

2. Control of Employment Bill 2013 – Second Reading approved

Mr Wild to move:

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

The President: We move on, Hon. Members, to Item 2 on our Order Paper, the Control of Employment Bill 2013.

I call on the Hon. Member, Mr Wild, to move the Second Reading.

Mr Wild: Thank you, Madam President.

As the principles of the Bill were discussed at length at the First Reading, I will seek to limit my remarks.

The Bill provides for the continuation and modernisation of the existing system of Work Permit controls. The main elements of the system are as follows: firstly, anyone who is not an Isle of Man Worker requires a Work Permit to take up employment, including self-employment. There are eight categories of Isle of Man Worker and the most significant change the Bill makes is to provide for a simple five-year qualifying period to become an Isle of Man Worker.

Secondly, the Bill continues to allow for exemptions from the requirement for a permit, as in the case of, for example, doctors and some temporary workers.

The Bill consolidates all exemptions, widens the enabling powers for exemptions to be made, and makes other desirable changes such as prohibiting certain persons with unspent criminal convictions from being able to make use of an exemption.

Thirdly, where a person is neither an Isle of Man Worker nor exempt, then the Department will continue to operate a system of Work Permit controls. In deciding whether or not to grant a permit the Department is to take account of the various criteria described in regulations.

The enabling powers for these criteria have been updated, as have the criteria themselves, which are to be contained in the regulations. The list of criteria is both more comprehensive and, in the Department's view, better balances the interests of employers and Isle of Man Workers than the list in the existing 1993 regulations.

Fourthly, under the existing legislation the Department must grant a one-year permit on application to anyone who is the spouse or the civil partner of a permit holder, or a person whose employment is exempt under the schedule of the Act. Under the new Bill, the spouse or civil partner will be able to apply to the Department for a one-year permit, rather than to have to rely on the employer to make an application.

The fifth point is to mention that there will continue to be a Work Permit Appeal Tribunal to which appeals can be made by any person who disagrees with the decision of the Department. The provisions regarding the Tribunal are much clearer in the new Bill than in the existing legislation, and are informed by some recent High Court cases.

Finally, the sanctions in the Bill for non-compliance have been strengthened and in particular there is a new provision for fixed penalties, and the fines in the existing legislation have been increased. Further, the grounds for revoking a permit have been increased in number.

Madam President, the Bill as a whole is intended to modernise existing Work Permit controls to make them smarter, more flexible, and more targeted. Some Members have described the existing Work Permit system as being something of a blunt instrument: I would hope that this Bill has honed the existing legislation sufficiently.

I now turn to comment on some of the points that were raised at the First Reading.

Mr Coleman stated that in his experience people sometimes left the Island because their spouses could not obtain permits. As I have mentioned, the Bill allows the spouse or civil partner of a permit holder or exempt person to apply to the Department for a one-year permit, rather than have to depend on a prospective employer to do so. So this should ease any problems with spouse permits.

I would also mention, in passing, that the Bill contains an enabling power for regulations to give the same rights to some partners as spouses and civil partners, but this would need careful thought and the Department has no immediate plans to make such regulations.

The Lord Bishop made a point concerning lay officers of religious bodies. I understand that he has worked with the drafter to table a suitable amendment which deals with this specific issue. The Department is content to support the amendment.

Mr Braidwood raised the issue of exempting the Chief Fire Officer. The view of the Minister of Home Affairs was sought on this matter and as a result the Department has agreed to proceed with that exemption.

Mr Butt spoke of the need to assist medical professions that are in short supply. I would be concerned if the Work Permit regime was making it more difficult to recruit such workers, but would suggest that officers from the Department of Health identify the groups they consider it would be desirable to exempt, and make the case for exemptions to the Department – in the same way as the Department of Education and Children in the secondary schools did, prior to the recent exemption of secondary school teachers by order last year. An order which would require Tynwald approval to be made in future, adding new categories of exemptions to those in the schedule.

Coming to Mr Turner: Mr Turner would like to abolish the whole system of Work Permit controls altogether. Whilst there are some arguments in favour of abolition, and it is favoured by some employers, the policy of both the Department and the Council of Ministers is to retain but modernise the existing system of Work Permits.

In the Department's view once the legislative and other changes have been implemented, the Island should have a Work Permit system which is much more in keeping with the needs of the economy. As Mr Crowe stated, the Department did in fact consider this option alongside a number of other options, including replacing the existing system of controls with a quota system, such as exists in Jersey, or introducing a flipped system of controls where, instead of a general requirement for Work Permits, permits would only be required for specific sectors or occupations. The Department also considered the option of abolition.

Each of these alternatives has its problems: some alternative systems such as quotas would be likely to lead to alternative bureaucracies, while abolition would result in much less protection for Isle of Man Workers, which would be likely to be socially and politically unacceptable.

Abolition would also destroy the careful balance of the Department's twin aims, which derive from the Agenda for Change, of growing the economy and protecting the vulnerable.

Further, it would also be likely to lead to an influx of workers to fill lower-level jobs that local workers should be capable of doing, as well as to increase demands on services.

Mr Turner: They are doing that now.

Mr Wild: Madam President, finally, I would like to mention that the Department is bringing forward a number of amendments at the clauses stage. For the most part these derive from the consideration of points raised in the debate in another place, as well as some points brought to the Department's attention by the Home Affairs Minister and the Attorney General's Chambers. The amendments would provide additional powers for the Department to maintain the discretionary registers – which is something that Mr Downie touched upon at the First Reading – and connected to this, additional powers to obtain information.

Other amendments deal with some changes of a minor nature relating to the schedule of exemptions. Mr Crowe will say more about these amendments at the next reading.

For now, I trust that Hon. Members will confer their support on this Bill. Madam President, I beg to move that the Control of Employment Bill be read for the second time.

The President: The Hon. Member, Mister Crowe.

Mr Crowe: Thank you, Madam President, I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

I said at the earlier reading that I did intend to bring forward some amendments for debate, which I will do at the clauses stage. I would extend my thanks, incidentally, to the AG's Chambers for drafting those because, as I suspected, it is not quite as simple as just deleting or voting down a particular clause at the later stage, because there are all sorts of consequential things that flow out from that, but we will come to that once we get onto the clauses.

At the Second Reading I raise the issue because, having worked in both the private sector and indeed in Government Departments, the Work Permit system has been nothing but a frustration. Recently the Department of Education, which is my most recent experience, was having trouble – and indeed the mover – recruiting secondary school teachers. They were offering the job out, and they were then accepting the job and saying, 'Well it is going to be subject to you getting a Work Permit'.

No-one in their right mind is going to commit to handing in their notice somewhere, looking for somewhere to live and all the upheaval which goes with coming to the Isle of Man – that is assuming it is an off-Island worker. What was happening was, the Department was losing very good quality candidates because of this system. So the law was changed to allow secondary teachers to be exempt.

I am not critical of that decision because it was the right decision to make, but to me what it does, is it proves that we are quite happy to change this system when it suits ourselves. The counter-argument could be, 'Well, why are they special?' when there are other firms who have key people in key roles that also could say, 'That's all very well but we also want an exemption'. How far do you go with the exemptions?

I think the point I was making at the First Reading was that the Control of Employment Act was brought in at a time for a very specific reason and for real good cause, but in the modern working environment I just do not believe it is the right mechanism.

The mover mentioned about a flip system that somebody is trying in one of the Channel Islands: that surely has got to be a better way of protecting workers in certain sectors. Whilst fast-moving industry... and we *are* in such a competitive world, where we are needing to adapt, we were quick off the mark with the e-gaming – it is no secret that a lot of these sectors have had real trouble recruiting people.

Yes, there are exemptions which can be given. I think – and I am sure the mover will correct me – that the Work Permit system is effectively in the gift of the Minister, it is a delegated function, how often that has been used because I know it was delegated to the Work Permit Committee, but nevertheless it is a bureaucracy that is administered. It is not even a simple process to administer, even under this new Bill which we are putting through – which, as I said at the First Reading, I would support it because it is better than what we had – but still it is an incredible bureaucracy, and if we go through the process we will see that.

The penalties I think are pretty Draconian: I mean we are talking about businesses here that are creating the jobs to keep the economy going. Many of the businesses are small businesses – 10 or less employees – they do not have HR departments to deal with all of this and, quite honestly, I think it is a process that is completely out of date.

The mover said something about 'it would create no end of problems', but nobody has actually said what these problems are. We have heard lots of wild statements about, 'Suddenly all Isle of Man Workers will be out of work, because they will bring people in'. I do not believe employers do that: employers will generally want the best person for that job, and is that not what we are supposed to be trying to encourage our businesses to do?

I speak as someone who is born in the Isle of Man, but we are in a global competitive world, just as *our* Manx people go and work in other countries.

Okay, some of them do have controls on immigration, and various other things, but that is fine if it fits them, but we are looking to what fits us here in the Isle of Man, and I just do not believe that this is giving us the best.

I had a conversation with somebody about this and they said, 'Well, how does that protect me?' and I said, 'It does not really protect *you* at the moment!' If an employer is absolutely adamant they going to employ a particular person, and we have seen it time and time again where there are ways of getting round the system, by the job description, going through the motions of advertising it in certain places and proving that they have done it – if they want that person, they will get them. So why have all the bureaucracy and cost?

That I think is where I am coming from with this: in theory it may be a good idea to protect the workers, but in practice it does not work. I think that the purpose of raising this is so we can have this debate – because at the presentation it was completely glossed over. 'Yes, we have considered it', but that was all that was said, and there was no real detail as to why consideration was not properly given to the abolition, and no case was made strong enough as to why abolition would be such a bad move for the Island and for industry.

I think it is important that the Department explains why. The mover said it was the policy of the Department and the Council of Ministers but, again, not really giving us the detail as to why that is the case.

As I said, I do have amendments to propose at the clauses stage. I hope they will be supported in terms of we can debate them, even if Members do not intend to support them. I think it is important that, as we are revising this legislation, we have the debate and we air the issues here in this place, because after all this is what this Council is for – it is for scrutinising the legislation and making sure all the i's are dotted the t's are crossed. So I hope that we can at least have the debate on that when the time comes.

But in closing, Madam President, I feel that whilst this Bill is an improvement, I do not think it has gone far enough to aid employers who are creating the wealth and the jobs.

The President: The Hon. Member, Mr Butt.

Mr Butt: Thank you, Madam President.

I will be supporting the Member's motion to approve the Second Reading. I will not be supporting the idea of repealing the 1975 Act or any elements of it, which we will debate later on, no doubt.

I would just like to thank the Department for listening to what was said last week: I did receive an e-mail from Mr Jonathan Clague about the nature of the hard-to-recruit medical staff that we had problems with. He has given me an e-mail and a way forward with that, which has been passed to the hospital management to try to sort out which posts in particular they are concerned about. It is too complicated to have any amendments before us today to amend certain posts so it is in hand and I would like to thank the Department for that. (**Mr Wild:** Thank you.)

I will be supporting the Second Reading.

The President: The Hon. Member, Mr Braidwood.

Mr Braidwood: Thank you, Madam President.

Madam President, I am also supportive of the Second Reading of the Control of Employment Bill 2013. I have listened with interest to the points raised by the Hon. Member for Council, Mr Turner, but I do feel that the steps he wants to take are a little bit too radical.

I think that the mover of the Bill actually said that this is a more flexible way of being able to employ people, and I do feel this is the right way forward, and step-by-step.

In future we may have to look at it again and *follow* on what Mr Turner has said, but I do feel at the present time this is the best way and the flexible way.

