

### **3.1. Control of Employment Bill 2013 – Consideration of clauses commenced**

Mr Shimmin to move.

**The Speaker:** We turn to Item 3, consideration of clauses, Control of Employment Bill 2013. I call on the mover, Hon. Member for Douglas West, Mr Shimmin.

**Mr Shimmin:** Thank you, Mr Speaker.

As the long title of the Bill states, the purpose of the Bill is to re-enact with amendments the Control of Employment Act 1975.

The Department's main purposes in bringing forward the Bill were discussed at length at Second Reading, so I will confine my introductory remarks to a few key points that I would like Members to bear in mind, as we deal with each clause.

Firstly, the Department made a strategic decision to retain the Work Permit system, because in our view, it is only right that Isle of Man Workers should be the principal beneficiaries of the Island's economic success and that they should be considered for work that is available on the Island, provided that they can undertake that work to the required standard. Furthermore, abandonment of Work Permit controls could result in much increased demands for Government services and, in the worst scenario, lead to some social tensions. So we have done all that is reasonable to assist Isle of Man Workers.

At the same time, however, we have had to recognise that the Island's diverse economy has needs and a huge range of skills, and that if we are to retain and expand our employer base, we have to listen to employers' concerns and to those aspects of the system that cause them concern, and to recognise that there is a legitimate need to import some labour. So we have also made some changes that we hope employers will welcome.

Finally, we should never lose sight of the stark fact that even if all of our unemployed were to obtain employment, there would still be a shortfall of some several thousands of workers that the Island needs if we are to remain open for business. For this reason, it is important to make the Island an attractive proposition for the prospective workers we need, which in turn means not placing obstacles in the way of their spouses, civil partners and children also working here.

So the Bill, we believe, carefully balances the needs of Isle of Man Workers, of employers and of prospective workers and their families. We have attempted to produce a Bill that has strategic focus and which is concerned with the big picture. This is accomplished by making a few key changes, as well as numerous small changes, which are intended to improve the way the whole system operates.

Very careful thought has been given over a long period of time to matters such as, for example: Isle of Man Worker status; the way criminality should be dealt with; the powers needed to exchange relevant information between my Department and other Departments; an exemption policy; and a wide range of other matters. The end result is, in the Department's view, a much more coherent system of controls which is more appropriate to the Island's needs. Furthermore, the Department plans to improve the way the system is administered, and to review internal policies.

As Members will be aware from the Order Paper, a number of amendments to the Bill have been tabled, including three which my Department is sponsoring, but we have tried to approach all the amendments with an open mind and will be supporting some, but not all of the amendments.

With that, Mr Speaker, moving to the clauses: clause 1, short title – this gives the Act its short title.

I beg to move it stand part of the Bill.

**The Speaker:** Mr Quayle.

**Mr Quayle:** Thank you, Mr Speaker

I beg to second and reserve my remarks.

**The Speaker:** I put the question that clause 1 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
Clause 2, please.

**Mr Shimmin:** Thank you, Mr Speaker.  
Clause 2 provides for the commencement of the Act.  
Subsection (1) provides that the Act, other than section 1 which provides for its title and this section, are to come into force on an appointed day or days.  
Subsection (2) provides that such an order may contain incidental and transitional provisions.  
I beg to move it stands part of the Bill.

**The Speaker:** Mr Quayle.

**Mr Quayle:** I beg to second.

**The Speaker:** I put the question that clause 2 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
Clause 3, Mr Shimmin.

**Mr Shimmin:** This clause provides for the interpretation of the Bill.  
The most significant difference between the section on interpretation in the Control of Employment Act 1975, which in future I shall refer to as the 1975 Act, and this clause is that the definition of 'employment' in the Bill is wider and captures more working relationships than the definition in the 1975 Act.  
I beg to move clause 3 stands part of the Bill.

**The Speaker:** Mr Quayle.

**Mr Quayle:** I beg to second.

**The Speaker:** I call Mr Karran.

**Mr Karran:** Vainstyr Loayreyder, this, as far as I am aware, is a technical issue that has not been put in the original draft and so, to help the Attorney Generals' department and the Government, I am happy to move the amendment as part of my proposals.  
I do so move:

*Amendment to clause 3*  
*Page 8, after line 7, insert —*  
*“information” includes evidence;’.*

**The Speaker:** Mrs Beecroft.

**Mrs Beecroft:** Thank you, Mr Speaker.  
I beg to second.

**The Speaker:** I call on the mover to reply, Mr Shimmin.

**Mr Shimmin:** Thank you, Mr Speaker.

Having sought legal advice as regards the effect of the amendment, the Department is supportive. The effect of the amendment is to remove any possible uncertainty as to whether the term 'information' which is used in the Bill includes evidence. Therefore we are supportive.

**The Speaker:** I put the question. First of all, the amendment in the name of Mr Karran: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 3 as amended: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 4, please.

**Mr Shimmin:** Thank you, Mr Speaker.

This clause sets out who is an Isle of Man Worker for the purposes of the Bill. There are eight main categories.

Subsection (1) is introductory.

Subsection (2) provides that a person is an Isle of Man Worker if he or she was born in the Island.

Subsection (3) provides that a person is an Isle of Man Worker if he or she has at any time lived in the Island for an unbroken period of at least five years.

Subsection (4) provides that a person is an Isle of Man Worker if he or she is the spouse or civil partner of an Isle of Man Worker and is entitled to remain in the Island under immigration law.

Subsection (5) provides that a person is an Isle of Man Worker if he or she had been married to or the civil partner of an Isle of Man Worker, was living in the Island immediately before the death of the former partner and has lived in the Island ever since.

Subsection (6) provides that a person is an Isle of Man Worker if he or she had been the spouse or civil partner of an Isle of Man Worker, had lived in the Isle of Man for an unbroken period of at least three years immediately before becoming divorced and has lived on the Island ever since.

Subsection (7) provides that a person is an Isle of Man Worker if his or her parent is, or was immediately before death, an Isle of Man Worker and at the time of the child's birth the parent or the parent's spouse or civil partner was serving in the armed forces.

Subsection (8) provides that a person is an Isle of Man Worker if he or she is the child of a person who is both born in the Island and lived in the Island for their first five years.

Subsection (9) provides that a person is an Isle of Man Worker if he or she (a) was for an unbroken period of at least a year under 23 years old and ordinarily resident in the Island and in full-time education; (b) has since the end of that period remained resident; and (c) is the child of a person who during that period was an Isle of Man Worker or an exempt person in regular full-time employment or the holder of a Work Permit.

Subsection (10) excludes certain temporary exemptions in schedule 1 from counting as regular full-time employment for the purposes of subsection (9)(c)(ii).

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

**The Speaker:** Mr Quayle.

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

**The Speaker:** Mr Quirk.

**Mr Quirk:** Thank you, Mr Speaker.

Can I just ask the Minister regarding when he says a resident in the Island's 'unbroken period of at least five years'? Then there is a further one where he indicated there 'unbroken for a year'. Is there any latitude in that for absences from the Island regarding sickness confirmed within the UK or just going on a holiday?

**The Speaker:** Hon. Member for Onchan, Mr Karran.

**Mr Karran:** Vainstyr Loayreyder, could the Shirveishagh just clarify: so if a child is born on the Island with no Isle of Man Worker status as far as his parents are concerned, he has got to be here five years to have status, as far as becoming an Isle of Man Worker?

I would just be interested in that, and maybe the Shirveishagh could explain to this House how he has tightened up the loophole there was as far as full-time employment is concerned. I believe that has been done by secondary legislation, but if he can confirm that there is no loophole, as far as somebody coming here, going into full-time education, and then being able to become an Isle of Man Worker within a matter of months of doing that. If that loophole has been sorted out too?

**The Speaker:** Mr Shimmin to reply.

**Mr Shimmin:** Thank you, Mr Speaker.

I will do my best to understand. It does identify... The Member for Onchan, Mr Quirk is raising one of the complexities of this whole process: when do you prove that somebody actually was on a holiday or relocated away from the Island?

The onus is on the individual to identify and prove that they have been resident on the Isle of Man for a period of five years continuously. Therefore, I would argue that were that person to be known to have spent a period of time on holiday or away from the Isle of Man, then if they did not disclose that at the time of application, they would be fraudulent in their application and the powers later in the Bill allow us to take that Work Permit away from somebody. So certainly, it is a five-day continuous period.

In answer to the... My apologies, Mr Speaker, if somebody is genuinely sick and is receiving hospital treatment in the UK, then I am sure, under human rights, that is something that would be taken into account. (*Interjections*)

The Hon. Member for East Douglas talks about a holiday: when is a holiday? Is that two weeks, is that two months, is that a year? There are many types of different holiday which is where there would be a requirement to actually evidence. We are not saying that a standard two-week holiday would refuse that person the right, but if somebody goes away for six months, as is quite possible, then that would invalidate it.

The other issue then is in subsection (2), it provides that it is an Isle of Man Worker, if he or she was born in the Isle of Man. Therefore, if a person were in that position, from the question from Mr Karran, my thought is that they are an Isle of Man Worker by the nature of their birth – they have been born on the Isle of Man – even though the parents may not have actually been fully here for the five-year period, and are on Work Permits.

The education loophole is closed, which is in clause 4(9), and if the Hon. Member refers to that period, we have attempted to try and do that. It is quite a complex area, which I did read out, but we are quite happy to go through that again. We do believe we have closed that loophole, which gives people educated in the Isle of Man certain rights which were never intended in the original Bill, so we believe we have successfully closed that.

I hope I have answered sufficient questions. If not, I will try and address them at Third Reading, but I beg to move clause 4 stand part of the Bill.

**The Speaker:** Hon. Members, I put the question that clause 4 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We turn to clause 5.

**Mr Shimmin:** This clause sets out supplementary information as to Isle of Man Workers.

Subsection (1) provides that where a person has been in prison for over six months, that person is not to be treated as living in the Island for the purposes of clause 4 after the six months has expired.

Subsection (2) provides that where a person has lived in the Island for an unbroken period of at least three years before serving in the armed forces, he or she is to be treated for the purpose of clause 4(3) as living in the Island during that period of service.

Subsection (3) defines references to relationships in clause 4 as including adoptive and step relationships.

Subsection (4) provides that the rules in clause 4 are subject to the transitional provisions in schedule 3.

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

**The Speaker:** Mr Quayle.

**Mr Quayle:** Thank you, Mr Speaker.

I beg to second and reserve my remarks.

**The Speaker:** Mr Karran.

**Mr Karran:** I am a little bit confused as far as the clause 5 is concerned, as far as the custody. I thought we had sorted this out years ago, under previous legislation, where the issue was that you could not accrue residency if you ended up going into jail. You could not accrue residency if you went in for five or ten years – go in as a non-Isle of Man Worker and come out as an Isle of Man Worker. If the Minister would just clarify, is he saying that it would break the residency accrued to them by the six months of sentence?

**The Speaker:** Mr Shimmin to reply.

**Mr Shimmin:** Thank you, Mr Speaker.

I am glad to try and give that clarification. The Department looked at this and actually tried to look at natural justice on it. We have determined that, should a person be sent to prison for a period of less than six months, that would not invalidate their residency period. Therefore, if somebody has been resident for three years on the Island and serves four months in prison, on his release, he or she then continues to live in the Island for two years, they would be classed as having lived in the Isle of Man for a continuous period of five years and four months.

However, when anybody goes beyond the sentence of six months, that is deemed to be a break in their residency and on their release from prison, they would go back to zero and have to accrue the full five years.

This is try and ensure that persons cannot accrue residency status while having committed offences significantly serious to have warranted a more-than-six-month custodial sentence. Therefore, these are rare occasions, and they are ones which we believe that those persons who have been incarcerated for a significant offence are not the type of people that we would want to be classed as Isle of Man Workers, unless they have served a further five-year period of residency to evidence their good nature. (**Several Members:** Hear, hear.)

So I beg to move with that clarification, sir.

**The Speaker:** I put the question that clause 5 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 6, please.

**Mr Shimmin:** Clause 6 provides that except in accordance with the Bill, a person must not undertake any employment in the Island unless he or she is an Isle of Man Worker, and that an employer must not employ a person unless he or she is an Isle of Man Worker.

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

**The Speaker:** Mr Quayle.

**Mr Quayle:** I beg to second, Mr Speaker, and reserve my remarks.

**Mr Karran:** Would the Shirveishagh want to clarify the issue of employment: does that involve somebody who does subcontract work, where they come and an individual employs them to do work as far as a jobbing builder is concerned?

Does the Minister want to just clarify that point, in order to try and make sure that it helps us to discourage the bad workmen that are coming to the Island on a regular basis, spending time here, ripping people off, so individuals who take them on to re-tarmac their runway or do some job – where is the liability? They are not directly employing them, but they are employing them to do a job of work, as far as them not being Isle of Man Workers is concerned.

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

**Mr Singer:** Just a small point – thank you, Mr Speaker. Could I ask the Minister, many charities nowadays employ people... they volunteer their services in a shop, etc, and that shop covers those people with their insurance. So does that make them an employee or not? Or is there a specific exemption for people who volunteer to work in charities and charity shops?

