

**REPORT OF PROCEEDINGS OF
LEGISLATIVE COUNCIL**

**Douglas, Tuesday, 7th April 1998
at 10.30 a.m.**

Present:

The President (the Hon Sir Charles Kerruish OBE LLD (hc) CP), the Lord Bishop (the Rt Rev Noël Debroy Jones), Hon C M Christian, Messrs E G Lowey and J R Kniveton, Hon E J Mann, Messrs J N Radcliffe and G H Waft, with Mr T A Bawden, Clerk of the Council.

The Lord Bishop took the prayers.

Apologies For Absence

The President: Hon. members, we have apologies for absence from the learned Attorney-General and the hon. Mr Delaney.

**New Prison - Timescale For Construction
- Question By Mr Lowey**

The President: Now, turning to our agenda paper, we take first of all questions and I call upon the hon. member Mr Lowey to ask the question standing in his name.

Mr Lowey: Thank you, Mr President. I beg leave to ask a member of the Council of Ministers:

What is the timescale for construction of the new prison and is the project proceeding on time?

The President: The hon. Minister for Health, Mrs Christian, to reply.

Mrs Christian: Mr President, no timescale has yet been set for the construction of a new prison, as the options for either the redevelopment or replacement of the existing prison are still under consideration by the Department of Home Affairs. Until these investigations are completed and a final decision made, no meaningful timescale for the onward progression of the project can be set.

The most pressing requirement is the provision of a new segregation unit to replace the one that was closed last year, and a motion for approval to proceed with this scheme will be brought before Tynwald by the Minister for Home Affairs at this month's sitting.

Mr Lowey: Would the minister not agree that to be told that there is no timescale placed on this most pressing need for a new prison is really doing nothing for the image of the Isle of Man and perhaps must be flouting our international agreements on humane treatment of prisoners?

Mrs Christian: Mr President, I would not agree in the sense that everybody is very conscious of the facilities at the prison and the requirement to build a new prison. However, I think it is eminently sensible first of all to evaluate where and how the new facilities should be provided and then set out a timescale for providing it.

Mr Lowey: Would the minister not agree, Mr President, that we have been evaluating this particular position for a very long time and how long further do we need to go about evaluating whether we need a new prison or not?

Mrs Christian: Mr President, I think it would be fair to say that the current Department of Home Affairs has done more detailed work than any other department has in terms of establishing what the detailed facilities are going to be for the future and that department is very anxious to progress the matter expeditiously. It is conscious that the eyes of the world are upon us and with that in mind is working hard to progress this matter.

Members of Tynwald will be invited to a presentation on the new segregation unit. It may be at that presentation that they may be briefed on the regime that will be operated in the new prison.

Mr Kniveton: Mr President, can I ask the minister have we any idea at this stage what the estimate cost or the top cost of the new prison will be?

Mrs Christian: No, Mr President.

Mr Waft: Mr President, I wonder if the minister could tell us, apart from the new segregation unit, what professionals they have called in, the department, to establish the need for a new prison with regard to penal reform and rehabilitation and educational facilities for the future, so we do not put the inmates back in the community exactly as they went into the institution and hopefully there will be less turnaround, revolving door policy. What has been looked at to look at this position?

Mrs Christian: Mr President, as I understand it, the department has done detailed work on what they feel should be incorporated in the new prison in terms of providing a different and better regime than currently exists, and members will be briefed on that regime at a presentation later this month where there will be an opportunity for members to put questions.

Freeport - Question By Mr Lowey

The President: Moving on, hon. members, to question 2, I call upon the hon. member Mr Lowey.

Mr Lowey: I beg leave to ask a member of the Council of Ministers:

- (a) What steps are taken to promote and develop the freeport; and*
- (b) when are new buildings to be erected there?*

The President: The hon. Dr Mann, Minister for Education.

Dr Mann: Thank you, Mr President. I am informed that the promotion of the freeport is primarily a matter for the operators, Freeport Properties Limited. The Department of Trade and Industry provides support by including details of the freeport's facilities in all of its publicity documentation, and enquiries received by the department are passed to Freeport Properties Limited for appropriate action.