Mr Wild: Thank you.

The President: The Hon. Member, Mr Corkish.

Mr Corkish: Thank you, Madam President.

Just very briefly, I join with my hon. friend, Mr Braidwood, in his summing up too.

The mover of the Bill said that the Bill was designed to be smarter, flexible and targeted – and we are moving into a new world. As a former member of the DED I know this: changing times, and changing economic demands on the Isle of Man, and for the business world here on the Isle of Man.

So I do support this Bill.

Mr Wild: Thank you.

The President: The Hon. Member, Mr Coleman.

Mr Coleman: Thank you, Madam President.

I will be supporting the Second Reading of this Bill. I have a problem with abolishing any form of Work Permit legislation in that it acts as a bit of a gatekeeper for identifying future burdens on public services such as healthcare, education. At the moment –

The President: Perhaps we can talk about that when we (**Mr Coleman:** Oh, okay.) come to the clauses.

Mr Coleman: I will be supporting the Second Reading.

The President: The mover to reply.

Mr Wild: Thank you to my hon. colleague, Mr Crowe, for seconding the motion.

In terms of... I will say, Mr Butt, Mr Braidwood, Mr Coleman and Mr Corkish: thank you for your support. I note that there are items to be debated as we go through the clauses.

In terms of my hon. colleague, Mr Turner: in terms of exemptions, DED is willing to exempt other employments and occupations but a case has to be made for a particular exemption. But the important thing is the powers to exempt are more flexible.

The Channel Islands has not got a flip system of permits, Jersey has quota system still.

In terms of your comments about the best person: the legislation does not prevent the best person from obtaining the job, the Department only has to *consider* any applications from suitable Isle of Man Workers who are available.

In terms of the arguments against abolition, we can talk about those when we come onto the particular clause. The only thing I would say is that my own assessment, having worked in employment and skills now for two years, is that if we were to completely abolish Work Permits I think unemployment would go up. It does act as a brake and a tool for the economy that enables the Department of Economic Development to manage certain sectors. It is also a source of very useful information, as Mr Coleman alluded to.

Thank you.

The President: The motion is, Hon. Members, that the Bill be read a second time. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

**Control of Employment Bill 2013 –
Consideration of clauses commenced**

The President: We turn now to clauses. Before we deal with clause 1 we have an amendment tabled in the name of the Hon. Member, Mr Turner, in respect of the long title.

Mr Turner, would you care to move your amendment?

Mr Turner: Thank you, Madam President.

Just as guidance, there are... Do we deal with the other clauses as we go through?

The President: We will deal with them in a chronological order.

Mr Turner: Yes.

So I move then, for the reasons I have stated at the Second Reading – which I will not repeat because we are in the same session – that the long title be amended in accordance with the amendment that has been circulated to all Members on the Order Paper today, and that is:

Amendment to the Long Title

For the long title substitute –

‘A Bill to repeal the Control of Employment Act 1975; and for connected purposes.’

As I said, I hope we can at least have some comment from Members on this, so I beg to move.

Mr Butt: I will second that to ensure debate, and reserve my remarks.

The President: Does any Member wish to comment on the proposal to amend the long title? Lord Bishop.

The Lord Bishop: Madam President, presumably passing this amendment would mean that there were inevitable consequences to various other amendments, and to the whole Bill? And also that if we failed to pass it, does that mean that we have to go through all the relative amendments that relate to (**Mr Braidwood:** Mr Turner.) Mr Turner’s –

The President: Mr Turner has tabled them so I think in fairness if you reject the long title change, you will have them put –

The Lord Bishop: They will fall.

The President: – but you can vote against them.

The Lord Bishop: Right, thank you.

A Member: Could I – ?

The President: But we will put them in the order in which they appear.

Mr Wild: Sorry, Madam...

The President: Just to be clear, Hon. Members, you are talking about the change to the long title which is on page 5 of your Order Paper, the wording of it is on page 5 of your Order Paper: the substitution of the long title. That has been moved and seconded.

Mr Butt: Madam President, the question the Bishop has raised really was, if that fails does everything else also fail automatically?

Mr Coleman: No.

The President: Well, I suppose we could deal with it that way.

Mr Braidwood: It fails.

The Lord Bishop: Consequential.

The Clerk: Madam President, if Mr Turner's amendment to the long title fails, you will then need to consider whether his other amendments are within the scope of the Bill, (**A Member:** Yes.) because they would arguably contradict the long title that was originally drafted.

A Member: That is right.

The President: Well, I can play it either way. If the Hon. Member wishes then to withdraw his tabled amendments, because they would mess up the Bill, frankly, if they were passed –

Mr Turner: Could I clarify?

The President: Mr Turner.

Mr Turner: Can I clarify my intention that the consequential amendments were obviously as a result to enable the proposal to happen. This is why at this point I would hope we could have the debate and, should that amendment fail, then with leave of the President and Hon. Members it would be sensible to withdraw those consequential amendments; but they had to be put in, in the event there was sufficient support for that to move forward.

So I hope that has clarified, and this is the point where I hope we could have that debate and if it fails, then I would seek leave to withdraw those amendments.

The President: Is that clear, Hon. Members? I think that is helpful.

Several Members: Yes.

The President: The Hon. Member, Mr Downie.

Mr Downie: Yes, thank you, Madam President.

I wish to speak against this amendment because, at the end of the day, if this amendment is successful we are left with the job then of picking up the pieces and trying to make something out of the legislation.

I think we have to cast our minds back to 1975 to understand why this legislation was brought in, when at the year-end we could be left with anything up to 2,000 to 3,000 people on the unemployment register. There is no doubt about it: people who came here to do seasonal work, and so on, were staying here.

The legislation, as exists at the moment, it does provide a form of security for local workers – that is what was developed for. I think the main purpose of the Bill today is to fine-tune the existing legislation. As my hon. colleague, Mr Turner, said, businesses have developed in other areas but we are going to be cognisant of that and we are going to try to remould the 1975 Act and make it more acceptable in present day employment.

The downside to all this is that we do use it as a benchmark for all sorts of other things right across Government: social security, health, numbers of children coming through the schools, and so on. People often look at the Control of Employment legislation and just see it as an entity in its own right. Well it does not, because it affects so many other things right across Government: we need some mechanism in place.

You can see what has happened on the adjacent Island, the mess that they have got themselves in over there, they have not got a clue who is working in the UK anymore, probably tied up to what has gone on with the EU... But at least we have got something here, and we have actually got an effective mechanism.

Allied to this is the ability to do police checks if required: certain jobs within the community now do require that level of intelligence. All this has been worked in together since 1975 and we have actually finished up with what I think is a very useful tool, both to control the employment market and also to help us get a better understanding of the economy.

I have got an amendment to move later on, I am not going to say too much about it now, but that is a glaring example where we have got to open up the jobs market in some areas and provide the best person for the job – but in certain controlled circumstances.

If you did remove the Control of Employment Act altogether, I would not like to consider what the circumstances would be. I think it would just be out of control and, as my colleague Mr Wild said, the evidence that they have in the Department, would there be an awful lot more people on the unemployment register? That is what we are trying to stop.

We have done very well because we have had legislation like this, and I think if we are going to make some changes to it they should be well thought out and introduced on a very slow and controlled basis, so we can see what is happening within the economy.

Thank you.

The President: The Hon. Member, Mr Wild.

Mr Wild: Thank you, Madam President.

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.

As Members will be aware from the Order Paper a number of amendments to the Bill have been tabled, including four which the Department of Economic Development is sponsoring. As was the case in another place, the Department has tried to approach all of the amendments with an open mind and will be supporting all of the amendments other than those amendments moved by Mr Turner.

As stated at the Second Reading the Department considered a number of alternatives to modernising the existing system of Work Permits. These included the option of abolition.

The present Bill carefully balances the interests of all the relevant parties. Chief amongst these are the Isle of Man Workers, but in addition the Department has taken into account the interests of employers, prospective workers, the Government itself, as well as the general interests of everybody that lives on the Island.

Mr Turner's amendments have been drafted from one perspective alone: that is of the employers.

While it is accepted that abolition might bring some benefits to the economy and perhaps make life easier for employers in certain respects, the Department does not support the amendment for the following reasons:

(1) Work Permit controls are an important labour market tool that the Department can use and one that the Government would wish to retain. I would also add that it is a control that the UK government would dearly wish to have.

(2) The legislation is socially desirable in that it creates the potential to enrich the lives of the people who consider the Island to be their home. Its repeal would be likely to adversely affect the

employment prospects of some local workers, particularly our young unemployed people, and could result in some of our young people having to leave the Island to find work or increased benefit payments. Remember, too, that legislation only requires that employers *consider* any suitable Isle of Man Workers who are available. As I explained at the First Reading following the *Hedges* judgment in the High Court, it is clear that there is nothing to prevent the Department from issuing a Work Permit to a non-Isle of Man worker even when there is a suitable Isle of Man Worker who is available. Whether or not a permit is issued will depend upon the circumstances of each individual case.

Madam President, a completely deregulated labour market would also be likely to attract an unknown number of workers from the European Economic area, particularly single people to undertake lower level employment. This could put pressure on Government services such as health and education. Complete deregulation, bringing with it a greater competition for jobs could also lead to some social tensions between persons previously considered Isle of Man Workers and persons from outside the Island.

Finally, whereas persons from the European Economic area are free to live in the Isle of Man, they are not presently free to *work* in the Isle of Man, with some exceptions such as those in exempt occupations.

In the absence of residency legislation a further reason the Government retains the Work Permit system is as a limited, albeit imperfect, form of residency control which allows the Department to look at on a case-by-case basis whether, for example, individuals with unspent criminal convictions under the Rehabilitation of Offenders Act 2001, or others whose arrival here might result in extensive costs to the Government, should they be permitted to work on the Island in particular employments.

For these reasons, Madam President, I oppose the amendment.

The President: The Hon. Member, Mr Braidwood.

Mr Braidwood: Thank you, Madam President.

In a similar vein to my Council colleagues, Mr Downie and also Mr Wild, I will be opposing this amendment to the long title.

Madam President, as Mr Downie has already mentioned, the Isle of Man is a completely different place to what it was 38 years ago, in 1975. In wintertime there were thousands of people unemployed. There was also the situation where there were not actually jobs for people. I was very fortunate; I was able to come back to the Island. A lot of the peers I went to school with had to get employment in the UK and have stayed in the UK.

This Bill, or the 1975 Bill, has served its purpose; it is now too restrictive and, as the points Mr Wild has mentioned... bringing in more flexibility. We have gone from being 50%-odd of GDP of the UK to now exceeding the GDP of the UK. We have come on leaps and bounds in this last 38 years and we have to change, and I think the change in this Control of Employment Bill 2013 gives us that flexibility. We need the right people for positions and doing it this way is the right way and not the way Mr Turner wants to do it, by abolishing.

The President: The Hon. Member, Mr Butt.

Mr Butt: Thank you, Madam President.

I think if we go into the history again, the reason for this 1975 Act was to protect the artisan workforce of the Isle of Man at that time. In those days, even though the tourism industry was in a healthy state, there were still some 2,000 people unemployed most of the time. But at the same time there was a building boom going on on the Island and I remember there used to be a special Steam Packet boat laid on at Christmas to go back to Dublin that used to take away 2,000 people, I

believe, every pre-Christmas break and bring them back again after Christmas – at the same time as 2,000 people locally being unemployed.

