

**REPORT OF PROCEEDINGS OF
LEGISLATIVE COUNCIL**

**Douglas, Tuesday, 10th April 2001
at 10.30 a.m.**

Present:

The President (Hon N Q Cringle), The Lord Bishop (the Rt Rev Noël Debroy Jones), the Attorney-General (Mr W J H Corlett QC), Hon Mrs C M Christian, Messrs E A Crowe, D F K Delaney, E G Lowey, Dr E J Mann, Messrs J N Radcliffe and G H Waft, with Mrs M Cullen, Clerk of the Council.

The Lord Bishop took the prayers.

Apologies for Absence

The President: Hon. members, we have apologies this morning from the hon. member, Mr Kniveton. I can report the fact that he is feeling a lot more comfortable and hopes shortly to be back with us.

**Airport Catering — Award of Contract to Cater Leisure (Isle of Man) Limited —
Terms and Conditions of Manx Workers — Question by Mr Delaney**

The President: We turn then to our order paper, hon. members, and it is a question for oral answer and I call on the hon. member, Mr Delaney.

Mr Delaney: Mr President, I beg leave to ask a member of the Council of Ministers:

Has the Department of Transport recently awarded a contract to Cater Leisure Limited, and, if so, have the terms and conditions of the Manx workers been a consideration?

The President: I call on Mrs Christian to reply.

Mrs Christian: The answer, Mr President, is yes. The Department of Transport awarded Cater Leisure (Isle of Man) Limited concessions in respect of provision of catering and general retail services at the airport from 26th March this year. During discussions with Cater Leisure Limited, the parent company of Cater Leisure (Isle of Man) Limited with regard to the company's tender submission, the company gave the department an assurance that any employees of the previous concessionaire, S L F (Isle of Man) Limited, that wanted to continue in employment with the new concessionaire would be offered employment subject to the satisfactory completion of a one month trial period. The parent companies of the previous concessionaire and the new concessionaire are United Kingdom based and have dealt with all matters relevant to the handover generally in accordance with the United Kingdom's legislation relating to transfer of undertakings. Under the terms of both the new concession agreement and the expired concession agreements the Department of Transport has no involvement with regard to the actual terms and conditions of employment of the concessional staff. These are matters for the concessionaires themselves. The Department of Transport understands that the rates of pay for staff have remained unchanged and that no major changes have been made in conditions of employment.

Mr Delaney: Can I ask a number of supplementaries, Mr President, please. First of all, I thank the minister for answering the question on behalf of her colleague. Could I ask this: when they took the undertaking that the condition would remain the same, why was it. . . I know since they have reversed back to what it was. They then changed conditions such as the right to free parking for the staff at the airport, which is one of the conditions they changed and subsequently reverted back to. Were they informed that they would require work permits to work at the airport and particularly any new staff they brought into the Island? Could I ask that supplementary first, Mr President?

The President: Mrs Christian.

Mrs Christian: Mr President, I have no information as to the situation in relation to parking. I can only imagine that they were advised that they would need work permits as a new concessionaire to the Isle of Man, but I have no information as to that from the department. There

have been one or two staff brought in from the United Kingdom for the initial period to establish the company in the Island in accordance with the standards and procedures of the new concessionaire. I understand that those staff would not necessarily be staying here on a longer-term basis. However, there is a work permit requirement, yes.

Mr Delaney: Yes.

The President: Mr Delaney.

Mr Delaney: The next supplementary, if I may, Mr President: are you aware that they have had staff working at the airport without the proper requirements on the work permit legislation?

The President: Mrs Christian.

Mrs Christian: No, Mr President, I am not aware of that.

The President: Mr Delaney.

Mr Delaney: Can I ask, then, is it not true true that at least one member of staff was dismissed within that month's period and that was the member of staff who actually made the complaints on the part of the other staff that conditions had been changed at the airport?

The President: Mrs Christian.

Mrs Christian: Mr President, I understand that continuing employment was not offered to two members of staff. The reasons why they were not suitable for continued employment have, I think, been given to the department who accept the reasons that they have been given. The concern of the incoming concessionaire was that certain members of staff did not work to the standards of the new operator in terms of management and operating procedures or hygiene standards.

Mr Delaney: I cannot ask further supplementaries on that because the industrial relations officer is involved. Could I ask, then, when the condition was put down that a month would be given to the concessionaire to decide whether they want to retain the staff, was the same condition given to the staff of the old concessionaire?

The President: Mrs Christian.

Mrs Christian: I do not quite understand the question, Mr President. The point is that the old staff were given an opportunity to have a month's trial with the new concessionaire. I thought that had been made clear in the answer.

Mr Delaney: That is what I said, and the answer. . . was it given, was that month's trial given to the staff or given to the concessionaire? You answered in your first answer, you said the concessionaire -

Mrs Christian: No, I did not. I said that the staff were given a month's trial by the new concessionaire. It is clear that the new concessionaire has not been taken on, as I understand it, simply for a month.

Mr Delaney: No, I am sorry. I will leave that question for a further time. Thank you, Mr President. May I thank the minister for the advice and ask her if she could find out, for her own satisfaction, the situation presently in being at the airport in relation to work permits et cetera?

The President: I am sure she will.

Income Tax Bill — Third Reading Approved

The President: We turn then to item 2 on our order paper and deal with the Income Tax Bill, which is for third reading. I call upon the hon. member, Mr Radcliffe.

Mr Radcliffe: Thank you, Mr President. This Bill is a routine updating of the income tax legislation to take account of a temporary taxation order which was approved by Tynwald at the time of the budget in February 2000. There are in this small Bill, and we debated it last week, three amendments which address the potential avoidance of tax and two minor corrections to provisions in the Income Tax Act which make no change at all in the effect of the law. This short Bill, Mr

President, confirms, as I said, the temporary taxation order approved as part of the 2000 budget. It tidies up a couple of minor problem areas and not unimportantly it prepares the way for the major update of our income tax legislation which is in keeping with the taxation strategy approved by hon. members in Tynwald in October 2000.

There is little more that can be said. It is a short Bill, it is an essential Bill, it is an updating Bill and prepares the way for, dare I say it, bigger and better stuff in the future. I beg to move, sir, that the Income Tax Bill be read a third time and do pass.

The President: Mrs Christian.

Mrs Christian: I beg to second, Mr President.

The President: Mr Crowe.

Mr Crowe: Yes, Mr President, I just want to support the Bill. It is obviously a technical measure just putting into legislation a temporary taxation order so I do not see anything at all wrong with this. It is confirming what is already in place at present, so again I support the Bill.

The President: Mr Lowey.

Mr Lowey: While supporting the Bill, and I understand it is all technical, could the mover of the Bill tell me, have any steps been taken to ameliorate what I would call. . . the plan for income tax in the future is to go from past year assessment to a current year assessment and when that finally takes place there will be a period where in one year we will be dealing with two years taxation. If that is the case could the mover of the Bill explain why some steps have not been taken, or are steps being taken, to inform the general public for when that happens, because I do think it will be a shock to some people when they get the two years? We know it is a housekeeping thing and does not add to the indebtedness of anybody in the tax, but there will be a period where a lot of people will need a lot of explanation as to what is actually happening. So have the authorities given leaflets out or warned people that this will happen in the near future?

The President: Mr Radcliffe to reply.

Mr Radcliffe: Thank you, Mr President. First of all I thank the hon. member, Mr Crowe, for his support. Mr Lowey is asking an interesting one about the steps which are now moving towards current year assessment rather than past year assessment which has always been the case. There has been a lot of technical thought going into it and there has been a consultative document out to all the various bodies which are involved. Current year assessment is one which will appeal I feel to the public in general because the confusion arises when people are being assessed on past years' performance and that is where one gets a lot of the criticism. The full arrangements for the transition are not yet finalised, but when they are everybody - and I mean everybody - will be fully aware of what is going to happen and the way the system will work. Full consultation, every chance for hon. members of this Court and other places and members of the public, I would suggest, to be very *au fait* with what the new system will be. I hope just to reassure the hon. member that there is nothing underhanded in all this. It is very, very open. (*Interjections*) I beg to move, sir, it be read a third time and do pass.

The President: Hon. members, the motion before us is printed at 2 on the order paper that the Income Tax Bill be now read for a third time. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Statutory Boards (Amendment) Bill — First Reading Approved

The President: Now for item 3 we have the Statutory Boards (Amendment) Bill for first reading and I call on the hon. member, Mr Crowe.

Mr Crowe: Thank you, Mr President. Members will be aware that this Bill first appeared, or saw the light of day, in 1998 and then it was pulled, shall we say, for further debate and discussion and we end up now with a Bill in the other place which has been drastically amended and I think, shall we say, simplified and shortened.

If I can go through the various parts of the Bill, starting off with the purpose, which is to alter the term of office of members of four statutory boards, the MEA, the Post Office, the Water Authority and the Office of Fair Trading. The intention is to provide flexibility for a future Chief Minister and Council of Ministers to make changes in the membership of these four boards should it be considered desirable at the time. The principle of introducing a degree of flexibility is considered to be important to facilitate the reshuffling of any of the chairmen or members of the four boards who are members of Tynwald should this be considered to be appropriate by the Council of Ministers as part of a more general reshuffle of the members of government departments or for other reasons. Introducing a degree of flexibility provides an opportunity to change the non-Tynwald members of the four statutory boards also should this again be considered to be desirable.

Mr President, in specific terms the Bill limits the tenure of office of a Tynwald member of a statutory board such that they would go out of office either after a period of two years and six months from the date on which the Keys was last dissolved or on the dissolution of the Keys or on ceasing to be a member of Tynwald or of the branch at the time of their appointment. In addition to dealing with the Tynwald members who are in effect put up for review at the half way stage of a Keys session, it also limits the tenure of office of a non-Tynwald member of a statutory board such that they would go out of office after a period of five years from appointment or on becoming a member of Tynwald. It also allows for the removal of a member of a statutory board at any time by a direction of the Council of Ministers. This does not mean, however, that changes will be made, but merely enables it to happen should it be considered desirable.

There are other provisions to the Bill. It amends section 12 of the Broadcasting Act, 1993, to remove the statutory requirement for the Chairman of the Gaelic Broadcasting Committee to be a member of the Communications Commission and it amends section 1(2) of the Water Act, 1991, to allow a degree of flexibility to increase the number of members of the Water Authority if circumstances require. I think this has been brought in because of the work load of certain statutory boards such as the Water Authority who may need extra non-Tynwald members.

The updating of Manx legislation in relation to the tenure of members of these four statutory boards is, I believe, timely and the Bill does so in a manner which provides a future Council of Ministers with the flexibility it requires regarding the appointment and removal of members whilst ensuring that there is no undue impediment to the effective functioning of the boards themselves. Mr President, I beg to move the first reading of the Statutory Boards (Amendment) Bill.

Mr Radcliffe: I beg to second, sir.

The President: Mr Radcliffe seconds. Hon. members, the motion before us then is that the Statutory Boards (Amendment) Bill be read for a first time. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Licensing (Amendment) Bill — First Reading Approved

The President: Item 4, on our order paper then, the Licensing (Amendment) Bill again for first reading and I call on the hon. member, Dr Mann.

