



**LEGISLATIVE COUNCIL  
OFFICIAL REPORT**

**RECORTYS OIKOIL  
Y CHOONCEIL SLATTYSSAGH**

**PROCEEDINGS  
DAALTYN  
(HANSARD)**

**Douglas, Tuesday, 12th February 2008**

**Present:****The Hon. President of the Council (The Hon. N Q Cringle, OBE)**

The Attorney General (Mr W J H Corlett QC),  
 Mr D Butt, Mrs C M Christian, Mr E A Crowe, Mrs P M Crowe, Mr A F Downie,  
 Mr E G Lowey, Mr J R Turner and Mr G H Waft,  
 with Mr J King, Clerk of the Council.

**Business transacted**

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*The Council sat in private.*

## Legislative Council

*The Council met at 10.30 a.m.*

[MR PRESIDENT *in the Chair*]

### PRAYERS

*The Chaplain of the House of Keys*

### Welcome to Canon R Paterson; apologies to Members

**The President:** Hon. Members, we do not have any apologies this morning, but before we do start can I say that it was quite pleasant to be able to welcome Canon Robert Paterson here last Friday and show him round the buildings. Can I apologise particularly to Mr Downie and Mr Waft, who I understand were waiting to meet the gentleman, but unfortunately I never got to the upper floors, having met a number of the Keys Members, and Mrs Crowe and Mr Butt in the lobby, where we had quite a gathering. I must apologise to Mr Waft and Mr Downie, because I understand they were waiting, and I missed that. So it is my fault and I am sorry about that.

Having said that, of course, I think that he will certainly be interested in joining us here in the Legislative Council. I do not think there is any question about that and I think his outward-going presence means that he will be welcomed in the Isle of Man.

## Orders of the Day

### Income Tax (Pensions) Bill

#### First Reading approved

1. Mr Downie to move:

*That the Income Tax (Pensions) Bill be now read a first time.*

**The President:** Now, Hon. Members, we have but the one particular matter in front of us this morning at our public sitting: the Income Tax (Pensions) Bill. It is for the First Reading, so Mr Downie.

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

This Bill makes significant changes to income tax legislation relating to approved pension schemes. The Bill itself contains 19 clauses.

There is a relaxation on the compulsion for members of personal pension schemes to purchase an annuity in retirement and an amendment that will allow members to draw their pension directly from the fund.

The Bill allows for regulations to determine appropriate investments within a scheme. It brings into primary law the

two concessions approved by Tynwald in June 2007: the first being Government Circular 20/07 – Concurrency on Personal Pensions Plans and Occupational Pension Schemes; and the second Government Circular 21/07 – Approved Pension Schemes: Trivial Commutation Lump Sums.

The tax-free lump sum available on retirement is increased from 25 per cent to 30 per cent and the permitted maximum lump sum will be repealed. Members will be able to receive their pension early, whilst continuing to work.

The existing percentage-based limit on annual contributions is being simplified. In the future all contributions to approved pension schemes that are below the new annual allowance of £300,000 will be allowed. A minimum allowance will be introduced that will allow non-earners and the lower-paid to access approved pension schemes. The concept of international personal pensions is introduced on the Island.

Finally, the Bill makes a number of consequential amendments, including the repeal of complex carry-forward and carry-back provisions linked to the current contribution limits.

Mr President, I beg to move the First Reading of the Income Tax (Pensions) Bill 2007.

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

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, just to express support for this Bill. I think we all recognise how important it is to encourage personal provision of pensions and so on, and anything which simplifies and encourages investment now for future pension provision has got to be supported, I believe.

I just hope that the measure... well, since the summer, when the Hon. Member indicated that these issues were first put forward, that there is significant publicity in relation to business, there is, too, a need always for publicity of changes in legislation to encourage people to make further provision for their future.

**The President:** Mr Crowe.

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

I support the Bill. As the mover, Mr Downie, has said, one of the key changes to current legislation is the removal of the need for trustees of an approved personal pension scheme to buy an annuity on retirement. The change is partly necessitated by the difficulty in purchasing annuities from Isle of Man insurance companies, but also by the changes in UK law which allow members of UK pension schemes to access investment funds directly.

The changes in this Bill will give members of Isle of Man pension schemes a similar facility to that of the UK. Compulsion to purchase an annuity is also relaxed in favour of the ability to withdraw funds following the death of the member of an Isle of Man pension scheme, and on commencement of a pension payable to the surviving spouse or dependants, which will of course be helpful.

Clause 6 deals with the commutation of a pension on the grounds of triviality. A figure of £16,000 is given in the Members' Guide as the figure to which triviality will apply. This will result in a more practical approach to be taken,

rather than the present system which requires a trustee to purchase an annuity and set up regular payments for what are relatively small sums. Other improvements in this Bill compared with current legislation are an increase in the amount of the lump sum on retirement, as this will be an incentive for people to save for their retirement, as Mrs Christian rightly points out, and the investment rules will be made clearer by subsequent regulation.

Thank you, Mr President.

**The President:** Mr Lowey.

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

I welcome the Bill; but I do wish it would be much simpler. I know the aim of the Bill is to make it simple, but for the ordinary man in the street, still, pensions are a mystery.

Let me just ask one of the basic questions that has been asked to me and quite candidly, I am supposed to be an expert on pensions. I am not really! But the question that was asked to me: 'Does this Bill apply to every pension scheme?'

I am glad the mover shook his head, because I did not think so. Therefore, when we talk about these things in general, they only apply to certain areas. Like the mover of the Bill said, you can draw your pension while you are working. You can when you are 75, under this Bill, if I have read it right.

So again, we have been given some very informative papers – I am not complaining about what we have got – but I would just like the papers sometimes to be written in layman's language that the man in the street can, at a glance... in my case, not the man in the street; I call it an idiot's guide! In other words, I would like to know how this will affect me.

Therefore, I would urge the Treasury... I know they consulted widely, but they consulted with the experts – the people who are selling and promoting and what I would call the business element – but not with the people who it may and can affect.

So, while generally welcoming the Bill – I think it deserves support, because the pension industry on the Isle of Man is one of the success stories of the last couple of decades, and we need to nurture that – I still think that we do need to be able to explain to people that these rules that we are changing are designed to help, to free up how it will affect them. So again, I am looking to the mover because I know he is in the Treasury: I think it is Treasury's job to explain to the ordinary people what the effects of these measures will be.

**The President:** Mr Turner.

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

I am speaking in support of the Bill. From the contacts I have in the financial service industry, they are welcoming this and say it is long overdue.

The Government has been encouraging saving for individuals and those who do not benefit from either a private or a Government or employer pension scheme can now make adequate provision. Of course, we need to also make sure that the people have enough surplus income to be able to put that aside, which obviously is a concern which will be ongoing, no doubt.

But this has been widely consulted on, with the industry.

I know they are very happy with it, and I am sure they are eager to get this piece of legislation through.

**The President:** Mrs Crowe.

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

I speak rather from having that weight of a pension scheme resting upon my shoulders occasionally! It is about the onerous position of trustees. The new provisions for trustees mean that there is a requirement for training within six months of being appointed a trustee, to demonstrate that you do know, really, or have some grasp of what you are doing.

I just would like the mover of the Bill to assure me that perhaps just even one public notice to alert trustees that there are changes in the Isle of Man legislation... because a lot of administrators of the pension schemes on the Island actually come from the UK, and really rather deal with UK legislation. So I just wonder if we could... or even a letter to the chair of the trustees of the pension schemes that are on the Island – just to make sure that trustees are aware that there will be changes in the provision, once the Bill has been enacted.

Thank you, Mr President.

**The President:** Mr Butt.

**Mr Butt:** Thank you, sir.

Can I just ask the mover briefly, from what we have been told about this Bill, which I support, does it actually provide an extra service to the finance sector which they can give to the Island? Will it actually generate extra revenue for the finance sector? I understand that may be one of the points of having this legislation. I wonder could he confirm that for me.

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

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

Some interesting questions there: I am fairly confident I can give answers to most of them, but if there are any I cannot, I have two very capable people with me today, who can provide all the answers that the Members are seeking.

First of all, could I start by thanking Mrs Christian for her support. I know she has had involvement with the pensions industry over the years: she knows a good deal about the way that business operates on the Isle of Man. She did say that one of the things that was key to the success of this new piece of legislation was publicity. In fact, I am sure, once this Bill becomes law, there will be a lot of publicity from the various pension providers on the Isle of Man, who will be using their skills to promote the new range of products that are going to come in, on the back of this particular legislation.

I am a newcomer to the field of pensions, but having been involved in the progression of the Bill for a considerably short time, I can see some of the tremendous advantages and the flexibility it brings to the present system.

I fell into that trap. When I was elected to the House of Keys, some 15 or 16 years ago, I had a thing called a deferred annuity, which was preparing for my own pension. I had to freeze that: I had to put it on hold, so for the last 15 or 16, I have not been able to pay in, legitimately, to a pension scheme.

When this becomes law I can make my mind up, at 63, whether I am going to revitalise it again. Likewise, within the

various parts of the Bill, there are opportunities for people to opt in or to opt out. For example, if you want to take a couple of years out to look after an ailing parent, or a wife wants to give up work to look after their children, at a particular age, (**Mrs Crowe:** Yes.) they can continue to pay the pension, if they want, or when they return to work, if it is agreed, they can make additional payments to catch up. So you have got a whole range of flexibility built in to this particular piece of legislation that we have never had before.

Mrs Crowe said she was supporting the Bill. She mentioned the triviality section in it. I think that is common sense, because if a person has only accrued £12,000 or £13,000 in a pension, there is no point in paying that back to them at so many pence or trivial amount a week. You are far better off saying to them, 'Well, there is your money back: you can go and do what you want with it – invest it or whatever – or there are other forms of pension available, if you want to pay that lump sum into something else, and get another type of a return on an annuity sort of a basis.'

Now, Mr Lowey welcomes the Bill. Could I say, having the benefit of his 70 years with us, could I wish him Happy Birthday today! (*Interjections*) He is a well-seasoned campaigner in these areas and he wanted the Bill to be made a little bit simpler, for the ordinary man in the street. I have some sympathy with that, but sadly, the world that we are living in, particularly with regard to income tax and pensions, is not a simple area. There are lots of specialists in this particular field, and I think when you are involving yourself in people's money, assets and all the other situations that could finish up in a court of law, you have to be absolutely belt and braces, when you are drafting your legislation, so it is not always possible to be simple.

I think the trick is that when the providers of the products come along, they need to simplify it. I am sure the man in the street does not need to know what is in the relevant clause of the legislation; he needs to know what is in it for him. If he invests his money, he wants to know it has been invested properly, it is safe and secure and if an issue arises he wants to have good, sound financial information given to him. If there is a problem along the way, or somebody dies, or there is a break-up, he wants to know there is a provision to resolve any disputes or issues that are not really going to affect the viability of his pension. So I would take what Mr Lowey has said on board.

The new piece of legislation does not actually apply to every pension scheme: for example, it does not apply to statutory pension schemes. So we need to divorce ourselves, really, from what happens within Government and the Civil Service. This is a vehicle available for the private sector.

**Mr Lowey:** The private sector – yes, that's fine.

**Mr Downie:** For some of the people who work in the Isle of Man now, we have a lot of company directors, people who are self-employed, it is ideal for them because it gives them the flexibility and also elements of what is paid in can be offset against tax and different other issues. So we need to be mindful that we are not talking about anything to do here with Government.

All of these schemes, when they come in, will have to be approved by the Assessor of Income Tax anyway, so he is the man who decides whether the schemes are run or not, in the Income Tax Division.

