

**REPORT OF PROCEEDINGS OF
LEGISLATIVE COUNCIL**

**Douglas, Tuesday, 14th March 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), the Attorney-General (Mr W J H Corlett QC), Hon C M Christian, Messrs E A Crowe, D F K Delaney J R Kniveton, E G Lowey, Messrs J N Radcliffe and G H Waft, with Mr T A Bawden, Clerk of the Council.

The Lord Bishop took the prayers.

Swearing-In of New Members

The President: This morning we welcome His Honour Deemster Gain, Clerk of the Rolls, accompanied by the Chief Registrar, Mrs Lloyd-Humphries. The deemster will administer the oath of allegiance and the oath of a Member of the Legislative Council to the newly elected members. The learned deemster, the Clerk will now introduce the new members to you.

The Clerk then introduced in turn Mr DFK Delaney, Mr J N Radcliffe and Mr GH Waft, to each of whom the First Deemster administered the oath of allegiance and the oath of a Member of the Legislative Council, as follows:

OATH OF ALLEGIANCE

I, . . ., do swear by almighty God that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second. So help me God.

OATH OF A MEMBER OF THE LEGISLATIVE COUNCIL

You shall well and truly serve as a Member of the Legislative Council of this Isle according to the Statute in that case made and provided.

You shall use your best endeavours to maintain the laws and customs of this Isle and shall justly and truly deliver your opinion and do right in all matters which shall be put unto you, without favour or affection, affinity or consanguinity, love or fear, reward or gain, or for any hope thereof, but in all things you shall deal uprightly and justly and do wrong to no man. So help you God.

Each new member, having taken the oaths, then signed the Liber Juramentorum, was presented with the Certificate of Election and a copy of the Standing Orders of the Legislative Council, and was conducted to his seat.

The President: Now, hon. members, the member yet to be elected for the remaining vacancy will be sworn in in chambers in due course. To our newly elected colleagues I send the warmest of welcomes and wish them a happy and successful term of office.

This Council has for centuries used its acknowledged experience and careful judgement to make an invaluable contribution to the life of our nation through the work of its members in Tynwald and in government. The value of its modern role as a revising chamber is proved at every sitting in this chamber. Its delaying role as a safeguard against unduly precipitate action

can be observed in Tynwald. An important part played by its members in the administration of good government must be plain to all.

The Council is, of course, well aware of its constitutional duties and limitations and there is no desire to challenge the other House. It nevertheless remains the ultimate guardian of the rights of the people. The re-election of the members we welcome back today has helped to ensure that it continues to possess significant legislative experience, business acumen and a proper understanding of our Island's needs as we move on to face the challenges of the new millennium. Thank you, hon. members.

Now hon. members will be upstanding while the learned Deemster and the Chief Registrar will withdraw.

Deemster Cain: Thank you, sir.

The President: Thank you, sir, for joining us and for carrying out the swearing in.

Deemster Cain: Thank you very much.

The First Deemster and the Chief Registrar withdrew.

Commonwealth Day Message

The President: Hon. members, yesterday was Commonwealth Day and we were pleased to receive the traditional message from Her Majesty the Queen, Head of the Commonwealth, which I now invite the learned Clerk to read.

The Clerk: 'A message for Commonwealth Day 2000 from Her Majesty the Queen, Head of the Commonwealth.

'It is highly appropriate that the theme of Commonwealth Day at the start of the new millennium should be The Communications Challenge. For much of the millennium just ended, the challenge was to relay information as speedily and accurately as possible. What once took weeks is now instantaneous. But the advance in technology brings a new challenge, of how to use rapid communication responsibly and for the common good. We have to strive to ensure that the advantages of modern communication systems are available to all, and are used to bring us all closer together, not to create fresh divisions. And we need to remember that exciting though the new ways of communicating undoubtedly are, what matters most is what we say to each other.

'The Commonwealth is an organisation so diverse and widespread that it has always depended on good communications which are helped, of course, by having a common language. Recent advances in communication technology are particularly helpful in fostering the non-governmental networks which help to make the Commonwealth so unique. The exchange of information and sharing of experiences between representatives of civil society in the different countries form an important part of the Commonwealth's activities at the start of the 21st century. Both in these networks, and in our co-operation at government level, our shared values and traditions provide a foundation for using the new technology to our common advantage.

'The challenge for the century just started will be to find ways to use ever faster communications to bring greater harmony and understanding both within each of our societies and between them, and thereby to strengthen the Commonwealth.

Elizabeth R

13 March 2000'

The President: Thank you.

Rio Convention – Compliance – Question by Mr Lowey

The President: Now, turning to item 4 on the agenda paper, I call upon the hon. Mr Lowey to ask the question standing in his name.

Mr Lowey: Thank you, Mr President. I beg leave to ask a member of the Council of Ministers:

What steps has the government taken, or does it plan to take, to comply with the Rio convention to which the Island is a signatory?

The President: The hon. Mrs Christian of Council of Ministers to reply.

Mrs Christian: Mr President, the United Nations Conference on Environment and Development, known as the Earth Summit, was held in Rio de Janeiro in 1992. It produced four obligations: the UN Framework Convention on Climate Change, the Biological Diversity Convention, Agenda 21, and the Principles of Forests. The so-called Rio convention is therefore a collection of obligations, but the Isle of Man is only included in the United Kingdom's ratification of the climate change convention. Other parts of the convention are either not ratified for the Isle of Man or are not binding on the Island.

The climate change convention established a framework for action to reduce the risks of global warming by limiting the emissions of greenhouse gases, in particular carbon dioxide. At the Kyoto World Climate Summit in 1997 the United Kingdom undertook to reduce emissions of six greenhouse gases: carbon dioxide, methane, nitrous oxide and the chlorofluorocarbons by 8 per cent between 1990 and 2010.

The Isle of Man is not specifically required to meet these reductions in greenhouse gases emissions separately from the United Kingdom. For the purposes of the reductions the Isle of Man is considered to be included in the United Kingdom inventory. The United Kingdom remains committed to achieving these reductions and is confident of meeting its obligations within the agreed timescales.

The President: A supplementary, sir?

Mr Lowey: Would the minister not agree that her answer today really is saying that we are relying externally, while internationally we say we are a signatory to the Rio convention or that part of it which she has mentioned this morning about the emission of gases. Is the Manx Government, and this is the crux of my supplementary, Mr President, taking any actions to reduce the emissions of gases, and would she not agree that the building of an incinerator will increase the emissions of gases into the atmosphere as opposed to decreasing them and isn't that contrary to the spirit of the international agreement which the Isle of Man is committed to in a limited way?

Mrs Christian: Mr President, I think the point I am trying to make is that the Island is not under an obligation to reduce in the same proportions as the United Kingdom is those gases which I enumerated. However, there are efforts being made in the Island to reduce the

greenhouse gases. The major contributors to greenhouse gases are domestic space heating. The others are electricity generation and transport. Waste and agriculture also produce some emissions in terms of methane and so on.

In terms of what the Island is seeking to do, the Department of Local Government and the Environment had commissioned a report by the University of Exeter to look into the levels of emissions in the Island. It is certainly true that there is a difficulty, given our increasing population, to meet the requirement in relation to transport. The emissions in that particular area will indeed pose a problem if we are to seek to reduce them and will require considerable education programmes and perhaps lifestyle changes which are not going to be easy to achieve.

In terms of the major producer of emissions in the public sector I would suggest that the MEA is the major contributor. The problem of emissions is being addressed by the MEA through the use of fuel with lower sulphur content. Whilst it is not directly attributable to the Island, the under-sea electricity cable will give the Island access for a period to imported electricity generated from a range of fuels which produce less Co2 than other conventional fuels and the MEA is committed to using gas for electricity generation should the government decide to bring it ashore.

The MEA is also currently operating a small hydro-station and is reviewing energy generation from other renewable sources with a view to eventually transferring 10 per cent of demand from fossil fuel to renewable sources.

The hon. member referred specifically to the incinerator. I have not been provided with statistics in relation to the incinerator, but it is certainly, I think, accepted that landfill in its own right produces greenhouse gases which are the subject of the Rio convention and any reduction in landfill will make a reduction in those particular areas. So I am afraid I cannot compare the two, to tell the hon. member whether the global package does effect a reduction or not, but I think we do have to recognise that whichever way we deal with our waste there is the production of gases which contribute to the greenhouse effect and I regret that I am not able to give the statistics to the hon. member.

Mr Lowey: Would the minister not agree, Mr President, that the inactivity, the only thing that the government has done in honouring its commitment to the Rio convention, to which it is a partial signatory, is to commission a report, there are no practical steps put into action, and as the 8 per cent reduction has to be brought in by the year 2010 we are halfway through that period?

Would she also not agree about the battery cars and the government could have introduced tax relief to encourage people to change their lifestyles and yet they have not done so and isn't that a dereliction of their duty to their international obligations?

Mrs Christian: Mr President, I have indicated that a report has been commissioned. To suggest that that is all that will happen, that it will be produced, I think does not do justice to the department that has commissioned it. The department has to consider the current statistics produced in the report which reflect a period of time and therefore the changes over that period of time and will consider the implications of that report, the greenhouse gas emissions, and consider in the light of that report what initiatives need to be included for the future in order to tackle the emissions issue.

As I indicated, one of the major contributors is space heating and that is us heating our homes by and large. The standard of insulation required in housing has been improved and that in itself will contribute to the requirement for less fossil fuel heating of homes and there are structures in place in the Department of Local Government and the Environment to assist people with insulation and so on. So I think the hon. member's suggestion that nothing is happening is unsustainable.

With regard to the question of battery cars specifically, it is true that no tax rebate has been offered on battery cars, certainly to my knowledge anyway, but to suggest that because that has not been done there is a total dereliction of duty I would suggest was unfair.

I do not have statistics on the use of battery cars. I am conscious that there is a new hybrid type of car out, which I do not believe is all battery, which is, I think, being trialled in other countries to see whether or not people may be persuaded to use those hybrid cars in an effort to reduce those gases. I am aware that the Treasury minister has had a conversation about that particular issue but at this stage no decision, as I understand it, has been taken to follow that precedent in terms of giving any concessions for the purchase of that particular type of vehicle.

Mr Lowey: Finally, would the minister not agree that the government's position is long on words and short on action and it is not sustainable?

Mrs Christian: Mr President, I cannot agree with the hon. member. I think that we all have to be responsible in relation to the greenhouse effect, and government, I accept, has a job to do to lead in those issues and I think the major issue must be one of education so that we all understand the consequences of our actions when burning fossil fuels.

Mr Lowey: And doing neither.

Declaration of Members' Interests Committee – Member Elected

The President: Moving on then, hon. members, to item 5, we now have to elect a new member to the Declaration of Members' Interests Committee in place of Mr Radcliffe who is eligible for re-election. So may I have nominations, please.

Mr Waft: I propose Mr Radcliffe.

Mr Lowey: I second Mr Radcliffe.

The President: Are there any further nominations?

The President: If not, is that agreed, hon. members?

Members: Agreed.

The President: Thank you. You are duly elected, Mr Radcliffe.

Mr Radcliffe: Thank you, sir.

Special Committee of the Legislative Council on Smoking and Passive Smoking in Public Places – Member Elected

The President: We now proceed to the election of one member of the Special Committee on Smoking and Passive Smoking in Public Places in place of Mr Waft who is also eligible for re-election. Nominations, please.

