



LEGISLATIVE COUNCIL OFFICIAL REPORT

RECORTYS OIKOIL
Y CHOONCEIL SLATTYSSAGH

PROCEEDINGS

DAALTYN

HANSARD

Douglas, Tuesday, 3rd December 2013

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Present:

The President of Tynwald (Hon. C M Christian)

The Lord Bishop of Sodor and Man (The Rt Rev. R M E Paterson),
The Acting Attorney General (Mr J L M Quinn),
Mr R P Braidwood, Mr D M W Butt, Mr M R Coleman, Mr C G Corkish MBE,
Mr E A Crowe, Mr A F Downie OBE, Mr J R Turner and Mr T P Wild
with Mr J D C King, Clerk of the Council.

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Legislative Council

The Council met at 10.30 a.m.

[MADAM PRESIDENT *in the Chair*]

The President: Moghrey mie, Hon. Members.

Members: Moghrey mie, Madam President.

5 **The President:** The Lord Bishop will lead us in prayers.

PRAYERS

The Lord Bishop

Order of the Day

1. Criminal Justice, Police Powers and Other Amendments Bill – Third Reading approved

Mr Coleman to move:

That the Criminal Justice, Police Powers and Other Amendments Bill be read a third time and do pass.

The President: Hon. Members, we move straight into the Third Reading of the Criminal Justice, Police Powers and Other Amendments Bill. I call on Mr Coleman.

10

Mr Coleman: Thank you Madam President.

I have distributed quite a detailed briefing on the issues of the jurisdiction of Manx policemen, and the absolute minefield which exists in international law with reference to this. If one regards the *Teddy* case in New Zealand, I think it gives us great reason for including this in Manx legislation, where Mr Teddy was on a trawler in front of a mining vessel going backwards and forwards in front of it, and New Zealand constables got on his vessel to prevent him from doing this and arrested him. That went to the district court and it was found that they had no jurisdiction. It then went to the high court where it was found they had jurisdiction, it is now in the appeal court. But the point is, if it had... and in New Zealand they are currently putting legislation in such as we are proposing to put in, to make sure that it does not become issues of precedence within the courts. It is in the Manx legislation so we would not have the problem which there was with Teddy.

15
20

The other issues that came up were the issue of how it was going to be paid for, and I will cover those now if I may in the general speech.

25 I am grateful to Mr Downie for seconding the Bill, to Mr Braidwood for his amendments to the Bill in this Chamber, and to Hon. Members for their support particularly through the clauses debate last week.

I will address some further matters mentioned by Hon. Members last week in a moment, but I thought first it would be useful to briefly remind you what the Bill is all about.

30 The purpose of the Bill is to update powers and procedures as they relate to, or impinge on the work of the Police and enable the Police to operate efficiently and effectively in the 21st century. Some of these powers, such as search warrants and additional powers of seizure reflect the changing nature of crime, including the impact of crime across borders, and developments in legal understanding or human rights obligations. Others are about ensuring appropriate regulations can be made to govern the procedures, conduct or manage the efficiency of police officers.

35 In relation to bail there have been a number of developments brought about by the need to remove unnecessary procedures, but also to address the problem of breaches of bail by extending forfeiture provisions, the aim here being not only to reduce the number of arrests required for breach of bail but to encourage greater compliance with legal procedures.

40 I recognise and respect the concerns some Members expressed in relation to clauses 29 and 30 which were about bail from the scene of arrest. As with the exercise of the power of arrest, and the power to release persons on police bail with conditions, there will be a code of practice that makes reference to the use of these provisions.

45 A few amendments to the Bill were made at the clauses stage last week. Mr Braidwood introduced two amendments to return the wording in clause 28 'Power of Arrest' relating to the requirement to provide an address to the police for service of a summons to that currently used, that is, an address must be satisfactory for service.

Mr Braidwood's other amendment added two new clauses, with one of them removing the requirement for an accused person, on remand, to give his or her consent to having a preliminary hearing by means of a live link between the Prison and the Court.

50 The other new clause provides for the expiry of the Custody (Amendment) Act 2013, which recently received Royal Assent, once it has been promulgated.

Hon. Members raised a few questions, or issues, last week, which I undertook to respond to today. Some I have done so through the briefing note.

55 In relation to clause 17, Mr Butt asked what the significance of the date, 14th September 2007, was in new section 8G(3) and (4) of the Police Act. This reflects the date subsection (4) was added to the old section 8 which conferred some discretionary powers on the Department in relation to regulations about pay and conditions of service.

60 In relation to clauses 36, 40 and 41, Mr Butt asked about the reduction in rank from 'chief inspector' to 'inspector'. This change is in line with similar changes made to the UK's Police and Criminal Evidence Act and is found in section 6 of the Drugs Act 2005 of Parliament. Presumably the rationale for the change in the UK was similar to that here, namely that there is not always a person of the rank of chief inspector or more senior at the police station, and therefore any delay could prejudice a person's health, rights or the investigation.

65 A question was raised about professional ethics or restrictions on the undertaking of intimate searches by healthcare professionals. The information I have obtained shows there is guidance available to healthcare professionals from the Faculty of Forensic and Legal Medicine and more detailed guidance issued jointly by the BMA and the Faculty in relation to this matter. The guidance assists with ensuring the healthcare professional is aware of all of the legal and ethical/professional requirements or issues to consider before or when undertaking this kind of work.

70 In relation to clause 43 a question was asked as to whether a photograph may be taken by any means and transmitted. The power to take photographs includes stills or moving images by any means and such may be disclosed to anyone for the purposes of preventing, detecting or otherwise investigating crime or for the use in prosecution.

75 Madam President, a number of questions were asked about the new clause 46 relating to the jurisdiction of officers of the Isle of Man Constabulary in relation to incidents on board Manx

registered vessels outside Manx territorial waters. I think that the briefing note that I have distributed previously has adequately provided the rationale for putting that clause into this Bill.

What we really are entitled to say is that although we are a small jurisdiction we are in this respect stealing a march on other jurisdictions.

80 Lastly, Madam President, in relation to clause 50 and the return of missing children in the green copy of the Bill, Mr Butt felt this was a sensible and a helpful measure which, as I explained last week, is about ensuring that the Police have the comfort of knowing the service they provide to the public in sometimes difficult circumstances is supported by appropriate legislation.

85 Mr Turner asked if officers are trained to understand how to handle the sensitive issue of the locating and returning children who are reported missing. The first thing to bear in mind is that locating and returning missing persons appears to have become something of a regular feature of the work of the Constabulary. The Chief Constable's most recent Annual Report, for example, reveals there were nearly 600 missing person reports or incidents in 2012-13 – true not all of whom will have been children, but you get the idea.

90 Mr Braidwood helpfully mentioned that he was aware a police inspector had spoken about the training officers received, particularly in relation to issues surrounding disability, and this seemed very helpful. A provision in this clause reflects the Department's response to the consultation exercise. Substituted section 49A(1)(b) expressly confirms existing legal provision in that where a constable has concerns as to the welfare of a child then, as before, the child may be taken into
95 police protection. I am also aware of a draft Protocol for Operational Guidance for Responding to Children & Young People missing from Home and Care.

In short, the Police have considerable experience of the practicalities and sensitivities of searching for missing children and taking the appropriate action upon locating such children.

100 Madam President, I think I have addressed all the matters that should be covered. I thank Hon. Members, once again, for their support and beg to move that the Bill be read for a third time and, in accordance with Standing Orders, be conveyed to the House of Keys to consider Council's amendments.

105 **Mr Downie:** I beg to second, Madam President, and reserve my remarks.

The President: The Hon. Member, Mr Butt.

Mr Butt: Thank you, Madam President.

110 I do support the Bill in its main principles, but I would just like to say that I did have doubts about the need for the street bail that was proposed – or is proposed and is part of the Bill – and I do hope the Constabulary will take notice of the comments made in this Council, and those that actually express some opinions about the need for it, and that it is not abused in use as a matter of course. I think it should be used only in exceptional circumstances, and hope that the Constabulary take note of that.

115 In general, I would also like to comment that in the UK in the last couple of decades because of terrorism, lots of extra powers have been given to the Police and I think in some cases they have gone beyond what they really need because of the terrorism threat. And it is our job, I think, in these Chambers – in the other place and in here – to make sure that when we do give the Police powers we carefully examine what they are, and make sure they do not go beyond what is necessary.

120 The Police have managed very well over many decades to police the Isle of Man properly without these extra powers, and I think they could continue to do so and we should not just blindly follow the UK Parliament. As the mover just mentioned, (**Mr Coleman:** Absolutely.) we are following the UK Parliament in some issues.

