



**LEGISLATIVE COUNCIL
OFFICIAL REPORT**

**RECORTYS OIKOIL
Y CHOONCEIL SLATTYSSAGH**

P R O C E E D I N G S

D A A L T Y N

(HANSARD)

Douglas, Tuesday, 27th January 2004

Present:

The President of Tynwald (The Hon. N Q Cringle)

The Lord Bishop of Sodor and Man (The Rt. Rev. Graeme Knowles), 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 and Mr G H Waft,
with Mrs M Cullen, Clerk of the Council.

Business transacted

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Legislative Council

The Council met at 10.30 a.m.

PRAYERS

The Lord Bishop

[MR PRESIDENT *in the Chair*]

APOLOGIES FOR ABSENCE

The President: Hon. Members, we have apologies from Mr Singer, who is off the Island and is missing.

CHAPLAIN OF THE HOUSE OF KEYS RECOVERY FROM ILLNESS

The President: Hon. Members will be interested to know that I did speak to the Chaplain of the Keys yesterday, and although he is still in hospital, he is on good form and recovering well.

Questions for Oral Answer

TREASURY

New tax allowances for persons on low incomes Number of individuals benefiting Total paid

1. The Hon. Member (Mr Lowey) to ask the Member for the Treasury (Mr Gelling):

A. How many individuals have benefited from the new tax allowances introduced in the 2003 Budget for persons on low incomes; and

B. what is the overall total, if any, paid to such persons?

The President: We turn, then, to our Order Paper, Hon. Members, and the first Question. I call on the Hon. Member Mr Lowey.

Mr Lowey: Thank you, Mr President. I beg leave to ask the Question standing in my name.

The President: I call on the Member for the Treasury, Mr Gelling, to reply, please.

The Member for the Treasury (Mr Gelling): Yes, thank you, Mr President.

As Members will know, the personal allowance credit came into operation for the income tax year commencing on 6th April 2003, and the maximum payment is £200 for a

single person and £400 for a married couple.

Up to 15th January, a total of 5,727 payments have been made, at a cost of £1.1 million. Of that, 4,268 – or, if you like, 75 per cent of all payments – were made to single persons, at a cost of £667,706, giving an average payment of £156 per person. Now, 1,459 – or 25 per cent of all payments – were made to married couples at a cost of £440,804, giving an average payment of £302 per couple. Approximately 2,000 further payments have still to be made, and that will be at an estimated cost of another £400,000.

As promised when the Income Tax Bill containing the new provisions was being debated, a review is in progress and is being carried out to actually check the effectiveness of the measure, and the Treasury Minister will be commenting on the outcome of this review as soon as the results are available to him, sir.

The President: Mr Lowey.

Mr Lowey: I thank the Hon. Member for his reply and say how gratified I am that this was back-dated to the beginning of the financial year. I think it is a good example of trying to get some relief to those at the bottom end of the scale. It is another positive plus.

Mr Delaney: Could I ask just one?

The President: Mr Delaney.

Mr Delaney: Would you just refresh us on how low the income of a family or a married couple has to be before they can claim such an allowance?

The President: Mr Gelling.

Mr Gelling: They have to be on the negative side of tax. In other words, if they are not paying tax... And if I could explain, we did explain, when this was put in, that we were putting it in as simple as possible. We would then review it after the experience of having paid, so what we have done is actually taken all those who are on the other side and are not paying tax, and they have had it more or less on an automatic basis. From next year, we will be asking them to submit a claim, because they are now on our system, whereas, before, they were not on our system. So, the review virtually will be to come forward to Members and say, 'This has been our experience. This is how we will actually do it in the future.'

I could add, Mr President, that we have only had one letter of any description from anybody in the Isle of Man, and it was actually not from someone who is a claimant but someone who had studied it and was actually saying, 'This is too simple. It could be abused.' So, we have written back, basically saying, 'Members fully understood that we wanted to get in quick. We wanted to make sure that those who were at the bottom were getting some benefit from it, and it will be reviewed', but that is the only correspondence we have had from anybody in the Island since we introduced it.

The President: Mr Delaney.

Mr Delaney: Could I just ask, for clarity: what is the amount a married couple can earn before tax, then? I will put the question that way.

Mr Gelling: I think it is £16,000.

Mr Delaney: Thanks very much indeed.

The President: Mrs Christian.

Mrs Christian: A supplementary, thank you, Mr President.

Could the Member for Treasury indicate what sum was budgeted in respect of this allowance and whether or not the outcome is in line with what was anticipated? And would he indicate whether or not the Treasury will be willing to discuss with the DHSS this developing (**The President:** Yes.) strategy, in order to refine the relationship between this and benefits?

The President: Mr Gelling.

Mr Gelling: In answer to the first part, I am quite sure that it was £2 million that was put aside. It was hard to quantify because we did not know who would be getting it. So we are within that. And, certainly, in that review, I would expect the DHSS to be consulted, because it is inter-linked, because we are all helping those at the lower end, both through the DHSS and, now, through the tax credits.

The President: Mr Lowey.

Mr Lowey: Would the Member not agree, Mr President, that the idea was that it was not to be a substitution for a benefit? In other words, it was an additional benefit for the low paid, and to have spent 75 per cent, which you will do by the end of the year if you take the £1.1 million and the £500,000, you are talking about 75 per cent of the amount of money that was raised. It was a pretty good guess and I have no complaints on that.

The President: Mr Gelling, do you wish to reply, sir?

Mr Gelling: Yes, only that that is the case, and I did say we have 2,000 more in the pipeline. That is not our problem; it is that they were late claims. So it is not us that have been holding back to see whether we were still within budget; it was, basically, because they are late claims. Regarding the review, as I say, I am quite sure the Minister will make a statement, probably in Tynwald, having consulted parties like the DHSS.

Vehicle disposal Responsibility for costs

2. The Hon Member (Mr Lowey) to ask the Member for the Treasury (Mr Gelling):

What steps are you taking to ensure that the current registered owner of a vehicle is responsible for any disposal costs of that vehicle?

The President: We turn then to Question 2, Hon. Members, and again I call on Mr Lowey.

Mr Lowey: I beg leave to ask the Question standing in my name, sir.

The President: The Member for Treasury, Mr Gelling, to reply.

The Member for the Treasury (Mr Gelling): Yes, Mr President.

This was quite interesting to myself (*Laughter*) and I have done, probably, far more research than was necessary, but, however... Hon. Members will probably be aware that, since 1st April 1993, the Department of Transport – which was then, of course, the Highways, Ports and Properties – assumed responsibility under the relevant road traffic legislation for the making of policy and legislation relating to the licensing and registration of vehicles and to the licensing of drivers. Since then the Treasury has, basically, been appointed an agent on behalf of the Department for the purpose of administering, on their behalf, all policy decisions and the legislation relating to licensing and registration.

Mr President, as agent for the Department of Transport, the Treasury maintains a database of the registered keepers – and I say that because it will come out later on: *keepers* – of vehicles which can be cross-matched to the registration number of a particular vehicle. When a vehicle changes hands, there is a requirement on the part of the vendor to notify the Treasury of the sale and for the purchaser to have his name recorded on the registration document, which is, of course, the log book. A reminder of the obligation of both vendor and purchaser to notify the sale to the Treasury is actually contained in fairly large print – probably not always read – in the log book. Also, in the event that a sale has not been notified, the annual reminder notice for a vehicle licence, which is your tax disc, which is sent to the last recorded keeper, contains a section to allow that person to notify a sale or transfer.

If the vehicle is not then either re-licensed, or a change of keeper is not received, within one month of the date of the expiry, the Department of Transport is proposing that a stronger, further reminder be sent to the last registered keeper. If no response is then received, a report should be sent to the police. However, this will require certain software and procedural changes to be in place before it can be implemented and will require the co-operation, of course, of the police.