Dr Mann: Thank you, Mr President. The Licensing (Amendment) Bill contains one major change which abolishes the fixed permitted hours in respect of licensed premises and clubs but on the other hand enables regulations to be made requiring holders of on-licences to notify the police of their opening hours. The Bill removes the general restrictions on persons under 16 in bars but requires the Licensing Court to consider whether to impose a condition on an on-licence restricting the presence of persons under 16 in specified rooms on the premises. There are a series of other enabling power which while allowing the abolition of the permitted hours put greater responsibility on the licensee or the licence holder. Some of these are relatively minor but some are significant. Certainly one of the things that should be welcomed that club premises are to be designated so as to require a fire certificate, which at the present time they do not actually have to hold and in view of the calamities that have happened around the world I think that is certainly a step in the right direction. The other additional alterations to the responsibility of the licensee come up in several of the different clauses which we will come to at the clauses stage. Certainly this

measure a few years ago would have caused an immense furore, but it went through the other place with almost no major discussion at all. I thought when I first saw this Bill, 'You are being given this for the sake of all the argument there is going to be', but up to now, certainly in the other place, it has been accepted without any major change.

Mr Lowey: You are up against it now, Edgar. *(Interjections and laughter)*

Dr Mann: I will therefore move the first reading. I have already had my fingers burnt on things going through the other place without trouble. So I will move the first reading of this and certainly discuss any individual clauses.

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

The President: Seconded by Mr Delaney. Mr Lowey.

Mr Lowey: Thank you, Mr President. It is ironic indeed - and I will get it out of the way because it will be referred to I am sure. I do believe the last Licensing Bill, which this amends, actually I moved, so here I am criticising the improvements. I am sure there are many items in this Bill that are improvements. The licensing of the clubs I think is one clear example where they should be subject to fire regulation I have not the slightest doubt about that.

I have two complaints of this particular Bill. One is the one where it permits people to buy alcohol in a public house with credit cards. I cannot believe that that is right. I understand that you pay for it when you have a meal and in hotel bills, but there is a world of difference between encouraging people who have had a few to spend more than what is in their pocket and this undoubtedly will assist in that. There is not the slightest doubt in my mind it will assist. I am not convinced, having read the debate in another place, that the answers given that somehow it would not and it is just a modern way of living, that people use credit cards for everything, that it should be permitted in licensed premises. I am afraid that is like saying well we should permit matches to be used in an oil refinery because people enjoy the pleasures of a cigarette. We have already got a problem with alcohol. We all recognise that and I understand what the mover said when he said that Licensing Bills in the past used to be horrendous affairs in debating time. I accept that and having had the dubious pleasure of taking the last one through I know all about the pain. However I seriously do question the need to put that in at this particular time. The other one that I do object to and I find rather strange because I did take pride when I moved it in the last Bill was for those that sell alcohol should be over the age of 21. It is the availability of alcohol now, more and more off-licences. Licensed premises, I think, and pubs by and large are pretty well run and regulated and there are things in place to cover that, but I do have grave reservations about the availability of alcohol through what I would call the off-licence system. I do not think it is regulated enough. I thought we had passed legislation in the last Act to make sure that people under 21 were the ones that were responsible, but I have been led to believe now that although it was passed in the Bill it was not actually activated. I think that is a major. . . but it is omitting it in this Bill and I do not approve of that and I hope to seek to get that put back in.

I do believe alcohol is a dangerous substance in the wrong hands, not in most people, average, but I do believe on those two things there ought to be questions and I give warning to the mover that at an appropriate time later on I hope to amend it maybe to take account of that.

Mr Delaney: That is a sobering thought.

The President: Hon. members, before the hon. member replies, can I satisfy my own curiosity? In clause 1 in the permitted hours in respect of the on-licence holder, apparently an on-licence holder simply has to notify the police of their opening hours. Is it intended that in the regulations that those opening hours which are notified to the police should be for any length of time, i.e. six months or a year or can they change every week or fortnight at will? Dr Mann.

Dr Mann: I need notice of that question, Mr President. It certainly cannot be changed at a whim and certainly once those hours have been advertised, as you might say, changes then have to be notified in the same way as the initial. Anyway I will come back to that at second reading.

Actually these two points both did raise certain questions in my own mind because the difficulty with credit cards, having been a retailer some years ago, a lot of retailers do not use credit cards for particular reasons. They do not have to use them and I could imagine many licensees would not use them because once a customer has signed the ticket he could well claim later that he was under the influence of alcohol at the time that he signed it. There could be all kinds of arguments over credit cards once you start getting involved in the alcoholic scene. I think the pressure that has come has come from the business of rather archaic regulation which stopped a hotelier, for instance, getting a credit card for drink only or with certain aspects of hotel bills and not others. I think that needed sorting out anyway but when we come to the individual clause it will be interesting to see how one intends to deal with this, because a person in possession of a credit card could just go down the road and put it through a machine and come back with the money. I mean I know it is convenience, but it is a difficult one this one I would agree. But I can see the reasoning for putting it into the Bill and I think we would have to depend very much on the sense of the actual individual licensee as to whether it is something that needs to be promoted on a regular basis. Quite honestly I do not know what happens in the UK in this situation. I never offered a credit card for drink in the UK and I do not know if it is normally accepted, so I do not know what the experience has been elsewhere. Certainly I can imagine that this particular clause will lead to a certain amount of argument and discussion. I beg to move the Licensing (Amendment) Bill be read a first time.

The President: Hon. members, the motion before us and printed at 4 is that the Licensing (Amendment) Bill be read for a first time. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Education Bill — Consideration of Clauses Concluded — Standing Orders Suspended — Third Reading Approved

The President: We turn then to the Education Bill which is for further consideration of clauses and we recommence our deliberations this morning at page 29 on clause 37 and I would invite Dr Mann to take clauses 37,38 and 39.

Dr Mann: Thank you, Mr President. Clause 37 enables the Department of Education to give financial assistance to pupils and students and this is the clause that enables the future legality, if you might say, of the student award scheme which up to now has come annually to Tynwald to be placed in a regulatory framework which will have to be approved by Tynwald in the first place but then will tend to roll on amended as required.

Clause 38 restates the existing power of the department to make arrangements for school buses and other transport.

Clause 39 enables the department to provide school meals and other food and refreshment and these are a restatement of the existing powers of the department. So I beg to move clauses 37, 38 and 39 stand part of the Bill.

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

The President: Hon. members, the motion before us is that clause 37, 38 and 39 and I take it we note the amendments made to the Bill in another place in relation to that. So, hon. members, the motion is that Clauses 37, 38 and 39 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. We turn then to clauses 40 and 41.

Dr Mann: Clause 40, Mr President, restates the existing powers to have pupils examined for cleanliness and if necessary to have them or their clothing cleaned.

Clause 41 restates existing powers of the department in relation to the school medical and dental services. The powers of the DHSS, who actually provide that service, are re-enacted in clause 16 of the National Health Service Bill which has already passed this branch. I beg to move clause 40 and 41 stand part of the Bill.

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

The President: Mr Delaney seconds. We note again the change in the amendment. Hon. members, the motion before you then is that clauses 40 and 41 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

The President: Perhaps we can take Clauses 42, 43, 44, 45 and Schedule 6, hon. member.

Dr Mann: Thank you, Mr President, these clauses relate to the regulation of independent schools, that is schools outside the provided schools and the maintained schools. This forms part of Part 5 of the Bill and it re-enacts the code for the regulation of independent schools.

Clause 42 provides for the registration of all independent schools and makes it an offence to run an independent school which is neither registered nor exempt from registration.

Clause 43 gives the department power to serve notice on a school where it becomes aware of certain kinds of defects.

Clause 44 provides for an appeal against a notice under clause 42 to lie to the Independent Schools Tribunal and that is constituted by Schedule 6.

Clause 45 provides for the deregistration of schools and lays down penalties for using premises or acting as a proprietor or teacher when disqualified.

Clause 46 enables the department to remove a disqualification imposed under clause 44 subject to a right of appeal against refusal to do so.

Actually these clauses do constitute a considerable power on the department to supervise the independent schools and I think although it is not specifically stated if a school was behaving in a manner that was contrary to statute that it would be a responsible act on the part of the department to actually take action under these clauses. I beg to move that clauses 42, 43, 44, 45 and 46 and schedule 6 form part of the Bill.

Mrs Christian: I beg to second, Mr President.

The President: Mrs Christian seconds, Mr Lowey.

Mr Lowey: Could I ask the mover of the Bill, we have abolished caning in state schools as a policy by statute, if a public school decided to retain caning would it have the power as a policy to impose the department's policy on it?

Dr Mann: Well, this was the question that had been raised by the learned Attorney at a previous reading that in fact was there this power? I would say that if we had already passed and implemented the Human Rights legislation the department could very reasonably say to an independent school this is against the statute of the land and if it is against the statute of the land then I think we would be justified in taking action.

The President: Mr Attorney.

The Attorney-General: Thank you, Mr President. I am interested in the comment made by the hon. mover of the Bill because I am concerned about the message that we can give in relation to the abolition of corporal punishment in relation to all the schools on the Island and not only in relation to that matter but also in relation to the teaching of religion and religious practices and so on and the employment of teachers and the condition of teachers within the independent school regime. Part 5 and the schedule really does not provide any power for the department to create rules which can be enforced against the independent school sector. I would just enquire whether those issues have been considered by the department in the preparation of this Part? It is a matter which gives me concern, Mr President.

The President: Mr Delaney.

Mr Delaney: Sorry, Mr Attorney, as I say I am getting a bit confused here. This Bill is coming through from government, or a department of government. It is drafted in your chamber by your legal draftsman. Why are we getting to this stage now? It worries me a little bit that we have now got these queries, Mr Attorney. I would have thought that these would have been picked up before it got to this stage. The Bill had been through the legislature. Obviously the Council of Ministers had a

look at this Bill as well, why have we just got to this stage now? It has been through the other place. The minister had a chance in another place to actually raise this particular query or somebody should have brought it to the attention down there. Procedurewise, I am just getting a little concerned here.

The President: Mr Delaney, we have a procedure here to revise legislation should members such wish -

Mr Delaney: Mr President, the Attorney-General is part of the procedure-making process of the Bill itself.

The President: Mr Lowey.

Mr Lowey: I would just say that I posed the question because again on procedures, were there enough powers there? The mover of the Bill has assured me that if the Human Rights Bill is in and it is against the statute then we would - I am happy to accept that. I take note of what the learned Attorney says if in examining it very closely there are not the powers I am quite sure that, although it will be passed, it will be the department's intention to make sure that the law of the land is upheld in all parts of the land.

The President: Dr Mann.

Dr Mann: This discussion is interesting. If the statute, the Human Rights Bill, is fully enacted in the Isle of Man and a school was acting contrary to that Act I would have thought the department would be entirely justified in going to law to impose that upon the school. Actually it is followed by a further clause that also gives strength to the Department of Health and Social Security in addition to that of the Department of Education. It is true this Bill was prepared probably before a survey of all legislation relating to human rights and I am sure as that is put into effect all existing legislation will be looked at anyway and if it is found to be contrary to the Human Rights legislation then it will have to be altered. So I do not have any fears on the matter and I am sure when we come to the next clause that between the two departments we would most certainly insist that human rights are upheld. I beg to move that they all form part of the Bill, sir.

