



**TYNWALD COURT
OFFICIAL REPORT**

**RECORTYS OIKOIL
QUAIYL TINVAAL**

PROCEEDINGS

DAALTYN

(HANSARD)

SELECT COMMITTEE ON IMMIGRATION

**BING ER-LHEH TINVAAL MYCHIONE
ARRAGHEY STIAGH 'SYN ELLAN**

Douglas, Monday, 3rd December 2007

Members Present:

Chairman: The Speaker of the House of Keys (Hon. S C Rodan)
Mrs C M Christian, MLC
Mr Q B Gill, MHK
Mr J P Watterson. MHK

Clerk:
Mr L Crellin

Apologies: Mr R W Henderson, MHK

Business transacted

	<i>Page</i>
Procedural□	49
Evidence of Mrs D Fletcher, Director of External Relations and Ms K Scott, Head of Crown and External Relations Administration	49

The Committee sat in private at 12.43 p.m.

Tynwald Select Committee on Immigration

*The Committee sat in public at 10.35 a.m.
in the Millennium Conference Room,
Legislative Buildings, Douglas*

[MR SPEAKER *in the Chair*]

Procedural

The Chairman (The Speaker of the House of Keys, the Hon. S C Rodan): Good morning, everyone. Can I welcome members of the public and witnesses to this meeting of the Select Committee on Immigration, which has been called to take oral evidence in public session this morning.

The Committee was established by Tynwald in January this year to examine and review the operation and adequacy of existing legislation in the Isle of Man for monitoring and controlling immigration to the Island.

My colleagues on the Committee, for the record, are: Mr Quintin Gill, MHK; Mrs Clare Christian, MLC; Mr Juan Watterson, MHK. We have apologies this morning from Mr Bill Henderson, MHK.

Les Crellin is our Clerk, and Clive Alford is the Hansard Editor responsible for recording. Could everyone please make sure any mobile phones are switched off, to avoid interference.

EVIDENCE OF MRS D FLETCHER AND MS K SCOTT

The Chairman: We have with us today Mrs Della Fletcher and Ms Karen Scott from the Crown and External Relations Division of the Chief Secretary's Office.

I would like to thank you very much for coming to meet the Committee and to present your evidence. Could I start just by asking you to introduce yourselves and explain your roles and particular responsibilities.

Mrs Fletcher: I am Della Fletcher, the Director of External Relations. My main area of responsibility in relation to the work of the Select Committee is that I have management and overall responsibility for immigration into the Isle of Man.

The Chairman: Thank you.

Ms Scott: My name is Karen Scott. I am Head of Crown and External Relations and my responsibility is that immigration falls under 'Crown'. Therefore, I oversee the operation of the Immigration Service and I act as the Immigration Inspector for the Island.

The Chairman: Thank you both very much.

If I could start with a general question to do with legislation: it is legislation as applies to people coming into the Island from outside of the European Union, and any differences with legislation concerning people coming to the Island from inside the European Union, whether those people come here for residence, or residence and work.

So perhaps in general terms, could you explain what particular legislation applies and the difference in these two situations.

Mrs Fletcher: Anybody who wishes to come into the Isle of Man is subject to immigration. However, under Protocol 3, EU/EEA nationals have the right of free movement to and from the Island, as part of our arrangement under Protocol 3, but they are subject to work permits. Of course, that applies to anybody, whether they are British nationals or French nationals, Spanish nationals, or whatever.

The situation is different in respect of nationals who are foreign, but outside of the EEA.

The Chairman: So people from the UK, the EU and the European Economic Area (EEA), which also has in it Norway... Just tell us the other countries.

Mrs Fletcher: Norway, Iceland and Liechtenstein.

The Chairman: Those people have the right of movement to the Island and the right to take up residence, but if they want to work, they are subject to work permits under the Control of Employment legislation.

Those from outside the EU, other foreign nationals, just clarify their situation.

Mrs Fletcher: They have to then make application for leave to enter the Isle of Man under the Immigration Act 1971, which is extended to the Isle of Man by Order in Council.

The Chairman: Do they also require a work permit to work here?

Mrs Fletcher: They will do, if they wish to work. It depends under which category of the Immigration Rules their application is being made, and that is where the complication of the interpretation comes into it.

The Chairman: We will come on to that a bit later –

Mrs Fletcher: I appreciate that.

The Chairman: – because it is just really to get the broad picture.

Would it be feasible for the Island to have its own immigration legislation and controls?

Mrs Fletcher: It is an interesting question, Mr Chairman, and it is one that has been raised on many occasions. I do not think it has been raised in the last seven years. I think it was probably 1998-99, the last time that idea was mooted.

Of course, immigration is delegated to the Lieutenant-Governor by the Secretary of State in the UK, to whom responsibility for immigration is allocated. We have asked on numerous occasions – I think the Committee may be aware of the decision of Tynwald – that the Island should evolve and take on responsibilities for as much of its external matters

Procedural

Tynwald Select Committee on Immigration – Evidence of Mrs D Fletcher and Ms K Scott

as it could do; but certainly in the discussions that we had in the late 1990s on this issue, it was felt that it would not be appropriate for the Isle of Man to have its own specific immigration legislation, because of the whole gambit of immigration.

Whoever is granted leave to enter the Isle of Man, of course it is extended to grant leave to remain in the UK or the Channel Islands; tying it in with the Common Travel Area, how we would monitor it... It really depends, I suppose, on the specifics of what we would be looking at for us to have our own controls and legislation.

The Chairman: If we can just be absolutely clear what it is we mean by 'immigration' then. I am an immigrant, as you can tell by listening to me. (**Mrs Fletcher:** Yes.) There are many English-speaking people here who are immigrants to the Island.

The Immigration Rules, though, as we have just talked about them so far, apply not to me or English-speaking people from the UK, or anybody from the EU; the Immigration Rules are quite separate and they are British Immigration Rules, as applied to the Isle of Man, for people outside the EU.

Therefore, when you talk about immigration, are you quite clear that what is being talked about are the rules governing people from outside the EU to come to the Isle of Man? When people talk about immigration, they mean anybody from outside the Island, don't they?

Ms Scott: I think that is an excellent point, Mr Chairman.

As far as the Immigration Service is concerned, when we talk about immigration, we are referring to foreign nationals. For us, foreign nationals, for the purposes of the legislation, relate to people outside the United Kingdom and outside the EU/EEA area.

The Chairman: I think it is important just to clear what we are talking about. So when we talk together about immigration, we are quite specific about the category of immigrant: it is not UK and EU.

Of course, this brings us on to some questions relating to our relationship with the UK, which we will move on to now. But before I do so, can I just ask my colleagues on what we have said so far.

Mr Watterson.

Mr Watterson: Certainly. You made the point about the discussions held in the late 1990s about the construction of Manx Immigration Rules. Yes? You said that there were discussions held in the late 1990s.

Mrs Fletcher: Sorry, Mr Watterson, let me just clarify: not about Manx Immigration Rules. We do already have Isle of Man Immigration Rules and we operate to Isle of Man Immigration Rules.

Mr Watterson: Sorry.

Mrs Fletcher: I thought Mr Chairman was perhaps referring to the Isle of Man having its own immigration legislation. Sorry if I have confused you.

Mr Watterson: The English ones apply to the Isle of Man, but as a new set of...

The Chairman: I think what Mr Watterson is saying is in your presentation you said the matter, the feasibility, was looked at, in the late 1990s, of having separate Immigration Rules.

Mrs Fletcher: Sorry, I am perhaps... Just to clarify, we have Isle of Man Immigration Rules. I am referring to Isle of Man immigration law.

The UK Immigration Act sets out the law and the Rules then administer the categories that impact law. So we do have Isle of Man Rules separate. What we do not have is our own Isle of Man Immigration Act.

The Chairman: Those Rules derive from the Immigration Act 1971 –

Mrs Fletcher: They are made under the Immigration Act 1971, Mr Chairman.

The Chairman: – as amended.

Mrs Fletcher: That is right, and as modified, of course.

The Chairman: And that is the base of the legislation.

Mrs Fletcher: Yes.

The Chairman: So we are quite clear: there is no Isle of Man legislation.

Mrs Fletcher: That is right, Mr Chairman, but there are Isle of Man Rules, so it is just a point perhaps worth clarifying. I am sorry if I have confused you, Mr Watterson.

Mr Watterson: So the conversation you had with the late 1990s, then, was about having separate Manx legislation, was it?

Mrs Fletcher: Yes.

Mr Watterson: So the question is then: who was that raised with, and who was party to that?

Mrs Fletcher: That was raised with the UK. I think in those days we were under the auspices of the Home Office. It was raised with them as our channel of communication with the UK at that time.

It was a long series of correspondence that went on. It began in 1996. In fact, I hope that this has actually been fed through by the Clerk to the Committee. We did convey this information earlier this year to the Committee.

The Council of Ministers did ask the Chief Secretary's Office to pursue this and it was made through the Home Office, because that is where we were inside at that time.

Mr Watterson: So the process was initiated by the Council of Ministers.

Mrs Fletcher: Yes.

Mr Watterson: And it was them, ultimately, who made the decision that it was not appropriate at that time.

Mrs Fletcher: Yes, it ultimately was made through

them; but it was done through the Constitution and External Relations Committee of the Council of Ministers, who prompted it. Then the feedback was given to Council, who made the decision that, having raised it on several occasions – I think it was over a two-and-a-half-year period – we were not going to be able to do that.

The UK came back and said that, because of their obligations, they needed to be in a position to guarantee that the Crown dependencies would follow the same immigration practices as the UK in relation to third-country nationals – who are foreign nationals, under the terms that we have just spoken about. They did not feel that could be guaranteed – although they did not have any doubt that we would certainly do so – if the ultimate authority did not rest with the Crown representative who had delegated powers from the Secretary of State in the UK.

The Chairman: So our statutory obligations in respect of people from outside the EU are as you have just described, (Mrs Fletcher: Yes.) and for those from inside the EU, European nationals, what statutory... Are those statutory obligations the ones through Protocol 3 that you referred to?

Mrs Fletcher: Yes.

Ms Scott: It is article 4 of Protocol 3, which requires, Mr Chairman, that all EU nationals are treated equally. So therefore the Isle of Man cannot treat people from the UK differently from people from the rest of the EU. So that is the difference in the legislation.

The Chairman: Let us move on.
Mrs Christian.

Mrs Christian: Yes, thank you.

When you explored the possibility... Sometimes the perception of some members of the public is that they would like to see controls exercised here in a visible way.

The exploration that you did in the 1990s, was there any exploration...? Apart from the legal issues, in terms of the United Kingdom's position and their statement that they have got to guarantee that we would apply the same rules, did you explore what the practicalities would be, in terms of the sort of provision that the Isle of Man would have to make if it had its own law?

Mrs Fletcher: We did not, really, at that time – not from what I can find in researching the files.

I would clarify I was not party to that at the time, so I am not sure that they did not; but it seemed to stem at a policy level, before the operational of how we would do that. The issue was trying to establish that we could do it, and in that case, how we would then police it was going to be the next part of that investigation, as I understand.

