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(HANSARD)

**STANDING COMMITTEE OF TYNWALD
ON CONSTITUTIONAL MATTERS**

**BING VEAYN TINVAAL MYCHIONE
COOISHYN Y REILL-CHEEREY**

Douglas, Monday, 16th November 2009

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Members Present:

Chairman: The Speaker of the House of Keys (Hon. S C Rodan)
Mr R P Braidwood, MHK
Mr T M Crookall, MHK
Mr Q B Gill, MHK
Mr G M Quayle, MHK

Clerk:

Mr R I S Phillips, Clerk of Tynwald

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The Committee sat in private at 4.06 p.m.

Standing Committee of Tynwald on Constitutional Matters

*The Committee sat in public at 2.30 p.m.
in the Millennium 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 afternoon, everyone, and can I welcome you all to this meeting of the Standing Committee of Tynwald on Constitutional Matters.

5 The Committee decided in April to inquire into the proposed provisions of the Borders, Citizenship and Immigration Bill, which previously had, as part of its text, a clause amending the Immigration Act 1971, which would have potentially changed the right of travellers from the Isle of Man to enter the UK without a passport. It reported its concerns to Tynwald in May. It has also spoken to the Chief Minister and officials privately. The Bill has now become law in the UK, but without the provision which caused so much concern, not just here, but in the other Crown dependencies and elsewhere. Nevertheless, we understand that the United Kingdom government plans to introduce provisions in the same terms as before in a Bill to simplify immigration law in the UK.

10 Lately, a further clause, clause 97, of the Policing and Crime Bill, has been introduced into a Bill which would empower Customs officers to ask to see passports. We shall be asking about this aspect also.

15 We are meeting this afternoon to take our second public oral evidence session. A fortnight ago we heard evidence from Mr T Llewellyn Jones, Mr Walter Gilbey and Mr Iain McDonald, the Data Protection Supervisor. This session with the Chief Minister is a follow-up session to that.

20 I would like to begin by introducing my fellow members of the Committee: Mr Phillips, Clerk of Tynwald, is the Committee's Clerk; Mr Gill; Mr Quayle; Mr Braidwood; Mr Crookall. Mrs Ellen Callister is our *Hansard* editor and she is recording this afternoon's proceedings. At this point, if I could ask everyone to kindly ensure mobile phones are turned off, because they do interfere with the recording equipment.

25 I have great pleasure in welcoming to the Committee the Chief Minister, the Hon. Tony Brown, and also Mrs Karen Scott and Mrs Della Fletcher. I would like to thank you very much for attending the Committee this afternoon.

EVIDENCE OF HON. J A BROWN MHK, MRS D FLETCHER AND MRS K SCOTT

Q120. The Chairman: It might be helpful, Chief Minister, in inviting you, if you wish, to make an opening statement, if you would, just for the record, kindly identify by name and position the two officers with you this afternoon.

30 Chief Minister.

Mr Brown: Thank you, Mr Chairman.

To my left, I have Mrs Della Fletcher, who is the Director of External Affairs; and to my right is Karen Scott from the Chief Secretary's Office, who also deals with immigration.

35

Q121. The Chairman: Thank you very much.

Would you care to make an opening statement?

40 **Mr Brown:** I am happy to. It is actually quite brief, Mr Chairman, if I can. Really, it is just echoing the policy of the Isle of Man Government, in terms that the Manx Government's policy echoes its duty, which is to protect the Island and its citizens from imported crime and illegal immigration, at the same time taking into account the historic, cultural, constitutional and economic ties between the Isle of Man and the United Kingdom. Ensuring continued ease of access for travellers between the Island and the UK will continue to be a primary goal.

45 That is our policy as Government and therefore protecting, as much as we can, the freedom of movement between residents of the Isle of Man and the United Kingdom for travel purposes.

Q122. The Chairman: Thank you very much.

50 The main points which the Committee are looking into were set out in the Report we made in Tynwald, and if I just run through the six bullet points... I know you have very kindly responded in a formal written submission on these points, and that will be taken into account in our report, but just for the public record this afternoon, those six bullet points are: firstly, the adequacy of consultation by the UK government with the Government of the Isle of Man; secondly, the protection afforded by a Memorandum of Understanding, especially in preserving the unfettered right to travel to and from the UK and the Isle of Man; thirdly, data protection of information provided, relating to those travelling to and from the Isle of Man; fourthly, the right to impose controls over those travelling between the Isle of Man and the UK; then there are the powers of detention over those travelling between the Isle of Man and the UK; and lastly, the collection of information to be fed into the system in advance, which may be as much as 24 hours in advance of travel.

55 There are two broad areas, I suppose, that are embraced by those points and those are the e-borders programme, which the Isle of Man Government has indicated it wishes to engage in with the UK; and, secondly, the most recent proposed changes to the Common Travel Area itself, as originally proposed by the changes to the law under the Borders, Citizenship and Immigration Bill, which has now become an Act but without the contentious clause 50, which would have potentially required identity checks for travel within the Common Travel Area – that being the Republic of Ireland, Northern Ireland and the Crown dependencies. That particular provision and intended reform to the Common Travel Area was defeated at Westminster.

60 However, it certainly would appear that the Immigration Simplification Bill is to be the vehicle by which the UK Government will reintroduce that particular proposal. I just wonder if you are in a position, Chief Minister, or Mrs Fletcher or Mrs Scott, to give us an update on the matter of the Immigration Simplification Bill and whether that is likely, as things stand, to reintroduce this particular measure.

65 **Mr Brown:** I think, if I start the ball rolling, Mr Speaker, the issue is that the Bill is being suggested to be introduced after the next General Election in the United Kingdom. Again, if I need to be corrected I will be, but also in relation to the actual issue of a Common Travel Area (CTA) clause, that has yet to be finalised and drafted into the Bill.

70 Anything you want to add, Karen?

75 **Mrs Scott:** Yes, certainly, Chief Minister. The latest indication, which you received last week, was that time would be put aside for the Simplification Bill in 2011 and 2012, so it is some time away. A draft has been recently published but without many of the areas that would most interest the islands. The UK has indicated that its policy intention remains the same, which is to put more controls on the Common Travel Area, but the drafting of the clause which was so contentious is still being looked at.

80 **Q123. The Chairman:** Thank you.

85 You have confirmed that the draft Immigration Simplification Bill has been published as a draft and it is on the Home Office website. Can you also just confirm, for the record, that explanatory note number 4 of that Bill states, and I quote:

90 'There are a number of further topics for inclusion in the full Bill which are not yet drafted: the most relevant of which are the Common Travel Area; Office of the Immigration Services Commissioner; Public Funds and Marriage.'

95 Is that your understanding?

Mrs Scott: Yes, that is correct, Mr Speaker.

100 **Q124. The Chairman:** Could we take it from that, the fact that the issue of the Common
Travel Area and changes to that are still open, effectively, to negotiation with the Isle of Man?

105 *Mr Brown:* Clearly, the Isle of Man Government's stance on the Common Travel Area is to
protect it remaining in being, and the UK are clearly aware of that policy. We will have to see the
basis of any final draft before we could actually see whether or not we need to do any more in
relation to any negotiations or consultations with the United Kingdom. But our clear priority is to
protect the Common Travel Area to ensure freedom of movement for the people of the Isle of
Man.

110 **Q125. The Chairman:** Would the Government's preferred position, then, be that the
equivalent of clause 50, which was defeated from the previous Bill, was not introduced to make
these particular changes to the Common Travel Area?

115 *Mr Brown:* I think it is important to get it clear that my understanding is that it was actually
withdrawn from the Bill, not defeated, so there was actually a conscious decision by the UK
Government to withdraw it.

120 Certainly, as far as the issue of having a clause... As long as we protect the Common Travel
Area our view is quite straightforward, that then, in fact, that is important with the changes that are
going on, because otherwise we would have a situation where there would be borders between the
Isle of Man and the United Kingdom. Anybody going to Liverpool would, then, without a
Common Travel Area, have border controls, and we do not want that to happen.

125 **Q126. The Chairman:** Therefore, would it be Government's intention to pursue the idea of a
Memorandum of Understanding to make clear the policy intention that such reforms to the
Common Travel Area that are brought about are intended primarily to be looking at travellers from
the Republic of Ireland to the UK, and not to affect those from the Crown dependencies?

130 *Mr Brown:* I think it may be helpful if I ask Mrs Fletcher to cover part of that but, in terms of
the Memorandum of Understanding, that came out of discussions about the provision that was
being proposed for the legislation. It was an enabling clause to go into the legislation, not actually
enacting it, as I understand it. Quite clearly, what we endeavoured to do was get some certainty
into this and we felt a Memorandum of Understanding would help give us that. In other words, we
took that opportunity to get an agreement provided between the two governments. That has not
proceeded because, of course, the clause has not yet, so we are in a position of waiting to see what
135 the UK now do.

