

**REPORT OF PROCEEDINGS OF
LEGISLATIVE COUNCIL**

**Douglas, Tuesday, 25th January 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, Dr E J Mann, Messrs J N Radcliffe and G H Waft, with Mr T A Bawden, Clerk of the Council.

The Lord Bishop took the prayers.

Shops Bill – Second Reading Approved – Clauses Considered

The President: Turning to our agenda paper, hon. members, we have as our first business the consideration of the Shops Bill and I call upon the hon. Mr Waft to take the second reading.

Mr Waft: Thank you, Mr President. As I explained in the first reading, the principal objects of this Bill are to repeal the existing regulation of shop hours on Sundays, to prohibit the opening of shops on Christmas Day, to introduce new employment protection provisions for shop workers in respect of work on Sundays and Christmas Day and also Good Friday following amendments in the other place, and to regulate the hours which shop workers may be required to work under their contracts of employment.

In essence the Bill removes the anomalies that beset the Shops Act 1985 and provides the level playing-field that the retail industry has requested for many years.

It must also be stated that, contrary to comments made in the other place, the Office of Fair Trading has taken action against those traders who breach the current legislation, with several prosecutions and numerous formal cautions being issued.

It was not the difficulty in enforcing the legislation that generated the drive to bring this Bill forward but the genuine desire of the retail industry to be allowed to trade on an equal footing with supermarkets and many large premises that were exempt from the current legislation.

No shops will be permitted on Christmas Day and so the Office of Fair Trading will still have an enforcement role, as detailed in clauses 2 and 3 of the Bill, but importantly, the necessary powers to enable effective enforcement are provided.

I recall that at the first reading my hon. colleague Mr Delaney enquired why all shops have to close on Christmas Day and not on Good Friday. I believe the answer is that Christmas Day is one day in the year when family and friends want to be together and most businesses outside the retail industry already close for this reason. It is interesting to note that no newspapers are published on Christmas Day, whereas they are on Good Friday. Whilst I accept that Good Friday is a deeply religious day in the Christian calendar, it is currently treated in the same way as a Sunday, with certain shops able to open throughout the day and all shops able to open in the afternoon. The closure of all shops on Good Friday at a time

when we are trying to attract tourists to the Island for the Easter sports festival would have a damaging effect on our reputation as a holiday island and on the retail industry, which benefits greatly from the influx of tourists. Nevertheless the Bill does recognise that some shop workers may not wish to work on Good Friday and they are able to give notice to their employer that they wish to withdraw from working.

My Lord Bishop at the first reading of this Bill mentioned Constantine who in 321 made the law commanding abstention from work for everyone except farm labourers. We have certainly come a long way since then. All I would perhaps ask is that about the same time as Constantine made his law there was a certain St Augustine of Hippo, one of the fathers of the Christian Church, who made this quote, 'And partem alteram' or in other words, 'Hear the other side.' That is all I am asking members to do on this Bill.

The delays caused by this Bill already, by the amendments of both Houses, will probably result in the need to have to go back to the Keys and a temporary exemption order could possibly be needed again this year from Easter up to October.

The bulk of the Bill is concerned with providing adequate employee protection for shop workers and, as with most employment legislation, it may at first appear complex. Nevertheless it provides a workable solution and a reasonable balance between the needs of the industry and the protection of shop workers. In fact it is the first piece of legislation to my knowledge that permits an employee to unilaterally amend their contract of employment.

The Bill has been widely circulated for comment and both hon. members and industry were provided with an excellent presentation by an independent legal adviser which received much support. The Bill has also been subjected to a great deal of public debate and no doubt hon. members will have received numerous pieces of correspondence from interested parties, but we are here to discuss the Bill sent from the other place where some of those comments were taken on board in the form of amendments. Some of those amendments have resulted in further consequential amendments being necessary and I will explain those when we reach the clauses stage, but at this point I would ask hon. members for their support. Mr President, I beg to move the second reading of the Shops Bill 1999.

Mr Kniveton: I beg to second, Mr President, and I will continue. To me it is clear that this Bill is to abolish the regulation of shop hours on Sundays and to make new provisions for the rights of shop workers as to the respect of opening on Sundays.

Why do we need this Bill? I had to ask myself that question, just that question, because I am confused somewhat on the subject. I have to agree that the Shops Act 1985 needs repealing as far as the existing regulations on shop hours on Sundays. There are so many, many anomalies existing at present. I shall not go through them because I believe I went through the examples at the first reading of this Bill. Then I had to ask myself, why do we want a Bill at all? Should not people have a choice? I think there is much to favour such a statement or even a decision as such. However, I am quite sure that the vast majority of people in the Isle of Man do want a change, a standardisation. People have a different mind of their own these days, so I believe we have to go a long way with them. People these days want to make up, as I say, their own mind on so many, many things and I would say unless this is dangerous or something like that, then we should go along with them. I am a regular churchgoer, a C of E

man, perhaps rather disenchanting in modern times, but I believe that during the build-up to this Bill the churches have not done their case justice.

As I say, I am a Christian, but I must have the choice to do what I want to do and I believe that this is the choice of the people of the Isle of Man. I believe we are here to protect their freedoms and not to dictate how they live.

Everybody is working throughout the week, with various pressures and many, many stresses, and for many Sunday has become a day for recreation, a family day, and I certainly do not believe that by shops opening on Sundays it is going to bring about the demise of Christianity or Christianity on this Island. I think only the Catholic Church has not objected to this Bill. I have many friends at St Mary's, many friends at St Anthony's, and I believe the reason why they have made no particular comment, and I believe a sensible approach to the sabbath day, is they go to church, if they want to, on Saturday evenings for mass at 8 o'clock or throughout the following day, Sunday, and I believe that our other churches should take up the example of not being quite so rigid. Certainly I believe that our Lord Bishop has hinted at that at a recent synod and, yes, I do recall I have had a conversation with him about it, so he knows my attitude and my feelings.

I can thoroughly agree with the closure of all shops on Christmas Day, I have no problem with that at all, and regrettably I can understand why shops can remain open under this Bill on Good Friday, because of the newspapers essentially, sold throughout so many, many types of shops and stores now and petrol stations, and so we get back to the level playing-field situation.

So now I come to the employee situation. Okay, let us legislate, but I have no problem in my mind. There are plenty of people - students, senior citizens, what Tesco call the 'grey brigade' - who want to earn. They will work, they will work okay, as they do in the UK. Just visit the malls there, the malls over there in the UK, Cheshire Oaks and so on - no problem there. So, as I say, I second the second reading of this Bill without any problem.

Many of us might like to turn the clock back to what some people call the good old days. If I look back at the '50s and '60s when people worked on farms and sold from vans or milk-floats and not shops, there were very, very few people working on Sundays. There were certainly no taxis. Sunday lunch at home was the thing; the Sunday roast was part of the family weekend. No restaurants, cafés or pubs. I had to go to church twice on a Sunday. I had to go to Sunday school in the afternoon and I was not allowed to even clean my bike on a Sunday. Those days are long passed, and certainly I believe the people of the Isle of Man do not want to go back to what some say they enjoyed of those days when there were much more of the present 8 per cent of the population that were regular churchgoers. I do not think we can turn the clock back by legislation. We have to recognise and get on with this legislation before us. I applaud the Office of Fair Trading for progressing it. Thank you, sir.

Mr Delaney: Just to say, Mr President, I thank my colleague Mr Waft for answering my query at the last reading. I am pleased with the answer. I am not satisfied myself, but I am not here to satisfy myself, it is for other people, and if everybody else seems satisfied with the situation between Christmas and Easter, that seems to be okay. The hon. member quoted a number of eminent gentlemen from the past, Thomas Aquinas, and who was it that said, 'a

hundred per cent off everything', and I am quite happy now with the Bill as it is being put through and I will be supporting it.

The Lord Bishop: Mr President, can I just comment on the seconder's statements. We are not trying to put clocks back at all, we are trying to make sure that the future is fair, and I think that the legislation to my mind has got to be fair and I should not wish for any comments of any Church representatives to be seen as wanting to hold the line or to be going backwards. We are certainly not backward-looking, we just want to make sure that what comes into place in the Island is fair and in the interests of the population.

I spent a considerable time reading the *Hansard* reports of the debate in the other place as it moved its way through the different stages. I feel a bit virtuous about this because there was a lot of reading and also I have discovered what wandering minstrels politicians can be. They rarely kept to the point as one worked through the stages of the debate and I learned all sorts of unimportant things when really they missed the point of what this legislation is all about, but that is a personal matter. We have some following amendments here, thank goodness, which do put the legislation back on track to a certain degree.

In the other place a frequent comment made by many who spoke was how much they deplored the inroads made into the special nature of Sunday, how much they wished to retain it as a day of rest or worship or for the family, and then quite calmly voted it out. I quote from one such speech: 'To deregulate causes many of us certain levels of concern: the Christian angle, the family angle and making Sunday a special day. It is different, it should be retained as different.' The same contributor then went on to comment about the impact of all shops opening on Sundays by saying the churches have to find ways of attracting people to their various religions, whatever that means. Mr President, in all honesty where is the common sense and fairness in a statement like that? If you create a seven day a week activity for retailers and the population, how can churches compete unless they open shops too or somehow create an eighth day upon which to operate? And regarding the comments this morning about the churches have not done their case justice, I do not quite know how we can do justice to a case when all the surrounding ground is taken from under the feet of any situation the churches take up.

Some voices were heard asking for the problem to be tackled by revisiting the 1985 Bill and doing a much better job of it. There is something to be said for that. For example, if this proposed legislation can so firmly shut everything down on Christmas Day, surely it is possible to take an equally strong line with retailers great and small and close everything down on Sunday mornings.

Much is made of the fact that countless people already have to work on Sundays, but I would contend that we can fairly describe them as essential service providers. Nipping out for a forgotten item on a Sunday morning despite many, many hours of late night shopping, which are available to us now, does not seem to me to be in the same category of argument.

I certainly do not intend to cover the old ground today that you can read in the *Hansard*, but I would like to ask the hon. mover to answer several queries and they are these: can he assure me that he believes sincerely that this proposed legislation does not discriminate unjustly in any way against a prospective employee who proposes to opt out of Sunday work, secondly, that it would be even-handed in its effects on all elements of the retail trade and that

it does not favour the large super stores, and thirdly, that it will not lead to a seven-day working week for a considerable number of people? I believe these questions are important for us to hear and I would like some real answers and not just a fudge.

Mr Lowey: Mr President, again I remember this topic being top of my shopping list, so to speak, when I was chairman of the consumer council many years ago and here we are still dealing with it.

I think the first thing I would like to say to the seconder of the Bill is that this Bill itself will not get rid of anomalies because I am quite sure there will be certain shops that do not open on a Sunday and if I was a customer and I wanted to shop at that shop the anomaly is still there, and that is precisely the position we have got at the moment where some can and some cannot. So let us not give to the Bill what is not there.

I thought we were getting governance by nostalgia again, what we did when we were kids, and I am an irregular churchgoer, much to my shame, but, however, having said that, I think my problem with the Church is that if they had not commented on this particular Bill I would have wanted to know why. That would have been more dangerous than what I would call their healthy close scrutiny of it.

However, the seconder of the Bill said this was all about choice. Well, I must remind him that the legislation was brought in in the first place because there was no choice for those working in it, and I think the Bishop is right to point out does this Bill give added protection to the workers so that they will not be forced to work against their religious beliefs? I think that is fair comment.

My view is that all in all this Bill is necessary to put in place what I would call a modern approach to what I would call irritations, but to suggest that this Bill is perfect and will do everything that the movers and the supporters of the Bill think it will do I think is a long way from it. I think it will be an improvement, but I think that the Bill itself is worthy of support on those grounds, that it will improve matters, but I too would like an assurance that those who are working will not be put at a disadvantage.

It is strange, when we are talking, how quickly time flies. It was not all that long ago that everything did shut on Good Friday in the Isle of Man, and we did deregulate, it was the accepted norm that nothing opened. I know only too well, as my good friend Mr Delaney knows, and as far as I am concerned the idea that somehow this is recreating choice, total choice for the people, does not bear examination.

But the Bill itself is worthy of support, subject to again a clear undertaking from the mover that the rights of people who work have the right to opt out and will not be put under undue influence by employers that they must work. I will be supporting the Bill.

The President: Reply, sir.