Even with these measures, the Department and the Treasury are aware that certain persons will still fail to notify a sale or transfer and therefore plan to introduce a new-style registration document that will help to eliminate some of the difficulties encountered in identifying the keepers of vehicles. Also, it is understood that the Department is considering a penalty for the late re-licensing of vehicles, as in the adjacent isle, but, as yet, no decision has been taken on that particular matter. The Treasury, Mr President, is unable to comment on steps that any other Department may be considering to ensure that the disposal costs of vehicles are borne by the registered keeper.

The President: Mr Lowey.

Mr Lowey: I thank the Hon. Member for his reply. Would the Member not agree that the Treasury, DoT, the police and the Waste Management Board had a working party set up and made many of these recommendations six months ago? And can I inform the Treasury that, at this moment in time, it is costing the Waste for the removal of over 1,100

complaints? Well over 600 cars have been scrapped at an estimated cost of well in excess of £300,000. The problem is a growing one, and although the decision was taken over six months ago that the Treasury or the Department of Transport modify the current system, recording of vehicles, we are hearing today that we are *planning* to do it, six months after we *agreed* that it should be done. Is the Treasury not concerned that public expenditure of money in the removal of abandoned vehicles is taking place at the cost to the taxpayer, when that, obviously, should be borne by those who are responsible for that?

Mrs Crowe: Absolutely.

The President: Mr Gelling.

Mr Gelling: Yes. A long question, Mr President, and you are probably going to get a long answer. Yes, indeed, six months ago a meeting took place, and I have to say... I am not coming out with this as an excuse, but it has actually assisted us, because, until such time as the hon. questioner said to me about a meeting six months ago, we could not find any trace of this meeting. Unfortunately, the officer who attended on behalf of the Treasury has now gone to the DHSS and is actually on leave at the moment, so we were not able to get in touch with him, but we did research it and we found the actual meeting and we see quite clearly what the situation is.

We have obviously been in touch with Transport, and it was Transport taking the lead, because they are the persons responsible, assisted by Treasury. However, there are many problems in that area. Again, I know it is six months, but I can perhaps inform Members that, if they do not already know, there is a great difficulty in saying who is the legitimate owner – and that is why I was repeatedly saying ‘keeper’. The log book only says who is the keeper of the vehicle; it does not get into the legal terms of ‘because your name is on the log book, you are the owner’. There are several problems, such as: you can have someone who has got their name on the log book but who does not own the vehicle. The vehicle could be owned by someone else.

So there are problems in that particular area, but what it has actually enabled us to do is to research into the EU, and we actually find that the EU are bringing forward legislation (**Mrs Crowe:** Yes.) that all manufacturers of vehicles in Europe will be deemed to be the persons who will have to get rid of the end product. In other words, if Ford produce a car this year and it becomes scrap in 15 years’ time, the onus will be on them. That is all very well, because they will be able to put into the price of the new car an amount of money that will be put into a pool to get rid of the car, but, of course, then you have, if I can say, ‘Japanese Direct’. In other words, the cars come in and there is no money put aside to go in. They could come into Europe and go out to somewhere else, the same as the Isle of Man. We could have a car which is registered in the UK, and, if you had introduced a system whereby they were penalised then with an amount of money of, say, £300 and it came to the Isle of Man, we have not got that pool and we would have to get rid of the car. And it works the other way round: we could put an amount of money on here and, of course, if it went to the UK, they would have to get rid of it. You might say it will work out both ways, but there are very great difficulties in actually where you put that amount of money.

I agree there is great concern, because I see all these cars around, and the greatest trick of all is, of course, people coming to the Island to work, maybe on a three-month contract. They come with an old banger, but they do not take it back; you find it parked on a park somewhere and they have gone. So, the Hon. Member, through the Department, has got the problem.

I will go a little further to say that you will have a bigger problem when the Waste Board is set up –

Mr Lowey: You are right.

Mr Gelling: – because you are then in an isolated situation where you will be given funding. I read through this, I have to admit, Mr President, it is addressed to the Treasury, so it has got to be about money, and I would have thought – these are my own thoughts – that if and when the Department of Local Government and the Environment actually let you loose, if I can use that word, they would have to transfer to you a sum of money that... We have now, through experience, found that, instead of the head being, say, £100,000 and it is now £300,000, that vote would have to go, otherwise you cannot carry out your job. That would be all part of budgetary processes, or whatever, but that is how I would suggest it would have to be done at this stage, because, even if you start getting manufacturers, as of this month, putting on money, that is not going to come through until 15 or 20 years’ time. So there is a problem.

The President: Right, now let us add some structure to this. Mrs Christian.

Mrs Christian: Mr President, a supplementary. Would the Member for Treasury confirm that, where a vendor records with the Treasury the sale of a vehicle, they have effectively removed responsibility from themselves for the disposal of that vehicle, notwithstanding the fact that the purchaser may not actually re-register it in their ownership?

The President: Mr Gelling.

Mr Gelling: Yes, this is one of the areas that is so obviously incorrect. All you have to do is fire in a form saying, ‘This vehicle has been scrapped.’ They take it off the registration, but the vehicle is obviously lying somewhere, and, therefore – quite right – that person has now ceased to be the *keeper*, but they still are the *owner*. That is what I am trying to say. So you could take legal action against them, but, certainly, the Treasury do not declare that because they have scrapped the vehicle and they are no longer the keeper, they are the owner.

The President: Mrs Christian.

Mrs Christian: May I go back to the question I asked, Mr President? The Hon. Member has not answered it. It was: if a *vendor* – not a person who scraps the vehicle – sells the vehicle to another party and the *vendor* records that sale at the Treasury, have they effectively removed from themselves responsibility for the disposal of that vehicle?

The President: Mr Gelling.

Mr Gelling: They have, Mr President –

Mrs Christian: They have; that is the answer.

Mr Gelling: – but in so doing, they will have transferred it to someone else.

Mrs Christian: Yes.

The President: Mrs Crowe.

Mrs Crowe: Thank you. As you can imagine, I was interested in hearing Treasury's response to this question. I would like to mention to the Member of Treasury that it was not a meeting; indeed, the working party was set up and a great deal of time and effort went into making the recommendations, which are at least six months in gestation and have been with Treasury for over six months.

Of course, we in the Department are fully aware of the emerging EU legislation, which will mean even more funding, in waste management terms, when all vehicles will have to be stripped to remove all their recyclable parts. However, what I would like to say is: would the Treasury Member confirm, as he indicated, that Treasury would view favourably the fact that the Department and the Waste Management Division will be, and will continue to be, overspent in budgetary terms and that Treasury will view favourably that overspend in view of their untimely addressing of this problem?

The President: Mr Gelling.

Mr Gelling: First of all, it is not Treasury's responsibility, Mr President. Treasury is the agent of the Department of Transport. The Department of Transport is the lead Department, and Treasury have been assisting them in their effort to modify it. They make the policy; we carry it out as the agent, but, obviously, we are helping inasmuch as Harold Crellin is the head of our licensing people, and they are already starting to put together a better way of identifying where the cars are going.

Treasury, right: I have taken on board what has been said about the finance, but if the Department of Local Government and the Environment at the moment is able to subvent to the Division which is getting rid of cars at the moment, I would suggest that that particular amount of money can be transferred to that Department when they actually become independent on their own. This is what it is all about. I am not in a position to say that we will take on board... Obviously, we will take on board the difficulties, but we have to consider the difficulties over the entire situation of the Departments of Government, and I would suggest that what the Hon. Minister for the DLGE should do is speak with her Council Member who is Minister for Transport. That is where the situation should be driven from, not particularly from the point of view of the Treasury.

The President: Mr Delaney.