As far as part (b) of the question is concerned, at the present time the department is in discussion with the operators concerning their request for a lease on the next phase of the freeport site. Any such lease will involve a commitment from Freeport Properties Limited to construct a new building or buildings on this site within a specified period of time.

Mr Lowey: Could I ask the minister, does he think it satisfactory that it should be left to the present lessees of the site to be promoting the growth at the freeport in so far as they have a certain number of buildings there which are already let? How can they then sell something which they have not got, except a greenfield site, and is it not right that the department should be actually encouraging, pressing, putting pressure on the people who have got the lease to expand and to fulfil that site with the potential that is there?

Dr Mann: In answer to the hon. member, as he will know, this structure was created by the government in 1987. It was a structure that they felt at that time was suitable for promoting this freeport into the future. There have been long and protracted negotiations with Freeport Properties Limited ever since 1996 to ensure the future development. In fact I think the hon. member was himself an initiator of the current negotiations. I understand they are getting near a satisfactory solution, so I would not like to refer to any timescale, but I understand that it is reaching a satisfactory conclusion.

Mr Lowey: In the light of that I will not pursue any more questions.

Computer Users - Millennium Bug - Question By Mr Lowey

The President: Question 3, the hon. Mr Lowey.

Mr Lowey: I beg leave to ask a member of the Treasury:

Is the Treasury satisfied that Isle of Man computer users are geared up to and capable of addressing the millennium bug in the time available?

The President: The hon. Mr Radcliffe to reply.

Mr Radcliffe: Mr President, I am grateful to the hon. member for bringing this topic to this Council's attention and thereby providing me with the opportunity to advise members and the business community at large of the need to translate the high level of awareness of this issue which currently exists into positive action, so as to avoid any detrimental effect of the year 2000 millennium bug on Island businesses that either use computers and computer-related equipment or deal with suppliers or customers that use computers.

This issue has recently had wide publicity in the United Kingdom where the businesses at greatest risk have been identified as the small to medium enterprises. Typically these are organisations employing less than 250 persons and into this category the vast majority of businesses on the Island fall.

The whole question of computer compatibility in the year 2000, or as it is known in the computer world Y2K, is so important to all businesses that I make no apology for giving the hon. questioner full and detailed response.

The ISSC, or Information Services Strategy Committee, which I happen to chair, were aware of potential problems as long ago as 1996 and took steps to initiate a working party to assess the implications and possible problems associated with Y2K.

The Treasury too recognise the risk and for the past 12 months the Treasury information Systems division - and I refer again rather than year 2000 to Y2K which is an easier way of getting round it - the project team associated with that has been promoting awareness of the millennium bug throughout both the public and private sectors. This has been achieved by holding seminars, giving radio interviews, issuing press releases, production of a free

information pack and providing an exclusive year 2000 millennium bug telephone helpline and the telephone number for that is, appropriately enough, 642000.

In addition the project team carried out a postal survey amongst Isle of Man computer users registered for data protection purposes. The survey was carried out in the last quarter of 1997 and was to assess (a) the types of computer operating systems and main uses; (b) the level of awareness; (c) the state of readiness; (d) any existing plans and projects and how advanced they were; and (e) identification of any assistance or support requirements. The results give the best indication of how computer users are geared up and capable of addressing this very important business issue.