Mr Delaney: I move the re-election of Mr Waft, Mr President.

Mr Kniveton: And I second that.

The President: Any further nominations, hon. members? If not, I will put the name of Mr Waft. Is that agreed, hon. members.

Members: Agreed.

The President: Thank you, hon. members. Congratulations, Mr Waft.

European Communities (Amendment) Bill – First Reading Approved

The President: Now, item 7 on the agenda paper, we have the European Communities (Amendment) Bill for first reading and I call upon the learned Attorney-General.

The Attorney-General: Thank you, Mr President. The European Communities (Amendment) Bill 2000 amends section 2A of the European Communities (Isle of Man) Act 1973. That section enables the Governor in Council to apply European Communities instruments as part of the law of the Isle of Man.

Clause 1 transfers the power of the Governor in Council to make orders under section 2A of the 1973 Act to the Council of Ministers. The clause also introduces a new Tynwald procedure for certain orders made under section 2A. At present that section embodies an exceptional Tynwald procedure. It requires a draft of an order to be laid at two sittings of Tynwald. The draft order must be approved at the second sitting before the order can be made by the Governor in Council. It has been found that this procedure can lead to delay in implementing European Community sanctions. A recent example of this was the imposition of sanctions against the former Yugoslav Republic. The new procedure introduced by the Bill will apply to orders which are made in respect of European Communities instruments which deal with sanctions. The new procedure will require a positive Tynwald approval but at the same time will enable the Council of Ministers to ensure speedy implementation of international sanctions et cetera when necessary.

Hon. members will be aware that over the last two or three years there has been an increasing amount of European Community sanctions measures coming before Tynwald for approval. (**Mr Delaney:** Hear, hear.) The European Community has become more willing to follow up United Nations Security Council resolutions with its own sanctions measures against various countries and especially as I have said, the former Yugoslavia. Because these measures are brought in by means of European Community regulations, they apply directly in member states on the day on which they are made. They also apply directly to the Isle of Man to the extent that they are applicable under protocol 3 to the UK's Act of accession to the European Community, which, as members will be aware, governs the Island's relationship with the EU. However, it is becoming increasingly common for the EU to bring in sanctions measures which fall outside the scope of protocol 3 and therefore require the Island to adopt those regulations under domestic law or run the risk of providing a means by which such measures might be evaded.

The current method of applying such EU legislation to the Island is under section 2A of the 1973 Act which states that the Governor in Council may make an order to apply any EU instrument as part of the Island's law. Furthermore section 2A(4) provides that no order shall

be made under the section unless a draft of the proposed order has been laid before a sitting of Tynwald and that draft has been approved at a subsequent sitting of Tynwald.

While this method of applying European Community instruments gives Tynwald the opportunity to scrutinise the legislation which comes before it, it is apparent that a considerable length of time can elapse before emergency sanctions measures can be introduced. If, for example, the EC brings in sanctions in late June or early July it could take up to four to five months before they are enacted in the Island. The Bill, therefore, seeks to remedy these problems by amending section 2A in the way I have explained.

It should be noted that this more streamlined system will only be used in cases where sanctions measures are to be implemented.

Mr President, I move that the European Communities (Amendment) Bill be now read a first time.

Mrs Christian: I beg to second, Mr President.

Mr Delaney: Just to make sure it is clear and not to challenge in any way, this is purely dealing with sanctions and no other European legislation. It is not giving a carte blanche speeding up of any implementation of legislation from European directives other than sanctions. Can I ask that, Mr President?

The President: Reply, sir.

The Attorney-General: Mr President, I do understand the hon. member's concern and I can reassure him that the effect of the Bill is to apply the streamlined measure, if I can put it that way, only to those measures which are set out in clause (4B) of the Bill and which are set out at page 2. They apply only, Mr President, to sanctions measures.

The President: Hon. members, I will put the resolution that the European Communities (Amendment) Bill be now read a first time. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Employment (Sex Discrimination) Bill – Consideration of Clauses Concluded

The President: We turn next to the Employment (Sex Discrimination) Bill and I call upon the hon. Mr Delaney to take the clauses, starting at clause 8, sir.

Mr Delaney: Thank you, Mr President. We recommence on this particular Bill at clause 8. This clause makes unlawful the main forms of discrimination against women and conversely against men in employment, including offering employment treatment within employment in respect of promotion, training, benefits et cetera and terminating employment.

Sub-clause (1) makes it unlawful to discriminate against a woman in relation to prospective employment in the Isle of Man. This covers recruitment arrangements, for example selection procedures, interviews and offers, the terms in which employment is offered and a refusal to offer employment.

Sub-clause (2) makes it unlawful to discriminate in the course of employment in the Isle of Man. This covers access to promotion, transfer or training and any in-service benefits and dismissal and other forms of detriment such as demotion or transfer.

Sub-clause (3) excludes any matter relating to death or retirement, except in relation to access to promotion, transfer or training and dismissal and other forms of discrimination.

Sub-clause (4) and (5) provide that in relation to offers of employment discrimination in respect of pay or other monetary benefits is excluded. This is in order to avoid overlap with equal pay provisions in part I. Such matters are dealt with in part I of the Bill.

Sub-clause (6) provides that in relation to treatment in the course of employment discrimination in respect of a facility which is also available to the public is not unlawful. So if an employer is in the business of providing sports facilities for women only, making those facilities available for female staff but not for male staff is not discrimination.

Sub-clause (7) provides a small employer defence in respect of sex discrimination. Any sex discrimination in relation to recruitment or in relation to promotion, transfer or training within employment may be justified by the size, the administrative resources of the particular establishment or undertaking.

I beg to move clause 8, Mr President.

Mr Kniveton: I beg to second, sir.

Mr Lowey: Mr President, now I can quite understand why the mover of the Bill just shoves in at the end of his motion that it offers a defence. It is a defence for a small employer to say if it impinges on him because of the size of the number of people who are in employment, and I draw your attention to item 7: 'In relation to sex discrimination' - and it is vital, it is the kernel of this particular Bill - (a) 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'. It completely takes the whole meaning away from the sex discrimination. You are permitted to discriminate or you can defend yourself by saying you are a small employer. Now, if that is not spinning and standing the onus of this Bill on its head, people will not be confused with it. This is a contradiction of the very essence of this particular Bill.

It is wrong to discriminate, full stop. It should not be wrong to discriminate because you employ a few people because that is the wrong signal. When you are sending out a signal in discrimination it does not give caveats to discriminate on a small scale or, in this particular case in the Isle of Man, on a very, very large scale because if I take the department's own figures, 70 per cent of the firms on the Isle of Man employ less than five or 10 people and these are the very people who this defence will be applicable to.

Now, what we are setting out in this particular Bill and this particular piece of legislation is that we are introducing at long last anti-discrimination laws to protect and yet this Bill will permit discrimination for 70 per cent of the employees on the Isle of Man. That cannot be right. It just cannot be right. If you are going to introduce a Bill you should not give an escape clause such as this legitimacy and therefore I am moving the amendment that I believe has been circulated standing in my name:

Page 7, line 38; for subsection (7) substitute -

'(7) In relation to sex discrimination -

(a) 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, in the circumstances specified in subsection (8).*
- (8) *Subsection (7) applies where -*
- (a) *the employment is or would be in an establishment in which 5 persons or less are employed; and*
- (b) *the discrimination is justified by reason of the administrative expenses which would otherwise be incurred at the establishment.'*

That would actually negate the very essence of this particular Bill. My amendment will actually still make it an offence for people to actually be discriminated against or offer a defence to an employer that because of their size they would not be able to do it.

Now, I believe that this particular piece of legislation is long overdue and it will not be accepted internationally, people will not be confused. I do not care what amount of spin is put on it by the department that the discrimination is only limited, it is allowing discrimination and it is allowing employers a defence, and I do not believe that is right, I do not think it is positive, I think it is giving short change to people out there and I do not think it should be included in this particular Bill. Therefore I beg to move the amendment standing in my name.

The President: Is there a seconder?

Mr Radcliffe: I will second it, Mr President, to get it on the floor.

Mr Waft: If I could just make comment, Mr President, I just wondered whether this amendment does provide for a situation, for instance, where there is a small establishment, a man and wife operating a small business and they decide to employ another lady to take on some of the work. What is the necessity for the provision of extra toilet facilities for that person in the situation where a man and wife are able to use the same facilities, if somebody else does come in? Would the Attorney-General like to make comment as to whether this amendment would cover that eventuality on the provision of added facilities for that new female who would be employed?

Mr Crowe: Mr President, can I ask the hon. mover of the amendment just for clarification, please? It is just there seems to be a double negative in here. Reading the first part of this, which is page 7 and sub-clause (7) in relation to sex discrimination, 'subsection (1) does not apply to any employment' and going on to (b), 'subsection (2) does not apply', and in the Bill the defence is by reason of being a small establishment et cetera. But in Mr Lowey's amendment he seems to be again agreeing with the Bill that there is a defence where the establishment is less than five persons. So he is quantifying the size of a small establishment and (b) the discrimination is justified because of the cost et cetera. So perhaps the mover could just clarify that point because he does seem to be confirming what is in the Bill but clarifying the size of a small establishment rather than removing the discrimination in total.

Mr Lowey: I must say that the way I had been advised this amendment has been worded was that it actually gets rid of the discrimination element. The Bill is also deficient, as the hon. mover will be aware, that there is no definition of 'small'. I have to say that the department that moved the Bill have deemed a small business establishment as that

employing less than five people. This amendment defines what is small but it actually makes it illegal for a defence to actually be put forward as to the size. In other words, I am not allowing discrimination because of the size of the company. Discrimination, if it is practised, is wrong whether the size is one, two or five.

Mr Crowe: Mr President, can I just again seek clarity on that? As I say, sub-clause (7) seems to say 'does not apply' et cetera but the subsection applies where . . . I think there is a double negative. Maybe could the hon. Attorney-General clarify?

The President: Learned Attorney.

The Attorney-General: Thank you, Mr President. There are some important issues which have been raised in the contributions made by hon. members. I think it is only correct for me to say, as Attorney, that I do have concern about the provisions of sub-clause (7) of clause 8. As it happens, I expect during this week to be appearing before the United Nations Committee on Human Rights and one of the issues which I am quite certain will be examined by the committee in relation to the Island's approach to the international covenant and discrimination in particular, one of the questions will be to what extent we do have legislation which prohibits discrimination because of course in the international covenant there is a free-standing duty for states not to discriminate for all sorts of reasons.

Now, the policy which has been adopted by departments of government thus far is to introduce anti-discrimination legislation in a fairly piecemeal way and of course this legislation, the Employment (Sex Discrimination) Bill, builds on some small inroads into our situation which was of course we did not have any legislation governing discrimination.

So it is a matter of concern for me on the one hand to be saying to an international body, 'Yes, we are hoping to introduce legislation banning discrimination', and then having to reveal if I was asked, 'Yes, there is quite a severe inroad into the principle because most of the businesses we have on the Island are small businesses and, yes, they can discriminate,' and that is a matter which does cause me concern.

