:** Paul Martin, Deputy Assessor of Income Tax.

The Speaker: Mr Martin.

1795 **Mr Martin:** The point relating to the annuity withdrawal: because the pension is so flexible the person can draw down whatever amount they want at draw down time, so it would be totally up to them how much they put into annuity and whether they leave their 40% tax free, they take 60% out, which includes 40% tax free of that 60%, put that into an annuity and they would leave 40% that still has 40% tax free, if that makes sense. So it is perfectly within their right to put whatever they want into annuity and how they claim it. And that 40% tax free will be there depending on how they want to use it.

1800 Thank you.

1805 **Mr Hooper:** So starting with the broader question of registered overseas pension schemes, is there anything in this TTO that would automatically bar a scheme from being eligible?

Mr Martin: There is one point that would, we think, bar it and that is the 40% tax free lump sum. In overseas the UK QROPS scheme needs to provide 70% for pension for life and therefore having 40% tax free would, we think, stop it from being approved.

1810 **Mr Hooper:** My understanding was that requirement had been removed from April 2016 in the UK with newly registered pensions. I might be wrong there, but is it something that Treasury could check and confirm?

1815 **Mr Martin:** It is something we would look at.

Mr Hooper: Thank you.

In respect of the fees then, Mr Shimmins has made a lot of very broad and I suspect unsubstantiated allegations around the Isle of Man pensions' administrators. Does Treasury have any evidence of inappropriate, opaque or unreasonable charges being applied by administrators of Isle of Man pension freedom schemes?

1820 **Mr Martin:** I think whether we have seen any up to date I cannot say. There does not seem to be any up to date.

1825 **Mr Hooper:** Yes, that is fine.

Mr Martin: But I think the question on the policy of the fees is really for the Minister.

1830 **The Speaker:** Mr Shimmins.

Mr Shimmins: Yes, let me just clarify, Mr Speaker.

My remarks were reporting the outcome of an investigation by the UK Financial Conduct Authority on UK pension providers. They were certainly not in any way aimed at Isle of Man

1835 pension providers. They were based on those remarks, investigation and best practice from a jurisdiction which has already implemented this type of regime.

Mr Hooper: I would like to thank Mr Shimmins for clarifying that his comments were specifically in respect of UK pension schemes and pension providers and have nothing to do with Isle of Man pension schemes or pension providers, and really do not provide any evidence for the need of this, especially as we have just heard that there is no evidence today of any of that practice being followed on the Isle of Man.

Can I ask then technically, does Treasury have this power to set or regulate fees in respect of any other pension schemes approved under the Act?

1845 **Mr Martin:** No.

Mr Hooper: Does Treasury have this power in respect of any other types of products in the marketplace – life insurance, banking, anything else?

1850 **Mr Martin:** Not as far as I am aware.

Mr Hooper: So Treasury does not have this power in respect of any other service or product on the Isle of Man, not even existing Isle of Man pension schemes?

1855 **Mr Martin:** Certainly not existing Isle of Man pension schemes.

Mr Hooper: Okay.

The Speaker: I would just remind Hon. Members, we may be in a Committee of the Whole House but you do need to wait to be called before you ask questions of our witnesses.

1860 Mr Cannan. Nothing to say?

Mr Baker.

Mr Baker: Thank you very much, Mr Speaker.

1865 I rise to follow the debate between my hon. friends, Mr Hooper and Mr Shimmins. I think the key points that Mr Shimmins did make are that large sums of money are involved in these drawdowns and relatively modest fees in percentage terms could actually be significant amounts of money for individuals and most individuals are not financially experienced and sophisticated in dealing with their pension arrangements, because for most people it is maybe something you do once in your lifetime or certainly not very many times.

1870 The other point, of course, is that we talk about funds that have had the benefit of favourable tax treatment, both on the way in and potentially on the way out. So I would support the importance of actually making sure that ordinary people are properly protected in this and I think I would expect Treasury to exercise judgement in this. The drafting says, 'Treasury *may* make regulations', it does not say they must. And of course, as Mr Shimmins has said, Tynwald's approval is required. So I think that it is a sensible element to have within the scheme and I think what we need to remember is not interests of regulators or of providers but actually of the ordinary people of the Isle of Man in this, and this does protect them.

1875 So, for me, whilst I support Mr Hooper bringing the motion for things to be voted on separately, I will actually be supporting the clause because I think it protects the ordinary man and woman in the street, for whom this is potentially life changing and if they are exposed to excessive fees it can obviously have a different effect on their financial outcomes.

