

**REPORT OF PROCEEDINGS OF
LEGISLATIVE COUNCIL**

**Douglas, Tuesday, 4th April 2000
at 10.30 a.m.**

Present:

The President (the Hon Sir Charles Kerruish OBE LLD (hc) CP), the Lord Bishop (the Rt Rev Noël Debroy Jones), Hon C M Christian, Messrs E A Crowe, D F K Delaney J R Kniveton, E G Lowey, Dr E J Mann, Messrs J N Radcliffe and G H Waft, with Mr T A Bawden, Clerk of the Council.

The Lord Bishop took the prayers.

Apologies for Absence

The President: Hon. members, we have apologies for absence from the learned Attorney-General.

Crowe EPH Ltd – National Insurance Contributions – Question by Mr Delaney

The President: Turning to the order paper, the first business is that of questions and question 1. I call upon the hon. Mr Delaney:

Mr Delaney: Mr President, I beg leave to ask the Minister for Health and Social Security:

With respect to national insurance contributions and Crowe EPH Ltd -

- (1) when did the company last make payments to your department;*
- (2) did such payments cover the whole indebtedness to your department at that time;
and*
- (3) what demands for payment had been sent to the company by your department and when were they sent?*

The President: The hon. member of the Council, Mrs Christian, to reply.

Mrs Christian: Mr President, technically no payments of class 1 contributions are made to the department: they are paid to the Treasury. Employers are required to remit to the Treasury by the 19th of each month the national insurance contributions and income tax due on earnings paid in the previous month.

With regard to Crowe EPH, the last payment received by the Treasury was on 19th January this year.

The second part of the question, Mr President - a payment of £39,034.16 was made on 13th January, which was in respect of contributions due for September which should have been paid by 19th October 1999. The last payment in the sum of £49,732.64 was made on 19th January and was in respect of the contributions due for the month of October, which should have been paid by 19th November 1999.

Two demands have been sent to the company: the first on 2nd February for the sum of £105,18.19, and the second on 7th February for the sum of £32,752.69 in respect of the period from 6th January to 24th January this year.

Mr Delaney: Thank you, Mr President, one supplementary. Bearing in mind the amount of money that was due to your department initially on behalf of the Treasury, wasn't it necessary to inform somebody at your level that this amount of money was owing by a company carrying out major works on a government building?

Mrs Christian: Mr President, the department which monitors the payment of records reviews the national insurance contribution record of companies on a regular basis. The review for this particular company - they had been paying on a regular basis and as a result of that and as a result of a substantial payment in October, no further notification was given to the department in respect of this company.

Mr Delaney: A supplementary, Mr President. Are you saying that somebody at your level was informed that these amounts of money were outstanding?

Mrs Christian: No, Mr President, I am not saying that at all.

Mr Delaney: Therefore, Mr President, I ask one further supplementary. As the minister has indicated that the 19th of the tax month was due to be paid on that day, wasn't there some concern about this amount of money being outstanding to the department, bearing in mind they had only paid and they had letters sent to them, according to yourself, two letters sent to them, asking for payments for prior to January?

Mrs Christian: Mr President, those letters were sent after receipt of the payments to which I have referred, at the time when the company had indicated its intention to go into liquidation. The periods prior to that had been subject to actually a monthly payment. It was the September payment which set in train the late payment procedure. However, the negotiations which had taken place with the company prior to that in respect of national insurance had resulted in a substantial increase in their contribution.

The department staff who monitor these things do not monitor everybody every month, they have a review process which they go through and in January this year they responded to the liquidation notice and sent out a further demand for payment.

Mr Delaney: Thank you, Mr President, for the minister's answers.

The President: Hon. members, we move on to item 2 on the agenda and that is a question down for a written answer. That answer has been circulated to all hon. members.

National Insurance Contributions – Deductions – Question by Mr Delaney for Written Answer

Question 2

The hon. member Mr Delaney to ask the Minister for Health and Social Security, Mrs Christian:

With respect to employees' national insurance contributions -

- (1) are all employers under a legal obligation to deduct contributions from employees' remuneration; if so*
- (2) how soon after making such deductions are they required to pay the receipts to your department;*

- (3) *is an officer of your department responsible for maintaining a record of overdue payments;*
- (4) *which political member of your department is advised of outstanding payments; and*
- (5) *at what stage is a decision made as to instituting legal proceedings against an employer who is in default and who is responsible for making that decision?*

Answer

- (1) Employers are not under a legal obligation to deduct contributions from employees' remuneration.

Where earnings are paid to an employee and a liability for employees and employers' class 1 contributions arises in respect of that payment, the employer, as well as being liable for his own contribution, is liable in the first instance to pay the employee's contribution also, on behalf of the employee. He is, however, entitled to recover such contribution from the employee's earnings, but is under no legal obligation to do so.

- (2) Where a liability for class 1 contributions arises on earnings paid to an employee, an employer is required, whether or not he has deducted the employee's contributions from his, to pay over both his and his employee's contributions, to the Treasury, within 14 days of the end of the income tax month in which the liability arose; that is to say by the 19th day of the month.
- (3) Officers of the inspectorate section of the department's social security division are responsible for monitoring the records of payments made, or not made, as the case may be, to the Treasury and for taking appropriate action, including legal proceedings where necessary, to recover overdue payments.
- (4) No political members of the department are advised as a matter of routine of cases of outstanding payments.
- (5) Decisions to institute legal proceedings against defaulting employers are taken when the amount outstanding has been established, usually following an examination of the employer's pay records. Such decisions are taken by the department's chief inspector, under delegated authority and in accordance with established guidelines.

Employment (Sex Discrimination) Bill – Third Reading Approved

The President: So in consequence we move on further to item 3 and I call upon the hon. Mr Delaney to take the third reading of the Employment (Sex Discrimination) Bill.

Mr Delaney: Thank you, Mr President. I wish to formally move the third reading of the Employment (Sex Discrimination) Bill 1999, aware that certain amendments may be moved at this reading, but thanking the members for the courtesy they have shown during the first two readings.

Mr Kniveton: I am pleased to second, sir, and reserve my remarks.

Mr Lowey: Mr President, could I move the amendment that I believe members have got before them. Can I first of all apologise to the Council for amending my original amendment at

the second reading, but on reflection it does seem to me that I do genuinely believe that this Bill does not need cosmetic surgery, it really required what I would call major surgery to get back to what I think the Bill's real intent is, which is to end discrimination. That I have no doubt about, that that is the intent of the Bill, but as written and as I tried to explain at the second reading and the clauses stage, the Bill is laced with what I would best describe as major defects.

Now, I think it is truly remarkable and it is the art of self-deception to have a discrimination Bill that allows you to discriminate and that is what this Bill does: it allows you to discriminate if you have less than five employees. I think it is deceitful and it is self-defeating if that is allowed to continue, and I do not think we can ignore really the words that our Attorney-General actually used about that particular one. He did, in my view, without wishing to embarrass him too much, underline and underscore the points that I was making.

So after, again, careful talking with the parliamentary draftsman, he says the neatest way in which you could do that is on page 7, line 38, omit sub-clause (7) and (8) as substituted by the Council and that is quite clearly spelling out in that particular clause, 'Discrimination against applicants and employees', and sub-clause (7) 'In relation to sex discrimination - subsection (1) does not apply to any employment, and (b) subsection (2) does not apply to opportunities for promotion or transfer to, or training for, employment, or to dismissal or other detriment, where the discrimination is justified by reason of the size and administrative resources of the establishment in question, or of any undertaking of which that establishment forms part.' The amendment there is quite clear: it just omits them so there is no discrimination or there is no defence for discrimination on the part of an employer because of the size or its lack of resources.

I think also this is the time, with your permission, sir, if I can also take clause 51, page 37, line 7 for three years. This is actually for when the Bill has been brought in, it is not going to be activated for three years to allow a training or a learning curve by the employers. I am going to substitute '12 months' for '3 years' and I did speak with the mover of the Bill and the officer in charge yesterday and gave my reasons for that, being that 12 months is a clear indication to the employers that it will not be permitted after 12 months, but 12 months seem to me to be a reasonable time to allow employers to get in train with the new requirements that this legislation puts on them, and page 37, line 9, omit sub-clause (2), which is self-explanatory.

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

- (1) *In clause 8, page 7, line 38;
omit subsections (7) and (8) (as substituted by the Council).*
- (2) *In clause 51, page 37, line 7:
(a) for "3 years" substitute "12 months"
(b) page 37, line 9: omit subsection (2).*

Dr Mann: I beg to second.

The President: You are seconding, right. Now, from the point of view of clarity about what we are discussing this morning, let us deal with clause 8 first. Clause 8 is before us, the arguments have been made in its favour. Those who wish to speak to it, please do so now.

Mr Crowe: Mr President, yes, as far as I can see you are just deleting an amendment we made at an earlier sitting. It is putting back to the status quo what we changed earlier, so I do not have any difficulty with this.

Mrs Christian: Mr President, I am not sure that that is the case. I think that whilst the hon. member seeks to have a totally equal playing-field and that is, in theory, fine, I do think that we have to have some recognition of small employers and the potential difficulty that this might put some of them in, and as I understand it, the clause does not permit them willy-nilly to discriminate but it simply allows them a defence. Now, it would be a matter of judgement whether or not that defence in the circumstances was appropriate or relevant and to that extent I am not particularly in favour of this amendment. I think that we should allow a defence to be presented and it would be a matter then of appropriate judgement whether or not discrimination could be permitted in the circumstances of the individual case and to that extent I will not support this amendment.

Mr Kniveton: Mr President, it would be rather interesting to know if the hon. Mr Lowey could give us some idea what percentage of employers or even number of employers would be affected under this amendment?

Mr Delaney: Mr President, I have no difficulty supporting this amendment whatsoever. I think it actually does what is the intention of this Bill and that is the important thing. I do not believe that we need to give any time of grace, any situation whether we are small or large. We are dealing with a society of 80,000 people and no-one should discriminate against anyone for any reason, and I think that was made clear by the Attorney-General, that the world expects us not to have discrimination and it is our duty then to make sure that we comply with what the rest of the world thinks right.

Mrs Christian: But does not do.

Mr Delaney: I am not answerable for other jurisdictions.

Mr Crowe: Sorry, Mr President, just for clarification, are you saying that the effect of this amendment will be that there is no argument left for small employers to argue a case because of the administrative resources that they do not have special circumstances, you are taking that out completely?

The President: While there is no reply to an amendment, a question has been posed which perhaps you might care to answer.

Mr Lowey: Thank you, Mr President, I appreciate the opportunity you have afforded me. Again if I can go through them from the end, the answer to Mr Crowe is a definite yes, there would be no defence on one of size because the principle of discrimination is, as the Attorney said, you cannot say you are against discrimination but at the same time you would permit it because of resources. There is a principle that has been enshrined in this particular Bill that discrimination is wrong.

Now, to suggest that somehow you have got to take recognition of the size of the firm, well I do believe that in general terms as a government we have taken decisive action to help small firms. I do not have to go back less than two months to the last budget where we gave half a million pounds worth of tax assistance to actually encourage small businesses. That was on top of the £1¹/₂ million that we gave specifically to small businesses last year. Now,

what is that for? It is to encourage and to help and to advise and to get them prepared. So we are giving them practical help. we have done that already. Now, this particular clause says, 'And in return you should not discriminate.'

I think we have to accept and I think most people round here and the economics of the world now tell us that you cannot discriminate because it is bad for business. It is bad in principle, so it is back basically to the principle: do you agree with discrimination in big firms but allow it in small firms? And really there is no logic in that argument and there is no real defence for it and then to enshrine it in legislation -

The President: There is no real defence for you to go any further either, sir.