Moving on to Mr Turner, he said that there had been a

long consultative process. The industry are really champing at the bit to get this piece of legislation onto the statute books. We are very much in competition with places like Jersey and Guernsey with regard to pensions. If we can move this forward quite quickly, I am sure there will be an advantage for us. I know that the industry out there cannot wait, really, to get on and to start to prepare some of the material, so that the insurance packages can be sold.

Mrs Crowe was supportive of the Bill. She made reference to trustees and notification. I think there is a requirement for everybody to be contacted about these matters. I am sure the representatives from the Treasury here will make sure all that is taken care and dealt with.

Mr Butt: does it provide an extra revenue income for the Island? Well, I would say it very much does provide an extra income revenue stream for the Island, an extra opportunity, but I would suggest that the funds that it brings into the Island are also available for things like the hedge fund industry, which we are trying to promote in the Isle of Man and grow. I think it shows the Isle of Man as being successful in its approach to developing new products, particularly new insurance products. When it does get through its various Readings, becomes law and the regulations are introduced, I think we will see some significant success.

So with that, Mr President, I would like formally move that the Income Tax (Pensions) Bill 2007 be read a first time.

**The President:** Hon. Members, I put to Council the First Reading of the Income Tax (Pensions) Bill: that the Bill be read for a first time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

### **Income Tax (Pensions) Bill** **Standing Orders suspended** **to take Second Reading and clauses**

**The President:** Mr Downie.

**Mr Downie:** Mr President, I do not know whether there is a requirement to suspend Standing Orders, (**Mrs Crowe:** Yes.) is there?

**The President:** Strictly, there is, sir.

**Mr Downie:** With your leave then, Mr President, as I said, in my introductory remarks, we have got two of our top people here from the Income Tax Division and the Pensions Section, and I think if we were to suspend Standing Orders to possibly take the Second and the clauses stage, depending on how Members feel after that, you could have a cooling-off period or you could go for the tape: I am entirely in the Members' hands, but I have got all the material here, anyway.

**The President:** Shall we take it one step at a time, Mr Downie? You are proposing that we suspend Standing Orders to allow the Second Reading and clauses to take place this morning.

**Mr Downie:** I move, Mr President:

*that Standing Orders be suspended to allow the Second Reading and clauses of this Bill to be taken.*

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

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

Hon. Members, there is a requirement, actually, that we need five, so are we agreed, Hon. Members? (**Members:** Agreed.) Anybody against? We are all agreed. I will take it, Hon. Members, that we have the five without any problem.

### **Income Tax (Pensions) Bill** **Second Reading approved**

**The President:** We will go straight on to the Second Reading. Mr Downie.

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

This Bill makes significant changes to income tax legislation relating to approved pension schemes and the manner in which tax relief is granted. It also follows recent major changes to UK pension legislation and an extensive consultation period that included the publication of two consultation documents, the draft version of the Bill and seven separate presentations to pension specialists, tax specialists and members of the general public.

The Bill contains 19 clauses. The first clause confirms the long-standing position that income tax is deducted at source and the payment of an occupational pension scheme.

Clause 2 allows a member of an approved personal pension scheme to draw funds directly from the scheme rather than purchase an annuity. Regulations will be needed to set out the minimum and maximum pension payable and provision will be introduced that will require the payment of income tax, if funds remain, following the last payment of pension to the member or a surviving spouse or dependant.

Clauses 3 and 4 allow Treasury to make regulations regarding the investments that an approved pension scheme may make. An approved pension fund has the sole purpose of providing the member with benefits payable near to or after retirement. Investments will not be allowed which, for instance, would put the sole purpose at risk or would provide the member with additional benefits other than those allowed by statute.

Clauses 5 and 6 bring into primary law the trivial commutation concession approved by Tynwald in June 2007. Triviality allows a whole pension fund to be paid out as a lump sum, where the amount is too small to purchase an annuity or withdraw directly from the fund. The lump sum will include a tax-free element, with the balance being subject to tax at source, at the lower 10-per-cent rate.

Clauses 7 to 9 increase the maximum tax-free lump sum available on retirement from 25 per cent to 30 per cent of the fund. In addition, the permitted maximum lump sum of £150,000 will be removed.

Clauses 10 and 11 allow a member of a pension scheme to take his tax-free lump sum before the normal retirement date, while allowing him to continue to work and without triggering the payment of the pension.

Clause 12 is a further relaxation and gives the member of a pension scheme more choice when approaching retirement age. It allows a member to take a pension at the normal retirement age and continue to work for the same employer.

Clauses 13 and 14 remove the complex calculations for contributing to pension schemes. It is replaced by a maximum annual contribution allowance of £300,000. Clauses 13 and 14 also introduce a new minimum allowance enabling non-earners to contribute into a pension for the first time and receive a tax deduction up to £3,600 against their other income.

Clauses 15 and 16 introduce a number of miscellaneous amendments which are necessary to introduce this legislation.

Clause 17 amends section 50B in the Income Tax 1970, extending existing provisions that allow the Assessor to approve international pension schemes set up by employers to include international schemes created by individuals.

Finally, Mr President, clauses 18 and 19 contain the interpretation, short title and commencement of the Bill.

Mr President, I beg to move:

*that the Income Tax (Pensions) Bill be now read a second time.*

**The President:** Mr Waft.

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

I wondered if the mover might clarify the situation with regard to the United Kingdom and the differences in Jersey and the Channel Islands etc, and how we lie there, or are we just copying other legislation?

**The President:** If I may, Hon. Members, just to get the Second Reading underway, the Bill is a permissive Bill, insofar as in most cases it is simply a 'may' rather than be a mandatory Bill. Perhaps the Member could tell us the difference between those 'mays' where the Treasury may make regulations subject to the approval of Tynwald and on the occasion, for example, in clauses 3 and 10(8), where they can make regulations without the approval of Tynwald. Yet even in clause 2, in the subsections where they make regulations, it is subdivided so that those regulations are subject to Tynwald approval. Perhaps you will explain the difference between the two.

Any other Member? Mr Lowey.

**Mr Lowey:** I recognise the mover of the Bill... and as he has drawn attention to the fact that he has got the experts with us this morning, can he explain to me why the Bill excludes statutory pensions? The heading of the Bill is the Income Tax (Pensions) Bill. Again, I am looking at people who would be wanting to look at the law sometimes, and they would go instantly to the 'Income Tax (Pensions) Bill', and say well that is where it is all at. But it is not 'all at': it is just the private sector. There may be a very good reason why. I would just like an explanation as to why.

The other point that I was going to make, the President already did: I have got 'regulations?' – but that point has already been made.

**The President:** Mr Downie, no other Member wishing to speak: Second Reading reply, sir.

I think Mr Lowey's question in relation to the 'Income Tax (Pensions) Bill', the actual title of the Bill, is seeking some clarity, within the Bill, as to the difference between statutory pensions, National Insurance pensions, and private pensions. It should be in the title of the Bill, although we can put a title to suit ourselves.

Mr Downie.

**Mr Downie:** On the first point that Mr Waft raised, clarifying the situation regarding the UK, Jersey and Guernsey, I am advised: we have not copied the UK changes, but we have ensured that the Isle of Man residents will be no worse off than a UK resident, and in most cases, the Isle of Man residents will be much better off.

Jersey and Guernsey have not yet amended their legislation: they still have legislation similar to the current legislation, but we understand that they are following quite closely on our coat tails.

The issue that was raised by Mr President: it is proposed that all regulations will be approved by Tynwald. I think there might be some more information coming through on that. Where there is reference to 'shall' or 'may', I think the Income Tax Office has always had discretion over certain things, but when they do make a decision, it still has to come before Tynwald. I do not think they can just move the goalpost on their own: I think there is a requirement to do that.

Is there any more information coming on that?

**The President:** If it is of any help, Mr Downie, my confusion may be insofar as for example in clause 3:

'The Treasury may by regulations extend or restrict the meaning of the word "investments",'

but nowhere in clause 3 does it say that those regulations should be approved by Tynwald; whereas if you look at the subclauses in clause 2, they are approved by Tynwald.

Similarly, if you turn to clause 10(8):

'The Treasury may by regulations provide for the method by which the total value of benefits payable to a member may be calculated and different methods may be provided for different classes...'

Again, it does not refer to those regulations being approved by Tynwald. I just wondered when in fact, in subclauses in clause 2, it refers to them being approved by Tynwald, and yet in clauses 3 and 10 it does not refer to them being approved.

**Mr Crowe:** Mr President, am I not reading this...?

In clause 3... Oh, I see what you are saying: it is only going to clause 4 that they talk about 'Regulations under subsection (3) shall not come into operation...'

**The President:** No, the regulations under *subsection* (3), sir; not under section 3. That is the difference.

**Mr Crowe:** Yes, sorry, Mr President.

**The President:** I am sure somebody will have the answer.

**Mr Downie:** Yes, I am sure if we do not get the answer today, we can get it at Third Reading. It is a little too technical

for me to give you the answer to.

There was a further issue that was raised by Mr Lowey about the Bill – it excludes statutory pensions. I understand that, although it might be useful to have a flexible system for statutory pensions, it would be such a complex area, bearing in mind that a lot of the rules regarding statutory pensions in the Isle of Man are the same rules that they have in the United Kingdom. Really, when you are looking at a whole diverse group of employees, there must be 6,000 or 7,000 people at least, maybe more, who are involved in the Government's pension, and for people to opt in and opt out, it would be an absolute nightmare.

I think what we are looking at, in the Bill, is trying to come up with a form of legislation which enables bespoke or tailor-made types of insurance products – and I hate using this word, but there again, targeted at people at the top end of the scale of salaries, high net-worth individuals. It is building on the success we have had in these areas in the past and trying to keep ahead of the game in the development of new products.

**The President:** Mrs Crowe.

**Mrs Crowe:** I would just like to answer that: I think, as far as my recollection is, the statutory schemes, the policy for all those schemes is all determined by the United Kingdom Government and not by our own, at the present time.

I presume that the review that is taking place at the moment may well address that issue. But as we know, we spent all summer looking at the reason (**Mr Lowey:** We did!) that we were not involved, so I presume that is why that Bill is not covered in our legislation, because those policies are not determined by us.

**The President:** Mr Crowe.

**Mr Crowe:** Although it is silent in the notes, it could be that the approval of Tynwald is in the 1978 Act or the 1989 Act. So there might be references which presumably our Clerk might be able to assist us on.

**The Clerk:** I have not found it yet, Mr President.

**Mr Crowe:** Thank you.

**The President:** Hon. Members, we are getting a bit loose in our discussion around here. I think Mr Downie is answering questions as they come, but if any other Member wishes to make any comment relevant to the Second Reading, before I formally put the Second Reading to Council, you have the opportunity now, Members.

In that case, Hon. Members, I will formally put to Council that the Bill be read for a second time. Hon. Members, those in favour, please say aye; against no. The ayes have it. The ayes have it.

## Income Tax (Pensions) Bill Clauses considered

**The President:** In which case, Hon. Members, having taken the Second Reading, we move straight on to the clause

stage of the Bill. Mr Downie, perhaps we could take clause 1, sir.

**Mr Downie:** Thank you.

Mr President, the Income Tax (Pensions) Bill 2007 introduces a modern and relaxed approach to the taxation of pensions. It provides a framework that will allow members of approved pension schemes much more freedom in the way they make contributions and the way in which pension is paid.

The amendments being introduced by this Bill will remove many of the barriers to effective saving for retirement that exist in current statute. Members of approved pension schemes will be able to continue to contribute at times of their lives when previously they were barred from doing so, and they will be able to have greater choice on when and how their benefits will be drawn.