There might have been a feeling – and this is an assumption, not a certainty – that because at certain times throughout the last 20 years, there had been controls under security measures during the Northern Ireland situation, that was not insurmountable, so that was not seen to be crucial to being able to implement it, if we did have our own law.

Mrs Christian: Mr Chairman, can I just ask one more question? You have mentioned the Manx Rules – and we

will come to that later, I am sure – but, presumably, the exploration of this issue of having our own legislation was to, in some way, effect something different from the United Kingdom – a tighter control perhaps? What was the thinking behind it? Was it purely to have our own controls, or to effect change?

Mrs Fletcher: It was actually probably not as deep as that, to be fair, Mrs Christian. It was more to do with the Island becoming more responsible for its own issues and to promote more complete self-government for the Isle of Man and developing its own autonomy.

Mrs Christian: Thank you.

Mrs Fletcher: Again, just in response to that point, when the UK was pressed, they said that they did not feel that actually this particular request would strengthen that aim, because in order to ensure that the Isle of Man's policy was entirely consistent with the UK, we would then, instead of self-determination or autonomy, have to be constantly consulting with the UK about their policy, in order that we were at one.

So we were not able to persuade them of our view in that respect, but it was more about our own self-determination, rather than having our own controls and monitoring our own borders at that time.

The Chairman: If that self-determination involved us making Rules that were no less strict than the UK – i.e. the UK would not be disadvantaged by more generous treatment of non-EU nationals – what was their response to that notion, in terms of our own legislation?

Mrs Fletcher: That approach was tried on several occasions – in fact, that was really the opening gambit in the discussions – but the UK kept bringing us back to their EC obligations, which guaranteed that the Crown dependencies had the same immigration practice. While we tried to give assurances and certainties, the final definition was that one administration could not tie the next administration to adhering to those practices or those guarantees, and therefore they felt that they had to retain that responsibility.

The Chairman: So our status as a non-sovereign territory is the bottom line for not being able to have immigration legislation that differs, or does not mirror the UK.

Mrs Fletcher: Because the UK immigration covers all of the British Isles and if the Isle of Man admitted people, it had to follow the same practice as the UK, just as whoever they admit can then come into the Isle of Man, so we have to be at one on that.

They did not actually dispute that we were aiming to do anything untoward; but it was this obligation under their EEC obligations. Of course, they are then responsible for us, as the sovereign state: they felt they could not let it be transferred.

The Chairman: Thank you.
Mr Gill.

Mr Gill: Thank you, Chairman.
Mrs Fletcher, could I just get this straight in my mind. I

am thinking about almost a Tynwald Hill picture here. On the top – not to scale – Manx workers can reside here and can work here freely. The next tier down is UK/EEA workers, or nationals. They can reside here freely, yes?

Mrs Fletcher: Yes.

Mr Gill: They can work here with a work permit, but we cannot discriminate, quite understandably, because of article 4 of Protocol 3.

Mrs Fletcher: Yes.

Mr Gill: So how many people are encompassed in that EEA workforce?

Mrs Fletcher: They will be on work permits. We do not retain that...

Mr Gill: No, within those countries that are covered within that area.

Mrs Fletcher: It is all the European Union countries, plus three from the EEA.

Mr Gill: So hundreds of millions.

Mrs Fletcher: Well, if they all wanted to come and work here –

Mr Gill: No, but within that area.

Mrs Fletcher: The work pool is millions. It was 550 million, I think, last year, before the accession countries, so probably over 600 million people.

Mr Gill: So many millions of people. Then the next layer down is other foreign nationals, and they cannot reside here freely: is that correct?

Mrs Fletcher: They have to apply and they have to have leave to enter for whatever purpose, yes.

Mr Gill: And that was the same system to come through. They can only work here. The only difference between residing in the UK, if they wanted to work here, they would need a work permit as well, of some description.

Mrs Fletcher: That is probably taking it to simplistics, I think. If they were wanting to work in the UK, they would need an entry requirement in the form of a work... Their leave to enter would be specified under their visa entry – which is what you would call a work permit, I think, Mr Gill. It would specify their terms of entry into the UK.

Mr Gill: Some form of agreement.

Mrs Fletcher: Yes.

Mr Gill: Given that the top two tiers – Manx workers and EEA – are hundreds of millions... I know there are individual merit and individual applications, but we seem to have a large number of people who are coming from outside of the EEA to fulfil jobs that surely could have been

– you would reasonably expect – filled from within that EEA workforce.

Mrs Fletcher: That would be down for the DTI to determine. They grant those leaves to enter under the Overseas Labour Scheme (OLS), or they grant the work permits. It is down for them to determine.

Mr Gill: But as a movement of people into the Island: is that not an issue you have a position on?

Mrs Fletcher: No. Our role is to administer the immigration law; not to determine... The DTI issue the work permits, or issue the entry for coming in for work. That was delegated to them by His Excellency, the Lieutenant-Governor – the Overseas Labour Scheme responsibility – so that they could determine the work, the needs of the Island.

Ms Scott: The employer has to show the DTI how, where and when it has advertised the position, and the DTI has to make the decision. Then it comes to us to deal with the entry clearances, making sure that they fit the Rules.

The Chairman: We will come onto the mechanics of the work permits. Did you have a further point?

Mr Watterson: Yes, the points we have already raised there. Has Council of Ministers accepted therefore that immigration legislation is a matter reserved for Westminster?

Mrs Fletcher: Not this Council of Ministers. That has not been examined by this Council of Ministers. They have maintained the status quo: that the Lieutenant-Governor has responsibility for immigration legislation, as delegated by the Secretary of State.

Mr Watterson: But the result of the previous discussion was that the Council of Ministers at that time accepted that immigration legislation was a matter for Westminster.

Mrs Fletcher: It certainly did back in 1998. That is where it rested and there was no further movement on that.

Mr Watterson: One other point, then: we said that one of the fundamental reasons for this is that we could not have a different set of Rules from that in the UK.

Mrs Fletcher: Sorry, I said that we could not? No, I did not. I said we *can* have different Immigration Rules. It is very important to rely...

This is where the confusion comes in off the immigration. The Immigration Act is extended to the Isle of Man with modifications and adaptations that we choose, but broadly it mirrors the UK. Then the Rules implement the different categories and criteria and I think, as Mr Chairman said, we will come to that perhaps.

We can have different Rules. The Rules are the actual detail of the immigration law. So we can have variables on the Immigration Rules, as long as they broadly stay in line with the UK.

The Chairman: Thank you. We will come on to that, as you say.

Just sticking with the relationship with the UK, can you just explain the role of His Excellency, the Lieutenant-Governor, the role of the Crown and External Relations Office and how that interacts with the Lieutenant-Governor and the political process of the Isle of Man.

Mrs Fletcher: The UK immigration legislation is extended to the Isle of Man and, along the way of implementing that legislation, there are discussions as to when there are changes in the UK law in immigration, as there have been. So obviously the changes, as they come in, are discussed and they are referred to His Excellency for approval.

The Chairman: With whom are they discussed?

Mrs Fletcher: The Immigration Office, the Crown part of the Office, which is Karen's and the team's.

The Chairman: Discussed amongst officers?

Mrs Fletcher: It is discussed amongst officers and recommendations are made to His Excellency.

The Chairman: Before the recommendations are made to His Excellency, is there any mechanism by which political comment or input is made into those recommendations?

Mrs Fletcher: Perhaps if I just take you back one stage, because there has been very little change on immigration legislation. We are constantly trying to catch up. So for about five years, I think it is fair to say, we have been trying to update the legislation.

In that time, papers have been put to the Council of Ministers advising what is going on. Under the legislation, when the Order is finally approved, there is to be a change that Council of Ministers will have a formal input into the Immigration Rules.

We have been very close to having that approved on several occasions, but the UK then brings out new legislation and we have to amend the Order.

I do not want that to appear in any shape or form to imply that there is any slowness on anyone's part to bring it forward, but it is very complex legislation. So the current position is that His Excellency and the previous Lieutenant-Governor were keen to keep the Council of Ministers involved, but the changes that have come forward have not been formalised at this time.

Certainly, the process clearly is: officers have to look at it and make the recommendations to His Excellency, who has responsibility for immigration legislation, in its simplest form, Mr Chairman.

The Chairman: So, as officers, your role is to advise His Excellency (**Mrs Fletcher:** Yes.) on ensuring that the Immigration Act, as applied to the Isle of Man, is applied correctly and that his statutory duty is carried out correctly.

Just stepping back though, as we say, there is, you say, an opportunity for comment by the Council of Ministers, before His Excellency give final approval. Is that correct?

Mrs Fletcher: At the invitation of His Excellency. Because of the nature of the way immigration law has

changed so rapidly and there is such a big impact on the Island, in recent times we have taken to informing Council of Ministers of what is going on and the changes and the policies.

But there is no obligation, of course, to do that. His Excellency is responsible for immigration legislation. In support of His Excellency, of course, we always consult with the Attorney General's Chambers and they help us advise His Excellency.

The Chairman: Yes, it is just that what is driving changes to immigration procedures – either the law, the UK law as applied here, or the Rules that have to change – is the situation in the UK, isn't it? It is the immigration patterns to the UK, as decided politically by the British Government, in the interests of the UK.

Mrs Fletcher: Much of the immigration law in the UK is connected... the changes are connected with asylum matters and appeals and that type of thing, much of which does not apply to our immigration law. When there are changes put forward to the Immigration Rules proposed by the UK, we analyse those, to try and make a determination as to whether that is a need or a benefit to the Island.

So there is that flexibility, that discretion.

The Chairman: So that examination of any changes being a benefit, or otherwise, to the Island, who makes that decision?

Mrs Fletcher: We do that, as officers, at the present time, and then we put those recommendations to His Excellency. Then the Immigration Rules, of course, are laid before Tynwald.

The Chairman: Yes. So, in making that assessment, as officers, do you apply a process of the particular political priorities, or the economic priorities for the development and the best interests of the Island?

Mrs Fletcher: We do that, Mr Chairman, through discussions with the DTI on what the changes are, or the impact, taking on board the DTI's views about the needs of the Island's workforce.

The Chairman: So you have discussions with the DTI, at officer level?

Mrs Fletcher: At officer level.

The Chairman: But not at political level?

Mrs Fletcher: No. I am not sure.

Ms Scott: No, not really.

Mrs Fletcher: In fairness, the officers of the DTI would then advise... I presume they will take it to a Department meeting. They have, obviously, a Department level. We are in a different position, with not sitting within a Department.

The Chairman: I appreciate that.

Mrs Fletcher: But I would assume that DTI, having had

the discussions with us and the changes that they are going to be involved in, or the feedback, would perhaps take that to the Department.

The Chairman: Because it could well be, could it not, that changes to the Immigration Rules, as driven by political considerations in the UK, may nor may not be in the interests of the Isle of Man? (**Mrs Fletcher:** Absolutely.) Unless the Isle of Man has its own political input into how those Rules are drawn up, really we are hostage to fortune.

Mrs Fletcher: Certainly, when I was in Karen's position, I had several meetings with the Chief Minister and the DTI Minister at the time about issues that were happening on immigration and looking at how we could make these improvements. That was the informative position.

Ms Scott: Rule changes happen a few times a year, so there are not huge amounts of Rule changes happening. I think the Committee has seen the Rules themselves, and it is quite a big document, quite an extensive document.