Mr Lowey: On that particular point. Could I just answer and I think I have answered Mrs Christian's point, and I fully accept her point, that she is entitled to put that point of view, but I disagree with it.

The President: Hon. members, the resolution is that the amendment in the name of the hon. Mr Lowey relating to clause 8 do stand part of the clause. That amendment is circulated to you and in your possession as part of the white paper. Will those in favour of the amendment standing part of the clause please say aye; against, no. The ayes have it. The ayes have it.

Now, those in favour of the clause as amended standing part of the Bill please say aye; against, no. The ayes have it. The ayes have it.

Now, hon. members, we move on to clause 51 and the proposed amendment to that clause. That amendment has been proposed and seconded and is before Council for debate.

Mr Kniveton: I am trying to remind myself, thinking back over the weeks ahead of our debate on this, was the period in the UK much longer than the three years as set out in this Bill, I would like to ask, Mr Lowey? Was it not brought down from six or five down to three, whereas now you are suggesting it comes down to just 12 months?

Mr Crowe: Mr President, could I just ask Mr Lowey as to the choice of 12 months rather than, say, two years and will this 12 months have any effect on any other part of the Bill. Will there be a consequential effect or an amendment required earlier in the Bill that this 12-month period will cause?

Mr Delaney: It is true, Mr President, that the Royal Assent was on 29th May 1970, but the commencement was delayed for five years in order to give employers time to put their houses in order in relation to voluntarily moving discrimination from their pay scales. That is for a community of 65-plus million.

The fact of it is I believe that the amendment is worth supporting. The 12 months is long enough for our small community to be able to do that, particularly small employers who have such a less amount to do on their pay sheets than others, and I believe that the 12 months will give time for the new discrimination officer to be in place and for him to educate our community to what is required under this Act. I will support the amendment.

Mrs Christian: Mr President, it would be interesting to hear the thinking of the department which is promoting the Bill in terms of the three-year period and I do not know

whether the mover is able, notwithstanding that he supports this change, to outline for us on what basis that department came to the decision that three years was appropriate.

There will be a requirement to appoint an officer whose function will largely be, I think, the education process and given the way in which budgets operate and manpower capping operates one would assume that this measure will be implemented during the course of this current year and I wonder whether or not the department have in their budget the funding and head count for the officer who will be critical really to the effective implementation of this particular measure. If that is not going to happen I suspect that the period for education before the implementation of the Bill will be further reduced because the person will not be in post and it will lead to further difficulties, but perhaps the hon. mover can comment on that.

The President: Would you care to -

Mr Delaney: Comment on it, Mr President. I have already spoken, but I can comment. The department, actually, for the reasons I have given, sees educational awareness and that was their main reason for proposing it. That is why provision has been made for the discrimination officer post, to educate employers and employees, and the education slant, the department thought, was a priority. I believe that is correct. I believe that 12 months is adequate time for this small community to educate the people who mostly are carrying out this practice anyhow because of their British connections in coming to the Island.

Mr Lowey: Could I just again pass comment, Mr President, if I may on some of the matters that have been raised. For Mrs Christian to say that the department may not have in place the money or the resources - they have introduced this Bill and therefore they must have the resources there to implement it. If they are not going to have the resources there to implement it then she really is saying that government are deceiving, we are introducing legislation without the ability to deliver. I cannot believe that to be the case and could I also remind her that this legislation was approved by Tynwald for introduction in 1990, 10 years ago, so to suggest that the employers of the Isle of Man have not had 10 years to prepare themselves for something which was coming in seems to me to be flying in the face that somehow they will do it all in the space of three years. I believe if the will and the intent is there it can be done quite easily in 12 months.

I believe there is a learning curve. I think economics have forced people to face up to what I would call the wastefulness of discrimination anyway, so I think events have overtaken us, but again, enshrining it in legislation, I want to be fair. To be quite honest to the member, the parliamentary draftsman said to me that it was three months it should have been, but I am quite happy to support 12 months in an attempt to give both sides a fair crack of the whip and to get it off onto the right footing, on the right basis.

So the reality has been pointed out to Mr Kniveton that this was passed in 1970 in the UK. It had been introduced in Europe two years earlier and they had had a load of other discrimination Bills and that was part of the reason why the five-year interim introductory period was actually agreed, because they wanted to make sure that they were compatible also with Europe. But again I want to point out that we are 25, 30 years behind the times in introducing it. They are moving on, but we are just catching up and here we are, still what I would call dragging our feet.

No, I believe that the amendment that I have moved, Mr President, will actually be fair to both parties and I think it would get everybody off onto a sensible, fair footing.

The President: Now, in view of the fact that you have spoken of fairness to all parties, I have given you the right of reply. Does anybody wish to comment on that reply?

Mr Delaney: Just to say that the allocation of manpower resources and finances are already in the department's estimates for 2000-2001, so the actual establishment of that officer and resources necessary are there, Mr President.

Mrs Christian: Thank you, Mr President. That answers the question.

Mr Delaney: In short.

The President: Hon. members, the resolution is that the amendment set out on the white paper in relation to clause 51 should in fact stand part of the clause. Will those in favour of that amendment standing part of the clause please say aye; against, no. The ayes have it. The ayes have it. Now those in favour of the clause as amended standing part of the Bill please say aye; against, no. The ayes have it. The ayes have it.

Now we proceed with our discussion on the Bill as amended. Does anybody wish to speak? If not, I call upon the hon. Mr Delaney to reply.

Mr Delaney: I think this was an interesting Bill, Mr President. I think that the Council has looked at it carefully. It goes back to another place for them to either decide with us or not. I hope it will be to get this Bill into law as quickly as possible for everyone's benefit in the Isle of Man. I thank the Council for their support on this Bill.

The President: Hon. members, the resolution is that the Employment (Sex Discrimination) Bill be now read a third time and do pass. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Electronic Transactions – Bill – Third Reading Approved

The President: Now we turn, hon. members, to item 4 and the Electronic Transactions Bill and I call upon the hon. Mr Crowe to take the third reading.

Mr Crowe: Thank you, Mr President. This Bill is to facilitate the use of electronic methods in commercial and other transactions and in dealings with public authorities. It has been designed to encourage the use of information technology in modern life, particularly in the business context. It also seeks to put electronic commerce and paper-based transactions on the same legal footing.

At the clauses stage Dr Mann and Mr Lowey raised an issue about certification of service providers and queried the proposed voluntary system of registration, suggesting that it be made mandatory. Having raised the query with the Department of Trade and Industry and having taken advice from the legal draftsman I would advise that this issue, this principle, has been considered in the UK by the House of Commons and there is also an EC directive on the subject.

Turning to the UK first, the disadvantages of mandatory accreditation are included in the 1999 House of Commons committee report from which I quote: 'A statutory licensing regime

might be slow to set up, inflexible and unduly bureaucratic, particularly in relation to a swiftly developing industry.'

Next, considering the European Union, the same approach for having a voluntary system was taken in its electronic signatures directive on 13th December 1999, from which I quote: 'The internal market enables certification service providers to develop their cross-border activities with a view to increasing competitiveness, and thus to offer consumers and businesses new opportunities to exchange information and trade electronically in a secure way regardless of frontiers. In order to stimulate the Community-wide provision of certification services over open networks, certification service providers should be free to provide their services without prior authorisation. This is given effect by article 3.1 of the directive which states, 'Member States shall not make the provision of certification services subject to prior authorisation.' The bottom line as far as the Isle of Man is concerned is that in practice any provision making it mandatory for a CSP to register would mean that no CSP would set up in the Isle of Man since they could set up almost anywhere else, including anywhere in the EC, without registration. So I hope this covers the points raised.

To sum up, the Bill represents a practical and flexible approach to e-commerce legislation and one that is designed to assist the use of e-commerce in the Isle of Man.

Mr President, I beg to move the third reading.

Mr Waft: I beg to second, Mr President. I would just like to compliment the department on moving this Electronic Transactions Bill. This, as opposed to the sex discrimination Bill, is at the cutting edge of legislation with regard to electronic transfer.

As I said at the previous reading, this e-commerce should be approached with caution, but after the caution has been adopted the way of dealing on the internet is certainly the way forward for the future, and this is one of the Bills that may be copied in other jurisdictions. I know the Office of Fair Trading are thinking about this now for the future to make some guidelines for people when they do use the internet with regard to buying and selling, and I would just like to underwrite the thoughts of the mover and the way they have approached this e-commerce situation. Thank you, Mr President.

Mr Kniveton: Just following on from Mr Waft there, sir, I am not going to repeat all he said, I actually agree with him, but I think I would like to thank our hon. colleague Mr Crowe, the mover of this Bill, for assisting us to understand more fully what this subject is all about, including putting all electronic dealings on an equal legal footing with normal paper ones. Obviously, Mr President, I support the third reading. Thank you.

Dr Mann: First of all I would also like to congratulate the department on moving so swiftly in this area.

Referring to the point that I and Mr Lowey raised at the last sitting, one has to question then why the registration procedure was ever in the Bill at all, but presumably it is intended at some time in the future to set up some sort of register. I accept the situation as it is now, but I think at an early stage we should need to move to registration since we now will have the power to do so.

The President: Reply, hon. member.

Mr Crowe: Thank you, Mr President, and I thank members for supporting the Bill, Mr Waft, Mr Kniveton and Dr Mann. I take their points on board. We do live in a very fast-changing world and electronic commerce is now all around us and in every newspaper it is the hottest topical subject around at the present time.

I think we are all going through a learning curve, and I do not have any particular expertise in this subject but it is a very interesting subject and one in which we are all embroiled in and part of, so in this fast-changing world we have to, I would guess, step on the escalator and travel with it rather than try to stand to one side.

Just turning to Dr Mann's point about the voluntary register, I think the legislation covers the situation that it can be a voluntary system, but I think in future with this ever-changing situation, to look at a mandatory system is not outside the possibilities.

So I thank members and conclude my remarks, Mr President.

The President: Hon. members, I will put the resolution that the Electronic Transactions Bill be now read a third time and do pass. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Police (Amendment) Bill – Third Reading Approved

The President: In the absence of the learned Attorney-General, we will bypass item 5 and move on to item 6 and I call upon the hon. Mr Lowey to take the third reading of the Police (Amendment) Bill.

Mr Lowey: Thank you, Mr President. Hon. members, this Bill is principally to amend the provisions of the Police Act of 1993 relating to the functions of the department and the Chief Constable and the appointment and tenure of the Chief Constable.

The main amendments to the Police Act 1993 are that the Chief Constable can be appointed for a fixed term; that a member of a UK police force could be seconded to act as Chief Constable; the Chief Constable could be dismissed, suspended or required to resign in the interests of the efficiency and effectiveness of the police force; an independent person or persons rather than a deemster could hold an inquiry on behalf of the Council of Ministers if the Chief Constable appealed against a decision that he should be dismissed or required to resign; the Chief Constable's right to direct access to the Council of Ministers is to be limited to matters relating to national security or public order, not as at present which seems to be carte blanche; the Police Advisory Group is to be made a statutory body and the department is to have the power, after consultation with the Chief Constable and the advisory group and the consultative forum, to determine the policies, objectives and priorities of the police force; and the department's powers are limited to give directions to the Chief Constable as to the exercise of his functions. It may not do so in respect of any operational matter and the department is to have the power to give written general directions to the Chief Constable or to the Police Advisory Group or the Police Consultative Forum to the exercise of his or its functions and seek information or written reports from the Chief Constable or either body.

