



**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, 18th February 2008

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 R W Henderson, MHK
 Mr J P Watterson. MHK

Clerk:
 Mr L Crellin

Business transacted

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The Attorney General was called at 11.25 a.m.

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The Committee sat in private at 12.14 p.m.

Tynwald Select Committee on Immigration

*The Committee sat in public at 10.36 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, Mr Taylor and I welcome you and a member of the press to this meeting this morning which is a sitting of the Select Committee of Tynwald on Immigration. We are taking evidence in public.

Just for the record, this Committee was established in January of last year to examine and review the operation and adequacy of the existing legislation available to the Isle of Man for monitoring and controlling immigration to the Island. I am the Chairman of the Committee, Steve Rodan, and my colleagues on the Committee are Mr Henderson, MHK, Mrs Christian, MLC, Mr Gill, MHK, Mr Watterson, MHK and we have Clive Alford as our Hansard Clerk recording this morning's proceedings.

I mentioned before the need to switch off mobile phones, if anybody has one.

EVIDENCE OF MR W TAYLOR

The Chairman: Thank you, Mr Taylor.

You have come in this morning and you are, I understand, representing the Isle of Man Law Society.

Mr Taylor: I am indeed.

The Chairman: We are aware also that you made a written submission to the Committee last year for which we thank you, with your own views on immigration, that we also had an additional submission from the Law Society, so we will want to follow up some of the points in both pieces of written evidence. Both submissions suggest that there is a disparity between immigration law in the Isle of Man and in the UK. The Society's open letter started off by saying:

'In introducing the legislation into the Isle of Man no account was taken of any amendments made to the 1971 Immigration Act in the intervening 20 years'

so could I ask you to start off, perhaps, at that point and explain your concerns with the operation of the immigration laws in the Isle of Man, firstly as they relate to European nationals who have the right to enter the Isle of Man as part of the Common Travel Area but also, secondly, in respect of those who require entry clearance to enter the United

Kingdom before coming to the Isle of Man.

Mr Taylor: Firstly, the Isle of Man is not a sovereign state and therefore, certainly for the purposes of the European Union, we come under the auspices of the United Kingdom. I think that is generally accepted. Certainly, I have seen documentation from Tynwald where we accept that point. Accordingly, we are not permitted to have immigration laws or legislation that is so different that it effectively has its own immigration provisions separate to that of the UK, or which would be considered to be different from that of the United Kingdom, not that I am advocating that we are, or should be, subservient to the United Kingdom.

We are in many ways, I would not say independent, but we have our own Tynwald and body which should be respected. However, we do have international obligations which we must and should consider.

After speaking on that point, it is my experience that there are significant differences between the UK immigration provisions and that of the Isle of Man. I am also aware that I think we were up to date, up until 1991, in respect of the 1971 Immigration Act. Since then we have fallen significantly behind.

That causes problems because one of the things is we do not have – or certainly I have not been aware that we have – a document that actually reflects what the actual immigration provisions in the Isle of Man are. There is a 1971 Act: that Act has been amended significantly since 1971. We have implemented changes up till 1991. There have been at least four or five different UK immigration provisions and there may have been reasons why they have not been adopted yet. I am aware that there have been three Orders in Council since – if I am correct – 2001 to try to bring us in line with UK legislation. I am not aware of the reasons why those Orders in Council – and I assume that is from the UK side – have not been put in place.

Without a definitive provision as to what the Isle of Man immigration provisions are, it does cause practitioners extreme difficulties in knowing precisely what the actual immigration laws are. I am aware that the UK HC395 is derived from the 1971 Act of Parliament. We have our own equivalent – I think it is ST605 – which mirrors the immigration rules of the UK. However, what is not clear at the moment is how and whether or not those rules are within the law because we cannot define where the rules derive from – where the statutory provision for the rules derive from – and that is a concern.

This morning I took a look on the *Juta's Statutes* as to the UK provisions that apply to the Isle of Man and there were none. That is a significant issue because if we are to be applying statutes in the Isle of Man that derive from the UK, they should be available and they are not.

With regard to EDA nationals, I am aware that the Isle of Man has passed legislation to bring in line the relevant EA nationals as and when they became assenting states within the EA provisions. What did concern me at the time was, was the Isle of Man looking to implement a different regime from that of the UK – although I have been informed that the provisions that have been put in place are akin to that of the UK. If that is the case, then that is all well and good.

My other issue is concerning non-EA nationals, because I am aware that the UK provisions have certain rules in relation to appeals and I am aware there was one instance – I think it was visitors' visas – where the UK had a right to appeal.

Procedural

That provision was not in the Isle of Man legislation and therefore that rule has been dealt with differently.

The Chairman: Thank you very much.

Do you accept that the vehicle for continuing to implement the basic 1971 Immigration Act is contained in the Immigration (Isle of Man) Order 1991 and the Immigration (Isle of Man) Order 1997? These extend the UK legislation to the Island.

Mr Taylor: Yes.

The Chairman: Are you aware that there is a draft Order seeking to extend, with modifications, certain provisions of the Asylum and Immigration Act 1996, Immigration and Asylum Act 1999, the Nationality Immigration Asylum Act 2002 and so on until the Immigration Asylum and Nationality Act 2006? Are these the measures which you are saying the Island has not incorporated as yet into Manx law?

Mr Taylor: What I said was I am aware that the Isle of Man has sought to incorporate those, but for some reason those Orders in Council have not been implemented. I suspect it is from the UK end, but as to why that is, I do not know, but I am saying I am aware that there is an outward stepping of the two immigration provisions.

We have in the Isle of Man sought... and it is quite clear that Tynwald has approved such Orders. They were sent to the UK, I assume, but they have not been implemented and that delay has caused a major impasse or imbalance in the immigration laws and that, in many ways, needs to be addressed because when you look at the cases that have been dealt with under the immigration provisions in the UK, when you try to apply them in the Isle of Man you cannot because they are applying current UK provisions which would otherwise be applicable to the Isle of Man, but they cannot be applicable because they are not in place in the Isle of Man at this present moment in time. That does cause a problem.

The Chairman: So the particular provisions related to the Acts, such as referred to, once they are incorporated into Isle of Man law, does a lot of the concern of yourself and the Law Society then fall away?

Mr Taylor: Providing that the provisions as are then applied in the Isle of Man are made available in some sort of documentation which is available in the Isle of Man which we do not have at the moment. We certainly do not have a definitive document, certainly up to 1991, which is effectively where we currently are, that shows what the actual immigration laws of the Isle of Man are.

The Chairman: Okay. So once we have this update by the Isle of Man and, for the sake of argument, we have reason to believe it is in the system and is due to come forward, a lot of the concern that you have, is dealt with, is that right?

Mr Taylor: I would say yes.

The Chairman: Thank you very much. I will ask my colleagues. Mrs Christian.

Mrs Christian: You have said that you are not clear about whether the rules are within the law currently. Can

you be more categorical about that? Is it your view that some of them are not covered by Manx law because of the failure to introduce these Orders from the UK?