Mr Delaney: Yes, this is the annual... All Members of Tynwald get the cars parked at the end of somebody's street every month. I do, anyway. I know it is not his direct responsibility – he said he is the agent on the finance – but could the Member, on his answers as we have been given them, tell me: is it not a fact that, whether or not the vendor puts in to say that it has been transferred to somebody else,

or the new owner does not either, there is nobody being prosecuted for doing either?

Mrs Crowe: Yes, that is right.

Mr Delaney: So there is no offence being committed actually that there is a penalty for. And would the Member, who has got this difficult answer to this question to find, answer me this: as I understand the law – and the Attorney will correct me if I am wrong – you can bring a vehicle from anywhere, it seems, for six months before you have to re-register it? We do not get any six-month tourists that I know of – and I should know, as a Member of the Tourism Department. I would be delighted to have them. Why do we not reduce that length of time and then make it an offence to have a non-registered vehicle on the Isle of Man? If the police stop you, you are going to get done for not having insurance and an unregistered vehicle. Why don't we do that?

The President: Mr Gelling.

Mr Gelling: I can only repeat what I said in my original answer, and that was that at the moment, if that vehicle has been transferred to Joe Bloggs and Joe Bloggs does not licence it, they are then reminded that they have a vehicle that is not licensed. However, as I said, that is going to be reduced down to, say, a three months instead of an annual and there will be a penalty for late licensing. In other words, 'Why have you got a vehicle? Why have you bought it and you have not put it on the road?' The simple answer is: as a vendor, I could put it in the name which was the great favourite –

Mr Delaney: Mickey Mouse.

Mr Gelling: You used to put it in the wife's name or your son's name to get the thing out of your name, so that you could take the tax disc and put it on your new vehicle or whatever. That was how you did it. These are the areas that are being followed through from that particular meeting, tightening up as to find out who is responsible, but still, at the end of the day, there is going to have to be legislation as to what those penalties are. I could go on for ever about... There is a Mercedes parked over now at Strathallan –

Mr Delaney: I will move it later on this afternoon. *(Laughter)*

Mr Gelling: – and it has had a flat tyre. It was there when I gave evidence to the Mount Murray Inquiry in – I think it was – September and it is still there with the tyre still flat. It is on the highway; it has got to be causing an offence.

Mrs Crowe: We pay –

Mr Gelling: So, as I said, unless you have the co-operation of the police, how can you do anything at all with these vehicles, especially if they are on a public road?

Mr Delaney: Can you answer the other part of the question?

The President: Mr Kniveton.

Mr Kniveton: Could you please –

Mr Delaney: Could you answer the other part of the question?

Mr Gelling: Sorry?

The President: Mr Kniveton.

Mr Kniveton: Just one point, Mr President. Whilst being a Member of the Department of Transport, but not familiar, because I am not responsible for highways, can I ask the Member: what is the position regarding abandoned cars which then have their number plates removed? That does happen fairly regularly. Does that, then, become the responsibility of Mr Lowey's Department?

Mrs Crowe: They all do this.

Mr Kniveton: Absolutely.

Mrs Crowe: Every one of them. (*Interjections*)

The President: Mr Gelling.

Mr Gelling: You see, there is also a difficulty, as I understand it, Mr President, between the legislation under which Transport operate and the legislation under which the Department of Local Government and the Environment legislate. How they operate in one particular area: a notice has to be put on that vehicle declaring that if it is not removed in such-and-such a time, it will be removed and scrapped. That is great, because, for some that have got these cars, it is going to cost them £50 or £60 to get rid of it, (**Mrs Crowe:** It is £35.) so they just leave it and then when the time is up, they know somebody else is going to remove it. So there are ways of getting round this area.

On the other side, you get cars that are parked on Local Government Board estates, and that is a favourite, too, as we know down at Clagh Vane. Of course, then they are on the DLGE. They own that land –

Mrs Crowe: So we pay again.

Mr Gelling: Yes. So they can remove them, but it costs them to do it, and people just leave them there. There is no basis on which they are frightened to leave them, because, if they take the number plates off, you have got to get the engine number or the chassis number and then try to trace that. It is exceedingly difficult.

If I could go back, it was remiss of me to not –

The President: Please answer the second part of Mr Delaney's question.

Mr Gelling: Yes. Reducing this period: I think Mr Delaney said six months. We were saying that, actually, if you buy a car and you are not going to put it on the road, three months gives you plenty of time to either polish it, titivate it, respray it or whatever, and, therefore, it could actually be brought down further (*Interjection by Mr Delaney*) – and I would suggest to three months. Then at least we would have some indication (*Interjection by Mr Delaney*) of where these vehicles are, rather than then finding them two years later,

or a year later, because, at the moment, only if you do not re-license it for 12 months does it actually come back to your notice that that vehicle has been sold to whoever and they have not licensed it. Therefore, you would question why they have not. It might be at home in the garage, but, basically, I would suggest it is out on somebody's car park or by the side of the road.

The President: Mr Lowey, do you wish to come back, as the original questioner?

Mr Lowey: I do really, because many of the problems, as outlined by the Hon. Member of the Treasury, were identified. I identified them over 12 months ago; that is why I set up the working party between the four interested groups. My complaint today is that, after six months of recommendations to resolve them, along the lines that have been explained round here, they have not been forwarded. I have to say to the Hon. Member that I do not have a Law Society or a legal team; the DoT do have a dedicated officer on law – a very able young man, too – but nothing has been done. Why? Because the Treasury are not responsible for the money. They are ultimately, for providing the money, but they do not appear to be the lead in this. The DoT do not, because it does not cost them anything; it falls on me.

As far as I am concerned, the problem has been identified. The UK have a system now, which was identified six months ago, where you get a penalty if you do not license your vehicles within a fortnight of when they should be renewed. This was identified. This was thought a good idea six months ago. They have brought it in; we have not even considered it. We are thinking about it. I have to say to the Treasury Member: if the Treasury have got a positive approach to the saving of the expenditure of public money, here is a classic example of where it should have been put into place and prosecuted with a bit of vigour. It is not. It is left for me, if you like, to say, within six weeks of taking over a job, (*Interjection by Mrs Crowe*) that my problems... I said earlier that the problem is not a diminishing one. If it was, fine. It is a *growing* problem, and, therefore, the deficiencies will *grow*.

The President: I think, Hon. Members, in fairness, we have given it fair comment (*Interjections*) from both sides. I think Mr Lowey's comment is, to use his expression, 'germane', insofar as he feels aggrieved, and the Treasury Member has given his explanation. I do not know if Treasury –

Mr Gelling: Could I respond?

The President: Yes, Mr Gelling.

Mr Gelling: Mr President, first of all, the Hon. Member says, 'Yes, because Treasury are not worried.' Of course, we are worried. We are concerned because it is going to cost money, and if this money goes out to the disposal of cars, the DHSS or somebody else is not getting it. (**Mrs Crowe:** Absolutely.) Therefore, we would not be following, I would say, what Treasury has always followed, and that is: if we can get money from somewhere to save us paying, we would certainly do so.

All I can say is some of the areas of that meeting six months ago have, obviously, now been addressed. They

are addressing them. It is in the hands of the officer at the Department, Ken Kyme. Is it Ken Kyme? (**A Member:** Yes.) Ken Kyme is a good officer. He is addressing it. He is one of the better of the legislative people. And I would suggest to the Hon. Member that, yes, we are worried. We are concerned. We will be pushing this on as fast as we can to see as much money coming in from wherever, but it is very, very complicated. It is getting the legal structure to enable us to achieve what was listed in those recommendations, and that is really where I would leave it, Mr President.

The President: Okay. Well, Hon. Members, I think, as I said before, we have given that a good airing.