Whilst this Bill may appear to highlight significant increases in pension options to the higher paid amongst us, the fact remains that the Bill will ensure all individuals across this Island will be able to save for retirement, through an approved pension scheme, and not just those individuals who are working.

Mr President, the Bill amends three separate Acts of Tynwald. Most changes are to the domestic provisions found in the Income Tax (Retirement Benefit Schemes) Act 1978 and the Income Tax Act 1989. One further amendment is being made to international pension schemes approved under section 50B of the Income Tax Act 1970.

Recognising the changes to existing statute, this Bill has been drafted so that topics common to both the 1978 and the 1989 Acts are contained in clauses under single heading.

Mr President, with your approval, I would like to move two or more clauses together, as they appear under each heading within the Bill.

Clauses 1 and 2 –

**The President:** Hon. Members, I will be happy... I just thought that clause 2 is rather complicated. I would prefer to move clause 1 on its own, sir.

**Mr Downie:** All the notes that have come up have all come from the Keys which is –

**The President:** In that case, Hon. Members, I am content to take the two clauses, but I think we will deal with them separately.

**Mr Downie:** Mr President, clause 1 of the Bill inserts a new section 10A into the 1978 Act and ensures that a pension paid out of an approved occupational pension scheme is taxable and tax should be deducted in accordance with the Income Tax (Instalment Payments) Act 1974.

Clause 2 of the Bill inserts new sections 4A, 6A, 8A, 8B and 22A in the 1989 Act and makes a number of consequential amendments needed to support these new sections.

Section 4A will allow for a member of an approved pension scheme to draw funds directly from a scheme in order to provide a pension. The member will not have to purchase an annuity on retirement but he or she may do so if they choose.

Regulations are required to provide further detail regarding the amount of pension that can be withdrawn from a fund. The regulations will allow for an actuary to

determine the amount of pension that can be paid or, in the absence of an actuary, the scheme administrators will be able to use tables similar to those published by the Government's Actuary Department in the UK to determine the appropriate amount.

The Income Tax Division are in discussion with interested parties regarding the structure of these regulations and it is envisaged that draft regulations will be available before the Bill receives Royal Assent.

Mr President, a new section 6A will also be inserted in the 1989 Act that will allow for the withdrawal of funds from a scheme to pay a pension to a surviving spouse or to dependants, following the death of the member, in the same way as a member drawing a pension, a surviving spouse or dependants can also purchase an annuity.

Section 6A will also be supported by regulations. The regulations will include the same conditions as required when the pension is paid to the member, and they will be extended to include pensions payable to dependent relatives who may be below the age of 18 or in full-time education.

The third new section inserted by clause 2 is 8A. This deals with the fund remaining on the death of a member, but it will only apply if a pension had already commenced. Allowing a member to receive a payment of pension directly from the fund means that there could be a balance of the funds remaining on the death of the member. This will therefore be available to the member's estate. Clearly, this is a major benefit when compared to the current system of compulsory annuity purchase.

An approved pension scheme enjoys very significant tax advantages, contributions are tax-deductible in the year they are made. The investments managed within the approved scheme are totally exempt from Manx income tax and the member can extract a large proportion of the fund as a tax-free lump sum. Those incentives are there to encourage the member to make provision for their retirement, satisfying the sole purpose test required of both the 1978 and 1989 Acts.

Approved pension schemes are not designed to allow members to accumulate income completely tax free; simply to distribute it without a tax charge. It is therefore intended to tax the amount remaining in the fund on the death of the member, ensuring that the whole of the pension is taxed in a similar way, had the pension been paid out fully during the member's lifetime.

The rate of tax due on this part of the member's pension will be set by order under section 1 of the Income Tax Act 1970 and I can confirm that the order, which will be presented for Tynwald approval, will include the rate of 7½ per cent, matching the rate applicable for certain other payments made during the member's lifetime.

Mr President, section 8A has come under very close scrutiny, since publication of the Bill on 15th October 2007, and whilst the Treasury must acknowledge it has received one formal response raising concern about the new charge, all other respondents have been very much in favour of the approach that Treasury has taken.

The debate surrounding section 8A did highlight the situation not catered for in the draft Bill published on 15th October 2007. Concerns were raised regarding the payment of the charge if the remaining funds are not distributed, but are used to provide a pension payable to the surviving spouse or dependants. This issue has been resolved by inserting a further new section into the 1989 Act.

Section 8B will impose a charge on funds distributed

out of an approved scheme following the final payment of a pension to the surviving spouse or dependants. The rate of tax due under 8B will be the same as that due on a distribution of funds under section 8A.

Section 8B ensures that the tax is charged only once after the last pension payment to the surviving spouse or dependants. In these circumstances, the section 8A charge will not arise on the earlier death of the member.

The final section being inserted in the 1989 Act by clause 2(8) is a new section 22A charged to tax and withdrawal of funds. This section is the same as that inserted into the 1978 Act by clause 1 of the Bill. It will ensure pension drawn directly from the scheme is taxable and tax should be accounted for in accordance with the Income Tax (Instalment Payments) Act 1974.

Mr President, I beg to move clauses 1 and 2 stand part of the Bill.

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

**The President:** Seconded by Mr Waft. Now then, Mr Crowe.

**Mr Crowe:** Clause 1 is simply a factual clause, where if you get tax relief on your contributions when you are building up a pension pot, when you get payments from the pension fund when you retire, then they will be subject to taxation. So that is a very simple factual clause, which I have no difficulty with.

Again, clause 2: we talked about the annuity earlier, that you do not need... If your pension pot is quite small, and there will be limits on this, you do not need to buy an annuity, because of the restrictions on getting an annuity and high administrative costs compared with the benefits coming out of it.

So, again, I do not have any problems with clause 2.

**The President:** Mrs Crowe.

**Mrs Crowe:** It was just a query actually. We mentioned the death of a member in clause 8A, after the commencement of payments of benefits, but there has not been a mention – and maybe there does not need to be – of the death in service benefits which, in some pension schemes, would be four times annual salary, which is quite a substantial sum.

I just wondered: was there no necessity to mention it? It may well be covered in other areas, but it is generally a substantial amount of money that would be going, and there is no mention of the taxation.

**The President:** It may not be strictly a pension – death in service benefit. (**Mrs Crowe:** No.) Mr Lowey.

**Mr Lowey:** Mr President, I have not got too much to say about the first clauses, other than when we are doing legislation, I have always been keen that we speak in a language that ordinary people understand.

Can I draw attention to the fact... When I see phrases like ‘in the hands of’, it is not a usual phrase that is in legal draftsman’s speak. I am told it is something that is in income tax law, but if you read that, it is:

‘Where an approved scheme allows for the payment of a pension, the amount of any such payment is chargeable to income tax’ –

and, really, ‘to those receiving or entitled to the income.’ ‘In the hands of’ the person does seem a little bit flowery and quaint, if I may put the word.

I am just pointing out that I regularly think that we should, when we are updating the law, be using modern-day language and not reciting the old words – be more precise. That is the point, but I should not be addressing the mover or this particular Bill, but to the draftsman – and enough said about that, the better.

I come to the amendment which I am moving. As I said, I think that we should try always to... what is on the package is what you get. Therefore, I hope I am not going to upset anybody by saying that I think it would help the Bill in its presentation, if we included the word ‘private’ retirement benefit schemes, and then therefore we know straight away.

The amendment actually is repeated twice:

*Long Title*

*Page 1 and page 24*

*In the long title, after ‘in respect of’, insert ‘private’.*

Therefore, it is quite clear what it means. If you see a package, you know what is in the package. It is meant to be helpful and certainly not detracting in any way.

I believe that tax and all the rest... As my hon. friend, Mr Crowe, says the first one is reciting virtually what we have got now, the Income Tax Instalment Payments (ITIP) and all the rest. So I have no difficulty in supporting.

I am not going to recite again about regulations. A lot of this cannot ever be put into every eventuality... regulations will be made and that is the time, in the detail, when it comes before Tynwald, we will be able to see what is actually being planned. I have no difficulty with that at all.

So with that, I beg to move the amendment standing in my name.

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

**The President:** Mrs Christian.

**Mrs Christian:** Could I just seek some clarity on clause 1. I know the Hon. Member, Mr Crowe, has explained what it means, but I just wonder about the words ‘receiving or entitled to the income’. If you have a pension scheme you would be entitled to draw the income from the age of 50, shall we say, but you may decide to defer it. Does it mean it is taxable before you actually draw the pension or not?

Mr Crowe has said not, but I just think that perhaps some clarity about that is needed.

Can I ask on clause 2(2) which says:

‘Subsection (1) applies only in respect of schemes approved after the date on which this section comes into operation.’

So that is straightforward. But in the memorandum which has been circulated to us, it does say:

‘Clause 2(2) limits the ability to withdraw funds directly to schemes approved by the Assessor after the date on which this section comes into operation’ –

which is in line with the Green Bill. Then it goes on to say:

‘This will also apply to existing approved schemes that are amended in line with the new legislation.’

I wonder if the mover can say where that provision appears in the Bill?

In other words, what we are saying is that there are some approved schemes currently that can, in some way, change to be in line with the Bill now, but that seems to be a little bit in conflict with clause 2(2), unless I have missed it somewhere else in the Bill, which provides for existing schemes to be amended.

Apart from that, Mr President, I think the changes in here introduce a deal of flexibility, in terms of when you can actually draw your pension, subject to a maximum age of 75, when you have got to begin to draw it, whether you want to keep on working or not, which seems reasonable!

And the provision to hand over the pension fund to the estate is also one that has got to be welcomed.

**The President:** Mr Attorney.

**The Attorney General:** Mr President, if I may, could I just make an observation in relation to the proposed amendment?

The Bill, of course, as the hon. mover has indicated, seeks to amend three existing Acts. One of the principal Acts, of course, is the Income Tax (Retirement Benefit Schemes) Act 1978. That, I think, can be regarded as the principal Act which deals with our retirement benefit schemes.

In that Act, Mr President – and I am reading it from section 13 of the Act:

“‘retirement benefit scheme’ means, subject to the provisions of this section, a scheme for the provision of benefits consisting of or including relevant benefits, but does not include any national scheme providing such benefits.’

Whilst I entirely understand the concern the Hon. Member, Mr Lowey, has about the apparently misleading title, insofar as it seems to apply to all retirement benefit schemes, in fact when you look at the principal Act, that Act narrows ‘retirement benefit schemes’ to private schemes because it specifically excludes any national scheme providing such benefits. I can only imagine that ‘national scheme’ means a scheme approved for employees of Government and so on.

So I just tentatively – this is a moot point – suggest that it might not be necessary to amend the title to the Bill, because ‘retirement benefit schemes’ is already defined in the principal Act.

**Mr Lowey:** My point in moving the amendment was again... One of my original observations at the First Reading was that people who use these things... The learned Attorney knew where to look for it in the principal scheme, yes. I would say most people would look at the main title and then would say... As we know, looking at pensions schemes as we did, you tend to look, under the Bill, at what it is for, its purpose, and then you just see ‘Retirement Benefit Schemes’ – you do not go searching in another Act.

That is the only why – I am certainly not wanting to be disruptive to the Bill in any way. I want to try and make it as user-friendly as we can and up front. I would not disagree with what my learned friend, the Attorney, has said; but again, my aim is to try and make it user-friendly from the

outset. There is the Bill: what is its purpose, there it is.

**The President:** We will pick that up when I put the amendment formally to Council, but at the present, I would like to complete our clauses 1 and 2, if practical.

