

**REPORT OF PROCEEDINGS OF
LEGISLATIVE COUNCIL**

**Douglas, Tuesday, 29th February 2000
at 10.30 a.m.**

Present:

The President (the Hon Sir Charles Kerruish OBE LLD (hc) CP), 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 Chaplain of the House of Keys took the prayers.

Apologies for Absence

The President: Hon. members, we have apologies for absence from the Lord Bishop, who is presently off the Island.

Crowe EPH Ltd – Evaluation Prior to Award Of Contract – Question by Mr Delaney

The President: Now, hon. members, turning to our order paper, the first item is a question for oral answer and I call upon the hon. Mr Delaney to ask the question standing in his name.

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

Was an evaluation made of the financial standing of Crowe EPH Ltd before it was awarded a contract in respect of work at the new hospital and, if so, by whom?

The President: The Minister for Health and Social Security to reply.

Mrs Christian: Mr President, under the terms of the management contract between the department and Bovis Construction Ltd, now Bovis Lease Lend, that company is amongst other things required to prepare lists in conjunction with the employer and the design team of works contractors for tendering and to investigate and report on their capabilities and financial standing. The company is also required to assist in evaluating tenders from works contractors and making recommendations thereon. The report to the department which led to the awarding of two contracts to Crowe EPH Ltd incorporates reports from Bovis which, in effect, say that they discharge these responsibilities on those contracts. The company has been invited by the department to provide further information as to the manner in which the investigative responsibilities were discharged, Mr President.

Mr Delaney: I thank the minister for her reply to me. Can I ask one supplementary, Mr President? Bearing in mind that Bovis were given duties as outlined by the minister, does she not find it strange that Bovis took a part according to the directors in the formation of this company?

Mrs Christian: Mr President, recognising that the philosophy of government and the department was to try and encourage as many Manx companies to get involved as possible, Bovis did indeed, I understand, have a role in encouraging a joint venture as it was portrayed to the department. I do think one should view that in a negative sense. One has to remember that this was not the only company which tendered for the project. Others did also and they

were all investigated and reported on in the same way. So I am not sure that we should assume that the fact that Bovis were involved in, as the hon. member suggests, encouraging a joint venture was not appropriate.

Mr Delaney: Mr President, that forces me to ask a further supplementary. If the minister does not think that it was not appropriate, surely then the setting up of this company under the terms as you have just laid out was purely a sham to give the impression that this was a Manx company and not for the actual purpose of which Bovis were employed in the first place, to ensure the work went to Manx companies?

Mrs Christian: Mr President, it is not possible that all the work on this project should go to Manx companies by virtue of the size and scale of the operation. I think it is pertinent that we are very careful at this time what we say about these issues in case we prejudice any future actions to be taken by any party, but I think that the hon. member is writing into his question issues on which I am not prepared to comment at this time without proper investigation of the exact wording which the hon. member has used.

Mr Delaney: Can I ask you, Mr President, as there is no legal case being brought at the moment, am I in danger of going sub judice according to the minister? She has just answered the question -

The President: I have no idea whether you are in danger or not, but all I can say is that you posed a question and the question is answered in the manner that the person that the question has been posed to wishes to answer it.

Mr Delaney: Therefore, Mr President - I thought this would have been over in one question - the situation then, I must ask, is, are you in any way investigating the conditions under which this contract was given in relation to the parties employed by your department to investigate the company that went into liquidation and reporting back to the Chief Minister or somebody with the results of that investigation?

Mrs Christian: Mr President, I have answered that, I think, in my first answer. We have asked those who have been responsible for making the recommendations to the department with respect to this company or any other company on which they make recommendations, but particularly on this one, to provide us with further information as to the manner in which they carried out their investigations which backed up those recommendations.

Mr Delaney: And will you be putting that report to a higher authority such as the Chief Minister or the Council of Ministers?

Mrs Christian: Mr President, the department has already prepared a preliminary report on the issue for the Chief Minister and the Council of Ministers. We will be keeping them informed as these matters unfold.

Mr Delaney: Thank you, Mr President.

Mr Lowey: Could I ask a supplementary, Mr President? Would the minister tell the Council if there is a timescale on the looking in? You have asked Bovis to comment on their agreement or their involvement with the formation of this company - is there a timetable? And is she not alarmed that, because of the urgency of the matters that are in the public domain, the silence of Bovis actually puts an added strain on the department who really have employed Bovis to act as their agents (**Mr Delaney:** Hear, hear.) and therefore the department is taking

the strain on behalf of Bovis. I find that rather improper. Perhaps I should watch my language but I do believe that -

The President: Pose a question.

Mr Lowey: Yes, indeed, sir. Is there a timescale on it and would she like to comment on Bovis?

Mrs Christian: I am putting pressure on the parties who I have asked to report to me to do it as expeditiously as possible. Clearly we are concerned that in going forward, as has been said by other people in other fora, we want to ensure, if we can learn anything from this, we must learn quickly to ensure that we protect against a repeat if that is humanly possible. Now, that depends on the analysis of what has gone wrong here. Indeed, I will certainly be pressing Bovis and the design team, all those who are involved in advising the department, for answers.

In terms of whether or not Bovis should be responding, I take the hon. member to imply, publicly, I am not sure that they have an obligation to do that, but certainly they have an obligation to respond to the department so that I can make the Council of Ministers aware of their arguments in relation to this matter.

Mr Lowey: My final supplementary to the minister. Was Bovis not employed to oversee the whole project and isn't that part of their remit to actually be answering the public as they have been in their PR exercise of how the development has been developing? Isn't this part and parcel of that general contract?

Mrs Christian: Mr President, there is a contract with Bovis to undertake the management function on this whole project indeed. The detail of that is obviously contained in a considerable document. I am not sure what the hon. member means by, 'isn't this a part of what Bovis should be dealing with?'

Mr Lowey: How the scheme is developing, and if there is a problem - and there is a problem with the scheme then - it is up to the main person who is employed by you to present the scheme to actually give the answers out, not the department, not the client.

Mrs Christian: The point at which the questions can be put, Mr President - I presume this produces a forum where the questions can be put and the department is endeavouring to answer them. Bovis and others need to make responses to the department. I agree with that and I have indicated that we are asking them for their responses on the issues that I have mentioned earlier. They do have a responsibility for the continuing operation of the project and management of the way it goes ahead and a responsibility to ensure that their contractual responsibilities in that direction are met. Now, this particular issue poses problems in that respect as well, but they have got to manage them.

Employment (Sex Discrimination) Bill – Second Reading Approved – Consideration of Clauses Commenced

The President: We move on, hon. members, to item 2 on the agenda paper, and I call upon the hon. Mr Delaney to take the second reading of the Employment (Sex Discrimination) Bill.

Mr Delaney: Thank you, Mr President. On the second reading, hon. members, I am sure you are aware of the purpose and reasons for this Bill which, I said last week, is to implement

the recommendations within the Social Issues Committee report entitled 'Sexual Equality in Employment' and that legislation being aimed at outlawing any discrimination between men and women in relation to employment should be prepared and introduced in that report. The legislation should be based on the employment aspects of the United Kingdom, sex discrimination and equal pay Acts. I would like to deal with some of the general provisions of the Bill and elaborate further when we get to the clauses stage.

The Bill is split into four parts. Part 1 of the Bill deals with equal pay and is based on the UK Equal Pay Act of 1970. The Bill implies in every woman's contract of employment, and conversely in every man's, a term known as an 'equality clause', that she will be treated no less favourably than a man if she is engaged in light work, and that is where the woman's work and the man's work are broadly similar, or work related as equivalent. That is where the woman's work and the man's work have been rated as equivalent in terms of the demand made on the worker under various criteria such as the efforts and skills by the job evaluation study.

The present Bill does not go as far as the UK legislation, in that it does not seek to apply the concept of work of equal value whereby a woman's work can be claimed to be of equal value to the man's, who might be doing a quite different job, and there has been no job evaluation. It is generally acknowledged that this part of the UK Equal Pay Act, which came into being as a result of the European Community legislation in the 1980s which is not binding on the Isle of Man, has not worked well and these cases have been characterised by complexity, delay, great expense and extremely low take-up rate.

Part 2 of the Bill deals with the aspects of discrimination other than pay and is based on those parts of the UK Sex Discrimination Act of 1975 in relation to employment if it makes unlawful both direct discrimination - that is, treating a person less favourably on the grounds of sex - and indirect discrimination - that is, applying to all persons unjustifiable conditions which fewer women than men can comply with or vice versa. Either form of discrimination is rendered unlawful if it occurs in a number of specified circumstances related to employment ranging from arrangements for selection, promotion, transfer, training or other benefits, and dismissal. Protection is immediate and it is not necessary to work to a qualifying period of continuous employment. The Bill makes allowances for those situations where it is not unreasonable for an employer to seek to recruit a member of one sex only. In addition, employers are given two possible defences: indirect discrimination which can be justified to an employment tribunal is not unlawful, neither is discrimination which can be justified by reason of the size of the administrative resources of the establishment in question. This latter revision was included in recognition of the special difficulties that the legislation may present to small employers but, as I have said, there is a defence only, not a blanket exemption of all employers who fall within the scope of the general provisions of the Bill.