Mr Taylor: What I am saying is in the UK the HC395, which are immigration rules, are governed by the 1971 Act. Because there have been certain amendments to the 1971 Act, whether or not those amendments would apply and bring the provision for the rules to come into place, whether or not they are in place, which is not clear at the moment. One cannot say with any degree of certainty that the immigration rules, as applied in the Isle of Man, are actually lawful because they come within the auspices of the Act.

Mrs Christian: You commented on the *Juta's Statutes*, are you implying that none of applied UK law is covered in *Juta's Statutes*?

Mr Taylor: I checked this morning; there is a section for European legislation. There is not a section for UK legislation and there used to be a section, certainly up till 2003, probably 2004, there was certainly a section which had UK provisions that apply to the Isle of Man. One of those used to be the Health and Safety at Work Act. Those provisions are no longer available so effectively you have an English provision which applies in the Isle of Man but you do not have access to that English provision as it applies in the Isle of Man.

Mrs Christian: Do you have any view on the effects and risks we are exposed to by this uncertainty at the moment?

Mr Taylor: If, for instance, a matter was raised to which the European Court of Justice was brought into play, because of the UK provision, for failing to have its immigration provisions properly throughout its territory, then although the Isle of Man's immigration provisions are incorrect, that would basically bring us into play through the UK.

Mrs Christian: Talking there about the EU but you are not talking about EU immigration, you are talking about immigration from *outside* the EU presumably, which could be challenged at the European Court?

Mr Taylor: No. If a European national, for instance, had a problem, say for a European national who had a spouse or a partner who was non-EU national and the immigration rules affect that non-EU national, they could bring an issue and if the immigration laws were such that it affected the European national directly, because of the disparity between EU law and Manx law, they could also raise that issue.

There is also the issue of the European Court of Human Rights. If, for instance, one of the relevant articles applied and that was not dealt with properly – because under Manx immigration law that would also be an issue – although it would not be the Isle of Man brought before the European Court of Human Rights, it would be the UK, but it would, like a case entire, be dealt with via the UK.

Mrs Christian: I am a little confused about the EU position in relation to... your concern about the immigration law, though, is to do with the law which covers immigration from outwith the...

Mr Taylor: No, what my concern is, you have got UK

immigration law...

Mrs Christian: – which deals with people from outside EU?

Mr Taylor: And within the EU.

Mrs Christian: Ah, right. How does that sit with the Common Travel Area?

Mr Taylor: The Common Travel Area provisions only deal with Ireland, England, Scotland, Wales, Isle of Man and Jersey, Guernsey. Outside of that you have got the European Economic Area, which is a different provision, so you have got one which deals with the British Isles, for instance, and one with the relevant European states.

If, for instance, the UK immigration law, as it is, which deals with all those EA provisions, nationals, Common Travel Area nationals and non-EA nationals, but you have a disparity between the UK law, which should be the same because, basically, it says the Isle of Man is the same as the UK... so if you then have a disparity with the Isle of Man, how it treats immigration purposes, which affects a European national, then there is a problem.

Mrs Christian: Right, I think I have caught up with you!

Mr Taylor: Sorry about that.

The Chairman: Mr Gill.

Mr Gill: Could I just ask: when you say, ‘the problem that might arise’ what would they actually look like and give me examples?

Mr Taylor: Unless you have got a specific case which the rules would affect, I will try and give a hypothetical situation. Say, for instance, you have an EA national and the EA national is able, or entitled, to live and work in the United Kingdom and the Isle of Man. He then brings his spouse, who is a non-EA national into the Isle of Man, but because the Isle of Man provisions are different and because there is a mismatch in the rules, in that the Isle of Man says ‘well, your spouse cannot do this, this and this,’ the rule itself, or the Manx provision, actually conflicts with that of the UK. That EA national would be entitled to raise that issue not only with the Manx authorities but would also be entitled to raise that at the European Court, if it is applicable, or the European Court of Human Rights, if that is also applicable.

Mr Gill: That suggests – I am sorry if I have picked this up wrongly – that the Isle of Man have regulations or rules or law which are different from the UK. Is that the case?

Mr Taylor: That is the case. They are effectively immigration provisions that are different from the UK because the UK has immigration rules and provisions that are not applicable in the Isle of Man.

Mr Gill: It is because of the time lag that you originally introduced the description of, that is the issue, so the HC395 Immigration Rules do not apply on the Isle of Man?

Mr Taylor: We have our own ST650 – whatever it is

called – at the moment and they tend to mirror the English HC395, but irrespective of the HC395, which is the rules of how to apply various things, there is immigration law which also is different. So you have got the immigration rules which, basically, say, ‘Under these provisions a visitor... a person seeking a visitor’s visa would have to fulfil these criteria’.

You have a completely separate immigration provision – which is the Immigration Acts – which says the laws are this and this is what you can and cannot do. So they are completely and distinctly separate from the immigration rules, but the immigration rules derive their power from the Immigration Act.

Mr Gill: Just finally, is there any example on the Isle of Man where that disparity has been challenged?

Mr Taylor: I am not aware at the moment of whether there has been a direct challenge in the disparity between the immigration provisions, if I call them that, between the Isle of Man and the UK, but there are certainly concerns where one would consider... or this is different.

Mr Gill: Do the Law Society have a shared view on that disparity?

Mr Taylor: I am not aware of any, but it is certainly something which may arise with the Law Society.

Mr Watterson: The UK Acts that have been brought in from the UK between 1991 and now, are they essentially enabling provisions that have not been extended to the Isle of Man or are they prohibitions that would not – I appreciate this is probably a balance but in terms of the key measures that have been brought in in the UK – that have not been brought in here. Could you provide a bit of information on what they would be?

Mr Taylor: I have not studied all the other relevant... because, certainly, since 2003 the new immigration provisions, because unless you practise in the UK, a lot of them do not really apply and unless they are going to apply, you do not tend to consider them. I am aware that the broad-brush view of these provisions, a lot of them deal with asylum immigration and also deportation provisions and they have changed how they do certain things.

Effectively, although we do not deal with asylum *per se* in the Isle of Man, my understanding is that they are dealt with by the UK authorities and in some ways that is probably right because unless you are a sovereign state you would not be considering dealing with immigration purposes because it is a treaty of a high authority state which would not, so therefore it is appropriate for the UK to deal with that.

Some of the provisions that are contained in that respective UK legislation are dealing with asylum issues. I am not sure what Tynwald’s views on those issues are, but certainly, as far as I am aware, Tynwald has not sought to integrate the asylum provisions in the Isle of Man but the other provisions which deal with immigration *per se*, they are relevant to the Isle of Man and Tynwald has sought to bring those provisions, where appropriate, into the Isle of Man but for whatever reason they have not been done.

Mr Watterson: Let us focus on this point you make about the Isle of Man not being a state for asylum purposes, which

I think would confirm the Attorney General's view of the situation. You then state that if a EU national had a particular concern because of the disparity between the legal provisions in the UK and the Isle of Man, they could take that up with the European Courts of Justice, potentially. Is that due to the provisions of Protocol 3 that they would be allowed that, or is that essentially an issue between the individual and the United Kingdom as the state for immigration?

Mr Taylor: Protocol 3 is a provision which deals largely with how the Isle of Man deals with Europe *per se*. It does not in itself deal with immigration and it is quite clear that Europe, under the Treaty, effectively had the UK with all its relevant territories, including the Isle of Man, so therefore if a European national had a problem with the Isle of Man on the immigration purposes, he should be looking to the UK as a sovereign state to deal with that. Therefore, he either seeks redress here in the Isle of Man through the UK or he seeks redress through the European Court.