The President: Well, hon. members, I am sure we note that in schedule 6, although the male embraces the female, is written politically incorrect however the motion is that clauses 42, 43, 44 and 45 and schedule 6 do stand part of the Bill. Those in favour please say aye; those against, no. The ayes have it. The ayes have it. Perhaps we could take clause 46, hon. member.

Dr Mann: We had already taken Clause 46.

The President: Clauses 47 and 48.

Dr Mann: Clause 47 enables regulations to be made as to the procedure of the Independent Schools Tribunal and requires its orders to be open to inspection. The very fact that there is this Independent Schools Tribunal which would hear appeals against the actions of the department in trying to impose a change on a private school, I think that is an additional safeguard both for the school and for the department.

Clause 48 imposes a duty on the proprietor of an independent boarding school to look after the boarder's welfare and gives the Department of Health and Social Security also powers to inspect it. So these are additional powers to the powers of the Department of Education to inspect the premises.

Between these two clauses there is a considerable strengthening of the position of the department in relation to independent schools. I beg to move clauses 47 and 48 form part of the Bill.

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

The President: Mr Waft.

Mr Waft: Mr President, I am a bit concerned with this clause with regard to the role that the department does have with regard to making regulations as to the constitution of the tribunal, the

manner of making appeals to the tribunal, the proceedings before the tribunal and the appearance, the last one, before such tribunal by an advocate. Now if the department decides on that, it does not seem to me a very good course to follow for the department to decide whether a school may ask an attorney to sit on their before before a tribunal through which the department makes regulations. Perhaps the member might like to elaborate on that. Thank you, Mr President.

The President: Mr Lowey.

Mr Lowey: Yes, it was just brought to my attention, when I was reading that the fine is £1000 for people. What sanction is there against a school for not obeying an order? That is for an individual who would obstruct the inquiry but what sanction is there against the school if it does not comply with the tribunal's findings? I do not seem to see that anywhere. There has got to be a sanction against somebody not carrying out the wishes of the tribunal. There is a sanction against an individual for obstructing the course of that which seems relatively low at £1000.

The President: Dr Mann to reply.

Dr Mann: Thank you, Mr President. On the one hand we are being accused of not having enough power and then we seem to be now being accused of having too much power or power to manipulate. If I could answer the last question first. The ultimate sanction of the department against an independent school is to actually deregister it and to deregister it means it cannot continue to exist. As far as the matters on the tribunal, I have no knowledge of any use of this procedure at all. On paper, I agree the procedure seems heavily slanted in favour of the department but quite honestly, if we are reaching a stage where we are going to have to deal with a major problem, I think the department needs every strength to its elbow. That is how it is set out in the proposed structure. I can only say that if the member is not happy he will have to vote against it.

Mr Lowey: Could I just press the mover of the Bill a little on the point I make. It is all or nothing. Yes, the department has the ultimate authority to deregister and I take note that to no school has this been applied but it is the scenario. You could ultimately deregister the school for not complying with the request for doing it but surely there must be degrees where you could censure the school, you can fine the school and say, 'Don't do that again and if you do it one more time you'll be deregistered.' There has got to be some sort of an interim period or is it just deregistration or nothing at all?

Dr Mann: I would agree with you as presented by myself in answering your initial request, it does appear to be that is the only - but obviously the offending school would realise that the department had the power to ultimately deregister so that obviously a step by step legal argument may well take place but the ultimate power exists.

The President: Now, hon. members, I appreciate I had actually asked Dr Mann to wind up and I am quite happy that we should go back on the subject but let us try not to introduce new material after Mrs Christian.

Mrs Christian: I would just like the mover to confirm that there is a provision in here in clause 44 to give a notice of an improvement or a change that is required before striking off and it is really only after they have not complied with that notice that you would come to that ultimate sanction so it is not quite all or nothing, there is a power to give a notice to straighten out the issue and I think that is fair. They have got time to put things right for the department and if they do not meet that requirement then it seems to me appropriate that registration should be deleted.

The President: Mr Waft.

Mr Waft: If I might just come back, Mr President, I totally take that on board but the fact that they have the ability to say that an advocate may not appear at a tribunal on behalf of the school seems quite contrary to the human rights.

The President: Mr Attorney.

The Attorney-General: Thank you, Mr President. I do not want to add anything new, just hopefully with a view to reassuring hon. members and in particular the hon. member Mr Waft. In

relation to clause 47 as I read it the department has to make regulations as to the manner in which an appeal will be conducted before the tribunal and clause 47(2) says that regulations may make provision requiring the tribunal to sit at such places as may be directed and so on and as to appearance before such tribunal by an advocate. What that means as I see it is that both parties to the appeal, that is the school and the department making the complaint, are entitled to representation by an advocate if the regulations so provide. In other words the regulations cannot say only the school can have an advocate or only the department. There has to be as they see in the European Court a equality of arms and the regulations, I am sure, will be drafted in such a way as to be human rights compliant so that both parties or no party has an advocate.

The President: Right, Dr Mann for the final time on Clauses 47 and 48, sir.

Dr Mann: Well, I am going to sign off at this moment. *(Laughter)* I think the hon. learned Attorney has answered the question.

The President: Fine, hon. members, the motion before us then is that clauses 47 and 48 do stand part of the Bill. Those in favour please say aye; and against, no. The ayes have it. The ayes have it. We take then clause 49 and schedule 7, hon. member.

Dr Mann: Yes, I have deliberately taken this clause by itself because there was some comment about this at first and second reading. This clause with schedule 7 provides for the Isle of Man Board of Education to continue in existence and for its constitution and functions. Sub-clause (1) provides for the continuance of the board and introduces schedule 7 and this provides for the board's constitution and election and the terms of office of its members. I do not want to go through all the arguments again as to why or why not we should continue with the Isle of Man Board of Education. I accept that in some ways its mode of election and its constituency basis could be questioned and argued about. In fact during the five years in the course of this House of Keys the relationship between the Board of Education and the Department of Education have been extremely good. They have both worked very closely together. I was responsible for about half of that period and I am very well aware of the immense amount of work done by those members. Although one could introduce ways of altering the mode of election and so on, a body of people who currently represent the membership of that board would still have to exist for the foreseeable future in relation to the Department of Education if the whole system is going to work as efficiently as possible. I beg to move that clause 49 and schedule 7 form part of the Bill.

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

The President: Mr Crowe.

Mr Crowe: Just, Mr President, to say I concur with the continuation of the Board of Education, it seems to make common sense.

The President: Mr Lowey.

Mr Lowey: Yes, as the person who raised it at the first reading, I am not going to oppose the clause or the system at the moment I do think it is evolutionary, we have reduced the numbers at one time. I do think the case for an elected board will crop up over the years to come and I think it will evolve.

Just one little query, only in our agenda we did have a Bill, the Statutory Boards (Amendment) Bill and how does this board comply with the stated intent of the mover of that Bill which was to regulate and simplify and here we are reinforcing the old. But anyway, that be as it may, life is full of ironies indeed. I shall be supporting the clause.

The President: Dr Mann, do you wish to reply?

Dr Mann: Thank you, Mr President. I just accept the comments, thank you, Mr President.

The President: The motion before us then is that clause 49 and schedule 7 stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses 50 and 51, hon.member.

Dr Mann: Thank you, Mr President. Clause 50 gives the department a duty to inspect schools and colleges. Sub-clause (1) requires the department to have all schools and colleges including privately run schools and colleges inspected regularly and to have a special inspection carried out if it thinks it desirable. So this actually quite deliberately extends the responsibility to all privately run colleges and schools.

Clause 51 gives new powers of entry and inspection for the purpose of carrying out inspections of schools and colleges under clause 50. I beg to move that clause 50 and clause 51 stand part of the Bill.

The President: Mr Delaney.

Mr Delaney: I beg to second, Mr President.

The President: Mr Delaney seconds. Lord Bishop.

The Lord Bishop: Mr President, I just wondered if Clause 50(3) might answer the Attorney-General's point made in relation to human rights and the punishment and religious education because somewhere in maintained and independent sectors then there must be some provision made for the trust deeds of the foundation of college or school which would give some flexibility in their ability to teach RE, for example, on certain foundation lines. So I wonder if that was covered in Clauses 50(3)?

The President: Mr Lowey.

Mr Lowey: I understand this is for inspection of schools. It is patent that the department must have that power now because they have had Ofsted. Has any private school had a visit from Ofsted on the Isle of Man and if not is there one planned?

Dr Mann: At this moment, as far as I know, no so called Ofsted but I have to point out that it is not an Ofsted in the same way as we are talking about Ofsted in the United Kingdom. It is an inspection carried out by staff who are used to and are involved in the practice of Ofsted examinations in the UK but it would be incorrect to use the term Ofsted and it is used colloquially. As far as I know it has not so far been extended to private schools in the Isle of Man up to now and that was the question I think.

Mr Lowey: Yes, it was but if I could just follow it on just one step further. If it is applicable to the state sector to know what the standards are, then should it not apply equally to the private sector?

Dr Mann: I entirely agree and as far as I know it could well be that similar inspections - most independent schools would actually invite -

Mr Lowey: Yes, of course.

Dr Mann: - because unless they have the status they will not attract the pupils.

The President: Mr Attorney.

The Attorney-General: Just in response to the point raised by the Lord Bishop. Unfortunately clause 50(3) does not really help because that is only in relation to a maintained school and of course that does not apply to the independent sector. The maintained schools are defined in schedule 1 part 2 as St Mary's and St Thomas' and of course trust deeds. . . and indeed the company memorandum and articles of King William's College, for example, refers to a particular religious upbringing mainly the Church of England so it actually raises more questions than it solves I am afraid.

The President: Hon. members, the motion before us then is that clauses 50 and 51 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. We deal then with clauses 52 and 53. Hon. member, Dr Mann.

Dr Mann: Thank you, Mr President. Clauses 52 and 53 re-enact the Education (Degrees, Etc.) (Regulation) Act 1989 which seeks to prevent establishments in the Isle of Man issuing bogus degrees and diplomas and this clause makes it an offence to offer bogus awards.

Clause 53 enables or makes further provision for the enforcement of clause 52. It gives persons authorised by the department power to require the production of records and seize such records with power to enter the premises. But these are powers that already exist in the Education (Degrees, Etc.) Regulation Act, 1989. I beg to move clauses 52 and 53 stand part of the Bill.

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

The President: Hon. members, the motion before us is that 52 and 53 do stand part of the Bill. Those in favour please say aye; and against, no. The ayes have it. The ayes have it. Clause 54.

Dr Mann: This clause gives enabling powers under which the existing primary and secondary legislation relating to the employment of children can be replaced by regulations made by the department. I do not want to go into a lot of detail on this particular situation. We recognise in the department that we are a long way out of date and behind the current scene on the legislation relating to the employment of children and this will enable us very rapidly to bring into effect modern, up-to-date regulations that accept the current situation. One could give examples of the way in which we are currently out of date in this respect. We recognise that. We want to put it right and this will do it faster than any other. I beg to move clause 54 stands part of the Bill.

Mr Delaney: I beg to second this important clause, Mr President, and reserve my remarks.

The President: Mrs Christian.

Mrs Christian: Mr President, I support the clause. I think that it is important that we do prevent children from being exploited (**Mr Delaney:** Hear, hear.) but at the same time there is a balance to be found, because I think children get some value out of the discipline of doing a job or a task or accompanying adults in the work environment. It is important that we, I think, do not exclude children entirely from starting off in the world of work but certainly that we have provision in which prevents exploitation.

