

# REPORT OF PROCEEDINGS OF THE LEGISLATIVE COUNCIL

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**Douglas, Tuesday, 13th May 2003  
at 10.30 a.m.**

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Present:

The Acting President (Mr E G Lowey), the Attorney-General (Mr W J H Corlett QC), Hon. C M Christian, Hon. P M Crowe, Mr D F K Delaney, Mr D J Gelling CBE, Mr L I Singer, and Mr G H Waft, with Mrs M Cullen, Clerk of the Council.

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*The Chaplain of the House of Keys took the prayers.*

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## Items Considered

Apologies for Absence	C284
Attendance Allowance – Payment to persons with Sensory Loss – Question by Mr Singer	C284
Severe Disability Allowance – Recipients’ Entitlement to Pension – Question by Mr Singer	C285
International Criminal Court Bill – Third Reading Approved	C286
Income Tax Bill – First Reading Approved	C288
Heath Burning Bill – First Reading Approved	C290

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## Apologies for Absence

**The Acting President:** Thank you, hon. members. We start with apologies from Mr President. As hon. members will be aware, Mr President is representing the Island in Norway this week.

### Attendance Allowance – Payment to Persons with Sensory Loss – Question by Mr Singer

Question 1. The hon. member (Mr Singer) to ask the Minister for Health and Social Security:

- (a) *At what age does a person who suffers a minimum of 50 per cent sensory loss qualify for attendance allowance; and*
- (b) *under what circumstances would this not be payable?*

**The Acting President:** This leads us to our agenda, and we start with question 1 from the hon. member of Council, Mr Singer.

**Mr Singer:** Thank you, Mr Acting President. I beg leave to ask the questions standing in my name.

**The Acting President:** Minister to reply.

**Mrs Christian:** Thank you, Mr Acting President. Attendance allowance is payable to people who are aged 65 or over, who on account of their disability, have had care and/or supervision needs for at least six months. Ordinarily, entitlement to attendance allowance depends on the level of care or supervision the person needs rather than the particular condition which they are suffering from. However, attendance allowance is paid at the higher rate where the person has a life expectancy of six months or less, irrespective of the need for care or supervision. Notwithstanding that a person may be suffering from a degree of sensory loss, attendance allowance would not be payable unless the person requires by day frequent attention in connection with their bodily functions or continual supervision in order to prevent substantial danger to them or others and/or by night prolonged or repeated attention in connection with their bodily functions or someone to be awake to watch over them at frequent intervals or prolonged periods in order to prevent substantial danger to them or others.

**Mr Singer:** Could I thank the minister for her answer. Minister, is attendance allowance paid to a person who is also in receipt of a pension? I know that DLA is paid plus the pension; is attendance allowance paid as well if someone is in receipt of a pension?

**Mrs Christian:** Attendance allowance is a non-contributory, non-income related, tax-free benefit. It

therefore does not have any bearing upon their pension entitlement.

**Mr Singer:** If that is so, can the minister tell me, then: if attendance allowance *and* pension are paid, do we pay equivalent to the United Kingdom? I think they can receive up to about £142 per week; is that the same here on the Island?

**Mrs Christian:** The hon. member is talking about both pension and attendance allowance, so I am not quite clear where his figures are coming from. Attendance allowance is payable at one of two rates: the lower rate is £38.30 a week, and the higher rate is £57.20 a week. As I have said, that is irrespective of their pension entitlement. In addition, a person may be entitled to income support, so it is difficult for me to give precise figures in terms of any particular case unless I know the circumstances of the person concerned.

**Mr Singer:** Thank you for the answer, minister. Could I ask one further question, which is more general, on this item? The second part of the question actually says: 'under what circumstances would this not be payable?' Is the minister aware that a survey recently conducted by Action for Blind People has shown that 94 per cent of visually impaired persons do not receive the benefits to which they are entitled? Would the minister outline the steps that are taken here to ensure that a similar percentage of people in the Isle of Man are not in a similar position and what positive policies her civil servants take to actively promote the benefits available to the potential recipients? And will those civil servants then help the applicants fill in what can often be complicated paperwork?

**Mrs Christian:** Mr Acting President, indeed the department does take steps to try and ensure that benefits are payable to all those who are entitled to them. With regard to the specific condition the hon. member has referred to, i.e. blindness, the department works very closely with Manx Blind Welfare and the RNIB in the Isle of Man, who have a social worker who liaises with our department to ensure that people are aware of their benefits and do make appropriate claims. Outside of that structure, the department also liaises with Age Concern and other organisations who provide help and assistance to people in making claims, and of course our own departmental officers will assist anyone who needs that assistance in making an appropriate claim.

**Mr Singer:** Can I thank the minister for those assurances, Mr Acting President.

**The Acting President:** Thank you. Mr Waft.

**Mr Waft:** Thank you, Mr Acting President. I wonder if the minister could clarify the situation now with regard to the problem when there is a controversy over whether the lower attendance allowance is given

and the client thinks he should be on the higher attendance allowance of £57.20. Is he able to get representation to go to an appeal, and is there any situation where there is – it has been talked about before – a disability rights officer who might be able to assist him in this area?