WELCOME TO NEW LORD BISHOP

The President: Hon. Members, just before we turn to the Race Relations Bill, I am sure that we welcome our Bishop to his first session of the Legislative Council this morning. I am sure that he has found the questions and the answers to those questions in our relaxed atmosphere here in the Legislative Council very interesting this morning.

Orders of the Day

Race Relations Bill Second reading approved

The President: So, we turn then to the Race Relations Bill. It is for second reading, and I call upon the Hon. Member, Mr Waft.

Mr Waft: Thank you, Mr President. It is quite fitting that, on Holocaust Memorial Day, we should be discussing the Race Relations Bill. As I explained to the Council, it has long been established that provision would be made in the legislative programme for the accommodation of the Race Relations Bill, which would, in turn, demonstrate that the Isle of Man meets the requirements of the International Convention on Racial Discrimination. This requires the pursuit of policies to eliminate racial discrimination and to provide redress for individuals who have suffered such discrimination. The Isle of Man Government, therefore, has a responsibility to ensure that the Island complies with its international obligations. Furthermore, the Isle of Man's reputation in the international community could be damaged for the seeming lack of social legislation.

I would also add that, whilst it may be perceived that there is no problem on the Island at this time, other conventions have been rigorously applied on the Island when it has been deemed there is no problem or incident at present.

I would emphasise that the Race Relations Bill was subjected to a wide and open consultation process that initially included all Government agencies, the judiciary, the Chamber of Commerce and the Isle of Man Trades Council.

Mr President, it would be useful at this time, I believe, to

highlight, once again, that the Race Relations Bill does not include employment discrimination. This will be included in a separate Bill, the Employment Discrimination Bill, and possibly in the future in the Disability Discrimination Bill, which still has to come before the branches.

I formally move, Mr President, the second reading of the Race Relations Bill.

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

The President: Okay, Hon. Members, no Members wishing to open discussion on the Race Relations Bill at second reading, I put to you formally that the Race Relations Bill be read for a second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Race Relations Bill Clauses considered

The President: So, we will work our way through the clauses, Hon. Members, and I understand the Hon. Member wishes to deal with a clause at a time. Mr Waft, clause 1, please.

Mr Waft: Thank you, Mr President.

Clause 1 imposes a statutory duty on public authorities, in the same way as applied to acts done by private persons. In addition, it imposes a duty on all public authorities to make appropriate arrangements with a view to securing that their varied functions are carried out with due regard to the need to promote equality of opportunity and good relations between persons of different racial groups and to eliminate unlawful racial discrimination.

The expression 'public authority' will have the same meaning as in the Human Rights Act 2000, which includes (a) a court or tribunal and (b) any person, certain of whose functions are functions of a public nature, but does not, in most cases, include Tynwald, the Legislative Council, the House of Keys or a person exercising functions in connection with the proceedings in Tynwald, the Legislative Council or the House of Keys.

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

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

The President: Bishop, please.

The Lord Bishop: Can I ask a question about religious discrimination and that we are quite clear that, within this particular Act, we are solely talking about racial? I am worried about those groups of people for whom 'racial' and 'religious' are, in fact, the same, that to belong to a particular race or a particular religion is coterminous, and whether that has been thought through in the processes here. It may be that it crops up under an employment Bill that comes later. I am sorry to throw that spanner in, but it was the thing that occurred to me as I looked here from standing on my side of the fence.

The President: Mr Waft.

Mr Waft: Thank you, Mr President.

In respect of the question about the definition of the word 'race', the legislative draftsman had advised that this was defined by reference to colour, race, nationality, ethnic or national origins. The definition did not include religion. However, the United Kingdom legislation did include Sikhs and Jews.

It has been suggested, through the submission from the Isle of Man District Methodist Church, that, in order to have regard to the need to work for good relations between different racial and religious groups, there would be merit in adding 'religious' after the word 'racial' wherever that term occurred in clause 1 of the Bill.

The legislative draftsman has advised that the word 'religious' had not been included in UK legislation primarily because the definition of 'religious' was quite open. It had been considered that the inclusion of 'religious' might encourage various religions, such as Moonies, new-age travellers, Trappists or any other unusual sect, to be included under the heading of 'religious'.

The Department of Trade and Industry commented on the definition of 'discrimination'. The legislative draftsman advised that the approach to the meaning of discrimination in the Bill was consistent with existing legislation.

The President: Hon. Members, I put to you formally, then, 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 Waft: Clause 2, Mr President, makes it unlawful for any person to discriminate, or to impose discriminatory requirements or conditions, on anyone on the grounds of colour, race, nationality or ethnic or national origins. Whilst the clause does not specify the treatment to which it applies, there are cases to which the clause does apply, such as: (a) access and use of places to which the public is permitted to enter; (b) accommodation in a hotel or boarding-house; (c) banking, insurance, loans, credit or finance; (d) education and/or training; (e) entertainment, recreation or refreshment; (f) transport or travel; (g) the services of any profession, trade or any public authority; (h) planning; (i) housing; and (j) retailing. The schedule to the Bill sets out special cases in which acts are not to be treated as unlawful under the Bill, and I will discuss these at a later date, Mr President.

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

The President: Mr Lowey.

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

The President: Mrs Christian.

Mrs Christian: Mr President, speaking in support of the way that this is drafted, I think it was recognised that the United Kingdom legislation was very specific in its terms and it was felt that this more generalised wording of the clause at least gives people the opportunity to take up the issue of discrimination where it was not, in fact, very finely defined, and, therefore, it is, perhaps, a better piece of drafting than in the United Kingdom. It would be for any individual to prove

their case, or, at least, put their case, within the broad context of these definitions, and I am, therefore, happy to support it and regard it as an improvement on the UK drafting.

The President: Mr Waft, do you wish to reply, sir?

Mr Waft: Thank you, Mr President. I would just concur with the Minister on those views, and it has been accepted with the reasons behind that thinking.

The President: Hon. Members, I put to you 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 Waft: Clause 3, Mr President, provides for certain types of victimisation to be unlawful on the grounds of colour, race, nationality or ethnic or national origins, or to be treated as discrimination. The class of discrimination arises where there is a victimisation of a person because that person has, for example, asserted his rights under the Act.

Victimisation arises where the discriminator treats the victimised person less favourably than he treats or would treat other persons because the victimised person has done or intends to do, or is suspected of having done or intending to do, any of the following: (a) brought proceedings under the Bill; (b) given evidence or information in connection with proceedings under the Bill; (c) done something under the Act – for example, giving evidence or giving information to the Attorney General; or (d) alleges that a person has committed any act in contravention of the Bill.

Under subsection (2), where the conduct of the victimised person involves the making of any allegation, the less favourable treatment on account of the allegation is not victimisation if the allegation was false and not made in good faith.

Mr President, I beg to move that clause 3 stand part of the Bill.

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

The President: Hon. Members, the motion I put to you is 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 Waft: Clause 4, Mr President, makes it unlawful for a person to publish or cause publication of an advertisement, as defined in subsection (6), which indicates, or might reasonably be taken to indicate, an intention to do an act of discrimination. However, such an advertisement is not unlawful if: (a) the contemplated act of discrimination is lawful under the schedule; (b) the advertisement relates to the services of an employment agency and deals only with employment in respect of which the employer could claim one of the exceptions at (a); and (c) the advertisement indicates that persons of any particular class defined otherwise than by reference to colour, race or ethnic or national origins are required for employment outside the Island.

It must be said that there will be cases where it is difficult for a publisher of advertisements to know whether or not a particular advertisement is unlawful. The advertisement might, for example, appear discriminatory, but the publisher

may not know whether the discrimination in question falls within one of the exceptions set out above. If the publisher can show that, in publishing the advert, he has reasonably relied on a statement by the person placing it to the effect that it was not unlawful because of one of those exceptions, then the publisher is not subject to any liability should the advert prove unlawful. It is an offence punishable on summary conviction with a fine not exceeding £5,000 for anyone placing an advertisement knowingly or recklessly to make a materially false or misleading statement to the publisher as to its lawfulness.