So, the point of the Act was to protect the local workforce. Even though times have changed, even though our nature of employment is much different now, we still have to maintain the same principles to protect the local workforce. I think that is important.

There have been difficulties with the Bill, with certain employers to get staff appointed. Yes, there are difficulties but this new Bill does ameliorate some of those to some extent and makes things simpler and more flexible.

My main reason for opposing this is, having listened to my colleague, Mr Coleman, last week – speaking about him coming here some years ago to bring a business over here and how he found the Work Permit legislation worked well, he was able to bring people over and the system did work – I think that actually persuaded me that, with an updated Bill, we can make it work properly. We still have the main duty to protect our workforce. As Mr Wild has just said, Mr Turner's amendment is from the viewpoint of the employer and we still have to look to the employees as well.

Thank you, Madam President.

The President: The Hon. Member, Mr Coleman. I did stop you before; this may be your opportunity. *(Laughter)*

Mr Coleman: Thank you, Madam President.

I think the other Hon. Members of Council have reflected my views, as I stated previously.

The Work Permit procedure gives us a method of identifying dependent costs for people, if there are any, and assessing what the burden will be on the social services: How many children are going to go into primary school education? Are there any medical problems which we would be funding?

We are in a time of stricture, really, on increasing budgets for these particular areas and I think we just have to be careful; and the Work Permit procedure and, hopefully, the same sort of collection of information will be made on those people who are able to come to the Isle of Man without a Work Permit – in other words they are given a pass in, and their families... that those records are going to be collected as well; otherwise then, if you have incomplete data the point of collecting data becomes redundant.

So I will be voting against this amendment for the reasons I gave last week and the reasons I have just stated. I think it is an essential safeguard to the Isle of Man in general.

Thank you, Madam President.

The President: The mover to reply.

Mr Turner: Thank you, Madam President.

I must extend my thanks to Mr Butt for seconding this motion. Even though he has made his views clear, it has given us the opportunity to air these issues, so it is appreciated.

I think what it has highlighted is that this is not really the Control of Employment Bill, it is the 'Control of all sorts of other fact-finding missions and fishing expeditions we wish to go on,' which is exactly the point I was making. **(A Member:** It works.)

I do not – Well, it might work but I do not accept it could be used as some sort of gauge as to how many people are employed, because there is already a mechanism for that and that is the register of employers with the Income Tax Division. Employers have to register and indeed self-employed people have to register, so that information is already coming in in a far more detailed manner and is also far more accurate. So I do not think this is the vehicle for it.

We hear about: we will be able to find out the impact on schools. Well, there are provisions in the regulations, which were also circulated with the Bill, asking about the state of health of the person concerned. I think we are going into areas there where we are almost going into... I understand the reasons for doing it because it is a question that needs answering. If we are running

services then we do need to know what we are planning for, but when it comes to Work Permits asking the state of health of the person, is there any guarantee that those people are going to be giving you all those details?

It seems to be that this is stepping really into the area of people's rights and confidentiality. It would be very interesting... I know it says here as well that they believe it is compatible with the Convention on Human Rights, but having read some of the clauses it would be very interesting to see if this was ever challenged and to see where the Island would stand, because I am not convinced the whole thing is completely compatible.

Somebody applying for a job... There is no guarantee that they would declare what family they have got in the UK and then after 18 months suddenly they all move over; and as we know, from being in the Department of Education, when children appear at school we have to take them. So the Hon. Member, Mr Wild, who has served in the Department of Education with me, is fully aware of that problem as well; that even now there are numbers of children who turn up on a school day who have not even registered with the Department and the Department has to take them. Again, I am not convinced this is the right vehicle for dealing with that.

I know Mr Downie mentioned 1975 and the seasons where we had 2,000 to 3,000 people engaged in certain sectors. Again, the whole make-up of the Island has changed considerably since 1975 and there is no guarantee that those who are here who are non-resident could be entitled to all sorts of benefits. There is another vehicle to deal with that; this is not it.

The UK would like the controls. I bet they would. Indeed, they are tied up with, of course, their involvement with the EU; and if and when there comes a referendum on that they deal with their membership of the EU and, obviously, they would then be able to decide what they do with their employment legislation, but at the moment they are completely dictated to by what they have signed up to in Europe – and that is the free movement and work of the EU nationals.

Indeed, if you are Manx there is an endorsement in the back of your passport saying that you do not have the entitlement to work in EU countries – residency and employment, I think it is.

So Mr Braidwood is saying here that if your grandparents are not Manx –

The President: No, if your grandparents *are* Manx... four grandparents are Manx.

Mr Turner: Yes, that is right... Then you will have that endorsement. Ironically, my seven-year-old daughter does not have that endorsement in her passport.

So it is a far more complex issue when you are dealing with EU membership. We are sort of half in that and half out because of our agreements we have and because of our unique position.

Sometimes I think our position does Manx workers a disservice, but anyway that is widening out into other areas. I want to bring this back to this particular clause.

The word 'suitable' was uttered again by Mr Wild and this comes back to what I was saying at the earlier Reading: employers should be able to employ the best people. Not 'suitable'. He said that if there are suitable Manx workers available then they have to have regard for that. Again, we should be striving for the best. It should be up to the employer to decide who they wish to employ.

Maybe he forgot to thank me for supporting the Bill, because I have said I will support the Bill because it is a vast improvement on what was before; so I do not at any stage intend to vote against it because that would be contradicting my whole argument of what I am hoping to achieve.

So I will leave it at that, Madam President. I do thank Members for the opportunity to look at these. I think this is exactly what this place is designed to do – debate the issues. I do not want to pre-judge the result but I think I know what it is going to be. But, again, I appreciate Members' support in having the debate. So I beg to move.

The President: The motion is that the amendment to the long title be made. Those in favour, please say aye; against, no. The noes have it.

A division was called for and voting resulted as follows:

FOR

Mr Turner

AGAINST

The Lord Bishop

Mr Butt

Mr Braidwood

Mr Coleman

Mr Downie

Mr Crowe

Mr Wild

Mr Corkish

The President: There was 1 vote for, Hon. Members, 8 against. The amendment therefore fails to carry.

We move now to clauses, Hon. Members.

Mr Turner: Madam President, would it be appropriate for me to withdraw at this stage...? I would seek leave of yourself and the Council to withdraw the subsequent amendments which were part of the clause that I have just moved.

I beg to move that they be withdrawn.

The President: Is that agreed, Hon. Members?

Members: Agreed.

The President: Thank you.

Clause 1, Mr Wild.

Mr Wild: Thank you.

Clause 1 gives the Act its short title.

(Interjections) I beg to move.

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

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

Clause 2.

Mr Wild: 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 the clause stands part of the Bill.

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

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

Clause 3.

Mr Wild: Thank you, Madam President.

Clause 3 provides for the interpretation of the Bill. The most significant difference between the section on interpretation in the Control of Employment Act 1975 – which 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 would also point out, Madam President, that this clause was amended in another place to remove any possible uncertainty as to whether the term ‘information’, which is used in the Bill, includes ‘evidence’.

I beg to move the clause stands part of the Bill.

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

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

Clause 4.

Mr Wild: Clause 4 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 in 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 was 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 (i) under 23 years old, (ii) ordinarily resident in the Island and (iii) in full-time education; and (b) has, since the end of that period, remained a resident; and (c) is the child of a person who, during that period, was (i) an Isle of Man Worker, or (ii) an exempt person in regular full-time employment, or (iii) 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 subsections (9)(c)(ii).

I beg to move, Madam President, the clause stands part of the Bill.

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

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

I just have a question on this. Is there any case where somebody would cease to be an Isle of Man Worker? So, if the unbroken period of five years was many years ago and they have left the Island and come back, does that still count, because I cannot really see whether there is any provision in that or is that them an Isle of Man Worker for life?

The President: Does any other Member wish to speak?

Mr Downie: Yes, Madam President.

The President: The Hon. Member, Mr Downie.

Mr Downie: I would just like to reinforce the point that I made when we were discussing Mr Turner's long title and the move to substitute the repeal.

It is quite obvious, looking at this, that this piece of legislation does lots of things and, as far as I am aware, if you are not working and you are not paying NI, you could be married to someone with a Work Permit but this is the only mechanism that I know exists where you might be living in the Isle of Man for five years and you might not even be on a doctor's list. So at least there is something here to safeguard the rights of the individual and it works two ways really.

I think the point I want to make is that, if we were just to go ahead and throw this out, as it were – repeal this piece of legislation – we would be months trying to work out other remedies and other pieces of legislation that we could introduce for us to do the same thing as we have got in this Bill now. So really, in my opinion, if it 'ain't broke' it does not really need fixing. Fine tune it, by all means, but I think as we go through the Bill you will actually see what a useful piece of legislation we have got.

The President: The Hon. Member, Mr Butt.

Mr Butt: Thank you, Madam President.

I will just comment on this clause. For those used to reading legislation it takes some time to make sense of it – if you can do. I wonder has the Department got a simple flowchart that would actually allow people to understand simply whether they are eligible or not, because it takes some reading to actually understand who is and who is not eligible. I think that might be useful.

The President: The mover to reply.

Mr Crowe: Can I just comment, Madam President? (**The President:** Yes.)

Yes, the explanatory notes that the Hon. Member, Mr Wild, has – and I have party to as well – do give details of how the original rules for the 1975 Act are being updated and improved; and I think, rather than read this out, I would be happy – or Mr Wild, I am sure, would be happy – to circulate the changes in chart form, which would help all Members. But I think, as we go through the debate and the clauses stage, it will become clearer... as we move through the clauses. There will be lots of explanations to follow on the later clauses, I am sure.

Mr Butt: Madam President, I was not saying clarifying for ourselves; I think for the public as a whole. Thank you.

Mr Crowe: I am sorry, Mr Butt, I misunderstood.

The President: I think we are now ready for the mover to reply.

Mr Wild: Right. Thank you, Madam President.

There is a guide, but on a flowchart. But I do agree entirely with my hon. colleague, Mr Crowe, that we can circulate the notes that give a more detailed explanation.

To answer Mr Turner's point, under existing rules, an individual can lose their Isle of Man Worker status if they go away. Under the new Bill they will not be able to lose their Isle of Man Worker status if they go away. They can come back. I hope that helps clarify. And there are transitional

provisions which mean people who were here for five years a long time ago do not become Isle of Man Workers. I hope that clarifies.

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

Clause 5.

Mr Wild: Clause 5 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 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 the clause, Madam President, stands part of the Bill.

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

The President: The Hon. Member, Mr Coleman.

Mr Coleman: Thank you, Madam President.

If they are released on licence... If someone is sentenced to one year, after six months what will the situation be? Would they actually, when they are on licence, be accruing benefit to their Isle of Man Worker status, or not?

Thank you, Madam President.

The President: There are no further questions?

Mr Wild: Well, there are two –

The President: The mover to reply.

Mr Wild: Thank you, Madam President.

I have got two examples. An individual who has been resident in the Island for three years, the individual then serves four months in the Isle of Man Prison, on the individual's release...

Mr Braidwood: The four months count.

Mr Wild: He continues to live in the Island for another two years; he has been resident on the Island for five years and four months and is, therefore, now an Isle of Man Worker under clause 4(3).

The other example is where an individual has been resident in the Island for three years; the individual then serves eight months in the Isle of Man prison; on release the individual continues to live in the Island for another two years; under clause 5(1), for the final two months of the sentence the individual is not treated as an ordinary resident in the Island. The individual has, therefore, been resident for one period of three years and six months and another period of two years with a gap of two months in between; the individual is, therefore, not an Isle of Man Worker, under clause 4(3).