Thank you, Mr Speaker.

The Speaker: Mr Callister.

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Mr Callister: Thank you, Mr Speaker.

I just want to carry on with this section of the 61PA regulations with regard to exit and transfers. I was wondering if the witnesses could possibly just give a little bit more clarity on this, because obviously when I read this initially I had a feeling that Treasury could potentially be stepping on the toes of the regulator.

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So I want to know if he could just expand on that: exactly how the Treasury may make these regulations restricting the amount of exit and transfer fees; how they would be imposed; how would they actually go through this process, because normally if the regulator is unhappy with a provider then they would have officers to go into the company and they would actually be checking the transactions and the payments, etc.?

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So I would just like to really understand, in very simple terms, how that would work in practice, if possible.

The Speaker: Mr Martin.

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Mr Martin: I think it is difficult to answer exactly how it would work in practice at the moment, given that we do not have the regulations yet. But the point was to put it on the amount of transfer fee from an old scheme into a pension freedom scheme. It is not for anything else. It is just where somebody is looking to take their money out of the scheme in full and they move their scheme from a current scheme which is there already but they want to move it into a new pension freedom scheme in order to take drawdown. It is so that basically the scheme provider could not put such a high fee on that it would stop him wanting to do it. That was the reason for it.

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The Speaker: Mr Callister.

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Mr Callister: Thank you, Mr Speaker, and I thank the witness for giving us clarity, because that is my understanding as well. I thank him for that.

If we take an example that most of the annual charges are around 1% for looking after a pension pot per annum, at what point would you actually say the percentage is too high? So if we take the average at the moment, it is around 1% of the pension pot value per annum in respect of administrative fees; if somebody tried to charge 2% for transferring it from the old scheme into the new scheme, would you step in at that point or would you think that is reasonable? At what point would you actually consider it to be considered high?

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The Speaker: Sorry, can I just say if in your opinion this is a political matter, you are quite within your rights to say so. I just thought that this might be an appropriate time to remind you of that provision if you feel it is appropriate.

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Mr Martin: Absolutely, and that is a political matter – what the rate is set at.

What I would say is that the UK have a rate of 1%, I think, from their cap, so that is what they have as a cap.

Mr Callister: Thank you.

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The Speaker: Mr Robertshaw.

Mr Robertshaw: Thank you, Mr Speaker.

I just want to support the mover here in terms of wanting to create protection for fee levels, insofar as, I think Hon. Member for Ayre and Michael, Mr Baker, made a very good point that we are trying to protect, effectively, in some respects all pensioners. Yesterday, we heard all about

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1940 the single-tier pension and the potential impact of that long term, and therefore as a consequence of that, the need to have workplace pensions. Perhaps they have not developed as much on the Isle of Man as we would like to see happen because of the cost of these schemes being introduced by UK providers.

The fear I have is that there may be a desire, should the Bill be passed without these protections, that such schemes would come into play whilst providing a high level of cost, and therefore I am very supportive of this principle of trying to protect the fee levels, Mr Speaker.

1945 **The Speaker:** Mr Hooper.

1950 **Mr Hooper:** Yes, just to pick up on that point about the protection, I get that completely but to date there is no evidence – we have heard that; no evidence this is needed! There is nothing stopping Treasury at some point, if evidence comes that this is needed, bringing a TTO like that. That is the way Isle of Man tax law works. Treasury could wake up tomorrow and bring another TTO if they wanted. That is the way Isle of Man tax law works.

So when there becomes evidence this sort of thing is necessary, Treasury can bring it in overnight almost. There is no reason to have a provision in this clause allowing something where there is no evidence whatsoever that it is needed.

1955 While we are in Committee, I will take advantage of this. This amendment only restricts exit fees and charges that may be imposed by trustees of administrators of pension schemes introduced under Part 5A – that is a pension freedom scheme. There is nothing stopping someone who has a pension already under Part 3 from saying, ‘I am going to put a 50% charge on anything coming out of that into a pension freedom scheme,’ because those pension schemes are not approved under Part 5. So a pension administrator, if they wanted to, could say, ‘Well, I am not going to charge anyone a transfer-in fee but I am going to charge you a transfer-out fee.’ So this amendment, if the aim is to protect people, actually does not do that anyway.