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

The President: Mr Lowey.

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

The President: Mr Gelling.

Mr Gelling: Mr President, following on, really, from the first clause, when the Bishop asked the question on religion, can I assume, therefore, in an advertisement that you could still say it was an Anglican organisation, that they could still put, in that advertisement, that the person should preferably be of the Anglican faith, which possibly could be saying you are discriminating against others in a similar way that you do with 'preferably a car driver', or something like that? In other words, you are then discriminating against people who are not car drivers, but, really, what brought it to my mind was the Bishop's question on the 'religious' not being in there as a discrimination.

The President: Bishop.

The Lord Bishop: I was going to ask the same question, in the sense that if I put that I wanted a Christian to do the job and a Jew applied, could they have me under the Race Relations Act because I was actually against them *racially*, as the Jewish race, rather than *faithfully* as a Jewish believer? Similarly with a Sikh; I doubt whether a Sikh would be applying for the job, but I just do not want us to be in that sort of grey land in between.

The President: Mrs Christian.

Mrs Christian: Mr President, I think we had some discussion on this in the Social Issues Committee, and I think that there may be some difficult decisions for publishers and so on to make, but I do not imagine that there would be any difficulty in relation to an advert, such as outlined by the Hon. Member, asking for someone of the Anglican *faith*, because it is *faith* there that is the crux of the matter. Irrespective of colour or race or anything else, it is *faith* which is the essential request in the advertisement. To take the Lord Bishop's analogy, if a Jewish person by race had become a Christian – and I do not know whether that happens, but if it had – then, presumably, they would qualify under his advertisement, if they were an Anglican, to apply for the job. I do not think it would be an offence – but, maybe, the learned Attorney would contribute here – for the Lord Bishop to turn down that application if the Jewish person applying was not of the Anglican faith.

I think the issues also cover matters such as advertising, shall we say, for a Manx dancer. It is hard to define 'Manx', perhaps, but it would not necessarily have to be someone who was born here with a long pedigree; it could be someone who could simply do the Manx dances.

Mr Gelling: You would find out that pretty quickly, wouldn't you? (*Laughter*)

Mrs Christian: There may be points in this which will be tested in due course, but I guess there is precedent from other places in terms of interpretation of these sorts of issues.

The President: Mr Waft to reply, sir.

Mr Waft: Thank you, Mr President. The legislative draftsman advised that the Bill did not deal with, nor was it intended to deal with, the dissemination of racial ideas. It was intended to prevent actual discrimination and bring pressure on persons who discriminated. For instance, it was difficult to understand how a BNP poster would fall foul of clause 4 unless it indicated an intention to do an act of unlawful discrimination. However, if it incited a public order offence, this would be dealt with under the public order legislation, possibly under the new criminal justice legislation. Maybe the Attorney General would like to clarify – (*Laughter and interjection*)

The President: Mr Attorney, do you wish to comment on it?

The Attorney General: Well, Mr President, if I may just restrict myself to the question that was raised by the Hon. Member of Council, Mr Gelling, and the Lord Bishop, I think I can, perhaps, answer the question in a fairly dry and precise way by referring to the definition of 'racial grounds' in clause 18 of the Bill, Mr President, which makes it perfectly clear that we are concerned in this Act with 'racial' in the context or in the meaning of reference to colour, race, nationality or ethnic or national origins. Mr President, therefore, it seems to me that, if an organisation were to advertise for someone who is preferably of the Anglican faith, or, indeed, of any other faith, that would not trigger off any offence under this legislation as drafted. It might possibly engage some difficult and interesting decision under other legislation, but insofar as this is concerned, Mr President, I do not think that we have any issue in terms of religion. It is a fairly narrowly drafted definition of 'race', and if I may leave those very interesting questions to another day... (*Laughter and interjection*)

The President: Mr Waft, do you wish to add anything further?

Mr Waft: I would just like to thank the Attorney for his full explanation.

The President: In that case, Hon. Members, the motion which I will put to Council is that clause 4 do stand part of the Bill. Those in favour, please say aye; and against, no. The ayes have it. The ayes have it.

We turn then to clause 5.

Mr Waft: Clause 5, Mr President, makes it unlawful to instruct another to discriminate. This would apply in respect

of a person who has authority over, or influence with, another person – for example, an employer over an employee or a company with one of its subsidiaries – to instruct that person to do an act of unlawful discrimination or to procure or attempt to procure the doing of such an act by that person.

Mr President, I beg to move that clause 5 stand part of the Bill.

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

The President: The motion, Hon. Members, 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 Waft: Clause 6, Mr President, makes it unlawful for one person to put pressure on another person to discriminate. This would apply when a person induces or attempts to induce another person to do an act of unlawful discrimination. An attempted inducement includes one which is not made directly to the person concerned, but is made in such a way that he is likely to get to know of it.

Mr President, I beg to move that clause 6 stand part of the Bill.

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

The President: The motion, Hon. Members, is that clause 6 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 7, Mr Waft, please.

Mr Waft: Clause 7, Mr President, deals with the liability of employers and principals for the acts of employees and agents. An employer is liable for any act done, with or without his knowledge or approval, by one of his employees in the course of his employment. A principal is liable for act done with his authority, whether expressed or implied, and whether given before or after the act, by his agent. In these situations, the agent or employee is treated as having aided his principal or employer. In other words, the principal and the agent, and the employer and the employee, are liable for the unlawful act.

The clause provides a defence to any employer who would otherwise be liable for an unlawful act by one of his employees if he can prove that he took such steps as were reasonably practicable to prevent the employee from committing the unlawful act in question or unlawful acts of that kind.

The clause makes special rules with respect to the person to be treated as the employer of police constables and applies rules set out in the Police Act 1993.

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

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

The President: Mr Gelling.

Mr Gelling: When the mover says ‘principals’, how far down the pecking order in a company would you declare a

principal? Would it be management level or whatever? And does the word ‘knowingly’ come in here? I am just thinking of the employer who employs people who are managing in their divisions or departments and then an employee actually does discriminate. Is it the case that it is a defence that they, the employer, did not know of that, and do they have to prove their innocence, or do the police have to prove that, in fact, they did?

The President: Mrs Christian.

Mrs Christian: Yes, Mr President, on the same issue, I think this highlights the need for employers to follow at least some sort of training programme for their employees, drawing to their attention the requirements of this legislation. Having done that, they would then appear to have a defence, should one of their employees commit an act of discrimination, thus proving that they did take reasonable steps to ensure that at least their employees were aware of their responsibilities under the Act. I expect that, in every organisation, there would be some nervousness about what anybody’s employees might do at any particular time. They are remote from, perhaps, the principals at certain stages and one cannot control everything that they do 24 hours a day – nor would wish to – but, provided that they have at least been trained in their responsibilities, I think that they would have a defence.

The President: Mr Lowey.

Mr Lowey: Would the mover also agree that in (2) it is a bit like the Health and Safety Act? If you train your people and make them aware, then you have, if you like, exercised your duty of care. In item (2), ‘anything done by a person as agent for another person with the authority (whether express or implied, and whether precedent or subsequent) of that other person shall be treated for the purpose of this Act’ et cetera, and is that not really...? This Bill has been in since 1976, so the precedent has already been set elsewhere and we actually are, if you like, following on from that. As in clause 2, we have amended existing legislation for the better. This one has a proven track record and, if you like, it is in telling people what their duties are that you then exercise your duty of care. Would the Member not agree?

The President: Mr Attorney.