**Mrs Christian:** Mr Acting President, there is an independent appeal tribunal to whom a claimant can apply for consideration of their case if they feel that they have not been awarded the right level of benefit, and that is led by a legal chairman, an independent layperson and someone with medical experience.

In respect of help for disabled people, there are a number of avenues through which disabled people can get assistance. There is not one disabled rights officer, but, as the hon. member will be aware, there are various voluntary groups who liaise very closely with the department in respect of the particular disabilities that they represent to ensure that their members get appropriate advice and assistance, as well, as I have just indicated, as our particular working relationship with Age Concern, who cover not only elderly people but anyone who wishes to go to them for advice, as do the Citizens' Advice services in the Island.

**Mr Waft:** There was just one other –

**The Acting President:** A final supplementary on this question.

**Mr Waft:** I am particularly concerned, Mr Acting President, with regard to the mental health side of the situation. I know personally that there are people willing to undertake this work, and there is a suggestion that perhaps there might be some support from the department with regard to assistance and having a scheme put forward in that direction with regard to legal representation by people who are willing to undertake it. I wondered if you had been approached from that area.

**Mrs Christian:** Yes, Mr Acting President. Indeed, as far as those with mental illness problems are concerned, the department is working very closely with the Sun organisation, with the Sun network. We have agreed to give as much assistance as we possibly can to the person who has been appointed their liaison officer with the department so that they get a full grasp of what benefits are available in order to assist their members making claims. The department has a panel of legal representatives who are willing to act at tribunals on a voluntary and free basis. In addition to that, we have recently had an offer from another individual who has offered services to give support to claimants in tribunal situations or, indeed, any other situation. We are liaising, as a matter of courtesy, with the panel of the Law Society officers to see if they have any observations or comments to make on us using yet another avenue. I cannot imagine that they would have any objection to that, but we have consulted them as a matter of courtesy, and when we

get their reply, we will be furthering our response to the person who has offered their services to act in this capacity.

### **Severe Disability Allowance – Recipients' Entitlement to Pension – Question by Mr Singer**

Question 2. The hon. member (Mr Singer) to ask the Minister for Health and Social Security:

*Will a person in receipt of severe disability allowance receive their pension entitlement on reach pensionable age?*

**The Acting President:** The hon. member of Council, Mr Singer.

**Mr Singer:** Thank you, Mr Acting President. I beg leave to ask the question standing in my name.

**The Acting President:** Minister.

**Mrs Christian:** Mr Acting President, it is assumed that the hon. member is referring to severe disablement allowance and to the state pension. Severe disablement allowance, or if I may call it SDA for short, was abolished for new claims from 9th April 2001, from which date access to incapacity benefit for persons incapacitated in youth is provided instead. People now in receipt of SDA are therefore those who are transitionally protected and had put in their claims before that change was made.

SDA is payable to the age of 65. A man may therefore qualify for his state pension immediately following the termination of his SDA. Women qualify for their state pension at age 60, and of course, as we know, this will be equalised with men at 65 over a period between 6th April 2010 and 5th April 2020. For a woman presently, if she is aged between 60 and 65 and in receipt of SDA and her state pension excluding pension supplement is payable at a rate which is lower than SDA, her SDA will be reduced by the amount of her state pension less pension supplement, so her total benefit income will be SDA and pension together, paid at the rate of SDA plus pension supplement. If, in that situation, her state pension excluding pension supplement is more than SDA, then no SDA will be payable. Perhaps I can clarify that by saying SDA and pension are both income substitution benefits, and therefore the overlapping benefit rule comes into play. So, a woman who is over 60 but has not reached 65 and is claiming pension will receive whichever is the higher of pension plus pension supplement or SDA plus an element of basic pension plus pension supplement.

**Mr Singer:** Could I thank the minister for her answer, but would the minister not agree with me that SDA was originally awarded to a person because they

obviously suffered disablement, perhaps because of an occurrence at work which prevented them working, and that the way we are working now is that, even though it was linked to inflation possibly, we are reducing the SDA from a person and giving them a pension, but the fact is that the person was given the disability allowance because of things that they could not do as well to help them and those do not suddenly disappear? The people who suffer a disability need greater help than a person who is fully able and gets their pension, so surely these people should not have their SDA taken away from them, because they are going to find it that much more difficult than a fully able person who is receiving the full pension.

