



**HOUSE OF KEYS
OFFICIAL REPORT**

**RECORTY SOIKOIL
YCHIAREASFEED**

PROCEEDINGS

DAALTYN

(HANSARD)

Douglas, Tuesday, 10th February 2004

Present:

The Speaker (The Hon. J A Brown)(Castletown); Mr D M Anderson (Glenfaba); Hon. A R Bell and Mrs A V Craine (Ramsey); Mr R E Quine OBE (Ayre); Mr J D Q Cannan (Michael); Mrs H Hannan (Peel); Hon. S C Rodan (Garff); Hon. R K Corkill and Mr A J Earnshaw (Onchan); Mr G M Quayle (Middle); Mr J R Houghton and Mr R W Henderson (Douglas North); Hon. D C Cretney and Mr A C Duggan (Douglas South); Hon. R P Braidwood and Mrs B J Cannell (Douglas East); Hon. A F Downie and Hon. J P Shimmin (Douglas West); Capt. A C Douglas (Malew and Santon); Hon. J Rimington, Mr Q B Gill and Mr P A Gawne (Rushen); with Mr M Cornwell-Kelly, Clerk of Tynwald.

Business transacted

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House of Keys

The House met at 10.00 a.m.

PRAYERS

The Chaplain of the House of Keys

[MR SPEAKER *in the Chair*]

WELCOME BACK TO CHAPLAIN

The Speaker: Hon. Members, I am sure that we all would like to welcome back our Chaplain after his recent illness (**Members:** Hear, hear.) and we are pleased to see him looking so well, and I am sure that we hope he continues to have good health.

LEAVE OF ABSENCE GRANTED

The Speaker: Hon. Members, I have granted leave of absence to the Hon. Member for Onchan, Mr Karran.

Question for Oral Answer

TREASURY

Taxation systems Shift in emphasis

1. The Hon. Member for Rushen (Mr Gawne) to ask the Minister for the Treasury:

(1) Are you concerned at the increasing shift in taxation from systems which take into account ability to pay to systems which do not; and, if so

(2) what legislative changes do you intend to introduce to alleviate the pressures on vulnerable members of society caused by this shift?

The Speaker: Hon. Members, Question for Oral Answer and I call on the Hon. Member for Rushen, Mr Gawne.

Mr Gawne: Gura mie eu, Loayreyder. Ta mee shirrey kied yn eysht y chur ta fo my ennym.

The Speaker: I call on the Hon. Member for Ramsey, Mr Bell, Minister for the Treasury to reply.

The Minister for the Treasury (Mr Bell): Thank you, Mr Speaker.

The Hon. Member poses a very wide-ranging question. As Treasury Minister, I am acutely aware that issues of taxation, the funding of public services and the benefit system operated are always a complex and shifting balance. I am

aware of the issues raised in relation to the delivery of the taxation strategy.

I am also aware of the concerns and pressures created by the accumulation of increases in water rates, the introduction of waste charges and local authority rate levels.

Looking at matters, initially, from a theoretical position, in principle, the cumulative effect of taxation systems should take into account ability to pay, otherwise they simply become a route to increased benefit levels. 'Ability to pay', however, is a term that can mean different things to different people. An individual's ability to pay is determined by their income in total, including income generated on capital or accumulated savings.

However, in respect to the current debate on the use of rates as a basis for meeting the cost of services, there are many differing arguments. From the perspective of an individual's ability to pay, some see the rates as a progressive tax, insofar as the larger the property the more you are expected to contribute. Others point to groups on fixed incomes, who are now finding that increases to their rates outweigh increases to their pensions or benefits. As Treasury Minister, it is my responsibility to ensure that, in formulating a budget, we are aware of these differing views and that we structure our tax and benefit systems to mitigate the impact of undesirable effects on vulnerable groups.

I stated earlier that I am well aware of the concerns which underpin the Hon. Member's Question and, in a practical sense, I would cite delivery last year of my earlier commitment to the introduction of the income tax personal allowance credits as evidence of my determination - indeed, that of this Government - to introduce tangible measures to assist those on low incomes.

To answer the second part of the Question, then, at this stage I do not have any specific legislative changes to announce. At last year's budget I indicated that my staff would review the implementation of the personal allowance credit.

I am also aware of the desire of the Minister and Members for the DHSS for there to be a formal working group to consider issues relating to those on low incomes.

Given those concerns, Mr Speaker, I have asked that the remit of the Treasury review be extended to become a wider review of the impact of taxation developments on low income groups. I welcome that review being undertaken in conjunction with the DHSS, as the implications for the benefit system are an essential element of any such review.

The Speaker: Hon. Member for Rushen, Mr Gawne.

Mr Gawne: Gura mie eu, Loayreyder.

Would the Treasury Minister agree that the rate system is in need of a complete overhaul and has Treasury or the Council of Ministers got a preferred option for updating the rating system? Indeed, have they discussed the matter recently or is this just another of those 'Oh, well, it is one of those things, there is nothing we can do about it.'?

The Speaker: Minister for the Treasury to reply.

The Minister: Mr Speaker, a considerable amount of work has been going on within Treasury over the last 12 months or so to respond to Members', and indeed the wider public's, concern about some of the iniquities which exist within the rating system.

Suggestions have been drawn up. They have not been

finalised yet. They have had an initial presentation to the Council of Ministers, but there is still further work, Mr Speaker, to be done on this process, but I can tell the Hon. Member that work is progressing well, although at this stage I cannot be specific as to when they may be made public.

The Speaker: Hon. Member for Douglas East, Mrs Cannell.

Mrs Cannell: Thank you, Mr Speaker.

Does the Hon. Minister agree with me, therefore - particularly when they include the capital charges for Government schemes - that the rates are to be considered as a form of taxation and, as such, they will come in under the review that he has announced that he is going to undertake with his Department?

Further, is it not true that the officer-led working group, looking into the whole issue of rates, has been deliberating for almost two years and is it not time now that a paper did come forward to Hon. Members of the House of Keys in terms of the thinking of this officer-led working group and also the thinking behind the Council of Ministers?

The Speaker: The Treasury Minister to reply.

The Minister: Mr Speaker, of course, everybody knows that the rates are part of the taxation system - including the water rates, which the Hon. Member is responsible for.

I did, in my earlier answer, though, Mr Speaker, be quite specific about the work that is being done by the rates review group within Treasury. As I have said, there is a considerable amount of work gone into it. There is no easy or simple answer to it and it is quite a complex issue altogether, so it is taking longer than, perhaps, we might otherwise have expected.

But work is progressing on that. As I say, it has been to Council for its initial consideration. There is further work to be done on it. That is progressing, and, when we feel comfortable with the conclusions that we have drawn on it, a wider debate will take place in public.

The Speaker: Hon. Member for Rushen, Mr Gawne.

Mr Gawne: Gura mie eu, Loayreyder.

I certainly thank the Treasury Minister for his full answers, but I would be grateful if he could be a little bit more specific about the time. I appreciate he says he cannot be very specific, but, perhaps, generally, could he let us know when are we likely to find out about these proposals and suggestions. Are we talking months? Are we talking six months; a year; two years; or are we talking after the next general election?

The Speaker: Treasury Minister to reply.

The Minister: There are really two issues there, Mr Speaker.

If I can refer, perhaps, firstly, to the review committee, or review group, which is currently being constructed between Treasury and the DHSS to look at the impact of taxation on low-income groups. Although the remit, initially, is to review the impact of the personal allowance credit scheme, it will be extended to other areas, and I would hope that that is virtually a permanent committee, because we need to review the position of those on low incomes on a permanent basis

and not just as a one-off snap shot.

As far as the wider review of the rates system goes, again, as I said, I cannot be specific yet, because there is further work to be done, but I would hope it will be a matter of months and not much longer than that.

The Speaker: Hon. Member for Douglas East, Mrs Cannell.

Mrs Cannell: Thank you, Mr Speaker.

Would the Hon. Treasury Minister agree with me that his very important and valuable tax credit scheme will not impact upon low-income earners, such as pensioners and those living on benefits, and, in view of that, does he not consider the exorbitant rate increases set around the Island during this month and also, on top of that, Government loading up that rating system with a charge for waste disposal is going to put those people in a very, very precarious situation - they are a vulnerable group of society - and that he ought to be doing something, sooner rather than later, to help alleviate those people?

Further, when he is undertaking his review, what sort of procedure will be available for those members of the public to be able to have impact on the thinking when the review is being undertaken?

The Speaker: Treasury Minister to reply.

The Minister: Mr Speaker, it is quite clear the Hon. Member does not understand the purpose of the personal allowance credit, because it is directed specifically at the very people that she refers to; those people who are above the benefit level, but below the tax level, who do not benefit from the current personal allowances. So we are trying to get into that group.

It is very glib, Mr Speaker, to make statements in this House, saying that we should be doing more. A considerable amount of work has been done over the years, but it is quite difficult, when you get down to specifics, to identify a mechanism which bring assistance to this particular group, without distorting the whole system of support in that area.

I would just point out to the Hon. Member, Mr Speaker, that this is the first time that any scheme has been identified, which actually gets through to this area and is bringing tangible help to those most in need on this Island. So, I think any criticism of us being slow, or unable to support this group, is very misguided.

In terms of the rate itself, we are conscious, obviously, of all rate increases, which add an extra burden to those on low incomes. There are rate increases around the Island, certainly on an annual basis, although we hear today that one local authority is actually reducing the rates, so it is moving in the opposite direction in some cases.

The biggest burden at the moment, I think, which is hitting most people is not waste management charges, it is the water rate, and that is likely to continue to increase for a number of years yet. The actual impact of waste charges is minimal, in fact, in terms of the overall rate burden, which is felt on those who are on low income.

Nevertheless, Mr Speaker, as I have said, we are conscious that all these charges, cumulatively, do add an extra weight of burden on this income group, and I have said on many occasions that the measure of the success of the Island's economic growth over the years has to be set against

our ability to ensure that every member of society benefits from that economic growth and that has to be the target of this Government and is certainly the strategy behind Treasury thinking in drawing up budgets and support schemes.

As far as the wider debate is concerned on the reform of the rate system, Mr Speaker, at this point I cannot give any indication at all as to what the future methodology will be. Whether it will be open for consultation, or whether it will be a resolution to Tynwald. There is a lot more work to be done on that. Council needs to consider its own position on that, and, once that position has been reached, then an announcement will be made at that time as to the way ahead.

The Speaker: Hon. Member for Rushen, Mr Gawne.

Mr Gawne: Gura mie eu, Loayreyder.

Is the Treasury Minister aware that Members of the House of Keys are not endeavouring to attack the Treasury, or to undermine the work of the Treasury? They understand that the Treasury is doing a good job and trying to address this issue.

However, Members are concerned that no obvious action is taking place, so would he agree that there is a pressing need for action now on this matter, and will he give an assurance that he will address this matter with a greater degree of urgency.

The Speaker: Minister for the Treasury to reply.

The Minister: Mr Speaker, I do not accept the comments from the Hon. Member that no action has been taken. I would simply point, again, to the fact that, in this last few months, we have brought in the personal allowance credit, which has paid up to £200 to the best part of 6,000 recipients on the Island. This is the first time that any direct action has ever been taken to start to tackle meaningfully the problems of the low-income groups.