Those are the aims and objectives of this piece of legislation. It has been welcomed by the police. It does remove grey areas of whose responsibility it is to do what. It clearly defines each component part's areas of responsibility.

One matter was raised by my hon. friend Dr Mann at the clauses stage regarding the regulations under which the specials will now operate and it was really, will those regulations under which they will operate eventually be subject to Tynwald approval? And I am pleased to be able to say that the answer to that is yes. It is under section 20(2) of the 1993 Act and that reads: 'Regulations under this Act shall be laid before Tynwald as soon as may be after they are made.' So they are laid before Tynwald.

With that I beg to move the third reading of the Police (Amendment) Bill 2000.

Mr Waft: I beg to second, Mr President.

The President: With silence in the court, I will put the resolution, hon. members, that -

Dr Mann: It is enthusiasm.

The President: - the Police (Amendment) Bill be now read a third time and do pass. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Retirement Benefits Schemes Bill – Second Reading Approved – Clauses Considered

The President: Turning next to item 7, I turn to the hon. Mr Radcliffe to take the second reading of the Retirement Benefits Schemes Bill.

Mr Radcliffe: Thank you, Mr President. Hon. members may remember that there was very general support for the Bill when it was read a first time. Most members were very much in favour of the Bill.

The hon. member Mr Waft raised an interesting query and he was expressing a concern about overseas transfers of pension fund assets in circumstances where an Isle of Man company is sold. I hope that I can satisfy his concerns by telling him that it is important to remember that occupational pension schemes have to be established under an irrevocable trust. At present this is an explicit requirement for tax approval. The trust legally separates the assets of the pension scheme from those of the sponsoring employer. Therefore it is not the employer but the trustees who have control of the assets of the scheme. Of course the employer will commonly be represented on the board of trustees, which may cause a conflict of interest, but the trustees individually and collectively have a duty of care to safeguard the interests of the beneficiaries under the scheme. Failure to do so exposes the trustees to prosecution.

The Bill before us today introduces a new control mechanism in the form of clause 3(7)(e). This clause requires that at least one trustee is entirely independent of the employer and this will help to ensure that the scheme is run separately from the normal business of the employer.

I would also just like to reassure the hon. member that under existing legislation governing the transfer of pension funds to overseas jurisdictions it is a requirement that all employees - not a percentage but all employees - give their consent to an overseas transfer. So it is not just a majority of members but each and every member and that means that the trustees cannot act unilaterally and they have to have the support of all the members.

I hope that satisfies the hon. member and the query he raised at the last reading.

Could I say in the second reading that it has been policy that a regulatory framework for domestic and international pensions should be developed and it was the Treasury who handed it on to the Insurance and Pensions Authority who were charged with doing just that.

Prior to the introduction of the Bill the authority, in its pursuit of open and democratic consultation, assembled a review group drawn from the population of the consultative respondees and this consultative document was issued over two years ago, two and a half years ago now. The review group was formed and assisted the authority with its final deliberations and consultation on this Bill has been extensive and indeed I could say that the authority continues and will continue to have dialogue with the market so that hopefully everybody is all working towards the one aim which is a good and well-regulated insurance regime.

It is envisaged that scheme members will be well protected by the regulatory framework but the role of the Bill also perpetuates the role of the pensions ombudsman who may act on behalf of an aggrieved member at no charge to that member. So there is another safeguard there for members of the scheme.

The Bill also introduces extensive whistle-blowing provisions, and this is not unimportant, and it puts a duty upon the trustees, the administrators and professional advisers to report any suspicions to the authority at the earliest possible opportunity. This will act as an early-warning system.

There are many other details I could go into but I will deal with them at the clauses stage if members so require. So I beg to move that the Retirement Benefits Schemes Bill be now read a second time.

Dr Mann: I beg to second.

Mr Waft: I would like to thank the hon. member for that clarification of my point with regard to the buying and selling of pension schemes. It is of concern from time to time when this does happen and I think the qualifications with regard to that have been clarified and would seem to be in order. Thank you, Mr President.

Mr Crowe: Mr President, just in supporting the second reading I would express how important this is for the Isle of Man and getting it right depends on good primary legislation, so I am going to support the legislation.

Mrs Christian: Mr President, just to say that this clarifies the position between the Department of Health and Social Security state pensions and other pensions and clearly it is sitting in the right place with the pensions authority in terms of all the regulation that should occur in relation to non-state provision and I welcome the Bill.

The President: Reply, hon. member.

Mr Radcliffe: Thank you, Mr President. There is little to reply to there. I hope I have reassured the hon. member Mr Waft about his concerns.

The hon. member Mr Crowe - as he rightly says, this whole thing is supported by good primary legislation. It is an essential part.

I thank the hon. Mrs Christian for her support and indeed it does help to clarify what is happening with pensions, and certainly the correct place for the regulations and so on is with the Insurance and Pensions Authority.

I beg to move the Bill be read a second time.

The President: I will put the resolution, hon. members, that the Retirement Benefits Schemes Bill be read a second time. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Turning to clauses, clause 1, sir.

Mr Radcliffe: Thank you, Mr President. Clause 1 represents the principal method for the control of retirement benefits schemes. Promotion of a retirement benefits scheme is prohibited unless the scheme is registered as either authorised or recognised. The definition of 'authorised schemes' is outlined in part 2 of the Bill, whilst the definition of 'recognised schemes' is outlined in part 3.

For this purpose, promotion means the selling of schemes, advising individuals to become members of a scheme or inviting individuals to join a scheme. Clause 54 clarifies the meaning of advertising, promotion and promotion applies to all types of media, including electronic media.

The clause also prohibits any person from acting as either a trustee or administrator or from taking or receiving contributions for a scheme fund unless the scheme is either authorised or recognised. Contravention of this clause constitutes a criminal offence.

The imposition of a prohibition upon promotion unless the promoted scheme meets the minimum standards required by the Bill is perhaps the ultimate deterrent for a product provider or indeed an employer. Inability to offer a product or to issue an invitation of membership carries significant commercial penalties and this provision is therefore likely to be most effective in raising standards, and that is quite important.

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

Mr Crowe: Mr President, can I just ask the mover, as far as advertising is concerned, will the Insurance Authority be vetting each advertisement or will there be a standard form employed that will be used on advertisements saying, for example, 'This is an authorised scheme certified by the Insurance and Pensions Authority'?

Mrs Christian: Mr President, if I may just comment on clause 1, sub-clause 1(5) creates an offence. I wonder if the mover could indicate what the penalties are for a breach of any of these provisions?

The President: Reply, hon. member.

Mr Radcliffe: Thank you, Mr President. If I can just first of all reply to Mr Crowe, any advertisements will be vetted by the IPA and will have to meet certain standards.

The hon. member Mrs Christian has raised a point and I am trying to find the part she was talking about here. The penalties will be fixed, I would suggest, under the regulations for the Bill and those will be severe enough, I think, to deter any particular person from contravening that particular section.

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

The President: I will put the resolution, hon. members, that clause 1 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses 2 to 5, sir.

Mr Radcliffe: Thank you, Mr President. Clause 2 deals with applications for authorisation and it requires that applications for registration as an authorised scheme are to be made by the scheme trustees. This clause requires applications to be in such form and be accompanied by such documentation and information as the supervisor may require. Fees to accompany such applications will also be prescribed by regulation and the Tynwald procedure for regulations subordinate to this Bill is that they shall be laid before and subject to the approval of Tynwald.

Clause 3 deals with authorisation again and lays down the criteria for the registration of a retirement benefits scheme as an authorised scheme. Authorised status may only be achieved once all constitutional documentation has been submitted to the supervisor and any conditions imposed by the supervisor have been satisfied. Contravention of any applied conditions constitutes of course a criminal offence.

It is a requirement that each scheme appoints a registered scheme administrator and that the name of the scheme is not undesirable or misleading. The registration of and conditions attached to the status of registered scheme administrators are contained in part 6 of the Bill.

All schemes must be established under an irrevocable trust and the trustees must be fit and proper. In circumstances where the Insurance and Pensions Authority rules that a trustee is not fit and proper the aggrieved party may appeal against the decision and the procedures for that appeal are detailed in clause 38. All schemes will be required to have a minimum of three trustees other than in circumstances where a corporate trustee is appointed.

In all circumstances at least one trustee must be wholly independent of the employer, and this is a very important part of the Bill. These provisions go to the heart of the need to segregate the scheme funds from the assets of the employer and to sustain this by the adoption of criteria of independence.

Trustees need not necessarily be resident in the Isle of Man provided a registered scheme administrator is responsible for the administration of the scheme.

The clause compels the supervisor, in circumstances where an application for registration as an authorised scheme is declined, to be required to provide a full written explanation as to why he decided the way he did.

Clause 4 deals with revocation and enables the supervisor, with the consent of the authority, to revoke the authorisation of a scheme if, for example, the trustee or administrator has contravened any of the provisions of this Bill or other financial legislation. It is envisaged that removal of an authorised status will be a final action taken by the authority, the IPA.

Clause 5, representation against revocation, clarifies that in circumstances where the supervisor, with the consent of the authority, proposes to revoke the authorisation of a scheme the supervisor must provide written notice of this intention and the reasons for revocation and the recipient of such a notice has 21 days to make representations against the proposal.

I beg to move that clauses 2 to 5 stand part of the Bill.

The President: Seconded?

Dr Mann: Yes, Mr President.

Mr Delaney: Mr President, first of all let us get it clear in layman's terms that the scheme in toto is put to the commission in relation to the workings of the scheme, which includes advertising of the scheme *and the small print*. That is in toto passed. Any amendment to that or alteration that appears after that will deem that particular scheme invalid. That is the point I want to make on that one. Is that correct or incorrect?

The second one is, on these trustees that we are working on, if we have a situation where one has no connection with the employer, who pays his fee for being a trustee? That is the one. If he is not being paid by anybody, why should he be a trustee and take the responsibility? So who pays the fee, and if he is not paid a fee, where does he get his recompense from?

Also, the limit of number of schemes any one trustee can be a member of is what is fascinating me and I would like some assurance on the restriction on that side of it. I do not want the same six people turning up on the whole list of companies.

Another point on this one is if they are off the Island, if something goes wrong and they are in a foreign jurisdiction other than the EC which we have relationships with, how do we get hold of them when something goes wrong?

Those are the points I would like cleared, Mr President.

Dr Mann: First of all I fully support the powers to revoke and so on which I think are very important and I note how carefully it is all set out within the Bill. The only question I have is if a scheme is revoked and it is revoked, say, 10 or 15 years into its life, what happens to the beneficiaries of that scheme, the potential retirees, as you might say? We understand that the scheme has to be stopped and revoked but what happens to the assets and what happens to the expectation of the beneficiaries?

Mr Waft: Mr President, I just wondered, with a case of this nature where the Pensions Authority are supervisors perhaps, for want of another word, of the scheme as such, to what extent are they then involved by authorising it as to the quality and the standard of the pension scheme that is encompassed within the rules and regulations of that scheme? Are there any standards by which a pensions scheme would have favour with the pension authority rather than another set of rules and regulations by another scheme? Would they lay down any specific needs for the employee? Thank you, Mr President.

Mr Crowe: Mr President, I support the Bill and I think the key to success in this legislation is to see that any pension scheme is set up properly at the outset so that whoever wants to set up a scheme will have to jump through various hoops to get the authorisation and I think then that the scheme manager, the trustees, the administrators will all have to comply, I would assume, with very stringent regulations and monitoring by the IPA. So I think we are building in the ground rules clearly from the start. I take Dr Mann's point that in 15 years' time or whatever, and pension schemes are of a long-term nature, 20, 30, 40 years in a person's life, it is to make sure that there is this constant monitoring.