125 We are the guardians who are looking after the guardians, in effect, so I think it is our job to closely scrutinise these Bills and if we have any further Bills from the Department, I think they do need close scrutiny.

The President: The Hon. Member, Mr Turner.

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

I absolutely concur with the views of Mr Butt and I hope that the Department will continue to scrutinise the workings of this and not just take on face value what the Constabulary tell them, particularly with regard to the street bail situation as outlined by my colleague, Mr Butt.

135 I still have reservations over the involvement of police officers on Manx vessels anywhere in the world.

I understand the mover says that we are stealing the march on other jurisdictions, but I am still not sure exactly how welcome Manx officers rocking up at a foreign port would be, because it is normal that of course in many international matters there would be close working with the United Kingdom.

140 I would imagine that if there is a Manx-registered vessel tied up in somewhere like... in some of these marinas around the Mediterranean or commercial ports around the world, if there was a murder on board or drugs, it would be at a level far higher than the Isle of Man authorities. And I just wonder quite how that would work.

145 I think this provision has all the hallmarks of becoming a huge money pit, even if there was one individual case I could see, depending on the severity of it and some of the things that go on around some of these ports in the world, some of these cases could run into millions. And I am just wondering are they prepared for this, is there a fund for it and how is it going to be funded when we start taking on the world?

150 I also wonder, is this a precedent really if we are looking at Manx-registered vessels: are we going to be venturing into Manx-registered vehicles that are in other countries; or even applying, are we try to apply the entire Manx law on anything that is registered as a Manx vessel, wherever it is in the world.

155 So I think we have to be very careful when we are looking at provisions to enable our officers. I fully agree with forces working cross borders together, but I do not think going off on our own in some of these issues is particularly helpful.

160 I am a bit concerned when we say we are 'leading the way': I think sometimes it is good to lead the way, but in other things such as this, I think we need to be fully aware of what we are getting ourselves into and if we are going to start boarding vessels in other countries and other ports for some of the these instances that the hon. mover says, then we have to expect there is going to be a huge cost associated with that and we have to ensure that we can afford it, whereas maybe before it was being dealt with by law enforcement agencies in those jurisdictions.

It may be seen as a good way out for them to offload the costs of these cases on to the Manx taxpayer, so we have to know exactly what we are doing.

165 I have already mentioned I hope that the Department will continue to scrutinise the use of the 'street bail' as it was referred to, and I think that if there is evidence that it is being abused, or people are maybe not understanding their full rights and are just accepting it because it is the easy way out, then I think the Department has a duty to revisit that case and if necessary come back with amending legislation.

If, however, it works then it will have done its job, but I am slightly concerned about that.

170 I did not think the mover had particularly answered my query over vulnerable children – the answer we got was that the Constabulary stated they had great experience in searching for missing people. My concern at the previous Reading was about identifying issues with children that many years ago may have been seen as bad behaviour, when in real terms the child or the young person may have medical conditions that to the untrained eye may seem like bad behaviour but there is a more serious problem. And I am sure we have all heard the anecdotal evidence of some of these children being put in police vans and not treated in the right way.

We hope those days have gone, but the question was are they able to identify it, not how experienced they are in searching and returning people home, because there is a difference.

180 The concerns, however, I have with the Bill are not going to mean that I am going to vote against
it because there is a lot of provisions in this which are needed, and which I support, but those are
the areas I would like to raise for the record at this Third Reading.

The President: The Hon. Member, Mr Wild.

185 **Mr Wild:** Thank you, Madam President.

I just want to thank my hon. colleague, Mr Coleman, for a detailed response and explanation of
the issues raised in the last sitting and the amendments. However, I also agree with the objective
comments made by my hon. colleague, Mr Butt, and one has to be careful and this type of
legislation has to be carefully balanced.

190 I thought with Manx vessels the legislation simply gives the Registry the flexibility to visit a vessel,
in case of need, and from recollection, I thought that from a cost perspective it can be reclaimed as
part of the administration of the vessel.

Mr Braidwood: Borne by the Minister's office.

195

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Madam President.

200 Just again to comment on the provisions for police to investigate crimes on incidents happening
in foreign waters.

As we all know, the Isle of Man Ship Registry is a very important contributor to the income of
Government, and when you register a ship under the Manx flag and you commit an offence on that
ship when you are at sea, you have broken the laws of the Isle of Man, and the Isle of Man is
responsible for dealing with that problem.

205 It appears that in almost 30 years of the Island's International Ship Register's existence, the
incidents of reported serious crime on board our ships has been negligible. Also I believe the
potential risk in terms of an increase in resource requirement is probably minimal. The risk in terms
of reputation if we do not put the right legal framework in place is substantial.

210 **The President:** The Hon. Member, Mr Braidwood.

Mr Braidwood: Thank you, Madam President.

215 I will be supporting the Third Reading of the Bill and I also thank my colleague, Mr Crowe, for
going through why the Police have to have authority to go on board ships. We have not even got the
authority at the present time to board a ship if it was in our own territorial waters, and I think if it is
outside territorial waters of other countries, then it is essential that the Manx Police, as it is a
registered vessel, have the authority to board the vessel.

220 However, one of the reasons I wanted to speak, Madam President, was a point which was raised
by the Hon. Member for Council, Mr Turner, regarding when years ago, the bad behaviour of
children as such and the Police putting them in the back of police vehicles.

225 I think it is well known now – particularly with autistic children – that the Police now have
experience, they have training in this sort of situation. Mr Corkish and myself are Chairman and Vice-
Chairman of the Tynwald Advisory Council for Disabilities, and we had an open meeting only a
couple months ago with the Council of Voluntary Organisations and other interested parties. We did
have an inspector at the meeting, who went through how the attitude of the Police has changed
quite dramatically, and they understand now children who have behavioural problems through
autism, and they do have the training of the officers so they can recognise the problems.

So I think the attitude of the Constabulary has changed for the better over the last few years.

Thank you, Madam President.

230

The President: The Hon. Member, Mr Downie.

Mr Downie: Thank you, Madam President.

Some interesting comments, really, at this sitting, at the Third Reading.

235 Just to elaborate a little further on the situation regarding Isle-of-Man-registered vessels. I think it has to be clearly understood that when a vessel is seen in international waters, the responsibility for that vessel rests with the master, and if there is a situation develops which he is not happy with, there is nothing to stop him putting into any port and requesting assistance from the local police. However, from time to time and admittedly it is very, very infrequent, there are some issues that
240 develop on board ships which have to be properly investigated.

A sudden death at sea or a person falling maybe in mysterious circumstances, someone going missing altogether, possible suicide, these things really have to be investigated formally, and that is where I think it is quite proper and right that we have our own people carrying out any such investigation.

245 The issue that Mr Turner was concerned about where you had a yacht alongside in Cannes or Nice, or somewhere, and somebody was murdered or there was some other act committed, that responsibility for investigating with that... is the responsibility of the police in that area. Once that vessel goes into their own particular territorial seas or is in a foreign port, it comes under their jurisdiction.

250 There are lots of international organisations in the UK, for instance, we have the Maritime Coastguard Association, and they look after all the ships that form part of what is called the Red Ensign Group. And not only are ships around the British Isles included in that Group, but also Gibraltar, Malta to some extent, parts of the Caribbean, the Falkland Islands, so there is a framework there that people already have a good understanding and can work under. But, I think as the mover
255 said, if we are going to be responsible for the well-being of seafarers and to do the job properly, we have to have this mechanism in place.

Moving on, I just like to ask finally – apologies if I should have mentioned this last week – but I just wanted to know formally: if a person is arrested and granted street bail, are they actually given their rights, are they actually told what is happening to them, and will that be covered in some other
260 regulation which will come in on the back of this Bill? Because a lot of this is brand new, people outside do not understand any more, and if a person does fall foul of the law and is arrested and bailed, I think it is important that they actually know what happens.

Recently, somebody showed me a card that they had been given while they were away, explaining that they had committed an offence, and it happened in Holland, and they were given a
265 card on the back of it was in Dutch and the front of it was in English. And they could quite clearly see what they had done wrong, it was a type of a traffic offence. But it was a very good example of how to get good communication so that people were aware of what would happen and what responsibilities lay with them to deal with it at a further time.

Thank you.

270

The President: The Hon. Member, Mr Butt.

Mr Butt: Could I come in on that, Madam President, for the help of the mover perhaps, too?

275 If the person arrested in the street is arrested properly, they should be given their formal rights, etc at the time, and they will be.

My point about my objection to this street bail was that the way it is done at the present, they go to the police station where it is all recorded and noted down and written down properly – there is a formal record of it – which is much less likely in the street. But they should be given their proper rights, or the indication of their rights, and the caution when they are arrested when they are in the
280 street.

