



**LEGISLATIVE COUNCIL  
OFFICIAL REPORT**

**RECORTYS OIKOIL  
Y CHOONCEIL SLATTYSSAGH**

**PROCEEDINGS  
DAALTYN  
(HANSARD)**

**Douglas, Tuesday, 28th February 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. C M Christian, Mrs. P M Crowe, Hon. A F Downie, 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.

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*The Council adjourned at 3.59 p.m.*

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## Legislative Council

*The Council met at 10.30 a.m.*

[MR PRESIDENT *in the Chair*]

### PRAYERS

*The Lord Bishop*

**A**lmighty God, humbly acknowledging our need for thy guidance in all things, and laying aside all private and personal interests, we beseech thee to grant that we may conduct the affairs of this Legislative Council and of our Island to the glory of thy holy name, the maintenance of true religion and justice, the honour of our Queen and Lord and the public welfare, peace and tranquillity of the Isle of Man, and this we beg, through Jesus Christ, our Lord.

**Members:** Amen.

## Orders of the Day

### Employment Bill

**Standing Order 22(2) suspended  
Further amendments approved**

**The President:** Now, Hon. Members, we have on our Order Paper the Third Reading of the Employment Bill.

Having said that, Hon. Members, we were discussing, at the clauses stage of the Bill, the practicalities or possibilities, or whatever, of making further alterations at the Third Reading stage, whilst we were going through the Bill. If we could suspend Standing Orders, I am perfectly happy that we should go back and consider in relation to items which Members have indicated they wish to alter, this morning.

**Mr Lowey:** Could I propose that we suspend Standing Orders, to carry out the very thing that you have just enunciated.

**Mrs Christian:** Seconded, Mr President.

**The President:** Are we agreed, Hon. Members? (**Several Members:** Agreed.)

In that case, Hon. Members, I think the logics are that we should return, first, to an amendment – which we have all had circulated – in the name of the Hon. Member, Mr Singer, to clause 21. Mr Singer.

**Mr Singer:** Thank you, Mr President.

This amendment is a substitute amendment to replace the Hon. Member, Mrs Crowe's amendment regarding unlawful deductions:

*Clause 21*

*In substitution for the amendments made by Mrs Crowe*

*to clause 21 on 14th February 2006:*

*(a) Page 20; line 30, in clause 21(3), for 'unless the payment satisfies one of the conditions set out in subsection (2)(a) and (b).', substitute – 'unless –*

*(a) the payment satisfies one of the conditions set out in subsection (2)(a) and (b); and*

*(b) in the case of a deduction under section 22 or a payment under section 23, the relevant provision of the worker's contract under subsection (2) (a) or the agreement or consent under subsection (2)(b), as the case may be, was fair and reasonable in all the circumstances.'*

*(b) Page 30; after line 4, after subclause (3) of clause 26 add –*

*'(4) On any complaint to the Tribunal under section 22 (deductions on account of cash shortages) or section 23 (payments on account of cash shortages), it shall be for the employer to prove that it was fair and reasonable to have inserted the relevant provision referred to in section 21(2)(a) or for the worker to have signified the agreement or consent referred to in section 21(2)(b) and that it was fair and reasonable in all the circumstances to have made the deduction or to have received the payment as the case may be.'*

The Department has looked further into the amendment tabled by the Hon. Member, Mrs Crowe, which was made at very short notice, on 14th February, and accepted by Council. It will be recalled that this amendment was tabled because the Hon. Member had concerns that some retailers might have contractual provisions allowing them to make deductions from their wages in respect of stock deficiencies or cash shortages.

The Department has now had the chance to properly study this amendment and has a number of concerns about it. Firstly, the amendment contains two drafting errors. The Department understands the amendment was not, in fact, drafted by the Attorney General's Chambers.

More importantly, however, the Department is concerned that the amendment goes much further than giving the Employment Tribunal powers to look at whether provisions in a retail worker's contract, regarding stock deficiencies or cash shortages, was fair and reasonable. The amendment is to the general clause on deductions, clause 21, as opposed to those clauses dealing specifically with retail workers, and does, in fact, open all deductions which a worker has previously agreed to scrutiny by the Tribunal as to whether a provision or agreement was fair and reasonable.

The Department's view is that the provision is potentially damaging, because it creates uncertainty for employers as to their ability to recoup training costs, relocation costs etc, which could amount to many thousands of pounds in some cases. The Department considers that employers may be more reticent before, for example, sponsoring someone to become an accountant, or supporting a member of staff doing an MBA, on condition that they remain within their employment for an agreed period of time, if the Tribunal was still able to determine if the provision or agreement, which both parties freely entered into, is fair and reasonable.

Further, the amendment involves the Employment Tribunal much further in contractual matters, which can already be dealt with by the ordinary courts.

For these reasons, the Department supports the substitute

### Prayers

**Employment Bill – Standing Order 22(2) suspended – Further amendments approved**

amendment, which has been prepared by a legislative draftsman, and which relates specifically to the treatment of staff in retail employment. This amendment should, nonetheless, address the Hon. Member, Mrs Crowe's original concerns.

I have circulated a letter from the Law Society, in which they... I believe Mrs Crowe consulted the Law Society, and this was their response. Whilst they were supportive, generally, of the Bill as it is, Mrs Crowe, I think, must have disagreed with them and brought forward her own amendment.

Now, can that be... Would Members wish me to read that out, or is it satisfactory that it is laid before them?

**The President:** No, sir, if you wish it to be recorded in *Hansard*, you had better read it, sir.

**Mr Singer:** Thank you, Mr President.

The Law Society Legislation Committee comment on two proposed amendments to clauses 21 to 29 of the Employment Bill 2005.

By a document dated 10th February 2006, the Law Society Legislation Committee commented on clauses 21 to 29 of the Employment Bill 2005 – referred to afterwards as 'the Bill' – at the request of a Member of the Legislative Council. The tenor of the Law Society comment was that clauses 21 to 29 of the Bill represented consolidation of existing law with slight update, thus the Law Society was not minded to make strong material submission in respect of those clauses.

It is understood that, subsequently, in the Legislative Council, under 2(1), Mrs Crowe has tabled an amendment, the first proposed amendment, at the clauses stage, adding a number of provisions to clause 21 of the Bill on restrictions on deduction from wages, which was in appendix 1.

Under 2(2), Mr Downie, MLC – well, in fact, it is myself now, sir – is proposing the substitute amendments, the second proposed amendment as set out to them in appendix 2.

It is understood that the concern from prompting the first proposed amendment related more to persons in retail appointment, and thus the provisions of clauses 22 and 23 of the Bill. If the first proposed amendments take place, then the general clause on deduction, clause 21, would be changed, potentially materially.

It is thought that the qualifications proposed at clause 21 by the first proposed amendment could create uncertainty for employers in respect of legitimate agreements with employees to recoup or claw back certain costs, such as training, education, removal and relocation costs if, say, an employee leaves immediately after taking an employer-sponsored degree.

Such uncertainty might mean that employers would hesitate before providing funds to support a member of staff on, for example, extra-curricular training or education, if it was felt that a Tribunal might later assess whether an agreement to recoup such costs was fair and reasonable, notwithstanding that both parties had freely entered into the agreement.

This proposed amendment today, the second proposed amendment, is more restrictive than the first proposed amendment. The second proposed amendment adds a new clause 21(3)(b), which is specific to the clause 22 and 23 retail worker provisions. Further, the second proposed amendment adds a new clause 26(4), which is also specific

to the clause 22 and 23 retail employment provisions.

The Law Society's Legislation Committee view remains that clauses 21 to 29 of the Bill, as presently drafted, are sufficiently clear, understandable and reasonable. If, however, it is thought that an amendment is necessary, perhaps because of a concern relating to the treatment of staff in retail employment, then the Committee favours the second proposed amendment, as it is specific to that area.

The first proposed amendment is, in the view of the Committee, too wide-ranging and has a potential to have unintended effects in the employment market, as illustrated above in the letter. That is dated, sir, 24th February 2006.

Mr President, the Department's view, there was no particular problem with the original provisions of the Bill, which are specific to retail workers, and which were designated to give enhanced protection to such workers, over and above that given to other workers.

Further, the Industrial Relations Service cannot recall ever having had a complaint from a retail worker regarding their employer making a deduction in respect of a stock deficiency or a cash shortage, whilst the Department itself has not been able to find a retailer that makes such deductions.

It would be a mistake if, in response to an illusory problem, we were to give the Employment Tribunal sweeping new powers to decide if any deduction made by an employer was fair and reasonable. Nevertheless, the Department is content to deal with the Hon. Member, Mrs Crowe's original concern, and to further enhance protection of retail workers, with regard to stock deficiencies or cash shortage, by way of this substitute amendment.

The new amendment will have the following effects. A new subparagraph is inserted in clause 21 which requires all deductions and payments under clauses 22 and 23, which are specific to the existing provisions regarding retailers, to be fair and reasonable.

A new subclause is added to clause 26. The effect of this is that on any complaint to the Tribunal regarding deductions on account of cash shortages or related matters the employer must prove that the original provision in the worker's contract was fair and reasonable in the first place.

Therefore, Mr President, I beg to move the amendment standing in my name.

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

**The President:** Mr Lowey.

**Mr Lowey:** Thank you, Mr President.

I really do think we are beginning to make heavy weather of what I would have thought was a straightforward proposition. I thought the amendment from Mrs Crowe was for clarity, and to define what was and what was not.

Can I come to the Law Society's Committee – which we have just got today, by the way.

**Mr Singer:** Yes, I only got it today.

**Mr Lowey:** Earlier today, yes, I appreciate that, Mr President. What I find rather strange is where they say that employers would hesitate before providing funds to support a member of staff on, for example, extra-curricular training, if it was felt that a Tribunal might later assess whether an agreement to recoup such costs was fair and reasonable, notwithstanding that both parties had freely entered into

the agreement. I would have thought that was exactly the same as is now.

But I would remind that the chairman of a tribunal has got to be a lawyer, has got to be a person of legal standing. So, they are really criticising their own, if you like, in that.

I take cognisance of the fact that the mover says that there has not been a case where a worker has complained in the past, but as we know, the law is there, as there will always be a first time.

But rather than go for a whole series of amendments, I would rather go back to the original Bill, and leave things as they were. Perhaps that would be the best route for this Council at this particular stage – notwithstanding, Mrs Crowe, I think, was absolutely right to draw attention to something which I think most Members of Council found rather strange.

But if it is working, why fix it? I think that would be my stance on this particular thing.

**The President:** Mrs Crowe.

**Mrs Crowe:** Thank you, Mr President.

Of course, there was not time when we looked at this Bill to go to the legal draftsman and go through the Bill in its entirety. The comments I would make are related, really, to the response, once again, from the Law Society and, indeed, from the Hon. Member of Council, Mr Singer.

No employer or employee has had cause to complain. I do believe that we are just perpetuating, in this Bill, archaic legislation. I do not believe that this legislation is utilised, at the present time.

I did ask that the DTI did some consultation, to see if there were areas where this particular legislation was used. I do not believe that good employers claw back training costs from employees. However... and it was not specifically the retail trade. We have got the banking industry, post offices, building societies, all of which this legislation covers, who could have deductions made from cash shortages in their particular tills, presumably, by this legislation.

I do believe that the DTI needs to do some consultation. I do know that there is more employment legislation on the way, and I am quite content, as it were, to go back to the original Bill, with the view that the DTI does do some consultation on this particular area of employment law.

**The President:** If I could just hold you there, Mrs Crowe, for one minute and you can certainly start up again, but, in actual fact, Mr Lowey also has made the comment that it may be better to go back to the original Bill.

Now, Hon. Members at clause stage you amended the Bill. If you wish to go back to the original Bill, I require an amendment to delete... or at least I will require Council to agree to turn over the amendment which it put to clause 21, in the name of the Hon. Member, Mrs Crowe.

I hope that has cleared that point.

**Mrs Crowe:** Yes, yes. I am happy. I think I was trying to just make the point that it was brought in good faith, because I really do believe that it is archaic.

However, I do believe the Department has drafted an amendment, which I will be quite happy to support, Mr President.

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, this amendment has just been placed on our desks this morning. Having heard the Law Society comment, I find it difficult to understand why, with concerns in clause 21, they simply did not seek to remove the words 'fair and reasonable' which had been inserted.

If 'fair and reasonable' going in here somehow upsets the possibility that employers could retrieve payments for education, or whatever else it may be, it seems an enormously cumbersome mechanism to introduce yet another subclause which, in my mind, does not, in fact, alter subclause (2), which still says that it has got to be fair and reasonable to make any deduction from any relevant provision of the worker's contract, including, presumably, education or training or moving home.

So, I am slightly... Perhaps it is because we have not had time to fully absorb what this new subclause says, but it does seem to me that it is further complicating the issue and does not take away their objection.

So, I would be either happy to leave it as it has been amended or support an amendment to remove the words which were inserted. But I do not fully appreciate the clarification which this further subclause is purported to introduce.

**The President:** Mr Gelling.

**Mr Gelling:** Yes, Mr President, I think I would go along, at this stage, unless the mover of the other amendment can convince me otherwise, to actually go back to as the Bill was, because at least it had been out to the Law Society. They were happy with it, they repeated they were happy with it. Of course, I know, and I can accept, Mrs Crowe moved that in all good faith to try to make it more clear.

But I think, if there was an indication from the Minister that they would readdress this in future Bills, the cleanest way, quite honestly, would be to go to as we were and then have it put into the next Bill, so that we can have proper consultation, rather than just receiving this this morning and then trying to decipher what they really want.

I take out of that, they were happy with it in the first place, so rather than try to again amend it, in all good faith, we would be better actually removing it, and going back to as the Bill was originally presented.

**The President:** Are you making that proposal, Mr Gelling, that in fact we should delete the amendment in the name of Mrs Crowe which we made at clause stage, so that it goes back to the original wording of the Green Bill?

**Mr Gelling:** Yes, I think I was seconding Mr Lowey, who had taken the initial...

**The President:** Well, Mr Lowey made the comment –

**Mr Lowey:** I did.

**Mr Gelling:** Oh, I see.

**The President:** – and as I pointed out to Mrs Crowe, she followed up on that, but did not actually propose that that was what we were going to do. I was trying to lead in that I needed somebody (**Mr Gelling:** Right.) to propose it.

**Mr Lowey:** And I ask –

**The President:** Mr Lowey is going to propose –

**Mr Lowey:** I have taken the hint.

**The President:** Well, let us just take two minutes, because I understand, maybe, we have that coming forward as an amendment.

Hon. Members, I also have on our papers this morning, we also have an amendment which could be moved by Mr Butt, relative to the same clause. No?

**Mr Singer:** Well, Mr President, if I can just comment on what we have been talking about –

**The President:** Yes, sir.

**Mr Singer:** – and the proposed amendment.

The Department was happy with the original Bill as it was, and none of this would have occurred, if Mrs Crowe had taken the advice of the Law Society, in saying that they also felt that the position was okay. It had been in a previous Bill and it had been brought across to this new Bill. So, the Law Society's first position was to leave the legislation alone.

I would be happy if Mrs Crowe's amendment was reversed, and we went back to the original section. Certainly, the Department will look at the points that have been made for future amendment of the Employment Bill.

But, actually, this was something Mrs Christian said, that judgement... the Tribunal, at the moment, does not interfere in contractual matters. This was in allowing them, then, to come into contractual matters. The overall worry – and it was Mr Lowey's concern – the overall concern of the employers was that, whilst they had possibly undertaken an agreement with the employee, that monies may have to be returned under certain circumstances, the employer might well have felt that, despite that, it could have gone to an Employment Tribunal and the judgement – fair and reasonable or whatever – could well have been reversed.

The Civil Service have these agreements with members. If somebody is sent on a degree course or somebody comes across and they pay their costs, their relocation costs – and those can be considerable – if they leave within a certain time, those can be repaid. There was a concern that maybe going to a Tribunal, dealing with something which was not their remit, but they could make a decision – is it worth bothering in the first place?

I think Mrs Crowe particularly asked about consultation. In fact, there was consultation – you will probably be interested in this – we received four replies: from Mark's and Spencer; Tesco; one for Mr Lowey in particular – Anne Summers; and from River Island, none of which deduct money from employees' salary. Nothing is in there.

So, basically, it does not happen with the big retailers. So, to a certain extent, we were trying to assume something was happening which did not happen.

But, Mr President, I would be happy to support this amendment and we went back to the status quo. The Department, again, would be happy to look at the discussion that has taken place.

**The President:** Well I have not quite reached there, but I am about to reach there, I feel. Mrs Christian, do you wish to comment first?

**Mrs Christian:** Was that a winding-up, Mr President, or are we still in committee?

**The President:** No, that is not a winding-up because, as I understand it, I possibly have two amendments still to come forward to this.

**Mrs Christian:** May I continue with the debate? (**The President:** Yes.)

In light of the comment that the hon. mover of the amendment has just made, I wonder if he could further explain, given that he is concerned, or the Law Society is concerned, that there should not be any power of the Tribunal to consider the issue whether or not the condition in a contract is fair and reasonable, why he is content to leave the words 'fair and reasonable' in 21(2)(a), which seems to me to give the Tribunal, continue to give the Tribunal – notwithstanding his amendment – power to consider any relevant provision in the worker's contract? It is not being removed by his amendment.

**Mr Lowey:** But I think the answer, Mr President, is in the Law Society's paper. In paragraph 1, it actually says that they commented on clauses 21 and 29 and it is the view, it is not minded to make strong material... It is their view that there is nothing wrong with the legislation, as of now.

Then it goes on to discuss the two amendments, and then, in the final paragraph, it says the Law Society Legislation Committee's view *remains* that clauses 21 to 29 are, as presently drafted, sufficiently clear, understandable and reasonable.

So, they have not changed their view; they are only commenting on the two amendments. So, therefore, I think Mrs Christian's question is why are they doing that? Well, they would rather it go back to the original, because they still think it is fair, reasonable etc, and they have not altered, but they have passed a comment on the two amendments that have been floated.

**The President:** I appreciate the point, but maybe I should let Mrs Christian come back on that, because, in fact, Mrs Christian is saying: is that not the effect of clause 21 *now*, as written? I think that is the point which she is making.

**Mr Lowey:** But is it?

**Mrs Christian:** No, clause 21 now, as amended by Mrs Crowe, provides in (2)(a):

'An employer shall not make any other deduction from any wages of any worker employed by him or her unless –  
(a) the deduction is required or authorised to be made by virtue of any statutory provision or any relevant fair and reasonable provision of the worker's contract'.

Now, that seems to me to deal with any relevant provision of the worker's contract, be it employment support or housing removals (**Mrs Crowe:** Everything.) or whatever. 'Fair and reasonable' is on there.