Rule changes come through periodically. They are not always economic. I think examples might be things to do with the Channel Tunnel, for example, which clearly are not relevant to us. There will be Rule changes that simply have no relevance because they deal with asylum or the Channel Tunnel or whatever.

Where the Rule change may seem to have an economic vent then we would always discuss it with the DTI or with Customs, if it seemed relevant; but always at officer level, before making a recommendation to the Governor.

The Chairman: And once those recommendations have been approved by the Governor, the document then is laid before Tynwald – or is it approved by Tynwald?

Mrs Fletcher: It is laid before Tynwald under the negative resolution rule. So it is laid before.

The Chairman: And we know that a document coming into the public domain at that stage – which is the first time it would come into the public domain – before Members of Tynwald, while they have the opportunity to debate it by picking it up at the following sitting, in practice we know that rarely happens.

Mr Watterson.

Mr Watterson: Firstly, just picking up a point that the Speaker made, because of the negative resolution rule, the resolution could only be annulled; you cannot further amend them. That in itself presents its own difficulties. If Tynwald came at variance with that decision, what would happen?

Mrs Fletcher: If Tynwald were at variance with it, it can be picked up under the same rule as with any 'laid before' item. It is not an unusual process, this type of process.

Mr Watterson: I am just giving you the hypothetical situation that Tynwald does actually annul a piece of immigration legislation that is laid before it.

Mrs Fletcher: The Rule change would not progress.

But, of course, the intention is to make the Rule change – or not to make the Rule change, as the case may be – to

the benefit of the Island, taking into account some serious discussion and thought and, if we do follow it, why we do it.

Also, we do in Immigration have considerable contact with Members of Tynwald. We are aware of the economy, workforce requirements, so there is a balance there in making those changes: we would hope that we were astute enough to try and put something forward that was for a useful purpose; not just to follow, *carte-blanche*, UK policy.

Mr Watterson: A quick one: hopefully a one word answer. Is it theoretically possible that a Rule change could go completely through the system and not have any political input?

Mrs Fletcher: No. It has to go to be laid before Tynwald.

Mr Watterson: But that said, because it is negative resolution, it may not have any input.

Mrs Fletcher: No. I would have to say it is laid before Tynwald. As an officer, I would see that that had a political input.

The Chairman: In fairness, anything laid before Tynwald is done so with the approval of the Council of Ministers. They have sight of it and sight of the business.

Mrs Fletcher: And Tynwald itself does have. That is why it is laid before. If the idea was to avoid political input, the 'laid before' process would not be in being, I would suggest. You are obviously in a better position to pass an opinion on it, but as officers, that would be our interpretation.

The Chairman: We are just trying to get clear in our own minds how the final set of Rules, changes to the Rules, have come about: what is driving it and how the interests of the Isle of Man are brought to bear on those changes. (**Mrs Fletcher:** Absolutely.) Whether you like it or not, the reason you have politicians is to make policy –

Mrs Fletcher: Absolutely, and we have no problem with that at all!

The Chairman: – and it is the officers' role to implement that policy.

Mrs Fletcher: Absolutely, and that is exactly what we are here to do.

Can I just clarify again, Mr Chairman, 'laid before' items on the Tynwald Order Paper do not go before the Council of Ministers. They are signed off by the Chief Minister and submitted for Tynwald business.

The Chairman: Thank you for correcting me on that point.

Mrs Fletcher: Just to clarify that point: it is the Items that are on the Tynwald Order Paper that are submitted formally. The Chief Minister, of course, does make that submission.

The Chairman: Yes, indeed, so in that case, what we are clearly saying is that the Immigration Rules will not have had

the Council of Ministers' stamp of approval, necessarily.

Mrs Fletcher: That is right. Not in, perhaps, the detail that you might feel. So I just would like to make sure you are –

The Chairman: But you can confirm that political input that you are aware of is with DTI discussion at officer level.

Mrs Fletcher: Definitely officer level. Whether they take it to the Department or not –

The Chairman: What about the Treasury who are responsible for the economic policy of the Island? Is it discussed with the Economic Adviser?

Mrs Fletcher: Not by us, Mr Chairman. So, I am not sure whether they would do that.

Ms Scott: There will be Attorney General's input and there will be DTI input or whoever seems relevant in terms of what the Rule change is.

As I said, Rule changes are not huge and they can be things that have nothing to do with us in any event.

No, Council of Ministers does not approve the Rules; it is a Lieutenant-Governor responsibility. Whilst the Lieutenant-Governor might periodically ask for the views of Council in respect of things that fall under his remit – I think an example that I can bring to mind would be when we introduced the citizenship test for nationality: that did fall under the Governor, but he asked Council to have a look at the final text of that – it is his decision.

The Chairman: Now, the Chief Secretary, of whose Office you are a part, has a function in advising His Excellency. In respect of immigration then, are those functions devolved to yourselves: that advisory function?

Mrs Fletcher: Yes, that advisory function under my role is devolved, but of course the Chief Secretary still has the final responsibility and, of course, we do advise the Chief Secretary of anything that we feel is necessary at any point, at management meetings and discussions.

The Chairman: So, the Lieutenant-Governor, in getting his advice as to how these Rules are or are not in the best interests of the Island and its economic development of the Island... the advice the Lieutenant-Governor gets is from the Chief Secretary?

Mrs Fletcher: I think it is probably fair to say that it would be from officers within the Immigration Office, supported by myself. I would usually brief the Lieutenant-Governor on those changes, particularly if there is anything contentious or different. The Chief Secretary, of course, does have overall responsibility and would be in a position to offer advice as well, if he so requested it.

The Chairman: How would the Island...? Just for the sake of argument, if the policy of the Isle of Government was to stimulate economic growth and that had an impact on immigration, in terms of numbers coming in, would you make reference to the annual policy document and the

Business Plans of the Isle of Man Government to ensure that the Rules that were being introduced were in the Island's own particular interests?

Mrs Fletcher: Yes.

The Chairman: If so, what would happen if the British interests and the Isle of Man interests were opposite and conflicted with each other?

Mrs Fletcher: It is an interesting question. I think, at the moment, both the UK and the Island are struggling with the same problems which are our workforce and growth in the economies. But it is a very interesting synopsis and, at that point, that would be probably when our Rule changes would have to be looked at further.

We certainly do – going back to the earlier part of your question – we are very aware of the Government's policy of growing the economy, balancing our quality of life and trying to do that with our Immigration Rules and immigration decisions.

That was actually one of the prime drivers for delegating responsibility from His Excellency to the Department of Trade and Industry for the Overseas Labour Scheme, so they who had hands-on experience of the needs of the economy and the workforce were actually making the decisions.

The Chairman: Okay, thank you. We will develop this a little bit further. Mrs Christian.

Mrs Christian: Thank you.

You have commented that we can have different Rules and that where Rule changes are made, they are laid before Tynwald. Primarily, the Rule changes, it seems to me – and I would be interested in your comment – deal with matters (a) that have no influence on us at all, such as the one you alluded to with regard to the Channel Tunnel; or (b) they are simply changes of name from 'United Kingdom Secretary of State', or whatever it may be, to 'Lieutenant-Governor' and substitution of 'Isle of Man' for 'UK'.

Have you, in effect, introduced many variations over the last decade which make these Rules any different from those which apply in the United Kingdom?

Mrs Fletcher: Yes. We have several categories of individuals in the UK Immigration Rules which we have not adopted, other than the generic ones that we have referred to.

In respect of students, for example, in the UK Rules, they have a category of prospective students, which means that a prospective student can enter the UK to find a course. They do not actually have to have been offered a course before they arrive in the UK.

We do not have that category in our Rules. We are more comfortable with students who wish to come to study knowing what they are going to study and where they are going to study it, before they arrive in the Isle of Man – primarily because, of course, people who are foreign students who are studying would be studying at the Isle of Man Business School and we like to know that they are here, that they have funds, they can look after themselves and they have the place. So, we took a decision not to include that category in our Rules.

Mrs Christian: Can I ask one further question.

Normally, you deal with omissions when applying the Rules. You look and see what does not apply to the Isle of Man. Occasionally, you said you apply variations. The one you have just alluded to seems to me to be an omission. Can you change and have you ever changed your decision on those issues and made an omission a positive application to the Island?

Mrs Fletcher: Perhaps a key one that we did that might highlight where we can differ is in respect of something we did in 2005. We had a major consolidation of the Isle of Man Rules and reviewed our Rules based against the UK Rules. It was a very complicated exercise, but it gave us the opportunity to look at each one and whether they were appropriate.

We consulted with the relevant Department and with HE about these types of things. The change that we came forward with was that to get indefinite leave to remain should be changed from four years to five years. At the time, in the UK, it was still four years, but we felt that to take into account the Isle of Man's specific situation and balance it with the Control of Employment legislation...

Previously, a foreign national who applied for indefinite leave to remain (ILR) had to do that after four years. Then they had to apply to the Department of Trade and Industry for a Control of Employment work permit for a further year before they became an Isle of Man worker. We felt that extending the period from four years to five years eliminated this extra requirement in the bureaucracy and we had set down a pattern to marry up Isle of Man systems, rather than UK systems.

If a person had spent some time in the UK and they were trying to get their ILR, they still would then need a Control of Employment work permit until they qualified.

Other reasons which influenced the recommendation that we made at that time, to extend this period, were that public funds are not payable to those with limited leave to remain; whereas a person who has indefinite leave to remain can be awarded public funds, if they meet the requirements for the benefit for which they are applying.

We felt there was an ambiguity there and it was within our discretion to decide to make that change. We did do that and, ironically, I think shortly afterwards –

Ms Scott: Not too long afterwards.

Mrs Fletcher: The UK made the same change themselves.

The Chairman: Sticking with that then – this is all very interesting! What drove the change from the Isle of Man: the extension from four years to five years, as a requirement for seeking indefinite leave to remain? Was there an administrative convenience? You mentioned the lack of bureaucracy in having to apply for a work permit for that one year.

Mrs Fletcher: It was. It was to try to give more of a control so that the applicants knew the position, that we had a control over it, but the main reason that prompted it was the considerable change in the workforce. Obviously, the balance in workforce was changing and we were having more and more people who were applying for indefinite leave to remain or who would be applying.

The Chairman: So, for one year, in respect of those individuals, you absolved them of any requirement to apply for a work permit and meet the criteria of the Isle of Man work permit for that particular year?

Ms Scott: I think it was more that they were having to apply for further leave to remain for that one year, because they were covered for four years, but they then had to come to us for further leave to remain for another year, for the five years and so it was creating... Because they would have got it in most cases anyway, so it was creating additional work, both for the DTI and ourselves.

There was partly the administrative issue, but also that alone did not drive it. It was also the issue which Mrs Fletcher was pointing out about the change in the workforce and the issues around people applying for benefits and so on.

The Chairman: And after five years, of course, then you qualify as an Isle of Man worker. That individual who, after five years, becomes an Isle of Man worker with indefinite leave to remain and to work has achieved that status through a different route than somebody from the UK or EU who had to apply for a work permit?