**Mrs Christian:** Mr Acting President, the point that I made earlier is that SDA was made as an element of income replacement, as is the pension, and therefore the overlapping benefit rules apply. There are, of course, other benefits which are available to a person who receives SDA. Income support is payable. They may be entitled to, or they may have qualified for, disability living allowance, which is disregarded for income support purposes, and that takes into account their needs as a disabled person. So, we need to be clear about what the relevant benefits are there for. If a person qualifies for SDA, it is extremely probable . . . Indeed, I would doubt that anybody who gets SDA does not get disability living allowance, and *that* is the benefit which is payable in respect of their extra needs in relation to disability. SDA was payable and has now been replaced by incapacity benefit – at least, sickness benefit, in most people’s terminology – and that is the element of an assistance in respect of lack of ability to earn.

**Mr Singer:** Okay. I may take that up again some other time.

**The Acting President:** I thank the minister for her replies.

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### **International Criminal Court Bill – Third Reading Approved**

**The Acting President:** We will move on, then, to the International Criminal Court Bill, third reading, to be moved by Her Majesty’s Attorney. Mr Attorney.

**The Attorney-General:** Yes, thank you, Mr Acting President. There were some matters which arose from the consideration of clauses at the last sitting of Council and, if I may, I will review those matters and hopefully deal with the matters which were of concern to hon. members.

The first matter related to clause 7(1) of the Bill, which, it will be recalled, concerns what happens when a delivery order is refused. When dealing with this clause, I indicated that if the High Bailiff refused to make a delivery order, he was under a duty to notify

the Attorney-General of his decision, and that the Attorney-General was similarly under a duty to notify the Home Secretary. Upon further consideration of this clause, I should make it clear that there is no statutory duty on the Attorney to notify the Home Secretary, but there is no doubt that the Attorney would, as a matter of course, notify the appropriate Secretary of State that His Worship had refused to make a delivery order. It would be incumbent on the Attorney to take advice as to whether it would be appropriate to appeal against the decision of the High Bailiff and, as has been observed, the decision to appeal has to be notified to the High Bailiff without delay.

The second point, Mr Acting President, related to clause 13: the effects of a delivery order. The purpose of clause 13 is to enable a delivery order to be executed. It provides that someone who is subject to a delivery order can be lawfully kept in custody pending or during the execution of the delivery order, whether in the Isle of Man or on board a Manx ship. The equivalent provision in the United Kingdom Statute of 2001 refers not only to a person being deemed to be in legal custody at any time when being in the United Kingdom or on board a British ship, but also being on board a British aircraft or a British hovercraft. Given that we do not as yet have the concept of a Manx aircraft, and presumably it is unlikely that we will have a Manx hovercraft, although events may prove that I am wrong, it is appropriate at this stage that our clause refers only to the defendant being deemed to be in legal custody when he is on the Island or on board a Manx ship because, in those circumstances, Mr Acting President, the Island’s courts will have jurisdiction over the person who is the subject of the order.

There was also concern, I believe, in relation to clause 13(3), and in particular whether a person authorised by the Department of Home Affairs, such as an ICC official, would have the power of arrest in respect of a person who was on the Island and was the subject of a delivery order. I indicated that, in my opinion, that would indeed be the case – in other words, the person authorised would have the power of arrest. I have to say that my further researches would support that view, and perhaps the best I can do is to refer to the explanatory notes on the equivalent provision in the United Kingdom Act, and I quote from those notes: ‘Subsection (3) grants the powers of a constable to a person authorised to carry out custodial duties in respect of a delivery order, such as the person designated to escort the person to the ICC or the state of enforcement, and provides for equivalent authority, protection and privileges.’

Mr Acting President, there was also concern, or at least a query, in relation to the position in Jersey and Guernsey. Hon. members wished to know whether the Channel Islands had enacted legislation similar to the Bill under consideration. My enquiries would indicate that, in fact, Jersey and Guernsey have, for the time being, elected to have the United Kingdom statute extended to them by order in Council but that it is their intention to pass their own legislation when the opportunity arises.

Mr Acting President, a query arose in relation to clause 44(2) in relation to the elements of crime. A query was raised as to whether any relevant elements of crime had yet been adopted by the United Kingdom. I confirmed, Mr Acting President, that the relevant regulations were indeed made by statutory instrument pursuant to Section 50(3) of the 2001 Act of the United Kingdom Parliament, namely the International Criminal Court Act 2001 (Elements of Crimes) Regulations 2001, which is statutory instrument 2001/2505.

Finally, Mr Acting President, a query was raised in relation to clause 49(4), namely as to whether part 8 of the Children and Young Persons Act 2001 was yet in operation, and I confirm that, by virtue of the Children and Young Persons Act 2001 (Appointed Day) (Number 2) Order 2002, the provisions of the 2001 Act which were not in force as at 20th December 2002 came into operation on 1st February 2003.

So, Mr Acting President, I hope that those responses to the outstanding specific queries will satisfy the hon. members. Having dealt with those specific matters, I do hope, Mr Acting President, that hon. members will be content that this Bill be read a third time and do pass. The Bill, if passed, will mark a further demonstration of the Island's capacity to play its part in fighting international crime, whether by co-operation with the international court or by enforcing our domestic law to combat the heinous crimes of genocide, crimes against humanity, war crimes and aggression. So, Mr Acting President, I move that the bill be read a third time and do pass.