So, Mr Speaker, there is direct action being taken at this moment. I have added that my Department is currently – now that almost all of these payments are complete – reviewing the impact, to make sure we are getting to the right people, to decide whether, in fact, this scheme needs to be refined further, whether we need to expand it in other ways, and, after that exercise is finished, we will, perhaps, have a better idea as to what the next stage might be.

But I would just reiterate to the Hon. Member, it is not an easy question, this. Successive governments for years have looked at ways of trying to assist this particular income group without very much success, and I understand, Mr Speaker, that the Hon. Member is in charge of Social Security and I am sure he will have an opportunity, through his officers, to have input into the low income review group, which is being set up and I look forward to the suggestions from the Hon. Member, which Treasury will take on board.

The Speaker: Hon. Member for Peel, Mrs Hannan.

Mrs Hannan: Thank you, Vainstyr Loayreyder.

Could I ask the Treasury Minister whether he is happy with how the personal tax allowance credit scheme is working. It has been reported to me that some young people still at school are receiving tax credit, and I do not think that was the reason why it was actually set up. Obviously, they are working and they are on a low income, but I wondered

if the Minister could look at that.

The other issue, could I ask the Minister, notwithstanding that this discussion is round about the shift in taxation and the ability to pay, would the Minister not also agree that vulnerable people also require support in other ways? Is the Minister satisfied that Government is able to support these vulnerable people in the form of services, in the form of care and provision that is also necessary, not just through the tax system?

The Speaker: Treasury Minister to reply.

The Minister: Thank you, Mr Speaker.

I fully take on board the concerns expressed by the Hon. Member for Peel, and she has raised these issues with me before, particularly about people who might not normally be perceived as being in low incomes, being in receipt of this particular benefit, or this credit; and I would just point out that this is not a benefit, it is a tax-related credit.

I did say, though, Mr Speaker, when we introduced this last year, that there would be anomalies in the system. We fully recognise that and the examples that the Hon. Member raises, may well be examples of those anomalies. The whole purpose, though, Mr Speaker, of the scheme, when I brought it in, was to make it as simple, as straightforward and as accessible, as possible, so that we could get help to the more needy areas as quickly and as easily as possible. In doing that, yes, we recognise that there are likely to be anomalies thrown up. I would just re-iterate, Mr Speaker, that the whole purpose of the Treasury review, which is currently underway, of this whole scheme, is to identify areas, such as the Hon. Member has mentioned, to see whether any more fine-tuning of the scheme might be necessary to ensure that, in future, the scheme is better targeted.

But the nature of the scheme itself, Mr Speaker, is a personal allowance tax credit. It is not a benefit and there are likely always to be anomalies in the system, unless we start to make it so complicated, then, that it slows down the delivery of the allowance to those really needy people who we are trying to help.

As far as the second part of her question is concerned, Mr Speaker, again I entirely endorse the views of the Hon. Member that vulnerable people in our society need help, other than financial, and I think Government is recognising that and the level of support, particularly through her area of responsibility in Social Services will never be enough.

I think that there have been resources targeted to Social Services over the last few years which have been increasing, but, of course, so have a lot of the problems the Social Services have to deal with and I fully accept that Social Services, in particular, are doing a superb job in difficult circumstances, and, no matter how much budget allowance is made for that responsibility, sadly, in this modern age, it probably never will be enough.

The Speaker: Hon. Member for Douglas East, Mrs Cannell.

Mrs Cannell: Thank you, Mr Speaker.

For the sake of clarity, Mr Speaker, does the Hon. Minister agree with me that this morning we have discussed two forms of study that are being undertaken by officers, one in terms of the review of taxation, particularly the tax credits scheme and how it is working and, secondly, an officer-led working group which has been deliberating for quite some

considerable time (**Two Members:** Question!) looking at the whole of the rate issue, which includes domestic and water rates, and, further, (**A Member:** Question!) has the Minister misunderstood my supplementary a moment ago, in that I asked him: what input can the public have to his review of the tax credits scheme? How can they impact upon the thinking of that group and that review?

The Speaker: Minister for Treasury to reply.

The Minister: Mr Speaker, maybe I did misunderstand the Hon. Member, because I thought she was talking about the reform of the rates –

Mrs Cannell: Two schemes.

The Minister: – not the personal allowance credit.

As far as personal allowance credit is concerned, it is an internal review carried on by my officers in Treasury and, at this point, there is no intention to have a wider review – a public review of it – any more than there would be on any other benefit that Government gives.

My understanding of her question, though, Mr Speaker, was that she was referring to the review of the rates system and my answer, which she clearly misunderstood, was that, when the final decision is made by Council, a further decision would be made at that time whether it is appropriate to put it out for proper consultation or not. That step at this stage is out of my hands, Mr Speaker, and very much in the Council of Ministers' court and, at that point, a decision will be made.

The Speaker: Hon. Member for Middle, Mr Quayle.

Mr Quayle: Thank you, Mr Speaker.

In relation to the personal tax credits scheme, could I clarify with the Minister that I understand correctly that he mentioned 6,000 people have benefited, which would amount to £1.2 million, and could I ask him, do I understand correctly that £2 million was allocated in last year's budget, which would amount to a shortfall of £800,000 which has not, in fact, been utilised? Could I ask him what has happened to this balance of £800,000 and does it give Treasury some considerable leeway to increase the allowances for the people who are needy and vulnerable and who are eligible for this particular scheme?

The Speaker: Minister for Treasury to reply.

The Minister: Mr Speaker, the Hon. Member is right that a figure of around £2 million was allowed for in the estimates last year. This was largely because, at that point, we were unclear precisely how many people would qualify for this credit and, therefore, we put in probably a figure slightly on the high side to ensure that we had adequate funds there, should it be taken up.

The payments to date have numbered somewhere around about 6,000. I understand that there are about 2,000 more claims outstanding and, at that point, we would be able to have a better idea of precisely how much it has cost, but, ultimately, it is likely to be somewhere in the region of £1½ million, so the Hon. Member is correct that there is, in that context, an underspend and the money at the moment obviously is still with Treasury and will go back into the pot for this year's budget.

The Speaker: Final supplementary. I return to the

original questioner, Hon. Member for Rushen, Mr Gawne.

Mr Gawne: Gura mie eu, Loayreyder.

Is the Treasury Minister aware that, in preparing this Question, I was merely trying to assist him in explaining the ongoing action Treasury is taking on the issue of rates and taxation and how protection is going to be introduced for vulnerable members of society?

However, the Treasury Minister has mentioned my role as Member with responsibility for Social Security, so is he aware that the Division has been endeavouring to establish a meeting with Treasury to discuss problems faced by people on low incomes since May 2003 and are still waiting for a date for such a meeting and does he believe this is acceptable?

The Speaker: Minister for Treasury to reply.

Mrs Cannell: Shame!

Mr Cannan: Shocking!

Mr Houghton: It's disgraceful!

The Minister: Mr Speaker, certainly, representations were made to Treasury some time ago to reactivate the previous working group. There were other issues I understand in play at the time which it was felt appropriate to wait for their conclusion before we took it any further.

I have to say that I have limited officers in my Department and there is a very heavy workload, as well, for them to do, but we are now in a position, Mr Speaker, albeit it could be argued belatedly, I do not deny that, to set up this joint working party and we now have something more specific to consider, which is a real tangible benefit which we have been able to identify in the personal allowance credit. That will be in the pot, as well for discussion with the DHSS.

I am not, Mr Speaker, being critical of anyone this morning, but I would just simply say to all Members, we are open to suggestions for any ideas that Members might have which can identify ways to help this vulnerable income group and we are more than willing to listen to any suggestions.

I take the point that the Hon. Member for Rushen has made. I thank him for his helpful Question. I hope that I have been able to answer most of the points that he has tried to raise and I would just close, Mr Speaker, by saying, really, that Treasury, whether it is belated or not because of pressure of work, are genuinely committed to try and find a meaningful way – not just some sort of superficial suggestion – but a meaningful way to get assistance to the vulnerable income groups on the Island, who have not been benefiting in quite the same way as the rest of the Island from the economic growth we have enjoyed in the last few years. But I am confident, Mr Speaker, given that we can maintain that level of growth and that we can establish a good working relationship between Treasury officers and the DHSS officers, which always has existed in the past, we in due course be able to find other mechanisms to help this group.

The Speaker: Hon. Members, that concludes Questions for Oral Answer. We have five Questions for Written Answer, which will be circulated to Hon. Members in the normal procedure.

Questions for Written Answer

TRANSPORT

Eskmeals firing range Substances and quantities fired into Manx Territorial Waters

1. The Hon. Member for Douglas North (Mr Henderson) to ask the Minister for Transport:

- (1) *Could you please confirm or otherwise if it is still the intention of the UK Government/private contractor to fire missiles into Manx Territorial Waters which form part of the Eskmeals firing range; and, if so,*
 (2) *will you give an undertaking to inform this House at a suitable time what it is that is being fired into our waters –*
 (a) *by size and weight;*
 (b) *live/practice;*
 (c) *depleted Uranium;*
 (d) *other; and*
 (3) *of the projectiles used, how many will be fired?*

Answer: (1) The Eskmeals Range is operated by Qinetiq, which is a UK Government Agency. On 3rd February 2004, Qinetiq confirmed that it does not intend to fire missiles into those parts of areas D406B and D406C, that lie within Manx Territorial Waters, without the prior approval of my Department.

Whilst Qinetiq would like to use all of the above areas, it recognises that it cannot do so, given the Government's position, as expressed in the Chief Secretary's letter dated 20th June 2003 to the Permanent Secretary at the Department for Constitutional Affairs. This letter restated

'the Isle of Man Government's position, as set out in its letters of 12th November 1997 and 18th February 1998, of being firmly opposed to the principle of projectiles (either live or inert) being fired into Manx Territorial Waters.'

I can confirm that the present situation remains the same as that expressed in the above correspondence.

(2) & (3) These questions are hypothetical, as it is not the intention of my Department to grant permission for the use of those parts of areas D406B and D406C that lie within Manx waters.

However, should there be a change of Government policy, to permit the use of the above areas, then the Department would propose to obtain appropriate information on the nature of any such use at that time.

Snow clearance on Mountain Road Departmental policy

2. The Hon. Member for Ramsey (Mrs Craine) to ask the Minister for Transport:

- (1) *What is the policy of your Department in relation to the closure of the Mountain Road in the event of snow;*
 (2) *in view of the heavy pressure of traffic on alternative routes when the Mountain Road is closed and the*

additional time necessitated in ambulance services reaching Noble's Hospital from Ramsey, will your Department adopt a pro-active approach in prompt snow clearance and re-opening of this highway; and
 (3) *is there a policy of not using the snow-plough on the Mountain Road so that the road surface does not become damaged?*

Answer: (1) The Police and the Department of Transport work together very closely when roads have to be closed due to adverse weather, particularly for ice and snow.

The ultimate responsibility for closing any road is that of my Department. Obviously, we are advised by the Police in the event of snow or icy conditions on the Snaefell Mountain Road, and share with them information received from our own staff and the public.