Mr Waft: Thank you, Mr President. I would like to thank Mr Kniveton for seconding the second reading and for his thoughts on the need for redress of the present anomalies and the need for choice. The call for change has been made and people can make up their own minds with regard to what happens to their own families on Sundays and where they would like to go, whether they want to work or whether they do not want to work. This Bill is giving the choice

for people to make up their own minds. The need for change is there and we have to recognise there is that need and respond accordingly.

I thank Mr Delaney for his comments and he appeared to be a bit happier with the Bill now and I thank him for that.

My Lord Bishop expressed the need for fairness. I think we would all agree with that and the important need to make Sunday a special day and I think many of us would not argue with those comments. He also asked me whether I believe that this Bill does not discriminate and is even-handed and does not favour large stores and will not end up with a seven-day working week. Well, I think this Bill goes more than any other Bill I have ever seen go through and even previously with regard to the need to examine the employee's situation in employment law. This has gone further than any other Bill has in the past with regard to this.

With regard to Mr Lowey's comments in saying that the Bill does not get rid of all the anomalies, I would certainly agree with him. What Bill ever does? This Bill is certainly not perfect, I would agree with that as well, and regarding the assurance again that people will not be put at a disadvantage, I do not think we can incur anything more for the employees other than what is encompassed in this Bill and the amendments to further the needs for employees to opt out. The opting out or opting in condition is a part of the Bill which made me actually be in favour of this Bill. Had it not been for the employee representation and the employee's rights being encompassed within this Bill I certainly would not have taken it, but they are encompassed within this Bill and they have gone as far as anybody can see in this situation, so I think we have gone as far as we might go within this Bill.

I beg to move the second reading, Mr President.

The President: The resolution, hon. members, is that the Shops Bill be now read a second time. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses, clause 1, sir.

Mr Waft: Thank you, Mr President. Clause 1 provides for the interpretation of the expressions used in the Bill.

Sub-clause (1) contains definitions and through the Bill references are made to the Employment Act 1991. The definition of 'dismissal' can be found at section 42 of the Employment Act 1991 and the definition of 'retail trade or business' is the same that is used in the Shops Act 1985 except for paragraph (b). The definitions of 'shop' and 'shop worker' are the same definitions as those included in the Shops Act 1985.

The definition of 'Sunday' was amended by the Keys and now includes Good Friday. This means that the employee protection provisions apply to Good Friday in the same way as they do for Sunday working.

Sub-clause (2), when taken with sub-clause (3), applies the provisions of the Employment Act 1991 to this Bill. Section 85 of the 1991 Act deals with the periods of continuous employment and is relevant for the purposes of clause 4(1)(b) of the Bill. Section 88 of the Employment Act 1991 contains the general definitions used in that Act which are also to be used for the purposes of the Bill.

Sub-clause (3) modifies the effect of schedule 7 to the 1991 Act as it applies for the purposes of this Bill and the calculation of periods of continuous employment.

Sub-clause (4) modifies the effect of section 43 of the Employment Act 1991 which treats as dismissal the refusal of an employer to permit a woman to return to work after childbirth. For the purposes of this Bill a woman is to be treated as a shop worker on the effective date of dismissal if she was employed as a shop worker before leaving work for the birth of the child.

Mr President, I beg to move clause 1 stand part of the Bill.

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

The Lord Bishop: Mr President, I would like to propose an amendment to two items in this clause 1 which you will see on the paper here:

Page 2, line 28: for the definition of "shop work" substitute -

' "shop work" means any work in or about a shop;'

line 29 to 31: for the definition of "shop worker" substitute -

' "shop worker" means any person wholly or mainly employed for any shop work;'

I am just concerned that despite the comments in the other place there still could be quite a lot of difficulty in a proper definition of 'shop work' and a 'shop worker'. I think that all the people employed in shop working are not entirely covered by that section 29 to 31 and there are very many people involved in shops and premises not just for the work of retailing. I think we have in our minds the picture of a person standing at a counter delivering goods to people who come to buy as a shop worker, and I would like to propose that within the definition of 'shop worker' at line 28 it does not mean the work of a shop worker, because that is a fairly restricting definition. I think it should mean any work in or about the shop, remembering that there are parts of a shop that are not visible to the normal customer, and I think that one wants to cover the definition there by extending it to 'any work in or about a shop', and for a 'shop worker' I believe that again this definition is very limiting. It means any person wholly or mainly employed in a shop in connection with the serving of customers. I really feel that we ought to broaden that into people who do the accounts, people who have to stock shelves or whatever it may be. I believe that there could be, on the part of an employer with an eye to legalism, quite a lot of restriction here and so I do ask that we give a fair wind to the amendments that I am proposing for a difference to 'shop work' and 'shop worker'. I propose, sir.

The President: Is there a seconder to those amendments?

Mr Lowey: Well, for the purpose of the debate I will certainly second the amendments to at least get them onto the floor.

Mr President, can I just say, in speaking to clause 1, first of all this is rather an unusual Bill. It is one of these Bills which I am sure the mover would agree is going to be pored over. First of all the first thing I want to point out is I cannot recall a Bill that starts with the interpretation. The interpretation in most Bills is at the end of the Bill. Here we are starting off, and clause 1 is usually the enabling clause, the key to any bit of legislation, and here we have this Bill with an interpretation clause as clause number 1, and if I was a member of the public, who was interested in my rights as a worker and all the rest of it I would come to this piece of legislation and look for guidance, and quite candidly clause 1 put me out: ' "opting-in notice"

has the meaning given by section 5(2); “opted out”, in relation to a shop worker, shall be construed in accordance with section 7’. It seems to me rather a bit of a complicated thing where we have, in biblical terms, my Lord Bishop, the last shall be first and the first shall be last. It does seem a little bit odd in legalistic draftsmanship that we have the interpretation first. Perhaps the mover could comment on that.

Speaking to the amendment, I think what the Lord Bishop is trying to do is get clarity and therefore I should not think it should have any detrimental effect on the mover of the Bill in accepting the amendment, because if it is clarity I would have thought that shop work means any work in or about a shop. What can be wrong with that? I think the Lord Bishop has spelt that out quite clearly. ‘Shop worker’ means any person wholly or mainly employed for any shop work. Again I think it is about clarity and therefore I think it is worthy of consideration and unless the mover can persuade me to the contrary I am mindful to support it.

Mrs Christian: Mr President, my hon. colleague has referred to the form of drafting, which is not critical to the content of the Bill, but I would disagree with him. I think it is useful to have the interpretation at the beginning rather than at the end and I would welcome that in many pieces of legislation so that we know from the start where we are going. So often you read through and you have to flick to the back to look at the interpretation section. These are merely presentational issues.

But with regard to the definition of ‘shop work’ which the hon. Lord Bishop is proposing, I would be concerned that rather than producing clarity it is likely to produce confusion: ‘ “shop work” means any work in or about a shop’. Let us suppose that a shop owner wants to close on Sundays in order to have shop fitters in or builders in to do remedial works. That is work in or about a shop, but one would not normally define it, I would suggest, as shop work and for that reason I would be loath to accept a change in the definition as it stands.

The second amendment - ‘ “shop worker” means any person wholly or mainly employed for any shop work’ - I am not quite sure what that really adds to the definition we already have. ‘ “Shop worker” means any person wholly or mainly employed in a shop in connection with the serving of customers’. Perhaps that hinges on what we mean by the serving of customers. Is it a very narrow definition in terms of being on the till or is it the wider definition of serving customers by making sure the shelves are full? I presume that might be an area where there could be legal debate in the future. But I really feel that the serving of customers covers the whole of the issue of producing the goods in the shops for the purposes of making them available to the retail customer to select and so on, so I am not convinced that we need to widen the definitions as they stand.

The President: Does any other hon. member wish to speak to either the clause or amendments? Reply, sir.

Mr Waft: Thank you, Mr President. I thank the Lord Bishop for his remarks and his speech to the amendment with regard to the shop worker. With regard to clause 1 and the amendment by the Lord Bishop, the present draft uses the same definitions as are found in the current Shops Act 1985 and was intended to protect the same people. A cleaner, electrician or maintenance operative does not have any protection at present and none was intended to be provided by this Bill, for the simple reason that much of the work they have to do can only be carried out when the shop is closed or at least quiet, for example Sunday. If

you allow these people to opt out of Sunday working you might not be able to open the shop on Monday. Equally, many suppliers arrive at the weekend with the articulated lorries returning to the UK on Monday morning, but if there are no staff available to offload the goods on Sunday the cost of goods will rise even further. The complications this amendment would bring would have to be paid for by the consumer.

The hon. Mr Lowey was concerned at the interpretation at the front of the Bill. I would say that it is not really unique, it has happened before and it is a possibility of either at the beginning or at the end, and the hon. Mrs Christian did remark on the form of drafting and it is not an issue, it is only a presentational issue, and I do not see any particular problem. I think having the interpretation at the beginning does give a guide as you work your way through the Bill, otherwise you continue with it at the back of the Bill. I do not think that is an issue.

Mr Lowey: Name me a book where the references are at the beginning.

Mr Waft: Offhand I cannot, but I have seen one. I am sure there will be one if you look back far enough.

So all in all I do not feel that this amendment by the Lord Bishop does anything for anybody other than what he has included and I have outlined the problems with regard to taking this amendment through. I can only ask members to think of the problems it would cause rather than the benefits. Thank you, Mr President.

The President: Hon. members, the resolution is that clause 1 do stand part of the Bill. To that resolution we have the amendments in the name of the Lord Bishop circulated to you on the white paper. I propose to put those amendments separately. Dealing with the first one relating to page 2 and line 28, will those in favour of that amendment standing part of the clause please say aye; against, no. The noes have it. The noes have it.

Now, the second amendment relates to lines 29 to 31. Will those in favour of that amendment standing part of the clause please say aye; against, no. The noes have it.

A division was called for and voting resulted as follows:

For: The Lord Bishop and Mr Lowey - 2

Against: Mr Waft, Dr Mann, Messrs Kniveton, Radcliffe, Mrs Christian, Messrs Delaney and Crowe - 7

The President: That amendment has 2 votes cast in favour and 7 votes against, hon. members. The amendment fails to carry.

I will now put the resolution as printed in the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 2, sir.

Mr Waft: Clause 2, Mr President, makes it an offence to open shops for the serving of customers on Christmas Day.

Sub-clause (1) requires shops within the meaning of 'shops' and 'retail trade' contained in the definitions in clause 1 to be closed for the serving of customers on Christmas Day. There are no exceptions.

Sub-clause (2) makes failure to comply a criminal offence, with a maximum penalty of £2,500.

I beg to move clause 2 stand part of the Bill.

Mr Kniveton: Mr President, I beg to second. I can go along with this one, no problem at all. I believe that Christmas Day is a very special day and everybody should be allowed to celebrate the greatest birthday. Even the newspaper people have their day off, or perhaps we might have a problem if they did not. Thank you.

The Lord Bishop: Strangely enough, Mr President, I have never gone for this clause. In my practical experience of 40-odd years of ministry more problems are caused on Christmas Day by families being incarcerated together for a whole day than any other day of the year. So I am not entirely convinced that everybody should be shut up on Christmas Day. However, the mover of the Bill in the other place seemed to feel a sort of height of virtue that at least we are giving this great Christian festival the shutdown so that everybody will have to shut. Well, that is fine. I see some of the merits behind that. However, having looked at it, again it is quite startling to have an offence put forward to shut your shop on Christmas Day and if you open it you are liable to a fine, that is quite strong. Now, if you are going to be strong on that basis, then I believe you ought to look behind the scenes and say, now, if every shop is going to shut on Christmas Day, are you really then doing it because you want to protect the workers from having a fully free day without any shop work at all on Christmas Day, and if so, that is fine, but behind the scenes, remember that sales start on Boxing Day or that things come to life on Boxing Day and your big retailers at least, if not the smaller ones, will want to say, 'Let's get everything ready today or this evening ready for the sales tomorrow on Boxing Day', and so you could have a scenario where a lot of people are called in to work behind the scenes, behind the closed doors, to stack the shelves, to clear the premises, to get everything ready for this mammoth sale that starts, or whatever, on Boxing Day, which is not a holiday for shops.

So I just feel that if we are going to be this firm with clause 2(2), then we ought to put in a clause 3 that does actually say that an employer or the occupier of a shop who asks people or makes them or persuades them to come in to work on Christmas Day is guilty of a similar offence. It really is only strengthening clause 2(2) and I feel it has the sort of merit that ought to be reflected in the voting in this House. I so move:

Page 3, after line 27: insert -

“(3) The occupier of a shop who causes or permits a shop worker to do shop work on Christmas Day shall be guilty of an offence and shall be liable on summary conviction to a fine of £2,500.”