The President: Did you want to pursue that further, Mr Coleman?

Mr Coleman: I would, Madam President, if I could?

I think the issue I was asking was, if someone gets sentenced to a year and they are released on parole at six months, do they start accruing while they are actually on licence? When they are on licence they are subject, if they breach their conditions, to being dragged back into prison again and I just wondered whether that had been thought about in this bit of drafting.

Thank you.

The President: Hon. Members, it may assist us and it may assist Mr Wild... We have Mr Clague with us here today. Would you be willing to allow Mr Clague...? Would it help you, Mr Wild –

Mr Wild: I think it probably would, actually now.

The President: – if Mr Clague was to – *(Interjections)*

Mr Wild: Sorry?

The President: The Hon. Member, Mr Butt.

Mr Butt: Thank you, Madam President.

I think the relevant word here is ‘detained’. So if they are actually detained that means –

Mr Wild: It is only being in prison that counts. *(Interjections)*

The President: Mr Clague, would you give us your name and your office, please; then if you could assist Mr Coleman?

Mr Clague: Thank you, Madam President.

I am Jonathan Clague, Legislation Manager from the Department of Economic Development. I can confirm what Mr Wild said, that it is only time in prison that actually counts for the purposes of this clause.

The President: Does that help, Mr Coleman?

Mr Coleman: Maybe what I ought to do, Madam President, is I will sort this out offline. *(Laughter and interjections)*

The President: I think, Hon. Members, we move to the vote on this then. The motion before the Council is that clause 5 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 6.

Mr Wild: Thank you, Madam President.

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 an employer must not employ a person unless he or she is an Isle of Man Worker.

I beg to move, Madam President, the clause stands part of the Bill.

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

The President: The motion is that clause 6 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 7 and Schedule 1.

Mr Wild: Clause 7 provides for a number of exemptions to the restrictions imposed by clause 6. Subsection (1) disapplies the Act to the list of exempted employments contained in schedule 1.

Some points of note regards Schedule 1 are as follows:

(1) The new schedule consolidates the exceptions in the schedule of the 1975 Act as well of 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 Schools Teachers) Order 2013.

(2) The exemption in the 1975 Act for employment in the Police is restricted to the employment as the Chief Constable only, although this will not be implemented for two years after the rest of the Bill comes into force.

(3) 'Employment as an Acting Deemster' in the 1989 Order is widened to 'Employment as a Deemster or judicial officer', in order to admit the appointment of an additional Deemster or an additional judicial officer to deal with a particular case or for a temporary period.

(4) 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.

(5) The existing 30-day exemption for performers etc in connection with any theatrical or musical performance in the Island is extended to 48 days.

(6) 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: (i) a company which is a member of an international group must now be incorporated in the Island; (ii) the company can now only bring in workers who are employed by a member of the group for up to 48 days a year; (iii) in addition, the definition of 'international group' has now been tightened up so that it must 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.

(7) The exemption for the 1975 Act for 'Employment of a temporary nature for a period not exceeding three days or such other period 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) 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 using part 1 of the schedule.

Subsection (4) exempts a person who is a 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 the 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 of 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. An order must be approved by Tynwald. 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. So, for example, the Department could not have removed the existing exemption of the Police by order.

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 made under subsection (6).

Subsection (9), which resulted from an amendment in another place, requires the Department to report annually to Tynwald as regards the number of any national interest authorisations made under subsection (5A) and the reasons for them. There is no requirement to report where no such exemptions have been made.

I beg to move, Madam President, that the clause stands part of the Bill.

The President: And schedule 1.

Mr Wild: And schedule 1, sorry.

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

The President: We do have a number of amendments, Hon. Members. I think we will deal with them first and then we can take questions.

We will deal with Schedule 1, the amendment in the name of Mr Braidwood. This is on page 27 of the Bill, Hon. Members.

Mr Braidwood: Thank you, Madam President.

During the First Reading of the Control of Employment Bill 2013, I did raise the point of the exemption for the Chief Fire Officer. After our meeting on 11th March, I contacted the Chief Executive of the Department of Home Affairs and also spoke to the Minister of Home Affairs before contacting the legislative draftsman.

They were both quite easy for this amendment to be accepted. I am glad that the mover, when he started the First Reading, said that the Department would accept the amendment to the Bill.

Madam President, if we look at the schedule, part 1, and the third subsection, we see that in the Police and related employments, employment as the Chief Constable is exempt. I think it is of the utmost importance that the right person is employed for the job. In this instance, actually, of the Chief Constable, this is the first instance we have had that a Manx-appointed Chief Constable who was the best candidate... and I feel that this should also apply to the Chief Fire Officer. We should have the best person for the position and, in doing so, Madam President, I would just like to move this simple amendment to schedule 1.

Amendment to schedule 1

Page 27 after line 18 insert –

*'3A Employment with the Isle of Man Fire and Rescue Service
Employment as the Chief Fire Officer.'*

The President: The amendment is printed on page 9 of your Order Papers, Hon. Members – for clarity – in the name of Mr Braidwood. Do we have a seconder?

Mr Downie: I would be pleased to second that, Madam President.

Mr Crowe: Madam President, the Department supports this amendment, as the Hon. Mr Wild has said.

The President: If there is no further comment, I do not think there is anything to reply to.

Mr Braidwood: I just thank the Department for accepting the amendment, Madam President, and beg to move.

The President: The motion is that the amendment in the name of Mr Braidwood be approved. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We now move to Mr Crowe's amendments to schedule 1. These are listed as amendments 5, 6 and 7 in your Order Paper, Hon. Members and they appear on page 8 and 9 of the Order Paper.

Mr Crowe: I thank you, Madam President.

Can I just move the amendment to schedule 1, paragraph 3A: the exemption of additional justice, judicial and court employments? Can I just move that one to begin with?

The President: That is the amendment –

Mr Crowe: To schedule 1, paragraph 3A.

The President: I have not got a 3A. Is this a new one? *(Interjections)* Have you, Jonathan?

Mr Crowe: Sorry, I am reading the wrong heading. *(Laughter) (Interjections)*

The President: This is confusing because of the way in which it is set out on a number of sheets. **(Mr Crowe:** Right, okay.) I am talking about the amendment to **(Mr Crowe:** Schedule 1) Schedule 1, paragraph 4 –

Mr Crowe: That is the one –

The President: – your amendment number 5 –

Mr Crowe: That is the one, Madam President, yes.

The President: – which is on page 8 of your Order Paper, amending page 27 of the Bill.

Mr Crowe: Yes, page 27, for line 20.

Madam President, thank you for that and sorry for the requirement for clarification. But paragraph 4 exempts judicial, court and tribunal appointments from the requirement for a Work Permit. The amendment to subparagraph (1) captures some additional judicial and court employments. The amendment was suggested by the Attorney General's Chambers and accepted by the Department. So I now beg to move the amendment standing in my name.

Amendment to schedule 1

Page 27, for line 20 substitute –

'(1) Employment –

(a) as a Deemster, High Bailiff, or Judicial Officer; or

(b) as a judge of the consistory court of the Diocese of Sodor and Man.'

Mr Downie: I beg to second, Madam President.

The President: The motion is that the amendment number 5, in the name of Mr Crowe, to schedule 1, part 1, 4(1), do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We turn now to Mr Downie's amendment, if we are dealing with these in chronological order.

Mr Downie: Thank you, Madam President.

In moving the amendment to schedule 1, it has been brought to my attention that there is an additional wording here which is 'Government'. I will read out what the amendment is to say:

'Page 28, after line 4 insert –

"4A. Senior public service appointments

Employment as the Chief Secretary or the chief officer (however described) of a Department or Statutory Board."'

It is printed 'Government' but under the Interpretation Act 'Government' refers to a UK ministry, so we are omitting the word 'Government' there and now that is on the record.

I just –

The President: Can we just hold on a minute?

You are introducing a new 4A (**Mr Downie:** Yes.) which has been printed on the (**Mr Downie:** Agenda.) Order Paper, but you are not moving the amendment on the Order Paper, you are moving a further amendment, as I understand it.

Mr Downie: Yes, I am just bringing to the attention of the Members of the Council that the word 'Government' is included in here, which is wrong. We have had advice yesterday, under the Interpretation Act, that the word 'Government' refers to a UK ministry. So we just, in the Isle of Man, refer to it as 'a Department or Statutory Board'.

The President: Hon. Members, I think we can most easily just ignore what is printed on the Order Paper.

Mr Downie is proposing an amendment, which I think has been circulated to you, either yesterday or today – (**A Member:** Yesterday.) yesterday, in hard copy. Please ignore what is on the Order Paper. It will not be moved. This is the correct amendment, as I understand it, to introduce a new 4A. (**Mr Downie:** Yes.) Right. (**Mr Downie:** Right.) Concentrate only on this paper, Hon. Members.

Mr Downie: Hon. Members, the reason for this... I mean Mr Wild said in his opening remarks we are looking to work smarter, be more flexible and targeted. We are aware that there will be a number of vacancies or new rules coming up within the senior echelons of Government.

Just to give you a flavour, Hon. Members, Government is currently advertising for a chief executive for the Department of Health. This attracts a salary of £97,254 to £121,467 for the new Department. The role:

'You will be the chief executive of a Department with a workforce of more than 3,000 people, a gross revenue budget of over £239 million and capital budget of £16 million. This is a challenging, diverse and influential role with responsibility for strategic leadership, direction and the operational effectiveness of a Department whose core purpose is to provide high quality health and social care services for the Island's community.'

I would err, Hon. Members, that this job in particular... Indeed, there will be another chief executive's role coming up shortly to head up the joint utilities and at some stage in the future we will be looking to replace the Head of the Financial Supervision Commission and other roles like that, which traditionally have been caught up in the Work Permits legislation and the applicant has been required to have a Work Permit.

The last thing I want to do is preclude any local people from these jobs but, to be perfectly fair about it, if we are going to extend the gene pool in the Chief Officers' Group and bring some fresh ideas and expertise in – when you see the salaries that they are attracting and the responsibilities they have – I think this is another area where we should allow an open process to take place and, where possible, have the best person for the job and not be stuck with the most suitable local person.

I think this has been long overdue and, while we have a number of these vacancies coming up, I think it makes sense to spread the net. There is lots of expertise out there at the moment and, in asking for your support, I think this would be a good opportunity at the right time.

I beg to move the amendment standing in my name.

Amendment to schedule 1

Page 28, after line 4 insert –

'4A. Senior public service appointments

Employment as the Chief Secretary or the chief officer (however described) of a Department or a Statutory Board.'

Mr Braidwood: I beg to second, Madam President.

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

It was only a few minutes ago we were talking about protecting Manx workers and the point I made was, why should a Government Department be any different?

I support this clause because it is exactly what I am saying we should be doing: going for the best. But it is a case of: do as I say, not as I do. Government Departments want to be able to employ who they like in some of these key roles, but the private sector cannot.

It does not add up to me. I think the whole ethos of having the best person, obviously, I fully support; and I will support this clause because it is absolutely right but it leaves a sour taste that the private sector has not got this provision and, as I said, it is: do as I say, not as I do.

The President: The mover to reply.

Mr Downie: I understand there is an exemption already for chief officers of the international companies, so we are not doing anything –

Mr Turner: What about local companies?