Mr Kniveton: Forgive me, Mr Radcliffe, if I have missed the point but what happens to existing benefits schemes? Up to six or seven years ago I was a trustee of a pension scheme

which was acceptable to the Manx tax authorities. Now, I wonder what would be the position today if I was still a trustee and what would happen to my scheme. Would I have to register it? I am presuming so but I look for confirmation. Thank you.

The President: The hon. mover to reply.

Mr Radcliffe: Thank you, Mr President. Some interesting points raised there by hon. members.

If I could deal with the hon. member Mr Delaney, any amendment to a scheme requires notification to the IPA and any alteration cannot be effective until the supervisor has approved. So you just cannot decide today that you are going to do something different and carry on with it. The supervisor has got to approve any alteration or amendment to the scheme.

The question of pay for the trustees - well, that would be paid from the funds of the scheme and it is important to say that the trustees should not undertake any post lightly because they are going to be held responsible in the ultimate for anything that goes wrong and you cannot go out in the street and ask the first man you meet to be a trustee of a scheme. It has got to be somebody with a great deal of knowledge and expertise to be such.

Another point which the hon. member Mr Delaney raised was as to who is responsible for the accounts of the scheme. The registered administrator is responsible for submitting all accounts.

Mr Delaney: That was not mine.

Mr Radcliffe: I beg your pardon then. The trustees, as I say, again replying to Mr Delaney, have to be fit and proper and approved by the IPA and the trustee must acknowledge when he undertakes the task that he is going to be held in the ultimate responsible for any shortcomings that the scheme may have.

The hon. Dr Mann - if a scheme is revoked the scheme is held and cannot be promoted again if it is in abeyance but the moneys, as I understand it, the assets are held and will be distributed at some point, again according to the trustees of that particular scheme.

The hon. member Mr Waft was asking about approval and what is required. The highest standards are sought and expected and are required from anybody who is involved with pension schemes, and as I said, you cannot go out in the street and invite the first person you meet to be an administrator or a trustee.

I thank Mr Crowe for his support, and Mr Kniveton's point, I think, would be that a scheme would be registered, it would be a registered scheme already. He would have to be aware of the new provisions placed on his shoulders as a trustee and whether he would wish to carry on in that position or not would be entirely up to him.

I do not think there is much more I can answer there, so I would beg to move that clauses 2 to 5 stand part of the Bill.

Mr Lowey: Could I ask the mover just for one point of clarification on a point that was raised? I can understand if I as a trustee then ask the supervisor, 'Can I change the rules?' What happens if they change the rules without asking the supervisor? Is the supervisory role proactive or reactive? In other words, do you have to complain to the supervisor before

investigation takes place or is it the supervisory role to oversee the thing because that, I think, is the key?

The President: Well, having posed your question, perhaps the hon. member will reply, but I would warn the Council that I cannot accept these questions after the hon. member has replied to the debate. There is ample opportunity to pose your questions.

Mr Delaney: And if you do not get an answer you vote against the clause. Is that right, Mr President?

The President: You can do what you like. It is entirely up to the member in charge of the Bill to answer in the manner that he wishes to answer in. Reply, sir.

Mr Radcliffe: Thank you. In answer to the hon. member Mr Lowey, Mr President, there is no doubt about it: the supervisor has to approve any changes, no matter which side they come from. The supervisor is the final arbiter as far as change goes.

I beg to move that clauses 2 to 5 stand part of the Bill.

The President: Hon. members, the resolution is that clauses 2 to 5 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses 6 to 12.

Mr Radcliffe: Thank you, sir. Clause 6 is an enabling clause. Various enabling provisions grant the Treasury power to make detailed regulations relating to the constitution, management, offices, assets, actuaries, auditors, investment managers, borrowing powers, records, funds, accounts, payments and other miscellaneous matters relating to schemes. That is a very, very wide remit.

The template for the regulations is the large body of current social security and taxation legislation already in force in the Isle of Man.

In due course it is anticipated that regulations subordinate to this Bill will replace current legislation and this will help to satisfy the objectives of a one stop shop for pensions.

Clause 7, funding requirements, applies to defined benefit and occupational schemes. There are in practice two types of pension scheme, a defined benefit scheme and a money purchase scheme. A defined benefit scheme is an occupational pension scheme under which the sponsoring employer has defined the level of benefits to be paid to the member on retirement. Such schemes are often referred to as 'final salary schemes' and usually offer members a pension equivalent to a percentage or fraction of the member's salary at the time of retirement, calculated according to length of service.

The employer is effectively underwriting the value of the scheme funds to meet this promise, subject to suitable funding provisions. This promise is, however, only as good as the liquidity of the sponsoring employer, and I think we have got to remember that, that employers as well as employees can get into money difficulties on occasions.

Money purchase schemes, often referred to as 'defined contribution schemes', make no such pension promise. The benefits provided from these schemes are dependent totally on the value of a member's scheme funds at the time of retirement.

Clause 7 introduces a funding formula for the purpose of measuring the value of the assets and liabilities of defined benefit schemes. Subordinate regulations will prescribe the necessary actuarial assumptions to be used for the upper and lower limits of funding acceptability.

The technical funding requirement combines both underfunding and overfunding within one formula, with the resulting simplification and subsequent cost savings. Underfunding is concerned with member protection whilst overfunding is concerned with the abuse of tax advantages and this formula therefore combines two measurements into one.

Clause 8 deals with the evaluation and certification of assets and liabilities and requires that the trustees of an authorised scheme to which clause 7 applies, which is basically all occupational defined benefit schemes, must obtain periodic actuarial valuations from the scheme actuary.

In addition this clause requires the trustee to obtain a certificate periodically from the same actuary. The purpose of such certification is to establish whether contributions to the scheme are adequate for the purpose of maintaining acceptable funding of the scheme in accordance with the technical funding requirement and associated valuations. A trustee who fails to comply is guilty of an offence.

The purpose of this actuarial valuation and contribution certification is to add a degree of transparency to actuarial methodology and ultimately to create a benchmark measurement to ensure the protection of the rights of scheme members and the use of one standard formula will in addition enable the authority to be effective and keep its costs to a minimum.

Clause 9 deals with schedules of contributions and requires the trustees and the administrator of all schemes to which clause 7 applies, which is basically all occupational and defined benefit schemes, to prepare and maintain a contribution schedule which must specify the amounts and the timing of contributions due to the scheme. The rates of contribution shown in the schedule must be certified with the scheme actuary in accordance with the technical funding requirement's valuation for the scheme.

There was an amendment to this clause in another place but it was a technical one and members have already had a copy of the amendment there.

Clause 10, determination of contributions: supplementary, requires the trustee or administrator of a scheme to which clause 9 applies to give notice to the supervisor and scheme members of late or non-payment of any contributions. This clause also specifies that any such unpaid amounts will be treated as a debt due from the employer to the scheme.

Again there was a technical amendment in the other place to clause 10 which we are quite happy to accept.

Clause 11 deals with schedules of payments to certain schemes and applies to all money purchase occupational schemes and all personal schemes for which an employer contributes. The clause requires that scheme trustees and administrators must prepare and maintain a payments schedule which must specify the rates of contributions payable and the timing of payments.

This clause also was amended in the other place but again it was a technical amendment which members have had a copy of.

Clause 12, schedules of payments: supplementary, is supplementary to clause 11 and requires that a trustee or administrator of a scheme to which clause 11 applies must give notice of late or non-payment of contributions to the supervisor and the scheme members. Failure to do so constitutes a criminal offence and any amounts unpaid will be treated as a debt due from the employer to the scheme.

Failure of the employer to pay contributions in accordance with the limits constitutes a criminal offence and this affects the gravity attached to late payment and loss due to delayed investment of money purchase schemes. The time limit for payment will be prescribed in forthcoming regulations.

I beg to move that clauses 6 to 12 do stand part of the Bill.

Mrs Christian: I beg to second and reserve my remarks.

Mr Delaney: Just at (6) at the end of clause 8, Mr President, and I take it that, following up from Mrs Christian's point, 'A trustee who fails to comply with this section is guilty of an offence', once again it is going to be carried into the regulations, but can I have an idea from the mover of what sort of penalties may be envisaged for this?

Mr Lowey: I want to make it quite clear, Mr President, that I support the Bill and this type of business is complex but it is legitimate quality business that this Island does very, very well and I welcome the consultation that has taken place with the industry and while putting these things in place seems very complex, it is the mechanics, I support it, but again we are taking the lot. Will the regulations be laid before Tynwald? In other words, will we get the opportunity to see the regulations? Because we are taking a lot of this on trust and I believe that the Insurance Authority - I have forgotten their full title - but the insurance people that are looking after this, overseeing this I believe will produce what I would call the working machinery in the regulations and I am certain from what we were told at our seminar, that was very useful to members, that the proof of the pudding will be in the eating when we see the regulations.

I am quite prepared to accept all the mechanics of this, subject to Tynwald having approval and I am certain that they will be laid before Tynwald for approval.

Mr Waft: Mr President, mention has been made of the scheme, this bona fide scheme, and the funding is adequate and the rights of the scheme members. I am just concerned that some of the schemes that people involve themselves in do not realise the actual situation they are going to be in when they do retire and often as not the older you get the poorer you get because of the scheme you have been tied into. This would have been an ideal opportunity to lay down some basic ground rules for pension schemes to comply with and a linkage to either RPI or some similar linkage which would at least keep the pension equitable to the present situation as time goes on, because that is a situation a lot of elderly people find themselves in if they have not gone into the fine print of pension schemes. I think we have missed an ideal opportunity for the IPA to look into that situation. Thank you, Mr President.

The President: Reply, sir.

Mr Radcliffe: Thank you, Mr President. If I could deal with Mr Delaney's point first of all, clause 48 carries the criminal penalties, if I could refer the hon. member to that: a fine not exceeding £5,000 or a term of custody on conviction on information, a fine or a term of

custody not exceeding two years, or to both indeed. So the penalties are incorporated in the Bill, sir.

The hon. Mr Lowey - Tynwald approval is required for regulations and Tynwald will have the opportunity to say yea or nay when those are laid before it.

Mr Waft - I think his point there was as far as state pensions go of course and that is beyond the remit of the authority anyway, there is no doubt about that, and I know a person who mis-sells a scheme is open to prosecution as well. It will be stated in the regulations that schemes cannot be sold on false pretences, kind of thing, and the safeguards will be there to ensure that the scheme member does not suffer at the end of it, but again one has to say that if you are a buyer you also peruse the document that you sign before you actually finish the deal with whoever is trying to encourage you to go into it, and we can look after most of the people most of the time but we cannot hold their hand day and night for ever.

I beg to move, sir, that clauses 6 to 12 as amended in the other place stand part of the Bill.

The President: I will put the resolution, hon. members, that clauses 6 to 12 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses 13 to 20, sir.

Mr Radcliffe: Thank you, Mr President. Clause 13 deals with the serious underprovision and this clause makes provision for cases where defined benefit schemes are seriously underfunded. In those circumstances the employer must make good any shortfall in the scheme funding within a prescribed period.

Sub-clause (8) permits the supervisor to impose civil penalties and indeed to remove a trustee from office in circumstances where the trustee fails to take reasonable action to secure compliance.

Clause 14 is about serious overprovision and this makes provision for cases in which defined benefit schemes are overfunded when measured by the technical funding requirements which are encompassed in clause 7.

Clause 14, by the way, had an amendment in the other place, again a technical amendment.

Clause 15 requires that the trustees of an authorised scheme must prepare and submit a copy of the scheme's annual accounts, together with supporting information, to the supervisor no later than six months after the end of the scheme year. Trustees who fail to comply will be guilty of an offence.