The third part of the Bill is concerned with enforcement. The individual remedy is to complain to the Employment Tribunal, which may award arrears of pay for a period up to two years preceding the date of application for breach of equal pay provision. The tribunal may also award up to £13,000 compensation for breach of the provisions within part 2 of the Bill dealing with sex discrimination. It is to be noted in this context that the medium level of compensation in the UK was just over £4,000 in 1999. Part 3 of the Bill also gives the Attorney-General powers to seek a high court injunction to restrain persistent discrimination and certain

other activities. Breach of such an injunction would be punishable by a fine or imprisonment or both. Publication of an unlawful advertisement is made a summary offence, attracting a fine of £5,000 on conviction.

Part 4 of the Bill contains supplemental provisions including that for a new discrimination officer post. The new post is being created to educate and advice employers and individuals on the implications of legislation, some of which are not obvious. Part 4 of the Bill also contains the commencement provisions. Whilst the discrimination officer post will come into effect immediately, the Bill as a whole will come into force three years after it is passed. This is necessary, as equal pay claims can be backdated for up to two years and the legislation will otherwise have a retrospective effect. The deferral period will give employers one year to bring their pay structures into line with the law should this be necessary, and then a further two years before any award can be made for back pay. In the UK there was a deferral of five years before the UK Equal Pay Act came into force.

I beg to move the second reading, Mr President.

Mr Kniveton: I beg to second, sir. Mr President, I have to agree that it is long overdue that legislation should be brought in to introduce measures to prevent discrimination, particularly on grounds of sex in employment amongst all the other many reasons. Some members may ask: can discrimination be proved, especially here on the Island where possibly job opportunities are not so great? However, to that I would say, yes, we must ensure it is; just as it is normal within developed countries to provide equal opportunities, we should that our Island is the same.

Now, I hope I am not a male chauvinist. I do not think so. I believe that if a woman can or is capable of doing the same job as a man, then she should be paid at an equal rate, and of course I immediately look across this hon. Council and I look at Mrs Christian; she is a minister and she is doing the same work as other ministers within government. I am sure, if she was not being paid equal, she would shout it as well! I am interested to note that, whereas we seem to concern ourselves with women being equal to men, the Bill also implies that men should be treated the same as a woman if engaged in the same work as she does.

I also note that the main forum for dealing with complaints of discrimination will be the Employment Tribunal, likewise for unfair dismissal claims. I have no problem with that.

At last it appears that advertisements must not discriminate unlawfully. Certainly a man or a woman may soon just become a person or a £5,000 fine. It is interesting to note that there is provision for the appointment of a discrimination officer, and I believe that such must be the case, otherwise there is no point in approving this Bill, especially for education of employers just as much as employees.

However, I was interested to note from the hon. mover that the Bill will not come into force until three years after it has been passed, whereas it was five years in the UK. I do ponder over that one.

Now, the question will always arise if this Bill is necessary. I have to agree that probably it will be sufficient for the Isle of Man. Nevertheless, I do support the Bill and I look forward to the clauses stage. Thank you.

Mr Lowey: The more I look at this Bill, Mr President, the less enamoured I become of it. Perhaps it is the mood I am in, I do not know, but I think the best way I can describe this particular Bill is it has got GM and, as everybody knows, like GM food it means it is genetically modified. How can you have a Bill that describes itself as anti-discrimination where you actually legally permit discrimination? And you do, with this Bill, actually allow discrimination. Now, discrimination is discrimination, whether it is practised in a firm with 101 people or with a firm that has got five people.

I have to say that clause 8 leaves me stone cold. That clause actually says you can discriminate if you are a small employer, so you immediately undermine the principle that you are against discrimination. By the way, the Bill does not delineate what 'small' is, so again we are only getting it on the say-so of how we have described it in the past: 'small' in Manx terms means a firm with less than five employees. So again I think the Bill introduces another doubt. And they are called by the mover of the Bill in another place 'safeguards for small businesses'. Now, these safeguards are always trotted out, whether it is minimum wage, sex discrimination or redundancy pay: 'The small firms cannot stand it, they will go to the wall' - that, I think, the phrase was when it was used in another place. On this particular Bill you want to destroy small businesses. As far as I am concerned, that is strident, over the top and does not bear examination.

As far as I am concerned, I believe these are all reasons that are trotted out to delay the implementation. The mover of the Bill has quite rightly said that in 1986 this was extended to the Isle of Man. It went to a committee of Tynwald and they agreed in 1981 and approved by Tynwald for introduction, so you cannot say we have rushed these fences, but the people that have kept a delay and delay and delay are the small businesses and those that represent them; never mind the workers who are in employment, it is their involvement that we are defending. That is why this Bill has been modified the way it has, and it is quite open and above board, but it must be spelt out why it is being done. It is to protect small businesses.

Now, I am not against small businesses. I think in my political career as Minister for Trade and Industry I did more for small businesses than most, so I know all about trying to help, and I would remind hon. members that in year's budget we gave three-quarters of a million pounds in direct help to small businesses on top of the £2 million we gave them the year before. So do not say that we are against small businesses; we are anything but, but I am in favour of fair treatment for workers, whether they are in employment with big business or small business. I believe that they should have the same protection. This Bill does not - let me repeat it, *does not* - give them the same protection. I notice the person who is going to be employed to educate the employees and employers; their first priority - and I only quote the mover of the Bill in another place - is that it is to assist and help, in the first instance, employers. Now, as far as I am concerned, I am all for people being helped and encouraged and shown the way, but I do believe in equal treatment.

No, this particular Bill means well, I have no doubt. We said last week it could be a framework - I actually used those words myself - on which we could build, but then I have to say my confidence is shattered when I hear the Chief Minister in another place saying 'By the way, the next bit of legislation on social legislation will be three years.' We have got a three-year programme and not one piece of social legislation to re-emphasise this is on the statute book or planned to be introduced. So if we are going to consult now with the people and if our

record of consultation is on this particular bit of legislation since 1986, then goodness knows when we are going to get the next piece of legislation. The will is not there. The record is clear that it is used as a delaying tactic and successfully, and I do not blame them for it - I do blame agencies of government for to allow it to happen. The consultation process has been very effective if you are a small employer. It is no good to the employees.

I think it is truly the art of self-deception to have a discrimination Bill that allows you to discriminate. It is nebulous, I can almost call it deceitful, and it is self-defeating. It will not be understood or condoned locally or, much more importantly, accepted by the international community, who will be looking at the Isle of Man and what we are doing or what we have promised to do in the discrimination stakes. The Bill is bereft, in my view, of its main aim, which is to end discrimination. It is deliberately designed to eliminate. . . and if we use the records that are being used before that 70 per cent of business in the Isle of Man is small business, then we are denying the majority of employees in the Isle of Man the right to what I would call the protection of the law against discrimination, and I do find it very strange where the mover of the Bill, again in another place, says 'Indirect discrimination,' which is the polite way in which they describe this nuance so that they can discriminate if you work in a small firm, 'can be quite difficult to grasp, and some potential applications of the provisions, particularly regarding pregnancy'. Well, if that is not peculiarly what I would call feminist. . .' I know, or it is alleged to me, that it takes two to create a pregnancy, but the lady carries the baby and is therefore up front and very much subject to discrimination in many instances - subtly, I agree, and that is why it is very important that she has this protection of the law.

I also have a great doubt in my mind that by limiting the amount of damages that this Bill does, which was introduced in the UK and has now been abolished, it seems to me to be getting a wrong signal out to the community that somehow you are going to penalise people. No matter how bad the discrimination is, you are limiting the damage that has been done to them to a measly £13,000 when the damage to a professional person, in my view, could be a whole lot more than that, and therefore I am not in favour of putting it in as a limit of £13,000; I think it should be left open, like it is in the UK. Times have moved on and I believe that you should be sending out a strong message that you are against discrimination. I think most people are against discrimination in their heart of hearts. As the hon. mover, my colleague, Mr Kniveton said, most of us just take it as normal, but regrettably I do believe that there is an in-built discrimination against women in particular and it is still very much in the psyche of the Manx people, and therefore I do believe this legislation should be right. Therefore I will be trying to move an amendment at the clauses stage dealing with the limits of payments and also if I can get the employment discrimination to apply to small numbers of firms, which I will be doing at clause 8.