I think if you are happy, Mr Speaker, Mrs Fletcher may be able to give you a little bit more on
that.

140 **The Chairman:** Thank you, by all means.

Mrs Fletcher: Thank you, Chief Minister.

145 It is just really, Mr Speaker, to endorse what the Chief Minister has said, in that we have to
start from the premise that the clause is being included in a UK piece of legislation, as we are all
aware, so whilst we have been consulted and we have lobbied and we have expressed our view,
the final determinator for whether it is included or not will rest with whether it goes through the
House of Commons and House of Lords. Because of our concerns that it may go through, even
despite our best efforts, we negotiated the fallback position.

150 I think to respond to your first question – which was whether that would be the Government's
choice for the clause not to be in – it is an interesting question, because whilst it seems as if all the
benefit of having the policy set out in law falls to the UK, it would actually allow the Isle of Man
also to have that legislation extended to us, so that the Isle of Man could then carry out itself
intelligence-led controls, which we are not able to do at the moment.

155 So there are benefits to the clause being in, as well as – and this is the Government's position, I
think, Chief Minister – providing that the requirement to carry passports does not stand as part of
that clause.

Q127. The Chairman: You say passports – what about other forms of identification which
was not a passport?

160 **Mrs Fletcher:** In order to have been on the travel, as part of the intelligence-led... somebody will have produced some travel document to be part of their trip on the aircraft or on the ferry, anyway, and that documentation is the documentation that can be produced as part of information given, if you are asked to produce any evidence.

165 An assumption has been made that the clause will require passports to be produced and it is to provide information about your journey, but that information is not necessarily from the carrying of passports.

170 **Q128. The Chairman:** Are you then saying that, really, there will not be much difference to the current situation, when air passengers need to carry photo ID documents to travel to the UK and back?

175 **Mrs Fletcher:** Perhaps I can give you an example. Coming back on Friday evening from Jersey... I carry a warrant card, which is evidence, photographic ID. It lets me travel, as a driving licence would do. Getting off the aircraft, I had mislaid my boarding card – the stub which told me where to sit. When I got off the aircraft from Jersey into Gatwick, I was asked about producing identification, that I had come from Jersey into the UK. I had a passport. I also had a reference, a ticket booking, an allocation which would show that I had actually travelled from Jersey on that flight. They asked me what time the flight was. So there was lots of other information that I could give to the immigration control without producing my passport. As it happens, I had that as well.

180 But it is this assumption, I think, which is causing some difficulty, that the proposals for intelligence-led controls will mean that you will have to carry passports to show that you are who you say you are, but at the moment people travel quite freely back and forward within the Common Travel Area without passports, and yet are still able to prove who they are, in order to make that journey.

185 **Q129. The Chairman:** Are you saying, then, the requirement to produce a passport is not intended – it will be alright to show some other form of photo ID on request?

190 **Mr Brown:** As people do. In the airlines already, we either produce a driving licence or people produce their free travel pass, or whatever, or they go to the Office of Fair Trading sometimes to get an identity card, as we call it, which they can get.

195 I think the issue – and part of our issue, certainly – is that we prefer not to have the situation where you are required to produce a passport, and to do that we would have to become part of not only the Common Travel Area but, if e-borders came in, part of that programme. Otherwise, passports are likely to be required.

Q130. The Chairman: Is it not the case, though, that currently travel between the Isle of Man and the UK on the ferry, sea travel, is undertaken no differently from buying a rail ticket and travelling from London to Edinburgh? There is no requirement to show any ID.

200 **Mr Brown:** Absolutely, but the Steam Packet could introduce that tomorrow. They do not need law to say, 'We want proof of identity' – as the airlines do. It is not because of a statutory requirement.

205 **Q131. The Chairman:** But the residents in the Isle of Man do not routinely have to show photo ID to purchase a ferry ticket the way they do to purchase an airline ticket, which is commonly accepted.

210 **Mr Brown:** It is not to purchase, with respect; it is actually when you arrive at the desk to book in that you need to produce ID to show that the ticket you have belongs to you and you are the person who is travelling.

That is done because the airlines implement that and more people travel on and off the Island by air, I would think, than by sea. So the point is that if the Steam Packet decided, for whatever reason, they wished to introduce such a system, they could do.

215 This is about something different. This is about a statutory requirement that may be required, and our view is that we wish to protect the Common Travel Area and freedom of movement.

Q132. The Chairman: What I am trying to just establish is that, at the moment, air passengers are expected to produce photo ID; sea passengers are not.

Mrs Fletcher: I take your point, Mr Chairman.

220 I think also... I am sorry if, maybe, I have misled you with identification, but the intelligence-
led control does not indicate that if you are asked or required for information about who you are or
where you are travelling, it does not require it to be photographic ID, or at this time it certainly
does not. There is information available. The immigration service will conduct an investigation,
225 but through various forms of questioning and approaches, it can establish who you are, whether
the information that you provide sits with other information.

So it is part of an ongoing additional package of information. It is not the be-all and end-all to
establishing who you are, because the information does not have to guarantee your nationality or
your identity, but it actually has to be part of other information that may already be available.

230 **Q133. The Chairman:** We are talking now about the level of information, the data which is
called the passenger name record, which is the information that you give to the airline or the ferry
company. Do you agree that this could actually be quite extensive, going beyond what one would
normally expect to provide, the basic information contained in the passport? As things stand, it
235 also goes beyond that requiring computer address, e-mail address, credit card data and so on. Does
this give you any concern?

Mrs Fletcher: Can I just confirm, Mr Speaker, are you now talking about the data that we
collect under the e-borders programme, (**The Chairman:** Yes.) which is separate to the data for
240 intelligence-led controls on the Common Travel Area?

The Chairman: Yes.

Mrs Scott: Perhaps I could say something briefly about that. There are basically two sets of
245 data that e-borders can collect.

One is, as you say, the PNR, the main data that is contained in the passport, which is the eight
pieces of information. There is also what is called OPI, which is 'other passenger information',
which I believe is what you are referring to, which is how a ticket is booked or where somebody is
sitting or what meals they might order, and so on and so forth.

250 The initial focus, I believe, has been on the main pieces of data from the passport, but I think
on high-risk groups, the UK, for its e-borders programme, is looking at collecting a range of other
data. There have certainly been some ongoing discussions about that, particularly with the
European Commission, and I am aware of the fact that there were some meetings taking place last
week between representatives of the Borders Agency and the committee that advises the European
255 Commission on data protection issues. I am told that the UK expects to know the results of those
by the end of this year.

So, certainly, there has been some ongoing discussions about the type and amount of data that
the UK is seeking to collect for its e-borders system, but they are still the subject of discussion.

260 **The Chairman:** Thank you. We can perhaps come back onto that.
Mr Braidwood.

265 **Q134. Mr Braidwood:** Following on from right at the beginning, because I want to try and
keep it in two distinct... the Common Travel Area and the e-borders. On the Common Travel
Area, particularly because we have a Customs Agreement with the UK, therefore when you sent
out your notice, press release, under the requirement we do to need to carry passports because we
have that Customs Agreement.

270 Secondly, you have signed this Memorandum of Understanding. The problem with a
Memorandum of Understanding is that that could be changed in the future because it is not written
in stone. It is just a gentleman's agreement between the Isle of Man Government and the UK
government.

Would you like to expand on the Memorandum of Understanding, Chief Minister?

Mr Brown: Yes, and thank you.

275 Chairman, through you, we should not believe a Memorandum of Understanding and changing
the law in the United Kingdom are going to be necessarily drastically different in terms of how
quickly they can be achieved. The UK can pass legislation through its branches in a very short
period of time and can do that, whether we want it or not. We are not part of the UK and,
therefore, we have to recognise that. These agreements are put in place and have been in place for
a long time because they are of benefit to us and, hopefully, to the United Kingdom. As we can

280 see, if they feel they are not, they can change how they allow access or change anything else
where there are agreements.

Our view comes back to what we are endeavouring to do, and our policy is to try and retain the
freedom of movement between the Isle of Man and the UK for travel purposes. But a
285 Memorandum of Understanding from our point of view was seizing an opportunity that came up to
get some certainty where, in fact, the legislation was being promoted to provide for a clause that
would have been an enabling clause which could be introduced, and while it was not there to give
us some more certainty than we have at the moment.

290 However, even if the UK did not bring it in, let us say next year, they could bring it in quite
easily, as we saw, through the amendment that they put in, or the part they put into the Bill that
they did. So if they wish to pursue it, they can actually pursue a change quite quickly. Our view is
to try and get some surety in that and get a clearly defined agreement, which we have had verbally
and we have used, and get it set out in a Memorandum of Understanding, if we need to.