Mr Watterson: Yet, if we were talking about... for example, you mentioned the right to appeal, which was not introduced in the Isle of Man, but was introduced in the UK, that would be seen primarily as a Human Rights issue. If you accepted the fact that we had the power to make our own laws here, then under the Immigration Acts as they stand, you could say that whilst it might be – I appreciate that you are questioning the validity of the rules that we have made, the legality of the rules – but the right to appeal is essentially a Human Rights issue. Could that then be tried in Manx courts, as most Human Rights could be, or would that again go back to the UK as they are the sovereign state for immigration purposes?

Mr Taylor: I would have thought that it would have to be dealt with locally first and, if the right was not addressed to the satisfaction of the party, that might occur or it could be directly referred on the 177, in any event.

Mr Watterson: We could be looking at Manx determination through Manx courts on the Human Rights element of it?

Mr Taylor: A provision of the 2001 Act would enable the Manx court to have first sight of such a provision and it would go through the normal channels of Manx legislation. If redress was not to the satisfaction of the relevant party, they could seek a hearing at the relevant European Court.

Mr Watterson: Your involvement with any engagement with immigration laws came out of a particular case on the Isle of Man relating to asylum. Now that case...

Mr Taylor: Not me personally. I was not aware of it, no.

Mr Watterson: Oh, wasn't it? The Law Society, then, because that is the first time that it has come to the fore in the Isle of Man. That case ended up with a deportation, if I am right, and a repatriation. Under what legal authority was that done ultimately?

Mr Taylor: I am not totally familiar with the case, but my understanding of immigration law is that if a person

sought asylum either here or the United Kingdom, they have a special status from the outset, as soon as the application is made. Once the case is determined by an adjudicator at a tribunal hearing and then if that appeal..., the person then appeals, it goes to the Immigration Appeals Tribunal, they could also then go, if needs be, to the Court of Appeal and ultimately to the House of Lords, if necessary.

But once the appeals process is completed and if they fail, then they are liable to deportation. There have been various changes in the regimes over the years, where the norm used to be... immigration persons who failed were not dealt with expeditiously and they were permitted to retain, in law, their temporary leave to remain in the United Kingdom and, as such, could travel to any part of the British Isles subject to whatever bail conditions, if any, were imposed.

Once the Home Office decided that they were going to deport, they would make a Deportation Order and that person would then be collected, arrested and then ultimately deported. I assume that is what happened in this case. His case was heard: if he failed he would then... an appeals process went through and then he would have been ultimately deported under a Deportation Order.

Mr Watterson: Yes, I would like to pick up at the stage before that from the Isle of Man. We have to determine, really, their port of entry, whether it was from the Republic of Ireland, presumably, which is also a state for immigration purposes, a sovereign state, or the United Kingdom is a sovereign state. How then do we determine under our laws which way that they are repatriated because, obviously, once they are here, they are within the United Kingdom's state, for immigration purposes, for nationality purposes. So we need to, really, repatriate them to a sovereign state, for immigration purposes.

Mr Taylor: Once they are in the United Kingdom, or come under the auspices of the United Kingdom, then they have to be dealt with in the United Kingdom.

Mr Watterson: I am looking for people who claim asylum on the Isle of Man.

Mr Taylor: Yes. Because they are in the Isle of Man, they are, effectively, within the United Kingdom, for immigration purposes, and therefore they would have to be dealt with under United Kingdom immigration laws.

Mr Watterson: Thanks.

Mr Henderson: You mentioned earlier that the basic nub of the argument is that the EU sees the UK and the Isle of Man, for immigration purposes... We should have the same rules, basically, and that is where the nub of the issue rises. Did I pick that up right?

How do you see that, given that we have got our Protocol 3 relationship with Europe, which gives us a slightly different, or substantially different, relationship with the UK, for instance, and a different relationship from other member states with the main EU organisation... Are you saying that, even with the variances of Protocol 3, the EU still considers, with that, we still should have the same immigration rules? In fact, have they not measured the Protocol 3 arrangements to see whether we can make our own variances, in which case it might not be suitable to have variances but, nonetheless, we can get away with it?

Mr Taylor: Protocol 3 does not take away the relationship, where the UK is a sovereign state and a high treaty authority. The Isle of Man is certainly not a high treaty authority.

The UK, in entering the Treaty with the European Union, did so also in respect of the Isle of Man. Protocol 3 effectively gave the Isle of Man certain subjugation – I think ‘subjugation’ is the word I am looking for – where it opted out of a lot of, or certain provisions of, the European Union. It did not, and certainly never had, opted out of the immigration provision –

Mr Henderson: That is what I am seeking.

Mr Taylor: – and so, therefore, we in the Isle of Man are still subject to the immigration provisions of the UK. They may well be provisions where you can have slight differences, but the differences cannot be such that they effectively make the Isle of Man a different immigration authority from that of the UK, if that answers the question.

Mr Henderson: Yes, it sure does. Thank you, very much.

The Chairman: Thank you.

I just want to come back a moment to the immigration rules that are devised in the Isle of Man.

I think we accept that the extension of the primary legislation in immigration from the UK to the Isle of Man... there is a process for doing that, and you have given us evidence that, in your view, certain extensions to recent legislation have yet to take effect, but aside from that, you accept that the immigration rules are the statement of the practices which are followed in the Island in terms of being secondary legislation. Do you accept, then, that they are not necessarily a carbon copy of the UK rules; that there are differences between the two?

The degree to which the Isle of Man rules can vary from the UK are set out, aren't they, in the 1971 Act? I think schedule 4 provides for mutual recognition of determination of immigration status by the authorities of the UK or Isle of Man and the Channel Islands. The Isle of Man rules will not necessarily reflect exactly the same position in terms of asylum or entry via the Channel Tunnel, for obvious reasons. Where, then, does the concern on your part, in the Law Society, rest? Is it with the differences between the immigration rules as they are devised in the Island, in compliance with the UK, or is it more fundamentally with the non-extension of primary legislation?

Mr Taylor: I would have to say it is more the immigration legislation, as opposed to the rules. Certainly, up until recently, until 2006-07, when the latest immigration rules came into being, there was a significant disparity because you had, I think, up to 300 immigration rules under HC395 and when you looked at the Isle of Man ones, you may have, say, dealing with a visitor's visa was something like 203 and in the Isle of Man it was 128. They did not correlate, so you would have a ruling from an entry clearance officer, say in Kenya, making reference to an English refusal. That would come to the Isle of Man for a determination, and they would quote the wrong immigration provision, dealing with the Isle of Man.

That caused significant problems, because legally, if you are making a ruling on, say, Rule 128, which deals

with working holidaymakers, but the application was for a visitor's visa, then that is not within the law. You are making a ruling on an incorrect application. That has been addressed, because now the rules mirror the UK provisions and it makes it perfectly clear. It makes it a lot easier to read.

The Chairman: Is it the lack of correlation between the Isle of Man rules and the UK rules in following what they are saying? They have to be consistent, broadly, with each other. Is it the references, or the sections, that are out of sync with each other?