**Mr Singer:** I would be happy to second, but could I ask a question?

**The Acting President:** Certainly.

**Mr Singer:** Just a further clarification of what has been said, and remembering that we almost had a hovercraft going from Ramsey to Scotland a couple of years ago, but it did not appear: under these powers of arrest and having people in legal custody on a non-Manx ship or an aircraft, I take it that if those vessels or aircraft are within territorial waters or in Manx airspace, the person can be legally in custody. Assuming that is right, what happens when that ship or that aircraft leaves Manx airspace or territorial waters? Is that person still legally under arrest and in custody, to be delivered into the custody of the ICC, particularly if there is no member of the ICC to deliver them into their hands on that particular vessel?

**The Acting President:** Mr Attorney.

**The Attorney-General:** Thank you, Mr Acting President. I think that the essential point to remember here is that our legislation can only be enforced in circumstances where we have jurisdiction; that is the connecting factor between the court's ability to enforce orders and this legislation. Therefore, as I indicated in

relation to clause 13, the legislation, or the Bill as presently drafted, limits the concept of legal custody, being when the person in question is in the Island or on board a Manx ship. In relation to the territorial waters around our Island, of course, the courts of the Island have jurisdiction in relation to that, so if we have a non-Manx ship in territorial waters, then the courts can enforce the delivery order and there would be no question about that. A non-Manx ship, Mr Acting President, which travels outside territorial waters does not fall within the jurisdiction of the Manx courts, and therefore if the person concerned were to attempt to escape, then it would not be for the Manx courts to enforce an order. I presume the ICC official, if we stipulate that, would, of course, try to restrain the escapee, and it may well be that if the ship is in international waters, the matter will be resolved when the ship comes back into the territorial waters of another state, but certainly, so far as the Isle of Man courts are concerned, my provisional view would be that we would not have jurisdiction outside our own territorial waters.

**The Acting President:** Okay. Mr Gelling.

**Mr Gelling:** Thank you, Mr Acting President. Could I just thank Mr Attorney (**Mr Delaney:** Hear, hear.) for the more detailed explanation of clauses 7 and 13? I think now that I am certainly – and I think others will be, too – quite clear as to what powers of a constable are being bestowed upon a person when the person they are bringing is under a delivery order and not otherwise. I think that has cleared it up, and I thank Mr Attorney for that.

**A Member:** Hear, hear.

**The Acting President:** Mrs Christian.

**Mrs Christian:** Mr Acting President, it would seem that if such a person is in custody, it would not just be a matter of concern to the Isle of Man; arrangements would surely have been made in respect of the whole of the journey to the destination with appropriate judicial authorities along the way. One would imagine that a seamless arrangement would have been made so that, when moving out of Manx territorial waters, the appropriate powers would be in place in the next jurisdiction, and if they went international, as soon as, as the Attorney says, they come back into another appropriate signatory country, then the appropriate powers would take effect.

**The Acting Speaker:** Mr Attorney.

**The Attorney-General:** Mr Acting President, may I confirm that? It is rather, I think, analogous to the situation on extradition. You might imagine a situation where a person was ordered to be extradited from, shall we say, Ireland to the United Kingdom and thence on to Germany. You can imagine that, at each stage, to adopt the very good way of putting it, there

would indeed be a seamless transit. Arrangements would be made in advance and if, to just take that example, the person concerned had to make an unauthorised stop in our Island, then I have no doubt – and indeed the Bill provides for this – that the Isle of Man would play its part in providing that seamless transit.

**The Acting President:** Hon. member Mrs Crowe.

**Mrs Crowe:** Thank you, Mr Acting President. As I raised the point about Manx ships last week, in some ways I am satisfied with the definition that has been given, but it does not reassure me still that the term ‘Manx ship’ should be included in the Bill, because so many of these ships that are registered on the Manx shipping register will be included in that terminology as a ‘Manx ship’ and the particular ones that we might be using for transportation will not necessarily be a ‘Manx ship’. But my query was originally: although you say that there would be a seamless transition from one jurisdiction to another, would that mean that, once out of our territorial waters on a non-Manx ship, which is the likely scenario, that person would have to be re-arrested, or would it just be a journey into wherever it might be, or does there have to be someone there to restate the authority of the delivery order? That was my original query, because I think that the fact that we have ‘Manx ship’ in the Bill rather clouds the issue when you think of all the numerous ships around the world that will be classed as ‘Manx ships’.

**The Acting President:** Mrs Christian, maybe on the same point?

**Mrs Christian:** Yes, Mr Acting President, it is on the same line, but imagining that a Manx ship may well be in another part of the world but in another jurisdiction. I do not know whether Australia, for example, is a signatory, but let us suppose it was and they wanted to transport (Mrs Crowe: Yes.) someone on a Manx ship. Is it not appropriate that we make sure that, on that ship, at least we could play our part in ensuring that the process took place effectively? I think we understood our jurisdiction is on Manx ships in international waters or wherever they may be.

