

# **REPORT OF PROCEEDINGS OF THE LEGISLATIVE COUNCIL**

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**Douglas, Tuesday, 27th May 2003  
at 10.30 a.m.**

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Present:

The President (the Hon. N Q Cringle), 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 J R Kniveton, Mr E G Lowey, 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**

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**Land Development Applications –  
Appeals Procedure – Question by Mr Waft**

Question 1. The hon. member (Mr Waft) to ask the Minister for Local Government and the Environment:

*In circumstances where a developer wishes to build on land not currently zoned for residential purposes and the application goes to appeal, if the developer appoints a Queen's Counsel, would your department also appoint a Queen's Counsel to support officers of your department in presenting their case?*

**The President:** Turning to our order paper, hon. members, we have but the one question, and I call on the hon. member Mr Waft.

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

**The President:** I call on the Minister for Local Government and the Environment, Mrs Crowe, to reply.

**Mrs Crowe:** Thank you, Mr President. In the circumstances outlined in the hon. member's question, the department would give careful consideration as to whether or not it would need to be legally represented. Planning officers of the department give evidence to the independent inspector on behalf of the Planning Committee. In the majority of cases, the department does not have legal representation and the planning officers give their evidence and answer questions from the appellant, interested parties and the inspector. The inspector will always invite the planning officer to question any other witnesses or parties giving evidence. In some cases, appellants – not necessarily always developers – will be represented by Queen's Counsel. In these cases, the planning officers will answer questions as usual and will ask questions of any witnesses called by Counsel.

In summary, Mr President, the department always considers whether the nature of the proposed development raises issues which require to be legally represented. The level of legal representation will depend on the nature of the development and the issues arising from it, but, in the majority of cases, appellants and interested parties are not legally represented, and neither is the department.

**The President:** Mr Waft.

**Mr Waft:** Thank you, Mr President. In view of that answer, minister, do you consider it appropriate that a planning inspector from another country is able to make decisions, having heard representations from a QC of that same country, and yet government officials delegated to defend decisions made by Tynwald itself are not represented by a legal person of equal status?

**The President:** Minister.

**Mrs Crowe:** Thank you, Mr President. What I would say is that our planning officers are extremely experienced in dealing with these matters, and if they felt that they required legal representation at a particular hearing of a particular development, then of course we would make sure that legal representation was present, but for the most part the planning officers feel that they can represent the Planning Committee in a capable manner and that the fact that a QC may or may not be appointed from another country may or may not disadvantage or have an advantageous effect on any planning inquiry.

**The President:** Mr Waft.

**Mr Waft:** Yes, Mr President. I would support the fact that you do have planning officers of great stature and recognition within the Island. A comment with regard to the view of this government's continued agreement to build on the outskirts of urban developments, so putting added pressures on existing and overcrowded primary schools, community facilities, roads, sewers et cetera: would you perhaps ask the Council of Ministers to revisit their decision with regard to the building of a new village to accommodate the need for first-time buyers and over 800 people coming to our Island every year?

**Mrs Crowe:** As a department, I will be shortly bringing to the Council of Ministers the all-Island strategic plan, which we are formulating at the present time.

**The President:** Mr Lowey.

**Mr Lowey:** Can I ask a supplementary of the minister? Why does the minister think that companies would employ, at great expense, QCs?

**The President:** Minister.

**Mrs Crowe:** That is entirely in the hands of any company or person who wishes to be represented at an inquiry. They may feel that they do not have the experience that indeed my planning officers have to answer the questions from the inspector.

**The President:** Mr Waft, finally.

**Mr Waft:** Thank you, Mr President. Having attended some of these appeals and area plans et cetera when a QC is present, great deference is given to the stature of the QC from the United Kingdom, despite the expertise that your officers have, yet I think it is only fair and equal that they should be represented by a QC of equal standing. Thank you, Mr President.

**The President:** Mrs Crowe.

**Mrs Crowe:** I would actually not agree with the hon. member of Council in that regard. The proof would be to read the area plans that have come forward

with the recommendation from planning officers and to see what effect the representation by a QC, from another place perhaps, has brought to bear on that particular inquiry.

**The President:** Mr Attorney.

**The Attorney-General:** Yes, thank you, Mr President. I wonder if the minister would agree with me that there is indeed a body of significant experience in the Manx bar who are well able to deal with most, if not all, of the planning matters that come before the tribunals on the Island and that it would indeed be an advantage to any applicant or respondent to an appeal to have the services of an experienced advocate who knows the local laws, the local approach to matters, rather than to have a Queen's Counsel from another country.

**The President:** Minister.

**Mrs Crowe:** I would most certainly agree with all that the Attorney-General has said, and indeed the proof can be witnessed in planning appeals that have been heard.

**The President:** Mr Delaney.

**Mr Delaney:** Mine is a simple question dealing with the rank or status of anyone giving evidence at any appeal. Surely a QC's position has no relevance on the planning application itself; it adds as much weight as is given to it by the person giving it.

**Mrs Crowe:** Thank you, Mr President. That is absolutely correct. Whether it be the humble person who may or may not have legal experience or indeed a fully wigged and gowned QC from another place, the independent inspector takes into account their evidence, and that is how he would evaluate the situation.

**The President:** Mrs Christian.

**Mrs Christian:** No, Mr President, my question has already been asked.

**The President:** Mr Lowey.

**Mr Lowey:** I would like to come back again to the point that I made earlier, Mr President, and really ask the minister: why is it, then, in representations, albeit that the experienced body of local legal advice . . . It is only recently, Mr President – and I say 'recently'; in recent years – that we have imported QCs. I would suggest to the minister that we should really say . . . And I am touched with her naivety that the humble man is the equal of a QC in the eyes of the law. That may very well be the theory, but in practice I would tend to disagree with the minister.

**The President:** Mrs Crowe.

**Mrs Crowe:** We may agree to differ on this very point. Thank you, Mr President.

**The President:** Mr Singer.

**Mr Singer:** Could I ask of the hon. minister, as a matter of clarification: Mr Waft's supplementary did quote 800 or so new residents coming in every year – you accept that figure, do you?

**Mrs Crowe:** That is the figure, I think that we have had from . . . I think it is actually Social Security that supply these kinds of immigration figures at the present time – maybe from Economic Affairs – and that has been the figure in the recent past. Whether that figure continues or not, of course is in the hands of the Gods.

**The President:** Now, I think, a final supplementary, Mr Waft.

**Mr Waft:** Could I just say to the minister: there is not even an advocate present at the ones that I have been to, representing government at these appeals and different situations that take place with regard to planning. Could I take it from your answer that, if you felt it necessary, a QC would be made available? Is that what you – ?

**Mrs Crowe:** No, indeed, I think from my answer I would suggest that a local advocate . . . Indeed, we do use local advocates who are very experienced in planning matters on the Isle of Man, and that would be the person that we would choose to represent the department in a particular planning issue that was a local issue.

**Mr Waft:** Thank you.

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## **Income Tax Bill – Second Reading Approved**

**The President:** Hon. members, we move on then, to item 2 on the order paper, which is the Income Tax Bill. It is down for second reading and clauses, and I call on Mr Gelling. Second reading.

**Mr Gelling:** Thank you, Mr President. If I can just remind hon. members that this is an Income Tax Bill which is in four parts: part 1 introduces the new personal allowance credit for those who do not presently benefit fully from their personal allowances; part 2 comprises a complete updating of the existing provisions relating to the confidentiality of tax information and provides for the disclosure of information by the assessor to other bodies and the disclosure of information to the assessor by third parties; Part 3, Mr President, provides for the exchange of information under the terms of international agreements; and part 4 makes a number of other amendments to existing income tax legislation. It

confirms the Temporary Taxation Order relating to company tax rates, which was approved at the budget last year; it addresses potential tax avoidance in relation to the valuation of benefits in kind; it amends the tax treatment of husband and wife in the year of marriage and the year of separation; it defines offences in relation to the unlawful assumption of the character of officers in the Income Tax Division and bribery and collusion; and it introduces a power enabling the Treasury to pay rewards. I propose to give members a fuller explanation of each of these measures at the clauses stage. In answering a couple of the queries that were commented upon in the first reading, I have to apologise, actually, to Mr Singer, because, in introducing the first reading, I did mention some figures, but the figures I mentioned were percentages, and when Mr Singer asked me why they were in the actual Bill, I suggested that it was my comment and not the Bill. Then the hon. member said he was talking about the £200 and of course the £200, is in there as a start for 2003-04, and it will be updated through the resolution which goes forward by the budget each year. Following on from that was the question, 'Well, when will this happen?', and the answer to that, Mr President, is: as soon as we have put it through, not Royal Assent, but through the Legislative Council. Once it has got third reading, it will then go to Treasury, and it will be introduced, with Treasury concurrence, straight away. So, in other words, once it has gone through the Legislative Council, we are up and ready to go with it. I think, at that particular stage, I said it would be after Royal Assent, but we could start on it right away.

The ability to change rates and amounts: I think, just to cover that, Mr President, in clause 14, when we come to it, you will find that this particular clause in the Bill gives the power that we require, and what is not given there is given by section 119 in the Income Tax Act of 1970, which is the actual annual budget resolution.

So, in answering them, Mr President, I would move that the second reading be taken this morning, and I would ask hon. members to support the same.

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

**The President:** Seconded by Mr Waft, hon. members. Does any hon. member wish to talk to the second reading? In that case, hon. members, I put to you that the Income Tax Bill 2003 be read for a second time. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

### Income Tax Bill – Clauses Considered

**The President:** We will turn to our clauses stage then. Part 1, clause 1, Mr Gelling, please.

**Mr Gelling:** Yes, I think it is a case this morning, Mr President, of working hon. members up, so I will

take the first clause on its own, with your permission. This clause provides for personal allowance credit payments to be made, through the income tax system, to certain Manx-resident individuals with low incomes. The credit is under the care and management of the Treasury. It will usually be granted on receipt of a claim for it made in a correct manner. There were some issues raised in another place. The principle of introducing the personal allowance credit appears to have a general acceptance.

The only criticisms, I think, were the amount of the credit, the thresholds for payment and the definition of 'gross income' and calculation, which I will cover when we get to those clauses, Mr President. So, I beg to move that clause 1 stand part of the Bill.

**The President:** Mr Waft.

**Mr Waft:** I beg to second, Mr President, and just make comment on '(3) Credit will be granted only if a claim is made for it in the correct manner': assistance will be given, if necessary, to that end.

**The President:** Yes, okay.

**Mr Gelling:** Again, that is correct, Mr President. It will be a little bit of trial and error to begin with, because obviously claims will have to be made for the simple reason that a lot of these people will not be in our actual tax system, and therefore the person will be greatly assisted to do that by coming into the tax department and getting information from them and help.

**The President:** Hon. members, the motion I put to you . . . Sorry, Mrs Christian.

**Mrs Christian:** Yes, Mr President, I simply wanted to say that I think we need to bear in mind that this is very different from the United Kingdom tax credits, which are really benefits by another name, and this needs to be recognised as something which is a part of our income tax system and quite distinct from the procedures which are used in the United Kingdom, although there may be a tendency for people in the Island to make comparisons which are unjustifiable, and, indeed cannot directly be made in terms of the benefits and taxes in that other country.

**The President:** Mr Gelling.

**Mr Gelling:** Yes, Mr President. I think that is absolutely correct, because, of course, we get inundated with the news and all from the UK and people are bound to think it is a similar thing, but it is definitely a tax system, not a benefit system, and that, I think, we need to keep clear as we are going through this first section.

**The President:** Okay, hon. members, the motion I put is that clause 1 stand part of the Bill. Those in

favour please say aye; against, no. The ayes have it. The ayes have it.

Perhaps we could take clauses 2, 3 and 4, Mr Gelling.

**Mr Gelling:** Yes, thank you, Mr President. Clause 2 qualification for credit for individuals, sets out the qualifications for credit for individual tax payers. The individual must have been resident in the Island for the whole of the year of assessment in respect of which the claim is made. The individual must have been aged at least 18 at the commencement of that year. That is clause 2.