The President: The mover to reply.

Mr Coleman: Thank you, Madam President.

285 I too share some concern about the use of new procedures within the Police environment, and I will also be looking at how these new powers are exercised, and I would expect to see details of that in the Chief Constable's Annual Report – to see certainly how many times it had been used and possibly at the end of the first year in his Annual Report he could describe the benefits of the latest clause that we hope to put through.

290 As far as Mr Turner is concerned, again, he says that maybe we are setting a precedent for doing vehicle licensing –

Mr Turner: As an example.

Mr Coleman: As an example, yes. But I think it has to be remembered that the United Nations
295 Convention on the Law of the Sea states:

'Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in this Convention, shall be subject to its exclusive jurisdiction on the high seas.'

When you are working on an over-riding international convention like that, I think it behoves us to make certain that we have procedures and protocols in place to adhere with that and to make sure that that can be reflected in our own national legislation.

300 So I personally do not have a fear of other things moving that way, basically because I think we are adhering to an international convention.

With reference to vulnerable children, Mr Braidwood expressed the situation quite eloquently, that I think the world has turned and the consciousness of the Police and the training that they receive, and there are protocols in place where they have to contact the Department of Social Care at certain points. I think we have moved quite a long way.

305 There will always be times when human beings are involved where perhaps the best outcome was not achieved, but we have to try and strive for that and I have every confidence in the existing Constabulary to make certain that if they are given this power – which they have requested and it has been changed in the wording from 'arrest', which I think is totally inappropriate, to 'return' – and they do have powers to say if this child is a little bit wary of returning to his normal place of
310 abode then they don't actually have to take them there. They have to look into it quite seriously.

With reference to the funding, the second paragraph of the briefing paper explained exactly how Department of the DED were going to do it. They are going to establish a fund which will be based upon a percentage of the Registry fee to develop a fund, initially while that is being built up, then it may well be that will have to be defrayed, but they will be with new vessel registrations ring-fencing
315 a part of each registration fee into this fund to make the payments.

Moving on, I think I have probably already answered Mr Wild's comments in that we are going to essentially be providing... essentially the ship owners in paying their registration fee will in future be paying for the fund to enable Manx constables to travel if necessary and do the work of that part.

320 Mr Braidwood's comments I think were very favourable and very helpful to my cause in this, and as Mr Butt has said with reference to street bail, street bail will be given after formal arrest so they will be told and given notice. They will be given their rights and they will be given a written notice of when they should appear and where they should go, and record will be made in the custody record as soon as possible after the officer referred to for permission to give street bail has given permission, and it will be made – a note will be made – actually in the custody record as soon as
325 possible after that actually happens.

I hope Madam President, I have answered the questions that have arisen.

The President: Thank you, Hon. Member.

330 The motion is that the Bill be read a third time and do pass. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

**2. Income Tax (Amendment) Bill 2013 –
First Reading approved**

Mr Braidwood to move:

That the Income Tax (Amendment) Bill 2013 be read first time.

The President: We turn now Hon. Members, to the Income Tax (Amendment) Bill 2013 for First Reading. I call on Mr Braidwood.

Mr Braidwood: Thank you, Madam President.

335 This Bill confirms a number of temporary taxation orders, makes various amendments to both the Income Tax Act 1970 and the Income Tax (Instalment Payments) Act 1974, and also makes minor amendments to the Interpretation Act 1976, and the Customs and Excise Management Act 1986.

The Bill itself contains 14 clauses and a schedule.

340 The temporary taxation orders confirmed by the Bill deal with: company residence; the European Union Savings Directive; the disclosure facility agreed between the Isle of Man Government and Her Majesty's Revenue and Customs; international agreements; authorised officers and their inspection powers; and returns made by insurers.

345 The Bill makes various amendments to the Income Tax Act 1970. These introduce two new categories of income on which tax is payable; replace section 48 addressing the tax treatment of Social Security benefits; insert a new part heading; and introduce a new offence of fraudulent evasion of income tax. They also make minor changes to section 115A concerning temporary taxation order powers.

The amendments to the Income Tax (Instalment Payments) Act 1974 introduce new part headings and a new Part 2 consisting of six sections which address deemed employment.

350 Finally, Madam President, the schedule to the Bill makes minor and consequential amendments to the Income Tax Act 1970, the Income Tax (Instalment Payments) Act 1974, the Interpretation Act 1976, and the Customs and Excise Management Act 1986.

Madam President, I beg to move the First Reading of the Income Tax Amendment Bill 2013.

355 **Mr Downie:** Madam President, I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Madam President.

360 Yes, just a few words on this. I will be supporting the Bill.

The temporary taxation orders: the confirmation is a statutory function, which we have to do before they expire, I think we have to do it in the current year.

365 Perhaps if the hon. mover could just expand a bit on the two new categories of remuneration. I think possibly this is to do with service companies and looking through from the company through to the shareholder or the employee to look through the structure so that the individual pays the tax rather than the company. So I think that is one of the issues.

I think as far as Social Security benefits is concerned, is this to now tax benefits that were previously untaxed or is it just a re-confirmation of the current situation?

370 **The President:** The mover to reply.

Mr Braidwood: Thank you, Madam President, and I thank Mr Crowe for his observations.

He is quite right, with the temporary taxation orders, within one year they have to be promulgated, otherwise they fall.

375 On personal service companies which are mentioned, I think this has been one way of avoidance
of paying income tax, particularly if the personal service companies is mainly used to be and
employed by one company or is employed by two companies. In actual fact, it is not being used as it
should be. It is being used basically as an employer/employee situation and it was this way of
avoiding having to pay income tax.

380 So this legislation will prevent that happening and the proper tax will be taken.

And on the other point on the change of taxation, if we look at the main Bill and clause 7 and
section 48 as substituted, 'taxation treatment of social security benefits': it is just going through
which are not taxable. However, this will give powers in the future if any of those benefits were to
be taxed. Or we could go the other way, some benefits which would be excluded from taxation.

385 I beg to move, Madam President.

The President: The motion is that this Bill be now read the first time. Those in favour, please say
aye; against no. The ayes have it. The ayes have it.

390

**Income Tax (Amendment) Bill 2013 –
Standing Order 4.3(2) suspended
to take Second Reading and clauses stage**

Mr Braidwood: Madam President, I did mention to you previously if it would be possible to have
a suspension of Standing Orders so that I could take the Second Reading and the clauses.

395 The situation being that I would be happy if we reach a certain time that the clauses are
suspended and then – as we are sitting on 17th December – to then complete the clauses and
probably the Third Reading on 17th December.

The President: We have a motion that Standing Orders be suspended – is there a seconder?

400

Mr Downie: I beg to second, Madam President.

The President: Is that agreed, Hon. Members?

The Hon. Member, Mr Turner.

405

Mr Turner: I am uncomfortable with the suspension of Standing Orders. Usually we would get an
inkling that there is a valid reason for wishing to take more than one Reading at a sitting. We have
had urgent Bills that have needed to come through for a variety of reasons.

410 I do not think in this case – and we have not actually heard a case – as to why Standing Orders
should be suspended to allow the Second Reading and clauses to be taken at this sitting.

I feel that if a Member wishes to move additional Readings at the same sitting, an example could
be that we are coming to the end of the legislative year and there could be a huge long gap then I
can understand reasons such as that, or if loopholes in law have been found due to court cases that
need urgent attention of the legislature, then I would support that principle.

415 But the mover, in asking for the suspension, has not made any case at all as to why Standing
Orders should be suspended, and Standing Orders are there for a reason.

The President: The Hon. Member, Mr Crowe.

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

I would support the suspension of Standing Orders.

I think the contents of the Bill have been well trailed, so we are all aware of the contents of the
Bill, and I think it makes logical sense to take the Second Reading and some of the clauses if

425 necessary today and continue with the clauses and the Third Reading on 17th December. Otherwise
we would be into 28th January 2014 for the Third Reading if we do it in the normal process, and I
think getting Royal Assent and so on takes some little time anyway.

A Member: Yes.

430 **The President:** The Hon. Member, Mr Downie.

Mr Downie: And to add to my hon. colleague: and into another tax year probably, whereas we
know that there is some abuse of the present tax system and that is what part of this legislation is
trying to close and to remedy. At the end of the day, Hon. Members, we are here to progress
435 matters and I do not think it is unreasonable for us to go as far as we can today in the time available,
and then resume on the 17th.

The President: I will put it to a vote on... Sorry, Mr Coleman, did you wish to speak?

440 **Mr Coleman:** Thank you, Madam President.