295 At the moment, that is not being pursued because we do not know where the UK are going
with the legislation in real terms. We do not know what the writing of the clause will be, and when
we know that we can then see whether or not we need to pursue that further.

Q135. The Chairman: Just sticking to this point, what is Government's understanding as to
the motives and the reasons for the UK wishing to make these particular changes to the Common
Travel Area?

300

Mr Brown: Security. They are endeavouring to safeguard their borders, and from our point of
view, because we are in the middle of the Irish Sea and we are surrounded, not only by the United
Kingdom but also by the island of Ireland, in terms of Southern Ireland, they are endeavouring to
deal with those issues of people coming in illegally. We are therefore ensuring, as far as we can,
305 that we continue to have the freedom of movement for our people that we have enjoyed in the past.

Q136. The Chairman: In what way are we caught up in this, then? If the issue is external
security, we have British passports and so on. How are the Isle of Man and the Crown
dependencies affected by the need to tighten external security?

310

Mr Brown: I suppose the best example we can give is all through the 1970s and 1980s we had
this problem with Northern Ireland, and, certainly, we all had to fill in cards to travel between the
Isle of Man and the United Kingdom or Ireland – a pink and green card, if I remember rightly. We
had to put our name, address and everything on that. That was purely for the Police, in terms of
315 security, and presumably the security forces.

In this case, what they are trying to do is do it by using modern technology and because of the
situation they have of illegal immigrants coming in through Ireland and other places.

Q137. The Chairman: So, in your view, is it a case of trying to plug a gap of illegal
320 immigrants to Ireland getting into the UK or indeed vice versa, and the Isle of Man being a port of
entry to both? Is that why we are caught up in this?

Mr Brown: Certainly, we would not want to be used as a place for people to be going illegally
into the United Kingdom; but I think more important is not to lose sight of the fact that what we
325 want to do is safeguard the Common Travel Area and the freedom of travel for the Isle of Man.
That is what we are about.

Q138. The Chairman: Would it not be better, in your view, for the UK to focus, jointly with
Ireland, on tightening up jointly such things as common visa criteria, so that they are truly
330 protecting and securing their own external border, without having to disturb the traditional
arrangements for unfettered travel without documentation within the Common Travel Area?

Mr Brown: My understanding is there have been ongoing discussions between the UK
Government and the Irish Government on how to deal with this issue, and whatever those two
335 countries do is likely to affect the Isle of Man. Very important, I think, is trying to secure that
freedom of movement, which we can with the UK, in terms of the Common Travel Area.

Q139. The Chairman: Because if they were able to truly bring about a secure external border,
the Common Travel Area, we would not need to worry about the potential of controls between the
340 Republic of Ireland and the UK in which we were caught. So would it not be a preferred policy

position, politically, for the Isle of Man Government to put pressure on the UK, or at least to do what we can to encourage them to strengthen the external border and leave the traditional Common Travel Area arrangements alone altogether?

345 **Mr Brown:** It is my understanding that these issues have been discussed. They have been discussed between parties, but maybe if it is helpful if I ask Mrs Fletcher just to cover a bit, because again, from their side, they are dealing with this on a more regular basis.

350 **Mrs Fletcher:** I think you make a very pertinent observation, Mr Chairman, in the fact that it would, and in an ideal world that would be the best way, so that anybody in the middle did not need to have any sort of control.

But there are two issues I think it might be helpful for the Committee if I pick up. It goes back, really, to why the Isle of Man is keen on the power to undertake intelligence-led controls, which is contrary to what some people do perhaps feel. Because it is the Common Travel Area, journeys are not subject to control. Whilst we do not wish to implement permanent controls in the CTA, there are, without doubt, occasions when it would be useful to have intelligence-led controls.

355 The immigration service receives quite a lot of intelligence from time to time that there are individuals, or groups of people, travelling to the Island on a particular journey who may not have leave to be here or have leave to enter, and it is at those times that we would really feel that the power to introduce an intelligence-led control would be useful. People feel, at the moment, that that power already exists – and it does not. It is a policy that we have done on goodwill, but the way the world has gone, it is much better to have it more clearly spelt out.

360 The other issue that people often perhaps raise – and just for the benefit of your Committee, if I may, Mr Chairman – is that there is no real substitute for a physical control. If there is an operation, or intelligence, needed to be followed through on, a virtual control can tell you who holds the documents and, maybe, who they belong to and if they are forged. But there are always ways of getting round those types of things, and we need the opportunity to be able to stop and detain individuals who we feel are in breach, and whether they have entered us...

365 Usually, they will have come through the UK into the Isle of Man illegally or they might be coming from the UK. There is certainly a huge debate afoot between the Republic of Ireland and the UK, and through Karen's team we are actively involved in these deliberations so that we can try and –

370 **Q140. The Chairman:** Are we talking about random stop-and-searching here, then?

375 **Mrs Fletcher:** No, intelligence-led, rather than... not random stop-and-search.

Mrs Scott: The number of... If I may, the levels of intelligence control... There are those controls which tell you exactly who you are looking for. Then there are those that tell you that there is a group of individuals, or somebody, who may have a forged document, right the way to more general controls where you may have evidence.

380 Say, for example, we found people in the Isle of Man who said, 'Oh, yes, we're here illegally and we regularly use the Heysham route,' that might prompt you to want to go and have a slightly closer look at what is happening on the Heysham route. So there are levels of intelligence, right the way from knowing that you are looking for a very specific individual for a specific reason, to where you are told that there is a group of people who are going to be arriving who may be of interest, right the way to where you want to, perhaps, introduce a control as a deterrent for a route from use.

385 Clearly, in respect of what the Chief Minister has said earlier, it is not the view of an immigration service that you want to be putting controls up at all, unless you have specific reason to do so. To just put a physical control up and just be checking people travelling back and to the Isle of Man would not be a sensible good use of resource and would be extremely disruptive to the vast majority of travellers, who are travelling perfectly legitimately. But where you know, or where you have been told, that you have got people who have no right to enter the Island, then clearly the ability to go and prevent them entering has to be a useful thing to do.

390 **Q141. The Chairman:** Does it give you any concern, the situation in Northern Ireland and the border there, travel into Southern Ireland, and the way people have been stopped and checked on their entitlement to go to Southern Ireland – such issues as racial profiling – does this give you any concerns that this might well happen here?

405 *Mrs Scott:* I think it is always important, Mr Chairman, to be very conscious about things like that, and certainly the Police experience in the UK, working in inner cities, has been very aware of the need to avoid racial profiling. Certainly, it is something that has been brought to the fore in some of the checks that have been going on on the Irish border. Obviously we would want to be concerned about that but, at the end of the day, applying an immigration control, particularly an intelligence-led one, would hopefully avoid you just highlighting people perhaps whose ethnic origin is not that of the indigenous population.

410 Ultimately, although there are no controls on the Irish border, as you yourself have commented, there are quite a number of controls on both sides of the border, not on the border itself, and the Republic of Ireland, I understand, is fairly understanding of the UK's approach to wanting to strengthen both the Common Travel Area and introduce an e-borders system. In fact, the Republic of Ireland is seeking to introduce its own e-borders system.

415 The concerns that the UK has about the level to which the Common Travel Area may be being abused are echoed very much by the Republic of Ireland – the Republic of Ireland is concerned that people enter the UK who have been refused a visa for the Republic and then get to the Republic of Ireland through the UK – so it is very much a two-way issue, and so all of these things are inextricably bound for the Republic, for the UK, and indeed for the Isle of Man.

420 **Q142. The Chairman:** So if it becomes commonplace that passengers will be stopped based on intelligence-led criteria, would we get to a situation where, if somebody was legitimately resident in the Isle of Man with the right of travel across the UK and was of a different racial origin, they might feel obliged to adopt a default position of carrying a passport or ID, even when they are travelling within the Common Travel Area, just to establish their rights of citizenship, that they are a citizen of the Common Travel Area?

430 *Mrs Scott:* Very much the approach from the UK, and very strongly the Isle of Man Government's view, has been that intelligence-led controls will not be commonplace, so 'commonplace' is not a phrase I think would ever be the case.

In terms of carrying documents, people do tend to carry documents, anyway. Clearly, it would be unsatisfactory if people felt that they had to carry a passport to avoid being subject to checks but, again, it is something that would have to be monitored.

435 **The Chairman:** Mr Quayle.

Q143. Mr Quayle: Thank you, Mr Speaker.