Mrs Fletcher: After four years, they had indefinite leave to remain. They were here as Isle of Man residents or as close to an Isle of Man resident, but they were still requiring a work permit. They were not Isle of Man work permit... Control of Employment was still eligible.

The Chairman: Year four to five, they still needed a work permit?

Mrs Fletcher: They still needed a work permit.

The Chairman: Yes, but then that was removed, was it not?

Mrs Fletcher: Well no. The period was extended. Instead of having to do four years to get indefinite leave to remain, they had to do five years for indefinite leave to remain which, of course, then made them an Isle of Man worker under the Control of Employment. Five years means that you no longer need a work permit.

The Chairman: Just to be absolutely clear, did they need a work permit in that fifth year? If they wanted to continue to stay and work in the Isle of Man...?

Mrs Fletcher: Oh, sorry. Yes, when they were given the four years, Mr Chairman, yes. They had their leave to remain for four years. They had to then go to the DTI for a work permit, so that added another layer of bureaucracy, but they did have to get a work permit for the extra year under the old system.

The Chairman: But not under the new system?

Mrs Fletcher: That would depend on why they were here. If they had come in, whatever their terms were, if they were working and they had to have a work permit, that did not change. That condition still applied.

The Chairman: What I am getting at is anybody from the

UK or the EU who comes here and applies for a work permit has to meet the work permit criteria. Those criteria include, for example, numbers of dependants. Four dependants or more require the application to be referred specifically for decision to the Work Permit Committee.

Under the Immigration Rules, however, questions about numbers of dependants are not on the form at all, are they?

Mrs Fletcher: No, they are not.

The Chairman: This is what the UK, what they decided and we have gone...

What we are getting at is: somebody can come into the Isle of Man under that mechanism who may have a large number of dependants and, after five years, automatically, by default, becomes an Isle of Man worker.

Of course, facilitating that by this Rule change from four years to five years has removed a possible element of control, has it not?

Ms Scott: I do not think it... If I could elaborate, Mr Chairman. I think the view was that they were coming to us because they were going to get the work permit for the additional year anyway, but they got indefinite leave to remain after four years. So, actually, we were putting an additional requirement on them, in that they needed to do five years to get indefinite leave to remain. So, it was actually seen as bringing the two systems closer together and putting an extra requirement on the individual that they had to do an extra year to get indefinite leave to remain as opposed to four years.

The Chairman: Yes I understand. Thank you.

Mrs Christian: Chairman, may I just ask, to follow the logic of that: if, in fact, the work permit rules are changed and Isle of Man worker status takes longer to obtain, would you change the rules to keep them in line.

Mrs Fletcher: We would have to see what the circumstances were at the time. That was done on request and discussions at the time. We could not rule it out, but we could not say it would definitely happen either.

Mrs Christian: But the logic would be the same?

Mrs Fletcher: I would say the logic probably would be the same, Mrs Christian. Yes. It would still...

Mrs Christian: Can I just ask one other point? You have almost indicated that indefinite leave to remain is automatic? Is that the case?

Ms Scott: No, it is not, Mrs Christian.

When somebody has done five years, they may apply for indefinite leave to remain. They have to make the application under the category under which they came in, so they have to meet certain criteria. If they do not meet those criteria, or their circumstances have changed, then they will not get indefinite leave to remain.

In addition, I think now, to be awarded indefinite leave to remain, you also have to take the citizenship test. So, there are additional requirements there too.

The Chairman: Okay. Mr Gill.

Mr Gill: Thank you, Chairman.

Can I ask a similar question to Mr Watterson, earlier: when you consider, draw up and interpret the UK's suggestions for the change of Immigration Rules document to Tynwald, up until it arriving in Tynwald, that effectively, as far as your concerned, is a politician-free process?

Ms Scott: It may well be. I have not dealt with a Rule change that was so dramatic that there might have been any question about needing to ensure the DTI brought it to the attention of the Minister, for example. Most of the Rule changes that we deal with are non-impactable Rule changes. Most of the ones that I have seen in the two years that I have been in my position have not been massively significant, in terms of spouses or in terms of employment and so on and so forth.

So, in terms of it being the responsibility of the Governor and of this Office to advise the Governor, then it is not required that a politician is involved in it. Certainly, in terms of other kind of Rule changes I have seen, they would not generally be such that you would immediately say you might want to ask an officer in another Department to draw it to the attention of a Minister.

In any event, it would always be the decision of the Governor, because it is the Governor's responsibility.

Mr Gill: Are you aware of any other areas of your work where policies of administration are interpreted by officers without any reference or involvement of a political representative?

Mrs Fletcher: It depends on the legislation under which that issue is being dealt with. In the areas that we work in, we are Crown Office and so we work and administer and support the Governor in his role. This is one of his roles.

Mr Gill: As far as other areas of policy development that you are aware of, are you aware where this is mirrored?

Mrs Fletcher: I am not sure that we are in a position to respond to what goes on, but the Governor... All the other Departments are under ministerial control; this piece of legislation is administered and delegated to the Lieutenant-Governor. There are other functions that the Governor has outside of immigration, of course, which would be dealt with in the same way, which might answer Mr Gill's question.

Ms Scott: In my office – the Crown and External Relations Office – the Crown Office deals with Governor functions and there are a whole range of functions that still rest with the Governor and the Governor has responsibility for, which do not have political input.

Mr Gill: Could I finally ask, when you talk about 'the final responsibility of the Chief Secretary.' I did not fully understand that at the time.

Mrs Fletcher: Well, the Chief Secretary is obviously the senior officer in our Office, so has overall responsibility for every area that is managed under her control.

Mr Gill: So, what does 'final responsibility' in this process mean?

Mrs Fletcher: It means that if His Excellency wishes

to discuss any issue with her or if there are any areas of concern that we feel ought to be brought to her attention, that is exactly what will happen.

Mrs Gill: Would she be having that discussion with His Excellency as his adviser or would she be reflecting the political will of the Island?

Mrs Fletcher: I think she will be doing both. That is her role: to try and take into account the business planning process, the growth of the economy and to advise His Excellency on how to take forward the immigration measures.

The Chairman: Okay. Thank you. Would it be fair to say that your office is a reactive one: any change to the Immigration Rules which emanate from the UK; you assess those and advise accordingly?

Mrs Fletcher: That would be fair.

Ms Scott: Yes, it would be, in terms of the legislative burden that has been coming from the UK recently. I think the Committee will probably have seen that there are very few Immigration Acts up until the last 10 years, when there has been a plethora of them. In terms of reacting to primary immigration legislation coming out of the UK and in terms of amending our Rules, it is reactive.

The Chairman: It is a reactive process. Therefore, if it is a question of policy as devised in the Isle of Man by political process in the Isle of Man – you referred to some policy changes which were expressed through amendment of the Rules – how would it work in that situation?

If the politicians or the Government of the Isle of Man decided, we want to amend the Rules; we do not want to, necessarily, do so in the context of your assessing changes that the UK might be proposing – we want it to be proactive and not reactive – has that happened? Is your Office structured to allow it to happen? If so, how?

Mrs Fletcher: I think it is fair to say there is limited flexibility, but certainly Members of Tynwald will come to us and talk to us about views or issues or suggestions. We will usually try and look at that and work through or explain things that are happening. They will ask us about something that might have happened in the UK.

It is not, I suppose, 100 per cent reactive, but there is a balance to be struck on dealing with the case of one person as opposed to, perhaps, a specific policy change.

Certainly, Members ask Questions in Tynwald and in Keys and Legislative Council and there are occasional motions put forward. We take all of that into account when looking at our administrative processes.

The Chairman: Would that be why – just coming to the example that you gave – in terms of the Overseas Labour Scheme and students, you mentioned that the Isle of Man devised its own specific requirement for a student to be attached to the Business School, whereas the UK left it widely open? (**Mrs Fletcher:** Yes.)

If politically it had been decided that is what we ought to do and things like that, at Council of Ministers, at political level, how easy would it be to get the Rules changed

specifically? Would we need to wait for an opportunity the next time the Rules are amended by the UK and then we tag on a change; or can we initiate change?

Mrs Fletcher: We can initiate it. We can put a Rule change to Tynwald, as long as we fit it in around the Tynwald submission programme. We can make changes quite quickly, if there was a view that something like that should happen.

In fairness, just to touch on the student issue, for example, the discussion was taken with the Business School themselves; it was not done by officers in Immigration deciding on that. It was suggested to us that because the UK has an enormous amount of higher education establishments where students could study, that they would probably find a place. The Business School is the one option here for foreign students to come into or through, of course, the previous Institute of Hospitality School. We knew that there were fairly limited opportunities, so the feedback we received was that this would not disadvantage people who genuinely were coming to study.

The Chairman: Do you need to consult the UK or anyone else when – ?

Mrs Fletcher: We are not obligated to. We usually do speak. We have a very good relationship with both the UK and the Channel Islands' Immigration teams. We try and support each other and talk things through. So, that is another option to –

The Chairman: What form do those discussions take with the Channel Islands?

Ms Scott: We meet with Channel Islands colleagues, usually about a couple of times a year. We are in regular contact. I have my opposite numbers in Jersey and Guernsey, one of whom is an extremely experienced officer, who has been around for quite a number of years.

The situations, the issues that we need to deal with are broadly similar. We have the UK Acts extended to us; hopefully, once our Order in Council comes through, our legislation will be the most up to date of any of the Crown dependencies.

But we operate under broadly similar circumstances. We share the same issues, for example, when the UK is introducing the amount of new immigration legislation, there may be provisions that we are consulted on with the UK that give us all cause for concerns. We will then talk to each other and, perhaps, separately and jointly, put submissions to the UK about the ways in which we think Bills need to be changed because they have not taken account of the situation of the Crown dependencies, for example.

That is not unusual, so we do have a very close working relationship on Crown matters, and by Crown matters I am including not just immigration there, but issues to do with nationality, passports and all areas around that.

The Chairman: So do the different jurisdictions apply different policy and, as a result, have different Rules to apply?

Ms Scott: The Rules are not identical in each jurisdiction. They do vary somewhat but not dramatically. For example, Jersey's Rules will take account of their particular

circumstances in the fact that they have a residency situation there. I am not completely *au fait* with how that works, but clearly their Rules will need to take that into account.

Guernsey and Jersey do not currently have immigration appeals, for example, which the Isle of Man has had for some time. So that is a big difference and involves us in a lot more work than the Channel Isles, so there are differences like that.

The Chairman: When somebody enters the Channel Islands – Guernsey, for example – from outside the EU, they are subject to the Immigration Rules and, after four years, there is an expectation that that individual will then leave the Island, that they are not going to be given rights to settle. They can apply to settle, but we understand that is the exception and would only be done on application to their Minister for Home Affairs.

So, after four years, the expectation is that somebody who has moved to work would then leave. Are you aware of that and what would be your comment about it?

Ms Scott: I am aware that... I am not sure about Guernsey but certainly Jersey have much shorter work permit periods than we do. I thought there was a shorter one than that, in fact I thought there was a two-year one, but certainly I was aware that they do do shorter work permit periods.

I suppose Mrs Fletcher might want to comment but my view is that we discuss these issues with the DTI. The length of time that work permits are issued for is a DTI matter, it is not an immigration matter.

