



**LEGISLATIVE COUNCIL
OFFICIAL REPORT**

**RECORTYS OIKOIL
Y CHOONCEIL SLATTYSSAGH**

P R O C E E D I N G S

D A A L T Y N

(HANSARD)

Douglas, Tuesday, 2nd May 2006

Present:

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

The Lord Bishop of Sodor and Man (The Rt. Rev. Graeme Knowles), The Attorney General (Mr W J H Corlett QC),
Mr D Butt, Mrs. P M Crowe, The Chief Minister (Hon. D J Gelling CBE),
Mr E G Lowey, Mr L I Singer and Mr G H Waft,
with Mrs M Cullen, Clerk of the Council.

Business transacted

	<i>Page</i>
Leave of absence granted.....□	361
Question for Oral Answer	
1. Nuclear energy – Consultation with Government on any new facilities.....	361
Orders of the Day	
2. Disability Discrimination Bill – Third Reading approved.....	363
3. Audit Bill – Second Reading approved.....	365
Audit Bill – Consideration of clauses commenced and adjourned	366
4. Income Tax (Corporate Taxpayers) Bill – Second Reading approved.....	375
Income Tax (Corporate Taxpayers) Bill – Clauses considered.....	376
Income Tax (Corporate Taxpayers) Bill – Standing Order 22(2) suspended to take Third Reading	384
Income Tax (Corporate Taxpayers) Bill – Third Reading approved.....	384
5. Agricultural (Amendment) Bill – First Reading approved	385
Procedural	386

The Council adjourned at 1.09 p.m.

Legislative Council

The Council met at 10.30 a.m.

[MR PRESIDENT *in the Chair*]

PRAYERS

The Lord Bishop

LEAVE OF ABSENCE GRANTED

The President: This morning, Hon. Members, we have two absentees, Mrs Christian and Mr Downie, who are off the Island on Government business.

Question for Oral Answer

CHIEF MINISTER

Nuclear energy

Consultation with Government on any new facilities

1. The Hon. Member (Mr Singer) to ask the Chief Minister:

Will the Government –

(a) be consulted on any plans by the British Government to build new nuclear facilities; and

(b) unanimously oppose any such plan if the arrangements for the total disposal of radioactive waste are unsatisfactory?

The President: We turn to our Order Paper Question. There is just the one Question, and I call on the Hon. Member Mr Singer.

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

The President: Chief Minister to reply, please.

The Chief Minister (Mr Gelling): Thank you, Mr President.

Rather a longish reply, sir, but I think it does need some clarification. First of all, I would thank the Hon. Member for his Question.

The possibility that the UK Government may decide, following completion of their energy review, to sanction the building of a new generation of nuclear power stations is, of course, a matter of considerable interest to the Isle of Man Government. However, I must preface my Answer to the Hon. Member with the observation, Mr President, that, at present, there has been no announcement from the UK Government, or from anyone else in the adjacent isle, that they wish to construct a new nuclear power station.

Hon. Members will wish to know that the pertinent UK legislation when considering the construction of a new nuclear power station is the Electricity Act 1989 and section 36 of that Act, which states that:

‘A generating station shall not be constructed except in accordance with a consent granted by the Secretary of State.’

Hon. Members will no doubt be aware that the safety of the nuclear industry in the UK is presently assured by a licensing process by which a corporate body is granted a nuclear site licence for a specified location. In the UK, the Health and Safety Executive, through their Nuclear Safety Directorate, regulates the existing nuclear sites.

The Department of Local Government and the Environment has already made preliminary inquiries with officials within the Nuclear Safety Directorate on the subject of new-build nuclear stations. The Department has been informed that, in all likelihood, there would be a public inquiry ordered by the Secretary of State and that there would be no hindrance to the Isle of Man Government in making representations to such an inquiry. Indeed, Mr President, we shall do so in appropriate terms in that eventuality.

Should we be faced with the possibility of the construction of a new nuclear power station in the vicinity of the Irish Sea coastline, I can assure Hon. Members that the Government would examine such a proposal very carefully before making the appropriate representations, either through the public inquiry process or directly to the UK Government, by whichever means as may be decided.

Hon. Members will also wish to know that the Minister for Local Government and the Environment has already instructed his officers to maintain contacts with officials within the Nuclear Safety Directorate to ensure that the interests of the Isle of Man are fully recognised in all the pre-licensing process for any proposed new nuclear power station and that his Department is supplied with all relevant documentation.

Mr President, if I may then answer part (b) of the Member’s Question. If I may start by referring to our established Government policy, and here I would quote clause (c) of the Tynwald resolution of October 2002, which was endorsed by Tynwald Court. Clause (c) states:

‘Tynwald opposes the introduction of any new civil nuclear energy plants in the United Kingdom which will employ a fuel management cycle involving reprocessing at Sellafield, and requires the Minister for Local Government and the Environment to examine all proposals and consultations concerning the development of any new nuclear facility in the United Kingdom.’

Hon. Members may well recall that this clause was drafted with specific reference to reprocessing at Sellafield. For good reason, that was to acknowledge that the Isle of Man Government could be faced with the possibility that there could be a fleet of new nuclear power stations which would have no reliance or link to the reprocessing plants on the Sellafield site.

In such circumstances, the spent or used fuel would be removed from those nuclear stations and the fuel rods would be kept intact and only subjected to some form of chemical conditioning or encapsulation, which would allow those fuel rods to be consigned for permanent disposal to a national disposal facility at a location yet to be decided.

This method of dealing with the nuclear waste generated by a power station is known in the industry as direct disposal.

It is quite possible, Mr President, that all the necessary procedures for dealing with the spent fuel would be carried out on the new power station sites, in which case there would be no role for Sellafield.

Hon. Members, it could well be the case that reprocessing at Sellafield is not part of the fuel management requirements for a new generation of nuclear stations in the United Kingdom. That is not to say that our problems over the Sellafield site have gone away. The ultimate question regarding the location for the UK's national waste repository, which could well be an underground facility, will shortly be placed on the UK Government's agenda following the publication of the final report by their Committee on Radioactive Waste Management, which is CoRWM, which will submit its final report to the UK Government this summer.

The site selection process which we then expect the UK Government to initiate is likely to be a long drawn-out affair. It is certainly one in which we intend to take a very close interest and be involved. The Department of Local Government and the Environment has made the Council of Ministers aware, through the parameter-setting process, that budgetary provision will need to be made to ensure it can represent the Isle of Man Government's interests fully at the appropriate time.

I can also confirm that officials at the Department of Local Government and the Environment will be seeking continuing involvement with the stakeholder engagement process in connection with the nuclear waste disposal issue in the UK. Indeed, the Department's senior scientific adviser on such matters will be attending the final national meeting to be held by CoRWM in London on 9th May, where he will be able to hear a first-hand account of the CoRWM's recommendations to the United Kingdom Government.

Hon. Members, may I conclude by saying that we do not yet have all the facts regarding the arrangements for the disposal of radioactive waste before us. However, important information should appear upon the conclusion of the UK Government's energy review and the publication of the CoRWM's final report.

Our responsibility, Mr President, is to the Isle of Man, and I feel sure that the Hon. Member realises that, should we be presented with proposals which are not to our liking, then we will seek Tynwald support for opposing them, sir.

The President: Mr Singer.

Mr Singer: Thank you, Mr President.

I thank the Chief Minister for that very detailed reply. Unfortunately, Mr President, the reply raises more questions than the answers given.

I know, Mr President, you do not want to go into a debate on this, but one of the things that the Chief Minister said was that we will look at the proposals. Does that mean, first of all, Chief Minister, that if the proposal comes forward to put a new nuclear reactor, not for reprocessing but for producing electricity, on the Sellafield site, this Government, your Government, or the future Government, will not necessarily oppose that happening?

We know that the Cumbria County Council and their local MP are campaigning for the commissioning of a new nuclear plant in Cumbria, and that is in order to mitigate job losses, rather than looking at the safety record. Chief Minister, knowing the safety record of the Sellafield site, which is

very poor, can you assure me that when the proposals, as you said, are looked at, safety will be the primary thought within the mind of the Government as far as protecting the Isle of Man people is concerned?

The President: Chief Minister.

The Chief Minister: I think, Mr President, I go back to starting with my last comment, and that was, without doubt, as far as I am concerned, our responsibility is about the Isle of Man. Then again, you will find in the body of that reply – for which I apologise for being long – that we will be involved in the pre-licensing as well.

But I think I have to go back, in answer to the Hon. Member, and say that, as far as we are concerned, as far as I am concerned, we are still abiding by clause (c) of the Tynwald resolution of October 2002 – and it has not in any way been altered – and that is that we oppose – oppose – the introduction of any new civil nuclear energy plants in the UK which will employ a fuel management cycle involving reprocessing at Sellafield.

That, I think, is where we certainly are at this present time. We are being involved. We are there from the very start. As I say, there is a meeting on 9th May, and our chappy will be there. He will come back, I would suggest, with far better information from that because he will have heard what CoRWM actually report on the recommendations to the United Kingdom Government.

Certainly, I can assure Hon. Members that we will be involved, and safety, without doubt, will be the very priority, I would suggest, of the Isle of Man Government.

The President: Mr Singer.

Mr Singer: Chief Minister, the policy of this Government has been, and has been reaffirmed as, to see any nuclear facilities go from Sellafield, to see the place shut down and the place cleared? (**Mrs Christian:** Yes.) Yes, I know, that is the reprocessing; but surely...?

Is the Chief Minister aware that the new type of reactor that they are going to put there is unproven? It is an American reactor, the one that the British Government is looking at, which has never been built to the size that they would have to build it here. It is unproven. There will still be a problem with the waste, which is highly reactive. There is a lot of it still there now.

Surely, Chief Minister, the policy of this Government should be to see no nuclear facilities there until the waste can be disposed of properly? Whilst they are talking about disposal underground, that is not really acceptable, when the waste can be radioactive for hundreds, if not thousands, of years. With the geological structures, there is no guarantee that it will not cause a problem in future times.

The President: Mr Singer, you did say that we were not going to get into a debate. Try to keep it to a supplementary.

Mr Singer: Can I just make one further point? Would the Chief Minister also kindly distribute his original Answer to Members?

The Chief Minister: Starting at the end first, the answer is yes. I have no problem on that.

The Member, of course, immediately divides the two, and that is the processing and the actual plant. I said in the reply... and I am rather concerned when the Hon. Member says 'going to be put there'. That is something that, as I suggested in the Answer, we are certainly not aware of. Nobody has told us that it is going to be put there or what type it is.

Of course, the recommendations that we will be listening to very carefully, and the information that we have had put to us, is that any new nuclear facility in the entire United Kingdom probably will be one where the actual rods are disposed of on that site, which encourages us to believe that, okay, Sellafield will not have to take all this from wherever.

I am aware that there was planning put in for using an underground cavern just over on the coast, because I am kept in touch by a gentleman – I do not know why he has a concern for the Isle of Man – who lives in the area, who sends me on a regular basis anything and everything that is happening. We, in turn, have made sure that we have an input into that particular area as well.

Certainly, that is the difficulty of... the Hon. Member says it will be there for numbers of years and, of course, the same as at Sellafield, it will take an awful long time, even if they decide never to do anything there again, to actually run these things down. They have to be run down in a very careful way.

That is something that, of course, we will be kept informed of, because we do have a much better link now, I would suggest, with the people because we have got regulators looking after what is being processed and what energy is there, rather than before when they were both in the same basket. I can assure the Hon. Member that we are kept informed by the Department of Local Government and, in particular, the good doctor who has the contact with Sellafield and the regulators.

The President: Mr Singer.

Mr Singer: One final one. I thank you very much for your patience, Mr President.

Would the Chief Minister, first of all, agree that it appears that the Labour Government have u-turned on their policy on nuclear energy in the fact that, initially, a few years ago, they were saying they did not want to see nuclear facilities, and they now appear to want to see them?

Would the Chief Minister not agree that, if Sellafield area was considered to be a suitable site for nuclear facilities, the lobby that is still there for reprocessing might have its way and they may still continue to reprocess on that site?

And should we not say, Mr President, let us see the end of any nuclear facilities within the vicinity of the Isle of Man, because of the potential dangers of high-level radioactive waste, and also not forgetting security and terrorist action?

The President: But neighbours are neighbours, aren't they? (**Mr Lowey:** Yes.) Chief Minister.

The Chief Minister: First of all, of course, I do not think we would have any way in which we could stop the United Kingdom Government, if that is what they wished to do, but I would hope that we would be able to influence whatever that decision might be.

I have to say that our position is strengthened by the fact

that the Irish Government are also now piggybacking on our opposition, and they are a little bit further away than we are. Certainly, anything that can be done in that respect, where lots of these conferences and meetings are extremely helpful to enable us to get that help from other bigger nations...

Certainly, if they do a U-turn, Mr President, that will be something which we will try to influence, but at the end of the day, we will not be able to actually say 'you will not', because they are the sovereign nation.

The President: Finally, Mrs Crowe.

Mrs Crowe: Thank you, Mr President.