The Attorney General: If I may – and hopefully with a view to being of assistance – I think that it is rare in the criminal law that someone can be, as they say, ‘vicariously responsible’ for the acts of another. In other words, as the Hon. Member of Council has indicated, ordinarily when we are looking at the criminal law, it is essential to prove a mental element, that you *knowingly* committed an offence. This is one of the very rare circumstances where you can be liable in the criminal law even though you did not *know* that the person who was your employee was committing an offence, but what the policy of this clause seems to be is that if you, in fact, are employing people and you are a good employer, as the Hon. Member, Mrs Christian, has indicated, it is your responsibility to implement some sort of training programme or some sort of warning system to, as it were, indicate to your employees that they must not become involved in racial activity. If you do not do that,

then you run the risk of being, as it were, branded with vicarious responsibility, which is quite unusual. In fact, it is very unusual in the criminal law. And so that is why there is a fairly limited defence in clause 7(3) that, if proceedings are brought against you, it is your duty – you have a burden of proof on you – to prove that you took such steps as were reasonably practicable to prevent the offence, and, of course, that will all depend on the particular circumstances of the case. Mr President, I hope that will be of assistance.

The President: Mr Delaney.

Mr Delaney: I am interested in that one because, as we know, the Licensing Act does the same thing. When the licensee is absent, he is responsible for what is going on in his public premises, which I find very unfair, but it was done through law. Can I ask this: would it be wise – and this is only for me and advising other Members – to actually have something in writing, where such a training course or instruction was given by the person in charge, that he did tell his staff the contents of this law, so that they knew that, under this clause 7, he can prove that he gave instruction?

The President: Contract of employment legislation.

The Attorney General: Well, Mr President, if that is addressed to me –

Mr Delaney: So that he can prove that he gave instruction.

The Attorney General: – I would be more than happy to confirm that, if I was an employer in this sort of situation, I would certainly ensure that my employees had attended a training programme and I would get them, as it were, to sign off to confirm that they had attended and that they understood what the implications were.

The President: Mr Waft, do you wish to reply, sir?

Mr Waft: Yes, thank you, Mr President. Mr Attorney has clarified the position with regard to most of the questions. A training programme, as has been stated, is necessary, and the cost to Government, I think, is covered in clause 21 – I think it is £104,000, sir – but any self-respecting employer would have an eye for this Bill when he compiles his training programme for his staff. It does state, as I have stated before, that, if the employer can prove that he took such steps as were reasonable and practicable to prevent the employee from committing an unlawful act, and I think it is covered within that. So I think I have covered...

The President: Hon. Members, then the motion that I put to you is 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 Waft.

Mr Waft: Clause 8, Mr President, deals with persons who aid others to do acts which are unlawful under the Bill. It is unlawful for a person to knowingly aid or assist in an unlawful act that includes acts of unlawful discrimination and victimisation, and that person is treated as having himself committed the act, so that both the aider and the person aided

are liable for the act.

However, a person is not treated as having aided another if he reasonably relied on a statement by the other person that a provision of the Bill prevented the conduct in question from being unlawful. It is an offence punishable on summary conviction with a fine not exceeding £5,000 for a person acting unlawfully, knowingly or recklessly to make a materially false or misleading statement to a person aiding him as to the lawfulness of the conduct in which they are engaged.

Mr President, I beg to move that clause 8 stand part of the Bill.

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

The President: Lord Bishop.

The Lord Bishop: Can I ask the Attorney General what 'recklessly' means? Without care? Without thought?

The Attorney General: No.

The President: Mr Attorney.

The Attorney General: Thank you, Mr President. Generally speaking, 'recklessly' in the criminal law means that you close your eyes to the obvious and that you should have known of the risk, and you thereby incur liability because you ought to have been aware of the situation.

The Lord Bishop: Thank you.

The President: Mr Waft.

Mr Waft: Thank you, Mr President. Clause 9, Mr President, deals (*Interjection*) with –

The President: Did you wish to add anything?

Mr Waft: I do not wish to add anything. The questions have been –

The President: In that case, Hon. Members –

Mr Gelling: I have got another question.

The President: Mr Gelling.

Mr Gelling: I thought Mr Waft was replying to the Lord Bishop. I had another question, if I might.

The President: We are still dealing with clause 8, Hon. Members. Mr Gelling.

Mr Gelling: We have heard about the discrimination and, of course, you come to, I have to say, the Irish joke –

Mr Delaney: The best jokes in Ireland are made up by Irishmen.

Mr Gelling: – about a race, if you like. If someone was to tell the Irish joke to another person, but an Irish person was not in the company, is that aiding and abetting

someone to, perhaps, then tell the joke in public? I am just trying to follow that one through as to whether or not you are aiding and abetting someone if you tell them a joke in private which they might very well then repeat in public. It is just that I have got quite a lot of those jokes which I use in public. (*Laughter*)

The Lord Bishop: All those after-dinner speeches.

The President: Mr Waft. Or Mr Attorney.

Mr Waft: Mr Attorney, I think, is more –

The President: Mr Attorney.

The Attorney General: Mr President, I think sometimes those who are charged with the duty of prosecuting have to have a fairly sensible approach to enforcement, and there is always, Mr President, an element of – how can I put it? – public interest in prosecuting. It is not every offence which is prosecuted; there has to be a public interest in prosecuting. If, therefore, it was suggested that a fairly harmless joke about Irish people had been told in the context of an after-dinner speech, shall we say, there would be some very difficult decisions to make as to whether it is in the public interest to prosecute. I think that is the first thing, and the Attorney General's Chambers, and indeed the police, have such difficult decisions to make most weeks of the year.

But, Mr President, also is there not, I think, in the Bill an exemption, whereby, if there is a publication of something which would otherwise be racially discriminatory, that is within your own home, and it is not disclosed outside to the public, there is a defence? If I can just find that, I hope... It is under paragraph 14 of the schedule, Mr President. This may be the point the Hon. Member is concerned about. Under the heading 'Private dwellings' it says:

'Nothing in this Act shall render unlawful anything said or done by a person inside his dwelling if that person had no reason to believe that his acts would be heard or seen by, or have any effect on, any person outside that dwelling.'

So, if the Hon. Member were to tell a joke to his son as they are having a quiet drink in their home, that might be deeply hurtful to someone who is of particular sensitivity if he overheard that, but the point is that the legislation is saying that again it is against public policy to make people criminally responsible for private jokes which they tell within their own home. As ever, much depends on the circumstances and it is very difficult to give a broad generalisation, but I think some element of common sense has to be imported here.

Mr Delaney: Mr President, the learned Attorney jumped to that section and I had a question on that, because am I seeing on that one there and on this clause we are looking at now the end of, say, Frank Carson, an Irish comedian? Is all his humour to the public and his profession now lost because he is unable to tell, publicly, Irish jokes? That is the question I was going to ask on that section 14.

The President: Mr Attorney.

The Attorney General: Well, Mr President, again, with people like Frank Carson – and, yes, we have all laughed

to tears – the point is that they can be prosecuted. There is no doubt about it. They can be prosecuted. It all depends on the facts. It depends what is said and in what circumstances, and any prosecution would have to weigh up all those elements.

The President: Mr Waft, is there anything that you wish to add to the discussion on clause 8, sir?

Mr Waft: I do not think so, Mr President. I think it does give some thought about being circumspect as to the audience that you are telling your jokes to.

The President: In that case, Hon. Members, I put to the Council formally that clause 8 do stand part of the Bill. Those in favour, please say aye; and against, no. The ayes have it. The ayes have it.

We turn to clause 9, Mr Waft.

Mr Waft: Clause 9, Mr President, deals with the effect of the Bill on contracts which contain discriminatory clauses. In general, a term in a contract which constitutes a contravention of the Act or which is in furtherance of, or provides for, such a contravention is void and unenforceable. However, where the victim of discrimination is a party to the contract, the term is not void, but is unenforceable against him.