The amendment moved by the Department through Mr Singer does not remove it, it goes on to deal only with clauses 22 and 23, I think (**Mrs Crowe:** Yes.) by introducing the new... by substituting clause 21(3), this new paragraph, which deals with clause 22 and 23. It does not remove the 'fair and reasonable' provision from clause 21. I do not follow the logic of that – perhaps there is one.

**Mr Downie:** Mr President.

**The President:** Mr Downie.

**Mr Downie:** I think, what we are trying to do: these specific areas that are under discussion, at the moment, related to people who are in an environment where they handle cash, or they were in a retail environment. What has happened, since the introduction of Mrs Crowe's amendment, is we have actually broadened the whole issue.

One of the areas, for example, if you recruit someone from the UK, you bring them over to the Isle of Man on a contract, their relocation expenses could be £45,000. Added to that, you could have that person seek support to do some extended work in the finance sector, where a qualification was required, and then because of a problem over a contract of employment, they broke their agreement, they went back to the UK, leaving the employer with a huge cost. At the end of the day, there was no employer's side of the agreement kept.

I think the thing we are trying to avoid is a situation where all this becomes an issue for the Tribunal to deal with. At the end of the day, the original clause 21 was put in to be able to find a mechanism to deal with an employer who wanted to take more than 10 per cent out of an employee's pay, when the books did not balance. It was a protection mechanism for the employer. I think, however well intent we have been, we have actually lost sight of that.

I would agree with my hon. colleague of Council, Mr Lowey, that really we should go back to the status quo. We have got a lot of time, then, to have some further dialogue with industry itself, and with the Law Society and the retailers, and at least we will know, then, we are acting in everybody's best interest.

This Bill has been two or three years in the making. There has been a lot of consultation, with a number of interested parties, and I think we are running the danger here of putting more and more problems in place further down the road.

So, if I help to clarify that, well, I am grateful.

**The President:** Well, let us just hold there, because I think the best position that we could reach now is if Mr Lowey will move his amendment, and we get that formally before Council. In the winding-up, possibly, Mr Singer – if Mr Butt does not wish to move his own amendment – might be able to clarify the position raised by Mrs Christian.

Mr Lowey.

**Mr Lowey:** Thank you, Mr President.

It is a simple one and it is an echo that has been reflected round the debating Chamber this morning. My amendment to clause 21 is:

*Clause 21*

*Delete the amendments moved by Mrs Crowe on 14th February 2006.*

That means the original printed Bill would stand, that clause 21 would stand, and for all the reasons that have been said – and I do not wish to recite them again – I think that may, in this instance, be the best way forward.

I beg to move.

**Mr Gelling:** I will second that, but is Mr Butt not moving his amendment?

**Mr Butt:** Mr President, if Mrs Crowe's original

amendment were to stand, the one she made two weeks ago, there are some minor technical amendments needed to that amendment. That is the only reason for this amendment. If we should revert back to the original Bill, it will not be necessary.

**Mr Gelling:** They are not required. Thank you.

**Mr Singer:** Mr President, I would assume that if –

**The President:** Can we just hold on a minute, because I am just trying to work out how we will vote on this, to get them in the right sequence of order, to be honest – *(Interjection by Mr Singer)* Just a minute, because if I do not have Mr Butt's amendment before Council, and we accept Mrs Crowe's, we need that amendment properly moved, don't we?

So, Mr Butt, for clarity, if only for my own purposes, I would prefer you to move the amendment, sir.

**Mr Butt:** Right, sir. I beg leave to move the amendment which is in my name, Mr President:

*Clause 21*

*Page 20, in the new subclause (3), for 'an employment tribunal' substitute 'the Tribunal' and after 'to have made the deduction' add 'or to have received the payment as the case may be.'*

It relates to two minor matters, which would be in the new subclause (3), which was Mrs Crowe's original amendment. Her amendment refers to 'an employment tribunal', whereas, in fact, there is only one Tribunal, 'the Tribunal'.

It also refers... there is a gap in her amendment. Whilst it allows the Tribunal to determine whether a deduction was relevant, fair and reasonable, it does not deal with the situation where an employer receives a payment from the employee.

So, the amendment is to actually add, also, to have received a payment, as well as to have made a deduction. Those would have been at page 20, in the new subclause (3).

So, I beg permission to move the amendment in my name, sir.

**Mr Gelling:** I will second that, as well, Mr President.

**The President:** Right. Okay. Now, Mr Singer, perhaps you would like to wind up, sir.

**Mr Singer:** As I have indicated, I would be very happy to accept the amendment from Mr Lowey and take us back to the original position. Then, as I said, the Department would be happy to look at the comments that have been made, and we would be going out to further consultation, as the Minister has said.

Just one point raised by the Hon. Mrs Christian: the new amendment that I have got is specific to those in retail employment – that is, in relation to stock shortages, cash deficiencies. The new amendment links to clauses 22 and 23, which are specific to retail.

So, with that, sir –

**Mrs Christian:** Mr President.

**The President:** No. Mrs Christian, you wish to come back. I can appreciate you are unhappy there.

**Mrs Christian:** I do not wish to come back. I just do not accept that interpretation of the clause.

**The President:** Right. Well, Hon. Members, we have thrashed around a little bit on this whole matter, really, so accepting that we have in front of us three separate amendments at the present time, can I, first, put the amendment in the name of Mr Singer. Those in favour of the amendment moved by Mr Singer this morning – Mr Singer’s amendment, Hon. Members –

**Mr Singer:** I would be happy to accept –

**The President:** Oh, okay. Alright –

**Mr Singer:** Would that not be better first, and then I can – ?

**The President:** Alright. Are you happy, Hon. Members, that if I just put Mr Lowey’s amendment we are formally overriding everything else? (*It was agreed.*) If you are content with that and not wishing to defeat the other amendments, that is fine by me. So, I will happily accept that, as well.

So, I will then, Hon. Members, put to Council the amendment moved by Mr Lowey. Those in favour, please say aye; and against, no. The ayes have it. The ayes have it.

Now, Hon. Members, in accepting that amendment, what it amounts to is that, for absolute certainty, we are reverting, all discussions notwithstanding, to the original Green Bill, clause 21. Okay, Hon Members? (*It was agreed.*)

Right, with that acceptance, can I turn to clause 131, where I understand... Mrs Christian.

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

Members will recall that we had some discussion about whether or not it was appropriate in primary legislation to have reference to a particular age, without the ability to amend that reference to age, without changing the primary legislation. For that reason, I beg to move the amendment standing in my name, in relation to clause 131:

*Clause 131*

*Page 112, line 7, after ‘the age of 65’ add ‘or such other age, not being less than 65, as may be prescribed.’.*

This will give the Department, with the approval of Tynwald, the possibility to change that reference to the age of 65 in that clause. I beg to move.

**The Lord Bishop:** I beg to second and reserve my remarks.

**The President:** Mr Singer, do you wish to comment?

**Mr Singer:** It was, sir, a point which I actually raised at the time. I am quite happy to accept that.

**The President:** Minister.

**Mr Downie:** I am content with that, Mr President. I think it does make sense and it will make things a lot easier in

future. I thank the Member for taking the time and trouble to work on the amendment, to bring it forward.

**The President:** Hon. Members, I put to you, then, the amendment moved by the Hon. Member, Mrs Christian, to clause 131. Those in favour, please say aye; and against, no. The ayes have it. The ayes have it.

Now we need to move on further to clause 134, dealing with the orders. In this case, I call Mr Singer.

**Mr Singer:** Thank you, Mr President.

This concerns clause 134(2). This subclause, as drafted in the Bill, prevents the Employment Tribunal from ordering re-employment where the dismissal is in contravention of clause 124, protected industrial action, where the industrial action is still ongoing. This is in order not to inflame a difficult situation further.

However, the same prohibition on the Employment Tribunal does not apply to dismissals under clause 129, which is concerned with dismissals of strike and circumstances other than protected industrial action.

So, if a union takes industrial action, which is not protected industrial action, and the employer selectively dismisses some of the striking employees, the Employment Tribunal could order the employer to re-employ the employees, whilst the industrial action was still ongoing. Whilst this scenario is, perhaps, unlikely, the approach in the Bill is inconsistent.

Further, the Bill makes it more onerous for the Employment Tribunal to order re-employment to employees who have taken lawfully organised, protected industrial action, than it does in the case of employees who have taken unlawful or unofficial action. This amendment, therefore, will make the approach in the Bill consistent.

I beg to move the amendment in my name:

*Clause 134*

*Page 114; line 22, for subclause 134(2) substitute –*

*‘(2) In relation to a complaint under section 132 (complaints to tribunal) that a dismissal was unfair by virtue of section 124 (dismissal : protected industrial action), or where the circumstances of the dismissal were either of those specified in section 129(2)(a) or (b) (selective dismissal or re-engagement arising out of industrial action), no order shall be made under subsection (1) until after –*

*(a) in relation to a complaint under section 132, the conclusion of protected industrial action by any employee in relation to the relevant dispute; or*

*(b) where the circumstances of the dismissal were either of those specified in section 129(2)(a) or (b), the conclusion of industrial action by any employee in relation to the relevant dispute.’.*

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

**The President:** Does any Hon. Member wish to comment in relation to this amendment? No, in that case, Hon. Members, what I put to Council is the amendment in the name of the Hon. Member, Mr Singer, to clause 134. Those in favour of the amendment, please say aye; against, no. The ayes have it. The ayes have it.

We move on, yet further, Hon. Members, to clause 141 and this time, Mrs Christian. Clause 141 is on page 119.

**Mrs Christian:** Thank you, Mr President.

Again, this is a matter relating to the specific reference to a birthday. The clause refers to the 64th anniversary of the day of the employee's birth, subclause (3).

In order to introduce a measure of flexibility, the amendment proposes that the words 'or such later anniversaries may be prescribed' be added to this subclause in order that the Department, in future, may have an ability to change the reference to that birthday, without recourse to changing the primary legislation.

I beg to move:

*Clause 141*

*Page 120, line 10, after 'the day of the employee's birth,' insert 'or such later anniversary as may be prescribed,'.*

**Mr Lowey and the Lord Bishop:** I beg to –

**Mr Lowey:** Sorry!

**The President:** The Lord Bishop seconds.

**The Lord Bishop:** I beg to second, yes.

**The President:** Hon. Members, I put to Council the amendment in the name of the Hon. Member, Mrs Christian, to clause 141. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We now turn to schedule 8 and, again, I call on Mrs Christian.

**Mrs Christian:** Thank you, Mr President.

This deals with changes to the Redundancy Payments Act. Again, it is to introduce flexibility and change the reference to the age, in section 2(1) of the Redundancy Payments Act 1990, by introducing:

*Schedule 8 (amendments to the Redundancy Payments Act 1990) –*

*Page 192, after paragraph 2 insert the following and re-number subsequent paragraphs accordingly –*

*'3. In section 2(1) –*

*(a) in paragraph (a)(i) after "less than 65" insert "or less than such other age not less than 65, as the Department may by order prescribe,";*

*(b) in paragraph (b) after "the age of 65" insert "or such other age, not being less than 65, as the Department may by order prescribe.'.*

*Page 196, after paragraph 16 insert the following and re-number subsequent paragraphs accordingly –*

*'17. In Schedule 1 paragraph 2 after "the 64th anniversary of his birth" insert "or such later anniversary as the Department may by order prescribe,'.*

The same principle as the two earlier amendments that I have moved, Mr President – in this one, you will note that the wording is slightly different. It is required that we put in the words 'that the Department may by order prescribe'. That is necessary under the Redundancy Payments Act, whereas it was not necessary under this Act, because of the general provision in the Employment Bill.

I beg to move.

**The Lord Bishop:** I beg to second and reserve my remarks.

**The President:** Again, Hon. Members, what I put to Council is the amendment in the name of the Hon. Member, Mrs Christian, to schedule 8. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Now, Hon. Members, having cleared the backlog, as it were, of amendments, for clarity again, when we came through the clauses stages, Hon. Members, we continued with the Bill in the knowledge that it was possible that further discussion on clauses would take place this morning, when dealing with Third Reading. We have cleared those matters, insofar as we acknowledge that clause 21 reverts to the Green Bill, as printed, and there have been amendments to clauses 131, 134, 141 and schedule 8, which we have accepted this morning.

## Employment Bill Third Reading approved

1. Mr Downie to move:

*That the Employment Bill be now read a third time and do pass.*

**The President:** Hon. Members, in that knowledge, I then ask the Member in charge, Mr Downie, to formally move the Third Reading.

**Mr Downie:** Mr President, may I say how pleased I am with the progress of the Employment Bill so far. I would thank Hon. Members for their support of previous Readings of the Bill and, as indicated earlier on, we will go back out to consultation, and deal with some of the other matters that have been dealt with this morning.

I would like to deal with a number of points that were raised during the clauses stages. Firstly, various Hon. Members asked why there is no reference to paternity leave in various clauses, such as clause 96(6) or clause 110(2), when other types of family leave are mentioned in those clauses. I would advise Hon. Members that these omissions are not oversights, but that references to paternity leave would be inappropriate in each of the clauses.

Clause 87(6) and clause 96(6) are concerned with the permitted modification of rights of employees who are away from work for very extended periods of time. On account of, respectively, taking a combination of parental leave and maternity leave or adoption leave, or taking a combination of additional adoption leave and maternity leave, or adoption leave, such a pattern of leave might be taken where, for example, a woman has taken both ordinary and additional maternity leave, in respect of the birth of a first child, during which time she becomes pregnant again and takes ordinary maternity leave in respect of the second child, without first returning to work.

The same issues do not arise in the case of a man who takes, for example, adoptive leave followed by paternity leave, because paternity leave is only two weeks long. Hence the absence of references to such leave in these clauses.

In the case of clause 92(2), paternity leave is not

mentioned because the clause, as a whole, is concerned with paternity leave and concerns the interaction of paternity leave with other forms of family leave.

Similarly, clause 110(2) provides for employees who are dismissed while they are pregnant, or on maternity leave, or on adoption leave, to be automatically entitled to receive a written statement of reasons for dismissal, without having to request such a statement. There is no corresponding right for fathers on paternity leave. This is because dismissal of pregnant women, or women on maternity leave, is a well-documented form of discrimination, which warrants particular protection.

In contrast, it is not necessary to afford enhanced protection to men who can only be on paternity leave for a maximum of two weeks, and who are far less likely to be dismissed while taking paternity leave. Further, a man who was dismissed while on paternity leave could, in any case, request a written statement for reasons of dismissal, under the general right contained at clause 110(1).

Moving on, various Hon. Members had concerns that clause 98 contains powers to modify or exclude an enactment, and there are other examples of such powers elsewhere in the Bill. The departmental officers contacted the legislative draftsman, who produced the Bill, about this matter and the advice received was as follows.

Secondary legislation can amend primary legislation and many application Acts contain such a power. These Acts include the Social Security Act 2000, the Pension Schemes Act 1995, the European Communities (Isle of Man) Act 1973 and the Customs and Excise Act. Moreover, secondary legislation comes before Tynwald every month, which has just such an effect.

In the case of clause 98(g) of the Employment Bill, the provision is intended to ensure that the benefits conferred by clauses 95 and 96 are not qualified by other legislation. The provision in the Bill is repeated elsewhere in respect of other rights, for example, in clauses 83(f) and 88(g), and the same justification applies in each case. Of course, such powers would be construed very narrowly and would not extend to matters of principle on which a decision of the branches ought to be taken.

Turning to the next point, the learned Attorney voiced concerns as to the right to be accompanied at disciplinary and grievance hearings, in part VIII of the Bill, being qualified by the 'reasonable' criterion. Mr President, the whole of part VIII has to be viewed in the light of the revised code of practice of disciplinary and grievance procedures, which will be issued for consultation very shortly. The new code will be divided into three main parts, the third of which will be entitled 'A worker's right to be accompanied', and which is based on part III of the corresponding UK code.

Paragraph 103 of the UK code is as follows:

'What is a reasonable request?

Whether a request for a companion is reasonable will depend on the circumstances of the individual case and, ultimately, it is a matter for the courts and tribunals to decide. However, when workers are choosing a companion, they should bear in mind that it would not be reasonable to insist on being accompanied by a colleague whose presence would prejudice the hearing or who might have a conflict of interest. Nor would it be reasonable for a worker to ask to be accompanied by a colleague from a geographically remote location when someone suitably qualified was available on site.'

It can be seen from this that the addition of a concept of reasonableness is, in reality, a means of identifying the

protection afforded by part VIII of the Bill to workers who might otherwise make unreasonable requests. Moreover, if workers had an absolute right to be accompanied, they would be protected in all circumstances, even where they had chosen a companion who was clearly inappropriate to be involved in the particular case, or where it might be exceedingly difficult for the employer to comply with a particular request.

Turning to the next point, the Hon. Member of the Council, Mrs Christian, also had a question relating to the new right of accompaniment which workers have at disciplinary and grievance hearings. The Hon. Member's concern was that where a worker was a lay official of a trade union, that worker might be asked many times to accompany workers and that this could create difficulties for employers. Mr President, I would make the following points to reassure the Hon. Member.

Firstly, under clause 103(8), the employer is only obliged to permit the worker to take time off if the purpose is to accompany another of his own workers. Further, even if an employer allows his own worker the time off to act as a companion to a worker of another employer, he is not obliged to pay him.

Secondly, clause 103(9) of the Bill qualifies the worker's right to accompany other workers by the same criteria, which govern the right to time off for trade union duties contained at clause 35. In particular, the amount of time off must be reasonable in all the circumstances and must take regard of any relevant code of practice.

Moving on to the next point, the Hon. Member, Mr Singer, queried whether the Bill should contain enabling powers to alter the default retirement age of 65, which is contained in clause 131(1). The default age appears elsewhere in both the Bill and the Redundancy Payments Act 1990, and the Department has worked with the legislative draftsman to produce the necessary amendments, which I understand are to be moved by the Hon. Member, Mrs Christian, and which the Department fully supports.

Turning to the next point, the Hon. Member, Mrs Christian, also asked whether compensation for injury to feelings can be recouped by the DHSS under its powers contained at clause 157, to recover any jobseekers' allowance or income support paid by the Department. I understand that, whilst the enabling powers at clause 157 do allow the Department to do so, the DHSS is not intending to bring forward amended regulations seeking to recoup any such awards. Members should, in any case, bear in mind that it is expected that any compensation for injury to feelings will only be awarded on rare occasions and that any such payments will be subject to an overall limit of £5,000.

Moving on, Hon. Members asked whether clause 164, part-time work, should contain a definition of 'part-time'. I can advise Hon. Members that the absence of a precise statutory definition by reference to any set number of hours is deliberate. The general approach of the regulations to be made under this part will be to make the custom and practice of each employer the determining factor as to whether the worker is a part-time worker or not.