Mr Delaney: The reason I raised the original question with the hon. member was prepared at the last reading and it has been brought back again by my hon. friend Mr Kniveton. I cannot understand the equation amongst this. If Christmas, the birth of Christ, is a day that we all celebrate, surely the death of that same person must be as important, and that is why you have brought it back again. We know, Mr Lowey, more than anybody, about the few tourists that are here, unfortunately, over the Christmas period, but we know of the many we are trying to bring over the Easter period, and the answer I got originally came back to me, that it is for commercial reasons that we are not closing, and that is the honest answer. The reason that we are not saying, 'Close as well on the death of Jesus Christ' - it is not a celebration, it is a very sad day as far as I am concerned - is done for commercial reasons and

we should not kid anybody for any other reason. It is not done because it is anything less than Christmas Day. It is done because we have a few bits of business to do, and I accept part of that, but let us not kid the people that much. That is the reason it is done and you actually reaffirmed that when you spoke, my hon. colleague.

Dr Mann: Mr President, I am not an expert by any means on employment law but I am sure regarding the proposed amendment the mover has put his finger on the fact that we are offering or creating special protection for a special group of workers as distinct from workers in general, and I think in the history of Shops Acts, which goes back into one of the earlier pieces of legislation protecting employment, there always has, for some reason, been a fascination in identifying shop work as something that is different from working in any other sphere. Now, if we are moving, as the Lord Bishop is suggesting, to protect a wider range of workers on that particular day, it is very difficult just to protect them if they happen to be working in a shop or shop premises. If you are going to protect all workers on Christmas Day, then that is an entirely different matter, but you are now moving out of employment in shops into employment in general and that is something that I think we ought to think seriously about. If we are starting to widen the sphere of control, then we are really talking about general employment legislation rather than just the Shops Bill.

The Attorney-General: Mr President, in answer to the point raised by the Lord Bishop and indeed touched upon by the hon. member Dr Mann, it strikes me that clause 2 has been drafted in a particular way. It has been drafted to create an offence of so-called strict liability. In other words, it makes it perfectly clear that if the occupier of a shop, and that is the person by whom the trade or business is carried on, who typically would be the owner of the shop, proprietor of the shop, allows the shop to be open on Christmas Day, that is an offence, irrespective of any excuse or intent on his part or negligence. That does not come into it. The fact is that if the shop is not closed on Christmas Day an offence will be committed and of course it is a not insignificant fine of £2,500. So I would suggest that the ordinary interpretation of the clause is that indeed a special regime is being created for Christmas Day and it is an offence of strict liability imposed upon the occupier of the shop.

Mrs Christian: Mr President, I think we are getting some different interpretations perhaps of the amendment, which I do not think has yet been seconded, but it does seem to me that whilst the strict interpretation as I see it, and perhaps the Attorney-General could guide us here, is that the shop shall not be open for the serving of customers, there is nothing in clause 2 which prevents a shop owner from requiring staff to come in, unless they have opted out, to stack shelves or prepare for the following day's sales, and I do not think that clause 2 affords that protection. Perhaps we could have some clarification, please.

The President: Do you wish to clarify that point, sir?

The Attorney-General: Mr President, thank you. Clause 2(1) says that every shop shall be closed for the serving of customers on Christmas Day. That is the essential thing and therefore if, as it seems to me, the employee were to consent to come in perhaps to stack shelves, that is possible, but what we are saying here is that if the occupier of the shop actually opens for business, that is, for the business of serving customers, on Christmas Day, he is strictly liable in law, in the criminal law.

Mr Lowey: Could I second the amendment, Mr President?

The President: Certainly, sir.

Mr Lowey: I think we should face up to this one because the mover of the Bill, in his second reading speech, said that the Bill gives protection to the workers, and here in the second clause, which we are now deeming, the power to the workers to opt out would come into play, I presume, taking the scenario as painted by the Lord Bishop. But the inference given is that we are protecting Christmas Day from what I would call the work ethic, and I think it is transparently obvious to those who want to see it that there are ways round this. You do have to prepare if you are going to have a sale on Boxing Day and the only time you can either prepare is Christmas Eve, before Christmas or on Christmas Day. Now, I think the shops themselves have brought this upon themselves by having their sales on Boxing Day as opposed to later on in the New Year. In other words, it is the force of economics and the marketplace coming into play, and there is no doubt at all that is why legislation was introduced in the Shops Acts, to protect workers from exploitation, and the idea that somehow this is going to protect workers from exploitation seems to me to be a little bit weak.

So I think we should at least face the issue that the Lord Bishop has put in it and I am prepared to test the Council's resolve in looking after the workers on this particular item and I am pleased to second.

The President: Now, with the amendment before the Council, does any hon. member wish to speak to that amendment? The hon. Mr Crowe.

Mr Delaney: Does anyone want to walk in a minefield, Mr President?

Mr Crowe: Thank you, Mr President. Yes, as Mr Delaney says, it is a minefield. I think it comes down to the interpretation and I think my reading of the Bill is that it is to protect the sanctity of Christmas Day for people who would not be able to go and buy from a shop. So the opening of a shop is separate from the actual person who might be asked to work in a shop to do overtime on a Christmas Day for the sale coming up on the next day. So I think if that person was comfortable with working and voluntarily did the work on Christmas Day behind the scenes, that is no different in my mind to somebody working in essential services in a hospital or some other work of that nature where they have to do work on a Christmas Day and I think there are many fields where people work now round the clock, and I think we should vote for the clause as it stands rather than the amendment which I think will only complicate matters.

The President: I think you may reply, sir.

Mr Waft: Thank you, Mr President. I thank my seconder, Mr Kniveton, for his remarks and my Lord Bishop for his speech with regard to the amendment.

With regard to the amendment, if I could just explain, the amendment is presumably trying to make absolutely sure nobody in a shop works on Christmas Day, regardless of whether it is open or not, but the shop worker has the right to opt out of the Sunday, Christmas Day and Good Friday already, so I do not see that making this a criminal offence is necessary. It might even be possible that a shop worker wants to work on Christmas Day in place of Boxing Day or New Year's Day, for instance, and in such a case the employer would be prosecuted for meeting the wishes of his staff.

I think Mr Delaney remarked on the sanctity of Christmas Day and I think we would all agree with that.

I thank the hon. Dr Mann for his remarks with regard to when we were talking about workers in general here. This is not a case of workers in general. This is a specific case of whether to open on Christmas Day or not to open on Christmas Day. This is not an extension of the Employment Act as such, this is purely putting forward what is reasonable.

I thank the Attorney-General for his remarks on the strict liability and explaining the legal situation. I think if we do look at this amendment we can find that there are problems with making it a criminal offence and I would not be in support of the amendment and would move clause 2.

The President: The resolution, hon. members, is that clause 2 do stand part of the Bill and to that resolution we have the amendment in the name of the Lord Bishop which is circulated to you on the white paper. 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, Mr Lowey and Mrs Christian - 3

Against: Mr Waft, Dr Mann, Messrs Kniveton, Radcliffe, Delaney and Crowe - 6

The President: Three votes have been cast in favour of the amendment, 6 votes against. The amendment fails to carry.

I will now put the clause as printed. Will those in favour of the clause as printed standing part of the Bill please say aye; against, no. The ayes have it. The ayes have it. Clause 3, sir.

Mr Waft: Clause 3, Mr President, makes the Isle of Man Office of Fair Trading responsible for the enforcement of part II of the Bill, prohibition on opening of shops on Christmas Day, and provides enforcement power.

Sub-clause (1) declares the Isle of Man Office of Fair Trading to be responsible for the enforcement of part II of the Bill.

Sub-clause (2) applies for the purposes of part II of the Bill certain enforcement powers contained in the Consumer Protection (Trade Descriptions) Act 1970 and will enable a person authorised in writing by the Isle of Man Office of Fair Trading to enter shops to make test purchases, inspect and seize goods and documents. It will be an offence to obstruct inspectors and compensation can be paid in respect of goods seized.

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

Mr Kniveton: I beg to second, sir.

The President: I will put the resolution, hon. members, that clause 3 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 4, sir.

Mr Waft: Clause 4, Mr President, provides a definition of the expression 'protected shop worker'. In essence two categories of shop workers fall within the definition. First, if they are employed as a shop worker immediately before the commencement date and continued to be

employed as such and are not specifically employed to work only on Sundays, or second, they are shop workers who cannot be required to work on Sundays in their contract of employment.

Sub-clause (1) introduces the substantive sub-clauses of this clause. Shop workers are to be treated as protected only if they fall within either sub-clauses (2) or (3).

Sub-clause (2) first sets out the category of protected shop worker. There are four criteria. Firstly, the person must be employed as a shop worker on the day before commencement of the Bill. Secondly, the shop worker must not be employed to work on Sundays only. Thirdly, the shop worker must be continuously employed between the day before the commencement date and the appropriate date, which is determined in accordance with sub-clause (4). In addition, the interpretation provisions of clause 1(2) will apply for the calculation of the period of continuous employment. Fourthly, the person must have been a shop worker for the whole of that period or during those parts of it when he was subject to a contract of employment.

Sub-clause (3) provides a second category of shop worker to be treated as protected. A shop worker is protected if he does not and cannot be required to work on Sunday under his contract of employment, even if his rights under this part are disregarded.

Sub-clause (4) provides rules to establish the appropriate date for the purpose of sub-clause (2)(c). The appropriate date is important for the purpose of determining the period of continuous employment. The appropriate date is different depending on the particular circumstances of paragraphs (a) to (f), as I will explain, which provide for the different circumstances.

Paragraph (a) deals with circumstances where a person is dismissed for refusing Sunday work or is made redundant on the same grounds. In such a case the effective date is the date of termination of the employment.

Paragraph (b) applies in relation to circumstances where a shop worker has suffered some detriment by an act or failure to act by the employer. In such cases the appropriate date is the date of the act or failure to act.

Paragraph (c) applies in relation to circumstances in which an employer and a protected shop worker enter into an unenforceable agreement requiring Sunday work. In such cases the appropriate date is the day on which the agreement is entered into.

Paragraph (d) makes a provision similar to (c) in relation to a worker who was not protected when the contract was entered into but is a protected worker following return to work after maternity leave. In such cases the period of continuous employment will end on the day on which the employee returns to work.

Paragraph (e) applies in relation to contracts for a guaranteed number of hours during each week in which a person might have been required to work on Sundays before the commencement of the Bill. In such cases the period of continuous employment shall end at any time in relation to which the contract is to be enforced by the employer.

Paragraph (f) applies in relation to circumstances where there is a reduction in pay of benefits where a shop worker could have been required to work on a Sunday before the commencement of the Bill but ceases to do so after the commencement. In such cases the

continuous period of employment is calculated as the end of the period in respect of which he is paid before the benefit accrues.

Sub-clause (5) provides for the meaning of the expression 'the effective date of termination' used in sub-clause (4)(a). In cases where the employer refuses to permit an employee to return to work after childbirth, the effective date is the day with effect from which an employee is treated as being dismissed under section 4 of the Employment Act 1991. That date is in effect the date notified as the day of return to work.

Sub-clause (6) provides a rule for the determination of the date on which an act or failure to act occurs for the purposes of sub-clause (4)(b). Where the act is in the nature of a continual act and extends over a period, the date of the act means the first day of the period, and where there is a deliberate failure to act the failure shall be treated as done when decided upon. The sub-clause also provides a refutable presumption for determining when an employer is to be taken to decide on failure to act. Inconsistent actions or a failure to act within a reasonable period will be evidence of a decision in the absence of other evidence to the contrary.

Sub-clause (7) sets out circumstances in which the conditions specified in sub-clause (2)(a) and (b) are to be regarded as satisfied. Under schedule 7 of the Employment Act 1991 a person is treated as continually in employment even where the contract of employment has ceased on the grounds of sickness, injury, temporary cessation of work, pregnancy and other similar reasons. Where a person falls within that category in the week in which the day before the commencement of the Bill falls, the employee is treated as continually in employment and complying with sub-clause (2)(a) and (b), provided he is a shop worker and was not employed to work on Sunday only.