The clause goes on to provide that any person with a concern in a contract which contains such discriminatory term, for example one which is not void but is unenforceable, may seek an order from the High Court revising the contract so as to remove or modify the term.

If a term in a contract purports to exclude or limit any provision of the Bill, the term is unenforceable by the person in whose favour it would otherwise operate, but because of subsection (4) that will not apply in respect of a contract settling a case under the Act before the High Court. But such a contract cannot affect a person's right to complain about any other alleged contravention of the Bill.

Mr President, I beg to move that clause 9 stand part of the Bill.

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

The President: 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 Waft: Clause 10, Mr President, deals with the effect of the Bill on the constitutional documents of charities which contain an object that is discriminatory. Where a charitable instrument, for example a trust deed of a charitable trust or the memorandum and articles of a charitable company, contains a provision for conferring benefits on members of a particular racial group defined otherwise than by reference to colour, the Bill does not render unlawful anything done to give effect to that provision.

If, on the other hand, a charitable instrument contains a provision for conferring benefits on a class of person defined by reference to colour, the provision has effect from the commencement of the proposed Act as though it provided for conferring the benefits in question on a class of person which results if the colour restriction is disregarded or if

the original class is defined by reference to colour only or persons generally.

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

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

The President: Mrs Christian.

Mrs Christian: Mr President, I think this is a quite an important one, in the sense that we often see charities with specific objects in respect of, perhaps, natural disasters in certain parts of the world and funds are raised for a particular group of people, and I think it is entirely appropriate that we should be able to say that we are raising this for the Iranians or the Kurds, or whatever. So it is an important provision.

The President: Mr Waft, do you wish to reply?

Mr Waft: No, I would just thank the Hon. Member.

The President: In that case, Hon. Members, the motion is that clause 10 do stand part of the Bill. Those in favour, please say aye; and against, no. The ayes have it. The ayes have it.

We will turn to 11.

Mr Waft: Clause 11, Mr President, contains the proceedings for breach of Act. This clause makes it clear that the only remedies for acts which are unlawful under the Bill are those provided by the Bill. This ensures that a person or body does not face double liability under this Bill and other provisions.

Mr President, I beg to move that clause 11 stand part of the Bill.

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

The President: The motion, Hon. Members, is that clause 11 do stand part of the Bill. Those in favour, please say aye; and against, no. The ayes have it. The ayes have it.

Clause 12, Mr Waft.

Mr Waft: Clause 12, Mr President: the general remedy for acts which are unlawful under the Bill. All complaints related to discrimination which is made unlawful by the Bill are dealt with by way of civil proceedings in the High Court. This applies also to acts treated as being unlawful under the Bill by the provisions dealing with aiding unlawful acts and the liability of employers and principals. Time limits for proceedings are dealt with under a later clause.

Legal aid is available to assist persons who consider they may have been discriminated against.

Where the High Court finds in favour of the complainant, it will usually make an injunction or order damages. An award of damages may consist of damages for any expenses or other loss sustained by the claimant for which it is possible to make substantially precise calculations, for example loss of earnings, and also any damages for any loss which cannot be precisely calculated, for example for injured feelings.

There is a right of appeal to the Staff of Government Division of the High Court, the appeal division against the

decision of the High Court.

Mr President, I beg to move that clause 12 stand part of the Bill.

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

The President: The motion, Hon. Members, is that clause 12 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 13.

Mr Waft: Clause 13, Mr President, will enable the Attorney General to apply to the High Court for the issue of non-discrimination Orders. A non-discrimination Order is an Order of the High Court that requires: (a) a person not to carry out a discriminatory act; (b) to advise the Attorney General of changes brought about to comply with the Order; and (c) to furnish other information that is reasonably required by the Attorney General.

The clause established procedures to be undertaken before applications are made to the High Court, including notification of the person to whom the complaint relates and consideration of any comments made by that person.

If a non-discrimination Order is made, the Attorney General can report a failure to comply to the High Court after the expiry of six weeks from the making of the Order. The High Court has powers to deal with such cases of contempt of court, if necessary.

The Attorney General has a number of law enforcement powers under the law, and the Bill does not affect or limit any such power.

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

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

The President: Mrs Christian.

Mrs Christian: I think, Mr President, that, in support of this clause, it does provide an avenue for determination of the matter to a degree by the Attorney General and then to the High Court, which enables an appeal procedure to be introduced into the whole structure, which I think is a change that was made from the original drafting of the Bill. But it is seen as important that there is some mechanism for appeal.

The President: Is the time limit between the 28 days, which is 4 weeks, and a 6-week period enough time for the Attorney General? Mr Attorney, you are giving the person the opportunity within a period of not less than 28 days and you have to take into account any representations and make your comment within the 6-week period.

The Attorney General: Yes. (*Interjections*) Yes, it is after the 28 days:

'if, after the expiry of a period of 6 weeks from the date on which the non-discrimination Order was made...'

The President: After 28, okay, right.

The Attorney General: So I would hope that that would be sufficient.

The President: Okay. Mr Waft, do you wish to comment?

Mr Waft: No, I would just thank the Minister for her support.

The President: In that case, Hon. Members, the motion as I put to Council 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 Waft: Clause 14, Mr President, enables the enforcement of clauses 4, 5 and 6 by the Attorney General only. Those clauses deal with discriminatory advertisements instructing others to discriminate and putting pressure on others to discriminate. The Attorney General can enforce those clauses by applying to the High Court for an order declaring the relevant act to be unlawful and an Order that is an injunction restraining repetition of the unlawful act.

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

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

The President: The motion, Hon. Members, 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.

Clause 15, Mr Waft.

Mr Waft: Clause 15, Mr President, sets down time limits for the bringing of proceedings under clause 12 or 14. In proceedings under clause 12, an individual may complain to the High Court within six months of the date of the act complained on. The same period applies in respect of applications under clause 14 for a decision that a contravention of the Act occurred. In respect of an application for an injunction under clause 14(3), the time limit is five years. However, the court has discretion to consider a complaint out of time if, in all the circumstances of the case, justice requires. Subsection (4) contains rules for calculating the time limit in special cases.

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

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

The President: The motion, Hon. Members, is that 15 do stand part of the Bill. Those in favour, please say aye; and against, no. The ayes have it. The ayes have it.

Clause 16, Mr Waft, please.

Mr Waft: Clause 16, Mr President, enables codes of practice to be made. The Bill will enable the Department of Home Affairs to issue codes of practice containing practical guidance for the implementation of the Act, the elimination of discrimination and/or the promotion of equality of opportunity between persons of different racial groups. Before issuing a code, the Department must consult

interested parties and shall lay the code before Tynwald. A failure by a person to observe any provision of such a code does not of itself render him liable to legal proceedings.

In any proceedings under the Bill, a code of practice issued by the Department is admissible in evidence, and if the court considers a provision of the code to be relevant to any question arising in the proceedings, it will take that provision into account in determining the question.

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

The President: Mr Lowey.

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

The President: Lord Bishop.

The Lord Bishop: Can I ask if any consideration was given to including education in this bit of the drafting, in the sense that this Bill will become otiose once we have taught our children about racial discrimination, if you see what I mean? (*Laughter*) It strikes me that we are laying down really good 'employment-think' here, but unless we actually take the business of educating our children seriously in this department, we shall just go round the houses again.

Obviously I shall vote for 16. I just want to put that into the public arena, and I think it is even more important for communities such as the Isle of Man, thinking of my experience in an adjacent island – 'he said carefully' (*Laughter*) – with Cumbria, where the Cumbrians felt that they were not racially prejudiced, they just did not like anybody that was not Cumbrian, (*Interjection by Mr Delaney*) or the remark heard in Carlisle that they had no racial prejudice, they just did not like people from Barrow-in-Furness. We are back to Frank Carson's jokes. But it was actually quite serious, because they *meant* it, and I think we should be failing in our responsibility if we thought that just producing a piece of paper like this would solve the problem, because I think the problem actually lies one stage before this.