In practice, what this means is that it will be up to each employer to determine what constitutes full-time working for their organisation. Any worker whose working hours are fewer than the standard full-time working hours in a particular organisation will then be treated as a part-time worker.

Thus, someone working 35 hours a week may be regarded as a part-time worker in organisation A, if the full-time norm in the company is 40 hours a week but, on moving to organisation B, may become a full-time worker, if the custom and practice in organisation B is that 35 hours a week is the full-time norm. In this way, all workers who work less than their employer's standard hours can be protected against less favourable treatment which is purely on account of the number of hours a person works.

The next point raised concerned the maximum amount of a week's pay, which amount is contained in schedule 6. Members will recall that, whilst this has been increased from £385 to £420 by the Council, it was suggested that the Bill should contain a formula such as the value of median earnings of the previous year instead of a fixed amount. The Department would not subscribe to this idea, because even if such a formula were adopted, an order would be required to specify the exact value of median earnings each year. Whilst the Department already has powers to increase the maximum amount of a week's pay by order, any obligation to bring forward a new order annually would be likely to be a waste of the Department's modest legislative resources.

Members should note, for example, that there was virtually no difference between median earning in 2005, the figure we have included in the present Bill and the median earnings in 2004. In fact, median earnings in 2005 were slightly lower than in 2004, so that, in this case, there would have been little point in bringing two separate orders over two years. The important point is to ensure that the maximum amount of a week's pay is reviewed, from time to time, and that there is a broad correlation with earnings.

Hon. Members should, also, note that even before the maximum amount of a week's pay was increased, the limit in the Isle of Man was well ahead of that in the UK and will, following this Bill, be 50 per cent higher than the corresponding UK limit.

The next point raised was the position of Crown servants under the Bill. Crown servants enjoy almost all of the normal statutory rights by virtue of clause 172(4). The main exceptions are the right to a minimum notice period, because of the doctrine that employment by the Crown is terminable at will, and rights in respect of the employer's insolvency under part XI of the Bill. This latter exception is for obvious reasons. These exceptions are contained at schedule 4 of the Bill and Members should note the exceptions are the same as those in the equivalent UK legislation.

Mr President, I hope I have answered the main points that were raised by individual Members. If I have not, then I would apologise for any oversight, and ask Members to let the Department have a note of any additional questions that we may not have dealt with satisfactorily.

Mr President, before closing, I would like to extend the Department's thanks to Andrew Webb at the Attorney General's Chambers, who drafted the Bill, and to Ken Gumbley who assisted the Department by producing notes on clauses.

I have nothing further to add at this stage, Mr President, but beg to move that the Employment Bill be read for a third time.

**The President:** Mr Singer.

**Mr Singer:** I beg to second, Mr President, and reserve

my remarks.

**The President:** Mr Waft.

**Mr Waft:** Thank you, Mr President.

I would just like to congratulate the Department and the Minister and colleagues for the way they have progressed this Bill. It is quite a hefty Bill and it is a great step forward in such legislation. We have been waiting for Bills like this for a long time.

I would, however, request that his Department does give consideration, now that we will have the Bill on the statute books, that the Department does progress the Employment Equality Bill hard on the heels of this Bill, so as to enable disabled access to all places of employment giving reasonable access.

Thank you, Mr President.

**The President:** Mr Lowey.

**Mr Lowey:** Yes, I, too, without reciting again what my hon. friend has just said, this is a very important piece of legislation, and the manner in which it has been conducted, the consultation... I remember when we first brought out social legislation, the Employment Bill in... was it the early 1990s? Maybe earlier than that. There were heated exchanges. I think the climate has certainly moved on, both from employees' and employers' sides, and I think the results by and large are... we have a good...

Contrary to what a lot of people try to make, from time to time – storms in teacups – the employment position in the Isle of Man is healthy, relations are good between employers and employees, and I think this Bill goes a long way to consolidating that. Long may it continue, because it is in everybody's interests that we do have good, sound legislation and I think this is.

**The President:** Mr Downie, I do not know whether you wish to reply or not, sir.

**Mr Downie:** Just briefly, Mr President.

I would just like to thank Mr Waft for his comments that the Bill was a great step forward. I will give Mr Waft that we will get on with the Employment Equality Bill as quickly as we can, given the resources within the Department.

I would like to thank the Hon. Member for Council, Mr Lowey, for his very positive comments. We do have good labour relations in the Isle of Man – I think they are excellent, and long may it continue. I hope that when this new Bill becomes law, it will provide the framework, it will be easy enough for both the employee and the employer to understand, and it will stand us in very good stead for many years to come.

I do not want to repeat this exercise on a regular basis!

**Mr Lowey:** Every 20 years is enough!

**Mr Downie:** So, I thank everybody in Council for the support and valuable comment that you have made.

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

## Dogs (Amendment) Bill

### Clauses considered

2. Mrs Christian to move.

**The President:** We turn now, Hon. Members, to the second Item on our Order Paper this morning, which is the Dogs (Amendment) Bill, for consideration of clauses. I call upon the Hon. Member, Mrs Christian, to take clause 1.

**Mrs Christian:** Thank you, Mr President.

Clause 1 inserts new provisions to supplement the existing section 4 of the 1990 Act. This will enable the Department to make regulations under which a dog can be identified by means of a micro-chip. That dog may be exempted from the requirement to wear a collar with the owner's name and address. That remains to be established under the regulations.

It also enables the Department to make regulations providing for alternative means of identification, for instance, tattoos. The Department has no immediate plans to introduce such regulations and, in the event that it did, with regard to the alternative methods, it would be required to consult with interested parties.

I do think, Mr President, we need to consider this in the context of the original Act, which currently exempts some dogs from wearing a collar under certain circumstances. This amendment would allow regulations to prescribe the circumstances in which this electronic transponder could be used as the identifier for the dog.

I beg to move clause 1.

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

**The President:** Mr Singer.

**Mr Singer:** Thank you, Mr President.  
I wish to move an amendment:

#### *Clause 1*

*Page 1, line 3: for the proposed new section 4(5) substitute-*

*'(5) Without prejudice to the requirements of this section, regulations may provide for a register to be established by the Department to facilitate the identification of dogs fitted with transponders by means of which a dog may be identified by reference to its owner's address and its licence.'*

*and omit proposed new subsection (6).*

Mr President, the present 1990 Bill stipulates that a collar will be worn with name, address and licence number. This Bill changes that it could be that a substitute of a transponder might be allowed, if the Department so prescribes, instead of the collar. I believe that this is not a good step.

I would like to see collars remain on dogs, with the name and address and the licence. Then the person who owns a dog can, as well as that, if they wish, fit a transponder to the dog, to use it as extra security identification.

The transponder, I can understand, could well be used by somebody who may have an expensive dog, a show dog, and if the dog is stolen, then that dog can be identified – although I suppose a thief could always remove the transponder.

But I think that we should keep the original collar. First

of all, it is a quick identification of the dog. If it has only got a transponder, then it will have to be taken to a vet, or it will have to be taken to the police station – wherever the equipment is to identify whose dog it is, where the dog lives, whether it is licensed or not.

At the present time, any member of the public can identify a dog and hold that dog – which they do, in practice – and then, whilst they contact the owner and say, 'Your dog is here', if the dog has escaped from the garden, etc, certainly, that way, it is a quicker removal of danger to the public, rather than the dog wandering and the person...

It is no good anybody holding a dog which they cannot identify. It could cause traffic accidents and, also, by somebody getting the dog quickly, holding it, ringing the owner and saying, 'This is your dog', it can avoid a £100 instant fine. Once a policeman gets hold of the dog, there is an instant fine of £100.

I believe it will also, by retaining the present situation, save the Police and the vet time, holding the dog in the police station. As I say, the person is still liable to the fixed penalty, if there is police involvement, but I believe it is not a forward step in saying that this is an alternative. By all means, if the person wishes to have extra identity on the dog, have a transponder; but not, Mr President, as a substitute. Therefore, I move my amendment.

**Mrs Crowe:** I will be pleased to second that, Mr President, to get it on the table for discussion.

**The President:** We have the amendment in front of Council. Is there any other Member who wishes...?

**Mrs Christian:** I would like to speak to the amendment, Mr President.

**The President:** Speak to the amendment, Mrs Christian.

**Mrs Christian:** I have some concerns about the amendment. I would ask Members to look at the Dogs Act, as amended, which Members have had circulated to them with their briefing notes. The Bill continues to require dogs to wear a collar. Section 4 says:

*'The keeper of every dog shall cause it, except when in a dwelling-house or the curtilage thereof, to wear a collar bearing the name and address of the owner and (except in the case of an exempt dog) having attached thereto a current token.'*

Then it goes on to list certain exemptions, and the circumstances where a collar is not required to be worn.

The regulations which are being proposed in subclause (5) are enabling. They do not suggest that it will necessarily apply that the provisions of the earlier part of the clause will not be necessary.

*'Regulations may provide that this section shall not apply, or shall apply subject to prescribed modifications,'*

and I think that is the important wording of the clause, as proposed by the Department –

*'to a dog which is implanted with an electronic transponder'.*

My concern, partly, with the amendment, as moved by the Hon. Member, Mr Singer, is that he is removing the reference

to 'as an alternative to a dog collar'. There are circumstances already within the Act which say that a dog can be without a dog collar. The thinking of the Department in moving this is that for those dogs which are exempt from having a dog collar, it will more readily facilitate their identification, if they happen to be wandering and are caught, if they have got a micro-chip.

It is, I think, to prejudge the issue to suggest that the regulations will apply to all dogs. It will be, at the time when the regulations are before Tynwald, for Members to decide whether or not they are going too wide, in terms of the exemptions for the requirement to wear a collar.

I would ask Members to support the Bill as stands as an enabling provision.

The other concern I do have about the amendment is that it says that:

'a register to be established by the Department to facilitate the identification of dogs fitted with transponders'.

Generally speaking, where dogs are micro-chipped, there are central registers, maybe in the United Kingdom or somewhere else, to which people refer. I think it would be onerous on the Department to require that it has to establish its own register. For that reason, I would ask Members to stay with the original proposal.

I am, also, concerned that the amendment moved by the Hon. Member omits the proposed new subsection (6). He has not actually said why he would wish to see that removed. Many animals are identified by means of tattoos, and there are alternative methods, such as freeze-branding, which may be used – although not generally accepted by people who are proud of their animal's appearance and do not want to have a brand across it! But it is a possibility. Subclause (6) does allow the Department to, in the future, make regulations to provide for alternative methods, such as tattooing, which seems to me to be a not unreasonable method for identifying an animal. Again, those regulations would have to be approved by Tynwald, and would not necessarily remove the requirement for a collar to be worn with an identifying licence and disc.

So, I hope that Members will give consideration to those concerns about the amendments submitted by the Hon. Member.

**The President:** Mr Lowey.

**Mr Lowey:** Yes, Mr President.

Following on from the Member in charge of the Bill, regarding the regulations, do the regulations take precedence over byelaws? I notice in the Bill that... and one of the concerns that I expressed in the First Reading was we could have post-code... a different law in various parts of the Island, if the local authorities are going to do this.

The regulations imposed on the local authorities and the byelaws cannot supersede or override the regulations – that is number one.

Number two is – forgive me – 'electronic transponder'. Now, I think we all have got a rough idea what it is. It is a chip that they put in and they can tell you their blood group and who their granny is! But nowhere do I see it interpreted. What does an electronic...? We have already heard of micro-chip used as an alternative to it – is there an interpretation of that anywhere – 'electronic transponder'? I do not see it, and I have looked in the clause dealing with

interpretation – unless it has been interpreted somewhere else that I do not know.

I am minded, on the strength of the argument of the mover of the Bill, to say why? I notice and I have got the word 'may' ringed, which gives it... it is a permissive thing, as opposed to a 'you shall do'. I think flexibility is the key, but then that rings a bell with me, with bye-laws and regulations, and which supersedes which.

So, for clarity, I think I would like that answered by the mover, when she comes to answer the clause, but I am minded to stay with the clause as printed.

**The President:** Mr Downie.

**Mr Downie:** A couple of points I want to raise, Mr President.

The Hon. Member for Council, Mr Singer, with his amendment, does make reference to the Department keeping a register. I think the Hon. Member for Council, Mrs Christian, is quite right. These transponders are quite tiny. I think it might be helpful, for the next Reading, if the Hon. Member could bring one, to actually show Members what they are.

**Mrs Crowe:** Minus the dog! (*Laughter*)

**Mr Downie:** It may be available to have a reader, as well, but they are tiny things. You could compare them to a small Beechams capsule, and they are inserted in the scruff of the neck of the animal, generally, and are read with a reader.

Now, for the Department to provide a database or access, I think it would be very costly. The only way to deal with that is... it is costly enough for the vet to install them, it is not a cheap exercise. They are expensive and, generally, the databases are held in the UK or somewhere else, and the vets and the animal organisations/welfare organisations have access to some of these pieces of information.

I think what the Hon. Member's amendment is looking for is a belt-and-braces approach, because most of the times of the year when you have a problem with a dog is when a dog has gone missing, or the time when the TT races are being held and there has been a dog caught on the closed roads. It is very difficult for those in authority to have a mechanism to deal with a dog, particularly if it does not have a collar on.

I would like to think that when the regulations are put before us, in another place, there will be quite a clear audit trail available to people in that sort of a circumstance, where there is an easy and effective way to identify who the owner is, for the sake and safety of the animal, if nothing else. Dogs do go missing and they do go astray. Whereas farm dogs and other dogs are exempt from the legislation, it is always somebody's pet that causes a particular problem, so I think that would be helpful.

I think the amendments that were moved in the other place actually have given us a way forward. I am content with the Bill as it is at the present time, and I will be supporting it.

I would just like to finish off, Mr President: if either the mover of the Bill or perhaps the Attorney General could explain to me, in normal terms, what 'a dog at large' actually means. It is terminology that is used by the courts, and in other areas, and yet it is not referred to in any legislation – 'Your dog is at large'.

**Mrs Christian:** It is.

**The Lord Bishop:** There it is, in under 'Interpretation'.

**The President:** Mr Waft.

**Mr Waft:** Thank you, Mr President.

I think the mover of the Bill has nullified, to a degree, the amendment, when it was stated that this was an enabling suggestion, that the Department can have a means for identifying those with a micro-chip. It does not say that they should not have to wear a collar in future; it is only an alternative, so anyone who has the idea of inserting a micro-chip has the alternative means of doing so legally. That is the difference, perhaps.

There has been no reference made to who actually identifies these dogs. Is there some kind of machine that will have to be used to identify the chip? If there is a hand-held machine to identify the chip, will all local authorities have to have one? When they do get loose, will they be able to take them to the local commissioners, and will they be readily accessible to be read there? What is the cost of these things? There is no mention of cost at all.

**The President:** Mr Lowey.

**Mr Lowey:** Just finally, I sometimes think, why are we bringing the legislation in? Because dogs create problems. These dogs that are loose need to be identified.

The micro-chips, for example, are used in expensive dogs which are show dogs, gun dogs, specialist dogs and I can understand that. The ordinary pooch, the mutt that most of us have in the house as family pets, we spend enough on them without having to put micro-chips in their ears! A collar is the norm.

I sometimes wonder what we are attempting to do here, because dog-napping or kidnapping dogs, or whatever – there is a growing trend for that, and the micro-chip was introduced as a way for that. We are trying to introduce an expensive resource for resolving the main problem on the Isle of Man, which is stray dogs.

If I believe what I read in the international press, my own local authority, of course, are leading the way with DNA – and I am not going to go into that (**Mrs Crowe:** Thank you!) but, you know what I mean! I think we are going overboard for what we know is a problem, and we are getting an awfully complicated way of resolving it.

I think what the Department are trying to do is just about striking a balance and I would be sorting the Bill on those grounds.

**The President:** Mrs Christian.

**Mrs Christian:** Starting off with the Hon. Member, Mr Lowey: do regulations over-rule a byelaw?

**Mr Singer:** Sorry, can I sum up my amendment? Is Mrs Christian summing up altogether?

**The President:** I will allow you to sum up, if you wish to sum up.

**Mr Singer:** I would like to.

**The President:** Well, alright – sorry, Mrs Christian – Mr Singer wishes to add to his amendment.

**Mr Singer:** I would like to thank Mr Lowey, actually, for his support, because he was saying that what is being introduced is well over the top, or it would be over the top for a stray dog which is going down the street anywhere in the Isle of Man, if the person who owns it decides, 'Oh, I do not want a collar on the dog, I am going to put a transponder on.' That is going to cause an awful lot of problems.

I think the Hon. Member, Mr Downie, said it would be easier to identify if it had a transponder, where a dog had not got a collar how. If a dog has not got a collar now, it is an offence. What I want to do is to keep it an offence for a dog not to wear a collar with easy identification.

If somebody has a farm job then, by choice, if they do not want to lose that farm dog, they may well choose, in the future, that they wish to put a transponder on that dog, for reasons... But, I am wondering, who is going to read the transponder? We have no idea who is going to – and talking about setting a Manx dog up on a UK database seems to me a bit over the top. Who is going to have the equipment? Is it going to be the Police? Is it going to be the vet? Is it going to be the local authority? We do not know.

The simple thing at the moment is that that dog has got a collar on it, with its name and address and its licence. Mrs Christian talked about... well, people might wish to tattoo a dog in future. So, are we actually going to have a dog tattooed to easily identify it, with its name and address – the tattoo has got to be changed each year, so it has got a new licence number?

We are really, really going over the top here. All I am saying is, whatever happens, if the person wants a transponder, by all means have a transponder, if that is going to be extra security for your dog. Meanwhile, it is easy for anybody, if they find a stray dog – a policeman or a member of the public – to identify that dog, ring the owner.

This here says that the electronic transponder, under the present Bill, can or may be used:

'as an alternative to a dog collar, by means of which, with the use of an appropriate device, the dog may be identified'.

To me, we are making it very difficult. Why can we not just leave it that the dog has to have a collar, full stop? If somebody wants an alternative, by all means, do it.

**The President:** Mrs Christian.

**Mrs Christian:** Thank you, Mr President.

Regulations, as I understand it, cannot be overruled by byelaws. Byelaws under this Bill are dealing with control of dogs in particular areas. It would not overrule, in any sense, the requirement for licences or dog collars or identifiers or anything else. So, those two issues are quite separate.

The Hon. Member has asked whether there is any definition of an electronic transponder and he is quite right, there is not, in the Bill. I think we, presumably, have to assume that there is not more than one way of interpreting 'electronic transponder', and it will be a normal understanding of what that means.

He also asked, why are we doing this? Partly, because in the consultation process, owners have asked for it.