The way that I construe the amendment moved by the hon. member Mr Lowey is that it has the great merit of defining what 'by reason of size' means. In other words, the hon. member's amendment is stating that there can be a defence. In other words, discrimination can be justified if the establishment is one in which five persons or less are employed and it goes on to say that the discrimination is justified by reason of the administrative expenses which would otherwise be incurred at the establishment. But I do agree with the hon. member Mr Crowe that in fact the amendment does not cure the fundamental problem which is that the Bill is still allowing there to be discrimination for small businesses. I am afraid we cannot deny that and that is the way I read the amendment. It is a matter of policy of course for the sponsoring department, but I do have very real concerns from our international obligations.

In so far as the specific question raised by the hon. member Mr Waft is concerned, I should have thought again, although perhaps I would like to check this, that in so far as toilet facilities are concerned, that would be a matter for health and safety. I think there are some specific provisions dealing with that and there could well be some exemption where you have a small business and I doubt that it actually falls within the ambit of this legislation.

I hope those comments are of assistance to hon. members, Mr President. As I say, it is a matter which gives me concern.

The President: Now, reply, hon. member.

Mr Delaney: With great difficulty because the situation has actually been clear. I spoke to the Attorney and I have tried to give the situation clarity because that is our job, to get legislation that works, and the situation I came down to was that the Bill actually does to some extent encourage in 70 per cent of our employers discrimination and yet here we are passing a Bill which is supposed to be going against any discrimination.

Mr Lowey: Absolutely.

Mr Delaney: It is like Douglas Corporation offering free tennis to the over-75s. It is a very great gesture but it does not actually do anything.

In this case to put an argument against Mr Lowey is very difficult. I did clear the three options the department - coming from, I take it, government policy - had in front of them and I went through the three that they had in front of them, but after speaking to the Attorney and listening to what he said, I am wondering whether this clause actually makes this Bill unworkable in our local situation, given the size of our employers, and if it is the intention that I am to put a case against Mr Lowey's amendment I need more clarity, and although I have had a lot of help from a number of the staff from the department and I have been given a brief to read out, I am reluctant, Mr President, to make excuses and I, on this occasion, am more inclined to support the amendment of Mr Lowey because of the position made clear by the Attorney and in this situation I am not prepared to say that Mr Lowey is wrong. I am taking it on the different arguments that have been put to me and I will be happy to see it re-debated in another place, to go back there, and maybe by that time Mr Attorney and the department themselves can come up with a clearer picture for the future. I will leave it to members to decide whether the amendment has some real meaning for the Isle of Man.

The President: Hon. members, the resolution is set out at clause 8 in your Bill. To that resolution we have the amendment in the name of the hon. Mr Lowey set out in the white paper in your possession. Will those in favour of the amendment standing part of the clause please say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

For: The Lord Bishop, Messrs Lowey, Waft, Kniveton, Radcliffe, Delaney and Crowe - 7

Against: Mrs Christian - 1

The President: Hon. members, we have seven votes to 1. The amendment carries.

I will now put the clause as amended. Will those in favour of the clause as amended please say aye; against, no. The ayes have it. The ayes have it. Clause 9, sir.

Mr Delaney: This clause, Mr President, provides that sex discrimination may be justified where sex is what is known as a genuine occupational qualification for the job.

Sub-clause (1) states the general principle that being a man is a genuine occupational qualification for a job and it is not unlawful to discriminate against a woman in arrangements

for recruitment or in refusing her the job or in respect of opportunities for promotion, transfer or training.

Sub-clause (2) defines 'genuine occupational qualification'. For this purpose one of the following conditions must be fulfilled: (a) being a man is an essential part of the job, for example to play Hamlet or to model menswear; (b) it would be indecent for a woman to do the job, for example as an attendant in a Turkish bath for men; (c) the job involves work in a private home and involves contact or intimacy such that a woman would be unsuitable, for example a gentleman's valet or lady's maid; (d) the job involves living in accommodation provided by the employer, accommodation for men only is available and it is not reasonable to provide accommodation for women; (e) the job is as a nurse, warder, teacher or similar position in a hospital, prison or other institution for men only and it is reasonable that the job should not be held by a woman, for example a warder in a men's prison; (f) the job is to provide personal welfare or an education service which can best be provided by a man, for example a tutor for a teenage boy; (g) the job will probably involve work in a country where such work by a woman is unacceptable, for example a salesman in Saudi Arabia; (h) the job is one of two and a married couple is required, for example as gardener and housekeeper.

Sub-clause (3) makes it clear that an exemption applies to a job not only where the work is wholly covered but also where it is partly covered by the terms of the exemption.

Sub-clause (4) limits the exemptions in cases where the employer could appoint a woman to a job and redeploy his existing male employees to do the particular work for which men are required.

I beg to move, Mr President.

Mr Kniveton: I beg to second, sir.

Mr Lowey: Just for clarity's sake, Mr President, the mover read some of his descriptions to say where it would not be an offence: I am rather perturbed that a lady doctor, for example, could be refused work in a male prison. It seems odd because I know of lots of lady doctors who actually do prison work. Could she be debarred because it was an all-male prison or vice versa, a male doctor going into a female prison? At that professional level it is accepted practice now. It does not matter whether it is a man or a woman dealing with a man or a woman and so therefore if you tie it too tightly you can actually be counterproductive. The clause does not exclude people from doing it if they so wish and are employed. But in some of the description of the types of job it says you would not expect a lady warder in a male prison. I think there are lady warders in male prisons now. So is that going to make them outlawed?

The President: Does any other hon. member wish to speak? Reply, sir.

Mr Delaney: Mr President, it actually does not in that way. It is listing the type of job as examples that could be used and obviously the female doctor is not one of the categories I read out, but in actual fact you are quite right: there are females employed as psychiatrists and other occupations inside male prisons. But this gives an opportunity if there is a need, for example in a prison where there are sex offenders of that nature, so that they would be obviously not encouraged to practise their misdemeanours against a lady member of staff. That is the situation.

The President: I will put the resolution, hon. members, that clause 9 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 10, sir.

Mr Delaney: Clause 10 - this clause makes provision to avoid overlap or conflict between the equal pay provisions of part I and the anti-discrimination provisions of part 2. An offer of employment on terms which, if accepted, would cause an equality clause to operate, that is, an offer at a rate of pay lower than that of a man doing like work, counts as unlawful discrimination but attempted discrimination over pay in the course of employment, for example a pay rise given to a man but not to a woman doing like work, does not count as unlawful discrimination as it is cancelled out by the operation of the equality clause. I beg to move, Mr President.

Mr Kniveton: I beg to second, sir.

The President: I will put the resolution that clause 10 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 11, sir.

Mr Delaney: This clause, Mr President, deals with the case of a contract worker, for example a temp, where instead of working directly for an employer she works for an agency which supplies her to various employers. Discrimination by such an employer, referred to in this clause as a principle, is prohibited in the same way as it would be by a direct employer. I beg to move.

Mr Kniveton: I beg to second.

Mr Crowe: Mr President, how would this actually be enforced? If the employer recruits through an agency an employee, is the onus on the employer using the agency or it is on the agency to see that the employees of the agency are fairly treated and fairly remunerated?

The President: Reply, sir.

Mr Delaney: The agency, if I can use that word, is the principal employer.

The President: Hon. members, I will put the resolution that clause 11 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 12.

Mr Delaney: Clause 12 deals with the case of a partnership. Discrimination by a firm against one of the partners or a prospective partner is prohibited in the same way as it would be by an employer. I beg to move, Mr President.

Mr Kniveton: I beg to second, sir.

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

Mr Delaney: Clause 13, this makes unlawful any discrimination by trade unions, employers' associations and trade or professional associations. It is straightforward, Mr President. I beg to move clause 13.

Mr Kniveton: I beg to second, sir.

The President: I will put the resolution, hon. members, that clause 13 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 14, sir.

Mr Delaney: Under this clause it makes it unlawful for any discrimination by a professional body or other licensing authority in relation to a trade or a profession and requires such an authority to have a regard to whether a person has practised discrimination before conferring on him the appropriate qualification or certification. I beg to move.

Mr Kniveton: I beg to second, sir.

The President: I will put the resolution that clause 14 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 15, sir.

Mr Delaney: Clause 15 makes unlawful any discrimination by anyone providing training for employment. I beg to move.

Mr Kniveton: I beg to second, sir.

The President: I will put the resolution that clause 15 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 16, sir.

Mr Delaney: Under clause 16 it makes it unlawful for any discrimination by an employment agency. This includes the provision of careers guidance and any other employment-related services of an employment agency, as was questioned by my hon. colleague Mr Crowe earlier. I beg to move.

Mr Kniveton: I beg to second, sir.

Mr Lowey: May I ask a question Mr President? Sub-clause (3): 'This section does not apply if the discrimination only concerns employment which the employer could lawfully refuse to offer the woman.' Now, is the mover telling me that the amount of employment is defined somewhere within this Bill? In other words, who is the arbiter of 'lawfully refuse to offer the woman'? Where is the list? Where is the person able to get this information from to say, 'I've been discriminated against because . . .' In other words, where am I going to get this information from? Because again we are putting in caveats all the time. It is illegal to discriminate but you can lawfully discriminate. Now, this worries me where they give caveats all the time. In sub-clause (3) it says, 'This section does not apply if the discrimination only concerns employment which the employer could lawfully refuse to offer the woman.' Where is this list of unlawful practices kept, held, and where can I get the information if I am being discriminated against?

The President: Reply, sir.

Mr Delaney: The answer, Mr President, is in clause 9 in the list the hon. member questioned earlier on. That is the situation. They are listed there as examples. Therefore that is the list that they would be working under. Agencies have the same responsibilities under this Bill as a straightforward direct employer and that list applies to both.

Mr Lowey: But if the Bill had been amended would it not be wise to amend these sub-clauses?

Mr Delaney: Well, the hon. member has moved the amendment. It is up to him to think if it needs some other clause amendment.

Mr Lowey: It is.

The President: Learned Attorney.

The Attorney-General: I am sorry, Mr President. If I may just clarify the position, the amendment which has been moved by the hon. member Mr Lowey is in relation to clause 8 which provides the defence in relation to the small business and so on. In so far as clause 16 is concerned, which we are considering now, clause 16(3), it provides a defence if there is a genuine occupational qualification. So in other words, if, shall we say, an employment agency were offering the services of a butler and perhaps that is not a particularly good example but one which had a particular aspect to it, that defence in clause 16(3) is precisely the same sort of defence which we find in clause 9 where there are genuine occupational qualifications.

Mr Lowey: That is fair enough.

The Attorney-General: So in other words, we are not concerned with the clause which the hon. member has amended. It is the next one.

Mr Lowey: I am with you. That I can readily understand, Mr President. If I was an SRN and the post demanded an SRN and I did not have an SRN, I could not accuse of being discriminated against because qualifications-wise I have not got it. Fine.

The President: Do you wish to add any comment to that?

Mr Delaney: No, I thank the Attorney-General for his explanation. I am sure the member's intentions are good but they are there because I looked for that myself.

The President: I will put the resolution that clause 16 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 17, sir.

Mr Delaney: This clause applies, Mr President, special rules for the police who are holders of an office, not employees, and allows only limited discrimination against women, for example in relation to height and uniform.

Sub-clause (1) provides that in relation to members of the Isle of Man Constabulary the Chief Constable, in relation to any discrimination by him and the Department of Home Affairs in relation to any discrimination by it, is treated as their employer.