I just would ask the Chief Minister if he would agree that the Isle of Man is fortunate to have a leading expert in the nuclear industry in the guise of Dr Paul McKenna, who works in DoLGE and who is fully aware of all the happenings at Sellafield on a day-to-day basis and, indeed, takes part in the full consultation process on any happenings regarding nuclear fuel around the area that may affect the Isle of Man Government, and he does so in the name of the Isle of Man Government?

The President: Okay, Chief Minister.

The Chief Minister: Within the policy. I thank the Hon. Member for her helpful question. Indeed, Dr McKenna is not just recognised by those on the adjacent isle that way, but he is also recognised by those on the adjacent isle the other way. He very much acts as the person who gets the information and, in fact, distributes it, so I am very confident that we will be in there at the very beginning.

Certainly, at the end of the day, the resolution of Tynwald, in my opinion, is still valid, and that is that we oppose anything that is probably, in any small form even, threatening our safety here in the Isle of Man.

The President: We have given it a good airing.

Orders of the Day

Disability Discrimination Bill

Third Reading approved

2. Mr Waft to move:

That the Disability Discrimination Bill be read a third time and do pass.

The President: We will turn, then, to the Disability Discrimination Bill for Third Reading, in the hands of the Hon. Member, Mr Waft.

Mr Waft: Thank you, Mr President.

Traditionally, the avoidance of discrimination against people with a disability has relied upon a combination of voluntary and self-regulating measures. Research carried out in the Isle of Man into disability discrimination in the late 1990s found there was significant evidence of discrimination against people with a disability in many walks of life.

The research concluded that, although the great majority of the discrimination found was not felt to be deliberate, the recommendation was made that legislation should be introduced to protect people with a disability from discrimination. Indeed, since the early 1990s, many First World economies have taken steps to provide statutory rights for disabled people. The Disability Discrimination Bill 2006 will give people with a disability a coherent legal framework in keeping with the requirements of a modern and dynamic economy.

The Bill will provide protection against discrimination for people with a disability as they live their normal lives, by introducing measures to prohibit discrimination in connection with the provision of goods, facilities and services to the public. It will also seek to eliminate less favourable treatment in provision and disposal of premises.

It will be the intention of the Department to phase in the implementation of different parts of the Bill, particularly with the introduction of guidance and regulation. In the UK, similar legislation was introduced in 1995 and has been phased in over a 10-year period of time. In the judgement of the Department, it is felt that to bring in all the requirements of the Bill immediately would not work. Appointed Day Orders would need to look at the requirements of each individual area.

An example would be, say, a taxi provider who has just bought a new taxi which may not be disabled friendly. It is felt that it would be unfair and unworkable to make that taxi provider buy a new taxi immediately but rather, when they were purchasing a new vehicle, it would be reasonable to require that the vehicle be equipped to be suitable for disabled people.

This marks a significant step forward for those with a disability living in the Isle of Man and will establish a good formal foundation for further work as regulations and guidance are brought forward by the Government, as happened in the UK.

Recent examples from the United Kingdom where their Disability Discrimination Act has been effective include the following: a travel agent refunded the holiday costs of a person using a wheelchair booked onto an accessible holiday that was not accessible; a commercial company agreed to send information in large print to a person who was visually impaired. These simple examples demonstrate the benefits of the Act where suppliers of goods and services were initially unwilling to assist a person with a disability. That source is the Disability Rights Commission.

I thank the Members for their support and move that the Bill be read a third time and do pass.

Mr Gelling: I beg to second, Mr President.

The President: Seconder, Chief Minister. Mr Lowey.

Mr Lowey: I obviously support the Bill, Mr President, but I have to put two caveats in now, and I really think we ought to put the markers down.

It has been relayed at the beginning of this Bill when it was introduced by the Hon. Member, and that is we have got to walk before we can run – and that is not a pun. In other words, as illustrated by the graphic, the taxi, I do hope that those who are there to enforce it do not become heavy-handed, because I think it will not be in keeping with the spirit of what we are all attempting to do. And, while I

expect Government Departments to lead, I hope they are not going to be penalised at the first drop of a hat and be told there is a threat of prosecution unless they conform to the nth degree.

What I am trying to do is what the Lord Bishop rightly said when he highlighted what I would call an extreme position adopted in another place, which created an anomaly for Carlisle Cathedral, for example. I just find that almost indefensible, really, and not what I would call the everyday effect that hopefully these measures will have on people who are disabled.

What I am really trying to say is that we have got to take this step by step and in a positive way, but not an extreme way. With that, I will be supporting the Bill, but I think it ought to be underlined.

The President: Lord Bishop.

The Lord Bishop: Thank you, Mr President.

Quite clearly, I am delighted to see this Bill before us and will be supporting the Third Reading, and quite simply wish to say that, as guidance and regulations are drawn up, I look forward to interested parties actually being involved in that process so that, instead of having a set of regulations which we then find are unworkable, we actually work together for a set of regulations which are workable. Other than that, I am delighted to see this Bill before us.

The President: Mrs Crowe.

Mrs Crowe: Thank you, Mr President.

I am just seeking some guidance from the mover of the Bill and his example of a taxi driver whose old taxi was unsuitable, but on the new purchase of a vehicle, one would be expecting that the taxi would be accessible for those disabled persons. In my own case, I know we have many post offices that are not particularly accessible at the present time, but would the mover of the Bill suggest that any new facilities that were to open should be accessible to all persons who are disabled?

The President: Mr Singer.

Mr Singer: Can I support what was said by Mr Lowey, because I have exactly the same thoughts. If we put a parallel with Health and Safety, to a certain extent – Members will be getting today the Report of the Health and Safety Committee – where they will see that it is more the common-sense application of the regulations, not strident, almost, interpretation of what it said. I think that is most important, that people actually read what it says and apply it in a common-sense manner. The Brunswick Road...

Mrs Crowe: It is the law.

The President: Mr Waft to reply.

Mr Waft: Thank you, Mr President.

I thank the Members for their replies. I would say that reasonableness is the thread which runs through the whole of this Bill. The Bill will take some time to introduce the regulations, which are to be introduced, as I understand it, by the various departments. It would be in the departments' interests to make sure the proposed regulations would be

acceptable and are not draconian in any shape or form.

With regard to Mrs Crowe and the new buildings proposed legislation, that is in being at the moment. New legislation will encompass the ability for disabled access etc.

Mr Singer and Mr Lowey also addressed a similar situation with regard to how the regulations are to be drafted, as, indeed, has my Lord Bishop, but with regard to introducing the regulations. I do not think there should be any fears in this legislation. The main thrust of the legislation has yet to be drawn up by the various Departments, for instance regarding access for employment etc and transport; none of that is included in this Bill. It will be for the Departments to sort out their own regulations for their own particular area but, as I say, the need for reasonableness is tantamount within the whole of the Bill.

Thank you, Mr President.

The President: Hon. Members, the motion that I put to Council is that the Disability Discrimination Bill be read for a third time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

BILLS FOR SECOND READING

Audit Bill

Second Reading approved

3. Mr Waft to move:

That the Audit Bill be now read a second time.

The President: Now, Hon. Members, we turn to the Audit Bill, which is on the Order Paper for Second Reading, again in the hands of Mr Waft.

Mr Waft: Thank you, Mr President.

This Bill re-enacts, with amendments, the Audit Act 1983, which made provision for the audit of the accounts of public bodies in the Isle of Man and itself replaced the Audit Act 1886.

Like its predecessor, the 1983 Act was based on United Kingdom legislation dealing with the audit of accounts of local authorities but applies to central government as well as local authorities. Deficiencies in this legislation have become paramount. The legislation is incapable of keeping up with major changes in accounting and auditing practices in the United Kingdom.

The auditor has few powers to enforce accounting requirements against bodies or individuals. In particular, there are no sanctions against a body which fails to produce accounts on time. Audit operates only after the event. That is, it can only identify past defaults, not anticipate those in the future. The powers of the auditor and the courts to surcharge individuals for illegal payments, losses or deficiencies have never been used in the Isle of Man. The existing legislation does not address issues of corporate governance, internal financial management or measures of performance on the part of public bodies.

The Audit Bill 2006, however, seeks to address those concerns. The main changes made by the Bill are as follows.

Additional persons are disqualified from acting as an auditor to avoid conflict of interest.

Accounts are required to give a true and fair view of the body's finances.

The auditor is given wider duties with regard to a body's finances and activities, particularly to ensure that it is not acting illegally and that its internal management and controls are adequate.

Time limits within which a body must prepare its accounts and the auditor must complete his audit are imposed. The auditor is given new powers to demand information and access to documents and records. More detailed requirements as to the content of the auditor's report are imposed. Treasury may require the auditor to investigate or review specific matters and report thereon. The auditor is required to consider whether to make a special report on any matter.

The auditor is given power to serve a warning notice on a body which is acting or is about to act illegally. The body is required to consider and respond to the notice.

The power for the auditor or the High Court to surcharge individuals is abolished.

Tynwald, Treasury or the Department of Local Government and the Environment, in the case of local authorities, is given power to call for an extraordinary audit.

The Treasury is given wider powers to make regulations governing public bodies and audit, including power to apply United Kingdom or international accounting and auditing standards, and power to require a body to appoint or nominate an officer to be personally responsible for prescribed matters with respect to accounts and audit.

The Treasury is given power to give directions supplementing the requirements of regulations.

In addition, Mr President, the Bill simplifies the auditing requirements for registered charities. Only large charities, with gross income of over £50,000, will be required to have their accounts professionally audited, and other charities may opt to have them examined instead. The smallest charities, with gross income up to £5,000, will need neither audit nor examination, though accounts must still be filed in the General Registry.

This is a further legislative move to lessen the audit burden placed upon our smaller organisations and complements the provisions of the audit exemptions granted to small companies by amendment of the Companies (Exempt and Non-Resident Companies) (Audit Exemption) Regulations 1994, which were approved by Tynwald on 13th December 2005.

Mr President, I beg to move that the Audit Bill 2006 be read a second time.

The President: Mrs Crowe.

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

The President: Mr Lowey.

Mr Lowey: Yes, Mr President. Just one or two comments really.

I note that in clause 3:

'All accounts required to be audited in accordance with this Act shall be audited by a qualified auditor...'

I understand; but then it says the people in section (5) of clause 3:

‘(5) The following persons are not qualified for the purpose...

- (a) a member of the Council or the Keys;
- (b) a member of or employed by a Department or Statutory Board;
- (c) a member of the Isle of Man Civil Service...

So, there is a large swathe of people being excluded, whether they are a qualified accountant or not. I note that a lot of the people who could be auditors are members of a local authority. They could be an auditor. Why are they not excluded? That is number one.

The other thing I notice is that, if you are employed by the Gaming Commission, in the same Act at item (6), you can be exempt. You can be an auditor and be employed by the Gaming Commission. There must be a reason for that.

So, in one case, they are exempted... if you are a local authority, it does not matter, and if you are a member of the Gaming Commissioners, you are exempt. I find that rather strange, and perhaps the mover could let me know the reasons for that?

The President: Mr Singer.

Mr Singer: Thank you, Mr President.

I did raise at First Reading the position of charities, and I have got an amendment to move, but could I refer the Hon. Member to a news release from the Treasury on 4th April, which was entitled ‘Audit exemption raising thresholds’? It was a document requiring a public response, and the quote that Treasury said was:

‘Treasury will continue to monitor the issue and will review the £1 million turnover limit again in future. The review will also consider whether to introduce an audit exemption for charities and how to ensure that the current audit position for exempt companies is maintained in the new 0 per cent corporate tax regime.’

And then there is talk about raising the thresholds to make companies audit exempt if the annual turnover is £5.6 million or less and its balance is £2.8 million, or it employs 50 people or fewer.

Can I ask the hon. mover of the Bill how this actually then coincides as such with the question that I asked about charities? Is it likely that the Treasury are going to exempt charities which may apply to be exempted if they are over the £50,000 limit?

The President: Mr Waft to reply, please.

Mr Waft: Thank you, Mr President.

Just to reply to a couple of those points, Mr President. With regard to Mr Lowey’s point... it is to avoid a conflict of interest where it may arise. With regard to the Casino Act, it is outwith the Public Audit Act apparently, so they tell me.

With regard to Mr Singer, registered charities and raising thresholds, they have been in the news recently, and he does refer to the news release with regard to audit exemption. Audit exemption has been subject to consultation with the business community.

And the raising of the thresholds. It says that Treasury will continue to monitor the issue and will review the £1 million turnover limit etc, so that is a case that it is continuing, as I understand, to be decided upon.

The President: Mr Lowey, are you wanting a further explanation?

Mr Lowey: Just a little bit. I apologise to my friend. I usually try to get these things pre-empted, but it just strikes me as rather strange. If the principle is to avoid a clash of interests, then a civil servant’s clash of interest is no different, I would have thought, than a member of a local authority’s, because they too get audited and they are required...

To say that in the Gaming Commissioners, the Isle of Man Gambling Control Commissioners, you are employed as an accountant but it does not come under that... I would have thought the fact that a commissioner who is an accountant can be treated as not employed when, in fact, he is employed seems to me to be a rather unnecessary thing.

The President: Mr Waft.

Mr Waft: We will probably be able to deal with it as we come to the Clauses –

Mr Lowey: I appreciate that. I appreciate that.