I am in favour of suspending Standing Orders. I did have the benefit of attending the briefing on
this particular piece of legislation and I would feel quite comfortable with the suspension of Standing
Orders and pursuing this through.

445 **The President:** The Hon. Member, Mr Turner, again.

Mr Turner: If I may come back, Madam President, on that.

It is all very well saying that we in here are aware of the contents of this but there is a well-known
process that the public are aware of the passage of Bills through the Legislature.

450 I think that if we are going to change the Standing Orders on the hoof there has to be a very good
reason for that. We have had no prior warning – and I know it is under the privilege of the President
to guide us through this process – but we have had no prior warning that we would be taking a
Second Reading and clauses at this sitting.

455 And I think if we are simply suspending Standing Orders for this Bill, there is no reason why we
should not do it for every Bill that comes through. I just do not feel the case has been made,
especially as we have had no prior warning that we were going to take a further Reading at this
sitting.

The President: Mr Braidwood.

460

Mr Braidwood: Thank you, Madam President.

There has been precedent, I think even Mr Turner, one of the last Bills he was taking through in
actual fact, we were not given any notice and he moved a suspension of Standing Orders. I think it
might have been the Weeds Bill, actually, where he wanted to take an additional Reading.

465 However, I have to agree with the Hon. Member for Council, Mr Crowe. One of the reasons
Madam President, I am trying to put this through, is because, otherwise, it would probably be
January before the Bill was completed and then we have to have Royal Assent and in actual fact, the
Bill has to be in operation by 6th April 2014, so that it gets into the next financial year.

470 So that was one of the reasons, because at times it can be held up for Royal Assent and I think it
was essential that the Bill is in operation by 6th April 2014.

The President: The motion is that we have suspension of Standing Orders in order to take the
Second Reading and clauses stage 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:

475

FOR	AGAINST
The Lord Bishop	Mr Butt
Mr Braidwood	Mr Turner
Mr Coleman	
Mr Corkish	
Mr Crowe	
Mr Downie	
Mr Wild	

The President: With 7 votes in favour, 2 votes against, suspension of Standing Orders is approved, Hon. Members.

**Procedural –
Item 3 to be taken as next business**

480 **The President:** Now, I would like to indicate that, under Standing Order 1.1, it is my intention that this sitting concludes at 12.30 today, for reasons which you will understand, and we do have another motion on the Order Paper which is time-constrained.

With your agreement, Hon. Members, I would like to take Item 3 before we continue with the Second Reading of the Income Tax (Amendment) Bill.

Is that agreed?

485

Members: Agreed.

**3. Webcasting –
Live and listen again audio facility to cover all proceedings of the Council –
Motion carried**

Mr Corkish to move:

That arrangements be made for a live and listen again audio facility to cover all proceedings of the Council commencing with the sitting on 28th January 2014.

The President: I call on the Hon. Member, Mr Corkish, then, to move Item 3 in relation to webcasting.

490 **Mr Corkish:** Thank you, Madam President.

I am moving the motion today on behalf of the Tynwald Management Committee.

It is an important principle of parliamentary democracy that proceedings of the legislature should be open and accessible. In ancient times, this meant holding our sittings on a hill, where the Lord of Mann with his Council and Keys would be clearly visible to everybody. Today we meet indoors, but there are public galleries in all three Chambers and everyone is welcome to attend.

495

People cannot always come in person. Whether they have come in person or not, people may wish to find out about our proceedings after the event.

Since the late 19th century, we have been able to rely on *Hansard* as a public record of what has been said here. Today, *Hansard* from 1887 to the present is available on the Tynwald website.

500 In the late 20th century, there came a new way of bringing parliamentary proceedings closer to the public: that was radio.

Questions have been broadcast from the House of Keys since 1992 and from Tynwald Court since 1995. In 2003, we began broadcasting the proceedings of Tynwald Court in full. But apart from Questions, the radio does not carry any other proceedings of the House of Keys.

505 We do not broadcast any proceedings of the Legislative Council; we do not broadcast any committee proceedings; and we do not televise anything.

Madam President, technology moves on. Today, broadcasting is not the only method of distributing sound. Sound can now also be webcast over the internet and this technology has been adopted by many other parliaments.

510 In 2010, the Tynwald Management Committee investigated the options for parliamentary webcasting in the Isle of Man, and laid a report before Tynwald. The Committee's recommendation was approved by Tynwald in October of that year, and for reference the resolution was that:

'As part of the development work being undertaken to modernise the Tynwald website that a live and listen again audio facility be provided with Manx Radio continuing to broadcast proceedings on the radio and via their webpage; and that both websites be monitored, to measure usage, over a period of twelve months before reconsidering the expenditure to upgrade to a video service.'

515 Madam President, the launch of the new Tynwald website was announced in May 2012. Since that time further work has been done and we are now in a position to launch an audio webcasting service. This system gives us the ability to webcast all proceedings, not just those that are currently on the radio.

In the Legislative Council, this would mean that for the first time, people who are not actually in the Chamber could listen to our proceedings.

520 Madam President this is not just a technical innovation, it is a way of letting people listen in on our business for the first time. It is for that reason that the Tynwald Management Committee has decided to seek the consent of the Council before switching the new system on.

I therefore move, Madam President, that arrangements be made for a live and listen again audio facility to cover all proceedings of the Council, commencing with the sitting on 28th January 2014.

525 Madam President, I beg to move.

The President: The Hon. Member, Mr Crowe.

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

530 **The President:** The Hon. Member, Mr Turner.

Mr Turner: I think this is an obvious step in the process of modernising the Tynwald website.

535 We have a wonderful website now tied in with the likes of the legislation.im, which gives people access to the statutes, the gov.im domain which gives people access to all the regulations and various other documents that the public need access to, and of course we have had the radio broadcasting and the web-streaming of Tynwald and the other place for many years. So I've always thought it a little strange that our own Tynwald website does not contain the links to enable people to access the live stream. It happens elsewhere and I think this will be a welcome addition.

540 The presentation: I was grateful for the presentation that was given to Members, which explained exactly how it was going to be achieved and exactly how cost effective this system was. Five years ago, we would be talking about many thousands of pounds to achieve this system and I think from memory from the presentation the other day that the cost of installing this is only about £3,000 to £4,000, and that is to put it in – there will be an ongoing annual cost which again was minimal compared to the benefit of people being able to click on.

545 We have to remember, of course, that in the modern age with data over mobile phones and iPads, it is a way people consume their media. They watch the BBC iPlayer, they do not have to sit

down at 7.30 to watch *Coronation Street*, they can watch at whatever time they want, and of course the listen-again facility that is built into this means that people will be able to listen back to the sittings at a time that is convenient with them.

550 So I know we are pressed for time today, Madam President –

The President: I do not think we are pressed for time. Please do not feel constrained. *(Laughter)*

Mr Turner: No, but media is a subject I could bore you all senseless with all day, so what I am trying to say is I am not going to, *(Laughter)* but this is a very worthwhile and certainly, for someone who has worked in the industry, the costs that we were shown are very good value for money.

555 So I do support this. There is just one query I would like to ask the mover and that is with editorial lifts by the media, it is quite common that feeds of other parliaments' clips are used in news broadcasts. It does go on with the current live feed we have of the other places, whereas news agencies can take a clip of somebody speaking.

560 I assume that that facility would be extended so that if journalists decided something of interest was said in this Council or in Committee, they would be able to exercise the same journalistic judgment and use the material as they do now from the existing feeds.

565 We all see the *Six O'Clock News* on the BBC where there are clips from Parliament. I assume that all the local media will be able to do the same with this, as I think that would broaden the coverage of what were actually going to be broadcasting from these Chambers.

But I support this motion.

The President: The Hon. Member, Mr Wild.

570

Mr Wild: Thank you, Madam President.

Just to give the motion my full support, as I see this as technology being used to make the parliamentary process more widely available to the population, the public, and from a cost perspective, it feels very reasonable in the present financial circumstances.

575

The President: Hon. Member, Mr Downie.

Mr Downie: Like previous speakers, I do not really have a problem supporting this.

580 I think it is a sad state of affairs that when we do sit, it is very, very rare we have anybody from the media here actually reporting on any of our proceedings. It is a rarity as, sadly, it is a rarity to see anybody in the Public Gallery. I know we do have one member of the public in today, but it is a rare occasion, and I think that anything we can do, bearing in mind the reasonable cost to get the proceedings of this Chamber out into the public, can only stand us in good stead.