If we come on to the actual practical interpretation or practical use of all of this, let us consider what the Bill

does at the moment and what it might do in the future. At the moment, people are required, on the whole, to have their dog wear a collar with a licence tag. To that, there are certain exemptions, which are set out in the Dogs Act 1990. The exemptions are: hounds; dogs being used for sporting purposes, catching or destroying vermin, driving or tending cattle or sheep; dogs taking part in a show, test, trial or other competition.

Now, normally, the provisions in the Bill are to do with catching and identifying stray dogs. If a stray dog is caught which is legitimately and properly wearing its dog collar, it may well straight-forwardly be identified. If it has slipped its collar, it will have no identifier. If it has a chip in it, in the future, and the regulations permit the chip to be used, first of all, as an identifier, then any owner who wishes to speed up the identification process – whether it be an animal who should legitimately be wearing a collar, or one which is, in fact, exempt – an identifier by a transponder will speed up the process of identifying that dog which is not wearing a collar, either because it was exempt or because it was breaking the law.

The Hon. Member of Council, Mr Singer, is concerned that in the proposal that I am moving, it does say that:

‘Regulations may provide that this section shall not apply, or shall apply subject to prescribed modifications, to a dog which is implanted with an electronic transponder as an alternative to a dog collar’.

I think those words ‘as an alternative to a dog collar’ are probably his primary concern. But, we already have exemptions for certain dogs, anyway, and he has not sought to amend that.

I think, in the consultation process, the wish to have, first of all, the ability to have your dog identified by a transponder has been discussed, and some people want it. Indeed, if these dogs which are, in fact, exempt were to have transponders, they would be more readily identified, although they can legitimately be about the countryside without a collar.

So, for that reason, the Department seeks to introduce this modern provision, albeit with possible prescribed modifications. That will be dealt with when the regulations come forward.

The Hon. Member, Mr Downie, has invited me to bring in a transponder and a reader – I will see if I can access one, maybe from the Department of Agriculture or a vet, for the next sitting!

He says that many dogs would have a collar on and would not normally be concerned about having a transponder. I think the most relevant group for which transponders would be useful is the exempt group, where people want to quickly identify their dogs. (**Mrs Crowe:** Obviously.) But, again, that is a matter for the individual, so there will be no compulsion, as I understand it, for people to have their dogs micro-chipped. This has been brought about because people have asked for it.

The Hon. Member also talked about dogs being ‘at large’. In the original Bill, there is a definition of ‘at large’. However, when we come to ‘control of dogs’, later on, the ‘at large’ provision may change to some extent.

The Hon. Member, Mr Waft, has asked, who will identify these dogs? Well, in the same way as stray dogs, at the moment, are either dealt with by a constable or the Dog Warden, they will continue to be dealt with by the same... in fact, under the Bill, there will be a provision for local authorities to introduce an authorised officer.

It will be down to them to decide whether they want, in conjunction, I would suggest, with the Department in discussion, to decide, if these regulations are brought in, who shall be the people who will need to have the readers of the micro-chips. It may be that a local authority will decide that it wants to have its own, and have access to the database, or it may be that they would simply keep the dog, as they probably do now, until the Dog Warden comes and the Dog Warden be the person who has the wherewithal for reading the chips.

So, I do think that the Hon. Member, Mr Singer, has exaggerated the case against this provision by suggesting that everybody is going to have to have their dogs chipped. They are not.

**Mr Singer:** Mr President, there is no way that I suggested they should do that.

**Mrs Christian:** Well, if that is the case, I withdraw that comment, Mr President. But I do think that the casing made was rather strongly made – but then, Members will have assessed that themselves. I think that it is an enabling provision which moves towards the sort of systems for developing for the identification of animals.

I beg to move that Council support the clause as proposed by the Department.

**The President:** Hon. Members, the motion to Council is that clause 1 do stand part of the Bill. To that, you have got the amendment moved by the Hon. Member, Mr Singer. Those in favour of the amendment in the name of Mr Singer, please say aye; against, no. The noes have it. The noes have it.

Hon. Members, I put to you now the clause, as it is – clause 1 – those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 2, Mrs Christian, please.

**Mrs Christian:** Thank you, Mr President.

Clause 2 deals with the control of dogs on roads. This clause substitutes a new section 23 of the Dogs Act 1990, relating to the control of dogs on roads and the new provisions will amend and simplify the current provision, whereby if a dog is ‘at large’, under the current definition – that is, not on a lead or under effective control of a person aged 10 years or over – on a road, then the keeper of a dog shall be guilty of an offence. This clause was the subject of considerable comment during consultation.

The proposed new section 23(1) – i.e. the clause before you – means that if a dog is on a vehicular road, which may or may not include a pavement, and it is not under effective control, then a keeper of the dog shall be guilty of an offence and liable on summary conviction to a fine not exceeding £1,000.

The proposed new section 23(2) introduces a defence in cases where, for example, the keeper may have had the dog on a lead. By promoting this clause, the Department is re-emphasising that it is the responsibility of the keeper to ensure that the dog is under effective control. It also enables those persons who feel their dogs are well trained, to exercise some discretion by allowing their dogs off leads. However, this would be at their own risk, because if an accident or incident did occur, they may have difficulty proving their dog was under effective control.

It also acknowledges concerns expressed to the

Department that even dogs on leads are not necessarily under control, especially if the keeper is using one of the new range of very extendable dog leads.

The removal of the 'at large' definition from this provision also addresses concerns as to whether it is necessary to include an age limit. Whilst children under 10 years old may have difficulty controlling some dogs, and this is what the current provision says, this could equally apply to elderly persons. Therefore the Department is removing the 'at large' definition. We believe that some children under 10 may have the ability to control a dog and, equally, some people over 10, if they are old and frail, may not have the ability to control a dog, under certain circumstances.

The Department originally proposed that it would be an offence if a dog is not on a lead, but, following consultation, modified this to 'not under effective control', with the qualifying subclause (2).

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

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

**The President:** Mr Lowey.

**Mr Lowey:** Yes, Mr President.

I just wonder, is the mover completely satisfied that... I was always under the impression that a prosecutor in a court had to prove the case; it is not up to you to prove that you were not doing it.

Subclause (2) seems to me to be putting the onus the reverse way, if you have got to prove that you had the dog under reasonable control. That seems to me, very difficult. I can think of one or two instances, when I have been out, for example, where a gunshot or a car backfiring or something has startled the dog. It was perfectly under control, at that time – maybe just walking alongside the last person that I had, and the dog took off.

Now, you could say that dog was not under control; it was under control – it was walking perfectly and something startled it. I know the onus is on me to prove that there was a noise that startled that dog. The end result is that somebody 10 yards or around the corner may not have heard the noise – all they have seen is a dog hurtling up the road, out of control. Yet under this clause, I have to prove that I had it under control.

It is the principle more – I am only using an illustration there. It is a principle that I always thought was right, that a prosecutor has to prove that I was guilty of an offence, not me to prove that I was not guilty of an offence.

**The President:** Mr Waft.

**Mr Waft:** I have some sympathy, Mr President, with that case. Subclause (2) says:

'A person shall not be convicted of an offence under subsection (1) if the keeper satisfies the court that he took all reasonable steps'.

That is on the presumption that the keeper is guilty, until he proves himself innocent – not innocent until he proves himself guilty, as is the normal course of events. I can understand where my colleague is coming from.

**Mr Lowey:** Well, that is the point.

**The President:** Lord Bishop

**Lord Bishop:** Coming back on that, though, it would be possible to convict the person of having lost control of the dog, or apparently lost control of the dog, from all evidence. What is being given the opportunity here is for the person to say, 'That may be the evidence as you perceive it, but I can prove, in fact, that the dog was under control'.

So, therefore, I think that actually it is giving a chance for the person to, indeed, prove their innocence, which otherwise might not be possible. So, I think it is belt and braces.

**The President:** Mrs Crowe.

**Mrs Crowe:** I think it is commonly known in Council that I do not know a great deal about animals, but I would like to know how else one could keep a dog under control. The mover did say that the first introduction was that they had the dog on some kind of leash or chain or whatever. But I just wondered how could you say a dog was under control... By what other means, apart from being on a leash?

**The President:** Mr Lowey.

**Mr Lowey:** Could I just develop that, because in dog obedience classes, you have control of a dog, not with a physical restraint, but by command. But something will startle – it is an animal, is it not? – and to the naked eye and to the observer, the dog... all they see is the dog at the end, not at the beginning. (*Interjection by Mr Singer*)

**Mrs Crowe:** I would like children and dogs on leads!

**The President:** Mr Butt.

**Mr Butt:** I would just like to reiterate what Mrs Christian said: the prosecutor still has to prove the offence. There is a provision for the owner to give his mitigation, in effect, or prove that he had control.

For Mr Lowey's benefit, I do not know where he lives exactly, but cars stopped backfiring about 20 years ago! (*Laughter and interjections*) I have not heard a car backfire for a long time!

**Mr Lowey:** Have you not? Oh, in Ballasalla, you will hear them backfiring, I will tell you! (*Laughter and interjections*)

**Mr Butt:** And the other point – where are these gunshots you are hearing?

**The President:** Hon. Members! Mr Attorney.

**The Attorney General:** Mr President, I just wanted to make one or two comments in relation to the point raised by the Hon. Member, Mr Lowey. In relation to subclause (2), it is suggested that the burden of proof is on the keeper of the animal to show that he took all reasonable steps to keep the dog under effective control.

Now, Mr President, one sees this so-called evidential burden of proof on the keeper of the dog appearing quite a lot, throughout the Dogs Act. Indeed, in various items of legislation, there is an evidential burden, from time to time, on someone to show that, for example, he has a licence or

something which is peculiarly within his control. He has the evidential burden to come forward with an explanation.

But it is always – and here I take up the point made by the Hon. Member, Mr Butt – on the prosecution to prove, beyond reasonable doubt, that all the elements of the charge have been made out. It is a far lesser burden, the so-called evidential burden, on the keeper of the dog to show, on a balance of probabilities, that he took all reasonable steps to keep the dog under effective control.

So, it is sometimes a difficult relationship, but it is quite common throughout legislation.

**The President:** Before Mrs Christian replies, I think in your opening comments, Mrs Christian, you used the terminology, ‘may or may not include a pavement’ in relation to the highway. I would like to know when it does not include a pavement, because my understanding is the highway goes from one side of the hedge to the other side of the hedge, and includes whatever is there. So, I wonder when somebody said, ‘may or may not’, when would it ‘may not’ include the pavement?

Mrs Christian.

**Mrs Christian:** Thank you, Mr President.

If we could deal with... well, I think the learned Attorney has dealt with the evidential aspects of the clause that the Hon. Member, Mr Lowey, is concerned about.

I think this clause and this amendment introduces a requirement for a person in control of a dog to make decisions about how it is controlled. As the Hon. Member has indicated, you can control a dog on a lead – if it is not 100 yards long. You might feel that you can control your dog by voice command.

If, in fact, neither of these things happens to work under the circumstances, and a dog warden or a police officer decides that your dog is out of control, then you have to mitigate against that allegation.

I can imagine a circumstance where you may argue. For example, you have your dog on a lead and somebody else comes along with a very aggressive dog on another lead and a scrap ensues, you might feel it is safer to let something go!

**Mrs Crowe:** I certainly would!

**Mrs Christian:** In which case, you might argue that, yes, your dog had been on a lead, but it was a problem.

So, there are circumstances, I think, where, certainly, again in consultation, there were different views being expressed, but the balance came down in favour of making it the responsibility of the person in control of the dog to prove how they were controlling it.

I thank Mr Butt for his supportive comments.

The question about the highway: there is a difference between a highway and a carriageway. Perhaps my wording was not sufficiently accurate – I cannot remember now what exactly I did say.

**The President:** It ‘may or may not’ include the pavement.

**Mrs Christian:** Oh, right, well it does say here, ‘If a dog is on a highway which consists of or comprises a carriageway’, so it could be a highway which is a back alley

which has no footpath, or it could be a carriageway –

**The President:** A highway is a footpath.

**Mrs Christian:** Well, yes, a highway is a footpath, but a carriageway is not a footpath necessarily; a carriageway is for vehicles. So, if a dog is on a highway which consists of or comprises a carriageway, in clause 23(1)(a) – i.e. one where vehicles may be travelling – then the dog has to be under control.

If it is on a highway which is not a carriageway, things may be different.

**The President:** Okay, Hon. Members, the motion that 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, Mrs Christian.

**Mrs Christian:** Thank you, Mr President.

Clause 3 deals with byelaws and substitutes a new section 24 in the Dogs Act 1990.

The key features of the new section 24, I would summarise as follows.

The responsibility for making any byelaws will now be transferred from the Department of Local Government and the Environment to the local authorities. There are, also, changes to the procedures whereby byelaws are to be approved.

At present, local authority dog control byelaws are made by the Department and then submitted to Tynwald for approval. However, the Department, in recognition of the local nature of such byelaws, considers that the process could effectively be streamlined.

It is, therefore, proposed to make dog control byelaws subject to departmental approval, although they will be laid before Tynwald for information purposes.

If, however, the Department refuses to approve any byelaws, the local authority may then petition Tynwald, who may direct, by resolution, that the Department approve the byelaws.

The scope of the dog control byelaws is also extended to place a greater emphasis on the keeper of a dog having to clean up. Local authorities will now be able to make clean-up byelaws, which also cover back lanes and specified beaches, as well as specified pavements and open spaces. Open spaces include any land laid out for sport, play or recreation, whether public or not, or as public walks or pleasure grounds. As is the case at the moment, the landowner’s consent is required for those byelaws relating to non-public open space and adequate byelaw signage has to be placed in a prominent position at or near the specified open space or beach.

Local authorities would, if the amendment is accepted, be able to assume greater responsibility for enforcing the Dogs Act and will be able to appoint their own authorised officers to help enforce any byelaws within their district. The Department is acutely aware that the byelaws are more likely to be effective, if authorities are prepared to take active steps to enforce them.

Subclauses (2) and (3) provide for certain transitional provisions which will allow the existing byelaws, which have been made by the Department, to remain in force for a further 12-month period. During this period, the Department will be consulting further with local authorities on the details

of the new byelaws.

However, it is the intention to ensure that, as far as possible, there will be an element of commonality between the different byelaws that are in force throughout the Island. This will make it easier for the general public, and dog owners in particular, to understand the implications of any new byelaws.

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

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

**The President:** Mr Singer.

**Mr Singer:** Thank you, Mr President.  
I wish to move an amendment:

*Clause 3*

*Page 2, lines 15 and 17: in the proposed new section 24 in subsection (1)(a) and (b) omit the words 'at any time of day'.*

This change is a request of the Department of Local Government. I know that Roy Corlett was working on the drafts of the new model dog control byelaws, and he did speak to Andy Webb who drafted this Bill. He was concerned that the wording at section 24(1) talks about a local authority making byelaws during a specified period of time, but in subsections 24(1)(a) and 24(1)(b), it does say 'at any time of the day'. There was a bit of concern on the clarification of 'any time of the day'.

The proposal from Andy Webb was that the words 'any time of the day' be removed because, for example, if a local authority were to specify a period of 10 o'clock till six o'clock, that it might somehow be that the local authority could still prosecute outside of those hours, because it will state 'any time of the day'.

So, really it is a matter of clarification and clear interpretation to remove the words 'at any time of the day' from sections 24(1)(a) and 24(1)(b), and I would therefore move.

**Mrs Christian:** I beg to second, Mr President. Is that in order? Can the mover second an amendment?

**The President:** I do not see why not. It is not against any Standing Orders that I know of. Mr Downie.

**Mr Downie:** I do not know whether I am moving on too far. In section 7, which deals with open space, and includes any land laid out for sport, play or recreation, whether public or not, but does not include any land vested in or managed or controlled by the Department of Agriculture, Fisheries or Forestry to which the public have access.

We are saying in this section that these rules do not apply, and yet we are talking about areas like Silverdale. Areas managed or controlled by the Department of Agriculture, Fisheries and Forestry also include areas around the reservoirs. Now, I know some areas of the reservoir are good places to take a walk for a dog, but there are circumstances where some of these areas could be at risk. Dogs do carry toxicara and you would have to question, really, what the intent is of this particular section, whether or not the

Department can introduce byelaws itself, in its own right.

If that is the case, I am happy to leave things as they are, but I think it needs to be clarified, because somebody could argue that they do not need to bother.

**The President:** Mr Butt.

**Mr Butt:** Yes, I may stand to be corrected on this, but I do believe they do have byelaws already, which include dog fouling on forestry land.

**The President:** They have the right to make byelaws.

**Mr Gelling:** Can I, Mr President, just on a point of clarification, the Hon. Mr Singer has put an amendment removing 'at any time of day'. Why have we removed 'at any time', as well as 'of day'? Should we not be saying on a specified beach, 'at any time'? I was just wondering why we are deleting 'at any time' which would just say on a specified beach. In both cases, I would have thought we would have left in 'at any time'.

**The President:** I think you have to read it in relation that it is 'a specified period of time' in (1). The two subsections (a) and (b) refer actually to that specified period of time, I would have thought, but I am not –

**Mr Singer:** It is only a matter of clarification.

**The President:** Mr Attorney?

**The Attorney General:** No, I have not anything to add.

I wonder, Mr President, if I may just ask a question for information. In relation to the proposed new section 24(1)(a), for example, we see there a reference to 'a specified beach'. I wonder if the hon. mover could indicate what beaches are likely not to be specified.

It would seem to me, Mr President, one of life's little pleasures is to be able to take a dog out on a beach and let him go for a good run and dashing into waves and so on. I think it would be most unfortunate that if, at every stage, one was prevented from doing that because the dog would not strictly be under control.

**The President:** Mr Singer.

**Mr Singer:** In Ramsey, Mr President, there are specified beaches for taking dogs at any time of the year, and other times when the dog cannot be taken on the beach. On the north beach, dogs can be taken at any time of the year. Along the Queen's Promenade, that beach, it is specified between, I think, 1st May and 30th September, a dog cannot go on that beach, in the byelaws.

**The President:** Mr Lowey.

**Mr Lowey:** I just want more clarification on 'open space':

"open space" includes any land laid out for sport, play or recreation (whether public or not)

– fine –

‘or as public walks or pleasure grounds’

– they are covered. And then it goes on:

‘but does not include any land vested in or managed or controlled by the Department of Agriculture’.

Now, we have 18, I think, national glens: does that mean that they have to have special treatment? I believe, at the moment – Silverdale Glen was mentioned – Silverdale Glen, apart from the boating lake – and I do not know about the boating lake – but I do know the Glen itself does have dog litter bins, which are run by the local Commissioners, which fit into this particular Bill. But this particular clause said that that is excluded, because it is owned by the forestry board... the glens are run by the Department of Agriculture, Fisheries and Forestry.