Mrs Fletcher: I think, Mr Chairman, there is always that option, of course, to think about a time-limit work permit, but I think what is probably driving current policy is the Island's need to develop and sustain its economy. One of the key issues for the Isle of Man at the moment is shortage of workers.

The Chairman: Yes, we are aware the Channel Islands have work permits measured in terms of months for skilled, whether skilled or non-skilled, and they can be extended by up to four years. Then the expectation is that the person does not have any right of settlement, leaves: somebody else or an employer can make a case that they stay, but it is very rare.

Ms Scott: I do understand, Mr Chairman – sorry, I did not mean to interrupt – that Jersey is currently undergoing a significant review of all its residency rules, though because they do have concerns that they do not have a sustainable population or issues to do with not keeping people as well. I do not know where they have got to with it, but I do know that they are currently having a look at residency and at how immigration and work permits fit into that. I do not know what the timescale for that review is, however.

Mrs Fletcher: There was also – just to add to that, Mr Chairman – yourself and Mrs Christian might recall that there have obviously been debates over time, Government debates, Tynwald debates, about whether the benefits of a transient workforce and transient residents, who come in and stay for several years, is more appropriate than actually getting residents who come and integrate and settle and become part of the Island's fabric. That is obviously outside our areas as

officers, but it is just worth having that discussion, perhaps, at this point.

The Chairman: Yes, I take your point.

I mean, some countries have categories of guest workers and there to work, and there may or may not be family to accompany and then they leave, but you make, I think, a very valid point. The alternative to that are people coming here, with dependants quite possibly, to live amongst the community and integrate.

Mrs Fletcher: They become part of it, rather than somebody who might come and stay for 12 months. Presumably, they have come to work and there is a need for that worker, so that worker then moves on and a new worker comes in and that, so that is obviously a political policy view on what...

The Chairman: Just sticking with the Channel Islands and the discussions you have with them, we have adopted the UK's Highly-Skilled Migrant Scheme, have we not – this category of entry to the UK and consequently to the Isle of Man – but why did we adopt it?

Ms Scott: I am afraid that is a bit before my time and I could not answer that. I do not know whether Mrs Fletcher might remember why we did it?

Mrs Fletcher: I am sorry. I can go back and check for you, Mr Chairman, on that.

The Chairman: Were you aware of...? Was it adopted because it was felt we were obliged to adopt it, because it was a UK immigration procedure, gate of entry to the UK, categories of highly-skilled migrants, not job-specific?

Mrs Fletcher: The Hospital tends to spring to mind, more so on that for professional medical personnel...

The Chairman: If the scheme was being proposed now, what would happen? Would we have the option not to adopt it?

Ms Scott: Yes, I am sure we would, Mr Chairman. The Highly-Skilled Migrant Scheme is not a scheme under which we get huge amounts of applicants. It is quite a small scheme and it is almost primarily doctors, that type of worker.

So whereas I could not answer for why we took it on, I am sure that we did not take it on just as a reactive thing. It probably was seen to be something that would be beneficial to the Island. It is a very small category compared to other categories under the Rules and, as I said, the majority seem to be applicants who are doctors.

The Chairman: Right, that is clear.

Jersey, for example, has not adopted that particular scheme. They have other schemes, under which such applicants would be able to get entry into work in Jersey, but not that particular one. Therefore, when you discuss these matters with the Channel Islands, do you discuss the merits of changes proposed by the UK, with a view to seeing how they can be tailored to best benefit the particular Crown dependency? Are you aware is that the form the discussions take, or is it a case of, well, we have no option but to adopt

this, so let us tailor-make it as much as we can?

Ms Scott: We are not so organised that we sit down with each other with a list of all the rule changes that have come through the UK and go through them one by one and discuss them with each other, because these decisions are very much driven by each Island, and the Isle of Man's issues and needs are different from Jersey's and different from Guernsey's.

Certainly, if a rule change came through that raised questions – and there was one in the past that was to do with something around fraudulent marriages – I would have to be careful what I said because I do not remember all the detail. That was one that had been challenged in the UK courts and it was one that we had some discussions about looking at how that might work.

Clearly, where there are changes to Rules that we feel might raise questions, or you look at it and you think: what is this intended to do, is it relevant to us and could it potentially cause some problems? Then we would always seek to talk to each other because you are professionals working in different jurisdictions who are going to experience, likely, some of the same problems – but, as a matter of course, we would not just go through every rule change and talk to each other about it because it often would not be relevant.

The Chairman: Mr Gill.

Mr Gill: I am fine, thank you.

Mr Watterson: I have got a few, if that is okay, Mr Chairman.

I am just interested in the process that we talked about when you mentioned about changing the definite leave to remain Rules from four to five years: just the process that you went through there and whether you would anticipate objections from the UK if we changed it to, say, one year or ten years – dramatically diverted from the UK practice?

Mrs Fletcher: We would not expect any real difficulty, of course providing that we could justify the reasons that we were doing it – and, of course, taking into account that we were treating everybody fairly in the discrimination issues – but from one to ten is quite a big gap and we would have to be very careful why, but in principle no, Mr Watterson.

I think, as long as we could justify it and we understood what we were achieving from that and were able to do that, I am sure there would be...

Mr Watterson: The next issue is: do you have, off the top of your head, an idea as to how many people are subject to Immigration Control on the Isle of Man.

Ms Scott: Oh, off the top of my head... I mean, we do have a database, we have figures... at any one time?

Mr Watterson: I hope we are not going to get the same answer, that the UK Immigration and Scotland, we have no idea how many people are slipping through Immigration Control.

Ms Scott: Well, in reality, we can certainly provide figures for the number of people who have applied to enter the Isle of Man, the number of people who have come to us to vary their leave. We have got accurate figures in those

terms but anybody who was granted leave to enter into the UK and is here currently, we would not have figures on those individuals unless they came to us to vary their leave, because they needed to when their leave was about to expire – unless they came to us to apply for indefinite leave to remain – then they would come to our notice.

So, in terms of counting people coming into the Isle of Man, we would not see necessarily everybody who would be subject to Immigration Control. For those people who have applied to come to the Isle of Man, and for those people who have remained here and have sought to stay or vary their leave, then we would have figures for that.

I am hesitating slightly because I have figures up to date for this year, but I have not added everything together. I would be able to provide you with a total figure, but not off the top of my head.

Mr Watterson: Some sort of ball park, then, roughly, to the nearest one hundred.

Mrs Fletcher: Of the people who are here who have come through Isle of Man immigration, or the people who were here subject to Immigration Control?

The Chairman: I think we have had this line of questioning before us in public before. I am sure it is in our records somewhere, Mr Watterson.

Mr Watterson: Fair enough, then. I will move on to a slightly different tack on that one, then.

As you mentioned, you can come to the United Kingdom because Immigration Rules are permissive, largely: you can come to the United Kingdom as a prospective student. You would then have the free movement to come to the Isle of Man, so there is actually no Immigration Control. The only thing that stops you really settling here is the work permit requirement, is it not?

Ms Scott: As a prospective student, what would stop you here is that you would not have a course here to come to.

Mr Watterson: That would stop you taking a course here, but it would not stop you coming here.

Ms Scott: No, you would have been given leave to enter the UK as a prospective student for, I think, it is six months. So you have a six-month period in which to find a course in the United Kingdom. It would not stop you coming over here for a holiday, and certainly you could not work here.

If you wanted to come and see a friend here for a week, there would be nothing to prevent you. What you could not do is either work here, because you would not get a work permit, and you could not sign up for a course here because you were not given leave to enter the Isle of Man to do a course under those conditions.

Mr Watterson: So just because somebody has leave to enter the UK under their Rules, would not stop them coming here but it would stop them actually taking up the course...

Ms Scott: Stop them coming here and doing that.

Mr Watterson: Okay. Another slight tack on the

variation point then and I promise, Mr Chairman, this will be my last one.

There is a case that I have certainly been in discussion with your Department on recently, about the case of a student who has come to the United Kingdom and has a student visa potentially. In order to convert that visa from a student visa to an employment visa they would have to return to their country of origin to apply there for a new type of visa. If we in the Isle of Man felt that it would be in our best interests for an ability for your Office to have discretion there, would that be something that we could do which would take us quite a way from the philosophy of the UK?

Mrs Fletcher: It depends on what their... the case to which you refer, you will be aware of the detail on that and that is not one of those where there is the opportunity to make that change. There are certain cases that switching can be allowed, but it is...

Mr Watterson: But if we decided that that would be a good thing to bring in from an economic perspective would that be something we would have the power to do?

Ms Scott: That relates to, taking us just back to an earlier conversation about a rule change. If we chose to decide to introduce that rule change, not for this particular individual case (*Interjection*) but in the scheme of things, then certainly we could do it.

I think, for the information of the Committee, there are certain categories under which one can exercise discretion and there are certain categories where one does not exercise discretion and part of that is about setting a precedent.

In law it is very difficult to decide we will do it for this individual, because then, effectively, what you do is you could be opening a huge category to people which would really undermine the whole application of the Rules – and the Rules are secondary legislation, so we need to treat them properly in law as legislation. So, yes, we could certainly, in the case of an issue where we think there has been, perhaps, not just one example, but if there were a number of examples and we thought to ourselves, well maybe, on reflection now things have changed, the world has changed, education has changed, the economy has changed, do we need to look at that again, then that would certainly be a rule change that we would consider introducing.

Mr Watterson: Thank you.

The Chairman: Just moving on to work permits, non-EU nationals.

We are aware that the responsibility for the issue of the work permit lies with the Department of Trade and Industry. As the Immigration Act requires a non-EU citizen to hold a valid Department of Trade and Industry work permit, who determines the criteria for the issue of a permit? Do those criteria need to comply and in accordance with the UK work permit scheme?

Ms Scott: Are we talking about the immigration criteria, Mr Chairman – ?

The Chairman: The immigration –

Ms Scott: – or the work permit criteria?

The Chairman: The work permit criteria for those coming... whose gateway is the Immigration Act and the Immigration Rules – they need a DTI work permit.

Ms Scott: Yes, what they need to have is the DTI work permit to then apply for a visa – if they are a visa national – to enter the UK and then what would happen at that point is they take their proof that they had the work permit to an entry clearance officer in a Mission abroad. Then they will be interviewed and they will be asked to bring along documentation and that documentation will be about their income, to prove that they have the qualifications that they say they have and so forth. Then all that information will be sent here to the Isle of Man and we will make a decision on that basis, as to whether to approve entry for that individual.

There are occasions when we have – although the individual has been granted a work permit by the DTI – refused entry because we are not satisfied that they actually have the qualifications that we have been told that they have.

The Chairman: Could the Isle of Man apply the work permit criteria which it currently has for UK and EU workers to non-EU workers?

Ms Scott: I am not sure I understand, Mr Chairman.

The Chairman: The work permit system, as we understand it, is more stringent for EU and UK workers than applying to non-EU, in terms, for example, of dependants. Is there any reason why that system could not be applied to non-EU applicants?

Mrs Fletcher: Can I just clarify, Mr Chairman, that the scheme we are speaking of here I think is perhaps the Overseas Labour Scheme for non-EU nationals who want to come in and work? Yes? That is often the conversation to the dialogue that we have with the DTI, but I think they would probably be better placed to set out the answer to that information for you, to be fair.