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

Mr Kniveton: I beg to second, sir. As I said at the second reading stage, we perhaps should also really look at the other types of employees who work on Sundays, but it can be argued that the shop workers knew their working conditions when they started their employment, as the other people did, whereas for shop workers many will not be familiar with the idea and took on their employment not being aware that we could change, shall we say, the rules through this Bill whilst they are employed as shop assistants. I accept that they do have a case, so we thus have this heading and clause to cover the protected worker, presumably with a contract of employment.

Mr Crowe: Mr President, just a simple question as to whether the Office of Fair Trading are going to issue a handbook on the rules that apply to employees and employers so that it would explain the effects of this new legislation.

The Lord Bishop: I would support that, Mr President. I feel that my eyes began to glaze over once the mover started this clause and halfway through you think, 'This is worse than my sermons' (*Laughter*) and that is saying something, but they are not quite so long, and I just feel for the teenager leaving school and going to get a job and knowing what this legislation is all about. It really is quite daft.

I did, at one of the presentations, ask for an explanation of page 5, section 20, and I would tease the mover now with the same reference. If you look at lines 20 to 25 and if you

are a teenager going for employment it says, 'in the absence of evidence establishing the contrary, an employer shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.' I think, 'Well, crumbs, amazing, legal gobbledygook and why can't we legislate in simple English?' I am sure that the Office of Fair Trading will already have got something on the stocks, but I do hope it makes some sense of this, with respect to my learned friend, legalistic jargon which is very difficult to get through.

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

Mr Waft: Thank you, Mr President. I thank my seconder and also the thoughts of the hon. Mr Crowe with regard to the handbook - that is already thought about and we will be going ahead with that when the Bill goes through. There is no problem with that.

With regard to my Lord Bishop and the legalistic jargon, he is only echoing what I have continually said in this chamber with regard to making these Bills in layman's language, but at the same time I suppose we have to be at the lawyer's.

Mr Lowey: You would not like to interpret it.

Mr Waft: Maybe the Attorney-General might like to interpret it. *(Laughter and interjections)*

The Lord Bishop: Well, does it mean anything or doesn't it?

Mr Waft: It certainly does, Mr President.

Mr Delaney: But we do not know.

Mr Waft: I am assured that it is necessary.

The Lord Bishop: Do I have enough faith in the mover to accept it?

Mr Waft: I beg to move clause 4.

The President: Hon. members, I will put the resolution that clause 4 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 5.

Mr Waft: Clause 5, Mr President, specifies certain circumstances in which a shop worker will not be treated as a protected shop worker. This clause was significantly amended in the other place.

Sub-clause (1) sets out the circumstances in which a shop worker will not be protected in respect of Sunday working. Three conditions must be satisfied. First, on or after the legislation comes into operation the shop worker must have been given an opting-in request by his employer. The request is defined in sub-clause (3). Secondly, not less than seven days and no more than 21 days after receiving the opting-in request the shop worker must have given an opting-in notice defined in sub-clause (4), and thirdly, after giving an opting-in notice the shop worker must expressly agree to work on Sundays or any particular Sunday.

Sub-clause (2) requires all conditions imposed by the clause to be complied with, otherwise the opting-in notice is void and the worker remains a protected shop worker.

Sub-clause (3) describes the opting-in request which must be a written request from the employer asking an employee to give an opting-in notice.

Sub-clause (4) describes an opting-in notice. It must be in writing and the shop worker must sign and date the notice. They must expressly consent to the opting-in request and state that they wish to work on Sunday or do not object to Sunday working.

Sub-clause (5) requires the Department of Trade and Industry to prescribe the form of opting-in requests and opting-in notices and the particulars and information to be included in them.

Sub-clause (6) requires the order in the form prescribed to be laid before Tynwald.

I beg to move clause 5 stand part of the Bill, sir.

Mr Kniveton: I beg to second, sir.

Mr Delaney: This follows on from the last comments again. We were all keen to get the Shops Bill cleared up, hopefully to help everyone, but the only people, according to this, who are going to work in shops are retired or ex-lawyers because I cannot see anybody going through this lot to actually get himself not working on a Sunday. To me it just does not seem any sort of step towards assisting anybody not to be able to work on a Sunday because he would have to go through a mountain of legislation and it would cost him a fortune to get a lawyer to interpret it. That is my view.

Mr Lowey: I think this, Mr President, is a classic where we say we want to get rid of bureaucracy and in passing this legislation we are actually institutionalising the very thing, back to what the Lord Bishop said earlier about saying one thing and doing another, and this, while the intent is absolutely right, will actually increase bureaucracy and I think to a large scale, because I agree with the hon. member Mr Delaney when he says can you picture coming to work in a shop and: 'Here is the form now - will you opt in and you do realise what this means and, by the way, refer to the book that has been kindly provided by the Office of Fair Trading to give you the ABC step, easy guide through this particular Act.' It just will not work.

Mr Crowe: Mr President, on reading this clause in depth it appears to be very cumbersome and very involved in a long time in getting this agreement. It is a pity to my mind that there was not some shortening of it so that by mutual agreement working on a Sunday could have been agreed by mutual consent in writing by both parties because I think all of these timeframes might work against the shop worker rather than encourage him to do shop work.

Mrs Christian: Mr President, I think we are in danger of exaggerating the complications of the issue here. It seems to me that if you read this it is to establish a fairness between the employer and the employee so that everybody knows exactly where they stand and so that there is no lack of clarity or understanding on the part of either the employer or the employee. It does not seem to me to be complicated that they are given a form to say, 'You have to tell me whether you want to work on a Sunday.' Most people will have it perfectly clear whether they want to opt-in or not, and if they do, are prepared to work on a Sunday, then they know that they have to fill in the form and return it within a certain period of time. It is not that complicated, I would suggest.

The President: Mr Attorney, would you care to speak on this one?

The Attorney-General: Mr President, I was just simply going to support what the hon. member Mrs Christian has said. I think, as the hon. member Mr Waft indicated in introducing the second reading, that the Bill is rather unique insofar as it amends or could amend a contract of employment which is already in place and it is therefore vitally important that both employer and employee should make a contract to vary what is already in place, and if I may say so, although I wholeheartedly agree that some parts of clause 4 are complex, clause 5 is straightforward and the Office of Fair Trading will, I am sure, in their usual helpful way, supply forms in a user-friendly way and I am quite sure that this clause should provide no difficulty whatsoever.

The President: Reply, sir.

Mr Waft: Thank you, Mr President. I would like to thank the hon. Mr Delaney and Mr Lowey for their remarks with regard to their worries about the legislation and how it can read by people who need to read it.

The hon. Mr Crowe did think about perhaps some way of shortening it, but I think Mrs Christian hit the nail on the head and said it was trying to establish some fairness, and most of the legislation, which I took a while to work through on clause 4, was read with regard to helping the workers, and I have sat through some of the Lord Bishop's sermons and I would think they are a little bit longer than my clause 4; however.

The Lord Bishop: And more interesting. *(Laughter)*

Mr Waft: I think, Mr President, the problem with the difficulties in reading this is purely to protect the workers at the end of the day. That is the majority of this Bill, how we protect the workers, and I do not make any excuse for that, and I am sure, as the Attorney-General said, the Office of Fair Trading will go out of their way to oil the wheels, as it were, for any employee who seeks some advice and they are always very helpful down there. I beg to move, sir.

The President: The resolution, hon. members, is that clause 5 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 6, sir.

Mr Waft: Clause 6, Mr President, enables shop workers who may be required to work on Sundays to give an opting-out notice to their employer.

Sub-clause (1) describes the categories of shop-worker to whom this clause applies. The clause does not apply to those who are employed to work only on Sunday. It does apply to shop workers who are otherwise working or required to work on Sundays. This might result from giving an opting-in notice under clause 5 or by reason of falling outside the definition of protected shop worker under sub-clauses (2) or (3) of clause 4.

Sub-clause (2) enables the shop worker to object to Sunday working by giving notice in writing which must be signed and dated by the shop worker.

Sub-clause (3) provides that the expression 'opting-out notice' when used in the rest of part III of the Bill is to mean a notice given under sub-clause (2) of this clause.

I beg to move clause 6 stand part of the Bill.

Mr Kniveton: I beg to second, sir.

Mr Lowey: Mr President, can I just comment that, because of some of the things that were said in the last clause and this clause, the impression is that all of these are put in at the behest of the protection of workers. Well, let me just tease this one out a bit. A shop worker now has a contract of employment. All this is doing is taking away rights of existing employees. If you do not opt in or opt out, you are in, but that may not be in the written contract now. Under this legislation it puts an onus on the employee to either opt in or opt out. He has already got that if he has got a written contract and he should have a written contract under the written Contracts of Employment Act that says whether he is in or out and you cannot have it both ways. It is a protection, but this is not a protection, this is actually diminishing employees' rights, not an added protection to employees, as stated by the mover, and if I may say so, the learned Attorney.

Mrs Christian: Mr President, I would differ in my interpretation of the clause from the hon. member because it refers specifically to people who are currently required under their contracts to work on a Sunday. It does not refer to people who are only contracted to work Monday to Saturday. If you are required or may be required to work on a Sunday under your existing contract, this clause gives you a power to opt out, and I would suggest that that is not the way the hon. member has portrayed it.

The President: Reply, sir.

Mr Waft: Thank you, Mr President. I thank Mr Lowey for his remarks. I do not think this Bill does in any way remove any rights of any of the shop workers. In fact it goes so far the other way as to be unequal, I think, in any employment legislation and I think we are not removing rights at all. I thank the hon. Mrs Christian for her explanation. I am sure if he examines the Bill properly he will realise that there are rights built into this Bill which help the shop worker and especially with regard to the Sunday situation and gives him extra rights. I think that is all. Thank you, Mr President. I beg to move clause 6.

The President: I will put the resolution that clause 6 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 7, sir.

Mr Waft: Clause 7, Mr President, deals with the criteria to be applied to the shop worker to be treated as opted-out for the purpose of this part III of the Bill.

Sub-clause (1) sets out the criteria but is supported by the definitions and qualifying provisions in sub-clauses (2) to (5). To be treated as opted-out a shop worker must comply with the following three provisions. Firstly, he must give his employer an opting-out notice. Secondly, he must have been continuously employed between the day on which the notice was given to the employer and the appropriate date, which is explained in sub-clause (2). Thirdly, the person must have been a shop worker for the whole of that period or during the whole of those parts of it when he was subject to a contract of employment.

Sub-clause (2) provides rules to establish the appropriate date for the purposes of sub-clause (1). The appropriate date is important for the purposes of determining the period of continuous employment. The appropriate date is different depending upon the particular circumstances and paragraphs (a) to (d) of the sub-clause provide for the different circumstances.

Sub-clause (3) provides for the meaning of the expression 'the effective date of termination' used in sub-clause (2)(a) in cases where the employer refused to permit an employee to return to work after childbirth.

Sub-clause (4) provides a rule for determination of the date on which an act or failure to act occurs for the purposes of sub-clause (2)(b) of this clause. Where the act is in the nature of a continuing act and extends over a period, the date of the act means the first day of the period and where there is a deliberate failure to act it shall be treated as done and decided upon. The sub-clause also provides a rebuttal presumption for determining when an employer is to be taken to decide on failure to act. Inconsistent actions or failure to act within a reasonable period will be evidence of the decision in the absence of other evidence to the contrary.

Sub-clause (5) provides circumstances in which a shop worker is to be treated as ceasing to be opted-out. The shop worker must give an opting-in notice and in addition expressly agrees to do shop work on Sunday or on a particular Sunday.

Mr President, I beg to move clause 7 stand part of the Bill.

Mr Kniveton: I beg to second.

Mr Lowey: Mr President, can the mover then reassure me because I am not reassured: 'Subject to subsection (5), a shop worker is to be regarded for the purposes of this Part as "opted-out" if, and only if - (a) he has given his employer an opting-out notice'. So the onus is squarely on the employee to give that notice. Under the Contracts of Employment Act the onus is quite clearly on the employer to give the employee a contract. Now, tell me how that is not changing the balance.

Mr Crowe: Mr President, I was interested in the hon. Mr Lowey's point there and I think it comes down to it gives the employee an extra right because under the Contracts of Employment Act generally it is drafted and framed by the employer and the employee agrees to it. This is giving a right to an employee to amend the underlying contract by allowing the employee to opt out from certain parts of the basic contract and I think there are further rights in that, having opted-out in writing, it does not stop him or prevent him from opting-in at some future time. So I think it is an interesting point that it is allowing the employee to amend his basic terms of employment by this clause. That is the way I was reading it perhaps.

Mr Lowey: Certainly it is applied for by the employees.