As both Mrs Christian and Mr Attorney have quoted from the Members’ Guide or the little booklet which was sent round as an explanation, perhaps it might be the correct time to just say that, for the benefit of anybody who will be reading the *Hansard* of our deliberations, in fact, a copy of the Members’ Guide has been deposited in the Tynwald Library, for a reference document, anyway. So, it is there and anybody picking up our *Hansard*, perhaps would realise that, in fact, the Members’ Guide, which has been quoted from, is available for the general public to follow, should they wish.

If I may just disrupt Mr Downie once more, by asking a question under... when you were explaining clause 2, sir, on a number of occasions, you referred, of course, to the spouse or the dependant. Now, I have no problem with ‘spouse’. I think we all realise the definition of ‘spouse’. I wonder, in fact, in today’s world, does ‘dependant’ include the common-law wife, or what is the definition of ‘dependant’ within this particular Bill, at this juncture?

**Mr Downie:** I have no problem with that one.

**The President:** Right, okay. Mr Downie.

**Mr Downie:** Right, Mr President, reference was made to the book and *Hansard*. Before embarking on the introduction of the Bill and during my briefings with the income tax advisers, I did get a number of these and had them all made available, because it is a complex matter, if you are not used to dealing with pensions. It is a useful aid to see where we have been in the past and, actually, where we are going to now, with the various clauses and how they are linked across.

Ironically, this is another Bill which had no dialogue at all in the House of Keys, just went through on the nod, virtually. So, it is good to see that we are giving it the scrutiny it deserves, up in Legislative Council.

Mr Crowe, again, spoke in support of the Bill. He made reference that clause 1 was factual and he did give a... He has a much greater knowledge of the subject than I have. He did try to give a resumé and interpretation of what the two clauses actually meant. I am grateful for that and I am grateful for his support.

Mrs Crowe raised the issue about the death of a member and death in service benefits. I would assume that, when this product is being sold, that is when reference is made to whatever arrangements are going to be made following a death in service, and so on. Some pension packages are much more advantageous than others. There are, in fact, people sitting around this table who are involved in two separate pension schemes within a small body like this, because, in the original Tynwald Members’ Pension Scheme, there was no provision made for spouses and dependants. That was reviewed some years ago, and I think that most Members have opted to take the revised package. It just shows, even in a little group of people like this, how many differences there can be.

Mr Lowey made reference again to the terminology ‘in the hands of’. I thought the President answered that question

for me, when he said, 'It is when you get it'! But I do not draft these. I know exactly where he is coming from, but I think what they have tried to do within the Bill, there is a theme of terminology running through this and, to put another phrase, it is all this 'accountants and tax adviser speak'. I am sure that, in all of these UK documents, and documents that you peruse about tax and accountancy policies and so on, you will come across this 'in the hands of'. I would ask him to accept that, but I will take on board his... When there are new Bills being drafted, we will raise that.

Now, the amendment that Mr Lowey has put forward, I can understand again where he is coming from. From my own personal perspective, it does not matter to me whether it is a private pension or what it is. The only thing I would say is that, in introducing this small amendment, is 'private' something that we want to be...? You know, 'private' has another... 'private bank', 'private...' I am hoping, in this product, that it is something that is going to be virtually available to everybody who is not involved in a Government pension and, by including the word 'private', maybe that is not the best way to sell it. It is giving an appearance that it is a bit...

And yet the Attorney General, who I am grateful to, has already indicated that it is catered for in the Bill.

I can live with it either way, but my own gut reaction to this would be that we should leave it as the Income Tax (Pensions) Bill 2007, rather than include that 'private', because people are going to say, 'private bank, private this, private medicine' – we are being a bit superior here. I am sure that is not the reason, but I will leave to Hon. Members. But, personally, I would prefer it not to be in.

Mrs Christian: clause 1, is it taxable before you draw the pension? I have got a couple of answers here. One answer is that no, it will not be taxable before it is received. The other question was: all the schemes, before they are amended, have to receive approval again by the Assessor.

**The President:** Mrs Christian.

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

Where does it say in the Bill that schemes can be resubmitted and approved by the Assessor or is that just going to be an administrative matter?

**Mr Downie:** That would be in the regulations, I would assume, governing them, because there are changes being made –

**Mrs Crowe:** All the time.

**Mr Downie:** – on a regular basis. It is part of the Assessor's job to assess all these various requests that come in for improvements and, provided they are within the spirit of the legislation, they can be either dealt with, accepted, or it can be rejected. That is part of the Assessor's role.

**Mrs Christian:** Would it be normal, Mr President, for a scheme which is currently in existence to be resubmitted to be amended?

**Mrs Crowe:** You have to at the time you amend a scheme.

**Mrs Christian:** Why would you...?

**Mrs Crowe:** You do have to.

**Mrs Christian:** Right.

**Mr Downie:** I am advised that you do have to.

**The President:** Hon. Members, let us not have too much of a conversation, because we do need to pick it up for *Hansard*. Mr Downie.

**Mr Downie:** And there again, Mr President, your point about the definition of a 'spouse' and a 'dependant', my understanding – and I have been involved in an issue quite recently – if a woman is living with a man, although they are not married, and it can be established that there has been a permanent relationship, under the eyes of the law, she is entitled to a portion, and it is the same with the children. The children are dependants of either party, so there is another opportunity there.

I think the old adage that the whole thing had to be bound up by marriage has gone now, and it is very much at the discretion of what the courts decide.

**The President:** You have started me off on another thought now, Mr Downie. Up to what age are the children dependent?

**Mr Crowe:** Eighteen.

**Mr Downie:** Under normal circumstances, it can vary. If they are still in education –

**Mr Crowe:** Oh yes, of course.

**Mr Downie:** – it can be extended and, of course, (*Interjection by Mrs Crowe*) it is not uncommon for some people to have written into their pension rules and so on (**Mrs Crowe:** Nomination.) that the children will not access any benefits until their education is actually paid for. Somebody was telling me about a weird one where a condition was put in until the child graduated. So, there was an incentive there to get their heads down and to study hard.

But, there again, these things are all open to discussion and you could nominate a beneficiary, and you can do all sorts of other things in this day and age. (**The President:** Okay.)

Mr President, I beg to move that clauses 1 and 2 stand part of the Bill.

**The President:** Hon. Members, just taking Mr Lowey's amendment, I wonder, Mr Lowey, if you will be prepared to allow me to take that at the end of the Bill, when we are dealing with the short title. I do so, sir, because I am aware of Mr Downie's comment, I am aware of Mr Attorney's comment in relation to the amendment. I do not want to put the Council Members and their voting into... I do not want to lead you, particularly, but if we do amend, the Bill has to go back to another place, no matter how we amend. And if there are substantive amendments which come as we pass through the clauses, then I do not mind. But I think I will happily leave your amendment, sir, until we come to end. I will put the amendment to Council, but I will put it at the end of the Bill.

**Mr Lowey:** That is fine.

**The President:** Having said that, Hon. Members, what I propose to do then is, taking it simply, I will put to Council 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.

And clause 2, Hon. Members, which was the lengthy clause: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Again, Mr Downie, you have indicated that you would like to take them in blocks, in relation to the headings. So, if we take clauses 3 and 4 together, sir, which are headed up 'Investment rules'.

**Mr Downie:** Right, Mr President.

An approved pension scheme is created for the sole purpose of paying benefits to the member in or close to retirement or the member's spouse or dependants following the member's death. To provide an incentive to make provision for retirement, the scheme is exempt from paying Manx income tax, allowing all income to roll up, providing the maximum possible return when the member reaches retirement.

Whilst investment choices are usually left to the trustees, it is important that legislation provides a framework that will allow the Treasury, by regulation, to permit or prohibit certain investments. Mr President, regulations will have to be approved by Tynwald and will detail whether a particular investment places the payment of a pension at risk, or whether it is in the national interest to shield certain income from tax.

Clauses 3 and 4 insert a new provision enabling the Treasury to make regulations to extend or restrict the meaning of the word 'investments'.

Mr President, I beg to move clauses 3 and 4 stand part of the Bill.

**The President:** Mr Waft.

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

**The President:** It puts me in somewhat of a difficulty, Mr Downie. I appreciate that you were reading from your brief and you did say, quite deliberately, that regulations have to be approved by Tynwald. I am still concerned that in clause 3 – unless, in fact, it is in the 1978 Act itself, those regulations – the Treasury *may* make regulations, extend or restrict the meaning of the word 'investments'. Clause 4 is definitive, sir; clause 3 is not.

Mrs Christian.

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

**The President:** I might be wrong.

**Mrs Christian:** No, we have a copy of the 1978 Act as amended.

**The President:** I looked, but I could not get it quickly enough!

**Mrs Christian:** I think you, Mr President, are right, in that there is nothing in clause 3 which provides for Tynwald approval.

**The President:** It is permissive.

**Mrs Christian:** And there does not seem to be a clause, as often appears towards the end of the Act...

**The President:** It does not, not in the Bill.

**Mrs Christian:** There is not one in the Act either.

**The President:** Alright, okay.

**Mrs Christian:** As far as I can see. It provides for Tynwald to approve all the regulations. In which case, Mr President, it might be handy to have an amendment.

**The President:** No, there are two ways we can deal with it. I appreciate I have raised the point, Hon. Members, and Members need to check it out. I think we can go through, and I know that we could take amendments at Third Reading.

Mr Crowe.

**Mr Crowe:** It is on page 21 –

**The President:** Is it?

**Mr Crowe:** – of the 1978 Act. Clause 6 on page 21 says:

'Regulations made under this Act shall not take effect until they have been approved by Tynwald.'

It is this explanatory... the summary that we were given. Do you want to give that to Mr Attorney? Page 21.

**Mrs Christian:** Page...? Which Act is that?

**The President:** You are looking at a different piece.

**Mr Turner:** It is not on the Members' book.

**Mrs Crowe:** You have got a different...

**Mrs Christian:** It is not on the one that we have.

**The President:** It is not in the Members' Guide.

**Mrs Christian:** Clause what?

**Mrs Crowe:** Twenty-one. It is in the...

**Mr Crowe:** Page 21 of...

**Mr Lowey:** Page 21 of the Bill I have got does not deal with that.

**The President:** Perhaps, Hon. Members, I have raised it and as I said before –

**Mr Crowe:** No, it is the 1978 Act. It is an extract from the 1978 Act. (*Interjections by Mrs Crowe and Mrs Christian*)

**The President:** Hon. Members, I am sure we can check that out and come back on that at a later date, should you wish.

Any other Member wish to speak to clause 3 or clause 4? No, in that case, Mr Downie, is there anything you wish to add to clause 3 or 4, sir?

**Mr Downie:** No, obviously we are taking a note of these issues –

**Mrs Crowe:** It is on page 32 of our explanatory note, at number 6 at the top of the page:

‘Regulations made under this Act shall not take effect until they have been approved by Tynwald.’

**Mr Waft:** Can I just ask, Mr President, in the Members’ Guide there, on page 8, it says:

‘Clause 4 – Inserts 2 new subsections in section 21 [...] These will allow for regulations that will have the same effect to those in Clause 3 above.’

That is in clause 4. But, in clause 4 in here, it says:

‘Regulations under *subsection* (3) shall not come into operation unless they are approved by Tynwald.’

It is quite different, sir.

**The President:** It is different. No, the point I was making is that clause 3 is permissive and 4 is definitive and mandatory. That is where I got the difficulty right at the start.

Mr Attorney.