I would not want us to mislead you in any shape or form, but if the DTI felt that there was a lack in stringency or there should be some restriction or change, that would be something they would take up with us to make sure that it could operate. We would discuss with the UK the terms of the Overseas Labour Scheme and make sure that it was not going to put us in breach in any shape or form, but I think, as I understand you – I might, perhaps, be misunderstanding you – you are looking to see how you can tighten up the Overseas Labour Scheme to sit with the Work Permit Scheme.

The Chairman: To ensure that the criteria for the two permits correspond with each other. Are they equivalent because we believe they are not exactly equivalent?

Mrs Fletcher: Right. I am not sure how they differ, except perhaps for the questions on the form about dependants. I think they would have to meet the same criteria of: is there a need for that worker, has it been advertised properly, etc, but I am afraid I am not really expert in both of the schemes, sir, and details.

The Chairman: Okay. It was really just non-EU

nationals, anyone who comes to the UK under the Highly-Skilled Migrant Scheme, which has been introduced in the Island, has a corresponding right to seek work in the Isle of Man under this particular status. Does he require, or she require, a further Control of Employment Act work permit to do that?

Mrs Fletcher: My understanding would be they probably do not, but again the highly-skilled migrant will be run through with the support of the DTI, so it is not something that we really administer fully.

Ms Scott: The Highly-Skilled Migrant Programme is quite complicated and relates to numbers of points that you get for how much money you earn and what age you are and so on and so forth. You get entry, I understand, for an initial two-year period and then need to re-apply if you wish to stay. Again, you have to meet a certain number of points in order for our Office to extend your leave to be here as a highly-skilled migrant, so it is actually quite a complicated system in some ways.

There are various charts that show you how many points you get for whichever criteria –

The Chairman: Is it the new points-based system that the UK is moving to?

Ms Scott: No, actually that scheme already operates and what the UK is trying to do with its points-based system is to simplify matters somewhat –

The Chairman: Yes.

Ms Scott: – but, in actual fact, it still all does relate to getting a certain number of points for if you speak English and if you are earning a certain amount of money and so on. Whereas they have tried to simplify their system a little bit and change it into tiers, the principle of points for qualifications and so on is there now and is what they will be using.

The Chairman: Yes, so the new points-based system that is coming to the UK next year: are you going to be recommending that it comes in here?

Ms Scott: We have had a few conversations with the DTI and the Economic Adviser about the UK's points-based system. The way matters currently stand is, we could adopt it, we could adopt part of it, we could not adopt it all, or we could develop our own system. That is entirely a matter that has not been decided at the moment.

The concerns of the DTI and the Economic Office, when we discussed it, was that, because there are discussions that have been going on for some time about residency, obviously there has been a recent review of the work permit system. In some ways, you would not necessarily want to introduce a new points-based system that just looked at foreign workers, non-EU nationals, and introduce a different system for other people, so part of the issue is that you would not want to be running two or three different schemes side by side.

We have been looking at what the UK are doing: they are due to start introducing that system in tiers and they are starting next spring with one of the tiers. It will take a while to roll all the tiers out. I will need to do a paper for Council,

just to update them about how the points-based system will operate, but ultimately I believe it will be a decision that the way that things are progressing may well go to Council.

The reason for that, if I am not talking too much – but we have touched on the Rules in our discussions – as the Committee is probably aware, once the new Order in Council comes through, the responsibility for making the Rules will transfer from the Governor to the Council of Ministers. Therefore, it may well be something that will be in the remit of the Council of Ministers to make a decision on later next year, so I do not anticipate there is any desperate hurry with deciding what the best thing to do is with a points-based system.

The Chairman: The points-based system: the essence, of course, is that it is not related to a specific job and therefore, unlike when somebody from the UK or the EU comes to the Isle of Man, it is job specific, the work permit, somebody under this new points-based system comes under a certain category and presumably then could, under that system, validly come to the Isle of Man and not necessarily take work in that particular category, or there would be no specific job that they were obliged to take. Would they be able to come and seek work in a particular category?

Ms Scott: If they were in the UK legally and they had leave to be there, then it would be a decision I would suppose for the DTI about whether it wished to issue a work permit for them here or not. Because they have permission to work in the UK does not, of course, mean that they have permission to take up work in the Isle of Man.

The Chairman: Is that the position? Is that really the position? If they have been granted, through the points-based system, entry to the UK and, by default, to the Isle of Man, there is no requirement to apply for a work permit, job specific, in the Isle of Man, is there?

Ms Scott: But my understanding is that, for example now, if you get entry into the UK under the Highly-Skilled Migrant Programme, that does not necessarily mean that you can take up a job on the Isle of Man automatically. I may not be correct about that, but...

Mrs Fletcher: Can I just go back and clarify one point. First of all, just rustling through these notes, you do need a work permit if you come in under the Highly-Skilled Migrant Programme.

Mr Watterson: CEA or OLS work permit?

Mrs Fletcher: I think it is a CEA, yes.

The Chairman: So, under the Control of Employment Act, you need –

Mrs Fletcher: – a work permit, if you come under the Highly-Skilled Migrant Programme.

To just take you back to that first point: at the moment it is all still very much up in the air about the points-based system. If it is something the Committee would like, we can go away and just clarify that for you properly, rather than trying to work out what our understanding is at this time and then we can report back to you in writing or are happy to

come again. If your interest is just being clear on that.

The Chairman: Yes, so a highly-skilled migrant can have the right to enter the UK under certain criteria and come to the Isle of Man. We understand they must intend to make the Isle of Man their main home, produce a valid document confirming the criteria and be able to maintain and accommodate himself without recourse to public funds. Having satisfied all that, if they want to work, they need to make a specific application to the Department of Trade and Industry for a work permit –

Mrs Fletcher: Yes, they do.

The Chairman: – and that will still be the position under this new points-based system?

Ms Scott: I think that that is something we will have to check, but although people coming to the UK... I am just reading from notes on the points-based system and I have it here that people coming for employment under the points-based system will no longer be issued with a work permit in the United Kingdom, but again we will have to check that, Mr Chairman, to make sure we are not giving you erroneous information.

The Chairman: I think that is probably an important point, because without that requirement in the United Kingdom, we would presume then they would have the right, then, to seek that category of work in the Isle of Man for which they were given a corresponding right in the UK. Would they still need a specific work permit in the Isle of Man, because if not, they are at an advantage over people from the UK or the EU who do require such a work permit?

Ms Scott: We will check that out. I mean I cannot imagine that it is the case, but we will check it out.

The Chairman: It seems like a small point, but it illustrates the difference in the way the systems operate in respect of EU and non-EU nationals.

Ms Scott: Because if we are not operating that system and, as things stand at the moment, certainly as I understand with the Channel Isles as well, they are not intending to introduce a points-based system (PBS), if there is no requirement, if there is no need or want on the part of the Isle of Man to introduce a points-based system, then we would continue to ask entry clearance officers to operate the systems that we currently do, which is that we would ask them to meet our standards and our criteria – which would include going into the Missions, being interviewed, applying exactly the same system or however we chose to change what we currently do. So we would be bringing people in to work, giving entry clearance to people to come to work on the system that we currently do it –

The Chairman: It would be towards the Jersey system who have work permits: the only people for whom they have work permits are people from non-EU – they have work permits.

They have other systems of control through housing and employment registration for UK and EU people, but work

permits are only obliged to those from outside the EU, so under a points-based system, presumably they would carry on with that specific system of control and presumably you were saying – from what you have just said – we could do something similar, tailor make –

Ms Scott: Yes, there is no obligation for us to introduce the UK's points-based system as we continue to operate as we do now.

The Chairman: There might well be a lot of merit in the UK points-based system for the UK. There might be for the Isle of Man, but the important issue is, if we independently assess that it is of value to the Isle of Man, in terms of its permissive powers in facilitating immigration of people whom the Island would like to see, for economic reasons or otherwise, it can do so.

Ms Scott: There are issues because the UK has set up panels specifically to advise Government on what skill sector it needs, for example, and the skill sectors that the UK may be looking to fill, may well not be our skill sectors, so that would be an issue.

There is certainly a lot of detail to sort out and a lot more investigation to be done before any recommendations could be made.

The Chairman: Thank you. Mr Gill.

Mr Gill: Thank you, Chairman.

Just on that point, about breaching recommendations and better understanding, the information that would lead to that, could I come back to the point that we have a number of people who are here from the EEA/UK, or a number of people from outside that, yet you seem quite relaxed about the fact that those persons from outside the EEA are here.

It seems to me that there is almost a sliding scale, but am I mistaken in thinking of it in those terms? I can understand the specifics, where it is highly-skilled migrants and within a population of 600 million there might be somebody whose specific needs and skills are outside that, but a general tranche of people who are coming into lower-skilled work from outside the EEA, how do you reconcile that with the process that we have?

Mrs Fletcher: Well, it probably goes back to... perhaps I have not explained it clearly enough, in that we fully understand where you are coming from, Mr Gill. It is a conversation we have had many times with our DTI colleagues. Initially, when the Island needed a workforce in different skills areas, nursing and auxiliary care, that was obviously one of the most prevalent ones for a time and I suppose where the initial workers were coming from would bring further workers. We did have a conversation about the need for care as to where workers were brought in, because we had this pool of resources from within the EU.

Again it goes back to being outside our areas: the work permits and people being brought in as work permits is a matter for the DTI. So while we can have that conversation, they are the people who are administering where the workers come from, where the adverts have gone, where the people have been drawn in from, just as if they were filling it under a CEA permit, the criteria that they follow. So it is really down to the DTI to determine.

Mr Gill: But, with respect, from a joined-up Government sense, officers are making policy here. The policy is: ‘Well, they’re doing that and we’re doing this’ and it just slips through the middle almost, then.

Mrs Fletcher: No, the conversation goes on, but we have to take into account the DTI grant permits. They do it on the information that is given to them. They follow through, they look at the applications, where the people are coming from, the skills, the criteria that the employer has asked for.

We can make our suggestions – which we do, and I am sure the Committee, ultimately, will do in its report – but we are not best placed to decide that people from a non-EU nation should not have been given that sort of work because there should have been... there is a pool out there but we must not assume that out of the 500-600 million EU they are all applying to come and work in the Isle of Man. So the DTI are looking at that, but the decision for whether the permits are granted must be taken by them ultimately and, you know, we can have the dialogue, we do have the discussion and there is awareness in that, but there is a full process to go through.

The Chairman: There is a question to DTI on that point: how are circumstances such that, notwithstanding the vast pull of potential applicants for a work permit from the EU in respect of a certain job, evidently there is nobody available –

Mrs Fletcher: Eligible or available, that is right.

The Chairman: – and eligible and therefore we are going outside the EU, that is the question –

Mrs Fletcher: That is right, Mr Chairman, that is how I see it. This Bill –

The Chairman: – that the DTI to need to satisfy us about.

Mrs Fletcher: I mean, I do not know, have you had any figures provided on how many work permits, or overseas labour permits, have been given to EU nationals, as opposed to non-EU nationals, which might just identify whether there really is a problem, or whether there is a perception of a problem.