Sub-clauses (2) and (3) preclude police regulations from treating men and women differently except in relation to height, uniform and equipment, maternity rights and pensions.

Sub-clause (4) makes provision for the payment by the Department of Home Affairs of awards of compensation in respect of discrimination by the Chief Constable. It corresponds to the Police Act of 1993 which makes the department liable to pay any damages and costs awarded against the Chief Constable in his capacity as deemed employer of the police.

Sub-clause (5) provides for proceeding against the Chief Constable in respect of discrimination by him or to be taken against whoever is acting as Chief Constable at the time, not necessarily the person who is alleged to have discriminated.

Sub-clause (6) extends the prohibition against discrimination to apply in respect of police cadets as well as police officers.

Sub-clause (7) excludes this clause entirely in the case of constables who are not members of the Isle of Man Constabulary, for example the harbour and airport police who are employees of the Department of Transport and therefore come within the general provisions of the Bill.

I beg to move, Mr President.

Mr Kniveton: I beg to second.

Mrs Christian: Mr President, I wonder if the hon. member could just give some clarification in relation to sub-clause (2)(c) and just indicate whether he has any information as to in what areas it may be permitted to discriminate between the relative pensions of men and women in the police force.

The President: Reply, sir.

Mr Delaney: An interesting question which I do not have the answer for, Mr President, because I understood that pensions are based on time of service and the amounts of salary and I did not know they actually had some regulation different in the police force than they have in the civil service but I may have the answer now. I do not have the answer. *(Laughter)* I do not have the answer simply because I cannot read the first word.

Mr Crowe: Actuarial.

Mr Delaney: Actuarial is the word, actuarial factors. So I do not actually understand why it would be any different because that would apply to men as well. So it is a good question.

Mr Waft: Mr President, I just want to clarify whether this is relating to police pensions as per superannuation or national insurance old-age pension maybe.

Mrs Christian: Can I perhaps comment on the national insurance position. The rules which apply to national insurance would apply to police personnel in the same way as they do to everybody else, but I think this must relate to police pensions.

The hon. member has indicated that it is an actuarial factor, but that may be because generally speaking women live longer, retire earlier and therefore the contributions are used to spread the pension over a longer period. So I will accept that -.

Mr Delaney: Isn't that God discriminating against us men?

The Attorney-General: Mr President, if I may volunteer an explanation, in clause 2 of the Bill there is again an exception in relation to women because the equality clause does not apply in relation to pensions.

The position in so far as the police is concerned is that clause 17 is designed to say, well, in so far as women and men in the police force are concerned it is permissible to discriminate within the very limited ambit of sub-clause (2). So in other words there may be discrimination in relation to height, uniform, equipment and so on, special treatment for women and also in relation to pensions. So in other words it is repeating, in the special regime for police, that which we have seen earlier in the Bill generally. So it is making it clear that women in the police force are entitled to have special considerations in relation to pensions.

Mr Waft: Can I just clarify that the contributions take that into account when they are taking the contributions?

The President: Any comment there, Mr Attorney?

The Attorney-General: I am afraid I cannot comment on that.

Mr Crowe: Mr President, I think it has been said by Mrs Christian. I think it is the actuarial tables are on life expectancy of women compared to men and the tables on life expectancy will show that women generally live longer than men, so the pension deductions are generally of a different rate to men and the pensions payable generally are for a longer period than for men. So I think it is to cover the actuarial calculations and I think it is satisfactory to be covered in this clause, sir.

Mrs Christian: I accept that, Mr President.

The President: Hon. members, I will put the resolution set out at clause 17, that clause 17 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 18, sir.

Mr Delaney: This clause gives a specific exemption for the employment of prison officers to preserve the statutory requirement within the Custody Act 1995 for a sufficient number of women prison officers for prisons and other institutions of detention for women. I beg to move clause 18.

Mr Kniveton: I beg to second, sir.

The President: I will put the resolution that clause 18 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 19, sir.

Mr Delaney: This clause permits an organised religion to discriminate against women in relation to employment or ordination to a priesthood and in particular saves the current restrictions on the ordination or appointment of women priests in the Church of England.

Sub-clause (1) gives a general exemption for discrimination against women by an organised religion where the employment in question is limited to one sex, for example as bishop, priest, monk, nun, rabbi or imam, either because of the doctrines of the religion or because it would otherwise offend a significant number of believers.

Sub-clause (2) gives an exemption for a religious authority so that it may discriminate against women in ordaining or licensing ministers because of the doctrines of that religion or because it would otherwise offend a significant number of believers.

Sub-clause (3) makes a specific exemption for sex discrimination against a woman in relation to ordination as a priest or appointment to any office to be held by a priest in the Church of England. This preserves the compromise over the women priests controversy which is embodied in the Priests (Ordination of Women) Measure 1993. I beg to move.

Mr Kniveton: I beg to second, sir.

Mr Lowey: Mr President, I have no difficulty whatever with the clause and especially in the early part of the explanation - 'Nothing. . . applies to employment for purposes of an organised religion where the employment is limited to one sex so as to comply with the doctrines of the religion to avoid offending the religious susceptibilities', and you itemise them, monks, priests, and that is fine. I just wondered why then we needed to be specific and put in sub-clause (3) because sub-clause (1) covers all religions or faiths, so why did we have to be

specific about the Church of England in this particular piece of legislation? It seems to me that we are itemising one particular religion and saying you should not, but we have already covered that in sub-clause (1). It seems an overkill and I just wondered why it was thought necessary to put that in.

The Lord Bishop: It is called discrimination.

Mr Lowey: Positive. No, the point being we have already accepted the principle that they should have that right for religious beliefs and all the rest of it. That is fine by me. That is absolutely understandable and I accept that. But then why do we have to put that in just specifically for the Church of England?

The President: My Lord Bishop.

The Lord Bishop: I think, Mr President, it is because with the Church of England being the established Church and the national church it has had to make its own legislation on the ordination of women, which is a contentious matter within the Church, and therefore I think this points to the fact that no matter clause 19 says there will also be balancing legislation in the Church itself which will be brought to bear in certain cases of prejudice or apparent prejudice. I think that is the only reason I can imagine why it is put in in specific terms, because it has its own legislation to cover certain areas of apparent discrimination.

Mr Waft: Can I just ask, Mr President? Perhaps the Bishop might clarify, when he mentions contention within the Church, isn't this clause then allowing that contention to continue perhaps -

The Lord Bishop: Yes.

Mr Waft: - and is leaving it as the status quo, as it were?

The Lord Bishop: Sub-clause (1) talks about a significant number of its followers. I think it covers it in that sub-clause.

Mr Lowey: I do not wish to get boxed in in that but, say, the Catholic Church again has the priests cannot be married and they discriminate and they therefore cannot have female priests. Sub-clause (1) says that is all right but that same principle applies. I understand the argument about the established Church, the state Church, and I am only posing the question, why have we put an added layer in there when sub-clause (1) actually covers the very point the Lord Bishop actually raises in defence of sub-clause (3)?

The President: I am sure the mover will be able to answer that question. *(Laughter)*

Mr Delaney: Do not ask me: I'm a Catholic!

Mrs Christian: Mr President, whilst the hon. member Mr Lowey indicates he is happy with the clause, I do have some difficulty with this one, I have to say, but I accept the clause on the principle that it should be up to the participants in those religions which are mentioned there to resolve the issues internally. However, I do think that religious bodies are no different in a sense from society in general in that where things have been male-predominated it is quite difficult to effect change, and we are seeing change in society in general and whether or not in due course there will be changes within the Church of England or any other religious grouping I suspect there may be, although I accept that these are matters of doctrines. At this point I feel that the scales are somewhat weighted in one direction with regard to equality in

those particular issues, but I cannot claim any great depth of knowledge in relation to Church doctrines so I perhaps better be quiet on that issue, but speaking from a lay person's point of view, I do think that there is a difficulty here but it has got to be probably for the members of those churches to argue the doctrinal issues and the general approaches to women in these particular areas in the course of time.

The Lord Bishop: Can I just say in reply to that, Mr President, that the very fact the Church of England is trying not to be discriminatory is what you have got here and we are facing change, as opposed to the Roman Catholic Church which is adamant in its stance and has not changed. We have faced the difficulty of change of ordination of both male and female and not to offend a certain significant number of the Church we have legislation within the Church in conscience, which means we can carry on together because of the legislation we have. So I think we are doing our best not to be discriminatory. The whole point of the legislation is that if a woman comes forward for ordination she cannot be denied if she passes the relevant criteria that a man would have to pass and she cannot be denied ordination and despite the fact that persons within the Church might deny the process of ordination, other people would have to step in and do it.

So I think, if I may say so, we are doing our best to approach non-discriminatory procedures within a situation where doctrinal differences are held in conscience.

The President: The hon. mover to reply.

Mr Delaney: Thank you, Mr President. I am probably the last person to be able to talk on religious matters but on this particular clause I do agree that it seems like an overkill, the way it is worded, but as the Bishop said rightly, it is the established Church we are talking about in some respects here. The fact is I also take the view of my colleague on my left in my own religion as a Catholic. I think that matter of female priests will have to be addressed at some time (**A Member:** Hear, hear.) but I think as we are moving this law and we are trying to give some protection to the different religions to make sure that they are not caught up in the things of Mammon which we are dealing with, that is why we are doing this. I could argue for hours about the rights and wrongs of different religions but this particular situation is to give them the opportunity to make their own decisions within their own beliefs and I think that is what is important here at this time.

I beg to move, Mr President, and I hope that I will get the support because I think it is couched in the right terminology.

The President: Hon. members, I will put the resolution that clause 19 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 20, sir.

Mr Delaney: This clause provides that where the constitution of a school or college requires its head teacher or principal to be a member of a specific specified religion or religious order, for example a monk or a nun, the appointment of a man in compliance with this requirement is not unlawful. I beg to move clause 20.

Mr Kniveton: I beg to second, sir.

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

Mr Delaney: Clause 21 preserves any legislation which requires discrimination in the employment field, subject to a power for the Department of Trade and Industry to remove a requirement of existing legislation by order which would be subject to Tynwald approval.

It is to be noted that the consent of the Department of Local Government and the Environment, which is responsible for health and safety at work legislation, is required to any order which affects existing health and safety at work legislation.

I beg to move, Mr President.

Mr Kniveton: I beg to second, sir.

The President: Does any hon. member wish to speak to this clause? If not, I will put the resolution that clause 21 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 22, sir.

Mr Delaney: This clause exempts from any prohibition against discrimination any provision of a charitable trust. For example, where a trust fund is held to assist the poor widows of a parish it is not unlawful to exclude men from any benefit under it. 'Charitable' means generally for the public benefit, the classic example of charitable purpose being the relief of poverty and the advancement of education and advancement of religion. I beg to move clause 22.

Mr Kniveton: I beg to second, sir.

The President: I will put the resolution, hon. members, that clause 22 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 23, sir.

Mr Delaney: Clause 23 gives exemptions for discrimination in sports and games where women's physical characteristics put them at a disadvantage to men. This will apply and only relate in practice to professional sports, for example football or golf, since amateur sporting activities, not being related to employment, are outside the scope of this employment Bill. Mr President, I beg to move clause 23.

Mr Kniveton: I beg to second, sir.

The President: I will put the resolution, hon. members, that clause 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.