**The Acting President:** Let us ask Mr Attorney.

**The Attorney-General:** Yes. Mr Acting President, I hesitate to say it, but perhaps hon. members are overdoing this. I think that, in practice, if a state was charged with the duty of ensuring that a particular individual was transported back to the jurisdiction of the ICC, that would probably be done by a military aircraft or a specifically designated aircraft, thereby avoiding any issue with domestic jurisdiction. If a situation were to arise, Mr Acting President, where the transit were to be done by sea and a Manx ship were in the jurisdiction of the Australian authorities, in the unlikely event that that ship would be chosen to carry out the journey, I would hope

indeed that the master of the ship would play his part, but it would be then pursuant to Australian jurisdiction, within the waters of Australia -

**Mrs Christian:** In international waters?

**The Attorney-General:** And then –

**The Acting President:** Okay. Mr Gelling.

**Mr Gelling:** Mr Acting President, the way I see it, having listened to Mr Attorney again today, is that we are talking about someone who is under a custodial sentence in the Isle of Man and is under a delivery notice in the Isle of Man being transported from the Isle of Man. That is how I have it in my mind, so a ship carrying that person is the one we are talking about. We would hardly have a Manx-registered ship out in Anguilla or somewhere – probably they have not got a sea down there, I do not know, sir – transporting someone, because the authorities there would use a ship possibly of their designation. We are not talking about an arrest on a ship that is Manx registered; we are talking about a delivery order, and I think that is the point, isn’t it?

**The Acting President:** I genuinely think Council has given this a very good airing. I think there is a certain amount of clarity. Mr Attorney, fire away.

**The Attorney-General:** No, well, Mr Acting President, I do not think I can add anything further. I think the questions that have been raised by hon. members will form the basis of an excellent question for the law finals. *(Laughter)*

**The Acting President:** Okay. Can I then put to Council that the International Criminal Court Bill be read for a third time and do pass? All those in favour say aye; those against? The ayes have it. The ayes have it. Bill read a third time.

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## Income Tax Bill – First Reading Approved

**The Acting President:** Can I call now on Mr Gelling to take the first reading of the Income Tax Bill? Mr Gelling.

**Mr Gelling:** Yes, thank you, Mr Acting President. The Income Tax Bill 2003 is, in fact, divided into four parts. The first three parts address the specific topics of the introduction of the new personal allowance credit, measures relating to the protection of information and measures relating to international information exchange, and the fourth part makes a number of amendments to existing income tax legislation, some of which are consequential amendments or in relation to the legislation in the first three parts that I have just described.

If I can just take, Mr Acting President, part 1, the principles, it comprises 16 clauses which introduce the

new personal allowance credit of up to £200, which will be payable to those individuals and married couples who have low income and who have not utilised all their personal allowances. The personal allowance credit ensures that those who would not otherwise benefit from a reduction in tax rates or an increase in personal allowances are eligible for some tangible benefit from the income tax system. The personal allowance credit is not intended as an alternative to the benefits system; it is intended to address the area of identified need where people have income higher than the threshold which entitles them to social security benefit but insufficient income to enjoy any increase in personal allowances or reduction in tax rates.

We move on, then, to part 2, Mr Acting President, which comprises clauses 17 and 18. It provides for an updating of the existing section 106 of the Income Tax Act of 1970, which relates to the confidentiality of tax information, and brings in new sections at 106C, D, E and F, which control both the disclosure of information by the assessor to other bodies and the disclosure of information to the assessor by third parties.

Part 3 comprises clauses 19 to 22. The exchange of information under the terms of international agreements is, as we all know, a developing part of the Island's international taxation responsibilities, and the provisions of this particular part enable the Assessor of Income Tax to release information where the Island has entered into an arrangement with the government of another country – and I emphasise that, Mr Acting President: where the Island has entered into an arrangement with the government of another country. It controls the use that may be made both of information released and information received under such an agreement.

Then we move on to part 4, clause 23, and this concerns the rates of income tax to be applied to the trading profits of companies. It confirms the provisions of the Income Tax (Temporary Taxation) (Standard Rate of Tax) (Companies) Order 2002, which, of course, was approved by Tynwald in March of 2002 and which provided for companies' trading profits to be charged as rates of 10 per cent and 15 per cent. Hon. members, I am sure, will be aware that for 2003-4 there is now effectively only one rate of 10 per cent on company trading profits, while the non-trading income of companies remains liable at the higher rate of 18 per cent.

Clause 24 in this particular part eliminates an area of potential tax avoidance in relation to the valuation of benefits in kind.

Clause 25 is a change which is consequential on the introduction of the personal allowance credit, and it amends the tax treatment of husband and wife in relation to both assessment and the entitlement to personal allowances in the tax year in which they marry or the tax year in which they separate. Treasury has, Mr Acting President, given an undertaking that the broader matter of the tax treatment of husband and wife will be addressed in another income tax bill which will be brought before the branches later in the

year, when it is intended to update those areas in relation to which the existing régime has received criticism from the standpoint of human rights and, indeed, fairness.