**The Speaker:** Mr Shimmin to reply.

**Mr Shimmin:** Yes, Mr Speaker, the Hon. Member for Onchan, Mr Karran, raises an issue which is close to all of our hearts inasmuch that we are aware of a range of ways people attempt to get around and break the rules. We have a penalty for those who do employ people without Work Permits. That has now moved to... In clause 15, we will come to it, but it is a term of three months in prison or a fine up to £5,000 or both. We genuinely want to try and discourage those persons who are employed on the Isle of Man in a way which undermines the whole principle of the control of employment. We are keen to get the thing which the Hon. Member for Onchan is always keen on, which is whistleblowing. We investigate all of those that are brought to our attention. Unfortunately, we have limited resource, therefore we cannot be constantly out checking, but when we do find, we will prosecute.

In the past, there has been a difficulty with prosecutions of those persons, because when we have gone to the authorities to see if they will take a case, they have found that it is a relatively low level. So we are now adopting an ability for my own Department to actually introduce the fines, if that is supported by the House.

With regard to those workers who are doing it for charitable purposes, if they are employed, if they are paid, then I am afraid they would be subject to Work Permits. If they are not paid, as volunteers, that is not an issue from this type of work, because this is *employment*.

If they were, however, found to be displacing somebody, then we would have to look at our regulations to see whether that was legitimate. We are not trying to discourage the importance of work of volunteers, but those people who are doing that could come and talk to us for advice as to how they can regularise their position.

I beg to move.

**The Speaker:** I put the question that clause 6 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 7, please.

**Mr Shimmin:** Clause 7 provides for a number of exemptions to the restrictions imposed by clause 6 and introduces schedule 1.

Subsection (1) disapplies the Act to the list of exempted employments contained at schedule 1. Some points of note as regards schedule 1 are as follows.

The new schedule consolidates the exemptions in the schedule of 1975 Act, as well as those made under four Orders, these being: the Control of Employment (Non-Resident Directors) Exemption Order 1988; the Control of Employment (Court Officers) Exemption Order 1989; the Control of Employment (Exemptions) Order 2009; and the Control of Employment (Secondary School Teachers) Order 2013.

The exemption in the 1975 Act for employment in the Police is restricted to employment of the Chief Constable only.

'Employment as an acting Deemster' in the 1989 Order is widened to 'Employment as a Deemster or Judicial Officer', in order to permit the appointment of an additional Deemster or additional Judicial Officer to deal with the particular case over a temporary period. 'Judicial Officer' is a term to a second-tier judge, namely a High Bailiff or Deputy High Bailiff, under the Administration of Justice Act 2008.

A new provision is made for the exemption of a person conducting an inspection or investigation by the Financial Supervision Commission, Insurance and Pensions Authority or prescribed body. The existing 30-day exemption for performers, etc in connection with any theatrical or musical performance in the Island is extended to 48 days.

Under the 2009 Order, a company in an international group can bring in workers for up to 48 days a year. The group must consist of at least one company incorporated in the Island, and at least one company incorporated in a country or territory outside the Island. The corresponding provision has been tightened up in a number of respects, so that firstly, a company which is a member of an international group must now be incorporated in the Island. Secondly, the company can now only bring in workers who are employed by a member of their group for up to 48 days a year.

In addition, the definition of 'international group' has now been tightened up so that must now consist of at least one company incorporated in the Island, and at least one company incorporated and *bona fide* carrying on business in a country or territory outside the Island.

The exemption in the 1975 Act for 'employment of a temporary nature for a period not exceeding three days or such other period as may be prescribed' is omitted as this was superseded by a longer 10-day exemption, subject to three exceptions, which was included in the Control of Employment (Exemptions) Order 2009. The 10-day exemption is now consolidated within schedule 1.

Subsection (2) of this clause provides that where a condition applies to an exemption in part 1 of schedule 1, the exemption does not apply unless the condition is complied with.

Subsection (3) provides that part 2 of schedule 2 applies for the interpretation of certain terms used in part 1 of the schedule.

Subsection (4) exempts a person who is the holder of an immigration employment document which permits him or her to undertake employment from the Act in order to prevent a double requirement. The term 'immigration employment document' will be defined in regulations by reference to the immigration rules in force from time to time.

Subsection (5) authorises the Department to exempt, subject to any conditions, (a) a person working in a specified capacity, if it considers the employment for that person to be in the national interest; or (b) a specified employment of a temporary or intermittent nature.

Subsection (6) authorises the Department to amend the schedule by order, which must be approved by Tynwald. Please note that under the 1975 Act, while additional exemptions can be made by Order, the exemptions in the schedule to the Act can only be altered by an Act of Tynwald. For example, the Department could not have removed the existing exemption of the Police by order, which is why we dealing with it in this way.

Subsection (7) provides that an order to amend schedule 1 may have effect indefinitely or for a period specified in the order.

Subsection (8) provides for the continued exemption of a person currently employed who would otherwise cease to be exempt, because of an order under subsection (6).

Mr Speaker, I beg to move that clause 7 stand part of the Bill.

**The Speaker:** Mr Quayle.

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

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

**Mr Skelly:** Gura mie eu, Loayreyder.

When the Bill was with the Council of Ministers, there was some disquiet expressed, most notably by my fine colleagues from Rushen here, Ministers Gawne and Watterson, who had expressed concern about the Department's proposed new power to be able to make exemptions in the national interest.

In order to address these concerns, the Department agreed to amend the Bill to include an obligation to report annually to Tynwald as regards the number of national interest authorisations and the reasons for them. There is no requirement to report where no such exemptions have been made.

To reduce bureaucracy, the report will form part of the annual report under section 6(1) of the Enterprise Act 2008, which the Department lays before Tynwald each year.

I now beg to move the amendment standing in my name:

*Amendment to clause 7*

*After subsection (8) add —*

*'(9) If in any year ending on 31 March the Department gives an authorisation under subsection (5)(a), it shall include in the annual report under section 6(1) of the Enterprise Act 2008 relating to that year a statement specifying —*

*(a) the number of such authorisations in that year; and*

*(b) the reasons for them."*

**The Speaker:** Mr Watterson.

**Mr Watterson:** Thank you, Mr Speaker.

When this Bill was coming through the Council of Ministers, myself and Minister Gawne thought it was important for Tynwald to know how these ministerial powers were to be exercised – whether they were being used as a floodgate or as an exception. We think that the amendment brings greater transparency to how frequently and why these powers are used and I would like to put on record my thanks and appreciation to the Department for taking this on board.

I beg to second the amendment standing in the name of Mr Skelly.

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

**Mr Gawne:** Gura mie eu, Loayreyder.

Yes, I would certainly echo the comments made by my two colleagues for Rushen. I do think this is an important amendment. Again, I am very grateful to the Minister for taking the time to consider this and work with us on this amendment.

I think there is always a concern that giving the Minister powers to do certain things without too much 'rick' – can I use the word 'rick' in the House of Keys? –

**Mr Anderson:** Brains.

**A Member:** Richard.

**Mr Watterson:** Check and balance.

**Mr Gawne:** It is always a concern, and yet the Minister needs to have a certain amount of flexibility to be able to do his job properly.

So I am very grateful to the Minister for coming forward with this compromise, which I think meets our concerns.

**The Speaker:** Mr Karran.

**Mr Karran:** Vainstyr Loayreyder, whilst the amendment is a stumble in the right direction as far as this is concerned, I think it is interesting to know that yes, maybe the new Work Permit legislation will be actually more worth than the previous one as far as many people were concerned outside this House.

The thing is that the question that needs to be asked by the Shirveishagh is how do you actually police this? Who actually knows when you have got up to 48 days? Will it all be left to chance? How do we find out? How do other workers find out that these people have been here only 48 days, if it is all clouded in secrecy, as far as that is concerned?

We are going into difficult times in the near future. We are not going to have the fantastic times we have had, where our young people could just pick and choose, there is going to be the same amount of job opportunities. That is why I just feel that whilst the clause is well-meaning, and it might clarify the points about it having to be part of a group that has an Isle of Man company and a company outside the Isle of Man, registered, I just think that the issue is enforceability. I just do not think it is going to happen.

I would just like to know what sort of criteria the mover of the Bill, the Minister, is going to give this House, as far as how he is going to actually enforce, when you have got these large companies, saying that they are only allowed to bring them in for 48 days, instead of 30 days, and how you are going to police that. I would be interested.

**The Speaker:** Mr Skelly, you have the right of reply if you wish.

**Mr Skelly:** No, thank you.

**The Speaker:** In that case, I call on the mover, Mr Shimmin.

**Mr Shimmin:** Thank you, Mr Speaker.

It is not a stumble; it is a clear direction of an improvement. As much as the Hon. Member for Onchan talks about difficult times and questions job opportunities, there is an enormous amount of opportunities for people on our Island.

Have we got it perfect? We believe that we have done the best job to represent both the needs of employers who create the job opportunities he refers to, as well as the protection of Isle of Man Workers.

With regard to the international companies, they have to provide a return to the Department, which is in schedule 1, part 6(2). However, there will always be a difficulty and we can always look at that negative side of 'how do you do it?' We are attempting in good faith to actually provide... I will accept the Hon. Member's comments, his recognition that it is a complex area. We do believe that our relationship with businesses has given us a strong indication that the vast majority of employers want to comply with this legislation and therefore, although it will never be a perfect system, we believe we have moved it significantly forward to benefit not just the rights of Isle of Man Workers. I would say this is always about a balance, and we do need to be fair to international companies who

have the choice of living and working and operating their businesses from anywhere, and therefore we have to make it sufficiently attractive that they want to keep those jobs on the Isle of Man.

This is to support local employment, not to actually undermine it, and so with those comments, I hope the Hon. Member will accept that it is a genuine attempt to try and protect jobs rather than to try and be a disincentive.

I beg to move.

**The Speaker:** I put the question in the name of Mr Skelly – the amendment to clause 7. Those in favour of the amendment, please say aye; against, no. The ayes have it. The ayes have it.

Clause 7 as amended, together with schedule 1: those in favour The ayes have it. The ayes have it.

Clause 8, Mr Shimmin, please.

**Mr Shimmin:** Thank you, Mr Speaker.

This clause provides for the Department to operate a system of Work Permits.

Subsection (1) disapplies the prohibition on employing non-Isle of Man Workers at clause 6, where persons are working in accordance with a permit issued by the Department.

Subsection (2) provides for a Work Permit to authorise the employment of a named person in a specified capacity. The permit may also be limited to employment by a specified employer or at a specified place or both, and may be issued subject to specify conditions.

Subsection (3) deals with the special case of a Work Permit holder who is suspended from work on maternity grounds. In that case, the person may be employed by the same employer in suitable alternative work, without the need to apply for a new permit.

Subsection (4) deals with the special case of a Work Permit holder whose employment is terminated by the employer, but who before the termination agreed to transfer over to a successor or associated employer. In that case, the successor or associated employer may continue to employ the holder in the same capacity without the need to apply for a new permit.

Subsection (5) provides that subject to exceptions, a Work Permit remains in force for the period which the Department considers appropriate and as specified in the permit.

Subsection (6) provides that a Work Permit is to be in such form as the Department considers appropriate.

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

**The Speaker:** Mr Quayle.

**Mr Quayle:** I beg to second, Mr Speaker, and reserve my remarks.

**The Speaker:** Mr Karran.

**Mr Karran:** Vainstyr Loayreyder, I think it is important that, like the previous one, well-meaning, the difficulty is in trying to bring enforcement. I have to say that the previous one actually is consolidating in the right direction.

The reason why I believe that the Department should maintain a register of Work Permits, and the names and addresses of those that are issued, and it should be open to public inspection at any reasonable time, is that it is again about enforceability. Often we used to find that you could be telling them the truth, but because you could not get the evidence, and there was a cloud of secrecy around the evidence, people who were wanting to complain and had legitimate reasons of abuse – and this is not in Work Permits, Vainstyr Loayreyder, but in the way that Government worked many years ago – could even be destroyed by telling the truth.

I think that if we are going to have a situation, with talking by Minister Robertshaw, that you have got to have a public register of flat owners to be registered, and that is to be open, I do not see why

this should not be open as well. I know that is quite perverse, maybe, that I am looking from the lower end instead of from the top end, as far as this is concerned, but I think it is about transparency.

I think the issue is that we are in difficult times. We do not want to talk the economy down, but we need to recognise that we are not going to have the abundance that we have had in the past, and I think the general public needs to have that register, so they can go along – if they have not got a job, they can go along – and then justify their concerns, as far as why they were not offered that opportunity to go for that job.

Now, this House will have to make that decision. Do you want your Work Permits actually to be more enforceable, or do you want to have them all clouded in secrecy, so legitimate, hard-working individuals who are Isle of Man Workers, who could do the job, cannot get the information, in order to object to the Work Permit? I personally feel, if you want Work Permits to be meaningful, then I think you have got to support this proposal.

I think it is important on transparency, if we are talking about the property owners having to be transparent, then it should be transparent right through the whole lot. I think the Minister... It would be interesting, and I hope he uses the opportunity to speak to the amendment without waiting till the reply, so that I could actually have the right of reply to why his views are so much against these proposals, to actually speak why his Department is so much against this proposal.

If we want it to be enforceable in difficult times, we need to be able to allow the general public, where people have been taken on on Work Permits, if there are suitable people who can do the job, then surely that is what we want.

I will be interested to hear the Hon. Member's views from his Department.

I move:

*Amendment to clause 8*

*Page 13, after line 10 insert –*

*'(7) The Department shall maintain a register of work permits and the name and addresses of those to whom they are issued.*

*(8) The register shall be open to public inspection at any reasonable hour.'*

**The Speaker:** Mrs Beecroft.

**Mrs Beecroft:** Thank you, Mr Speaker.

I am happy to second the amendment, because I cannot think of any legitimate reason why it should not be in the public domain, and because I think it would help not only employees know how many permits are issued in which areas as well, but employers, because employers can be left in very difficult situations, without knowing the current situation.