The President: Reply, sir.

Mr Waft: Thank you, Mr President. I thank the hon. member for his comments and the hon. member Mr Crowe for the explanation. The obligation is on the employer with regard to issuing an opting-in or opting-out notice and the employee can alter his terms and conditions of employment.

Mr Lowey: That is not how it reads in this. It is quite -

The President: Hon. member, you are getting your reply.

Mr Lowey: Sorry, Mr President.

Mr Waft: And so I think Mr Lowey's concerns are not valid.

Mr Lowey: They are.

The President: Hon. members, I will put the resolution that clause 7 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 8, sir.

Mr Waft: Clause 8, Mr President, defines the notice period for an opted-out shop worker. This clause was amended by the Keys and now defines the notice period for an opted-out shop worker as a period of one month beginning with the giving of the opting-out notice. I beg to move clause 8 stand part of the Bill.

Mr Kniveton: I beg to second, sir, and I am quite happy and accept as fair the one-month notice period as agreed in another place.

Mr Delaney: The Bill we are carrying on very quickly but let us not kid ourselves on this particular one. Where we talk about the principal reason for dismissal, nobody is going to be daft enough to break the law if they can get out of it. They are going to find some other reason. If a person has given notice they are not going to work on Sundays and the employer does not like it, he is going to find another reason and where we talk about the principal reason for dismissal that is really bunkum. In real life other reasons will be found to sack the employee who does not want to work on a Sunday, so I do not want the Bill to go through with the illusion that somehow this going to be to make sure that they will not be sacked for not working on a Sunday. They will find another reason to sack if they want to sack him. They will find a reason to sack him.

The President: Reply, sir.

Mr Waft: Thank you, Mr President. I would like to thank members for their remarks and my seconder.

With regard to Mr Delaney and the reasons for dismissal, other reasons will be found, any employer would be in a dangerous area if he was going to go down the road of an unfair dismissal. I beg to move clause 8 stand part of the Bill.

The President: Hon. members, I will put the resolution that clause 8 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 9, sir.

Mr Waft: Clause 9, Mr President, confers rights on protected or opted-out workers not to be dismissed for refusing to work on Sundays and for treating such a dismissal as unfair dismissal under the Employment Act 1991.

Sub-clause (1) declares that the dismissal of a protected or opted-out shop worker is unfair dismissal if the reason or principal reason for the dismissal is the refusal or proposed refusal of the shop worker to work on Sunday. Allegations of unfair dismissal can be adjudicated before the Employment Appeals Tribunal and compensation awarded where the tribunal is satisfied that the dismissal is unfair.

Sub-clause (2) qualifies sub-clause (1). A refusal to work on Sunday will not be treated as unfair dismissal in relation to an opted-out shop worker if the refusal occurred within the notice period calculated in accordance with clause 8, i.e. a month from giving an opting-out notice.

Sub-clause (3) makes it unfair dismissal to dismiss a shop worker for the reason or principal reason that an opting-out notice is given to the employer or proposed to be given to the employer.

I beg to move clause 9, Mr President.

Mr Kniveton: I beg to second, sir.

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 Waft: Clause 10, Mr President, deals with cases where protected or opted-out workers are purported to be dismissed on grounds of redundancy but the reason for dismissal is shown to be refusal to work on Sundays. Such cases are to be treated as unfair dismissal.

Sub-clause (1) sets out the circumstances in which dismissal on alleged grounds of redundancy is to be treated as unfair dismissal for the purposes of the Employment Act 1991. Two conditions must be satisfied. Firstly, the circumstances constituting the redundancy apply to other employees in similar positions but they have not been dismissed, and secondly, it is shown that the principal reason for dismissal was that the shop worker refused or proposed to refuse to work on Sundays.

Sub-clause (2) disapplies sub-clause (1) which will not apply to a dismissal in respect of refusal or proposed refusal to do shop work on Sundays following before the end of a period of one month commencing with the giving of an opting-out notice.

Sub-clause (3) makes it unfair dismissal to dismiss a shop worker on grounds of redundancy if the reason or principal reason for the selection for dismissal was that the shop worker gave or proposed to give an opting-out notice. In such cases, and this applies also to sub-clause (1), it is not the fact of dismissal that is in question but the fact that the dismissed person was selected for dismissal on grounds of redundancy on the basis of giving an opting-out notice or, in the case of sub-clause (1), a refusal or proposal to refuse to do shop work on Sundays.

I beg to move clause 10 stand part of the Bill.

Mr Kniveton: I beg to second, sir.

The President: I will put the resolution, hon. members, 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 Waft: Clause 11, Mr President, modifies the effect of section 41 of the Employment Act 1991 as it applies in relation to the unfair dismissal of shop workers under clauses 9 and 10 of the Bill. By virtue of clause 11 shop workers do not have to have been continuously employed for a period of one year or to be under the normal retirement age to claim that they were unfairly dismissed under clauses 9 and 10 of the Bill. I beg to move clause 11 stand part of the Bill.

Mr Kniveton: I beg to second, sir.

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

Mr Waft: Clause 12, Mr President, gives protection to protected or opted-out workers in respect of their refusal to work on Sundays. Such workers are not to suffer any detriment in their employment by reason of refusing to work on Sundays.

Sub-clause (1) declares that a refusal or proposal to refuse to do shop work on Sundays must not result in any act or omission by the employer to the detriment of the employee. Detriment might involve a range of sanctions such as demotion and refusal of promotion.

Sub-clause (2) removes the protection provided by sub-clause (1) from opted-out shop workers who refuse or propose to refuse to do Sunday work before the end of a one-month period beginning with the service of an opting-out notice.

Sub-clause (3) declares a right of shop workers not to be subject to detriment by act or deliberate omission by the employer on the basis that the employee gave or proposed to give an opting-out notice.

Sub-clause (4) declares a dismissal is not a detriment under sub-clauses (1) to (3). A dismissal is dealt with under clauses 9 to 11.

Sub-clause (5) sets out three cases in which a shop worker who does not work on Sundays is not treated as being subject to any detriment. Firstly, a failure to pay a remuneration in respect of Sunday shop work which the shop worker has not done is not a detriment. Secondly, a failure to provide any other benefit under the term of the contract of employment which links the benefit with the number of hours worked on Sundays on which the employee has not done shop work is not a detriment. Thirdly, clauses 16 to 17 of the Bill set out certain circumstances in which an employer is not obliged to provide work, remuneration or other benefits to shop workers refusing to work on Sundays. In those cases a failure to provide that work, remuneration or other benefit is not treated as a detriment for the purposes of this Bill.

Sub-clause (6) deals with cases where an employer offers money to induce Sunday working by protected or opted-out shop workers and shop workers who under their contracts of employment are not obliged to do work on Sundays. There are two cases where the sub-clause treats employees as not suffering any detriment in relation to any such offer or payment of money. Firstly, if no offer is made to an employee it is not to his detriment even though the offer is made to other employees. Secondly, a refusal to accept such an offer is not treated as a detriment following the subsequent failure to pay that sum of money to the shop worker. Mr President, I beg to move.

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 Waft: Clause 13, Mr President, deals with the statutory notices which an employer is are obliged to give to shop workers about their rights in relation to Sunday shop work.

Sub-clause (1) requires an employer to give newly appointed or newly opted-in shop workers a written statement of their rights in relation to Sunday working. The statement must be given within two months and is set out in sub-clause (4).

Sub-clause (2) deals with the consequences of a failure to comply with the requirement to give the written statement under sub-clause (1). The sanction provided in the green Bill was that the notice period defined in clause 8 was reduced from three months to one month. However, following the amendment in another place where the period of three months mentioned in clause 8 was reduced to one month, a further consequential amendment is now required to provide a sanction and I understand the hon. member Mr Crowe will be moving such an amendment in due course.

Sub-clause (3) disappplies the requirement to give a written statement under sub-clause (1) if within the two-month period the shop worker gives an opting-out notice.

Sub-clause (4) sets out the prescribed form of written statement which must be given to the shop worker under sub-clause (1) if the green Bill reference was wrongly made to an industrial tribunal, and in the other place this wording was amended to read 'the tribunal'.

Amendments made to other clauses in another place also necessitate consequential amendments to be made to the explanatory statement detailed in sub-clause (4) which the hon. Mr Crowe will be moving on behalf of the sponsoring department.

Sub-clause (5) enables the Department of Trade and Industry to make orders amending the prescribed form, and sub-clause (6) requires those orders to be laid before Tynwald.

Mr President, I beg to move clause 13 stand part of the Bill.

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

Mr Crowe: Mr President, in the other place an amendment was successfully moved to clause 8 which reduced the period of notice required to be given by an employee once he had given notice that he no longer wished to work on Sundays. This notice period was reduced from three months to one month.

Clause 13 requires that all employees are supplied with a statutory notice advising them of their right to opt out of Sunday working. Failure to provide the statutory notice results in the employee having to give a reduced notice period and the original draft reduced the three-month period to one month.

My amendment today takes into account the amendment to clause 8 where the maximum notice period is now just one month and further reduces it to 14 days where an employer fails to provide the statutory statement to his employees. In addition the statutory statement has been redrafted to make it absolutely clear to employees that they may also opt out of working on Good Friday and Christmas Day in the same way as they can for Sunday working.

This amendment is supported by the Office of Fair Trading and I urge hon. members to give it their support. Mr President, I beg to move the amendment standing in my name:

Page 10, line 22: for ""3 months"" of ""one month"" substitute ""one month"" of ""14 days"".

Page 10, lines 29 to 39 and page 11, lines 1 to 19:

for the prescribed form substitute -

“STATUTORY RIGHTS IN RELATION TO SHOP WORK ON SUNDAYS,
CHRISTMAS DAY AND GOOD FRIDAY

You have become employed as a shop worker and are, or can be, required under your contract of employment to do shop work on Sundays, Good Friday and Christmas Day.

However, if you wish, you can give a notice, as described in the next section, to your employer and you will then have the right not to do shop work on any of those days once one month has passed from the date on which you gave the notice.

Your notice must -

be in writing;

be signed and dated by you;

say that you object to working on those days.

For one month after you give the notice, your employer can still require you to do all the work on those days that your contract provides for. After the one month period has ended, you have the right to complain to the Employment Tribunal if, because of your refusal to do shop work on those days, your employer -

dismisses you, or

does something else detrimental to you, for example, failing to promote you.

Once you have the rights described, they cannot be taken away without your agreement. You can surrender them only if -

your employer gives you a written request asking you to work on those days; and

you respond with a further notice, signed and dated by you, saying that you wish to work on those days or that you do not object to working on those days; and

you then agree with your employer to do shop work on those or any particular one of those days.”.

Dr Mann: I beg to second.

Mr Lowey: Mr President, still at it. Can the mover of the Bill tell me what is the difference between these prescribed statutory rights statements which are to be given to employees that differ from the usual contract of employment? What is the difference? I thought when you have a contract of employment now you have to have a contract of employment. What is the difference between this written statement and what I would call the statutory employment legislation which is in being and everybody has to have? And also when we are introducing new contracts who is going to enforce it, who is going to check it, who is going to oversee it, who is going to police it? Because if we police it as well as we police the contract of employment legislation, then it is hardly worth us passing it at all because my complaint at the moment is that that piece of legislation is not being policed as it should and here we are

introducing a further variation, if that is the case, on this one. What is the difference between this and a statutory contract and who is going to police it?

The President: Does any hon. member wish to speak to either the resolution or amendment? If not, reply, sir.

Mr Waft: Thank you, Mr President. I thank the hon. member for his amendment which does clarify a certain problem which has arisen because of previous amendments, and I thank my seconder for his support.

With clarification for the hon. Mr Lowey's concerns, the contracts of employment are contracts of employment. What this Bill does in effect is enable contracts of employment to be changed. In other words people can opt out of working or opt in for working on a Sunday, which are not previously in the contract of employment, as I understand it. I do not think it does include, possibly, unless it specifically states in your contract of employment when you will or when you will not work. What this Bill does is enable people to change the contract of employment if they are asked to work on a Sunday. This is the difference. So it puts the ball firmly in the employee's hands to actually change his original contract of employment to his benefit because he decides he does not wish to work on a Sunday.

With regard to the policing situation, I understand this situation will be policed by the Department of Trade and Industry. They will be taking on that role. Thank you, Mr President. I beg to move.