Mr Waft: I think it is the main principle of the Bill at the moment that we are discussing.

The President: So, Hon. Members, what I would put to Council is that the Audit Bill be read for a second time. All those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Audit Bill Consideration of clauses commenced and adjourned

The President: We turn, then, Hon. Members, to deal with the Clauses stage of the Audit Bill, and I call on Mr Waft to move clause 1.

Mr Waft: Thank you, Mr President.

Clause 1. This defines the central and the local bodies whose accounts are subject to the public audit in accordance with this Bill, and enables bodies to be added to the list.

The only major addition is in subclause (1)(g), offices and departments of Government and the Legislature, but more flexibility in the application of public audit to certain bodies is permitted by subclause (2).

I beg to move clause 1, sir, be part of the Bill.

The President: Mrs Crowe.

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

The President: Mr Lowey.

Mr Lowey: Well, we might as well get it dealt with here then, Mr President. Is the Gaming Commissioners a part of a department? I believe it is a part of the Department of Home Affairs; not a Statutory Board, but it is an arm of a department. It cannot be in limbo. It cannot be one thing and

not another. It has got to be either a part of the Department... and, therefore, it is part of the exclusions that it is going to be subject to, and its employees should be considered, in my view, the same as any other member of that Department, till I can be persuaded to the contrary.

The President: Mrs Crowe.

Mrs Crowe: I am sorry to raise a query even though I am seconding, but I wonder if the mover could tell me do all Statutory Boards, at the present time, conform to the same accounting standards, or are some Statutory Boards accounting to GAAP standards at the present time?

The President: The question is not relevant to the Bill, I would have thought, but never mind. Mr Waft.

Mr Waft: Just dealing with the last question first. They are varied and different, the different local authorities. Some have professional chartered accountants, some have accountants, some have finance officers, and some have somebody trying to do their best with what they have got. So, we get a varied –

Mrs Crowe: I am sorry, Mr President. I am fully aware of the standards within local authority accounting, which is why I am delighted to be seconding this Bill. I was querying Statutory Boards and it is my assumption, at the present time, that some Statutory Boards are accounting to GAAP standards, and it was a query... I wondered, whilst there were officers present, whether there could have been a nod about that or not. Maybe not. I can pick that up at a later stage.

Mr Waft: Not to my knowledge do they all comply. I think that is the principle of this Bill, to get them all...

The President: Mr Waft, have you replied to Mr Lowey's point?

Mr Waft: Just finishing off Mrs Crowe's point. This will be clarified in the Accounts and Audit Regulations 2006, which will be presented to Tynwald upon enactment of the Bill, when, hopefully, it will be clarified for you. Whether –

The President: Hold on. Mr Attorney, before you come back again, Mr Waft.

The Attorney General: Mr President, I hope with a view to being of assistance to the Hon. Member, would the Hon. Member agree that, in relation to clause 1(1)(h) of the Bill, there is a power for the Treasury, by order, to direct that this subsection shall apply to any other body? If there were to be a concern about, for example, the Gaming Commissioners, would the Hon. Member agree that the Treasury could extend the obligation to have accounts audited to the Gaming Commissioners by virtue of clause 1(1)(h)?

The President: Mr Waft, please, to reply.

Mr Waft: I take that advice, Mr President, that with clause 1(1)(h) Treasury would be able to clarify the problems that arise from that situation.

Mr Lowey: I do not want to press the point too hard but

it then poses the question why not include them in the first place? (*Interjection*)

The President: What I will put to Council is that clause 1 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 2.

Mr Waft: Clause 2, Mr President. This clause requires every public body's accounting year to end on 31st March unless the Treasury otherwise directs or there is a statutory provision to the contrary. For example, a burial authority's accounts are to be made up to 31st December under the Burials Act 1986.

I beg to move clause 2.

Mrs Crowe: I beg to second, Mr President.

The President: The motion, Hon. Members, is that clause 2 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 3, Mr Waft.

Mr Waft: Clause 3, Mr President. This clause makes provision for the appointment by the Treasury of public auditors and their qualifications for appointment. Minor changes are made from the present law, which include a revision to the period of appointment for public auditors, which is now five years, and such provision as to enable more than one auditor to be appointed for the same body.

It is also worth bringing to the attention of Members the reference to the limited liability company, which is new.

I beg to move clause 3, Mr President.

Mrs Crowe: I beg to second, Mr President.

The President: Mr Lowey.

Mr Lowey: I am sorry. Accepting the reply that I got before that it is to stop a clash of conflict, can the mover explain to me why it does not include members of local authorities who may be...? As you say, there is clash of, you know... and they can be employed to do it. Yet here we are, putting primary legislation, which excludes Members of Tynwald – which I understand and can go along with – but what I cannot see is why include the civil service?

Well, okay, I can see they are agents and arms of the same body and they need to be excluded. But, then, so are local authorities, and I think they should be included.

Mr Singer: Move an amendment. Just move an amendment, then.

Mr Gelling: Mr President, only perhaps a comment that might be helpful or otherwise. I think if you look at that particular issue, the others are paid servants of Government. Local authorities, of course, are unpaid servants of an authority, whose job could, in fact, be a fully fledged accountant who earns his living by it. I would suggest that the conflict would come in if that person was asked, for argument's sake, to audit the affairs of that particular authority.

I think that is where the conflict would actually arise, rather than being a paid servant of the Government. I do not

know so I cannot comment on it being fact.

The President: Mr Attorney.

The Attorney General: Mr President, again if I could, hopefully to be of assistance, in relation to clause 3(5)(f), it says that:

‘The following persons are not qualified for the purpose of subsection (1) –’

and it goes on to say there:

‘(f) in relation to the accounts of a body referred to in section 1(1)(c)...’

so that would be a local authority, (**Mr Lowey:** Yes.)

‘a person who is... a member of or employed by that body;’

So, in fact, although I agree it is not the most straightforward way of referring to it, it seems to me that a member of a local authority, or someone employed by the local authority, is, in fact, not qualified –

Mr Lowey: Is excluded.

The Attorney General: – is expressly excluded, albeit in a rather mysterious way.

Mr Lowey: I am grateful to the learned Attorney –

Mrs Crowe: Who drafted the mysterious legislation!

Mr Lowey: – and I can sleep easy in my bed tonight.

The President: Mr Waft, would you care to reply, sir?

Mr Waft: No, thank you, Mr President. (*Laughter*)

The President: In that case, Hon. Members, may we put to Council that clause 3 do stand part of the Bill. All those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 4, Mr Waft.

Mr Waft: Clause 4, Mr President, lays down the general duties of a public auditor in relation to any accounts he audits. It makes significant changes to the matters to which he has to have regard.

For the first time, he is to consider whether the accounts give a true and fair view of the financial situation or disclose any payment or transaction which is contrary to law.

He is also to consider whether the body’s internal management and controls are adequate and, in the case of a central body, whether it has complied with any code of conduct prescribed by the Council of Ministers. In this respect, the corporate governance principles and code of conduct approved by Tynwald in November 2005 is likely to be prescribed.

I beg to move clause 4 stand part of the Bill.

Mrs Crowe: I beg to second, Mr President.

The President: The motion I put to Council, Hon.

Members, is that clause 4 do stand part of the Bill. All those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 5, Mr Waft.

Mr Waft: Clause 5, Mr President. This clause gives the auditor a right to be given facilities and information needed for the purpose of his audit and the right of access to all relevant documents and records.

The categories of documents and records covered are significantly widened. They will now include computer records and documents held by certain third parties. Obstruction or non-compliance is a criminal offence. There are no changes other than obstruction.

I beg to move, Mr President.

Mrs Crowe: I beg to second, Mr President.

The President: Mr Lowey.

Mr Lowey: I support the widening and the powers that this gives. I think it is a comfort factor for the general public. Could the mover tell me, if somebody refuses to do it or destroys it, what are the penalties? (*Interjections*)

Mr Singer: £5,000.

Mr Lowey: £5,000?

Mr Singer: Bottom of page 6.

Mr Lowey: Yes, well, I am grateful for that. I do not think that £5,000 is a big enough deterrent, because I think, in some of these cases, the figures could be much more substantial than that. Is £5,000 adequate?

Mr Butt: There could be six months’ imprisonment as well.

Mr Lowey: Yes, well...

The President: Summary conviction, Mr Lowey.

Mr Lowey: Yes, indeed. I think that some of the figures that we know of are, you know...

Mrs Crowe: Mr President, I do support Mr Lowey’s view on this. We draft legislation which will be in place... and we know the last Audit Act has been in place for 20-odd years. In 20 years, £5,000 will be, perhaps, the tea money. I think it is always dangerous when we actually put the figures in –

Mr Lowey: Maximum.

Mrs Crowe: – the primary legislation and there is no other way of – (*Interjection*)

Yes, that is what I was going to say. There is no other way of altering it once it is there in black and white, whereas if –

A Member: We could amend it.

Mrs Crowe: Well, yes, but they do not get amended, as we know, do they?

The President: That is not the question though.

Mr Butt: Mr President, most penalties of this nature have a six months' imprisonment alternative and that might be more of a deterrent, perhaps?

The President: Hon. Members, can I point out to you that we are dealing with clause 5 now. It is fine talking about the level of fine which is within the Green Bill and, in fact, even the level of penalty in relation to imprisonment. If you wish to put it in, Hon. Members, it is entirely up to you to move an amendment.

Mr Lowey: I appreciate that, Mr President. I am raising the matter primarily as one of public concern, of whether this Bill is important, and I think it will go ahead.

We used to have Statutory Revision Bills which – and may I speak to the Chief Minister, through you, sir, of course – were very handy to uprate things generally. We have fallen out of favour of doing that.

My point is that I do believe that some of the amounts of money now... we are actually lowering the figure here, or we were going to, from £5 million to £1 million initially for it to be audited... or is it the other way round? Anyway, we seem to be lessening the controls and, for these amounts of money, to be told, 'And, by the way, if you do not conform and help us, you get up to a maximum of £5,000'... I think we introduced a Noise Bill which had almost exactly the same sort of penalties, and I do not think there is a comparison between the two.

I appreciate your point, sir, about we can amend the Bill. I appreciate that very much. I think it is equally important, at this stage of discussion, that we should flag up that we believe that the penalties should reflect what I would call the seriousness of the offences. I just query whether we have got into a mindset that this is acceptable practice now. I do not think we are strong enough in this particular area.

I do not wish to amend it, sir, but I am still thinking it is right to...

The President: I was just considering the point as well, Mr Lowey, and I think, if memory serves me right, that, in most of the Bills which come before us, summary conviction has been standardised at £5,000. Now, it is a question, really, of whether or not Members ultimately want to look at that standardisation.

Mr Singer: Can I, with your permission, move an amendment so that we can have full discussion on this, because we seem to be passing it round and not making any decision? We need to decide either, yes, we think there should be a possibility of a prison sentence, or not. Could I move an amendment 'not exceeding £5,000 and/or six months' imprisonment'. Is that suitable? And let us discuss it. Is anybody wishing to second that?

Mr Butt: I would second that, sir.

The Lord Bishop: I would second that, sir, and reserve my remarks. (*Interjections*)

The President: Hon. Members, can we just take it steady. I think the point has been raised. I think, to some extent, that it is a pity it was not picked up and raised at the

Second Reading and then we would have been more in a mind to move.

Could we take our time, if that is the wish of Members. So, Mr Singer, your amendment is:

'is guilty of an offence and liable on summary conviction to a fine not exceeding £5,000'

and then adding the words...?

Mr Singer: – 'and/or six months' imprisonment', if that is the correct terminology. (*Interjections*)

The President: There is, actually, a wording which gets used from time to time...

Mr Gelling: Could I, therefore, Mr President, whilst looking for that... Mr Attorney, you did say that this is in common with other legislation; in other words, 'liable on summary conviction to a fine not exceeding £5,000'.

The President: I think, in fairness, I put those words into the Attorney's mouth, so I do not want him to be found guilty of something which might not be true.

Mr Gelling: Right, my question would be, therefore, if we alter this, are we then going to alter the ability in the future to be able to change that particular figure across all other legislation under the words of summary conviction?

The Attorney General: No, I think not, Chief Minister. I think that if, in fact, there were to be a Statute Law Revision Bill which amended penalties for summary offences generally, this would be caught by that as well.

Mr Gelling: We do not have Statute Law Revision Bills nowadays, Mr President.

Mr Lowey: We should.

The President: At one particular stage, I can even remember what was known as a Fines Bill. Never mind. (*Discussion amongst Members*)

Hon. Members, just hold on. I appreciate that whilst we are waiting here, you engage in conversation, but it does make it difficult for *Hansard* because we are all...

Mr Gelling: I pose an unspecific question, Mr President. Is that, perhaps, why it is not in here? How could you put a body to prison? How could you... who...? This is talking about the relevant body. If someone was, therefore, going to go to prison, who would be the person sent to prison? Would it be the officer or the clerk or the...?

Mr Lowey: Chief executive.

Mr Gelling: The chief executive? I just wonder if that is why...?

Mr Singer: Can I say it is an and/or, so if it is not a suitable punishment, then it will not be applied.