Mr President, it is sad that I should not be welcoming this Bill, because I have asked more questions about the sex discrimination Bill and where it is over the last 10 years. The record will show that I have asked more questions about this subject than any other member of Tynwald, but it saddens me that we have got a hybrid, and the best thing, as I said, with genetically modified food - and I am not happy with it - is that this Bill has been genetically modified at the behest of the very people who should, in my view, have been practising discrimination and should be jumping at this opportunity, especially when the government has given them all the credentials, all the back-up and all the help to get them over and to make them successful. They should be playing a full part and, in accepting anti-discrimination

measures, they should be welcoming it, not trying again to delay and modify. It saddens me immensely.

Mr Waft: Mr President, it is one thing accusing people of sex discrimination and it is another thing trying to prove it, certainly through the courts. I am concerned also about the limiting of the amount of money available - up to £13,000, I think it is. In this day and age it is not a great deal. I think one of the comments was, 'Well, there are not many people who actually reached that amount of money.' We have not actually tried this with regard to sex discrimination, so I would think it needs to be certainly looked at for the future. There is a glass ceiling out there; a lot of ladies have reached the limit of where they can go with a certain firm, and then the male superiority takes over and there is a problem.

With regard to the future of anyone who does reach the situation where they do, for the larger firm it would be possibly easier to go through the sex discrimination route and reach that £13,000 level or whatever it is in order to replace someone who is giving them a problem. I just wondered - maybe the Attorney-General might be able to say - if somebody is discriminated against and they win their case and they are awarded whatever they are awarded, the time out after that when they have not actually achieved a similar position that they have been happy to be in for a number of years, the time between actually being discriminated against and being awarded compensation for that, between that time and the time they actually take up other employment - is there a possibility of taking the firm to court if there is a loss of income over that period which is in excess of what one would normally understand it to be? I understand in the UK this situation does exist and enormous sums can be claimed. I know of one case where it was into hundreds of thousands of pounds because there had not been a reference given to the person who was looking for the position, so perhaps the Attorney might like to clarify that? Thank you, Mr President.

The President: Would you care to respond to that, Mr Attorney?

The Attorney-General: Mr President, if I may, I would like to reserve my comments on that. It is a technical point and perhaps I could refer back to the hon. member when I have had an opportunity to consider it. I am not sure whether you would like me to deal with that perhaps at the next reading, but I certainly do not have the information available at this stage.

Mr Crowe: Mr President, I would just like to say at this time in the Island's movement that the education opportunities of the school level are such that there is very little discrimination in our education system. Every child now through the system is able to study and go on to degrees, and that gives them the foundation then to seek work in the wider field of employment, so at least the education system is the benchmark for non-discrimination, and it is a changing attitude, I think, from many of our younger days where there was serious discrimination in the opportunities that young men or young women had in those days. so I think by having that benchmark now that the education opportunities are there, it gives them the springboard to allow them into career opportunities to work or to fight for those opportunities on an equal basis, and I think you will find that many of the companies on the Isle of Man do not have any discrimination against men or women in their job opportunities. Many of them are large companies with UK parents and they adopt the attitudes and the procedures of their UK counterparts, so I think the problem we have might be less than we maybe think and the Bill actually is probably bringing into effect or encompassing a situation that probably already exists in the real world.

The President: The hon. Mr Delaney to reply.

Mr Delaney: Thank you, Mr President. I must say that I felt and do feel very similar to my colleague, Mr Lowey, in relation to clause 8, but I understand, after some information that has been supplied to me by the department concerned and also the officers concerned, that clause 8 does not provide an exception but a defence. It does not allow small employers to discriminate carte blanche; that is as I understand it. Now, I will ask the Attorney-General to give his version of this, but I am concerned about that particular clause too and have raised it. So, Mr President, I share the concerns and the understanding has been given, it is not a cop-out, but the interesting statistics dealing with the Isle of Man, because you cannot work on a parallel with Britain in many instances and on that particular section we have got to look at the latest statistics, for example, from the economic affairs division of the Treasury showing that employers with five or fewer employees comprise about 69 per centum of all employers on the Island and another 13.4 per centum of employers have between 6 and 10 employees. We cannot, I would suggest, go equal to across the water with what their type of industry is on the small community, and that gives me some little comfort and makes it necessary to give some discrimination for the employers because of our commercial circumstances in the Isle of Man. But on that concern as shown and so well put by Mr Lowey, I certainly would like to have some clarity that we are not causing discrimination by breaking in anti-discrimination laws on the Island and, subject to that assurance, I will certainly carry on the Bill as it is, but I will look at that clause particularly.

I thank Mr Kniveton for his support for the Bill and seconding the Bill. It is not perfect, and I have said this on the first reading. This Bill is not perfect and no legislation ever is. This is the best we can look forward to and, as I said at the first reading and I made it clear, I am not happy it has taken in excess of, I thought it was, 10 years, but according to Mr Lowey - he is probably right - it is in excess of 10 years to get to this small stage and on reflection I can recall that in 1986 there was a lot of movement on that committee to get something done, and I am hoping that, if nothing else, we do speed up the necessary legislation in all spheres, but in particular in these sorts of areas where we have lagged behind other countries in making sure our citizens enjoy the rights and privileges as afforded to them by different conventions, and this one is the Convention of Human Nature. All people, as I said at the first reading, are equal in my mind and I hope that everybody in the next generation of people is brought up with that and not like myself and my generation where it was a sort of hangover from the last century that you actually did have a discrimination even in the household between boys and girls at school age; there was discrimination in what they could take up in subjects and what they could not take up, but happily that that is going out of the window.

I thank the other members who have spoken on it and certainly I hope Mr Waff's point is cleared by the learned Attorney on that area there, so we are clear on what we are doing there.

On the amounts of money being awarded I can make no comment on what they award across, but it seems to me as a watcher of these things, like the justifiable awards that are given, there is also so much, I am bound to say, that seems to me awarded for trivial things, and I hope that does not come in. I think any justice which we are supposed to serve is brought in - the punishment on the employer fits the crime and not some extremist's view sitting on a panel somewhere who thinks that the world is to be given away because

somebody has been done down in some small way, and that is the observation I make on observing what is done across: some of it horrifies me and at other times people who seem to have a genuine case lose out, and I hope that does not occur on this particular Bill.

Because of Mr Lowey's concerns I will stop the reading at clause 7 to give myself a chance to really get myself prepared either to support or not support Mr Lowey's amendment, but I do want clarity and exactly where we are going on this so that we are not introducing some bigotry into a Bill which we are actually hoping will be designed to get rid of it in relation to the sexes.

Mr President, I hope that the members will support this second reading and then will fight it out, if necessary, when we get to the clauses.

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

Now, the hon. member in charge of the Bill has indicated his wish to take clauses 1 to 11 this morning.

Mr Delaney: Mr President, I did inform your office 1 to 11, but because of the points raised by Mr Lowey on clause 8 I would like to give the opportunity to him and myself to study that particular clause and make sure that we all have a justification for passing it.

The President: So you do propose to go as far as clause 8, then?

Mr Delaney: Clauses 1 to 7, Mr President, please, with your permission.

The President: Clauses 1 to 7, right. Will you proceed, sir, clause 1.

Mr Delaney: Thank you, Mr President. Clause 1 of this particular Bill requires a woman to be treated no less favourably - and I underline *no less favourably* - than a man engaged on like work or work rated as equivalent by implying an equality clause in her contract of employment. Men are given the same rights by clause 3, and references to a woman are to be taken as including a man or vice versa.

Sub-clause (1) provides that if a woman's contract of employment does not include an equality clause, then such a clause is implied, and that is, the contract is treated as including it.

Sub-clause (2) defines 'equality clause'. Basically, if the woman is employed on like work or work rated as equivalent with a man in the same employment then, if a term of her contract is less favourable than the corresponding term of his, then it is altered so as to be not less favourable, and if her contract does not contain a term corresponding to a term in his contract which benefits him, then it is treated as containing a similar term. In short, this is a balancing act in these two particular subsections. Thus equalities are to be levelled up. Equality covers all aspects of the employee's treatment - not just pay but holidays, hours of work, overtime and benefits in kind.

Sub-clause (3) provides that an equality clause does not apply where the difference in the contracts is genuinely due to a material factor other than the difference in sex - for example, because a man has higher relevant qualifications than the woman.

Sub-clause (4) defines the work 'like work.' It means that the woman's work and the man's work to which hers is being compared are broadly similar in practice.

Sub-clause (5) defines work rated as equivalent. There must have been a job evaluation study which ranks the woman's work and the man's work as equivalent in terms of various headings, such as effort, skill or responsibility.