Mr Downie: – different, but what I am suggesting that they do here with this amendment is we are not precluding any local applicants; what we are doing is having a fair – (**Mr Braidwood:** Candidates.) opportunity for all candidates to come forward and, as Mr Turner gave in his argument, we are actually turning people away now because of the complexities of some elements of the Work Permit.

We can agree amongst ourselves that the situation that we have is not perfect, but 'slowly, slowly catchy monkey', as they say. I think, in supporting this amendment, we will open these new job opportunities up and they will attract people with a lot more expertise and knowledge in these areas to come in.

As you have seen in today's newspaper, we have lost three key people out of the Health Service so you can hardly say there are lots of people out there to fill these positions.

So I beg to move, Madam President.

The President: Hon. Members, in order to have clarity about which amendment we are dealing with I will read it out. The motion is that the:

'Amendment to Schedule 1

Page 28, after line 4 insert:

"4A senior public service appointments

Employment as the Chief Secretary or the chief officer (however described) of a Department or a Statutory Board."

Those in favour of that amendment, please say aye; against, no. The ayes have it. The ayes have it.

Dealing with these amendments in order, we turn to the amendment tabled by the Lord Bishop, which deals with line 6 on page 28 of Schedule 1.

The Lord Bishop: Madam President, I beg to move the amendment of which all the Members have had a copy. I am grateful to the legislative drafters for producing a form of words that explains that accredited lay ministry is becoming more common in the church these days, and this amendment satisfies that. It seems to me it is a common-sense amendment, and therefore I beg to move.

Amendment to schedule 1

Page 28, at the end of line 6 add –

‘or as a lay worker with a religious body’.

Mr Braidwood: I beg to second, Madam President.

The President: The motion is that the amendment in the name of the Lord Bishop which appears on page 9 of your Order Paper: Page 28, at the end of line 6 add ‘or as a lay worker with a religious body’, be approved. Those in favour of this amendment, please say aye; against no. The ayes have it. The ayes have it.

We turn then to the second of the amendments in the name of the Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Madam President.

In order that Work Permit legislation is not overly bureaucratic and does not encumber international companies on the Island, existing Work Permit legislation permits a company incorporated in the Island which is a member of an international group, to bring in certain persons employed outside the Island by another company which is a member of the group, for up to 48 days a year, subject to compliance with certain conditions.

This amendment would extend a parallel right to Class 1, Class 2 or Class 3 licence holders within the meaning of the Regulated Activities Order 2011.

That Order regulates all classes of financial services. The principal ones are: deposit taking, Class 1; investment business, Class 2; services to collective investment schemes, Class 3; provision of corporate services and trust services, Classes 4 and 5; management or administration of service of a person licensed to carry on another class of business other than Class 3, and Class 7; money transmission services: bureaux de change, cheque cashers and e-money insurers, Class 8.

The international group provision does not work for these because classically there is no subsidiary incorporated in the Island. Instead they are frequently run on the Island as branches or agencies of companies incorporated in one or other of the Channel Islands.

The lacuna in the existing exemption was brought to the attention of the Department by Juan Watterson MHK. The FSC has since been involved in identifying which additional international executives should be covered.

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

Schedule 1

Page 28, line 19 to page 29, line 10. Omit paragraph 6(2) as printed and substitute –

‘(2) Employment in any capacity for a period or periods not exceeding 48 days in the aggregate in any year –

(a) by a company incorporated in the Island which is a member of an international group; or

(b) by a Class 1, Class 2 or Class 3 licenceholder within the meaning of the Regulated Activities Order 2011,

if the person concerned is mainly employed outside the Island by the licenceholder or a member of the group.

This is subject to the qualifications in sub-paragraphs (3) and (4).

(3) It is a condition of the exemption that, not later than 31st January in each year, the employer provides the Department with a return in writing giving, in respect of each person employed as mentioned in sub-paragraph (2) in the previous year, the following information —

(a) the person's name;

(b) the number of days he or she spent in paid employment in the Island during that year;

(c) the nature of his or her work in the Island;

(d) whether the person is still so employed; and

(e) to the best of the employer's knowledge, whether the person is still residing in the Island.

(4) Sub-paragraph (2) does not apply to employment —

(a) in the supply, in the course of a business, of food and drink;

b) in the sale by retail of goods, otherwise than from a permanent place of business in the Island, whether at a fixed location or from door to door;

(c) in construction operations;

(d) in shop work;

(e) in tourist premises;

(f) in licensed premises;

(g) in the provision of personal care;

(h) in clerical work;

(i) in horticulture;

(j) in cleaning work.'

Mr Wild: I beg to second, Madam President.

The President: Can we be clear: is there any difference between the amendment on the Order Paper and the amendment circulated yesterday?

Mr Crowe: I think, I need to look at Mr King's explanatory note. No, there is no change to the one on the Order Paper, Madam President.

The President: The motion is that the amendment to schedule 1, part 6, stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it. *(Interjections)*

The Clerk: Madam President, is that amendments 6 and 7 from Mr Crowe's amendments?

The President: Well, I was only dealing with 6.

Mr Braidwood: Just a point of clarification —

The President: Did the Hon. Member move both?

Mr Braidwood: Madam President, it was just a point (**The President:** Yes.) of clarification that Mr Wild moved the clause and schedule 1 but has seconded the amendment.

The President: Ah...

Mr Crowe: Oh, did Mr Wild —

The President: Right, sorry.

Mr Crowe: Oh, he seconded the amendment, so do we need another seconder?

The President: We do need another seconder.

Mr Butt: Yes, I second, Madam President.

The President: The Hon. Member Mr Butt has seconded, I think.
Now Mr Crowe, would you just clarify, were you moving your amendment number 6 – alone?

Mr Crowe: I seek guidance from Mr...

The President: You seemed to speak to number 6; I do not think you spoke to number 7.

Mr Crowe: No, just the number 6.

Mr Braidwood: Yes, you did say the 6.

The President: We will deal with them separately, and we will speak again at 7. It is very short. But let's deal with the amendment number 6, which is an amendment to page 28 of the schedule – paragraph 6(2), substitution of 6(2). Are we clear, Hon. Members? (**Several Members:** Yes.)

If there are no further queries about it – and I think there is nothing to reply to – those in favour, please say aye; against no. The ayes have it. The ayes have it.

And finally, the amendment number 7 in the name of the Hon. Member, Mr Crowe, dealing with page 30 of the schedule.

Mr Crowe: I am sorry, Madam President, I do not seem to have a note on this, I will have to just...

The President: Well, it is the last thing on the paper which has been circulated.

Mr Crowe: Shall I beg to move, Madam President...?

The President: Page 30, line 31, for paragraph 6(2), substitute 6(4).

Mr Crowe: Sorry, yes, I beg to move that amendment.

Schedule 1

Page 30, line 31 for 'paragraph 6(2)' substitute 'paragraph 6(4)'.

Mr Braidwood: I will second that, Madam President.

The President: The motion before Council is that the amendment number 7 in the name of Mr Crowe, amending schedule 1, paragraph 7(1) stands part of the Bill. Those in favour of the amendment, please say aye; against no. The ayes have it. The ayes have it.

That concludes consideration of all the amendments of the schedule, Hon. Members.

I will now put to you the schedule as amended. Those in favour of the schedule as amended, please say –

The Clerk: Sorry, would you put clause 7 and the schedule?

The President: No, I wanted to do the schedule first, and then I will come back to the...
(*Interjection by the Clerk*) Well, I take your guidance. Alright, we will have them both together.

Those in favour of clause 7 and schedule 1 as amended, please say aye; against no. The ayes have it. The ayes have it.

Right, now I think we can move a little more smoothly after that, Hon. Members. Clause 8.

Mr Wild: Thank you, Madam President.

Clause 8 provides for the Department to operate a system of Work Permits.

Subsection (1) disappplies 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 within 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 specified 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, agrees 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 new permit

Subsection (5) provides that, subject to exceptions, a Work Permit remains in force for a period which the Department considers appropriate and is 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, Madam President, that the clause stands part of the Bill.

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

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

Clause 9.

Mr Wild: Thank you, Madam President.

Clause 9: 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 a permit in the case where the person in primary employment is working by virtue of a temporary exemption which is limited to a maximum number of days.

Subsection (5) enables the Department to make the regulations treating (a) a man and a woman who are not married to each other but are living together as husband and wife; or (b) 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, Madam President, the clause stands part of the Bill.

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

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

Clause 10.

Mr Wild: Thank you, Madam President.

Clause 10 disapplies clause 7, exemptions, and clause 9, spouse or civil partner permit, 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 be disclosed under the Rehabilitation of Offenders Act 2001. This is a new clause.

I beg to move, Madam President, the clause stands part of the Bill.

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

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

Clause 11.

Mr Wild: Thank you, Madam President.

This clause empowers the Department to revoke a Work Permit in certain circumstances.

Subsection (1) provides that the Department may revoke a Work Permit if it considers that the circumstances that justified the grant or the renewal of the permit have changed. The circumstances for revocation are subject to regulations, see clause 23.

Subsection (2) provides that the Department may revoke a Work Permit held by a person referred to in clause 10, criminal records, where (a) the sentence in question was passed since the permit was granted or was last renewed; or (b) the Department was unaware of the sentence when the permit was granted or was last renewed. This subsection is a new provision.

I beg to move, Madam President, the clause stands part of the Bill.

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

The President: The Hon. Member, Mr Downie.

Mr Downie: Yes, Madam President.

I think this is a very worthwhile clause because there have been cases in the past where people have made a false declaration. I do not want to go into this too deeply but I can remember when I was in the old Department of Trade and Industry, I was finding out that a person who had been issued with a permit had actually served a sentence for murder – and wrote on his application that he had no previous convictions. So, needless to say, the Work Permit was revoked and the matter dealt with in the proper way.

This is another way, I think, of making sure that we do get good clear information about people who are on the Island. No matter what you say, people do take some comfort from the fact that Work Permits *can* be granted and they can be revoked under certain circumstances. I think that is a very good thing about the system.

The President: Do you wish to comment, Mr Wild?

Mr Wild: Just to thank my hon. colleague, Mr Downie, for his support.

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

Clause 12.

Mr Wild: This clause provides for the Department to have regard to certain criteria when making a decision to grant or renew a Work Permit.

Subsection (1) provides that 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, to be prescribed by regulations, see clause 23.

Subsection (3) contains a wide list of matters which may be prescribed by regulations for the purpose 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).

Subsection (3)(a), inserted as a result of an amendment in another place, qualifies subsection (3)(p) which allows the Department to take into account the ability of a potential worker and his family to speak English, in order to give the Department explicit powers to (i) prescribe the information that the applicant must provide; (ii) make arrangements for the ability of the person concerned and any relevant person to be examined; and (iii) charge a fee for making such arrangements. But the amendment imposes no obligation on the Department nor does it limit the Department's freedom as to whether to test or not to test ability to speak the English language.

Finally, subsection (4) defines 'relevant person' which term is used in subsection (3). It means '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, Madam President, that the clause stands part of the Bill.

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

The President: The Hon. Member, Mr Turner.

Mr Turner: I just wonder in terms of the... You have got the criteria laid out there for the grant or renewal of a permit. Who actually would decide? Is it officers in that Department that would make that decision?

One thing, obviously, we have to be conscious of, is if somebody has a Work Permit and is then sentenced to spend a period in prison, that this is not a further punishment on top of it that where they would lose the permit. I know that it is permissive, and I think the Department needs to bear that in mind because then when they come out of prison they could be – to use the phrase that was used earlier on in the debate – an even bigger burden, by not having a job to go back to.