The President: Mr Delaney.

Mr Delaney: I just entirely agree with what has been said by my colleague on the left that this is so important. I hope that it is handled delicately and treated with the importance it is. It is a need: there is more to education than just cramming facts and figures into people. It is learning to live with other people, it is a major part of education.

The President: Dr Mann to reply.

Dr Mann: The main reassurance to members' comments is that, of course, these proposed regulations will appear before Tynwald. They will be open for debate and so on.

The President: Hon. members, the motion before us then is that clause 54 do stand part of the Bill. Those in favour please say aye; and against, no. The ayes have it. The ayes have it. Clause 55 and schedule 8, Dr Mann.

Dr Mann: Thank you, Mr President. This clause once again comes into a rather confused area. It enables the department to act as trustee of any educational trust and introduces schedule 8 which gives it new powers to make schemes for the administration and variation of educational trusts. There are, surprisingly, quite a number of educational trusts set up which have been set up over the years which are in many cases now very much out of date and certainly this clause will enable a certain amount of reorganisation of some of these very small trusts which currently can be brought together. I beg to move that clause 55 and schedule 8 form part of the Bill.

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

The President: Mr Delaney seconds. Mrs Christian.

Mrs Christian: To support these provisions, Mr President, they do rather echo our experience in the Department of Health and Social Security in that people very generously give but over time the trusts become less and less significant and the administration sometimes costs more than the benefit from them. So I think it is a very useful provision to allow the department to amalgamate or change the purposes and so on within the parameters that are set out.

The President: Dr Mann, do you wish to reply?

Dr Mann: No, I think it is self-explanatory.

The President: The motion then, hon. members, is that clause 55 and schedule 8 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses 56 and 57, please.

Dr Mann: Yes, Mr President, these two clauses make provision for something that one normally would never even have thought about but it makes a special provision for birth certificates to be provided for the purposes connected with education or the employment of minors. It requires a Registrar of Births and Deaths to provide a birth certificate on request, if required for proving a child's age for education or employment purposes.

Clause 57 provides for evidence of a child's age in legal proceedings under the Bill and enables evidence of certain matters to be given by written certificate. I beg to move clauses 56 and 57 form part of the Bill.

Mr Delaney: I beg to second, Mr President.

The President: Mr Waft.

Mr Waft: Mr President, with regard to the certificates of birth et cetera and registrar's return, the proof of age card as applied by the Office of Fair Trading seems to be having an increased circulation and has been accepted by the Department of Education as a step forward with regard to identifying the individual and the acknowledgement that they can enter certain premises. The breadth of information that can eventually be put on to a proof of age card is quite tremendous and it should be pursued, I would have thought. Thank you, Mr President.

The President: Dr Mann.

Dr Mann: I am grateful for the information from the member.

The President: Now, hon. members, the motion before us then is that clauses 56 and 57 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clauses 58, 59, 60 and 61 together with the schedules 9, 10 and 11 Dr Mann.

Dr Mann: These are a transitional requirement. Clause 58 provides the parliamentary involvement in subordinate legislation under the Bill. It requires Tynwald approval for all the regulations under the Bill.

Clause 59 is the definitions. This clause gives definitions of terms used in the Bill.

Clause 60 introduces schedules 9, 10 and 11 which contain transitional provisions and consequential amendments and repeals.

Clause 61 gives the Bill its short title and provides for its commencement. I beg to move clauses 58, 59, 60, 61 and schedules 9, 10 and 11 form part of the Bill.

Mr Delaney: I beg to second, Mr President.

Dr Mann: I think at our last sitting -

The President: Yes, well we will just deal with these clauses first. I was just waiting to see if anybody wished to speak on the final bit. They do not so the motion, hon. members, before us is that clauses 58, 59, 60, 61 and the remaining schedules 9, 10 and 11 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Now, hon. members, we did give the indication when we retired at clause 36, I think, the last time round that it would be possible that we could take third reading today if it was so desired. Now, hon. members, I think - Dr Mann.

Dr Mann: Thank you, Mr President. Do we have to take a vote on whether we should have the third reading?

The President: Well, I think that would be advisable, sir.

Dr Mann: It was indicated at the last sitting that we could consider the third reading today. I do not think any matter of major conflict or further amendment has been considered on the clauses at this sitting. This is a very important Bill certainly from the point of view of the department and, as we have agreed one amendment which subsequently has to go back to the other place for consideration, we are up against the time frame of other legislation coming through and I think it would be very helpful, if members are prepared to be helpful on this matter, to have this third reading proceeded with so that the Bill plus its amendment can return to the other place. So may I beg to move, sir, we take the third reading today.

The President: Mr Waft.

Mr Waft: Thank you, Mr President. Broadly speaking I would agree with the member and support it.

The President: Hon. members, are we agreed that in fact the third reading be taken?

Members: Agreed.

The President: In that case, hon. members, we will go forward with the third reading and again I call on Dr Mann to so move.

Dr Mann: Thank you, Mr President. In considering the third reading, we have first and foremost to accept that there was a successful amendment by the Lord Bishop at the last sitting and that will have to be decided now by the other place as to whether that is acceptable or not acceptable and so we need to proceed along those lines. I think the Council gave its view fairly forcibly. I think we had a very good debate even though it could be considered just over one word but at least the argument was made and supported. I do not think there has been any other major concern. I appreciate the concerns that have been expressed over the control of the private sector and I am sure, in the coming months and years, we are going to see a development over more togetherness, as you might say, in terms of ensuring that the standards of premises and so on meet a common aim. The one thing I would hate to develop is a conflict between the private sector and the public sector because they are both creating in their own way for their own clientele, as you might say, a standard of education which is recognised as being very high. So I beg to move the third reading of the Education Bill.

Mr Waft: I beg to second, sir.

The President: Seconded by Mr Waft. Mr Lowey.

Mr Lowey: Yes, in supporting the Bill I think education on the Isle of Man has got a good - I was almost going to say, Mr President, proud-record of achievement. I think the Department of Education, which I have never served, has been astute in the way in which it has fought its corner for resources I think that is shown in the quality of the buildings and, I forget the wording, but in the state sector and on the quality of education provided for children of many generations. I think this Bill, as the mover has said, has been condensed. It reflects a lot of the UK legislation. It has been condensed into about a fifth of the legislative body. I think the machine there will actually continue the good record of education provision provided by and control of education within the Isle of Man and I wish it well, I think it will achieve its objectives.

The President: Mr Delaney.

Mr Delaney: I want to relate with that. I think the seed corn has been planted now and can only be good for the future in education and anything we spend there, taken out at this time, is going to be a big return for the Isle of Man.

The one thing I do want to ask is: from time to time we are all used to seeing the different schools in the galleries and one of the reasons I believe that we seem to be a backwater of politics in local elections and government elections to some extent is that people do not understand what we are doing. They read the media or they may not read the media but if you can get the schoolchildren to see what we are about and how their Island is governed and run and controlled, I would like to see more. I have not seen any for a while in the public gallery and I am wondering if

the minister can get that message back, that it is important they come and see us and what we are supposed to be doing from the gallery so that - they may actually take an interest in politics. They are the people that will be running this Island in years to come and they should see what they will be running and how they will be running it.

The President: Mr Crowe.

Mr Crowe: Yes, Mr President, just following on from Mr Delaney's point. I think the important thing for education is to try and preserve the best of the Isle of Man in the education system to show that the Isle of Man has a separate identity whilst bearing in mind the UK national curriculum standards that have to be met. So it is a fine line between preserving our special character of the Island in the schools and, I think, picking up Mr Delaney's point about the way we are governed and the local authorities and national government and so on so again I am supportive of this Bill.

The President: Lord Bishop.

The Lord Bishop: Thank you, Mr President. Yes, I want to thank the mover for taking us through this so well and, despite my little amendment which might hold up proceedings a bit, I do put it forward as a serious consideration. I hope he will speak on ones behalf without prejudice on that. I would like to say, withstanding that, that I support the Bill entirely because I am very committed to supporting the Department of Education. I happen to have a little bit of a foot in both camps of the state and the independent sectors and I have to say that the independent sector here is extremely aware of the very high standards set by the Department of Education in its secondary schooling and therefore that colours it whole motivation. Both in inspections and so on - they have their own very high standard of inspection - and their high regard for academic and sporting standards. So there is a very healthy relationship between the two which I would hope will continue in the spirit in which it currently is. So I do support the Bill 100 per cent.

The President: Dr Mann.

Dr Mann: Thank you, Mr President. First of all the matter of the interest in Tynwald and the functioning of Tynwald: I think there is an increasing awareness, particularly in the secondary schools although it certainly exists also in quite a few primary schools, to develop the interest in the way in which Tynwald works. I think there is a seasonal attendance, if you might say, because there tends to be a build up during the first part of the year towards the meeting of Tynwald where the schools actually take part, which is held in July, and of course directly they have to put forward their own questions to their own representatives. The interest of how Tynwald actually functions on a day to day basis becomes very real and so there is more interest then in bringing the pupils in and I think you will find that in the next few months it builds up towards that aim. At the same time members of Tynwald themselves can help enormously in interesting schools in the way in which Tynwald functions. In fact if the members of Tynwald actually went into the schools more often to speak to the teachers, you will find that that brings on more interest in the way in which Tynwald members and Tynwald itself functions. There is an enormous amount of ignorance on the part of the ordinary population as to what happens in these four walls. I think we are probably as responsible as anybody else for the fact that people are not more knowledgeable but we try to do everything we can certainly within the department and the schools themselves.

As far as standards are concerned, it has always been the aim of successive Departments of Education to achieve results which are better than the equivalent in the UK and nearly every year they have certainly succeeded in doing that. There are certain groups within the system where we perhaps do not achieve that all the way through but certainly overall the standards are higher. It becomes more difficult year by year to be assured that that will happen because standards are increasing in the UK in spite of all that you hear and read. Standards are increasing rapidly and unless we are increasing our standards as well then we will start falling behind. So there is an intensity at the moment in the provision of education which is to some people almost frightening but the end result will certainly be that educational standards here, throughout the whole system, will rise and continue to rise ahead of the average in the UK. So I do not have any apprehension of us failing. I have every confidence that we are going to continue to succeed in giving our children the best that we can possibly give them. I beg to move the third reading of the Education Bill.

The President: The motion, hon. members, is that the Education Bill 2000 be read for a third time. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

**Minimum Wage Bill — Clauses Considered — Standing Orders Suspended —
Third Reading Approved**

The President: Hon. members, we will turn then to item 6 on your order paper which is the Minimum Wage Bill for consideration of clauses and I call upon the hon. member, Mr Crowe. Now, we will take clause 1, sir.

Mr Crowe: Thank you, Mr President. Clause 1 imposes on an employer an obligation to pay not less than the minimum wage to any worker of his who works in the Isle of Man and is over compulsory school age.

Sub-clause (1) gives any person qualified for it the right to be paid not less than the minimum wage. This is an entitlement to be paid for work in any pay reference period at a rate not less than the minimum wage and is enforceable by civil action by the worker and by official action.

Sub-clause (2) states who is qualified for the minimum wage. He must be a worker ordinarily working in the Isle of Man and over compulsory school age.