**The Attorney General:** Mr President, I think the Hon. Member, Mrs Crowe, has found the needle in the haystack. It is hidden away in schedule 2 to the 1978 Act and it says, in general terms, under the heading ‘Regulations’, paragraph 6:

‘Regulations made under this Act shall not take effect until they have been approved by Tynwald.’

So, that is a provision in the schedule which has general effect, albeit that the schedule in question is a general interpretation provision.

So, I think we are alright. All regulations made under the 1978 Act have to be approved by Tynwald. It is a curious way to deal with it.

**The President:** In which case, I then ask the question which I did originally, that why, in the other clauses referring to the 1978 Act, it specifically says that those regulations have to be approved by Tynwald? It is a bit of a dog’s dinner there!

**The Attorney General:** It is!

**The President:** Anyway, Mr Downie.

**Mr Downie:** Yes, I just thank my colleague, Mr Crowe, for bringing these various sections to my attention. Obviously, there are a lot of cross-references here, but I think it does make it clear that all the regulations have to come to Tynwald, and I think Members can gain some comfort from that: they just cannot go out and do things on their own. (*Interjection by Mrs Crowe*)

**The President:** It is in the schedule. I accept what Mr Attorney has said, that it is in this schedule, checked: it is in the schedule of the original Act. I just wonder when, in fact, then it is specific in other clauses in this Bill, and it is not consistent all the way through.

Nevertheless, Hon. Members, I put to you that clauses 3 and 4, under the heading ‘Investment rules’ do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We turn then to the trivial commutation, and we are dealing this time round, Hon. Members, with clauses 5 and 6. Mr Downie.

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

Just for the benefit of Hon. Members, the figure, at the present time, that we refer to is currently £16,000. Mr President, from time to time, a person reaches retirement age, but unfortunately finds that the value of an approved pension scheme is too low for the purchase of an annuity, or that a pension drawn directly from the scheme would not be cost effective. In these cases, the Assessor will allow the whole fund to be paid out as a lump sum.

When the lump sum is paid, the Assessor will allow a tax-free element equal to the amount which would have been payable, had the fund been large enough to pay a regular pension. The taxable element of the lump sum will be similar to income tax at the lower 10 per cent rate. If the member has insufficient income to pay income tax, a refund of the tax paid will be available through the normal assessment process.

Mr President, this process received Tynwald support in June 2007 when an Extra-Statutory Concession, GC 21/07, was approved. Clauses 5 and 6 in the Bill will introduce into primary provisions dealing with commutation of small pensions, ensuring members will be able to continue to enjoy the benefits of the tax-free cash, while ensuring tax can still be collected on the remainder of the payment.

Mr President, I beg to move clauses 5 and 6 stand part of the Bill.

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

**The President:** Seconded by Mr Waft. Hon. Members, clauses 5 and 6. Mrs Christian.

**Mrs Christian:** Just to say, Mr President, I think the commutation provision for small sums is very sensible. I can imagine an annuity... I get one from my first job of £17 a quarter! So you can see it would have been sensible in those days to commute it to a lump sum.

But I think that provision is going to be quite useful for people who, perhaps, have not huge incomes but have made some effort to save.

**The President:** Mr Crowe.

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

Yes, I would share Mrs Christian’s comments there and would also recognise that it is better to have... Although Mr Downie mentioned the £16,000 figure which is presently considered to be the trivial amount, by having it in regulations, the figure can be amended each year, rather than having to do it through primary legislation.

**The President:** Again, I apologise, Mr Downie, but you see we have the difficulty again, don't we? We are dealing, in clause 5, and I just want to make it plain that it is the 1978 Act. It is in the schedule of the 1978 Act that enforces the regulations to be approved by Tynwald. So, although Mr Crowe is indicating that, in fact, they can do it every year, it would still be with the approval of Tynwald.

**Mr Downie:** I have no problem with that.

**The President:** Mrs Crowe.

**Mrs Crowe:** Yes, I welcome the inclusion of this clause too. I think people tend to forget that the cost of administration of pension schemes really does nothing to benefit the actual fund. So, whilst we have people who are receiving quarterly payments of £17, it is most probably detracting enormous sums, over time, from the actual pension fund.

I do welcome this and I am sure that the administrators of schemes will be very pleased that they can actually just write one cheque and save all the cost of administration.

Thank you, Mr President.

**The President:** Mr Turner.

**Mr Turner:** The observation was really referring to the approval by Tynwald, your point. It appears through the 1989 Act that the various parts refer to 'regulations made under this section will be approved by Tynwald', when the 1978 Act has the overall rider at the end. Am I correct there?

**The President:** I think we have got there! It has taken us a little while, but I think it has got there, insofar as where it refers specifically within this Bill to approval by Tynwald, they are actually referring to the 1989 Act. Where it refers to the 1978 Act, it is in the schedule of the 1978 Act, that regulations under that Act have to be approved anyway. I think that is where... It has taken a little while but we have got there!

Mr Butt.

**Mr Butt:** Yes, I would just like to ask the mover about the figure of £16,000. It is not actually mentioned in this clause whereas, later in the Bill, the figures of £300,000 and £3,600 are mentioned, obviously to give an indication of where the level is going to be. I wondered why, perhaps... or should it perhaps be mentioned by name as the actual figure 'or such other sum', as the other clauses say, to give the public or the sector some indication of what the figure is through the Bill itself?

**The President:** Mr Waft.

**Mr Waft:** It just is a sign of the times when triviality is £16,000.

**Mr Lowey:** Yes, absolutely.

**Mr Waft:** Somebody must sit there and say, 'Right, triviality is £16,000'.

**Mrs Crowe:** That is to the administrators, not to the beneficiaries!

**The President:** Mr Downie.

**Mr Downie:** Yes, if I can start in reverse order: this issue about triviality, that Members are keen to know a little bit more about, triviality is the ability to receive the whole value of the pension scheme in one lump sum and will only occur when a scheme is so small it is not viable to pay a regular pension to the member. Allowing the payment of the scheme in one lump sum breaks the sole purpose test. Therefore, it is very closely monitored so that only genuine cases are allowed.

In the UK, triviality is currently available to members whose total pension fund is £16,000 or less. The Isle of Man DHSS have adopted this level and Tynwald provided its support when approving Statutory Document SD 38/07. So, income tax regulations will be drawn up to match the UK and the DHSS limits.

I hope that clarifies for Mr Butt.

What we intend to do, we will bring in a figure when the Bill receives Royal Assent and we will review it annually.

**Mrs Crowe:** Yes, it is an annual review.

**Mr Downie:** Yes.

Just going back to the beginning, I thank Mrs Christian for her remarks in support. She did outline a very good example of how wanting we are in this area and how, in the present day and age, we need to have a proper legally bound system, to deal with matters relating to triviality.

Likewise Mrs Crowe, she referred to the figure again and I have confirmed that we can amend that figure, subject to Tynwald approval, if necessary.

Mr Turner, I thank him for his observations regarding the 1989 Act and how the whole of this is restricted. It has got to come back to Tynwald for approval of the areas referred to earlier on.

There are just some interesting topics and I know that one will be close to Mr Lowey's heart. The rate of income tax currently charged on trivial commutation is 10 per cent, reflecting the fact that the majority of affected taxpayers are liable to tax at the 10-per-cent rate. However, if a person, via their assessment, shows that they are a nil rate tax payer, the Assessor will refund the tax via the normal annual assessment process. There is a bit of give and take in it, and having this payment will not skew the tax.

Mr President, I beg to move that clauses 5 and 6 stand part of the Bill.

**The President:** Hon. Members, I put to Council that clauses 5 and 6 do stand part of the Bill. Hon. Members, those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We move on then to lump sums on retirement, Mr Downie, and again you are dealing with clauses 7, 8 and 9.

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

Existing income tax legislation allows for a tax-free lump-sum payment to be made on retirement.

During the recent consultation, the lump sum was highlighted, by a significant number of respondents, as a real incentive for a person to contribute into a pension scheme. Respondents asked if the level of the lump sum could be reviewed and, if possible, lifted.

The current limits are based on a proportion of the

member's earnings, or on 25 per cent of the value of fund available to pay a pension. Both limits are also subject to an overriding cap of £150,000, above which tax-free lump-sum payments are not permitted. The cap was introduced in 1989 and has remained unchanged since then.

To provide an additional incentive for people in the Island to make provision for their own retirement, clauses 7, 8 and 9 will remove the monetary cap from the 1978 and 1989 Acts, and will increase, from 25 per cent to 30 per cent, the maximum tax-free sum payable out of an improved pension scheme. This increase in the tax-free benefit has been very widely supported throughout the pensions industry.

Mr President, I beg to move clauses 7, 8 and 9 do stand part of the Bill.

**The President:** Mr Waft.

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

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, perhaps this is reflecting the changing times too. To have had a figure in of £150,000 in 1989 must have been a very substantial fund at that time.

I think we should welcome the changes but – on the one hand, recognising that, to the recipient £16,000 is a trivial sum, but in administrators' hands that is trivial – wouldn't it be nice to have a fund where 30 per cent of it was £150,000? It is just a comment, Mr President, that it would be nice to think that we had a community that were investing, or able to invest, for their pensions at this sort of level.

**The President:** Mrs Crowe.

**Mrs Crowe:** I think it is quite a good job that this does not apply to the Statutory Pension Scheme at the present time, because I think you would be quite surprised at the number of...

**The President:** Mr Lowey.

**Mr Lowey:** I welcome the clauses here that permit lump sums. It does encourage people to do it; I am sure it must. Well, it has proven it has. This upping it a bit, I think, has given us a slight advantage in selling products.

On the point of pensions, I think you have heard me in another place, Mr President, say it is fine saving for your old age – which we should all encourage – but, whatever else you do, please do not go sick in between getting your pension and retirement age, because, if you do, we, as a state, penalise you because you have taken steps to look after yourself in your old age. Unfortunately, those are the rules – we do penalise people – and I find that sad, really, because we should not penalise people for looking after, or attempting to look after, themselves in their old age and, when ill health comes along, somehow the state turns round and says 'You have got a lump sum, or you have got a way of getting your hands on a lump sum: you are penalised,' and you *are* penalised. I say that, again, as a throwaway line, and really to emphasise the point that has been made.

Dealing with the clauses, I think these clauses are designed to help, and get my support.

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

**Mr Downie:** Yes, I would just like to thank Members; particularly Mrs Christian, who was first to comment, for her wise remarks, really.

I do not think there has been enough emphasis in the past given to people to provide their own pension, and there is no doubt about it, there is far too much reliance on the state system. I know that there are generations of people who have not been in that position, to be able to have afforded to put money away for a rainy day, but there is no doubt about it that, with today's modern living standards and earnings, there is a salutary message there for everyone that they should be making proper provision for pensions for themselves.

Mrs Crowe remarked that she is glad it does not apply to the statutory schemes. Obviously, that is an issue that is quite close to her heart at the moment, and no doubt we will be hearing a little bit more about that in another place.

I also thank, again, Mr Lowey for his remarks and his contribution.

I think what we have got to realise is that there are numbers of people in the wider world now who have a window of opportunity. You have people like entertainers, divers, people in a high-risk occupation where they may be earning exceptionally good money for quite a short period, and I think what this piece of legislation does is it tailormakes a product to be able to be sold to that type of person. As we all know, the entertainment industry can be here today and gone tomorrow – it is as simple as that – but if you get that opportunity to put the money into the pension scheme, you can come at a later date, when times are hard, and maybe not pay so much, but you have still made that contribution and you know you have got the thing off the ground.

I would thank Members for their approach to this, and beg to move that clauses 7, 8 and 9 now stand part of the Bill.