Clause 3 sets out the qualification for credit in the case of married couples, who are jointly assessed under section 64 of the Income Tax Act of 1970. In their case, one of the parties to the marriage must have been resident in the Island for the whole of the year of assessment in respect of which the claim is made. One of the parties must also have been at least 18 at the commencement of that year.

Clause 4 brings in the special rules to address the situation where a claimant dies or where a claimant or claimants marry during a year of assessment or separate during a year of assessment. In the case of the taxpayer who dies, that fact will not deny the taxpayer or his estate the benefit of a claim to which he would have been entitled had he survived and remained resident for the whole of the tax year. The rules for couples marrying or separating during the tax year will be specified in regulations in addition to the change which you will find in clause 25 when we get to that, Mr President. The intention is that the two parties to the marriage will be treated as individual tax-payers for the year of marriage and the year of separation, which again we will see in clause 25, but the regulations will permit the transfer of unutilised personal allowances in the year of marriage.

Mr President, I beg, therefore, to move that clauses 2, 3 and 4 become part of the Bill, sir.

**The President:** Mr Waft.

**Mr Waft:** I beg to second, Mr President. Could the mover just clarify a couple of points for me? As with the case of social security benefits, a lot are not claimed because they are not reaching the people, sometimes that they should be reaching. As with the case of the tax situation and tax forms, they do not actually have to fill in the tax form because they do not earn enough. How do you intend to reach the people that should be reached? Have you given that some thought?

**The President:** Mr Singer.

**Mr Singer:** Thank you, Mr President. Relating to both clauses 2 and 3, the age of 18, it is not uncommon for a couple to be married with a baby and be under 18. These, I would have thought, were the people who needed these tax credits to help them have a greater income, and I wonder why the figure 18 has been put

in. That is the age when you can buy alcohol or whatever, but at 16 people can be married, and perhaps I could have a further explanation on that.

**Mrs Christian:** Mr President.

**The President:** Mrs Christian.

**Mrs Christian:** In respect of these particular measures, as the hon. mover said earlier, I am quite sure that, in the first year, you will be monitoring how this all goes, and it may indeed be the case that these benefits are open to individuals who perhaps do not work at all or work part-time or, indeed, are students and beneficiaries of state assistance. Whilst I am happy to see the age – at least, some age – in there and I think the intention earlier was to have a higher age limit than this, I think we do have to recognise that some of our population are working full-time at 18 and they are as entitled as anybody else, I believe, to make a claim for such support, but I do accept that there may be a need to refine the clauses and the conditions as this whole new structure is evaluated in future years.

**The President:** Mr Gelling to reply.

**Mr Gelling:** Yes, thank you, Mr President. If I take that particular point which has been commented upon by Mr Singer and Mrs Christian about the age, I think this is something again that we will find as we progress with this particular system, but certainly the age of 18 has been something that has been taken as the age of majority. We have to have an age to start the system off with, and that was the age that has been put into the legislation, but I agree with Mrs Christian that, as time goes on, obviously there will be fine-tuning and alterations, I would suggest, to the system, because, quite honestly, as much as the information we have to hand is fairly accurate, we certainly are not fully appreciative of how many claimants we will have and what the final cost will be. So I think that after we have got it introduced, this is going to be a time, each year, as we are running up to the budget, to actually look into it to see if there is anything further that needs to be finely tuned.

I think, from the people who Mr Waft has quoted that might not know of this, certainly they will be sent out forms, basically for them to fill in or inviting them to fill in, and the others certainly will be helped, because I am quite sure that advertisements will be put out into newspapers to alert people to the fact. It is very similar to how the health service put out their circulars and advertisements alerting people to the 'Are you entitled to . . . ?' or whatever. So, it will certainly be a case of trying to inform the people that would be entitled to make a claim. It will be monitored, certainly, Mr President, but I think we have got to run with it as we have got it laid down, as I said in the first reading, to get it introduced, because we have now got the system to be able to do it and we have to have a starting point, and it will be fine-tuned as we are going along.

**The President:** Mr Singer.

**Mr Singer:** I thank the hon. member for his answer, but I am not very happy with the answer, in that in monitoring that is fine, because you will find out who is entitled and who is not entitled and who has not claimed and who has claimed, but what we do not know is how many people under 18 would be entitled to claim if they came within the scheme, and I am not quite sure how Treasury is intending to find out who and where these people are. Is there going to be some positive attempt by Treasury to find out who, between the ages of 16 and 18, would be entitled to this qualification if they were 18, if you know what I mean?

**The President:** Mr Gelling.

**Mr Gelling:** Yes, Mr President. I think again this will materialise as we get into the system, because as people get to know about it, I am quite sure that we will then find out from those people who are between 16 and 18 whether or not they feel aggrieved that they are not in the system. But, as I say, we have got to start somewhere, and 18 years is the age that has been put into the legislation first to give us a start and then obviously we will have to monitor how many requests we get from those under 18, because how else do you measure it?

**Mr Singer:** Could I – ?

**The President:** Mr Delaney.

**Mr Singer:** Sorry.

**Mr Delaney:** Mine is a simple thing. We are putting through a Bill with a definitive age on this. What do you say to somebody who then does not come under this, who is disenfranchised when he turns up at the Treasury and says, ‘Why aren’t I included in that?’ and they say, ‘Because you are younger than the age specified in the Bill?’ That is no sort of situation that helps them. They will say, ‘Why am I disenfranchised? I am a taxpayer.’

**The President:** Mr Singer.

**Mr Singer:** Can I make a suggestion that Treasury becomes proactive in this and actually they find out the number of people, from their records et cetera and the records of people who pay tax et cetera, who may well be entitled to qualify, who are under the age of 18?

**The President:** Mr Gelling.

**Mr Gelling:** Yes, Mr President. I quite understand the concern expressed by members, but, as I have said, we have to start somewhere with an age, and that is the age that has been put into the legislation, an age which can be amended at a later date. I would suggest to hon.

members that the great difficulty is that you can very well have people under the age of 18 who are not on the tax system at all anyway because they are not earning sufficiently to do so, but what I can say to hon. members is that Treasury obviously is not introducing this to try then to deprive people of getting it, so it will be proactive in a way to try and make sure that the people who this hon. Legislative Council and others need to help are helped. That is why we are introducing it: to try to help these people. So, certainly, in answer to the hon. member’s question, Treasury will be actively promoting this to try and find out so that, in the second year and so on, we will get it tuned to an area where people will be satisfied.

**The President:** Okay, I think . . . Mrs Christian, I will give you one more crack at it.

**Mrs Christian:** Thank you. Just, Mr President, to suggest that Treasury may also wish to consider how much people are putting into the economy in terms of their working hours, because this seems to be open-ended and one can do very little work but still claim a benefit. Here I am not including those people who, for other reasons, cannot contribute in full, but it certainly, I think, would be something that would be worthy of consideration so that if people of the age of 16 are working full-time and would come into this, then maybe that would be appropriate. But if they are of any age and working minimal hours when they might be contributing more fully, is it appropriate then that they receive some sort of support from the taxpayer in this mechanism?

**The President:** I suppose that leads to the question: if somebody is working full-time at age 16 with a minimum wage, would they actually be still eligible for tax credit? Mr Gelling. (*Interjections*)

**Mr Gelling:** Yes. Mr President, as I have repeatedly said, we are definitely in a stage of putting a system in which, we will be the first to agree, will need fine-tuning. There are other areas which we will come to in the Bill whereby also if you were in work this week and you were out of work next week, nevertheless the weeks are taken separately and it does not affect the other week that you did or you did not get it. So there is quite a complicated system here, which we are quite confident we will be able to handle, but it will need tuning as we go along, sir.

**The President:** Okay, hon. members. We are dealing with the clauses which deal equally with the qualification for credit, that is, clauses 2, 3 and 4. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Moving on then, Mr Gelling, perhaps we can take 5, 6, 7 and 8, ‘Calculation of credit’.

**Mr Gelling:** Thank you very much, Mr President. Clause 5 incorporates the calculations of the tax credit for an individual. The low income point is set at

£6,000 and the upper income point is set at £8,000. If the individual's gross income is £6,000 or less, the credit will be £200 which is the minimum credit. For income between £6,000 and £8,000, there will be a reduction of the credit by £1 for every £10 of gross income in excess of the £6,000 low income point.

Moving on to clause 6, which covers married couples who are jointly assessed. Mr President, the credit for a married couple is twice that of an individual, i.e. £400, and the low income point of £12,000 and the upper income point of £16,000 are also obviously twice the figure for an individual. The rate of reduction for income between the low income point and the upper income point remains £1 for every £10 of gross income in excess of the low income point.

Clause 7, Mr President, is intended to avoid the imposition of the administrative burden of the claims process on that group of taxpayers. We think there are approximately 2,500 claimants. Where the assessor is satisfied that the individual or couple is unlikely to have income in excess of the lower income point and has confirmed in writing that he will not require the submission of a formal income tax return under section 62 of the Income Tax Act of 1970, in these cases the assessor will make an automatic payment of £200 to an individual or £400 to a married couple.

Clause 8 enables the assessor to issue a revised tax credit notice or to give notice that a claimant is not entitled to receive a credit if he becomes aware that the amount of a credit already calculated is wrong or that a person who has claimed a credit is not qualified to receive it. In this situation any overpayment will be recoverable by the assessor and any underpayment will be paid to the claimant as soon as practical thereafter.

Mr President, I beg to move clauses 5, 6, 7 and 8, sir.

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

**The President:** Mr Kniveton.

**Mr Kniveton:** Yes, thank you, Mr President. I refer to clause 5, sir, and I am very much interested in that figure of £6,000 and how it is arrived at, because when I look at it closely, it is about £120 a week for an 18 years and over person. I need to know how many people there are: I think you did mention a number, but if you could just repeat it to us. Then, after all, taking into account the minimum wage of today as scheduled, I find it hardly believable that anybody over 18 can survive on £120 a week.

**Mr Delaney:** They cannot.

**Mr Kniveton:** No. So, really, where does the figure come from, how many are there and how did you arrive at it?

**The President:** Mr Lowey.

**Mr Lowey:** Along the same lines, would it not be fair to say that, at the budget, the Treasury have allocated £3 million for this particular scheme in its figures, and can the member . . . ? First of all, can I just say that this must be the first time that I have seen algebra in primary legislation. It has got me worried, and if legislation is supposed to be for what I would call the layman to be able to read and understand, I think we are going in the wrong direction if we put algebra into primary legislation to calculate. But the point I am making is that if the £3 million is allocated, is it expected that £3 million will be actually put to the low paid?

**The President:** Mr Gelling.

**Mr Gelling:** Yes, thank you, Mr President. First of all, yes, I did quote the figure 2,500. Again, we have had to put approximately 2,500. With the research we have made, that is what we feel there will be thereabouts: 2,500. There could be a lot more, there might be less, but we are fairly confident that there will be somewhere around 2,500.

The situation again raised by Mr Lowey: had Treasury put £3 million, it obviously could have been more. I think the point that we are trying to establish is that once the system is in, the amount of money put into that system then is calculated. It could very well up the rate, and it certainly will not go down: the minimum is £200. So, working on that calculation, if it came around budget time, we now have a system in place where before we were criticised that anything you did in the tax round did not affect those who did not pay tax. Well, at least now we have a system in the tax system whereby we can help those who are at the bottom end that we always hear are not helped in any shape or form of anything that is done in the tax, whether it is up or down. So, really, this is something that we are putting in so that we have got available to us a way in which we can get to those people who are on the lower income rates.

Of course, I think somebody calculated out there £110 a week. I think the hon. member next to me on the left said they cannot. It is very difficult for them, but some actually do, and it is difficult for them to get by on that kind of money, so this is a way in which we will be able to do that. Sorry, Mr President, I am just reading: the assessor had a lot of authority in here. *(Interjection by Mr Delaney.)* The assessor can do this in here, so I will just see what the assessor is saying, Mr President. Oh, I see, sorry. The 2,500, if I can go back, are the ones that we anticipate will not have to claim; they are the ones that actually – **(Mrs Crowe:** Automatic.) automatically get it, and we believe that the number of persons in total that could get in on the system is more around the 9,000 point. Okay? And the £6,000 again appeared to be a compromise where we could get the thing off the ground. That is really . . . So it was a figure that was put in to get the system going.