The President: Hon. members, the resolution is that clause 13 do stand part of the Bill and to that resolution we have the amendment in the name of the hon. Mr Crowe as circulated on the white paper. Will those of you who wish to have the amendment embodied in the clause please say aye; against, no. The ayes have it. The ayes have it. Now, those in favour of the clause as amended please say aye; against, no. The ayes have it. The ayes have it. Clause 14, sir.

Mr Waft: Clause 14, Mr President, declares certain provisions of contracts of employment of shop workers to be unenforceable when they require shop workers to work on Sunday.

Sub-clause (1) applies to contracts of employment in respect of persons who are employed as shop workers on the day before the Bill comes into operation if the shop worker was not employed to work only on Sunday. Any requirement under the contract for the shop worker to work on Sunday or requiring an employer to provide Sunday shop work is declared unenforceable.

Sub-clause (2) makes provision in relation to agreements between shop workers and employer which are made after the legislation comes into operation. Any such agreement which requires shop work on Sunday or requires the employer to provide shop work on Sunday is unenforceable. This sub-clause applies only in respect of protected shop workers as defined in clause 4 and the reference to the protected shop worker in this subclause is extended by sub-clause (4) of this clause to women returning to work after childbirth. The sub-clause is also modified by sub-clause (3) in respect of circumstances where a protected shop worker expressly agrees to do shop work on Sunday after giving an opting-in notice under

clause 5. In such a case a contract of employment is deemed to be varied to the extent necessary to permit the shop worker to work on Sundays.

Mr President, I beg to move clause 14 stand part of the Bill.

Mr Kniveton: I beg to second, sir.

The President: I will put the resolution, hon. members, 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 Waft: Clause 15, Mr President, deals with circumstances where a shop worker gives notice to his employer to opt out of Sunday work and the effect which opting out has on the contract of employment between the shop worker and the employer. The clause indicates the circumstances in which contractual requirements relating to Sunday work become unenforceable.

Sub-clause (1) applies to a shop worker who has given an opting-out notice under clause 6 (2) following the expiry of the one-month notice period under clause 8 as amended in another place. Conditions in the contract of employment which require Sunday work or which require the employer to provide Sunday work become unenforceable.

Sub-clause (2) applies to any agreement between an opted-out shop worker and his employer requiring the shop worker to do Sunday work or requiring the employer to provide Sunday work. The sub-clause makes those elements of the agreement unenforceable after the expiry of the one-month notice period following the giving of an opting-out notice.

Sub-clause (2) is extended by sub-clause (4) which requires a woman returning from childbirth to be treated as an opted-out shop worker if she has previously given an opting-out notice.

Sub-clause (3) deals with cases where an opted-out shop worker gives an opting-in notice and expressly agrees to work on a Sunday. In such cases the contract of employment is varied automatically to take account of the shop worker's agreement to work on a Sunday.

Mr President, I beg to move that clause 15 do stand part of the Bill.

Mr Kniveton: I beg to second, sir.

The President: I will put the resolution, hon. members, 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 Waft: Clause 16, Mr President, modifies the effect of certain contracts of employment for shop work which require a shop worker to work for a specified number of hours each week and where the shop worker has been doing but now ceases to do Sunday work. The clause only applies to contracts which comply with the following conditions. Firstly, the employee must have been employed as a shop worker on the day before the legislation comes into operation and must not have been employed to work only on Sundays. Secondly, the contract requires the employer to provide shop work for a specified number of hours each week. Thirdly, the contract permitted Sunday work before the day in which the legislation comes into operation. Fourthly, the shop worker has done Sunday work before or even after the legislation comes into operation, and fifthly, at some stage after the date on which legislation comes into

operation the worker has ceased to do Sunday work. Until a shop worker gives an opting-in notice under clause 5 (1) (b) the contract is treated as modified. That modification means the employer needs only to provide the shop worker with weekdays shop work equivalent to those normally worked on the weekdays before ceasing to do Sunday shop work. In broad terms it means that the employer does have to increase the hours worked on weekdays to make up for the lost Sunday hours and the employee does not have to work on a Sunday to make up the guaranteed hours.

Mr President, I beg to move that clause 16 stand part of the Bill.

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

The Lord Bishop: Mr President, again I think I am just concerned with the fairness of the situation. If you can imagine somebody who is brave enough to say that they do not want to work on a Sunday, which I think in this legislation is going to be quite considerable in the future when an employer has got 20 prospective employees, it is going to be a very brave person who says, 'I don't want to work on a Sunday', when everybody else might say they will and therefore will get the jobs. But in the whole effect of this it seems to me that if somebody is saying, 'I can't work on a Sunday', for either religious or conscience reasons or whatever it may be, there ought to be some provision. I mean, that is a whole eight hours or more of a working day that according to this legislation cannot be made up in any other time, and I feel that there ought to be some flexibility in this clause that gives an employer and employee a chance to talk that through and perhaps make up some hours in the week outside of Sunday work and therefore I would ask that you give some consideration to permitting the word 'not' in line 16, omit that and insert for the protection of the employer 'as is practical and reasonable' in that sentence. I so move:

Page 13, line 16: omit 'not'.

line 16: after 'requiring' insert ' , but only to such extent as is practicable and reasonable'.

Mr Lowey: Again, to get the amendment on the floor, I will second the amendment.

The President: Now, hon. members, we have a resolution and an amendment. The hon. Mr Crowe.

Mr Crowe: Mr President, I am interested in the Lord Bishop's amendment here and, reading the clause, it appears to say that if an employee has, for instance, a 35-hour week and previously that included a Sunday, if he or she opts out of working on a Sunday the employer has to make up those hours by providing extra hours in the week to make it up to 35 hours.

The Lord Bishop: No.

Mr Crowe: That was the way I was reading it. But your amendment is trying to achieve that then.

The Lord Bishop: Yes, that is in the provision at the minute.

Mr Crowe: Right, if I could have some clarification on that.

The President: Learned attorney?

The Attorney-General: Mr President, as I read the Bill, the position is that if, to take the example from the hon. member Mr Crowe, an employee has a 35-hour week and that included work on Sunday, shall we say, and the employee wishes to opt out of that obligation to work on Sunday, then the employer does not have to provide any additional hours, i.e. by requiring the employee to work additional hours during the week, and it is primarily for the benefit of the employee, it seems to me. In other words the employee can still have his remuneration package, although he is not working on Sunday.

Now, it strikes me that if the Lord Bishop's amendment is permitted to form part of the Bill, the employer and the employee will have to negotiate an extension of the working hours between Monday and Saturday with a view to protecting the employer, in other words giving the employer the right to say, 'Well, look, employee, you're not going to work on Sunday but I'd like you to work some additional hours on Saturday or Monday', as the case may be. So in other words the Lord Bishop's amendment actually puts a different tilt on the whole expression of the Bill which up till now has been to protect the employee rather than the employer. I hope I have understood the Lord Bishop's amendment correctly.

Mrs Christian: Mr President, I am grateful for the learned Attorney's explanation. I certainly had not interpreted this as meaning that the employee's remuneration was protected.

The Lord Bishop: No.

Mrs Christian: It seemed to me that the person's job was protected within the limited hours outside of something that they worked before and it did not require the employer to provide extra hours, and I can understand the difficulties that that might present an employer with. If an employer has a contract with an employee to work so many hours a week including some hours on a Sunday it might not be easy to find extra hours during other days of the week, for commercial or other reasons. If they have got other employees who are fulfilling those hours it might impact on those other employees.

So the way I read this was that it does give the employee the opportunity to opt out of Sunday work but the consequence of that was that in opting out they would obviously not be paid. There is a contradiction in the interpretations here. I am not clear where the Bill says they continue to be paid. Perhaps the mover could clarify that point.

Mr Delaney: I would like this one cleared because I was quite happy with it, in fairness to the employer, they cannot pay somebody for not working if they will not work and they cannot guarantee him extra hours if the business does not allow it. But I am somewhat confused now with what has been said by the learned Attorney and I had the same view as Mrs Christian; that is all I am saying.

The Attorney-General: Sorry, I do agree with the interpretation by the hon. member Mrs Christian in so far as pay is concerned.

The Lord Bishop: So we do reduce the pay.

Mr Crowe: Mr President, surely it does give some protection to the shop worker in that, for instance, if it was a seven-hour, five-day week and one of the days was Sunday, and he or she said, 'Look, I really don't want to work on a Sunday any longer: reduce my hours by seven hours on a Sunday. Would it be right to the employer to make that time up? If he can't, I don't want to lose my job by the mere fact that I am having to work four days instead of five days.' I

think by turning it around the other way it might be more detrimental to the employee. That is the way I feel that the we are trying to do.

The Lord Bishop: From my point of view, my reading of it is that one is trying to say that if a person is opting out of the Sunday for any reason there is a definite cut in pay on that basis, there is not a provision for making up your pay to what you originally had, and I am asking here for some negotiation within that settlement for a person to say, 'Well, I'd like to keep my hours: is there any alternative that I could work in the week to make my 44 or 35?' whatever it may be, otherwise a person in this position is being penalised unfairly I think, for opting out of Sunday and that is an unfair harrassment of non-Sunday workers.

The President: Reply, sir.

Mr Waft: I thank the Lord Bishop for raising this concern and the Attorney-General for his explanation of the situation, as requested by the hon. Mrs Christian.

In many cases this probably already happens as part of good management practice, but you could have a situation where a new employee has accepted Sunday working and once in post decides to opt out. The employer would not only have to find extra hours for him during the week but they would also have to find someone else to do his Sunday work and possibly pay them a premium for doing so, and the cost to the retail industry could be considerable and probably would lead to more Sunday-only workers, as they are the only workers who cannot opt out.

So there are more problems again with this amendment, I would, see, helpful though it seems to be to the employee. There has to be a balance here and that could be the situation that could arise.

I beg to move that clause 16 stand part of the Bill.

The President: Hon. members, the resolution is that clause 16 do stand part of the Bill and to that resolution we have an amendment in the name of the Lord Bishop, circulated to you on the white paper. Will those in favour of the amendment standing part of the clause please say aye; against, no. The noes have it.

A division was called for and voting resulted as follows:

For: The Lord Bishop, Messrs Lowey, Radcliffe and Delaney - 4

Against: Mr Waft, Dr Mann, Mr Kniveton, Mrs Christian and Mr Crowe - 5

The President: Four votes being cast in favour of the amendment, 5 votes against, the amendment fails to carry.

I will now put the clause as printed. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 17.

Mr Waft: Clause 17, Mr President, enables an employer to reduce pay where a shop worker ceases to work on Sundays et cetera but only in effect where there is a reduction in the hours worked.

Sub-clause (1) declares that if certain conditions are met the pay of a shop worker may be reduced if apportioned to the reduction in hours caused by ceasing to work on Sundays. The clause applies in respect of pay and other benefits. A simple example illustrates a shop

worker who is employed to work 30 hours a week including three on Sunday for £90 in total. If the conditions of the clause are complied with, the pay may be reduced by three thirtieths, one tenth of £90, which results in a reduction of £5.

Sub-clause (2) deals with circumstances where the actual number of hours worked on Sunday varies from week to week depending on the number of hours done on weekdays. The effect of the sub-clause is to allow the proportion of reduction under sub-clause (1) to be varied from week to week to take account of the actual hours worked during week days.

Mr President, I beg to move clause 17 stand part of the Bill.

Mr Kniveton: I beg to second, sir.

Mr Delaney: Some, not all, shops, and we are talking about the big supermarkets which may pay a flat time, but a lot of our local shops pay extra time for working on a Sunday, so how does this equation work out when the person decides working those mathematics out? If you decide not to work, Sunday could be paid double time normally but it could be an extra payment for working Sunday. How is that calculation worked out when you decide not to work? How does that work out on the thirtieths? Because it is not exactly, it is a more substantial part of your salary than the ordinary flat time.

Mrs Christian: Mr President, I think it is clear from the clause that if your contract quite clearly says that you are paid a different rate on Sunday from other days, then you lose that remuneration when you cease to work on a Sunday. This clause only comes into effect when the contract is not clear about whether there is a different rate for a Sunday hour, I would suggest.

Mr Delaney: But in a contract of employment it should be clear exactly what your working hours are and what your payments are. That is what Mr Lowey's point was before. So we are having to police this, that is why it is there, to police it to make sure that it complies, but if somebody in some shop is paid extra because they have done their hours and they are not getting paid flat time, this calculation still has to be used surely, Mr President. Well, obviously you agree and he does not agree. Somebody agree with somebody, please.

The President: Reply.