Mr Taylor: The sections are now within sync. There are certain omissions in relation to the UK and the Isle of Man and, looking at the ones that I have come across, they certainly are perfectly proper, because we do not have those provisions in the Isle of Man. A lot of those deal with university students and various things like that: we do not have those provisions. Certainly, with certain parts of our Work Permit Scheme, we do not have those, so it is perfectly proper that those should not be in our rules. They are omitted, and it is quite clear that they have been omitted. So now, when you look at the rules, they effectively mirror those of the UK and where there are omissions, it is quite clear what has been omitted.

The problem that we have is where the immigration law, i.e. the statutes, are in place in the UK, and we do not have those provisions in the Isle of Man and they are fundamental differences. For instance, you will come across a case which makes reference to the old 1971 Act, or a previous statute. They are now applying a new statute and they are making a ruling on that, and we are still in the old statute and we cannot apply the new statute which should be applied, because otherwise you are dealing with completely different provisions, and that makes it completely out of sync with what the UK are doing.

The Chairman: We have taken evidence from our Crown Division to the effect that, generally, the Island's immigration rules reflect the UK's rules and where they do not, any differences must be legally accountable, for example, not discriminatory or contrary to existing legislation, such as Human Rights. Do you believe that is the case?

Mr Taylor: I have not seen the full transcript of the Crown Division's evidence, so I cannot comment in its entirety.

I am aware of one issue that was raised, where they had applied different time periods for various things. In many ways, that, to me, may well be contrary to the immigration laws because, again, you apply a different principle and, in many ways, could be determined to be discriminatory. Although the UK may now have altered their time periods to that of the Isle of Man at that time, it certainly was, and is, an argument that it could be dealt with. Certainly, if it caused an individual hardship or a problem, that could be discriminatory, and it could have been in breach of article 4 of Protocol 3.

The Chairman: Does that discrimination relate to what was given in written evidence? Is it really to do with the non-availability of legal aid, particularly in tribunal hearings?

Mr Taylor: That is a concern because you may well have

an individual – say, for instance, an EEA national – who is relatively low paid, needs advice on an immigration matter which directly affects them. Their ability to take legal advice is restricted or limited, if at all. Therefore, that is a question as to whether or not they are able to have access to the courts under Article 6. That is a concern of mine, because certainly, immigration is quite a specialist field. The issues and the rights and the outcomes that derive from it are fundamental to the individual and it may well affect their actual rights under the provisions.

The Chairman: Okay. Just a final point. I am just conscious of the clock. We read a lot in the UK media about the effectiveness or otherwise of border control or lack of control. In your view, are the measures in the Isle of Man sufficient for purpose or – we talked a lot this morning about deficiencies as you see them and possible infringement of individual rights and so on – should the Isle of Man have a strong system in place that is consistent with its obligations under the UK Immigration Act?

Mr Taylor: I am not sure if I catch what the question is.

The Chairman: We read a lot in the UK media about the lack of effectiveness of their border controls and, by default, because we follow the UK immigration system, a lot of that deficiency, potentially, could be reflected in the Isle of Man in terms of legality of entry. Do you think there is a case for the Isle of Man having, as far as it is able, systems in place that are tailored to the Isle of Man's requirements?

Mr Taylor: It is not an easy question to answer because, effectively, the only way you could do that is for all flights or boats coming to the Island, you would have to have immigration control to effectively police your borders. I think I understand what you are saying in relation to having free access from, say for instance, Ireland to the Isle of Man or to the UK and then once you are in the Common Travel Area, you effectively can travel to any part, including the Isle of Man. So, if you are then able to get into the Common Travel Area, effectively you have access to the UK and you cannot control who then enters the Isle of Man, whether that person is entering legally or not. I think, if I understand, that is the gist of what you are saying.

The Chairman: If the Isle of Man was consistent with that to impose other controls in its own interest that do not deviate from the broad objectives of immigration policy in the UK, should the Isle of Man seek to vary the immigration rules, in a consistent manner, but in its own interests, as far as it judges appropriate?

Mr Taylor: Well, if I answer the question in this way: I think there are, at the moment, talks or moves to alter the provisions of the Common Travel Area between the Republic of Ireland and the UK, if I use the term broadly. What I think you are asking is, can the Isle of Man effectively have border controls at its port of entry and, without restricting those who are entitled to enter the Isle of Man within the immigration provisions, then can it do so? Providing that the Isle of Man acts within the law, and if that is permitted within the law, then I do not see any reason why the Isle of Man could not effectively have border controls, providing

it is acting within the remit of the immigration law, if that answers the question?

The Chairman: Yes. That is very helpful. Thank you. Any final points. Mr Gill?

Mr Gill: Thank you, Chairman. Whilst I understand the importance of the argument from your professional, legal position, are there any flesh and blood, if I can call it that, cases that have been affected by this disparity that you are aware of?

Mr Taylor: There have been cases where I have had to advise clients where there is a difference between work permit provisions in the UK and that in the Isle of Man. There has been a case involving an EA national and their non-EA partner, where they were applying, or seeking to apply, a difference between the two provisions. Again, it is how they apply the law, is one of the main concerns. Are they applying the provisions within the rule of law? I cannot be specific about those, but you can have the law, you can have the rules, but it is how you apply them.

There is a question mark as to whether the laws and the rules are properly being applied. In the UK you have the Home Office Division and you have various parties who could give appropriate advice. Whether that is available to the Isle of Man, I do not know, but there are certain concerns that the rules and the laws are not being applied necessarily, in all cases, in concert with the actual registered provision and the rules.

The Chairman: Okay. We are out of time. Mrs Christian.

Mrs Christian: Very quickly. Am I summarising you correctly in thinking that, whilst you have said that there are, in terms of the rules... it is reasonable, in some cases, to exclude elements of UK rules because they are not necessarily applicable here, but that we are in danger where we actually vary them?

Mr Taylor: Yes.

The Chairman: Thank you. Well, I would like to thank you, Mr Taylor, very much for coming and assisting the Committee in its deliberations. You are very welcome to stay, but thank you for your evidence and you are invited to stand down.

Mr Taylor: Thank you very much.

The Attorney General was called at 11.25 a.m.

EVIDENCE OF H M ATTORNEY GENERAL

The Chairman: May I now call the Attorney General to come forward and take a seat, please. Good morning, Mr Attorney.

First of all, can I begin, on behalf of the Committee, to thank you very much for your attendance this morning. I thank you, also, for your written submissions that you have

given to the Committee in the recent past. Perhaps it would be the business of this morning, for the public record and we are being recorded, if we could go through some of those items of written evidence from your good self.

If I could, perhaps, first of all, ask you to confirm that the statutory basis for immigration in the Isle of Man is the UK Immigration Act 1971?

The Attorney General (Mr W J H Corlett QC): Yes, I think that is still the primary piece of legislation. There are other items of UK legislation but, essentially, the 1971 Act is the core.

The Chairman: Have all the extensions of this Act and amendments to that Act, through various pieces of legislation over the years, been adopted by extension within the Isle of Man?

The Attorney General: I think not, Mr Chairman.