Sub-clause (6) defines 'employed,' whilst 'the same employment' means employment in the Isle of Man by the same employer or employers in the same group under common terms and conditions.

Sub-clause (7) makes it clear that this clause applies so long as the employment is in the Isle of Man and it does not matter that the proper law of the contract of employment may not be Manx law. I beg to move clause 1, Mr President.

Mr Kniveton: I beg to second, sir.

Mr Lowey: I support this particular clause because it is the very essence. I know, Mr President, before I came into the legislature I worked in engineering, and engineering work is always held up as one of the trailblazers because they recognised early on that women were to be paid the same as men. They did it in two stages, I think: one was half way to 95 per cent and then in a matter of three years they got exactly the same wage, and it does seem strange in this day and age that we look on women - teachers, there is no differentiation; nursing, there is no differentiation; and you can go through the professions, no differentiation - civil service, no differentiation - and here we are having to write it into law that women should not be treated less equally than men. It does seem that we have a long way to go and I agree with my hon. colleague that education now puts women as people and so they should. My mother practised equality of the sexes, she had seven lads and seven girls and she said she was not going through that twice again for anybody (*Laughter*), but the reality is, it is right and proper in this day and age that it is the legal stamp of approval that where like work is done it should be treated the same and paid the same. I only wish the Bill reflected that in all aspects, but on this particular clause 100 per cent, and I have no difficulty at all in accepting it.

Mrs Christian: Mr President, just to endorse, really, what the hon. member has been saying. He has indicated that in a number of areas within the economy of the Island this already applies; the concern, of course, is for those areas where perhaps it does not apply. Again it is morally indefensible and if we need statute law to back up the morality of the situation, then here it is.

Mr Crowe: Mr President, just a small point here. I think obviously the contracts of employment of existing workers up to the date of when the Bill becomes an Act would not be changed, but anything to do with equal pay would be deemed to be part of the contract. I would imagine that after the Bill becomes law that all new contracts of employment would have to state clearly what the conditions were on equality. I think when the discrimination officer is appointed, in the three-year period it is going to mean that there is going to be an education process to employers and employees to make sure that they are aware that this equality clause does exist and possibly an explanatory booklet would have to be given or be available for any employee who wants to make sure that they fall within the terms of the Act.

Mr Delaney: Mr President, could I answer Mr Crowe, first? This discrimination officer - it is to see that they all work for both the employee and the employer advising them on the initial stages of exactly what is happening here when this Bill becomes law and he or she is in place to put it right. So I am hoping he is right on that, that everyone gets time to know - they should

know - and will actually have an opportunity to be educated into what is their responsibility both as employer and employee and what their rights are on that one.

Mrs Christian's point, if I may say, is the right . . . I know it is not the feminist point but it is the member's point, but in actual fact I not only believe this I would like to see it in practice more, and as the Minister for Health and Social Security, may I say, I hope this is taken to its ultimate when pensions, for example, are equal and the times of pension, which I understand is going to happen, but the amount of pensions that are awarded and at the time they are awarded, for example, they should be equalled out as well, particularly in that sphere and of course that will come to pass in the future, I have no doubt.

Mrs Christian: If contributions are equal, Mr President, that will apply.

Mr Delaney: The situation will be that everything will be equal I hope, in life.

Mr Lowey's situation and the engineering side and how things have changed - and actually if you look, nothing good comes from a war, which I believe, but in actual fact as a result of the war an awful lot of changes were made into the social standing of women, because I do not believe that Britain certainly would have survived without the contribution of women in the last war; that is my belief. Certainly in engineering and in the armaments of war required, the amount of work put in by them, I think, brought them, which they were not prepared to go back to after the war, which I think was a major move. I thank the members for supporting this clause, Mr President, and I beg to move.

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

Mr Delaney: This clause gives an exemption from clause 1 in the case of contract terms which are for women's protection and pension rights, except to the extent that the equality is required for the social security legislation, the point made by Mrs Christian on clause 1.

Sub-clause (1) provides that clause 1 does not imply an equality clause in relation to the contract terms which are either to comply with the laws for the protection of women in employment or relate to pregnancy or childbirth.

Sub-clause (2) provides an equality clause does not apply in relation to contract terms relating to death or retirement except so far as the Pension Schemes Act requires as an occupational pension scheme to afford men and women equal access to benefits. Also, the equality clause requires women and men to be treated equally in relation to retirement insofar as it involves promotion, transfer, training et cetera.

Sub-clause (3) only defines retirement, Mr President. I beg to move clause 2.

Mr Kniveton: I beg to second.

Mr Lowey: Could I just have some clarity? Perhaps I am not thinking as straight as I should this morning, Mr President, but an equality clause 'shall not operate', and then can I just come to the special treatment to women in connection with pregnancy or childbirth - perhaps the mover could clear that up with me: why are they being discriminated against because of pregnancy or childbirth? I do not know what this particular Act does. You see, it says, 'An equality clause shall not operate in relation to terms. . . affording special treatment to women in

connection with pregnancy or childbirth.’ I would have thought that when they are having a baby that is a special reason and they should be covered. Perhaps I am interpreting it wrong, but I just -

Mr Delaney: Unless you know something I do not know, men cannot have babies.

Mr Lowey: No, they do not, but then women should not be discriminated against. The babies do not come into this world without men at some stage of the proceedings, it is alleged.

Mr Crowe: Isn't it a kind of double negative, reading clause 2(b)? If they have special treatment afforded to them in their contract, then going back to the 2(1) the equality clause 'shall not operate' in relation to those terms, so this will not override any special terms that are in -

Mr Lowey: Okay, that has cleared it, yes.

Mr Crowe: So it was the double negative, I think it was.

Mr Lowey: Yes, that is fine. But it does seem to me that we start off by saying it shall not apply.

The President: Hon. members -

Mr Lowey: Sorry, Mr President.

The President: You are not having it! *(Laughter)*

The Attorney-General: Mr President, as we have heard, the Bill applies to men and to women, and the purpose of the sub-clause is to avoid the possibility that a man might say 'Well, here we are, here is a lady who is entitled to,' for example, 'maternity leave; I am not entitled to maternity leave and that is not fair.' So the purpose of clause 2(1)(b) is to preserve to ladies alone the right to maternity leave, for example.

Mr Lowey: That is okay, that has cleared it. I told you I was not thinking right, Mr Attorney! Thank you, Mr President.

Mr Waft: I think, with regard to maternity leave, we are commonly seeing now that paternity leave is becoming the norm in a lot of areas and might be worth noting. Thank you, Mr President.

The President: Reply.

Mr Delaney: Thank you, Mr President. That did confuse me a little bit going through it but, as I said, this is something different. It is clear that the women have superior rights, and by nature they have to have superior rights in certain circumstances, and it is to make sure that men - some person may try to claim that it is to clarify that point that they have not, but Mr Waft's point where they are actually claiming, as I understand it, certain rights in relation to their wives and their partners having children and their rights to be off at the same time as well. I do not know how far that is going to go down the road, but I understand that is happening across the water at the moment. But I think the rest of the clause is self-explanatory, Mr President. I beg to move.

The President: The resolution, hon. members, is 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, sir.

Mr Delaney: This clause makes it clear that part 1 of the Bill applies equally to discrimination against men as to discrimination against women, and this clause is deliberately placed in a prominent position at the beginning of the Bill. I beg to move clause 3.

Mr Kniveton: I beg to second, sir.

The President: I will put the resolution 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 Delaney: Clause 4 defines discrimination against a woman. It means either direct discrimination - that is, treating a woman less favourably than a man - or indirect discrimination - that is, applying unjustifiable conditions which fewer women than men can comply with. This clause applies equally to discrimination against men also.

Sub-clause (1) defines discrimination against the woman for the purposes of this Act as meaning either treating her less favourably than a man, which constitutes direct discrimination - for example, refusing to employ a woman in a particular job or applying conditions which fewer women than men can comply with, which are unjustifiable and which the woman concerned cannot comply with. This constitutes indirect discrimination. For example, the UK civil service previous policy that the maximum age limit for appointment as an executive officer was 28.

Sub-clause (2) deals with the case where sex discrimination is based on marital status - for example, where a job is open to a married man or an unmarried woman but cannot be held by a married woman. I beg to move, Mr President.

Mr Kniveton: I beg to second.

The President: Does any member wish to speak?

Mrs Christian: Mr President, I think that sub-clause (2) here is an interesting one in that a lot of interviewers and so on are going to have to be careful about questioning, really, the status of people who are applying for jobs unless they are absolutely equal about all of it, but I think it does indicate that these questions in the past have been asked because it is generally recognised, I would suggest, that women are deputed to carry certain responsibilities for home and family which are regarded as theirs rather than a man's, and that in itself is a measure of bias, I would suggest. Whether or not that is actually changing - it may be changing to some degree - but it still applies, I think, in many households. So this actually challenges that assumption and maybe practice in its turn will change. It is to be welcomed again, Mr President.