1965 So can I just get confirmation on that: that this regulation would not prevent an administrator from charging exit or transfer fees out of existing schemes? It would only prevent them from charging an exit or a transfer fee in specific respect of a scheme that is approved under this TTO, under Part 5? The reference in there is specifically to schemes under Part 5A.

1970 **Mr Martin:** Mr Speaker, I would like a bit more time to consider that, if that is possible.

The Speaker: I appreciate that an answer may not be available quite now, but we still have this clause before the House. It is up to the mover whether they wish to proceed at this point or not, but that is entirely up to the mover.

Is there anything else that Members wish to deal with whilst in Committee?

1975 Mr Hooper.

Mr Hooper: One more question.

1980 My understanding is it is the Assessor that approves these schemes under the Act, not Treasury. Why was it felt that it is not left up to the Assessor, as the regulator of these schemes, to determine what appropriate fees were? Why was that handed over to politicians and Treasury as opposed to the Assessor of Income Tax? Do you know what the thought process was behind that – why it was felt Treasury is a more appropriate body rather than ...?

1985 **Mr Martin:** That is again a policy decision.

Mr Hooper: So there is no technical reason, as far as you are aware?

Mr Martin: No, the Assessor does approve scheme fees.

1990 **The Speaker:** Mr Baker.

Mr Baker: Thank you, Mr Speaker.

Can I just ask a couple questions of Mr Martin?

1995 Obviously, these amendments have come in as a result of the feedback and experience, presumably, from the industry in the market since the temporary taxation order was introduced. So it would be useful, I think, for Members just to understand a little bit about that feedback to the extent you are able to share relevant aspects of it.

2000 The second point is I would be grateful for clarification: we talk about transfer fees in; many potential transfers may come from UK-based pension schemes and I would just be grateful if you could clarify whether there is a distinction between people transferring in from the UK as from other Isle of Man schemes.

2005 Then, just in terms of Mr Hooper's comments, for me, we do not need to wait for evidence of a problem before we act; we pre-empt that. We are giving Treasury powers. As I said earlier, we say 'may', not 'must'. I think, for me, I am comfortable with the idea that we set the policy and the regulators regulate. So what the mover of the Bill is advocating here is that Treasury may make regulations and they must be Tynwald approved. So that is the policy setting; the FSA then would regulate against that policy, in my view. So I do not see the inconsistency. (**A Member:** Hear, hear.)

2010 So if you could clarify those, please, Mr Martin?

Mr Martin: Yes, there were three main changes or additions that were requested after the TTO originally came in in the Budget. The first one was that to only have one scheme, certainly where it is an occupational scheme, would make it quite difficult to administer and therefore that is why the rule of only having one scheme has been taken away. There is no reason why 2015 people cannot have more than one of these schemes – particularly when the amount that they can put into them is restricted anyway to £50,000 overall.

The second was allowing it to move on to dependants and being able to leave it to a surviving spouse etc. That has been added in.

2020 The third one was: would it be possible to make it more flexible when it was coming out? It is not, as Mr Hooper mentioned, in the Budget itself so that now has been changed to make it more flexible.

2025 With regard to UK schemes, the way the legislation is currently worded, you have to move in from a current Isle of Man-approved scheme. So it is not possible to move directly in from a UK scheme; you have to move into an Isle of Man scheme before you move it in. So you cannot move directly in from a UK scheme, but of course UK schemes would have pension freedoms in any respect.

2030 **The Speaker:** Now, Hon. Members, I get the feeling that we have completed as a Committee of the Whole House, in which case I will put the motion that normal business be resumed. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

The House moved out of Committee and business was resumed.

The Speaker: We now resume our debate, if anyone wishes to contribute to the debate; if not, then I will put it first to Mr Hooper to reply to his motion and then I will put it to the Treasury Minister to reply to the question on the clause – the procedural question being about the separate voting on clause 3(2)(j). Are we all clear about that?

2035 **Mr Cannan:** Sorry, what motion?

The Speaker: The motion on the clause, that part (2)(j) be taken separately from the remainder of the clause. Content? You know where we are?

2040 In which case, Mr Hooper first of all.

Mr Hooper: Okay, thank you, Mr Speaker.

It is simply to ask that that part be taken separately so that Members, if they are minded to, can vote for or against it separately.