The majority of schemes already prepare accounts but it is anticipated that submission requirements will create a focus and a culture of compliance.

The time limit has been set at six months to create a consistent approach, and insurance companies are required to submit their company accounts to the authority within the same timeframe.

Clause 16 deals with publication of scheme particulars and this enables the Treasury to make regulations concerning the publication and availability of scheme information and this is principally for the benefit of scheme members and prospective members.

Education of scheme members is of paramount importance in order to enable informed decisions to be made. So we come back to the hon. member Mr Waft's point there.

Disclosure of information is currently incorporated within social security legislation and in due course it is anticipated that these provisions will be consolidated in regulations which will be subordinate to the Bill - again a further example of the one-stop shop.

Clause 17 deals with professional advisers and requires the appointment of an auditor, actuary and investment manager to each authorised scheme. It is the trustee's responsibility to make these appointments and failure to do so constitutes a criminal offence.

Clause 18 deals with alteration of schemes and changes of trustees, administrator and professional advisers. This clause requires that the trustees of an authorised scheme give written notice of any proposal to alter the scheme to the supervisor and this requirement includes any changes to professional advisers as well as a proposed change of administrator.

In circumstances where a change of trustees is proposed it is the administrator who shall provide the information. Any notice given shall include a full explanation and failure to provide the appropriate notice by any party constitutes again a criminal offence.

Alterations will not have effect unless the supervisor has given his approval or one month has elapsed since the notice was given.

Clause 19 deals with directors, controllers, et cetera and enables the authority, in circumstances where the trustee or administrator is a body corporate, to prevent the appointment or continued appointment of an officer of that body corporate who appears not to be a fit and proper person. The supervisor is required to provide that officer with a written explanation 28 days prior to the effect of the prohibition direction. Any officer who disregards such a prohibition is guilty of a criminal offence.

Clause 20 deals with avoidance of exclusion clauses and provides that any provisions of the constitutional documents of any authorised scheme excluding the trustee or administrator from liability for negligence shall be void.

The importance of pensions is growing all the time and it is inequitable that those persons who manage such important and valuable investments are able to take advantage of any get-out clauses. The stewardship of pension schemes in consequence of this provision is likely to become more professional and this surely must be a positive step forward.

I beg to move, sir, that clauses 13 to 20 do stand part of the Bill.

Mr Waft: I beg to second, Mr President.

The President: I will put the resolution, hon. members, that clauses 13 to 20 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses 21 to 23, sir.

Mr Radcliffe: Thank you, Mr President. Clause 21 deals with schemes authorised, et cetera in designated countries and this introduces the concept of a recognised scheme. In the Isle of Man there are a number of United Kingdom schemes which offer membership to Manx residents and these UK schemes are subject to the regulatory framework which is extant in the United Kingdom. Therefore if these schemes were compelled to register as authorised schemes this would create an unnecessary duplication of regulatory effort.

The concern of the authority is that the regulatory framework in the jurisdiction of constitution is of an equivalent standard to the regulatory framework proposed by this Bill. Where it can be ascertained that the alternative regulatory standard is sufficient for the adequate protection of local members, then this clause enables the scheme to be recognised by order of the Treasury.

Schemes which are constituted in a jurisdiction with a regulatory framework of an inadequate standard will require to be authorised in order to invite membership in the Isle of Man. Each recognised scheme will be required to appoint a registered scheme administrator to act as the point of contact with the authority.

Hon. members may like to note that the European Union commission is currently embarking upon initiatives concerning mutual recognition of regulatory provisions for pensions prevailing in member states. I do not think it is unfair to say that the Isle of Man is again ahead of the game with this Bill and the requirements in this clause.

Clause 22 deals with the revocation of recognised status and enables the supervisor, with the consent of the authority, to revoke recognised status if deemed necessary. In these circumstances notice of revocation must be issued by the supervisor, together with a full explanation for such revocation.

Clause 22(5) permits a person served with such a notice to make representations to the supervisor within 21 days.

Clause 23, facilities, information and assets in the Island, enables the Treasury to make regulations requiring recognised schemes to maintain appropriate facilities, information and assets on the Island.

I beg to move, sir, that clauses 21 to 23 do stand part of the Bill.

Dr Mann: I beg to second.

Mr Lowey: Could I just ask one for clarification - I am sorry again - on clause 22(5): 'A person on whom a notice is served under subsection (4) may, within 21 days of the date of service, make written representations to the Supervisor and, if desired, oral representations to the Supervisor.' Why didn't we just say '. . . could make representations to the Supervisor'? Why do we have to put 'oral' in there? Is there a specific reason why we are highlighting that, 'written and oral', because I do not think there is any need, is there, of making representation?

Mr Crowe: Mr President, can I just ask the mover just for slight clarification. He talked about schemes authorised in designated countries and talked about principally UK-based schemes which seemed to get automatic recognition for people living in the Isle of Man. He then went on to say that the European Union were talking of recognition of pension schemes in member states. Does this follow then that any pension scheme based in the UK or the European Union would be authorised in the Isle of Man by reason of it being a designated country?

Mrs Christian: Mr President, can I just make an observation on the representations. I think that the important thing is that it is a written representation and that is in statutory form. The sub-clause allows oral representation as well, but I think that from any regulatory point of view it is surely important to state the written bit anyway, which this clause does, rather than, as the hon. member suggests, just say that representations may be made. I think it is

important that it states 'written' and then it gives the option to follow that up with an oral representation if necessary.

The President: Reply, sir.

Mr Radcliffe: Thank you, Mr President. I thank Mr Lowey for his comment there. It was rather an interesting one really, whether it should be written or oral. I think that is really drafting style, but it is essential always to have something written. We can say what we like and say that we did not say it at the end, but if it is written out and on record, well there is no escaping then as to the content of what was said or stated.

I thank the hon. member Mrs Christian for her support and indeed explaining that particular point.

The hon. Mr Crowe and recognition of schemes in member states - we still require application to the authority because the understanding between the Isle of Man and the UK is not exactly the same as between the UK and EU. So the authority will demand that it should meet our requirements anyway, any scheme from wherever. There is no fear of a substandard scheme coming into the Isle of Man.

I beg to move, sir, clauses 21 to 23 stand part of the Bill.

The President: I will put the resolution, hon. members, that clauses 21 to 23 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 24, sir.

Mr Radcliffe: Clause 24, Mr President, deals with registration of retirement benefit schemes and this will enable the creation of a general register of schemes and the register will be set up under regulations made by the Treasury.

The Department of Health and Social Security maintains a simple register of pension schemes for tracing purposes. It is anticipated that the department's register will be incorporated in due course into a comprehensive register to be maintained under this clause by the IPA.

Again this is a further manifestation of the one-stop shop for pensions, Mr President, and I beg to move that clause 24 stand part of the Bill.

Mrs Christian: I beg to second and reserve my remarks.

The President: I will put the resolution, hon. members, that clause 24 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses 25 to 32, sir.

Mr Radcliffe: Thank you, sir. Clause 25 deals with the requests for information and enables the supervisor to request information from trustees, administrators or professional advisers of any scheme and the supervisor may if necessary issue a direction to secure an answer to such a request.

Clause 26 deals with inspection and investigation and provides that the supervisor or any other person authorised by the authority, and this is the IPA of course, shall have powers to investigate the affairs of a scheme or former scheme and any person who is acting or has

acted as trustee, administrator or adviser to a scheme. The clause empowers the supervisor if necessary to enter premises and take possession of documents, books and accounts.

Clause 27 deals with the power of the supervisor again to require information and it enables the supervisor to apply to a justice of the peace for further investigative powers. Where the justice is satisfied that there is a good reason for doing so, he can authorise the supervisor to exercise the further powers contained in this clause and the powers are twofold. Firstly, the supervisor can require persons under investigation, and third parties, for example trustees, administrators and professional advisers, to attend before him to answer questions or otherwise furnish information, and secondly, the supervisor can require persons to produce documents which appear to relate to matters under investigation.

Clause 28 deals with a deemster's search warrant and provides for further investigation powers which may only be exercised if a deemster is satisfied that they are necessary. This clause enables the deemster to issue a warrant enabling named officers to enter and search premises.

Clause 29 deals with injunctions and enables the high court to make orders to prevent or stop breaches of the proposed legislation.

Clause 30, restitution, permits the high court to make orders providing for restitution where any person has been prejudiced by payments, distributions or act or omissions contrary to the Bill or regulations made under it.

Clause 31 deals with the directors and enables the supervisor with the consent of the authority to issue directions to the trustees and administrator of a scheme in circumstances where it is in the interests of members to do so or where there have been breaches of this Bill or on other specified grounds.

Directions may be issued to prevent the admission of new members to a scheme. The purpose behind such a direction would be to protect the interests of prospective members until such time as the regulatory breach has been satisfactorily resolved. In extreme circumstances a direction may be issued requiring that a particular scheme be wound up. The purpose behind such a direction is to prevent the perpetuation of an unacceptable situation with regard to existing members. However, it is anticipated that the supervisor will utilise this direction-making power as an effective day-to-day regulatory procedure which will allow for the straightforward resolution of problems.

Clause 32, notice of directions, is an extension of clause 31 and stipulates that all directions issued under clause 31 must be in writing and served by the supervisor on the trustee or administrator of a scheme.

This clause also empowers the supervisor to issue a public notice of a direction and, where challenged, requires that the supervisor must give written reasons for the issue of that particular direction.

I beg to move, sir, that clauses 25 to 32 do stand part of the Bill.

Mr Delaney: I have a question dealing with 25, 26 and 31. Is there anywhere - I cannot see it, but there probably is somewhere - mention of the amount of size of remuneration paid to trustees or professionals on these schemes that may not be in the interest of the members of the scheme? Is there any direction that can be given in relation to the size of fees that are

going to be paid to them? Could the hon. member tell me if there is anything like that in this particular section and if they are not happy with it, our people, can the supervisor actually be told not to increase fees annually or when the fees are going to be increased?

Mr Lowey: Could I ask on clause 33, the removal of trustees and administrators et cetera, if the IPA decides or the supervisor decides to remove someone as an unfit person, is there any list that could be published? Do they announce that to the world or is it a private arrangement and are there professional advisers? I have asked questions in another place and I have been assured that it is their policy to name and shame, but is there anywhere written here, where somebody has been struck off, the world knows that he has been struck off as a fit and proper person to be acting as a trustee?

The President: Can I just stop there for a moment, please.

Mr Radcliffe: Mr President, the hon. member is ahead of himself there because we have not dealt with clause 33 yet, sir.

Mr Lowey: Oh, I beg your pardon. I do apologise.

The President: Right. There is one point I want to clear. When I asked the hon. Mr Delaney if he was seconding I think he nodded his head.

Mr Delaney: I am sorry, sir. I wanted to speak. *(Laughter)*

The President: Right. Well, I have no seconder as yet.

Mrs Christian: Can I second and reserve my remarks, sir.

The President: Well, that clears the situation in a way. Now, we proceed with the debate. The hon. Mrs Christian.

Mrs Christian: Yes, Mr President. I would just like some clarification, please, of the wording in clause 25(1)(b) which reads, 'any person who, in or from within the Island, acts or has acted as the trustee or administrator of, or professional adviser to, any scheme, to provide the Supervisor with any information . . .' What I am a bit confused about is this wording 'in or from within the Island'. Does this particular provision relate only to Isle of Man schemes or does it mean that someone within the Island acting as a trustee for a scheme outwith the Island where the supervisor in the Island might have reason to make enquiries about a scheme in another jurisdiction. I am not sure that the hon. member will be in a position to answer that today but I would be grateful for a reply, or whether it is simply legislative draftsman-type wording. Does it have a significance, please?