**The President:** Okay, hon. members. I put to you clauses 5, 6, 7 and 8. Those in favour that they stand

part of the Bill, please say aye; and against, no. The ayes have it. The ayes have it.

Claim for payment, clauses 9, 10 and 11, Mr Gelling, please.

**Mr Gelling:** Yes, Mr President. This particular clause 9 sets out the form of the claim for credit. The claim for credit must include the information which will enable the assessor to calculate the entitlement to credit and, if necessary the assessor may consult the Department of Health and Social Security in relation to a claimant's entitlement to social security benefits. The clause also opens a gateway for the DHSS to disclose this information to the assessor.

Clause 10 provides for the assessor to issue a notice to a claimant confirming either that a claim is admitted and, in that case, incorporating a quantification of a credit to be paid or indicating that the assessor is satisfied that the claimant is not entitled to the payment. A claimant who is dissatisfied with the assessor's decision may contest that decision using the normal appeal process.

Clause 11, Mr President, is the 'Payment of credit', and this clause requires Treasury to make arrangements for the payment of the credit as soon as practical after the issue of the tax credit notice. In any case in which there is significant delay in a claim being finalised, the payment will be increased by a supplement, which will be at the same interest rate as is prescribed for a repayment supplement.

Therefore, Mr President, I beg to move that clauses 9, 10 and 11 stand part of this particular Bill.

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

**The President:** Mr Singer.

**Mr Singer:** Could I ask, just as a point of clarification: if someone puts in a claim because they are 18 after the beginning of the year, this tax year, they do not get allowances for the remainder of that year? So, it could be 11.5 months – is that right? You have got to be actually 18 on the date of claiming at the beginning of the year? Somebody could well . . . There is no proportion paid, for the length of time they are 18? Is that right?

**The President:** Mr Lowey.

**Mr Lowey:** The member moving the Bill says that this gives the Department of Health and Social Security the right to disclose information. Can we have an assurance from the mover that this will not be one of those benefits that are given with one hand and taken away with the other, in other words we give a tax benefit of £200 to see the £200 tax credit taken off the benefits that have been given by the DHSS?

**The President:** Mrs Christian.

**Mrs Christian:** Yes, may I just comment on this particular provision? I do think it is appropriate that . . . Indeed, there already are certain channels of communication permitted between the Treasury and the DHSS. With regard to this particular benefit, as we will see further on in the Bill, certain benefits are exempt from consideration in respect of the tax credit, but, in terms of other benefits, if a person's income is raised to a certain level by benefits, then they may well come into the tax bracket. Certain benefits are taxable, so there is –

**Mr Lowey:** So therefore it is an Irishman's rise.

**Mrs Christian:** Well, it is not an Irishman's rise in the sense that if they are already taxable, then they will not qualify for this benefit. That is perfectly clear.

With regard to the comment about levels of people's income, I think that whilst hon. members say someone cannot survive on £120 a week, we have to bear in mind that there is a benefits structure which assists the vast majority of people who have incomes at that level. I accept that there is a deficit in respect of single persons who are not covered by family income supplement, but most other people are covered by family income supplement, and I believe that this tax credit will benefit people who are not in work i.e. the retired (**Mrs Crowe:** Yes.) members of our population and those who are single people in work, in a way that currently they are not able to be assisted. I think those are the people . . . well, certainly the hon. member Mr Lowey has been seeking to get some support for people who are in that retirement bracket and who may not be able to access other benefits in our benefits structure.

**The President:** Mr Lowey.

**Mr Lowey:** Could I again just follow on, really, from what the minister has said and look, because this particular Bill is signposting a general upgrading of assistance to those at the lower end. It will be ironic indeed if those who think that they are going to benefit are then given in one hand and taken off in the other, and I think there should be a clear definition of those. We do not want to deny somebody who can get a benefit from it, but I think it will be ironic indeed if those who think that they may benefit from it are then told that they are getting their money taken off them in benefits because this increase is going to rebound. In fact, the good work that it is I believe it is a genuine attempt to get something in place to see if it can work, but it does seem to me that we could snatch defeat from the jaws of victory – and we have got a habit of doing that.

**The President:** Mr Gelling.

**Mr Gelling:** Yes. If I could just take Mr Singer's point, 18 years: yes, they have to be 18 when they apply.

Then we moved into the situation of the liaison, if you like, between the assessor and the DHSS. In actual fact, clause 12 deals with that, which is the next clause we are coming to, in respect of what that information is, so if I could leave it until clause 12, I think it will bring that to light. I can assure the hon. Mr Lowey that our intention is to try to help those, and certainly it would be most difficult if we found that we did have those loopholes whereby for the very people we were trying to help it was given with one hand and the other . . . I will try and do that at clause 12 if I might, Mr President.

**The President:** Okay, hon. members, I put to you that clauses 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.

Perhaps, Mr Gelling, do you wish to take 12 on its own now or do you wish to – ?

**Mr Gelling:** Well, it is all part of a section and I can –

**The President:** We will take 12, 13, 14, 15 and 16 then, the general clauses.

**Mr Gelling:** Yes, I think clause 12 actually deals with the point that has been raised by Mr Lowey. This clause actually ensures that the receipt of a personal allowance credit will not have an adverse effect on that person's position in relation either to income tax or any other statutory purpose, including the calculation of DHSS benefits. I know that, in another place, an issue was raised by a member of education, who expressed the view that any personal allowance credit payment should be taken into account for the purpose of calculating student grants, but this particular clause makes it quite clear that the personal allowance will not have an adverse effect on that person's position in relation to either income tax or other statutory purposes, including the calculation of DHSS benefits.

Clause 13, Mr President, ensures that if a claimant has any other debt to Treasury in respect of income tax or class 4 contributions, the personal allowance credit payment may be set off against that particular debt.

Clause 14 covers the regulations. This clause enables Treasury to make such regulations as are necessary to bring the personal allowance credit into effect and to amend the thresholds rates and definitions. These regulations, Mr President, are to be laid before Tynwald, sir.

Clause 15 is the 'Interpretation'. This clause sets out the interpretation of certain terms in relation to the personal allowance credit. The 'gross income' to be brought into the calculation of the personal allowance credit includes: all income, whether or not it is treated as income for the purposes of the Income Tax Acts and whether or not it is subject to income tax under the Income Tax Acts; benefits in kind and similar benefits; all social security benefits other than attendance allowance, disability living allowance; and all payments of similar benefits paid under the law of a

third-party jurisdiction. The amount of that gross income is not reduced by any tax exemption, relief or allowance, including capital allowances, or any other income tax deduction other than money expended in the performance of duties.

This particular clause, Mr President, is dealing with the whole income and the whole income, if I could say at this point, has to be taken, otherwise you do not get a fair comparison.

Therefore, the whole of the income has to be taken into account, otherwise it would be unfair to those whose income did not come up to the level and probably then unfair because those above the level would be claiming something else that would not be taken into consideration. Therefore, the whole income has to be taken into consideration for a fair comparison. The other point I just wish to reiterate was that point that benefit from one week does not affect the possible non-benefit the following week, in other words that is a person in or out of work.

Then if we go on to clause 16, this clause makes the personal allowance credit effective from the year of assessment commencing on 6th April 2003, and the first payment of the credit will be based on the claimant's income for the year commencing 6th April 2002. This then covers the point, Mr President, where I said that as soon as this particular Bill has had its third reading, it will be put to Treasury by the assessor and the whole system will then get under way.

So, I beg to move, Mr President, that clauses 12, 13, 14, 15 and 16 become part of the Bill, sir.

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

**The President:** Mr Singer.

**Mr Singer:** Can I ask the hon. member: under section 13, the set-off, in the case of a married couple, if one of the partners has a debt, will that be set off against both partners or will it be then calculated separately?

**The President:** Mr Lowey.

**Mr Lowey:** Yes, Mr President. I am rather disturbed to hear the member moving the Bill say it would be unfair to those that did not qualify if all their income was not disclosed. Forgive me, but if the disability allowances which we give, which are tax-free at the moment, disregarded for tax purposes at the moment, are to be taken into account now –

**Mr Gelling:** No, they are not.

**Mr Lowey:** No, they are not. I am getting it clarified. Those are the ones that are already discounted, because I cannot for the life of me understand why we should be thinking that it is unfair. I still cannot follow the reasoning how it is unfair that some people may get an advantage. The only

unfairness surely would be to the income tax. It would not be unfair on somebody else if they are in the position where . . . Not everybody's income is the same or the sources of income are the same, so nothing is fair to start with. So I cannot see the reasoning where the mover of the Bill is saying that it would be unfair if everybody has got to be treated the same, because they are not the same. Everybody's taxes and incomes are different, derived from a variety of sources.

**The President:** Mrs Christian.

**Mrs Christian:** Yes. Mr President, if I might just comment on that particular issue, when we start to evolve tax structures and benefits structures which can fight with each other and I have to say I personally would have preferred that we had dealt with this sort of issue simply through a benefit structure, but I am running with the tax structure as an alternative, and we are endeavouring to make the two mesh together in a sensible manner – the point that the hon. member is raising and is concerned about is very important, because if you are giving a benefit through the tax structure, you want to give it to those who have least, and if you do not take into account income – and it may not be necessarily taxable income, but if you do not take it into account – you will end up not focusing it at the people who have least. The hon. member has commented on and expressed some concern about, certain allowances which are set out in clause 15(a)(iii), which will in no way be taken into consideration, and they are the attendance allowance and the disability living allowance, but I do think it is appropriate, lest we get into a complete state of confusion and disarray and will have members coming forward with individual cases where we have inequalities or what seem to be unfair treatments, that we have to take into account the gross income of claimants to try and structure something that is fair and will give most to those who have least.

**The President:** Mr Gelling.

**Mr Gelling:** Yes. I think, Mr President, if I can take the hon. Mr Singer's point first about a couple, for a couple the payment would only be set off against a joint liability, not a liability prior to marriage. Okay?

Then, on the unfairness, I think basically we have to look on this just the same as your tax that you pay, in other words you fill in your tax form and anything that is taxable goes on the form, This is where, of course, this was once called negative tax, so whatever you put in for tax purposes will be used just the same, but in a negative way. So, the point I made was that all the benefits that are given that are not taxed at the moment will not be included for this either. With the point I was saying about it being unfair, you have got to try to judge each person, whether it be that they are getting a tax credit or paying tax, in the same fair way to find who should get paid and who should pay the Treasury. So, that is really what I was saying about

unfair. I certainly would not like to think that in-built in this is an unfairness where someone is deprived, just because they are on low income, not to be able to get some tax credit. So, I would again try to reassure the member that this is something, obviously, that we will be looking at very closely to make sure that it works in the way in which members wish it to work. Certainly, if I can say, from the Treasury point of view and from the Assessor of Tax's point of view, we want this to work, and certainly we will be making every effort to make it do so.

**The President:** Mr Attorney, do you wish to . . . ?

**The Attorney-General:** Thank you, Mr President. There was just one aspect of clause 16 which I would like to raise. The hon. member has said that this Bill, at least this part of the Bill, clause 16, will come into effect on third reading, after third reading. I have to say I do have some anxiety about that (**A Member:** Hear, hear.), I hope without putting any difficulty in the path of the hon. member. Clause 31(2) states that the provisions of the Act 'shall come into operation on such day as the Treasury may by order prescribe and different days may be so prescribed for different purposes', but even that clause, Mr President, can only become effective when the Bill is passed and signed, clearly, so I just have a little bit of anxiety. Strictly speaking, the whole of this Act, of course, will come into force when it is passed, and then the Treasury can implement clause 16 and not before.