If I can summarise the main findings, personal computer systems are used by 95 per cent of the businesses. Microsoft Windows is the most popular operating environment, used by 88 per cent of the businesses. The main uses for computers are word-processing and for accounting purposes. Two per cent of businesses had no awareness of the millennium bug issue. Ninety-six per cent of businesses were aware of the issue, with 24 per cent of those having heard of the problem, 41 per cent had a general understanding and 31 per cent had a full understanding. Only 29 per cent had checked on or intended to check on the awareness of their trading partners. This covers both suppliers and customers, and 15 per cent thought it unimportant to know this information. Only 31 per cent had completed an assessment of the impact of the year 2000 bug on their business; 30 per cent had plans in place to do an impact analysis but had not yet started; 24 per cent were not sure how to do an impact analysis, and 9 per cent had no plans to undertake such an analysis. Seventy-six per cent of businesses said, yes, so probably they did know what to do to solve their year 2000 problems. Fifty-nine per cent are relying on software suppliers to solve their problems. Thirty-four per cent stated that they will require no external assistance to resolve the Y2K problems. Twenty-seven per cent stated a definite, yes, they will need external help, and 35 per cent are unsure. Sixty per cent have not allocated any funding to fix Y2K problems. An encouraging 67 per cent of businesses have recognised the need to take action and this includes 8 per cent who have completed their year 2K fixes and 38 per cent who are or have commenced fixing their problems. Thirty-eight per cent indicated the need for technical guidance and support.

Although the survey indicates a high degree of awareness of the year 2000 computer data problems, most businesses have yet to address resolving the issue and it is in this regard that I must emphasise strongly that the computer millennium bug is not one that can be ignored. It is not just a hype, everyone talking about it and that is it. There is not and will not be any silver bullet, magic wand or fairy godmother that will appear just before midnight on December 31st 1999 to solve the problems. Failure to address the problem could have dire consequences and result in failure for some businesses if they just do not acknowledge that this is going to happen.

I would encourage all businesses who are not taking positive action regarding the millennium bug to place the topic high on their agenda and all company directors and business owners to take a leading role in ensuring that no time is wasted in determining the impact and effect on their business processes. They must ensure that corrective action is put in place well in advance of January 2000.

The Treasury Y2K project team will shortly be launching a new initiative to be called the Year 2000 Business Assurance Scheme. For a modest charge of £200 a trained assessor will,

using a computer software package, carry out a year 2000 computer health check on a business. The Treasury year 2000 project team have engaged the services of a number of local private sector computer and business consultants who have been trained as assessors. It is estimated that a three-hour consultation session will give the equivalent of three days' professional consultancy. The Treasury is underwriting the scheme because it believes that this issue, if not addressed, could have serious implications for Island businesses and I would again encourage all businesses to take advantage of the scheme which, it is planned, will commence before the end of this month.

The Treasury is therefore doing its utmost to ensure that the Isle of Man computer users are geared up and capable of addressing the millennium bug.

Mr Lowey: I thank the member of the Treasury, the hon. Mr Radcliffe, for his full reply. Could I ask him, in the light of the assistance, financial assistance, being given to small and medium-size firms in the United Kingdom, have I interpreted his reply right by saying that there is no financial assistance given to the small firms in the Isle of Man other than the technical knowledge and expertise to identify the needs of the business? In other words I believe in the United Kingdom last week it was announced that £97 million of new money was being set up in financial assistance to small and medium-size firms. Are there no plans for any financial assistance to assist small firms who are involved with computers? And I speak as an illiterate when it comes to computers.

Mr Radcliffe: Mr President, well, I too am not an expert on computers, I must say, but I can and have to say that there are at this moment no plans in mind for any direct cash aid for computer users. I think one has to acknowledge that the assistance which we are offering is not unreasonable and I think that the hon. questioner's figure of £97 million could well include the technical assistance rather than direct financial aid, and, as I said, the Treasury is doing its utmost to ensure that everybody is aware and able to take advantage of our computer division expertise plus the outside consultants which we have engaged and I honestly think that at this moment we cannot go much further with assistance to the private sector.

Mr Lowey: I congratulate the Treasury on the positive stance and steps that they have taken, Mr President.

Low Incomes Committee - Question By Mr Lowey

The President: Question 4, the hon. Mr Lowey.

Mr Lowey: I beg leave to ask a member of the Council of Ministers:

How many meetings of the Council of Ministers' Low Incomes Committee have been held and when is it due to report?

The President: The hon. Dr Mann, would you care to reply?

Dr Mann: Mr President, a report to the Council of Ministers' working party on low incomes was laid before Tynwald in October 1994. There has been no Council of Ministers' committee specifically dealing with low incomes since that date.

Mr Lowey: There is a committee meeting of the Council of Ministers, is there not, Mr President, that was set up just prior to the budget to look into low incomes and assistance? So we were told at the budget time.