440 I just wanted to mention, if I can, about the border between Northern Ireland and the Republic of Ireland. As I understand it, there is a section of roadway which traverses, criss-crosses, the border for about 14 miles. I just wonder if you have any comments on whether or not we are likely to be encumbered with controls between ourselves and travelling to the United Kingdom when they are going to find it exceptionally difficult to police, or to have the relevant controls in place to deal with, people going backwards and forwards into the United Kingdom – Northern Ireland – from the Republic, and from the Northern Ireland part of the United Kingdom into the Republic of Ireland? How is it thought that, by strengthening the controls for the Common Travel Area, they will avoid the problems of immigration going into either area?

450 *Mr Brown:* I think the point, Chairman, if I can, through you, is if we retained a Common Travel Area we would be treated no differently than people travelling within the UK, travelling from Northern Ireland across the UK, or from, as I understand it, the Republic of Ireland into Northern Ireland. Certainly, the Irish situation is slightly different. There are no border controls, but they do have intelligence-led issues, for very good reasons that we understand. I think the point is if we did not have a Common Travel Area, then there would be clear restrictions put on us. By continuing to support the need for a Common Travel Area and getting that continued, that will help us have a relationship which actually we have enjoyed in the past.

455 I think there is a difference between what people may be required statutorily, as against what an airline might require, or a shipping company might require if they want to take passengers. There are all different issues here. We are looking quite clearly at the issue of any primary law brought into the United Kingdom and how it *may* affect the Isle of Man, and if they are bringing forward other changes, like e-borders, then we have to clearly examine what the implications of that are to the Isle of Man and how do we best secure our freedom of movement within that process. If we are outside e-borders, quite clearly we will have barriers up. If we are within that e-

border process, then we will not have barriers up; we will be treated so that we can pass through as normal.

465 Intelligence-led... we already have that. We have that in the UK, you have that in the Isle of
Man now, you have that if you go to Ireland. These things are already in place and have been for
decades, and I think it is just a matter that things are changing. The UK has an issue they wish to
try and overcome and they are looking at the best way to do that, and it is important, from our
point of view, that we are not forgotten in that process and that is why we have been putting our
470 case to the UK. Quite clearly, our standing point is, as I said at the beginning of my presentation,
to protect our freedom of movement between the Isle of Man and the UK.

Q144. Mr Quayle: I suppose really connected to that is the fact that we all hold a special
passport over here. We are British and Manx but our passport is British Islands, Isle of Man, and
475 in the Republic of Ireland they have, obviously, Irish passports. The United Kingdom does not
have the control of people going into the Republic of Ireland to be able to check their security
arrangements or how they deal with people arriving whereas, for the Isle of Man, the point at
which people come into the Island will be via the UK or Ireland. Just making the comparison that
we are British and it is so important to have that direct freedom of movement between all British
480 islands, but particularly with our passport, as it is a British one.

Mr Brown: And our point is to try and see if we can secure that you do not need a passport to
travel between the Isle of Man and the UK.

485 **Q145. Mr Quayle:** Could I just mention about the Memorandum of Understanding. I think it
was mentioned about a fallback position of having a memorandum, and I am just wondering have
we much experience of previous memorandums that have been entered into, and whether or not
the British Government have tended to comply with the spirit of them?

490 **Mr Brown:** I think, through you, Chairman, the point is that it is well documented that the
Memorandum of Understanding is designed to serve as a record of the intentions of the
governments involved, so in this case the Government of the Isle of Man and the Government of
the United Kingdom concerning immigration control or journeys between the Isle of Man and the
United Kingdom. So it is not a statutory right, it is not a statutory responsibility; it is an
495 understanding. We have them even within the Isle of Man Government for certain aspects of what
we do because, instead of putting it in statute, we get a Memorandum of Understanding put in
place so all the parties know what is intended. Again, I think we have to come back to the point
that if the UK wished to introduce legislation to control the situation, then they would do it and
they could do it in a very short period of time. What we are endeavouring to do is make sure that
500 they do not impinge on our present freedoms of movement to a degree that we end up with barriers
in the way – in other words, that we have to carry a passport.

Q146. The Chairman: Do you think they sufficiently understand our constitutional position
and our sensitivities over this?

505 **Mr Brown:** They do now.

Q147. The Chairman: They do now: they did not before?

510 **Mr Brown:** I think it is fair to say that we have to understand not everybody deals with the Isle
of Man or the other Crown dependencies or, for that matter, overseas territories. So, for example,
the people who would have a better understanding would be, in our case, the Ministry of Justice;
another Department of the UK Government might not.

515 What we have to do, then, is put our case to them so they understand that relationship and,
quite clearly, that is what we did and that was then accepted. What we have to do is ensure that...
It is our responsibility to try and protect ourselves, and we put our case to the United Kingdom
then and made the point of why the Common Travel Area was important and why it was historical,
our constitutional relationship, etc.

520 **Q148. The Chairman:** Why was Jersey not as keen on a Memorandum of Understanding as
Guernsey and the Isle of Man? They were fairly critical of that idea.

Mr Brown: I am sure they would be pleased to answer that one, Mr Chairman, but we can give you some indication, I think, if I can ask Della, because they dealt with it.

525 **Mrs Fletcher:** It is a very good question, Mr Chairman, because we went as three Crown dependencies to that meeting with Lord West and we tried to persuade the UK... would it be possible to find a different form of wording? We explained very clearly about the concerns over the constitutional relationship and they responded that the UK had looked at finding a way of putting the policy into law in a different language and it had not proved possible, and that they were quite clear that our concerns would not come to the fore because there was no intention to have permanent controls. So we reached this position where... 'Well, we hear what you say and you hear what we say,' but we remain quite cautious about what that will mean with corporate memory further down the road.

530
535 It was actually the Isle of Man who proposed a compromise measure which would be at least to have the MoU and we also sought the undertaking from Lord West on the floor of the House of Lords, in the public arena, so that we could fall back on that in the future if there was any renegeing of the position. At that meeting we agreed, as a three, that that would be the least preferred... Obviously, the clause in the format that it stood, where there was an implication that there might need to be permanent controls, was not what we wanted, and the MoU would set out very clearly what that policy was intended to be.

540
545 We left the meeting on the grounds that we would advance down this road: we would set it out clearly in writing between us in letters for the future, for anybody who came behind us in the future, if the clause went ahead. Then suddenly, out of the blue, Jersey decided that it was not keen. I think that is probably based on their taking that information back to their Attorney General, who was not at the meeting, who perhaps has a slight difference of opinion on constitutional matters for Jersey than the way in which the Isle of Man, perhaps, progresses on constitutional matters.

550 **The Chairman:** Thank you.
Mr Braidwood.

Mr Braidwood: Thank you, Chairman.
We have touched on e-borders and the proposals for what the British Government would like to introduce, and I think the Manx Government have already said that they would actually introduce the same proposals for e-borders. The proposals from the British government are really incompatible with the freedom of movement between the member states of the EU. What they are trying to introduce goes too far in the minds of the other EU states for the freedom of movement. Have you got any evidence which can show that...? One of the points which was raised –

560 **The Chairman:** You are asking about e-borders now. Can we just finish, perhaps, with the reform of the Common Travel Area and then we will go onto the e-borders strategy?

Mr Braidwood: I thought we had mixed it up slightly. That is why I have been distinct –

565 **The Chairman:** No, I have brought it back to the –

Mr Braidwood: – between the Common Travel Area, and then I was –

570 **The Chairman:** Yes. If we could go onto the e-borders strategy in a moment. We will just finish the questioning on the Common Travel Area.
Mr Crookall, anything at this stage?

575 **Q149. Mr Crookall:** Could I just ask the Chief Minister: are we happy with where we are at the moment and the way this is going?

Mr Brown: I think the point is that our stance all along has been that we oppose the need for legislation to deal with this for the Common Travel Area. The Memorandum of Understanding was the backstop, in other words, to make sure there was a way forward because we believed, and still believe, that the United Kingdom government will ultimately legislate in this way in terms of the Common Travel Area, so therefore that is why we said, 'Well, let's move forward to a Memorandum of Understanding.'

585 Jersey, as Della has said, were of the view that they would just oppose it, and that is fine. It is
like anything, you can oppose things, which you do, but 'What if?' is another issue. From our
point of view, at this stage, because we have not seen any final draft of a clause to go in the new
legislation then, in fact, although we understand they are reviewing it at the moment, because of
590 comments that have been made, until we see that I think we are not in a position to give any
definitive answer, except to say that we would prefer not to have that legislation. If it is in there,
then we come back to the point that any legislation, then, must, from our point of view, protect the
position of freedom of movement of travel between the Isle of Man and the United Kingdom.

The Chairman: Thank you.
Mr Gill.