Sub-clause (3) defines the minimum wage as an hourly rate prescribed by regulations and sub-clause (4) provides the pay reference period to be defined by regulations. Mr President, I beg to move clause 1.

Mrs Christian: I beg to second, Mr President.

The President: Mrs Christian seconds. Mr Lowey.

Mr Lowey: Thank you, Mr President. Looking at the minimum wage and the first clause: as I said at the first reading, I must attempt to strengthen the Bill and make it a better piece of legislation. To that end, I have sought advice from the legal draftsman and I have come up with an amendment. I believe the amendment does receive favour with the department, the proposing Department of Trade and Industry. I do know that having spoken with the mover of the Bill in another place that I believe it may even have the support of the Treasury and to that extent I would ask members. . . the amendment has been circulated and if I may say what the aim of the amendment is. The aim of the amendment is simple. It is really to have an independent - after the initial setting of a minimum wage to then put the procedures for upgrading that, or dealing with that on an annual basis, in the hands of an independent committee, at arms length if you like from government. Obviously that committee would have to seek advice from the government department regarding the statistics and on the evidence on which it would base its findings and recommendations. To that extent I would like to move the amendment that has been circulated to clause 1:

Page 1 line 11, for subsection (3) substitute -

“(3) The minimum wage shall be such single hourly rate as the Department of Trade and Industry (“the Department”) and the Treasury, acting jointly, may from time to time prescribe by regulations.

(3A) The Department and the Treasury -

(a) shall consult the Minimum Wage Committee established by section [The Minimum Wage Committee] before making any regulations under subsection (3); and

(b) shall consider any recommendation made by that Committee pursuant to section [The Minimum Wage Committee](1).

(3B) Subsection (3A)(a) does not apply to the first regulations made under subsection (3).”

That is how it is at the moment and the new clause would follow on from that, so do I take it, Mr President, that I take the amendments as they are because it actually will substitute an addition

to clause 1? I seek your guidance really because there would be a new clause, the setting up of that body, i.e. the Minimum Wage Committee.

The President: Right, hon. member, I was just getting myself organised here because in fact I was working off the old sheet as well. So we will get rid of that one and we will take the amendment as has been circulated this morning. So in fact what we have is that we have an amendment to clause 1 and can I suggest and concur with the hon. member that the way we handle this is to accept the amendment which he has moved to clause 1 as his intention at the present time and that the new clause which he has reached in relation to the Minimum Wage Committee, that that will become clause 2 and thereafter we will accept that they will be renumbered. Now, hon. member, the Council are happy with that so we will now continue to move what will be clause 2.

Mr Delaney: I beg to -

The President: It is fine. It is part of the amendment. We will tidy it up at the end.

Mr Lowey: The Minimum Wage Committee, it spells it out, it will consist of a chairman and four members, two from each side of industry - two from employers, two from employees representing and reporting to the department and the rest of it is all administrative. A person shall be disqualified from being a member if he becomes a member of the Council, the Keys, any statutory body. The department shall make regulations with respect to the Minimum Wage Committee and in particular the terms of office of the committee, the proceedings of the committee subject to any regulations. The procedure of the minimum wage shall be such as the committee may determine. In other words, there is the machinery in which it can operate it has been drawn up by the draftsman and I beg to move because the essence of my proposal is to make the machinery because most people now have accepted the principle of a minimum wage and I do not wish to regurgitate all the arguments that were and have been put over the years particularly by myself. I think most people now accept it is a *fait accompli* and to that extent I think we do not need to revisit that. This is actually making the machinery more effective in the medium and long-term. I beg to move the amendment standing in my name:

The Minimum Wage Committee

(1) *There is constituted a body by the name of "the Minimum Wage Committee", which shall from time to time make recommendations as to the rate of the minimum wage to be prescribed under section 1(3).*

(2) *The Minimum Wage Committee shall consist of a chairman and 4 other members, all of whom shall be appointed by the Department.*

(3) *Subject to subsection (4) -*

(a) *the chairman shall be a person appearing to the Department to be suitably qualified to act as such and to be independent of employers, workers and organisations representative of employers and workers;*

(b) *of the other members -*

(i) *2 shall be persons appearing to the Department to be representative of employers; and*

(ii) *2 shall be persons appearing to the Department to be representative of workers.*

(4) *A person shall be disqualified for being appointed or being a member of the Minimum Wage Committee if he is a member of the Council, the Keys any Statutory Board or any local authority.*

(5) *The Department shall make regulations with respect to the Minimum Wage Committee and, in particular, as to -*

(a) *the term of office and the resignation or removal of members of the Committee; and*

(b) *the proceedings of the Committee.*

(6) Subject to any regulations under subsection (5), the procedure of the Minimum Wage Committee shall be such as the Committee may determine.

(7) The Department, with the consent of the Civil Service Commission, shall make such arrangements as it considers appropriate for the provision of staff for the Minimum Wage Committee."

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

The President: Seconded by Mr Delaney. Mr Crowe.

Mr Crowe: Can I just say, in regard to the amended clause 1 and the new clauses that Mr Lowey has obviously raised this with me and with the department and with the mover in another place and there is a general consensus as to what Mr Lowey is trying to achieve so I am happy to accept those as submitted if that helps, Mr President.

The President: Mrs Christian.

Mrs Christian: Mr President, I am not unhappy with the amendment I just wonder if the mover might clarify a point. It does in the new clause prohibit certain people being members of the committee including any statutory board. I am just wondering here whether the Agricultural Wages Board is defined as a statutory board and whether it would then prevent - it will. If they are a statutory board it would prevent any person from that wages board participating in consideration of the minimum wage. It would have seemed useful to me to have some interplay between the two bodies because I think the Agricultural Wages Board will continue to exist. However, I presume they could confer if membership was excluded by virtue of this sub-clause.

Mr Lowey: Could I say I actually raised that matter with the parliamentary draftsman I was saying it seemed a bit cumbersome in drawing up in primary legislation all the exclusions, why not just leave it for regulations to be laid by the department who would then deal with it on what I would call the standard way. I have been assured by the draftsman that that is necessary to make sure that the point is underlined that there are certain people who are excluded from sitting on but that does not exclude them from being consulted. So again I think there will be on both sides of the panel including the chairman taking advice from as wide a field as I hope they will, which will include the Treasury, government, because they will have the statistics on board and it will be necessary for them to consult with Treasury, I would have thought.

The President: Now then - Mr Radcliffe.

Mr Radcliffe: Thank you, sir, a very brief comment. I am pleased to see that the mover of the amendment has come round to second thoughts one could say. Hon. members may recall that at the first reading stage he was full of condemnation for Treasury and everything to do with Treasury and the record will show that: 'Keep them well away from anything to do with minimum wages' but I am pleased to see that he has now had second thoughts and been prevailed upon perhaps to -

Mr Delaney: He has also turned conservative. *(Laughter)*

Mr Radcliffe: - to just soften some of his thoughts regarding the composition of this committee. He mentioned the Agricultural Wages Board as a model, much, much larger than this one is proposed to be. You set off, hon. member, with only two members and a chairman, now you have got four and a chairman. The Agricultural Wages Board has nine so you are getting there.

The President: Hon. member Mr Waft.

Mr Waft: Thank you, Mr President. Just a small thing. On the new clause where on (3) (i) and (ii) it says, 'two shall be persons appearing to the Department to be representative of employers' and 'two. . . persons appearing to the Department to be representative of the workers'. That would give the intimation that the employers do not do any work. It might be better if it was down as 'employees' rather than 'workers'.

Mr Crowe: It will work as a definition, Mr Waft, sir, I think that -

Mr Radcliffe: I think you are going to want an official arbiter as chairman of this committee.

The President: Mr Lowey, as you have moved an amendment and a new clause I will permit you to have a further comment before I ask Mr Crowe to wind up.

Mr Lowey: Thank you. I am going to resist the temptations, Mr President, of my very good friend, Mr Radcliffe. My reservations of the Treasury in this matter are on public record and I have not deviated one jot from those observations because they are fact. They are fact. They are hostile, they have been hostile, they remain hostile. I am here dealing with legislation in the long term. As far as I am concerned they will be the Isle of Man Treasury under the Statistics Act. We already have certain information now compulsory in their power. They will be obviously an area which will have to be consulted and I am a realist and they will have to be consulted. I do not retract one word from what I said before about them.

Now, as for increasing the numbers, I am sure the hon. member will agree you can have too big a committee and you can have a too small a committee. I accept that. On talking with the mover in another place, I am quite happy to strike a balance, a five man committee and I use that word - there will be women as well - a five man committee seems to me acceptable. You get a variation between employers and who would represent them. You have got two camps and I think it is wise to have two voices representing them I am quite happy I do not get excited on that. I believe it is a practical way forward. There are no winners, there are no losers. We have already accepted the principle and I think it is incumbent on Council to make sure that it works in the long run and I believe that what I am proposing will enhance the legislation that is being put before us.

The President: If I could ask the mover, Mr Crowe. You have the right to reply, sir.

Mr Crowe: I think that is has been fully covered, Mr President, and I just move clause 1.

The President: Hon. members, the motion before us then is that clause 1 do stand part of the Bill. To that we have the amendment circulated and moved by the hon. member, Mr Lowey, which will amend clause 1, page 1, line 11, which you can follow on the white paper circulated to you. It will also introduce a new clause to be numbered number 2. Hon. members, those in favour of the amendment moved by Mr Lowey, those in favour please say aye; against no. The ayes have it. The ayes have it.

Clause 1 as amended then, hon. members. Those in favour, and that would incorporate the new clause 2 also. Hon. members, those in favour please say aye; against no. The ayes have it. The ayes have it.

Now, hon. members, we will continue then with the clauses, accepting in fact that they will all now be renumbered to move on. So clause 2 becomes number 3. Hon. members, I call on Mr Crowe to move clause 2.

Mr Crowe: This clause enables regulations to be made defining a worker's hourly rate of pay, so that it can be determined whether he is being paid at, or below the minimum wage.

Sub-clause (1) enables the Department of Trade and Industry to make regulations providing how a person's hourly rate of pay is to be worked out.

Sub-clause (2) enables the regulations to provide for deciding the hourly rate where the worker is paid in situations such as fixed weekly wages, overtime rates, piece rates and benefits in kind.

Sub-clause (3) enables the regulations to deem a person to be, or not to be, working - for example, where he is on call and to deal with periods of absence from, or lack of work, for example unpaid holiday situations.

Sub-clause (4) makes further provision with respect to regulations, deeming a person to be or not to be working.

Sub-clause (5) enables the regulations to make further provision for valuing a worker's rate of pay - for example, benefits in kind, deductions from pay for superannuation and travel expenses.

Sub-clause (6) enables the regulations to spread or apportion pay over particular periods, to aggregate pay for different periods and to deem pay to be received or accrued at a particular time.

Sub-clause (7) makes it clear that the list of matters in sub-clauses (2) to (6) is not exhaustive and sub-clause (8) ensures the different areas - employments, businesses, ages and occupations are all treated the same by regulation. Mr President, I beg to move clause 2 stand part of the Bill.

The President: Mr Delaney.

Mr Delaney: I am waiting for someone else to second, Mr President.

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

The President: Mrs Christian seconds. Mr Delaney.