Mr Waft: Mr President, I did not want members to take that paragraph too literally with regard to the thirtieths, and obviously extra time is paid for Sundays but it depends on where you are working exactly how much you are paid - sometimes it could be time and a third, time and two thirds, double time even - so without getting into the complications of it, this was trying to put it in a simplistic form. I do take the point.

Mr Lowey: It is the law.

The President: Hon. members, I will put the resolution 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 Waft: Clause 18, Mr President, enables employees to make complaints to the Employment Tribunal set up under the Employment Act 1991 where the employee alleges that he or she has suffered detriment contrary to clause 12. The powers of the tribunal are dealt with in clause 19.

Sub-clause (1) permits an employee to complain to the tribunal that he has been subject to a detriment in contravention of section 12.

Sub-clause (2) requires that when such a complaint is made it will be for the employer to show why any act or failure was done.

Sub-clause (3) provides a time limit for presenting complaints. Normally the time limit is three months from the act or failure from which the complaint results. If there is a series of acts or failures, then the time is calculated from the last act or failure. The tribunal is given the discretion to extend the period in proper cases.

Sub-clause (4) deals with two special cases relating to the calculation of the three-month period. Firstly, where an act extends over a period of time the three months is calculated from the last day of the period. Secondly, a deliberate failure to act is to be treated as done when the employer decides upon the failure.

Mr President, I beg to move that clause 18 stand part of the Bill.

Mr Kniveton: I beg to second, sir.

The President: I will put the resolution, hon. members, 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 Waft: Clause 19, Mr President, sets out the remedies available to the tribunal when it reaches a decision following a complaint under clause 18.

Sub-clause (1) enables the tribunal, if it finds the complaint proved, to declare that it finds the complain well founded and to require the payment of compensation by the employer to the complainant.

Sub-clause (2) deals with the amount of compensation. There is a considerable degree of discretion but it should be as much as justice requires, taking into account the nature of the infringement and any loss to the complainant. Tribunals will be able to use compensation awarded under similar legislation in the United Kingdom as guidance in setting amounts under this Bill.

Sub-clause (3) directs that the losses of the complainant should include, firstly, expenses reasonably incurred in consequence of the act or omission of the employer, and secondly, the loss of any benefit that he may have had but for the act or omission. Sub-clause (4) requires the complainant to limit his losses. This means that the complainant cannot simply sit back and allow them to accumulate without taking some reasonable action to limit the losses.

Sub-clause (5) allows for the tribunal to reduce any amount of compensation where it believes the employee did in part contribute to the act or omission.

Sub-clauses (4) and (5) summarise the principles which are generally applied in the assessment of damages in the high court.

Mr President, I beg to move that clause 19 stand part of the Bill.

Mr Kniveton: I beg to second, sir.

Mr Lowey: Mr President, I am sure the hon. mover of the Bill will have seen me referring to the front of the Bill which means I have gone back to the interpretation and again I would

like some comment, please. 'Where the Tribunal finds a complaint under section 18 well-founded'. Will somebody define to me what 'well founded' means? It either is proved or it is not proved, but 'well founded'? I looked in the interpretation for 'well founded' and I do not see it mentioned.

Now, unlike the mover of the Bill who said in our last clause, 'I didn't want you to take that too literally', well when we are passing the legislation that is precisely how it will be taken: absolutely literally when it comes to interpretation by whoever interprets it. So on this one, what does 'well founded' mean? Perhaps the Attorney could tell me if it is defined in one of the other Bills? It is proved or it is not proved. 'Well founded' - what does that mean?

The President: Mr Attorney, do you wish to respond?

The Attorney-General: Thank you, Mr President. I think that the use of the words 'well founded' is quite clear in so far as it means that if the complainant has made out his or her case to the satisfaction of the tribunal, then the tribunal can award compensation or make declarations and so on. It really is another way of saying that if the complainant has established his case to the satisfaction of the tribunal. It might perhaps have been better to have said that, but that in fact is what it means, I am sure, well founded.

Mr Lowey: But is it defined anywhere?

Mrs Christian: Mr President, again, dealing with with interpretation, we have a number of references to 'the Tribunal'. There is nowhere actually in the body of the Bill which defines which tribunal this is except for a margin note by clause 18. I would just like clarification, please, as to whether that is considered in drafting terms to be adequate to indicate which tribunal we are talking about or whether there ought to be some provision in the interpretation or a clause to define which tribunal will be involved.

Mr Crowe: Mr President, could I comment?

The President: Certainly, sir.

Mr Crowe: Mr President, my amendment under clause 20 actually will clarify this.

The President: I take your point, sir, but -

Mr Crowe: It was a drafting error in the Bill, sir.

Mrs Christian: Mr President, with respect, it does not.

Mr Crowe: No.

The President: So let us take it as it is at the moment and, Mr Attorney?

The Attorney-General: Well, Mr President, certainly on looking at this it would appear that 'Tribunal' has not been defined. It would obviously, I think, mean the tribunal as defined in the Employment Act in section 88 and the tribunal there means the Employment Tribunal. But I think it would be as well to cure this oversight in the Bill and it might be appropriate if I were to move an amendment when it comes to the third reading if hon. members were to agree that.

The President: Is that acceptable to hon. members?

Members: Agreed.

The President: Reply, hon. member.

Mr Waft: Thank you, Mr President. I thank the hon. Mr Lowey with regard to his concerns over 'Tribunal'. I have always thought it to be the Employment Tribunal that has been referred to correctly, but perhaps it might take an amendment to clarify it further. I beg to move, Mr President.

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 Waft: Clause 20, Mr President, prevents any agreement between an employer and a shop worker excluding or limiting the operation of part III of the Act including any restrictions on making complaints to the tribunal. I beg to move that clause 20 stand part of the Bill.

Mr Kniveton: I beg to second, sir.

Mr Crowe: Mr President, just before moving this amendment, I assume from the learned Attorney-General that he is going to be moving an amendment to the definitions in clause 1 next week.

The Attorney-General: Yes.

Mr Crowe: So it does not affect this amendment in any way. Thank you. Mr President, an amendment then to clause 20. In the green Bill on page 15, line 26 reference is made to an 'industrial tribunal' rather than the 'Employment Tribunal', which is referred to as 'the tribunal'. This is a drafting error that resulted from following the relevant section of the United Kingdom legislation. Mr President, I beg to move the amendment standing in my name:

Page 15, line 26: for 'an industrial tribunal' substitute 'the Tribunal'.

Mr Radcliffe: I beg to second.

The President: Does any hon. member wish to speak to either the clause or the amendment? If not, reply sir.

Mr Waft: Mr President, I thank the hon. member Mr Crowe for his amendment. It is in keeping with the thoughts of the Bill and I beg to move clause 20, Mr President.

The President: Hon. members, I will put the resolution that clause 20 do stand part of the Bill and we have to that resolution of course the amendment in the name of the hon. Mr Crowe, as set out on the white paper. Will those in favour of the amendment standing part of the clause please say aye; against, no. The ayes have it. The ayes have it.

Now, those in favour of the clause as amended standing part of the Bill please say aye; against, no. The ayes have it. The ayes have it. Clause 21, sir.

Mr Waft: Clause 21, Mr President, modifies the effect of certain provisions of the Bill so far as they relate to cases where a woman has been absent for the purpose of childbirth and is unable to return to work because the pregnancy has left her incapable of adequately doing her work or she will not be able to do the work without contravening any duty or restriction imposed by or under any enactment.

Under section 47(3) of the Employment Act 1991 an employee is treated as unfairly dismissed if the employer dismisses her on the grounds mentioned and the employer or an

associate or his successor has not offered an alternative position if there is a suitable vacancy. Where an alternative position is offered it will be under a new contract of employment and may break the continuity rules required to keep a woman's status as a protected worker or an opted-out worker. The clause ensures that that will not happen.

Mr President, I beg to move that clause 21 stand part of the Bill.

Mr Kniveton: I beg to second, sir.

The President: I will put the resolution, hon. members, 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 Waft: Clause 22, Mr President, modifies the provisions of the Employment Act 1991 which apply for the purposes of this Bill. As modified, section 75(3) of the 1991 Act will apply in respect to a contravention of the right not to suffer detriment for refusing Sunday work as well as for the purpose of infringement of rights under the 1991 Act. Paragraph 3 of schedule 5 and section 84 of schedule 6 of the 1991 Act are modified in the same way.

In the Keys the reference to 'Great Britain' at line 2 on page 16 of the Bill was amended to read 'Island'.

Mr President, I beg to move that clause 22 stand part of the Bill.

Mr Kniveton: I beg to second.

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 Waft: Clause 23, Mr President, repeats the provision contained in section 1 of the Shops Act 1985. The clause makes it an offence to require a shop worker, as a term of his contract, to work for more than seven specified periods without intervals for meals and rest.

Sub-clause (1) declares that a contract of employment of a shop worker must not oblige a shop worker to work for more than five hours without an interval of at least 30 minutes or for a total number of hours, exclusive of intervals allowed for meals and rest, in excess of 10 hours in any 24 hours or 44 hours in any week.

Sub-clause (2) makes it an offence for the employer of a shop worker to fail to comply with sub-clause (1) for which the maximum penalty is a fine of £2,500.

Sub-clause (3) is evidential. It is based on the requirements in the Employment Act 1991 that written particulars of the terms of employment must be given to each employee. If those particulars include a term or condition which contravenes sub-clause (1) the particulars are to be treated as conclusive evidence of the contravention.

Sub-clause (4) advises employers to include the written particulars of terms of employment which are delivered in accordance with section 1 of the Employment Act 1991: a statement that the shop worker is not obliged to work for any spell or period in excess of those referred to in sub-clause (1).

Sub-clause (5) excludes contracts of employment entered into before 19th November 1985 from the operation of this clause. This is because the equivalent provision in the Shops

Act 1985 excludes contracts of employment which were entered into before the date on which that Act came into operation. That Act came into operation on 19th November 1985.

Mr President, I beg to move clause 23 stand part of the Bill.

Mr Kniveton: I beg to second, sir.

The Lord Bishop: Could I ask for a point of clarification please, Mr President. Bearing in mind that the legislation means deregulation of the Sunday shopping, trading and so on, looking at the hours here, does that mean that a person could work seven days a week, and if so, is that not an unsociable type of contract for anybody to opt in for? I am just a bit concerned. I am not quite sure what these hours mean, but it seems to me that a person could be asked under this provision to work seven days a week.

Mrs Christian: Mr President, I would just like if the mover could confirm that whilst it does not create an obligation for a shop worker to work more than 44 hours, if a shop worker wished by agreement to do more than those hours, it does not impose any restriction on the overall hours which may be worked.

Just with regard to the comments of the Lord Bishop, it seems to me that the whole of this Bill provides that nobody has to work seven days a week. By opting out on the Sunday you can restrict the number of days that you are required to work. That is the essence of the Bill.

Mr Lowey: Could I ask regarding the question raised by my hon. friend Mrs Christian regarding the 44 hours a week and anybody can then work more hours if they so wish, does European directive on hours worked apply to the Isle of Man or does it not and will it not come in to cover that category?

The President: Mr Attorney.

The Attorney-General: Mr President, yes, my understanding of the European directive is that it would not apply in the Isle of Man and we are not bound by that part of the European Convention. Also it does not apply in the United Kingdom at the moment.

The President: Reply, hon. member.

Mr Waft: Thank you, Mr President. With regard to the Lord Bishop's query with regard to working seven days a week, yes, that is certainly still a possibility. We have not limited the days of the week. What we have done in this Bill is specified with regard to the amount of hours that can be worked with the interval of at least 30 minutes and the total number of hours, exclusive of intervals allowing for meals and rest, in excess of 10 hours and then 24 hours or 44 hours in any week. There is no actual limitation on the number of days in the week that they work, if the contract of employment is what they wish to do. But this Bill, the whole contents of this Bill, is that they can opt out from working completely from Sunday to Sunday.

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, sir.

Mr Waft: Clause 24, Mr President, imposes a liability on officers of bodies corporate where the body corporate commits an offence under the Bill with the connivance et cetera of the officer.

Sub-clause (1) imposes personal criminal liability on directors, managers, secretaries and other similar officers of bodies corporate, including a person purporting to act in such a capacity. Where the body corporate commits an offence under this Act and it is proved, the individual officer will be prosecuted and punished as if he had personally committed the offence.