**Mr Gelling:** Mr President, my information is that as soon as it has passed its third reading in Legislative Council, the preparation will be then made to put this to Treasury. As soon as Treasury are then satisfied and content, they will put the system into operation. I am assured that Royal Assent is purely a formality, and therefore that will be received very quickly. So, what I am saying is that there will be no delay; we will not be sitting back waiting for Royal Assent before we even start to put the system in being. That is really the case. Whether the first payments would be made prior to the Royal Assent, I would take the hon. Mr Attorney's advice on that one.

**The President:** Royal Assent may be a formality, hon. member, but certainly in my time within here there was one Bill which passed all three readings by the House of Keys and the Legislative Council but could not get signed in Tynwald Court and therefore never became an Act. So, there is many a slip. Having said that –

**Mr Lowey:** Could I, Mr President . . . ? On that retrospective part, because it is in here, it is rare indeed for a Bill to be retrospective anyway. It is rarer still indeed for Treasury to go retrospective in giving grants.

**The President:** Making 'preparation', I think, is the word.

**Mr Lowey:** Is that the word? But retrospectively. How can you make preparation for something that has already happened, a deed that has already gone past?

**The President:** The papers all done.

**Mr Gelling:** I think, Mr President, my reply to that would be, having listened to the hon. member Mr Lowey for a long time, that we obviously want to put in something which . . . I think he said it is a credit. It is something we have been looking for, and we do not want to spoil it. Therefore, we are trying . . . Treasury are here to help you, Mr Lowey; that is the message from Treasury.

**Mr Lowey:** That is the second biggest lie. The cheque is in the post – (*Laughter*)

**The President:** Come on, then. Hon. members, the ‘General’ section of this, then, clauses 12, 13, 14, 15 and 16: those in favour of those clauses standing part of the Bill please say aye; and against, no. The ayes have it. The ayes have it.

Part 2, clauses 17 and 18, Mr Gelling.

**Mr Gelling:** Yes, thank you, Mr President. Clause 17 introduces a new clause to replace the original section 106. This clause imposes a duty of confidentiality on every person having an official duty under, or in respect of, the Income Tax Acts. It sets out the precise circumstances in which documents and information can be disclosed. Any disclosure outside the defined terms constitutes an offence against the Act.

The assessor and his officers may disclose documents and information to: (a) the Attorney-General or any other authorised by him; (b) the Chief Financial Officer; (c) the assessor; (d) any person engaged in the assessment or collection of income tax; (e) any person who, under the direction of the assessor, is undertaking or assisting in the assessment or collection of income tax; (f) the Judgements Officer or a coroner or lockman; (g) a person authorised to audit the accounts of the general revenue under section 4 of the Finance Act of 1958, who shall be entitled to examine the same for the purpose of such audit; or (h) a duly authorised officer of the Treasury pursuant to section 8(2) of the Treasury Act of 1985.

Mr President, documents and information may also be disclosed: (a) for the purpose of an objection or appeal before the commissioners or the staff of Government Division; (b) for the purpose of proceedings connected with a matter in relation to which the Treasury, the Chief Financial Officer or the assessor perform duties; (c) if required or authorised to do so by order of a court in the Island; (d) for the purpose of enabling or assisting the Treasury to discharge its functions in respect of *bona vacantia*; and, lastly, (e) if required or authorised to do so by any statutory provision, including a provision in this particular Act.

Every person who incites or counsels or attempts to procure another person to commit any of the offences aforesaid shall be guilty of an offence. References in this section to documents and information which are held on behalf of another include references to documents and information which: are held by a person who provides services to the other; and, secondly, are held by that person in connection with the provision of those services.

Clause 18. Clause 17 was long; clause 18 is short, Mr President. Clause 18 introduces new provisions which will become sections 106C, 106D, 106E and 106F of the Income Tax Act 1970.

Then, if I can go into those sections, Mr President, section 106C defines the gateway for the disclosure of information by the assessor to the DHSS. This clause brings a gateway into income tax legislation which was previously only in DHSS legislation. The section applies to information obtained before as well as after its coming into operation. Information obtained by the DHSS pursuant to subsection (1) shall not be disclosed to any person other than: the department; any officer authorised by the department to receive such information; or for the purpose of any proceedings connected with a matter in relation to which the department performs duties. Mr President, if the department or any person authorised by it fails to comply with that requirement, they shall be guilty of an offence. Information obtained by means of a disclosure authorised by this section is not to be further disclosed, except with the consent of the assessor.

Section 106D defines the gateway for the disclosure of information by the assessor to the Financial Supervision Commission, the Insurance and Pensions Authority and the enforcing authorities defined in section 106F. No disclosure or information to which the section applies is to be made unless the person by whom the disclosure is made is satisfied that the making of the disclosure is proportionate to what is sought to be achieved by it. Information to which this section applies is not to be disclosed by virtue of this section except with the consent of the assessor. Information obtained by means of a disclosure is not to be further disclosed except with the consent of the assessor. The assessor’s consent for the purposes of these subsections may be given either in relation to a particular disclosure or in relation to disclosures made in such circumstances as may be specified or described in the consent. Nothing in the section authorises the making of any disclosure which is prohibited by any provision of the Data Protection Act of 2002. References in the section to information which is held on behalf of the holders include references to the information which: (a) is held by a person who provides services to any of the holders; and (b) is held by that person in connection with the provision of those services. Nothing in the section shall be taken again to prejudice any power to disclose information which exists apart from this section.

Then we go on, Mr President, to section 106E. This addresses the opening of gateways from specified authorities to the Treasury and to the assessor. The

section applies to any information which is held by or on behalf of an enforcing authority as defined in section 106F or the Manx Electricity Authority. No restriction on the disclosure of information imposed by statute prevents the disclosure to the Treasury or the assessor of information or documents if the disclosure is made for the purpose of enabling or assisting the Treasury or the assessor to discharge their respective functions under the Income Tax Acts or in respect of income tax. Information obtained by means of a disclosure authorised by subsection (2) shall not be disclosed except: (a) for a purpose mentioned in that subsection; and (b) with the consent of the relevant enforcing authority. A consent for the purposes of subsection (3) may be given either in relation to a particular disclosure or in relation to disclosures made in such circumstances as may be specified or described in the consent. Nothing in the section authorises the making of any disclosure which is prohibited by any provision of the Data Protection Act 2002. References in the section to information which is held on behalf of the holders include references to information which: (a) is held by a person who provides services to the particular holder; and (b) is held by that person in connection with the provision of those services. Nothing, again, in the section shall be taken to prejudice any power to disclose information or documents which exists apart from this particular section.

Then we finally go on to the final section which, is 106F, and this incorporates supplementary matters. It defines those enforcing authorities in respect of which the gateways for the flow of information have been opened, and these are: the Isle of Man Office of Fair Trading; the Isle of Man Gambling Control Commissioners; the Chief Constable and the members of the police force; and, lastly, any person, other than the Financial Supervision Commission and the Insurance and Pensions Authority, who is prescribed for the purpose of this definition by an order made by the Treasury. It also ensures that the appropriate gateway is opened in the Financial Supervision Act of 1988 for the flow of information from the FSC to the Assessor of Income Tax.

Mr President, I therefore move that clauses 17 to 18, including the new sections 106, be part of the Bill, sir.

**The President:** Mr Waft.

**Mr Waft:** I beg to second, Mr President, but would just make the comment that it started off as a personal allowance credit scheme, but now it has gone into all kinds of different areas. It looks as though the Income Tax Department is now clearing up all the little bits and pieces that they needed to have swept up over the years, and it does confuse the issue somewhat when we talk about gateways and the FSC and enforcing authorities. I think 17(5)(c) would include the Mount Murray inquiry, I presume. It is just that there seems to be a whole lot of things encompassed within these last two or three clauses which just go

away from the actual situation with regard to the credit scheme which is . . . But having said that, I will go along with the comments. Thank you, Mr President.

**The President:** Mr Singer.

**Mr Singer:** Could I ask the hon. member: under 106D(4), it restricts disclosure of information unless a person making the disclosure is satisfied that a disclosure would be proportionate to what is sought to be achieved by request. This appears to leave it to a personal judgement of whoever is deciding whether they should be disclosing or not, so are there any guidelines to help them determine what should be disclosed or not and, if so, who would provide those? And perhaps the hon. member could give me an example of what the word 'proportionate' means in this, what they would be looking for in order to decide to disclose.

**The President:** Mr Lowey.

**Mr Lowey:** Can I just ask clarification of the mover? On page 13, line 7, and it is (2) well, that is line 4 and 5 'In section 24(1) of the Financial Supervision Act 1988, after paragraph (f) insert – '(ff) for the purpose of enabling or assisting the Assessor of Income Tax to discharge his functions under enactments relating to income tax': not just specifically for this particular Bill, but, one presumes, for all matters relating to income tax, and isn't this rather widening the scope? I have got that highlighted. There were one or two other little minor ones, but I will leave them alone.

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, I think we need to bear in mind the explanatory memorandum. The Bill is not simply about the tax credits; it is about a number of provisions, and I think that this section . . . It is appropriate, isn't it, that we take steps to ensure that the taxpayers' money is disposed of appropriately and correctly? To that extent, I think that the powers which are being inserted by virtue of these particular clauses in this section are appropriate to ensure that appropriate protection is given to the disposal of taxpayers' funds.

**Mr Lowey:** Would the hon. member not agree that, in allowing for what I would call reasonable . . . And I accept totally the argument she comes from, but surely it is right to question, in opening that protection for this particular group, that we are giving an opening for other implementations for which we really are not asking at this particular time and would not be asking for only this Bill is before us, and it can be used for another purpose. I think you have got to be careful, you know. It is a balance.

**The President:** Mr Gelling.

**Mr Gelling:** Mr President, yes. Thank you for the comments, and I thank the hon. minister of health for her comments in respect of . . . And of course it brings me to the first question that was asked: 'Where have we gone now?' In actual fact, we started off, I have to say, with a huge Income Tax Bill, and that Income Tax Bill was covering so much, bringing old law, amending it and so on, and it was felt in Treasury that it was going to take so long to get that all together and get it in front of the branches that we were so keen to get some parts of that into being as quickly as possible, the tax credits, this particular area. We have now moved from the tax credit area into an international arena, and this actually is the position that we have used, this particular Bill, to get ourselves in line with international requirements so that we are in a position now to be able to say that we have in our law the requirements in the international arena which are expected to do business in the international arena. We have to have this type of information available, so we have actually . . . You will find there are other parts in this Bill also where we move again. So, there are different parts of the Bill that we have taken out that we were ready to go with, which we thought required much more urgency. You have got two more Income Tax Bills, I am sorry to say, coming up, I hope very shortly. I do not know when, but certainly we felt that it was not right to hang on just to get the whole of that Bill in front of the two branches when there were certain items which needed urgency.

I think the other point was . . . Yes, it does include . . . I think that again the hon. member Mr Lowey said, 'Does this encompass all of tax affairs?' and it does. It is not for the tax credits; it is an umbrella covering the ability to the assessor to talk with all the other authorities that might have relevance in their particular areas.

**Mr Lowey:** As long as we do it with our eyes wide open, and I think that is the point.

**The President:** Okay, hon. members, the motion I put to you is that clauses –

**Mr Singer:** Excuse me, Mr President, I have not had my question answered.

**The President:** Well –

**Mr Gelling:** What was that, sorry?

**Mr Singer:** Section 106D, about the guidelines of disclosure of information.

**Mr Gelling:** Oh, yes. Sorry, Mr President. Basically, that is the assessor. The assessor will have that situation and, as far as I can see, a lot of the information in relation to the perceived offence, which would go beyond that, obviously that would be disregarded. In other words, the information would only be appertaining to whatever that offence was,

why the information was called for. In other words, the rest of it would be put to one side.

**The President:** Mr Attorney.

**The Attorney-General:** Yes, thank you, Mr President. Just really entirely supporting what the hon. member has said, but just perhaps to build on that, the hon. member Mr Singer has raised this specific point about a disclosure being proportionate. We do see very often now, in relation to human rights cases, the notion of what is or is not proportionate and, as hon. members will have seen, the new 106D deals with disclosures by the assessor to the Financial Supervision Commission or to the Insurance and Pensions Authority or to an enforcing authority, and of course we can see that an enforcing authority means quite a number of bodies, the Isle of Man Office of Fair Trading and so on. Therefore, Mr President, the protection which the European Convention on Human Rights gives is that if a public authority were to disclose information, private information, about an individual in circumstances where that was totally unnecessary or out of proportion with the need to disclose, then that person who was affected by the disclosure could go to the court and say, 'Look, my human rights have been offended because it is out of proportion to the risk which the state was going to run by not having information disclosed.' So, I entirely accept and agree with what the hon. member has said, but I hope that that perhaps builds on what was said.