585 I do have one small item which I think we would need to consider. Hon. Members will be aware on occasion, which are perhaps only once a quarter, the Council does sit in private to consider the business that has been to the Council of Ministers. But given that that is sanitised in such a way and it is historic by the time we get it, I do not think it would be a bad thing for that to be broadcast as well because as I say, it is so out of date and we are so long-winded getting round to receiving these updates, I think it should possibly all go out at the same time, and then people might be interested here what our views are at some of the issues that the Council of Ministers have been dealing with.

590

I am in support, Madam President, of the proposal.

The President: The Hon. Member, Mr Butt.

595 **Mr Butt:** Thank you, Madam President.

I would just like to express my full support for this motion. There are no downsides to it that I can see, unless you are a member of the public and you are listening to a debate from here, where we discuss the difference between say 'will' and 'shall', that might bemuse some listeners. *(Laughter)*

600 But I think, Madam President, on the upside, it will demonstrate that we do a lot of work in this Chamber, this Council. We do discuss legislation thoroughly. We do go into detail perhaps more than the other place, and we provide a service I think which the public probably are not aware of at the moment. So we may have an upside in that regard.

So I fully support the motion.

605 **The President:** Hon. Member, Mr Crowe.

Mr Crowe: Yes, I fully support the motion too. It would be nice to have Tynwald, House of Keys, Legislative Council all able to be listened to either live or by listen again.

610 But the interesting point that I just want to add is that Committees will also be able to be broadcast live, because as a member of one of the Scrutiny Committees, it is interesting that they do attract particular interest, and for anybody with a direct interest in one of the Scrutiny Committees, the subject they are looking at, they can listen again or listen to it live and I think that is a very good added adjunct to this new service we are going to see.

615 **The President:** Mr Corkish to reply.

Mr Corkish: Thank you, Madam President.

I firstly thank Mr Crowe for his seconding of the motion, and Mr Turner and also the Members for the general support in this move.

620 Mr Turner perhaps summed it up by saying that it was an obvious step forward and also utilising the excellent website that Tynwald already has. I thank him for that as an expert user of technology both here and outside.

The Tynwald website indeed would be more complete through this.

625 A cost was perhaps asked – it would cost about £3,475 to set all this up – the ongoing costing would be £600 per annum. (**A Member:** Very good.)

Regarding clips of the Council, as is used through other branches now, the answer is ‘yes’, there are no restrictions on the use of the material, once it is in the public domain. Once it is there, it is there.

Mr Wild, thank you again for his support.

630 I suppose we would all agree with the expression from Mr Downie for this and there is little media attention or indeed public attention, for the work that happens here too and indeed regarding his question regarding private sittings, I think he amply answered that himself.

Mr Butt too, no downsides, I thank him for that.

635 And again this comes down to how we are observed not only by the public, but also perhaps by governments in other jurisdictions here as well.

Madam President, I beg to move.

The President: Hon. Members, the motion is that arrangements be made for a live and listen again audio facility to cover all proceedings of the Council, commencing with the sitting on 28th January 2014. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

The motion therefore carries.

**Procedural –
President’s neutrality in suspension of Standing Orders**

The President: Now, before we move to the Second Reading, I would just like to comment on a comment made by the Hon. Member, Mr Turner, in relation to my involvement with suspension of Standing Orders.

645 I would make it quite clear that I am neutral on the issue of the suspension of Standing Orders. The Hon. Member, Mr Braidwood, notified me as a courtesy that he would be raising the issue, but I have no authority one way or the other to say whether or not he can do that – he is entirely free to do it.

**Income Tax (Amendment) Bill 2013 –
Second Reading approved**

The President: So I call on the Hon. Member, Mr Braidwood, to take the Second Reading of the
650 Income Tax (Amendment) Bill 2013.

Mr Braidwood: Thank you, Madam President, and can I thank Members of Council for allowing me to go ahead with the Second Reading by using the suspension of Standing Orders.

655 Madam President, this Bill confirms three temporary taxation orders and makes amendments to both the Income Tax Act 1970 and Income Tax (Instalment Payments) Act 1974. It also makes two small amendments to the Interpretation Act 1976 and one to the Customs and Excise Management Act 1986. The Bill is divided into four parts and has 14 clauses.

I will now give an overview of what they are intended to achieve.

660 The first part of the Bill contains clauses 1 to 4. Of these, clauses 1 to 3 provide the short title, commencement and expiry of the Act, while clause 4 confirms three temporary taxation orders. The temporary taxation orders to be approved by this Bill are as follows.

The first is the Income Tax (Company Residence) (Temporary Taxation) Order 2012. This Order was approved by Tynwald in December 2012 and helps to simplify the income tax position for certain companies with dual residence.

665 The Bill also confirms articles 5 and 6 of the Income Tax (International Agreements) (Temporary Taxation) Order 2013 and articles 1 and 2 of that Order insofar as they relate to articles 5 and 6. The Order was approved by Tynwald in July of this year.

670 One of the articles updates the Island's legislation concerning the European Union Savings Directive, while the other introduces an obligation for financial intermediaries under the disclosure facility agreed between the Isle of Man Government and Her Majesty's Revenue and Customs.

675 Clause 4 of the Bill also confirms the Taxes (International Arrangements) Order 2013. This temporary taxation order was approved by Tynwald in October 2013, and broadens and consolidates international legislation. In addition, it introduces inspection powers, amends the Assessor's powers to request information, and introduces a requirement for insurers to provide certain information. It also includes savings and transitional provisions and makes consequential amendments to the Income Tax Act 1970.

680 Part 2 of the Bill contains five clauses, all of which concern the Income Tax Act 1970. One of these inserts two categories of remuneration on which income tax is payable. A further amendment consolidates the legislation regarding the taxation of social security benefits and enables Treasury to exempt a benefit from taxation by means of secondary legislation. Another amendment introduces a new part heading and the new criminal offence of 'fraudulent evasion of income tax'.

Finally, Part 2 of the Bill makes two minor amendments to the temporary taxation order legislation introducing one definition and amending an existing one.

685 Part 3 of the Bill contains four clauses which concern the Income Tax (Instalment Payments) Act 1974. These insert part headings into the Act and introduce a number of new definitions. They also introduce a new part consisting of six sections. The new part will address the use of personal service companies and will, in the appropriate circumstances, deem an individual to employed by the client of the personal service company rather, than by the personal service company itself. This will ensure that a personal service company cannot be used to defer the payment of tax.

690 The Treasury Minister mentioned his intention to introduce this legislation in his Budget speech last year. The changes will help to ensure that our tax system is fair and that all employees are treated in the same way for income tax purposes, whether they work through a company or not. Although this legislation will only introduce new income tax legislation, the intention is to also introduce legislation that has the same effect for National Insurance purposes.

695 Part 4 of the Bill contains one clause which gives effect to the schedule. The schedule itself makes a number of minor and consequential amendments to the Income Tax Act 1970 and two to the Income Tax (Instalment Payments) Act 1974. It also inserts two definitions into the Interpretation Act 1976 and amends a reference to the collector of Customs and Excise in the Customs and Excise Management Act 1986.

700 Madam President, I beg to move the Second Reading of the Income Tax (Amendment) Bill 2013.

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

The President: The motion is that the Bill be read a second time. Those in favour, please say aye; 705 against no. The ayes have it. The ayes have it.

Income Tax (Amendment) Bill 2013 – Clauses considered

The President: We will move on to clauses, taking clauses 1 to 3 together.

Mr Braidwood: Thank you, Madam President.

Clause 1 provides the short title of the Act.

710 Clause 2 confirms that the Act will come into operation on 6th April 2014.

Clause 3 provides for the Act to expire on the day after its promulgation, by which time it will be spent. It also confirms that its expiry will not affect the provisions of the Act.

Madam President, I beg to move that clauses 1, 2 and 3 stand part of the Bill.

715 **Mr Downie:** I beg to second, Madam President, and reserve my remarks.

The President: The motion is that clauses 1, 2 and 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.

720

Mr Braidwood: Thank you Madam President.

Clause 4 confirms two temporary taxation orders and part of a third.

725 The first of these is the Income Tax (Company Residence) (Temporary Taxation) Order 2012, which was approved by Tynwald in December 2012. This temporary taxation order simplifies the income tax position for companies with dual residence. It provides that if a company is incorporated in the Isle of Man, but is managed and controlled in another country, it will be accepted as only resident in that other country for Manx income tax purposes, provided that the following conditions are met: the company is tax resident in the other country under that country's law; and, the company is tax resident in the other country by virtue of a residence tie-breaker in a tax agreement; 730 or, the highest rate at which any part of a company's profits may be charged to tax in the other country is at least 20%.

Any change to the residence of a company brought about by this temporary taxation order will not affect the Assessor's powers to assess that company on Isle of Man source income.