Our prime concern is the safety of the public and we take into account all of the prevailing weather conditions at the time of the decision. We must also take into account the safety of our staff engaged in the clearance of snow and ice, and the safety of emergency services staff, who might be required to rescue stranded members of the public.

If the decision is taken to close the road, it is the responsibility of the Department of Transport to erect and maintain the necessary road closed signs and barriers, before we start on any snow clearance or ice treatment work.

(2) The Department already has a proactive approach to keeping the Mountain Road open.

The Department's gritters and snow ploughs are operated gainfully by our Works Division's Engineering Works Section. If an ice or snow warning is received, they ensure the road is pre-salted in advance, regardless of the time and day of the week. Also, in any snow fall situation; the crews will press on and work over long hours in an effort to keep the Mountain Road open for as long as possible. Two dedicated bulk gritting vehicles are used for this purpose. If conditions deteriorate and the road has to be closed, then, as long as circumstances permit, and it is safe for our staff to do so, snow clearance works will continue during normal, and outside of, working hours, until it can be safely re-opened. One caveat to this – I am sure Hon. Members will accept – if we have an all Island situation where snow or icy conditions affect the Island's other main roads, then we will, of course, give a higher priority to these roads which, unlike the Mountain Road, provide access to residential, business and farming properties.

However, due to its relatively high altitude, conditions on the Mountain Road can be drastically different from lower lying areas and there are many occasions when the coastal low lying routes are clear and dry, yet the Mountain Road is impassable, and the coastal routes provide a safe route from Ramsey to Douglas for all traffic.

(3) Snow ploughs are used on the Mountain Road by the Department. They are fitted to the two gritters deployed on the Mountain Road when forecasts indicate falls of snow. The ploughs run on two wheels that can be adjusted to be about one inch above the road surface. The bottom of the plough blade is made of a two inch piece of rubber. The ploughs should not, therefore, damage the road surface.

The ploughs are removed from the gritters when they are required to pre-salt or to grit areas of ice.

This winter the ploughs have already been in use on several occasions.

HEALTH AND SOCIAL SECURITY**Benefit claims
Maximum backdate periods**

3. The Hon. Member for Douglas North (Mr Henderson) to ask the Member for Health and Social Security:

What is the maximum period to backdate benefit claims in each of the benefit categories allowed to eligible local people, and list out by name of benefits and period for maximum backdate?

Answer: The Department, in its leaflets and benefit claim forms, clearly sets out the prescribed time limits for making a claim to the appropriate benefit to try to ensure, as far as is practicable, that claimants are aware of such time limits. It is worthy of note that, in the circumstances where the benefit is covered under the reciprocal agreement on Social Security with the United Kingdom, the time limits are, by necessity, the same as those prescribed in the UK.

It should be further noted that, for the following benefits, marked with an asterisk, additional criteria may have to be met for the maximum backdating to be allowed.

The prescribed maximum backdating periods, by benefit type, are set out in alphabetical order in Table 3A.

TABLE 3A

Benefit type	Maximum backdating
Bereavement Benefit	3 months
Bereavement Payment	12 months
Carers Allowance	3 months
Child Benefit	3 months
Disability Working Allowance	3 months*
Family Income Supplement	3 months*
Guardian's Allowance	3 months
Incapacity Benefit	3 months
Income Support	3 months*
Industrial Injuries	3 months
Jobseeker's Allowance	3 months*
Maternity Allowance	3 months
Retirement Pension (all categories)	3 months

Social Security legislation prohibits the backdating of claims for Attendance Allowance and Disability Living Allowance.

HOME AFFAIRS**Car tax and insurance
Monitoring and convictions for non-payment**

4. The Hon. Member for Douglas North (Mr Henderson) to ask the Minister for Home Affairs:

(1) How many convictions has your Department successfully concluded with regard to drivers caught driving without tax or insurance, or both, in each of the last five years;

(2) will you consider a way forward on this, as the Post Office used to monitor payment of TV licences using a complete database of every postal address in the Isle of Man and sending out notice to any addresses not checked as having a licence or provide proof; and

(3) could this same method be used for all car owners/ commercial vehicle owners who could be noticed via the vehicle registration centre of the Treasury on a twelve monthly basis - all registered vehicle owners to provide evidence of tax and insurance?

Answer: (1) The following convictions have been successfully concluded with regard to drivers having no insurance:

TABLE 4A

1999	199
2000	176
2001	217
2002	211
2003	202

The following convictions have been successfully concluded with regard to drivers having no vehicle licence:

TABLE 4B

1999	114
2000	90
2001	76
2002	79
2003	108

There may be duplication within some of the information above, as it is not currently possible to provide figures for both without going through each file.

(2) & (3) The Isle of Man Constabulary have considered a way forward and discussions have been taking place between the Isle of Man Constabulary and the Department of Transport into how this matter can be best handled.

**Motorists' use of mobile phones
Police targeting**

5. The Hon. Member for Douglas North (Mr Henderson) to ask the Minister for Home Affairs:

Will you give a direction to the relevant section of the Isle of Man Police Force to instigate, when resources allow, the specific targeting of the now commonplace occurrence of motorists using mobile phones whilst driving?

Answer: The issue of 'targeting' motorists using mobile phones is an operational issue for the Chief Constable.

The police will continue to target motoring offences in appropriate places and at appropriate times.

Orders of the Day

Fireworks Bill

Report on Conference with Council deferred

The Speaker: Hon. Members, we move to Item 3 on the Order Paper. Can I advise you that the Hon. Member, Mr Downie, who is in charge of this Bill, has, in fact, requested it be deferred for further work. Therefore, that will not be moved today.

Income Tax (Amendment) Bill

Second reading approved

The Speaker: We, therefore, move on to Item 4 on the Order Paper, Bill for second reading, the Income Tax (Amendment) Bill and I call on the Hon. Member for Ramsey, Mr Bell.

Mr Bell: Mr Speaker, this Income Tax Bill is divided into five parts and three schedules.

The first four parts each address a specific topic. These are: the legislation that determines the basis of assessment; the legislation relating to the completion of returns and the civil penalties applying where returns are not made; legislation which provides for powers in respect of documents and information; and legislation which deals with anti avoidance issues that result from differential rates of income tax.

The fifth part of the Bill makes a number of amendments to existing income tax legislation.

Turning to the clauses themselves, Mr Speaker, the first part of the Bill comprises clauses 1 to 7, which will provide for the current year basis of assessment to apply to all income received by non-corporate taxpayers.

From 1987-88, income received from employment and from Manx pensions has been assessed using the current year basis. It is intended that, from 2004-05, all other income sources received by a non-corporate taxpayer will also be assessed using the current year basis.

This move will mark a significant simplification of the income tax system in line with proposals outlined in the amended taxation strategy that was endorsed by Tynwald in October 2002. Consequential to the move to a current-year basis of assessment, this Bill seeks to change the date on which tax is due to be paid and will introduce a system whereby a non-corporate client will be required to make a payment on account of their tax. Consequential amendments to repayment supplement and interest charge provisions are also incorporated.

In order to bring the current-year basis of assessment into effect, the Bill contains transitional measures that will deem income sources to cease and recommence at midnight on 5th April 2004. Further amendments will be made to the Income Tax Act 1970, that will have the effect of disapplying provisions that are consequential to the application of the previous-year basis of assessment.

The second part comprises clauses 8 and 9 and is supported by schedule 1 of the Bill. Provisions within this part relate to the submission of income tax returns and introduces a

new civil penalty to apply in those circumstances where a non-corporate taxpayer fails to submit a return on time. This Bill seeks to amend provisions relating to the submission of an income tax return by extending to five months the time limit during which a return must be filed. This part will also require that a return be made and delivered within five months of the date on which an individual taxpayer ceases to be regarded as a resident of the Isle of Man.

The third part comprises clause 10, which is supported by schedule 2 of the Bill. Provisions within this part relate to powers enabling the Assessor to call for documents and information. These documents may be used by the Assessor, both in relation to the fulfilment of international obligations and for domestic compliance purposes. The Bill introduces provisions enabling the Assessor to call for documents from the taxpayer or to call for information relating to the taxpayer, but held by a third party.

Supplementary provisions set out documents which may not be required and the manner in which documents are to be produced. The Bill also provides for orders to be made by the High Court requiring the delivery of documents by the taxpayer or by a third party.

Further provisions within this part of the Bill deal with situations where documents are falsified, concealed or destroyed and with situations where warrants are required authorising the Assessor to enter premises. Warrants required under this part are to be issued by a deemster.

The fourth part of the Bill comprises clause 11 which is supported by schedule 3 of the Bill. Provisions within this part introduce anti-avoidance provisions to address the use of loans to take advantage of differential rates between companies and individual employees or participants or to delay the payment of tax.

Schedule 3 of this Bill includes provisions that define the loans that are subject to an income tax charge under this part. Schedule 3 also outlines provisions that apply to small loans and to loans made through intermediaries, further provisions dealing with loans that are released or written off, the requirement to make a return and definition of certain terms.

Part 5 of the Bill comprises miscellaneous amendments in clauses 12 to 15, interpretation in clause 16 and, of course, the short title at clause 17.

Clause 12 itself inserts section 35C, 35D and 35E into the Income Tax Act of 1970 and extends personal allowances to non-resident individuals. A non-resident, who does not propose to lodge a Manx tax return, will receive a flat rate personal allowance of £2,000. A non-resident who chooses to lodge a return will receive the full resident's personal allowance reduced to the proportion which the total Manx income bears to the total world income. The non-resident allowance will be apportioned in those years during which non-residence commences or ceases.

Clause 13 extends the temporary taxation Order provisions that are set out in section 15 of the Income Tax Act 1995, to enable Orders to be made in relation to the implementation in the Island, or compliance with international agreements and obligations.

Clause 14 deals with the taxation of mariners and removes an anomaly from section 2L of the Income Tax Act 1970 by ensuring that personal allowances are taken into account in the calculation of mariners' relief.

Clauses 15 and 16 are minor supplementary amendments and interpretation.

Mr Speaker, this Bill amends income tax legislation in relation to four distinct areas, as well as tidying up a number of other minor parts in part 5. It introduces the current-year basis of assessment for all income that is assessable on non-corporate tax payers. It addresses compliance issues relating to the submission of income tax returns by introducing a fixed civil penalty regime. It introduces new comprehensive powers, enabling the Assessor to call for documents in order to fulfil the Island's international obligations and the Bill also introduces new anti-avoidance provisions to address the use of loans to take advantage of differential tax rates between companies and individuals.

It is, therefore, Mr Speaker, providing the legislative support for a number of elements of the developing taxation strategy approved by the Hon. Members of Tynwald in October 2002. Therefore, Mr Speaker, I beg to move the second reading of the Bill.

The Speaker: The Hon. Member for Onchan, Mr Earnshaw.

Mr Earnshaw: Thank you, Mr Speaker. I beg to second and reserve my remarks.

The Speaker: Hon. Member for Glenfaba, Mr Anderson.

Mr Anderson: Thank you, Mr Speaker.

I realise this is just another part in the Treasury's jigsaw of bringing our tax up to date and I thank the Hon. Minister for actually arranging the presentation last week. I was one of the few that was unfortunate to have a previous engagement and was not able to be there, but I do thank him for the notes of the presentation.