So I am more than happy to second the amendment.

**The Speaker:** Hon. Member, Mr Quirk.

**Mr Quirk:** Thank you, Mr Speaker.

Just to quiz the Minister a little bit regarding accountability. The panel itself, the Work Permit Committee, the members who come in to be that panel, be it representatives from the workers and the employers and a person usually legally trained will act as Chairman – that would give them accountability where permits were coming forward for examination. Obviously, it would not be in the public domain as such – what Mr Karran was on about – but there would be an element there where the public, both sides of the employers and employees, would have an interface.

**The Speaker:** Mr Shimmin.

**Mr Shimmin:** Thank you, Mr Speaker.

I do not like the inference from the Hon. Member for Onchan when he says we are so much against it. I can understand what the Hon. Member is doing, that he is presuming things which are not actually the case. We will be opposing it and I will give him the good grace to actually answer the reason so that he can come back to us.

He does talk about this as being an element of legitimate hard-working people have their entitlements, and certainly from our point of view, those very people he is talking about do, on a semi-regular basis, contact the Department to investigate, which is why employers do not like the Work Permit system, because it is bureaucratic. What the Hon. Member is talking about here is again putting in a whole level of bureaucracy for those people who actually... the information they require does not need to be done in that format.

We actually have attempted in our consideration to see whether or not this would be appropriate, and the main reasons we are against: the names and addresses of the persons to whom those permits are issued - what benefit do those names and addresses do? What is the use going to be made of it?

Within the Landlord and Tenant Bill, there will be certain restrictions on the access to the list of the named landlords, to try and actually stop people just going ferreting around for the skeet factor of these types of things.

He does start talking about not in Work Permits, we are talking about enforceability. We actually, my Department, deal with Work Permits on a daily basis and the number of complaints is far fewer than the Hon. Members of this House would probably guess, because employers over the years have become accustomed to it. They work with the officers from my Department who, despite working in an area that has a degree of concern expressed politically, are actually praised so regularly by members of the employers' area, because of the guidance and advice.

There is a lesson there for the Hon. Member and his new-found leader (*Laughter*) that we actually had a presentation on this. We had this opportunity where Mr Thomas came in to the Department and discussed things; Minister Gawne and Minister Watterson came in to discuss things; other Members have stopped myself or talked to my staff to try and actually understand how and what we are trying to do.

From my point of view, if this had been written and drafted in a way which was better, we may have been able to support it, but the Hon. Member chose not to come and talk to us. The drafting of the amendment is in need of refinement, so we cannot support it in its current form. But we do, under clause 23(1)(h) of the Bill, already have an enabling power for the Department to make regulations which may provide, and I quote:

'for the keeping and inspection of registers of work permits'.

So DED could in any case establish a register in the future, if it considers it would be beneficial. We put that in as enabling legislation. We had considered keeping the register in some form of electronic format, which again we could have discussed about whether that would have been a better improvement in the amendment, and that would have made it easier for inspection of the details and information to be available at a reasonable hour, instead of having people going in during office hours to trawl through in order to find out who the names and addresses were. And we have looked at providing additional information which is generally covered what the Hon. Member is after.

So the date of the expiry of the permit, the nature of the employment: these are issues that we are dealing with on a regular basis. We do not believe that this amendment in its form at the moment is right. And I would reassure the Hon. House that there is an opportunity later on in a clause which will allow us to have enabling powers that, should the move be better and be supported by the House, we could introduce in a form which would be appropriate rather than what is in front of you today.

So I would urge you to please oppose this amendment, although I have far more sympathy for the Member than he believes.

**The Speaker:** Mr Karran to reply.

**Mr Karran:** Vainstyr Loayreyder, firstly to my hon. colleague, he said that the Committee has workers' representatives and employers' representatives. They will not know the issues of individual companies, as far as whether the opportunity is there that there are Isle of Man Workers to take up that job.

I am glad that the Minister did take up the courtesy of actually replying whilst I have the right of replying. I think that is good, and it is good to see that parliamentary procedure and I hope it is encouraged by other Ministers in the future.

The situation is that too often it is too late, by the time that anyone knows that a permit has been issued months down the line, as far as the issue is concerned.

I am aware of the issue that you have the enabling power, as far as that is concerned. That might be a reasonable compromise, as we are not in the position of having high unemployment on this Island at the present time. I put this down, because to be honest with you, Vainstyr Loayreyder, I am very impressed to see the amount of amendments. It must be 10 years since we have had an Order Paper like this, with the amount of amendments and activity as far as that is concerned.

The issue is that the Minister, whilst he is well-meaning, the fact is that there are few who are outside in the general public who find out who is on a Work Permit and who is not. Whether the issue of my proposal is premature, that could be a reasonable... and putting it into statute law instead of putting it into secondary law, that is a reasonable opportunity that we can actually put a declaratory resolution down in another place, to bring in the public register at a later date to do that. So that is up to Hon. Members.

I have to say that it does rather concern me that the fact is that the Attorney General's... whilst I have moaned about the Attorney General's way that we backbenchers are treated, I have to say that we are supposed to be treated on the same basis as Departments are treated, as far as the same level of service is concerned. So there should not be any dispute as far as the legal drafting of this amendment is concerned, because this is an amendment that had to have been written in a way that it was within Standing Orders and within the context of the long title of the Bill.

Hon. Members, it is up to you whether you want to make the registration of Work Permits open and transparent. It is up to this House. You have got enabling legislation later on that can bring it in at a later date, and it can be flexible, as far as that is concerned.

My concern is that I think too often there is more of a concern as far as business is concerned, than there is of the individuals, being well aware that you need business in order to create the employment opportunities. I just feel that what we want to see is fairness. So unless there is an issue of it being defective, as far as the amendment is concerned, there should be no problem as far as the Attorney General's staff drafting this Bill.

Hon. Members, the clear choice is do you want to put it in statute law that we should have to have a register and the general public have a right to look at that register, particularly if you are in a position where you feel that you should be offered a job? We heard this morning from the Member for Ramsey about a disabled person who has put so many applications in and has not got a job, I wonder how many of those applications have gone to people on Work Permits, where he could have maybe done that job.

I am just trying to make this legislation more effective. I am also trying to do what this House needs to do, and that is become proper parliamentary assembly, and actually put alternatives down to executive government. That is what a parliament does.

It is up to this House to decide: does it want the flexibility of leaving it later, or does it want to put it in statute now? I think the time has come that we should be putting it in statute law.

**The Speaker:** Minister to reply.

**Mr Shimmin:** Thank you.

Picking up the question from the Member for Onchan, Mr Quirk, about the Work Permit Committee, and it actually comes in with what the Hon. Member for Onchan, Mr Karran has just said: that the Work Permit Committee would not know. Of course they would! The Work Permit Committee would have all the information about the companies, the number of Work Permits they had previously been in receipt of or applied for, because the officers who deal with this on a daily basis advise the Work Permit Committee. Therefore, Mr Karran's comment that the Work Permit Committee would not know is fundamentally misguided and gives the wrong impression.

He did use the expression 'too often too late'. So let's just think about this. You have got a register that records those who have got Work Permits. Therefore, they have already got the Work Permits. What he seems to be talking about is more of an appeals mechanism, which is something different, because by the time they were on that register, they had already been in receipt of a legally empowered Work Permit. Therefore, it would not be any good, just seeing it, because actually the deal would already have been done, so it is too late if it is at the register stage there. It is actually the appeals mechanism, which he does not seem to pay any attention to, but actually that is where the current situation and the future situation is that if a person believes they are qualified, suitable for a job, then they appeal against it. The Hon. Member is shaking his head and he talks about fairness. This fairness has got to work for all parties, not just those who come to his door to complain that they are being unfairly treated.

The concern I have is that he patronises me talking about how well-meaning I am, and I will patronise him equally: I think he is well-meaning for a very small part of this equation. But in reality, you have a system whereby the officers deal with the complexity of this on a daily basis, and those who come across it find the advice that they are given is actually first-class. The biggest problem is when those people fail to take advice when it is offered, and I do again say that to the Hon. Member for Onchan: if he had come to us we could have worked with him on an amendment. He went to the Attorney General's Chambers and of course, it can work, but it is not the person who drafted the original Bill and therefore was not put into the same context that we are trying to achieve, after so much consultation and the responses are all available to Members.

So, without trying to be too awkward, there is a mechanism already there to try and make it fairer for Isle of Man Workers to have a fair crack of the whip. But this register would not actually benefit that situation. So I would urge you to vote against the amendment on this occasion.

Thank you.

**The Speaker:** Hon. Members, I put clause 8 – first of all, the amendment in the name of Mr Karran. Those in favour of the amendment, please say aye; against, no. (**Mr Karran:** Divide.) The noes have it. The noes have it. (**Mr Karran:** Divide.)

Clause 8 –

**Mr Watterson:** Point of order, Mr Speaker.

The Hon. Member did shout for a divide.

**Mr Cretney:** Twice.

**Mr Karran:** Absolutely.

**The Speaker:** Sorry, I did not hear him. I am willing to accept that, if you in fact heard that. Please say it a bit louder.

Please vote, Hon. Members.

*Electronic voting resulted as follows:*

**FOR**

Mr Karran  
Mrs Beecroft

**AGAINST**

Mr Quirk  
Mr Hall  
Mr Ronan  
Mr Crookall  
Mr Anderson  
Mr Bell  
Mr Singer  
Mr Quayle  
Mr Teare  
Mr Cannan  
Mr Cregeen  
Mr Henderson  
Mrs Cannell  
Mr Robertshaw  
Mr Shimmin  
Mr Thomas  
Mr Cretney  
Mr Watterson  
Mr Skelly  
Mr Gawne  
The Speaker

**The Speaker:** With 2 votes for, 21 against, the amendment therefore fails.

Clause 8: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 9, Mr Shimmin.

**Mr Shimmin:** Thank you, Mr Speaker.

This clause re-enacts with amendments the right of a spouse or civil partner of a Work Permit holder or exempt person to be entitled to a Work Permit.

Subsection (1) provides that, subject to any exceptions prescribed by regulations and refusal in certain cases of criminality, where a Work Permit holder or exempt person is engaged in regular full-time employment – which I shall refer to as the primary employment – his or her spouse or civil partner is entitled to a Work Permit.

Subsection (2) provides that a Work Permit granted or renewed under subsection (1) remains in force for (a) a year, beginning with the date on which it is granted or renewed; or (b) for six months, beginning with the date on which the primary employment ceases, whichever is the sooner.

Subsection (3) provides that such a permit authorises the employment of the person named in it generally in any capacity, subject to any conditions specified in the permit.

Subsection (4) applies the rule in clause 4(10) so as to exclude entitlement to permit in the case where the person in primary employment is working by virtue of a temporary exemption, which is limited to a maximum of days.

Subsection (5) enables the Department to make regulations treating a man and a woman are not married to each other but are living together as husband and wife, or two men or two women who are not civil partners of each other but are living together as civil partners, as though they were spouses or civil partners for the purpose of this clause.

Subsection (6) empowers the Department to make any consequential or transitional provisions as are necessary or expedient in any regulations made under subsection (5).

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

**The Speaker:** Mr Quayle.

**Mr Quayle:** Thank you, Mr Speaker.

I beg to second and reserve my remarks.

**The Speaker:** Mrs Cannell.

**Mrs Cannell:** Thank you, Mr Speaker.

I just wanted to ask the Minister: under this particular clause, you have a couple – whether they are married or it is a civil partnership or a common law arrangement – where one is gainfully employed full time, possibly on a Work Permit – or not. They might be on a Work Permit; they might not. If they are not on a Work Permit, and they are gainfully employed at the time that the spouse applies for the Work Permit, which there is an automatic granting of it, if I read this legislation right. And then say subsequently after that, a month or two after that, the full-time employment... the primary holder of the job loses job. What then happens to the spouse's position?

Equally, if the person holding the primary employment is also on a Work Permit, and then they lose the job, subsequently they lose the Work Permit too, don't they, because it is the employer, is it not, who applies for a Work Permit for the person that they wish to engage?

I just wonder whether or not he could explain what the scenario would be in that type of circumstance.

**The Speaker:** Mr Karran.

**Mr Karran:** Vainstyr Loayreyder, I just wondered if under the regulations of subclause (5), the issue of a man and a woman who are not married but are living together as man and wife... I do understand the problem that the Department has – young people coming back to the Island, have done their degree, got themselves a girlfriend or a boyfriend, want to remain on the Island, want them to come to the Island, and I understand that difficulty. I have had representations on that point myself, and I am sure other Member have, as far as that issue is concerned.

But what sort of criteria... Are there any criteria? Do they just have to bunk up together from straightaway? Have there got to be some sort of criteria?

**Mr Anderson:** Explain that one!

**Mr Karran:** How do you police them so you do not allow it to be...? How do you police it so it is not really just used as a way to circumvent the Work Permit legislation?

The point is, what the Department is trying to do is actually something that I think we all sympathise with. We have got our young people who go away at great expense to university, they come back, they have found their love of their life, they want to come to the Island, and they cannot get... They do not want to marry them, they do not want to be tied down – are there any criteria as far as this is concerned? Purely that they are living under the same roof? I just think that we need to know that.