735 Feedback from a consultation exercise proposing this change was positive and indicated that it should provide new business opportunities and potentially bring new commercial advantages for the Island.

740 Clause 4 also confirms articles 5 and 6 of the Income Tax (International Agreements) (Temporary Taxation) Order 2013, which was approved by Tynwald in July 2013. Articles 1 and 2 of that Order are also confirmed insofar as they relate to articles 5 and 6. Article 5 makes a small change to the Island's legislation concerning the European Union Savings Directive: it amends the Income Tax (Exchange of Information) (Temporary Taxation) Order 2010 to reflect the Isle of Man's move to automatic exchange of information in its application of the Directive from 1st July 2011. As a result of this move, agreements between the Isle of Man and new members of the European Union will not include articles regarding retention tax, as that option is no longer available.

745 Article 5 makes a minor amendment to the wording of the legislation in order to reflect this change.

750 Article 6 introduces an obligation for financial intermediaries to comply with the requirements of the disclosure facility between the Isle of Man Government and Her Majesty's Revenue and Customs, which came into operation in April of this year. Under the terms of the Memorandum of Understanding signed by both parties, the Government will require financial intermediaries to make relevant clients aware of the facility on two occasions: firstly, before 31st December 2013; and secondly in the final six months of its operation in 2016.

755 The final temporary taxation order to be confirmed by this clause is the Taxes (International Arrangements) Order 2013, which was approved by Tynwald in October 2013. This Order inserts a new part into the Income Tax Act 1970, which consolidates international enabling legislation from section 54 of that Act and Part 3 of the Income Tax Act 2003. The new part also enables the Council of Ministers to ratify, by order, international agreements such as the Convention on Mutual Administrative Assistance in Tax Matters.

760 In addition, the Order allows the Assessor to appoint authorised officers and introduces powers for those officers to inspect business premises if necessary, and to inspect, copy and retain documents if required. The inspection powers also include enforcement measures.

765 These amendments brings the Island's income tax powers more in line with those of other jurisdictions. The order introduces a requirement for insurers provide the Assessor with specified information on an annual basis regarding policies held by Isle of Man policyholders. Insurance industry representatives had been consulted on this measure before it was introduced.

It also includes savings and transitional provisions and makes consequential amendments to the Income Tax Act 1970 to reflect the international changes. In addition, the Order amends the Assessor's powers to call for documents when investigating a taxpayer.

770 The amendments will allow the Assessor to call for information, as well as documents, and to request a document to the whole of which is more than six years old if the Assessor believes it to be relevant to the investigation.

These changes are also applied to each order ratifying an international agreement already signed by the Island.

775 Madam President, an amendment was introduced into the Bill at the consideration of clauses, which addresses clause 4. The amendment makes a number of minor corrections to the third temporary taxation order confirmed by the clause. These largely correct references and confusions that have arisen in the amended text and make no material changes.

Madam President, I beg to move that clause 4 stand part of the Bill.

780 **Mr Downie:** I beg to second, Madam President, and reserve my remarks.

The President: The Hon. Member, Mr Crowe.

Mr Crowe: I thank the hon. mover and will be supporting this clause.

785 Just an interesting point is that the Assessor will now be able to call for documents the whole of
which is more than six years old, if it is considered relevant to the period under investigation. I think
the Statute of Limitations makes people keep documentation for up to six years. (**A Member:**
Correct.) If documents have been destroyed just in the normal course of business by shredding
because of the Statute of Limitations, how will this affect the Assessor's powers? Will make it
790 impossible to achieve, shall we say? That is the question.

The President: Does any other Member wish to speak? The mover to reply.

Mr Braidwood: Thank you, Madam President.

795 Mr Crowe is quite correct, such as VAT information is required to be kept for six years and then
could be destroyed. Therefore, I think if a person got to six years and destroyed the documentation,
there is not a lot that the Assessor would be able to do. In some companies, they do keep
documents longer and if they were available the Assessor would be able to obtain those documents.

But Mr Crowe is quite correct that it is six years on the limitation.

800 Madam President, I beg to move that clause 4 stand part of the Bill.

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

Clauses 5 and 6.

805

Mr Braidwood: Thank you, Madam President.

Clause 5 confirms that Part 2 of the Bill amends the Income Tax Act of 1970.

Clause 6 amends section 2 of the Income Tax Act 1970 to ensure that income which arises in
respect of deem employment under Part 3 of this Bill, and in respect of directed remuneration under
810 section 6 of the Income Tax (Instalment Payments) Act 1974, is income chargeable to income tax.

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

The President: Hon. Member, Mr Downie

815 **Mr Downie:** I beg to second, Madam President, and reserve my remarks.

The President: The motion is that clauses 5 and 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.

820

Mr Braidwood: Thank you Madam President.

Clause 7 substitutes a new section 48 into the Income Tax Act 1970. This clause has two
functions: (1) it ensures that all benefits are chargeable to Income Tax; and (2) it then lists those
benefits that are not to be charged to income tax. It also allows Treasury, by an order that is to be
825 approved by Tynwald, to either make a benefit chargeable to income tax or remove a benefit from
liability to income tax. This will allow Treasury to bring into secondary legislation a recent concession
which was approved by Tynwald on 16th January 2013.

Madam President, I would like to make it clear that the substitution of section 48 is purely a
housekeeping exercise to bring this section up to date. It does not change the actual income tax
830 position of any benefits.

Madam President, I beg to move that clause 7 stand part of the Bill.

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

835 **The President:** The Hon. Member, Mr Crowe.

Mr Crowe: Can I thank the hon. mover for just clarifying that point, the issue I raised at the First Reading.

Thank you.

840 **The President:** Mover to reply.

Mr Braidwood: I just thank Mr Crowe for his observations, Madam President.

845 **The President:** The motion is that clause 7 do stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 8.

Mr Braidwood: Thank you, Madam President.

850 Clause 8 inserts a new section 112K into the Income Tax Act 1970. This new section introduces a criminal offence of 'fraudulent evasion of income tax'.

Currently, the Island does not have an offence of tax evasion. However, as we have a very favourable income tax regime, it is even more important that everyone pays their fair share. Therefore the fraudulent evasion of income tax should be dealt with seriously, and quite correctly, as a criminal matter.

855 Madam President, I would like to stress that this will only be for the most serious of cases, but will of course act as a deterrent.

Madam President, I beg to move that clause 8 stand part of the Bill.

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

860

The President: The Hon. Member, Mr Crowe.

865 **Mr Crowe:** Again, just an observation. I think when we all fill our income tax form in, we sign a declaration that we have declared all our worldwide income and income that we enjoy the benefit of. I think if income is under-declared, the Assessor currently has powers to levy penalties and extra taxation under the current regime. But I think this is now making it a criminal offence for evasion.

That was the only comment I wanted to add.

The President: The Hon. Member, Mr Butt.

870

Mr Butt: Just briefly comment, Madam President, it is amazing that there has been no such power prior to this – I had always imagined there had been. And I presume they actually deal with it, as Mr Crowe has just said, by negotiation and by financial penalty rather than any other sanction. I am quite surprised that I did not know this, that this is the first time this has been in being.

875

The President: The 'Bluff Act'!

Mr Butt: Yes the 'Bluff Act' has been repealed!

880 **The President:** The Hon. Member, Mr Wild.

Mr Wild: Thank you, Madam President.

Just for a point of clarification from the hon. mover. So presumably, if the amount of tax evaded was £10,000, the fine would be £30,000.

885

A Member: It doesn't say that.

Mr Wild: Just trying to understand the impact of that...

890 **The President:** Yes, whichever is the greater, yes – so it could be.

Mr Wild: It would be, right.

Mr Braidwood: Three times, yes... Sorry, Madam President, I will wait until everybody...

895

The President: Does anyone else wish to comment?
Mover to reply.

Mr Braidwood: Thank you Madam President, and I thank Mr Crowe, Mr Butt and Mr Wild.

900

Yes, I think because we are a low tax jurisdiction and anybody who has been evading income tax, as Mr Butt and Mr Crowe have said, this was generally with the income tax authorities where they would have to pay a charge, they would have to pay that tax and then there would be penalties. This is putting it down in statute that it is a criminal offence to evade Income Tax and also it would be the three times.

905

If we look at the Bill itself on the 112K Fraudulent Evasion of Income Tax, under subsection (1)(b):

'... on summary conviction –

(i) to custody for a term not exceeding 6 months,

(ii) a fine not exceeding £5,000, or three times the amount of tax evaded, whichever is greater...'

So, in actual fact even if it was £10,000 or £20,000, it could be £60,000, three times. (**Mr Wild:** Thank you.)

