

**4.2. Control of Employment Bill 2013 –
For Second Reading –
Debate commenced**

Mr Shimmin to move:

That the Control of Employment Bill 2013 be read a second time.

The Speaker: We turn now to the second of our Bills for Second Reading, Control of Employment Bill, and I call on the mover, Mr Shimmin, Hon. Member for Douglas West.

Mr Shimmin: Thank you, Mr Speaker

I am pleased to be able to move the Second Reading of the Control of Employment Bill 2013 which is promoted by my Department. The purpose of the Bill is to re-enact the Control of Employment Act 1975 with amendments, in order to modernise the Island's domestic work permit legislation. I would like to thank all Hon. Members who were able to attend last week's briefing session, but it was regretful that there was not an opportunity for more questions.

Due to the complexity of this and the importance to our Island, I would give notice here that I do not intend to move the clauses stage until Tuesday, 25th February, in order to allow further opportunities for any individual Members wishing to seek amendments, or indeed to seek further clarification from my Department. I would urge all Hon. Members to discuss matters with my Department, because at times there can be unintended consequences of amendments and in something as important as this, I would like you to work with my Department to ensure that we understand the full implications.

If I move, Mr Speaker, to the reasons for the Bill: the 1975 Act was last substantially amended in 1990, which is nearly a quarter of a century ago, and since which time we can all agree the economy has changed greatly. Therefore, a review of the legislation is overdue.

The Bill retains the existing work permit framework. However, each of the main components of that framework, such as the definition of 'Isle of Man worker' and the question of exemptions has been carefully examined, re-engineered, and then re-assembled, with the aim of providing a modern system of work permit controls which should better serve the Island in the coming years.

The new Bill will also specifically modernise the existing powers to make orders and regulations which are currently inadequate, as well as removing a considerable number of loopholes in the 1975 Act.

Turning to the history of this particular Bill, in 2011 the Department published a consultation paper, containing a draft Bill and Regulations. The Bill and Regulations, which followed much internal discussion and analysis of how the existing legislation could be improved, were intended to iron out most of the known problems with the existing Act and Regulations, whilst retaining the work permit framework.

The Department received approximately 40 submissions from consultees, including detailed responses from the Chamber of Commerce, the Isle of Man Law Society and other umbrella organisations. Following this, our original proposals were amended in a number of respects, in view of the consultees' comments and suggestions.

Mr Speaker, we should recognise and it is fair to say that many employers would like to have seen more radical legislation or even the removal of work permit controls altogether. However, having considered all options are taken into account the interests of all stakeholders, the Department decided to proceed with its proposals to retain or modernise the current system.

Although this may not be the preferred option of all parties, we have listened carefully to the concerns have been expressed and taken into account as far as possible while continuing to balance the interests of Isle of Man workers and the other interested parties.

Towards the end of last year 2013, the Council of Ministers approved the Bill and draft Regulations and we published a comprehensive review of the consultees' comments, together with our final proposals as to the contents of the Bill

Turning to that now, Mr Speaker, it is important that the Bill and the draft Regulations are considered together, if Members are to understand the Department's full intent as regards the legislation – although, of course, primary legislation is one thing and Regulations will be dealt with separately by Tynwald at a later date. However, I would urge Hon. Members to consider the two together.

There are numerous differences between the existing and proposed legislation, so I will concentrate on the most important points. As I have said, the Department has looked carefully at the main components of the work permit framework, and we have proposed reforms in each area.

Firstly, Mr Speaker, most persons who are not Isle of Man workers or not in an exempt category of employment require permits under both the old and the new legislation. The Bill re-enacts and updates the categories of persons who are Isle of Man workers for the purposes of the legislation.

Most notably, it is proposed that a person should be an Isle of Man worker, if he or she is resident in the Isle of Man for an unbroken period of at least five years. This new definition removes a complicated proviso that is attached to this category in the 1975 Act, the effect of which can be to deprive a person who has been resident for five years of his or her Isle of Man worker status, if they cease, and then recommence residence following that five-year period.

Most consultees favour a simple five-year qualifying period on the Island, and that is what we provide. This would not, however, be retrospective, but would apply as we move forward.

Turning to policy regarding which employment should be exempt under the legislation, the Bill contains more flexible powers to make and remove exemptions that are contained in the existing Act. For example, whereas the Department has powers to exempt employment by order, we cannot remove any of the exemptions in the original schedule of the 1975 Act, even if that is no longer required, unless we bring forward new primary legislation. The Bill deals with this and other problems with its enabling powers.