Mr Delaney: This clause 24 excludes from the prohibition against discrimination any differential treatment of women in relation to insurance, provided that it is reasonably based on actual differences between men and women. For example, where in-service benefits include life insurance it is in order for men and women to receive different benefits, provided any are based on the undoubted fact that men's average life expectancy is shorter than women's and it clarifies the point that was raised earlier. I beg to move.

Mr Kniveton: I beg to second, sir.

The President: I will put the resolution, hon. members. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 25.

Mr Delaney: Thank you, Mr President. Clause 25. This gives a limited exemption for sex discrimination in relation to communal living or sleeping accommodation.

Sub-clauses (1) and (2) define 'communal accommodation'. It means living accommodation, which includes dormitories or other shared sleeping accommodation which has men or women only. It also includes shared living accommodation which has to be men only or women only because of shared toilet or washing facilities.

Sub-clause (3) gives an exemption for sex discrimination consisting of allowing men-only or women-only communal accommodation, so long as the employer has done what is reasonable to treat men and women fairly. So if there is living accommodation in work premises which is only suitable for men it is permitted to exclude women staff, provided that it is not practical to provide equivalent accommodation for women as well.

Sub-clause (4) makes it clear that in deciding whether the employer has acted reasonably one is to consider whether he should have altered or extended the existing accommodation or provided new accommodation for women staff.

Sub-clause (5) gives a further exemption in the case of sex discrimination in providing in-service benefits or facilities which cannot be used except in conjunction with communal accommodation. For example, if staff are offered training at premises which have men - only sleeping accommodation from which women can lawfully be excluded, it is not unlawful to refuse that training to women.

Sub-clause (6) excludes the exemptions of sub-clauses (3) and (5) where the employer could have made arrangements to compensate women affected by sex discrimination and has not done so. I beg to move, Mr President.

Mr Kniveton: I beg to second, sir.

The President: I will put the resolution, hon. members, that clause 25 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 26, sir.

Mr Delaney: This clause gives an exemption from the prohibitions against discrimination in the provision of vocational training and similar activities where it is needed in order to remedy an imbalance in the sexes engaged in a particular occupation or organisation or to train or retrain women coming back into work after raising a family.

Sub-clause (1) provides that discrimination in the provision of training for employment, careers guidance, et cetera is allowed where there are no or very few women or men doing the work in question in the Isle of Man and the object is to help or encourage them to get jobs doing that work.

Sub-clause (2) provides that such discrimination is also allowed in order to train or retrain women coming back into work after raising a family.

Sub-clause (3) excludes such positive discrimination in the case of in-service training.

Sub-clause (4) provides that discrimination by an employer in the provision of in-service training, careers guidance, et cetera is allowed where there are no or very few women or men doing the work at the level in question in the organisation. The object is to help to encourage them to do that work or to rise to the level.

Sub-clause (5) provides that discrimination by a trade union or professional association in the provision of training, et cetera for particular in-post organisations, for example a shop steward, is allowed where there are no or very few women or men in those posts and the object is to help to encourage them to take those posts.

Sub-clause (6) provides that discrimination by trade union or professional associations in encouraging admission to membership is allowed where there are no or very few women members or men available.

I beg to move, Mr President.

Mr Kniveton: I beg to second, sir.

Mr Crowe: Mr President, can I just say, whilst not necessarily talking about discrimination, how important it is to try and bring people back into the workforce and training is so essential to bring people who have been out of work for some time, such as for childbirth or bringing up children, back into the workplace, so I am pleased that this clause is in because it allows discrimination to select either men or women for particular courses. So I think this is a good clause but the overall benefit of training cannot be understated.

Mr Lowey: Could I just say, Mr President, that I think this Bill is behind the marketplace. I was at an awards ceremony last week, sir, where one of the best students for child nursing actually happened to be a young man, and it is not an accepted practice that young men actually look after children, but he was a young man who had obviously got a career planned out for himself and the training has been angled at him.

So I think the marketplace out there is actually doing this and so this is why I think out there the vast majority of employers large and small are good employers and they do take note of the individual, whether they are male or female, but regrettably I do think we have to have legislation in place to protect that minority of people who will still discriminate because of their gender and they should never cross, but they are doing it out there in the workplace now and I think this Bill is to be commended for that, but it did not have the players for omitting what I recited earlier on in an earlier clause, but the Bill is to be welcomed.

Mrs Christian: Mr President, I think there is a danger that we look at this from the perspective of one gender only and it is both ways and this clause in particular is both ways. I think it is reasonable in that it recognises that there are occasions sometimes when it might be useful to have single-gender courses for training in order to provide a balance in the workplace between men and women doing a particular job and he has illustrated that there are jobs which have perhaps traditionally been regarded as relevant to one gender, but that is certainly changing, but he has given an example where a young man is doing a job which had traditionally been regarded as a woman's job. That should not prevent us from having courses, as this clause would allow, for only males to encourage more into the workplace.

So I think we have to remember that this applies both ways, and as the hon. member says, yes, it is to be welcomed in that regard and it is balanced in the sense that it is not so

restrictive that it says, 'Well, you can't have a single-sex training group'. It allows for it in order that we can get a balance across the workplace ultimately, and I think that it is a sensible provision.

Mr Waft: There has, Mr President, been a problem with training, especially in the nursing profession with regard to sex discrimination. The only discrimination that I have found perhaps in the past was when they became qualified and they joined the armed forces: the ladies tended to get commissioned straightaway, whereas the men did not.

The President: Reply, sir.

Mr Delaney: I thank all four members. They are obviously in support of the particular clause and I thank them for that, and what has been said is quite right. We have sometimes to actually be discriminated against to get yourself ahead. It is positive discrimination, Mr President, and I agree that that is necessary.

The President: I will put the resolution, hon. members, that clause 26 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 27, sir.

Mr Delaney: Clause 27 extends the prohibition against discrimination in the provision of in-service benefits, et cetera to cover discrimination by the actual provider as well as by the employer.

Sub-clause (1) provides that where an employer, firm, trade union, et cetera is forbidden to discriminate in the provision of in-service benefits, facilities or services, the prohibition extends to access to the benefits, et cetera provided by others. For example, if by arrangement the employees of company A are allowed to use the sports facilities of company B which are available to men only, this counts as discrimination by company A.

Sub-clause (2) similarly extends any exemption in relation to such discrimination to cover the actual provider.

I beg to move clause 27.

Mr Kniveton: I beg to second, sir.

The President: I will put the resolution, hon. members, that clause 27 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 28, sir.

Mr Delaney: Clause 28, Mr President. This clause gives a blanket exemption for discriminatory acts done in the interest of national security. A certificate of the Chief Minister on this point is conclusive. I beg to move clause 28.

Mr Kniveton: I beg to second, sir.

The President: I will put the resolution, hon. members, that clause 28 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 29, sir.

Mr Delaney: This clause makes it unlawful to publish an advertisement for a job in terms which discriminate against women.

Sub-clause (1) makes it unlawful to publish an advertisement which could be construed as showing that the advertisement proposes to do anything which is or could be prohibited by part II of the sex discrimination Bill, such as discriminating against women in appointment to the advertised job.

Sub-clause (2) provides an exemption where the proposed Act would not in fact be unlawful, for example where the job advertised is for a man only because of a genuine occupational qualification.

Sub-clause (3) provides that if the advertisement uses a word connoting one sex, for example 'waiter' alone instead of 'waiter or waitress', it is to be taken as an unlawful advertisement unless it is made clear that the job is open to persons of either sex.

Sub-clause (4) gives an exemption for the publisher of a newspaper or other medium in which an advertisement is carried if he shows that he reasonably relied on a statement by a person placed in the advertisement that it would be lawful. Breach of the prohibition in a published discriminatory advertisement is a criminal offence which may attract a fine of up to £5,000. It may also be the subject of High Court proceedings for an injunction by the Attorney-General.

I beg to move clause 29.

Mr Kniveton: I beg to second, sir.

Mr Crowe: Mr President, is this not a minor minefield that employers might find themselves in and is there a reasonable defence for this provision? I think it is quite an onerous responsibility and I think there is apocryphal evidence in the UK of people making mistakes here and is there a reasonable defence for this if they did it unwittingly?

The President: Reply, sir.

Mr Delaney: Well the publisher, as I have said in reading out the sub-clause, has a defence in effect that he honestly, genuinely believed and he was taken by the person who placed the advert that it was not unlawful to do so. But the situation is that that case would be settled by a court, whether it was intentional that he was discriminating against male or female in the actual advertisement placed through whatever media he uses, and of course his own defence would have to be that he did not, not know the law that it was discrimination but in fact that he was of the advice that such discrimination did not appear in the advert. It could be anything. To use an example, it could be even a printing error when the advert came in which changed the actual advert he placed.

Mr Lowey: Would the mover of the Bill not agree that this has been in operation for over 10 years in the UK and as our newspapers are wholly owned subsidiaries of UK national paper groups they will be fully aware of what the legal requirements are?

The President: I will put the resolution, hon. members, that clause 29 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 30.

Mr Delaney: This clause makes one form of secondary discrimination unlawful whereby a person gives instruction to another person to do a prohibited act of discrimination. For

example, a holding company in a group instructs its subsidiary companies to discriminate. I beg to move clause 30.

Mr Kniveton: I beg to second, sir.

The President: I will put the resolution, hon. members, that clause 30 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 31, sir.

Mr Delaney: Clause 31 makes another form of secondary discrimination unlawful whereby pressure, which may be either threats or promises, is brought in on another person to do a prohibited act of discrimination.

Sub-clause (1) provides that it is unlawful for one person to bring pressure on another to do an unlawful act of discrimination, for example if a trade union threatens industrial action if a woman is appointed to a job or a customer promises further orders if a woman is not appointed.

Sub-clause (2) makes it clear that a threat or promise does not have to be made directly. For example, it would be unlawful if it were made to a business associate who might be expected to pass it on.

I beg to move.

Mr Kniveton: I beg to second.

The President: I will put the resolution, hon. members, that clause 31 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 32, sir.

Mr Delaney: This clause 32, Mr President, imposes vicarious liability on an employer or principal where his employee or agent does an unlawful act of discrimination.

Sub-clause (1) provides that if any employee does anything which is an unlawful act of discrimination, then his employer is normally liable with him. For example, if the personnel manager of a company discriminates against a woman recruited for a job, not only he but also the company will be liable to compensate her.

Sub-clause (2) provides similarly that if an agent does anything which is an unlawful act of discrimination with the express or implied authority of his principal, then the principal is normally liable with him. For example, if a head hunter is asked to recruit a manager for an undertaking and is authorised to discriminate against women, not only he but also the principal will be liable to compensate her.

Sub-clause (3) provides a defence for an employer where a woman seeks to claim against him for discrimination by his employee. If he gave proper instructions and imposed proper systems to try and make sure that no discrimination was practiced, then the employer would not be liable.

I beg to move clause 32.

Mr Kniveton: I beg to second, sir.

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

Mr Delaney: This clause provides that where one person helps another to do an unlawful act of discrimination he will equally be liable for it.

Sub-clause (1) provides that where one person knowingly helps another to do an unlawful act of discrimination he will be equally liable for it.

Sub-clause (2) makes it clear that where an employer or principal is liable for discrimination the employee or agent for whose acts he is responsible will be liable under the clause as helping the employer or agent.