It seems to me, if we are simplifying it... I cannot see the reason why it has been excluded.

**The President:** Mrs Christian, I think you can reply.

**Mrs Christian:** Thank you, Mr President.

The response in relation to the issue about DAFF lands is that they have their own powers to make byelaws to control their own areas. Now, whether they do that themselves or whether they would, in conjunction with a local authority, for example at Silverdale, seek to have the local authority in force or whatever, I do not know.

But I do think that, in drafting the Bill, it is recognised that there is still – even in local authorities there are people who are dog lovers, dog owners, who will be pressurising their own local authorities to make some provision for the exercise of dogs, and dogs to be able to run free in certain areas. I think the Hon. Member, Mr Singer, has indicated, for example, that Ramsey has different areas for different purposes, and one would hope that all local authorities would exercise that kind of judgement.

The purpose of the Bill is not to contrive to control dogs to the ultimate degree, but just to provide that there are some safe and secure areas for people to walk in, or clean areas, wherever they may be, and areas for children to play safely. So, it will be down to local authorities to specify which areas are going to be for which purposes and which areas have to be controlled and where dog owners have to clean up. Again, with DAFF, they will deal with their own areas in the manner in which they see fit.

Mr President, it was remiss of me, perhaps, not to focus on a matter which was raised at an earlier Reading about the byelaws and their expiry. Subclause (10) states that the byelaws shall expire 10 years after the date they are made. I think you, sir, asked about that.

In fact, it is not a new provision as such. Under the Local Government Act, byelaws currently expire after 20 years. Now, one hopes that local authorities remember they expire after 20 years, and that they renew them! (*Laughter*) But it was felt that 10 years in relation to this might be more sensible. In fact, I do not think there is anything to prevent them amending them in the meantime, but they would automatically expire after 10 years and require to be reviewed after that stage.

I hope, Mr President, I have answered all the queries on this particular clause, and hope that Members will support it. It does seem to me a little bit unnecessary that, in Tynwald, we have to deal with dog byelaws. (**The Lord Bishop:** Hear, hear.) This mechanism transferring the permissions to the

local authorities with DoLGE approval seems to me to be a reasonable one.

**Mrs Crowe:** Yes.

**The President:** Hon. Members, the motion that I put to Council is that clause 3 do stand part of the Bill. To that, you have the amendment which deletes the words ‘at any time of day’ in section 24(1)(a) and (1)(b). Hon. Members, putting, first, the amendment in the name of the Hon. Member, Mr Singer: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

The clause, as amended, Hon. Members: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 4, fixed penalties, Mrs Christian.

**Mrs Christian:** Thank you, Mr President.

This clause introduces a new section, 27A and 27B, into the 1990 Act.

The new section 27A will enable fixed penalty notices to be issued in respect of certain offences: dogs not wearing a collar; unlicensed dogs; dogs not under effective control on roads; or offences under the dog control byelaws. Fixed penalty notices may be issued by: a constable; a dog warden; an authorised officer of a local authority; or, on land vested in or managed by the Department of Agriculture, Fisheries and Forestry, an officer authorised by DAFF.

The amount of the fixed penalty will be £50, although this amount can be varied by an order approved by Tynwald.

This clause also provides that, where an authorised officer of a local authority issues a fixed penalty notice, monies due under that notice should go to the funds of the authority concerned.

The new section 27B provides for a similar arrangement to apply with respect to fines imposed by the courts, following any prosecutions brought by a local authority. This, I think, is a very important change. In principle, in the past, fines and fixed charges have generally gone into general revenue. This has offered local authorities no incentive at all to police their byelaws, and to embark on the expenditure of appointing authorised officers for the purposes of cleaning up their areas. It is hoped that this provision which will give them at least a potential for some financial reward, if they are effectively controlling their areas, I think is one which I hope that the Council will feel able to support.

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

**Mrs Crowe:** I beg to second, Mr President.

In doing so, I would just like to reiterate the comments of the mover. I think it has taken some time to achieve, I know, within the Department, but I do believe that this should encourage local authorities to put in place provision to ensure that not only are the matters dealt with that are in this Bill, but also in the Litter Act, whereby the local authorities will have the provisions to keep their own areas clean, and it will be their responsibility to do so.

**The President:** Mr Waft.

**Mr Waft:** I know the Onchan Commissioners have, for many years, had dog wardens and officers going around the place doing the job of the warden. I just wondered, where the local authorities in their area do not have a dog warden

and we are reinstating the legislation, is the local authority then under any obligation to offer that service, or is there any sort of recompense that they can claim for the finances from the local authority to do that?

**The President:** Mrs Christian to reply.

**Mrs Christian:** Thank you, Mr President.

I think the post of the Dog Warden was created under the 1990 Act. I would prefer to confirm at Third Reading who actually employs the Dog Warden, I am not sure whether it is the local authority or whether –

**The President:** It is the local authority.

**Mrs Christian:** Right, well the Dog Warden is employed by the local authorities, then, and I think they share it out between themselves –

**Mrs Crowe:** On secondment, as it were.

**Mrs Christian:** – because the Dog Warden seems to travel round to different areas, depending on what arrangements they have got.

Then I think, after that, the keep of the dog which has been taken into custody falls to the cost of the Department. But I will accept confirmation that the local authorities do employ the Dog Warden.

**The President:** The motion, Hon. Members, 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, Mrs Christian.

**Mrs Christian:** Thank you, Mr President.

This deals with minor amendments and repeals. The main changes relate to section 27, where the responsibility for certain financial matters and for administering the dog licensing system is transferred from the Treasury to the Department of Local Government and the Environment. The Department is also allowed to appoint an agent to carry out the licensing function, and an agency agreement has now been established with Isle of Man Post.

Initially, the agreement will be between the Treasury and Isle of Man Post, but if this becomes enacted, then it will be modified, so as to involve the Department of Local Government, instead of the Treasury.

With regard to the amendments proposed to section 13, notice to be given to the Police, and section 14, the disposal of strays, I would like to reassure Members that the reduction in time period from 14 to seven days will speed up the process whereby stray dogs are referred to the MSPCA. Only on very rare occasions are dogs destroyed, and that would only be after examination by a veterinary surgeon.

In section 28, orders will need to be approved by Tynwald, whereas regulations and byelaws will be laid before Tynwald.

In section 30, the interpretation, there is a new definition of authorised officer, which includes an officer of the local authority authorised to enforce the Act within its district, and on land vested in and managed by DAFF, an officer of that Department. Police and dog wardens have the power to enforce throughout the whole Island.

I beg to move that clause 5 do 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 ask the Hon. Member: whilst the Hon. Member says there is an agreement with the Post Office to issue licences, will the present companies who can now issue licences still be allowed to do so, other than the Post Office? There are people now where you can go and get various items licensed, including dogs. Will the Department still permit these people to retain that power, as such?

**Mrs Christian:** Mr President. Shall I reply yet, or are there any more comments?

**The President:** If no other Member has a comment, Mrs Christian, perhaps I may as well, again. On page 7, it says ‘carriageway’ – I am back onto my carriageway and highways. Why are cycle tracks specifically excluded from clause 2? Clause 2 refers to ‘highway’ and ‘carriageway’, and cycle tracks are specifically excluded.

**Mr Gelling:** Could I, then, Mr President, because I was going to raise: under ‘highway’, it ‘includes a footpath over which the public have a right of way on foot only’. So, does that mean, for argument’s sake, on the path around the Island’s coastal area, you would have to have your dog... of course, that is where they let them roam.

The other was a bridle path – and the same system as you have got. A cycle track is a bridle path looked upon as a footpath or a cycle track.

**The President:** Mrs Christian.

**Mrs Christian:** Yes, Mr President, I did raise this question with the draftsman. ‘Carriageway’ means a way other than a cycle track... ‘carriageway’ is where a vehicle can travel. Cycle tracks are covered, I understand, under the highway provision. So, a cycle track –

**The President:** Highway says footpath, a right of way on foot only.

**Mrs Christian:** – includes a footpath over which the public have a right of way on foot only. It does not, I understand, preclude a cycle track. That has been the explanation that has been given to me.

My understanding is that, in terms of the dogs under control provision, which we dealt with earlier, that relates to dogs on a carriageway, so control of dogs on roads. That is on a highway which consists or comprises a carriageway, that is where your dog must be under control.

Your dog on the highway is not defined within there, so your dog might be out of control on the highway, which is the footpath. The issue is primarily concerned with control of dogs on roads where there are vehicles.

So, the Hon. Member’s dog gambolling along the coastal footpath may continue to do so, provided he does not cause any other kind of hazard, I guess.

**Mr Gelling:** Just on a point of clarification, Mr President,

I was thinking more of the hon. mover riding along on her horse on a bridleway, with her dog obediently trotting behind. You could not very well have it on a lead. That is just why I was wondering whether bridleway was the same.

**Mrs Christian:** ‘Bridleway’, Mr President, is not ‘carriageway’, and the control of dogs on carriageways is what we were dealing with there.

**Mrs Crowe:** I never knew I would learn so much about roads from the Dogs Bill. *(Laughter)*

**Mrs Christian:** May I answer the point, insofar as I am able to, about the Post Office issue. I do not know what the detail of the arrangements currently are between the Post Office and the Treasury. I imagine that, whatever they are, the Department of Local Government would accept them as established and transferred to the Department of Local Government and the Environment, but I cannot speak for what they may do in the future.

**The President:** Hon. Members, the motion to Council 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, short title.

**Mrs Christian:** Clause 6 introduces the short title of the Bill and deals with the Appointed Day Orders. The Department, if the Bill is accepted, would intend to bring the Act into force as soon as it can, after Royal Assent has been announced.

I beg to move that clause 6 do stand part of the Bill.

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

**The President:** Seconded by Mr Lowey. Hon. Members, the motion 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.

### **Dogs (Amendment) Bill**

#### **Standing Order 22(2) suspended to take Third Reading**

**Mrs Christian:** Mr President, may I seek permission to suspend Standing Orders, with the concurrence of the Council, in order to take the Third Reading of the Bill?

**Mr Gelling:** I second that.

**The President:** Suspension of Standing Orders to take the Third Reading, proposed by Mrs Christian, seconded by Mr Gelling. Any other Member wish to speak to it?

In that case, Hon. Members, those in favour of suspension of Standing Orders, please say aye; against, no. The ayes have it. The ayes have it.

### **Dogs (Amendment) Bill**

#### **Third Reading approved**

**The President:** Mrs Christian, we will take the Third Reading of the Dogs (Amendment) Bill.

**Mrs Christian:** Thank you, Mr President.

Thank you, Hon. Members, for supporting the suspension. I think that any of the issues which have been of concern have been well covered in the clauses stage.

The Bill will improve the way in which local authorities can control the cleanliness of their areas. It has, as a result of a very considerable amount of consultation, incorporated changes which dog owners have sought.

I believe, via the provision on the allocation of fines and fees to those local authorities, it will go a long way to encourage them to improve the provision both for dog owners, and for people who use the areas in which dogs enjoy their leisure time.

I ask Hon. Members to support the Third Reading. I beg to move:

*That the Dogs (Amendment) Bill be now read a third time and do pass.*

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

**The President:** Mr Lowey.

**Mr Lowey:** I think the Bill is well intentioned. I commend the Department for the consultation that they have done. But they have, if I may say so, dealt with responsible dog owners.

The problem, really, is the irresponsible dog owners that are still out there. I do not know how you get in touch with them. I think the idea of putting it to the locality and asking them to take it on, to invest in their locality – they are nearer the problem – I think is the right one. It is certainly worth a try, and I think the Bill has got the right balance: severe penalties for those that do not, and giving it to the local people to try and implement it.

I think it deserves support, and I wish it well.

**The President:** Mrs Christian, do you wish to reply?

**Mrs Christian:** I would like to thank the Hon. Member for those supportive remarks. He is quite right, in that it does provide that incentive for local control. He is, also, right that it is not responsible dog owners who are the problem, it is those who do not control their animals properly. I think that there is a strong incentive here, with an instant fine, an instant penalty, for those who do not control them to think a lot more seriously about controlling their dogs in future.

I thank Hon. Members for their support.

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

### **Income Tax (Amendment) (No. 2) Bill**

#### **Consideration of clauses commenced**

3. Mr Waft to move.

**The President:** We turn, now, Hon. Members, to the Income Tax Amendment (No. 2) Bill. Again, it has reached

its clauses stage for consideration of clauses. I think, Hon. Members, we have all had circulated the copy which spells out to us amendments which were made in another place.

Clause 1, Mr Waft.

**Mr Waft:** Thank you, Mr President.

Clause 1, Mr President, inserts sections 14A to 14D in the 1970 Act. With permission, Mr President, Members, as you say, will have the Bill with the amendments separated, for your convenience. So, I will introduce the clauses, as amended. I will not pull out the clauses separately or refer to them particularly as they will be incorporated into the new Bill.

Section 14A introduces the new corporate charge which will be payable annually by every corporate taxpayer, other than exempted taxpayers. This section outlines the position where a company becomes or ceases to be, resident in the Island, is incorporated, established or constituted in the Island and lists the exemptions that are allowed. Treasury will by order, and with the approval of Tynwald, be able to add to the list of exemptions.

Section 14B directs that the administration of income tax with regard to the tax, confidentiality, interest charge for late payment etc will apply to a charge under this part.

Section 14C allows for the charge to be set off against an income tax charge in any year, during which the corporate taxpayer is the subject of both an income tax charge and a corporate tax charge under this part.

Section 14D provides for an order of set-off where a corporate taxpayer makes a payment and is liable to both income tax and the charge. Any unpaid corporate charge will be cleared first.

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

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

**The President:** The motion, Hon. Members, is that clause 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 and continue, sir.

**Mr Waft:** Clauses 2 to 4, if I may, Mr President?

**The President:** Clauses 2 to 4 and the schedule.

**Mr Waft:** The second part of the Bill comprises clauses 2, 3 and 4.

Clause 2 directs that the current position, where aggregation of income is automatic, shall cease to have effect in respect of the years of assessment commencing with the year 2006-07. This clause, together with parts 1 and 2 of the schedule to the Bill, provide for the consequential amendments and repeals to the Income Tax Act that are necessary for the smooth transition into the new system.

The consequential amendments within part 1 of the schedule are: an amendment to section 21A that deals with the exemption from income tax of interest on certain government securities; an amendment to section 35 that grants a personal allowance to a single person, persons who are married and jointly assessed, and persons who are married but assessed separately; an amendment to section 35B(4) that provides for additional allowance for disabled persons, ensuring that

the link to the definition of 'living together' is not broken; an amendment to section 49(8) that provides for relief in respect of retirement/ annuity premiums, ensuring that the income of a married woman is not treated as the income of her husband, or that the husband's income is not treated as the income of his wife; an amendment to section 17(6) of the Income Tax Act 1989 that provides for relief in respect of personal pension contributions, matching the amendment to section 49(8), previously mentioned; finally, an amendment to the 2003 Act, ensuring that the calculation of personal allowance credit is not affected by the change being proposed within this Bill.

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

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

**Mrs Christian:** Alleluiah, Mr President! (*Laughter*) Husband and wife get separate treatment – at last!

I can only say, Mr President, when I first came into Tynwald, 26 years ago, this was an issue then.

**The President:** Yes, it was.

**Mrs Christian:** Ever since then, they have been saying, 'We're working on it'!

**Mrs Crowe:** There are not many female officers in Income Tax!

**Mrs Christian:** At least there is a provision for election for joint treatment, which is fair. That is balanced, but the automatic assumption has been quite wrong, over a long period of time.

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

**Mr Waft:** I just thank the Hon. Member for her remarks. (*Laughter*) (**Mr Lowey:** Alleluiah!) I am not getting involved in that! (*Laughter*)

**The President:** In that case, Hon. Members, the motion that I will put to Council is that clauses 2, 3 and 4 and the schedule do stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it. Hon. Members, we have reached clause 5.

**Mr Waft:** Clause 5, Mr President, the distributable profits. The fourth part of the Bill substitutes sections 12 to 13A of the 1970 Act with sections 12 to 13J inclusive.

Clause 5 of the Bill substitutes section 12 and 13A of the Income Tax Act with new sections 12 to 13K.

Section 12 makes the provision that corporate taxpayers are to account for income tax, due to the resident members of the company. The charge is to be known as a 'distributable profits charge' and will be a charge due in respect of distributable profits of the company. Having accounted for the charge, corporate taxpayers will be required to issue a credit voucher that will provide for the set-off of the amount paid against the income tax liability ultimately due by the member.

Section 12 provides for a definition of 'corporate taxpayer', 'members' and 'interest'. Anti-avoidance

provisions are contained to prevent the avoidance of a charge that may result where the interest of a person can be traced through a series of companies, partnerships, trusts, agreements or any other arrangements.

Corporate taxpayers accounting for this charge will be categorised as either a distributing company or non-distributing company: the effect of that categorisation will be explained in more detail later, but the definition of a 'distributing company' can be found in subsection (8).

A distributing company is one that pays income tax at a rate that is at least 10 per cent on every pound of its distributable profit; or is a company that distributes a prescribed amount of its profits; or is a company of such other description as specified in regulations made by Treasury.

The amount of profits that is to be prescribed for this purpose is 55 per cent for trading profits, and 100 per cent for non-trading profits, and any regulations required by this part must be approved by Tynwald. There is also the ability to make regulations in respect of groups of companies. This has, historically, been a complex area for income tax, and it is, therefore, prudent to allow for regulations which should simplify the distributable profits charge for groups of companies.

Section 13 directs that the distributable profits charge shall be paid by all corporate taxpayers, other than distributing companies, in respect of and in proportion to the amount of the distributable profits attributable to the members who are resident in the Island.

If the Assessor is not satisfied that a company is a distributing company, a charge shall be imposed. For the avoidance of doubt, this charge does not affect the liability of any person to income tax.

Section 13A provides the calculation of the charge. A trading company will be required to account for the charge based upon 55 per cent of the distributable profits, at a rate of 18 per cent. A non-trading company will also be required to account for the charge, but in such cases the charge will be based upon 100 per cent of the distributable profits, at a rate of 18 per cent. The rationale for including 100 per cent of the distributable profits of a non-trading company is that the resulting charge would be the equivalent to that which would be due if the investments were held by an individual and is the equivalent to the tax rate applying to non-trading companies at the present time.

There is also the ability to make regulations in respect of companies with mixed source of income and provide for an apportionment of the distributable profits charge, where a member is resident for only part of the year. All of the percentage rates applicable within this part may be amended by Tynwald resolution, as part of the annual budget process. In determining the amount of distributable profits, a company may deduct capital allowances, available losses, group relief and any such amount or proportion of their profits as prescribed in an order made by Treasury.