The Chairman: And depending on the answer, the question then is does it matter? I mean the job needs to be filled and somebody qualified... Does it matter if they are coming from the EU or outside the EU? I mean they are coming –

Mrs Fletcher: That is how the dialogue goes round. It is exactly the dilemma that we –

The Chairman: Yes, of course, and that is the question that we look at. I think Mr Gill’s question is: is there a consistency being applied across the board?

Mrs Fletcher: Absolutely, yes.

The Chairman: And this has been a lot of what our questioning has been about, areas of inconsistency, whether deliberate or whether it matters or not: we have identified

areas of inconsistency across the systems and whether they should be brought together.

You made the point that the four year to the five year for indefinite leave to remain brought a certain consistency. This is for us to examine also. Mrs Christian.

Mrs Christian: Yes, thank you. A move to a points-based system opens up gateways and people do not have to come in then to specific jobs. Will there, in parallel, still be retained in the United Kingdom, as far as you are aware, certain jobs for which specific application can be made, or will they move to completely a points-based procedure?

Ms Scott: I am afraid I do not know and I will have to enquire. My understanding is that they are going to be a points-based system. That is all the conversations we have had with them, but I could –

Mrs Christian: Well, can I go a step further, then? If they go to a completely points-based system, which you have indicated they want to do, to simplify the movement in and out – you would be assessed on your qualifications against the gateways, as it were – how do you think the UK will view us retaining a more specific job application structure?

Ms Scott: I do not anticipate that that will create a problem. The only problem I can anticipate is the practical one, in that we will be asking entry clearance officers to treat applicants for the Island in a slightly different way than they are treating applicants to come and work in the UK. However, having said that, entry clearance officers always have to treat applicants for the Island differently because, apart from anything else, they have to remember to send the application to us for determination. So it should not be too significant a problem, I would have thought.

The Chairman: Mr Watterson.

Mr Watterson: Can I just talk to you about my understanding of residence control. Am I right in thinking that residence in the United Kingdom would not count towards residence in the Isle of Man for immigration purposes, even though we are all under the same sort of immigration umbrella? You can live in Liverpool, for example, for six months and then you can come and live in the Isle of Man for four years and nine months and you would not be eligible for indefinite leave to remain in either jurisdiction?

Ms Scott: I understood that, as long as you are resident in the United Kingdom or the Island, that contributes towards your overall total and towards indefinite leave to remain.

The Chairman: We have had evidence from Jersey that that is not the case. It will not happen too often, admittedly, but –

Ms Scott: There is – I would have to check the details – but in general I think that what I have said is correct. There are certain cases, in terms of if you are... There are certain cases and it is not in every case that where, if you come and go back and go back again, then it does not quite count up, but it is not as a general rule, as I understand it. I would have to define the exact circumstances under which it does not always count.

Mr Watterson: Approved medical staff is a prime example. Where they might come from outside the EU, they will work for two to three years in a UK hospital, they will come to the Isle of Man to work for a couple of years: would they, therefore, be eligible for indefinite leave to remain, on the basis that they have done five years in the common travel area? That is the purpose of the question I am asking?

Ms Scott: I cannot be exact. I am reluctant to say anything that will mislead you. However, I do know that – certainly when we are looking to grant people indefinite leave – they do not have to have spent all five years on the Isle of Man to get their indefinite leave.

I think it is under particular circumstances that what you are talking about is the case, but I can check the details and let you have them.

The Chairman: Presumably, for the sake of argument, a person who worked in the UK for three years, came here for two years under that system, would have acquired indefinite leave to remain if there is the umbrella provision. That person will then have acquired residency status and the right to work in the Isle of Man, notwithstanding that they had not required a work permit for five years or lived here for five years. Would that be the case?

Ms Scott: I am afraid I cannot comment without looking at the detail, Mr Chairman. I am just nervous of... Because I do not –

Mr Watterson: No, I would presume that they would still require a work permit, even if they had indefinite leave to remain. That is not because the two systems are separate and distinct. You can have indefinite leave to remain and still be subject to work permit requirements, can you not?

Ms Scott: Again, I am not certain.

Mrs Christian: Mr Chairman, that used to happen, so why would it not happen now? That is why you changed from four years to five years so, presumably, if someone came in from the UK for two years and worked here for two years they would still require to have a work permit here for three years, even though they have got indefinite leave to remain.

Ms Scott: It is under the CEA legislation, not under ILR which is a different... ILR is immigration status – I beg your pardon, Mrs Christian, you are right – ILR is immigration status, CEA is separate.

Mr Watterson: It is separate. That is the point I wanted to make, thank you.

The Chairman: Thank you very much.

Mr Gill: In your response could you absolutely clarify that they are separate and that there is no cross-over process, deliberately or inadvertently, which affords somebody to spend two years to get ILR status and it would also afford them the exemption from work permit, as well.

Ms Scott: The work permit legislation is entirely separate from immigration legislation.

Mr Gill: Could you just –

Mrs Fletcher: Yes we will clarify that for you in writing.

Mrs Christian: Could I just clarify one further point, Chairman, and that is if you came here and you have got indefinite leave to remain while you are in the Isle of Man, does that automatically apply in the UK, if you then had to move because you could not get a work permit? Is it an indefinite leave to remain within the common travel area?

Ms Scott: In the Island, yes it is.

The Chairman: Thank you. Mr Crellin?

Mr Crellin: Yes, Mr Chairman.

The Chairman: To give you an opportunity.

Mr Crellin: I would just like to pick up on a point that the Chairman made a little earlier, just really for clarification.

Under the Immigration Rules, anyone entering the Isle of Man for work permit employment holds a valid Department of Trade and Industry work permit. Is there any requirement in that rule that the criterion of that work permit has to be in accordance with the UK Overseas Labour Scheme, or can the Isle of Man apply its own criteria? Therefore, by the issue of a work permit it has complied with the rule?

Mrs Fletcher: I am sorry, I am not sure I quite follow – *(Laughter)*

Mr Crellin: It was mentioned before that the DTI have been delegated the authority for employment issues. The requirement, under the Rules, is that they hold a valid Department of Trade and Industry work permit. Does the immigration rule require that that work permit has to be in accordance with the UK Overseas Labour Scheme?

It is an issue that has come before the committee concerned that the Control of Employment Act requirements are more stringent than the Overseas Labour Scheme, as an example, with the requirement for a number of dependants. So the question is: does the work permit issued by the DTI have to apply the criteria of the Overseas Labour Scheme?

Ms Scott: I believe it does. I believe – and again I will definitely check for the Committee – but as I understand it, His Excellency has delegated his responsibility to the DTI to operate in the same way as the United Kingdom, so if it was to change, then that would need to change, too.

Mr Crellin: Referring to the Highly-Skilled Migrant Programme, which is a points-based system, and the proposed changes to the UK work permit-based system into a points-based system, the requirement under the Rules here is that a person seeking leave to enter as a highly-skilled migrant must produce a valid document issued by the Department of Trade and Industry, confirming that he meets, at the time of the issue of that document, the criteria specified by the Lieutenant-Governor. Would it be correct to say that the decision for the entry of that person for employment purposes is with an Immigration Officer at the point of entry and the DTI then confirms the application of points?

Maybe to simplify that, is the DTI not applying the points to permit the entry, the Immigration Service is applying the points to effect entry? My understanding is that an individual would go to the Immigration Office to apply for a visa in the country of origin and satisfy the Immigration Officer that he has adequate points under the system, the three main categories, I believe, being their qualifications, their age and their potential earnings. I believe they require a maximum of 75 points.

I am just looking back at the delegation to the DTI to make decisions on work entry. Is this effectively changing a decision to immigration with a confirmation later by DTI? It might sound a little pedantic, but I think there is a change coming with a points-based system that the Isle of Man needs to be aware of.

Ms Scott: Right, I could not accurately answer that question because I do not deal on a day to day basis operationally with applications from highly-skilled migrants, so the actual process of who is checking the points, and at what stage, I could not honestly say. I would have to check that.

The Chairman: Thank you. One or two other points that we have not covered: what rights do dependants of those entered under Immigration Control have?

Ms Scott: The rights of the dependants will depend, to some extent, on the conditions under which the person who they are a dependant on, is in the Island. Normally they will not have... Again, people cannot bring dependants in and have recourse to public funds, so their passports will be endorsed appropriately and their stay within the Island will depend on whoever they are dependent upon being able to support them, having an income that is judged to be appropriate, having accommodation that is appropriate, so there will be a degree of dependencies upon them being here.

The Chairman: If somebody got entry under the Overseas Labour Scheme to a not particularly highly-paid job and, subsequently, dependants came in, who would ordinarily be judged not to be well supported by that earner, would there be anything that could be done about that?

Ms Scott: If it came to our notice, then certainly there are things that can be done. I mean, ultimately, in my position I can curtail the leave of people who are here before the time that their period to be here runs out, if it is clear that the conditions of entry are no longer met, or were fraudulent in the first place, so there are things that can be done.

Of course, it has to come to your notice, so we try and ensure, when there are applications for dependants to enter, that there is clear evidence that they can be properly supported, but, yes, clearly if somebody's circumstances change, then it would have to be brought to our notice first for us to actually act upon it.

The Chairman: Thank you. Is there a requirement for anyone coming to the Island to have a knowledge of the English language?

Ms Scott: There is a requirement for people who apply for indefinite leave to remain, or for naturalisation, to

demonstrate a knowledge of the Island and the language in the United Kingdom. In terms of applying for certain jobs and applying for college courses, there is a standard – an English language test standard – that needs to be met. I cannot remember what it is: it is something like 0.6.0 on the English language scale, or something.

Mr Watterson: It would not apply to people coming from within the European Union, though? You would not need to demonstrate –

Ms Scott: No, because... I do not suppose it would, because you would not be able to apply it across the board.

The Chairman: So, paradoxically, an Australian would need to satisfy the English language, but somebody from Poland would not. I mean a person from Poland would never have been in a position of requiring to, but the Australian would?

Ms Scott: Yes, certainly the Australian – and we have had odd cases of people from Canada or Australia – seeking naturalisation or indefinite leave, but then, of course, they simply take the test and that is straightforward for them because they speak the language.

The Chairman: Thank you.

Children born to EU nationals working here: are they eligible for a British passport and again the same question for non-EU nationals?

Ms Scott: I made a note of this. Right – I am just going to read from my notes at this point, if I may – if parents of foreign nationals with limited leave, the child is the nationality of the parents, so it is not a British citizen. If the parents are foreign nationals and have gained indefinite leave to remain in the Island, then the child is a British citizen.

If one of the parents is a British citizen – this would also apply if somebody is married to an EU national – if one of the parents is a British citizen, the child would be a British citizen. So I suppose, in terms of EU nationals, the child would not automatically be a British citizen, it would probably be the nationality of one of the EUs, unless they had applied for indefinite leave to remain, or sought naturalisation.

The Chairman: Applying for indefinite leave to remain does not, however, change the nationality of the parent, the applicant, does it?

Ms Scott: No, but it means that they are able to stay outside of Immigration. They can stay indefinitely in the Isle of Man and, therefore, any child born here would have acquired that right.

The Chairman: Acquires British nationality and a corresponding right to remain through that, yes.