595 **Q150. Mr Gill:** Yes, thank you.
Chief Minister, to yourself, particularly in the negotiations between the UK and the Republic
of Ireland, given our political interest in that, which political Member has been involved in those
negotiations?

600 **Mr Brown:** All decisions relating to this have been made by the Council of Ministers and then
officers have carried them out.

Q151. Mr Gill: So there is not a political lead person?

605 **Mr Brown:** We do not in negotiations. We deal with that within ourselves. I oversee as a main
contact, to some degree, the issues that we are talking about, but they ultimately go to the Council
of Ministers. They will make a decision based on the policy paper and then that is the policy
carried out by our officers, who will then report back to the Council of Ministers.

610 **Q152. Mr Gill:** So the negotiations are at officer level?

Mr Brown: They are in the UK, as well.

615 **Q153. Mr Gill:** Yes, thank you.
Mrs Scott, you used a phrase 'high-risk routes': what is the definition of a high-risk route?

Mrs Scott: I am not sure if I could give you a legal definition of a high-risk route. A high-risk
route, in operational practical terms, will vary depending on a number of factors.

620 It might be one where there has been significant abuse detected in the past, for example. That
would be an obvious one. If you know that a route is regularly used by people who have no right
to be in the country, who are undocumented, who arrive at a control and immediately claim
asylum, then you know that that might be a route you want to look at. It might be a route where
there have been changes happening and it is a route that might then link to other routes that have
been known to be high risk in the past. It might be an international hub where you have got lots of
625 routes coming in from around the world. It might be a route on which you have detected high
numbers of fraudulent passports and other documents being submitted. So I think it could be a
combination or any one of those things.

630 **Q154. Mr Gill:** Is that combination, or any one of those considerations, relevant to the UK, to
the Isle of Man, or to the Republic of Ireland?

Mrs Scott: Not so far as we are aware. I would hope not.

635 **Q155. Mr Gill:** You would expect reasonably that, if there was that concern, we would be
aware of it?

Mrs Scott: Absolutely.

Q156. Mr Gill: So we can assume that we are not a high risk?

640 **Mrs Scott:** We can assume we are not a high-risk route and, indeed, the UK has said, in terms
of determining its borders strategy, that the Crown dependencies are *not* regarded as high-risk
routes.

645 **Q157. Mr Gill:** Finally, if I may, Chief Minister, you referred back to the 1970s and 1980s when Northern Ireland terrorism was an issue, which obviously, with our geography, reasonably impacted on travel restrictions. Would you anticipate that we would be reverting to that sort of system, albeit with a different technology base, sooner or later? Is that your expectation?

650 **Mr Brown:** I have no idea what the UK may come up with in the end. All I can say is that, certainly any proposals they have are likely to use modern technology. We understand there will be a limitation on the information required which will be given to the person when you book your travel arrangements, but I think it was far more specific in those days on the pink form and the green form. I cannot really remember; I just remember filling them in.

655 Quite clearly, I suspect it will be – and hopefully it will be – the minimum amount of information required to enable them to have intelligence-led operations, if necessary. This is about protecting the public but, at the same time, getting the balance right to ensure, because of our unique position, where we are, that our people can travel relatively freely between the Isle of Man and the United Kingdom.

660 **Q158. Mr Gill:** Just finally on that point, as we speak, somebody from the Isle of Man could quite legitimately and reasonably buy a ticket on the ferry to go the UK or to the Republic of Ireland, and even at the point of embarkation they do not need to show any identification. That is my understanding: is that the case?

665 **Mr Brown:** What, on a ship?

Mr Gill: Yes.

Mr Brown: Yes.

670 **Mrs Scott:** At the moment, yes.

675 **Mr Brown:** At the moment that is right, but there would be nothing to stop the shipping company, or any shipping company, if it wished, to say, ‘We require that for our own comfort.’ That is not a statutory thing. I think we must not mix up what is a statutory requirement, or potential statutory requirement, and what is not.

Again, if we are part of the e-borders programme, do not forget that secures the situation that all that information may not be required, or is not required, because we are not then travelling outside the e-borders area.

680 **Mrs Scott:** If I may just jump in there briefly as well, Chief Minister, Mr Gill, it is the case at the moment, obviously, that you do not require a passport to travel on the ferry. Notwithstanding what the Isle of Man may or may not do with e-borders and the UK borders programme, if the Isle of Man ferry is travelling to Dublin and the Irish introduce an e-borders system, then everybody will require, in any event, to check in with a passport, because data will have to be sent to Ireland because people will be crossing into an Irish e-borders system. So I think, if you understand what I

685 am saying, you have to provide that data if you are travelling to another country outside of the UK.

690 **Mr Brown:** The e-borders is international travel; not if we then become part of the e-borders programme.

Q159. The Chairman: We will come onto e-borders in just a second.

The Borders, Citizenship and Immigration Act, as it now is, does not include the CTA reform.

695 The Policing Bill that is currently at Westminster had in it, in clause 97, a provision where, with the general changes to the UK Border Agency, Customs officers were now being given explicit power to demand passports from travellers, not for immigration purposes, but for Customs purposes. Certain critics of that pointed out that it is very hard for a UK Borders Agency officer to wear two hats and can quite easily apply, for immigration purposes, these new Customs powers. What is the Isle of Man Government’s position about that particular clause?

700 **Mr Brown:** In which way, please? Sorry, Mr Speaker.

The Chairman: Inasmuch as how do these new Customs powers impact potentially on travel between the UK and the Isle of Man?

705 **Mr Brown:** Again, my understanding is that this has happened, this is putting it into statute to
take away any uncertainty, and it does not require an individual to carry any specific passport or
anything. Maybe Karen might give you a bit more about that, but I think we need to be clear that
they have been doing these checks, anyway. The question has been that, in fact, the law has not
been as clear as now they wish it to be, and therefore that was tidying that up.

710 But, anyway, Karen, if I may?

Mrs Scott: Yes, if I may, Mr Chairman, our understanding from our Customs colleagues is that
Customs officers have, for the past 30 years or more, been able to ask people to show documents,
but that that was never clarified in this particular piece of legislation. What the Policing and
Crimes Bill, that has now actually become an Act – I think it got Royal Assent at the end of last
715 week, and this is now clause 97 in that Act – does it clarify that a Customs officer can require
a passenger to show them their travel documents.

Again, it does not say a passport; it simply says ‘documents’ that you may have used for travel.
It cannot require you to carry a passport on a route where a passport is not required for travel, nor
can it place Customs officers on routes where there are no Customs controls, which clearly there
720 are not between the Isle of Man and the UK.

Mr Brown: Absolutely, so that is important, isn't it? We do not have Customs checks between
the Isle of Man and the UK so, therefore, Customs officers are not involved. It is international
725 travel where they would become involved.

Q160. The Chairman: Is there, however, not a situation that could arise that, while there is
not a requirement, because of Customs union between the Isle of Man and the United Kingdom,
ever to meet a Customs officer, nonetheless, by virtue of our links with Dublin and Ireland, who
730 are not in Customs union with the United Kingdom, we could reach a position where the Borders
Agency might establish checks at the port of Heysham on ferries from the Isle of Man on the basis
that they would be entitled to check passengers originating in Ireland? Is that being considered as
an issue at all?

Mr Brown: I would not have thought it was an issue, because at the moment it is a Common
735 Travel Area.

Mrs Scott: I would not believe that would be the case, Mr Chairman, although you may want
to check that again with the Customs people. We are part of the same Customs union, and once
740 one has entered the Customs territory one has entered the Customs territory, and the Isle of Man
and the UK are part of the same Customs territory, so it is not as if somebody is directly transiting
on the same ship or aircraft moving through the Island, and on the same boat or plane going on to
the UK –

Q161. The Chairman: But it is a possible Customs route into the UK, and therefore might
745 need monitoring by the UK Border Agency.

Mrs Scott: I would strongly doubt that would be the case, Mr Chairman, but, as I said, it might
be best checked out with the Customs people.

750 **Q162. The Chairman:** I just wanted also to ask, as part of the final impact assessment on the
Common Travel Area by the Borders Agency in January 2009, there is a single line entry which
says:

755 ‘Mobile teams will be deployed in Wales and the northwest of England.’

Are you familiar with that particular proposal?

Mr Brown: They have not implemented it, I do not think, because of costs; or at least if they
760 have, it is very minimal.

Do you know any more?

Mrs Scott: I beg your pardon, Mr Chairman, where was that written down?

765 **The Chairman:** It was written as part of the final impact assessment on the Common Travel Area made by the UK Borders Agency. It announced a policy intention in order to be able to deliver the reforms to the Common Travel Area that were being talked about a year ago.