Section 13B sets out the additional information that will be required when the corporate taxpayer makes a return to the Division. The additional information includes: the income for the year; the amount of distributable profits that would be payable; the amount of profit not distributed; identification of members resident in the Island; and the charge calculated in respect of the resident members.

Section 13B also provides for the making of a default assessment to protect the revenue where a return has not been made, or where a return does not include all relevant

information. Where a company has been subject to a default assessment, that company may, within six months, make and deliver a return that complies with requirements of this Act. Having made that return, the default assessment will be replaced by the appropriate distributable profits charge.

Section 13C directs that a distributable profits charge shall be due and payable on the same day on which income tax is payable. This section also requires the payment of a charge on the date of a distribution, where the distribution takes place before the normal due date for tax.

The same collection procedures that currently apply to the income tax will also apply to the late payment of the distributable profits charge. This will include an interest charge on late payment. If a charge is accounted for on the making of a distribution, the amount of the charge is to be deducted from the total charge that would be payable on the normal income tax due date. The deduction would ensure that the tax is not accounted for twice.

Section 13D deals with certain special cases where it appears to the Assessor that arrangements exist that reduce the tax liability or where the corporate taxpayer is not a distributing company. In such cases, the Assessor may adjust assessments of the person or corporate taxpayer, or its members, and he may impose distributable profits charge which appear necessary for the protection of the revenue. A person receiving a notice under section 13D is able to appeal against the charge, and appeal will be made in the same manner as an appeal against an income tax assessment.

Section 13E will allow for the assessor to call for documents from corporate service providers or any other person that holds the position of secretary of the corporate taxpayer. Documents called for are those that contain information relevant to any interest that another person may have in a corporate taxpayer or the resident status of that person.

A person must be given a reasonable opportunity to deliver or make available the documents before a notice is served, and having been served with a notice that person should be given a reason for the notice. If having been served with a notice, the person fails to comply, then that person shall be guilty of an offence upon summary conviction, that person shall be liable to a fine not exceeding £5,000, or to custody for a term not exceeding six months.

Section 13F provides powers for the Assessor to call for information necessary to identify the members of a company and whether the members' interests are subject to the distributable profit charge. Information required under this part will include information relating to current and past members of the company, the names and addresses of each member, and information relating to any other person who acts for or on behalf of a member of the company.

Failure to provide the information or knowingly to provide false information to the Assessor may result in a custodial sentence not exceeding six months or a fine not exceeding £5,000.

Section 13G provides for an offence and, on summary conviction, for a fine of £5,000 or for custody for a term not exceeding two years, where a person intentionally falsifies, conceals, destroys or disposes of documents that are the subject of a notice under section 13E.

Section 13H deals with the requirement on a corporate taxpayer to send a distribution credit voucher to every member that is resident in the Island. The information that is contained within the voucher is to be prescribed in the

regulations that require approval of Tynwald.

Section 13I sets out the formula that should be used to determine the value of the distributable credit. The formula takes into account the rate of tax, the relevant proportion of the profits applied at the time the profits arose, and not at the time the distribution is actually made. This will ensure that the credit available to the person receiving the distribution reflects the charge actually paid by the company on his behalf.

While section 13J directs that the value of the credit shall be deducted from the tax due and payable by the recipient in the year of the assessment in which the distribution is paid.

The final section within this part, section 13K, deals with the area of appeals and confirms that an appeal shall lie to the Commissioners, with respect to any liability to a distributable profits charge, or a decision made by the Assessor, in certain special cases.

Hon. Members, clause 5 shall have effect in respect of the year of assessment commencing 6th April 2006 and subsequent years.

I beg to move clause 5 stand part of the Bill.

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

**The President:** Mr Singer.

**Mr Singer:** Could I ask the Hon. Member, if there is any recognition made of a company which does not distribute its profits, but wishes to reinvest those profits into the company? This is something that we positively encourage in the Isle of Man, for people to put the profits back into the company, therefore producing more jobs etc. Is there any sort of allowance for the people doing that, or are they automatically paying this percentage on the non-distributable profits?

**Mr Lowey:** Mr President, just as a matter of public record to say to the Treasury, how much I appreciated the papers which were given, explanatory memoranda and the consultation details.

**Mrs Crowe:** And the presentation.

**Mr Lowey:** I am not an academic or certainly not an accountant, more is the pity, but even I can follow the very complex... there were lots of subclauses, but the papers actually draw attention to the relevant points. While they are an aide-mémoire, you have still got to work at them, they are certainly very helpful to the Members. I commend the Treasury for the way in which they have been presented on this very complex subject.

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, this section of the Income Tax (Amendment) (No. 2) Bill underlines a very fundamental change in the Tax Strategy. For that reason, it has in it a lot of detailed material relating to the complexities of the changes that are being brought about.

I am conscious that, in respect of income tax matters last year, certain changes were made, which left those who deal with people's income tax returns, accountants and so on, in some difficulty in meeting the deadlines in a practical

sense, which were imposed by the changes in the law. I think there has been some leeway, as far as the Treasury is concerned on that.

But I note, in these particular clauses, that there are many regulations to be introduced. Treasury may by regulation make special provision, Treasury may make detailed regulations to deal with the mechanisms for dealing with some of this.

I wonder if the mover could indicate, given that the final subclause in that section says the year of assessment commencing on 6th April 2006 will be the year when this all has effect, how far advanced are the Treasury, with regard to the preparation of those regulations? When does the Treasury anticipate the regulations will be coming forward for approval? Does he have a view that the timetable which they are pursuing will give everyone sufficient time to know and understand how this is all going to be implemented?

As the Hon. Member, Mr Lowey, has indicated, it is complicated and if you are not dealing with these matters every day, it is difficult to fathom. If you are dealing with it every day, you probably come across any number of circumstances which are not precisely dealt with. So, I would appreciate it if the mover could, if he is able to, give some indication of the timeframes which the Treasury are working to, in making this very fundamental change to the way in which corporate matters are to be dealt with, under our tax law.

I note also that there is a provision in here, power to call for information relating to beneficial ownership, which is a new provision. I wonder there whether it is an enabling power – 'the powers conferred by this section may be used for the purposes of enquiring' – one assumes that there are currently provisions where there may be nominee directors or whatever, presumably with some legitimacy, I do not know. Maybe the learned Attorney General could say so.

Provided the tax is paid, I wonder if the Hon. Mover could indicate when he feels that those powers might be exercised. I can understand they will want to ensure that they receive the revenue, and that is the purpose of this. But if the revenue is paid over by the people who hold the shares, I wonder when they think this would be exercised.

**The President:** Mrs Crowe.

**Mrs Crowe:** I was just following on from the first point made by my hon. colleague, Mrs Christian: it was regarding the tax advisers and the accountants who, indeed, will have to implement and advise on the new law.

I hope that the hon. mover will be able to confirm that consultation is ongoing, regarding the introduction of these regulations. The timescale, quite frankly, is unrealistic. To expect accountancy firms with tax accountants to be able to train their staff in the new regulations etc, in this time-frame...

So, I do hope there will be some reassurance that there is in our small community ongoing consultation regarding what... These regulations must be in draft form now and I would like that there is some reassurance, otherwise I just do not believe that these timeframes will be realistic.

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

**Mr Waft:** Thank you, Mr President.

Dealing first with Hon. Mr Singer, with regard to

businesses investing in their own company prior to paying tax. This is purely an anti-avoidance situation with regard to distributable profits charge. There will be, obviously, capital allowances that will continue for companies that wish to reinvest their capital into the company. That will be taken into consideration.

With regard to the regulations, there is some concern. It was anticipated the regulations will be put forward to Tynwald at the same time the Bill is announced. There is a guide that has been provided into the technical workings of the distributable profits charge, and the powers for, it was mentioned, beneficial ownership. These will only be exercised in doubtful cases.

It would not be the norm just to progress beneficial owners; it is only when there is a problem that does evolve from that. As I said, the regulations will be brought forward quite quickly.

**The President:** In which case, Hon. Members, the motion that I put to Council 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.

I think, Hon. Members, it is an appropriate time for us to take our break. We will reconvene at 2.30, and deal with clause 6 onwards.

Thank you, Hon. Members.

*The Council adjourned at 1.04 p.m.  
and resumed its sitting at 2.30 p.m.*

## **Income Tax (Amendment) (No. 2) Bill**

### **Consideration of clauses concluded**

**The President:** Please be seated, Hon. Members.

Hon. Members, we will continue with our deliberations on the Income Tax Amendment (No. 2) Bill. When we rose for lunch, we had just completed clause 5, so we have reached clause 6. Hon. Member, Mr Waft, please.

**Mr Waft:** Thank you, Mr President.

Clause 6 inserts new sections 35C, 35D, 35E and 11A in the Income Tax Act 1970.

Section 35C allows a non-resident individual to deduct £2,000 from total income for the purpose of ascertaining taxable income. The amount of the allowance may be amended by Tynwald resolution and will be reviewed annually as part of the Budget process.

Sections 35D and 35E deal with the situation where an individual ceases to be regarded as a non-resident or where he ceases to be regarded as a resident. In each case the non-resident allowance would be restricted, the apportionment being based on the number of days of non-residence or residence, as the case may be.

The provisions contained within these sections are in line with current provisions that restrict the resident's personal allowance in the event of commencement of residence or following cessation of residence. The restriction of the personal allowance in this way will ensure that the individual receives no more than the resident personal allowance during any year, where such a change in circumstance takes place.

Clause 6 also inserts a new section, 11A, in the Income Tax Act that will limit income chargeable on non-residents.

This clause introduces the concept of excluded income and limits the income tax due where a person receives income that is classified as excluded. A list of excluded income sources is contained within the clause, and includes dividends paid by Manx companies, deposit interest paid by banks and building societies on the Island, interest or dividends paid on Government and local government bonds, social security benefits and National Insurance retirement pensions and any other income described in a Treasury order.

In essence, apart from income in the form of remuneration, trading income of rents, which will be charged income tax in the normal way, the non-resident tax liability will be limited to tax deducted at source. An order made under this part must be approved by Tynwald before coming into operation.

Whilst the income may be classified as excluded income for the purposes of a non-resident assessment, certain excluded income groups, for example Manx company dividends, will remain subject to a deduction of tax at source, currently at 10 per cent, but being reviewed in line with the Taxation Strategy commitment to move to a zero per cent rate.

The limit on income chargeable is based upon the lower of the following calculations: the liability computed in the normal way, i.e. computed on the liability on all Manx income sources, allowing a deduction of the new resident personal allowance in applying the relevant rate of tax, and the liability computed on income which is not excluded without deduction, the non-resident personal allowance plus the tax deducted at source on excluded income.

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

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

**The President:** Mr Singer.

**Mr Singer:** Right at the very beginning, on section 35C, there is a figure there of deduction allowable of £2,000 in total income. Why is there a figure of £2,000? Why has that been chosen, £2,000, as opposed to any other amount?

**The President:** Do you wish to reply, Mr Waft, please?

**Mr Waft:** Thank you, Mr President.

I think this £2,000 comes from the considerable consultation that has taken place in the last 12 months, for the accountants, bankers, interested parties, corporate server providers and the rest – £2,000 is the figure that has been agreed upon, as I understand it.

**Mr Singer:** Could I just come back there. Mr Waft said 'I think that' – perhaps he could find out before the Third Reading why the figure is there.

**Mr Waft:** I will certainly do that, Mr President.

**The President:** Hon. Members, 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.

That takes us to part 5 and clause 7.

**Mr Waft:** Clause 7, Mr President, substitutes existing section 1(2), (2A) and (3), and makes a number of minor consequential amendments to the Income Tax Act that are

required to bring into effect the principal changes included within this part.

The existing sections 1(2), (2A) and (3) established the standard rate of tax, the higher rate of tax and the threshold within which the standard rate applies, and restricts the application of those rates and thresholds to individual taxpayers liable to Manx income tax. The application of two rates of tax and one threshold has proved restrictive, and this clause has been included within the Bill to provide greater flexibility when setting up rates of tax and thresholds.

This clause allows for a lower rate of tax to be applied to resident individuals and a prescribed rate of tax that will apply to all other persons. There may be more than one prescribed rate of tax, and a prescribed rate may also be applied against a specific income source.

Orders will be required to determine the lower rate of tax any threshold that applies to the level of the prescribed rate of tax. All orders will not come into operation until Tynwald approval has been received. An Appointed Day Order will be required to activate the amendments contained within this clause.

I beg to move clause 7 stand part of the Bill.

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

**The President:** The motion, Hon. Members 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, inserts 10 new sections, 2Q to 2Z, into the Income Tax Act 1970. These sections introduce an income tax charge for the realised profit from a discount. On a relevant discounted security, any relevant costs can be deducted from the chargeable amounts.

This clause also provides relevant discounted security lists, with the exclusions such as the maturity of a life insurance policy and the disposal of shares in a company, and clarifies the amount payable on redemption of a security.

In circumstances where there has been a transfer and the agreement is not at arm's length, this clause ensures that the charge to income tax is made at the market value of the gain. It also ensures that the correct amount is charged in instances where the securities are issued in separate tranches.

Finally, this clause also provides for the treatment of gilt strips, and for any losses of deep discounted securities to be offset against any profits on such securities in the same year.

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

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

**The President:** Hon. Members, the motion I put to the Court 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, confirms the income tax non-resident tax rates, trading income, temporary taxation over 2004 in accordance with the provisions contained in section 15(4)(a) of the Income Tax Act 1995.

This temporary taxation order was approved by Tynwald

on 16th March 2004 and established the trading rate for non-resident corporate tax payers at 10 per cent.

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

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

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

Clause 10.

**Mr Waft:** Clause 10, Mr President, amends section 57 of the Income Tax Act which deals with the computation of relief in respect of tax suffered in other territories.

The first amendment deals with the situation where the taxpayer has foreign taxed income, and has received income in the form of a company loan that has been released or written off. In such cases, it confirms that the total amount of income tax payable includes tax payable in respect of the amount of the loan realised.

The second amendment to section 57 clarifies a situation where a person receives income from more than one overseas source and different rates of foreign tax have been applied against each source. Presently, relief is computed with reference to the income suffering tax at the highest rate first, followed by the next highest, with the lowest rate being considered last. Relief computed in this way provides the greatest level of relief to the taxpayer. The amendment in this part will provide statutory support to a computation that the Income Tax Division has applied for a number of years.

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

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

**The President:** Mr Downie.

**Mr Downie:** I would just like to ask the mover, Mr President, for instance, if a double taxation agreement exists between another jurisdiction, or there is a Memorandum of Understanding (MoU) in place, how does that actually work? Can a person paying tax opt to pay their tax in either jurisdiction, and are there provisions within this element to enable that to happen?

**The President:** Mr Gelling.

**Mr Gelling:** Yes, Mr President.

Could the hon. mover perhaps clarify that, in this clause, we are dealing with relief in respect of other territories – that is, I take it, people who are not resident here – and in clause 6, we have got section 35C, where it allows a non-resident individual to deduct £2,000 from total income, for the purpose of ascertaining taxable income. Have the two of them got any relevance or, in fact, are they totally separate?

**The President:** Mr Singer.

**Mr Singer:** The Hon. Member said that the way that they are going to compute this now is going to be to the advantage of the taxpayer. Is this going to be a significant amount lost to the Treasury overall? Has that been looked at?

**The President:** Hon. Members, I will now call on Mr Waft to reply.

**Mr Waft:** Thank you, Mr President.

Could I answer, first, the Hon. Mr Singer with regard to the previous clause. The £2,000 allowance was originally included within Income Tax (Amendment) Act 2004, section 12. The same allowance has been used within this Bill. This was originally consulted on, previously.

My colleague is getting ready with the rest of the answers on this clause

**The President:** Points have been raised, Hon. Members. It is as well to wait until the Hon. Member has been briefed.

**Mr Gelling:** Could I, Mr President, say that the whole intention of my question was actually to enable the Hon. Member to answer, in clause 10 – so I hope they are not researching it!

**Mr Lowey:** I can understand, when somebody from the Income Tax Division says, ‘We are here to help the taxpayer’, it sort of takes the wind out of the sail! (*Laughter*)

**Mr Waft:** Thank you, Mr President. I hope this helps!

A double tax arrangement would overrule the double tax relief. The calculation will only apply to the Isle of Man resident who has paid tax in another jurisdiction, and there will be no loss to the Treasury, as the calculation is being used now.

I hope that clarifies the position.

**The President:** Our exchequer comes no worse off because of section 10.

Hon. Members, the motion I put to Council 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: the Income Tax (Amendment) Act 2004 includes provisions that prevent the avoidance of income tax where a company extends the benefits of the loan to a participator, and then allows for the release or write-off the loan. Following the introduction of those provisions, certain loans advanced by a company are subject to an 18 per cent income tax charge on the advance.

If the loan is then written off or released, Treasury retains the tax paid and, by way of assessment, the participator is charged income tax on the amount released. If the participator pays income tax at the rate less than 18 per cent, then no further income tax would be due, but no refund would be made of the excess.

The amendment included in this clause is designed to provide certainty to the taxpayer regarding which part of the total income tax liability is attributed directly to the released loan. This is achieved by computing the tax attributable in the same way in which double taxation relief is computed.

Having established a tax attributable to the loan, the Income Tax Division will then be able to grant the maximum amount of credit that results from the original payment of the tax that was made when the loan was originally advanced.

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

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

**The President:** Hon. Members, no Hon. Member wishing to comment on clause 11, I put to you the motion 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, please.

**Mr Waft:** Thank you, Mr President.

Clause 12 of this Bill extends the surcharge rate of interest, and ensures that where income tax is not paid on time, due to an understatement or omission from a return, interest may be charged at the surcharge rate during the period beginning on the date the tax should have been paid and ending on the date the tax was paid. This will be used in conjunction with the current interest and penalties regime.

I beg to move clause 12.

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

I did note the hon. mover said the word ‘may’, and I notice in the Bill, it says ‘shall’, so there is a difference there.

**Mrs Crowe:** It’s income tax – ‘shall’!

**Mr Lowey:** Yes!

**The President:** No other comments, Hon. Members? If you wish Mr Waft to comment about this ‘shall’ or ‘may’, it is in subsection (9) of that section as ‘shall’. There are no ‘mays’.

**Mr Waft:** I am advised that it is ‘shall’, Mr President.

**The President:** It is ‘shall’; it is not permissive.

In that case, Hon. Members, I put to Council the motion that clause 12 do stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 13, Hon. Members.