I beg to move, Madam President, that clause 8 stand part of the Bill.

910

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 Braidwood: Thank you Madam President.

915

Clause 9 amends the temporary taxation power in section 115A of the Income Tax Act 1970. It introduces a definition of 'administration' of income tax, which clarifies that this includes instalment payments, the deduction or repayment of income tax and any other matter for which provision is made by the Income Tax (Instalment Payments) Act 1974. This clause also amends the definition of 'confirmatory Act' in the temporary taxation order section, which is required for clarity.

920

Madam President, I beg to move that clause 9 stand part of the Bill.

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

The President: The Hon. Member, Mr Butt.

925

Mr Butt: Madam President, can I just refer to the previous clause, very briefly.

The mover mentioned the six months imprisonment: I think it is important for the public record to say that, on information, they can be dealt with, (**Mr Braidwood:** Seven years.) get seven years' imprisonment. So that message needs to go out quite clearly, I think, that on indictment they could get seven years.

930

Thank you.

The President: Well, (*Laughter*) a little jump back, Mr Butt, but there we go! I do not think you need to reply to that, but you may do.

935

Mr Braidwood: I do thank... I was only reading out actually the section which was summary conviction, which Mr Wild had mentioned, Madam President.

940 **The President:** Perhaps even more significant is you could be fined both, £5,000 and –

Mr Braidwood: It could be that, term not exceeding three times or it is both on summary conviction, where they could have six months.

But in actual fact, referring back to clause 8, Madam President, Mr Butt was quite right: a person who fraudulently evades income tax commits an offence and is liable on conviction on information, 945 to custody for a term not exceeding seven years, a fine or both. Just for *Hansard* –

The President: We are now dealing with clause 9.

950 **Mr Braidwood:** I know, but clause 9 – I would just like the clause to stand part of the Bill, Madam President.

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.

955 Clauses 10 and 11.

Mr Braidwood: Thank you Madam President.

Before I provide the details of clause 10 to 13, I would like to explain why these changes are being introduced.

960 The taxation of the remuneration of an employee is very straightforward, and the individual is paid a salary and that salary being income is liable to income tax.

In addition, the employer deducts an amount of ITIP and National Insurance from that salary, which is paid together with the employer's National Insurance contribution into Treasury each month. However, although the taxation of an employee's remuneration is very straightforward, the Assessor has seen evidence in recent years of planning to delay the payment of income tax, and to 965 avoid the National Insurance that would normally be charged on the salary.

This planning is very simple in some cases and can be lucrative for both the employee and employer. A client contracts a company to provide a service: that company is usually beneficially owned by an individual who will themselves provide the service to the client. As the service is provided through a company the payment for the service is made to the company and is not 970 considered to be remuneration of the individual. Therefore it is not subject to ITIP, employee's or employer's National Insurance.

The payment made by the client to the company is chargeable as income, but will be liable to the general corporate rate of zero. Any distribution subsequently made by the company to the individual will of course be liable Income Tax on the recipient when it is paid.

975 The amendments to the Income Tax (Instalment Payments) Act 1974 by clauses 10 to 13 of this Bill, together with the amendment of clause 6 will stop this planning being effective.

In essence, if a client employs an individual, it will not matter whether their services are provided through a company, a trust or any other structure. The amount paid for the services will be treated as remuneration of the individual and subject to Income Tax with an ITIP deduction.

980 As this is an Income Tax Bill, it does not include any new provisions for National Insurance. However, the intention is to ensure that their National Insurance planning in this area is also stopped and an order having similar effect for National Insurance will be introduced if this Bill receives your support. This will help to ensure that our Income Tax and National Insurance systems are fair and that everyone pays their fair share.

985 In the response to the public consultation on this matter, Treasury agreed that the Assessor would introduce a clearance procedure for employees to categorise any working relationship. This is still the case.

The Assessor will also ensure clear guidance on the matter of categorisation of employment status, and publicly raise awareness of this matter.

990 Madam President, I am sorry for that long introduction but I think it gives a clarification to these clauses why we are introducing it.

I would now like to turn to clauses 10 and 11 of the Bill. Clause 10 confirms that Part 3 amends the Income Tax (Instalment Payments) Act 1974, and clause 11 inserts a new Part 1 heading into the Income Tax (Instalment Payments) Act 1974.

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

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

The President: The Hon. Member, Mr Butt.

1000

Mr Butt: Thank you, Madam President.

I am not sure if this applies yet but, from the introduction the mover gave to these two clauses, does that mean that people can no longer use company structures to lower their income to gain access to, say, education maintenance grants, to student loan grants, child benefit etc?

1005

Is this a way of stopping them from using their company structures to avoid these incomes, which would prevent them from getting the grants?

The President: Not under those two clauses...

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Mr Butt: Not under those two clauses, no, the introduction.

The President: The Hon. Member, Mr Turner

Mr Turner: It was to do really with the opening comments by the mover.

1015

Is this the same sort of practice that was well publicised with the Jimmy Carr case in another jurisdiction, and if...?

The President: We might be coming to that under 'deemed employment', so perhaps we could just hold your comments until we –

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Mr Turner: I will. He knows it is coming now anyway, so there we go – I will hold.

The President: The Hon. Member to reply.

1025

Mr Braidwood: Thank you, Madam President.

And turning to the point which was raised by Mr Butt, on personal service companies. I know of when he has mentioned about grants for students, I know of cases a few years ago where one individual who had a company and only paid him a certain amount, and then the amount he was getting from his company, he submitted to such as the Department of Education and was able to achieve full grant student awards for his child.

1030

The other party then paid himself a dividend from the company which would get round... instead of it being fully paid as a salary. And this is one the reasons which... and this was quite well known, quite common practice quite a few years ago.

This, on this personal service company, is slightly different because it is not where he has his own company and is paying himself a dividend; this one is when the person is employed by another company, as such, and is basically an employee of that company and he has now got a personal service company.

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So what he would do would put an invoice to the company on the work he has done say in one month, he would then be paid that amount – the personal service company would pay that amount

1040 of the invoice – and then the person who has the company would probably receive only a small remuneration from that, because again he would be able to take the money as a dividend. But that dividend would be taxable, later on, when it came out of the personal service company.

I hope I am clear on that, Madam President.

1045 **Mr Butt:** So these clauses do not specifically cover that, the issue I raised as yet.

Mr Braidwood: If he is using... that does not come under a personal service company; that would come under a limited company which the person himself would own.

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

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The President: Clauses 10 and 11 are dealing only with the fact that this applies to the Income Tax (Instalment Payments) Act 1974 and introduces an element to the long title.

So the motion is, Hon. Members, that clauses 10 and 11 do stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

1055

Clause 12.

Mr Braidwood: Thank you, Madam President.

Clause 12 inserts a number of new definitions into the Income Tax (Instalment Payments) Act 1974, that are required for the amendments introduced by clause 13 of this Bill.

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

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

The President: The motion is that clause 12 do stand part of the Bill.

1065

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

Clause 13.

Mr Braidwood: I think this is the nub of the whole Bill, Madam President.

1070

Clause 13 introduces a new Part 2 into the Income Tax (Instalment Payments) Act 1974. The new part consists of six sections: 2AA to 2AF inclusive.

Section 2AA clarifies the circumstances in which the new part will be applied. The circumstances require an individual to provide, or be under a contractual obligation to provide, services to a client in connection with a business carried on by that client. They also require the conditions in section 2AB to be satisfied.

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In addition, section 2AA clarifies the range of entities that would qualify as a client for the purposes of that part.

The section also clarifies that the part will not apply where the third party, which is defined in 2AB, is a genuine employment agency.

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Section 2AB sets out the conditions that must be satisfied in order for the new part to apply. These require the client to be resident in the Island for income tax purposes or to have a place of business in the Island. The services themselves must be provided under an arrangement involving one or more third parties, rather than directly through the individual and the client. The final condition to be satisfied is that if the services were assumed to be provided under a contract directly between the individual and the client, then the individual would have been an employee of that client.

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Section 2AC sets out the treatment of the individual, the client and the individual's earnings for the services in those cases where the conditions required by the new part are satisfied. It specifies that the individual will be taken to be an employee of the client; the client will be the individual's employer, and the individual's earnings are treated as passing from the client directly to the individual.

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Section 2AD sets out the treatment of any sum received by the third party for the services when the conditions for the part are satisfied. It specifies that the sum will be treated as remuneration of the individual and also clarifies the treatment of any fee charged by the third party and which forms part of the sum received by them.

1095 Under section 2AE, if an individual is notified of a decision made under the new part, they can lodge an objection to the decision with the Income Tax Commissioners.