Mr Delaney: I am particularly interested in clause 2 because I am dealing at the moment with a situation where a person comes into the Island and is living on the premises, or premises supplied by a particular catering establishment. How is that going to be governed under this in relation to benefits in kind, and understanding what 'in kind' can mean? The variations? How will that be able to be fixed by the minimum wage if the person's employer determines that the actual costs of the accommodation, particularly in the modern world in the Isle of Man, the costs of accommodation is deemed to be of a value of at least £1 an hour, for example. How is that going to be clarified under this particular Bill, and also it touches on conditions such as in relation to a semi-educational establishment as well. I am interested how this is going to operate?

The President: Mr Lowey.

Mr Lowey: On that, actually the principle of that has already been accepted in Manx law with the tourist industry. There is a formula already set up where that will be and this will be done by regulation. Already in the United Kingdom this is already taken into account. There are regulations set up which allow a certain amount to be taken for board and lodgings, or just board. So there are regulations and they will be set up under this particular clause.

Mr Delaney: That Act at this moment does not apply to this.

Mr Lowey: It will be under regulations.

The President: Mr Crowe.

Mr Crowe: Yes, Mr President, I thank Mr Delaney for his question and Mr Lowey for giving the explanation that we are following a UK system here and the regulations will certainly lay this out absolutely clearly that benefits in kind will be detailed. It will be explained how to charge and what is fair and what is reasonable, what can be charged and what we cannot be charged. The regulations which are in advanced form and hopefully when this Bill goes through, they will be explained to members fully.

The President: Hon. members, the motion before us then is that clause 2 stand part of the Bill, and I want to make it plain hon. members, that in saying clause 2, I am dealing actually with the numbers as printed on our green Bill. We will be acknowledging that they will all be altered subsequently. So those in favour of clause 2 standing part of the Bill, please say aye; against no. The ayes have it. The ayes have it. Clause 3, Mr Crowe.

Mr Crowe: Clause 3, clause 4 now, Mr President, enables regulations to be made excluding the right to a minimum wage or prescribing a lower minimum wage. This clause enables a lower rate to be paid to 16 and 17-year-olds with a full rate being payable at 18. Trainees under 25, probationers and those on work experience can be excluded for fixed periods of time to encourage their employment. It also allows persons with disabilities working for essentially therapeutic reasons to be excluded.

Sub-clause (1) defines the classes of workers in respect of whom provision can be made by regulations under sub-clause (2) and this relates to persons under 25 and persons over 25 who are or have been employed for less than 6 months, are on work experience, training, trial work or further education.

Sub-clause (2) enables the department to make regulations excluding the entitlement to a minimum wage or prescribing a different minimum wage for persons within sub-clause (1).

Sub-clause (3) ensures the regulations treat different areas, employments, businesses and occupations in the same way.

Sub-clause (4) makes it clear that if regulations under clause 4 specify additional classes of persons over 25, regulations under sub-clause (2) must not discriminate between persons of different ages over 25. Mr President, I beg to move clause 4 stand part of the Bill.

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

The President: Mr Crowe, just for my own purposes and for yours as well, if we would stick to the numbering on the green Bill, we will acknowledge that the numbering will be changed afterwards. Hon. members, the motion before us then is that clause 3 stand part of the Bill. Those in favour please say aye; against no. The ayes have it. The ayes have it. Clause 4, Mr Crowe.

Mr Crowe: This clause enables regulations to be made adding new classes of persons to those whose right to a minimum wage is excluded or modified under clause 3. For example, full-time students might be excluded.

Sub-clause (1) gives the department power to make regulations amending clause 3 by adding new classes of persons aged 25 or over to those listed in clause 3.

Sub-clause (2) ensures that the regulations treat different areas, employments, businesses, ages and occupations in the same way. I beg to move clause 4 stand part of the Bill.

The President: Mrs Christian.

Mrs Christian: I beg to second, Mr President, and whilst this is enabling because it gives an authority to change the people to whom clause 3 applies I am not particularly comfortable with the example the hon. member gave, but that I suppose is to a degree irrelevant at this time. It is just the enabling power that we are really looking at.

The President: The motion, hon. members, is that clause 4 do stand part of the Bill. Those in favour please say aye; against no. The ayes have it. The ayes have it. Perhaps we could deal with clauses 5, 6 and 7, hon. member?

Mr Crowe: Clause 5 enables regulations to be made requiring employers to keep records. In most cases existing wage records will be adequate. Records will be able to be kept on computer. Failure to keep records is an offence under clause 25.

Clause 6 gives the worker a right of access to the records his employer is required to keep under clause 5, to ensure that he is being paid the minimum wage. The clause gives a worker a right to request an employer to produce relevant records if he believes that he has been paid less than the minimum wage. The worker has to give the employer notice by way of a production notice, specifying the period in question. The worker may be accompanied by, for example, the union representative and the employer has to produce the relevant records within 14 days.

Clause 7 enables a worker to complain to the Employment Tribunal if he is denied access to his employer's records in accordance with clause 6. If the employer fails to produce the records the worker has the right to complain to the employment tribunal. If the complaint is proved, the tribunal can make an award to the aggrieved person. The clause also includes time limits for lodging a complaint. Mr President, I beg to move clauses 5, 6 and 7 do stand part of the Bill.

The President: Mrs Christian.

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

The President: Mr Waft.

Mr Waft: Mr President, obviously there will be an appointed day order for this, but I just wondered with regard to retrospective records of past salaries. I take it that it will only be subject to records kept from the date of this Bill being in place?

The President: Mr Crowe to reply.

Mr Crowe: Yes. *(Laughter)*

The President: The motion before us then is that clauses 5, 6 and 7 do stand part of the Bill. Those in favour please say aye; against no. The ayes have it. The ayes have it. Clauses 8 and 9, hon. member Mr Crowe.

Mr Crowe: Thank you, Mr President. Clause 8 enables regulations to require employers to provide workers with written statements containing prescribed information about their rights and their pay to enable them to decide if they have been paid the minimum wage.

Sub-clause (1) enables the department to make regulations giving a worker the right to a written statement at or before the time he is paid.

Sub-clause (2) enables the regulations to require information about the worker's statutory rights or enabling him to find out whether he is being paid the minimum wage.

Sub-clause (3) enables the employer to include a statement required by regulations under sub-clause (1) in the itemised pay statement to which an employee is entitled under the Employment Act, 1991.

Sub-clause (4) enables the regulations to apply the enforcement provisions of the 1991 Act and this relates to itemised pay statements required under sub-clause (1) of clause 8.

Clause 9 sets out the powers of entry, inspection of records et cetera given to authorised officers of the Department of Trade and Industry to enable the Bill to be enforced. The clause gives authorised officers specific powers to enter premises and require the production of records. Power is also given for relevant persons, as defined, to answer questions at a stated time and place. Mr President, I beg to move clauses 8 and 9.

The President: Mrs Christian.

Mrs Christian: I beg to second, Mr President. I just wonder if the mover would confirm that currently workers are entitled anyway to a statement of their pay? I wonder if - he is not perhaps in a position to do so yet, because this is again enabling - but whether he envisages that the regulations to be drafted under this clause would require an additional statement to go out on a pay slip to say that this meets the minimum wage requirement, or does he have any indication at this stage just what might appear in these regulations under this clause.

The President: Mr Lowey.

Mr Lowey: Just the one point. Is it not a fact that it is not a requirement in another jurisdiction where we have borrowed most of this legislation from? Could I also ask the hon. member, would he also confirm that this same sort of . . . the claim really is that it will be putting extra onerous duties on management and therefore jobs could be at risk and that is the same argument that was argued when we had shorter working hours introduced, redundancy pay, sex discrimination legislation, maternity legislation and none of them, all of the cries of them being extra burdens, none of it has been sustainable in that in fact the economy has continued to grow and grow and grow. Would the hon. mover not agree that the perceived extra work for the employers will only be asked if the employee asks for it? Is it not right, in this day and age, that if an employee asks for conditions that he should be given it?

The President: Hon. member Mr Crowe to reply.

Mr Crowe: Thank you, Mr President. Mrs Christian is right. Existing workers have to have a statement of pay, hours, overtime, deductions, national insurance, tax, etc. That is an existing condition. The new situation, which will apply when this Act comes into force, is that certain extra information will be printed on the payslip, giving some detail of employees' rights. This is my understanding but it will come out in regulations. Mr Lowey's point about the extra burdens: I think there is always a fine line between producing extra work for employers at a cost and the cry that we are producing too much red tape. It is a constant battle between producing laws that are meaningful, without over burdening those who have to produce the bits of paper.

The President: Hon. members, the motion before us is that clause 8 and clause 9 do stand part of the Bill. Those in favour please say aye; against no. The ayes have it. The ayes have it. Clauses 10 and 11, hon. member.

Mr Crowe: Clause 10 enables information obtained by authorised officers to be exchanged for the purpose of enforcing the minimum wage of the Agricultural Wages Act, 1952. The Agricultural Wages Act, 1952, fixes minimum rates for workers employed in agriculture.

Sub-clause (1) defines the information to which the clause applies, that is information obtained by an authorised officer under the Bill.

Sub-clause (2) provides that the information belongs to the Department of Trade and Industry.

Sub-clause (3) enables the information to be used by the department for any purpose under the Bill.

Sub-clause (4) makes it clear that the powers of sub-clause (3) do not limit a purpose for which information could be used apart from this clause.

Sub-clause (5) makes it clear that sub-clause (2), in making the department the owner of the information, does not deprive anyone else of ownership.

Sub-clause (6) makes disclosure of trade secrets by officers an offence, unless it is made for the purposes of the Bill.

Clause 11 is the converse of clause 10 and enables information obtained by the Department of Agriculture, Fisheries and Forestry under the Agricultural Wages Act, 1952, to be used for the purpose of enforcing this Bill. Mr President, I beg to move clauses 10 and 11 do stand part of the Bill.

The President: Mrs Christian.

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

The President: The motion, hon members, is that clauses 10 and 11 do stand part of the Bill. Those in favour please say aye; against no. The ayes have it. The ayes have it. Clauses 12, 13 and 14, hon. member, Mr Crowe.

Mr Crowe: Clause 12 gives a worker who is entitled to the minimum wage but is paid less a contractual right to be paid the difference.

Sub-clause (1) deems a worker who is entitled to the minimum wage, but is paid less, to be entitled under his contract to be paid the difference and this gives him a right to sue the employer for the difference and also a right to complain to the Employment Tribunal about an unauthorised deduction.

Sub-clause (2) sets out the calculation of the entitlement in sub-clause (1). It is the relevant remuneration he should have been paid in the pay reference period, less what he was actually paid and sub-clause (3) defines 'relevant remuneration'.

Clause 13 ensures that the rights given by clause 12 are enforceable where the worker is not technically employed by the employer, for example, an agency worker.

Clause 28 explains who is responsible for paying the minimum wage to an agency worker.

Clause 14 provides an alternative method of enforcement of the minimum wage. An authorised officer of the Department of Trade and Industry may serve an enforcement notice on the employer, requiring him to pay the minimum wage. The authorised officer can serve an enforcement notice requiring an employer to pay the minimum wage for any current or future pay reference period to one or more workers. The employer does have rights of appeal to the Employment Tribunal. Mr President, I beg to move that clauses 12, 13 and 14 do stand part of the Bill.