770 **Mrs Scott:** I believe that was when the UK was first considering its entire border reform strategy. There were some thoughts – and we are going back now two or three years or more – that there may be permanent physical controls between the UK and the Republic of Ireland. They seem to have backed away from that and are now talking about the more mobile intelligence-led response so, therefore, you would have central teams that were just deployed as and where they were needed.

775 So certainly, yes, we are aware of that change of strategy and, indeed, we understand that that is the way they will be continuing in future.

780 **Mr Brown:** I think it is important – sorry, if I can, Chairman – to say there is still uncertainty about this because they have not yet defined anything, so we do not know what they are going to do. They do not really know what they are going to do and they have speculated this is one way to deal with it, but I think until they make a proper decision then it is hard for us to properly assess what the implications of that are.

785 **Q163. The Chairman:** Given the potential... and I hear what has been said about this being intelligence-led checks on an *ad hoc* basis and not random stop-and-check, but what representations are being made to guarantee that travellers from the Isle of Man will not be subject to random checks, will not feel obliged to prove their entitlement to live within the Common Travel Area by carrying a travel document?

790 I hear what you say about passports, but some sort of ID. I come back to, again, on train travel in the United Kingdom there is no requirement to prove ID and carry any ID documents.

Mr Brown: But they are within the United Kingdom; we are not.

The Chairman: But we are within the Common Travel Area.

795 **Mr Brown:** We are within the Common Travel Area, absolutely.

Q164. The Chairman: And for travel purposes that is equivalent to saying we are within the United Kingdom.

800 **Mr Brown:** And, again, we come back to the point we have made, which is that, as far as we are concerned, we are endeavouring to protect the Common Travel Area so that we do not have to produce passports, but if they have to produce identity for travel by air or sea, that will apply whether you come from a Scottish island into the Scottish mainland or whether you come from the Isle of Man into the UK mainland.

805 **Q165. The Chairman:** Is that your understanding, that travel from Scottish islands to the Scottish mainland will require potential checks?

810 **Mrs Scott:** Intelligence-led.

815 **Mr Brown:** Yes, again, coming back to the intelligence-led, of course, but if you are going to travel by air or sea from different places... I came back from the Shetlands to Scotland and I had to produce ID to get on the plane, just the same as I do from the Isle of Man to the UK, so that sort of principle is the same. I think the difference is between whether or not we have immigration controls, and, of course, our case is not to have immigration controls.

820 **Mrs Scott:** May I give an example that might be helpful, Mr Chairman, in terms of guarantees and so forth? Obviously, it is very difficult to give guarantees, but we would always want to know what was happening.

A couple of months ago, there was a large Police-led operation in Liverpool and, as part of that Police operation, some people getting off the Isle of Man boat were stopped. Indeed, people were stopped getting off a number of boats and a number of methods of transport throughout the port of Liverpool, I understand. That was a Police-led operation under the Prevention of Terrorism Act. That is the Act the Police have to use if they want to stop people getting off transport. A number of

825 people were stopped from the Manx boat and we were contacted and asked to check a few details. I wanted to know why that had happened, what was going on, because we had not been informed in advance that that was taking place. I contacted our colleagues in the Borders Agency and in the Police to find out what was happening, what was the reason for it, who had been impacted and all the rest of it.

830 Part of the conversation that we have been having with colleagues in the UK is that, however the border reform strategy develops, we would very much want to be involved in knowing when such operations are planned, and being consulted on them, so that in some ways, where it is not a guarantee, certainly it is having a better understanding of, and a better partnership with, UK colleagues rather than being done to, as it were.

835

The Chairman: Thank you, that is helpful. I think if we turn now to the...
Mr Quayle.

840 **Q166. Mr Quayle:** Sorry, just one final question, if I can, before we move on to e-borders. We are in the dying days or months of the present United Kingdom government. I wonder, are there any thoughts on the enthusiasm or otherwise of an incoming government of a different political colour? Will they still be –

845 **Mr Brown:** It would not be for us to comment, I am afraid. What the UK decide is a matter for the UK people. We will work and consult and talk with any government.

The Chairman: We will turn now to the broader aspects of the e-borders strategy and the collection of data.

850 Mr Braidwood, would you like to open the questioning?

Q167. Mr Braidwood: Thank you, Chairman.

855 It is basically on the advance passenger information. The UK, of course, want to introduce proposals so they will know the number of people coming in and the number of people going out of the UK. Of course, the Conservatives stopped this quite a few years ago and the present government want to reintroduce this.

860 This was brought up in the Home Affairs Committee which met on 30th June this year. The difficulties which would be experienced by this advance passenger information, particularly for EU member states to give that information... What they are saying is that, because of the free movement between the member states, this is going too far with the data protection and, secondly, it would near enough be impossible to introduce because of the number of people who will turn up at a port, say, coming from Calais to Dover, on coaches. The number of people would bring everything to a standstill with the information which needs to be required from people coming in, because normally what happens is if you come into Dover, if you are on a coach, the coach is normally waved through. Even in cars there are only random stoppings. So, on the e-border controls, we would have to introduce similar proposals so that we would not have problems with the Common Travel Area as well.

865 **Mr Brown:** But that would only be on international travel.

870 **Mr Braidwood:** Yes, that is what I am saying.

Mr Brown: That would not be on travel between the Isle of Man and the UK as long as we have a CTA.

875 **Q168. Mr Braidwood:** No, that is... What I am saying is that other people... There are flights which come in from overseas, charter flights coming into the Isle of Man, so our proposals would have to be the same as the UK.

880 **Mr Brown:** For international travel, if we have direct flights from the Isle of Man to anywhere outside the United Kingdom, then, of course, immigration controls apply and we put officers down there, and passports are checked when the plane goes out and when it comes back. But, again, it is also checked by the airlines. You have got data protection, which we have there. We have our own data protection legislation which very much echoes the United Kingdom and very much, I think, reflects most of Europe, if not all, or certainly the EU.

885 I understand there is an issue being raised between the UK – what it is wanting to do – and the EU, but I think we have to await the outcome of that. That is not in our gift, but I am sure at some stage a decision will be made on that and that will then clarify that position.

890 **Q169. The Chairman:** Just to follow up on that point, the amount of data that the UK is proposing to collect from passengers – and I referred to it a little bit earlier – is considered disproportionate, and in fact allegedly contrary to Human Rights. It has given concern to the European Data Protection Commissioner, for example, and the UK Information Commissioner is on record as saying this is a step too far. Do we share those concerns, given our keeping in line with UK data protection policies because of the international links?

895 **Mr Brown:** Chairman, it is straightforward: we have our own data protection legislation, we have our own Human Rights Act, and anything that was contrary to that, people would challenge and would be able to challenge it, certainly.

900 As far as we are concerned, we would hope any laws comply with both those pieces of legislation, whether they are in the Isle of Man or the UK.

905 **Q170. The Chairman:** But rather than have data protection out of sync between the Isle of Man, the UK and Europe, would it not be better to have a common agreed standard for data protection that we can happily sign up to, rather than waiting to be challenged for inappropriate use of data?

910 **Mr Brown:** Absolutely, and I think that is why we are awaiting the outcome of the discussions by the UK government with its European partners, and until we know that outcome I do not think we can prejudge anything. What it will do is give us information we require on which to either argue, disagree, or go with whatever the outcome may be, sir.

915 **Q171. The Chairman:** Thank you.
Our Data Protection Supervisor, from whom we took evidence recently, presumably you would want him to be an active part of that discussion?

Mr Brown: He would be consulted, as he is, as we deal with issues that reflect on anything that might be deemed to be, or which we wish to check is not, contrary to data protection.

920 **The Chairman:** Thank you.
Mr Gill?

Mr Gill: No.

925 **The Chairman:** Mr Quayle?

Mr Quayle: No.

The Chairman: Mr Braidwood?

930 **Mr Braidwood:** No.

935 **Q172. The Chairman:** Just on data protection issues, are you aware of there being Human Rights concerns if persons of particular ethnic background are focused on for stop-and-search procedures? We are talking not just about e-borders, but some of the earlier issues.

Mrs Fletcher: Sorry, Mr Chairman, I missed a bit: are we aware of any concerns?

The Chairman: Yes.

940 **Mrs Fletcher:** We have had very little representation from anybody on the Island on either of these two issues, a very small nucleus of two or three individuals, but the remainder of people whom we do deal with, and certainly people at the Airport when we are doing any controls of that, are fairly positive.

945 **Q173. The Chairman:** Have you had reports about members of the Filipino community encountering difficulties last winter, when they arrived at Liverpool off the ferry being asked to show documentation? Was that brought to your attention?