Sub-clause (3) gives an exemption for a person who helps another commit an act of discrimination if he shows that he reasonably relied on a statement by that person that he was not committing an unlawful act.

I beg to move clause 33.

Mr Kniveton: I beg to second, sir.

The President: I will put the resolution, hon. members, that clause 33 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 34, sir.

Mr Delaney: This clause extends, Mr President, the operation of section 87 of the Employment Act 1991 to enable codes of practice to be issued covering sex discrimination and equal opportunities between men and women in addition to industrial relations. I beg to move clause 34.

Mr Kniveton: I beg to second, sir.

Mr Crowe: Mr President, can I just ask the mover of the Bill? He talks about a code of conduct for sex discrimination. Could I just ask if this code of conduct is being worked up at the present time in anticipation of the Bill becoming law?

The President: Reply, sir.

Mr Delaney: I understand that not only the department but the body responsible, the Office of Fair Trading, is already in that mode at the moment, Mr President, doing so but it will be a very difficult job, I would suggest.

The President: I will put the resolution, hon. members, that clause 34 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 35, sir.

Mr Delaney: Clause 35, Mr President. This clause gives an Employment Tribunal jurisdiction to decide any claim arising by virtue of an equality clause which is implied in a contract of employment by clause 1 of this Bill.

Sub-clause (1) enables an employee who claims that an equality clause is implied in her contract of employment by clause 1 to bring a case before the Employment Tribunal to decide the question. The tribunal can decide a claim for arrears of pay or damage arising out such claim. For example, a female employee thinks she ought to be paid the same as a particular

man in the same organisation because they are doing like work. She can bring a case to the tribunal to decide the question and can also claim backpay. It is to be noted that a tribunal will not have exclusive jurisdiction. The employee could also bring an action in the high court for arrears of pay.

Sub-clause (2) gives an employer a similar right to refer a dispute over an equality clause to the tribunal.

Sub-clause (3) enables the department to bring a test case on behalf of a group of women employees if it thinks it unreasonable that they should make a claim themselves.

Sub-clause (4) provides that the high court can strike out or stay proceedings which involve any equality clause, for example a claim for arrears of pay, if it thinks the question ought to be decided by the tribunal instead.

I beg to move clause 35.

Mr Kniveton: I beg to second, sir.

The President: I will put the resolution, hon. members, that clause 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 Delaney: Clause 36 gives the Employment Tribunal exclusive jurisdiction to decide cases of alleged discrimination in employment other than equal pay cases.

Sub-clause (1) enables a person who thinks that an act of discrimination has been committed against her to bring her case before the Employment Tribunal against the person who committed it or any other person who is liable for it such as the employer of that person.

Sub-clause (2) defines the acts in respect of which tribunal proceedings can be brought by the individual which are any acts declared unlawful by part 2 of this Bill, with the exception of acts such as, for example, pressure to discriminate which may be the subject of actions in the high court by the Attorney-General for an injunction.

Sub-clause (3) provides that there is no civil or criminal liability for any breach of part 2 of the Bill except tribunal proceedings by an individual, high court proceedings by the Attorney-General where there is persistent discrimination and certain other types of discrimination, an appeal against the decision by the qualifying body that awards qualifications or prosecution or publication of a discriminatory advert or for making a false statement both of which are offences.

I beg to move, Mr President.

Mr Kniveton: I beg to second, sir.

Mr Crowe: Can I just ask the mover about the mechanics of this tribunal as to how it will work and who will be on it and where will it sit, for instance, and how will it relate to the high court. Can an aggrieved individual bring a case to the tribunal and if that person fails to get the satisfaction they expect or would seek are they then able to take the same case to the high court or is the tribunal's decision final and binding in all respects?

The President: Reply, sir.

Mr Delaney: The part of the question I did not catch was the right of the individual. That is clear in the Bill, that any person can go to the tribunal or that side of it, but of course we have the overriding side with the other claim in the high court which I had clarified I thought. Is that what you are asking?

Mr Crowe: Yes. Can an individual take an action to the tribunal for discrimination and if that person fails to get the solution or the decision that they feel like, they could then seek leave to go to the high court.

Mr Delaney: No, not as I understand it, Mr President, they could not. That is a separate issue.

Mr Crowe: It concludes at the tribunal level -

Mr Delaney: That's it, yes.

Mr Crowe: - and their decision is final and binding.

Mr Delaney: Right.

Mr Crowe: Thank you.

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. Clause 37, sir.

Mr Delaney: Clause 37. This clause sets out the powers of the Employment Tribunal on a complaint.

Sub-clause (1) provides that a tribunal can declare the parties' rights, order the respondent to pay the complainant compensation and make recommendations as to the action to be taken by the respondent.

Sub-clause (2) limits the compensation which can be ordered to the maximum for unfair dismissal under section 63 of the Employment Act 1991 which is currently £13,000.

Sub-clause (3) enables the tribunal to increase or make an award of compensation up to the maximum where the respondent fails to comply with a recommendation of the tribunal.

Sub-clause (4) excludes any payment of compensation for injured feelings but not for financial loss in the case of indirect discrimination where the discrimination was unintentional.

I beg to move clause 37.

Mr Kniveton: I beg to second, sir.

Mr Lowey: Mr President, this brings me again to what I would call the changing face of this particular Bill. In the United Kingdom, for example, they now have unlimited awards, they have lifted the ceiling from £13,000 to an unlimited amount, whatever the tribunal thinks is necessary. The department moving the Bill, I believe, has said that the average in the United Kingdom has been about £4,000 and therefore they see no reason at all why this limit should not be in. As far as I am concerned, I believe the tribunal needs to be, in fact should be, empowered to properly enforce this particular act.

Now, whether we like it or not, there are some very highly paid young people now in positions, females in the Isle of Man, and I can quite see that for a company who has been

found guilty of serious violations in discrimination £13,000 is an easy pay-off, but when was the last time, if you put a ceiling on it, the maximum was actually paid out? Now, I believe myself that I think it would be rare that it would be paid out but I do not think we should circumscribe the ability and in the light of what is happening elsewhere I do believe that the ceiling should be unlimited, in other words in the tribunal you are declaring that if you seriously violate the legislation, then you can seriously be dealt with. I do not believe £13,000, whilst a tremendous amount of money to an individual, yes, but in the world which we are inhabiting now in the Isle of Man where young people are earning very high salaries my belief is that we would be wrong to impose a maximum fine at this particular time.

Notwithstanding the record, the United Kingdom in practice over the years has seen the awards going up: on a median line it is only £4,000. They have deemed it right and proper to actually now lift, so I am told, the ceiling and I believe that in this particular clause we are not only not catching up with what is existing but we have been slow in getting off the mark, we are even slower now, we are still keeping the old ceiling when we know that the practice is to leave it open.

So I would like to move the amendment that I did circulate to members: on page 24, line 34, omit sub-clause (2) which actually sets out the ceiling of £13,000 in effect on the award. I do believe that there may very well have to be a subsequent amendment to sub-clause (3) because actually the tribunal may, subject to the limit in subsection (2), increase the amount. If we are going to abolish it, then perhaps we will have to amend that as well in a subsequent amendment, but for this particular purpose I am asking for the omission of the total of sub-clause (2) and the reason to me is that the tribunal should be armed fully to deal fully with a problem that may not have reared its head now but could very well do in the very near future and I just believe that we should have in place the right controls and I believe limiting it to £13,000 does not meet the requirements for the immediate and long-term future of the Isle of Man and especially for those who have been offended against. I beg to move the amendment standing in my name.

The President: Reply, sir.

Mr Delaney: Thank you, Mr President. I cannot disagree with my colleague Mr Lowey, but I am informed reliably that there is a move to increase this amount, as I was given to understand when I questioned this part of the Bill that the Isle of Man is not part of the directive which changed the British legislation.

Now, I think in all things there has to be a finite limit personally because of some of the exorbitant awards that can be given, in some cases wrongly, and there has to be a finite limit, but I do not think the figure of £13,000 was correct, but I am assured that that figure is being reviewed and looked at by the department concerned and that gives me some solace. But I think to eliminate in this amendment, had it been carried by a seconder and put to them, would be wrong. I think at this moment it is enough for what we are trying to achieve. I am not saying that it will not be improved on, I am given an assurance that this figure will be improved on because the very people the hon. member was talking about are members of my own family who are in these high-paid jobs and I understand the situation well. I beg to move, Mr President.

The President: I will put the resolution, hon. members, that clause 37 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

The comment of the hon. mover has caused me a little concern in that it would appear we are considering this morning legislation which, if we pass it, is going to be amended by the source of the legislation, which is rather, I think, insulting to this branch in that we would have expected the legislation to be up to date before presentation and it is only by fortune this will be moving back to another place, so the whole system, I think, has to be queried in that respect. Moving on, clause 38.

Mr Delaney: Point taken, Mr President. This clause requires an industrial relations officer to act as a conciliator in any dispute under this Act.

Sub-clause (1) requires an industrial relations officer to act as conciliator in any tribunal proceedings under this Act if asked to do so by the parties or if he thinks his services may assist in resolving the dispute, in the same way he is required to act in the case of unfair dismissal or the matters under the Employment Act 1991.

Sub-clause (2) requires an industrial relations officer to act as conciliator in a dispute which has not gone as far as the tribunal if requested to do so by the respective complainant.

Sub-clause (3) provides that an industrial relations officer, when trying to conciliate in a dispute, is in appropriate cases to try to get the parties to use other methods of resolving it, for example mediation or internal grievance procedures.

Sub-clause (4) provides that whatever is said to an industrial relations officer when acting under this clause is confidential and privileged and is not admissible in evidence.

I beg to move clause 38.

Mr Kniveton: I beg to second, sir.

Mr Lowey: Could I, Mr President, just say that I too would like to place on public record what I would say is the invaluable work that the industrial relations officer does in many of these cases in getting warring parties together and I think we have a good record in the Isle of Man when he is actually brought in to play and he actually achieves a very high rate of success satisfactory to both parties and therefore I welcome this clause which says they should involve him and try and get the matter resolved.

I think for too long both employers and employees have looked upon the industrial relations officer as on the other side. In fact he acts as the honest broker and I believe that he, the present incumbent, and his predecessor, have done excellent service for the Isle of Man and particularly for industrial relations and I think it is nice to be able to publicly congratulate that department on the work that they do in this particular field.

The President: I will put the resolution, hon. members, that clause 38 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 39, sir.

Mr Delaney: Clause 39 makes the publication of a discriminatory advertisement an offence and also makes it an offence to make a false statement that an advertisement or other matter is exempted from any prohibition against discrimination.

Sub-clause (1) makes it an offence to publish a discriminatory advert, and sub-clause (2) makes it an offence to make a false statement that discrimination is permitted in relation to a job which an employment agency is asked to fill or an advertisement in a newspaper or other medium or help which a person is asked to provide in connection with employment.

I beg to move clause 39.

Mr Kniveton: I beg to second, sir.

The President: I will put the resolution, hon. members, that clause 39 do stand part of the Bill. Will those in favour please aye, against, no. The ayes have it. The ayes have it. Clause 40, sir.

Mr Delaney: This clause enables the Attorney-General to take proceedings in the high court for an injunction to stop repeated acts of discrimination.