Ms Scott: Yes, through the parents.

Mr Gill: Does that change, then, so that if a child is born to parents both of whom are not on indefinite leave to remain, they would be whatever country their parents were from?

Ms Scott: Yes.

Mr Gill: And then if the parents subsequently, one or both, became granted leave to remain indefinitely, would the child's passport entitlement change?

Ms Scott: Yes, that is as I understand it, yes.

The Chairman: Thank you.

We read a lot in the UK press concerns about numbers of illegal immigrants in the UK. Is there any evidence that illegal immigration is an issue in the Isle of Man at this time?

Ms Scott: We do receive intelligence on illegal immigrants. I suppose, when we talk about illegal immigration, there are those people who are in the Island illegally because they have overstayed their leave, sometimes genuinely, and do not realise they needed to come and change their passport details or whatever, have applied to stay longer. They will often come to our notice simply by coming in to the counter and we will say, 'Look, you shouldn't be here any longer.'

Obviously, they are quite straightforward to resolve. There will be cases where we receive intelligence that people are here illegally, usually working illegally, and then we take enforcement action, as long as we have enough information to do it on. It is not, as we can ascertain, a significant problem. The numbers that we are talking about – the numbers that come to our notice that we deal with – are relatively small. So, yes, we do have a small degree of illegal immigration: it has not come to our notice that it is a significant problem.

The Chairman: What would be the typical figures, just for the record?

Ms Scott: I can give you some figures.

In 2005 we detained and removed 16 illegal immigrants.

In 2006 it was 22, although I would say that, in one case, up in Onchan, we actually found seven people in one go, so that amounts for a large part of that 22, as you will see.

To date, in 2007, 15 people have been detained and removed.

The Chairman: And do these people fall into the category of people whose leave to remain has expired, or is it people who are coming in?

Ms Scott: There are people who have come in and who are working illegally and who have no leave whatsoever to be either here or in the United Kingdom.

The Chairman: And of course, without border control or passport control on-Island, we are relying on the UK Immigration authorities and, to a lesser extent, the Irish Immigration authorities.

There is, of course, as we know, the sign at the Airport requesting entrants to the Island who come from non-EU countries via Ireland to report to the Passport Office. Does that happen? I mean that is presumably the one and only control, this invitation to report: is there any sign that any of the cases that you have referred to have come in by that route and –

Ms Scott: We have – oh, I beg your pardon, Mr Chairman, I did not mean to interrupt – yes you are right, we do not have border controls.

I would say, however, that all the illegal entrants we are talking about entered the UK, who do have border controls, and there are any number of ways of entering islands, be they huge like the United Kingdom or smaller like the Isle of Man. So they slip by border controls, illegal entrants, for the most part in sometimes very sophisticated ways.

In terms of the notice at the Airport, yes, we do get people coming to get their passports checked and stamped. I think we provided for the Committee some figures to say that, in the last five years, 18 persons coming through have needed to be given leave to enter the Isle of Man and have come to the Passport Office. The numbers might be slightly higher because we gave these figures some months ago, so I think we have had one or two people in since then and people tend to.

Apart from anything else, they like to get a stamp from the Isle of Man in their passport, so it is actually seen as quite a nice thing to do.

The Chairman: On the question of recourse to public funds, where the passport can be stamped to that effect, conditions no recourse to public funds, what checks are in place to ensure that the person legitimately entered already has adequate income to support dependants. You touched on it a moment ago. Would checks actually be made?

Ms Scott: Yes, we ask to see at every stage when an individual applies to come – under whatever category, students would be a fine example – that they have adequate funds to maintain themselves through the period of their course, for example, or that they will be earning enough if they are coming in as workers and they have enough money.

So we ask to see financial statements, bank statements, and so on and so forth. If we do not think that the money is there, then often we have refused on the basis that funds are not available.

The Chairman: Mr Watterson.

Mr Watterson: How do you achieve that? Obviously it is relatively easy for people to go down the road, get a bank loan for three months, then pay it back and then I can come to you with a statement somewhere in the middle of that period and say, 'I've got £10,000 in my account.' How vigorous and how do you achieve those sort of controls?

Ms Scott: We would look at your bank account going back some time and we would see that you have been overdrawn for several months at a time and suddenly there is a whopping great £10,500 that has appeared and we would ask where that has come from and –

Mr Watterson: Just in terms of the points that you have made about your intelligence, is that mainly UK based or is that mainly tip-offs on-Island –

Ms Scott: On-Island.

Mr Watterson: Right, and do people – are people able to accrue rights, so if an illegal immigrant came here,

but was somehow able to evade detection for a five-year period, would they have any rights then or would they still be deported?

Ms Scott: They have absolutely no rights because they have entered the common travel area illegally then. No, they are an illegal immigrant and they will be removed.

The Chairman: Thank you. Final points, Mrs Christian.

Mrs Christian: Just to touch on the question of asylum, please. I think we have had one case where there was some difficulty with the law. What is the current position in relation to someone who might arrive here pleading asylum?

Mrs Fletcher: It is, as we have always advised, that we are not a sovereign state, therefore you have to apply for asylum in a sovereign state, in the UK. Also you have to claim asylum in the first country which you come to and there are very few people who are seeking asylum from around the world and the first country they land in is the Isle of Man.

That case to which you refer was right. It was a little bit complicated and some lack of clarity along the way, not by us, I have to say, but the position was maintained at the end. The procedures that we have in place are that if somebody claimed asylum here, we would find out where they had come through and the position remains, at this time, that they would have either come through the UK or through Eire, and we have arrangements in place administratively to let them be returned there to seek asylum formally through the proper channels.

Mr Watterson: Are we able to presume that they have come from the UK? If we cannot actually find out where they have come from to get here, are we allowed to make an assumption that they have come from the UK and send them back there?

Ms Scott: If they were seeking asylum, then they would have to tell us –

Mrs Fletcher: Whether they want to or not.

Ms Scott: Yes, exactly. But Mrs Fletcher is right: the case that happened last year went on much longer than it should have done, simply because while we had an agreement with the United Kingdom on this matter, it has never been formalised and we are currently in discussions with the UK to get that formalised. So it is just a question of certain officers knew in the UK how it should work and certain other officers did not know. That is what took the time at the end of the day and why it ended up taking longer.

The Chairman: So the issue with the person we have had written evidence to the effect that, because of the non-availability of legal aid in terms of contesting, it could be an infringement of Human Rights, particularly the human right to have a fair hearing –

Mrs Fletcher: It is an interesting point you raise because they are the sort of issues that come every time there is an issue in immigration. That type of issue is thrown at us, but it still goes back... At the moment, our understanding is that

you have to claim where you have come through and the UK is responsible, as a sovereign state. You claim the asylum of the sovereign state, so those sort of issues sometimes can be seen to muddy the waters.

Going back to Mrs Christian's original question about asylum, if people want to claim asylum, they claim it in the sovereign state. We constantly keep looking at this issue because we have more people coming into the Island. So that we are up to speed, we take advice from the Attorney-General's Chambers on that. Of course, our own legal profession, it is a new area for them, too, but it does not take away from the fact that the advice that we have is what we have just –

Mrs Christian: So if it happens again tomorrow, you will be in a better position and they will be in a better position to deal with the matter?

Mrs Fletcher: Well, we would hope so. That was not the first instance of it. It was the first instance where there was an interpretation, both by the representatives of the individual, by the individual themselves and about a wish from all of us to treat people with the respect they deserve, whatever they are claiming for. But the bottom line is that the process is there at this time.

Mr Gill: So asylum seekers would appeal, or have whatever appeal process they chose to rightly engage in, in the country that they determine through the way you have described –

Mrs Fletcher: Well, where they have sought asylum, Mr Gill, yes.

Mr Gill: But, illegal immigrants: would their appeal process against intention to remove would be on the Island?

Mrs Fletcher: Here, yes, if they were here.

Mr Gill: And are we, as a jurisdiction, equipped to deal with that?

Mrs Fletcher: Yes, we have an appeals process that is in place.

Mr Gill: Has that been tested? Have we – ?

Ms Scott: Well no, people who are here illegally do not have a right of appeal. If somebody is here illegally and we detain them working illegally or whatever, then they are... It is something that does not go through the courts, it is dealt with straightaway by the Immigration Service, who arrange for their removal.

If somebody is here and we wish to curtail their leave or somebody is seeking entry and, for various reasons, to use Mr Watterson's example of saying they had not got enough funds, we refuse them entry, then there are quite a number of categories under which you may appeal. Then, obviously, there is an appeals process and the High Bailiff acts as the adjudicator for that.

Mr Gill: Sorry, specifically on the illegal immigrants, they would be removed from the Isle of Man to the UK?

Through the UK to –

Ms Scott: Yes. Through the UK: no, we will move them back to their country of origin, but usually it has to be through the UK because of the –

Mr Gill: And who actually undertakes that duty?

Ms Scott: We do.

The Chairman: You accompany the person back to the UK or back to the country of origin?

Ms Scott: We accompany the person, with the police, to the Airport and either arrange for a police escort or, if they are not deemed to be a high risk, then they are transferred over to the UK: they are met in the UK by the UK Immigration Service and escorted onto whichever flight will take them back to their home.

Mrs Christian: Something to ask: who pays?

Ms Scott: If we are arranging the removal, certainly of illegals, it is our cost, we pay.

Mrs Christian: To the country of origin. Do the airlines not have a responsibility?

Ms Scott: That is a more complicated a matter, Mrs Christian. Under legislation, if a carrier is identified as carrying illegals, then they can be subject to fines. That is an issue, obviously, much more for somewhere like the Channel Isles, who –

Mrs Christian: If you cannot prove how they got in, I presume we have to carry the full cost?

Ms Scott: Yes, exactly, there are all kinds of issues around that, but yes.

The Chairman: Thank you.

Les, have you got any final questions? Quite happy? Final? No? Well, we would like to thank you both very much indeed for giving us your time this morning. It has been a very valuable discussion for us and you have been very

helpful to the Committee, so thank you very much indeed.

Mrs Fletcher: You are very welcome. Thank you for having us, Mr Chairman.

If there is anything we can do and if we have not answered – or Les, when he comes to read back – we are happy to meet up with Les or to assist. Also, if it would help to give clarity when you have had a chance to look through *Hansard*, we are happy to try and clarify any of our comments. It is a complicated area that –

Ms Scott: Particularly where we have said we do not know, we are more than happy to go back and fill in the gaps.

The Chairman: I think we probably would find it very helpful indeed if the officers could have sight of the *Hansard* –

Mrs Fletcher: That would be useful.

The Chairman: – and also of the *Hansard* of the previous officers from the Passport Office, because, we are conscious, similar sort of questions were asked at that time and it would just –

Mrs Fletcher: It is important that we make sure what we are explaining... When you work in it sometimes you get steeped in it and we are not as involved as some of our colleagues in the details, so if we have not been able to answer anything, we shall certainly make sure you do get that information, or if you want further clarity then we will liaise through Les, anyway. So –

The Chairman: Good, thank you very much.

With that, ladies and gentlemen, this brings this particular session of the Select Committee to an end. I would like to thank the members of the public and the press for their attendance. Thank you very much.

The Committee sat in private at 12.43 p.m.