Obviously I do not know how you would legislate, as far as that issue is concerned, to get around it, but what criteria are there, as far as that issue is concerned?

**The Speaker:** I call the mover to reply.

**Mr Shimmin:** Thank you.

Taking the Hon. Member for Onchan, Mr Karran's point first: this provision is new. It contains enabling powers for regulations to give the same rights to partners as to spouses or civil partners. It was included following consultation because some consultees had strong views that Government should have a level playing field for spouses, civil partners and what we would call long-term partners, and that we should not discriminate on the ground of marital status. Any extension of such a right would complicate the enforcement and would need very careful thought and we have no

immediate plans to bring it in, because of the very point he has made on this and previous points about enforcement.

One of the few real contentious issues that I have had to deal with in Work Permits in the last two and a half years is when you are attempting to evidence that a civil partner was residing on the Isle of Man throughout that period of time to gain the entitlement for a Work Permit. So the potential for abuse in this area is there. However, it is far more normal within lifestyle choices for people not to be either formally married or in civil partnerships. Therefore there is a disincentive.

So it is a problem. These are enabling powers. There would be a lot more discussion before we were actually to try come forward with that legislation.

With regard to the Hon. Member for East Douglas, we are attempting to be reasonable on the grounds that if the primary employment person were to lose their job, there is a period of time when they would need to try and find alternatives to keep them and their families maybe together on the Island. So it would depend on the circumstances, but if their spouse or civil partner had a Work Permit, and they would then be able to continue that Work Permit until its completion of the one-year period. So if, for example they had taken it out in January for a period of 12 months, then if the primary employment person lost the job in March, they would be entitled to continue for a further nine months as the breadwinner for the family, whilst the spouse tried to find the alternative employment. If they were within the last five months – so it was now into July/August – of that 12-month exemption, then we would give them a six-month period, again to allow the family the opportunity to put their house in order and either find alternative employment or have an income whilst they look at their future.

So we have attempted to get the balance right. We do believe that it is a fairer system than the 1975, and indeed my good friend from Ramsey, Mr Singer raised this very point at the Second Reading, to try and make sure that we were not disadvantaging families who got the burden of having lost the employer and then having a difficulty with the legislation as well.

I beg to move.

**The Speaker:** I put the motion that clause 9 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 10.

**Mr Shimmin:** This clause disapplies clauses 7 and 9 in any case where a person has been convicted of an offence and sentenced anywhere in the world to a term of custody, where the conviction is not spent or is otherwise required to have disclosed under the Rehabilitation of Offenders Act 2001.

Mr Speaker, this is a new clause and we believe appropriate, and I look to the House for support. (**Mr Cretney:** Hear, hear.) I beg to move it stand part of the Bill.

**The Speaker:** Mr Quayle.

**Mr Quayle:** Thank you, Mr Speaker.

I beg to second and reserve my remarks.

**The Speaker:** I put the question that clause 10 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 11, please.

**Mr Shimmin:** This clause empowers the Department to revoke a Work Permit in certain circumstances.

Subsection (1) provides the Department may revoke a Work Permit, if it considers that the circumstances that justified the grant or renewal of the permit have changed.

The circumstances for revocation are to be subject of regulations which we will come to in clause 23.

Subsection (2) provides the Department may revoke a Work Permit held by a person referred to in clause 10, on the grounds of criminal records, where the sentence in question was passed since the permit was granted or was last renewed or the Department was unaware of the sentence when the permit was granted or last renewed.

I beg to move clause 11 stand part of the Bill.

**The Speaker:** Mr Quayle.

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

**The Speaker:** Mr Karran.

**Mr Karran:** Can the Shirveishagh just explain, if say there has been a deception as far as the previous clause is concerned, as far as the revocation of a Work Permit: once he is given the Isle of Man status, is there any way of taking away that Isle of Man Worker status, once he is given it, if there has been a deliberate fraud as far as criminal records are concerned?

I am very keen on the Rehabilitation of Offenders Bill and the fact that our own people were at a total disadvantage and it took us years to get them actually to do something about it.

But I would be interested to know where it talks about the withdrawing of the Work Permit. If they have been given the Isle of Man status and it comes to light that they have been fraudulent, five years later down the road whether there is any action within this legislation, in order to nullify the deception of a fraud as far as his Department is concerned?

**The Speaker:** Mover to reply.

**Mr Shimmin:** Thank you, Mr Speaker.

Deception is a ground for revocation. With the Member's permission, I will clarify this in Third Reading, (*Interjection by Mr Karran*) because I understand the point that he is making, that if we were not to discover until some time after they had got their five years' residency and become therefore a *bona fide* Isle of Man Worker, and that was born by a level of fraud in the application, I cannot give a categorical assurance at this stage. Therefore, with the permission of the House, I will look into that for Third Reading and come back to the Hon. Member separately, to make sure that I have understood the question correctly.

So with that rider, I would like to move the clause stand part of the Bill.

**The Speaker:** I put the question that clause 11 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 12.

**Mr Shimmin:** Clause 12 provides for the Department to have regard to certain criteria when making a decision to grant or renew a Work Permit.

Subsection (1) provides the Department may refuse to grant or renew a Work Permit held by a person referred to in clause 10, which deals with criminality.

Subsection (2) provides that when considering whether to grant, renew or revoke a Work Permit or impose a condition in a permit, the Department must have regard to certain matters and may have regard to certain other matters which will be prescribed by regulations.

Subsection (3) contains a wide list of matters which may be prescribed by regulations for the purposes of subsection (2). The powers are wider than in the 1975 Act, and in particular, explicitly include some matters which are concerned with the wider social considerations of the decision as to

whether or not a permit should be granted – for example, the ability of the person concerned and any relevant person to speak English – and which might be considered as not directly relevant to employment issues.

There are also explicit powers to take into account any ‘relevant person’, which is defined in subsection (4). That definition in subsection (4) says that ‘relevant person’ is a term used in subsection (3):

‘any person living with, or likely to live with, the person concerned as a member of his or her family or household.’

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

**The Speaker:** Mr Quayle.

**Mr Quayle:** Thank you, Mr Speaker.

I beg to second and reserve my remarks.

**The Speaker:** I call Mr Karran.

Can I just draw the House’s attention, just for one moment, to a misprint that the drafter has brought to our attention. Under amendment number 8 on page 7, it should read ‘subsection (3A)’ and not ‘subsection (2A)’ – simply a misprint, if the House will take that into account.

Mr Karran.

**Mr Karran:** Thank you, Vainstyr Loayreyder.

Talking to the clause to start off with first, the issue is, again, when we are doing renewals, my concern is that as again – and I am not being patronising, it is well meaning – how do you enforce an objection, as far as a Work Permit is concerned, for its renewal, by a legitimate Isle of Man Worker, if they do not know the person is on a Work Permit? This is where the underbelly as far as the problem is, without that sort of register is concerned, and the general public known. We were in new times... There is only me and David Cretney, the Hon. Member for South Douglas, and Allan Bell that were here when employment opportunities were a *major* problem.

I do think that the issue needs to be looked at as far as the public register is concerned, because I personally feel... And I am sorry, the Work Permit Committee may know lots of things, but they will not know everything as far as the application of a renewal of a Work Permit is concerned. Mr Quirk, the Hon. Member for Onchan might be happy enough with that, but there are a lot of people who are not just coming to me – surely people have made representation to other Members about the issue of a Work Permit, where they felt that they were an Isle of Man Worker and could have done the job.

I just feel the reason that there is not the problem there at the present time, is the lack of transparency as far as objecting to renewals and Work Permits is concerned. I totally disagree with the Minister: whether I live on a planet to him, I do not know, or whether he lives on a different planet to me and the people who talk to me –

**Mr Watterson:** Is that not the same thing?

**Mr Karran:** – outside this Hon. House, is an issue where obviously we are going to be at our... I just think that this is why the issue of a public register on clause 12 is so important.

I put this amendment down... I would hate to see anybody not getting medical intervention that they need on our Island. It is one of the greatest achievements that have been made for humanity is a National Health Service.

But what I believe is that this amendment to clause 12 will add to discourage employers wanting to take on persons who need Work Permits.

We have heard today from the Shirveishagh son Slaynt, the Minister for Health, about his limited finances. We cannot have parity with the UK on cancer drugs, we cannot have... There is a dispute, whether he is right or whether the Hon. Members for Ramsey and North Douglas are right, as far as A and E is concerned, over the issue of the speed and the acceptable levels, as far as that is concerned.

We are in pressing times. This primarily in my opinion should be seen as a way of discouraging employers wanting to take on people on Work Permits, in order to maximise the Work Permits issue to be to a minimum.

I think that it is not unreasonable for us to put this into the provision that they have to have appropriate medical cover as far as that is concerned – medical insurance. Yes, I want this Island to be as buoyant as the mover, as far as that issue is concerned. We want to get as many employment opportunities here.

But I think this would be one way of... Two things: one way of bringing in extra income for the Department of Health; the second thing it would do is bring in... it would discourage employers willy-nilly, always looking to bringing in people in from across, if they can get away with it, because this would be a fiscal liability.

The second point is, it might be rather ironic that I am moving it, I want some sort of standards as far as the English language is concerned, (*Laughter*) with my record as far as when Manx was *persona non grata* and totally unacceptable in this Chamber and in another place, where what we have done fiscally to try and promote the language over the last couple of decades... The situation is I want an inclusive society, and one of the reasons why we were so keen on the issue, if you could not do anything for the 60% that were facing pre-school education that were going to get nothing, the issue was that what we wanted to do, and the specific areas, where we have a big immigrant community, or whatever you want to call them, where English is their second language, we had no pre-school provision. Not a vote-winner in Onchan –

**Mrs Cannell:** We haven't got any now.

**Mr Karran:** – but the point is I believe that English... If we do not address that issue of forcing people to be able to communicate in English, the divides will happen.

I have not spoken to this Chief Constable, but the previous Chief Constable has expressed concerns about certain areas in Douglas where English is not the majority language, and what we have got to realise is that one of the sacred things, not just like the health service, but law and order, this is actually important, that we need to force people to make sure that we do not end up with ghettoisation. Snobbism is a bad thing, Vainstyr Loayreyder but inverse snobbism is actually more corrosive and dangerous, especially if people feel that they are not part of society.

So I believe that it is not unreasonable that we put a priority, that where we have got people coming to this Island, that we need to make sure that English has to be encouraged, and there has to be some sort of commitment to actually learning the language that basically the majority of people – all people – can understand in this country, and the few of us who can speak the native tongue to a limited or a fluent basis would recognise that.

So I hope Hon. Members will support these two important facets: one to create the issue of discouraging wherever possible, employers to take on people by having to find health insurance; it is a way of creating an income for the health services; and the English part of it, whilst my credentials as far as the Manx language is second to none in Tynwald, the fact is that I do believe this emphasis, because I think it is absolutely absurd in the UK, where you can have people there 30 or 40 years resident in the UK and cannot speak English, because all that is is a declaration of abuse, misinformation and mistrust.

I think that this amendment should be supported:

*Amendments to clause 12*

*Page 15, after line 39, insert the following paragraph —*

*'(oa) the provision by the employer, in the case of an employee who is not resident in the Island, of appropriate medical insurance for the employee and any dependant accompanying the employee;'*

*Page 16, after line 2, insert —*

*'(2A) For the purposes of any requirement imposed under subsection (3)(p)<sup>1</sup> the Department may —*

*(a) prescribe the information that the applicant must provide in order to satisfy the requirement;*  
*(b) make arrangements for the person concerned and any relevant person to be examined as to that person's ability to speak English; and*  
*(c) prescribe a fee to be paid by a person examined under arrangements made by virtue of paragraph (b).*

*Nothing in this subsection limits the Department's powers under section 23(1).'*

<sup>1</sup> *This is a reference to the existing paragraph (3)(p) (which will be renumbered as (3)(q) if the preceding amendment is passed).*

**The Speaker:** Mrs Cannell.

**Mrs Cannell:** Thank you, Mr Speaker.

I will happily rise to my feet to actually second this particular amendment, because I think there is a lot of common sense in it. Now, I hope the Minister is not going to say that he is not happy with the wording of it, because I think the wording is quite simply put and —

**The Speaker:** Mrs Cannell, sorry to interrupt. Can you just clarify for the House, which of the two amendments to clause 12 you are seconding and speaking to?

**Mr Karran:** Both.

**Mrs Cannell:** Sorry, Mr Speaker, I am seconding both of them, quite frankly, because it is all in relation to the one clause which we are presently considering. So there are two parts to it. There is the part after line 39 and there is also the second part of it.

Now, the first part of it requires an employer who is wanting to engage somebody who requires a Work Permit to also give a guarantee that that person so to be engaged and get the Work Permit is going to be covered by medical insurance. I think that is a good thing. There might be cries of, 'Well, that's unfair because we haven't applied that kind of rule before.' Well no, we haven't, but this is new law that we are considering here, and it will save the Department of Health an awful lot of money in going forward.

So I think that is a good thing that they have medical insurance, and I think any good employer worth their salt, if they want to bring somebody in because we have not got the person here so required and so qualified, that they would in fact have some kind of provision or the individual themselves might have some kind of provision. Nevertheless, I think it is a sensible way to go.