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

The President: The motion, hon members, is that clauses 12, 13 and 14 do stand part of the Bill. Those in favour please say aye; against no. The ayes have it. The ayes have it. Clauses 15, 16 and 17, hon. member, please.

Mr Crowe: Clause 15 gives an authorised officer of the department power to bring proceedings in the Employment Tribunal or the High Court on behalf of a worker where the employer has failed to comply with an enforcement notice under clause 14. The worker still retains the right to take proceedings himself.

Clause 16 provides further machinery for enforcement. An authorised officer of the department can serve a notice on the employer imposing a penalty on him. Authorised officers can serve such a notice, imposing a penalty payable to the Treasury, for failing to comply with an enforcement action.

Clause 16 also sets out the content of the penalty notice and specifies the rate of the penalty. A penalty notice may be served even though an appeal against the relevant enforcement notice is pending.

Clause 17 gives the employer a right of appeal to the Employment Tribunal against a penalty notice served under clause 16. The time limit is four weeks from service of the notice. The burden of proof is placed on the employer to prove that he was paying the minimum wage and if he cannot prove that, the appeal would be dismissed. Mr President, I beg to move that clauses 15, 16 and 17 do stand part of the Bill.

Mrs Christian: I beg to second, Mr President.

The President: The motion, hon members is that clauses 15, 16 and 17 do stand part of the Bill. Those in favour please say aye; against no. The ayes have it. The ayes have it. Clauses 18, 19, 20 and 21, Mr Crowe.

Mr Crowe: Mr President, clause 18 gives workers further protection by preventing them from being victimized by enforcing their right to a minimum wage or for becoming entitled to it.

Clause 19 gives a worker the right to complain to the Employment Tribunal where he has suffered for claiming the minimum wage or for becoming qualified for it.

Clause 20 provides for the tribunal to award compensation where a worker has suffered for claiming the minimum wage or for becoming qualified for it.

Clause 21 inserts a new section 45A in the Employment Act, 1991, under which dismissal of a worker for claiming the minimum wage or on becoming qualified for it is automatically unfair. This clause also makes it an unfair dismissal if a worker is victimized for claiming the minimum wage by being picked on for redundancy. Mr President, I beg to move clauses 18, 19, 20 and 21 do stand part of the Bill.

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

The President: Mr Waft.

Mr Waft: On clause 21 with regard to the minimum wage: action taken with regard to the employee, reasons for dismissal, et cetera. I just wonder with clause 15 when the authorised officer may act on behalf of any worker, in actual fact they are not acting on behalf of any worker, they are acting on behalf of this legislation. If the company is in breach of this legislation they are in breach of this legislation, they are not purely acting on behalf of the worker, they are acting on behalf of this legislation. If they are acting on behalf of the worker, there is as a consequence of that that clause 21 needs to be inserted so that there are no repercussions. It is not taking the weight of the blame if you like for the enactment of reprisals against the company or the industry away from the worker and actually putting on to the minimum wage legislation.

The President: Mr Crowe.

Mr Crowe: Mr President, I think clause 15 gives, as you are right in saying, Mr Waft, the authorised officers acting in the terms of the Act. They could not act if the Act was not in being. As I

have said, the worker still retains the right to act on his own accord anyway. But this really is giving a new power to a worker, or the new right to a worker in which would be deemed to be unfair dismissal if he was victimised.

The President: Hon members, the motion before us is that clauses 18, 19, 20 and clause 21 do stand part of the Bill. Those in favour please say aye; against no. The ayes have it. The ayes have it. Clauses 22 and 23, please.

Mr Crowe: Mr President, clause 22 puts the burden of proof on the employer to show that a worker was not qualified for the minimum wage and was paid at least the minimum wage. The presumption will be in any civil proceedings that a worker was qualified to be paid the minimum wage. In proceedings before the Employment Tribunal payment of less than the minimum wage would be considered an unauthorised deduction from wages.

Clause 23 gives a right of appeal to the High Court on a point of law against any decision from the Employment Tribunal under this Bill. It adds a reference to proceedings under this Bill to the Employment Act, 1991, which gives such a right of appeal in other employment disputes. Mr President, I beg to move that clauses 22 and 23 do stand part of the Bill.

Mrs Christian: I beg to second, Mr President.

The President: The motion, hon. members, is that clauses 22 and 23 do stand part of the Bill. Those in favour please say aye; against no. The ayes have it. The ayes have it. Clause 24, hon. member.

Mr Crowe: Clause 24 provides for an industrial relations officer to seek to conciliate in any dispute under this Bill if requested by either party or if proceedings have begun in the tribunal. It adds a reference to this Bill to the Employment Act, 1991, which makes similar provision for employment disputes. Mr President, I beg to move clause 24 do stand part of the Bill.

Mrs Christian: I beg to second, Mr President.

The President: The motion, hon. members, is that clause 24 do stand part of the Bill. Those in favour please say aye; against no. The ayes have it. The ayes have it. Clauses 25, 26 and 27.

Mr Crowe: Clause 25 makes it an offence not to keep prescribed records, to keep or produce false records or to obstruct an authorised officer of the Department of Trade and Industry.

Clause 26 is a standard form provision under which directors and other officials responsible for offences by companies can themselves be prosecuted.

Clause 27 enables persons other than advocates to prosecute for offences under clause 25 and extends the normal time limit for summary offences. For example, authorised officers of the Department of Trade and Industry may conduct prosecutions for offences under clause 25. Mr President, I beg to move that clauses 25, 26 and 27 do stand part of the Bill.

The President: Mrs Christian.

Mrs Christian: I beg to second.

The President: The motion, hon. members is that clauses 25, 26 and 27 do stand part of the Bill. Those in favour please say aye; against no. The ayes have it. The ayes have it. Clauses 28 to 32 inclusive, hon. member, Mr Crowe.

Mr Crowe: Mr President, clause 28 makes special provision for the agency worker. That is a worker supplied by an employment agency to work for its customer, there being no direct contract between the worker and customer to ensure that such a worker is paid the minimum wage.

Clause 29 makes special provision to ensure that homeworkers are entitled to the minimum wage. A homeworker is defined in the clause.

Clause 30 makes special provision for Crown employment so that civil servants and others who do not have a contract of employment with the Crown are still entitled to the minimum wage.

Clause 31 excludes the armed forces from entitlement to the minimum wage and clause 32 makes special provision for seafarers. A person employed on a Manx registered vessel is treated as working in the Isle of Man, unless his work is entirely outside the Island or he does not live in the Island. Mr President, I beg to move that clauses 28, 29, 30, 31 and 32 do stand part of the Bill.

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

The President: Mr Delaney.

Mr Delaney: My question is a follow-on from my recent question, dealing with clause 28, where the other arrangements, that word appears, 'other arrangements' and I will get the answer, I suppose again, that it will come in in the regulations. I am particularly concerned with those people who are brought into this Island to work at a training or education establishment, who are then leased out, or used by a third person under the guise of education. Are they entitled to the minimum wage?

The President: Mr Crowe.

Mr Crowe: I thank Mr Delaney for his question and I think what clause 28 is putting clearly into statute is that you cannot remove your obligations to pay the minimum wage by having an intermediary between you and the employee. So the employer cannot employ an agency to employ a worker and then find there is subterfuge to stop the worker getting his rights under the Act. I think regulations will make it clearer as to what will be. . .

Mr Delaney: Can I come in and ask for the mover there to bring to the concern I am trying to show in relation to persons who are not actually agency workers but are actually agency employees through educational and leased out to other persons for educational purposes, but receive little or no remuneration for that service. I want that brought back to the departments concerned, in other words cheap labour.

Mr Crowe: Can you just be a bit more specific there, Mr Delaney?

Mr Delaney: Well, when a person comes to the Island to undertake education, as a worker, in a particular trade or profession and is then used to work at that profession under the guise of education but does not receive any remuneration for it because they are deemed to be getting an education from it. They are actually carrying out a function. To be blunt, the people who work in the catering trade who we see so often ourselves, serving us very excellently at different functions, late in the evening, but do not receive at the moment remuneration they are actually working to earn. It goes to the establishment, rather than to them.

The President: Mr Crowe.

Mr Crowe: It is my understanding that catering workers will be employed under the minimum wage.

Mr Delaney: I understand they are, because they are covered by us, but I am talking about people who are deemed to be learning a profession. You understand that did you?

Mr Crowe: Yes, I think in the Act, I think training is. . . I think we would refer to that in an earlier clause, that if you are being trained to do a job, you can be paid at less than the minimum wage.

Mr Delaney: You cannot be paid less?

Mr Crowe: You can be paid less.

Mr Delaney: I want that clarifying under regulations. No cheap labour in this Island.

Mr Crowe: I will take the point back about the training aspect and Mr Delaney's point.

The President: Hon. members, the motion before us is that clauses 28, 29, 30, 31 and 32 do stand part of the Bill. Those in favour please say aye; against no. The ayes have it. The ayes have it. Clauses 33 and 34 dealing with extensions, hon. member.

Mr Crowe: Clause 33 enables the Bill to be applied by regulations to persons who would not otherwise be workers, deeming them to have contracts of employment and deeming a person to be their employer.

Clause 45 defines workers. Clause 33, for example, might be applied to government sponsored trainees in receipt of a training allowance.

Clause 34 enables the Bill to be applied by order with or without modifications to employment in territorial waters, for example, on oil rigs. Offshore employment is defined and the Council of Ministers will have power, subject to Tynwald approval, to make an order applying the Bill to offshore employment. Mr President, I beg to move clauses 33 and 34 do stand part of the Bill.

Mrs Christian: I beg to second.

The President: The motion, hon. members, is that clauses 33 and 34 do stand part of the Bill. Those in favour please say aye; against no. The ayes have it. The ayes have it. Clauses 35, 36, 37 and 38.

Mr Crowe: Clause 35 excludes share fishermen from entitlement to the minimum wage as it is considered that they are essentially self-employed persons.

Clause 36 excludes voluntary workers from entitlement to the minimum wage and this is provided the person seeks no payment other than expenses and no benefits in kind, except food and drink and, in appropriate circumstances, accommodation. There is also availability of payment of subsistence allowances in limited circumstances.

Clause 37 excludes members of a religious community from entitlement to the minimum wage in respect of work done for the community and a religious community and its activities are defined.

Clause 38 excludes prisoners from entitlement to the minimum wage in respect of work done in pursuance of custody rules, as defined in the terms of the Custody Act, 1995. Mr President, I beg to move clauses 35, 36, 37 and 38 do stand part of the Bill.

The President: Mrs Christian.

Mrs Christian: I beg to second, Mr President, and I just wonder if the mover would confirm that community service does not constitute work and therefore does not qualify for payment under the minimum wage?

The President: Mr Delaney? No? Mr Crowe then to reply.

Mr Crowe: I am sure that community service would not form part of the minimum wage because this would be part of the custody rules.

The President: The motion, hon. members, is that clauses 35, 36, 37 and 38 do stand part of the Bill. Those in favour please say aye; against no. The ayes have it. The ayes have it. Clauses 39 and 40, Mr Crowe, please.

Mr Crowe: Clause 39 avoids overlap between this Bill and the Agricultural Wages Act, 1952, which both provide for a minimum wage rate. This clause ensures that prosecutions cannot be brought or claims made under both this Bill and that Act in respect of the same circumstances.