950 *Mrs Scott:* I was aware of it only because I did a talk to the Filipino community over a year ago – I think it was about a year ago – and that was mentioned to me then. It had not been brought to my attention formally, and we did discuss it. I do not know the background to it. I am assuming, again, it was a Police-led operation of a similar sort to the one that I mentioned that took place in Liverpool a couple of months ago, but certainly that is the only time anything has ever been mentioned to me directly.

955 **Q174. The Chairman:** Do you see this as an indication of the sort of thing that could routinely happen if we go down the system of having intelligence-led checks? Who is to guarantee that zealous officials, UK Border Agency officials, will not do what certainly appears to have been the case in Belfast, where incoming passengers from other parts of the UK were talking about being targeted and racially profiled quite unjustly?

Mr Brown: I do not think we can answer –

965 *Mrs Fletcher:* Are you saying immigration officers are unfair, Mr Speaker?

The Chairman: Pardon?

970 *Mrs Fletcher:* Are you trying to say that immigration officers are unfair? Look at Karen and I sat here!

The Chairman: Present company excepted.

Mrs Fletcher: Thank you.

975 *Mr Brown:* I think the point is we cannot control... We have no direct influence over the officers who are dealing with this in the UK or Ireland, or anywhere else. What we can do, if anybody who is resident in the Isle of Man is affected unfairly, is make representation directly to the relevant government, and that is what we would do. There is no problem about that. The laws are quite straightforward. They are there to protect individuals, whatever race they are and, as far as we are concerned, those laws should be applied and people's rights should be respected.

Mrs Scott: I believe, if I can just comment, that immigration legislation does not make one exempt from racial discrimination. It is not acceptable, and that is addressed in the legislation.

985 **Q175. The Chairman:** Just coming back, finally, to the issue of protecting the data that is supplied as part of passenger name records – which could be quite extensive, and is intended to be quite extensive – what protection exists that would satisfy the Isle of Man Government that such data will be used correctly, and not inappropriately, once it is in the hands of others, third parties, and in the UK?

990 *Mr Brown:* I think all we can say is that, certainly, we can only refer back to our own data legislation. We could refer to the UK data legislation if the incident happened in the United Kingdom. Again, we still have to await the outcome of the discussions that are happening between the UK and its European partners, but the laws are quite straightforward, as is the Human Rights legislation, and if there is any infringement on that, then clearly the Isle of Man Government would take that matter up with the UK.

995 **Q176. The Chairman:** If the question of data mining was used – that is the process by which information which has been supplied is then assessed and more deeply examined for other purposes – given the 90-day rule for travel, do you see any dangers in all this of monitoring Isle of Man residents who are resident here for tax purposes and, with the 90-day rule in the UK that, in fact, it could be a real possibility that Isle of Man residents could be tracked, in effect, by Border Agency officials?

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1005 **Mr Brown:** I think it may well be that people who are saying that do not understand the legislation that is in being, that does protect people's individual data and, of course, do not forget, if anyone was concerned, they can request that information from the relevant agency under the Data Protection Act, whether it be here or in the United Kingdom.

1010 We have statutory provisions to protect people and how people can use data, and there are occasions where data can be transferred between different agencies, but then, as far as I am aware, Mr Speaker, they have to have had that permitted under legislation. Again, there are lots of things being said about these different issues. I think, quite clearly, as far as we are concerned, we would look for the minimum of information being required, and certainly, as far as mining down is concerned, I would have thought that may well be illegal.

1015 **Q177. The Chairman:** Do you have concerns, because of the necessity of transmitting data about individuals outside of the Island for travel purposes, that while we would have legal safeguards in place here, really there is little control over how that data can be used once we are not in control of it?

1020 **Mr Brown:** The UK still has data protection legislation, so their officers are under the same controls and legislative responsibility, I would have thought.

Karen, do you want to... If I may ask Karen to...

1025 **Mrs Scott:** Yes, if I may. The data is used because it is compared against watchlists that already exist, and those watchlists are shared by... The data is put on by Island agencies in the same way as the Channel Islands and the UK. So examples would be the Police National Computer, or the immigration watchlist, or the Customs system, or there are also other more sensitive databases.

1030 Those watchlists already exist so, in terms of using data for immigration, it is quite straightforward: one is either in the UK and the Isle of Man legally, or one is not in the Isle of Man and the UK legally. Therefore, if in using that data it becomes clear that somebody is illegally here, then clearly we would want to intervene and the parameters for that would be relatively, I would suspect, straightforward. For the Police, obviously – and that might be one of the areas that you are thinking of, Mr Chairman – there will be different levels of intervention. That is an operational matter, and one perhaps for the Police to answer more fully, but at the end of the day it is not appropriate – and I do not believe the UK has said it is appropriate – to use a system of this nature for anything other than relatively serious matters: a definition of that would be, for the agency concerned, against its protocols and against the legislation that would be in place for that agency.

1035 **Q178. The Chairman:** If a mandatory identity card was introduced in the UK, do you think that travellers resident in the Isle of Man would be, or would need to be, on the UK national identity database as a result of our being engaged in the e-borders programme?

1040 **Mr Brown:** My understanding is that the ID card situation has been pushed right back, and certainly any usage, or what it may be used for, is purely speculation, Mr Speaker. I think that at this stage we are not able to comment.

1050 **The Chairman:** Thank you.
Mr Quayle.

Q179. Mr Quayle: Thank you, Mr Chairman.
I just wondered about the Council of Ministers' Constitutional and External Relations Committee.

1055 I think you mentioned earlier, Chief Minister, that you had been the principal person dealing with this, and then via the Council of Ministers. I just wondered if you could explain what aspect... Are they assisting, or looking at, or reviewing, or linking to the officers in looking at any of these issues that we have been talking about?

1060 **Mr Brown:** Clearly, the issue... The committees do not deal day to day with stuff that we deal with as a Council or as an Office – the Chief Secretary's Office – on behalf of the Isle of Man Government. If we did, we might take too long to actually deal with the issue before us because the UK tends, in most cases, to move fast in its legislative area. Quite clearly, we will deal with it in the best and most efficient way possible.

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As far as the Council of Minister's Sub-Committee is concerned, it has roles to do in terms of looking at constitutional matters, but this actually... We did advise the Committee of the situation and a paper subsequently went to the Council of Ministers. I think we have to be practical about this. We are not going to slow ourselves down for the niceties of just taking something to a
1070 Committee for a decision, when that decision can be made by the Council of Ministers. What we will do, though, is, as appropriate, advise that Committee of the decisions Council have made and, of course, if it is a longer-term policy issue then they may well be involved in that in terms of giving advice.

We would take a judgement that, if necessary – and we need to act efficiently and effectively –
1075 we will deal with it at the Council of Ministers.

Q180. Mr Quayle: That just brings me to the linked question: in terms of the unprecedented amount of work that has had to go on by a relatively small amount of officers, both within the Chief Minister's Office, the Chief Secretary's and External Relations, when there has been the
1080 G20, the OECD, the IMF, the Foot Review and the Ministry of Justice, that Committee, looking at different aspects, I just wondered what thought has been given to strengthening External Relations to assist with the matters that, obviously, are so important and are to the fore?

Mr Brown: Through you, Chairman, we have had an independent review undertaken about the staffing levels in the Chief Secretary's Office, which covers all that area, and we have had a report which we have had now for some months. We have not acted upon it, in terms that we are very aware of staffing levels increasing within the public sector, but we are looking at the moment to second people in to give extra support, not only because of the issues that you have mentioned, but also because of the ongoing situation in relation to G20, taxation, VAT and the many other issues
1085 that we have to deal with. So we are looking to second people in temporarily to help support that Office.

Mr Quayle: Sorry to miss out Treasury. I think I gave everybody else involved, but I missed out Treasury.
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The Chairman: Mr Braidwood.

Mr Braidwood: Thank you, Chairman.
1100 In actual fact, Mr Quayle has hijacked the question I was going to ask –

Mr Brown: That is why we need immigration controls!