When you look at clause 12, and you look down to subsection (3)(n), there is a requirement in the Bill, and it says:

*'the state of health of the person concerned and any relevant person...'*

So that then brings me on to the second part of the amendment, if you like, because the second part of the amendment does say that the Department prescribes the information the applicant must provide in order to satisfy the requirements, and makes arrangements for the person concerned and

any relevant person to be examined as to that person's ability to speak English. So in moving onto that, but before moving away from the health, the Bill says 'the state of the health of the person concerned and any relevant person'. Now, how can you judge that without first of all putting them through a health screening test? The cost of that, I would imagine, is going to fall on Government, if we are going to have to health screen individuals, but then not being a nation on our own, and being part of the United Kingdom in terms of these matters, I would have thought anybody comes through the United Kingdom... I am talking about a foreign national, for example, coming through from another country into the United Kingdom, provided they have been screened there, we will automatically accept them here, which is not always a wise thing to do. Recent history will confirm that in fact, when we have done that, we have come a cropper once or twice or three times over the last decade.

So there is a requirement in the Bill that the person has to prove that they are in good health. I would have thought as a caveat to that, and to strengthen that provision, that they need to have medical insurance in place. They could be harbouring all sorts of things that they are not aware yet, for instance diabetes. You can harbour diabetes for about eight or ten years before it actually becomes a health issue and you are diagnosed with it. There are lots of other conditions. So I think that that is a good thing to do.

Looking down a bit further on (p), still on page 15, the requirement in the Bill is that:

'the ability of the person concerned and any relevant person speak English...'

But there is no requirement for them to be able to satisfy that they can speak appropriate English.

If you have a foreign national coming to the Isle of Man, who wants to go for nationalisation, for example, in the Isle of Man, they have to sit and take examinations to prove that they understand reading of English, the interpretation of English and the good speaking English, before their nationalisation is accepted – (**A Member:** Naturalisation.) naturalisation is accepted as a person in this country or the United Kingdom.

So I think that the second amendment, in part (b) of the amendment, it says:

'make arrangements for the person concerned and any relevant person to be examined as to that person's ability to speak English...'

I do not see why we should not do that, if we are talking about bringing foreign nationals in. You turn over the page and part (c) of the amendment says:

'prescribe a fee to be paid by a person examined under arrangements made by virtue of paragraph (b).'

So Mr Karran, the Hon. Member for Onchan is actually putting the provision there to be able to make a charge to cover costs.

It is all very sensible, what he is actually suggesting, and I really do consider that the House should support it.

Thank you, Mr Speaker.

**The Speaker:** Mr Gawne.

**Mr Gawne:** Gura mie eu, Loayreyder.

Just in relation to this, particularly the item in relation to speaking English, I think what I would absolutely agree with the Hon. Member for Onchan on is that it is essential for people who are living and working in the Isle of Man, if they are here for some considerable time to be able to speak English; but equally I would not want us to become or for us to appear to be being xenophobic on this, and I am sure that was not the Hon. Member's intention. (**Mr Karran:** No.) I think there is a really positive aspect to a multi-lingual society, and I think multi-cultural society, as well, provided

that we do make sure that people can communicate in the majority language of the country, which obviously in this case is English.

The one point, though, I would raise, is that there are international businesses operating on the Isle of Man. There may well be a case for someone who is a fluent Russian and Chinese speaker to be employed in the Isle of Man doing a particular piece of translation, who perhaps does not actually need to speak any English at all. Perhaps it is a short-term Work Permit and it may not be necessary for that person to be completely fluent in English. It is an unlikely scenario, but it is a possibility (*Interjection*) and I do hope that if we are looking at this, that there is enough flexibility that would allow for companies that needed to employ people like that to be able to do so.

**The Speaker:** Mr Shimmin.

**Mr Shimmin:** Sorry, is this winding up?

**The Speaker:** Do you wish to –

**Mr Shimmin:** No, Mr Speaker.

**The Speaker:** – speak to the amendment? (**Mr Shimmin:** No.)

Does any other Member wish to speak, either on the motion or on the amendment? In that case, I call the mover to reply – (**Mr Karran:** Ah – !) the mover of the amendment to reply.

**Mr Karran:** Yes, absolutely.

I would have liked to have the rationale and to have heard the points so that we could have had a balanced debate in this House, as we have seen 2 to 22, but the Minister has taken the liberty not to talk about the amendment and what his concerns are, which would have made it a far more balanced input, as far as that is concerned.

I think the point is that I find myself embarrassed having to say this, because the situation is that, as the Member for East Douglas says, it horrifies me to even be talking about idea as far as the health service is concerned. But I do feel that the whole idea of this amendment is to try and discourage employers, to do that extra vigilance to try and find an Isle of Man Worker, and I think if they had to have another liability, the likes of health care, it would make them think. You have only got to be in this office late at night, after hours when the office is shut, to see the number of people who have difficulty in communicating in English who obviously have come from somewhere else. I think it is great that young people travel about.

My concern is that, whilst I might be living in a different world to the mover, the issue of little pockets of areas where English is not the first language is growing.

I have not had anybody recently onto me who – somehow, I am the only one that gets it in here – where we have had horrendous problems of people having difficulty with their minimum wage, with their accommodation being tied up with their work, and I am sure there must be other Members than me that have had that experience. If they have the issue of the language and the communication problem, the exploitation actually grows. (**Mrs Cannell:** Absolutely.)

Now, the points to the Shirveishagh, Minister Gawne, to be honest with you, he is right. There are cases in the gaming industry where Cantonese... the likes of people wanting Cantonese, Russian, the Far East gaming industry is phenomenal and more likely the long-term sustainability of the gaming industry on this Island, allowing for what the UK does with its initiatives. The situation would be that obviously, short term – people who are only here for the short-term – hopefully this would not affect, but it would affect people long term.

The fact is that it is not acceptable that we have people who are working in our employ, in this Island who cannot understand English. What happens to health and safety? What happens to

employment legislation? We are creating an underclass. The inverted snobbism of ending up being an exclusive society, where the individuals...

So I personally feel that on the English side alone, that is so important. It is so important for law and order, because if we end up with streets where English is not the first language, you end up with the cultures of these places that are not on the same lines of going through the law enforcement agencies, as far as that is concerned.

Maybe that is an issue that is premature at the moment, but it is an issue that we are going to have to address. I feel that this House should be addressing the issue because how can these people be safe if they cannot speak a reasonable level of English? How do we protect them from being exploited? There must be more than one. I have not actually asked my colleague, the leader of the Liberal Party, but the fact is I have had a number of occasions over the years where people have been tied into horrific accommodation with their Work Permits, and they have had large chunks of their money off them for substandard accommodation.

So I think Hon. Members need to think about that. The issue over the health side, I believe that we are in a different environment. We are going into a different environment, and whilst I have had great situation, very polite, very nice people when we have been clearing, where the cleaners have been cleaning our offices at night, the reality is there is something bad about the situation where we cannot have Isle of Man Workers that are supposed to be on the dole doing those jobs. I believe that it would encourage employers if they had to pay the health care costs of that, it would make them think – because they are not really aiming at the top end, what Mr Gawne is aiming at, the translators on big bucks, on big money. What I am talking about is the underclass – the underclass of people on minimum wage, who really cannot live here on the wages or Isle of Man Workers will not put up with the wages, will not put up with the conditions, and I think this needs to be put into the legislation.

I so move.

**The Speaker:** Mover to reply.

**Mr Shimmin:** Thank you, Mr Speaker.

I think it is unfortunate, some of the language the Hon. Member for Onchan uses. I would prefer to *encourage* employers, rather than the party line, which seems to refer on four occasions that his intent is to *discourage* employers. These are the people who we build our economy and jobs around. Therefore, this legislation is to try and *encourage* lawyers.

He then goes on to a term which I find offensive, but I understand what he means when he refers to an 'underclass'. At a level where we are trying to drive what he talks of as an inclusive society, there are many people in our community of a whole range of qualifications and qualities and skills, but I think the fundamental of what he is talking about, for those people who are coming in to do some of those lower paid jobs, he has part of the answer himself: people approach him and they say they felt they could have done that job. Well, why aren't they? The reality is that employers do not always want to 'get away with it'. What they want is a fair day's work for a fair day's pay. Unfortunately, the very people that Mr Karran refers to complain to him that they felt they could have done the job have got to step up.

It has been said previously about the differentiation between those who cannot work and those who will not work. Those who cannot work, I think everybody in this House has enormous sympathy and empathy for and we have to do more. But for those who will not work or consider it to be below them to take some of these jobs, which does force employers to advertise, to find nobody suitable on the Isle of Man, therefore they do bring in these people, normally from Eastern Europe, who come into our community.

But I want to look at the two amendments in particular. The first one, I would urge all Hon. Member to read it, because the way it has been drafted – and I am not blaming the drafter, because they only go on the information given by the Member – it says:

'the provision by the employer, in the case of an employee who is not resident in the Island...

of medical insurance etc and dependants. It is only applying to employees who are not resident on the Island. Therefore, temporary workers who are likely to be non-resident are already exempt under the Work Permit legislation. But if they are not resident, they are not likely to be on the Island very long and if they are having health issues, then they are going to be wanting to go back to where their normal place of residence is.

So we could work with the Hon. Member on some of this, but we have already included the health element, and if anybody breaches the instructions or the forms when they fill them in, if they are dishonest on those forms, then we can revoke the permit. The idea of health screening being bureaucratic with the free movement of people, it would be a massive disincentive, and rather than saving – as the Hon. Member for East Douglas talks about, an awful lot of money saved – the reality is that people would be moving into our Island, we would have a whole process that we would have to put in place, which would interfere with the waiting lists, the cost to Health and everybody else. If you are then going to try and talk about insurance, then, what else are we going to do when somebody comes to the Isle of Man? Is it just when they are working and how do we enforce that?

Again, most of the people the Hon. Member for Onchan is talking about are those who are on the dark side, the grey side where they do not actually want to conform to our rules and regulations, either as an employer or as an employee. If people are going through the process, the process is there, that people can come in and contribute to our Island. That is what we require: we require thousands of people to build our economy whilst being over here, and that is by the employers getting people who can do the job.

I am sorry, but the Hon. Member for Onchan forces me to do this. What we have attempted to put in this legislation is a balance between those who will say, from an unemployment point of view, possibly do away with the Work Permits, and the Hon. Member for Onchan who seems to think Manx workers should and can do all these jobs. We have attempted to get it in the middle.

But I am *really* frustrated about the number of people who will not work on our Island or will not work of a quality and level that is acceptable to employers, and they need those workers to actually be working at a capacity to make the business successful.

The Hon. Member for Rushen, Mr Gawne talks about the international business – absolutely. But it is fairly obvious that those persons who can learn Russian, Chinese or other languages will not be the problem with picking up the language.

Like some of you in this House, my son currently works in Spain. Which type of culture and persons are the worst in the world for trying to learn foreign languages? They are probably the British, and therefore when you look at that, he is attempting to learn Catalan and Spanish, whilst he is out there. For many of the people coming over to the Isle of Man, the main purpose of wanting to live and work in the Isle of Man is actually to learn the language.

And I agree entirely with Mrs Cannell, Mr Karran and everybody else, that the multi-cultural community we have, they do have to engage and build in, and language is a fundamental part of that – which is why we put in those parts of the legislation.

So I will be opposing the first part of Mr Karran's or the first amendment of Mr Karran because I think it is totally misleading to say 'an employee who is not resident in the Island'. I think he has missed the mark of who he should be actually referring to, and the bureaucracy is a nightmare.

But the second one, and I will quote, it says:

'For the purposes of any requirement imposed under subsection (3)(p), the Department may...'

We will support that. It is saying the Department *may* take into account and prescribe these things. We have already said in our legislation that English language is something that will be a consideration. What Mr Karran is doing is a benefit, that it gives us an express power to prescribe a fee, if we were to make arrangements for examining the English language ability, and we would then

have to decide how we are going to do it. We could actually just put it on part of the form. Therefore, if they mislead or misrepresent on the form, that would be liable to revocation.

So initially, the Department will choose a least bureaucratic option. We are supportive of the second part, but not please the first.

I beg to move.

**The Speaker:** Hon. Members, I put the motion on clause 12, to which there are two amendments in the name of Mr Karran.

I put the first amendment – that is amendment number 7 on page 7 of the Order Paper. Those in favour, please say aye; against, no. The noes have it.

*A division was called for and electronic voting resulted as follows:*

**FOR**

Mr Karran  
Mrs Beecroft  
Mrs Cannell  
Mr Thomas

**AGAINST**

Mr Quirk  
Mr Ronan  
Mr Crookall  
Mr Anderson  
Mr Bell  
Mr Singer  
Mr Quayle  
Mr Teare  
Mr Cannan  
Mr Cregeen  
Mr Henderson  
Mr Robertshaw  
Mr Shimmin  
Mr Cretney  
Mr Watterson  
Mr Skelly  
Mr Gawne  
The Speaker

**The Speaker:** With 4 votes for, 18 against, that amendment therefore fails to carry.

The amendment number 8 on page 7 of Mr Karran: Those in favour, please say aye; against, no. The ayes have it.

*A division was called for and electronic voting resulted as follows:*

**FOR**

Mr Quirk  
Mr Karran  
Mr Ronan  
Mr Crookall  
Mr Anderson  
Mr Bell  
Mr Singer  
Mr Quayle  
Mr Teare  
Mr Cannan  
Mr Cregeen  
Mrs Beecroft  
Mrs Cannell  
Mr Robertshaw  
Mr Shimmin  
Mr Thomas  
Mr Cretney  
Mr Watterson  
Mr Skelly

**AGAINST**

Mr Henderson

Mr Gawne  
The Speaker

**The Speaker:** With 21 votes for, 1 vote against, the amendment therefore carries.

Voting now on clause 12. Clause 12 as amended: Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We turn now to clause 13.