Mrs Crowe: Yes, Mr President. It could be the relevant body – the body corporate, the commissioners or whoever the body corporate was – or, indeed, as was the case, it could be the

person whose custody or control such a document was in. So, it could be either/or, depending on what the court decided.

Mr Lowey: If an individual obstructs, maybe on behalf of a corporation, but there is an individual that either gets rid of the information or whatever –

Mrs Crowe: Or without the body corporate knowing.

Mr Lowey: So, there is, I believe –

Mr Butt: Back in the subsections of (3), persons are mentioned.

The President: Mr Attorney.

The Attorney General: I think, Mr President, it would look as if the correct way of approaching this is to say:

'is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding £5,000 or both.'

Mrs Crowe: Well, there we are.

Mr Singer: Why didn't I think of that?

Mrs Crowe: Yes! A double whammy!

The Attorney General: That would be:

'is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding £5,000 or both.'

If I may, Mr President, in relation to the question raised by the Hon. Member, the Chief Minister, subclause (7) of clause 5 is directed against 'a person who intentionally obstructs', and so on. So, it would be against an individual rather than a corporation.

The President: Right. Now then, Hon. Members, just to get it right, at the bottom of page 6, dealing with subsection (7), the proposal from Mr Singer is that we add in the words, after 'to', so it is... I will read the complete sentence again, as Mr Attorney did, and hopefully that is right:

Clause 5, page 6, line 37:

For 'to a fine not exceeding £5,000' substitute 'to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000, or both'.

Those are the words which will be utilised in that particular section, subject to you approving the amendment. Any other Member who would like to speak about it?

Mr Waft, if you would like to reply, sir.

Mr Waft: Yes, Mr President.

I think it is a bit harsh that whoever takes on this onerous role of trying to do accounts for a local authority would have the worry of a six-month imprisonment or a fine of £5,000 if he fails to give the auditor the assistance when he needs it. Is there going to be any time between when he needs it and when it is available, or when is he going to take him

to court? I just think it seems a bit harsh having that six months as well –

Mr Lowey: I do not think it is harsh enough.

Mr Waft: The £5,000 fine, I would have thought, would have been sufficient. However, I would be under the impression that the fines for these sorts of offences are standard throughout the legislation that does come through, and if we start picking and choosing as to whether this fine will be £10,000 or six months or a year, we are treading deep water really.

If we want to make an overall blanket agreement that... alright, the Statute Law Revision can be changed from time to time but has not been, but there should be some sort of process so that there is equanimity with regard to fines and imprisonment.

The President: Mrs Crowe.

Mrs Crowe: Mr President, as seconder of the Bill, I actually support the amendment. I really do think that it is essential that auditors are always provided with all the relevant information that they require, and far too often, relevant information is missing. It is very easy, in this day and age, to dispose of information that is relevant to the audit.

I am sure we will be hearing in the not-too-distant future about information that may or may not be missing that was required by auditors, and I think it is essential.

In the case of the person who is to supply the information to the auditor, the relevant body, that is the Statutory Board, the Government Department or the local commissioners, whoever they might be, has a responsibility to ensure that auditors are given all they require to complete their audit of government, or indeed all, public accounts.

If it is... it says in both the cases it is either the relevant body, in which case it could have been charged against ratepayers – which is why I quite like the idea of imprisonment, if it was the ratepayers who were going to pay the fine in any case – or the person who kept the information from the auditor.

Mr Lowey: And there will be a court who will decide.

The President: Mr Butt.

Mr Butt: Mr President, I just point out that, if this penalty were to be imposed or approved, it does refer to people who intentionally obstruct, (**Mr Singer:** Yes, absolutely.) (**Mrs Crowe:** Right.) who are deliberately trying to avoid things happening –

Mr Lowey: The court will decide that.

Mr Butt: – and if that is the case, by that stage, obviously, things will have gone way beyond what is the normal procedure.

I am sure the court, when they take into account what actually the offence is, will take into account whether it was a definite obstruction or just a neglect, in which case the penalty, I am sure, would be appropriate to whatever action they took.

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

Mr Waft: Yes, I would just like to say ‘intentionally obstruct’ is a vague notion. I know when people go to try and audit shops and premises, you will find bills all over the place. If it is a butcher’s, you will find it in a butcher’s van or under a piece of meat, and it takes a long time to get all the bits and pieces together.

To take it as whether it is wilful or not is an emotive thing, and I just wondered what sort of side issues there would be to state that this was an intentional obstruction. It would be for the courts at the end of the day to decide, I appreciate that, but you are giving an added whip to the imprisonment –

Mrs Crowe: Mr President, these are public bodies, not the local butcher who may have misplaced the odd invoice.

The President: Okay. Now, Hon. Members, I have to put to...

Mr Singer: Can I sum up on the amendment, Mr President?

The President: What I have to put to Council is clause 5, Hon. Members. To that, we have the amendment. I am aware that the amendment will be circulated to Hon. Members in writing, because it is on its way; nevertheless, I think we have debated it enough. The wording is:

‘is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000 or both.’

Hon. Members, I put to you first the amendment. Those in favour of the amendment, please say aye; against, no. The ayes have it. The ayes have it.

Mr Gelling: Divide.

The President: It is a bit late on that one, so we will go straight on to putting to you then the clause as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Now, Hon. Member, Mr Waft, we will turn to clause 6.

Mr Waft: Clause 6, Mr President. This requires the auditor to prepare a report on any accounts that he has audited. New provisions impose a deadline for the report and require the relevant body to publish it.

The President: Is that it?

Mr Waft: That is it, Mr President, yes.

The President: Hon. Member, Mrs Crowe.

Mrs Crowe: Thank you, Mr President, I beg to second.

The President: The motion I put to Council then is that clause 6 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. We turn to clause 7.

Mr Waft: Clause 7, Mr President, gives the Treasury

a new power to direct the auditor to investigate or review specific matters in the course of an audit and report upon the results. For example, if there is concern about members’ allowances in relation to a particular local authority, the auditor could be required to investigate them.

I beg to move clause 7, sir.

The President: Mrs Crowe.

Mrs Crowe: I beg to second, Mr President.

The President: Mr Singer.

Mr Singer: Could I ask why they cannot do that now? What is the change?

The President: I think they could do that now. If my memory would serve me right, I think it would be within their rights for an auditor to review.

Mr Singer: That is why I cannot understand the clause.

The President: Maybe it is not at the direction of the Treasury, I think that is the...

Mrs Crowe: No, I think, Mr President, the difference is within the Audit Act. The government auditors work to the Government Audit Act and do not work to the professional standards which, as you say, would include a special report of any kind. That is my assumption.

The President: I think the auditor would be carrying out his duties under the original Audit Act, but in this one it introduces, does it not, that the Treasury may direct the auditor, and I think that might be the new part.

Mr Lowey: Could I, Mr President, just pose a query? If the Treasury employs a set of accountants to do a certain job, is that not within the remit of the employment contract to say, ‘And by the way, we may direct you to do this, this and this – A, B or C’? That should be the way it is worked now, is it not?

If it is going into primary legislation, why is there a need for it? That is really why I posed the hypothetical question. Why is there a need to write down that the Treasury *may* direct, when in fact it is a requirement of the employment of a firm of accountants by the Treasury to produce... They are providers, we are employing them... or if I was in the Treasury, I would be employing them to do a service for me, and that would be in the contract of employment.

The President: It could be outside of the Treasury or could not be –

Mrs Crowe: It is, yes.

The President: Mr Attorney? It does say in the explanatory notes of the Audit Bill 2006, Hon. Members:

‘Clause 7 enables the Treasury to require the auditor to investigate or review particular matters.’

and I think this is probably the new provision.

The Attorney General: Yes, it is, Mr President, a new provision which does not appear in the 1983 Act. I do take on board what the Hon. Member Mr Lowey has said, that an auditor may be commissioned to carry out a specific task, which will involve investigation and review of other matters, but I think that it is important to put that on a statutory basis in case it is argued in future that the Treasury did not have the power to do that.

Mr Lowey: I have no difficulty with that.

The President: Mr Waft, would you care to...?

Mr Waft: Yes, Mr President. I did actually make that point when I read out clause 7.

The auditors are required to audit independently; that is, being directed about what they audit within the audit part of the regulations. If the Treasury has a concern, they may direct rather than having to specifically appoint...

The auditors audit the books according to their professional expertise and they are limited with regard to their professional ability as to what they can and cannot report on. I would presume the Treasury is concerned for the future, probably because of what has gone in the past, that they need to be able to require to investigate certain circumstances that they are concerned about.

Mr Singer: I can read prescriptions, by the way! (*Interjections*)

The President: Hon. Members, the motion that I put to Council is that clause 7 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 8.

Mr Waft: Clause 8, Mr President, imposes a new requirement on auditors, if they come across a matter of particular concern, to consider whether, in the public interest, to flag up that matter and, in a serious case, to make an immediate report on it.

To ease any concerns on the consistent use of such provision, the criteria to be applied in deciding whether the public interest requires action under this clause may be specified in regulations.

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

Mrs Crowe: I beg to second, Mr President.

The President: The motion that I put to Council is that clause 8 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 9.

Mr Waft: Clause 9, Mr President, gives an auditor a new power to serve a warning notice on a body which is doing, or is about to do, something which is contrary to law. The body is required to consider the notice and tell the auditor, and the public, whether it intends to continue and, if so, why.

All of this must be done within a timescale prescribed by regulations, and non-compliance is an offence. The auditors' expenses involved in such action will be borne by the relevant body, subject to the warning notice.

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

Mrs Crowe: I am delighted to second that clause, Mr President.

The President: Mr Lowey.

Mr Lowey: Could I just ask, we are always told that auditors only deal with things that have happened – (*Interjection*) Well, I think that phrase was used earlier on. Here we have a situation where we are putting into primary legislation where the auditors can warn the authority or board in advance of them doing something.

I would like a little bit more explanation, if I can please, of how they can foretell what the authority is going to make. How do they know that the authority or the Department is going to make a decision and warn them about it in advance?

The President: Mr Waft.

Mr Lowey: Is there a 'Well, this might happen and therefore we can deal with it'? I would like a theoretical scenario to sort of –

Mr Butt: Could I say, Mr President, it would appear that perhaps in the wording of (a) of that section, the auditor is actually carrying out an audit, or has carried one out and has observed something, presumably, something has happened, and that is when they make the warning.

Mr Lowey: Yes, okay. I understand the need for it, but I cannot get my head round an explanation. How do I explain to people that we have given an auditor the authority to pre-empt something when at the same time we are saying and by the way, they only audit things that have happened in the past?

Mrs Crowe: Well, Mr President, in order to be helpful. If, for example, the public body concerned was negotiating a bank loan that was spotted, or whatever it might be, in the accounts, that they could see that something was about to happen that may be contrary to law, in their view, then they would have, at that time, sufficient time to warn Treasury, or the public, that these things may well be happening and may well be contrary to law and may well need some examination, which is not in the present Audit Act at the present time.

It is a tightening up of all these regulations whereby little things can slip by, because at the present time, the auditors cannot report when they perhaps see something like that, that they can see through their financial tracings, if you like.

Mr Lowey: Yes, I have no difficulty with the principle. I am just trying to get my head round when and how would it come into play, because I am working, if you like, on things that... I think this is an area that needs tightening up in the public interest, and the only people that can do it are the people we are sending in to keep an independent check on things.

I want to support this, and I am going to support it, obviously, but I just want to know what I am supporting. It is not what I think, it is what is actually written that gives me –

The President: Mr Gelling.

Mr Gelling: Mr President, by keeping consistent, does it mean that clause 6 needs, again, amending, because it is a conviction and a fine not exceeding £5,000? If you do not heed a warning, well, we are getting into a depth of six months in prison if you do not heed a warning. I just wonder whether, for consistency, Members are going to amend that as well, and perhaps the Member moving the Bill could –

The President: The Lord Bishop.

The Lord Bishop: Mr President, surely no, because this is a body, whereas the last lot was a person.

Mrs Crowe: Or body.

The Lord Bishop: No, in clause 8, as the Attorney pointed out... not clause 8, sorry, clause 5. The subclause (7) starts with 'a person who intentionally' and then ends with 'is guilty'; whereas this section actually has (**Mrs Crowe:** Okay.) in subclause (6) 'a body fails to', so it is different.

Mr Lowey: The definition of a body... is there a definition? (**A Member:** Yes.) There is a definition of a body.

The President: Okay, Mr Waft, reply sir, dealing with clause 9.

Mr Waft: Thank you, Mr President.

It is a warning notice, I would have thought, being a lay person in these matters, for an auditor to turn round and say, 'Look, you are heading into deep water and there are problems afoot. If you continue down this line, you will find yourself acting illegally, and it is my position, I would have thought, according to this Bill, it gives me the chance to warn you that this possibility is in front of you. If you do not do something quite soon to rectify the situation, then I am afraid you are going to have problems in the future.'

The President: Hon. Members, the motion I put to Council is that clause 9 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 10, Hon. Member, Mr Waft.

Mr Waft: Thank you, Mr President.

Clause 10 re-enacts the existing powers of an auditor to report an illegal payment or transaction to the High Court. The power to surcharge individual members or officers is abolished. This amendment has been imposed through the deficiencies experienced in the United Kingdom in enforcing the powers of surcharge. Redress could be invoked through the court process.