In addition, there are powers to exempt not only employments but also persons of a description, which broadens the possibilities for making exemptions.

The Bill consolidates the exemptions contained in the schedule to the 1975 Act, as well as exemptions which have been made subsequent by four orders. This is into a new schedule to which Department will be able to add or remove exemptions by order, subject to Tynwald approval. Notably too, the existing exemption of the Police is intended to be removed, other than for the post of Chief Constable.

Whereas most exemptions require the approval of Tynwald, the Bill contains a new power to exempt, subject to any conditions, a person working in a specified capacity, if the Department considers the employment of that person to be in the national interest. This is intended to enable a Minister to deal speedily with an important case and the intention is to ensure the legislation is not so rigid as to result in the loss of employment or the loss of employment opportunities.

When the Bill was with the Council of Ministers, some disquiet was expressed about the potential for this proposed administrative power of the Department to be abused. In consequence, my Department is going to support an amendment which would require us to report annually to Tynwald, if any such national interest authorisations are made.

If I may divert for a second, and give an example, one situation arose where a bank on the Isle of Man had the need for a member of staff to be either positioned in one of the Channel Islands or the Isle of Man. Wherever that member of staff was positioned would result in significant deposits and growth of job opportunities in that jurisdiction. They had identified the individual, and they were looking to identify which jurisdiction. By making a speedy decision under the current position, that person came, has created two further jobs and significant deposits on the Isle of Man, along with further opportunities.

If I had not used those powers which we believe are intrinsic within the current system, we would have lost that business, because the person was already domiciled in the Channel Islands. So what turned out to be beneficial to employment was done in a way which others may question the appropriateness. I can guarantee that there would have been no Isle of Man worker given that post. Therefore it seemed expedient and appropriate. The new Bill proposes that, under exceptional circumstances like that, it will be more clearly available for a Minister to make such a decision, but that will then be reported to Tynwald, and were there to be concerns, there would be a vehicle for Tynwald Members to resolve or refuse that power to be permitted into the future.

I draw that to Members' attention because this complexity of it, at times, we look to try and make things overly careful for Isle of Man domiciled persons, but sometimes business requires a bit more flexibility, and I believe as Minister of Economic Development, we need to give that power to the Minister in exceptional circumstances.

Returning to the Bill, the spouses and civil partners have always been an issue and I would look at that position now. Our current legislation provides the Department must grant a one-year permit in respect of the spouse or civil partner of a permit holder or a person whose employment is exempt under the schedule of the Act. Other than in cases of self-employment, the employer is to apply for the permit.

The problem with the existing provision is that many employers tend to overlook applications by spouses and civil partners of permit holders and exempt persons, either because they may be unaware that person has an entitlement to work, or because they are deterred by the cost and trouble of making an application. In order to fix this problem under the new Bill and Regulations, the spouse or civil partner will be able to apply to the Department for a one-year permit which is not limited to any particular employment, which can then be presented to a prospective employer.

The Bill also closes loopholes in the 1975 Act which enabled persons with unspent criminal convictions under the Rehabilitation of Offenders Act 2001, to either take advantage of an exemption or to apply for an automatic spouse or civil partner permit. Once the Bill is enacted, persons coming to work in the Island with unspent convictions will not be able to use an exemption, nor have any entitlement to an automatic permit. In future, persons with unspent convictions would have to apply for a permit in the normal way in order to work in the Island.

Mr Speaker, where a prospective worker is not an Isle of Man worker or not an exempt person, an application can be made to Department for a work permit. The criteria on which the Department will base its decision on whether or not to grant a permit are made by Regulations.

The proposed Bill contains more comprehensive enabling powers for the criteria that the Department is to take into account, and whereas the 1993 Regulations contain five matters to which regard *must* be had and 11 matters to which regard *may* be had, our current proposals now contain nine matters to which regard *shall* be had and 17 which *may* be had.

So the new Regulations are much more comprehensive. They take greater account of employers' business needs and the needs of the economy and, in particular, try to better balance the consideration must be given to suitable Isle of Man workers who are available with the employer's particular requirements, explicitly requiring consideration of any skills, qualifications, knowledge or experience that may be required and the importance of the particular position to the employer.