Mr Waft: Mr President, I think the hon. Mrs Christian makes a good point with regard to interviewing for situations. The phraseology used by interviewers when they are interviewing has to be carefully worded in the questions that they ask the interviewee to make sure that they do not inadvertently discriminate through the use of words quite without malice aforethought or anything like that. It is purely over the years that a system has evolved of interviewing people and that will have to be challenged. It is challenging for the future interviewers to make sure that they do comply in every respect with regard to the Sex Discrimination Bill and are not seen to be using phrases that could be seen to be detrimental in these situations.

Mr Lowey: It is not impossible. I would just say that the record shows that it has been in operation in the UK for 10 years, but too much. We always hear of the odd case that gives rise to it, but generally speaking I think the framework is there and people respond to it. I agree with Mrs Christian that the assumptions that lie behind some of the questioning have got to be challenged and it will be a challenge for those interviewing to make sure that they respond and comply with the law. I do not think there is too much difficulty. It may inadvertently happen and be challenged; I agree with that.

Mr Crowe: Mr President, could I just add that, at a time of full employment when both men and women are keen to work and work by choice or by necessity in some cases, I do not think the problem will exist in the current time of full employment, but the time might come in a downturn when employers may become selective and I accept other members' points about the interview techniques of certain people, so that was the point I wished to make.

The President: Reply, hon. member?

Mr Delaney: All the members - I thank them for the questions. The one I did not ask: I think, first of all, people who are doing interviews now - it has become the done thing to have virtually training courses to actually teach them, the people who are going to do it, how to interview, because the question which has been raised - if I, for example, am interviewing somebody for a position and I, to be friendly, ask if she is married, under this particular Bill and the one across the water I can find myself in trouble; they can actually use that to show I was discriminating against them on the marital status, but I wondered then, can I ask a married man if he is married under the equal situation? Of course, I cannot, so the fact that he is married or unmarried will only become a nicety after they have got the job. That is the position that we are in now. That is how times have changed and for the better, I hope, but the point will be that the nicety of questions that were asked by all of us in the past, I would suggest, no longer exists and there is a whole new learning curve for the people in positions of interviewing candidates for jobs. That has all changed. I beg to move, Mr President.

The President: The resolution, hon. members, is 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 Delaney: Clause 5, Mr President, defines discrimination against a married person for the purposes of this Act and is associated, obviously, with the last clause: treating him less favourably than an unmarried person of the same sex, which constitutes direct discrimination - for example, refusing to employ a married woman in a particular job or applying conditions which fewer married persons than unmarried persons of the same sex can comply with which are unjustifiable and which the married person concerned cannot comply with. This constitutes indirect discrimination - for example, requiring all women employees to be available for evening work in a job in which evening work is rarely required. I beg to move clause 5.

Mr Kniveton: I beg to second, sir.

The President: I will put the resolution 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 Delaney: This particular clause provides that the victimisation of a person because she sought to exercise her rights under this Bill counts as discrimination.

Sub-clause (1) sets out the principle that to victimise a person - that is, to treat her less favourably than someone else because she has sought to exercise her rights under this Bill - is in itself discrimination.

Sub-clause (2) provides that actions such as dismissal on the grounds that the person made a false allegation of discrimination does not count as victimisation for this purpose. I beg to move clause 6.

Mr Kniveton: I beg to second, sir.

Mr Lowey: Could I ask the mover of the Bill, Mr President: we have talked in this and previous clauses about marital positions; what happens if the people are co-habiting together, in the modern terminology? 'Are you married?' - you are not allowed to ask that question now. You are not allowed to ask them, 'Are you co-habiting with somebody?' - I think that is the modern phrase for it; I may be wrong. Mind you, they do not say that very often in the Whitestone to me! But that is the legal term, I suppose, that has got to be used. Does this particular thing allow for discrimination against people who are co-habiting?

Mr Delaney: It does not affect them -

The President: Hon. Mrs Christian, do you wish to speak?

Mrs Christian: I just want to comment, Mr President: I think really what we are saying is not whether they are married or not, but provided that they question a woman who is married and treat her in the same way as they would treat a man who is married, it is that element of equality that is required in this as well as, I suppose, a comparison of whether or not being married or not impinges on the job. But it is a question of getting the balance of equality of treatment between men and women. For example, the question often put to women in the past has been 'How will you manage if your children are ill?' whereas the same question is not put to a man. I presume that it would be fairly acceptable if questions were put to people of either gender in that sense, but as long as it is equal is what counts.

The President: Reply, hon. member?

Mr Delaney: Yes, I think Mrs Christian has covered it, Mr President. That is why I tried to make out: if you ask the woman the question you have to ask the other applicant, who is the man, the same question. The equality is actually in the whole perception of this Bill, that if you asked a woman if she is married - she is an applicant for a job - you must ask the man. Thank you.

The President: I will put the resolution, hon. members, 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 Delaney: This clause defines discrimination and sex discrimination as used in this Bill and also explains how the treatment of different persons is to be compared, and makes it clear that discrimination against men is treated in the same way as discrimination against women.

Sub-clause (1) defines the term 'discrimination' and related terms such as 'discriminate' as used in this Bill as meaning discrimination on the grounds of sex, marital status or by way of victimisation, while sex discrimination and related terms are meaning only discrimination on the grounds of sex.

Sub-clause (2) makes it clear that when comparing persons of different sex or marital status you must compare like with like.

Sub-clause (3) provides that the references to this part, to discrimination against women, only are to be taken as including discrimination against men and are to be read accordingly.

Sub-clause (4) provides an exclusion for any special treatment of women in respect of pregnancy or childbirth. I beg to move.

Mrs Christian: I beg to second, Mr President.

The President: I will put the resolution, hon. members, 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. That concludes our examination of the Employment (Sex Discrimination) Bill this morning.

Income Tax Bill – Second Reading Approved – Clauses Considered – Third Reading Approved

The President: So we turn now, hon. members, to item 3 on the agenda paper and I call upon the hon. Mr Radcliffe to take the second reading of the Income Tax Bill.

Mr Radcliffe: Thank you, Mr President. I would just remind hon. members, perhaps, that this Bill contains all the measures which were announced in the 1999 budget and which in the main are already in place and in force by way of temporary taxation orders. Only one clause is entirely new and that relates to an anomaly associated with benefits in kind.

The Bill is two parts with one schedule. Part 1 of the Bill contains the clauses for the three measures already in force and replaces and confirms the temporary taxation orders; part 2 contains two new measures and then we have the schedule which sets out consequential amendments.

I would propose to give members perhaps a fuller explanation at the clauses stage if there are any queries about this particular Bill and I would therefore beg to move that the Bill be read a second time.

Mr Waft: I beg to second, Mr President, and reserve my remarks.

The President: I will put the resolution, hon. members, that the Income Tax Bill be read a second time. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Turning now to the clauses, we will take them in blocks, sir. Clauses 1 to 3.

Mr Radcliffe: Thank you, Mr President. This - we can call it chapter 1 - covers clauses 1 to 3. Clause 1 makes three changes to the Income Tax Act of 1970 by repealing existing legislation and inserting three new sections and a definition. Sub-clause 1(1)(a) sets out the first of these measures by repealing sections 2D and 2E of the 1970 Income Tax Act. The existing legislation states that all Isle of Man incorporated companies are resident for income tax purposes unless a non-resident declaration has been filed under section 2 of the Non-Resident Company Duty Act of 1986. It also caters for situations where a company may change its status during a year. This is no longer permitted. A newly incorporated Isle of Man company does not have the option to be non-resident. Paragraph (b) inserts the replacement legislation into the 1970 Act.

If I can just go into a little detail there, perhaps, section 2N deals with the deemed residence of companies and it deems all companies incorporated after 5th April 1999 and any existing company which at 5th April 1999 had not filed a non-resident declaration to be resident for income tax purposes. This means that any existing non-resident company will remain so unless it rescinds its non-resident status or it becomes managed and controlled from within the Isle of Man. It is the Council of Ministers' decision that this position will be reviewed in the light of the international initiatives currently being pursued by the OECD and the EU and the impact of the proposed legislation to regulate corporate service providers, which is another matter altogether.

Subsection (2) provides for consistency by adopting an existing definition of 'company'.

Subsection (3) sets the parameters for companies which are considered non-resident before 6th April 1999.

If we move on to section 2O, which deals with an assessment with the 1986 Act companies in actual residence in the Isle of Man, subsection (1) retains the ability for the Assessor to assess an existing 1986 Act company if it is resident or is in receipt of taxable income.