Mrs Christian: Mr President.

The President: Mrs Christian.

Mr Delaney: We have got the same problem in Peel.

The President: Mrs Christian.

Mrs Christian: I think the Lord Bishop has made a very important point, and I am quite sure that the Department of Education may include this (**Mr Delaney:** Hear, hear.) as a part of their overall citizenship training programme or whatever. It is interesting that, in our earlier debates – I think at the first reading – it was alluded to here that, in the Island, we did not feel we needed a Race Relations Bill, but we have never really been tested, and our community is changing now and we may well be tested. I do think that the codes of practice will be useful, particularly for employers in terms of fulfilling their function in making clear to their employees the sorts of things that they have to consider and look out for.

The President: Mr Lowey.

Mr Lowey: Can I just say that, really, in furthering that on education, where the Isle of Man was, if you like, a protected area from the outside world, that has changed completely, and I highlighted it and I have highlighted it here before. I went for an operation to straighten my little finger under the courtesy of my good friend Mrs Christian, and a very good job they did of it. Of the eight people that I met and who actually straightened my finger, they varied from the anaesthetist, who came from Trinidad, to the Egyptian doctor, who actually did it, or to the consultant, who was from Northern Ireland. The only Manx person that I came in contact with was the lady who made me a cup of tea when I recovered – and vital that was, too. But the reality was seven nationalities in that one operation, and that is the Isle of Man today: the world is here and there is a need. But there is a framework and an education thing, which the Bishop has touched on, which is vital. It, maybe, is not covered in the Bill, but I think it is a vital part of what I would call making sure, like all legislation, that if this is never enacted, the mere fact that it is there gives that comfort factor that we have to do what we have to do. But I think education is the key to all of this.

The President: Mr Waft.

Mr Waft: Thank you, Mr President. I would like to thank Members for their comments, and I respect the word of the Lord Bishop with regard to the educational side of it. As said by the Minister, I am sure the Minister for Education and the Chief Executive will take on board those comments for the future and perhaps look at the curriculum. Thank you, Mr President.

The President: Hon. Members, the motion then is that clause 16 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 17, Mr Waft, please.

Mr Waft: Clause 17, Mr President, deals with the liability of officers of companies et cetera that commit offences under the Bill. Where offences are committed with the consent or connivance of, or are attributable to the neglect of, officers or those involved in management, then the officer as well as the body can be prosecuted. This clause applies in respect of companies of all types, including limited liability companies.

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

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

The President: The motion, Hon. Members, is that clause 17 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Clause 18, Mr Waft.

Mr Waft: Clause 18, Mr President, defines ‘racial grounds’ and ‘racial groups’ for the purposes of the Bill. ‘Racial grounds’ means colour, race, nationality – including citizenship – or ethnic or national origins, and a ‘racial group’ is one defined by reference to colour, race, nationality – including citizenship – or ethnic or national origins.

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

The President: Mr Lowey.

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

The President: The motion, Hon. Members, is that clause 18 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Clause 19.

Mr Waft: Clause 19, Mr President, provides for the general interpretation of the following expressions: ‘act’; ‘discrimination’; ‘employment’; ‘employment agency’; ‘nationality’; ‘non-discrimination notice’; ‘notice’; ‘public authority’; ‘racial grounds’; and ‘racial group’.

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

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

The President: The motion, Hon. Members, is that clause 19 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We will take clause 20 and the schedule, please, Mr Waft.

Mr Waft: Thank you, Mr President. Clause 20 introduces the schedule, which specifies acts that are not rendered unlawful by the Bill. The schedule specifies these acts as: those done under or in an implementation of statutory provisions; the making of statutory provisions; judicial acts or things done on instructions of, or on behalf of, a judicial authority; acts safeguarding public security; the exercise of immigration functions; education services for special needs of racial groups; special education providers in the Island for those not resident on the Island; charities which are established for special classes of person; selection on the basis of nationality et cetera for sports and games; employment matters – this is excluded because it will be dealt with by separate legislation; certain acts by employment agencies where the employer would be exempt; partnerships in which membership of a racial group is a genuine occupational qualification; and things said or done within a private dwelling and not affecting persons outside the dwelling.

The Council of Ministers has a power to amend the schedule by Order. Tynwald approval is required.

Mr President, I beg to move that clause 20 and the schedule stand part of the Bill.

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

The President: In that case, Hon. Members, what I put to the Council is that clause 20 and the schedule do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 21.

Mr Waft: Clause 21, Mr President, deals with the financial consequences of the Bill. There will be a cost of approximately £104,000 for training to enable Government bodies to comply with the proposed legislation. The Bill is not expected to have any other immediate effect on the

expenditure and income of Government.

The effective operation of the Bill relies to some extent on functions that are conferred on the Attorney General. There may ultimately be resource implications for the Attorney General's Chambers, but this depends on the frequency of use of those functions. It is not possible at present to assess the extent of those implications.

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

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

The President: The motion, Hon. Members, is that clause 20 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

That was actually – (**Members:** Clause 21). Hon. Members, what I am putting to Council is that clause 21 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

And, finally, we reach the short title and commencement at clause 22. Mr Waft, please.

Mr Waft: Thank you, Mr President. The short title and commencement: this clause provides for a short title for the Bill and for the commencement by Appointed Day Order made by the Council of Ministers.

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

Mr Lowey: I beg to second, sir. Could I draw attention to the fact that the Act is dated 2003? Do I take it that will be altered to 2004? In that case, I beg to second and reserve my remarks, sir.

The President: The date will be taken care of.

Hon. Members, the motion that I put to you is that clause 22 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

That concludes the business of the clause stage of the Race Relations Bill.

Suspension of Standing Orders Approved

The President: Mr Waft.

Mr Waft: It would be in keeping if we could suspend Standing Orders on this Holocaust Memorial Day, this very special day on which we remember the racial hatred which formed a great part of past wars. Mr President, I beg to move the suspension of Standing Orders to take the third reading.

Mr Delaney: I beg to second, Mr President.

Members: Agreed.

The President: Hon. Members, there seems to be agreement unanimously around the room. Those in favour that we suspend Standing Orders – I will put it to you formally – to take the third reading, please say aye; and against, no. The ayes have it.

Race Relations Bill Third reading approved

The President: So, we will deal, then, Hon. Members, with the third reading of the Race Relations Bill, and I call on the Hon. Member Mr Waft.

Mr Waft: Mr President, it has long been established that provision would be made within the legislative programme for accommodation of a Race Relations Bill. This would then demonstrate that the Isle of Man meets the requirements of the International Convention on Racial Discrimination. I would remind Hon. Members that this requires the pursuit of policies to eliminate racial discrimination and to provide redress for individuals who have suffered such discrimination. The Isle of Man Government, therefore, has a responsibility to ensure that the Island complies with its international obligations. This Bill is an important piece of social legislation, and, without it, the Isle of Man's reputation in the international community could be damaged.

The Race Relations Bill quite clearly sets out that discriminatory treatment on the grounds of colour, race, nationality or ethnic or national origin is unlawful, and this applies not only to private individuals but also to actions by public authorities.

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

The President: Mr Lowey.

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

The President: Does any Hon. Member wish to contribute to the third reading? In that case, Hon. Members, what I put to Council formally is that the Race Relations Bill 2003 be read for a third time. Those in favour, please say aye; and against, no. The ayes have it. The ayes have it.

Hon. Members, that brings to a conclusion our business on the Order Paper for today. Council will now meet in committee to consider the proceedings of the Council of Ministers.

The Council sat in private.