Could I, at this stage, say that I do not profess to be an expert in this area. It is, as Mr Taylor has told you, a very specialised area and I think that the general theme is that the 1971 Act, with appropriate amendments, has been extended to the Island, but not all the amendments which have been made by subsequent UK legislation have been extended.

The Chairman: Okay. In your written evidence, if I could just quote a couple of instances: in your letter of 15th February of last year, you direct our attention to the fact that there is a draft Order in Council being prepared, intended to take account of relevant changes of the law in the UK relating to immigration and, if passed, that new Order in Council will provide that the Council of Ministers, rather than the Governor, must lay before Tynwald statements of the rules, the practice to be followed in administering the Immigration Act and for regulating the entry into and stay in the Isle of Man of persons who have leave to enter.

So, that was a new draft Order in Council and then a little later on, in April, in a letter of 23rd April, you say that:

'the draft Order in Council, to which reference has been made in previous correspondence, is intended to extend, with modifications and exceptions, certain provisions of the following Acts...'

Then you state those Acts: the Asylum and Immigration Act 1996 through the Asylum and Nationality Act 2006. Just for clarity, is that the one and the same draft Order in Council that you are referring to or are there two draft Orders in Council? The first seems to be dealing with the process of how the matter would be dealt with in Tynwald, i.e. an Order of the Council of Ministers rather than the Governor?

The Attorney General: The principal change, Mr Speaker, will be embodied in the Immigration (Isle of Man) Order 2008 which is an Order in Council made by Her Majesty and which will be extended to the Island and that, as I understand it, comes before the Privy Council in March, next month. I think it will provide a very useful starting point now for any discussion of immigration issues. The opportunity has been taken in that Order to update the relevant provisions in relation to immigration which extend to the Island, so that, henceforth I think we can – I am sorry to interrupt, but I do not know whether the Committee have seen the draft Order; whether it has been supplied by the Crown Division?

The Chairman: We have not seen that. No.

The Attorney General: It actually, if I may say so, Mr Chairman, although it is in draft, I think it would be very helpful for the Committee to see it, because you will see – and I hope with some relief – that the Order – and it is that thick – at the end, the explanatory note, extends certain provisions of UK immigration and related legislation to the Isle of Man with modifications, as necessary – which is the usual sort of wording we see.

'In particular, this Order extends provisions contained in the following statutes...'

Then we go through the statutes which you have mentioned, Mr Chairman, from the Immigration Act 1971 right up to the Immigration (Asylum and Nationality Act) 2006. It goes on to say:

'the Order revokes and replaces the Immigration (Isle of Man) Order 1991 and the Immigration (Isle of Man) Order 1997.'

So, we will see, in one consolidated Order, the relevant legislation in relation to immigration which can be used by practitioners and those who advise applicants for immigration.

The Chairman: And there will be a difference in the way this is implemented, if we understand your evidence, in that, before this Order is laid before Tynwald, instead of being an Order by the Governor in Council, it is an Order of the Council of Ministers. So the Council of Ministers will have had the opportunity to have political input into this Order before it goes to Tynwald.

The Attorney General: They will, sir, yes. I think that is the general rule, is it not now? That Orders in Council have to be very particularly regarded by Council of Ministers to ensure that it is not appropriate to have our own primary legislation.

To put it another way, of course, there is always a presumption that we have our own legislation. There might be a case, for example, all things being equal, to have an Immigration Act 2008 of Tynwald, but that, in this unique situation is not possible, it seems to me, because of all the factors which go to ensure that our immigration regime is the same as that of the UK, with necessary amendments.

The Chairman: So, is it an administrative convenience that the UK law which we are obliged to mirror, is applied in the Isle of Man by extension, rather than a separate act of Tynwald?

The Attorney General: I think, Mr Chairman, I would go a little bit further than that. It is not just administrative convenience, it is a matter of substantive law, it seems to me. There are certain areas of law: nationality, extradition, immigration, that sort of thing, where it is convenient, but also necessary, that the Isle of Man is regarded as part of the UK.

Of course, Hon. Members will be very familiar with the Common Travel Area and everything that flows from that, so it seems to me that it would not be possible to have an Immigration Act 2008 of Tynwald. What we are doing instead, as you say, subject to the vetting by the Council of

Ministers and approved by Tynwald, is to have an Order in Council which is a consolidating piece of legislation, which will give us a fresh start.

The Chairman: In this draft Order 2008 then, does it rectify the deficiency, as the Law Society has given its evidence when they say, ‘no account has been taken of amendments made to the 1971 Act in the intervening 20 years.’ In other words, the 1991 and 1997 Order was the latest updating of the 1971 Act, so we have 10 years of change to the primary legislation still to incorporate and this Order in Council will do that?

The Attorney General: It has almost been an impossible task, a Herculean task. I am sure there must be some analogy from the damned in Hades trying to accommodate an absolutely impossible task! The drafters have been trying to keep up with amendments in the UK and, of course, the UK law is forever changing so we have had a really good try, Mr Chairman, in Chambers to accommodate the changes. At a certain point of time we have said, Isle of Man law should be the same as the UK, with certain amendments.

The Chairman: But, in the meantime, of course, it is not like nothing has been happening, because the Isle of Man immigration rules have been getting periodically updated. Does that updating... was that intended to reflect those changes in the primary law, that were made in the UK and fed into UK immigration rules to be mirrored, as appropriate, in the Isle of Man, not blindly copied but incorporated where relevant?

The Attorney General: Well, I think, Mr Chairman, the difficulty, as ever with rules which are subordinate legislation, is that we have got to ensure that there is the necessary power given by the primary statute and, of course, as we fall behind, as we inevitably did, in primary legislation, it was not possible to confer additional powers in the subsidiary legislation – if I make myself clear – so our immigration rules have almost been hogtied by the inability of the primary legislation to keep up to date with the UK primary legislation.

The Chairman: I see, but we have made a number of amendments.

The Attorney General: Yes.

The Chairman: So, in no sense were they *ultra vires*?

The Attorney General: I hope not.

The Chairman: Were they consistent with the limitations in the primary law being extended to the Isle of Man?

The Attorney General: Mr Chairman, I hope you do not think I am being evasive here, but it is not an area I can answer in any great confidence, but my impression is that the drafters and the Crown Division immigration officers have always tried to ensure that the immigration rules have a sound basis in the primary legislation.

The Chairman: Thank you.
Mr Henderson, at this point?

Mr Henderson: Not at this point, Mr Chairman.

The Chairman: Mrs Christian.

Mrs Christian: Yes, thank you.

You have referred to the fresh start. Is this draft Order going out to consultation with organisations such as the Law Society, or would that not be –

The Attorney General: I am sure it will be. Of course, first of all, amongst many, it will have to go to His Excellency, because His Excellency has a role to play in relation to immigration.

Certainly it would be very nice to have wide consultation, but, of course, the danger is that the longer we consult, the more potential there is for a change in the UK legislation and we are back to square one again.

In many ways we have to, I think, have the courage of our convictions and say, ‘Right, well, this is going to be our immigration law. It has been carefully worked upon, in consultation with the UK authorities, and we think this is a good start.’

Mrs Christian: Can I ask you about the... You made the statement that it is a requirement that the Manx law be in line with the UK law.

The Attorney General: Yes.