Subsection (2) provides that if a 1986 Act company goes into liquidation and appoints a resident liquidator it will not by itself result in the company being resident.

Subsection (3) covers the situation where a company is assessed to income tax by the Assessor. It provides for the duty paid to be set off against the income tax due or possibly, in odd cases, a refund given if the tax has already been paid.

Section 2P deals with companies ceasing to be 1986 Act companies. Subsection (1) enables a company to be non-resident for part of an income tax year and not to be assessed for that part, all other factors, of course, being satisfactory.

Subsection (2) sets down the date from which residence in the Island is considered to have commenced. Finally, clause 1(1)(c) inserts the required definition of a 1986 Act company.

Clause 2 continues to deal with the residence of companies and clause 2 makes the necessary amendments to the Non-Resident Company Duty Act of 1986.

Clause 3 of the first part of the Bill sets out the last of the measures relating to residence of companies by deeming the changes to have applied from 6th April 1999, being the date from which Tynwald approved the operation of the temporary taxation order. I beg to move that clauses 1 to 3 stand part of the Bill.

Mr Waft: I beg to second, Mr President, and reserve my remarks.

Mr Crowe: Mr President, while supporting this, which is putting into effect something that has happened through an order of Tynwald, can I just ask the hon. member to clarify that it does not affect the exempt companies which still can claim exemption from income tax?

The President: Reply, sir.

Mr Radcliffe: I can indeed confirm that that is the case, Mr President.

The President: I will put the resolution, hon. members, that clauses 1 to 3 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses 4 and 5, sir.

Mr Radcliffe: Thank you, Mr President. Clause 4 deals with a lower tax rate for certain companies. Clause 4 inserts into the 1970 Act a new section 1A providing, as I said, a lower tax rate for companies.

Section 1A has eight subsections and if I can deal briefly with them perhaps, subsection (1) contains the basic requirements.

Subsection (2) provides for an apportionment of the £100,000 mentioned in subsection (1) on a monthly basis where under other provisions companies' activities either commence or cease partway through an income tax year.

Subsection (3) requires the lower rate band to be apportioned out equally amongst any associated companies.

Subsections (4) and (5) arose out of the consultation process and provide an alternative to subsection (3) in that the associated companies may decide themselves as to how the allocation of the £100,000 is to be made. In practice it has been found that many will allocate the full amount to one company.

Subsections (6) and (7) set out what is meant by the term 'associated company' but exclude from that definition any company which is dormant or has not traded in the year.

Subsection (8) adopts some standard definitions for the purpose of this section.

Clause 5 inserts a new section 13A into the 1970 Income Tax Act to cater for situations where an individual seeks to avoid a personal tax liability by the accumulation of profits within a company. In the exceptional case where it is believed that the profits have been accumulated to bring about a reduction in the tax liability of an individual or individuals, the assessor will be able to apply the provisions of sections 12 and 13 of the Income Tax Act of 1970 to deem that a contribution has taken place. I beg to move -

The President: Hon. member, may I suggest you add clause 6 to this little block?

Mr Radcliffe: I am quite happy to do that, Mr President, yes, thank you very much. Clause 6 deems companies' tax rate provisions to have applied from 18th May 1999, this being the date that the temporary taxation order was approved by Tynwald. It has already been stated that the Treasury has agreed to a concession covering the earlier period of the income tax year from 6th April 1999 to 17th May 1999. I beg to move that clauses 4, 5 and 6 stand part of the Bill.

Mr Waft: I beg to second, Mr President.

Mr Crowe: Mr President, just a small point. It appears to be a logical part of the Bill, the computation rules on calculating the tax with a £100,000 ceiling and to stop groups of companies from each claiming this allowance. It is to bring them into a group rather than have them individually claiming an allowance of £200,000.

Mr Radcliffe: Yes, as the hon. member has rightly said, Mr President, it is a logical one, this one, and the facts are again as stated.

The President: I will put the resolution, hon. members, that clauses 4, 5 and 6 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses 7 and 8, sir.

Mr Radcliffe: Mr President, clauses 7 and 8 refer to the new allowance for disabled persons introduced by the last of the temporary taxation orders. Once again, there have been no changes to the provisions which were set out in that order.

Clause 7 inserts a new section 35B into the Income Tax Act of 1970.

Subsection (1) of this new section sets out the basic condition for the new allowance by requiring that the individual is to be in receipt of attendance allowance or disability living allowance from the Department of Health and Social Security. Attaching it to the payment of such benefits avoids the individual having to prove to yet another government department that he or she is genuinely disabled.

Subsection (2) provides for a claim or claims in the case of married couples who are living together as man and wife.

Subsection (3) prevents a claim under both this provision and section 35A, which refers to blind persons, and subsection (4) applies to this section the definitions when a married couple shall be treated as living together.

Clause 8 deems this section to have applied from 6th April 1999, being the date that Tynwald approved for the temporary taxation order. I beg to move that clauses 7 and 8 stand part of the Bill.

Mr Waft: I beg to second, Mr President.

The President: I will put the resolution, hon. members, that clauses 7 and 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 Radcliffe: Thank you, Mr President. Clause 9 contains the necessary confirmation required by the Income Tax Act of 1995 that a Bill confirming or amending the temporary taxation orders has been read a second time by the House of Keys. I beg to move that clause 9 stand part of the Bill.

Mr Waft: I beg to second, Mr President.

Mr Lowey: Could I ask a question? A lot of the things are retrospective and as quite rightly said, the Income Tax Bill is the one. Is it just my imagination or is this particular Income Tax Bill a little late in the pipeline this year, and is there any particular reason for that? Or is it because we have brought the budget forward a month which makes this an embarrassing overlap, because many of the clauses here, the increases in the small companies tax, will have to be amended in next year's Income Tax Act?

The President: Reply, sir.

Mr Radcliffe: Yes, Mr President. We have in this year's budget altered that rate of tax that you rightly say, but the same conditions prevail, that providing it has been put before the Keys within a certain time period the order will stand. One has got to say this Bill has been a little while in the hatching, shall we say, and time does clip on pretty hard, but it is a catching-up Bill, in effect, and putting into proper law what has been a temporary provision.

The President: The resolution, hon. members, is 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 Radcliffe: Thank you, Mr President. Clause 10 sets out the provisions which both maintain and extend the additional relief for single persons with children. Prior to this change an additional relief was only available to a single person who was entitled to one-parent benefit from the Department of Health and Social Security, and entitlement was conditional upon the person being single and in receipt of child benefit. If the person was co-habiting the benefit was withdrawn, as was the additional tax relief.

Changes in the benefit system has meant a new formula had to be found, and this has happened over the period and, in finding this new formula, the opportunity has been taken to extend the relief to make it available in limited circumstances to co-habiting couples but in a way which did not disadvantage married couples. Sub-clause 10(1) achieves the changes by substituting for section 39A in the 1970 Act a new section 39A and three additional sections.

Section 39A refers to the first of the qualifying claimants. Subsection (1) applies the section to any person who, as defined, is generally single for the income tax year.

Subsections (2), (3) and (4) entitle the single person within subsection (1) to one additional deduction of £5,035 providing the qualifying child was resident with the claimant for the whole or part of the income tax year, and the supplementary provisions set out later in section 39D are met.

Section 39B refers to the second category of claimant, and subsection (1) applies the section to two people who, as defined, are living together as though they were man and wife for the whole of an income tax year.

Subsection (2) entitles one of the individuals within that relationship to make a claim for an additional deduction in respect of a qualifying child resident with that individual for the whole or part of the income tax year. This is subject to the other individual within the relationship making an irrevocable agreement to the claim.

Subsection (3) provides that the amount of the additional deduction shall be either £5,035 or, if lower, the amount of the unutilised personal allowance of the other individual. In other words, if one of the individuals within the relationship has an unutilised personal allowance of, say, £6,000, the amount of the additional allowance will be restricted to £5,035. If the unutilised personal allowance was only £2,000 the additional reduction will be restricted to £2,000. The reasoning behind the limit is to seek to maintain parity between persons who are single parents, co-habiting or not, whilst at the same time recognising that the co-habiting couple are not married and therefore are not entitled to the full transferability of allowances to which a married couple are entitled. It should be recognised that this is a vast improvement on the previous system, which not only deprived a co-habiting couple of one-parent benefit but also of any right to claim an additional deduction as a single parent. The fact that the deduction is governed by the amount of the unutilised personal allowance of one of the individuals explains the need for the written agreement of the other person.

Subsection (4) limits the entitlement to only one amount irrespective of the number of qualifying children, and subsection (5) makes the claim subject to the supplementary provisions set out later in section 39D.