Mr Waft: Just a small one, Mr President. When the supervisor deems it necessary to take possession of all documents for so long as may be necessary and take copies or extracts from them or require the person producing them to provide an explanation of any them, there seems to be a gap there perhaps between when this investigation starts to take place, perhaps the freezing of the assets to secure the funding of the people for whom those assets erode, and what rights of retribution has the person who is receiving the pension, of retribution has he or she got if the Insurance and Pensions Authority has not acted quickly enough quickly enough to seize those assets at that time?

The President: Reply, sir.

Mr Radcliffe: Thank you, Mr President. If I could deal with Mr Delaney's query first of all, there is no specific control on size of emolument. If a person can ask a huge figure and receive it, fair and well, but at the moment there is nothing in place to say that a scheme should pay a supervisor or trustee or whatever a certain amount. Perhaps if it appears that the thing is -

Mr Delaney: It would be worthwhile doing it.

Mr Radcliffe: Yes, if it appears that it is being abused I think we would take the necessary actions in due course. But I think it is a test and try and see what sort of figures there are.

The hon. Mrs Christian on my right - I do not think there is any significance in that wording, which I would say is drafting style, for whatever reason the legislative draftsman has included it, but there is nothing specific as far as I understand and I am given to understand that there is nothing specific or nothing suspicious in the wording of that particular one.

Mr Waft asked about the removal of documents and time lags and so on. We obviously, and I speak on behalf of the IPA, cannot be guaranteed that assets will not be misused by trustees and we cannot interfere with the rights of the individual in certain circumstances. This whole vexed question of human rights comes into this in part and I think what the authority would do is move quickly when a thing came to their notice, but there is a certain amount of caution about just jumping in. People's rights of all sorts are involved these days, whether they are proven at the end of it to be guilty or not guilty, so I think we have to take cognisance of that. But certainly if there is any movement required, if documents are required to be seized and so on there would be a very short time lag between the decision being made and the action being taken.

I beg to move, Mr President, that clauses 25 to 32 stand part of the Bill.

The President: I will put the resolution, hon. members, that clauses 25 to 32 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses 33 to 35, sir.

Mr Radcliffe: Thank you, sir. Clause 33 deals with the removal of a trustee, administrator et cetera and this empowers the supervisor, with the consent of the authority, to direct the removal and replacement of a trustee and/or administrator. The supervisor must provide written notice of the removal and replacement and inform members of the scheme of the making of the order.

Trustees and administrators are the centre of the regulatory environment and therefore in circumstances where they prove to be unsuitable it is necessary that the supervisor has the power to act in this way in order to protect the interests of the scheme members.

The hon. Mr Lowey was asking about name and shame in this particular one. I think in the community names are known if they are removed, particularly in something like this anyway, but there is nothing, as I understand it, saying that the authority should stand up with a big banner saying so-and-so is not fit to be a trustee or administrator or whatever.

Clause 34 deals with the appointment of an inspector and enables the supervisor, with the approval of the authority, to appoint competent inspectors to investigate and report on the

affairs of the scheme or on the trustee or administrator of the scheme in instances where it is in the interest of members and/or the public.

Clause 35 deals with the use of powers for the benefit of certain government departments and this introduces the one-stop shop for pensions.

Pension legislation is currently the responsibility of both the income tax division and the Department of Health and Social Security, and there are quite a number of disparate pieces of legislation covering a wide range of issues. One of the aims of this Bill is to pave the way for the consolidation of existing legislation. However, there are certain functions, for example the granting of tax approval and the issue of contracting-out certificates, which should rightly remain with the respective departments. Notwithstanding this the authority and its officers may be in a position to act on behalf of the income tax department and the Department of Health and Social Security in respect of certain pension matters. This clause permits the supervisor and the authority to act in that capacity.

I beg to move, sir, that clauses 33 to 35 stand part of the Bill.

Mrs Christian: I beg to second, Mr President.

Dr Mann: Mr President, I would refer to clause 35. In earlier discussions on over-provision and serious over-provision there was a hint raised that in fact the Income Tax Department may themselves look at over-provision as being a way in which a company can escape income tax by transferring assets in seemingly over provision from their business to the pension fund. What part does the Assessor of Income Tax play in determining whether there has been serious over-provision in a pension scheme?

Mr Lowey: Mr President, can I just say I am disappointed with the mover's response regarding the name and shame. It is all right saying that the supervisor and the people in the industry know the people who have been blacklisted, but what about the investors in these concerns? And I believe that sometimes we have to think, and we have talked about the rights of the people who are being investigated, but also I think in setting up this we have to give prime recognition, primacy, to the investors. It is about protecting them and the best way of protecting them from unscrupulous ones, and regrettably no matter how well regulated an industry is you will always maybe get one or two trying it on, is openness and I think they should be named publicly, and I am sorry that the mover of the Bill does not think that that is the right way to go.

Mr Waft: I just wonder if there is any facility for with regard to the trustee administrator with regard to an appeal against dismissal by the IPA or are they just automatically dismissed and that is the last resort?

The President: Reply, sir.

Mr Radcliffe: Thank you, Mr President. In reply to the hon. member Dr Mann regarding over-provision of a scheme, the Tax applies a tax charge. The authority is the body which would decide if a scheme is over-provided and they would inform Tax then of that particular case. Any change which would happen would come through income tax. If there is consistently over-provision in schemes the Assessor can introduce legislation, regulation or whatever to ensure that this does not happen and again the authority is the whistle-blower by saying that a certain scheme is over-provided and look at it.

The hon. member Mr Lowey was again a little bit ahead of himself because clause 42 does allow the authority to publish names, and when we come to that I think I can reassure the hon. member that name and shame could come from that particular clause, and I think the same comment applies to the comment that Mr Waft made that individuals and others can be named, but before I deal with that perhaps in clause 42 I beg to move that clauses 33 to 35 stand part of the Bill.

The President: I will put the resolution, hon. members, that clauses 33 to 35 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 36.

Mr Radcliffe: Clause 36 deals with a register of scheme administrators and this deals with the registration of retirement benefits scheme administrators and prevents persons acting as scheme administrators unless they are registered with the authority.

The clause contains the necessary provision for application for registration and also contains the necessary provisions for the cancellation of registration. The supervisor is prohibited from registering any person unless that person satisfies the supervisor that he is fit and proper to be a scheme administrator and the supervisor must give a written explanation for a refusal to register or for the removal of an administrator.

The role of the registered scheme administrator is crucial to the operation of the regulatory framework and all schemes are required to have a registered administrator in the Isle of Man in order to be authorised or recognised.

The registered administrator will be the principal communicator with the authority. This focus is appropriate, as in the majority of instances the administrator will be the person most intimately involved with the day-to-day running of the scheme.

Research conducted by the authority has shown that existing administrator requirements are not adequate to ensure that each scheme appoints and retains an accountable administrator.

I beg to move, sir, that clause 36 stand part of the Bill.

Mrs Christian: I beg to second, Mr President.

Mr Delaney: To bring in my point once again, and it is an appropriate place to do it in clause 36, when we come to a person who will act as the administrator, under (5), for example, if they are trustees of another scheme, how far can they go in this before they are disallowed to be an administrator? I am trying to limit, if you see, the gravy train and how much gravy will be supplied by the members of each scheme or schemes, and I am wondering how far this band of merry men will be a cross-fertilisation into all these different schemes between being trustees and administrators, et cetera, et cetera, and what the limitation is going to be.

Mr Crowe: Mr President, if I might pick that point up, I think what we are seeing is that the major corporate players in this industry are competing against other competitors and it is a very keen industry and the market forces will determine the prices of a lot of these things, and a corporate body will be supervisor of a number of schemes, so I do not think there is a problem of a large corporate entity being supervisor to a number of schemes, and I think the legislation also covers the role of trustees who have to be of a certain type and the restrictions are there on them.

So I think the legislation is covering, shall we say, the multiplicity of work being carried out by schemes administrators, and it gives, I think, the divisions of responsibilities between the administrators and the actuaries and the investment advisers and the trustees. So I think it is built in here and I think again the proof of the pudding will be in the eating.

Mr Delaney: A bit late if you have already paid for the meal!

The President: Reply, sir.

Mr Radcliffe: Thank you, Mr President. I am obliged to the hon. member Mr Crowe for answering that question in part. The fit and proper criteria will certainly include, I think, if one is going to be administrator of a thousand schemes, well obviously you are not going to be fit and proper to handle the whole lot. The authority will decide as to what is required but I think that, as the hon. member Mr Crowe, has said, market forces will determine whether any particular administrator will be involved in too large a way.

It is going to be a very competitive business, I think, and there will be enough players there to ensure that the whole thing is not mismanaged and open to criticism that one person is drawing all of them and others are getting nothing. So I think I would like to reassure the hon. member that the situation he foresees should not happen.

Mr Delaney: May foresee.

Mr Radcliffe: I beg to move that Clause 36 stand part of the Bill.

The President: I will put the resolution, hon. members, that clause 36 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses 37 to 41 along with schedule 1, sir.

Mr Radcliffe: Thank you, sir. Clause 37 introduces schedule 1 to the Bill and this deals with the constitution of the Insurance and Pensions Authority.

The existing provisions relating to the authority are consolidated into that schedule. The majority of the provisions are minor and inconsequential in nature. However, I should particularly like to draw members' attention to paragraph 1(3) of schedule 1. This subparagraph makes it possible for the appointment of a non-political chairman of the IPA. Previously the requirement was that the chairman of the IPA should be a member of Tynwald. This change is in accordance with the recommendation made by Mr Edwards as part of his review of the Crown dependent territories and the recommendation was made and has been followed.

The statutory indemnity as currently in operation exempts the authority from any court proceedings but only in respect of any good faith action carried out within its powers. In recent years it has come open to question whether a statutory indemnity of such breadth is consistent with the European Convention on Human Rights. In addition the old of indemnity could have prevented all judicial review and even the commencement of any proceedings, and this is no longer an acceptable position.

Following a review of the position and appropriate legal advice taken, that indemnity has been upgraded in order to ensure that it is in keeping with and is not liable to be subjected to a declaration of incompatibility with relevant articles of the convention. Furthermore, potential plaintives against the authority will now be in a much stronger position than was previously the

case, and I do not think there is any doubt that this is a positive and right enhanced development.

It is clear from recent United Kingdom legislation that it is far from clear exactly what the European Convention on Human Rights really does say in this matter. Recent Westminster legislation has granted similar indemnities as we have here to the United Kingdom regulations. The one difference is that the UK provision takes account of the Human Rights Act 1998 by limiting the operation of the indemnity to the extent permitted by that Act, and this Act of course does not apply to the Isle of Man.

It has to be said that the UK authorities are not entirely certain of the precise extent of the convention in this field and there is considerable doubt. In this climate of uncertainty there is one subject on which I am sure we all agree: the reputation of the Isle of Man and the protection of the interests of residents and investors are of paramount importance.

It is likely that without the indemnity as detailed in paragraph 7 of schedule 1 the authority would inevitably feel obliged to act in an unduly conservative manner. The very teeth that we seek to have would be weakened. It would be reluctant to take enforcement action otherwise than on only the strongest or possibly incontrovertible evidence. To do otherwise might invite a claim for damages. In the meantime of course unscrupulous activities would be able to continue. The downside risk of reputational harm and the economic consequences of such a scenario could be catastrophic for the Isle of Man.