Dr Mann: Yes, in answer to the hon. member's supplementary, it is a working party to examine the possibility of providing support to persons who do not qualify for social security benefits and who do not earn enough to pay tax. That is the working party that was set up in anticipation of the budget. The working party comprises the Treasury minister, the Minister for Health and Social Security, the transport minister, the Minister for Tourism and Leisure and the Minister for Trade and Industry. The working party has yet to meet and it is not possible at this stage to give a timescale within which it will report.

Mr Lowey: Is the minister satisfied that this area was acknowledged at the budget time even by the Treasury minister as an area that needed addressing with urgency, and to be told four weeks later, six weeks after it was set up, that it has not even met yet and there is no timescale for it meeting is a slap in the face for low-paid families in the Isle of Man?

Dr Mann: I accept the comment that the hon. member has finished his supplementary with. I did not say that there is no timescale on meetings, I said it was not a timescale on which it will report. But I entirely take the point that the hon. member has made and I will transmit his feelings to the members of the committee.

Mr Waft: Mr President, will the minister perhaps refer to the working party the essential reading of the Institute of Fiscal Studies' report on inequality in the United Kingdom and hence the Isle of Man on the widening gap between the rich and the poor and how this may be addressed in the future?

Dr Mann: I appreciate that the hon. member made these comments in another place during the Tynwald debate on the budget. They are very valid and certainly form part of the consideration.

Mr Waft: Thank you, Mr President.

Criminal Justice (Money Laundering) Bill - First Reading Approved

The President: We move on then, hon. members, to consideration of item 2 on the order paper and I call upon the hon. Mr Waft to take the first reading here of the Criminal Justice (Money Laundering) Bill.

Mr Waft: Thank you, Mr President. The Island already has legislation covering money laundering where the funds laundered are the proceeds of drug trafficking or are terrorism funds. This Bill extends the existing legislation in two respects. Firstly, it amends the Prevention of Terrorism Act 1990 to bring its provisions covering money laundering into line with those in the Drug Trafficking Act 1996. Secondly, it amends the Criminal Justice Act 1990 to create offences of laundering the proceeds of criminal conduct other than drug trafficking and terrorism. These provisions will be in line with those contained in the Drug Trafficking Act and the Prevention of Terrorism Act as amended.

The Bill will bring a consistent approach to the way in which money laundering is dealt with, regardless of the source of the funds being laundered. It will bring Manx law broadly into line with legislation on this subject in the United Kingdom. Similar legislation is to be introduced in the Channel Islands and it is also to be introduced or in some cases is already in force in the dependent territories. By bringing our legislation into line with other countries and territories, it will enable the Isle of Man to play its part internationally in combating money

laundering and will ensure that the Island is not misused by those who may be looking for somewhere to launder their ill-gotten gains.

There has been considerable consultation with the finance sector over this Bill. A draft was circulated to over 470 local businesses and organisations by the Treasury in September 1997 for comment. Thirty-four responses were received, the majority of which fully supported the objectives of the Bill. There are, however, some concerns expressed by some of those that responded. In the main those concerns revolved around the content of the codes and the need for industry involvement in their drafting, the need to adequately protect persons making disclosures under the legislation, and the lack of specific exemption in relation to laundering the proceeds of criminal offences involving tax evasion. This latter point was considered in detail and at length when the Bill was being drafted and it was determined that no exemption should be included.

The Bill relates solely to criminal law and any court proceedings' conduct must be proved beyond reasonable doubt. Those working in the business sector who comply with the proposed codes in good faith and apply best practice will have nothing to fear from this Bill.

Fraud and false accounting for the purpose of evading tax are covered by the Bill. The government is determined to discourage such behaviour and it is not proposed to exempt the laundering of the proceeds of any of the criminal offences covered by the Bill.

In conclusion, this Bill demonstrates the Isle of Man's continuing commitment to play a full part in defeating those who seek to launder the proceeds of criminal activities. Our legislation must be strengthened if the Island is to be recognised internationally as a centre of excellence. Other jurisdictions have reached the same conclusion, encouraged by international concerns and a general desire to thwart the efforts of the money launderers.