**The President:** Hon. Members, the motion that I put to Council is that clause 7, 'Lump sum limit: occupational pension schemes', clause 8, 'Lump sum limit: personal pension schemes' – using the side notes – and clause 9, 'Voluntary contributions: abolition of permitted maximum', do stand part of the Bill. Hon. Members, clauses 7, 8 and 9: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We move on, then, to 'Lump sum – early payment', Hon. Members. Mr Downie, clause 10.

**Mr Downie:** With your leave, Mr President, could I take clauses 10 and 11?

**The President:** And 11.

**Mr Downie:** Yes, and then whatever you want to do, separately.

Mr President, clauses 10 and 11 will introduce a degree of flexibility that has not been available within a pension scheme until now.

A member of a pension scheme will be allowed to take his tax-free lump sum whilst continuing to work, and without triggering the payment of the pension. The amount of the lump sum will be calculated on the same basis as a lump-sum payment paid on retirement.

Mr President, the new conditions within the 1978 and the 1989 Acts will be available to members who have reached the earliest age at which they can retire and take the benefits of the scheme. However, only one tax-free lump sum will

be available to the member and, therefore, where there is an early payment of a lump sum, a second lump sum will not be available when the member actually retires.

As with the increase to the lump sum considered in clauses 8 and 9, introducing flexibility in relation to benefits taken at or before retirement has been seen by many respondents to the consultation as an incentive to new members to make or increase provisions for their retirement.

Mr President, I beg to move that clauses 10 and 11 stand part of the Bill.

**The President:** Mr Waft.

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

**The President:** Mr Crowe.

**Mr Crowe:** Yes, I think this is helpful. I think the word that Mr Downie emphasised was 'flexibility', and I think, again, it does bring some flexibility into the Act.

I think, at present, a lump sum can only be paid on retirement – which is at 25 per cent – when the person leaves the employment of an employer. This 30 per cent rule will now allow Treasury, on application, to allow an earlier payment of the lump sum for a specific circumstance. We have no idea what that might be: it might be to put a deposit on a home; it might be a divorce settlement; it could be a particular instance where the personal circumstances of that individual require financial assistance, which can be obtained by the flexibility built into the pension scheme.

I think I am supportive of this, and see it, again, as a benefit in selling pension schemes.

**The President:** Mr Waft.

**Mr Waft:** Could I just ask the Member for clarification: when the lump sum is paid to an individual, and his continuing pension contributions would evaluate part of the lump sum in the future, he cannot obviously take another lump sum, so are his pension contributions reduced to make allowances for that?

**The President:** Mrs Christian.

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

I can see that, as the Hon. Member, Mr Crowe, has said, that this adds... It is a selling point, in a way, for people to have what is effectively a savings scheme, in terms of the lump-sum element of it, and then the rest is there for pension provision.

I presume the Treasury, in increasing the lump sum available, have had in mind that the primary purpose of this is to produce a pension. We are all going to live... Well, hopefully, people are living longer. Presumably they have taken into account the balance between wanting people to provide for their pensions into the their old age, and having a lump sum at the 50s to 60s to 70s?

There has to be a balance, doesn't there – if we are to encourage people to have personal pension provision – between what would be regarded as the savings element, as opposed to the pension provision element? I presume that they have determined that it is better to allow a bigger lump-sum payment than to keep the capital there for pension production.

**The President:** Mrs Crowe.

**Mrs Crowe:** I think this is my 'life begins at 50' clause, really, because I think what it would allow for is that, if one was due for retirement at that age, and chose to retire, you could have a lump sum and have a new life, a new business, move abroad, do whatever you want with the provision of your lump sum, and not just have the continuous payment.

An awful lot of people have a retirement age at 40. The police force, I think, is 40 years in. So, if you start your work as a 16-year-old, 17-year-old, there is very adequate provision for a 50-year-old to be onto a new scenario of life, and the lump sum would be very helpful. So, I suppose, yes, I am supportive of the lump sum payment.

I am just a bit concerned about how it will affect present pension schemes, and I presume that one would have to amend the rules of a pension scheme to allow for this at the present time, because the rules in present pension schemes would not allow for this, but I would be interested to know from the mover. I presume that is what one would have to do.

**The President:** Perhaps the mover will tell us. Mr Downie.

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

First of all, I would like to thank Mr Waft, again, for seconding the clauses.

My hon. colleague, Mr Crowe, was quite right: the advantages in doing this are fairly significant. When a person got to that period in their life where they were able to draw the lump sum, you could have a situation where their son or daughter was getting married and they wanted to have a deposit on a house. Coming up to retirement, it is a time when you tend to spend a lot of money on your own property, getting ready for your retirement, getting all the jobs out of the way; that would also need money. Someone wanting to pay off a mortgage, or someone trying to assist the family right at the end of their... They are going through university. There are numerous ways in which this could be beneficial.

Mr Waft asked: is the final figure reduced by taking the lump sum early? I am advised that the final fund would increase after the lump sum is taken, and therefore an increased pension would be available. Also, the lump sum will still be restricted to 30 per cent of the fund, leaving 70 per cent for the pension to be provided. Those are the ground rules in this.

Mrs Christian, I think, agreed it was useful, but there had to be rules that everybody understood, and understood quite clearly, and I am sure that is going to be dealt with when we get to the regulations.

Mrs Crowe, the comment she made was 'life begins at 50 clause'. I quite agree with her: this does give people quite a new lease of life, and at a time when... Particularly if they have worked very hard to get into the situation they are, and they feel they want to access a reasonably large amount of money to go off and do other things, it is a provision that is available for them again.

I do not think we should get hung up on this too much, because this is going to be part of the sales pitch for the product that is going to be developed.

**Mr Lowey:** The product, yes.

**Mr Downie:** So, the person coming along and buying the insurance product may want to have this flexibility, this lump sum, to take the wife on the QEII and round the world, and still have his pension to fall back on at the end of it.

Mr President, I would like to move that clauses 10 and 11 stand part of the Bill.

**The President:** That is fine, Mr Downie, but before I put it to Council, I am just sitting here trying to get my head round the fact that I think you were telling me that somebody who takes a lump sum still gets an enhanced pension thereafter.

**Mr Downie:** That is the advice I have been given.

**The President:** I would doubt if you would get an enhanced pension unless, in fact, you had paid more payments in, I would have thought. I am getting nods from the bench.

**Mrs Christian:** If you defer it, you would get a...

**The President:** In that case...  
Mr Crowe.

**Mr Crowe:** I think, Mr President, the way I read it is, if we were all contributing to a personal pension scheme – say it was £1,000 per year – and we reached the age of 50 and we wanted a 30 per cent payment out, we can have that 30 per cent under the statute, but we continue to pay. The payments do not cease at 50 or 54, or whatever it is. The payments carry on and, by the time you are 60 or 70 and you wish to withdraw your pension, the accumulation within the fund has benefited the pension. Your 30 per cent, in a way, can be a negative at 50, because at 60, the 30 per cent is a bigger slice of the pot, so there is a drawback in taking the 30 per cent early, as well as an advantage.

**Mr Waft:** That was my point, Mr President, yes.

**Mr Crowe:** It is a double-edged sword.

**Mr Waft:** I was saying that when you do those extra years, because they cannot give you a lump sum, they enhance your pension, so you do not lose out.

**The President:** I am happy with the explanation. I was just a little concerned that I think Mr Downie, when moving, was rather giving the indication, without an explanation, that in fact you could take your lump sum and still get an enhanced pension, and I thought, 'That's a good deal!'

Hon. Members, what I will put now to Council is that clauses 10 and 11 – the section dealing with 'Lump sum – early payment' – do stand part of the Bill. Hon. Members, clauses 10 and 11: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 12.

**Mr Downie:** Clause 12, Mr President, gives a member of a pension scheme more choice when approaching retirement age.

Not allowing the payment of a pension until a member retires from employment is not always appropriate for the individual or for the employer. There are a number of reasons

why full retirement may not be appropriate, for example: an individual's pension may be small, meaning continued employment is needed to maintain a reasonable standard of living; or the individual and the employer may wish to adopt a phased approach to retirement, that is to say work reduced hours for a period before retiring fully.

Mr President, the amendments to the 1978 and 1989 Acts contained in clause 12 will break the link between actual retirement and commencement of benefits, giving the member, with the agreement of his employer, the option to carry on working after drawing a pension from the scheme.

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

**The President:** Mr Waft.

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

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

Mr Downie, 'Contributions – annual allowance', clauses 13 and 14.

**Mr Downie:** Clauses 13 and 14, Mr President, greatly simplify the area of contributions permitted into an approved pension scheme. In the future, the majority of people who make provisions for retirement will be able to contribute the amount they can afford.

The current limits on contributions to a pension scheme effectively stop anyone who is low paid from contributing. Equally, where someone does not work for a period – for instance, due to caring for an elderly relative or partner – no pension contribution is allowed.

The annual allowance concept will ensure that everyone can now contribute to a pension scheme, and will remove the current complex carry-forward and carry-back provisions. This Bill introduces an annual allowance of £300,000. This amount covers all contributions into a pension scheme – whether they are paid by the member, the employer, or by the DHSS – if the scheme is contracted out of the state pension.

Whilst it is important that everyone is able to make suitable provisions for their retirement, the tax exemptions afforded to approved pension schemes could be used to shelter excess income from tax. Therefore, in order to prevent inappropriate levels of savings being introduced to a pension scheme, the annual allowance will be accompanied by an excess payments charge. This charge will only be due where contributions within a year exceed the annual allowance of £300,000, and will be at a rate of 40 per cent of the excess contribution over the £300,000, matching the rate that has been applied since 1989 where occupational schemes are in surplus.

Mr President, clauses 13 and 14 also deal with two other areas, the first being how much tax relief is available on contributions into an approved scheme. An individual will be allowed tax relief of up to 100 per cent of their relevant earnings, or the amount of the annual allowance, whichever is the lower. This compares to the current limits, which can be as low as 15 per cent of the member's remuneration, if the contribution is made to an occupational scheme, whilst 17.5

per cent of relevant earnings, if made to a personal pension scheme or arrangement.

The final change within clauses 13 and 14 is the introduction of a new minimum allowance. As I have already explained, an individual currently cannot contribute to an approved pension if they do not have relevant income from employment. Furthermore, if the individual receives only a small amount of earnings, contributions are permitted, but are not usually viable. The minimum allowance will ensure that everyone making contributions into approved pension schemes will receive income tax benefit relief against other income in their assessment, up to the value of the minimum allowance of £3,600.

The minimum allowance will benefit everyone who is currently barred from making provision for their own retirement. It will allow people who are between jobs, or on unpaid leave, to carrying on paying contributions, and it will allow parents who stop work to look after young children to continue, or start, making contributions into approved pension schemes.

Mr President, I beg to move that clauses 13 and 14 stand part of the Bill.

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

**The President:** Mr Crowe.

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

Yes, I see this as a very positive move. I think, at present, as the mover, Mr Downie, has said, you only get tax relief if you are contributing to a pension scheme on a proportion of your earnings, and, if you are not earning anything, you cannot contribute or get tax relief.

Now, by introducing a basic allowance of £3,600 for everybody, if they are unemployed or between jobs, then, of course, it allows people to contribute to a pension scheme, and thus enhances their own savings.

The cap of £300,000 obviously is a benefit to stop people having a tax avoidance scheme of putting more than that figure into a pension scheme. There has to be a cap on that, otherwise you could get people contributing say £1 million into a pension scheme to get the tax shelter. So I think I support these clauses.

**The President:** Perhaps, Mr Downie, in subsection (3) in clause 14, you could give us an explanation. It says:

‘Where the scheme administrator could not reasonably have been aware of an excess referred to...’