2045 My personal preference, as I have already explained, is that this is unnecessary. There is no evidence base for it; there is no perceived requirement for it. It certainly has not been demonstrated today that is needed. I think it is very badly worded in the respect that it does not seem to apply to fees for pension schemes where you are transferring out of a part 3 scheme into a part 5 scheme. You can only restrict fees, to be fair, and it is even more odd than that – it
2050 restricts the amount of fees that may be imposed by the trustees of a pension scheme introduced under that part, but not necessarily that particular scheme.

But I think the wider question is if the Treasury's intention is to stop exorbitant charges, of which there is absolutely no evidence on the Isle of Man, really this needs to apply to all pension schemes equally, not simply the ones approved under this part. I think we need clarity on that
2055 before we approve this particular suggestion. If it does become necessary at a later date, Treasury can bring this in quite easily, as they often do with tax orders.

Simply, the motion is to take that part separately. Whether you choose to vote for or against it is entirely at your own discretion, but the motion I am asking for is just to take that one part separately.

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The Speaker: Mr Cannan to sum up on clause 3.

Mr Cannan: Thank you, Mr Speaker.

2065 Can I actually just start by thanking the Hon. Member for Ramsey for bringing to our attention some of his technical queries on the Bill. It does make for a more informed debate and allows us to respond in a proper manner and it is very helpful when that process is taking place, and I think the other technical questions asked both today and previously have been answered in the course of the session that we have just had.

2070 I do think, having said all that, that we are making a bit of a mountain out of a molehill here. There are clear examples in the UK where extortionate fees have been used under the pension freedoms regulation and consumers have suffered as a result. What we are simply doing here is getting ahead of the game, looking after our constituents, I would suggest, and ensuring that we are ready to act should there be any evidence that companies on the Isle of Man or unscrupulous providers of products or financial advice are acting in such a way that they are
2075 detrimentally impacting and harming our constituents. I am not for one moment suggesting that our well-regulated, highly ethical financial services business on the Isle of Man would ever be guilty, but I think we should be ready to act in such cases and that is simply what this clause is setting out to do.

2080 In terms of the judgement calls, I am sure those judgement calls will be made were evidence to be presented around the scale of fees that perhaps have been charged in any certain instances or were being applied. As has already been pointed out, the UK do have some protection already in this respect. Although I accept there are other financial products where we do not apply fees, I would suggest that it would be incumbent on us to act if it was brought to our attention that financial institutions were acting disproportionately or out of sync with the
2085 realities of their costs in terms of managing people's moneys on the Island. I think that we would be prepared to act if that was brought to our attention.

I think, certainly in terms of other pension schemes, if there is evidence that consumers, constituents, are being disadvantaged as a result of some inappropriate behaviours, then I would suggest to the Hon. Member that I would happily look at that and assess whether some

2090 sort of action should be taken, because I do think it is incumbent on us to take action in these circumstances and not necessarily sit around and wait for the technocrats and others to come forward and tell us that things are not working appropriately.

On that basis, I would ask Hon. Members to support the fact that we do need to be prepared to be ahead of the game in these circumstances, particularly where large sums of money or even small sums of money are involved but do represent, for our constituents potentially, their life savings.

I beg to move.

The Speaker: I put to you first the question that subsection (2)(j) be taken separately. If you vote yes to that, we will then vote on the principle of 3(2)(j). If you vote no to that, we will go straight to the vote on clause 3. Are you all clear?

I put the question first that clause 3(2)(j) be taken separately. Those in favour, please say aye; against, no. The noes have it.

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

FOR

Dr Allinson
Mr Baker
Miss Bettison
Mrs Caine
Mr Callister
Mrs Corlett
Mr Hooper
Mr Moorhouse
Mr Perkins
Mr Speaker

AGAINST

Mr Ashford
Mr Boot
Mr Cannan
Mr Cregeen
Ms Edge
Mr Harmer
Mr Malarkey
Mr Peake
Mr Quayle
Mr Robertshaw
Mr Shimmins
Mr Skelly
Mr Thomas

2105 **The Speaker:** With 10 for and 13 against, the noes have it. The noes have it.

We then have the question simply on clause 3 as it stands. Those in favour of clause 3, please say aye; against, no. The ayes have it. The ayes have it.

Clause 4. Mr Cannan to move.

2110 **Mr Cannan:** Clause 4 sets out the amendment which is to be made to the avoidance TTO if that Order is to be confirmed.

Mr Speaker, the Assessor has confirmed to me that she has already seen that this measure is working and even at this early stage her officers are seeing that there is a change in behaviour.