I beg to move clause 10, Mr President.

The President: Mrs Crowe.

Mrs Crowe: Thank you, Mr President, I beg to second, but I would reinforce the small afterthought that Mr Waft just said then, that redress for surcharge could be enforced through the High Court if there was some... or, certainly, redress could be enforced through the High Court.

The President: Mr Lowey.

Mr Lowey: I am perturbed on this one because I do think it is a good deterrent for individuals who are serving on public bodies that if they act wilfully – I am not saying inadvertently, wilfully – they should be surcharged, and because it is difficult or it is having difficulty... If it is difficult to surcharge them in the existing one, how much more difficult is it going to be surcharging them through the courts? Even more difficult, I would assume.

For the life of me, the mere fact that nobody has been surcharged does not make it any less relevant to be in, as a sword of Damocles hanging there. I do think the case has got to be made stronger to me before I am going to remove it, to tell me why the benefits of not having it outweigh the benefits of having it.

I am not being awkward, I am just being... I want to be reassured that what we are taking away is a natural deterrent which is already there.

The President: Mr Attorney.

The Attorney General: Mr President, in relation to that, it seems to me that clause 10(3)(d) may give the Hon. Member some comfort insofar as the court does have the power to make such other order as appears to it to be appropriate.

If the auditors apply to the court and they feel that a particular item or transaction is contrary to law, the court can, first of all, grant an injunction. That would prevent any future recurrence of the problem and would restrain somebody from doing anything illegal as a result of that.

Secondly, it can order rectification of the accounts, so it can put the accounts in good order and can direct that the auditors' costs be paid.

But then it can make such other order as appears to the court to be appropriate. Whereas, certainly, there is no power, as we have under section 7 of the Audit Act 1983, to order surcharge as such, it would seem to me that it may be open to the court to say, in relation to a particular individual, 'Yes, not only did you prepare those accounts wrongfully and submit them to the auditor but, instead of paying £5,000 for buying a new tractor for the authority's sports ground, you have actually paid it into your own account', and therefore the court could order that the money be repaid to the local authority.

I think that it might not be as bad as the Hon. Member understands.

Mr Lowey: Correct me if I am wrong, Mr Attorney, but do the courts not look at the proceedings of Tynwald and say, well, Tynwald has indicated that they do not think it is a serious offence by omitting it? Therefore, they will be guided, if you like, when it comes to that by saying, well, alright, they've been penalised the £5,000, or whatever it is, by doing this. The mere fact that that is left in as a safeguard is only...

Do they not take a guidance from the readings of Tynwald proceedings and when the legislation was actually being enacted? If we are signalling that we do not think it matters any more or it is too difficult to enforce, and therefore we should not have it, then we are signalling, if you like, that we do not wish that to be considered by the courts.

The President: Mr Butt.

Mr Butt: Mr President, I think perhaps this section does not actually refer to an offence as such, it is just a case where a board or authority could have made a mistake, contrary to law, perhaps not even realising it, and then it has to be remedied. It does not actually cover people deliberately committing acts.

The President: Mr Attorney again.

The Attorney General: Mr President, could I answer the very important question put by the Hon. Member Mr Lowey?

I think he is actually right that if you were, for example, representing someone who was going to be surcharged, if we use that word, the argument could be mounted that the intention of Tynwald was to do away with the power to surcharge which is currently in section 7 of the Audit Act 1983, because Tynwald did not replicate that power in the new Bill.

The danger, if you like, is that because you are excluding that power, (**Mr Lowey:** That is right.) you cannot reintroduce it by the back door. (**Mr Lowey:** No.)

I think my advice would be that if Hon. Members truly do wish to have the power to surcharge, then that should be stated expressly in the Bill. That would certainly put it beyond doubt. I have tried to explain that it may be possible to rely on subclause (3)(d), but it might not be possible.

Mr Lowey: I am sure it will not be.

The President: And subclause (3) does actually use the words the High Court 'may'.

Mrs Crowe.

Mrs Crowe: I think it has always been the case, certainly with local authorities, that the penalty of surcharge was always available should anyone act, as the Attorney has said, deliberately irresponsibly with their fiduciary responsibility. That has always been something that has been stressed, that all local or statutory bodies could, in fact, be surcharged if, as I say, they did act irresponsibly.

I know that this has had some consultation with the auditors, but I am not sure as to why the statutory surcharge ability has been removed.

The President: I am beginning to feel, Hon. Members, sitting here, trying to keep you moving, that in fact we are getting into somewhat deeper water. I do not know what Hon. Members feel but I think Mr Lowey wishes us to follow this one up in a more formal form.

It may actually be wiser for Council, be it that we normally move straight onto clauses after the second reading... Mr Waft, as the Hon. Member in charge, it may be wiser for us to just stay it at this stage where we are and invite Mr Lowey to take such...

Mr Lowey: I am concerned about it, Mr President.

The President: Do you wish to come back then with an amendment or the introduction, as Mr Attorney is suggesting, of the original clause 7 in the 1983 Audit Act, to insert that into this particular measure? That would be... I would rather see it done with preparation than trying to do it now on the hoof.

Mr Lowey: No, sir.

The President: Well, no, fine. I have made my comment.

Mrs Crowe: I think, Mr President, it could be quite useful to perhaps ask someone from the audit profession, if they were consulted – and I am sure they were, fully – why, in fact, they were happy or content that that surcharge power was removed.

The President: If Hon. Members are happy, I would feel more content actually to just stay it at this stage. I appreciate we might slip a week, but I would rather stay it at this stage and know that the members were happy. I have tried to push you on on a couple of occasions this morning already.

Lord Bishop.

The Lord Bishop: I was just going to add, Mr President, that I am slightly concerned still about clause 17 and charities, especially with the piece of paper from which Mr Singer read this morning, that we are about to pass primary legislation which talks about charities while the charities are being watched.

Would it not be sensible actually to change clause 17 to what it might be in six months'/a year's time now, rather than put this through?

I would support putting that off so that we can have a bit more time, even on that clause when we come to it. I was going to beg leave that at Third Reading we might do something with that clause as well.

The President: Hon. Members, the Clerk tells me that we are likely to slip three weeks if I stay this now. Can I suggest, Hon. Members, that we cease deliberation on this one to allow these various points which members are going to raise if we are going to be a little bit uneasy about them? If you can use that time to take observations, we can finish the clauses and the Third Reading on the one day.

Would you be happy to do that, Hon. Members?

Mr Gelling: Could I ask, Mr President, that if Members have any other queries on any further clauses that they actually raise that so that we do not end up with the same thing again.

The President: Absolutely. Mr Attorney.

The Attorney General: Mr President, I am sorry to add just one other important feature of the existing legislation. Hon. Members will recall that there is power under the existing legislation to seek an order from the court that a person be disqualified from being a member of a local authority for a specified period if the expenditure concerned exceeded £2,000.

It may be, of course, that that figure is now widely out of date, but the principle is there that if the court feels that somebody has erred so badly that he or she should be disqualified, that may be a power that Hon. Members think should be reinstated in the Bill.

The President: Well, Hon. Members, with your agreement, then, are you agreed that we stay our deliberations at this particular stage, having completed clause...? Mr Waft.

Mr Waft: Mr President, could I just add that, internationally, the Treasury understands that power to surcharge can no longer be actually imposed, being considered draconian and too expensive, and this is the public auditor's opinion. I just thought I would put that in.

The President: Mrs Crowe.

Mrs Crowe: Mr President, I wonder if it would be helpful if Treasury were to ask either the present public auditor or, if they wanted, someone independent to arrange a small presentation for Council for an hour or so, just to pick up some of the points in the Bill?

Auditing is a specialised part of the accountancy profession, and I do believe they have been consulted on this Bill. All of these queries, like the one Mr Waft has just raised, if the surcharge cannot be imposed, these are questions that we could have dispatched very swiftly.

The President: I think the words were 'cannot be imposed because it is considered to be draconian'. You are writing the law, Hon. Members, it is entirely up to you, (**Mr Lowey:** Absolutely.) and a judgement would be made thereafter.

Hon. Members, at this stage, I am going to hold over further deliberation on the Audit Bill. Hon. Members, we will depend on that. I think the Hon. Member, Mr Waft, if he wants to take cognisance of the practicalities of having the auditors make a presentation to Council Members, I will leave that up to you, sir, but, at this stage, we will hold it over.

Income Tax (Corporate Taxpayers) Bill

Second Reading approved

4. Mr Waft to move:

That the Income Tax (Corporate Taxpayers) Bill be now read a second time.

The President: That means, Hon. Members, we will now start the Second Reading of the Income Tax (Corporate Taxpayers) Bill, and on this occasion again, Second Reading, we have the Hon. Member, Mr Waft.

Mr Waft: Thank you, Mr President.

This Bill follows a period of extensive consultation, which included three periods of consultation, the latest of which was concluded during November 2005 and which was supported by a seminar attended by 200 professionals on 18th October last year. This Bill will introduce the pay-and-file system for corporate taxpayers and brings into law one of the commitments made in the 2000 Income Tax Strategy, which was restated in the modified Tax Strategy 2002.

Mr President, the Bill is divided into 20 clauses and one schedule and contains a significant number of consequential amendments to the Income Tax Acts that are necessary to support the introduction of pay and file and the move to an accounting period basis of assessment. In most cases, the consequential amendments do not materially affect the application of the existing statute.

Mr President, it is intended that these provisions will come into force on 6th April 2007 with regard to accounting periods ending on or after that date.

This Bill sets out provisions needed to adopt the accounting period basis of assessment. The provisions outline when an accounting period will commence and when it will finish. Further provisions are included to deal with those situations where there is uncertainty regarding when an accounting period ends.

In addition to the adoption of the accounting period basis of assessment, this Bill also seeks to change the date on which tax is payable. Currently, all corporate taxpayers are required to pay their income tax liability on 1st January in the year of assessment. In the future, payment of tax will be 12 months after the end of the accounting period.

For some companies, this change will result in tax being paid later than is currently, for others it will be sooner, but for many it will reflect no change at all. Notwithstanding, this Bill provides for the transition between current and new systems.

Adoption of the accounting period basis of assessment and new rules for the payment of income tax will allow for the spread of work for both tax advisers and the Income Tax Division throughout the year and is internationally accepted.

Mr President, this will be a major simplification in the way that corporate taxpayers are treated and will allow those companies who have a requirement to file accounts both here in and in the UK to do so at the same time, in accordance with provisions that are largely the same.

It is, also, proposed that the filing date of returns will be changed and will now be 12 months from the date on which the company's accounting period ends, making the filing date for returns and the payment of any income tax the same. No longer will companies or their advisers have to prepare returns and pay tax to different dates.

Following the introduction of fixed penalties payable by individuals who fail to file their returns on time, Treasury concluded that similar provision should be introduced for corporate taxpayers. Mr President, this Bill introduces that system, modelled on the system adopted for individuals.

In the future, corporate taxpayers will be liable to an initial penalty if a return is outstanding for more than one day after the filing date. If the default continues, a further penalty will be due. If the returns remain outstanding six months after the filing date, the Bill includes provisions that allow for mitigation of each penalty and for appeals.

A new provision that will be unique to corporate taxpayers is one which will increase the level of the penalty if returns are filed late or if not at all for three consecutive accounting periods. Mr President, consultation on this point raised concern regarding the proposed level of the penalty, the concerns being that the amounts were too high. Treasury has acknowledged this point and will review the position fully before seeking Tynwald's approval regarding the level of the penalty.

Amendments to the assessment process are proposed which will allow the Assessor to make enquiries on a corporate taxpayer's return at any time during the 12 months immediately following the filing of the return. A corporate taxpayer will also be allowed to request an amendment to the return during the same period.

Within the Bill there is also a general move to reduce the period during which the Assessor can raise additional assessments from six years to four years for corporate taxpayers. Specific comment was received during consultation that supported this reduction.

Mr President, finally, the schedule within the Bill repeals the measures deemed to be harmful by the OECD and the European Union Code of Conduct for Business Taxation, the repeal of which is part of the Island's commitment to each organisation.

Mr President, I beg to move the Second Reading of the Bill.

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

The President: Thank you, Hon. Members. Does any Hon. Member wish to speak to the Second Reading of the Income Tax Bill? Mrs Crowe.

Mrs Crowe: I think we have all been very well versed by Treasury on this particular Bill, so along with the 200 professionals, I think the vast majority of Legislative Council attended the presentations as well.

The President: Mr Waft, do you wish to reply to that? No?

Mr Waft: No, thank you, Mr President.

The President: In that case, Hon. Members, the motion that I put to Council is that the Income Tax (Corporate Taxpayers) Bill be read for a second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Income Tax (Corporate Taxpayers) Bill **Clauses considered**

The President: Hon. Members, we will now continue with the clauses of the Bill. Clause 1, Mr Waft.

Mr Waft: Mr President, clause 1 substitutes section 81 of the 1970 Act. It deals with the basis of assessment for companies. This clause provides for the accounting period basis of assessment. Where the accounting period straddles the end of one income tax year and the beginning of the next, the new subsections 81(2) to 81(4) will allow for profits in the accounting period to be apportioned and further assessment made.