**Mr Shimmin:** Thank you, Mr Speaker.

This clause deals with the constitution of the Work Permit Appeal Tribunal.

Subsection (1) provides for the continuation of the Tribunal.

Subsection (2) specifies the constitution of the Tribunal. It is to consist of a chairman and two other members, one of whom is to be drawn from a panel of persons representing employers and self-employed persons, and the other from a panel representing employees. The appointments are to be made by the Appointments Commission in accordance with the Tribunals Act 2006.

New provision is also made for a panel of deputy chairpersons. Subsection (3) specifies that where the chairperson is absent or unable to act, his or her place is to be taken by a deputy drawn from the panel of deputies in accordance with the regulations made under the Tribunals Act 2006.

Subsection (4) specifies that one member is to be drawn from each of the panels referred to in subsection (2) in accordance with regulations made under the Tribunals Act 2006.

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

**The Speaker:** Mr Quayle.

**Mr Quayle:** Thank you, Mr Speaker.

I beg to second and reserve my remarks.

**The Speaker:** I put the motion that clause 13 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 14.

**Mr Shimmin:** This clause provides for appeals against decisions to the Work Permit Appeal Tribunal and the High Court.

Subsection (1) specifies the decisions against which an appeal may be brought under this clause. They are a decision to grant, refuse or revoke a Work Permit or to include a condition in a Work Permit.

Subsection (2) provides a right of appeal to the Tribunal against a decision specified in subsection (1) by a person specified in subsection (3). The appeal is to be in accordance with rules made under the Tribunals Act 2006.

Subsection (3) defines the persons that have a right of appeal. They are: (a) where a permit is granted, any person who applied for the employment, subject to one exception at subsection (4); (b) where a permit is refused or revoked, or is granted subject to a condition, the applicant or holder and their employer or prospective employer.

Subsection (4) deals with the case of a person who did not apply for employment because it was insufficiently advertised. Where the Tribunal considers that a person would have had a reasonable expectation of obtaining the employment, it may treat that person as having applied for the employment and thus able to make an appeal.

Subsection (5) provides that where an appeal is made, the Tribunal must either allow or dismiss the appeal. It must allow the appeal where it considers that the Department, in reaching the decision, made a mistake in law or based its decision on any incorrect material fact or exercised its discretion in an unreasonable manner.

Subsection (6) provides that where the Tribunal allows an appeal, it is to remit the application to the Department with its reasons for the decision and the Department must reconsider the application.

Subsection (7) provides that, except as provided in subsection (8), the decision of the Tribunal on an appeal is final.

Subsection (8) allows an appeal to the High Court from a decision of the Tribunal on a point of law only.

Subsection (9) provides that rules made under the Tribunals Act 2006 may require an appellant to pay a fee to make an appeal and provide for some or all of the fee to be refunded in specified circumstances.

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

**The Speaker:** Mr Quayle.

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

**The Speaker:** Mr Thomas.

**Mr Thomas:** Thank you, Mr Speaker.

Just three points which I was able to discuss with the Department already.

The first one is about the Article 13 under the Convention on Human Rights. I wanted the Minister to comment on whether this clause actually provides for the right for an effective remedy before national authorities for violations of rights under the Convention. Can the Minister confirm that the person should have and would have an adequate redress in the new legislation and there is not actually circularity of the Work Permit Committee acting on the authority of the Minister, having its decision reviewed by a Work Permit Tribunal who can only send back their findings to the Minister who may or may not agree with the initial decision.

The second point is about the Tribunal rules. Would the Minister agree with me – and this is particularly relevant in the light of the discussion we have had today about disclosure and registers – that the Tribunal rules, regulations and procedures should be considered to make sure that there is actually adequate protection for a person who is aggrieved by a decision of the Tribunal, that the process whereby the applicant has selected the person concerned is not actually a fair process. So would he agree with me that we perhaps need to investigate the action of distance in application of rules?

The third point is that, in the light of the court case, *Thomas v Department of Education and others*, 9th January 2009, would the Minister confirm that *all* decisions of his Department means actually final decisions and not interim decisions of the Tribunal?

**The Speaker:** Mr Quayle.

**Mr Quayle:** On a point of order, can I just say there might be a conflict of interest with the previous speaker in his comments on this.

**The Speaker:** I shall take advice, Hon. Member.

*The Speaker consulted the Secretary of the House.*

**The Speaker:** In relation to any court case that may have been referred to, I would advise you to make reference to any conflict of interest that there might be – whether there is or whether there is not.

**Mr Thomas:** There is not any conflict of interest, Mr Speaker.

**The Speaker:** Thank you, Hon. Member.  
Mr Quirk.

**Mr Quirk:** Thank you, Mr Speaker.

Just a small point regarding there 'may be required to pay an application fee': there is just some ambiguity there, whether, if an appeal takes place, that somebody will make an adjudication on what basis. I just wonder whether the Minister could flush that out a little bit.

And then the second bit on (b) there, is where it may be refunded – I just wonder what the criteria... to win the case or if it does have merits, or something like that. I am not quite sure, or is it just to stop frivolous appeals?

**The Speaker:** I call on the mover to reply, Mr Shimmin.

**Mr Shimmin:** Thank you and I am very grateful to my colleague in West Douglas for the interest he has shown in this, and the time he has spent in the Department.

In regards to the first point he raised about Article 13, I can only say to the House that the Attorney General's Chambers have confirmed that the Act complies with the Convention. The ultimate area open to an individual is a petition of dolence would be possible, were they to be aggrieved.

The second part with regard to the Tribunal rules, that is a matter where the Tribunal rules are set outside of my Department. Effectively they are monitoring what we do. My Department will work with the Chief Secretary's Office in order to make sure that when they are publicised, they have adequate protection.

With regard to the final point, the Hon. Member for West Douglas talked about, I can confirm the High Court gave very good reasons why interim decisions should not be appealed. That is in the judgment available for anybody who wishes to see it.

With regards to Mr Quirk, Member for Onchan, it is all about the opportunity of having the flexibility in primary legislation and the regulations that go underneath it. We are concerned not just about vexatious opportunities, but also fairness. Therefore it would appear to be a reasonable attempt to avoid vexatious applications that you may charge a fee. However, if that person has evidenced that they were right, then certainly that would be refunded. But we will look at those cases as we move forward, once we have got primary legislation in place.

I beg to move.

**The Speaker:** I put the motion that clause 14 do stand part of the Bill. Those in favour, please say aye; against, no., say aye; against, no. The ayes have it. The ayes have it.

Clause 15, please.

**Mr Shimmin:** Thank you, Mr Speaker.

This clause sets out various offences and the penalties for commission of such offences.

Subsection (1) makes it an offence to be employed or to employ a person in breach of clause 6, which places restrictions on the employment of non-Isle of Man Workers. The offence carries a maximum of three months' custody or a fine of £5,000 or both. The maximum fine in the 1975 Act is £2,500.

Subsection (2) provides an exception to subsection (1) in the case where the accused believed that the person concerned – that is, the person employed – was an Isle of Man Worker and took all reasonable steps to verify the accuracy of that belief.

Subsection (3) makes an offence to fail to comply with conditions attached to an exemption or to a Work Permit. The offence carries a maximum fine of £1,000.

Subsection (4) provides it is an offence to lie or deceive a person in the circumstances specified in subsection (5), or to pretend to be the person named in a Work Permit or to tell an employer falsely that a Work Permit is in force or unnecessary for the employment concerned.

The offence carries a maximum of six months' custody or a fine of £7,500 or both. The present maximum fine under the 1975 Act for these aggravated offences is £5,000.

Subsection (5) specifies the two circumstances referred to in subsection (4)(a). They are for the purpose of obtaining a Work Permit or in response to a question as to a one's Work Permit status.

Subsection (6) makes an offence to intensely delay or obstruct an inspector in the course of his or her duties or to withhold information when required to provide it. The offence carries a maximum fine of £7,500, compared with the present maximum fine of £5,000.

Subsection (7)(a) enables regulations which impose an obligation to make contravention of the obligation of an offence, with a maximum fine of £1,000. Provision is also made for a fixed penalty to be imposed for any such contravention.

I beg to move clause 15 stand part of the Bill.

**The Speaker:** Mr Quayle.

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

**The Speaker:** Mrs Cannell.

**Mrs Cannell:** Thank you, Mr Speaker.

Just a small query really. The legislation as worded seems very geared towards employer/employee but what happens in the circumstances of an individual applying for a self-employed Work Permit, which I understand still happens – and it did happen. In fact, when I first came to the Isle of Man in 1977, I applied for a self-employed Work Permit, and it would last for 12 months and then I would have to reapply again.

Will these same offences be applicable in that type of situation or are they merely geared towards employer *vis-à-vis* employee?

**The Speaker:** Mover to reply.

**Mr Shimmin:** Thank you.

With all of these issues, I am grateful for the Hon. Member's interest. See 'Interpretation' in clause 3, where 'employed' includes self-employed. So all of these offences would be exactly the same, were it to be in that category, as outlined by Mrs Cannell.

I beg to move.

**The Speaker:** I put the motion that clause 15 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 16.

**Mr Shimmin:** Thank you, Mr Speaker.

This clause contains further provisions concerning offences.

Subsection (1) provides that where an offence has been committed by a body corporate, a director, manager, secretary or other officer who is responsible for it shall be treated as having committed that offence and liable to be punished.

Subsection (2) provides that proceedings for an offence under the Act – see clause 15 – may only be brought by or with the consent of the Attorney General.

Subsection (3) provides that criminal proceedings may be brought within three months of the date on which the Attorney General had sufficient evidence to warrant proceedings, but subject to an overall limit of 12 months after the offence was committed.

May I actually say, Mr Speaker, that was something the Hon. Member for Onchan, Mr Karran, when he raised that issue before, I will have to look at that with regard to any offence in this section and how it applies to the example that he used. So I will revert back to that, if necessary, in Third Reading.

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

**The Speaker:** Mr Quayle.

**Mr Quayle:** Thank you, Mr Speaker.

I beg second and reserve my remarks.

**The Speaker:** I put the motion that clause 16 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 17.

**Mr Shimmin:** Thank you, Mr Speaker.

This clause enables a fixed penalties to be imposed for an offence of working or employing a person without a Work Permit or failing to comply with the condition of a Work Permit or exemption, as an alternative to prosecution.

Subsection (1) enables an inspector to serve a fixed penalty notice on a person believed to have committed or be committing an offence under clause 15(1) or (3) or, where applicable, regulations.

Subsection (2) provides that a person who pays the fixed penalty within 14 days of being given the notice cannot then be prosecuted for the offence.

Subsection (3) prevents any charge being brought for the offence during that period of 14 days where a fixed penalty has been imposed.

Subsection (4) provides for the amount of a fixed penalty to be specified in regulations. This is included in clause 23(1), subject to a maximum of £1,000 for an offence under clause 15(1) or £200 for an offence under clause 15(3) or regulations.

Subsection (5) provides for a fixed penalty to be paid to the Chief Registrar, who is to deal with it in the same way as a fine. That is to pay to the Treasury for general revenue.

Subsection (6) enables the fixed penalty to be paid by post.

Subsection (7) defines properly addressed for this purpose.

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

**The Speaker:** Mr Quayle.

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

**The Speaker:** Mr Singer.

**Mr Singer:** I do not object to this clause, if it is a case of a one-off, maybe a mistake or whatever. What does worry me is that this becomes, for maybe a large employer who does not get a necessary Work Permit, easier for them to say, 'Oh well, I will pay the fine.' At what stage does the inspector say, 'Enough is enough and we are going to prosecute'? Because on the other side of the coin, we have had many occasions in the past – and I remember this one, when I was in the Department – where the Department has gone to the Attorney General on a matter, and the Attorney General has said it is not in the public interest that people get away with it.

So could I ask the Minister, where is the balance when you have finished with a fixed fine and you go for prosecution?

**The Speaker:** Mr Karran.

**Mr Karran:** Vainstyr Loayreyder, I just find that I am deeply concerned about this, that we are going to end up with a situation where the law is going to be different if you have got deep enough pockets to be able to afford the on-the-spot fines. I think this is a concern that I think we have.

I understand – we all understand – the importance that we have got to get that economy bouncing again. There is no doubt about that, but there are certain fundamental principles in a parliamentary democracy that you have to have, and I am afraid that the idea that you can have spot fines and... You just bring it onto yourselves, hon. mover, as far as what people outside think!

What will happen will be that people will just pay the on-the-spot fine, and it will undermine the whole principle of the legislation.

I have said, Vainstyr Loayreyder, I have no problems in losing in this House arguments when you are right; but I think the problem is when you win the vote and still lose the argument. I think you are going to have to do an awful lot of reassuring outside this House, that this will not mean that the big boys... a little 'Oops, we've been caught out, we put our hands up, we'll pay the fine.' I think that is going to be the problem.

The difficulty, as I appreciate, about employment opportunities and everything else, I do think that you need to reassure this House that we are not bringing in a situation where... And I have had representations about this issue. I do not know whether the Hon. Member for Ramsey has as well, but I have had representations about this being of deep concern in any channels, as far as our community is concerned.