When would it have been reasonable for them not to have been able to pick up that the subsection (1)...?

**Mr Downie:** While we are waiting for that come over, Mr President, just to support the comments made by my hon. colleague, Mr Crowe... He said it was a positive move. I think this is going to be a very useful selling point, but I think, when you look at the legislation, it starts at the top and it comes right down to the bottom, and it deals with all eventualities, and that is unusual.

Really, that is one of the reasons why we need to look at this as an Income Tax (Pensions) Bill, and not be – without being disrespectful – caught up with this private, because there are people... We gave the figure, £3,600. There are

some people who will want to carry on, who are looking after young children, or they are looking after an ill member of the family, or they are between jobs. This is not going to disadvantage anybody. There again, what they do pay in, there would be an opportunity to claim some of that part benefit on their tax, or relief on their tax.

Mr Crowe also raised a very good point about the £300,000 cap, which is a considerable amount of money, but if you do go over that, you can be charged 40 per cent on top of that. I am told in the UK it is anything up to 60 or 70 per cent that they charge if a person goes over that, so I think we are being fairly generous. But, if a person wants to put more money in than they are entitled to, obviously the Income Tax are expecting a proportion of that back. So there again, I think the balance is just about right.

I am advised here, Mr President, that contributions may have been made by the employer into a scheme unknown to the administrator, and that is the reason for that.

**Mr Crowe:** Presumably, it is saying that the administrator cannot be prosecuted for something that unwittingly happened.

**The President:** It is, but the administrator should know, shouldn't they? That is the point I was making more than any.

Hon. Members, the motion that I put to Council is that – it is the section headed ‘Contributions – annual allowance, etc’ – clauses 13 and 14 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

‘General’ section then, Mr Downie, if you would, sir. Clauses 15 and 16.

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

Clauses 15 and 16 include a number of miscellaneous amendments, most of which are consequential to the amendments contained in clauses 1 to 14 of the Bill.

Clause 15(5) includes a number of minor amendments that simply bring up to date existing provisions contained in the 1978 Act. These do not change the effect of the existing provisions.

Clauses 15 and 16 also provide for regulations to be approved by Tynwald which will require the scheme administrators to report prescribed events to the Assessor of Income Tax. Thus, this enabling provision will be discussed in more detail with pension providers, the Insurance and Pensions Authority and the DHSS before regulations are drafted and passed to Tynwald for approval.

Mr President, I beg to move that clauses 15 and 16 stand part of the Bill.

**The President:** Mr Waft.

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

**The President:** Mrs Christian.

**Mrs Christian:** Can I clarify that the deletion of the words, in 15(1):

‘In section 1(3)(a) of the 1978 Act, the words “(or, if the employee is a woman, 55)”’

– i.e. changing the age relevant to earn from 55 to 60 – is that retrospective in any way, or will that apply to those pensions which become payable when the Act is...? I am not quite sure how it works, in terms of retrospectivity or transitional provisions.

**Mr Downie:** Just while I am waiting for confirmation of that, I know under the state pension provisions, there has been a cut-off date provided. Women who are retiring now at 60 automatically qualify for their pension. I would think this needs to be written into the new rules, but I will get some confirmation of that.

**The President:** Mrs Christian.

**Mrs Christian:** This is dealing with the conditions for approval of schemes, so I presume new schemes will require to be 60. I just wonder what is going to happen, if anything –

**The President:** To existing schemes.

**Mrs Christian:** – to existing schemes.

**Mr Downie:** I would think they stand.

**Mrs Christian:** At 55.

**Mr Downie:** I would have thought... but I will get confirmation on that.

**The President:** Mr Lowey.

**Mr Lowey:** If I come to the notes in clause 15, it just virtually says that it makes miscellaneous amendments to the 1978 Act, including the repeal of references to ‘insurance company’ in the introduction. Yes, it does do that, but the main one, I think, is in the first, where you are dealing with women. It was actually highlighted that women can now go at 60 instead of 65.

It is alright for repealing these things, but when you repeal them, there have to be safeguards for existing people in the scheme, like there are in the national state system. There was a phased period, announced in advance, that it was not happening today, it was not happening tomorrow, but from year... that is when it is going to be phased in.

I presume there will be a phased in... Will these be again subject to Tynwald approval, or are we just tidying these words up, which allows them then to act?

**The President:** I think that is rather the same case as Mrs Christian is making, really, that in fact what both Members are seeking is clarity in what that particularly means, and what happens to the people in between 55 and 60, at any given particular time.

**Mr Lowey:** Mr President, if I may say so, it says in this very helpful book... and I will be honest I said to my good friend, Mr Waft, at the start of it, I found this book more enlightening than the Bill, because it is complex! We deal with lots of complexities and so I have judged mine on the code, the Members’ Guide. The emphasis put on this particular clause is not the emphasis that I would have thought would have been put on it.

Yes, we can tidy up things and regulate things, but I think when tidying up, we must be very careful that we are not trampling on existing rights of people who are in certain schemes.

**The President:** Mrs Crowe.

**Mrs Crowe:** I think it does say that subsection (1) only applies in respect of schemes approved *after* the date on which –

**Mr Butt:** It is in 15(2).

**Mrs Christian:** Oh, sorry, yes, Mr President.

**Mrs Crowe:** – it comes into effect. I think, also, we have to bear in mind – I think I am right – but all pension schemes have rules which govern their pension schemes and those would have to be amended and have to go to the Assessor of Income Tax, if indeed one was to alter the age on the receipt of benefit or the contribution rate or whatever it might be. Those schemes, if amended, would have to go... apart from the fact that there would have to be consultation with the beneficiaries of the scheme as well.

**Mr Lowey:** Where does it say it has to be with the beneficiaries? Sorry to have this dialogue, Mr President, but where does it say it has to?

**Mrs Crowe:** These are rules which will govern new pension schemes for new pension beneficiaries, but I think the pension schemes that are in being, at the present time, all have rules applying to them. Those rules are set out in a rule book that every member of every pension scheme has, or should have.

**The President:** Mr Butt.

**Mr Butt:** Yes, I think Mrs Crowe has raised the point already, section 15(2), I think, actually clarifies that previous subsection, which takes out the words, only has approval for new schemes.

**The President:** Mr Crowe.

**Mr Crowe:** Yes, if I can help, Mr President, I think all pension schemes have to be approved by the Assessor, at the outset, to get tax relief, so any amendments to an existing pension scheme would obviously have to get approval as well. As Mrs Crowe says, every scheme has scheme rules. These rules have to be approved by the Assessor.

**The President:** Mr Downie.

**Mr Downie:** I think there has been some good debate on this and just to reinforce 15(2), this subsection applies only in respect of schemes approved after the date the paragraph comes into operation. So all the existing schemes will have to honour the original commitments. The only change that will come is after this particular new paragraph comes into operation.

But it is interesting to see in the Income Tax (Retirement Benefit Schemes) Act 1978 – and I will read the relevant section out –

'Subject to subsection (1), the Assessor shall approve a retirement benefits scheme for the purpose of this Act if the scheme satisfies all of the conditions in this subsection, that is –  
(a) that any benefit for an employee is a pension on retirement, at a specified age not earlier than 60...'

Under the old legislation, it was 55 for a woman, so I would think when this comes into act, it will be 60 for everyone.

What does also remain is:

'and not later than 70, which does not exceed one-sixtieth of the employee's final remuneration for each year of service up to a maximum of 40'.

So it will be 60 when the new things are finally approved by Tynwald.

I will finish it there.

**The President:** In that case, Hon. Members, what I now put to Council, under the general heading, are clauses 15 – which is miscellaneous amendments to the 1978 Act – and clause 16 – miscellaneous amendments to the 1989 Act. Hon. Members, clauses 15 and 16: those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 17, Mr Downie.

**Mr Downie:** Mr President, clause 17 amends the Income Tax Act 1970, extending existing provisions that allow the Assessor to approve international pension schemes set up by employers to include international schemes created by individuals. International pension schemes are not open to Manx residents or those people who are employed on the Isle of Man.

The income generated within the fund would be tax exempt, and the payment of the pension would not be subject to Manx tax, unless the member of the scheme became a resident in the Isle of Man in retirement.

This clause introduces a change to current statute that was highlighted during consultation. It is seen as an opportunity to create new business through Island pension providers that is currently not available.

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

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

I wonder if the mover could give me some clarification on page 22, subclause (6) there:

'Treasury may by regulations restrict the Assessor's discretion to approve a scheme under this section by reference to such criteria or circumstances as may be specified in the regulations.'

I wonder why that was in there; why it would not be seen by the Assessor in the first instance.

**The President:** Mr Crowe.

**Mr Crowe:** Can I comment, Mr President, on this clause?

I think it will be fair to say that most of the major insurance companies on this Island are dealing with international pension schemes. It is interesting that clause 17, which is putting this new section 50B in the 1970 Act...

'Whilst retaining the existing power to approve an international occupational scheme, the new section 50B will also allow the Assessor to approve an international personal pension scheme.'

This is so vital for people now working internationally in the Middle East, the Far East, South America or wherever, where they can build up funds. They might have a five-year or three-year contract, where they are earning very high sums of money for a short period of time. They can invest it into a personal pension scheme in the Isle of Man. The Assessor will then give the authority under discretion to allow this. It is a tremendous benefit for the Isle of Man, because it helps the insurance companies; it is helping the banks; the legal profession; accountancy profession. It is a great benefit to the Isle of Man.

So I am very pleased to see that this is in the Bill that we are looking at today.

**Mr Lowey:** It is contradictory though, Mr President, with the greatest respect.

We start off the clause by saying, in subsection (2)... I accept everything that the Hon. Member has said about international business and all the rest – international footballers come to mind. Forgetting all the detail: we are in favour of that.

This clause is the framework, and you start off by saying in subclause (2):

'Subject to subsection (3),' –

which we will come back to –

'the Assessor may, if he thinks fit,'.

I happen to know the Assessor, like most of us here: we know what a terrific ambassador he has been in the Isle of Man in selling the Isle of Man as a destination. He is first class, so we have confidence in him here.

And yet we put a stop-gap in, in subclause (6), which says:

'The Treasury may by regulations restrict the Assessor's discretion to approve a scheme under this section by reference to such criteria or circumstances as may be specified in the regulations.'

It seems strange in the one breath we are saying, leave it to the administrator, i.e. the Assessor, as he thinks fit, because he is responsible and his team work well. I accept that. But then we put in this proviso here as a safeguard.

Like my colleague, I wonder, well, what have we put it in for? I do not see why it should be in primary law that we put in the safeguards that we have done. We will tell you what to do...

**The President:** Mr Crowe.

**Mr Crowe:** I think it was a fail-safe device. I would imagine that if the Treasury felt the Assessor had approved a scheme which was way out of line with normal and reasonable circumstances, the Treasury would be the final arbiter in a decision.

So I think it is a belt-and-braces approach to the approval of these international schemes. I am sure it is a fail-safe provision.

**The President:** Mrs Crowe, do you wish...?

**Mrs Crowe:** No. I am still busy reading it!

**The President:** Mrs Christian then.

**Mrs Christian:** Again, Mr President, I am still busy reading it, but I think, is this one where there is not any ultimate Tynwald approval, either?

**Mrs Crowe:** No, the regulations are coming to Tynwald in the 1989...

**The President:** We may be in the same position, and I do not know without checking again, Mrs Christian, but it is an amendment to the 1970 Act. It could be that if the 1970 Act, the provision is there, that all regulations have to be approved by Tynwald. (*Interjections*)

**Mrs Crowe:** My only thought, Mr President, is that there might be a conflict of interest with the Assessor at any time, so the Treasury would be able to approve a scheme if need be. I do not know.