Sub-clause (1) provides that where the Employment Tribunal has found in proceedings that a person has committed a discriminatory offence and the Attorney-General thinks that he is likely to repeat it, he can ask the high court for an injunction stopping him doing so. Breach of such injunction would be punishable by a fine or imprisonment or both.

Sub-clause (2) provides that the Attorney-General cannot take such action unless the tribunal's finding has become final, that is, where the time for the appeal has expired and the appeal has been lost or abandoned.

I beg to move clause 40.

Mr Kniveton: I beg to second, sir.

Mr Lowey: Could I just ask for clarification? Who involves the Attorney-General that discrimination has been broken and is continuing? Does the complainant have to appeal to the Attorney-General or is it the role of the Attorney-General to act as he thinks fit?

The President: Reply, sir.

Mr Delaney: Well, in the first instance, as Attorney-General he has the right to act wherever he thinks the law has been broken, I should imagine, but the complainant or other persons involved in that particular situation can bring it to his attention under the laid-down procedures.

Mr Lowey: I see. Right.

The President: I will put the resolution, hon. members, that clause 40 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 41.

Mr Delaney: This clause gives the Attorney-General further powers to apply to the high court for an injunction to prevent the publication of discriminatory advertisements or giving orders or bringing pressure to discriminate.

Sub-clause (1) provides that where the Attorney-General thinks that a person has published a discriminatory advertisement or given instructions to discriminate or has brought to pressure to discriminate and thinks he is likely to repeat it, the Attorney-General can ask the high court for an injunction stopping him from doing so. Breaches of such an injunction would again be punishable by a fine or imprisonment or both.

Sub-clause (2) provides that the high court is to rely on a finding by the tribunal that a person has done a discriminatory act and that the facts do not have to be proven over again.

Sub-clause (3) provides that the proceedings for a breach of provisions in respect of the discriminatory advertisements instructions to discriminate or pressure to discriminate cannot be taken otherwise than by the Attorney-General.

I beg to move clause 41.

Mr Kniveton: I beg to second, sir.

The President: I will put the resolution, hon. members, that clause 41 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 42, sir.

Mr Delaney: Clause 42 imposes time limits on the bringing of proceedings for discrimination.

Sub-clause (1) provides that the tribunal proceedings relating to an equality clause, that is, equal pay claims, cannot be brought more than six months after the complainant left the employment in question. It does not mean that you have to have been employed for six months before you can bring a claim.

Sub-clause (2) provides that a claim for arrears of pay arising by virtue of an equality clause cannot be back-dated more than two years from the commencement of the proceedings.

Sub-clause (3) precludes the bringing of tribunal proceedings in respect of an act of discrimination prohibited by part 2 of this Bill more than three months after the act in question.

Sub-clause (4) imposes a time limit in the case of proceedings by the Attorney-General of five years from either the date of the tribunal's findings that a discriminatory act was done, became final or from the date of the act complained of.

Sub-clause (5) gives the high court or tribunal power to expend any of the time limits if it would be just and equitable to do so.

Sub-clause (6) clarifies the position regarding time limits both when acts of discrimination extend over a period and with omissions such as failing to give someone a job.

I beg to move clause 42.

Mr Kniveton: And I beg to second, sir.

The President: I will put the resolution, hon. members that clause 42 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 43, sir.

Mr Delaney: This clause, Mr President, provides for forms of questionnaire to be prescribed by order of the department so that the claimants can put questions to employers and others about alleged discrimination.

Sub-clause (1) requires the Department of Trade and Industry to prescribe by order forms of questionnaire for use by people who think they have been discriminated against in relation to employment.

Sub-clause (2) provides that the questionnaire and answers in these forms are admissible as evidence and that a court or tribunal may draw an inference against the respondent where there is failure to reply or to otherwise give an evasive reply.

Sub-clause (3) enables an order by the Department of Trade and Industry to prescribe time limits for the putting and replying to questions and the manner of service.

Sub-clause (4) clarifies a reference to 'respondent' to include 'respective respondent'.

I beg to move clause 43, Mr President.

Mr Kniveton: I beg to second, sir.

Mr Crowe: I think this clause is very useful, Mr President. I think it will allow for consistency in obtaining evidence. Having a standardised form will allow the complainant and the person complained against to know exactly what is required and will cover all eventualities, I would imagine, so I think it is a very good situation that this clause covers.

The President: Reply, sir.

Mr Delaney: No need to reply. I thank the member for his support for the clause.

The President: I will put the resolution, hon. members, that clause 43 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 44.

Mr Delaney: This clause provides that references in part 3 to discrimination against women are to be taken as including discrimination against men. Then I am happy to move clause 44, Mr President.

Mr Kniveton: And I am happy to second, sir.

The President: In this mood of happiness I will put the resolution that clause 44 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. The ayes have it. Clause 45, sir.

Mr Delaney: This clause 45, Mr President, provides for the appointment of a discrimination officer to be based with the Department of Trade and Industry whose main function will be to promote equal opportunities and to educate both employers and employees. The post is necessary as the full implications of concepts in this Bill, such as indirect discrimination, can be difficult to grasp and some potential applications of the provisions, particularly regarding pregnancy and sexual harassment, are not obvious. The department considers that it would be unjust for the Bill's provisions to take effect without an increase in employers' awareness and an opportunity for them to adopt appropriate practices and to this end it is planned to recruit a discrimination officer next year. I beg to move clause 45.

Mr Kniveton: I beg to second, sir.

Mr Lowey: Does that mean, Mr President, then that this Bill will not come into operation until such time as there is an officer recruited next year and does that mean that in the meantime we carry on with nothing or is this Bill going to be introduced when it has passed an appointed day order, and I suppose I should have looked at one of the Bills for the appointed day order, but isn't this another delaying tactic until we get an officer in post?

The President: Reply, sir.

Mr Delaney: Not as I understand it, Mr President. There is nothing to stop, when the order is decided to come forward by the department, it will be placed and I hope it is not used for the purposes outlined by the member. The situation is, as I understand it, there are to be no hold-ups on this Bill once it has cleared both branches, and this year is the time it is going to be done. The situation is I hope and I am sure it is not going to be and the hon. member and myself we will both be watching carefully that this is not the case. I beg to move.

The President: I will put the resolution, hon. members, that clause 45 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 46, sir.

Mr Delaney: This is a most important clause, 46, Mr President, because this clause invalidates contracts and contract terms so far as they relate to discrimination which it prohibits by part 2 of the Bill.

Sub-clause (1) provides that certain contract terms are void and unenforceable where they are unlawful under part 2 of the Bill, for example the constitution of a professional association which is limited to men only or a term of a partnership deed which prohibits the admission of women.

Sub-clause (2) excludes the operation of sub-clause (1) in the case of discrimination against an actual party to the contract in that the contract term is simply unenforceable against the party, for example a term of a contract of employment which precludes a woman employee seeking a transfer or promotion where a man's contract allows for it.

Sub-clause (3) provides that a contract term which precludes a party taking any action under the Bill is unenforceable by the other party. For example a term of a contract of employment in which the employee undertakes not to bring proceedings under this Bill cannot be enforced by the employer.

Sub-clause (4) excludes from sub-clause (3) an agreement to settle a discrimination claim provided that is either negotiated with the help of the discrimination officer or industrial relations officer or the claimant has taken independent legal advice from a named advocate that the agreement is in writing and states that these requirements are satisfied.

Sub-clause (5) defines 'independent' in relation to legal advice. The advocate must not be acting for the other party or any person connected with him.

Sub-clause (6) gives the Employment Tribunal power to make an order exempting a contract from the requirements of sub-clause (2), for example by collective agreement which makes satisfactory arrangements for an independent tribunal to decide disputes over discrimination.

Sub-clause (7) enables a tribunal order under sub-clause (6) to be back-dated.

I beg to move clause 46.

Mr Kniveton: I beg to second, sir.

The President: May I put the resolution then, hon. members, that clause 46 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 47, sir.

Mr Delaney: This clause extends the operation of the preceding clauses to cover collective agreements, employment rules and rule books of a trade union, employers association, trade or professional association or qualifying body.

Sub-clause (1) provides that clause 46 applies to collective agreements and any rules made by employers or other bodies.

Sub-clause (2) defines those 'other bodies' as a trade union or employers association, a trade or professional association or a body that awards qualifications.

Sub-clause (3) provides that the discriminatory term or rule falls within the scope of clause 46 if it provides for the inclusion in an individual contract of employment of a provision which would cause an equality clause to operate, that is, a term or rule requiring unequal pay.

Sub-clause (4) excludes discriminatory terms or rules where the discrimination in question is the subject of an exemption, for example where being a man is a genuine occupational qualification.

Sub-clause (5) enables a person to bring a term or rule before the Employment Tribunal for a ruling as to its validity.

Sub-clause (6) provides that in the case of a collective agreement or an employer's rule an employee or applicant for employment can bring Employment Tribunal proceedings against them.

Sub-clause (7) provides that in the case of a rule of a trade union, employers association, trade or professional association or qualifying body a member or applicant for membership of the body or a holder or an applicant for an authorisation or qualification conferred by that body can bring Employment Tribunal proceedings.

Sub-clause (8) requires the tribunal, if it finds that the term or rule is invalid, to make a declaration accordingly.

Sub-clause (9) saves the effect of any term or rule in so far as it confers rights on a person who would have been discriminated against or anyone except a right to require someone else to be treated less favourably than oneself. For example, where a term of collective agreement requiring lower pay for women than for men is invalidated, that does not affect the men's rights under the agreement.

Sub-clause (10) defines 'collective agreement'.

I beg to move.

Mr Kniveton: I beg to second, sir.

The President: I will put the resolution, hon. members, that clause 47 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 48.

Mr Delaney: This clause 48 provides for the interpretation of terms used in the Bill.

Sub-clause (1) defines various expressions.

Sub-clause (2) provides a broad definition of 'dismissal', and sub-clause (3) defines the time when a finding becomes final. This is when all possibility of appeal is exhausted.

I beg to move clause 48.

Mr Kniveton: And I beg to second, sir.

The President: I will put the resolution, hon. members, that clause 48 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 49, sir.

Mr Delaney: This clause, Mr President, defines employment at an establishment in the Island as excluding work which is wholly or mainly outside the Isle of Man.

Sub-clause (1) provides that generally employment at an establishment in the Island excludes work which is wholly or mainly outside the Isle of Man.

Sub-clause (2) excludes from sub-clause (1) any employment on a Manx registered ship or a UK registered aircraft which is operated from the Isle of Man. Such employment is regarded as an establishment in the Island except where the work is wholly outside the Island. But employment of a Manx registered ship plying between Africa and south-east Asia, for example, is not covered by this particular clause.

Sub-clause (3) provides that in the case of employment on board a ship the establishment is to be taken as the ship itself and not the shipowner's premises.

Sub-clause (4) provides that where the work is not done at an establishment as such, for example in the case of a travelling salesman, establishment is to be taken as the place where the employee works from or which is mostly connected, in the case of a travelling salesman which I have just mentioned earlier, where the sales department is located; that is the place of employment.

I beg to move clause 49.

Mr Kniveton: I beg to second, sir.

Mr Lowey: Mr President, could the mover of the Bill tell me why in this particular clause we make an exception with shipping companies where in other clauses of the Bill we make no exception for agencies? If I worked for an agency who replaced me with an employer and discrimination takes place, I cannot get out of my responsibilities as an agency for the work that I have been placed in there. Here we have in exactly the same place a shipping company operating in the Isle of Man whose people are working elsewhere and yet we are making the law not apply equally to both categories. Why the difference?