It also contains stronger enabling powers for the Department to take account in the Regulations of potential economic and social costs of prospective workers, a spouse or civil partner and dependants, which will include medical, social security or educational costs that may be incurred by their coming here. Account must also be taken of any unspent convictions, while, in addition, the Department may take into account the ability of the prospective worker and family to speak English.

Moving on, the Bill makes certain reforms relating to the Work Permit Appeal Tribunal. The 1975 Act is very sketchy as to the purpose and functions of the tribunal. This Bill takes account of two High Court judgements to clarify the grey areas. The grounds on which the Work Permit Appeal Tribunal can allow an appeal against a decision of the Department are defined, as are the powers of the tribunal.

A further change the Bill makes is that at present, any aggrieved person... Sorry, any person... My apologies, can I start again, Mr Speaker?

A further change the Bill makes is that whereas at present any person aggrieved by any decision of the Department can appeal, in future an appellant must have a direct interest in the matter being appealed, as is the case in planning.

Turning now to enforcement, the Bill enhances the powers contained in the 1975 Act. Maximum financial penalties for offences are increased from £2,500 to £5,000 and for aggravated offences, from £5,000 to £7,500, while in addition, as an alternative to prosecution, the Department will have new powers to impose fixed penalties of up to £1,000 for an offence of working or employing a person without a work permit, or up to £200 for a breach of the Regulations.

The Bill contains express information-sharing powers with the Police, Treasury and other relevant agencies and Departments, to enable my officers to receive and pass on relevant information to help them enforce legislation. Members should be aware that these powers override any data protection considerations, which at present can impede information sharing.

The Bill contains enabling powers for regulations to provide for revocation of permits. The grounds for revocation in the draft 2014 Regulations are wider than in the 1993 Regulations. Under these Regulations, the Department may revoke a permit where that permit holder has provided false information, been convicted of a criminal offence or not paid National Insurance contributions.

New grounds in the Bill and the draft Regulations include: not complying with conditions attached to the issue of a permit; not paying Income Tax; and a significant number of complaints being passed to the Department by the OFT. The latter provision should assist the Department to prevent any so-called cowboy builders who are not Isle of Man workers from continuing to work on the Island. **(A Member: Hear, hear.)**

Mr Speaker, the Bill and Regulations constitute what we believe is a balanced package of reforms, which liberalise the system of work permit controls where that is in the overall interests of the economy, but also tighten up controls in a number of important ways. It continues to protect the interests of Isle of Man workers. The Department has chosen to retain the framework across the economy, in spite of considerable opposition from many consultees.

We have strengthened the enforcement provisions of the 1975 Act, closed loopholes in existing legislation and made it easier to remove exemptions that are no longer necessary.

It is, however, at the same time, Mr Speaker, vitally important that we take into account the legitimate interests of parties besides Isle of Man workers. While work permit legislation has the capacity to prevent an employer from taking on a non-Isle of Man worker, it cannot require an employer to recruit one. Further, if the overall employment environment in the Island is too rigid and restrictive, and viewed as hostile to new blood, then we risk losing some of our existing employers altogether and deterring prospective employers from coming, and therefore ultimately reducing the opportunities for Isle of Man workers.

So the Bill does consider the needs of employers, and we have attempted to take greater account of their needs by updating criteria on which we decide whether or not to grant a permit.

The other party the legislation needs to consider are prospective workers from outside the Isle of Man, because even if every jobless person on the Island could find employment, our diverse, high-skills economy would continue to require thousands of workers, be they doctors, secondary school teachers or the many specialist works in the private sector at one end of the spectrum, as well as those workers who do work that Isle of Man workers often shun, at the other end.

Again, this is tied in with employers' needs. If the Island fails to attract workers, we ultimately risk losing some of our employer base, or in the case of the public sector, not being able to provide services to the standard we would like.

We believe this Bill seeks to make it more attractive for the prospective workers the Island needs to come here, both by a simple five-year qualifying period with no strings attached, and by alleviating the practical difficulties of spouses and civil partners of permit holders and exempt persons who can obtain permits, and to provide this we have changed the administrative process.

Before finishing, I would remind you of the reason we have brought this Bill forward – that is, the need to modernise our domestic work permit controls so that they adequately serve the employers and the workforce of the Isle of Man. I hope the Hon. Members will now confer their support on the Bill, and I beg to move the Control of Employment Bill be read a second time.

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

Mr Skelly: I beg to second and reserve my remarks.