Mr Braidwood: – on the size of the team, particularly with all the legislation which you have just mentioned coming through. I know we have White & Case, and we have Lansons, who monitor as well, but it does put an unbearable pressure, I would think, on the team who are having to deal with everything.
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Q181. The Chairman: I think what the Committee would be quite interested just to... You have covered it to a large degree, but the level of political contact that takes place with the UK – I do not mean at officer level, I mean at political level – to have an early influence before some of these issues which the officers are picking up on their radar screen and dealing with in the way you have described to us... but would you agree that there is a need for, perhaps, greater political intelligence gathering, if I could put it that way, on a lot of these external issues?
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How do we routinely communicate to political friends at Westminster? In terms of the present debate, the Policing Bill, for example, there were two peers who were quite outspoken in the debate in the Lords, in defence of the Isle of Man, really, over what the implications might be from this clause 97 of the Policing Bill. What sort of contact takes place at political level with people who are in important and key positions to actually affect UK policy before we have to deal with it once it has been made?
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Mr Brown: There is the Isle of Man – I think that is not the right term but, anyway, it includes the Isle of Man – All-Party Parliamentary Group, and we have regular contact with them in terms of giving them information and advice. They sometimes seek advice from us on issues. I meet usually with a representative of theirs when I go to London; not every time, but certainly, quite often – maybe three or four times a year, depending on how many times I go to London.
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1130 We also have direct contact with the Ministry of Justice at political level, as necessary, and we do take that up. We e-mail information to Members of the Palace of Westminster – so that is the Commons and the Lords – to give them information, and we endeavour to keep them as informed as we can. But some of it is information that comes to us, and I think we need to be clear: the provision that was put in the legislation that we started this about, which is the Common Travel Area, of course was suddenly put into the legislation. It was not one that went through the normal process, for which the United Kingdom Government has apologised. So where we have the normal process of information – being advised, then consultation – it is pretty straightforward.

1135 On an odd occasion – and this is one of those odd occasions – because of the way it was dealt with, it was actually just put into the legislation, we had not been advised, and we picked it up from our information. We also have an agency in London which makes political contact on our behalf and, of course, on occasions involves myself, the Treasury Minister or other Ministers when we are down in London. So we do have reasonably regular contact.

1140 I think it is more important, if we are going to do that, though, to get to the right people, instead of just going across everybody, but there is a basic information exercise which we are happy to provide everybody with in terms of generally what the Isle of Man is doing and what it is up to.

1145 **Q182. The Chairman:** Yes, and, as a Committee, we certainly have taken note of the very strong, robust representations that were made when the UK, quite inappropriately, sought to change the law in total disregard of its constitutional obligations to us.

1150 **Mr Brown:** And it is very rare that it happens, but unfortunately sometimes it does happen, and when it does we always challenge it and we usually are effective in terms of getting discussions under way.

1155 **Mrs Fletcher:** I think, just to support the Chief Minister on that, Mr Chairman, it might be useful to know that no amount of intelligence gathering, at political or officer level, would have helped us with that particular clause, because it was popped in late at night by an officer who had, perhaps, had an understanding of how overseas territories operated but was not aware of how Crown dependencies operated. With the best will in the world that will always happen.

1160 We have been quite robust recently – in probably the last 12 months, certainly – in actually seeking out individual contact. We have quite a good support network at political level across the three main UK parties, but even then it is very difficult to keep up with their ever-changing agendas, with ever-changing pressures. I think we just live in interesting times and we have to be very selective, and also cautious, about the information that we hear, because what we tend to do is distil it with other pieces of information. I suppose it is a bit like an intelligence-led operation. On its own it is perhaps not valuable, but two or three different sources feeding into it and it starts to take a lifeline and is perhaps worth pursuing.

1165 **Q183. The Chairman:** So, to summarise, would you be confident that the Isle of Man Government is fully abreast of the changes that are coming through in the pipeline in respect of the Common Travel Area, the border security arrangements that we are obliged to be engaged in; that there is sufficient protection of the interests of Isle of Man travellers, insofar as they can be secured? Are you confident that the Isle of Man case is being properly made when these important decisions are being made?

1175 **Mr Brown:** Yes, I am confident the Isle of Man case is being put very robustly to them and we are explaining the reasons why any changes should be undertaken with care. Again, coming back to my original point, our starting point, Mr Chairman, is that we wish to protect the continuation of enjoying reasonably free travel between the Isle of Man and the United Kingdom, and to do that there are certain things that we will have to look to do to ensure we can keep that in being.

Clearly, we do not want border controls between the Isle of Man and the United Kingdom.

1180 **Q184. The Chairman:** Just before I bring Mr Gill in, an expression that has been used in relation to this Policing Bill, just by way of an example, is ‘mission creep’, whereby the UK Government will use other vehicles for doing what it wants. Given recent events and the relationship that the UK Government has with the Isle of Man, and actions that it has imposed unilaterally on us, can they be trusted to uphold what is in the best interests of the Isle of Man as a Crown dependency when we are talking about these sorts of issues to do with travel?

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1190 **Mr Brown:** We certainly do what we can to safeguard the Isle of Man and its future, in terms of what is best for the Isle of Man. Another government might make a decision, for different reasons, which could affect us, and we have to acknowledge that, but we will always fight our corner and we will always endeavour to get the best we can for the Isle of Man.

The Chairman: Thank you.
Mr Gill.

1195 **Q185. Mr Gill:** Thank you.

1200 Just on that 'mission creep' argument, or fear, could you foresee an occasion where, in order to maintain the efficiency of a watchlist or to ensure that the intelligence is studied in a timely manner to be effective, advanced notice would always have to be given of travel? If that is the case, what comfort would you bring to people who have concerns about having to travel for family bereavements or other very short notice travel?

Mr Brown: Certainly, that is something we would have to be conscious of and, as I understand it, we have made that point.

1205 Karen, do you want to...?

Mrs Scott: Yes, certainly. There seems to be a view that data for travel has to be given 24 hours in advance. We have raised this with the UK Borders people on a number of occasions and we have been told that is not the case. We have been told that data for e-borders can be given *up to* 24 hours in advance or it can be given as you depart, and that includes both small boat and plane traffic and the larger carriers. That is our understanding, Mr Chairman, Mr Gill.

1215 **Mr Brown:** Again, we have to be vigilant about this. I think the point is we are coming from our position, which is to protect the ease of travel for the people of the Isle of Man to and from the Island, so we are not going to lightly accept things that would put restrictions on us that we find unreasonable.

Ultimately, if the UK did decide to do that, by legislation or whatever, we would have to live with that, but that is not their intention and, therefore, people can last-minute travel still.

1220 **The Chairman:** Thank you.
Mr Quayle.

Q186. Mr Quayle: Thank you, Mr Chairman.

1225 Just one final question from me, really. I wonder, do we have any idea about the cost implications for the Immigration Simplification Bill and associated matters, and also e-borders?

1230 **Mr Brown:** No, we do not at the moment, through you, Chairman. Again, the new legislation is being finalised. We are not sure exactly... Sorry, Karen gave an indication of when it was likely to be introduced. Until we see its content properly and what might affect the Isle of Man, I think we are not in that position.

Mr Quayle: Thank you.

Q187. The Chairman: Thank you.

1235 Mr Phillips, have you any observations?

1240 If I gave you an opportunity – which I will do, if you would like to – to make any concluding remarks, how would you best summarise the situation? Bearing in mind that the Common Travel Area has got thousands of miles of border which are unpoliced and there are only a finite number of ports of entry – therefore, the practicality of controlling such internal travel is open to question, anyway – and just coming back to the point about the common visa idea between Ireland and the UK actually rendering a lot of this discussion potentially irrelevant – if they really secured the external border we would not need to be worried about potential controls and travel within the border... If I were to invite you to just comment on those points finally, how would you wish to put it?

1245 **Mr Brown:** I think that if the UK and Southern Ireland were able to secure their borders to their satisfaction then the impact on the Isle of Man is likely to be negligible, if any, simply because they have secured their borders. The problem is the uncertainty of that security. We

happen to be geographically located between the two countries, and because of the present Common Travel Area, of course, that makes travel easier for them.

1250 Again, from our point of view, everything is changing. We know why the UK are doing more and more to control immigration. It clearly is a big topic still in the United Kingdom. You only have to read their press, watch their news programmes or any documentaries about anything to do with that.

1255 I think what we have to do is to ensure, as best we can, that the Isle of Man can remain as part of that Common Travel Area – certainly with the United Kingdom, with which, of course, clearly we have a special constitutional relationship, which we do not have with Southern Ireland – and we will ensure, as best we can, that those areas are then properly managed. But I think, again, it is no different than today, for illegal immigrants. Those areas – the coastal lands of the Isle of Man, the UK and Ireland – are there. What we have is some main ports of entry, and in those main ports
1260 of entry, when it is appropriate for intelligence-led information, then checks can be made. I think all we can do is commit ourselves to try and secure our borders as best we want for ourselves, but at the same time have this freedom of movement which we know we all enjoy and all wish to continue to have, and that is really our stance.

1265 **The Chairman:** Thank you.

Chief Minister, I would like, on behalf of the Committee, to thank you, Mrs Fletcher and Mrs Scott, very much for your attendance and for your evidence this afternoon. It is much appreciated.

1270 **Mr Brown:** Thank you, Chairman.

The Chairman: Thank you very much.

Now, ladies and gentlemen, that brings the afternoon session of taking evidence in public to a close. I thank the members of the public and the press very much for their attendance. Good
1275 afternoon.

The Committee sat in private at 4.06 p.m.