This is necessary should Tynwald support any changes to income tax rates, capital allowance or other forms of relief, as those changes will be made by reference to tax years and not accounting periods. In the absence of any change, these subsections will not affect the computation of income tax for a given period.

Within subclause 1(2), a number of repeals are listed. They are necessary to allow for the substitution of the existing section 81. The repeals do not affect the application of the original section 81 for years prior to the commencement of the provisions contained in the Bill.

I beg to move clause 1 stand part of the Bill.

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

The President: Mr Lowey.

Mr Lowey: Thank you, Mr President.

It is just a little query, really. I was very impressed with the mover when he said they had 200 people consulting them on this one, very impressed.

I am agreeable with the principle of zero rates for corporate taxpayers, (**Mr Singer:** Good.) but perhaps the mover can tell me why, in clause 1, it is deemed necessary to be more draconian, if you are not going to get any tax off them, to have their files in on time, because you are not going to get anything off them anyway. (*Laughter*)

Mrs Crowe: Treasury has got to get the money somewhere.

Mr Lowey: There seems a little bit of an irony in that one.

The President: Mr Waft to reply, sir.

Mr Waft: Clause 1, Mr President, I would have thought the return had to be in on time to get the return in, otherwise there is no time limit on it and it could go on for years and years.

Mr Lowey: But you are going to get nothing anyway.

Mr Waft: There has got to be a return. You have to have an official return and find out what is happening within the company.

The President: Hon. Members, the motion I put to Council is that clause 1 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 2.

Mr Waft: Clause 2, Mr President, inserts new sections 119E and 119F to the 1970 Act.

Section 119E introduces accounting periods for companies. It sets out the provisions that establish the end date for an accounting period being: the expiration of 12 months from the beginning of the accounting period; the date to which accounts are drawn up; the date on which a trade begins or ceases; the date on which the company begins or ceases to be resident; or the date on which the company ceases to be within the charge to income tax. The earliest date one of these events occurs is taken to be the end date for the accounting period. The next accounting period will then begin.

This section also deals with situations where companies carry on more than one trade and make up accounts to different trades in respect of each trade. Provision is also included where a company is wound up, directing that the accounting period ends and the new one begins on the date on which the winding up commences.

Section 119F extends powers to the Assessor where there is doubt regarding the date on which an accounting period begins or ends. If, having determined the date using the powers, a company is aggrieved by the assessment, the company can appeal to the Income Tax Commissioners against the assessment. If, on appeal, the true accounting period is established, then the Assessor will amend the assessment and all other assessments that were based on the original determination.

Subclause 2(2) includes a number of consequential repeals

to the Income Tax Act 1970 that will remove those provisions that establish the basis of assessment for companies within the current system. These repeals do not affect the application of those sections prior to the commencement of the new provisions contained in the Bill.

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

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

The President: My only comment, Hon. Members, in relation to this one is that, in fact, in clause 2 there is a lot of cross-reference to the previous Acts (**Mrs Crowe:** Yes.) and schedules and I will hold both hands up and tell you that I have not checked them all out to make sure that all those cross-references are true. I hope some Hon. Member has.

Mrs Crowe: Of course, Mr President.

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

Clause 3, Mr Waft.

Mr Waft: If I could just clarify, for Mr Lowey's benefit, with regard to clause 2, the income tax return will be used for the distributable profits charge and some companies will continue to pay at 10 per cent.

Clause 3, Mr President, substitutes section 96 and sets the time for payment of income tax at 12 months following the end of the accounting period. There will no longer be a requirement for the Assessor to send an assessment to a company for income tax to be due and payable. It will be payable on the 12-month date, whether or not an assessment has been made.

The Assessor will require the filing of a tax computation with a return and, in the absence of assessment, the company will be able to apply the relevant rate of tax against the taxable profit included on the computation to determine the amount of income tax that should be paid.

In most cases, the resulting income tax will be nil as the company is liable to tax at a zero rate, therefore the absence of an assessment at the time the tax becomes due will not represent any difficulty to the company. The issue of an assessment will therefore no longer drive the payment of income tax.

Subclause 3(2) includes two consequential amendments that ensure section 102 continues to apply for non-corporate taxpayers, and a new definition of 'assessment' and 'assessed' is included within section 120.

Mr President, the final subclause includes a consequential repeal relating to existing section 96. As with appeals included in previous clauses to this Bill, this repeal does not affect the application of the existing section 96 for years prior to the commencement of the new section.

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

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

The President: Perhaps, Hon. Members, what would

happen – Mr Waft, you commented about distributable profits in relation to section 1 – if a company dealing with the 12-month accounting period, and its annual general meeting of the company was, say, three months behind that date when the accounts had been finalised, and the shareholders did not agree to the distributable profits rate which the directors had outlined within the accounts? What would be the position then in relation to the level of taxation?

Mr Singer: We should put this off to next week.

The President: They would still be dealing legally, but not on the distributable profits.

Mr Lowey: It would be carried over to the next one, would it not?

Mr Gelling: I would have thought, Mr President, as we await the note, that it would be readjusted in the following year. I would assume that if you made a statement and that statement is not correct, for whatever reason, then it would be readjusted in the following year.

This has been an area of difficulty with the actual distribution of profits as to whether they should or whether they should not, or whether they could evade paying tax on them. I would assume that that is what would happen, that the tax office would take it year on year following that particular decision, as you have said, by the annual general meeting of the company.

As I did raise in a previous sitting, Mr President, I look forward to the day when officers at the Bar can do as they do in Westminster: instruct and you can invite comment from them, directly to them and...

The President: Mr Waft, do you have a reply, sir, to clause 3?

Mr Waft: Yes, Mr President.

With regard to your query, Mr President, the income tax charge will be zero but a distributable profit may be due. A company will have 12 months following the end of the accounting period to pay the required dividend.

The President: So it is 12 months from the day after the first 12 months. Right, okay.

The motion that I put to the Council is that clause 3 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 4.

Mr Waft: Clause 4, Mr President, inserts new sections A84 and B84 into the 1970 Act.

Section A84 deals with enquiries relating to a return after it has been filed. During the 12 months immediately following the filing of the return, the Assessor may open an enquiry and request further information and documents that might be necessary to verify the liability to income tax. The enquiry must be opened within 12 months of the filing of the return.

The company has a similar power to that of the Assessor. If, following the filing of the return, the company discovers that the return is incorrect in some way, then the company may provide written notice to the Assessor that the return should be amended.

If amendments to the return reduce the tax payable, then a refund will be made, whereas should further tax become due, the company will have to pay the additional amount. Penalties will not be due in respect of the additional tax resulting from the notice but interest may be payable on the tax that is paid late.

Section B84 provides general powers required for the verification of returns. Information that may be required includes information that supports anything contained in a return or relating to the amount of tax payable for information relating to claims, reliefs or elections. If a person fails to provide the information without reasonable cause, then that person shall be guilty of an offence and on summary conviction shall be liable to custody of a term not exceeding six months or to a fine not exceeding £5,000, or both.

Mr President, subclause 4(2) includes the repeal of section 93 of the Income Tax Act 1970, which directed that the Assessor should place a notice in two Isle of Man newspapers in December giving notice that tax will become due during January. This section is no longer appropriate as payment of income tax will be due throughout the year and will be different from one company to the next. The Assessor will, however, ensure that reminders are issued to all companies before returns and payments are due.

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

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

Mr Lowey: Could I just ask, if I have listened to the mover right, overpayment of tax by the corporate body gets nothing from the Treasury; underpayment, the Treasury ask for their pound of flesh?

I thought we had accepted the principle that if it was fair for the goose, it was fair for the gander, and that if you were overpaid and it was retained by the Treasury, you got money. But, as outlined by the mover this morning, that seems to have been jettisoned. Is that right and, if so, why?

Mr Singer: Because the Treasury is God.

The President: Just to throw a little spanner into the works, too, could I just check that on page 7, for example, at the top of page 7 in (3) there in B84, it refers to this section as subject to 84A. If we turn back to page 5, at the start of clause 4 it refers to A84, but 84A is referred to twice when dealing with B84 and I am not sure that it is actually right.

It might have been reversed in typographical information, is it? If it has been reversed, we ought to put it right. Unless there is a section A84?

Mr Butt: There was in the 1970 Act, 84A.

The President: There is an 84A in the 1970 Act. Right, well, if it is in the 1970 Act...

Mr Butt: Section 5. The first line of clause 5 refers to that.

Mrs Crowe: Yes, but is it...? The previous refers to A84.

Mr Butt: It is obviously a new naming. This is a clause

before that section, an extra clause, a new name. It has to be.

The President: Right, okay.

Mrs Crowe: We think.

Mr Butt: We think.

The President: Mr Waft, have you got a reply to Mr Lowey's question?

Mr Waft: Just about repayment, Mr President. The repayments supplement is covered by clause 16, 107A. Section 107A of the 1970 Act provides for repayment supplements to be paid on refunds of income tax. This section has also been redrafted to reflect the move to an accounting period basis of assessment.

Mr Lowey: That does not answer the point as raised by the mover of the Bill, who actually said that all payments by an individual retained by the Treasury get no interest but underpayments to the Treasury are subject to interest. I thought we had accepted the principle that we do it for individuals.

Mistakes can be made, and they can actually be made by the Treasury too. If that is the case, then the same rules should apply to the one body as to the other body for equality. That particular clause –

Mr Singer: Clause 16.

Mr Lowey: But 16 does not say that at all.

Mr Singer: 107A on page 18:

'the repayment shall be increased under this section by an amount... equal to interest on the amount repaid at the rate of 3 per cent per annum (calculated on a daily basis)...'

The President: Yes, they do pay interest.

Mr Lowey: That is what I thought, but... As long as I have got that established, I do not mind. That is fine.

The President: Mr Waft, are we happy that Mr Butt's interpretation does mean that in the 1970 Act there is an 84A and we are inserting an A84?

Mr Butt: Mr President, I think, having read through it, we have got a section 84 in the 1970 Act, 84A. We now put in A84 and B84. It is a sequence.

The President: Okay. Content, Mr Waft?

Mr Waft: Yes, I think that has been talked through, Mr President.

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

Clause 5.

Mr Waft: Clause 5, Mr President, deals with the time

limits during which an additional assessment may be made. Currently, the Assessor can issue an additional assessment at any time during the six years immediately following the end of the relevant income tax year.

When a discovery is made that income tax should have been assessed, that tax has become insufficient or where relief has become excessive, the substitution of subsection (2) in section 84A of the Income Tax Act will reduce that time limit to four years following the end of the accounting period.

The section will also provide for the reduction of time during which the Assessor may make an additional assessment where a person has been dishonest or negligent in relation to a tax matter.

Currently, the company could be subject to an additional assessment at any time. The amendment included in clause 5 will restrict the Assessor's powers following the assessment to be made at any time up to 12 years after the end of the relevant accounting period.

The proposed change to section 84A was supported by all contributors to the recent consultation period who expressed a view.

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

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

The President: Mr Lowey.

Mr Lowey: I really am not trying to be too pedantic, because I accept the general gist of this, but I cannot for the life of me understand why corporate cases get four years but individuals are subject to a six-year clawback. I can understand those consultants who are dealing with corporate people, and I just wonder why the different treatment?

The President: The phrase:

'... corporate taxpayer, at any time not later than 12 years after the end of the accounting period'

also crops up in (b).

Mr Lowey: Yes, indeed; but it is the general principle that I cannot... Again, I try to be fair. What is different between a company and an individual, and why is a corporate entity treated better than an individual? That is the principle.

The President: Mr Waft.

Mr Waft: Thank you, Mr President.

I am sure these 200 people found the reason for this when they wanted it included in the Bill. Perhaps there might be some clarification on the way from...?

Mr Lowey: They were acting on behalf of corporate entities. Nobody was there acting on behalf of the individual.

Mr Waft: Well, this is the Corporate Taxpayers Bill, is it not?

Mr Lowey: Yes, I know.

Mr Gelling: I think, basically, Mr President, while we are awaiting the official line, that this is all about business. It is the economy and it is creating an atmosphere in which companies will actually be attracted to the Isle of Man. Had we also gone down the road of putting a zero tax in for personal, I do not know where the income would have come from.

The idea here is, of course, to get people to come in here with their entrepreneurial business links. They set up their company and people work, people then pay tax, and that is the way the economy will be generated. So, specifically an economy company tax, not a personal one.

The President: Mr Waft.

Mr Waft: Thank you, Mr President.

The amendment has been made to companies as the whole of the corporate regime has been brought up to date. The amendment for individuals may be something for the future, if Treasury is in favour.

The President: Right, Hon. Members. The motion I put to Council then is that clause 5 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 6, Mr Waft, please.

Mr Waft: Clause 6, Mr President, inserts a new clause 86 into the 1970 Act. Section 86A includes provisions that allow for an assessment on default where a company fails to file a return on time. Currently, all taxpayers subject to default would receive an assessment in accordance with section 86, that section being retained for non-corporate taxpayers with companies being assessed in accordance with this new section.