Mrs Christian: If we could move to the rules, we have a system where the rules are laid before Tynwald, and the negative procedure applies: if someone disagrees with it, it can be lifted at the following sitting. To what extent do you believe that we can vary the rules from those which apply in the UK?

The Attorney General: I think we can.

Mrs Christian: Apart from omissions which are not relevant.

The Attorney General: Yes.

Mrs Christian: I am asking specifically about the variations, so that we might be more rigorous than the UK in a particular area. In your view, is there a capacity for us to do that?

The Attorney General: Possibly, but I think we have to tread with great care. Given – if my analysis is correct – that we have got to keep an immigration regime which is broadly consistent with the UK, the more we deviate, the more potential there is for an allegation that our regime does not come up to scratch. So I think it is possible, but we would have to look at it very carefully.

Mrs Christian: Thank you.

Could I ask you: if a rule was moved in Tynwald, and was not accepted, presumably only the *status quo* would apply?

The Attorney General: Yes.

Mrs Christian: And presumably an Order, where we

perhaps have excluded something which applies in the UK, we can revoke that by having an amendment in a further Order which would apply it, and vice versa?

The Attorney General: I suppose that must be so, but again I think we have to be careful. If we were to have a harsher regime – if I can put it that way – than the UK's, there is always the possibility that that might be challenged under the Human Rights Act.

The Chairman: Mr Gill.

Mr Gill: Thank you.

You described the role, in response to the Chairman's question about the political input... That is almost after the event. So we have the draft Orders which have been drawn up at officer level, presumably?

The Attorney General: Yes.

Mr Gill: What political input has there been so far in this process?

The Attorney General: The Council of Ministers have been kept advised periodically of the developments in drafting this lot, and there has been an information paper to them, and they have approved, in broad principle, the thrust of the new Order, but they have not, as yet, seen every page.

Mr Gill: So is the leadership and the ownership of this process effectively an officer ownership, or a political ownership?

The Attorney General: No, it is very much a governmental-driven initiative. The Government is aware – the Council of Ministers is aware – that our immigration legislation requires amendment, revision, of a fairly drastic kind, and so it is not just officer driven, although it has to be said that there has been a rather intense period of activity by the relevant officers, including the drafters.

Mr Gill: Thank you.

The Chairman: Mr Watterson.

Mr Watterson: We have heard from you in written evidence, and from Mr Taylor as well, about the Isle of Man not being a high treaty country, and certainly not a state, for immigration purposes. Given that, would our legal status, under the UK, and in terms of under the EU, override any domestic provisions that we had? To give you a scenario: if an immigration case went to court in the Isle of Man, would it, because of the higher authority, be assumed that the UK primary law was extended to the Isle of Man, or would we have to wait for the provisions to actually be enacted to an Order such as the one you have mentioned?

The Attorney General: Chairman, I do not think I have described the Isle of Man as being a non-high treaty state in my correspondence. It is not a state, of course, in international law, and therefore, as in certain other areas of law, Isle of Man law flows from a source outside the Island. In this case, the source of the law flows from the Immigration

Act 1971, extended to the Island by the full approval of the Government and by Tynwald, which is a very normal way of legislation being applied. Also, of course, in relation to Protocol 3, that is, I suppose, a treaty source of law, which again applies to the Isle of Man by our consent and by Act of Tynwald, by the European Communities Act 1973.

So, Mr Chairman, I do not think that we need be worried that our courts have to apply Manx law from this foreign source. It is a perfectly proper and appropriate way for a small country to deal with an international issue.

Mr Watterson: So you do not consider that our international obligations, as signed up to by Tynwald, would overrule our domestic legislation – probably our secondary legislation – in regard to immigration, asylum and nationality?

The Attorney General: There should not be any conflict.

Mr Watterson: But, due to time lag, there has been potentially, or there may be.

The Attorney General: I have to say I am not aware of there having been a problem in terms of conflict between the two.

Mr Watterson: Theoretically, I suppose, but...

The Attorney General: I have to say that my understanding is that immigration cases are relatively few. They are very important, no doubt about it. There have even been one or two potential asylum cases, which are very important, and I have no doubt, though, that the courts here, and the tribunals, the High Bailiff, Deputy High Bailiff, will seek to apply the principles that flow from the UK law if our Manx law is silent, or perhaps is not up to date.

Mr Watterson: So if, theoretically, there was a conflict, because of our obligation to follow UK provisions, they would be considered first, as opposed to whatever our domestic rules say.

The Attorney General: I think I would prefer just to put it this way, Chairman: that, because the Human Rights Act applies in the Island, and is our own law, I think that any judge – whether it is in the High Court, or the High Bailiff – will have regard to the UK law, because the UK law actually reflects good Human Rights practice, and therefore we can say, 'Right, well, we are going to apply our own Human Rights Act,' which we have to. That is part of our duty, as judges, to apply Human Rights law, and in order to do that, we have a weather eye to what has been going on in the UK.

Mr Watterson: It seems to me that what you are saying, though, is that, even if we decided not to bother with publishing statements of changes in immigration rules, or have an Isle of Man Immigration Act, or anything like that, the first route of the courts would be to look at the UK one, anyway. So are we, to a certain extent, perhaps wasting Tynwald's time by even putting such a framework together on the Island, given that that would be the case law that we would be looking at, anyway?

The Attorney General: No, I think not, Mr Chairman. I think that is too extreme. I think that we have to look for our own law, wherever possible, in our own statutes and in our own case law.

I think the point that you were putting to me, sir, was that, if there was a gap in our law – if there was no Manx law on the point – would it be appropriate to look at UK law, and my answer to that is yes, it would.

Mr Watterson: I suppose I was actually looking at if there is a conflict between UK law and Manx law.

The Attorney General: The position there, I think, is well settled, that the judges in the Isle of Man apply Manx law. It is only when there is a conflict, a real difference between Manx law and a decision of the House of Lords, or the Judicial Committee of the Privy Council, that the Manx courts would have to have regard to the English law, and be overturned by the English law.

Mr Watterson: So you would not see any significant advantages in the Isle of Man seeking to remove itself from its present arrangements with the UK/EU, and become a sovereign state, for the purposes of immigration?

The Attorney General: Not at all.

The Chairman: Just reverting, for a moment, to the immigration rules and the extent to which the Isle of Man can adopt, or not adopt, elements of the UK rules to suit the Isle of Man, a lot of those changes are to do with the employment position for overseas workers, and we are aware that the UK have criteria for granting entry for overseas workers. Are we obliged in the Isle of Man to adopt the UK criteria in respect of that individual given entry clearance to the UK coming to the Isle of Man, the criteria for work for the UK? Must the Isle of Man mirror that criterion?

The Attorney General: I do not think so, sir. My understanding is that we do not have to adopt systems such as the points system.

The Chairman: So the points-based system, which is being developed in the UK for policy reasons... If the Isle of Man was to judge that its policy objectives were different, it would be entitled not to have a points-based system?

The Attorney General: I think that must be right. Again, I would imagine that the Island would want to have close regard to what is happening in the UK, but I do not think it would be bound to take on, as I would describe it, administrative or policy issues in relation to control of employment. After all, we have our own Control of Employment Act, which is different from the UK, and it is a very important piece of our armoury to regulate immigration.