Section 39C covers the third situation in which an additional deduction may be claimed; it caters for part-year claims.

Subsection (1) is intended to cater for two situations: paragraph (a) where a married couple living together as man and wife cease to do so - and this does happen quite often - and this arises if one of them dies or where they become separated and divorced, and paragraph (b) where a genuine single parent, as defined, marries partway through an income tax year.

Subsection (2) enables a claim to be made for an additional reduction provided the qualifying child is resident with the claimant for the whole or part of the income tax year, and subsection (3), by way of a formula, restricts the amount of the additional deduction to that part of the income tax year during which the claimant is a single parent as defined.

Subsection (4) limits the entitlement to only one amount and subsection (6) makes the claim subject to the supplementary provisions set out later in section 39D.

Section 39D contains supplementary provisions, and subsection (1) applies the section to each of the situations in which a claim may be made.

Subsection (2) restricts the additional deduction to the period during which the child was both a qualifying child and resident with the claimant.

Subsection (3) defines a 'qualifying child' and is in keeping with the child benefit provisions adopted by the Department of Health and Social Security.

Subsection (4) extends full-time instruction to include full-time training by an employer for a person which covers at least two years.

Subsection (5) sets out what evidence or guidance may be called for in settling any dispute as to whether the child is actually undergoing full-time instruction or training.

Subsection (6) defines who is to be accepted as a child of the claimant. Now, this was amended in the other place to avoid the use of the word 'illegitimate' and this was achieved - and quite rightly so too - by importing from the Family Law Act of 1991 the term 'marital child'. This means that, in addition to a stepchild and a child who is wholly maintained, it also means an illegitimate child, a child whose parents subsequently married, an adopted child, a child of a void marriage - that is, a child who is conceived at a time when both parties had reason to believe they were legally married.

Subsection (7) caters for a situation where a claimant has more than one qualifying child.

Clause 10(2) inserts a new subsection (6A) in the 1970 Income Tax Act to provide for the situation where one of the co-habiting individuals has agreed to forego an amount of unutilised personal allowance.

Clause 10(3) brings the new provisions into effect from 6th April 2000. The Treasury has instructed the Assessor to concessionally backdate the measure to 6th April 1999. I beg to move that clause 10 stand part of the Bill, as amended in the other place, of course.

Mr Waft: I beg to second, Mr President.

Mr Lowey: Could I just say, Mr President, I welcome this particular clause. I know it sounds awfully complicated but I do think it rectifies what I would call a large anomaly where people do accept responsibility, whether they are married or not. I know of one particular case

where the people were co-habiting and readily accepted and openly admitted that was what they were doing and their children's allowance, which becomes affected, was quite clearly open and above board and was accepted, and then they seemed to be penalised because of a tax thing that . . . Now, if they accept the responsibilities - and it is all about responsibilities, I think the clause has gone as far as it dare at this time to meet that - I think it is a recognition by the Treasury and I think they are to be congratulated. I know they were criticised when they decided to do it, but I do believe that they were right and in fairness to those who accept responsibility they should get some of the rewards and not all the downside all the time, and I think that encourages responsibility and I do not think it encourages what I would call a recklessness, that when people accept responsibilities for one another and their children then they should be at least treated fairly. This particular clause now goes a long, long way to meeting that and what I would call treating them fairly, so I welcome it.

Mrs Christian: I was simply going to endorse that, Mr President, and say how this perhaps illustrates how a simple principle or a simple idea has to be set about by fairly complicated provisions to make sure it applies fairly. And again, I think when it was first mooted there was some suggestion that we were not supporting family life here, that being defined as married family life, but I think we have to recognise there is family life in a responsible way outside of families where the couple is married, and this measure, as the hon. member has indicated, does respond to people who were hitherto being prejudiced against in some measure by taking on responsibilities.

The President: Reply, hon. member?

Mr Radcliffe: Thank you, Mr President. Well, I am grateful to members for their welcome for this particular clause. It is rectifying what has been an anomaly. We all know, I think - I am quite sure - of cases where it is the case and this will ensure a fairer treatment anyway, at least of those people involved. As the hon. member Mrs Christian rightly said, it is a pity that it requires such a long and detailed section and subsections to do it but it is there and I am sure - I know - that members have welcomed it and I beg to move that clause 10 stand part of the Bill.

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 Radcliffe: Mr President, clause 11 seeks to correct any uncertainty or inconsistency regarding the charge of income tax on any benefit in kind. Sub-clause (1) of clause 11 inserts a new section 2KA into the 1970 Income Tax Act to clarify a problem which has arisen over the taxation of benefits in kind and the holders of an office. Put simply, it treats the holder of an office as an employee for the purpose of the benefits in kind legislation and it does ensure a consistent approach for taxation purposes.

Sub-clause (2) of clause 11 adopts for this section the existing definition of benefits. I beg to move, sir, that clause 11 stand part of the Bill.

Mr Waft: I beg to second, Mr President.

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 and schedule, sir.

Mr Radcliffe: Thank you, sir. Clause 12 provides for the amendments set out in the schedule to apply from 6th April 1999 and the amendments are consequential to the provisions relating to the lower rate of tax to companies and the residence of companies. Paragraph 1 makes a minor amendment to permit income tax to be charged on companies at a rate other than the higher rate, which is 15 per cent, and paragraphs 2 and 3 relate to sections 2D and 2E in the 1970 Income Tax Act dealing with company residents and which are to be repealed, thereby making these provisions redundant. That is the schedule, and clause 13, of course, contains the short title for this particular Act. I beg to move, sir, that clauses 12 and 13 stand part of the Bill.

Mr Waft: I beg to second, sir.

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

Mr Radcliffe: Clause 13, sir, is the short title for the Bill and I have already moved that, sir.

The President: I put the resolution that clause 13 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Bill read a second time.

Mr Radcliffe: Mr President, could I move the suspension of standing order 22(2) to take the third reading of this Bill today?

Mr Kniveton: I beg to second, sir.

The President: That is seconded. Does any hon. member wish to speak to that resolution? If not, I will put the resolution that standing orders be suspended to enable the third reading of the Income Tax Bill to be taken. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Proceed, sir.

Mr Radcliffe: Mr President, I am obliged to the House for permitting me to take the third reading today, but it is almost old hat, some of this Bill now, in that it is dealing with things that happened in the budget of 1999. There are further things that have happened in the budget of 2000 which will probably require another Bill in due course. It is non-controversial, this particular Bill; members have welcomed, I think, all of the proposals which are encompassed in it. It seeks to rectify certain anomalies which have been in legislation and seeks to formalise what has happened by way of temporary orders which have gone through Tynwald. It is, as I say, really an uncontroversial Bill. It is one which we could well do with finishing with to make way for the next one, I suppose one could say, but I would beg to move simply that it be read a third time and do pass.

Mr Waft: I beg to second, sir.

Mr Lowey: Could I, Mr President, just say that I do not always give the Treasury praise but I do want to congratulate them: they do listen from time to time, and especially on clause 10 on this particular Bill, dealing with the benefits, and particularly I would like to stress that although the Bill actually says they will commence on 6th April 2000 whereas all the others have been backdated, the Treasury have given a concession to backdate this one too. I commend them for that. I think it is treating everybody as the same and I think they are to be commended for it.

The President: Reply, sir.

Mr Radcliffe: Thank you, Mr President. I am obliged. It is . . . well, not unusual, perhaps, but to have praise for the Treasury from the hon. member on the far side of the Council (**Members:** Hear, hear.) -

Dr Mann: End of term!

Mr Radcliffe: He says the Treasury listens some of the time -

Mr Lowey: Yes.

Mr Radcliffe: I would just venture to suggest that Treasury is listening all the time. (*Laughter*) They may not always take notice of what has been said but we do endeavour to be fair to everyone, and that is just what this Bill is about, sir.

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

Electronic Transactions Bill 1999 – Second Reading Approved

The President: We move on, hon. members, to item 4 on the agenda paper. I call upon the hon. Mr Crowe to take the second reading of the Electronic Transactions Bill.

Mr Crowe: Thank you, Mr President. As mentioned at the first reading, this Bill is designed to encourage and assist in the use of information technology in daily life. This is being achieved by putting electronic commerce and paper-based commerce on the same legal footing and serves to assist in the use of electronic communications in commercial and other transactions and with public authorities. There are also provisions relating to service providers whose functions are increasingly important as electronic commerce develops.

The Bill is based on two principles, namely media neutrality and technology neutrality. Media neutrality means transactions conducted using paper documents and those using electronic communications should be treated equally by the law and neither should be given any advantage over the other. Technology neutrality means the law should not discriminate between different forms of technology. In general, any existing requirements of statute or common law for writing, signature, the production of documents or the retention of information can be satisfied by the use of an electronic communication containing the required information. There is provision for regulations to be made to exempt particular legal requirements from that general rule where appropriate - for example, in relation to wills and cheques which must continue to be in written form and VAT rules as to the time and place in transaction.