Whilst this is a new section, the principles included in the original section are being maintained, albeit within the new accounting period basis of assessment. A company subject to default will still have six months following the issue of the default to file a return. A return filed within that time will require the Assessor to replace the default assessment with an assessment based on the return.

The provisions included within this new section that deal with assessments becoming final and conclusive, the replacement of assessments, the date on which the tax would be due, repayment of tax and the duty of any person to make and deliver a return on time all match the existing provisions within section 86.

In short, other than the default being based on the accounting period for the company, and not the tax year, an assessment on default under 86A is the same as a default under the existing statute.

Subclause 6(2) makes a minor consequential amendment to the existing default provision in section 86 that will ensure that non-corporate taxpayers will continue to be assessed in default, in accordance with that section.

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

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

The President: The motion that I put to Council is that clause 6 do stand part of the Bill. Those in favour, please say

aye; against, no. The ayes have it. The ayes have it.

Clause 7, Mr Waft.

Mr Waft: Could I take clauses 7 and 8, Mr President?

The President: Right, sir.

Mr Waft: Clause 7 inserts a new section 101A into the Income Tax Act 1970. Section 101A allows the Assessor to make additional assessments in cases where an error or mistakes have been made within four years from the end of the accounting period to which the return relates. The normal rights of appeal against further assessments will remain.

Previously, the power to make additional assessments was contained within section 101 and, in accordance with that section, the Assessor could make an additional assessment at any time up to six years after the end of the relevant tax year. In line with the amendment included within clause 5, the new section 101A will restrict the Assessor's power, allowing only for additional assessments to be made during the four years immediately following the end of the relevant accounting period.

The existing statute within section 101 is being retained but will be restricted in its application to non-corporate taxpayers.

Clause 8 includes a restriction within section 107(2) of the Income Tax Act that reduces from six to four years the time during which the income tax may be repaid. This restriction only applies in respect of companies and is necessary to match the reduction in time limit for making assessments considered in clauses 5 and 7 of this Bill.

Mr President, I beg to move clauses 7 and 8 stand part of the Bill.

The President: Chief Minister.

Mr Gelling: I beg to second, Mr President, clauses 7 and 8.

The President: Hon. Members, the motion that I put to Council is that both clause 7 and clause 8 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 9, Mr Waft.

Mr Waft: Thank you, Mr President.

Clause 9 is required in order that certain treatment is applied to all companies in the same way as it applies to the exempt company regime. It is important that when a distribution is paid from an Isle of Man zero-rated company to a non-resident that there is no charge to income tax on that distribution.

This clause, together with the legislation in the last Income Tax Bill, will ensure that a dividend payment to a non-resident from a zero-rated company will not be charged to tax, whilst protecting the domestic tax base.

Clause 9 substitutes sections 25 and 25A of the Income Tax Act 1970 with new sections 25, 25A, 25B and 25C. Previously, sections 25 and 25A provided for the deduction of a distribution from the profits of a company before calculating the amount of income tax due for the year and, having made a distribution, prevented the avoidance of tax by ensuring that the distribution was charged to income tax in the same year as the deduction was made.

The new section 25 included within this clause will prevent the deduction of distributions and computing taxable profits. Therefore, should the company be subject to the 10 per cent rate of income tax, the company will be required to pay tax on the whole of its profit, whether or not the profit is retained by the company.

The Treasury recognises that, where a company actually distributes profits, then the resident recipient will be taxable on the amount distributed, in effect creating a second charge. To prevent the double taxation of the amount distributed, sections 25A, 25B and 25C will ensure that a distribution carries a tax credit equal to the tax paid by the company on that distribution. The amounts of the credit will be available for set-off against the recipient's liability to income tax.

Section 25A directs that the company shall send a voucher to the recipient of a distribution, restricting the issue of the voucher to those cases where the company is actually liable to pay income tax and where the distribution is made from profits arising after 6th April 2006. A company that is subject to tax at the zero per cent rate will not have to provide a voucher as there will be no tax credit attached to the distribution.

Section 25B sets out how the tax credit will be calculated and, where a distribution is made out of the profits arising over a number of accounting periods, directs that the distribution will be made from the earliest profits first, then the next profits, with the distribution being made from the most recent profits last.

Mr President, the final section to be submitted by clause 9 is section 25C. This section provides for the credit to be set off against the income tax due on the distribution through the recipient's assessment.

If the recipient is an individual who is resident for income tax in the Isle of Man, the credit may be refunded where the amount of credit exceeds the final liability. If the recipient is an individual who is non-resident, then there will not be a refund as the non-resident liability is limited to the amount of credit. Where the recipient is a company and the amount of credit exceeds the final liability, no refund of the credit will be available to that company.

The final part of this subclause 9(3) includes a number of consequential amendments to the Income Tax Acts that are necessary following the substitution of the existing sections 25 and 25A.

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

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

The President: Mr Lowey.

Mr Lowey: Again, I understand that this is very complex and complicated, and I do not pretend to know the total answer, but I am supposed to understand the legislation that I am passing.

I just come to item (4) on page 10, line... it is at line 20 anyway and it is (4):

'Where distribution credit is allowed under section 13H in respect of a distribution, this section shall not apply to so much of the distribution as is subject to distribution credit.'

I try to get my head round that and it is like unpunctuated speech. It really is meaningless. I suppose it must mean

something to a tax expert, but not to me, I am afraid. I understand what the clause is about. It is a corporate... you get a credit note which, if you are a recipient of it, you give it to the taxman with your tax return to show that it has been accredited, given to it.

But that particular paragraph leaves me stone cold. I cannot get my tongue... I cannot follow that and, if we are making legislation that cannot be followed by the layman, then who are we legislating for?

I understand it is a complex subject, and I do not want to add to the burden of the mover of the Bill, because the principle I agree with, and this is machinery to put it into place; but the machinery has got to be... we have got to know what the machinery is about, surely?

The President: Mr Waft. Distribution credit.

Mr Waft: Yes, Mr President.

Mr Lowey: Perhaps somebody could take me through it, if they understand what subclause (4) means?

Mr Waft: This section, Mr President, is to prevent double counting of the distribution. Section 13H relates to the distributable profits charge.

Mr Lowey: I will take your word for it, sir.

The President: Right, Hon. Members. The proposal that I put to Council is that clause 9 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 10.

Mr Waft: Clause 10, Mr President, makes a number of consequential amendments to the distributable profits charge that will be necessary following the move to the accounting period basis of assessment.

When the distributable profits charge was introduced through the previous Income Tax Bill, the computation of the charge, the making of a return and payment of the charge was intentionally linked to the administration of income tax payable by the company, the result being that a company that is required to make a return for income tax and a return for the charge can do so using the same return, therefore there would be no duplication of work by the company.

The consequential amendments contained within this Bill maintain the link to income tax within the accounting period basis of assessment. None of the amendments contained within clause 10 change the way in which the charge is computed other than the change included within subclause (2)(a).

The amendment within subclause (2)(a) is necessary where an accounting period is less than 12 months. The result of the apportionment is that the amount of the charge will be reduced by reference to the length of the accounting period.

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

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

The President: The motion, Hon. Members, is that

clause 10 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 11.

Mr Waft: Clause 11, Mr President, deals with further consequential amendments from the change to an accounting period basis of assessment for companies in relation to reliefs and deductions.

The amendments included within the part deal, firstly, with trading losses and capital expenditure and, secondly, with relief in respect of charitable donations. In each case, the amendments are necessary to maintain the availability of relief within the accounting period basis of assessment.

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

Mr Gelling: I beg to second, Mr President.

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

Clause 12.

Mr Waft: Clause 12, Mr President, inserts a new paragraph A1 into schedule 2 of the Income Tax Act 1980 and is an amendment that is needed to support the accounting period basis of assessment for groups of companies.

Schedule 2 includes numerous references to years of assessment and tax years. The new paragraph A1 provides a general interpretation which ensures that reference to tax years shall be construed as reference to accounting periods and reference to companies and bodies corporate shall be construed as reference to corporate taxpayers.

Subclause (2) inserts a new subsection 1(3AB) that will enable a restriction to be made to group relief between one member of the group and another where the first is assessed to income tax at a different rate from the second. An order will be needed to bring this new subsection into effect and, in accordance with existing section 1 of the order, will require the approval of Tynwald.

I beg to move clause 12 stand part of the Bill.

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

The President: The new section is (3BA) and not (3AB). (**Mr Lowey:** Yes.) Hon. Members, those in favour of clause 12 do stand part of the Bill, please say aye; against, no. The ayes have it. The ayes have it.

Clause 13, Mr Waft.

Mr Waft: My apologies, Mr President, for section (3BA).

Clause 13, Mr President, makes minor consequential amendments to the existing legislation in relation to loans to participators. This follows the move to an accounting period basis and the change from six to four open years of assessment.

As with previous clauses, that includes consequential amendments related to the move to an accounting period basis of assessment. These amendments do not affect the application of the loans to participator provisions.

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

Mr Gelling: I beg to second, Mr President.

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

Clause 14.

Mr Waft: Clause 14, Mr President, makes minor consequential amendments to the existing legislation in relation to double taxation relief. These amendments, again, reflect the move from a tax year basis of assessment to an accounting period basis and the change from six to four open years.

Amendments to those sections that deal with matters relating to double taxation will ensure that a company can continue to gain relief, where applicable, from double taxation in the future.

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

Mr Gelling: I beg to second, Mr President.

The President: The motion, Hon. Members, is that clause 14 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 15.

Mr Waft: Clause 15, Mr President, inserts a new section A66 in the Income Tax Act 1970 which will set out the provisions under which a company will file an income tax return.

The clause sets out the information that is to be included on a return, the date on which the return should be delivered to the Assessor, and the requirements include with the return a computation of tax that would be due.

The date on which the return shall be delivered shall not be later than 12 months after the end of the accounting period.

Section A66 will only apply to companies and, to ensure the existing provision within section 62, which deals with the submission date for returns for non-corporate taxpayers as related, a minor amendment is included within subclause (2). Other than restricting section 62 to non-corporate taxpayers, that section remains unchanged.

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

Mr Gelling: I beg to second, Mr President.

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

Clause 16.

Mr Waft: Clause 16, Mr President, substitutes sections 99, 111B, 107A, and 100 of the Income Tax Act 1970. In each case, the new section updates the existing provision to reflect the move to the accounting period basis of assessment or the introduction of the distributable profits charge.

These new sections do not introduce any new powers. For example, section 111B of the Income Tax Act 1970 deals with interest on tax recovered to make good a loss due to a taxpayer's default. This provision is already available to the Assessor within the tax year basis of assessment. The provision within clause 16 has been redrafted to provide for interest on tax recovered for an accounting period.

Similarly, section 107A of the Income Tax Act 1970 provides for repayment supplements to be paid on refund of income tax. This section has also been redrafted to reflect the move to an accounting period basis of assessment.

Mr President, the final subclause (f) includes six consequential amendments to the Income Tax Acts which are necessary to support the substitution of sections. The repeal does not affect the application of the original sections prior to the commencement of clause 16.

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

Mr Gelling: I beg to second, Mr President.

The President: Mr Lowey.

Mr Lowey: Can I just ask one question. I notice that an officer of the Treasury, under this section, can delegate responsibility, and he does not have to be a lawyer. Under the existing Act, one assumes they must have legal training, or is this just reintroducing what is already in practice?

By substituting,

'an officer of the Treasury (whether or not an advocate) who is authorised by the Assessor'

can proceed with the recovery of unpaid bills, is that existing legislation or is that a new departure?

The President: Mr Waft.

Mr Waft: I will have to get clarification on that, Mr President, whether it is existing or a departure. I have not got information on that.

The President: Hon. Members, I am sure we will get an answer to that later, but, Hon. Members, I put to you anyway the motion that clause 16 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We move on to clause 17, Mr Waft, please.

Mr Waft: Clause 17, Mr President. You will recall that in 2004 provisions were introduced to encourage individual taxpayers to file returns on time. This was achieved through the introduction of fixed penalties that are applied where a return is outstanding following the due date.

Whilst those provisions only applied to non-corporate taxpayers, it was always the intention of Treasury to introduce equivalent measures for companies. Clause 17, if supported, will introduce those measures.

This issue was highlighted during the recent consultation and those who expressed a view raised two comments in particular. Firstly, most respondents understood and accepted the need for a mechanism that would encourage the prompt filing of a return. Secondly, most respondents were concerned that the level of the penalty should not be set too high.

With both points in mind, the new sections included within clause 17 introduce a mechanism for late return penalties which is a very similar structure to that applying to individuals. Whilst the amount of the charge is not included within the Bill, Treasury have made a commitment, through the recent consultation and response document, to review the level of penalty and, following that review, to bring forward an order to Tynwald setting the amount of penalties as soon as practicable.

You may wish to note that the penalty will not be due until the beginning of April 2008 in respect of a return for the accounting period on 30th April 2007.

Clause 17 includes new sections 112A to 112J into the Income Tax Act 1970.

Sections 112A and 112B provide for the initial and extended penalties which will be due if the return is not filed within 12 months and 18 months respectively after the end of the accounting period.

Section 112C allows for the mitigation of each penalty by the Assessor or by the Income Tax Commissioners.

Section 112D allows for the removal of each penalty if the company is able to provide a reasonable excuse for not filing a return on time.