Clauses 26 to 28 update the income tax legislation in relation to the offence of the unlawful assumption of the character of officers of the income tax division and the offence of bribery and collusion and the introduction of a power enabling Treasury to pay rewards to informants.

This Bill introduces a number of important amendments into our income tax system. The Island's commitment to maintain best practice in an international arena has given the opportunity to update legislation relating to confidentiality and exchange of information, while the Bill also contains a very important development in the form of the personal allowance credit system for the Island's own lower-income individuals and married couples. On those remarks, Mr Acting President, I would move that the first reading of the Income Tax Bill be taken this morning.

**Mr Delaney:** I beg to second, Mr Acting President.

**The Acting President:** Any member wish to comment?

**Mr Singer:** Could I just make a general comment? I wonder why -

**The Acting President:** Yes, Mr Singer.

**Mr Singer:** Thank you. Under section 4, it is actually giving examples and figures. Should these not come under regulations for when they are possibly changed, rather than . . . ? If the figures change, you are going to have to start to change primary legislation. The other comment, while I am speaking, is that because it mentions the figures, certainly I have, and there is certainly disquiet amongst certain members of Tynwald that what we are actually giving is not very much in order to help people who need the help. We are talking here £200, which is what? Three loaves of Manx bread or six loaves of imported bread a week. It is not a lot. I think there are questions about that. And I just wondered if I could ask the hon. member why the figures are actually in the primary legislation and not just the principle.

**The Acting President:** Mr Waft.

**Mr Waft:** Yes. I wonder if the members for the Treasury might just clarify when these credits will be due to be paid out. When can those due to receive them actually start receiving them?

**The Acting President:** Any other member wish to comment? Mr Gelling to reply.

**Mr Gelling:** Yes, thank you, Mr Acting President. I think, basically, it was my introduction that gave you the figures, because I stated that in Tynwald in March 2002 it provided for companies' trading profits, so I think you will find that the figures were my explanation rather than being entrenched in the actual Act. I will answer, no doubt in a matter of seconds, as to why they are there. *(Laughter)*

Personal allowances: to the question of the amount. Again, I can only emphasise to members that this is a first stab at something that we have been trying to introduce for a long time and, due to the inability, actually, of our system to be able to do it, we were unable to introduce it. I think now we have introduced it and the principle of its introduction is really what is important here, to get it actually working, and then we will see what the take-up is, because it has been very difficult to assess, in fact, who will and who will not – because of not filling in income tax forms, we have difficulty in assessing how many will – actually qualify. So I would ask hon. members to bear with Treasury. Let us get the system up and running. We have made an assessment of what it is going to cost us, and we are well satisfied with the fact that we can afford that particular amount, and as and when we see how it works and how it runs, I am quite sure then, once the system is in place, the budget will be able to raise it or whatever.

Very hurriedly, a message received: these are rates as they will apply for the year 2003-4, and it is updated by the budget resolution annually.

**Mr Singer:** Then I would have thought it would have been in regulations, because if these figures are changed, then each time it is going to have to go through another place and here to change primary legislation. We have actually got speakers in here, and surely am I not right that if they need to be changed, then it has got to change in primary legislation? Perhaps the Attorney-General could explain that.

**The Attorney-General:** I do not know. Mr Acting President, if the hon. member's question is related to the figures and the calculation of credit in clause 5, *(Interjection by Mr Singer)* the Bill specifically provides for that in so far as clause 14 of the Bill provides that the Treasury may make regulations as are necessary to carry into effect this part and, without prejudice to the generality of that, the regulations may amend the amounts specified in sections 5 and 6. So, the answer is there, Mr Acting President, that indeed it will be dealt with by Treasury by regulation.

**Mr Gelling:** I think, just continuing there, Mr Acting President, it is updated by the budget. The resolution, of course, will then change the regulation and change the amount if that is the wish of members.

The payments, Mr Waft: basically, as soon as we have got the legislation through and we have got Royal Assent to the actual legislation, it will be introduced then as soon as possible thereafter.

I think we might have something more helpful. Yes, the ability to change: I think Mr Attorney has gone to clause 14, and now also my assistant assessor has said quite the same in clause 14, and also section 119 of the Income Tax Act of 1970 gives that provision.

**The Acting President:** Mr Waft.

**Mr Waft:** Just a point of clarification on how the credit is worked out: the  $a$  minus  $b$  minus  $c$  over  $d$  will, I take it, be sorted out by the taxing officer. In other words, they do not have to apply for the credit; it will be automatic, will it?