I have had representation from quite a few sources about one particular area in this Bill. I think the most contentious seems to be clause 8 and I am sure other Members have had the same concerns raised. Where clients are having returns made on their behalf to the Treasury, the timescale of five months does seem quite unreasonable. The UK, of course, has progressed to current-year basis of assessment for some time, but they have not introduced such a short timescale – in fact I think they have to 31st January.

If this five months was adopted, it would only give them until something like 6th September to have the returns in. Accountants have to spread their workloads throughout the year and it would put them under enormous pressure to have all this work done in such a short time frame and, then, maybe not twiddling their thumbs for the rest of the year, but it would certainly mean that their workload was severely imbalanced, if you like. I think, if they were waiting for their clients to return their returns to the accountants to start with, they would probably be waiting for a month to start with and that would probably, then, only leave them four months to file the returns.

If accountants wanted to be uncooperative, they could then, maybe, hold and store all their clients' returns until the day before the date of 6th September and then just go to the Income Tax Department and put all the returns down for them on the same day and that would put the Income Tax Department under the same sort of pressure as the accountants were being put under.

So, I think it is a little bit unreasonable. We all know that the traditional tax returns had 30th June for a completion of

a return, but we all know that that did not carry a financial penalty and you could actually go, I think, something like 12 months after that date before you would get a financial penalty.

This specific clause, as I understand it, was not actually raised by the Assessor when he met with the industry several months ago. This is something that has come as a bit of a surprise to the industry, when the green paper was published.

I hope the Minister can take on board these concerns and will reconsider before we come to the clauses stage. If not, I am sure a reasonable amendment could be put forward by Hon. Members, but I am sure it would be better and more preferable if the amendment came from the Department itself, in recognising the problem to the industry.

Maybe, in reply, the Minister could say why a 'stick' approach and not a 'carrot' approach has been used, as well. Maybe, another way round to encourage people to get their returns in quicker would be a £50 reduction of the assessment. It is just an idea, but, maybe, the Minister could give us some understanding how they have come to this. Are we just following the UK, or have we seriously thought what is the best for our citizens in the Isle of Man?

Just, finally, when the Minister is replying, could he actually just say what the thinking behind – and I apologise, I was not at the presentation – introducing personal allowances for non-residents is, please?

The Speaker: Hon. Member for Middle, Mr Quayle.

Mr Quayle: Thank you, Mr Speaker.

The concerns that I would like to express lie principally with the proposed tax return deadline and the resulting penalties proposed for late filing. It seems to me, from representations received, that support would be for an extension of time to submit returns to 30th November. At present, the strict date is 30th June, but the tax office have, to date, allowed until 31st October to submit, prior to a default assessment being issued.

From a practical point of view, a 30th November date, hopefully, is workable and the proposal from the tax office is a 5th September deadline before defaults are issued. This 5th September date would put impossible pressure on taxpayers, particularly those who are self-employed, or who need to prepare their private company accounts in order to determine dividend payments et cetera for inclusion in the return.

Agents, too, would find their workload severely tightened at a time when staff take holidays, as well as many self-employed people being occupied with seasonal work pressure during the busy summer months.

An alternative would be to leave the return date as is proposed, but tie penalties into the payment of tax, that is, if tax paid is by 5th January, then no penalties and, instead, penalties to accrue from 5th January would, I think, have appeal to Treasury, as it is assumed that their priority is to collect the tax.

So, those are representing concerns from chartered accountants and I know the Institute of Chartered Accountants have, obviously, been in dialogue with the Treasury. The Hon. Minister for Treasury will know that I briefly have discussed this matter with him and have passed on these concerns to his officers and I am grateful, indeed, for, to some extent, the concerns being addressed by it being said that there will

be an opportunity for chartered accountants and anybody interested to go to a seminar on 23rd February, where these matters could be, perhaps, discussed, as hopefully a way forward for everybody to have these concerns addressed.

I think, one thing, I would say, is that there ought to be general acceptance within the Island that, with the development of the taxation strategy, then, presumably, the Income Tax Division will have to devote greater energy in ensuring that the existence of differential rates of tax is not exploited to avoid or defer tax.

So, I am grateful for the officers of his Department, who have been corresponding with me over the last day to address some of the concerns, but I highlight the ones that I have mentioned and hope that a way forward can be sought.

The Speaker: Hon. Member for Ramsey, Mrs Craine.

Mrs Craine: Thank you, Mr Speaker.

I was present at the presentation last week and I would thank the Hon. Minister for the Treasury and his officers for that presentation.

I have been made aware that the Isle of Man Society of Chartered Accountants has made a submission with regard to the Income Tax (Amendment) Bill, and I am wondering, if the Minister has that submission, why it has not been brought to the attention of the Members of the House of Keys. I do think that it would be of benefit for us to know what the industry's views are on this Bill.

I would also say that, last week, at the presentation, we were told that there are to be guidelines for the industry, and I am glad to learn from Mr Quayle this morning that that meeting and presentation of guidelines is to be 23rd February, but it does seem to be somewhat behind-the-time scheduling and I do wonder why this presentation of guidelines and discussion with the industry has not taken place prior to this debate.

There were three items that have been brought to my attention and I do not know if they are contained within the Society's submission or not, so I will raise them anyway.

The first touches on the issue raised by the previous speakers on this time situation and I would just say – I do not wish to repeat their remarks – at the present time, instead of 30th June being the date for submission, it is going to be 6th September. This would appear to be a two-month extension. However, nobody ever does implement that date at the present time and, in practice, it has been that if your return is in by the end of October there are no financial penalties – in fact, it is a default assessment, not a penalty that has been implemented and here we have a situation that has been dressed as a two-month extension of time, whereas, in reality, it is a two-month reduction.

Mr Anderson has touched on the practical problems of accountants trying to get their work concluded in time, but I do wonder if it would not make more sense, in terms of this implementation of a fine, whether it would make more sense to phase this in over a two- or three-year period. If, at the present time, we are striving to get returns in by 31st October to avoid default assessment, why not make that the date of the fine penalty in year 1; in year 2 bring it back to 30th September and, in year 3, bring it back to 6th September. It is a mind set, Mr Speaker, that people have to become accustomed to.

A Member: It totally confuses me.

Mrs Craine: I would refer also to the issue about the non-compliance, with regard to putting in returns being made a criminal offence. If we have a situation where people have not submitted a return for two years, then, yes, by all means apply a fine – apply a heavy fine – but we are actually talking about a *criminal* offence here. Is society really going to be served by putting people who do not submit their tax returns into prison?

A Member: Why not?

Mrs Craine: A fine would concentrate their minds. These people are not criminals. Should we be really taking people who fail to put in their tax returns into jail? (**Mr Houghton:** Hear, hear.)

These people may be dilatory in their attitude, but it is a draconian measure to consider imprisonment for such a matter. I do notice that there is nothing in the Act to provide for appeal or mitigation and I have to say, Mr Speaker, that people's lives do go awry, and where is the common sense to this action? We are not talking about deliberate evaders. There are all sorts of reasons why people do not submit their tax returns on time and I do believe that there ought to be a case for mitigation.

Finally, there is a slightly technical issue to do with production and auditing of accounts. As we read in section 8, the Treasury can call for accounts to be audited. This does raise technical issues for professionals within the industry, the first one being the potential acceptance of the audit assignment.

The Bill instructs the taxpayer to find an approved auditor. The taxpayer may have an auditor, they may be a single one-man band, they may put their own tax returns in, and they may have to find an auditor, but, depending on the results of that audit, the fee for the audit will be met either by the non-corporate taxpayer, or the Treasury, and I would ask who is the client in this case? And whom does the accountant send his letter of engagement to? Does he have two clients?

The industry really has to have these guidelines set out to be able to work within and it would have been preferable that they would have had that guideline presentation prior to this debate, in order that we would have been able to have their expert comments to work from.

I do think, Mr Speaker, it does bring into question the lack of liaison with the industry, which does concern me, and I would like to have that reassurance that there is liaison being made within the financial industry with regard to this measure and I do think that it seems that this degree of liaison is somewhat retrospective. This is an industry that we profess to nurture and are in partnership with and I would have thought that we could have seen a better degree of liaison with them.

Thank you, Mr Speaker.

The Speaker: Hon. Member for Rushen, Mr Gill.

Mr Gill: Thank you, Mr Speaker.

I was going to echo the comments of the previous three speakers, sir, and so I will not repeat them, other than to impress on the Minister that the concerns that Mr Anderson and Mr Quayle and Mrs Craine have raised have been raised with myself. From my own perspective, matters of tax returns are a fairly straightforward matter. That said, I

always go to the wire and perhaps beyond and that is due to my lack of attention to a duty so, sir, I appreciate the Treasury have got to make a deadline and they have to have some enforcement in that, but my financial circumstances are pretty straightforward. Others have much more complicated circumstances.

I think that it is fair to flag up that the concerns that have been raised by the profession, by accountants, are legitimate. They are not trying to be difficult and it would be interesting if the Minister could advise why there seems to have been a lack of consultation. I can fully appreciate the Treasury would want to have rules and regulations which would suit their administration but, of course, we have heard earlier today, sir, that the Treasury is, just as other parts of Government, here to serve the people of the Isle of Man and I just wonder if there is any reflection of that in the clause 8, as its currently drafted.

So, sir, I am not going to repeat the comments of the previous speakers, but I do hope that the Minister would appreciate that these concerns are not just from one particular part of the Island, they are actually across the Island, and I would hope that the Minister would be able to come back with a bit more comfort than a seminar after the Bill has been introduced at second reading.

I would hope that that would be a meaningful exercise and that he will have an open mind and his Department will have an open mind to actually amending some of the clause to reflect the issues that have been legitimately raised.

The Minister: Hon. Member for Peel, Mrs Hannan.

Mrs Hannan: Thank you, Vainstyr Loayreyder.

I wonder could the Minister explain – he mentioned and it is in clause 3: with regard to the payment of tax due on account, it states in the Bill:

‘105 per cent of the amount of tax due and payable in the preceding year.’

Now, does someone pay that and then put in their returns and then argue the case afterwards as to how much tax is due? I am a little bit at a loss, because I also had another engagement while this presentation was going on, so I am not absolutely sure where this payment on account comes from, or how it is going to work in relation to the issues of the tax due and the returns due in.

Presumably, a non-corporate taxpayer would, on or before 6th January, pay this particular sum – 105 per cent of what was paid last year, no matter if their circumstances had changed, or not, and, after that, surely, it is up to the accountant, or, obviously, the taxpayer, to get returns in on the particular date.

I also have had representations to me with regard to this Bill. The suggestion has been made to me that, in the UK, a fixed penalty of £100 is applied for any returns not submitted by 31st January and such a timescale would, in the opinion of the person writing to me, be acceptable here. So the issues are not the same for everyone else and it seems strange that we are bringing this in on 5th April 2004 – is my understanding – when, in actual fact, the accountants are not on board. They are the people in the front line and the position has been spelt out by a number of speakers with regard to tight deadlines.

The comments that have been made to me is that

additional staff will be required during that period, where the returns will be needed to be assessed and checked and then there will be this downturn of activity. The actual time for where the pressure is will be July–August and the concern has also been expressed to me about families and the effect on family life.