Mr President, section 112E will allow Treasury, with the approval of Tynwald, to set the level of each penalty. It is under this section that Treasury will set the level of penalty following the review mentioned previously.

Section 112F provides for a situation where a company fails to provide a return in consecutive periods and directs that, where three consecutive returns are outstanding or were submitted late, the amount of the penalty due in the third period is increased. The amount of penalty due in these circumstances will, again, be set by order and will only come into operation following the approval of Tynwald.

Sections 112G and 112H deal with the administration of the charge, directing that a penalty notice should be issued through a company that is subject to the charge and providing for the collection of the amount due.

Section 112I clarifies the position relating to a criminal offence for failing to submit a return. Currently, a company could be committing a criminal offence if a return is outstanding for just one date beyond the filing date. This new section ensures that an offence is only committed where a return is outstanding for more than 24 hours after the filing date. If, on summary conviction, the company is found guilty of an offence, then that company, or an officer of the company, may be liable to a fine of £5,000 or custody of a term not exceeding six months, or both.

Mr President, the final section inserted by clause 17 deals with appeals and directs that an appeal against the penalty, or against the decision of the Assessor relating to the mitigation of a penalty, shall be to the Income Tax Commissioners. Such an appeal would be subject to the same procedure as that where an appeal against an assessment is made.

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

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

The President: Mr Singer.

Mr Singer: Mr President, could I just ask for an explanation? On page 23, subsection (3), I do not quite understand this, it says that:

'A certificate under this section shall be deemed to be authentic, and no proof shall be required of the signature or of the official character of the person signing the same as Assessor.'

What does that actually mean? If someone gets a note and it has got a signature on, it is either the signature of the... It needs to be the signature of the Assessor.

The President: Anybody can sign, I think. Mr Attorney?

The Attorney General: Yes, Mr President, provisions like this are not uncommon. It is designed to prevent a debtor saying, 'Well, I do not believe that that is the certificate of the Assessor', and the Assessor then has to be called into court and has to confirm everything personally.

Mr Singer: Oh, right.

The Attorney General: Normally, certificates are produced and are admissible in evidence, unless there is something patently wrong.

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

Clause 18.

Mr Waft: Thank you, Mr President. Just to clarify clause 16 which the question was on. This is existing legislation. It has been extended to include the distributable profits charge, the point which Mr Lowey was wanting clarified.

Mr Lowey: The wording is right. That is fine.

Mr Waft: Clause 18, Mr President, directs that, within this Act, the 1970 Act means the Income Tax Act 1970. I beg to move clause 18 stand part of the Bill.

Mr Gelling: I beg to second, Mr President.

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

Mr Waft: Mr President, clause 19 substitutes section 5 of the 1970 Act. The existing section 5 in the Income Tax Act 1970 deals with the basis of assessment where a company commences residence in the Isle of Man. That section is no longer required following the introduction of the accounting period basis of assessment.

However, within subsection 5(1) of the existing statute, a provision can be found that restricts the personal allowance in the year in which an individual commences residence on the Island. Whilst the majority of section 5 is no longer required, that restriction is still needed.

The new section 5 included within clause 19 reinstates the restriction, placing new residents to the Isle of Man in exactly the same position as in previous years.

Mr President, subclause 19(2) deals with the repeal of the statutes included within the schedule. These repeals are in line with the Island's commitment to the OECD and the European Union to remove perceived harmful taxation measures and will be effective from 6th April 2007.

Mr President, I beg to move clause 19 and the schedule stand part of the Bill.

Mr Gelling: I beg to second, Mr President.

The President: The motion, Hon. Members, that I put

to Council is that clause 19 and the schedule do stand part of the Bill.

Finally, then, Mr Waft, clause 20.

Mr Waft: Thank you, Mr President.

Clause 20 includes the short title provision for commencement by Appointed Day Order and provisions relating to transitional measures that may be necessary to facilitate the move from the existing position to the new.

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

Mr Gelling: I beg to second, Mr President.

The President: Finally, Hon. Members, the motion I put to Council is that clause 20 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. (*Interjections*)

Mr Singer: Did we vote on clause 19?

The Lord Bishop: No.

Mr Butt: Did we vote on clause 19, sir?

The President: Hon. Members, the Lord Bishop is pointing out to me that I did not call the vote on clause 19. (*Interjection by the Lord Bishop*)

Mr Waft: Could I move clause 19 then?

The President: Just for clarity, for absolute certainty and so that it is not questioned, Hon. Members, clause 19 and the schedule. So, Hon. Members, in fairness, those in favour of clause 19 and the schedule standing part of the Bill, please say aye; against, no. The ayes have it. The ayes have it.

We will tidy that up by adding clause 20 on at the end. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Income Tax (Corporate Taxpayers) Bill Standing Order 22(2) suspended to take Third Reading

Mr Waft: Mr President, could I indulge the Council for a few minutes just to get rid of this Third Reading? It is only a very short Third Reading and there are a lot of Bills piling up.

The President: The first thing you will have to do is that Hon. Members approve that you can take the Third Reading.

Mr Waft: Indeed, sir:

That Standing Order 22(2) be suspended to enable the Third Reading of this Bill to be taken.

Mr Singer: Can I second the proposal, Mr President.

The President: Mr Lowey.

Mr Lowey: I would agree with it because it is enacting what we have already agreed in principle in Tynwald Court and this is the Budget being put into practice. So, yes, sir, I think there is a case.

The President: In that case, Hon. Members, with your agreement, if we suspend Standing Orders to take the Third Reading of the Income Tax (Corporate Taxpayers) Bill.

Income Tax (Corporate Taxpayers) Bill Third Reading approved

The President: Mr Waft.

Mr Waft: Thank you, Mr President.

This Bill contains 20 clauses and one schedule. The Bill follows extensive consultation on the taxation of companies here in the Isle of Man and introduces a pay-and-file system, which is an internationally accepted format. It also repeals legislation dealing with tax exemptions for companies and fulfils the Island's commitments to the OECD and the European Union Code of Conduct Group.

Mr President, clauses 1 to 6 deal with the main changes needed to bring forward the pay-and-file system. The changes include the introduction of the accounting period basis of assessment, the time for payment of income tax, setting the date at 12 months after the end of the accounting period, enquiries and verification of the terms, including powers allowing the taxpayer to amend and return, additional assessments resulting from enquiries, and for default assessments where a taxpayer fails to file on time.

Clauses 7 to 16 include consequential amendments to the Income Tax Act 1970 that are necessary to support the changes included in clauses 1 to 6. Whilst a number of changes are minor and do not materially affect the application of the Income Tax Act, one change is fundamental, namely the reduction from six to four years during which the Assessor may make an additional assessment and pursue payment or authorise repayment of income tax. This change has been supported throughout the consultation process.

The minor amendments that do not materially affect the application of the Income Tax Act include amendments to the distributable profits charge introduced by the Income Tax (Amendment) (No. 2) Bill 2006, reliefs and deductions that can be made when computing taxable profits, provisions relating to the taxation of certain loans, the grant of double taxation relief, interest on unpaid income tax and repayment of supplements.

Mr President, clause 17 introduces penalties for late filing of company returns that are similar to those introduced in 2005 when an individual fails to file a return on time. Whilst the Bill contains the structure of the new penalty system, the amount of the penalty is still to be agreed. Tynwald approval will be required to set the amount of penalty.

Clauses 18 to 20 deal with the interpretation, amendments and repeals and the short title and the Appointed Day Order.

Finally, Mr President, the schedule has further repeals to other Acts of Tynwald.

Mr President, I beg to move:

That this Bill be now read a third time and do pass.

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

The President: Mr Lowey.

Mr Lowey: Just the one query. It may be a little bit simplistic, Mr President, but this is a complex Bill dealing with what I would call a complex subject. I do make a plea to the people who write the law to put it in terminology so that people who read the law should be able to interpret it.

It may be that the tax experts can understand all of this but I think it is very important that the people who are passing the legislation, we legislators, should be able to follow what we are passing. I defy anybody to say that, apart from a tax expert, he would know every clause and every subclause in this particular piece of legislation.

That may be inevitable, but I do make a plea, yet again, when we are making legislation, to put it into a form of words that, alright, we may not all be experts, but at least we should be able to interpret what we are agreeing to.

I understand the difficulties of the mover and the people who are putting it forward, but I do think it is important that we get legislation that we know what we are actually passing.

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

Mr Waft: No. I would just like to thank all the Members for their support during this Bill, and I take on board the comment with regard to simplification of legislation. In defence, there were explanatory notes given as well, which might have helped pave the way to seeing their way through this difficult legislation.

The President: Hon. Members, the motion that I put to Council is that the Income Tax (Corporate Taxpayers) Bill 2006 be read for a third time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

BILL FOR FIRST READING

Agricultural Marketing (Amendment) Bill

First Reading approved

5. Mr Butt to move:

That the Agricultural Marketing (Amendment) Bill be now read a first time.

The President: The Agricultural Marketing (Amendment) Bill for First Reading, Hon. Members. Mr Butt.

Mr Butt: Yes, Mr President. If I may –

The President: Could I just ask before you start, Mr Butt, as we have got a... is it a long brief or are we...?

Mr Butt: It is a brief brief, sir.

The President: It is a brief brief, here for the First Reading. Are Hon. Members content that we should continue? (*It was agreed.*) Mr Butt.

Mr Butt: Thank you, Mr President.

The Agricultural Marketing Act has been in place since 1934 and, at present, the Isle of Man Agricultural Marketing Society consists of 25 members, 23 of whom are producers, with two persons appointed by the Department of Agriculture, Fisheries and Forestry. This amending Bill sets out the broad enabling powers by means of which some important changes can be made to the structure of agricultural marketing in the Island.

This is the result of a lengthy consultation process with the industry, the main results of which will be seen in the subsidiary legislation flowing from the enabling powers set out in this Bill.

The purposes of this Bill are to achieve the streamlining of the Isle of Man Agricultural Marketing Society, with an increased role for Government employees, and to enable the Society and the Marketing Associations to be limited companies. The aim is to develop a more flexible structure for the Marketing Society, recognising the role that it will play in leading the industry through vital changes. The need for change is more important than ever with the withdrawal of the Island's meat derogation after December 2010. Marketing will be a key element in the future success of the agricultural industry.

A major concern for the industry, and those involved in the Society and the Marketing Association and the Fatstock Marketing Association, is the fact that these bodies do not have limited liability. The Agricultural Marketing Act 1934 provides that the Society and Marketing Associations are constituted under the Act, which also sets out the detail of their structure and proceedings, but does not currently provide or permit limited liability.

Limited liability status of those involved in important decisions about the industry is an issue which has been a particular concern to the industry. It cannot be done under the Agricultural Marketing Act 1934 in its present form and this amendment Bill will enable that to be achieved.

The amendments in this Bill will enable specially set up limited liability companies to be designated to act as the Society and the Marketing Associations. The contents of the memorandum and articles of association of these limited liability companies will be the subject of subsidiary legislation and subject to Tynwald approval.

Regulations will also be made to determine the nature and type of the elections and the transfer of property and assets from the previous Associations to the new limited liability companies.

The proceedings of these limited liability companies will then be mainly regulated by the requirements of the Companies Acts.

Mr President, I move that this Bill be read for the first time.

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

The President: Mr Lowey.

Mr Lowey: It is just in general terms, there is one specific point that I would flag up to the mover of the Bill, which I will be pursuing, and that is the grandfather rights of people who are already existing within the Acts, that they have been consulted, they have had assurances, particularly the Milk Marketing.

I will speak with the mover of the Bill, but I do think it is important that we take people along with us, as opposed to saying we promise that but it is not in legislative terms. I want assurances that those have been approved and are safeguarded.

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

Mr Butt: Yes, sir. I understand that the Associations have their own advocates working closely with the Department on the detail of the regulations and the nature of the new companies. I also understand that present contracts and agreements which are in place now will continue beyond this Act when it comes in.

I do know there has been a lot of consultation, which is still going on, between the industry and the Department.

The President: Now, Hon. Members, what I put to Council is that the Agricultural Marketing (Amendment) Bill be read for a first time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Procedural

The President: Hon. Members, that concludes our Order Paper for today. Our adjournment will be to next week, 9th May.

I apologise to Mr Waft, on the one hand, for half pulling

his Audit Bill this morning. I did just begin to feel a little uncomfortable that I was pushing on with something that Members were unhappy at, and I think that would have been wrong to have done so.

I would plead with those Members who do wish to possibly amend this Bill that they do pay attention to it and come prepared for our next sitting so that we can deal with that particular measure.

Mr Waft: I will be missing next week, sir.

The President: I appreciate that you are missing next week, sir, so it will be three weeks' time when we come back for the Audit Bill.

Can I remind Hon. Members as well that, if there is the practicality, Mr Waft, of some sort of presentation to Members in relation to the Audit Bill, it would be helpful to try to fit it into the timescale at some stage between now and three weeks' time.

Hon. Members, can I remind you that there will be a photograph taken of the Council next week. Mr Waft will be brought in from a distance.

Mr Singer: Cardboard cutout.

The President: Thank you, Hon. Members.

The Council adjourned at 1.09 p.m.