The Chairman: So when the corresponding changes to the Isle of Man immigration rules came along, following the changes to the UK, could we change our rules to reflect a different system from the UK, or by simply not adopting the points-based system, could we incorporate something quite different from what the UK has, and put it through the Order in Council in the normal way?

The Attorney General: I am afraid I am a little bit tentative on this. My understanding would be that, provided that our administrative controls were consistent with the broad policies of the legislation and the Order in Council, it would be open to us to have a different system of the kind you describe.

The Chairman: We have had evidence, for example, that the Channel Islands, in respect of overseas workers, restricts the length of employment, or defines the length of employment, and it quite consciously does not lead to settlement, unless there is an exceptional circumstance, and there is a process of political determination. So after the period of employment is over, the expectation is that the individual leaves that particular Channel Island. Could the Isle of Man do something similar, if it wished?

The Attorney General: Again, I would have thought so, sir, yes.

Under the proposed new Order – I, of course, am very aware that this is a draft and is subject to approval and so on – the proposal is that the Governor – and he, of course, will be acting through the immigration officers – can make an Order with respect to the giving, refusing or varying of leave to enter the Island, and leave to remain is also going to be dealt with by the Governor and Orders and so on. So I would have thought that, in principle, in the same way that Guernsey has a different regime from the UK, there is no reason why we should not have a different...

The Chairman: I think we accept that the mechanism for making the decision, or granting any approval, would be the Governor. The policy basis, though, could be open to the executive and Tynwald to make the rules which the Governor implements.

The Attorney General: I think that is so. Yes.

The Chairman: Yes. The UK does not require applicants to say anything about dependants when application is made for entry clearance for employment: the dependants apply separately as the family of a work permit holder, quite possibly at a later stage. Would the Island be entitled to request that information at the outset, which would be consistent with work permit applications under the Control of Employment Act? What I am saying is, information about dependants is not a requirement for entry clearance for that immigration decision, but it is for work applicants who come from within the EEA. Would we be entitled to – even though the UK did not do it – make such a requirement?

The Attorney General: I suspect that there may be some concerns about confidentiality and Human Rights issues. Perhaps that is the reason why the UK has not insisted on such undertakings.

The Chairman: If we were to do so, could it be possibly a test of Human Rights issue, if we were to seek to do it?

The Attorney General: It could indeed sir, yes.

The Chairman: Thank you.
Mr Gill.

Mr Gill: Just a narrow question, Mr Attorney: if the

Control of Employment Act is compatible with Human Rights and the other tests that you have assured us it was, would it be possible to extend say the five-year period for the various qualifications that flow from that, to double that, say?

The Attorney General: I think the relevant decision on the Control of Employment Act was the Barr and DHSS case, and that was a matter that was tested by reference to the EU law, and, as probably you have heard many times, our Control of Employment passed muster because there was no discrimination. So I suppose it is possible that you could say that a person cannot be deemed to be a Manx worker unless he or she has resided here for 10 years, instead of five. I suppose that is possible, provided that you do not discriminate against any given nationality or type of person. Whether that would be a good thing for the economy of the Island, of course, is a policy matter which others would have to decide on.

The Chairman: Just before I call Mr Watterson, another example, of course, could be this issue of dependants. If the Control of Employment Act is non-discriminatory, in that it does not discriminate between UK, EU or EEA citizens in terms of requiring information about numbers of dependants with a view to a possible decision not to admit for that reason, it clearly is quite different if it is deemed that, in the case of overseas applicants, such a decision would be discriminatory.

The Attorney General: Yes, I agree with that, sir, but also one would have to be careful about the human right to have connection with one's family and to found a family. If we had a regime which enabled a migrant worker to come here and to work, but not to be allowed to be joined by his or her family, then I can see that that is treading on very thin ice.

The Chairman: But potentially, at the moment, the Control of Employment Act... Is the difficulty avoided by the decision from the outset to refuse a work permit on grounds of number of dependants, rather than to grant it and then subsequently refuse entry to dependants?

The Attorney General: That is a nice question. I think both decisions are capable of being attacked under the Human Rights Act. It is a very wide-ranging piece of legislation, of course, and until precedents are built up, I am afraid I am very tentative on that.

The Chairman: Thank you.
Mr Watterson.

Mr Watterson: That is my first point gone, but the second was about the... We have made the assumptions here. I think it is reasonable to expect that we have made the assumption round the table that if we were going to vary the UK immigration rules, the assumption is that we would make it more stringent to come to the Isle of Man. If we were looking to lower the bar to come to the Isle of Man, do you foresee the same ease of variation?

The Attorney General: I think it would be easier, Mr Chairman, because presumably then there is less prospect

of an attack on Human Rights grounds.

Mr Watterson: But, equally, that may create conflicts with the UK immigration laws –

The Attorney General: Indeed.

Mr Watterson: – and therefore we... Where does that leave us?

The Attorney General: I understand that, and that is why I think the other caveat would kick in: we have got to ensure that our regime is broadly similar with the UK.

Mr Watterson: We would look to ensure that we were not a floodgate for the UK.

The Attorney General: Absolutely.

Mr Watterson: I was also a bit concerned about you saying that we would look towards the UK in terms of any Human Rights decision. If we made a policy decision one way and the UK made a decision the other, they would look towards the UK as if they had some sort of monopoly on the truth when it came to Human Rights, and I was a little bit... Why is it that the UK decision would be more persuasive from a Human Rights perspective than ours?

The Attorney General: I think that, generally speaking, compliance with Human Rights in Douglas should be the same as compliance with Human Rights in Liverpool. There should not really be much difference in perception of what Human Rights means and how they are protected, and it would be difficult to rationalise a different rule in Douglas than in Liverpool.

So that is why I say that one inevitably, and quite naturally, has regard to our larger legal neighbour, because they have more cases, they have a more developed jurisprudence on immigration and asylum, and that is why our judges look very closely to decisions in the UK.

The Chairman: Mr Henderson? No.

Mrs Christian: Could I just ask one final question? It has been said to us that there is not a definitive document available about immigration law on the Isle of Man, and also – and this is a peripheral issue, really – that the *Juta Statutes* do not cover applied law. I do not know whether your Chambers deal with *Juta Statutes*, or whether it is the law courts, but is that not a deficiency in terms of people being able to access readily what Manx law provides?

The Attorney General: Mr Chairman, I think Mrs Christian puts her finger on a very important point. No matter what happens in terms of our amendments and updating of legislation, it is absolutely essential that we have a consolidated booklet, or information pamphlet, which tells people precisely what our law is. The difficulty in this area is that we do not have the Immigration Act 2008 of the Isle of Man which we can look up in *Juta Statutes*.

What we have is an absolutely enormous body of applied legislation, and if you were going to specialise in immigration law as an advocate in the Isle of Man, you would have to make yourself familiar with seven or eight Acts of

Parliament – that is of the UK Parliament – and you would have to make yourself familiar with the Immigration Order and the Rules and any decisions in the Isle of Man – a huge body – and I absolutely agree that we have got to put that right, and put it right quickly.

Certainly, when I have been trying to advise Government and immigration officers on an asylum case, it was quite an impossible task, and I have every sympathy with those who say that it is wholly unsatisfactory. I absolutely agree.