The Speaker: Now, Hon. Members, as we are a minute to one o'clock, I do not think it would be sensible to commence debate at this point, so the House will now stand adjourned until 2.30.

*The House adjourned at 12.59 p.m.
and resumed its sitting at 2.30 p.m.*

**Control of Employment Bill –
Debate continued –
Second Reading approved**

The Speaker: Hon. Members, just before the adjournment the Control of Employment Bill was moved and seconded, and the floor is now open for debate.

Mr Quirk.

Mr Quirk: Thank you, Mr Speaker.

To Mr Shimmin – yes, after the seminar, I am broadly in support of the particular Bill that is before us here today.

The only couple of questions I would love to ask, really, and get a response from him, is as to where we have a scenario sometimes when individuals do come across, and it used to be what we called a three or five-day rule. My concern is on that when they think they can come here for the minimum length of time, and then come again later on in another month, and come again later on in another month. I just wonder whether – maybe not today, but maybe in the future – if you just clarify that, so we do have something on record to say to the public that this does happen.

We do have a lot of people that come on to us and say that this particular contract has turned up, and with reference to that, I do, from my own point of view as Chairman of the OFT, support that particular issue regarding cowboy builders, developers or whatever. I do hope we can seek an assurance from you where our officers can work together in that particular organisation to prevent this from happening on that.

The final thing I had, which I have just mislaid a little bit, but it was to do with the disclosure of discharging criminal offences. I believe that is a big issue because we have known for a fact sometimes when we have had people that have lived here or worked here or traded from here, when they have been picked up or taken into custody or charged with something, it is then that you find you out there is a record behind it, but they have done the damage on the Island. So I do welcome that that is coming forward.

But if he could clear them up sometime, I would be appreciative.

The Speaker: Hon. Member for Douglas North, Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

Vainstyr Loayreyder, we understand what the Hon. Member is trying to do here and in broad terms I am supportive of it, obviously. We are having a modernisation of the legislation, we are

having it more flexible, and the quote he gave us with regard to the banking position, where situations like that occur and it is own to a ministerial decision and flexibility – yes, absolutely, hats off to the Minister for applying some common sense there, that is excellent. And what transpired from that, and if that is what we are trying to achieve, yes I am quite supportive.

We are also, it would appear, softening the definition, if somebody local can reasonably do the job, the rest of the definition and I will just paraphrase that, because I am sure all Hon. Members know that that is the key to the whole situation, and it is the crux of the matter. This legislation has added a bit more and deleted a bit and softened it up so that more cognisance can be taken from ‘away’ applications, if I can put it like that, for the job.

Now, ostensibly that is fine, given the need to grow the economy, we need to be flexible, we are in a highly competitive, mercenary world when it comes to growing the economy and so on, and what sort of business we are trying to get here. That I can understand, and that bit is fine. As everyone here knows, I have been a long-time supporter of the work permit system (**A Member:** Yes.) for other reasons, least of all which is protecting the local employment force, to a degree. Now, I have always put that caveat on it and I do not want the Minister to come back to say, ‘Oh well, you are just trying to stifle the economy.’ I certainly am not. I just want to put that marker down because it has held us in good stead, and I think there is flexibility here: if we need to review things, we can go back again, which is what I like to see.

However, I will put down on *Hansard* my disappointment with one particular piece of the briefing that we had the other day with regard to this, whereby it was indicated at the briefing that language was used or terminologies, whereby if there was a suitable local applicant that would be fine for medium jobs. There would be a problem for more senior, important jobs. There would probably not be any local applicants, and it would be more applicable to come from across. Now, that was clearly stated, and I took offence to that in one way. And that is this, Vainstyr Loayreyder: that any time we have these debates, there is always this chorus in the background, and the media often drive it up too, that we are promoting mediocrity with the work permit – ‘we need new blood’, ‘the organisation is stagnant’, ‘we need an injection of new enthusiasm’. And the simple answer for most people is, ‘Oh, this has to come from across.’ The local workforce, whatever shape or form they are in, cannot aspire to the top jobs.

Now, that is a clear message that goes out every time we have this, and I am putting a stop to it, Vainstyr Loayreyder. It might be unintentional of the Minister, but in the background we have these commentaries made, and there was such a commentary made at the briefing. There were hints this morning slightly that perhaps we need to get more... there is better blood away, if you like, and I do not believe that for one minute.