**The Speaker:** Mr Shimmin to reply.

**Mr Shimmin:** Thank you, Mr Speaker.

Deep enough concern never to have raised the issue with myself. However, I would ask the Hon. Member to really rethink what he has just said. This is exactly attempting to achieve the very thing he is concerned about, because the Hon. Member for Ramsey was quite right: the Attorney General's Chambers in the past have determined not to prosecute, and therefore this is a clear direct attempt by my Department to have the control to make sure that when we find a breach in the Work Permit legislation, we will be able to do those fines, and if a business or employer then does it for a second time, we have the evidence that this is not a one-off that can be warned, this is a case that we can then get the Attorney General's to prosecute.

My Department are desperately keen to prosecute those who abuse the rules and regulations that everybody else complies with. I would urge the Hon. Member for Onchan to do us all a favour, but rather than encouraging people to be negative about this, this is one of the most important steps forward, to allow prosecution of those abusing the system. Yet somehow he sees it as the polar opposite of that.

This will actually allow my Department the ability to prosecute offenders and that will only be for the best interests of Isle of Man Workers and the people that we all represent. I am astonished that he chooses not to understand that.

Please support this and be clear that this is giving us what we often need, which is the teeth to actually do something, rather than be in the hands of the Attorney General's, who may have far more pressing areas that they consider important.

I beg to move.

**The Speaker:** I put the question that clause 17 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it.

*A division was called for and electronic voting resulted as follows:*

**FOR**

Mr Quirk  
Mr Ronan  
Mr Crookall  
Mr Anderson  
Mr Bell  
Mr Singer  
Mr Quayle  
Mr Teare  
Mr Cannan  
Mr Cregeen  
Mr Henderson  
Mrs Cannell  
Mr Robertshaw  
Mr Shimmin  
Mr Thomas  
Mr Cretney  
Mr Watterson  
Mr Skelly  
Mr Gawne  
The Speaker

**AGAINST**

Mr Karran  
Mrs Beecroft

**The Speaker:** Twenty votes for, two votes against, Hon. Members.

It is now the appropriate time for the lunchtime adjournment. When we return at 2.30, we shall resume at clause 18.

In the meantime, can I remind Hon. Members that the Department of Health has a presentation in the Barrool Suite on waiting lists at 1.30.

Thank you, Hon. Members.

*The House adjourned at 1.00 p.m.  
and resumed its sitting at 2.30 p.m.*

### **3.1. Control of Employment Bill 2013 – Consideration of clauses concluded**

**The Speaker:** On the adjournment, Hon. Members, we completed clause 17 of the Control of Employment Bill.

We turn to clause 18 and I call on the mover, Mr Shimmin.

**Mr Shimmin:** Thank you, Mr Speaker.

This clause deals with evidence in relation to offences.

Subsection (1) gives the Department power to serve a written notice on a person suspected of working in contravention of clause 6, requiring him or her within 14 days to satisfy the Department that he or she is an Isle of Man Worker. The corresponding period in the 1975 Act is 40 days.

Subsection (2) provides that where a person who has been served a notice under subsection (1) fails to satisfy the Department within 14 days that he or she is an Isle of Man Worker, the Department may issue a certificate which is to be taken as evidence that the person is not an Isle of Man Worker until the contrary is proved.

Subsection (3) provides that where a person or his or her employer is prosecuted for an offence under clause 15(1), evidence of payment of social security contributions, or of conviction for non-

payment, in respect of any employment is admissible to show that that person was engaged in that employment.

Subsection (4) provides that, for the purpose of clause 16(3), which deals with time limits for bringing proceedings, a certificate signed by or on behalf of the prosecutor and stating the date on which the relevant evidence came to his or her knowledge is to be taken as conclusive.

Subsection (5) provides that a certificate of the Chief Registrar as to payment or non-payment of a fixed penalty is evidence of whether or not it was paid.

Subsection (6) provides that the signature of a certificate under subsections (2), (4) or (5) does not have to be specifically proved.

I beg to move clause 18 stand part of the Bill.

**The Speaker:** Mr Quayle.

**Mr Quayle:** Thank you, Mr Speaker.

I beg to second and reserve my remarks.

**The Speaker:** I put that clause 18 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 19.

**Mr Shimmin:** Thank you, Mr Speaker.

This clause sets out the powers of inspectors to enforce the Bill. 'Inspectors' are defined by clause 2 as persons authorised by the Department to exercise those powers.

Subsection (1) provides for the powers in this clause to be exercised for the purpose of ascertaining whether there has been a contravention of the provisions listed.

Subsection (2) gives an inspector power of entry, and power to require the production of documents, including those kept on computer, and to ask questions.

Subsection (3) places an obligation on a person who is required by an inspector to produce documents or to answer questions to provide the information and to produce the documents.

Subsection (4) provides that a person cannot be required to incriminate himself or herself or his or her spouse or civil partner.

Subsection (5) requires an inspector exercising any power to produce evidence of his or her authority to do so if required.

I beg to move clause 19 become part of the Bill.

**The Speaker:** Mr Quayle.

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

**The Speaker:** I put the question that clause 19 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 20.

**Mr Shimmin:** Thank you, Mr Speaker.

This clause applies the provisions in the Bill to the Government.

Subsection (1) applies the Bill to the Government as if they were private persons.

Subsection (2) provides that the Government cannot be guilty of an offence under the Act.

I beg to move clause 20 stand part of the Bill.

**The Speaker:** Mr Quayle.

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

**The Speaker:** I put the question that clause 20 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 21.

**Mr Shimmin:** Thank you, Mr Speaker.

This clause enables the Bill to be applied to employment in territorial waters.

Subsection (1) enables the Council of Ministers to make an order applying the Bill, for specified purpose and with or without modifications, to employment in territorial waters – for example, such as on oil rigs. Such an order requires Tynwald approval.

Subsection (2) enables such an order to deal with the jurisdiction of courts or the tribunal in relation to employment in such waters.

I beg to move.

**The Speaker:** Mr Quayle.

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

**The Speaker:** I put the motion that clause 21 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 22.

**Mr Shimmin:** Thank you, Mr Speaker.

This clause allows the sharing of information relating to employment between various bodies for specified purposes.

Subsection (1) limits the coverage of the clause to information relating to persons undertaking or engaged in, or intending to undertake or be engaged in employment in the Island.

Subsection (2) as drafted, which was prior to the recent Transfer of Functions (Health and Social Care) Order 2014, enables (a) the Governor, insofar as he has functions under the Immigration Acts; (b) the Chief Constable; (c) the Treasury; (d) the Assessor of Income Tax; and (e) the Department of Social Care, to share with the Department information which is likely to be of use for control of employment purposes.

Subsection (3) provides that the Department may share with an authority mentioned in subsection (2) information relating to control of employment purposes if it is likely to be of use to the particular authority to carry out its particular functions.

Subsection (4) provides that the Isle of Man Office of Fair Trading may supply to the Department information concerning complaints received by that Office as to commercial activities in the Island which relate to the supply of goods and services to consumers in the Island if the information is likely to be of use for control of employment purposes.

Subsection (5) defines various terms used in this clause.

Subsection (6) provides for the interpretation of expressions used in subsection (4).

Subsection (7) overrides any restriction there may be on the purposes for which information may be disclosed or used.

I beg that clause 22 stand part of the Bill.

**The Speaker:** Mr Quayle.

**Mr Quayle:** Thank you, Mr Speaker.

I beg to second and reserve my remarks.

**The Speaker:** Mr Skelly.

**Mr Skelly:** Gura mie eu, Loayreyder.

The amendment is necessary, due to a Transfer of Functions (Health and Social Care) Order 2014 which has resulted in the merging of the Department of Social Care and the Department of Health. The particular function of the former Department of Social Care which is relevant to clause 22, that is benefits, has been taken over by Treasury, which is already covered in clause 22.

I now beg to move the amendments standing in my name:

*Amendment to clause 22*

*In clause 22(2) for paragraphs (c) to (e) substitute —*

*'(c) the Treasury; and*

*(d) the Assessor of Income Tax,'.*

*In clause 22(3) for 'in subsection (2)(a), (b), (c), (d) or (e)' substitute 'in subsection (2)(a), (b), (c) or (d)'*

**The Speaker:** Mr Ronan.

**Mr Ronan:** Thank you, Mr Speaker.

I beg to second and reserve my remarks.

**The Speaker:** Mr Shimmin?

I put first of all the amendments to clause 22 in the name of Mr Skelly. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 22, as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 23.

**Mr Shimmin:** Thank you, Mr Speaker.

This clause deals with regulations and orders under the Bill.

Subsection (1) provides the Department with power to make regulations prescribing anything which may be prescribed under the Bill, and in relation to the procedural and other matters listed.

Subsection (2) defines the term 'application' used in subsection (1).

Subsection (3) enables the Department by order to amend any provision of the Bill concerned with immigration which may be necessary as a result of changes to UK nationality or immigration legislation which are extended to the Island.

Subsection (4) provides that orders made under clauses 7(6) exemptions and 21(1) territorial waters and under subsection (3) of this clause require Tynwald approval.

Subsection (5) provides that regulations are subject to the annulment procedure, that is they must be laid before Tynwald as soon as possible after they are made, and if Tynwald, at the sitting at which they are laid or the next following sitting, decides that the Regulations should be annulled, they will cease to have effect.

Subsection (6)(a) provides that regulations or an order made under clause 7(6) may confer a discretion on the Department so that it can consider the particular circumstances of a case, rather than being limited to making black and white rules

Subsection (6)(b) gives the Department power to provide a right of appeal to the Tribunal under clause 14 in any such cases.

Subsection (6)(c) prohibits the Department from discriminating on the ground of sex when making orders and regulations.

I beg that clause 23 do stand part of the Bill.

**The Speaker:** Mr Quayle.

**Mr Quayle:** Thank you, Mr Speaker.

I beg to second and reserve my remarks.

**The Speaker:** I put the question that clause 23 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

New clause in the name of Mr Thomas.

**Mr Thomas:** Thank you, Mr Speaker.

There are two parts to my contribution: moving this new clause to establish and empower a new different Work Permit Committee; and secondly, providing a context – some observations about the existing Work Permit Committee whose creation would be effected if this clause was adopted.

The first point about the existing Work Permit Committee is that it is not established in statute now, although originally it was as the statutory Employment Committee of the former Board of Social Security. Instead, the Minister for Economic Development has delegated power to make decisions on Work Permits to the existing non-statutory Work Permit Committee, although most decisions are then delegated back to the Work Permit Committee Secretary under delegated authority.

Mr Speaker, Hon. Members, why have a committee set up administratively? There are potential issues with all these delegations, as has been suggested, in respect of a similarly constituted committee, the Planning Committee, and I suggest it would be better for the Minister, the Department and staff to make decisions themselves directly without the actual cost and potential trouble of delegating to a non-statutory part-time committee, which sub-delegates back to officers, the Minister and the Department. As we form new legislation, surely we should aim to minimise the potential for challenge in difficulty and cost.

Another alternative would be to empower a statutory Work Permit Committee to determine policy, to make regulations and to carry out the work, and the drafter has provided me with a draft of such a clause, which would be available to others. This is similar to the Legal Aid Committee, in terms of its powers; but there are issues with this. For instance, surely it is best to leave actual power and management with the Department.

So I propose a statutory advisory Work Permit Committee to monitor and review the implementation of policy, to develop and propose regulations for the granting of Work Permits to the Department, to oversee the Department's Work Permit processes and procedures and to deal with any complaints made about these processes and procedures.

Forming this statutory advisory Work Permit Committee would allow the existing arrangements to be made more efficient – i.e. officers would carry out the work according to the Department's policy, with policy and implementation overseen by this statutory advisory committee. There would be no more potentially sham delegations with *quasi* arm-length... [*Inaudible*] This type of Work Permit Committee is a committee which already has a parallel in the Department of Economic Development, the existing Minimum Wage Committee, which 'shall from time to time make recommendations as to the rate of the minimum wage to be prescribed'.

I beg to move and hope Hon. Members will support forming this Committee, which could meet from time to time to consider which Work Permit regulations should be brought forward, which Work Permit procedures are being used... sorry, *how* they are being used and how their use could be enhanced. In fact, to monitor, in respect of many of the issues raised this morning during the debate, as this Bill passes through us.

The Department would be left to manage and deliver the Work Permit regime with independent oversight from this committee, alongside that from Hon. Members within Government and in Tynwald.

I beg to move:

*New clause*

*Page 24, after line 14 insert the following clause —*

*'23A Work Permit Committee*

*(1) There is to be a Work Permit Committee consisting of 5 members appointed by the Appointments Commission.*

*(2) Of the 5 members —*

*(a) one is to be a member of Tynwald, who is to be the chairperson of the Committee;*

*(b) one is to be a person representative of the interests of employers in the Island;*

*(c) one is to be a person representative of the interests of employees in the Island; and*

*(d) two are to be persons who do not fall within any of the preceding paragraphs.*

*(3) The members are to be appointed for a term not exceeding 3 years and no member may serve more than 2 consecutive terms.*

*(4) The Appointments Commission must appoint one of the members to serve as vice-chairperson.*

*(5) At any sitting of the Committee —*

*(a) the chairperson or vice-chairperson is to preside; and*

*(b) at least two other members must be present.*

*(6) The functions of the Committee are —*

*(a) to monitor and review the implementation of policy with respect to the granting of work permits making recommendations to the Department when necessary;*

*(b) to develop and propose regulations for the granting of work permits to the Department; and*

*(c) to oversee the Department's work permit processes and procedures and deal with any complaints made about those processes and procedures.'*

**The Speaker:** Hon. Member, Mr Karran.

**Mr Karran:** I beg to second and reserve my remarks, if I can do on a new clause.

**The Speaker:** Hon. Members, we are in a debate in principle, the debate being that the new clause forms part of the Bill.