Mrs Christian: Can you just clarify the point, though: on *Juta Statutes*, who is responsible, or can guide them as to what should go in there? There is a body of applied UK law, and if that is not in there, there is a...

The Attorney General: Yes, sorry. *Juta Statutes* are simply the Isle of Man statutes, the Acts of Tynwald, but we do –

Mrs Christian: Would it not be better if it had all Manx law, as applied from the UK?

The Attorney General: That, again, is a very good... As a general point, we actually should have, in an ideal world, all the subordinate legislation, not just from the UK, but all those thousands and thousands of statutory documents that are passed by the various Departments and approved by Tynwald. I am afraid it is a question of finance, really, that has been constraining us there.

Just to answer your question, we do have a book which sets out the Orders in Council which apply to the Isle of Man, and that is available and it will include the Immigration Order.

The Chairman: Thank you. Mr Gill.

Mr Gill: The very last one, please, Chairman.

When you say it is ‘wholly unsatisfactory’, the current situation, is that equally wholly unsatisfactory from an Isle of Man perspective and a United Kingdom perspective?

The Attorney General: I am afraid I would not like to comment on the UK’s situation; I have not looked at it. All I do know is that there are specialists in the UK who do nothing else but immigration law – immigration adjudicators – and I am sure they have a massive volume of statutes and cases to look at.

Mr Watterson: A person turns up in the Isle of Man and says, ‘I want to claim asylum.’ I think the established precedent now is that they are sent to the United Kingdom, because we are all part of the same area, as far as asylum is concerned. What power do we have on the Isle of Man to repatriate somebody to the United Kingdom for their asylum case to be heard there?

The Attorney General: I think I can best answer that, Mr Chairman, by recalling a case that I actually did deal with, where someone came to the Isle of Man and, as a result of a control of employment check, was found without having appropriate papers and immigration clearance, and when he was told that he would have to leave the Island, he then claimed asylum.

It has been suggested that our law is defective because

we do not have any asylum provisions. Actually, I would respectfully disagree with those who have that view, because asylum is a notion, a concept, which is confined to international states. The Isle of Man could never, under international law, have an asylum regime, so I think, to get back to your question, in practice the best interests of the asylum seeker would be to have his case decided in the UK because that is where they have a very well-developed system of tribunals and appeals and that is what happened in this particular case.

The gentleman concerned, having received legal advice on the Island, was content that his appeal be dealt with in the UK and he voluntarily went to the UK. If he had not gone voluntarily, I do not quite know what the answer would be, to be perfectly frank.

The Chairman: That being on the basis that the original port of entry was the UK. If it had been the Republic of Ireland, what would be the consequence?

The Attorney General: I think it is exactly the same provision. The Refugee Convention, I think it is the Dublin Convention, recognises that a person’s first, as it were, claim should be in the country where he or she first arrives, so if he or she had come to Dublin then the case should be dealt with in Dublin and, hopefully, the Irish authorities would agree to take back the person from the Isle of Man, but there is always an uncertainty as to whether a country would agree to take them back.

The Chairman: And the fact that we operate under the UK Immigration Act and not the Irish Immigration Act, would there be any differences with that situation?

The Attorney General: I think the Refugee Convention, a treaty to which the UK, of course, is a party, that Convention would dictate that the person should be dealt with in Ireland, in your example, and the UK would encourage that.

Mr Watterson: Is this perhaps something then that we need to tighten up on from the Isle of Man perspective? If a man turns up in a fishing boat in Port St Mary harbour and says ‘I claim asylum’, you do not know where that individual has come from. Are they therefore treated as claiming asylum in the same way as if they arrived at Dover?

The Attorney General: The position is, as I understand it, that there are ongoing discussions with the UK authorities at the moment and it is hoped that the UK will recognise that they have the primary responsibilities for dealing with asylum cases. Ironically, Mr Chairman, this is a case where the UK are almost attributing statehood to us and we are saying, ‘No, we are not a state,’ which is quite the opposite to what normally happens.

Mr Watterson: So you agree that applying for asylum in Port St Mary is the same as applying for it in Dover for all legal intents and purposes?

The Attorney General: Well, it should be, if we have a good relationship with the UK.

Mr Watterson: Well, that is something that may need a little more clarity.

The Attorney General: It needs to be clarified and we are working on that.

The Chairman: Just on a final point. People with criminal records coming for employment to the Isle of Man, the Control of Employment Regulations flag this up as a matter to which regard shall be had, but of course we know that routine checks, pre-employment checks, are only undertaken in respect of individuals intending to work in certain categories with vulnerable people, children and so on.

There was the recent publicity a few weeks back, of course, persons working here from other parts of Europe under the Control of Employment Act. Of course, there was no knowledge of previous criminal records. In your view what is the answer to that situation? Would it be pre-employment checks routinely of everyone as part of the work permit application?

The Attorney General: I think, sir, in an ideal world there should be far better liaison between the Isle of Man authorities and the UK authorities in relation to antecedents of all sorts of people coming to the Isle of Man, not only those who come for employment. There should be a far better system of checking and barring and so on and I would like to see a network of memoranda of understanding between say, the Police here and the Police in the UK, probation services in the Isle of Man, probation services in the UK, to prevent the very things that you have highlighted. It seems to me that that is only sensible and is in compliance with Human Rights.

The Chairman: For that to work in a comprehensive manner would require, would it, residency legislation, not simple employment legislation which can potentially deal with it? If we were to cover everyone, as you suggest, it really needs residency legislation, with existence of criminal records as a barrier to anyone coming to settle in the Isle of Man?

The Attorney General: It is perhaps difficult to invent a proper long title for such an Act, but I agree with the principle. You would have to find a good long title for it, but yes, some good domestic legislation enabling better exchange of information between the authorities here and the authorities elsewhere I think is very sensible.

The Chairman: Within the Common Travel Area, would

it be important to have consistency in other parts of the Common Travel Area for that to work?

The Attorney General: Yes, that would be the essence of a memorandum of understanding and as a level playing field amongst the countries.

The Chairman: Mr Gill.

Mr Gill: Could I ask: is there a model, a template where that memorandum of understanding system has actually been introduced and works effectively that you are aware of?

The Attorney General: I think there are one or two agreements in place with the Police authorities, but I am not sure of any others.

The Chairman: Mr Crellin. I must give our Clerk an opportunity to cover any points he feels we have not covered.

The Clerk: No I have not. I think you have covered all the valid points, thank you.

The Chairman: A final point?

Mr Watterson: A really quick one, then. Just a case of confirming my understanding that none of the UK laws that we are seeking to extend by the new Order in Council would confer on any person the right to work on the Island?

The Attorney General: No. That is my understanding that we have our own domestic legislation to deal with that. It is essentially, of course, to do with entry and the ability to remain in the Island.

The Chairman: Thank you, Mr Attorney. We do appreciate you giving your time to assist us and thank you very much for your very helpful comments this morning.

Thank you, ladies and gentlemen. That brings to an end the public session of this meeting of the Select Committee on Immigration. I would like to thank our witnesses and members of the public and the press for their attendance. Thank you very much.

The Committee sat in private at 12.14 p.m.