**Mr Gelling:** I think, again, that the person will have to apply in some way, otherwise we will not be able to identify them but certainly that would be done by the assessor. That is how I understand it, but until those people apply for it . . . Again, I made it quite clear that it is not a benefit; it is within the tax system, and it must be treated that way. So, if the person does not fill in a form, we do not know what their affairs are to be able to assess it, but certainly the assessing officer will be the person who will calculate it.

**Mr Waft:** It will be in the income tax form anyway, their income and expenditure, and if the officer was to say, 'This chap should have a credit', then it would be allowed, rather than the claimant saying, 'I think I am due for a credit.' It is just a clarification of –

**Mr Gelling:** There are quite a number, if I can respond, Mr Acting President, of persons who do, in fact, not fill in an income tax form because they are deemed to be out of the system, and therefore only if they have an increase in salary or whatever that brings them into that system will it be brought to the attention of the Income Tax Assessor.

**The Acting President:** Any other member? No? Therefore, I put it to the House that the Income Tax Bill be read a first time. Those in favour, say aye; those against? The ayes have it. The ayes have it.

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### **Health Burning Bill – First Reading Approved**

**The Acting President:** Item 4, which is the Health Burning Bill for first reading in the hands of Mr Delaney.

**Mr Delaney:** Thank you, Mr Acting President. I am pleased to be able to take this Bill on behalf of the Department of Agriculture, because it actually goes along with a great belief I have in the management of land. As we know, fire is one of the oldest tools in agriculture. However, it is a very powerful one, and there is a need to have great care, particularly with the

modern idiom of land welfare, wildlife and flora and fauna.

The current Act of 1939 and subsidiary legislation set out the reason for burning, enabling areas to be identified as heathland for the purposes of the Act. However, the Bill before this hon. branch is intended to provide a greater measure of control in two stages. The first stage is identifying and registering areas of heathland and recording their particular characteristics in terms of flora and fauna, their relationship to water catchment areas, any archaeological sites and other special features in that area. This will enable the department to be more positive and proactive than under the present legislation. The interest of other parties in, and other concerns about, heathland areas is taken into greater account than in the 1939 Act.

The second stage is that burning of heathland will be permitted only under a licensing régime; the present legislation deals with permission to burn during a season. The department has issued guidelines on best practice. Practices are unsatisfactory where too little regard is given to other items, as I have already explained. However, the 1939 Act and the heath burning regulations made under it are too general in their terms to enable the department to seek legal remedy where burning has been carried out in an unsatisfactory or even potentially dangerous way. This Bill enables the department to require that best practice be observed, both by making regulations and orders provided in clause 13 of this Bill.

I, as I have said, Mr Acting President, am keen and, as you know, I serve on the chairmanship of the wild flowers and other wildlife groupings quietly, because I believe in the conservation of nature together with agriculture as one of the mainstays of the Island. I am pleased to move the first reading of this Bill and hope I will get the support of the Council to have this Bill brought into practice. There are, as you will already be aware, small amendments coming from the other place, and we will get to them as we get through the Bill. I beg to move, Mr Acting President.

**The Acting President:** Seconder?

**Mr Waft:** I beg to second, Mr Acting President.

**The Acting President:** Mr Waft. Any member wishing . . . ? Mr Gelling.

**Mr Gelling:** Just one point, really, Mr Acting President, and that is just a little concern: we are coming from the angle of protection but, in fact, heath burning has another side to it, and that is that unless you heath burn, certain wild partridge cannot feed on the new shoots that come up. There are groups of gun clubs on the Island that do have the rights on certain lands in government ownership, and the difficulty that I can recall was in getting these people actually to do the work in looking after that heath, and one of those actions was to burn the heath to allow these new shoots. I just wondered: is there any change within this which will actually discourage or encourage? I think

the management of the heath is so important. That was the only comment I had.

**The Acting President:** Any other member wishing . . . ? Mr Singer.

**Mr Singer:** If I could comment, I think this is a very important Bill, because I know that when I was in agriculture one of the concerns was that you would see areas where the whole of the area seemed to be on fire. I think the mover of the Bill was talking about it and that it should not be dangerous, but I think a lot of it is highly irresponsible, some of the things that have gone on. Often, I have been over the mountain and I have seen large fires quite clearly; they are not small areas and controlled areas. So, I think it is very important, because we have to prevent the unnecessary destruction of wildlife and vegetation. Farmers particularly, I am sure, will be responsible; they are guardians of the countryside, and I think – hopefully – will take that responsibility importantly. So, I think it is a very important Bill. I give it my full support. The only thing I would say to the hon. member is: when I first saw ‘Heath Burning Bill’, I wondered if he was going to burn any other ex-UK prime ministers. *(Laughter)*

**The Acting President:** They would not burn; they would smoulder. Some of them would, anyway. Any other queries? Mrs Christian.