Clause 38 covers the review of the supervisor's decisions and provides for the right to and the process of appeal for parties aggrieved by a decision of the supervisor. In practice the supervisor would be required to obtain the consent of the authority prior to making any decision of consequence.

Members should note that earlier drafts of the Bill vested the management and power of a review committee in the Treasury. However, proposals contained within this clause now require a more arm's-length approach and the application shall be made to the Chief Secretary who shall notify the Council of Ministers. The Council of Ministers shall thereupon appoint a review committee comprised of persons independent of both parties to the appeal.

The review committee will have the right to confirm, vary or revoke the supervisor's decision and the decision arrived at by the independent review committee shall be binding on all parties. However, as always, this does not derogate the right to a judicial review.

The authority is concerned that the appellate structure should be in accord with the European Convention on Human Rights and the IPA has therefore obtained corroboration from the Attorney-General that the appeal structure is compatible with the appropriate articles, and it is one which does raise concern at times with the appeal procedures but I think this particular clause now is quite clear.

Clause 39 deals with the retirement benefits schemes ombudsman, and this contains provisions for the purpose of continuing the present arrangement which is operated by the Department of Health and Social Security for the conduct of an ombudsman who investigates pensions complaints. Members will no doubt be aware of recent developments concerning the creation of an Isle of Man financial services ombudsman office but until such time as these proposals are more fully developed, members can be assured that the existing provisions

continue and will continue in order to ensure that no black hole in terms of member protection will be created. So the ombudsman is there and he is free to a member.

Clause 40, compensation, amends section 21 of the Financial Supervision Act 1988 and provides a series of enabling provisions to give an effective compensation scheme for retirement benefits schemes. The authority has investigated various funding mechanisms to enable the introduction of such a scheme but at this juncture an equitable solution has not been found. This is fundamentally in consequence of the relatively small number and size of the Isle of Man schemes. However, the principle of the compensation scheme as promoted is desirable and the authority will continue to strive to resolve the issue. This enabling provision will permit prompt and effective introduction once a practical solution has been found and the authority is working hard on that particular one.

Clause 41, blowing the whistle, this imposes an obligation upon trustees, administrators, auditors, actuaries and investment managers for all schemes to give a written report to the supervisor in circumstances where they suspect a breach of the legislation and the breach is likely to be of material significance.

The original proposal were that only the auditor and actuary to a scheme could be the statutory whistle-blowers. However, the feedback that the authority had was very much in favour of extending that whistle-blowing facility to include trustees, administrators and investment advisers.

I beg to move, sir, that clauses 37 to 41, including schedule 1, should stand part of the bill.

Mrs Christian: I beg to second, Mr President, and I think the hon. member has indicated an area which is going to be recurring with some frequency as we go ahead and that is how human rights legislation will be interpreted in different situations. It certainly seems that most interpretations of it will only be tried and tested through court action at some point, which is unfortunate, but that, I think, is the way in which we will develop an understanding of how it applies.

In supporting Clause 40 as providing an opportunity to make regulations for a compensation scheme, I will look forward with interest to see how the IPA resolve this particular issue in terms of who is going to fund it, as it does seem to me that where trustees are responsible for the funds in any particular scheme, use of those funds in a compensation scheme for other people's failures does not seem to be reasonable or in accordance with the trust, so it will be interesting to see how that particular provision develops.

Other than that I think it is right that the breadth of clause 41 has been increased to widen it simply from administrator and actuary to other people who may be whistle-blowers and I am happy to support these clauses, Mr President.

Mr Lowey: Mr President, can I say I welcome the ability to not have a political representative as the head of the IPA, because I do think it is the public perception that the regulators and regulated should be at arm's length, and I think it is long overdue and I applaud the Treasury for honouring what they said they would do anyway and I think, to be fair to them, they said it before Edwards as well.

But can I come back to the appeals procedure. It does seem cumbersome, but again I am back to perception. I can understand why the industry would not want the appeal from the supervisor or the IPA to go to the Treasury because the Treasury had been tainted, if that is the correct word, with a member of the Treasury being its chairman. But it does seem, in a day where we have just got rid of the direct access by the Chief Constable to the cabinet, that the cabinet are getting involved in what I would call nitty-gritty mechanics. Once there is the removal of the political thing of the IPA, then the appeal structure should be to the Treasury. I have every confidence the Treasury can do this. These are the mechanics, but in the meantime as an interim we have to go along with this and I can understand, as I say, where they come from, that they should not be appealing to the very people who laid the regulations down. But it does go to show once again that in these sorts of things it is perception as opposed to the reality that is real and has to be dealt with.

Mr Waft: Mr President, I would like to say that this does clarify my concerns with regard to the supervisor's decision of who the appeal goes to and what happens to it. With regard to the bill of rights and the UK acknowledgement of the European Union and our acknowledgement of the same, there will have to be, I would think in future Bills something of an equal acknowledgement for the aggrieved person who can be seen to be not receiving his due rights because of a Bill, and there needs to be a clause incorporated or something similar for all future Bills that we have before us, and the legislative draftsman will have to take into consideration the human rights provision in all future Bills, and there will have to be an awful lot of work done by the acknowledgement of the human rights legislation in future and we would need to be seen to be aware of what is in store for us, and this Bill does encompass that necessity. Thank you, Mr President.

Dr Mann: Mr President, just two small points. Twice in moving these clauses the mover used the words 'judicial review'. I notice it is not actually in the clause but as we have found out from the Attorney-General only recently, there is no procedure for a judicial review in the Isle of Man and nor is there any intention of introducing it even though he mentioned it himself during the police Bill.

Secondly, I very much would support the establishment of a compensation scheme. I appreciate the particular difficulties in this particular area but without this compensation scheme we could well be in trouble and I think I would very much encourage the authority to try and establish one and in particular to ensure that it is reviewed very frequently to make sure that it takes into account inflation because other compensation schemes that we have have not been altered for nearly 20 years or certainly 10 or 15 and their value to the individual becomes less and less each year as it goes by.

Mr Crowe: Mr President, just speaking to Dr Mann's point, there are other compensation schemes and I think it does give comfort to the investor if there is such a scheme around because they feel that they are investing in an authorised scheme, recognised and fully supervised by the IPA, and compensation scheme would certainly be useful. Again it is the level at which it is set which is the difficult point and the levies that are made on the investment and the scheme administrators. So again I would guess it is quite a difficult balance to try and get a scheme that gives a measure of comfort without being too onerous on the administrator.

The President: Reply, sir.

Mr Radcliffe: Thank you, Mr President. The hon. member Mrs Christian on my right has mentioned human rights. That is legislation which has a certain amount of the unknown and, as she rightly said, I think probably it is only over time after it has been tried and tested that we will have a complete understanding of what is going to be involved.

A compensation scheme has been mentioned and certainly the authority is looking for an equitable and fair way of levelling such a scheme. They are certainly a comfort for the investor but on the other hand there has to be a level and the level of levies which have to be imposed is not unimportant. I think that is one which is, as I said earlier on, receiving a lot of thought and we will be trying to come up with a safe and equitable way of administering it.

The hon. member Mr Waft and human rights and so on again - I think his query was really a question for the legislative draftsman. It is, as I said, a bit of an unknown field at this moment anyway.

Mr Lowey and the Edwards review and public perception and so on - yes, it has been acknowledged in this Bill that there may come a time when a person outside of the Treasury may be chairman of the IPA. It has not happened yet. It probably will happen in the future and certainly the Bill enables that to happen.

The Council of Ministers, I think, is the body who would deal with any decisions and deal with the panel and so on. They are all really pro tem, I think, until the chairmanship has been sorted out. As he rightly says, if it is somebody completely outside of government, Treasury can then be seen to be probably as a reasonably fair and impartial body to appeal to.

I beg to move that clauses 37 to 41 and schedule 1 stand part of the Bill.

The President: Hon. members, I will put the resolution that clauses 37 to 41 along with schedule 1 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses 42 to 44, sir.

Mr Radcliffe: Thank you, sir. Clause 42 deals with publication of information and advice and permits the authority to publish information in appropriate cases about schemes in general or in particular for the protection of members and others. These provisions permit the authority to issue information for the education of practitioners and scheme members. The clause enables the authority to publish guidance notes to provide for interpretation of a policy and so on. So it is this one which was worrying the hon. member Mr Lowey regarding publication of information and so on.

Clause 43, restrictions on disclosure of information, stipulates that any parties concerned with the management of this legislation may not pass on any information obtained under the provisions of this Bill to any third party unless agreement has been obtained from the person to whom it relates. Information that is already in the public domain of course is not restricted by this clause.

Clause 44, exceptions from restrictions on disclosure, lays down the circumstances upon which the restrictions on disclosure detailed in clause 43 do not apply. These include amongst other things the institution of criminal or civil proceedings, assisting the Treasury to discharge its functions in relation to legislation for which it has responsibility, assisting the Assessor of Income Tax, the Department of Health and Social Security, the Financial Supervision Commission and appropriately appointed officers in discharging their respective functions.

I beg to move that clauses 42 to 44 stand part of the Bill.

Mrs Christian: I beg to second, Mr President.

Mr Lowey: Mr President, I again want to be able to say I am reassured by clause 42, but I am not. For a start it is permissive as opposed to mandatory: the IPA *may* publish information et cetera et cetera. I am not saying this has happened in the past or is rife, but what I can say is it could happen. Say the supervisor or the IPA is guilty of maladministration or lack of urgency and the report could be embarrassing to them. They could withhold it under this legislation and that is not right. I am not saying it has happened but it could happen in the future and therefore why not make it mandatory so they have to publish? Openness is the best answer. It focuses minds. This, I am afraid, does not focus. It gives a permissive thing and, I am sorry: you will rue the day you do not make it mandatory.

I use that as an illustration. The supervisor is a paid official of the IPA so he must be read as one with the IPA. I can understand, if there is something that could be damaging to the IPA, not to disclose it. It is natural, and human nature being what it is, it will happen and unless it is made mandatory I am afraid you are in trouble.

So far from reassuring me, it does not reassure me. I know it is meant to, but it is not going to.

Mr Crowe: Mr President, just picking Mr Lowey's point up, there is customer confidentiality as well to take account of and I think it is a difficult one. I understand where he is coming from and I think if it was mandatory it could in fact force publication of details of members of schemes which could be detrimental to the scheme and I think customer confidentiality has to be brought in. Perhaps the mover might be able to comment on that better than myself.

Mr Delaney: Won't the argument that has been put forward by my hon. colleague be used every time not to publish any report? I just think that is what is going to happen.

The President: Reply, hon. member.

Mr Radcliffe: Thank you, Mr President. I am rather disappointed to hear that Mr Lowey is not reassured enough on clause 42. Certainly disclosure and name and shame are not mandatory but, as I said earlier on, there are certain difficulties, I guess - human rights, customer confidentiality - there are all sorts of things which come into it and all I can do is assure the hon. member and other members that the authority will use its powers there sensibly and ensure that, although there is not a big banner with their names on, their names are known. That is the best assurance I can give the hon. member.

I beg to move that clauses 42 to 44 stand part of the Bill.

The President: I will put the resolution, hon. members, that clauses 42 to 44 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses 45 to 49, sir.

Mr Radcliffe: Thank you, sir. Clause 45 requires the supervisor to keep public registers of authorised schemes, recognised schemes and registered scheme administrators. The information to be contained within the registers will be prescribed by regulation and access to view the registers will be permitted during normal office hours.

Clause 46, false and misleading statements, makes it a criminal offence for any person to make a false or misleading statement in connection with any matter which is covered under this Bill.

Clause 47 provides for a defence in criminal proceedings and clarifies that it will be a defence in law if a defendant can prove that he exercised all due diligence and exercised all reasonable precautions in order to avoid the offence.