**Mr Waft:** Clause 13, Mr President, deals with limitation periods and how they apply with regard to income tax.

The Income Tax Division, through the application of the Income Tax Acts, has operated on the basis that an income tax assessment may be open for revision, if the year in question is no older than the current tax year minus six years, looking at the current tax year 2005-06. The years of assessment 1999-2000 to 2005-06 would be open to revision.

The Income Tax Division and the taxpayers of the Isle of Man have been able to rely on that position for many years. However, following a ruling of the European Court and in light of amendments to the UK legislation, reliance on that position could no longer be maintained. Potentially, therefore, income tax assessments could be open to amendment for years prior to 1999-2000.

This clause inserts a new section 118A into the Income Tax Act that directs that section 30(1)(c) of the Limitations Act 1984 does not apply in relation to a mistake of law relating to a taxation matter under the Income Tax Act.

The result of this change is that Income Tax Division can, where a mistake of law is identified, rely on the fact that all the assessment used for the current year, or for the six preceding years, will be amended.

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

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

**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.

The new clause now, Hon. Members, which was inserted in another place.

**Mr Waft:** The new clause includes an amendment to confirm the Income Tax (Retention of Tax and Exchange of Information) Temporary Taxation Order 2005. This Order was originally approved by Tynwald in April 2005 and was required to meet the Island's commitment to the European Union, with regard to the application of the Savings Tax Directive. However, as a Temporary Taxation Order, this requires confirmation within 12 months, or it will cease to have effect.

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

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

**The President:** Again, Hon. Members, what I put to Council is the new clause. Numbering will be picked up later, I am sure, so on the new clause, Hon. Members, those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 14 then, Hon. Members.

**Mr Waft:** Clause 14, Mr President, makes four minor amendments to the Income Tax Act and, within clause 14(2), extends the Temporary Taxation Order provisions contained in the Income Tax Act 1995 to include orders required for the implementation of international agreements. The minor amendments correct cross-reference errors relating to the payment on account system of paying income tax that were identified during the drafting of this Bill. These amendments do not change the operation of that system.

I beg to move clause 14 stand part of the Bill.

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

**The President:** I imagine the two blanks become (e) and (f), do they? I am sure they will. I will put to the Council the motion, then, 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. This is an interpretative clause, Mr President.

I beg to move clause 15.

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

**The President:** The shortest clause, I think, that we have ever had:

'In this Act, "the 1970 Act" means the Income Tax Act 1970.'

I think that is a very brief clause. Those in favour of

clause 15, please say aye; against no. The ayes have it. The ayes have it.

Short title and commencement – clause 16.

**Mr Waft:** Clause 16, Mr President, provides for the short title, construction and commencement.

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

**The President:** Mr Lowey.

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

It just goes to show you just how tight this Bill is, in legislative terms, because if it is to come into operation on 5th April this year, as many of these things do, to say we are on the last lap of the timing, as I presume these Orders will have to go to Tynwald for approval, and the Bill will have to go to Tynwald for approval, we are going to have to rush, to make sure it is.

So, when the Bill started its life, it goes to show that it really is a fast-track effort to try and get it fitted in to the one financial year. I commend the Treasury for trying – and succeeding, on this occasion – but they should leave themselves a little bit more time –

**Mr Singer:** We know what is coming next, then!

**The President:** Mr Waft, do you wish to comment on that. (**Mr Waft:** No.) In that case, Hon. Members, I put to Council clause 16. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

### **Income Tax (Amendment) (No. 2) Bill Standing Order 22(2) suspended to take Third Reading**

**Mr Waft:** Mr President, in view of the Hon. Member's mentioning the need for some speed with this Bill, perhaps the Members might indulge in allowing me to suspend Standing Orders to take the Third Reading.

**Mr Gelling:** I second that, Mr President.

I think Members have realised it is a short window of opportunity and we must take it, if possible.

**The President:** Well, Hon. Members, it is in your hands in relation to the suspension of Standing Orders. Those in favour of suspension, please say aye; against no. The ayes have it. The ayes have it.

### **Income Tax (Amendment) (No. 2) Bill Third Reading approved**

**The President:** Therefore, Mr Waft, I suggest you move the Third Reading, sir.

**Mr Waft:** Thank you, Mr President.

Mr President, the Income Tax (Amendment) (No. 2) Bill is divided into eight parts and one schedule.

The first six parts each address a specific topic. The seventh part of the Bill makes a number of amendments to

existing income tax legislation, while the eighth part includes the interpretation, short title and commencement clauses.

Part 1 of this Bill comprises clause 1, which inserts new sections 14A to 14D inclusive, which introduce a new annual corporate charge. These sections identify the companies subject to the charge, exemptions, administrative provisions and set off rules, where both income tax and the charge apply in the same year.

Part 2 of the Bill comprises clauses 2, 3 and 4 and the schedule to the Bill. These clauses deal with taxation of married couples and amend current legislation by adopting an independent taxation status for all married couples. Mr President, joint taxation will be available for couples who make an election.

Administrative provisions, including regulations providing for the election, or for the revocation of the joint election, are included, as are provisions allowing for the transfer of allowances, deductions and reliefs, where election is in force, or in the year of marriage or in the year of death of one spouse.

Part 3 comprises clause 5, and inserts new sections 12 to 13K into the Income Tax Act. This part introduces provisions that are required to counter the potential avoidance of income tax resulting from the introduction of a zero percentage rate of tax for certain companies. This part will ensure that the company accounts for income tax due by its resident members on the distributable profits.

Part 3 outlines which companies are subject to the distributable profits charge, how the charge is to be computed, the timing of the payments of the charge, how and what information is to be returned, and additional powers available to the Assessor in special cases. This part also provides for deduction of a voucher detailing the amount of tax accounted for, for the credit of that tax against members' own liability to tax in the Isle of Man.

Part 4: Mr President, the fourth part of the Bill comprises that clause 6 inserts four new sections into the Income Tax Act.

Sections 35C, 35D and 35E introduce the non-resident personal allowances and provide for the adjustment of the allowance where an individual ceases to be regarded as non-resident or ceases to be regarded as a resident for tax purposes.

Section 11A introduces a limit on incomes chargeable to income tax by providing for excluded income. Income that is excluded may be liable to a deduction of income tax at source and the limit applying against an excluded income source will be, in effect, the amount deducted at source.

Part 5 of the Bill comprises clause 7, which amends section 1(2), (2A) and (3) of the Income Tax Act and provides for increased flexibility when setting rates of tax and thresholds, Mr President. It is through this part of the Bill that Treasury, with Tynwald approval, will be able to set the zero and 10 per cent rates for corporate taxpayers, whilst, at the same time, maintaining existing rates of tax for other taxpayers. Further rates may be prescribed and, if it is the will of Tynwald, this part will enable the setting of rates of tax against specific sources of income.

Part 6 of the Bill comprises clause 8 and inserts new sections 2Q to 2Z to the Income Tax Act. This part deals with the taxation of discounts on deep discounted securities and ensures that guaranteed increase in the value of a security is treated as interest for the purposes of income tax.

Part 7 of the Bill comprises clauses 9 to 14 which provide for miscellaneous amendments to the Income Tax Act

and the Limitations Act 1984. The provisions include: the confirmation of two Temporary Taxation Orders; a restriction of relief under double taxation rules; the computation of tax attributable to a loan that is written off or released; amendment to the limitation period for income tax purposes; and a number of minor amendments, correcting statutory cross-reference errors identified during the drafting of this Bill.

Finally, Mr President, part 8 incorporates the interpretation, short title and commencements of the clauses.

I beg to move:

*That the Income Tax (Amendment) (No. 2) Bill be now read a third time and do pass.*

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

**The President:** Mrs Christian.

**Mrs Christian:** Yes, Mr President, just to say, on the companies side, I think it is a bit like a launch into the unknown. It is to be hoped that, after all the consultation that has gone on and the work that has been done by Treasury, that we have got it right, but I suppose only time will tell.

I do feel that, with a Bill like this, and if you are not familiar with the tax structures, there are things in here which we perhaps might have asked questions on, but did not, but will need, as the years roll out, to just keep an eye on, in terms of the powers of the Treasury and so on.

But we hope that the launch will be a happy one, and that it will result in increased revenues for the Island.

**Mr Lowey:** It is faith.

**The President:** Now, Mr Waft, I just raise the question, in relation to clause 5, which I thought about before and am aware of, I think, where the answer comes from now. We are dealing with distributable profits or future distributions. If future distributions are then deemed as tax by the taxpayer and, in the interim, the company goes upside down or never pays out those distributions, what happens to the tax which the taxpayer may very well have paid on those supposed future distributions due to him?

Now, I am aware that you should not get taxed twice, but if we look at page 20, on 13D, in the same section, you are looking at the Assessor having to exercise his powers in that sort of manner, and then, in subsection (4) of 13D, it refers to an appeal therefrom, provided in section 87.

Perhaps you could explain what the procedure would be for a person who was caught in the trap of having paid tax on future probable distributions which never take place.

Mr Waft.

**Mr Waft:** This is on the distributable profits charge on profits which have not been distributed in the first place, and yet you have paid them, have you not?

**The President:** You would have to pay the tax on them, as I understand it from clause 5:

*'Income tax that may fall due in respect of distributions and future distributions and no account shall be taken of the fact that there is no assessment to income tax at the relevant time to the company.'*

**Mr Gelling:** I think, Mr President, certainly, as I understood it, that was the case that you would not get your taxes back. There would not be any taxes back, coming from the fact that you had paid tax on the distributable profits, when the company actually went into liquidation.

But I wait for definite confirmation on that, sir.

**The President:** I think the wording is covered in 13D, but we will soon have it cleared. Mr Waft.

**Mr Waft:** I am informed that the credit remains within the company when a distribution is made, whether by the company or liquidator, the credit will remain. The appeal will be to the Income Tax Commissioners in the usual way.

**The President:** Ultimately, the appeal would, under clause 87, which goes back to the original Bill, that is where the appeal lies to the Commissioner. Prior to that, the taxpayer would appeal to the Assessor? (**Mr Lowey:** Yes.) But the tax will already have been paid, although the credit remains within the company.

**Mr Singer:** Yes.

**Mr Gelling:** You will forfeit your tax that you have paid, sir.

**The President:** Okay, Hon. Members, no other Member apparently wishing to draw any attention to points in the Income Tax Bill, I put to Council formally that the Income Tax (Amendment) (No. 2) Bill be read for a third time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

## Registration of Electors Bill

### First Reading approved

4. Mr Waft to move:

*That the Registration of Electors Bill be now read a first time.*

**The President:** Having completed our Income Tax Bill, as the third one which we have reached conclusion of today, we have reached the Registration of Electors Bill, again in the hands of the Hon. Member, Mr Waft. It is there for First Reading. Mr Waft, Registration of Electors Bill.

**Mr Waft:** Thank you, Mr President.

The Registration Officer has the responsibility of compiling and maintaining a Register of Electors for each of the constituencies and local authorities on the Island. The data recorded in the Register are used for the production of poll cards for the House of Keys, local authority and Board of Education elections and is valid for a period of 12 months from September 1st each year.

The production of the Register is governed by the Registration of Electors Act 1984 and the publication of the various versions, provisional, full and edited, by the Registration of Electors Regulations 2003. The Act imposes a qualifying date of 12th May each year, at which time a person wishing to register must have his usual place of abode in the specified electoral area and for the whole of the

12 months preceding that date at his usual place of abode in the Island.

An annual canvass of residential properties is undertaken in February each year, with approximately 38,000 registration forms being delivered by mail. A reminder is sent in April to those properties where a response has not been received, typically between 30 per cent and 40 per cent. Due to the time taken to process, print and post the reminders, it is often the case that, during this interim period, many of the original forms are returned, rendering the reminders useless and wasteful in both staff resources and material costs.

Any person moving between properties or moving to the Island after the qualifying date will not be eligible to vote in the local electoral area for a period of up to 15 months for existing residents and up to 27 months for new residents.

For example, a person previously residing and registered in Douglas, who moved to Ramsey on 31st May 2005 will not be eligible to vote in any House of Keys, Board of Education or local authority elections in Ramsey until 1st September 2006, but would be entitled to vote only in the Douglas area.

Similarly, a new resident arriving on the Island on 31st May 2005 will not be eligible to vote until 1st September 2007. Persons living in short-lease rented accommodation and who frequently relocate could conceivably be left without entitlement to vote for even longer periods. Recent local authority elections in April 2004 highlighted the need for a more up-to-date register. Of the 22,447 poll cards issued, 454 or 2 per cent were returned to Economic Affairs marked, 'No longer at this address.'

Utilising data from the 2001 census and the number of electors currently registered, it can be estimated that up to 5 per cent of the eligible population has failed to or is unable to register in their local electoral area. The majority of the shortfall can be traced to the Douglas area, where there is a large stock of rented accommodation. New residential developments in rural areas may also be seen as a cause for concern. A large influx of residents after the qualifying date could amount to a sizeable proportion of the local community being unable to participate in local politics.

To enable the Registration Officer to maintain a more accurate register and to allow the electorate a more flexible approach to registration by addressing the current problems, it has been proposed that the Island introduces a rolling register of electors. The introduction of a rolling register is not intended to replace the current system of registration, but to complement it. The annual canvass of all residential properties on the Island would continue with little or no change.

In addition to the annual canvass, persons wishing to register or re-register in a different electoral area will be able to utilise rolling registration throughout the year, with amendments to the register being produced and published on a monthly basis. With the facility to register year round, the need for reminders and the associated waste would be negated.

Registration forms will be made available on request from the Registration Unit throughout the year. Local Authority offices will be provided with blank forms, as required. Plans are progressing towards enabling residents to download and print forms from the Economic Affairs Division website.

Notwithstanding objections and appeals, it is anticipated that an application to be included in the Register, and

hence for an individual to be eligible to vote, would incur a maximum waiting time of two months.

To enable a rolling register to be introduced requires a number of fundamental changes to the existing Registration of Electors Act 1984, predominantly, the removal of a specific qualifying date, the addition of revised timetables regarding applications, publication of registers and revisions, claims and objections and supply of copies.

A rolling register will give access to more accurate and up-to-date information to be utilised for electoral purposes, such as the production of polling cards and addressing of campaign literature, by increasing the opportunities for persons to register. A larger proportion of persons entitled to register in a specific electoral area will be able to do so, regardless of when and how often they move location. Name changes due to marriage or any other reason could be amended throughout the year.

Year round administration would enable staff resources to be utilised in a more effective manner. Claims and objections can be dealt with on a year-round basis, not, as currently the case, restricted to the period between 12th May and 25th June.

It is the practice that returning officers use the Register in force at the time a writ of election is issued. Additions to the Register would not be permitted after this date. Persons who have failed to register often become aware of this only when they do not receive a polling card for an imminent election. Even with waiting times reduced to a maximum of two months, this would still be the case.

Due to the amendment to clauses 3 and 17 of schedule 2 and 3, supported by the Keys, there would be an additional cost incurred. Operational costs will increase to a maximum of an additional £20,000. Additional costs will be required to upgrade the existing registration software package in the short term and replace the software in the near future, until the technical analysis has been completed. It is not possible to define the additional costs.

There has been some legal concern raised with regard to lowering the voting age to 16 years. The resulting Register of Electors will include personal details of minors, for example, those electors who will attain voting age within the period the Register is in force. This would appear to be in contravention of the United Nations Conventions on the Rights of the Child.

The registration of electors legislation is closely linked to the Representation of the People Act and Jury Act. Inconsistencies with these Acts will mean that a person aged 16 will be entitled to vote at an election, but not stand as a candidate nor sit on the jury of his peers.

There is other legislation in place which prohibits 16-year-olds from purchasing tobacco products, alcoholic beverages, fireworks, etc and, also, it is the case that persons under the age of 18 years require parental consent to marry and, under the United Kingdom legislation, to enter the Armed Forces.

There are international considerations: we would be following Iran, which is at 15, Brazil, Somalia, Nicaragua, 16, local elections in Germany and Australia, East Tamur, Cuba, North Korea, Sudan, Seychelles and Indonesia.

At a recent conference of the Association of Electoral Administrators attended by officers of the Electoral Registration Unit at Crown Division, there were no quantitative views received regarding the reduction of the voting age. A number of negative views were noted.

A recent poll by the Department of Education of 500, 16- to 18-year-olds at the Careers Convention resulted in 81 per cent in favour and 19 per cent against lowering the voting age. A similar poll by Isle of Man On-Line of all age groups resulted in 25 per cent in favour and 75 per cent against the proposal, the latter being broadly consistent with similar polls in neighbouring jurisdictions.

It could reasonably be expected that constitutional change of this magnitude would attract some degree of consultation. This, regrettably, was not the case.

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

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

**The President:** Mr Downie.

**Mr Downie:** A couple of points, Mr President.

First of all, the reduction in the voting age that has been suggested and amended by the other place: one area I do have concern about is the amount of consultation and whether there has been a wide enough opportunity to discuss the implications, as has been referred today by the mover, the rights of the child and some of these other areas. I do not want to use the old pun, but I will, regarding 'No taxation without representation'.

In my view, if you are capable of voting, it does infer that you have reached the stage in your life when you are considered as a responsible adult. I do not think that issue has been examined widely enough in the other place. You could have an issue which relates to an instance where we are trying to protect young people and, because of the sensitivity of the nature, there is quite a swing of young people who do come out to vote, if we actually agree to having 16.

My own view, for what it is worth, is that I think we have had this thing pushed on us and I think with the benefit of hindsight, we would be better off doing a little bit more research and trying to identify some of these problematic areas, which have been looked at.

I am not totally against introducing the vote at 16, but I think we really need to be sure what we are actually letting ourselves into and whether there has been enough background work done to fully justify this unusual stance, really, in the Western world, when you look at other jurisdictions around the world. We are dealing with a country that has had a democracy for over a thousand years, and if you look at what is common in similar areas in Europe, Scandinavia, the UK, for example, it is not 16. There is a reason for that, which I hope we can develop, when we are having further dialogue.

The other area I would like to ask the mover a question about is that clause 3 of the Bill, when we are talking about (2)(a)(i), we talk about a qualifying period of a person to go onto the electoral roll. Now, also, before another place, there is another piece of legislation which indicates that we are going to discuss the allowing of prisoners to have voting rights and as there are quite strict guidelines regarding the place of your abode and the time that you are in your place of abode, when you go onto the electoral roll, there is a procedure for changing your place of abode.

How do we square the circle and apply that to a person who has been sentenced to three or five years in prison? How do we deal with an issue, when, really, there is no set time for

a period of sentence these days? It is an area that fluctuates, and we are often told that, as there are accommodation problems within the prison. A lot of people get put out on early release. Could we, perhaps, have a steer as to whether, if a person is incarcerated in the prison, that is where they vote and that is that particular area in the Isle of Man that has a representation from them or is there going to be some link out into their old constituencies, as it was?