I also think that there is another area, Vainstyr Loayreyder, that I think joined up government could actually work more together and that is in relation to T14s. I know, as an employee, I have to specifically ask for a T14 form to be sent to me at the end of the year and, if it does not come, a reminder has to go to ask for it and I wondered why it could not be sent routinely when people are putting in returns for national insurance and tax purposes? So that takes time to prepare and distribute a T14.

In addition, the certificates of bank interest, and I know from personal experience with constituents, that they have great difficulty getting records from banks to provide information for tax purposes, so that all takes time and I will relate to a difficulty that has been flagged up by this particular chartered accountant in relation to doctors’ practices. My husband is no longer involved in doctors’ practices, but their year-end is 31st March.

If there needs to be change, then I think the change needs to come in, as has been suggested, over a period because of changing that. It is impossible to prepare the accounts until July at the earliest, as the remittance of the March items of service – and it might change with the new contract, but it has not changed yet – are not paid until 30th June, being the subsequent quarter day end. So you can see the difficulties that just one area is going to experience and that is an area which Government is involved in – contracting doctors’ practices.

So, there are a number of issues within this legislation which I think needs more discussion, more debate with the professionals and I think, then, reporting back to Members of the House of Keys and, I would suggest, Vainstyr Loayreyder, that, if that does not happen, then I believe the legislation should go off to committee, and a committee should then look at the whole aspect of this and whether it is reasonable. What we should look at is whether any law is reasonable – and this law does not seem to be reasonable – and I think it is that that we ought to work towards, so I accept that we do need tax to operate as a Government, but I do think we also need to work with people and we do not need to be at loggerheads and, as Members have stated, putting people into prison, or with large fines, because some people, in relation to tax returns and the like, can be quite dilatory, especially when they are having difficulty getting the information themselves to send back.

What I have said to constituents is, send it in and say that the rest will follow, because it is not a huge amount, but I do recognise that it is going to be a problem for non-corporate taxpayers, and I just hope that the Minister will explain about the payments on account. If somebody has paid that on account, does that get them out of all the other difficulties along the way with this particular legislation?

Thank you, Vainstyr Loayreyder.

The Speaker: Hon. Member for Ramsey, Mr Bell to reply to the debate.

Mr Bell: Thank you, Mr Speaker. and I thought this was a small uncontroversial Bill!

The concerns of Members have centred around clause 8 and I think pretty well everyone who has spoken has made reference to that and, of course, I at Treasury have also been approached by a number of practitioners within the accountancy profession raising similar issues.

I think a lot of it breaks down between the large practitioner and the small practitioner. Whereas the large one can manage this, the smaller one, or two-man band operations, perhaps, it is a lot more difficult.

Underlying all this, Mr Speaker, is a desire on the part of Treasury, bearing in mind the structural changes which are taking place in our taxation system now, and will continue to do so for the next two or three years, to ensure the cash flow of Government remains protected. The Hon. Member for Rushen, Mr Gill, made the point that Treasury is here to serve the people of the Isle of Man. I would just point out to the Hon. Member that protecting Government's cash flow is the most fundamental way of protecting the people of the Isle of Man, because it ensures that the services which we provide to our people are properly funded throughout the year.

Bearing in mind that there will be a reduction in corporate tax over the next couple of years, and, in fact, we are experiencing at the moment, it is absolutely essential to ensure a continuity of flow of the individual taxpayer to, as I say, make sure that these services are provided.

The point has also been made, Mr Speaker, that, almost as a throwaway line, the existing law is that the returns have to be in by 30th June and it has been commented on: 'oh well, it has never been implemented,' but the law is still the law, it is only that we have not been enforcing it in the past, that this date has not been adhered to, and I appreciate that that is not necessarily an excuse for what is happening, but the thinking of a cut-off point has been there all along, albeit not properly implemented.

The main concern, I think, Mr Speaker, seems to come from the point of view that the five months is too short a time and that, in particular, puts undue pressure on the profession itself and I fully accept the reasons which have been given that they cannot do the work within that period of time. I have had further discussions with the Assessor and, again, this morning, recognising this point, to see if, in fact, we can find a compromise on this to ensure that we improve the cash flow of tax revenues to Government, while, at the same time, acknowledging the difficulties of the industry itself.

At this point, Mr Speaker, I cannot be specific as to what that compromise will be. The Assessor is looking at the situation at the moment and I am hoping I will have some clarity from him in the next day or two.

If we can achieve that – and I believe we can – then I will be prepared to bring back an amendment to clause 8 at the clauses stage which will, I think, certainly give Members a further chance to discuss the issue itself, but I believe it will be a satisfactory compromise which will satisfy, probably not all Members' concerns but most of them, and will give a situation where the industry can actually work comfortably with the new arrangements.

So, I suppose on that specific one – and, as I say, it covers all speakers – I am afraid I am going to have to ask Hon. Members to trust me on this one and give me a chance to work up an amendment with the Assessor (*Interjection and laughter*) to make sure a compromise amendment can come back at the clauses stage.

It has been referred to that there is a presentation seminar to the industry on 23rd February; the guidelines will be

discussed at that point and, if we are successful in finding a compromise, I would hope that compromise can be put to the seminar as well on 23rd, to give the industry the chance to discuss and see whether that, in fact, is suitable.

A number of Members have made the point about consultation. Now, there certainly was consultation in the early stages of this, but I do accept that, as I understand it, there was very limited consultation on the final Bill when it was put together. With hindsight, that would appear to be a fault, perhaps, on our side. I hope we can make it up at the seminar on 23rd February.

It may well also be, if Members feel it appropriate, that if, in fact, we can agree a form of words on this that a further seminar, a very short presentation to Members, could be put together before the clauses stage so that my officers could explain precisely how this clause will work and ensure that Members fully understand what the implications are, and, of course, once again, to give us the opportunity to listen to Members reflecting the concerns of their constituents and, hopefully, between us all, we can find a suitable way forward on this.

The Hon. Member for Peel: again, I fully recognise her concerns, but I would urge her and Hon. Members, please do not consider putting this Bill to a Committee. It is very important that we get this Bill through as quickly as possible, particularly to bring in the –

Mrs Hannan: Only if it is acceptable.

Mr Bell: Well, if the clause goes, the whole Bill has to go, this is the problem –

Mrs Hannan: Oh, the whole Bill will go.

Mr Bell: – and we are hoping and planning at the moment to bring in the same year of assessment this year, so we are up against a deadline to do that. If it was to go to Committee, we would lose the Bill for at least 12 months (*Interjection by Mrs Hannan*) and that would cause real problems for Treasury at this particular juncture.

If I could just go through the other points, the Hon. Member for Glenfaba, Mr Anderson, as well as the points which everyone has made on clause 8, asks why personal allowances have been extended to non-residents. This, essentially, is based on Human Rights grounds and, together with that, we have had representations from non-residents in receipt of Manx-source pensions, for example, Manx people living with family in the United Kingdom or elsewhere, because of ill health, after having worked in the Island all their lives. This has been a niggle, I think, for a number of years with various Members with their constituents over the years, and it is an attempt, now, to recognise that difficulty and to put non-resident Manx people, in effect, on the same footing as Manx residents. So, I hope that explains to the Hon. Member why we are doing it.

Mr Quayle, Member for Middle, is again referring to clause 8 and I hope I can give some assurance on that, that we are prepared to look at it.

Mrs Craine, my colleague from Ramsey, again, I think most of her concerns relate to clause 8 and I appreciate that she is coming from the industry point of view, because her husband works in this business, so I recognise the concerns that are put forward. I think the only other point that the Hon. Member has made which is separate from the others, relates,

really, to the criminal offence for non-returns. It is really a draconian measure, but it is intended only for a course of last resort. This will not apply to your average taxpayer; it is for those persistent offenders who will not put in returns and, in fact, there may well be substantial amounts of money involved in it.

So, it is a fallback situation, I think, which is essential in this particular instance. We are charged to generate the tax revenue, as I have said, to fund and service Government services, and, therefore, we are, in effect, protecting the taxpayer generally – those who legitimately pay their tax on time, and, indeed, those in receipt of Government services – by ensuring that all those who should pay tax, do pay tax. That is the only purpose behind this; it is not something which is going to be used on a regular basis, but it is essential that the Treasurer has the ultimate sanction, should we have some serious issues arising, and I hope the very fact that the potential for a criminal offence is there will, in fact, in itself, be a spur to taxpayers to ensure that their returns are in in time.

It will go to court, obviously, and there will be an appeal mechanism in the normal court process, so there will be an appeal if that was to take place.

The Hon. Member also refers to the fact that the Assessor can call for audited accounts in specific cases. Again, we would expect this to be a very minimal occurrence. It is only where the Assessor suspects that the return that has been put in is not accurate and there will be occasions where the Assessor will ask for further evidence of that return and, in a very few cases, they will ask for audited accounts to confirm what those figures are.

The client in that case will be the taxpayer himself, if the amount outstanding is within certain bounds, which I think is 10 per cent of what the actual figure is, or £10,000, then Treasury will meet the costs of paying for the audited accounts. If, in fact, the figures presented to the Assessor are wildly wrong, then, clearly, it is down to the client to make those payments, but the client will be the taxpayer himself.

The Hon. Member also refers to lack of liaison and, as I say, with hindsight, perhaps we should have done a bit more and I can only apologise for that.

The Hon. Member for Rushen, Mr Gill, again refers to clause 8 and, as I say, also makes reference to the fact that Treasury serves the people, but we serve it in both ways; it is not just looking after the taxpayer. We have to look after all the Isle of Man and we need Treasury revenues to do that.

The only other point which I have not covered: the Hon. Member for Peel, Mrs Hannan, refers to payment of tax on account. This will be assessed at 105 per cent in the first year. The actual figure itself is based on the previous year's earnings, so it will be the previous years earnings, plus five per cent – that will be the assessment.

If, in fact, when the final return is put in and identified, the income is actually less than that and the taxpayer has overpaid, then, clearly, there will be a refund and, in fact, Treasury will be paying interest on that refund to compensate for it.

The T14 certificate the Hon. Member refers to: I am told that the Income Tax Division and the DHSS have been working very closely on this one to ensure ease of issue and availability, and they are hopeful that, in future, taking up the point the Hon. Member made, that the concern she has expressed will be addressed and, in fact, the T14 will be made

available more quickly and to the right people.

And, finally, the Hon. Member makes reference to the law being unreasonable. It depends from what perspective; again, I can only repeat myself that we believe this certainly is a tightening up of the tax payment regime, it is an essential step, following on the introduction of the Tax Strategy.

Albeit one or two areas might be controversial, in many other areas it is blocking off loopholes where people have been able to evade tax, or avoid tax, for a number of years, and we believe it is only right that everybody should share the burden of paying tax fairly, and these loopholes have to be blocked off. The person on the receiving end of it may think it is unreasonable, but we believe, in fairness to all the other taxpayers, that it is an appropriate way forward.