Some jobs, if they are open for application, there may be a range of people apply, and it may be that somebody from off-Island has got better qualifications, has got better experience – fair enough. But what I do not see in this debate is where we have had it before about this promoting, as I say, mediocrity. What we are saying to our workforce, and the young people coming up through the education system is: ‘Do not bother about the higher standards of jobs, the more important positions.’ I am afraid you may well scare some of the talent off by doing it, so what we want to do is keep a sensible proportion on it, and move this forward in a balanced fashion, is what I am asking for, Vainstyr Loayreyder. I am quite conscious of what some of the businesses say, and that is fair enough. If they want more flexibility and they want to trial out different ways of doing this, fair enough. I am prepared to be flexible myself, because of the situation.

But I have also seen the other side of the coin, Vainstyr Loayreyder, where job descriptions, and other paperwork associated with a position, have been pitched in such a way that the local talent has been dialled out. Now, I have furnished the Minister with some such documentation before now. I am not saying it happens all the time, but it does happen at odd times. So, we are quite conscious of the different elements that go along with this, and I just want to put that balance in here, Vainstyr Loayreyder, that there is a plenty of good talent on the Isle of Man too. If an organisation feels, or a section or a Division in Government; if there is a sense that it feels it is being

stagnant or that it needs new blood, that may be a correct observation, but the point is how is it being allowed to go to that point? That is the question I often asked myself with various Sections over the years.

And I have noticed the Chief Minister likes to shake his head about, but it is very true where I have personally witnessed this nonsense where 'Oh, we need new blood.' So we have got the new blood in, we have got the new dynamos in – Mr and Mrs Dynamics – and within two or three years we have seen that they were not as dynamic as they were purported to be, and they have left. I have watched that happen too. And I have watched staff become demotivated because if they had had the chance to scale up, do additional training, be energised by more senior management, you would have had a different playing field in that particular area. That is something that could be done with being looked at as well while we are on this discussion, because it always annoys me, or is upsetting to see that that side of things is often forgotten. It is, 'Oh well, let's get someone in from across, that will do the trick.' Fair enough, an odd time they might well be more experienced and it is the best thing to do, but also, Vainstyr Loayreyder, as I say we need some balance in there because if an area is stagnant, then with the next layer of management up that is their responsibility to 'unstagnate' it, energise the staff that are there, and if anybody requires any additional training or courses, or whatever do that. Do not just write people off. Energise the situation, let us see some effort put into it.

That is my message, Vainstyr Loayreyder. Gura mie eu.

The Speaker: The Hon. Member for Ramsey, Mr Singer.

Mr Singer: Thank you, Mr Speaker.

First of all, I would just like to say that I will fully support this Bill. I think it is necessary.

We need the flexibility, as has been mentioned, absolutely essential. And we seem to be moving, I think, maybe towards more the Australian model, where we are attracting workers into employment areas where there is a shortage, because there is difficulty in recruiting so we need to have that flexibility to bring these people in.

But picking up on what the last speaker, Mr Henderson said, if we are going to advance as we want to do, we do need to have the best person in the job and whether that person comes from across or on the Island. But the problem probably in Government, maybe more than in the private sector, is that we have not really got the hang of succession planning. It is not, as Mr Henderson says, ask if there is anybody who would like to train up. We should be saying to them, 'We want you to train up, that you are there when you are needed', and then we would not need to bring as many people in and to issue as many work permits as perhaps we are.

I would also like to touch on this matter of enforcement, and it is interesting that the idea of the fixed penalty is coming in now, and I would like to ask the Minister the reason for this fixed penalty. Do we have many work permit prosecutions? Have we had many over the last few years? Because my experience, when I was in the Department, was not so much on work permits but on contracts of employment where the inspectors went round and found out that people had not issued contracts of employment and all it did was to leave them a note 'well, apply for a contract of employment' and why? Because generally the Attorney General's Chambers were not interested, they said it was not in the public interest to prosecute those particular employers. That to me is the wrong decision and I am just wondering whether it is the same when there are people abusing the work permit system – whether the Attorney General's department say it is not in the public interest.

One other item I would like to raise with the Minister, which is not clear in this Bill: if I can give him an example of a person who comes across here, gets a work permit and their spouse or partner is automatically entitled to a work permit, for any job, not a specific job, what is the position if that person who got the original work permit loses the job or leaves the job, what happens to the work permit of the spouse or the partner? Do they retain that work permit, is that work permit immediately revoked or do they retain it for a certain length of time before it is revoked? That does

not seem to be clear to me in the Bill, and perhaps the Minister would like to clarify that position for me.