Section 2AF, the final section of the new part, clarifies that where the part applies, it has no effect on any VAT charge that would be incurred if the part did not apply. It also ensures that any distribution made by a third party to the individual or any sum received by the third party that is charged as remuneration of the individual will not be taxed twice. This section also inserts a new Part 3 heading into the Act.

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

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

1105

The President: Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Madam President.

1110 I thank Mr Braidwood for making the position very clear. I think currently, if you were the employer and I had a service company, I would invoice you monthly with an amount and you would pay me gross, I would put that into my company and distribute a certain amount of income to myself as the individual employee of my own company, shall we say.

1115 What you are saying now is that the contract would continue with the company, a personal service company with the employer, but the employer would now deduct tax rate of, shall we say, 20% at source to that management company, and the individual would declare his tax. Return at the end of the year would show income from the service company, less the tax credit which the 'employer' would make as a deduction and then the employer would have to pay the 20% over to the Treasury as a credit in advance of the annual taxation of that individual who is employed by the service company.

1120 That is the way it appears to work, so the employer has the responsibility to deduct the tax at source, rather than the employee of the service company declaring an amount at the end of the year and paying tax on an assessed basis. And I think, from what you are saying, this would take effect from 5th April 2014, so it would be the year ending 2015 where the first assessment of this would apply.

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The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

1130 I mentioned before, there, about some of the high profile cases in the media, the likes of the Jimmy Carr case, which I think was in one of the Channel Islands –

Mr Braidwood: Jersey, I think it was Jersey.

Mr Turner: The mover thinks it was Jersey.

1135 I felt at the time that there was a lot of criticism given to some of these stars that had structured their tax affairs. But of course... some of that really was a bit of a media witch-hunt, because if the legislation is correct and these people were operating within the law, then it is up to legislators to change the legislation. I do not think people should be lambasted if they are actually complying with the law, and clearly it has become an issue now that the fairness element has been identified and now the law is being changed. But I think it is important that until such time as the law is changed
1140 then sometimes I think people can be criticised – they always use it as what they morally should be paying and obviously this is a step to change that.

1145 I just wondered then with these provisions coming in, what... if the mover could maybe outline the remaining benefits of people having a personal service company – there was obviously some still associated with being set up as a limited company for example – maybe he could outline that.

Has there been any study done as to whether this new provision here will actually result in any business going to jurisdictions that maybe do not have these provisions, and will there be any loss in revenue? Has there been a calculation of any potential loss of revenue from maybe persons who are currently paying the various company registry fees that would say, 'Well, in these cases we are no better off by doing that,' so therefore they are no longer going to do it?

But as I said, I am happy to support these provisions, but do feel it is important that people if they are acting within the law should not be criticised if we have not got the law quite right, and it is our job to actually put that law right, in which case then the picture is quite different.

1155 **The President:** The Hon. Member, Mr Wild.

Mr Wild: I fully support the clause. In my view, this is about bringing in a level playing field and equality and I think this legislation effectively does that.

1160 **The President:** The Hon. Member, Mr Crowe

1165 **Mr Crowe:** Can I just clarify... there are service companies, if for instance I was a chartered surveyor with a business and I had an office and I was one-man band, I can still work as a company on the legitimate basis that the contract with a third party will be gross to me. So this is really targeting people who use a service company solely as a ruse – well no, not necessarily a ruse – but in a way of short-circuiting the employer-employee relationship. They interpose a company... they may not have a premise or an office, they may be actually in the building where the employer works. So I think what we are trying to do it is a narrow point –

1170 **Mr Braidwood:** It is a distinction.

Mr Crowe: It is a distinction, but for the ordinary person in the street, the one-man band, the one-man business, who use a company legitimately –

1175 **Mr Braidwood:** It won't affect.

1180 **Mr Crowe:** – and they have limited liability. So the great advantage of the company is to get limited liability, which gives them protection for them and their families. So I think there is... this is an area which is dealing with a narrow problem, I do not know what the extent of the problem is, but it is making sure the Assessor, and he will be fully aware of this, that it is targeting a small part of the people who use this type of structure.

1185 **The President:** In the interest of gender balance, I think we should say that 'she' will be aware of this. *(Laughter)*

Mr Crowe: My apologies, Madam President. (**Mr Braidwood:** Gender neutral...) The Assessor, Ms Nicola Guffogg, of course, yes.

1190 **The President:** The Hon Member, Mr Butt.

Mr Butt: Thank you, Madam President.

Can I thank Mr Crowe for his examples, they have actually helped clarify to me what this is all about. Clearly my previous comment about the company structures to avoid... to obtain benefits is not relevant to this Act, to this Bill. So thank you, Mr Crowe, for that.

1195 Can I ask the mover, then, the Treasury Minister did say he would bring in legislation to try to counteract those devices that were being used. I presume that is coming in the future.

Mr Braidwood: National Insurance.

1200 **The President:** The Hon. Member, Mr Coleman.

Mr Coleman: Thank you, Madam President

I fully support this clause and at the briefing session that I attended, much emphasis was placed on the avoidance of National Insurance by these personal companies, as opposed to taxation. And with everyone... with the social benefits that we get I think we need to Hoover up just about as much National Insurance as we possibly can.

So I therefore fully support this clause.

The President: The mover to reply.

1210

Mr Braidwood: Madam President, following on from Mr Crowe. He mentioned such as a chartered surveyor. If that chartered surveyor had a personal service company that only worked for one client, then he would fall under the jurisdiction of this personal service company.

If he is a chartered surveyor, but did work for Mr Corkish, Mr Wild, yourself, Mr Downie, the Bishop, the President, then that is completely different because he is working for variety of clients, and therefore the personal service company would be fine – he would not fall under this legislation.

It is only where basically you are working for one client... actually more personal service companies have been formed since the attribution regime for individuals was lost as such, the legislation for that was taken away. It means that people who have a personal service company could roll up the amount of money and then pay themselves as a dividend which would be above the tax cap, so they would only be liable for the amount of the tax cap, and anything over that they would be able to receive.

So that is one way we can stop individuals rolling up in a company with the dividends, so that they only have to pay a tax cap amount and they receive the rest.

On Mr Turner, I think the Jimmy Carr case is slightly different on that. I am afraid we have at the moment... we did go out for consultation, we did not get any adverse comments, in actual fact, they were all positive comments that individuals, if they are working, should pay the right... everybody should be on a level playing field and should pay the right tax.

And that is why we will be looking now at the National Insurance and the evasion of the National Insurance, as Mr Coleman said – they are receiving all the benefits of what National Insurance gives us, our medical, other benefits – and Treasury will be looking at that.

I do thank Mr Wild for his support and I think the clarification for the questions or queries Mr Butt has put, particularly on previously when I tried to explain and also what Mr Crowe has explained as well, Madam President, and therefore I would like to move that clause 13 stand part of the Bill.

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

1240 Clause 14, introducing the schedule.

Mr Braidwood: Thank you, Madam President

Clause 14 confirms that the schedule has effect.

The schedule makes minor and consequential amendments and consists of four paragraphs.

1245 The first paragraph amends the Income Tax Act 1970 by replacing certain cross-headings with part headings and inserting a new Part 14 heading and Part 15 heading.

It renumbers section 106F as A106, relocates it immediately under the new Part 14 heading and makes minor amendments to it.

In sections F108 to J108 it replaces the wording 'sections A108 to J108' with 'this Part'.

1250 Section 112 is renumbered as 112L and relocated under section 112K.

Finally, the paragraph removes the definition of 'Assessor' from section 120 to reflect a change made by paragraph 3.

1255 Paragraph 2 of the schedule amends the Income Tax (Instalment Payments) Act 1974 by removing the word 'written' from section 1A(3) in order to allow for the possibility of a notice being given by the Assessor in an electronic form.

Paragraph 3 amends the Interpretation Act of 1976 by inserting two definitions: one for the Assessor of Income Tax and another for the Collector of Customs and Excise, to be defined as 'Assessor' and 'Collector' respectively. Reference to these posts appear in many different Acts and it is therefore considered appropriate for the Interpretation Act to include a definition of both.

1260 Finally, paragraph 4 amends the Customs and Excise Management Act 1986 by replacing 'the Collector of customs and excise (in this Act referred to as "the Collector")' with 'the Collector' to reflect the amendment made by the previous paragraph.

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

1265 **Mr Downie:** I beg to second, Madam President, and reserve my remarks.

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

1270 Hon. Members, that concludes our extended Order Paper for today. Council will now adjourn and we shall meet again in this Chamber on 17th December – of course, we have our Tynwald sitting before that.

The Council adjourned at 12.19 p.m.