So, I hope I have answered the questions raised as best I can and in a satisfactory manner for Members. I do recognise the concerns of clause 8 and I am prepared, and I have already instructed the Assessor, to see if we can find a compromise on this which will satisfy all Members, perhaps not 100 per cent, but certainly 90 per cent of the way, and we will be discussing the guidelines and other issues with the industry on 23rd February, at which point, I hope, we will get a greater clarity and a better understanding.

Of course, this seminar with the industry will, in fact, take place before the clauses stage takes place here, so, if there are other issues raised at that seminar, then there will be opportunity for further consideration at that point.

So, Mr Speaker, if Hon. Members will accept my assurance on that, I beg to move the second reading of the Income Tax (Amendment) Bill.

The Speaker: Hon. Members, the motion before the House is that the Income Tax (Amendment) Bill be now read a second time. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Criminal Justice (Arrestable Offences) Bill

Third reading approved

The Speaker: Now, Hon. Members, we move on to Item 5 on our Order Paper, the Criminal Justice (Arrestable Offences) Bill. Hon. Member for Douglas East, Mr Braidwood.

Mr Braidwood: Thank you, Mr Speaker.

The whole purpose of this Bill is to restore the power of arrest for the possession of cannabis, which was removed when the drug was reclassified from 'B' to 'C'. There was never any intention to do otherwise.

Some Members have indicated that the Bill was not helping the vulnerable of our society. However, the response to the misuse of drugs and alcohol is contained in the Chief Minister's Drug and Alcohol Strategy Committee Report, which is a fully integrated cross-departmental approach, through education, harm reduction, treatment and support, and reducing the availability of illegal drugs.

The Bill also contains an enabling power which was amended in this Hon. House. This clause allows the Department of Home Affairs to make Orders to add offences to the list of arrestable offences in section 27 of the Police Powers and Procedures Act 1998. The Department must be satisfied that the offence is sufficiently serious to warrant

being treated as an arrestable offence.

The clause, as amended, ensures that the Department must consult with Members of Tynwald, the Attorney General's Chambers, and such other persons as the Department considers appropriate. The Order must be advertised in two local papers eight weeks before being moved, also be laid the preceding month. The Order will not come into operation unless it has the approval of Tynwald.

The guidelines issued by the Association of the Chief Police Officers will generally be followed in the Isle of Man Constabulary. The presumption will be against arrest for simple possession offences and the police will have more discretion than previously; therefore, it is not draconian legislation, as Members have alluded to.

Mr Speaker, I beg to move that the Criminal Justice (Arrestable Offences) Bill 2004 be read a third time.

The Speaker: Hon. Member for Onchan, Mr Corkill.

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

The Speaker: Hon. Member for Peel, Mrs Hannan.

Mrs Hannan: Gura mie eu, Vainstyr Loayreyder.

I am surprised actually by the comments of the Minister this morning when moving this legislation, because concerns were expressed last time about arrests, about this sort of activity, and this sort of support for this legislation, and, really, all we have had this morning is that the Chief Minister has a Drug and Alcohol Strategy and it is to do with the misuse of drugs and the Chief Minister's Drug and Alcohol Strategy, their approach to reduction of drugs. I would have thought that the Minister could actually have told us whether there has been a reduction in arrests for cannabis, whether there has been an increase in recent times, whether that is the reason why this legislation needs to be on the statute books.

The reason why cannabis was downgraded came about following a recommendation in the UK of an independent committee in 2000, so it is not something that has suddenly been jumped on us, or anyone else, in the last month. They concluded that the decision to place cannabis in the middle category of harmfulness 30 years ago did not reflect current scientific, medical or sociological findings. They did not say that cannabis was risk-free, but they concluded:

'When cannabis is systematically compared with other drugs against the main criteria of harm, mortality, morbidity, toxicity, addictiveness, and relationship with crime, it is less harmful to the individual and society than any of the other major illicit drugs, or than alcohol and tobacco.'

So, I wonder why the Minister has chosen not to mention the reason for the return to the status quo in relation to cannabis being a class 'B' drug, without any major discussion, as far as I am aware, of this change and needing to go back to, really, class it as a category 'B' drug in relation to arrest. But what the Minister was saying, we need stop and search, we need arrest, we need property searches, we need court, we need conviction, we need jail, and it is my understanding that arrest at (4) now, when this legislation is passed, which it will be. But it is my understanding that arrest for suspicion of possessing cannabis is now mandatory, and it goes back to the mandatory situation, because it would be

seen as being an arrestable offence.

This leads on to the court appearance, the conviction, the possible jail, and the other social damage, so, in a way, this is not actually being addressed. And the one place where drugs seem to be available and we cannot do anything about, is prison. So, maybe, the Minister can explain the idea of putting people in prison for possession of cannabis when it could, in actual fact, lead to the use of other drugs. If cannabis was not in the prison, it may lead to use of other drugs, if they are in the prison.

Recently, the Chief Constable of Norfolk, commenting on this particular piece of legislation, stated that this classification of cannabis to a category 'C' drug was, and I quote:

'Just formalising an existing informal arrangement, which will allow police to concentrate on the other major, illicit drugs.'

Other police chiefs have even called for more major changes and I think this is, really, to encourage debate and discussion, because the police are finding it extremely difficult to address issues such as cannabis, such as alcohol, such as cigarettes, which are becoming more unacceptable, especially for the young, but the young are increasingly using these items, especially with regard to alcohol.

In recent years we have seen the introduction of alcopops – which really, I mean is not like alcohol at all – and I have not had that many of them, I must admit, but they are just sort of frothy, smoothie type drinks, many of them. Young people do not realise the actual strength of these drinks, maybe, in the same way that they do not understand – because it is seen as unacceptable by society, but it is exciting – but they do get involved with cannabis and I do accept that we should try to encourage them not to. But I have not heard anything other than bringing in the arrestable offences, as to dealing with this.

It is, really, part of what we should be doing, if we are introducing and going back to making cannabis an arrestable offence, and, as I say, my understanding is that it would then be mandatory and leads on to these other things of arrest, property searches, court, conviction, and jail, because that is what the penalty is; two years for possession of cannabis, it is five years for dealing.

This was not entered into lightly in other places. In other places it was deemed to try to provide a safer society, because of the effects of more dangerous, major, illicit drugs, the other major, illicit drugs. All I am trying to say is that cannabis is not risk-free, it is dangerous, we should not be encouraging people to use it, or anything like that, but what I am concerned about is that we are bringing in this legislation without any sort of major discussion about the issues, and I know of people's lives that have been seriously affected, through losing their jobs, being in prison – and, granted it was only a short period – but they then went on and lost their jobs, families took more or less forever to get over it, because of the stigma and the lot, and I just wonder what Government itself – because, obviously, this is a Government move and seconded by the Chief Minister to Home Affairs – have in place to try to deal with and help young people who do get attracted into drugs.

As I explained at our last sitting, it is given to young people, it does not matter whether it is ecstasy or whatever, they are given it, and they are given it until they are regular users, and then they are charged for it, and it can be quite considerable – £20 for an eighth of an ounce, that is what

one of my constituents told me that he was paying for it and, as it becomes in shorter supply when activities are on, and people are lifted for possession, or trading, or whatever, and it becomes more difficult, then it costs even more. Then it leads into further criminal activity, with people being seriously threatened by their dealers, and I do think that we ought to be trying to do an awful lot more for our young people, to try to help them in regard to this, and maybe help and support.

Even although we do have agencies within Government, who are able to give a certain amount of support, they are not able to come up with the sort of money that some of these young people are using, if they are using it on a regular basis, and getting into a situation where they are being threatened with violence. There is an awful lot more discussion to take place on this. I accept that this Bill is only to do with Criminal Justice (Arrestable Offences).

I have dealt with the first part. The second part – all of the information that we have had – says other areas have come into the arrestable offences, but could I just remind this Hon. House that all those other issues have not come in as a special item, they have all come in through a green Bill; no matter what it is, they have been introduced through a green Bill, which has been made available to the public. It is debated in here three times, second reading, clauses stage and third reading, so people should know what is being introduced onto an arrestable offence.

What this legislation is doing... and I do think that we talk about human rights, the Minister just talked about human rights and about people who are non-residents having human rights, when it comes to tax allowances, but here we just blithely say: 'Oh, here, tag it on to the end of the Arrestable Offences legislation and we will just add a few more issues in', because it is so much more convenient, it is so much more... We do not then have to produce a green Bill. We do not need to do it; all we need to do is put an Order before Tynwald. Alright, the Minister has said, because at the last sitting, it has got to be advertised.

In lots of cases it would be quicker to have a green Bill, and it would be more effective to have a green Bill, because at least we would spell out and we would be debating it on three occasions, here, instead of consultation with a letter going out, 'do you agree?', and then it just comes into Tynwald, or 'this is what we are going to do', knowing how we consult.

I just think that this is a Bill that has not been discussed enough already, without having this new Section 27A, which brings in this very serious addition to creating arrestable offences, and I think the effects that we have had in recent times on people's human rights, with legislation that we have introduced, does not bode well for the future of a liberal society, and I use the liberal with a small 'l'.

I just wonder at the message that we are sending out with legislation such as this, and, Vainstyr Loayreyder, it will come as no surprise that I shall be voting against it.

The Speaker: Hon Member for Rushen, Mr Gill.

Mr Gill: Thank you, Mr Speaker.

There is very little that I wish to add that we have not covered at the clauses stage, other than to reiterate that I was given a free vote on this. It is not a Department of Home Affairs issue, it is a Government Bill that the Member for Douglas East, Mr Braidwood, happens to be bringing

through, so I do not feel obliged to support it, as a matter of loyalty to the Department. In fact, I feel the urge to resist it, the second clause. We heard, in the introduction earlier, Mr Braidwood say that this is simply about the powers of arrest for cannabis, but if it was, it would be a one-clause Bill, or a two-clause with the long title.

It is clause 2 which is the problem. Clause 1, I am fine with that. I voted for that and I appreciate the comments from the previous speaker, and we have been over that ground and I am sure there are lessons to learn, but Clause 2 is a different kettle of fish. Clause 2 is like the Amendments Bill, as I have said earlier, it is an enabling motion that does not fit here. It is not necessary to have arrestable offences, in relation to cannabis, to have clause 2 and I resist it, I will continue to resist it, it is unnecessary.

It is another example of the Government trying it on when they do not need to, and I celebrate the fact that there were amendments moved which have made it unworkable, because that, frankly, is what this clause deserves. I just wonder what the motivation – and, perhaps, the mover can inform us – of Government is to keep bringing these Bills in, and what the problem with the legislative process this Government seems to find they are now experiencing, because, on one side, we pride ourselves in being the oldest continuous parliament in the world and the next we see the Government is trying to marginalise the House of Keys, and I cannot just square the two.

So, perhaps, the mover could advise us why the House of Keys and the legislative process are not necessary in this instance and why they feel that they are unnecessary in others.

The Speaker: Hon. Member for Onchan, Mr Corkill.

Mr Corkill: Thank you, Mr Speaker.

I have listened with interest to the previous two speakers, and I think a lot of their comments certainly reflect the discussions that went on in the Drug and Alcohol Strategy Committee around the table, with officers and politicians from the relevant Departments, because, in regard to the changes in relation to cannabis which have occurred in the United Kingdom, there is no logic to it.