So, it is a question of what criteria the officers use, and is it just left to the whim of officers?

The President: The Lord Bishop.

The Lord Bishop: Madam President, thank you.

I am just a little concerned that such a detailed list might not become a hostage to fortune, because the more you specify the more difficult it can sometimes be for the Department to have regard in the widest sense to matters that relate to the granting or revoking of a Work Permit.

The President: The Hon. Member, Mr Downie.

Mr Downie: Thank you, Madam President.

I think you need a list like this because the decisions are taken by the Work Permit Committee, they are not taken at random by officers within the Department, there is a Committee that sits on a regular basis to look at all the applications. I think the straightforward ones could quite easily be taken by an officer, but then reinforced by the Committee when they sit.

Just to look at some of them: (a) the economic situation of the Island today; (b) the availability of suitable Isle of Man Workers for the employment concerned; (d) any special economic benefit which the employment of the person concerned may bring to the Island; and I think the one that is most relevant, is (q) any other circumstances which, in the Department's opinion, ought in the public interest be taken into account.

So, you have got benchmarks here all along the way and likewise when employers are looking to recruit staff these are the things that are taken into consideration. I would assume that once this piece of legislation comes through that the Department will be introducing a guide to the new legislation, and that will be available for all the employers to look at – and then nobody can say, or plead ignorance of the fact that we have updated the legislation.

The President: The mover... did you wish to speak again?

Mr Turner: Am I able to speak again?

The President: Yes, you can at this juncture.

Mr Turner: Thank you.

Obviously, these are criteria for the granting *or* renewal of a permit and it says about matters which may be prescribed for the purpose of subsection (2)(a) or (b) include the state of health of a person concerned. So does that mean that if somebody is coming up for renewal, and they are quite poorly, we will refuse to renew their Work Permit in case they are a burden on our hospital?

I think that is a pretty appalling provision. I understand that we trying to manage things but I think if you have got the renewal... Who makes that decision? Where is the expert who is going to decide whether the health of the person should not have the Work Permit renewed?

To me, it is a very strange thing to have in here and I do not think... Do the Work Permit Committee have the expertise to decide whether the health is going to be relevant to the renewal of a Work Permit?

The President: The Lord Bishop.

The Lord Bishop: Can I come back?

The President: Yes.

The Lord Bishop: Thank you, Madam President.

I just find it a bit strange that we have this comprehensive list of things – and I do not query the relevance of any of those things to particular circumstances – but then when you get to (q) you say 'any *other* circumstance...', which effectively means... It is like a recipe for baking a cake. (**Mr Downie:** Catch all.) You put the following ingredients in but of course you can add anything else you like as well. (*Interjections*) It almost renders the rest completely pointless!

The President: The Hon. Member, Mr Butt.

Mr Butt: Thank you, Madam President.

I think the last two speakers have made a point: this is supposed to be about the control of employment and actually some of these clauses, or these subclauses, are actually some social engineering going on. (**Mr Turner:** Draconian.)

In effect, if somebody has a serious health problem that is going to cost lots of money, say they need dialysis or whatever, do we then refuse them?

And the very last one is, in effect, the size of the family maybe. I think bring four or five people over, dependants, we are denying them, maybe, a permit on those grounds. So social engineering rather than control of employment.

I think that has always been the case within the Work Permit legislation, but it always has jarred with me slightly that we try to engineer things socially by using this legislation.

Thank you, Madam President.

The President: The mover to reply.

Mr Wild: Thank you for everybody's contributions.

I think it is a comprehensive list that gives clarification and flexibility. The Minister has, in fact, delegated his power to the Work Permit Committee which can delegate to the Work Permit Secretary. So the decision-making is made either by the very experienced Committee or by the very experienced secretary. Renewals tend to be granted automatically, DED does not require a completely new application form.

Mr Turner: It does not say that, though.

The President: The motion then, Hon. Members, is that clause 12 do stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.
Clause 13.

Mr Wild: 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 chairmen – or 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 chairperson drawn from the panel of deputy chairpeople in accordance with 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 the regulations made under the Tribunals Act 2006.

I beg to move, Madam President, that this clause stands part of the Bill.

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

The President: The Hon. Member, Mr Downie.

Mr Downie: Thank you, Madam President.

It is not quite clear in here, maybe it is in the Tribunals Act, but can the mover confirm that you still have to be a legally qualified person both to chair this Tribunal and also a legally qualified person to act as a deputy in their absence. And can the mover also clarify if it is fairly easy to get somebody

to work in these roles, or is it sometimes difficult to get the right people with these qualifications should that be the case?

The President: The mover to reply. Oh, are you calling on Mr Clague?

Mr Wild: Can I ask Mr Clague?

Mr Clague: Thank you, Madam President.

I have a copy of the Tribunals Act here. The Work Permit Appeal Tribunal is a Part 2 tribunal under the Act and in section 4 of the Tribunals Act it gives the rules for the constitution of Part 2 tribunals. It says:

'A chairman (other than a panel chairman) of a Part 2 tribunal, and a member of a panel from which chairmen of a Part 2 tribunal are drawn, shall be a barrister, advocate or solicitor, in each case of not less than 7 years' standing.'

The President: Thank you.

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

Clause 14.

Mr Wild: 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). This appeal is to be in accordance with the 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 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 be 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 (i) made a mistake in law; or (ii) based its decision on any incorrect material fact; or, (iii) 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 Tribunals Act 2006 may (a) require an appellant to pay a fee to make an appeal, and (b) provide for some or all of the fee to be refunded in specified circumstances.

I beg to move, Madam President, that the clause stands part of the Bill.

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

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

Coming up, there is a clause on fixed penalties and I cannot see any appeal mechanism in that. I wonder whether that would include appeals to the Tribunal, because I also cannot see the Tribunal listed as being the place to deal with an appeal against a fixed penalty which is issued.

We have not actually got to that clause yet, it is coming up in clause 17.

I just wonder, maybe the mover could explain, would the Work Permit Appeal Tribunal also deal with appeals on fixed penalties issued?

Mr Wild: I will pass that to Mr Clague, if I may.

Mr Clague: The Work Permit Appeal Tribunal does not deal with fixed penalties. **(Mr Wild: No.)** But a fixed penalty can be appealed.

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

Clause 15.

Mr Wild: This clause sets out various offences and the penalties for the 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 £5000, or both. The maximum fine in the 1975 Act is £2,500.

Subsection (2) provides an exemption 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 it an offence to fail to comply with a condition attached to an exemption or to a Work Permit. The offence carries a maximum fine of £1,000.

Subsection (4) provides that 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 the 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 that 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 one's Work Permit status, see clause 18(1).

Subsection (6) makes it an offence to intentionally 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. The present maximum fine under the 1975 Act is £5,000.

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

I beg to move, Madam President, that the clause stands part of the Bill.

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

Mr Downie: Thank you, Madam President...

The President: The Hon. Member, Mr Downie.

Mr Downie: I would just like to ask the hon. mover if the offences apply both to employers and also to self-employed, and is he happy that the amount of fines that can be awarded, bearing in mind that the courts never actually award the maximum, and it seems to me to be a little out of kilter as legislation we will be looking at later on to do with the registration of landlords, there is a fine of £25,000 for failing to register.

Is he happy that this is a good enough deterrent, bearing in mind that for some of the offences, liable to summary conviction, it is £1,000 here. In some circumstances that will be less than a week's wages for some of these people. Should we not be lifting the bar a little bit and sending the message out?

The President: The mover to reply.

Mr Wild: Well, the answer... I will pass that over to Mr Clague.

Mr Clague: Thank you, Madam President.

The fines have been increased substantially. The fine that Mr Downie is talking about is for an offence... the £1,000 fine is for an offence in respect of regulations which could be fairly minor matters, like filling in application forms and things like that.

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

Clause 16.

Mr Wild: 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 also 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.

I beg to move, Madam President, that the clause stands part of the Bill.

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

The President: The motion is 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 Wild: This clause enables a fixed penalty to be imposed for an offence of working, or employing a person, without a Work Permit, or failing to comply with a condition of a Work Permit or exemption, as an alternative to prosecution. This is a new provision.

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 the 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, see 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, i.e. pay it to the Treasury for the General Revenue.

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

Subsection (7) defines 'properly addressed' for this purpose.

Madam President, I beg to move that the clause stands part of the Bill.

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

The President: The Hon. Member, Mr Downie.

Mr Downie: It is a related issue, Madam President.

I would just like to ask the mover or... (**Mr Braidwood:** Mr Clague.) the representative from the Department, can a Government Department be prosecuted for employing somebody without a Work Permit, or served with a fixed penalty notice? And, if this is the case, do we know when it last happened?

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

There does not appear to be any appeal here against a fixed penalty. They can be issued at the whim of the inspector, the person who is receiving the fixed penalty then has to pay it within 14 days, but it does not actually say anywhere here if they do not agree with the whim of the inspector, how they can appeal it.

So I think I am against this provision. We have heard the case of how important this legislation is: my view is, if there is an offence committed there should be a proper process for it, or at least an appeal if you are going to give somebody a fixed penalty, which the Department is doing. They can just hand these things out like confetti and people... well, how do they appeal it?

So the answer has not really been given.

The President: The Hon. Member, Mr Braidwood.

Mr Braidwood: Madam President, I think Mr Downie's question is answered through clause 20, 'Application to Government', which states Departments.

Mr Wild: It does, yes.

The President: The Hon. Member, Mr Butt.

Mr Butt: Thank you, Madam President.

I think every fixed penalty –

The President: Is covered in... legislation.

Mr Butt: – in whatever legislation, has an option (**The President:** Appeal.) to actually refuse it and go to court. So I think that will apply in this case as well.

Mr Turner: It does not say that here.

Mr Wild: I will just –

The President: The mover to reply.

Mr Wild: Thank you, and thank you to my hon. colleague, Mr Butt, for clarifying that position, which is the case.

Of course, in terms of my hon. colleague, Mr Turner, he did make reference to – what was it? – Draconian wild statements, earlier on –

Mr Turner: That is what this is –

Mr Wild: The reason for fixed penalties, or the rationale behind it, was the fact that you get a lot of... there are a lot of incidents where corporates are not paying due heed and regard to the Work Permit legislation. So, speaking from my own business background, if the banking group I was associated with got a fixed penalty for non-compliance, which was legitimate, it would be taken very seriously. It is just to try and give a bit of gravitas to the fact this is our legislation and control of employment legislation and should be followed properly by HR departments.

Mr Turner: Where is the appeal?

The President: The motion, then, Hon. Members, is 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 voting resulted as follows:

FOR

The Lord Bishop

Mr Butt

Mr Braidwood

Mr Coleman

Mr Downie

Mr Crowe

Mr Wild

Mr Corkish

AGAINST

Mr Turner

The President: Voting is 8 votes for, 1 vote against, Hon. Members. The motion therefore carries. Clause 18.

Mr Wild: Thank you, Madam President.

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, restrictions on employment, 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 the 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 the 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 signature of a certificate under subsection (2), (4) or (5) does not have to be specifically proved.

I beg to move, Madam President, that the clause stands part of the Bill.

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

The President: The motion is that clause 18 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 19.

Mr Wild: Clause 19: 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 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 powers of entry, and power to require the production of documents, including those kept on computer, and to ask questions. Obstruction or refusal to answer is an offence under clause 15(6).

Subsection (3) places an obligation on a person who is required by an inspector to produce documents or to answer questions to provide information and produce the documents. Non-compliance is an offence under clause 15(6) again.