Sub-clause (2) deals with cases where a body corporate is not managed by directors or officers but by its members. This is most likely to happen in companies known as companies limited by guarantee. In the case to which this sub-clause applies the members will be subject to personal responsibility for the acts of the company which are permitted with their consent and connivance et cetera.

Sub-clause (3) deals with a special type of body known as a limited liability company which is established under the Limited Liability Companies Act 1996. These companies bear some of the hallmarks of a traditional company but also some of the hallmarks of a partnership. In addition management can be by members or by a special manager or by a registered agent. The sub-clause has the effect of imposing personal liability on members, managers and registered agents if the body commits an offence with their consent and connivance et cetera.

Mr President, I beg to move clause 24 stand part of the Bill.

Mr Kniveton: I beg to second, sir.

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

Mr Waft: Clause 25, Mr President, makes two amendments to the Employment Act 1991 which are necessary as a consequence of the operation of this Bill.

Sub-clause (1) amends section 55 of the 1991 Act. Section 55 deals with the dismissal procedures arrangements. Where such agreements are in force they replace rights not to be unfairly dismissed established by section 41 of the 1991 Act. Subsection (4) of section 55 provides for an exception to that exclusion, and the effect of the amendment under this clause is to ensure that the rights under the Bill not to be unfairly dismissed for refusing to work on Sundays cannot be excluded by a dismissal procedures agreement.

Sub-clause (2) amends section 76 of the 1991 Act and that section enables an industrial relations officer to endeavour to promote a settlement in any dispute between employer and employee. The effect of this amendment is to enable conciliation to be undertaken in relation to complaints by a shop worker that he has been subject to detriment contrary to section 12 of the Bill.

In the Keys a substantial new sub-clause was added which inserted a new section into the Employment Act 1991. This requires the Department of Trade and Industry to publish a notice summarising the rights of employees under the 1991 Act, the Redundancy Payments Act 1990 and the Shops Act 2000 in two newspapers at least once a year. The Department of Trade and Industry may prescribe the form of notice.

Mr President, I beg to move clause 25 stand part of the Bill.

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. Clauses 26 and 27, sir.

Mr Waft: Clause 26, Mr President, repeals the Shops Act 1985 and amendments which were made to do with that Act by the Employment Act of 1991; the provisions of the repealed Act have been consolidated into this Bill.

Clause 27 provides the short title of the Act and its commencement. The Act may be cited as the Shops Act 1999 and may be brought into operation by an appointed day order made by the Department of Trade and Industry. Different days may be appointed for different provisions and different purposes.

I beg to move clauses 26 and 27 stand part of the Bill.

Mr Kniveton: I beg to second, sir.

Mr Lowey: Mr President, again I started off my comments on the Bill by saying about the differences in presentation, again with the interpretation being at the front of the Bill, and again this Bill differs from other Bills and if we are going to have a different format, then I think we should be told we are going to have a different format, because the repeals and schedules and things are usually in other Bills at the back, where we see what the Bill is and where they are being repealed and the like, and there is no such provision in this piece of legislation.

Now, those of us who are used to it are used to going to the back, and perhaps again it may be an interesting transitional thing that we are doing, but if a department of government - and I presume the department that is promoting this is the trade and industry department - are going to what I would call alter the format, then I think we should have advance knowledge. It may be a detail, but I think in parliamentary terms we should know what we are doing and if there is a change about, and therefore I just ask the member to comment on that and to explain why the repeals are not in the Bill as normal, because if people come to look at the Bills, they look for the repeals at the back of an ordinary Bill and it will not be there.

The President: Reply, sir.

Mr Waft: Thank you, Mr President. Perhaps the Attorney-General might like to a comment on that. *(Laughter)*

Mr Lowey: Good lad, George!

The Attorney-General: Well, Mr President, the draftsman in my chambers has obviously considered, I think, that the repeals are very slight indeed in so far as -

Mr Lowey: The whole Act?

The Attorney-General: - that can be stated in a straightforward sentence, I think, in clause 26.

I quite agree that in clause 26(2) it might have been preferable for entry 3 of schedule 10 to be quoted in this Bill. It is always difficult when you have to cross-reference and look back at certain Bills, but I can only assume that it is because there are so few amendments made by clause 26 that the draftsman thought that was appropriate.

Mr Lowey: And I accept that explanation.

The President: Hon. members, I will put the resolution that clauses 26 and 27 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.

The Lord Bishop: Mr President, can I make a request?

The President: Sir.

The Lord Bishop: You might think this is out of order, but next week I have to be in York for a consecration of a new Bishop and therefore would miss the sitting in this chamber, and I would like to record my vote at the third reading, and I understand the Bill wants to progress fairly quickly, but the following week would be before Tynwald and would be early in February anyway, the second week in February. I wonder if, with your permission, I might ask for the mover to move the third reading a fortnight today and not a week today.

The President: You certainly may ask that, sir. Your response?

Mr Waft: Yes, Mr President, I think we can accommodate the Bishop's wishes.

Social Security Bill – Second Reading Approved – Clauses Considered

The President: We move on, hon. members, to item 2 on the order paper and I call on the hon. member Mrs Christian to move the second reading of the Social Security Bill.

Mrs Christian: Mr President, when the national insurance and national assistance schemes were introduced in Great Britain after the Second World War the Isle of Man passed similar legislation and continued to do so in order to follow changes in UK legislation until 1974. This was principally in order to ensure that reciprocal arrangements with regard to contributions and benefits remained in force.

As the social security system of Great Britain became more and more complicated the difficulty of keeping up with the increasing mass of primary and secondary legislation became insuperable. Because of that, in 1974 new legislative arrangements were made by the Social Security Legislation (Application) Act 1974 which conferred powers on the Isle of Man Board of Social Security to make orders applying UK legislation, both primary and secondary, relating to social security in the Isle of Man. Such orders were subject to Tynwald approval and their effect was that the applied UK legislation became a part of Manx law, subject to the modifications specified in the relevant application orders.

Recognising that UK legislation, particularly regulations, might have come into force in Britain before an application order could be made and approved by Tynwald, the 1974 Act gave power to apply such legislation retrospectively, i.e. to backdate its operation, but no further back than the operative date in Britain. This was necessary in order to ensure compliance with the reciprocal agreements between the Isle of Man Government and the United Kingdom Government with regard to social security.

The 1974 Act applied originally only to the UK Social Security Act 1973 and Acts amending it. But it had to be amended in 1975, 1976, 1977 and 1980 to enable new UK Acts to be applied.

The Social Security Act 1982 replaced the Acts of 1974 to 1980 and conferred power by order to add new UK Acts to the list of Acts which might be applied to the Isle of Man by application orders.

The 1982 Act is still in force, but it has in its turn appeared to be failing in certain respects. The form of application order required by the Act is very unfriendly in that it has to list the modifications to the UK legislation which it made and could not be understood without all the text of the latter and with difficulty even then. The Statute Law Revision Act 1992 gave power instead to set out the modified text in a full schedule. Although it is bulkier, the application orders are now easier to read.

UK social security legislation has become more and more concerned with occupational pensions and when the pensions legislation was hived off as a separate Act in 1993 it was necessary to pass a separate Act of Tynwald, the Pension Schemes Act 1995, to enable the 1993 and subsequent pensions legislation to be applied. So the 1982 Act applies only to more strictly social security matters.

It has been the practice to apply some new UK legislation administratively even before the necessary application order is made, in the expectation that the order would apply retrospectively so as to validate past actions. The increasing quantity of UK legislation and the extent of the changes made by it has made the practice of back-dating increasingly risky, and you may note the time and the delays which sometimes occur in bringing those measures forward to Tynwald. If the delay between administrative action and validation is wider than a few months there is the danger that an appeal or other legal challenge will declare the action without authority, since a court or tribunal is bound to apply the law as it is, not as it will be.

It is this last failing that the Bill is designed to address. It shortens the time between the making of an application order and its coming into effect by providing that it will be subject to subsequent approval instead of prior approval by Tynwald, that is, instead of having to have the order approved by Tynwald before it comes into force, it may come into force immediately, provided that it is approved by Tynwald at the next or next but one sitting, and if Tynwald does not at that time so approve it, then the order ceases to have effect.

The opportunity is also taken to consolidate the 1982 Act with all its amendments and to repeal a number of obsolete Acts relating to social security.

I therefore beg to move the second reading of the Bill, Mr President.

Mr Radcliffe: I beg to second, sir.

The President: I will put the resolution, hon. members, that the Social Security Bill will be now read a second time. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses - proceed, hon. member. Clause 1.

Mrs Christian: Clause 1 and schedule 1, Mr President, give the Department of Health and Social Security a general power to apply existing and future UK social security legislation to the Isle of Man by application orders. They will enable the application of any UK legislation to be back-dated but no further than the relevant commencement date in the United Kingdom.

The sub-clauses also set out the ways in which the application order may be drafted, and sub-clause (5) sets out the legislation which can be applied by an application order under sub-clause (1).

Sub-clause (6) gives the department power to amend schedule 1 by adding further Acts and deleting unwanted Acts from the list of Acts which can be applied to the Isle of Man.

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

Mr Waft: I beg to second, sir.

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

Mrs Christian: Clause 2 sets out the procedure for making application orders under clause 1(1) and amending orders under clause 1(6). It provides for approval by Tynwald after the order comes into force instead of before, as at present. The sub-clause also requires the department to produce a text of the UK legislation applied by the application order as soon as it comes into force unless it is an order under clause 1(4)(b) which itself sets out the applied text and the schedule, and the clause also requires the department to make the applied text available for public inspection at its main office and to sell a copy to anyone who wants one. I beg to move that clause 2 stand part of the Bill.

Mr Waft: I beg to second, Mr President.

Mr Lowey: Just for clarity, Mr President, I think the Bill is a practical way of dealing with the day-to-day problems of the department and to that extent I welcome it.

This clause 2 is making it quite clear how it will operate. But is there anything to stop the department if there is a recess of, say, three or four months, if something comes in out of the blue, from implementing it but getting the information out to the general public in a public format, subject to Tynwald approval?

My fear is that somehow in dealing with this the department then becomes the sole arbiter of when it will actually come to Tynwald. It says here 'as soon as the department decides'. Now, I am sure the present department and previous departments have always tried to get it to Tynwald as quickly as practicable, but there may be a time where it may suit an administration not to do it, and if we are putting it in legislation we should be quite clear that it should be, or in receipt of that, and then the general public should know why it is not being done. Does this clause give carte blanche to the department to be the sole arbiters, or does it actually give a timescale that is reasonable and what I would call fair?

What I am trying to do is take a worst case scenario and make sure that we are not allowing or justifying that by saying, 'But in the legislation it says we can do it, so we can do it.'

The President: Reply, hon. member.

Mrs Christian: Mr President, the essence of this is to enforce reciprocal arrangements with the United Kingdom and to that extent it will be the date at which the United Kingdom introduces changes that the department will seek to introduce changes. At the moment that is done administratively but without any authority until Tynwald confirms it, and as I have tried to indicate, that provides for difficulties in the event of there being too long a period between Tynwald approving it and it actually having been applied administratively. This will give the department a legal basis on which to make the UK changes applicable, and the reciprocal arrangements, as soon as they come into force in the United Kingdom, and it obliges us to

come to Tynwald at the next or next available sitting for Tynwald to confirm that it approves our continuing with those reciprocal arrangements. If Tynwald does not support that at the time when it is presented to them, then anything which has been done in that intervening period has a legitimacy but it will cease at the point at which Tynwald does not approve it.

The President: I will put the resolution, hon. members, that clause 2 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 3, hon. member.

Mrs Christian: Clause 3, Mr President, is the interpretation clause in which the terms that are used in the Bill are defined. I beg to move that clause 3 stand part of the Bill.

Mr Waft: I beg to second, Mr President.

The President: I will put the resolution, hon. members, that clause 3 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 4 and schedule 2.

Mrs Christian: Clause 4 and schedule 2 provide for the short title of the Bill and repeal the Acts and orders listed in schedule 2, which are mostly legislation superseded by the Bill but also include the remaining and redundant provisions of two Acts of 1974 and 1975. I beg to move clause 4 and schedule 2 stand part of the Bill.

Mr Waft: I beg to second, Mr President.

The President: I will put the resolution, hon. members, that clause 4 along with schedule 2 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.

Now, I think, hon. members, it is unwise perhaps to start another hare running and with a sitting of Tynwald at 2.30 this would be an appropriate time for Council to adjourn and the adjournment will be until Tynwald at 2.30. Thank you very much.

The Council adjourned.