**The President:** Okay, hon. members, the motion I put is that clauses 17 and 18 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

We move on then to part 3, clauses 19, 20, 21 and 22. Mr Gelling.

**Mr Gelling:** Thank you, Mr President. Part 3 of this Bill ensures that the Assessor of Income Tax has the statutory authority to exchange information under the terms of those international agreements which are going to be a developing part of the Island's international taxation responsibilities which I described earlier.

Clause 19 provides for international information exchange where the Council of Ministers enters into applicable arrangements with the government of any other country, and such an order is subject to approval by Tynwald.

Clause 20 imposes restrictions on the disclosure and use of information received by the Treasury or the assessor from a mutual assistance country specifically to: income tax purposes; the facilitation of legal proceedings for failure to observe the income tax law of the Island; or purposes permitted under the arrangements.

Clause 21, imposes restrictions on the disclosure of information by the Treasury or the assessor to a mutual assistance country. Neither the Treasury nor the assessor shall disclose any information unless satisfied

that the competent authorities of the other country are bound by, or have undertaken to observe, rules of confidentiality with respect to the information which are not less strict than those applying to it in the Island. Subject to subsection (3), nothing in the section shall permit the Treasury or the assessor to authorise the use of information disclosed under this Act other than for the purposes of taxes to which the arrangements relate or to facilitate legal proceedings for failure to observe the laws of the other country relating to those taxes. The Treasury and the assessor may decline to disclose information unless satisfied that information furnished pursuant to the exercise of those powers will not be used in any criminal proceedings against the person furnishing it other than for an offence of perjury or for any like offence.

Mr President, the last clause in this particular section incorporates the necessary interpretation.

So, I beg to move that clauses 19, 20, 21 and 22 stand part of this particular Bill, sir.

**The President:** Mr Waft.

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

**The President:** Mr Lowey.

**Mr Lowey:** Could I ask a question? Clause 19(1): 'If the Council of Ministers by order declares': this is to deal with international obligations – where is the parliamentary scrutiny? Do those orders have to be placed sooner or later before Tynwald, and isn't it right that parliament should have the right to scrutinise an order? That is number one.

Number two: the member moving the Bill says that the information must not be used for anything other than offences such as perjury. Isn't international crime . . . Shouldn't that evidence be allowed to be used in drugs trials and the like, not just for perjury? And wouldn't it be right and proper that that information should be used in that case, or international fraud? Shouldn't that be allowed to be used? It does not come under perjury, but I would have thought it was more serious than perjury, and why the restrictions?

**The President:** Mr Gelling.

**Mr Gelling:** Yes, thank you, Mr President. In that particular area of the Council of Ministers, of course, this is a situation where the Council of Ministers are entering into and discussing and negotiating – it has been pretty well continual for the last, probably, seven or eight years – international agreements, and of course members of Tynwald as a whole are informed on a regular basis as to where those negotiations and regulations – (*Interjection*)

**The President:** Clause 19(3).

**Mr Gelling:** Yes, there it is, sorry. Thank you very much, health minister. 'An order under this section shall not have effect unless it is approved by Tynwald.' So, ultimately it will come to Tynwald.

The second part was whether the information could be used in other criminal cases. In that particular clause, it is quite clear that 'the Treasury and the assessor may decline to disclose information unless satisfied that information furnished pursuant to the exercise of those powers will not be used in any criminal proceedings against the person furnishing it other than for an offence of perjury or for any like offence.' I would look to the Attorney, I think, for some legal definition in that respect, Mr President, but certainly I would say that, in other cases, the assessor, of course, can speak with like assessors in other countries on tax matters, as can the Financial Supervision discuss matters with other regulators, and that information, I understand, can be used in that particular case, but not under this clause.

**The President:** Perhaps, Mr Attorney, you have a response.

**The Attorney-General:** Yes, thank you, Mr President. This section, this part, as hon. members will have seen, is concerned with the disclosure of information pursuant to an international obligation. It is essentially disclosure of information which relates to taxes. We have, of course, all sorts of other arrangements in relation to the disclosure of information for drug trafficking, money laundering and so on and so forth, terrorism. Within an Income Tax Bill, we are concerned with the disclosure of information for tax purposes, and if we look at clause 21, first of all the assessor and the Treasury have got to be satisfied that there are rules of confidentiality in the receiving state. So if, for example, the United States of America asks us for information about a particular taxpayer, the Treasury and the assessor have got to be satisfied that, according to the relevant state law or federal law, the information, when disclosed, will be treated confidentially by the recipient. Equally, in clause 21(2), we have to be satisfied that the information will be used for the purposes of facilitating legal proceedings for failure to observe the laws of the United States related to taxes, so that, of course, is entirely consistent with the purpose of the arrangement.

Subclause 21(3), though, does say this: the Treasury and the assessor may decline to disclose information if they are not satisfied that the information is going to be used for criminal proceedings. In other words, what it says is this: if there is a suggestion that the United States will use this information to put a person in jail for a long period of time for a tax offence where, for example, in the Isle of Man the wrongdoer would be fined or subjected to a short period of imprisonment, the Treasury and the assessor may say: 'Well, it is out of proportion;' – again, if I can use that phraseology, Mr President – 'it would be totally wrong and against our notion of

human rights that the person should be put into prison for that disclosure of information.’ However, we can always permit the relevant tax authority in the United States to use that information to show that the taxpayer in the US has been guilty of perjury, because presumably we do not want anybody to be guilty in court, we do not want to encourage perjury. We might be very content that he should face US law for perjury, but he should not go to prison for the tax offence, and so I hope, Mr President, that that is the rationale behind the subclause.

**The President:** Mr Singer.

**Mr Singer:** Mr President, can I ask: how can we make a judgment here against the democratically approved laws of another country? How can we approve or disapprove of the laws of those countries if they are democratically approved?

**Mr Lowey:** The system of information.

**The President:** Mr Attorney.

**The Attorney-General:** Well, Mr President, it is not unusual for countries to, decline to enter into arrangements with another country unless they have an assurance that information will not be treated in a given way. For example, in relation to extradition, the United States of America still has the death penalty for various offences which would not have the death penalty in the United Kingdom or the Isle of Man, and the relevant extradition treaty will say, the UK and the Isle of Man will say, ‘Yes, we will extradite, provided that we have an assurance that if we extradite, that person will not be subjected to the death penalty.’ It is very common that these assurances be given in advance of entering into the arrangement.

**The President:** Okay, hon. members, the motion I put to the Court is that part 3, clauses 19, 20, 21 and 22, do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.  
Part 4, clause 23, Mr Gelling.

**Mr Gelling:** Yes, thank you, Mr President. As members have already commented, this Bill is in different parts, addressing different areas, and this particular part actually comprises miscellaneous amendments in clauses 23 right through to 28, so I think it is certainly the best thing, Mr President, as you said, to take them separately, although some of them are only short.

Clause 23 deals with the trading profits and this clause addresses the rate of income tax to be applied to the trading profits of companies. It incorporates the rates of tax and thresholds for the 10 per cent and the 15 per cent bands applicable for the tax year 2002-3. Though this section is effective for the income tax year commencing 6th April 2003, hon. members will be aware that the 2003-4 threshold for the 15 per cent band has been increased to £100 million so that for

companies there is now effectively one rate of 10 per cent on trading profits. It confirms the Income Tax (Temporary Taxation) (Standard Rate of Tax) (Companies) Order 2002, which was approved by Tynwald at the time of last year’s budget. The clause also clarifies the fact that the non-trading income of companies remains liable at the higher rate of 18 per cent. The clause in this form is effective for the tax year 2003-4 and subsequently.

Mr President, I therefore beg to move that clause 23, dealing with the trading profits of companies, stand part of this particular Bill, sir.

**The President:** Mr Waft.

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

**The President:** The motion, hon. members, is that clause 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, Mr Gelling.

**Mr Gelling:** Yes. Clause 24: again, a different clause dealing with a different thing, Mr President, and it is benefits in kind and the valuation thereof. This clause eliminates an area of potential tax avoidance in relation to the valuation of benefits in kind. Where an asset is transferred to an employee and its realisable value in his hands is more than the cost of the asset to the employer, then the value of the benefit to be taxed is the higher of the two figures. This is effective for the tax year, again, of 2003-4 and subsequent years. I therefore beg to move that clause 24, dealing with benefits in kind, stand part of the Bill, sir.

**The President:** Mr Waft.

**Mr Waft:** I beg to second, sir.

**The President:** Mr Kniveton.

**Mr Kniveton:** Mr President, is there a minimum level which one of these benefits comes in at? You can imagine what small ones there are and what large ones there are, but is there a level?

**The President:** Mrs Christian.

**Mrs Christian:** Simply, Mr President, to say: heads, Treasury wins; tails, we lose. They are taking the higher of the values here. It does seem, perhaps, a little unfair that if they are going to take an increase, they do not recognise a decrease in the value of an asset, but there we are. It is rather like the rateable value and the metering on the water supplies. (*Interjection by Mrs Crowe.*) We pay the higher of the two.

**A Member:** That is right, yes.

**The President:** Mr Gelling.

**Mr Gelling:** Yes, thank you, Mr President. The benefit level is £400, so anything lower than that would not come into being. Taking the point of the hon. member Mrs Christian, I suppose in many respects, having been in the motor trade, I know this one quite well. It was never introduced as benefits in kind when I was the Treasury minister –

**Mr Delaney:** I wonder why?

**Mr Gelling:** – but of course it was an understood thing, if we take a car, that the net cost of a car to a dealer is a lot less than what the retail price to the recipient would be, and I take it that little margin of – *(Interjection)* Yes, only a very small profit made in cars and –

**Mr Delaney:** That is like farming, isn't it?

**Mrs Crowe:** Yes.

**Mr Gelling:** Again, as Mrs Christian said, nothing in life is often seen as fair, sir.

So, with those remarks, Mr President, I move that the benefits in kind clause, clause 24, stand part of the Bill, sir.

**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.

Clause 25, Mr Gelling.

**Mr Gelling:** Yes. Clause 25, Mr President, 'husband and wife assessment and allowances', amends the treatment of husband and wife in relation to both assessment and entitlement to allowances in the tax year in which they marry or the tax year in which they separate. It is an amendment which is consequential upon the introduction of the personal allowance credit and provides that, in the year of marriage and the year of separation, the couple are not jointly assessed, and in each of those tax years they will be treated as individual taxpayers. In order to ensure that no couple is disadvantaged in the year of marriage, the Assessor of Income Tax will, by concession, pending incorporation and regulation made under clause 14, permit the effective transfer of unutilised personal allowances from one spouse to the other. This change again is effective for the tax year 2003-4 and subsequent years. So this is something that has to be introduced to enable the situation in clause 14 of the tax credits to actually happen, sir. So I beg to move that clause 25, 'Husband and wife: assessment and allowances', do stand part of the Bill, sir.

**The President:** Mr Waft.

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

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

We turn to clause 26, Mr Gelling.

**Mr Gelling:** Yes. Clause 26, Mr President, deals with the unlawful assumption of character of officers et cetera. This clause supplements the rules in relation to access to confidential information. If anyone falsely assumes the name, designation or character of the assessor or one of his staff in order to obtain admission to premises or to access information improperly, he may be arrested and shall be guilty of an offence. Of course, it could be said, 'Who would want to be an income tax assessor?' However, clause 26 does make it quite clear that, in this particular area, they cannot falsely assume the name or designation or the character of an assessor. I beg to move that clause 26, unlawful assumption of character of officers, be part of the Bill, sir.