Does anyone wish to speak? Mr Quirk.

**Mr Quirk:** Thank you, Mr Speaker.

I do welcome the insertion of the new clause here. It gives, as the mover of this new clause has indicated, the committee probably a more wide-ranging view and supportive role to the Department. I am actually interested and mindful to support this particular insertion of this new clause, but, as I always do, will wait for the Minister to respond on that to see if there are any concerns in there.

But I do hope maybe Members can voice their views on this because the only bit I did have a concern was having a Member of Tynwald in there, maybe as the chairperson, a little bit, but, hey-ho, the other members are in there (*Laughter*) and they are from different organisations.

The only other one from Mr Thomas would be that the two persons do not fall into the category of both, because normally it has been an employed person and employee. I do not know where you would seek those from and I would be interested.

**The Speaker:** Hon. Member, Mr Shimmin.

**Mr Shimmin:** Just to say to the House that the Department will be opposing the introduction of this and therefore, if we are at the principles stage, that is just putting on record that we will be opposing the introduction of this new clause. I have some grounds that I will be putting forward, should it be getting to that stage of being formally moved.

**The Speaker:** Mr Karran.

**Mr Karran:** It is very disappointing that – speaking to the principles – the Minister, the mover, did not give the courtesy of the reasons why he is objecting to this. In fact, I think the time has come for us to –

**Mr Shimmin:** A point of clarification, please, Mr Speaker.

My apologies if I have been out of order. My thought was that we were only voting on the principle and therefore we were going to be going to the debate on the actual clause shortly.

**The Speaker:** If the vote on the principle falls, then, of course, there will be no vote on the detail. (Mr Karran: Absolutely.)

So that was the opportunity –

**Mr Karran:** Well, taking the point that the Minister did not realise that, then I am happy as far as it was done by a genuine misunderstanding. But it is important that if we are going to object from executive Government, as a parliamentary assembly we need to know the rationale for not supporting the principle for leave to introduce for the new clause (*Interjection*) being taken and that is why I think it is important.

People complain and people say about us in this House... just nodding whatever the Government says, and it is important that we know the reasons why for that. It was like the previous amendment that I put forward, where the situation is it would have been better to have been able to have him reply to that clause in the right way, as far as that issue is concerned.

We are now blinded to the rationale of why we should not support the Hon. Member for West Douglas's new clause to give the principle, for it to be debated in principle. I think, Hon. Members, we need to vote for the principle of giving them the right, so that at least it gives the Minister the rationale of why we should not support the Hon. Member for West Douglas having this put into primary law.

**The Speaker:** Hon. Members, with the leave of the House, I will give the Hon. Member, Mr Shimmin, the right to speak in the debate. I am satisfied it was a genuine misunderstanding that this was the opportunity to make the Department's case.

So, if the House is agreeable, (**Several Members:** Hear, hear.) I waive the Standing Order and allow the Minister to speak.

**Mr Shimmin:** Mr Speaker, whilst we are waiving the Standing Order, would it therefore be acceptable for the Hon. Member for Onchan, Mr Karran, to again come in to respond after I have done? It seems fairer if that were the case.

**Mr Watterson:** We have all afternoon.

**The Speaker:** If he wishes. Again, with the leave of the House, I will allow that. Leave has been given. Mr Shimmin.

**Mr Shimmin:** Okay. Thank you.

Yes, certainly some of the original part of what the Hon. Member was talking about, I do have a great deal of sympathy about, and although he chooses the words to say 'the sham delegation', it is certainly true that the delegation that we give could be done as an administrative role far better, quicker, easier and in most cases that is really how it operates. I do not think citing the Minimum Wage Committee does any strength to the argument because that is another one of these quangos that does not really fulfil a purpose in a meaningful way and it gives, almost implies, a level of

credibility that does not really exist because of the difficulties that those committees operate under.

But certainly, as the Hon. Member has drafted this amendment, it gives the committee more powers than he seems to have indicated at the moment and that is one of the concerns the Department has, which is effectively delegating away from ourselves certain control over something so fundamental as the legislation on Work Permits. So the Work Permit policy is an essential lever of economic policy and should remain with the Department. There is no good reason to move that responsibility for policy elsewhere and so, if the Department loses this control, we cannot manage the system effectively; whereas at the moment, the Minister, whoever it is, can – and in my case does – give directions of a general nature to that Work Permit Committee, and that is based on information about the current labour market and the conditions and policies. We live with this daily in the Department of Economic Development.

In a recent High Court case, the *Department v the Work Permit Appeal Tribunal and Simons 2011*, the court described the Work Permit regime as an administrative process heavily influenced by public policy considerations. So it is right that those decisions should remain the responsibility of the Department, as opposed to a temporary quango brought together to consider and discuss those issues.

This committee would strip the Department of the powers that rightly remain with the Minister in the Department, because my responsibility goes to the Chief Minister, the Council of Ministers and ultimately Tynwald, and actually that is for economic policy of the Isle of Man. I think most people can see that on occasions there have been concerns about the actions of committees that actually have not done any favours or benefit to the economy of the Isle of Man, yet they are a body established that we have no control over.

So further, whilst the idea may sound attractive, it is unlikely it is going to work as well in practice as the theory and the portrayal. It is quite often to find suitable persons... for the Appointments Commission to find members willing to serve on some of these bodies, but even if they do, how do we judge their calibre and expertise? Some members may well know nothing about Work Permits, whilst others may have their own agenda. I think we can all understand and have probably got experience of people on committees who have their own agenda, which is quite a dangerous process to be going down for something as fundamental as this.

The other part is the practical difficulties of getting five people into a room at the same time. Quite often in these cases people will have employment; if not, they may not be the best persons to consider and be adjudicating on the Work Permit. If they are in a working environment, can you get the five people together out of full-time jobs to serve for three years? There is no mechanism in this draft as to how you would remove those persons if they were failing to perform, and indeed, who would judge their failure to perform?

So we are very concerned that this could seriously damage the Department's efforts to continue to develop the Work Permit system. This is something that the Hon. Member has discussed with us. We understand that he wants to have a set-up that is perceived as being at arm's distance from the Department, and I can understand that. However, the reality is we have spent some years working with large consultations, responses to consultations, trying to get a balance between the two sides and therefore, for numerous reasons, please, I would urge the Court not to support this. It is something whereby I will work with the Hon. Member to try and see whether the existing Work Permit Committee can be improved, but certainly this delegation of this power away from my Department is really quite a dangerous proposition and I would urge you not to support it.

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

**Mrs Cannell:** Thank you, Mr Speaker.

I think perhaps the mover of the Bill is getting a little bit unduly concerned about the intention of this new clause. (*Interjection*) I support the new clause, and I know a little bit about Work Permit legislation – the rules and the operation.

But when you read the actual new clause that the Member is putting in principle, he talks about the functions of the committee to monitor and review the implementation of policy.

Policy, of course, is determined by the Department. It says:

‘With respect to the granting of work permits making recommendations...’

It also goes on to say:

‘to develop and propose regulations for the [...] Department.’

It is not taking the Department’s job away from it at all. If anything, it is giving this aspect, this area a little bit more flexibility and credibility, I would suggest, because the Department is always there as the head office, if you like, the one that has to bring in the policy, has to bring in legislation and enforce the legislation.

Part (c) says:

‘... to oversee the Department’s work permit processes and procedures...’

It is to oversee it. I cannot see and I do not know what the mover is frightened of here.

There is a public perception, of course, of bias in this area. Of course we have got to be very aware, have we not, of public perception, because, rightly or wrongly, if the perception out there is one way and we go and undermine that further by not acknowledging a degree of independent scrutiny, then we are not helping the situation are we.

The Minister said there is no mechanism within this new clause on removal of the members of this Work Permit Committee. Well, what I would suggest is that regulations could bring in the detail about that, but it is saying that they should not exceed a term of three years.

In answer to one of the queries, I am disappointed when Members get up in this place, Mr Speaker, and they say, ‘I am minded to support it, but I will wait and see what the Minister says’. It suggests to me that Members do not have an independent mind (*Interjections*) and an independent view, (*Interjection*) which they ought to have in here.

In answer to one such Member, who said the same, he said he is a bit worried about a Member of Tynwald being a chairperson. Well, a true chairperson is impartial. A true chairperson chairs and keeps order.

**A Member:** And a casting vote.

**Mrs Cannell:** He may not have a casting vote, it all depends, but a proper chairperson is there to restore balance and ensure that the right informed decisions are taken.

So I will give the Hon. Member some support, because I think is a good route to be going down. I cannot understand really the Minister’s vehement reluctance to even consider this. So I would ask the House to support it in principle so that we can get down to the meat of the issue.

**A Member:** Vote!

**The Speaker:** I call on the mover of the new clause to reply, Mr Thomas.

**Mr Thomas:** Thank you very much, Mr Speaker, and to the Hon. Members for East Douglas and Onchan, who spoke in support, and to the Minister for making such a full response.

To pick up on a few points that the Minister made, the first one was that this committee could not match the Department's ability to monitor the market. I think that is likely false because the Minimum Wage Committee, for instance, commissions evidence and there is no reason why this committee could not also commission the same sort of evidence.

The second point I wanted to make is I have stressed throughout, as the Hon. Member for Douglas East has picked up, that this is an *advisory* committee making *proposals* to the Department, and so I do not accept that it is taking away from the Department or from Government's capacity to carry out a good job.

The third point is you dealt with some very specific issues about the composition and you made some observations which I wanted to deal with.

The first is that you said it would be very hard to get *five* people together; of course, as currently drafted, it is only three people that need to come together for a quorum.

The second point is that I think the removal is perfectly covered by the law of the regulations under which the Appointments Commission acts already.

And thirdly, at the moment the Work Permit Committee, as it currently is constituted, can get paid easily under section 11 of the 1975 Control of Employment Act, but there are equal difficulties going forward, given that that clause, that section in the current law does not have a matching clause in this Order, and so I think there are issues to do with the administration of this current situation continuing which would need to be dealt with.

My final point in closing is that I really do hope that Members give agreement in principle for this clause to be considered and I think it is the perception that Mrs Cannell picked up on the end that I wanted to close with. One third of the employment in the Island is by Government and this would deal with the perception that from time to time, I think, there have been quite a few cases in the Work Permit Committee where there has been controversy to do with Government selection and Government appointment, and having an arm's length independent advisory committee reviewing the implementation would be helpful to manage that perception.

**The Speaker:** I put the motion that the new clause as set out in the Order Paper in the name of Mr Thomas, form part of the Bill. Those in favour, please say aye; against, no. The noes have it.

*A division was called for and electronic voting resulted as follows:*

**FOR**

Mr Quirk  
Mr Karran  
Mr Cannan  
Mrs Beecroft  
Mrs Cannell  
Mr Thomas

**AGAINST**

Mr Ronan  
Mr Crookall  
Mr Anderson  
Mr Bell  
Mr Singer  
Mr Quayle  
Mr Teare  
Mr Cregeen  
Mr Henderson  
Mr Robertshaw  
Mr Shimmin  
Mr Cretney  
Mr Watterson  
Mr Skelly  
Mr Gawne  
The Speaker

**The Speaker:** With 6 votes for, 16 against, the motion therefore fails to carry.  
We have dealt with clause 23. We now deal with clause 24 and schedules 2, 3 and 4.  
Mr Shimmin.

**Mr Shimmin:** Thank you, Mr Speaker.

This clause introduces schedules 2, 3 and 4.

Subsection (1) introduces schedule 2, which makes various amendments of enactments. These are all consequential on the replacement of the 1975 Act by this Bill, with one exception, as follows.

Section 21 of the Employment Act 2006 is amended to make it unlawful for an employer to receive from a worker, or deduct from his or her wages, a fee for a Work Permit under this Bill.

Subsection (2) introduces schedule 3 which makes transitional provisions, mainly to protect the position of persons who have rights under the 1975 Act at commencement.

Subsection (3) introduces schedule 4, which repeals provisions replaced or superseded by this Bill.

**The Speaker:** Mr Quayle.

**Mr Quayle:** Thank you, Mr Speaker.

I beg to second and reserve my remarks.

**The Speaker:** Mr Skelly.

**Mr Skelly:** Gura mie eu, Loayreyder.

This is a consequential amendment on the replacement of the 1975 Act by this Bill. A reference to the 1975 Act in the uncommenced Residence Act 2001 needs to be replaced by reference to the new Act. The reference to the 1975 Act in the Residence Act has been previously overlooked.

I now beg to move the amendment standing in my name:

*In Schedule 2, after paragraph 3 insert —*

*3A Residence Act 2001*

*For the Schedule substitute —*

*‘Schedule*

*AMENDMENTS*

*Control of Employment Act 2014*

*In section 7, after subsection (4) insert—*

*“(4A) Section 6 does not apply to the employment of a person who is —*

*(a) registered or qualified to be registered under section 2 of the Residence Act 2001;*

*(b) registered under section 3 of that Act;*

*(c) exempted from that Act; or*

*(d) exempted from registration under that Act.”’*

**The Speaker:** Mr Ronan.

**Mr Ronan:** Mr Speaker, I beg to second and reserve my remarks.

**The Speaker:** First I put the amendment in the name of Mr Skelly to schedule 2. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 24 as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

That brings us to the end of the Control of Employment Bill.