Extensive consultation has taken place and as a result of the views received a number of changes have been made. In particular, the Bill has been extended to include two additional provisions relating to service providers. The first enables a voluntary system for approval of certification service providers, or CSPs, to be set up. The function of the CSP is to provide a service issuing electronic signatures, which are coded messages, in order to identify the person by whom an electronic communication is sent, thus making electronic commerce more secure and increasing consumer confidence. The second clarifies the position of internet service providers, ISPs, and telecommunications system operators with regard to electronic communications sent through them. It is proposed that ISPs should not be subject to criminal

or civil liability in respect of such communications provided that they take appropriate action if the communications are brought to their notice and they are not required to monitor the contents of communications sent through them.

The Bill adopts a practical and flexible approach to legislation and one that will help to generate confidence and trust in the use of e-commerce in the Isle of Man. It will also help by having progressive legislation actually in place. The Bill will, I believe, be of considerable importance to existing businesses and will provide them with the opportunity to compete effectively in global export markets. The Bill will also support the work being undertaken to diversify further the Island's economy through the attraction of new inward investment. Mr President, I beg to move the second reading of the Electronic Transactions Bill.

Dr Mann: I beg to second.

The President: Now, does any hon. member wish to speak to the second reading?

Mr Waft: Just with regard to the internet service providers, they will, of course, only be the service providers which are based in the Isle of Man; they are not service providers which are UK-based?

The President: Reply, sir?

Mr Crowe: Yes, sir, in response to Mr Waft's query the Bill will only affect or regulate the internet service providers based in the Isle of Man, not the UK, but it is hoped that it will attract business to the Isle of Man of those internet providers.

The President: Very well, I will put the resolution that the Electronic Transactions Bill be now read a second time. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Now, I understand the hon. member does not wish to proceed with the clauses this morning, so we move on to item 5 but our hon. colleague is just not here at the moment so I think we will pause for a moment to await his return.

Mr Delaney: He is out canvassing, Mr President! *(Laughter)*

Mr Crowe: Mr President, could I just mention that I had anticipated taking some of the clauses this morning, but it may be that an extra clause may be included in the Bill, and for that reason it has been requested that I defer taking the clauses at this stage.

The President: As I understood from the learned Clerk, the situation is as I have mentioned, so, given that, I think we should stay with our programme.

Mr Crowe: Yes.

Emoluments of Certain Public Servants – Joint Committee's First Report for 1999-2000 Received

The President: We move now to item 5, sir, on the order paper and I call upon you to move that resolution.

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

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

The resolution is as set out in the order paper. The committee, and hon. members of course, have had a copy of the first report of 1999/2000. The committee considered all that had been said both in this chamber and in another place and concluded at the end of it that there was little progress to be made at this time, anyway, after a very full and, at times, acrimonious discussion, I must say, within the committee, but anyway consensus has arrived at the end and we believe, as we say in paragraph 5.2 of the report, that no useful purpose would be served at present by proposing alternative comprehensive arrangements for the emoluments of members but we will as a committee, if I am still on that committee, will keep the arrangements under review. I beg to move, sir, that the First Report be received and its recommendations approved.

Dr Mann: I beg to second, Mr President.

The President: Does any hon. member wish to speak to the resolution? If not, I put the resolution set out at item 5 on the agenda paper. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Tribute to Retiring Members of Council

The President: Item 6, the hon. Mr Lowey.

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

That Council do express its appreciation of the parliamentary governmental and other public service of Mr Radcliffe, Mr Waft, Dr Mann and Mr Delaney who shortly vacate office as members.

I am sure the press will note that we actually took the last item in public; I mean somehow they seem to think -

The President: Hon. Mr Lowey, item 6! *(Laughter)*

Mr Lowey: I could not resist it, Mr President!

The President: You will! *(Laughter)*

Mr Lowey: Mr President, it is with immense pleasure that I move the resolution standing in my name, and I do so because the four gentlemen who are retiring at this juncture from their term of office at midnight tonight have been, all in their own way, quite remarkable characters and contributors to the political life of this Island. When you think that three of them, between them, have given over three quarters of a century to the House of Keys, the Legislative Council and Tynwald Court and between them all have contributed in full measure, I have got them down here with one little headline that they are really four just men. They are just men in various ways and all have contributed.

If one was to pick an adjective in an alphabetical order I could say to Mr Delaney that he is always enthusiastic in whatever he undertakes, so enthusiasm is the hallmark. If he was a stick of Manx rock it would go right through: 'enthusiastic'. If we mention Dr Mann, he is calm and cool, as you would expect a doctor to be. I am not going to say clinical, but he is always calm and cool, his arguments are always well marshalled and firmly put, so he is 'calm and cool Edgar'. Then we come to Norman. Well, I put him down as 'Stormin' Norman' because in parliamentary terms there is nobody in either branch that has contributed more in legislative terms. That is because he is the sole member of the Treasury up in this House and they put a

lot of legislation through, but he puts through a lot of very complicated technical measures with a style that makes it even understandable by me, and I must be the hardest person on this planet to please, but he puts it through with competence and style. And then we have Mr Waft, who can only be described, really, without making him sound boring, as 'Steady George'. And why 'steady'? Because he never loses his rag; as much as I try to irk him from time to time, he remains steady as a rock.

They are all sound, hardworking members. They are in touch with the community they serve. They are very well experienced; there are none better. All are competent effective legislators.

Again, let me go back individually over their careers. Mr Delaney has held ministerial office; he has been Chairman of the DHSS - again, as we know, one of the most difficult departments to grasp; he has been Chairman of the Local Government Board - another empire which I have never been in but I understand and know to be a great challenge. Mr Delaney, as I have said, has been enthusiastic, he has held the high offices in the government and has distinguished himself in all of them.

Dr Mann has been Chief Minister, although in those days we used to call it 'Chairman of Executive Council'. He has been the Chairman of the Board of Agriculture and does not look any the worse for that. He has been the recent Minister of Education. I broke my political teeth in 1976 with Edgar Mann in the Department which is now called Transport; it was the Harbours Board. We brought the harbour development together. He has always carried out his duties, as I said, coolly, calmly and, above all, effectively and his recent term as Minister of Education stands testimony to that.

Mr Radcliffe has been, again, a Minister of Agriculture and Norman does not look too bad for that either! He must be one of the longest-ever serving members of the Treasury. Again, he has seen the Isle of Man go from a place where we used to have to be - how can I best put it? - elastic with our accounting to make sure that we kept within the law of keeping a balanced budget, to producing reserves that any self-respecting private business would give an arm and a leg to produce. They do it consistently well, Norman plays his full part and he is also, not least, Chairman of the Value for Money Committee.

Then we come to Mr Waft - I am almost tempted to call them by their first names because it is hard not to, but George is Chairman of the Civil Service Commission, he has been burnished in the fire of the Local Government Board and had to undertake planning, for which I think anybody deserves medals if they have gone through that department and, above all, he is noted for what I can best describe as the heart and soul of government, and that is the Overseas Aid Committee. George has pressed on with that, he has been vigorous throughout his tenure of office of looking to those less fortunate than ourselves, and it is very easy to play what I would call the local scene. George is an internationalist, I remember him asking questions way before they became fashionable on the anti-mine legislation and pleading with the Isle of Man to take a firmer line. George is very much outward-looking.

Without wishing to get involved into the election process which will commence next week, I would say to our colleagues, thank you very much first of all for your friendship in this House. You deserve to be returned on your merit and your dedication to these duties that you have undertaken on behalf of governments over the years and their performance in post; you have

helped to create in the Isle of Man a stable, prosperous society and I think, therefore, you are not only recognised in this chamber but, much more importantly, by the community outside which we all serve. You have been proven to be good servants, loyal, hardworking and above all, again contrary to popular belief, we do keep contact with the people outside and we do serve them. On behalf of everybody in this Council we wish you well next week and I would like to place on record formally our appreciation for the services that you have rendered and in particular over the last few years in this particular Legislative Council. Thank you, Mr President.

The President: Seconder?

Mr Crowe: I am delighted, Mr President, to second this and, as the hon. Mr Lowey has said, all of the retiring members have given us the benefit of their experience. There is an old adage that there is no substitute for experience. They show competence, dedication and above all, commitment to the Island and the people of the Island, and I have enjoyed working with each and every one of the retiring members and I wish them well.

The President: Hon. members, I will put the resolution set out at item 6 on the agenda paper. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Hon. members, thank you all. That concludes our public business for this day. The Council will now sit in private.

The Council sat in private.