I tried to make this point at the second reading, that the United Kingdom approach has been convoluted – and that is putting it mildly – so I can understand Hon. Members, as, in fact, the members of the Committee, struggled to do over a period of 18 months, myself in the Chair of that Committee. We attempted to have a rational, logical approach to the substance of cannabis, knowing that the United Kingdom is going down this path of reclassifying it from group 'B' to group 'C'.

What we came to appreciate, eventually, was that that was almost an academic debate, because the real debate that ensued is whether we, as an Island, wanted to be out of step and different from what was being applied in the United Kingdom, and I do not say that, from the point of view that the UK does something, so, therefore, we have to follow. Far from it, because I think, on this issue, we have analysed very deeply that they have gone down a very convoluted route, but they have different circumstances and there is a lot of politics gone on in this particular debate within the United Kingdom.

The issue I want to draw attention to is that, for quite a number of years now, we have had the situation where, in terms of the classification of substances, we replicate

what happens in the United Kingdom. If we want to have a generic debate about particular substances, and, in this case, cannabis, to look at research evidence and, perhaps, draw a different conclusion from our counterparts in the adjacent Islands, where they have come to the conclusion that moving it from group 'B' to group 'C' is appropriate – if we were to follow our own lines of evidence, perhaps come up with a different structure, then we are free to do that. As I said at the second reading, we used to have that system, whereby we had many Orders coming to Tynwald on a regular basis, with lists and lists of substances, many of which I had never heard of and I am a pharmacist.

It was a technical paper which used to come forward and it was never scrutinised properly, in my view, and, at the end of the day, we rubber stamped the UK list of substances in any event. That was changed, quite sensibly in my view, to an administrative function, whereby we automatically import those decisions and, because of that structure, we have been led down this particular debate.

We knew that this group 'B' to group 'C' was happening and we knew, all along, that the Isle of Man, unless we change things, was going to import that decision and the view was taken, certainly in the Drug and Alcohol Strategic Committee, that we should do our own background thinking about this. But the more we did it, the more we came to the conclusion that, really, what we were debating, at the end of the day, was whether we were going to have our own system in relation to substances here in the Isle of Man, a separate entity.

To me, as Chief Minister, and to Government, that raises more questions than answers, because it is a hugely resource-hungry thing to set up that separate structure, to determine our own classification of substances from our own background and our own research, and I came to the conclusion that we should not go down that route, that, in fact, we have to acknowledge that the changes are going on in the UK and that is what the debate really is about.

I can understand Hon. Members wanting to look at the substance of cannabis in its reality, because it is a harmful substance and my personal preference would have been to leave it in group 'B', as someone who has looked at the evidence, because it is harmful and there are varying research papers, but they all talk about harm to a degree. The degree of harmfulness is sometimes open for debate, but we all know that cannabis is harmful in a number of ways.

The Hon. Member for Peel was talking about the problems that young people have in relation to drugs on this Island, and I would wholeheartedly agree with her that we need to do more and the Drug and Alcohol Strategy which the Minister, in moving this reading, referred to, is just about that. It is trying to find the resources and the ability to actually improve people's lot, and I would be the first to say that throwing young people, who have dabbled on the fringes of cannabis, been in the wrong place at the wrong time, putting them into jail is exactly the wrong thing to try and turn those people around.

The reality is, of course, that we have a drug referral scheme; we already have, in our criminal justice schemes, a way of dealing with first-time offenders. I do not want to use the word 'charitable', because it is not a charitable process, but it is an understanding process and it is a process which is designed to steer young people away, without giving them a criminal record from day one, and that ability is there.

The problem we have is that, in the United Kingdom, because of political pressure, they have come up with a

situation where they want to retain this power of arrest, so the question before Hon. Members is to whether we want a structure in the Isle of Man which is different from that, and I do not think it is the sensible thing for us to do, to be seen and to actually have a system, whereby it will be flagged up as a softer line on cannabis than the adjacent Islands have in the United Kingdom. I think that would be a very retrograde step for us as an Island, and that is what this Bill is about.

It is not really about how we deal with young people in particular, as the Member for Peel has mentioned, because there are lots of things within Government where we try to steer young people to a healthy way, in the way that they live their lives. So, I am sorry that the Hon. Member cannot support the Bill, and I understand that there is this issue about the other clause where the other powers of arrest can be brought in by Order to Tynwald, and I am slightly concerned – well, very concerned – that a number of Members seem to think that bringing an Order to Tynwald for approval of Tynwald is not an appropriate way of scrutinising secondary legislation.

Mrs Hannan: Absolutely not.

Mr Corkill: Now, if that is an issue, then, that is something that we all need to address, that, perhaps, some of the Orders that are coming through Tynwald, if they are not getting proper scrutiny, maybe there needs to be a process put in place where that is better. (A Member: Hear, hear.)

That is an issue separate from this particular point, but we have made it quite clear, in this legislation, that any other powers of arrest and, of course, we have had the amendments that have come on to the Bill and I am rather surprised by the Hon. Member for Rushen, Mr Gill, that the suggestion is that these amendments are being supported because they make the Bill unworkable, because that is a rather negative way of producing legislation. One can move amendments to try and change the nature of the Bill, to be more ensuing with one Member's particular policies or point of view, but to deliberately move amendments to make something unworkable – and I do not believe these amendments are unworkable, because they all talk about consultation...

The Government view has been, yes, if there needs to be consultation in the lead up to an Order going to Tynwald so that the public know, Members know, that the powers of arrest issues are likely to be changed, then that broad debate can happen in the lead up to a Tynwald debate, and I would say, from a legislation point of view, that there are advantages by changing things by coming to Tynwald. As an Island, as a parliament, we have total control over our secondary legislation and the way that we can implement things by Tynwald Order. It is not necessarily the same with primary legislation, where we have the issues of Royal Assent to deal with; as Members will know, we tend to deal with those in advance of Bills coming to this Hon. House.

So, in terms of determining our own destiny on these things, I would suggest that the Order to Tynwald is a good way of achieving that, as long as it is appropriate in the circumstances. I am sorry that one or two Members cannot support this particular Bill, because, on balance, there may be some of the downsides that the Hon. Members have mentioned, in relation to they do not like this idea of a power of arrest, but, in my mind, I am having to balance that against being completely out of step with a United Kingdom situation and I think that that, on balance, is less attractive to me as a citizen of this Island and I would suggest to a great number

of people residing on this Island. They would not wish to see us in a weaker situation.

I would like to thank Hon. Members who have supported this Bill in this situation. I just want to finish by saying that it is not Government policy to rush readings through this Hon. House on a regular basis, if we did feel that the circumstances around the particular subject warranted a special approach, and obviously we have to seek suspension of Standing Orders to achieve that, and that happened to a degree at the last sitting.

We have had another week to reflect, because of the parliamentary process, and so I want to make it clear to the Hon. Member for Rushen, Mr Gill, that we do have total respect for the legislative process, which is why we are debating this particular Bill here today.

It is unusual circumstances. The way that the United Kingdom announcement surfaced at the end of last year was a surprise to the Isle of Man Government and was not in accordance with what we had been led to expect, and so we have had to react to that and this is the result and I have made it quite clear in the adjacent Islands that, in future, the Isle of Man Government and Tynwald and the House of Keys, expects a much better notice of changes like that, which actually have an impact on the Island – that we should be taken into account. I have made that point already, so I do hope Hon. Members will put it in perspective.

When this Bill is, hopefully, passed, I do hope Hon. Members will realise that the work of the Drug and Alcohol Committee will continue unabated and that, in a way, this is a sideshow to the main job of actually dealing with illegal drugs on this Island.

The Speaker: Hon. Member for Rushen, Mr Gawne.

Mr Gawne: Gura mie eu, Loayreyder.

I remain unconvinced, particularly by clause 2 in this Bill, but I am also not convinced that we have had appropriate information, and the whole premise on which we are being asked to support this Bill has not been properly explained.

We hear mention about the continuing and ongoing excellent work of the Drug and Alcohol Strategy Committee and yet, in their report, there did not seem to be any reference to proposed changes, or any particular reference to what it is that this Bill is trying to counter.

I know the Chief Minister has said that we only found out fairly suddenly, fairly quickly, what was going to happen here but, in previous speeches, he has mentioned that we knew back in June, or either he, or the Minister for Home Affairs, back in June, or July, that UK were considering some kind of changes, admittedly, not, perhaps, the changes that we have got now, but some kind of changes were referred to. There is no reference in the Drug and Alcohol Strategy to this, or to what was going to happen.

I am very disappointed that so little information has been provided to Members. I am also disappointed that we have been spun a line that all the constabularies in the UK have been trying to get this power back, that they are against what has happened in the UK, and yet we hear from other senior police officers in the UK that, in fact, they do not see any particular value to this particular arrestable offence.

Conflicting evidence, lots of spin being put on it, the whole way this Bill has been constructed is something I am sure Alistair Campbell would be proud of, in that we have linked two completely separate things together. Any news editor worth their salt will lead with the cannabis side of this

Bill, they will not be interested in the manipulative clause 2, which alters the way in which our legislation is scrutinised, and this has certainly been borne out in both Manx Radio and Isle of Man newspapers' coverage of this. They have led with the cannabis side of this Bill and yet this is a Bill about arrestable offences. I think this is a very poor way to introduce legislation and I will not be supporting the Bill.

The Speaker: Hon. Member for Douglas East, Mrs Cannell.

Mrs Cannell: Thank you, Mr Speaker and hip, hip, hooray to the previous speaker!

I just want to add a little further balance into the debate at this point. The Chief Minister said, when he was on his feet, that we do not want to take a softer line than the UK and then, latterly, towards the end of his presentation he said, we do not want to be in a weak situation. Well, I suppose it can be said, because the legislation is not in place, that we are at present in a weaker position but, nevertheless, clause 1 in this Bill will put us in a tougher position than the UK, and we have to be clear about that. We do not, under this legislation, have an equivalence of fairness across the board between those in the United Kingdom and those in the Isle of Man.

I think the Hon. Member for Peel tried to put it into perspective, following the Minister's moving of this third reading, when she said that the United Kingdom have removed it from class 'B' and made it class 'C' and we automatically have to oblige similarly because we have adopted the same legislation as the UK.

However, we have a penalty, even when it is class 'C' and the penalty has not changed from when it was a class 'B'. That is basically what this legislation is saying. It is a power of arrest for possession, without warrant. That does not exist in the United Kingdom with their new legislation; they do not have the power, without warrant, to arrest somebody who is in possession, unless it is deemed at the time, or there is suspicion at the time, that they might have sufficient quantities to be in a dealer category and their intent is to supply.

So, let us be clear, when the Chief Minister tries to give us a load of soap-wash by saying we do not want a softer line, we do not want to be in a weaker situation. If this legislation goes through all of its readings, and I dare say it will by a slim majority, then, in fact, the Isle of Man is taking a tougher line than the UK. We have not had the foresight of debate, in terms of looking at this whole issue, like the UK have, but we are obliged to amend our law because we have adopted the same law as them.

Clause 2 is the one that is causing the most disharmony within this Hon. Chamber with Members, and, yes, amendments were made last week to attempt to make clause 2 a little bit more palatable. But, nevertheless, the majority of us in here do not like the move that the Council of Ministers have made on this.