Thank you, Mr Speaker.

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

Mr Thomas: Thank you, Mr Speaker.

Firstly, I would like to congratulate and also thank the Minister for giving us draft Regulations alongside the Bill, because that is surely good practice. I would also like to thank him for extending the two-week period before we have the clauses stage and I would like to take advantage of that to work with the staff who have drafted these excellent explanatory memorandum and Regulations, to consider perhaps some amendments I would like probably to move at the clauses stage.

There are five points I just wanted the Minister to think about and comment on.

The first one is that because this is a 1975 Act that we are repealing and replacing, we have this situation where we have got a Committee that is not set up in the statute but set up under the Government Departments Act 1987, and we have potentially got the circularity where the Minister delegates to the Committee who delegates back to officers, and perhaps we can consider putting the Committee into statute. That is one of the issues I would like to consider in coming weeks.

The second one is the Article 13, human rights point, which is that the person should have an adequate redress from a statutory body's decision, and perhaps in this new legislation that has not been dealt with sufficiently, because there is a circularity of the work permit Committee acting on the authority of the Minister, having its decision reviewed by the work permit Tribunal, who can only send back their findings to the Minister, who may or may not agree or disagree, so I would like to have that reviewed in coming weeks.

Thirdly, in the presentation – which unfortunately I could not attend, but your excellent staff have actually given me a full briefing since – there was a statement that any decision could be appealed. But there was actually a case, *Christopher Thomas versus the Department*, back a few years ago, where that issue was determined in the courts, and I think it might be helpful to bring the law up to date with the decision of that case, because it is not actually, I don't think, *any* decision that can be appealed; it is only *final* decisions. It is not interim decisions. So that is something I would like to review in coming weeks.

The fourth point is that, still, we only have one statement in the Regulations that the process whereby the applicant has selected the person concerned is taken into account, and there is not really a lot you can do, especially given that lots of these work permits are to do with Government recruitment places, to actually monitor the process to make sure it is good process, where you have anonymous criteria, referenced procedures are in place. Perhaps there is something better that can be done to make sure that we have got good selection, and that will address in part the issues raised by Mr Henderson, whereby a good Manx worker can get an ear and can get the decision going in the place, or *vice versa* from the other side.

And finally, the point raised by Mr Singer, which is that there is this Articulate 8 issue, with the right to family, to do with the spouse losing a work permit when the other spouse loses a work permit; and also the political issue about what happens to the family in those first few years, when in good faith they have come to the Island and four years, 360 days, a work permit goes and that sort of issue. So there is actually that issue that we need to reflect on.

Thank you, Mr Speaker.

The Speaker: Mr Shimmin to reply. (*Interjection by Mr Karran*)

Hon. Member, would you please indicate...? Mr Karran.

Mr Karran: There are two things that I was particularly interested in in this Bill. One is that I feel that one of the things that does disturb me is when I see in the adjacent island that people can live in

the United Kingdom and not be able to speak English 40 years after they became a resident in the United Kingdom.

I think the issue of whether there should be some sort of English test as part of the scheme, as far as if English is not their first language, after the first year's worth of permit... even to allow for the fact of letting them be in here for a year, but they have to take a compulsory test, as far as the application for the second year's thing. I think it is important that we must not allow a situation where we have parts of Douglas where English is not the first language now.

I know, from my brief time as Minister of Education, that one of the things that I was deeply concerned about was the total lack of resources, particularly in two or three schools in the Douglas area where they had a large amount of children who could not speak English. That was one of the reasons we were very keen on trying to get a way around the fiscal problems as far as pre-school education was concerned.

We must not allow a situation where we create an underclass. We have come a long way in 30 years from the postcode justice and the postcode way things were done years ago; and I do feel that if we are going to have a fair society then we need to address this issue; and I think it is something that needs to be addressed seriously, as far as whether there needs to be some sort of undertaking that an application will be put through, but on the renewal of that application there shall be an English test for the individuals.

I was the first one to support the Manx language when it was totally anti-social in this House, but I do feel it is important that we are not to create a situation where we have people who do not belong. If we do not want that then we *must* address this issue.