The President: Reply, sir.

Mr Delaney: As I understand it, where you do a comparison against other establishments such as travelling salemen, a ship may be in another jurisdiction and covered or not covered by that particular law in their waters, international waters, and therefore we would have no jurisdiction anyhow, but obviously the Attorney-General could clarify if that is not the case.

The President: Will you comment there, sir?

The Attorney-General: I think, Mr President, that the reason why we refer to ships in clause 49 is that, as the hon. member has said, you can often have of course different jurisdictions applying depending on where the ship is plying its trade, so that, for example, one

might very readily conclude that if one is employed by the Steam Packet Company going between here and Heysham, that could very well be regarded as employment at an establishment in the Isle of Man. But if you were a sailor on board, say, a merchant ship plying between Africa and south-east Asia, that employment would not be at an establishment in the Island and therefore the legislation would not apply. I think that is the purpose of it, to try and create some sort of certainty for shipping companies.

Mr Lowey: Again, Mr President, really I am still unclear. If I am an agency and I send somebody to work and maybe this work is overseas, under the other clauses they are still responsible and yet the principle is not being applied equally to these companies who operate ships from the Isle of Man as it is elsewhere, albeit that mainly most of these ships do their business elsewhere. But it could easily apply to a company employing temporary staff in other jurisdictions.

The President: Learned Attorney-General.

The Attorney-General: I think, Mr President, if I may, it is useful to point out that this legislation can only apply within our Island, within the jurisdiction of our Island. I do not think there has ever been any suggestion that if, say, an agent were to be guilty of discrimination outside the Island he could be proceeded against under this Act. He might be guilty of some offence, say, in England or in Malaysia or wherever he is, but the point of this Bill, as in so many other Bills which create criminal offences, it is only designed to have effect within the Island or on ships which have a real connection with the Island, or aircraft.

Mr Delaney: I misread that as I was given to understand. I hope that satisfies the hon. member and I beg to move clause 49, Mr President.

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

Mr Delaney: Clause 50, Mr President. This clause provides that civilians working for the Crown are treated in the same way in relation to discrimination as employees in the private sector.

Sub-clause (1) provides that an act by an organ or official of the Isle of Man Government or the UK Government is to be treated in the same way as an act by a private person.

Sub-clause (2) provides that work in the civil service is treated for the purpose of equal pay and other anti-discrimination provisions in the same way as employment in the private sector and references to the contract of employment therefore include the conditions of service in the civil service.

Sub-clause (3) saves the special provisions for the police which are in clause 17. If you recall, police are deemed to be employed by the Chief Constable or the Department of Home Affairs for the purposes of this Bill.

Sub-clause (4) exempts the armed forces from the Bill as they can enforce rights from the European Community equal rights directive against the UK Government through service redress procedures under the service Acts or under the UK sex discrimination legislation.

Sub-clause (5) exempts ships belonging to the United Kingdom Government.

Sub-clause (6) deals with the case where a person is appointed to a government post which is a statutory office, in the case of the Crown appointer, if it is required to take on the same obligation as any other employer.

Sub-clause (7) defines terms used in this clause.

I beg to move clause 50.

Mr Kniveton: I beg to second, sir.

The President: I will put the resolution, hon. members, that clause 50 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 51, sir.

Mr Delaney: This clause provides for the Bill to come into force three years after it is passed, except for the provisions relating to the discrimination officer and codes of practice which will come into force on its passing. It also makes transitional provisions and consequential amendments.

The reason for the three-year gap is that equal pay claims can be back-dated two years and without a deferral the legislation would have a retrospective effect. This three-year period will give employers the opportunity to resolve any issues, allowing them one year to bring their pay structures into line with the law should this be necessary and then for a further two years before any award can be made for back pay.

It is to be noted that in the United Kingdom the gap between the Equal Pay Act 1970 and its coming into force was five years.

Sub-clause (1) provides for the Bill to come into force three years after it is passed, except for the provisions relating to the discrimination officer, as I have outlined, and the codes of practice and the commencement which will come into force on the passing of this Bill.

Sub-clause (2) excludes the operation of clause 13 for three years from the date it comes into operation as respects differential union subscriptions and benefits.

Sub-clause (3) and (4) enables the Department of Trade and Industry to make further transitional periods by order which would require Tynwald's approval.

Sub-clause (5) makes consequential amendments of the Employment Act 1991 including the repeal of section 51 which makes a dismissal on the grounds of sex or marital status an unfair dismissal. This is now superseded by provisions within the sex discrimination Bill. In addition, Employment Tribunal proceedings under this Bill are brought within the scope of the 1991 Act.

I beg to move.

Mr Kniveton: I beg to second, sir.

The President: Learned Attorney-General.

The Attorney-General: Thank you very much, Mr President. I hope that hon. members have the text of an amendment which I wish to move to this clause. As has been described by the hon. mover of the Bill, this Bill comes into force three years after it is passed, except for certain provisions listed in clause 51 including the new discrimination officer post.

The purpose of the amendment I wish to make is to add one additional section to those exceptional provisions and the amendment recognises the fact that a new clause was introduced in another place at the third reading, its purpose being to strengthen certain provisions within the Employment Act 1991 relating to insolvency. So if hon members were prepared to agree the amendment in my name, that would enable the new insolvency provisions to come into effect upon the passage of the Bill rather than waiting for the three years.

The amendment which was made in another place was important because it seeks to give employees an additional right, in other words the right to apply for payments to be made out of the Manx national insurance fund. So therefore if hon. members were to agree the amendment, that part would come into effect immediately rather than having to wait for the three years. I therefore move the amendment, Mr President:

Page 37, line 5; for paragraphs (d) and (e) substitute -

'(d) subsections (1), (3) and (4) of this section,

(e) section [51A] (power to make additional payments out of Manx National Insurance Fund), and

(f) section 52 (short title etc.),'.

Mr Radcliffe: I beg to second, sir.

Mr Lowey: Mr President, I have no difficulty with the amendment: it is practical and therefore I will be supporting it. But I cannot allow what I can best describe as the sanitising of the three-year delay in implementing all the provisions of this Bill. It is no defence for the government of the Isle of Man to say, 'In the United Kingdom when this was passed in 1970 they had a five-year coming into being.' Nineteen seventy is over 30 years ago that it was brought into being. Ten years ago we agreed in Tynwald Court that we were having this Bill. So for employers to say that they are not aware of the ramifications and that the Bill was coming, in effect this is another extension of a 'do nothing' period and I regret it very much indeed, I really do.

I think practice in the marketplace, as I said before, is fast overtaking some of the provisions in this Bill, but I do not believe that we need a three-year settling in period for the Isle of Man, and remember I was Minister for Trade and Industry and dealt with the industry when I was minister four years ago and they were trying to go back on the agreement that they had agreed in 1990 and here we have another three-year extension being added to not implementing the Bill, and I really think it is quite shameful that the government have backtracked and put that clause in. I think it should have been operative from day one that the Bill was passed and I do think it is a shame. Once again I think we are snatching defeat from the jaws of victory.

I think it would be quite right for the Isle of Man to stand up and say we have now got a proper discrimination thing in. What we are saying in effect to the Attorney-General is go to the United Nations this week and say, 'We've got discrimination that allows discrimination and, by the way, we're not bringing it in for another three years but we've dealt with the problem.' That will not be acceptable in the international field, it will not be understood outside by the ladies in

the street or the men in the street and I just think it is a shame that the government have not had the guts to actually implement this Bill from the day it was passed.

The President: Reply, sir.

Mr Delaney: I do not think there is a lot of reply I can give. I can see the argument being put by my hon. colleague Mr Lowey, it is viable, but it is up to members to decide whether this amendment of Her Majesty's Attorney-General is worthwhile putting into the Bill and I will be interested to see how the vote goes. I beg to move.

The President: Hon. members, the resolution is that clause 51 do stand part of the Bill and to that I have the amendment in the name of the learned Attorney-General which has been circulated to you and is in your possession at the moment. Hon. members, 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.

I will now put the clause as amended. Will those in favour of the clause as amended please say aye; against, no. The ayes have it. The ayes have it. Now, clause 51A, sir.

Mr Delaney: Clause 51A is the new clause This clause makes additional payments of the Manx National Insurance Fund. After section 67(1) of the Employment Act 1991 there is inserted the following section 67A, additional powers to make payments: (1) On application made to it in writing by an employee the department is satisfied (a) that the employment of the employee has been terminated; (b) that the employer has ceased to carry out business on the Island; or (c) that on that date on the application the employee was entitled to be paid the whole or part of any debts to which section 67 applies; and (d) that the employee has taken all reasonable steps other than legal proceedings to recover the debt from the employer and the employer has either refused or failed to pay it or has paid part of it and has refused to pay the balance. The department may pay to the employee out of the Manx National Insurance Fund the amount which in the opinion of the department the employee is entitled to in respect of that debt. The department shall not make any payment under this section unless an application under subsection (1) is made before the end of the period of 12 months beginning with the date of the termination of the employee's employment. I beg to move, Mr President.

Mr Kniveton: I beg to second, sir.

Mr Lowey: Mr President, I am supporting this particular clause but once again it makes the reason for the three-year delay of the implementation of this Act even more indefensible because it will not have an effect on the very small numbers, because this will not be big employers that will be affected by this, this is the very small employers and where the employees are affected they have a safeguard. I am in favour of that. But this makes my plea for what I would call the indefensible actions of delaying the introduction for three years even more poignant in my view and therefore I may very well be moving an amendment at the third reading to try and get the Council to see my point of view on it, but I am supporting this particular amendment because I do think that it does actually protect employees and it is using the national insurance fund which we have used before in redundancy things, so I can see no reason why it should not be used in this way on this occasion.

So I will be supporting clause 51A but I do think it is another reason for in my view not supporting a three-year delay in implementing the Bill.

The President: Reply, hon. member.

Mr Delaney: Under this particular clause it works in a similar way to the unfair dismissal, a situation we have got, and I thought we were very generous to keep everyone on board when we did that at that time and to protect both sides of employees and employers. I have no doubt that I will look at the amendment with interest when it comes. I will also question why this clause was supposed to be 50A, this new clause, Mr President.

The President: It is 51A.

Mr Delaney: I will take your direction, sir, but I understood it was 50A originally but, fine, Mr President, it may be a misunderstanding.

The President: There is no problem. Hon. members, I will put the resolution that clause 51A do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Finally, clause 52, sir.

Mr Delaney: This clause gives the Bill its short title, Mr President, and provides a composite title for this Bill and the series of Acts relating to employment which have been passed since 1989.

Clause 1 gives the Bill its short title.

Clause 2 provides a composite title for the Acts of 1990, 1991 and 1996 and this Bill, all of which deal with employment rights, and together they are to be known as the Employment Acts 1990 to 2000. I beg to move, Mr President.

Mr Kniveton: I beg to second, Mr President.

The President: I will put the resolution, hon. members, that clause 52 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Bill read a second time.

An appropriate time, I think, hon. members, to adjourn and the adjournment will be to the sitting of Tynwald on 21st March at 10.30. Thank you very much indeed.

The Council adjourned.