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, Madam President, that this clause stands part of the Bill.

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

The President: The motion is that clause 19 do stand part of the Bill. Those in favour, please say aye; against, no. against no. The ayes have it. The ayes have it.

Clause 20.

Mr Wild: Thank you, Madam President.

Clause 20 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, Madam President, that this clause stands part of the Bill.

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

Mr Downie: Yes please, Madam President.

The President: The Hon. Member, Mr Downie.

Mr Downie: Perhaps Mr Clague might be able to advise us. If a Government Department is the client Department on – let's take for instance the Peel Road job – that is, the client Department

there, is the Department of Infrastructure. The question I am posing is: that subcontractors working directly for that Department, if it was found that some of the subcontractors were employing people who did not have suitable Work Permits, who is responsible? Is it the subcontractor or the client Department? At the end of the day, the client Department is the employer.

Mr Turner: I don't think they are.

Mr Downie: Who would be guilty of the offence, and who would be requiring to face this matter? Or as it says here in (2), 'nothing in the Act makes the Civil Service Commission or any Department or Board guilty of an offence under this Act'.

So is this just worthless or what?

The President: Mr Clague.

Mr Clague: Thank you, Madam President.

Whoever directly employs the worker is the person who is responsible under the legislation. The reason that we have subsection (2) is really that the Government could fine itself but it is just a question of robbing Peter to pay Paul.

The Government is still obliged to follow the legislation, but it does not make sense to fine itself.

Mr Downie: So, just to bear with me for a second, Madam President, would the Chief Executive of that Department, or the person responsible for the contract, not be guilty of a disciplinary offence under the Civil Service rules?

Mr Clegg: If somebody acted not in compliance with the legislation then it could be a disciplinary offence, but as I say the legislation applies to the person or organisation that directly employs the worker concerned.

Mr Downie: Right, okay, thanks.

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

I must admit I have mixed views on this, and the views are almost contradictory, because I think it is important that Government is not seen to be able to flout the rules and should be subject to punishment. But at the same time, as we have just heard from Mr Clague, it is the same pot of money so what we end up doing is taking ourselves to court, paying a load of money to lawyers, and the money that comes out of the Treasury goes back to the Treasury. It is a complete nonsense. But there is the principle.

So I think it is valid, the point raised by Mr Downie with regard to this, that if an offence has been committed then there should be some sort of recourse to follow. However subsection (2) where it says 'nothing in the Act makes the Civil Service Commission or any Department or Board guilty of an offence', we do of course again, where we have double standards here, where we are happy to make it an offence for a director of a private company to be hauled over the coals, but not a member of a Department or a Statutory Board – of course, they are constituted slightly different.

I just wonder in a final part to this, where we have corporatised entities – and there is probably going to be much discussion about corporatisation over the coming months – would they also be covered by this, or would they be treated like private companies? I understand that some of the Government's corporatised entities may be established under the Companies Act, therefore I would imagine this does not cover them.

The President: The Hon. Member, Mr Braidwood.

Mr Braidwood: Thank you, Madam President.

Madam President, in actual fact the point that Mr Downie has raised is a vital point – or a viable point, more so – in that it has happened previously where Departments have been... Actually I know of one case where, I think it was through Health and Safety, and it was the Department of Local Government and the Environment who prosecuted... the Health and Safety section actually prosecuted its own Department for not carrying out health and safety checks.

So, it is a matter of principle that Government cannot be exempted if they are wrong in employing somebody, then the principle is that they should be taken to court. It does not matter if the money actually goes back into Treasury, it is a matter of principle that there cannot be law for one and law for another.

The President: The mover to reply.

Mr Wild: Could I ask Mr Clague to pick it up, please?

Mr Clegg: Thank you, Madam President.

As regards Mr Turner's point, the clause is clear about its application to Government. It applies to members of the Isle of Man Civil Service and persons employed by any Department or any Board, so if bodies were corporatised then they would not, as far as I can see, fall within that definition. I imagine that would be one of the factors that would be looked at if legislation to bring forward corporatisation is advanced.

The President: Thank you.

The motion is that clause 20 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

I think we shall now take an adjournment, Hon. Members, until 2.30.

*The Council adjourned at 1.06 p.m.
and resumed its sitting at 2.30 p.m.*

Control of Employment Bill 2013 – Consideration of clauses concluded

The President: Fastyr mie, Hon. Members.

Members: Fastyr mie, Madam President.

The President: We continue at clause 21 of the Control of Employment Bill.
Mr Wild to move, please.

Mr Wild: Thank you, Madam President.

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, on oil rigs. Such an order requires Tynwald approval. That is covered in clause 23(4).

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

Madam President, I beg to move that clause 21 stands part of the Bill.

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

The President: The Hon. Member, Mr Downie.

Mr Downie: As I understand it, seafarers are exempt from the current legislation. I do not really know what this clause intends to do because people working on rigs are working on registered vessels, so they form the same duties as seafarers and, if a person was required to come in to do specific work for a few days, they would not require a permit anyway. So I am just looking to seek guidance here – that this is the clause that the Council of Ministers may bring an order in to deal with, should the situation arise. But, under normal circumstances, people working for the Steam Packet and Ramsey Steamship Company are exempt from the present legislation.

The President: The mover to reply. Any comment on it?

Mr Wild: I shall ask Mr Clague?

The President: Mr Clague.

Mr Clague: This clause is really similar to a provision in the Employment Act 2006. I think we have in mind things like wind farms, which may be situated in our waters in the future.

The President: Thank you.
Does that satisfy, Mr Downie?

Mr Downie: Yes, I am satisfied.

The President: Thank you.

The motion is then 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.

We now turn to the new clause 21A which is embodied in an amendment to be moved by Mr Crowe.

Mr Crowe: Thank you, Madam President.
The amendment has been circulated and starts on:

‘Page 22 after line 31 insert –
“21A Registers...”’

– and then it goes on to stipulate what those registers will be.
This amendment permits the Department to:

‘... maintain registers of –
(a) Isle of Man workers;
(b) persons in respect of whom permits have been issued; or
(c) exempt persons.’

A register would only be available for inspection by the public if the Department considered it appropriate. A register could be kept in electronic form. Information to be kept about persons on the register would be prescribed in regulations.

The Department listened carefully to the arguments that were put forward in support of an amendment in another place regarding a register of Work Permits which failed to carry. The re-drafted amendment will deal with the Department’s previous concerns.

Whereas the Bill presently provides enabling powers for a register of Work Permits, at clause 23(1)(h), this new clause is wider. The Department considered that it would be very useful to have registers of Isle of Man Workers *and* exempt persons, not just holders of Work Permits, as had previously been proposed.

In this way, information would be available as to all people working on the Isle of Man, whereas at present there are some gaps. For example, the Department knows little about persons who are exempt under the legislation or even the numbers of exempt people. Registers would also ease enforcement.

The provision means that clause 23(1)(h) is no longer necessary, but that will be dealt with in the amendment to clause 23 which stands in my name.

I beg to move the amendment standing in my name.

New clause

Page 22, after line 31 insert —

'21A Registers

(1) The Department may maintain registers of —

(a) Isle of Man workers;

(b) persons in respect of whom permits have been issued; or

(c) exempt persons.

(2) A register maintained under this section —

(a) must contain such particulars about a person whose name is entered in the register as may be prescribed;

(b) may, if the Department considers it appropriate, be made available for inspection by the public; and

(c) may be kept otherwise than in documentary form, subject to the following qualification.

If a register is kept as mentioned in paragraph (c), and the Department makes the register available for inspection under paragraph (b), the Department must make the information it contains available for inspection in visible and legible form.'

Mr Butt: I beg to second, Madam President.

The President: The motion is that a new clause be introduced, by way of amendment in the name of Mr Crowe. Those in favour of the new clause 21A, please say aye; against, no. The ayes have it. The ayes have it.

Clause 22.

Mr Wild: Thank you, Madam President.

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 amended in another place, enables (a) the Governor – in so far as he has functions under the immigration Acts; (b) the Chief Constable; (c) the Treasury; and (d) the Assessor of Income Tax, to share with the Department information which is likely to be of use for control of employment purposes.

Subsection (3), as amended in another place, 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 the 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 the various terms used in this clause.

I beg to move. (**Two Members:** Subsection (6).)

Sorry. Subsection (6) provides for the interpretation of expressions used in subsection (4) and subsection (7) overrides any restriction that there may be on the purposes for which information may be disclosed or used.

So I beg to move, Madam President, that clause 22 stands part of the Bill.

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

The President: The Hon. Member, Mr Braidwood.

Mr Braidwood: Thank you, Madam President.

I am supportive of clause 22, but inquisitive why – and the reason why – the Department of Social Care was removed in another place, because I thought that would have been beneficial to the Department?

The President: The Hon. Member, Mr Turner.

Mr Turner: Yes, I just would like to know about the sharing of information. I mean is this some sort of other instrument to stop people getting a Work Permit or is it involved with all persons engaged in employment in the Island – that the information can be shared with the Department?

What concerns me here is I know that if people owe money to Government they can be prevented from... For example, if a business is getting a grant from the Department of Economic Development but they owe VAT, then fair enough; but are we saying here that we can disclose some information and then say, 'Well, we are not going to give you a Work Permit,'? Because this is how it looks.

It is almost like we have real state control here now, over individuals, creeping in; People can talk to each other within Departments and then say, 'Well, unless you do that and clear that Bill with the Assessor of Income Tax or the Treasury, because you have got a load of parking fines outstanding...' or something like that. What is this for? I would like to know because that is how it looks... it could be used.

The President: The Hon. Member, Mr Downie.

Mr Downie: Yes, thank you, Madam President.

Taking up the point that my hon. colleague, Mr Turner, makes – (*Interjection*) (**Mr Turner:** It is outrageous.) But coming at it from the other angle, I think we should know who is working in the Isle of Man or intending to work, or be intended to engage in employment; and what is becoming obvious is that, since data protection and all these other things have come in, there is this inability now to disseminate information.

For example, we have spent years trying to find ways of collecting fines and I would like to ask the mover if the sharing of information will be available to the courts so that if the person who has been working commits an offence we can put in an attachment of earnings and things like that; because these are areas that slipped the net all the time and I would be happier if this information, that we are going to share here, is available to all Government agencies.

At the end of the day, it must be beneficial for the person themselves because it is much easier then to access electricity accounts and gas and so on, because you have actually got some standing here, you have got some presence in the community.

As I say, when this information is given out – albeit on a restricted basis – to Government Departments and so on, it can be used properly. We are not wanting to know how much a person is worth, delving into their accounts or personal data or anything like that, but I think it is important that, when we are introducing legislation now, we are doing it for the right reasons and to get a good end result.

The President: The mover to – (**Mr Turner:** Can I...?) Do you wish to add, Mr Turner?

Mr Turner: Yes, I would, if I may, Madam President.

I just think that yet again we are using another instrument where there are provisions. If somebody owes money, there are attachment of earnings orders which can be applied for. The Control of Employment Act is not the vehicle for doing it. It is another case of almost holding people to ransom, saying, 'We are not going to give...' This is about giving people a permit to work, not some blackmail tool to say, 'Well, unless you clear your fines with whichever Department' – it could be, I do not know, non-payment of the toilet tax that is coming up, for example – 'Well, we are not going to give you a Work Permit or renew it.'

The provisions appear that they could be used for those sorts of things and that is surely not what the Control of Employment Act is designed to do. It was meant to be protecting Manx workers. Now we are delving into all sorts of other things that we can have, with all sorts of collusion between different Departments that may be owed money.