2115 The amendment is made to article 4 of the TTO. This article inserts a new section to 2BP into the Income Tax Act 1970 which, as already described, addresses practices used to pay profits out of a company in a non-taxable form rather than the taxable form of dividends. The amendment inserts a new subsection (1A) into section 2BP. The new subsection sets out three scenarios to which the section will not apply, provided the Assessor receives satisfactory evidence that it should not do so. The scenarios address transactions involving the sale of unquoted shares.

2120 These are commercial and are in no way a form of tax avoidance, but without the amendment they would be unintentionally caught up by the measure contained in section 2PB. The scenarios have come to light since the TTO came into operation.

2125 Clause 4 also provides that the amendment to section 2PB will also be considered to have come into operation at the same time as the avoidance TTR itself came into operation in 2018 and to have been in operation since that time.

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

The Speaker: Mr Shimmins.

2130 **Mr Shimmins:** I beg second and reserve my remarks.

The Speaker: I put the question that clause 4 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 5.

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Mr Cannan: Clause 5 makes three separate amendments to the Income Tax Act 1970.

The first of these amendments addresses section 88, which provides for the Income Tax Commissioners, including their constitution and certain practices and procedures. The Commissioners consist of a chairman and eight commissioners who are appointed under the Tribunals Act 2006 by the Appointments Commission. That Act requires the Chairman of the Commissioners to have been a barrister, advocate or solicitor for at least seven years. There is no such requirement for the commissioners themselves.

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Section 88 was amended by the Income Tax Legislation (Amendment) Act 2017 to require the Income Tax Commissioners to also have a deputy chairman. The deputy is appointed from the eight commissioners by the chairman and, like the chairman, must also have been a barrister, advocate or solicitor for at least seven years. However, there is no requirement for any of the commissioners to have suitable qualifications and experience to act as a deputy. This Bill therefore substitutes subsection (2)(c) in order to introduce a requirement for at least one commissioner to be suitably qualified and experienced to be appointed to act as deputy chairman.

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The second amendment to the Income Tax Act 1970 addresses section 120, which contains definitions for the Act. The amendment to this section expands the definition of 'tax position'. The Income Tax Act 1970 currently contains inspection powers which enable the Assessor to examine a person's tax position. These powers permit an officer authorised by the Assessor to enter business premises and to inspect those premises, as well as the business assets and documents there if this is considered necessary. Such a measure might be considered appropriate in certain cases of suspected non-compliance with the Income Tax Act. The amendment to section 120 expands the definition of a tax position to include compliance with the Common Reporting Standard. This standard was developed by the OECD and is the global standard for the automatic exchange of financial account information. The Isle of Man has been exchanging information under the Common Reporting Standard since 2017. Changing the definition of 'tax position' in this way will mean that the inspection powers may also be used to investigate suspected non-compliance with the standard.

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The third and final amendment to the Income Tax Act 1970 concerns foreign companies that are resident for tax purposes in the Island. However, before I describe what the amendment does I would like to provide Members with a brief explanation as to why it is required.

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The Isle of Man is a member of the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes and is subject to an in-depth peer review process which assesses the implementation of international standards of transparency and exchange of information for tax purposes. The Island has been subject to two rounds of peer reviews, the first in 2010 and the second in 2017, and has been awarded the top rating of compliance in both reviews. However, in a follow-up report to the 2017 review a recommendation was made for rules to be put in place to ensure the availability of legal ownership information for foreign companies that are resident in the Island for tax purposes.

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In order to address the recommendation, the third amendment to the Income Tax Act 1970 inserts a new section 63CA into the Act. As the majority of foreign companies on the Island will have a corporate service provider here who is regulated and who will keep the necessary ownership information on the Island, this section is directed only at those companies that do not

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2180 have a corporate service provider with a regulatory oversight. The new section introduces a requirement that such a company nominate an individual who is tax resident in the Island and who will hold information on the legal owners of the company and provide it to the Assessor if requested to do so. In order to help ensure compliance with this measure, the section also makes it an offence for the company to fail to comply with this requirement and for the individual to fail to hold the necessary information or to provide it when requested.

2185 I beg to move that clause 5 stand part of the Bill.

The Speaker: Mr Shimmins.

Mr Shimmins: Thank you, Mr Speaker.

2190 I beg to second and reserve my remarks.

The Speaker: I put the question that clause 5 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, that completes the business before us today. The House will now stand adjourned until 10.30 on 19th February in Tynwald Court.

The House adjourned at 12.20 p.m.