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

**The President:** Mr Kniveton.

**Mr Kniveton:** Just one very interesting little question, sir: has that ever been known to happen?

**A Member:** Yes, indeed. Why?

**The President:** Mr Gelling.

**Mr Gelling:** I get a nod from the assessor so it has happened in the past, sir.

**The President:** In that case, hon. members, the motion I put to you is printed as clause 26. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

We turn then to clause 27, 'Bribery and collusion'.

**Mr Gelling:** Yes, Mr President, clause 27. This addresses bribery and collusion affecting any member of the Treasury and also ensures that any person instigating bribery or collusion is guilty of an offence. It inserts a new section 105B in the Income Tax Act 1970.

If any member of the Treasury or the assessor or one of his staff (a) directly or indirectly asks for, or takes in connection with any of his duties, any payment or other reward whatsoever, whether pecuniary or otherwise, or any promise or security for any such payment or reward, not being a payment or reward which he is lawfully entitled to claim or receive, or (b) enters into, or acquiesces in, any agreement to do, abstain from doing, permit, conceal or connive at any act or thing whereby the Crown or the general revenue is or may be defrauded or which is otherwise unlawful relating to any matter under the Income Tax Acts, he shall be guilty of an offence.

If any person directly or indirectly offers or gives to any member of the Treasury, the assessor or any person authorised by the assessor any payment or other reward whatsoever, whether pecuniary or other, or any promise or security of any such payment or reward, or secondly proposes or enters into any agreement with any such member, assessor or person authorised in order to induce him to do, abstain from doing, permit, conceal or connive at any act or thing whereby the Crown or the general revenue is or may be defrauded or which is otherwise unlawful, being an act or thing relating to any matter under the Income Tax Acts, or otherwise to take any course contrary to his duty, he shall be guilty of an offence.

Any person committing an offence under this section shall be liable, on summary, to a fine of £5,000 and may be arrested.

Mr President, I beg to move that clause 27 be part of the Bill, sir.

**The President:** Mr Waft.

**Mr Waft:** I think I will second that, Mr President.

**The President:** Mr Lowey.

**Mr Lowey:** There is only one little query. When we are passing this sort of legislation, there are areas that are out of the ordinary, and I am going to ask the question. Usually, at (3) on page 17, line 20, '£5,000 and may be arrested': I do not see that ever appearing or very rarely do I see that in any other legislation. Why? 'Any person committing an offence under this section shall be liable on summary conviction to a fine of £5,000', and then we have got this other bit on the end: 'and may be arrested.' Why? (*Interjections*) But that is not in any other legislation that we summarise and put the fines. We put the fines down and –

**Mr Gelling:** Mr President, the penalty is as what is in the Income Tax Bill at present. I think it is 1970 – yes, I am right, 1970 – other than that which is actually stated in this Bill. In other words, all the penalties are as the 1970 Act, except where it is mentioned, as it was mentioned in that particular clause. So it is no different unless it is quoted.

**Mr Singer:** Mr President, do we understand it at the present time that it is not an offence for an officer of the Treasury to ask for a bribe? Out of interest.

**The President:** Mr Gelling.

**Mr Gelling:** I would say you are right, yes, otherwise it would not be in the law. It would be covered under other legislation, I would imagine, but it is not covered in income tax law.

**Mrs Crowe:** Quite so.

**The President:** Mr Attorney.

**The Attorney-General:** Mr President, although I cannot just remember the precise provision, I am sure that there is a general clause in one of the Acts which makes it an offence to bribe or corrupt or attempt to bribe or corrupt a public official, civil servant or otherwise. I am sure that this provision is just to make it absolutely clear beyond doubt, but I am afraid I have not got the . . . (*Interjections*)

**The President:** Belt and braces, and a person can be fined, can be arrested, whether under the other provision or under this Income Tax Bill.

Hon. members, the motion I put is that clause 27 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clause 28, Mr Gelling.

**Mr Gelling:** Yes, a very short one, Mr President. Clause 28 is the 'Power to pay rewards'. This clause enables Treasury, at its discretion, to pay rewards to informants. Therefore, I ask that clause 28 stand part of the Bill, sir.

**The President:** Mr Waft.

**Mr Waft:** I beg to second, sir.

**The President:** Mr Lowey.

**Mr Lowey:** And I ask the question: what is so special about the Treasury having a special dispensation to offer inducements, and is this included in any other piece of legislation to any other department of government? Is it, for example, in the Department of Home Affairs' remit to offer rewards?

**The President:** Mr Singer.

**Mr Singer:** And do they have to keep the name of the informant confidential?

**The President:** Mr Gelling.

**Mr Gelling:** Yes, it is elsewhere – in fact it is in the customs and excise – and this will mirror the customs and excise situation. So, in other words, it is adopting what the Customs and Excise Assessor and officers already have. It will be subject to a limit, to be a small percentage of the tax recovered, and I could imagine it will be used very rarely. That, I think, is the information I was given, Mr President: that it would depend on what kind of a tax claim it was. If it was an enormous fraud which somebody tipped the tax assessor off on, obviously the reward would be a percentage of that if their information actually triggered off the offence to come to light.

**Mr Singer:** Is the reward taxable? (*Laughter*)

**Mr Gelling:** I think it would be part of the earnings of the recipient, so I would say it would be, sir, yes. (*Interjections.*)

**The President:** Mr Lowey.

**Mr Lowey:** Could I just say that there is, in law, where you are not allowed to profit from crime or . . . You cannot artificially convict somebody, in other words encourage somebody to convict somebody for profit, and for a defence counsel to say, 'my client was being prosecuted because my good friend here has given information against him', I just wonder where that lies when the state does it to procure evidence. That is what it is doing, isn't it? It is, in effect . . . I know it is . . . I agree that it has been done in criminal cases in the past, but I just wonder why it is being extended.

**Mr Gelling:** Well, I look to Mr Attorney, Mr President, but, just from the Treasury's point of view, I think, in the customs and excise area it is often these tip-offs . . . We ourselves have actually been a recipient of an American cheque for information that we gave to lead to a huge drugs haul in Cambodia or wherever it was, and therefore I am thinking it is not like snitching on somebody; it is a bigger affair –

**Mrs Crowe:** It could be.

**Mr Gelling:** – and I look to Mr Attorney, Mr President, to give a more full explanation.

**The Attorney-General:** Yes, well, Mr President, I do think that there is a difference in principle between a person who is given money or some incentive in advance of giving evidence, which is, most people would say, wholly wrong, and on the other hand the person giving evidence or giving information not with an expectation of receiving any payment, but at the discretion of the Treasury receiving it, as it were, out of the blue, which is what I think is contemplated here. It is either out of the blue or it is certainly not the inducement for giving the information. I think that is the essential point. This is something that the Treasury may, at its discretion, do. It can give a reward, but it certainly would not, from the Attorney-General's position and, I think, from any prosecuting authority be appropriate for the Treasury to encourage that, except in the most extraordinary circumstances.

**The President:** Okay.

**Mr Lowey:** If I have got something to sell to the Treasury, I would have to go to the Treasury?

**The President:** Okay, hon. member.

**Mr Kniveton:** You would make a bob or two, Eddie.

**The President:** The motion I put to the Court is that clause 28 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clause 29, Mr Gelling.

**Mr Gelling:** Yes. Clause 29 is just the interpretation and it is an interpretative clause, so I ask that clause 29 stand part of the Bill, sir.

**The President:** Mr Waft.

**Mr Waft:** I beg to second.

**The President:** The motion, hon. members, is that clause 29 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

The 'Financial provision' clause, clause 30, Mr Gelling.

**Mr Gelling:** Yes. Clause 30 makes financial provision in respect of any expenses attributable to this particular Bill, and I ask that clause 30 stand part of the Bill, Mr President.

**The President:** Mr Waft.

**Mr Waft:** I second, Mr President.

**The President:** The motion, hon. members, is that clause 30 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Finally, clause 31, Mr Gelling.

**Mr Gelling:** Yes. Clause 31, Mr President, is the 'Short title, construction and commencement', and this clause provides for the short title of the construction and commencement of the Bill, sir. and I ask that clause 31 stand part of the Bill.

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

**The President:** The motion, hon. members, is that clause 31 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

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### Suspension of Standing Orders – Approved

**Mr Gelling:** Mr President, could I possibly indulge your guidance and ask: with there not being another Legislative Council meeting, I think, until 27th June, which is a month off, would hon. members accept that we could possibly go for the third reading so that we could get this under way, sir?

**Mrs Crowe and Another Member:** Agreed.

**The President:** Well, Mr Waft, are you prepared to second that?

**Mr Waft:** I will second that, Mr President.

**Mr Gelling:** And no reward will be given, Mr President. *(Laughter)*

**The President:** Does any member wish to comment on – ?

**Mr Singer:** I am not terribly happy regarding a couple of things that I have asked. I am not happy, certainly, and I would have liked to have found out more information on how the Treasury are going to tackle these problems of people who are under 18 and might well be entitled to it and whether they are going to be proactive in going out to find out whether there is some way that these people can be incorporated within the Bill within the next 12 months. That is something I wanted to find out before the third reading, and I am not thrilled with that.

**The President:** We have a proposition, hon. members, that we suspend standing orders to take the third reading this morning. That is effectively what Mr Gelling is seeking. Those in favour, hon. members, that we take the third reading this morning, please say aye; against, no. The ayes have it. The ayes have it.

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### **Income Tax Bill – Third Reading Approved**

**The President:** Hon. members, we will take the third reading of the Income Tax Bill. Mr Gelling.

**Mr Gelling:** Thank you, Mr President, and I thank hon. members for allowing us to have the third reading. I can summarise by saying this Bill includes a number of important measures which develop the Island's income tax system across the full spectrum, from the Island taking its part in relation to international taxation obligations to the personal allowance credit, which is designed to improve the treatment of some of the Island's lower-earning individuals and married couples.

The personal allowance credit ensures that those who are low earners and who therefore do not have an income tax liability receive something tangible from their unutilised personal allowances.

Part 2 of the Bill, Mr President, updates the rules relating to the confidentiality of tax information and the disclosure of information, both by the assessor to other bodies and by third parties to the assessor.

Part 3 provides for the exchange of information under the terms of international agreements between the Isle of Man and other countries and controls the use that may be made of information released and information received.

The temporary taxation order which provided for lower rates of tax for companies as part of the taxation strategy is confirmed, and an area of potential tax avoidance in relation to the valuation of benefits in kind is remedied.

As a consequential matter arising from the introduction of the personal allowance credit, the tax

treatment of husband and wife in the year of marriage and the year of separation has been amended, and hon. members will recall that Treasury has given an undertaking that other issues in relation to human rights and the fairness of the treatment of married and unmarried couples will be addressed in a future Income Tax Bill.

Finally, clauses have been included to reflect best practice in relation to the offence of the unlawful assumption of the character of officers of the Income Tax Division, the offence of bribery and collusion and the introduction of a power enabling Treasury to pay rewards.

This Bill introduces a number of important amendments to the income tax system, and I beg to move that it be read a third time and therefore ask hon. members to support the third reading on the understanding, Mr President, that I will make sure that anything that the hon. member Mr Singer has raised will be answered and I will circulate all members with that, sir.

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

**Mr Lowey:** Mr President, may I say that it may appear that I have been hostile to this particular piece of legislation this morning, but on the contrary I welcome the general thrust for the low-paid. It has been a long time coming, but I am not going to, as I said, I am not going to be mealy-mouthed about that. It is here now, and I think it is a genuine attempt to assist, and I welcome that.

Having said that, I go on also that this particular Bill gets my support with its international obligations for the Isle of Man, which will allow us to sign up to international agreements with companies. I think that is again part of the . . . What I would call the Island's way forward is . . . We are now an international jurisdiction, and we have to play our part in a responsible way. This legislation was necessary for that, and I support it on those grounds.