The second issue I think that we need to address is the issue of the health services. I think that we should be seriously looking at the issue of bringing in, in primary legislation, the issue of making work permit employers pay for private health cover insurance, as far as the issue is concerned. This would discourage the employers who have got low-waged work and the likes from trying to get people from outside the Island when there are enough people on the Island who should be able to obtain that type of employment.

It is interesting about the secondary legislation. It is very good to see that a lot has been put into the secondary education. I do really think it is important that we do address those two fundamental issues. If the Health Service has got no money I think that should be part of the equation for the Work Permit legislation.

I would just finally say: can the Shirveishagh, in his reply, just tell us... I take it we will be working to the criteria that was set down when there was a Social Services Bill in the last House, as far as the criteria... as far as where the work permit would be issued where there was criteria put down as far as residency is concerned; and whether it will be the same sort of residency qualification of services that was being proposed under the Social Services legislation that Mr Teare brought in some time ago?

I do appreciate that the regulations can do lots of things but the regulations... In my opinion, I feel that we should be making a positive stance to make sure that if people are coming here... What is the use of the Members in this Chamber, who are mostly gone now... of all the fighting for social legislation for employment rights... If they cannot communicate then they are an 'out' person in our society?

So I would be interested in the mover's response to the two particular issues. There are a couple of minor amendments that I might be considered to do and will give the opportunity for them to see them beforehand.

The Speaker: Mr Shimmin to reply.

Mr Shimmin: Thank you, Mr Speaker, and thank you to the small number but the in-depth questions that actually highlight the difficulties that we have been grappling with for some time in the Department.

If I can start and go through some of these points, but we will go through *Hansard* and make sure that we have got a full understanding of them.

If I can start off with Mr Quirk and the 10-day rule. The difficulty here is that people have an entitlement to be able to come and work on the Isle of Man for 10 days in a year. There are slight exceptions or variations in the construction industry, but normally a 10-day rule applies. However, how do we know about it? How do we enforce it? How do we pick these people up and prosecute? I will come to that other issue about prosecution shortly.

So, yes, it is something where we will try and clarify but it is effectively a similar principle. But we will require people's assistance to actually identify that if there are regular people repeat visiting the Isle of Man without a work permit offences are being done.

It is quite possible that that aspect may be benefited by the fixed penalties because – picking up another point that was raised before about the Attorney General's and whether they wish to take part in prosecuting people – that has been a difficulty. There has normally been a warning but there has not been a prosecution.

We need, as our Department, to set an example and I cannot think of any better way than – those who are abusing it – to give them a fixed penalty which can have an enforcement opportunity and we would then know that employer or employee to keep an eye on and maybe be able to pick up further in the future. So we have lacked from enforcement. This gives the Department the powers to do the fixed penalties rather than relying upon an external agency.

So we do envisage getting stronger powers to exchange information with the police and again the idea of attempting to try and reduce those with criminal offences or, indeed, cowboy builders from causing damage of whatever sort on our Island.

If we look at Mr Henderson's point, I think he had a point. I think he over-egged it a little bit but I think that is part of what we have got to do with the balance in this Bill. So I can understand exactly where he is coming from – when he sees things softening in one area, he wants to make sure he makes the point – and I think that he understands that there is a balance in the middle there that we are aiming for.

What we are attempting to do is find out... not in any way promoting mediocrity but being in the real world of saying, 'We need to survive in the future to be excellent'. Everything we said about 2020 Vision document yesterday is: we need excellence; we need to be a quality destination and a quality employer across a whole range of areas of our economy.

One of those issues that we have a problem with, and have done for generations, is every September some of our brightest students disappear off to university and only a percentage of them come back; and, as I said in this morning's presentation, we still need thousands of people in our economy who are on work permits, even if everybody who is currently unemployed got a job. So we know that we require people to build our economy.

Certainly employers, from all of my experience, would prefer local people to get the jobs because they have a family support system around them, they already have the connections and the accommodation and many things that new people coming to our Island... have got to settle in, adapt; it is more expensive and there is a risk that those persons may not settle and, therefore, you have invested money and it is not worthwhile.

So, Mr Henderson's concern about a poor message about this mediocrity... One of the things that we are seeing more and more is the work permits are at the top and the bottom end. At the bottom end – some of the lowest paid jobs in the Isle of Man – I am afraid we do have a difficulty that people who are unemployed are not wishing to take those posts.