Clause 40 and the schedule amend the Agricultural Wages Act, 1952, and enable further amendments to be made by regulations to the Act which remains in force as a separate scheme of wage control but assimilated with regard to enforcement to this Bill. The minimum wage rate set by the Agricultural Wages Act cannot be less than the equivalent rate set by the Minimum Wage Bill. Mr President, I beg to move clauses 39 and 40 and the schedule do stand part of the Bill.

Mrs Christian: I beg to second.

The President: The motion, hon. members, is that clauses 39, 40 and the schedule do stand part of the Bill. Those in favour please say aye; against no. The ayes have it. The ayes have it. Clauses 41, 42 and 43.

Mr Crowe: Clause 41 provides that where a worker's employer is himself employed by another employer and the work takes place on the latter's premises, they are to be treated as joint employers of the worker and as jointly liable for any failure to pay the minimum wage. This covers cases in industries such as agriculture or construction where A employs B to engage other workers to work on A's premises. For example, A employs B as gang master who in turn employs labourers to work on A's farm or A has a building site and employs B as site manager to provide building workers.

Clause 42 makes contracting out of the Bill unlawful with an exception for written agreements set in tribunal proceedings.

Clause 43 requires the Department of Trade and Industry to arrange for publicity to be given to workers' rights under the Bill and this would include the hourly rate, the way in which the hourly rate is to be calculated, the classes of workers whose entitlement is excluded or modified and the means of enforcing workers' rights. Mr President, I beg to move clauses 41, 42 and 43.

Mrs Christian: I beg to second.

The President: The motion, hon. members, is that clauses 41, 42 and 43 do stand part of the Bill. Those in favour please say aye; against no. The ayes have it. The ayes have it. Perhaps we could complete and take the clauses through to clause 47, hon. member, Mr Crowe?

Mr Crowe: Clause 44 requires Tynwald approval to orders and regulations under the Bill and clause 45 defines the terms 'employee', 'worker', 'contract of employment', 'employment' and 'employed' in the Bill.

Clause 46 defines other terms used in the Bill and clause 47 gives the Bill its short title and provides for its commencement on an appointed day or days after regulations having been made fixing the minimum wage and making other provisions under clauses. Draft regulations are almost completed and will be submitted to Tynwald upon Royal Assent to the Bill. I beg to move clauses 44, 45, 46 and 47 do stand part of the Bill.

Mrs Christian: I beg to second, Mr President.

The President: Hon. members the motion before us is that the remaining clauses 44, 45, 46 and 47 do stand part of the Bill. Those in favour please say aye; against no. The ayes have it. The ayes have it. Mr Crowe.

Mr Crowe: Mr President, may I ask that we take the third reading at this stage? It is quite urgent. I would like to think that it was urgent because this legislation does have to go to another place consequent upon the passing of our amendment and I would ask that members would consider taking the third reading.

The President: Mr Lowey.

Mr Lowey: I would support the hon. mover in that, that we should complete the Bill. As I said before, I think the principle is accepted. I think the machinery is there and I think we ought to get it to another place and finalised.

The President: Is the Council agreed that in fact we should take the third reading this morning?

Members: Agreed.

The President: Agreement all round. In that case, hon. members, I will invite Mr Crowe to take the third reading.

Mr Crowe: Mr President, if I may be brief, I think we have explored it fully and I think the one area of contention was the question of the mechanics or the machinery of setting up a committee which has received support today. I look forward to being able to arrange for the department to present regulations in to all the members and have these regulations hopefully brought before Tynwald in June or at the latest I would guess July. Mr President, I beg to move the third reading.

The President: Mrs Christian.

Mrs Christian: I beg to second, Mr President.

The President: Mr Delaney.

Mr Delaney: I think there is a need for speed on this one if we are to get the regulations before the other place goes out is the general election.

The President: Mr Lowey.

Mr Lowey: Yes, I wish to support the Bill. I am glad that the climate has changed. Most people now accept the principle. I am sure we will come to a proper rate of pay, but that is for another day. This legislation puts the framework in being. Again I cannot resist the temptation to say that when we deal with social legislation - and here I go again - shorter hours, redundancy pay, sex discrimination, maternity, all of which has been said would bring the end of the world, the economy would stop and no employers would employ. The contrary has been the case since they have been all introduced and now we wonder what the excitement was about, and if I may say so to my friends from the Treasury, they were the ones that objected to all of them in the same vociferous way. They were wrong then and they are wrong now. So a leopard does not change its spots.

The President: Mr Radcliffe.

Mr Radcliffe: I was going to say time will prove the right or wrong of that statement, Mr President.

The President: I invite then Mr Crowe to reply to that debate.

Mr Crowe: Thank you, Mr President. I think this is one of the most important pieces of social legislation. I think it has had a fair debate and I think we all accept the principles. I think the interesting amendment, hopefully, will improve the administration. I think the key to setting it is the rate and that is outside our hands and I think will lead to a debate in Tynwald on that. It is setting a rate which is meaningful but not overburden some and I think today is one part of the issue of putting into primary legislation. The key is establishing the rate and then in future years establishing a rate that accords with inflation or certain things at the time. So again, I thank members for their support and for their interest. It is relevant, I am sure to all of us. I beg to move the third reading, Mr President.

The President: Hon. members, in putting to you the third reading of the Minimum Wage Bill, I would reiterate, just to have perfect clarity, that in fact from clause 2 onwards we did deal with them as numbered in the green Bill. There is a requirement to renumber those as a result of putting in the new clause moved by Mr Lowey. So, hon. members, the motion is that the Minimum Wage Bill be read a third time. Those in favour please say aye; and against no. The ayes have it. The ayes have it.

Fair Trading (Amendment) Bill — Second Reading Approved

The President: Hon. members, we then turn to item 7 on our order paper, which is the Fair Trading (Amendment) Bill for second reading and I call upon the hon. member, Mr Waft.

Mr Waft: Thank you, Mr President. The first three clauses of the Bill amend the Fair Trading Act 1996 by introducing controls over pyramid selling schemes. When the 1996 Act was being drafted, we had hoped to include pyramid selling provisions in the Bill but at that time my research showed that the controls existing in the adjacent isle did not work very well and we decided not to follow their unsatisfactory lead. Since then the legislation has been amended and, having looked at it and similar examples from elsewhere, we believe that the time is now right to introduce controls over pyramid selling which follow those found in the UK and other jurisdictions. Pyramid selling schemes in their simplest forms are those where participants are encouraged to introduce others into the scheme and their principal reward, or benefit gained from investing scheme, is through this recruitment process rather than the distribution of goods and services. These types of schemes will be outlawed and other trading schemes with similar elements will have to comply with regulations to be made by the Department of Trade and Industry.

Clause 3 of the Bill extends the scope of anticompetitive practices, controls found in the Fair Trading Act 1996.

Clauses 4 to 7 deal with unfair contract terms and clauses 8, 9 and 10 include controls over contracts concluded as the result of an unsolicited visit by amending the provisions currently found in the Consumer Protection Act 1991.

Clauses 11 to 15 of the Bill add a new part 8A to the Consumer Protection Act 1991 which deals specifically with distance selling. The legislation affords the consumer of goods and services additional protection when purchases made remotely without any physical contact with the seller. All distance selling mediums are covered from phones to fax, post and e-mail, et cetera. Improvements are also made to the law governing inertia selling or the sending of unsolicited goods and services.

Clause 17 provides new provisions for the resolution of disputes between customers and suppliers of financial services by an ombudsman scheme through an amendment to the Financial Supervision Act 1998. The Office of Fair Trading will handle complaints in the first instance with a view to resolution through mediation. The office will maintain a panel of adjudicators, one of whom will be appointed to determine each complaint that cannot be resolved through mediation. The adjudicators will have power to require information and make binding awards on both parties which can take the form of monetary awards up to £100,000 payable by the supplier and all directions of action. The Bill also allows the ombudsman scheme to dismiss complaints if they meet certain criteria, such as if they are vexatious or if they simply concern unpredictable investment performance.

Clause 18 removes some of the restrictions placed on our officers when co-operating with other government agencies such as the police, customs and the DHSS. The enforcement powers granted under the Trades Description Act and used by other statutes at the present time can only be exercised by inspectors of Weights and Measures. Although we currently have several qualified inspectors, we also have other staff who have been trained in certain matters and are well experienced in investigations, who can perform a very useful function by doing much of the initial information gathering to assist the senior officers, provided they have the same enforcement powers.

Clause 19 of the Bill amends the various statutes by replacing references to 'inspectors' or 'Inspectors of Weights and Measures' with the term 'duly authorised officers'. The Bill contains many different elements and some substantial new provisions, some minor improvements of existing legislation, but as a whole it is vitally important for the effective operation of the Office of Fair Trading and for the protection of the consumer on the Isle of Man.

At the first reading stage, the hon. Mr Crowe's query related to the administration of the ombudsman scheme, staffing details and how it would fit within the current structure of the Office of Fair Trading. When financial complaints come into the Office of Fair Trading, in the first instance they will be dealt with by the Office of Fair Trading staff, using approaches of conciliation and mediation to attempt to resolve the complaint. There are currently two full time consumer adviser posts dealing with consumer complaints across all goods and services. These staff will handle the financial complaints as well, with additional help from one trading standards officer and one special project officer who have been appointed principally to work on the ombudsman scheme. We anticipate that most complaints will be resolved at this stage, with only a small proportion needed to be referred to an adjudicator or ombudsman. Under the Bill the Office of Fair Trading has responsibility for providing and maintaining a panel of adjudicators to give formal determination on unresolved cases. We plan to have one chief adjudicator who will deal with most of the complaints, supported by probably two fellow adjudicators to help out when necessary. The Office of Fair Trading consumer advisers are well experienced at handling consumer complaints, handling some 4,000 in the last year. It is hard to estimate with any certainty how many extra financial complaints will be received as a result of the ombudsman scheme but with the support of the two additional staff members we think the staffing should be adequate. Mr President, I beg to move the Bill be read a second time.

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

The President: Hon. members, the motion before us then is that the Fair Trading (Amendment) Bill 2001 be read a second time. Those in favour please say aye; and against no. The ayes have it. The ayes have it. Well, hon. members, being aware of the clock, the decision is yours, we could sit until, say, 1.30 and complete or try to complete in the half hour. We could carry the clause stage over to our next sitting, or we can come back at 2.30pm. I am in your hands, hon. members. Would you be happy to take clauses and third reading together at the next stage? Agreed? Mr Waft would that be. . .?

Mr Waft: Yes, Mr President, provided there is no particular objection to the Bill which I can -

The President: That I cannot guarantee!

Mr Waft: - clarify for any members at the third reading if we are going to do it all in the one session.

The President: Hon. members, let us be fair and plain on it. Are we prepared to carry the Fair Trading (Amendment) Bill clause stage through to 1st May?

Mr Lowey: I propose that we suspend the clauses stage for today and revert to them at our next meeting.

Members: Agreed.

The President: We are agreed, hon. members, that we will take clauses and third reading at the next sitting? In that case, hon. members, that draws our order paper to a conclusion for this morning, so the adjournment will be to Tynwald, commencing 24th April at 10.30 a.m. and thereafter, as we have just indicated, to Tuesday 1st May at 10.30 a.m. Enjoy your Easter break, hon. members.

The Council adjourned.