I also support its budgetary measures. I understand that this particular Bill is a bit of a potpourri, it has got bits and pieces, but I support the budget. I supported the budget, therefore I must support the budgetary recommendations. The only query that I have – and perhaps the member can tell me – again coming back to what I would call maybe the least important, but one on principle, is that if payments are made to informants for information, are they recorded, and where do they show in the public records? In other words, not that you paid £8,000, £10,000, £100,000 to Joe Bloggs, but somewhere in the public accounts the money that has been paid to informants should be at least up front. There has to be an accountable system, and perhaps you could point out where it actually shows up. It is not a common practice, I am sure, but even in those rare . . . They should be at least in the public arena.

**The President:** Mr Singer.

**Mr Singer:** Mr President, I will support the third reading of the Bill because, as has been said, it is much wider than just the personal tax allowances, but I do believe that something could be done fairly quickly – and I would have liked to have seen it be done – to help those people who are between the ages of 16 and 18 (**Mr Delaney:** Yes.) who would normally qualify for these personal tax allowances, but they are not going to qualify and they are going to be cut from the system. I do not know how many people there are, but I think it is important that we are trying to help all the lower-paid people and here we are cutting out a big section, possibly, of people who pay tax. Secondly I am not happy that if someone is 18 on April 7th, they have a whole year where they do not get the personal tax allowances. I think there could have been some proportion paid in that time for somebody who is 18 during that particular tax year, and now they are cut out for a complete year. I do not know why the hon. member Mrs Crowe is pulling faces over there, but I think it is very important that we consider these people who are low paid, are contributing to our tax system and are not getting out of it what other people are getting out of it. I think we should be looking at them very quickly to ensure that they are encompassed within the system.

**The President:** Mrs Crowe.

**Mrs Crowe:** Mr President, I was merely thinking of the bureaucratic nightmare. It is like saying that if one qualifies for one's state pension on the day one becomes 60 and you do not get it paid for whatever might be the proportion of the year, it is trying to work out the proportions – (*Interjection by Mr Singer*) Yes, on your birthday, but this is a tax credit for a whole year, and to work through the months to proportion out how much an 18-year-old would be paid per month, I think, would be quite difficult. I think that the Treasury are trying to address a problem. This is the first attempt at doing so, and I think they have said to us quite clearly they will come back with a review of all the queries that have been raised here and in another place, because I do think it is important to get this system under way. By delaying it, no-one gets anything.

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, I am a little confused by the statement of the hon. member of Council, Mr Singer, who said the low-paid pay tax and therefore they are entitled to support.

**Mr Singer:** Could. (*Interjections*)

**The President:** Now, hon. members. Mrs Christian.

**Mrs Christian:** If they are paying tax, they are not entitled to this benefit. (*Interjections*)

**The President:** No. Mr Delaney.

**Mr Delaney:** My point is similar. The fact is that there are people being taken out of the system. I am sure there is a need for haste to get this system under way. (**Members:** Yes.) What I want is an assurance coming from the mover and from his officers that before we get to Tynwald to make the decision on the rules and regulations, this situation is looked at so we do not exclude anyone by law who is a taxpayer or could be a taxpayer of this Island. That is what I am saying.

**Mr Lowey:** Could be entitled to tax, therefore they should be –

**The President:** Mr Gelling to reply.

**Mr Gelling:** Could I, Mr President, just ask the hon. member Mr Lowey: when he asked for the records, was it for the payment of reward or the payment . . . The payment of reward, right. Okay, I was not quite sure whether it was that or the payment of some of the benefits. We will look at customs and how they record it, because it will certainly be recorded in Treasury, but I do not know how they actually . . . It could be in the Blue Book. I am not quite sure, but certainly we will look at that and obviously follow the same thing.

I quite understand Mr Singer's concern continues on the 16 to 18 section. Not happy with it. Certainly, I can offer straight away that the assessor will meet with Mr Singer at any time that he wishes to actually explain how we have got to that situation where we have used 18 and what we are going to do actually to address the concerns he has, but what I must impress is that we were trying to introduce a simple system where we had to put benchmarks to get it off the ground. So, what we have here, is the most simple system we could have without, as Mrs Crowe says, the nightmare of having a system that was so complicated and so confusing that nobody could ever actually receive anything. It was to try to actually have a system that was going to work and do what hon. members want.

So, basically, taking that on board and having the assurance from Mr Delaney before the orders go before Tynwald, where there will be another opportunity obviously to discuss this, everything that has been said this morning will be recorded, and we will address any of those problems and make sure that members are fully aware of what the situation is. On that note and with the thanks to hon. members and yourself, Mr President, for allowing the third reading to take place this morning, may I thank you all and ask you to support the third reading? Thank you very much, Mr President.

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

## **Heath Burning Bill – Second Reading Approved**

**The President:** Having completed that then, hon. members, we turn our attention to the Heath Burning Bill, in the hands of the hon. member Mr Delaney, for second reading. Mr Delaney.

**Mr Delaney:** Thank you, Mr President. When asking the Council to give me permission to take the second reading through, I am very conscious of the meeting that took place on 13th May at the first reading, where at least three members raised points which I have tried to ascertain and get clarity on from the officers and the minister concerned. If I could turn first to my colleague on my left, Mrs Christian, she raised the issue of accidental burning. I am given assurances that under the Bill, individuals could not be held to account for actions taken by nature or by other persons who they have no responsibility for, and any culpable negligence obviously would have to be proved in a court. The cause of damage to the heathland of the Island has been a matter of some disquiet throughout a number of years, and obviously accidental burning will not be a problem. We do not perceive anyone on the Island losing out through it.

The other two members who raised points were Mr Gelling and the Attorney-General. Mr Gelling raised the issue of management of the heath for game and conservation purposes. He asked whether the Bill would encourage or discourage burning for game conservation, and Mr Attorney also referred to different burning techniques depending on whether it was for game, conservation or for sheep grazing. The important feature of this Bill is that, in the event of individuals disagreeing with the decision – this includes the conservationists or the shooters or the licensing there is a right of appeal to a tribunal. The tribunal is provided for under clause 8(6) of the Bill: a tribunal under the chairmanship of His Worship the High Bailiff is set up specifically to deal with appeals against any registration or licensing decisions. The tribunal includes a member nominated by a specific advisory committee, a member nominated by the Manx National Farmers Union and a member nominated by the Manx Game Preservation Society, and I hope that clarifies the point. I have a number of other areas I could go into, but I assume that will be an adequate answer to the matters raised.

Moving on to the second reading, although the Bill only contains some 14 clauses, I want the Council to be aware, if they were not already aware, that there are a number of amendments to clauses 3, 4, 5, 6, 7 and 8 which were passed at different stages of its reading in the other place. I have asked the President if he would be kind enough to give me permission to take a clause at a time so that members will be aware of the amendments. I will try and give an answer, if requested, as to why those amendments were thought necessary, but I am a bit disquieted at the fact that some of these amendments were brought in by meetings of members of the Keys or with agreement of

the members of Keys which I find some difficulty in gaining knowledge of. I have a copy – it is not a *Hansard* copy – of the meeting that took place and what occurred at that meeting, but I will start off with clause 1 to establish a simple register of heathland, Mr President.

So, clause 1 provides for the establishment of –

**The President:** We are still dealing with the second reading.

**Mr Delaney:** Well, can I move the second reading then?

**The President:** Yes.

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

**The President:** Mr Waft will second. Hon. members, the motion I will put to the Court is that the Heath Burning Bill 2003 be read for a second time. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

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## **Heath Burning Bill – Clauses Considered**

**The President:** Right, Mr Delaney, we will take clause 1.

**Mr Delaney:** Clause 1 simply provides for the establishment of a register of heathland, and that is covering all heathland on the Isle of Man, as opposed to the 1939 Act, which covers all land over half an acre. It would not be an intent of the department to take a register of people's private gardens which might include some heathland. I beg to move clause 1.

**Mr Waft:** I beg to second.

**The President:** Seconded by Mr Waft. The motion, hon. members, is that clause 1 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clause 2, Mr Delaney.

**Mr Delaney:** Thank you, Mr President. Clause 2 provides that a register may be kept other than in the documentary form, which shall include a map, and the register will also be open for public inspection, and copies may be made of the details included in it. I beg to move clause 2.

**Mr Waft:** I beg to second.

**The President:** Seconded by Mr Waft. Mr Singer.

**Mr Singer:** The register will be open for public inspection and copies may be made. Normally there is a charge made by the department for this. Is the department intending to make a charge if somebody wants a copy?

**Mr Delaney:** I am given to understand that it would be required by the Treasury for charges to be made for any government document which is supplied to outside bodies. I do not know what this charge would be, because I did not go into this particular one. I will find out for you before the third reading.

**The President:** Hon. members, the motion I put is that clause 2 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clause 3, Mr Delaney.

**Mr Delaney:** Clause 3 deals with the form and content of the register and provides for inspection of the register, Mr President. The details which are to be included in the register of the heath are set out in clause 3, and the department is required to consult bodies that appear to have a particular knowledge about the heathland before details are entered in the register. In considering eligibility of an area for registration, consideration may be given to such things as the vegetation, its value as a food source for both farm livestock and wildlife, including game, as well as a description of the ecology of the habitat. Factors may include all sorts of information dealing with the habitat and the need to maintain certain areas undisturbed. The department is required to inform the owner or occupier of the registered heath of details entered into, and the owner or occupier may apply for a review if there is a disagreement over the details of the registration. I beg to move clause 3, Mr President.

**Mr Waft:** I second, Mr President.

**The President:** Seconded by Mr Waft. Hon. members, you will note that there was an amendment to clause 3 by the Keys in another place, which actually deletes lines 30 to 35. Accepting the amendment, hon. members, and noting that, I put to you that clause 3 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clause 4, Mr Delaney.

**Mr Delaney:** Clause 4 deals with the process of registration of heathland and procedures for restoring, amending or deleting particulars of the registered heathland. I beg to move clause 4.

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

**The President:** Seconded by Mr Waft.

**Mr Lowey:** Could I just – ?

**The President:** Mr Lowey.

**Mr Lowey:** There is an amendment which adds the word ‘destroying’. The title is the *Heath Burning* Bill. What does ‘destroy’, if it is not by fire, mean?

Does it mean destroying by chemicals or does this include . . . ? (*Interjections*)

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, two points. I think that, in another place, it was considered that it was necessary to introduce the word ‘destroy’, meaning to ‘grub up’, rather than to burn. Burning is just a method of controlling regeneration and improving the quality of the heathland, but I think it was a concern that that would not cover some other mechanical mechanism for ‘grubbing out’ heather or heath. It is not actually – (**A Member:** Chemical.) Or chemical even; yes, chemical to destroy vegetation. It is not recognised in the title of the Bill.

May I just make one other point please, Mr President? I should have perhaps asked about it earlier, but in the explanatory notes we have been given by the department they say that the department has responsibility for the effective management of the Island’s 7,000 hectares of heath. This Bill covers not only land in government ownership but apparently covers land in private ownership, and I wonder where the responsibility is vested in the department for dealing with the management of private land. I wonder if the mover could answer that.

**The President:** Mr Delaney.

**Mr Delaney:** I will take Mrs Christian’s point first. As I understand it, they are responsible for the heathland even under private ownership, as I have pointed out, not small amounts in a garden, but any larger amounts in reflection of the natural state of that and the benefit to nature, to the other benefits that that heathland gives to the Isle of Man, its community and its wildlife. I understand they have responsibility for that, not the control of it, just the management of it in relation to heath burning.

**Mrs Christian:** Mr President, under what statute? Is it the existing Heath Burning Act or is it some other measure?

**Mr Delaney:** The 1939 Act.

**The President:** Mr Delaney says it is the 1939 Act. Mr Attorney, I do not know whether you have had any . . .

**The Attorney-General:** It is the 1939 Act, yes.

**The President:** It is the 1939 Act. That is as far as we know, no other.

**Mr Delaney:** Well, I am only asked to cover this particular Bill, but I would not know of any other.

**The President:** Yes. Mrs Christian asked a question in relation to private land. What other jurisdiction has the department in relation to other than

the burning of heath? Do they have any other knowledge?

**Mr Delaney:** Oh, I am sorry, I misheard. I just thought she meant why we had the right to control the burning of heathland on private property.