So, I think it is appropriate to deal with that, because it could resolve a lot of these issues before we get caught up in the Representation of the People (Amendment) Bill, when it comes through.

**The President:** Mr Lowey.

**Mr Lowey:** Yes, Mr President.

Very much along the lines of the previous speaker, really. On two fronts, I find it strange. I read the preface of the Bill, which says, 'No extra cost and no extra manpower' and then an amendment comes along, which actually increases it by £20,000, which is a substantial figure, a sum of money.

Are the amendments vetted by the Treasury? I thought the Standing Orders should have required it to be, in the first place. If not, why not? Perhaps that is not for this Council to discuss.

However, having said that, there is a cost now, which was not there before.

Now let us get on to the one on voting at 16. I have yet to meet anybody outside who says they are in support of voting at 16. I have had a lot of comments by people who do not support 16 and given very strong reasons why.

My own view – as the Hon. Member said, 'and now for my own view' – is quite clear on this, that I am not a supporter of voting at 16, for a lot of the reasons that have been spelt out.

I have to say, one of my pet theories with what is wrong with the modern age and modern world in which we live is that we do not allow children or kids to be children for very long. Here we are saying... and the definition of a child, I think it is up to 18 – perhaps the learned Attorney can tell us, but the definition of a child is defined in statute somewhere, legal responsibilities and all that. Here we are saying 'And by the way, we are going to put... you can vote at 16.'

So, I think there is a load of contradictions there. We do not allow children to be children for too long and my big thing is, at eight years of age... and the answer, answering my own query, as to why we do not allow that, is because I think they become a market. In other words, I think they have disposable incomes, or their parents have, and they are sort of targeted at that and 'must have' – 'a must have society.'

Now, we are going to give them the vote. There are contradictions: you can fight for your country, you can join the army, you can have a motor car licence; at the same time, in legal terms, you are not allowed to do other things without permissions. 'By the way, you can have the vote now, but you are not allowed to buy tobacco until you are 18' – is it – I think we have? So, what I am saying is, there are lots of anomalies. It is not cast iron.

My big worry is on where we get amendments to the Constitution. This is a constitutional change of some significance, on an amendment. It seems to me we are changing the Constitution by the death of a thousand cuts. It is not a perceived overall package which we are dealing with; it is an opportunistic... 'Here is a vehicle – can we

alter something?'

Perhaps in politics that is ... and, I suppose, I am as guilty as anybody of having used that vehicle. But having said that, this particular piece of legislation did not include anything about voting. It was for the reasons set out why we have it: to try and assist people to get on the Register, and it is too long and for the reasons ably set out by the mover.

My only query on that is, having been involved in the election since I was 14, helping and what have you, there were always complaints about people not being on the voters' list and that has not altered from one election to the next. No matter how hard we try, we will always get... even with this Bill, I am sure there will be people who turn up that are not going to be... if this Bill was passed. There will be people turn up that are not going to be on the list.

I know it is trying to narrow that down, but I have to come back to it. I do not like amendments on the hoof, which have repercussions. I do not like the thought of the extra cost, without going through it, so I might as well say that, but on the principle, which we seem to be... or two speakers up to now have concentrated on the voting age of 16. I am not in favour of lowering the voting age to 16. I do not think people are matured enough.

I have spoken with 16-, 17- and 18-year-olds and apart from one who was ambivalent about it, the others were not interested in the slightest. No way did they want to get involved in voting.

Now, that is not a scientific sample that I took, but I have to say that the response I got from the younger generation that I have consulted with was: 'Thank you, but no thank you'. If I was here, I would not be voting for this particular...

**The President:** Mr Singer.

**Mr Singer:** Thank you.

Now, Mr President, one point was raised by the last speaker about Treasury concurrence. I seem to remember when I moved an amendment to the Employment Bill last week, two weeks ago and we moved the figure from £385 to £420, I was told that amendments do not need Treasury concurrence, so whether that is the same here, or not, is that right? Yes.

But we are talking about no extra costs. I am sure the amount of work that is going to go into monthly amendments to the voters' list, in every constituency, is going to cost some money, if they are going to put alterations in and then reprint them, which they will have to do, because there will have to be a final reprint at some time. It would not be satisfactory, I think, to put an addendum on the end, so we do not know how much that is going to cost.

But I think, if anybody would say for young people... well, for anybody, that if you vote you vote with responsibility, you understand the importance of the vote and the privilege of the vote.

I have two sons, one who will be 18 in April – sorry, 18 in March, I cannot remember his birthday! – and the other will be 16 in April. I have spoken to both of them and the 15-year-old says, well, he thinks he put 'yes' on the card at this careers... but, again, they said they do not know anything about, they are not taught anything about politics at all.

I spoke to an A-level student at a school. She is a politics student, and she said she does not know enough about Manx politics and she would not vote.

So, the first thing is the responsibility and the first thing is

that there should be education of the children, in the schools, certainly, I would think, from when they start the grammar schools, to be taught something about what Manx politics means, the history of Manx politics. I think it makes a big difference, Manx politics, from anywhere else, where there are party politics. Maybe, young people would identify with some aims of a party and then vote for the party, rather than the person.

I believe that education is lacking at the schools in our system, they are not taught about our political system. I actually, every year, speak to the politics class at O-level at Ramsey Grammar – about 25 in the class. Last year, somebody had mentioned about voting at 16, and I raised with them: ‘put your hands up, who would vote if you were 16?’ Out of about 25, three put their hands up. Basically, they were all saying, ‘We do not know anything about it’ – and they were taking O-level politics. It was not really to do with Manx politics. The only thing I think they were doing, at that time, was reform of the Legislative Council.

So, I think that more consultation has got to take place. We have not got a real proper outlook on how people feel. It has all been mainly straw polls that we are talking about. We are conducting them. Other people are conducting them. There is no scientific evidence at all for people voting at 16. I think, from what I know, there will be a very, very small turnout of 16- to 18-year-olds. That defeats the whole object of giving 16-year-olds a vote, because, in fact, your overall percentage of people voting would go down, in an election.

I heard today that Gordon Brown is looking at it – 16-year-olds for the UK – and if Gordon Brown is looking at it, then it must be a gimmick. I think it is a gimmick. I do not quite know the point of bringing it in. I do not think there was any real reason for this amendment. I cannot see a backing, a reason behind this amendment, because there was no evidence to the mover of the amendment that this is something that is needed, is acceptable, at this particular stage.

**The President:** I will just remind Members that we are still on the First Reading. Mr Gelling:

**Mr Gelling:** Yes, thank you, Mr President.

I think that, up to now, I am in an agreement with pretty well all of the Members who have spoken.

But, taking the point raised by the Hon. Member about Treasury, Mr Singer has, in fact, answered the question: Standing Orders were changed because Treasury were able to veto – or it was stated that they could veto – any amendment coming forward. Therefore, I think, the wording was changed, that the Treasury Minister could alert Members to the cost, and they should take that into consideration, when they were either to go for the amendment or otherwise. So, basically, that is how they now do not go to Treasury.

But the interesting point is that 16-year-olds... and, as it was described by the hon. mover, the problems that do exist. So, I can only take it that, if this is passed through this branch, Mr President, and it goes then for Royal Assent... if that does not happen, then what is originally in the whole of the Registration of Electors will stand, for the simple reason that the Bill will have been looked at by the Constitutional Office in London, without that amendment. Of course, we got a green light, but unfortunately, with that 16, it could be very well a problem that we cannot get through for this election.

So, it is really – just looking at Mr Attorney – that, in fact, if that does happen, I take it that none of the changes in this particular Bill will, therefore, take effect, because of that one area, perhaps, that does not get Royal Assent.

**The President:** Mrs Crowe.

**Mrs Crowe:** Yes, interesting comments, really, the fact that 16- to 18-year-olds would not really be capable of making their minds up or interested in voting. I think that there are a great many 60-year-olds that are not interested in voting, as we know.

But Mr Lowey defeated his whole case by ending and saying, as a 14-year-old, eager and enthusiastic, helping in the local elections –

**Mr Lowey:** I wasn't ready to vote!

**Mrs Crowe:** – he was patently obviously interested in politics. That is what, presumably, we are hoping to do: Interest the children in –

**Mr Gelling:** But that was Mr Lowey.

**Mr Lowey:** Yes, let that be a warning!

**Mrs Crowe:** Precisely. An odd person, we know! We might not get every one of them, but there will be a few young Eddie Loweyes amongst the group, who are interested – or Edwina Loweyes! – who are interested in voting.

We were talking about the education, educating our children in Manx politics. I only noticed today in the paper, there is an advertisement for the Clerk of Tynwald's for an education officer, presumably going to be employed full time with the children in the local schools.

So, I actually do believe that those who are interested, between the ages of 16 and 18, will take the opportunity to vote. I do not suppose that it will be in vast numbers, but then we have to recognise that vast quantities of people on this Island, who have that wonderful opportunity to vote, do not take advantage of it, in any case.

So, taking on board all the comments that the Chief Minister has made – I would not like the Bill to fall – but I still would not like the message to go out that we thought that young people were incapable of having an interest in politics, because I do believe that many of them are. When you listen to some of them who come to Euroclub, who are interested in European politics, we should be interesting them in Manx politics. The way to do that, perhaps, would be to encourage a few of them to vote.

**The President:** Mr Attorney.

**The Attorney General:** Well, Mr President, I think that there were two short questions which arose and I hope that I have the correct answers, but I will certainly check.

In relation to the definition of ‘child’ – of course, we find sometimes ‘children’, ‘young persons’, ‘adults’ and so on – but I think, Mr President, the relevant age in this context must be 18. In other words, that 18 is the age where you acquire majority, and that is the age which is the reference point for voting and all other important steps, in relation to assertions of rights as an adult.

In relation to the point whether the Bill would be lost

completely – in other words, if it goes through the branches with the inclusion of the clause, lowering the age to 16, and that Bill, having gone through the branches, nonetheless does not receive Royal Assent, because of some controversy on the point – my understanding is, Mr President, that the Bill would fail completely. It would have to start off *de novo*, after the new House of Keys is sworn in, but I can certainly check that.

There is one other point, I think, in relation to the Convention on the Rights of the Child and whether it will be contrary to that Convention, if details of children under 16 may be disclosed in a public register. Again, I will have to just check that, if I may. I have not had an opportunity to look at that.

**The President:** Mrs Christian.

**Mrs Christian:** Thank you, Mr President.

Just to focus on the registration issues for the vast majority of the population, I think the Bill is a useful one, in that registration once a year at a particular time has created quite a lot of problems –

**Mr Downie:** I will agree with that.

**Mrs Christian:** – in that people move, or you cannot track them down, or they did not do it in time. I do think that this facility to register changes at different times in the year will be a useful one, in terms of keeping people registered and able to vote.

As everyone is commenting on the age issue, but I think that we will come to it probably in more detail at the clauses stage, I would have to be persuaded that to change it from 18 was a good idea. The argument about taxation does not hold much water, because my understanding is that a child can be taxed at any age. So, are you going to say that a 10-year-old can have a vote, because they are paid tax – if they are in the fortunate position of having enough resource to pay tax?

And there are other arguments to say that, because they can buy cigarettes – oh, no, they cannot buy cigarettes – that they can smoke or marry with permission is an argument for giving them the vote. It might be an argument the other way round, that that is the wrong thing.

So, coming to that one, I am going to take a lot of persuasion to move from the current position.

**The President:** Mr Butt.

**Mr Butt:** Yes, Mr President.

First of all, I welcome the original intention of the Bill which was to create a rolling register, which is likely to increase the electorate, which can only be a good thing.

Having said that, briefly on the age issue, my understanding of the various Childrens and Young Persons Acts – Mr Attorney can back me up – is that a ‘child’ is to the age of 14 and a ‘young person’ is to the age of 17, which may well be, perhaps, a better date from which to start voting.

Having said that, I know, from my experience of 16-year-olds, that they are not interested in politics – neither are 18-year-olds nor 20-year-olds very, very rarely.

**Mrs Crowe:** Or 40-year-olds!

**Mr Butt:** Or 40-year-olds! But I would go along with Mrs

Crowe on this, in that they have no interest, at the moment, but once they have become aware that they have the ability to vote, that they can be part of the process, we might see a sudden increase in the interest. They may then put a valuable contribution towards it.

I am worried that, I believe the UK have had a survey and an enquiry and have rejected the idea of a 16-year-old voting age. That does worry me; I wonder what the reasons for that are.

But the Isle of Man led the way in the 1870s –

**Mr Singer and Mr Lowey:** 1880s. (*Interjections*)

**Mr Butt:** 1880? – with the votes for women. (**Mr Singer:** 1881, yes.) I think it would be a breath of fresh air to grasp –

**Mr Singer:** That is being repealed in this one! (*Laughter*)

**Mr Butt:** I think it would be nice to grasp the nettle and perhaps go that way – what harm can it actually do?

The various differences in ages to do with young people and children – the 16-year-old not being able to buy fireworks or drink – those things can do them harm. That is why those ages are there. Can it do any harm to have 300 or 400 extra people voting?

**Mr Singer:** Yes.

**Mr Lowey:** Yes – in a close election. (*Interjection by Mr Singer*)

**Mr Butt:** Is it going to destroy our system? I do not think it will.

Thank you.

**The President:** Lord Bishop.

**The Lord Bishop:** Thank you. In another place, we had the wonderful malapropism, quite recently, of ‘no representation without taxation’, and I think that we have been neatly brought back to that today.

I think, like a lot of other people, it is a red herring, along with the whole business about whether you can marry, whether you can buy fireworks. Each of those is a decision on its own: you decide not to allow people to buy fireworks at that age, because... up to that.

What I want, therefore, for us, if we can, is to turn round to say: what is the gift of the vote? What is the purpose of giving somebody a vote? Once we work that out, then we can actually have the debate about at what age that person can actually exercise that vote. What are we given by the gift of a vote? What are we given in democracy? (**Mrs Crowe:** Responsibility.)

I think, rather than arguing and thinking about, ‘Oh, but they can marry’, and so therefore... I came into this Chamber after lunch thinking, ‘Well, if they can marry at that age, they might just as well cast a vote at that age’, and I have been thrown off by the various debates that have happened.

So, I think we really do need to go back to the beginning again, to discuss what the principle of voting is about. Then we can make the judgement about what age that can be fixed at. I think we could move to Mr Butt and Mrs Crowe’s

point of view that 16 would be reasonable, because we have decided that that is what it is about.

I heartily approve of the rolling system, as one who was caught in it, on arrival in the Island, I know the problems of that system. I think what is provided here is a very good solution.

**The President:** Once again, Council makes you think! Mr Waft, would you like to reply, sir?

**Mr Waft:** Thank you, Mr President.

I will go through each one, in turn, but before I just mention each one in turn: there is a possibility, I am advised, to minimise the concerns, with regard to having a version of the Register which could be produced for the sole use of the returning officers or associated election officials, which would indicate if an individual is of sufficient age to vote at a particular election, possibly by something as simple as the letter 'A' to denote 'attainer'.

Such a version of the Register would be required for every election covered by the franchise – for example, the House of Keys, the Board of Education. So, that might be some way out of the impasse that we might have, with the legal situation.

Mr Downie was concerned about the reduction and the voters' age. He mentioned the consultation that has taken place, other than the consultation that I did mention in the First Reading, with the consultation that was taking place with the schools' careers advice centre that they had, and the 500 children who were asked about it. There was 89 per cent in favour and 19 per cent against – something of that – but I do not know whether any other consultation has taken at any place.

With regard to prisoners and rights and their place of abode and how long they stay there, I have not got any information on that at all. I cannot really give an opinion on that, with the link to outside.

Mr Lowey mentioned the extra costs – it says £20,000. I think we are talking about the problem of making software available to include these children within the existing parameters that our software is available to use – in other words it would have to be compatible, to take on this group.

I think £20,000 is an optimum maximum figure, perhaps, but I could not give a definite argument to how much, within £1,000, how much it would cost. Whether the Treasury agreed with the cost or not, as Mr Gelling has pointed out, they have got no say over amendments.

The Member also went to say that people are not supporting it, and it does not allow children to be children. Perhaps, I might agree with them on that point. It is a big thing about changing the Constitution – perhaps more consultation should have been taking place to give us a better flavour of how the public think about it.

It was mentioned that the UK was thinking about bringing it in, fairly recently. I think it was on the television yesterday and today.

Mr Singer referred to Treasury concurrence and his anecdotal evidence, with regard to the conversations that he has had with schoolchildren, and the possible small turnout. Therefore, the overall percentage of the voters would go down.

Mr Gelling was able to clarify the situation, with regard to the Treasury situation on amendments and the vetoes. There is a query about whether – he mentioned – it does pass through this branch, and what will happen, with regard to the constitutional situation, with regard to the legal position.

Mrs Crowe mentioned a lot of 60-year-olds do not vote, which is quite true. She thinks that maybe very few would be keen to vote. There will be a few keen to vote, I am sure there will and, probably, those that are interested in political sciences. Those who are interested will vote, I am sure she is right there.

Mr Attorney mentioned the relevant age of the child. The Bill could be lost, he thought, if we went down that route. Possibly, it would be lost, and we might find a way round that, if we do find ourselves going along with the amendment.

Mrs Christian referred to changes during the year would be very useful, but she still thinks she needs a lot of persuasion to go down that route.

Mr Butt referred to the Children and Young Persons Act and the child is up to the age of 14, then a young person. He mentioned that it could be valuable, perhaps a breath of fresh air, and what harm could it do?

The Bishop referred to, perhaps, a red herring with regard to buying fireworks etc. That could be the case, but he asked the question as to what is the purpose of giving them the vote and what are we giving them, at the end of the day? Is it right that we should be doing this?

I think most people have revolved around – as probably to be expected – with regard to the 16. Personally, I think that 16 is a possibility, if we can get round problems with the Register being legal, and getting round the problems that might ensue because of that.

Having said that, I am just moving the First Reading at the moment. I am sure it has a long way to go, so I will not try for the Second! (*Laughter*)

**The President:** Right, in that case, Hon. Members, the motion that goes before Council is that the Registration of Electors Bill be read for a first time. Those in favour, please say aye; against, no. The ayes have it.

*A division was called and voting resulted as follows:*

FOR	AGAINST
The Lord Bishop	Mr Lowey
Mr Waft	
Mr Singer	
Mr Butt	
Mrs Christian	
Mr Gelling	
Mrs Crowe	
Mr Downie	

**The President:** Hon. Members, with 1 vote being recorded against, the Registration of Electors Bill, therefore, carries at its First Reading.

That concludes our Order Paper, the business before Council for today, and our adjournment will be till Tuesday next at 10.30.

Thank you.

*The Council adjourned at 3.59 p.m.*