**Mr Downie:** We will get the answer in a minute. (*Laughter*)

**Mrs Crowe:** I don't think we will!

**Mr Downie:** I think we will!

**Mr Crowe:** You've got the answer, Mr Downie!

**The President:** The regulations have to be made first before the Treasury could intervene, because they can only intervene under regulations. (**Mrs Crowe:** Exactly!)

Mr Downie.

**Mr Downie:** I listened to the various sides of the discussion here. I thank Mr Crowe, first of all. He has hit the nail on the head. What we are talking about is an international pension scheme. At the end of day, the Treasury has to be ultimately responsible for this and has to have the ability, through the Council of Ministers or whatever, to issue directions to the Assessor.

In this world that we are living in, you got the IMF and FATE, and all these other people, so...

**Mr Lowey:** If he thinks fit.

**Mr Downie:** At the end of the day, the Assessor does work for the Treasury.

**Mr Lowey:** I know he does.

**Mr Downie:** He is an employee, and I think we all agree that, in Malcolm Couch, we have a very good, innovative Assessor; but you have to accept that the Treasury may by regulations restrict the Assessor's discretion to approve a scheme under this section by reference to such criteria or circumstances as may be specified in the regulations.

Mr Waft had a similar question and he said it is 'if the Assessor thinks fit.' Well, there is a balance there. Obviously, there will be issues that the Assessor will need to bring to the Treasury. But at the end of the day, you are dealing with an international pension scheme. It is not just an Isle of Man based scheme; there are other people, as Mr Crowe said, in the Far East, in the Middle East, and they want to

be absolutely certain that the scheme here is 100-per-cent reliable, or we will not attract any business at all.

My understanding is that this is a requirement that the Treasury have sought.

**The President:** I am sure it is. Mrs Christian, come back again.

**Mrs Christian:** Yes, I think that this has to raise some concerns in our minds about the... Whilst you can understand that we want flexibility to devise schemes in a particular way, and this introduces some flexibility for the Assessor to approve certain schemes, subject to certain conditions set out in subclause (3), because this is international, they can overrule them.

I wonder why the regulations which the Treasury is going to make are not subject to Tynwald approval, but we need to maybe have clarification of whether it is so, under the 1970 Act. If that is not provided, somewhere generally in the Act, I would have some concerns about it, because these schemes seem to me to have the capacity to be very much tailor-made and that may be appropriate. But should we not have some - ?

**The President:** Hon. Members, let us not have a cross-table discussion. Mr Attorney, we should look at the 1970 Act.

**The Attorney General:** I will certainly do that, Mr President, but if I could just comment perhaps on the debate thus far, (**The President:** Right, yes.) it does seem to me that it is not unusual for a senior officer within a Department to work within policy guidelines and indeed policy diktats from his or her relevant Department or Minister.

I think I am right in saying that, in the Income Tax Act, there are several provisions which do govern the apparent discretion of the Assessor. That is certainly the case in relation to obtaining information for the operation of tax information exchange agreements, a matter which is very much in the international sphere. If, for example, a request comes in from a country and the Assessor has to find the information to respond to a request, the Treasury has set out policy guidelines for the Assessor to work within.

It seems to me that this provision in this Bill is yet another perfectly normal, rational provision, which does not restrict the Assessor's discretion. Really, what it is saying is that the discretion is set within guidelines. Once those parameters have been set in advance, the Assessor can work within those parameters, without any restriction.

But it is entirely right, I would respectfully suggest, that the Assessor's discretion should not be completely without guidelines. We could for example, Mr President, allow £10 million to be invested in one of these international schemes without any problems with money-laundering provisions or anything like that. The Treasury would say, 'Well, of course, we want to encourage these international schemes; but do make sure, Assessor, when you apply these schemes that the money should come from a given source', and so on and so forth. Perhaps not a very good example, but I think it illustrates that we cannot have unfettered discretion.

**Mr Lowey:** Fine, but that is never, ever, as far as I am aware, in other Departments, put into primary law. Here we are putting this into primary law. You say it is not unusual for

senior officers to operate within a framework of guidelines from Ministers; but that is not put into primary law, Mr Attorney.

In this one, I can understand... I cannot get my head round it. The only thing I am coming to is that perhaps it is terminology:

'Subject to subsection (3), the Assessor *may*, [...] having regard to the facts of a particular case and subject to such reasonable conditions, if any, as he thinks proper to attach...'

and perhaps they are superfluous, its terminology.

But it does seem strange to me that we are saying in the opening clause, it is the Assessor that will make the decision. We understand that it is within the framework of the regulations. There is nothing between us here, it is the terminology, but we are writing primary law. I just think that if we are writing primary law, we should at least know the framework.

I can go along with everything the Attorney has said, that it is right and proper that we have to be seen... that we cannot be creating a framework for what I would call... whatever – amassing sums of money that could be shady. I accept that. That would not occur here, because we are a quality organisation.

But it seems to me that it is just the terminology that is wrong in the opening too, and that is what I am really on about.

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, I think the framework that the Assessor can work under is set out in (3): he shall not approve a scheme, unless they comply with the provisions of subsection (3). That deals with the irrevocable trusts, properly established under the laws of the Island, and so on and so forth.

It is a little difficult to comprehend what might be done under subsection (6). I wonder if the mover has any thoughts about where subsection (6) might be used – the Treasury *may* by regulations restrict the Assessor's discretion. Could it be that say do not establish a scheme for people in a particular country at a particular time, (**Several Members:** Yes.) because of political situation or whatever?

It would be helpful to have some idea of what the thinking was behind this form of drafting. As Mr Lowey says, it may be discretion in Departments is not normally put in, but I think the framework at least is fundamental to the initial discussion of the Assessor, which is set out in primary legislation.

**The President:** Mr Waft.

**Mr Waft:** Yes, Mr President.

I am arguing against myself a bit here, but when I read:

'The Treasury may by regulations restrict the Assessor's discretion to approve a scheme under this section'

– and then qualifies it by saying –

'by reference to such criteria or circumstances as may be specified in the regulations.'

In other words, if it is laid down and the Assessor goes outside that or omits to refer to them, then they have the discretion then. I think they have tried to qualify the reasons why they are restricting the Assessor, because he has not...

It says:

'by reference to such criteria in circumstances as may be specified by regulations.'

In other words, there is a query over the reason that he gave the decision in the first place.

**The President:** Mr Crowe.

**Mr Crowe:** There could be a problem over the source of the money, because although the criteria do not concern themselves... or the Assessor need not concern himself where the source of the money is or the country of origin of the money. So there could be, again, this fail-safe mechanism to cover unusual circumstances, outside the clauses in primary legislation.

**The President:** Mr Waft.

**Mr Waft:** Just going back to the Agricultural Bill we have just had, the same problem was there. You leave a discretion to the Department and, as I said before, they have always got this get-out somewhere in there – the Treasury 'may'.

**The President:** Mr Attorney. It was the question on 70 in the regulations.

**The Attorney General:** Very briefly, Mr President, the example I was thinking about, in answer to the hon. colleague, Mr Lowey, when I referred to the tax information exchange agreement and so on, and the extra powers for the Assessor to obtain information, I was thinking of a provision that had been added by the Income Tax (Amendment) Act 2004. Section 105E of that Act – and I will very briefly refer to it – says that:

'The Treasury may by order declare that information of a particular description is not to be subject to...'

certain obligations. In other words, it has restricted in some way the ultimate powers of the Assessor.

But then it does say – and this I think is the point that Mrs Christian made – that when you have a restriction of a discretion like that, you would ordinarily find that orders of the Treasury would be subject to approval by Tynwald. That is precisely what happened in the 2004 Act.

In other words, it did say the Treasury can restrict the powers of the Assessor, but if it is going to do that, then those orders of the Treasury have to be approved by Tynwald.

Perhaps, Mr President, the alarming feature of this, that Hon. Members are concerned about, is that the Assessor's discretion is going to be restricted by Treasury regulations, but there does not appear to be any safety-valve in terms of Tynwald.

**The President and Mrs Christian:** But is the safety-valve within the 1970 Act itself?

**The President:** If it is within the 1970 Act, we are in the

same position as we were with the 1978 Act. If it is in the Income Tax Act 1970...

If it is not, it took us a while to discover the difference between the 1989 Act and 1978 Act earlier and now, Mr Attorney, you are saying that the 2004 Amendment Act carried the proviso that Tynwald had the ultimate to say; and the indication is that maybe, in this amendment to this 1970 Act, the 1970 Act does not carry that same proviso.

**The Attorney General:** Well, that is right. I think that must be right, Mr President. If the draftsman thought it was necessary to specifically say, in section 105, that there had to be Tynwald approval, it would follow that there is not that general power for Tynwald.

**The President:** Maybe Members will have time to have a look at that.

Mr Downie, would you like to wind up on 17, sir?

**Mr Downie:** I thank the Members for their comments.

I am told that one of areas that the Treasury may make regulations on, for example, is for the type of investments – for example, Manx land and property. That is something that they might need to give the Assessor direction on.

Leading on to the restriction, the restriction was originally contained in section 50B of the 1970 Act and it was originally to be approved by Tynwald, and the amendment should be the same.

**The President:** It should be the same, but it is not the same. I think that is the point which is being made.

Hon. Members are aware of that. I am still inclined to put to you clause 17, on the understanding, Hon. Members, that should you wish, you can amend the Third Reading.

**Mr Downie:** We are going to do some more work on that, Mr President.

**The President:** I think that is a fair comment. Hon. Members, at this stage, in order that we are progressing with the Bill, I would put to Council that clause 17 do stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

The interpretation clause, clause 18, Mr Downie.

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

Clauses 18 and 19 include the interpretation of terms used in the Bill, the short title and commencement provisions, which will be by Appointed Day Order.

I beg to move clauses 18 and 19 stand part of the Bill.

**The President:** Mr Waft to second, sir.

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

**The President:** Now, Hon. Members, I will put to you separately clause 18. Those in favour, Hon. Members, please say aye; against no. The ayes have it. The ayes have it.

Hon. Members, clause 19, short title and commencement: those in favour, please say aye; against no. The ayes have it. The ayes have it.

And now, Hon. Members, if you remember, we did discuss the amendment moved by Mr Lowey, seconded by the Hon. Member, Mrs Crowe, page 1 and on page 24 – in other words, in the long title – after ‘in respect of’ insert ‘private’. Hon. Members, we have come to the Bill, and it appears as if there may be further definition to take place on clause 17, so I put to you the amendment. Page 1 and page 24, in the long title, after ‘in respect of’ insert ‘private’: those in favour, please say aye; against no. The noes have it. The noes have it.

In that case, Hon. Members, that concludes our Second Reading and clause stage of the Bill. As I think Mr Downie indicated, it could be that Members will wish to do further work on that, so in that case, Hon. Members, we will leave it at this particular stage.

I am left then, Hon. Members, to sit in private, to consider the proceedings of the Council of Ministers which was published last week, should you so wish.

#### **Birthday wishes to Mr Lowey**

**The President:** Before we go into private, Hon. Members, perhaps I could join all the Members of the Legislative Council in the words of Mr Downie earlier this morning, in congratulating my colleague, Mr Lowey, who now catches me up again!

**Mr Lowey:** We are the same then!

**The President:** Happy Birthday!

**Members:** Happy Birthday!

**The President:** Hon. Members, Council will now sit in private.

*The Council sat in private.*