I had a meeting on Friday of last week where somebody had taken on 20 jobs – 10 of them local. Two of them – local – did not turn up the next day. They got the hi-vis jackets, they got a bit of induction, they never came back. They know that some of those people turning up for interviews do not want the work and they want to actually go and get their jobseekers'.

Pointing that out is equally as wrong as what Mr Henderson was doing because they are odd exceptions. I think the comment that Mr Henderson said is an odd time, about Isle of Man workers.

What we have got to try and do in this legislation is say, 'Right, let's deal with the vast majority of the issues'.

At times, we will be highly qualified people, possibly with language skills or skills that we have not been able to create. We are allowing more and more Manx students to come back to our shores with the skills and the jobs to match up together. We know that at the lower end we have a difficulty of getting some people into some of the construction jobs. They can do a job but as an employer – particularly in hard times in the construction industry – you need somebody who is reliable, skilled and going to be there when you need them.

So we think that we are getting a balance but I think the main message I take from Mr Henderson is training and education. It is skills; it is re-skilling; it is training; it is education; it is attitude, ambition, aspiration – all of those things – (**A Member:** Hear, hear.) and I think that really we are on the same page but just trying to get the balance right.

Going on to Mr Singer, when he was talking about the exemptions... Under the new regime it is effectively going to be a six-month lead-in period from when one would lose the job. So if I can take the example that a new resident and her partner came to the Isle of Man – her partner or husband might be on a 3A – if she lost the job for which she was employed – the person would have had a year work permit – if they had less than six months remaining of that work permit, that six months would run through to give the family an opportunity of trying to find alternative employment and resolve their circumstances. I will clarify that more when I come through with information in the clauses stage, but effectively there will be a six-month run off for those persons.

I have covered the bit about the fixed penalties.

I am grateful to my colleague, Mr Thomas, and I would recommend anybody coming into the Department to talk – most of you know our Legislation Officer and his knowledge in this is second to none – (**Several Members:** Hear, hear.) again, if you can come in and work and talk with us so that we can actually deal with some of these. There are choices. Certainly when it comes to the Work Permit Committee, I do not favour it becoming a statutory power, but that is a choice the House will have to make.

The issues about final decisions can be appealed. The problem in the case that the Hon. Member refers to – a certain Mr Thomas – the High Court ruled that it was not the final case; there was another... So the appeal is only at the end of the due process. But it is an expensive process – as the Hon. Member can testify – and therefore we need to make sure that, if there are going to be appeals, that they are worthy and legitimate. Certainly, if we are looking at appeals mechanisms we have got to make sure that there are not any of those that are burdening the taxpayer on areas where there is not really the opportunity of success. So I will look further at Article 13 on human rights.

He has raised the issue about the right to family and I think that is one that came up with Mr Karran's comments at the end. Because, on the one hand, Mr Thomas is talking about right to family; on the other hand, Mr Karran is raising the spectrum of the issue about what might happen if persons failed to learn English when they were going for a renewal but, in the meantime, that person had actually met somebody and maybe developed a family on the Isle of Man.

So we are trying to get a balance right which says that, yes, we will be humane and reasonable but the persons coming to live with us do have an obligation on attempting to integrate into our community.

One of those bits, however... In e-gaming, it might be that English is not the most important language but Mandarin might be. Another subject.

So we have to try and get the regulations and the legislation to allow us a degree of flexibility to deal with the modern economy. The opportunity for us to do that is going to be a challenge. When the Hon. Member for Onchan again talked about national health cover – or private health cover, I should say – we have National Insurance; they would be paying that as part of their salaries. But actually what they would do, Mr Karran, would be to say to the likes of Mr Henderson that the only

persons to be coming in would be the top earners, because it is certainly only the top earners who would be able to subsidise the employees having a private health insurance.

So that is the conflict that we have got to deal with. I think there will be challenges for all of us when the legislation comes through at the clauses stage but I would urge all of you to seek the guidance to understand why we decided as we did and to make sure that we do not put in legislation issues that are the worst possible example of what may happen – very unexpected and very unrealistic. If we imbed that within legislation that affects everybody then we will really disincentivise our employers in our community. So what I want to do is build in a flexibility and give us the opportunity to deal with the peripherals in regulations or secondary legislation, so that we can allow most employers to do what we have talked about, which is have the freedom to flourish.

I beg to move.

The Speaker: Hon. Members, I put the motion that the Control of Employment Bill be read for the second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.