I just do not think it is acceptable.

A Member: Not collusion.

The President: The mover to reply.

Mr Wild: Some very interesting points.

In terms of my hon. colleague, Mr Braidwood – the inquisitiveness – the Department of Social Care ceases to exist under the transfer of functions. Its functions are taken over by the Treasury.

Mr Braidwood: Yes, Social Security is Treasury. (**Mr Wild:** Sorry?) Social Security is Treasury still. The Department of Social Care (**Mr Wild:** Yes.) is being absorbed into the Department of Health and Social Care.

Mr Wild: Then in terms of the points made by my colleague, Mr Turner, we can revoke permits if people do not pay tax or National Insurance, and that is why there is an element of liaison between bodies. But the information-sharing provisions are limited to very specific purposes; they are not general.

Mr Turner: Well, it says in here it is, doesn't it?

The President: The motion is then, Hon. Members, that clause 22 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We turn now to clause 23, Hon. Members.

Mr Wild.

Mr Wild: Thank you, Madam President.

This clause deals with regulations and orders under the Bill.

Subsection (1) provides the Department with powers 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, i.e. 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 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 (a) 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 grounds of sex when making orders and regulations.

I beg to move, Madam President, that clause 23 stands part of the Bill.

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

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

Can I ask the mover why the regulations are not a straight approval. The reasoning behind making the regulations and then laying them... under this process, why they are not being under the approval process?

Mr Wild: Can I ask Mr Clague to respond to that?

Mr Clague: Thank you, Madam President.

Often the regulations which are moved will be of a fairly technical or routine nature. The last time that the regulations were amended was to make a series of consequential amendments following the Civil Partnership Act. So that is one reason why it is the change in procedure.

The President: We have some amendments in the name of Mr Crowe, in relation to this clause. *(Laughter)*

Mr Braidwood: Madam President, did Mr Crowe second the moving of the clause?

A Member: I am prepared to second –

Mr Crowe: No, I seconded the clause.

The President: Yes and now you are moving some amendments to it. *(Laughter)*

Mr Crowe: I thought you were saying I had not seconded it. *(Laughter)* **(Mr Braidwood: No.)** Oh, sorry.

The President: You did second. Right, that does...

Mr Crowe: Oh, I see.

Mr Downie: I am prepared to second the clause, Madam President, if it will help.

The President: Right.

Mr Crowe: Sorry, Mr Braidwood.

The President: However, these are Government clauses, but... I take the point.

In that case, we call now on Mr Crowe to move the amendments standing in his name in respect of this clause. There are three minor amendments. Would you like to move them together? (**Mr Crowe:** Yes, please, Madam President.) They are the version which was circulated yesterday, Hon. Members.

Mr Crowe: It is the clause as corrected... page 24, page 25 and another one on page 25. The amendment – the most recent one circulated – has four subsections:

‘(i) employers;
(ii) the holders of work permits;
(iii) exempt persons; and
(iv) Isle of Man workers.’

So that should be the amendment that is circulated.

The President: Well, first there is page 24.

Mr Crowe: Yes:

‘... 24, omit lines 35 and 36...
Page 25, omit lines 3 and four...’

– and then:

‘Page 25, after line 4 insert the following as the final paragraph...’

– and it details that. I hope everybody has had that latest amendment.

So, Madam President, the amendment would require:

‘... the provision of prescribed information to the Department by...
(i) employers;
(ii) the holders of work permits;
(iii) exempt persons; and
(iv) Isle of Man workers.’

The Department listened carefully to the arguments that were put forward in another place regarding the potential difficulties of policing exempted employments. The amendment is a fairly comprehensive enabling power which would enable the Department to obtain information from all relevant parties.

At present, most exempt employments are beneath the radar and, consequently, the Department does not know which individuals are exempt or how many they are in number. The additional powers to obtain information are also necessary for the Department to be able to maintain registers of Isle of Man Workers, exempt persons and holders of Work Permits under new clause 21A.

Madam President, paragraphs (h) and (k) of subsection (1) are omitted as part of this amendment. Paragraph (h), which deals with registers, is now covered by clause 21A, while paragraph (k), which obliged employers and Work Permit holders to notify the Department on the happening of prescribed events, is no longer necessary due to the insertion of the new paragraph in

subsection (1), which enables the Department to obtain prescribed information. Such information includes the information that could have been obtained under paragraph (k).

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

Amendments to clause 23

Page 24, omit lines 35 and 36 (paragraph (h) of subsection (1)).

Page 25, omit line 3 and 4 (paragraph (k) of subsection (1)).

In consequence of the preceding amendments adjust numbering of the following paragraphs of the subsection.

Page 25, after line 4 insert the following as the final paragraph of subsection (1) —

'() requiring the provision of prescribed information to the Department by any of the following —*

(i) employers;

(ii) the holders of Work Permits;

(iii) exempt persons; and

(iv) Isle of Man Workers.'

Mr Braidwood: I beg to second, Madam President.

The President: The Hon. Member, Mr Turner.

Mr Turner: Yes, thank you, Madam President.

With regard to registering Isle of Man Workers, the definition earlier on was that a person is an Isle of Man Worker if he or she was born in the Island. Does that not have the effect of registering everybody?

The President: Not if you have gone away and come back, perhaps.

Mr Turner: No, but, (*Laughter*) for example, someone who is Manx and is an Isle of Man Worker, because they are deemed an Isle of Man Worker under this legislation. I accept that this is a 'may' maintain register of Isle of Man Workers, so would that not include people who are not subject to Work Permits, because they are an Isle of Man Worker?

Mr Crowe: Yes, the definition of 'Isle of Man Workers' is at clause 4, which sets out the whole *raison d'être* of who an Isle of Man Worker is. So it does cover Isle of Man Workers who may not require a permit. So that is —

Mr Turner: I am an Isle of Man Worker.

Mr Crowe: No, but it is only a 'may' require registers of these people — so employers, the holders of Work Permits, exempt persons and also everybody who is deemed to be an Isle of Man Worker. So it catches (**The President:** Right.) everybody. (**Mr Wild:** The workforce.) So you will then know who is working on the Isle of Man and who is not.

I beg to move.

The President: Any further comment on that? Mr Turner.

Mr Turner: Well, I do actually, Madam President, thank you.

Again, Isle of Man Workers are captured on the Income Tax system. I mean, in effect, everybody in this room could be on this register. I just do not see why the Department — other than yet again more control over people... that this is meant to be a Work Permit type of legislation and you are now wanting a register of every single person who is working on the Island.

What if people who are Isle of Man Workers do not want to be on this register? I am not talking about Work Permit people, I am talking about people who do not need a Work Permit. Why should they be on the Department's register? Because this does catch, quite simply, everybody.

Mr Crowe: Madam President, it is an enabling power to allow this information to be obtained as part of the governing of the Isle of Man.

Mr Wild: It provides statistical... Sorry, Madam President.

It provides the opportunity for more details and statistical data if required by Economic Development, for example.

Mr Downie: Madam President, I think the present tax system does not tell you who is and who is not an Isle of Man Worker and it is useful to have that information.

Mr Turner: May I come back?

The President: Yes, you may.

Mr Turner: The status of an Isle of Man Worker does not necessarily mean you might be working. You qualify as an Isle of Man Worker, yet the Department is wanting to have everybody on a register in the Department of Economic Development – effectively, is what this power is giving.

I appreciate it is an enabling power, but that is even worse, in my view – that answer – because why do you want it? Isn't every individual registered on the NI number, the Income Tax system? There is a whole load of registers of persons that other Departments of Government have, yet the Department of Economic Development is maintaining a register of Isle of Man Workers which includes, quite simply, everybody on the Island who may or may not need a Work Permit, including every Manx-born person. I do not know why you want it.

The President: Do you want to add anything or have you replied to the extent that you want to, Mr Crowe?

Mr Crowe: Well, as Mr Downie said, the system does not tell us who is not an Isle of Man Worker; and, as Mr Wild said, statistical information is very helpful to the Government administering its own way going forward.

Mr Turner: You can then make –

Mr Crowe: If I can quote from Mr Clague, it gives you the whole picture of people working on the Isle of Man. Without this, we only have partial information about the workforce. So it is to give statistical information.

The President: I think we have a disagreement here. (**A Member:** Yes.)

Hon. Members, the motion is that the amendments in the name of Mr Crowe be approved. I will move them separately. We will take first amendment number 3, dealing with page 24. Those in favour of that amendment, please say aye; against, no. The ayes have it. The ayes have it.

Amendment number 3, relating to page 25, clause 23. Those in favour of that amendment, please say aye; against, no. The ayes have it. The ayes have it.

Finally, amendment number 4, in the name of Mr Crowe. Those in favour of that amendment, please say aye; against, no. The ayes have it. The ayes have it.

I put to you now the clause as amended. Sorry, were you...?

Mr Turner: I apologise. I was quite confused there as to (**The President:** The numbering.) the numbering, I think.

The President: Would you like us to take it again?

Mr Turner: I just want to be clear exactly. The register issue is in that list that we are –

The President: It is in –

Mr Braidwood: It is (h).

The President: – amendment number 4.

Mr Braidwood: On page 24. It is that one.

Mr Turner: Yes, okay. (*Interjection*) Okay, yes.

The President: Are we clear? Amendment number 4. I am not sure whether you voted or were silent. I would be happy to take that amendment again, should you wish me to do so.

Mr Turner: Yes, please, Madam President.

The President: Are we clear, Hon. Members? (**Members:** Yes.) Is everyone clear on what –

Mr Braidwood: Everybody else is clear. (*Laughter*)

The President: – they are voting on? (*Laughter*) Right. (*Interjection*)

We are referring to the document which was circulated yesterday – amendments in the name of Mr Crowe, which have been amended from the Order Paper. We are looking at the second page, at the top of the page: amendment number 4, to clause 23. Those in favour of that amendment, please say aye; against, no. The ayes have it. The ayes have it.

I put to you now that clause as amended, Hon. Members. Those in favour of the clause as amended, please say aye; against, no. The ayes have it. The ayes have it.

Clause 24.

Mr Wild: Thank you, Madam President.

The President: Along with the schedules 2, 3 and 4.

Mr Wild: 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.

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

Before I move it, can I just make a point of clarification to the question raised by my hon. colleague, Mr Turner, in terms of fixed penalties? A fixed penalty is an alternative to prosecution for an offence. If a person does not think that the fixed penalty is warranted he or she can refuse to

accept it, in which case he or she may be prosecuted. If prosecuted, the person may plead not guilty and their guilt or innocence is then a matter for the court to decide, bearing in mind that it is for the prosecution to prove its case beyond reasonable doubt. So, although the fixed penalty cannot be appealed, there is a mechanism to challenge its appropriateness.

Mr Crowe: I beg to second clause 24.

Mr Wild: I beg to move, Madam President –

The President: He has to move it first. *(Laughter)*

Mr Wild: – clause 24 stands part of the Bill.

Mr Crowe: And schedules 2, 3 and 4, which I –

Mr Wild: And schedules *(Laughter)* 2, 3 and 4.

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

The President: Does anyone wish to speak to clause 24 and the schedules?

The motion before Council is that clause 24 and schedules 2, 3 and 4 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

That concludes consideration of the Second Reading and clauses, Hon. Members – rather a convoluted one today. *(Laughter)*

Mr Braidwood: You did very well... *[Inaudible] (Interjections)*

The President: However, you got through it. Right.

A Member: We got there in the end.