**Mrs Christian:** Or the management of.

**Mr Delaney:** Or the management of heathland.

**Mr Lowey:** The National Trust is a big owner of land which is, if you pardon the pun, private. This would apply to their land. Before they could light fire to it or do it, they would have to come under all the rules and regulations from the department.

**The President:** Mrs Christian.

**Mrs Christian:** Yes, Mr President. The hon. mover has raised an interesting point, in that some of the land which might come into this category does belong to Manx National Heritage. However, my understanding . . . Presumably that would have to be licensed in order to be covered by this particular legislation, and therefore under clause 4, which we are now looking at, they would have to manage the burning on those areas in accordance with the clause. However, this measure does not cover the burning of gorse in other situations, and I think there is some public confusion about that issue.

**Mr Delaney:** Isn't it similar, Mr President? I can particularly understand the situation arising in a private garden where you cannot cut down a tree over a certain height, six foot. You have to go . . . I thought it was under the same sort of regulatory authorities, but this is – (*Interjection*) That is what I understood.

**The President:** Mr Attorney, can you help us out of this one?

**The Attorney-General:** Mr President, the Heath Burning Act 1939 gives the power to the department to declare any area of land to be a heath for the purposes of the Act. So it would include obviously not only land which is owned by the department, in government ownership, but also private ownership. The 1939 Act creates a régime which prohibits burning of the heath and regulates burning of the heath and so on, and I think that the same approach is reflected in this new legislation. As the hon. member in charge of the Bill says, it is rather like the Tree Preservation Act, where the department, having a broad duty of care for the Island's forestry, is able to enter private land and to regulate the cutting of trees on private land. By analogy, it is exactly the same thing.

**The President:** Okay, hon. –

**Mr Delaney:** I think Mr Lowey raised a point too. Could I just have that again?

**Mr Lowey:** No, it has been answered.

**Mr Delaney:** I have answered. (*Interjection by Mr Lowey*)

**The President:** In that case, hon. members, the motion that I put to you is that clause 4 do stand part of the Bill, and we note that, in fact, the words 'or destroy' have been added into line 5 and 'or destroyed' added into line 14. Those in favour of clause 4 please say aye; against, no. The ayes have it. The ayes have it.

Clause 5, Mr Delaney.

**Mr Delaney:** Mr President, this deals with the procedure for applying to the department for a licence to burn heathland, which is set out in this clause clearly. If the department intends to refuse a licence or grant it subject to certain conditions, it must consult those who appear to have a special knowledge and consider any representation, both written and oral, from the applicant about its decision. That reaffirms that point from the previous discussion that took place here about consulting with everyone to do with the welfare of the heathland of the Island.

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

**The President:** Again, hon. members, noting the amendments which were made in another place, the motion I put to you is that clause 5 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clause 6, Mr Delaney.

**Mr Delaney:** Mr President, if it appears in this clause to the department that the registered heathland is likely to be burnt other than under the authority of a licence, they may take pre-emptive action and serve a stop notice on the individual or individuals. Clause 6 provides an offence of contravening a stop notice. Where a stop notice is considered unlikely to be effective, the clause provides that the department may apply to the High Court for an injunction. I beg to move, sir.

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

**The President:** The motion, hon. members, again noting the amendments made in another place: those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 6 becomes part of the Bill.

Clause 7, Mr Delaney, please.

**Mr Delaney:** This clause allows the department to take pre-emptive action to prevent unlicensed heath burning and enables it to issue a stop notice. I want to raise a point here with the Attorney on the drafting of this Bill, because if you look at the way members got their Bill, you will see that –

**The President:** Can we have it moved and seconded and at the relevant – ?

**Mr Delaney:** Right, I beg to move clause 7.

**The President:** Right. Mr Waft.

**Mr Waft:** I beg to second.

**The President:** Now, unusual though it is, Mr Delaney, you wish to ask a question of Mr Attorney. Right, okay.

**Mr Delaney:** I have been through this very carefully since we first got it, and I have consulted everyone I thought necessary, but I was reading through the clauses and the debates as you can see from the *Hansards* in the House of Keys, and I am looking here at where it says, under clause 6, clause 5, clause 6 and clause 7 enable the department to serve rehabilitation notices to restore heathland which has been burnt without a licence. What occurred to me was: who would bring it to the notice of it? Would it be after they see the fire or would it be sometime when an inspector was in on the land? I thought that I should ask the question rather than wait for members to spot it.

**The President:** The rehabilitation – (*Interjections*) Mr Attorney.

**The Attorney-General:** Mr President, as I see it, clause 6 gives the department the power to prevent heath burning by serving a stop notice, and the nuclear weapon, if you like, is to go to the court and actually get an injunction.

**The President:** That is right.

**The Attorney-General:** Clause 7, however, goes on to say that if the heathland has been destroyed or burned, perhaps despite the stop notice or the injunction, the department can serve on the occupier or any person having an interest in the land a so-called rehabilitation notice, which would require the recipient of that notice to take positive steps to put the heath back in the condition it was before the unlawful burning or destruction took place.

**Mr Delaney:** The point being, Mr President, if I may again . . . This is what I have been trying to finally ascertain. It would be unfair on the owner of the land if he was not the person who caused the fire, if it was some vandal who is not identified or if it was a lightning strike or some other cause. What would be the position then? That was the point I was trying to make for members' benefit. (**The President:** Right.) The landlord was going to be charged for putting all this back, but it was not his fault. It will be clear that it is not his fault, accidentally.

**Mrs Christian:** Mr President, the only way out here is that the department *may* serve such a notice – (**Mr Delaney:** Yes.) but they would have to take into –

**The Attorney-General:** Absolutely.

**Mr Delaney:** I just wanted nobody to jump on my back because I had not looked at the situation.

**The Attorney-General:** I should have thought, Mr President –

**Mr Lowey:** An act of God or –

**The President:** Yes, I think we would be relying on the 'may' in that regard. (**The Attorney-General:** Yes.) Any other member wish to speak to clause 7? In that case, hon. members, again noting the amendments made in another place, I put to you the motion that clause 7 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clause 8, Mr Delaney.

**Mr Delaney:** Provides – which you would expect – for an appeal procedure for an aggrieved owner or occupier of heathland against the decision of the department. I beg to move clause 8.

**Mr Singer:** I beg to second.

**The President:** Seconded by Mr Singer. Hon. members, the motion I put is that clause 8 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Incidentally, hon. members, we note that in (5)(d) there has been an addition made in another place to that clause as well.

Clause 9, hon. members. Mr Delaney.

**Mr Delaney:** I will just get back to my place here, sir. Clause 9 provides the department with powers, continuing from the 1939 Act, to enter upon land, Mr President. I beg to move.

**Mr Waft:** I beg to second.

**The President:** Seconded by Mr Waft. The motion, hon. members, is that clause 9 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clause 10, Mr Delaney.

**Mr Delaney:** Clause 10 deals with miscellaneous matters relating to the offences that are brought in under this Act, Mr President. I beg to move.

**Mr Waft:** I beg to second.

**The President:** The motion, hon. members –

**Mr Singer:** Can I just ask one question?

**The President:** Mr Singer.

**Mr Singer:** It says that proceedings can be brought within six months of when the offence was discovered, but not more than two years after the commission of an offence. Well, how do you know, until it is discovered, when it was committed? How do you know it is two years?

**Mr Delaney:** That would be under the same point I have raised myself. On evidence supplied to the department that can prove that particular date.

**Mr Lowey:** Could I just then ask: in (5), it says, 'When imposing any penalty for an offence under this Act, the court shall have regard to any benefit accruing as a result of the offence to the person convicted.' I find that rather strange that the court is being directed, because if I robbed somebody, a bank . . . It is a new one that.

**The President:** Mr Delaney.

**Mr Delaney:** That one has stumped me. The benefits, I would think, to the improving of the land for grazing purposes or wildlife, I would imagine.

**The President:** He did not have a licence, he had not applied for a licence, but presumably there was a benefit accruing, so he could be done for not having a licence, I suppose. (*Interjection by Mr Delaney.*)

**Mr Lowey:** This is a new one to me.

**The President:** Hon. members, the motion I put is that clause 10 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clause 11, Mr Delaney.

**Mr Delaney:** Clause 11 deals with offences committed by bodies corporate, which is self-explanatory.

**The President:** Mr Waft.

**Mr Waft:** I beg to second.

**The President:** Seconded by Mr Waft. The motion, hon. members, is that clause 11 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clause 12, 'interpretation'.

**Mr Delaney:** Mr President, clause 12 simply deals with the interpretation of words and phrases used in the Bill, and I think everything there is self-explanatory. Just one very minor point, in botanical terms, under vegetation, there is quite a free translation to Manx gorse being *Ulex gallii*, 'galli' meaning in French God knows what. (*Laughter*)

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

**The President:** Hon. members, I put to you the interpretation clause, clause 12. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 13, Mr Delaney.

**Mr Delaney:** Thank you, Mr President. Clause 13 is a very important part of the Bill. The department is given powers under the clause to make regulations to give effect to provisions of this Act. All regulations must be approved by Tynwald, of course, before coming into operation. The department may also, subject to Tynwald approval, make orders approving codes of practice and giving guidance on things detrimental to heathland. I beg to move.

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

**Mrs Christian:** Mr President, I just –

**The President:** Mrs Christian.

**Mrs Christian:** – hope that, in terms of practicalities, the regulations will look at practicalities in terms of the business of burning heath. This is quite bureaucratic in its nature, and it certainly would be a requirement, in my view, that you have a licence which would cover a period of time, because you would have to pick your weather and the opportunities are very limited sometimes. So, I do hope that there is a practical aspect to the implementation of both the regulations and the codes.

**The President:** We also note, in clause 13 (4) that the codes of practice, equally along with the regulations, have to be approved by Tynwald.

**Mr Delaney:** That is right.

**The President:** Hon. members, the motion I put to you –

**Mr Delaney:** Can I just say something?

**The President:** Mr Delaney.

**Mr Delaney:** I do take to heart what the hon. member has said. I did go through this with the present minister and with his staff, who may be more permanent, but I am given the assurances that everyone involved, from agriculture to shooting and conservationists, will all be considered when it comes to the handling of this legislation. It could become very blunt, I think, this point, and it should not be. It should be very well considered before it is . . .

**The President:** Hon. members, the motion I put then is that clause 13 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clause 14, Mr Delaney.

**Mr Delaney:** I beg to move clause 14, Mr President, which is self-explanatory and the short title.

*The Council adjourned at 1 p.m.*

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

**The President:** We have only reached the powers of the department yet, through clause 14, but perhaps –

**Mrs Christian:** I wonder if the mover – sorry, Mr President.

**The President:** Yes, Mrs Christian.

**Mrs Christian:** I wonder if the mover could indicate where there is likely to be any clash between this Act and any other statutory provision.

**The President:** Mr Delaney.

**Mr Delaney:** I should not think it will be either, but I do not know of any and I did not raise any on this particular one. Maybe the Attorney could help me there. Would there be any conflict there?

**The President:** The powers of the department, clause 14, Mr Attorney.

**The Attorney-General:** Mr President, just my off-the-cuff comment is that, of course, the department will have powers under various pieces of legislation dealing with forestry and so on, and it may very well be that, as such, the department can enter land and can plant trees and so on and so forth and can consult with adjoining landowners. Clearly, it is intended that this Bill, or this Act when passed, will work hand in glove with the other pieces of legislation of that ilk. That is the only thing I can say, Mr President.

**The President:** Okay, hon. members, the motion I put is that clause 14 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Mr Delaney, perhaps we could take clause 15, the schedule and clause 16 and finish the Bill.

**Mr Delaney:** I beg to move the remaining clauses, Mr President, and thank the members for the courtesy shown to me.

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

**The President:** Hon. members, the motion I put is that clauses 15 and 16 and the schedule stand part of the Bill. Those in favour please say aye. The ayes have it. The ayes have it.

Hon. members, that draws to a conclusion our sitting for this morning, completing our order paper. The adjournment will be to the sitting of Tynwald on 17th June, and thereafter we will again sit ourselves on 24th June. Thank you, hon. members.