**Mrs Christian:** Yes, Mr Acting President, just to say that I would endorse the views expressed by the hon. member Mr Gelling. I do think that there is a balance to be found here because of the necessity to burn for the regeneration of heath, and I do think that whilst it sets out a structure and framework for control, it is not unknown for accidental burning to start on the hill unbeknown to those who have a responsibility for the hill. How anyone believes they are going to be able to track that down, I do not know, but it is a factor of the right to roam on the hills, if you like, that there is that potential at any time. But other than that, the proof of the pudding, in terms of its practicality and application, will be in the eating.

**The Acting President:** Mr Attorney.

**The Attorney-General:** Mr Acting President, I wonder if I could just ask whether, in making regulations and codes, the department will endeavour to, as it were, hold a balance between those persons who have shooting rights and those who have grazing rights. It is certainly to my knowledge, Mr Acting President, that there was always some difference of opinion – put it no higher than that – as to whether a particular block should be burnt as a block, which might be very good for sheep grazing, but it would be absolutely disastrous for the raising of a good head of grouse, which, of course, requires strip burning. It would be interesting, I think, to know if the department has any plans to reconcile the two competing interests

in the regulations and codes which would be made under clause 13. Thank you.

**Mr Delaney:** Well, I would like to first of all reply to Mr Attorney.

**The Acting President:** Get between the fire and the firing.

**Mr Delaney:** Whose side are you on? (*Laughter*) Both points are actually good, because nowhere . . . Mr John Rimington, the minister, gave me all this, and I must confess, Mr Acting President, that he had not complied with my requirements that this be in my hands before this Bill came down in draft. He apologises profusely, but that does not help it, because through this, as I pointed out to my colleague on my right, nowhere is anything of a gun or shooters mentioned, except in – and we managed to find it – ‘Periodic burning of heather is advantageous for agriculture and can be for wildlife conservation.’ That is the closest we can get. Nowhere did I find in the *Hansard* any mention of the shooting rights, yet I know from my past life it is very important for the management of wildfowl and also for the heathland. I also confess the fact that I have never actually witnessed, on the Isle of Man, a burning; I have seen it but never witnessed it. I took myself out to above Dhoon Glen above to witness it and, to be honest with you, I was quite appalled by what I saw, in actual fact. The situation, as I understand it . . . I will get back for the second reading and the clauses to answer that and to get a clear identification for that very important matter, but please forgive me: these were only put in my hands half an hour before this sitting took place this morning by the minister, who sends his apologies.

On the other point given about the heath burning, ex-prime minister or not, I understand he is a sailor and can have a Viking burial, so he will still burn, but it will be at sea. (*Laughter*)

On my left here, I concur with what has been said by my colleague, because it is a similar point. I will give a clear statement from the ministry that the regulations, when they come in, will bear this in mind about the welfare of the shooters, which is actually the welfare of the wildfowl. I have never had any worry about that, because they would not be there if the shooters were not there. A lot of activities, of sports, and agriculture go together, and I think that is important. Once again, forgive me: I cannot give you an answer straight off, because I did not get it myself from the minister.

**The Acting President:** Right.

**Mr Singer:** Can I just - ?

**The Acting President:** A final question. Yes, indeed.

**Mr Singer:** A general point, from what the hon. member of Council has said, and being new here:

when these items are put on the agenda, is not a check made with the person who is moving the Bill first to ensure that they have got all the information necessary before it is actually put onto our agenda?

**The Acting President:** I am quite sure Mr President and the Clerk would be able to take note of the comments that have been made this morning, but I would -

**Mr Delaney:** Mr Acting President, it is a matter between the member and the minister who moved the Bill, and unfortunately one side broke down, and on this occasion it was not me. I would normally then speak to the Clerk and say I am ready to go ahead with this. That is what I would do.

**The Acting President:** I think it is a valid point that the hon. member of Council has made, and I am certain the Clerk has taken note. Okay? Mrs Crowe.

**Mrs Crowe:** In order to be helpful on that very point, because I know it does cause difficulty, and especially if it is a long and very complicated Bill in officer time in repeating explanatory notes to the two Houses, in actual fact it was mentioned in the Council of Ministers, I think two weeks ago, that it would be preferable for the mover in the Legislative Council and the Keys to have the same officer fully explain the Bill at a joint meeting in preparation, rather than have two separate -

**The Acting President:** The logistics, I think, need to be looked at in the light of that -

**Mrs Crowe:** That is right. In fact, it has been raised previously, and it has been finally illustrated today (**Mr Delaney:** Yes.), the need for this process to begin.

**The Acting President:** Okay, can I then put to the Council that the Heath Burning Bill be read a first time? Those in favour please say aye; those against? The ayes have it. The ayes have it. Bill read a first time.

That completes our sitting in public, and I would ask the House to remain as there is a matter that needs to be dealt with in private. This House will adjourn, then, to the sitting of Tynwald on 20th May 2003 and thereafter 27th May 2003 in the Council chamber.

That ends the public session of the Legislative Council, and could I thank Council for being so tolerant and well-behaved and making my short sojourn in this chair as comfortable as it has been? (*Interjection by Mr Delaney and laughter*)

*The Council sat in private.*

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