Clause 48 deals with criminal penalties and specifies the monetary and custodial limits in respect of an offence committed under this Bill.

Clause 49 deals with offences by bodies corporate, and this clause was amended in the other place and hon. members have a copy of that amendment in front of them, quite acceptable to myself and the authority, and I beg to move that clauses 45 to 49 do stand part of the Bill.

Mr Crowe: I beg to second.

Mr Delaney: On clause 48, Mr President, just looking at the £5,000: not exceeding six months or both on conviction on information to a fine or to a term of custody not exceeding two years or both. Now, why was two years fixed, bearing in mind the amounts of money that could be involved in these pensions schemes, could ruin so many lives for the rest of their lives, bearing in mind what we are doing with the national SERPS pension scheme? Two years seems very light. It is a bit of a Savundra situation, isn't it?

The President: Reply, sir.

Mr Radcliffe: Thank you very much. Well, I think the hon. member was trying to elicit there are standard fines and penalties and custodial terms incorporated in many Bills which the legislative draftsman is certainly endeavouring to make a standard length of time, a standard fine to cover more, not single pieces of legislation, as a standard which has been applied and is applied over many Bills.

Mr Delaney: The punishment does not fit the crime.

Mr Radcliffe: No, perhaps not, but anyway I beg to move, sir, that clauses 45 to 49, as amended in the other place on page 47, be part of the Bill.

The President: I will put the resolution, hon. members, that clauses 45 to 49 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses 50 to 53, sir.

Mr Radcliffe: Clause 50, Mr President, deals with civil penalties and permits the authority to levy a summary fixed penalty upon the trustee, administrator, professional adviser or employer in circumstances of a breach of any prescribed provision of the Bill. The authority has got to issue a written explanatory notice to the person concerned and the person specified has 14 days to either pay to the Treasury the penalty or to appeal to the High Bailiff for a review.

Clause 51, regulations and orders, enables the Treasury to make regulations in order to give effect to the Bill.

Sub-clause 51(5) lays out the Tynwald procedure which should, I think, reassure hon. members that things will not happen without their knowledge and the Tynwald procedure will be followed for those.

Clause 52 states the position with regard to the financial effect of the Bill.

Clause 53 deals with the principal terms and defines them.

I beg to move that clauses 50 to 53 stand part of the Bill.

Mrs Christian: I beg to second and reserve my remarks.

The President: I will put the resolution, hon. members, that clauses 50 to 53 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Now, with the winning-post in sight, we move on to clauses 54 to 56 and schedules 2 and 3.

Mr Radcliffe: Thank you, sir, and the winning-post is almost in sight. Clause 54 is the interpretation clause and provides explanations of a number of the terms used throughout the Bill.

Clause 55, Mr President, deals with amendments and repeals and introduces schedule 2 and clause 55 introduces schedules 2 and 3.

Clause 56 deals with the short title and commencement and clarifies the short title of the legislation.

I beg to move that clauses 54 to 56, together with schedules 2 and 3, stand part of the Bill.

Mrs Christian: I beg to second.

Mr Crowe: Just a point, that many trustees now have a power in them to move to another jurisdiction and I am just wondering what would be the situation if a scheme were to be exported to another jurisdiction as to how a changeover would be placed to a regulatory authority in, say, Bermuda or Guernsey or wherever, and similarly, what would be the position of a scheme being imported to the Island from another jurisdiction as to the acceptance by the IPA as to how the whole thing would slot together? Perhaps you may wish to comment on that at the next reading, Mr Radcliffe.

The President: Reply, sir.

Mr Radcliffe: Thank you very much indeed. I am obliged to the hon. Mr Crowe for his comments there. Certainly the IPA, the authority, will be very cautious about importing stuff from another jurisdiction. I think, seeing that it is the time of day it is, Mr President, if I could undertake to give the hon. member an answer at the third reading stage which will, I think, have to be another day.

So with that I beg to move that clauses 54 to 56 and schedules 2 and 3 stand part of the Bill.

The President: Hon. members, I will put the resolution that clauses 54 to 56 and schedules 2 and 3 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Emoluments of Certain Public Servants – Second Report of the Joint Committee Received

The President: Now, hon. members, with the agreement of the hon. member in charge, item 8 will be held over to the next sitting of the Council. We turn to item 9 and I call upon the hon. Mr Radcliffe to move the resolution.

Mr Radcliffe: Thank you, Mr President. I beg to move:

That the Second Report for 1999/2000 of the Joint Committee on the Emoluments of Certain Public Servants be received and its recommendation approved.

Hon. members are in possession of the second report of the Joint Committee on the Emoluments of Certain Public Servants and this report deals with the remuneration of the judge of appeal. I think it is fairly self-explanatory. There is no need to go into great detail. Hon. members will, I am sure, have read the case and the committee recommend that with effect from 1st October 1999 the judge of appeal should be paid an annual salary of 10 per cent of the annual salary payable to group 5 judicial appointments in the United Kingdom. This is the interesting one as far as the committee was concerned. For every day over 18 days devoted to sitting in preparation the judge of appeal shall be paid at the daily rate payable to group 5 judicial appointments in the United Kingdom.

We make that recommendation and we recommend that the judge of appeal be reimbursed. He did receive expenses. We looked at that and we recommend that the judge of appeal should be reimbursed with documented reasonable expenses as incurred and I would beg to move that this report be accepted and approved by this hon. Council here today.

Dr Mann: I beg to second.

The President: I will put the resolution, hon. members, set out at item 9 on the order paper. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. And that, hon. members, concludes our business for this day.

Retirement of the President – Tribute

Mr Radcliffe: Mr President, before we adjourn could I be permitted to say a few words because I understand that this will be the final occasion on which you will be chairing this Council. I am sure that there will be in the course of the next few weeks many glowing and flowing tributes given to you and the service you have given, but I can quite honestly say that as far as the tribute from myself is concerned, none will be more sincere than that which you will receive from me anyway.

Your record of service to the Island, Mr President, is second to none, your services to government, services to the parliamentary scene, and most important of all, I think, your services to the people of the Isle of Man. It is indicative, I think, that you are known outside the Island as Sir Charles, but dare I be familiar and say that not only in Garff but over the Island you are known as Charlie, and that is indicative, I think, of the esteem in which you are held, that people want to be on such a close first name term with you.

You are known and respected worldwide. Wherever there is a branch of the Commonwealth Parliamentary Association one has only to mention our President here and

there is an immediate outflow of praise for all that he has done for the Commonwealth Parliamentary Association as a whole.

Your guidance to members on all aspects of parliamentary roles and duties has been received by many, valued by many and I can honestly say that for myself the advice that I have received from you over the years has been invaluable, very much appreciated and I am sure that similar comment applies to other members, not only here but in the other place.

I did mention service to the Island and I think a good example of that service and indeed the foresight that you had was the way in which the Isle of Man handled its own health service. You were certainly involved in the early days. You were at the very front end of the whole thing and decisions which were made then are still pertinent today and I have always said publicly and privately that the health service of the Isle of Man owes an incalculable debt to Sir Charles Kerruish.

Constitutionally the Isle of Man has seen a lot of changes over the years and I think it would not be unfair to say some of that change has been instituted by yourself, and the Isle of Man, I think again, is much the better for it.

As I said, there will be many long, glowing and flowing tributes but I would say on behalf of all the members here in this particular chamber that we certainly regret your decision to retire, but having made it, we wish you and Lady Kerruish many happy years of retirement and our very best wishes for the future.

Members: Hear, hear.

Dr Mann: May I second that, Mr President. I arrived by sheer chance 27 years ago in Garff and at that point within a few days I had heard of all the work that you had done and the immense standing that you had in the Isle of Man and in Garff. You had achieved at that stage the position of a distinguished statesman. You had done an immense amount before that time. I know how much the people of Garff appreciate what you have done, I am sure the Isle of Man does, but in particular the constituency that you represented so long has gained immensely from your representation.

I have, in those 27 years, worked with you and many times against you. At all times you have been perfectly correct in your relationships. We have always had a very good relationship and I think in the time that I knew you, in the Keys in particular, you spent such a lot of time dealing with the small issues that members were worried about and needed guidance on. You have always been available to help the individual member, however difficult he may be or however troublesome, and when you came to the Council following your election as President, you were essentially a Keys man, as you have always said, but since your arrival in this Council this Council has increased in its stature, I think, in spite of all the things that are said against it or thrown at it. I think you have personally been responsible for this Council being held in a higher esteem and I think this Council also owes to you a considerable debt.

I would say if I wanted to describe one thing about you, you are a gentleman to everybody, but particularly to those whom you know well you are what I would describe truly as a gentle man, in spite of the fact that you are a great man politically and in the state, but as an individual you are essentially a gentle man and that is what is appreciated by ordinary people and by the members of this legislature.

We wish you well. I think, and I have told you yourself, you are very courageous to have given up at this particular point. I think, however, we wish you well and I am sure you are not going to be far away from us in the future.

Members: Hear, hear.

The President: Well, hon. members, I do thank you most sincerely for the words you have spoken. I find some difficulty in recognising the character that you portray -

Mr Delaney: We don't.

The President: - but nevertheless I do appreciate the tribute that you have paid in a general sense and in particular in respect of the years I have been associated with this Council.

Hon. members, the richness of our Island's story and the part played in it by this Council, first disclosed in the *Chronicles of Mann and the Isles* in respect of King Reginald's decision in the 1200s to refer a petition by his brother Olaf to the Council, have made me feel very proud and very privileged to have presided over its deliberations for almost 10 years now. Those years have given me the fullest opportunity to study Council's operation and its contribution to the Island's wellbeing, a contribution which had been ongoing for over a thousand years as we recently approached and entered a new millennium of time, a contribution which Councils through the centuries have made in varying forms, leading up to the present-day responsibilities of the second chamber, such as the Legislative Council as the revising chamber of our age-old tricameral parliamentary institution, the Legislative Council as a vital component of Tynwald Court, a role in which it has consistently been an essential plank in the platform of stability within our parliamentary system and from which confidence in the Manx Government has been generated, and finally, the Legislative Council that makes an outstanding contribution to work within the administration, playing a full part in the activities of the Council of Ministers, departments of government and associated committees and commissions.

So it is that in respect of the Legislative Council's operation perhaps the words of Matthew Green, written in the 1600s, could be applied: 'Experience joined with common sense to mortals is a providence.' Certainly I believe its work on behalf of the Manx nation, that I have noted during my years of association with you, has been providential and I find it strange that such a contribution should provoke at any time adverse reaction and, to paraphrase Shakespeare, 'a campaign which is a pipe blown by surmise, jealousy and conjecture that the wavering multitude can play upon', thus, hon. members, creating a need for thinking people in our community, who cherish the thought of this tiny nation going into the new millennium with the strength of stability and confidence to serve both their interests and those of generations yet unborn, to question the need for change in respect of what could well be described as a winning political combination: Tynwald, Keys and Council.

Hon. members, as I take my farewell I do wish to convey my appreciation of your expressed good wishes. To work with you over the years has been a rare privilege, enhanced by the courtesy, kindness and friendship that has been my lot to enjoy in this setting. As I thank you and indeed your forebears in office with whom I have worked, along with the Clerk of the Council, Mr Arthur Bawden, for the consideration and support I have enjoyed during my

time here, may I in turn wish you well as you continue to make your invaluable contribution to our Island's wellbeing. Thank you. (*Applause*)

Hon. members, the Council will now adjourn and the adjournment will be until Tynwald next Tuesday at 10.30. Thank you.

The Council adjourned.