I can see all the reasons for them doing it, because it makes their job of administrating the Government of the Isle of Man a little bit easier and, perhaps, a little bit swifter from time to time. Had that 'arrestable offences' in clause 2 been clarified as 'arrestable offences in terms of drugs'; if it included the words 'arrestable drug offences' for the future, then we may have accepted it as it was written. But to have a broad-brush approach, an arrestable offence, if it is deemed to be sufficiently serious as an offence, by the Department, then

it is going to be added by Order. Well, that is a broad-brush approach to all sorts of things which may, in the future, be deemed appropriate by this Department here in the Isle of Man, together with the Attorney General, to include as an arrestable offence, and that is what we cannot swallow; that is stuck in our craw at the moment.

Even with the amendments, the principle of doing it this way is all wrong and I would like to shoot across the bows of Government this morning by saying that, if there is an attempt in the future, while I am in this place, to try to do this again, to try and prevent primary legislation by converting it in to an Order, if there is an attempt to do this again without due justification, proper comprehensive consultation, I will fight tooth and nail to oppose it.

The one thing that the public are not aware of is what the original intention was with clause 2, how that would impact upon them, save for those that picked up a little bit from either ourselves during conversations since last week, or what little bit has been publicised, but the impact is great.

It is less scrutiny. Orders, generally speaking, need to be looked at again because the way in which the Orders are presented, the explanatory memorandum for Orders sometimes contains so much gobbledeygook that even the best academic in this place would not be able to comprehend the real impact that the Order will impose on the public.

That is one issue alone, the Chief Minister said, 'well, perhaps we need to be looking at that', but the issue of Orders in Tynwald is an issue all of its own, which needs much further scrutiny by a parliamentary system.

This before us today is a converting mechanism, converting a green primary Bill stage to consider future arrestable offences into a white paper, an Order that goes to Tynwald and you have one debate.

The Hon. Member for Peel expressed it well this morning and we all did last week. For primary legislation you have three, sometimes four debates, if clauses are referred to a select committee. It is proper scrutiny – that is what we are here for, that is our job and we do that in primary legislation. Regulations, which sometimes flow from primary legislation, will then come to Tynwald. That is fine. I have no problem with that, the primary side, the principle of doing it. The principle of adding another offence in the future, which, in the next 5, 10, 15 years, may, according to the Department, be sufficiently serious to be arrestable, is serious, and needs to be considered seriously at primary legislative stage.

There was comment about the amendments making the Bill unworkable. I dare say that this Bill will go through by a slim majority and will probably pass through the other place and will go off for Royal Assent, and we will not know whether it is workable or not, but I feel sure the Department of Home Affairs will come back swiftly if it is not.

If there is a problem with it, they will be wanting to seek further amendment, but I have to say we need to add balance and, for the sake of record, we are not stupid in this Chamber, we know what is happening here, Chief Minister. We know what you are up to, as well.

Further, I have to put it down here, I have a huge question mark hanging in my brain. The Chief Minister said, when he was on his feet, it was his insistence as involvement with the Drug and Alcohol Strategy, that we were not going to be a softer option. Fine. Then he said, later on, that it was his personal opinion that this is the way things should be done. I would put it to him, why then did he not move this Bill? If he is so much in favour of it why did he not move it, instead of putting his poor Minister for Home Affairs

(**Several Members:** Ahhh.) who is full of a cough and a cold today –

Mr Corkill: He is on the Committee as well.

Mrs Cannell: – to go through all the rigours of debate and the answering he will have to satisfy us with, before we vote third reading, but I can say, Mr Speaker, I, too, will not be supporting third reading.

The Speaker: Hon. Member for Douglas East, Mr Braidwood, to reply to the debate.

Mr Braidwood: Thank you, Mr Speaker.

I will probably answer the last speaker first, because I want to bring balance to Mrs Cannell's contribution.

She has mentioned that the Chief Minister's presentation was that we have a softer approach, we are in a limbo at the present time, I think I explained, last week, under section 28 of the Police Powers and Procedures Act, the general arrest conditions, so that the officer could arrest a person in possession of cannabis now.

I would also like to say that, in the UK, the officers still retain the power of arrest. Presumption is against arrest, but they can arrest for possession of cannabis, so I am afraid my colleague from Douglas East is wrong on that aspect of her contribution

Mrs Cannell: My function is different from yours, Minister.

Mr Braidwood: Mr Speaker, the power of arrest is still in the UK, so, if an officer feels that the person is in possession of cannabis, he can arrest him. There is no problem about that at all. Again, we have had a rerun of the second reading and the clauses stage

Mrs Hannan: Why not?

Mr Braidwood: Again, it was first moved, in July 2002, when the UK, through the Home Secretary, said there was going to be a review of the reclassification of cannabis from 'B' to 'C'. That meant that the maximum imprisonment would come down from five to two years and the power of arrest would be lost.

Therefore, the other police authorities in the UK and Chief Constables asked for the power of arrest to be retained and this is the reason why we are here today, because, initially, they were going to put it through public disorder offence legislation, but it was only in November that they said they were having a change to primary legislation. In the UK they do this through an Order which goes through Parliament.

Mrs Hannan said it is more draconian. It is not. As I said, there is going to be a presumption against arrest. At the present time, there cannot be any presumption, so, at least, with the reclassification from 'B' to 'C', discretion is being given to the police officers, so they do not need to arrest a person if they feel they have a simple possession of cannabis.

I think I explained the situation about juveniles last week, when they would normally be taken to their own home, or they could be taken to a police station, where an appropriate adult would be called when the juvenile was interviewed, and I will reiterate what I said then.

'If the offender is a juvenile or other person who should have an appropriate adult present, then this interview, obviously, cannot take place on the street. Steps should be taken to ensure that this type of offender is interviewed and reported in the presence of an appropriate adult. The offender should then be reported for the offence, a short report should be submitted to the officer's supervisor, who will make any decision on disposal of the case. The option of drug arrest referral, caution, no further action, or prosecution are still available options. The supervisory officer should consider all the facts before deciding on a disposal option. If drug arrest referral is a chosen option, then the offender will have to be invited to participate on the scheme as if he were in custody. He/she will have to sign the appropriate form, which will then be forwarded to the drug arrest referral team as normal.'

I am glad that Mrs Hannan, the Hon. Member for Peel, acknowledged that cannabis is harmful. The acute effects include damage to people's ability to learn and carry out more tasks, including operating machinery and driving vehicles. Acute cannabis intoxication can also lead to panic attacks, paranoia and confused feelings. The chronic effects include damage to mental functioning and, in particular, to learning difficulties, which, in prolonged and heavy users, may not necessarily be reversible. A cannabis dependent syndrome has been identified in heavy users and the drug can exacerbate schizophrenia in people who are already affected. Smoking cannabis over a long period of time can lead to respiratory diseases, including lung cancer.

Mrs Hannan: So can tobacco.

Mr Braidwood: So, all we are talking about in this Bill, Mr Speaker, is maintaining the arrestable offence.

A lot has been said about clause 2, which has been amended. This was an enabling power so that, if there is any reclassification of another drug from 'B' to 'C', it can be put forward as an Order and papers have been circulated over the last few weeks.

Mr Speaker, I do believe that the Chief Minister has answered a lot of the other points which has been raised by Hon. Members and I beg to move the third reading.

The Speaker: Hon. Members, I put to you that the Criminal Justice (Arrestable Offences) Bill now be read a third time. All those in favour, say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

FOR

Mr Anderson
Mr Cannan
Mr Quine
Mr Rodan
Mr Quayle
Mr Rimington
Mr Houghton
Mr Henderson
Mr Duggan
Mr Braidwood
Mr Downie
Mr Shimmin
Mr Bell
Mr Corkill
Mr Earnshaw
Capt. Douglas
The Speaker

AGAINST

Mr Gill
Mr Gawne
Mrs Cannell
Mrs Hannan
Mrs Craine

The Speaker: Hon. Members, the motion carries, with 17 votes for and 5 votes against.

**Members' method of resignation
Investigation by Management and Members'
Standards Committee
Motion carried**

6.1. The Hon. Member for Rushen (Mr Rimington) to move:

That the Management and Members' Standards Committee investigate whether it is desirable that section 6 of the Representation of the People Act 1995 should be amended to provide a simple and honourable method by which an Hon. Member may resign his or her seat, and to report.

The Speaker: Hon. Members, we now move on to the next Item on our Order Paper, which is a motion at Item 6 and I call on the Hon. Member for Rushen, Mr Rimington.

Mr Rimington: Thank you, Mr Speaker.

I hope this will be a very short debate and uncontroversial. All I am seeking to do is to address the issue, a loophole in our existing arrangements, whereby an Hon. Member, if for any reason he or she wishes to resign, cannot do so, without either deserting their constituents for a considerable length of time, for committing a crime, or for taking an office of profit from the Government –

Mr Corkill: Or dying.

Mr Rimington: – and, quite simply, there are many reasons why a Member may wish to vacate his seat mid-term. If I wish, for family reasons, to emigrate to New Zealand – which I can assure you I am not just at the moment, (*Interjections and laughter*) but they would be legitimate family reasons, given the number of family that we have out there – there is no method to do so and it would be wrong that, if that was the case, if I took that family decision, then my constituents would be unrepresented for a length of time.

Or it might be for reasons of ill health, or whatever, and that simply is it. The issue has been there in the background for a while and I think Members have generally been aware of this anomaly and, really, it is just, can we now put some focus on it and provide the necessary means to resolve it, that is all.

Thank you, Mr Speaker.

The Speaker: Hon. Member for Rushen, Mr Gawne.

Mr Gawne: Gura mie eu, Loayreyder.

I am happy to second this motion. I, too, have no immediate plans to resign, (*Laughter*) but I think it is an important point that is raised by my colleague and as I say, I am happy to second.

The Speaker: Hon. Member for Douglas West, Mr Downie.

Mr Downie: Yes, I, too, rise in support of the motion, Mr Speaker.

It seems to me, in this day and age, when circumstances could prevail in the House, when a person is advised under doctor's orders that to continue would really be detrimental to his health, the only option available to him is not to come forward in the normal way, and express his pleasure at being a Member of the House and the way in which he can reflect on his association with the House, and go gracefully.

He has to put himself in a position where he needs to absent himself for a period of months and, then, as it were, be reduced as a form of disgrace.

I think there is something radically wrong there. I think that there are circumstances, or there may well be circumstances in the future – we know, in another place, we had a similar situation with an Hon. Member, who was ill for a particularly long time – and I think we should bring our Regulations up to date. Provision should be available for a Member who wishes to resign, whatever the reason, and go in good standing and go in good grace and with respect.

The Speaker: Hon. Member, Mr Rimington, do you wish to reply to the debate, sir?

Mr Rimington: No, sir, I think all that has been said, has been said.

The Speaker: Hon. Members, the motion before the House is that as set down at Item 6.1. in the name of the Hon. Member for Rushen, Mr Rimington. All those in favour, say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, that concludes the business before the House today. The House will now stand adjourned until 10 a.m. Tuesday, 17th February in Tynwald Court.

Thank you, Hon. Members.

Members: 10.30 a.m!

The House adjourned at 12.09 p.m.