If this Bill is enacted the Island will comply with all the recommendations issued by the Financial Action Task Force, FATF, to combat money laundering and should then receive a clean bill of health from that body.

The FATF is a task force established by the world's Group of Seven major industrial countries, of which all the world's major countries are members and which meets regularly to exchange information and views on money laundering and to ensure adherence by its members to its code of conduct which is known as 'the 40 recommendations'.

The Bill has been drafted to strike a balance between meeting the Island's international obligations to combat money laundering but at the same time taking account of the more legitimate interests of the Island's finance industry.

Mr President, I beg to move that this Bill be read a first time.

Mr Radcliffe: I beg to second, Mr President, and in doing so I strongly support this Bill. One of the scourges of modern times is acknowledged to be money laundering and the associated activities, and strong and good legislation is required to beat it.

I suppose one can say that when dealing with money laundering you are dealing with people on the other side, our best brains gone wrong perhaps for whatever reason, but certainly one has to be very much aware that you are dealing with professionals, highly professional people, and we have just got to try and be on top of the game and beat them back.

As the hon. mover has said, in fact the Financial Action Task Force has certain recommendations of minimum standards required. This bill is going to enable the Isle of Man to comply with what is required. We are always striving and saying that we are a centre of excellence and in order to maintain that image we must support this Bill. I strongly support it, Mr President.

Mr Lowey: Could I ask, while I support the Bill, the idea of the Bill, who is going to enforce it? I see it is an extension really of the terrorism and drugs legislation which has been relatively successful. I do not see any cost. If the Bill is not expected to increase public expenditure, then if it is going to be enforced, I do not see how it is going to be enforced for nothing and as it is going to be complicated I would have thought it would have been money well spent, but it says we are not going to spend any more money. So that gives me the first thing: are we passing the legislation without the wherewithal to enforce it?

Secondly, would we have the same problems, because a lot of business is done internationally now and we are part of an international chain, would we be able to enforce this legislation with all countries who are members of - and forgive me if I pronounce it wrong - the FATF organisation which we aim to be in or is it just countries that we have special arrangements with? And because of our international business that we are doing, are we able to get information from these other jurisdictions and is it vice versa, in other words they could get information from us? I do not see that anywhere mentioned in this particular Bill.

So while welcoming the principle, I would like to know who is going to enforce it and where is the cost element in it because it says the Bill is not expected to increase public expenditure, and secondly then, are the countries that we are able to work in co-operation with mentioned in any of the Bills?

The President: Any further points?

Mrs Christian: Mr President, I think that in this, as in many other Bills, it will be the financial institutions who are in the front line of enforcement, having the responsibility to check on where their funds are coming from as they currently deal in connection with laundering of other moneys. So that it is the people out there as opposed to. . .

Mr Lowey: But aren't they out there doing - could I, through you, Mr President?

The President: Hon. members, we are on the first reading and if there are no further comments I will call upon the hon. Mr Waft to reply.

Mr Waft: Thank you, Mr President. I thank Mr Radcliffe, the member for Treasury, for seconding the Bill.

White collar crime is particularly difficult to prove but this Bill will make it a lot easier for the people that have it on their doorstep, as it were, to try and pursue the perpetrators. This Bill will go some way towards evening their work out a little.

Mr Lowey asked who is going to enforce it. This does not envisage any increase in expenditure, but it will facilitate better co-operation between the countries who can enforce it and ourselves. We will, with the co-operation of the finance sector, try to make this Island as clean as it can possibly be. The FATF are the group which is worldwide recognised and we would like to be a member of it and this is one of the ways in which we can pursue that.

I think that is all I have to say on this, Mr President.

The President: Very well, I will put the resolution, hon. members, that the Criminal Justice (Money Laundering) Bill be now read a first time. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Criminal Justice (Exclusion Of Non-Resident Offenders) Bill - First Reading Approved

The President: Item 3, the Criminal Justice (Exclusion of Non-Resident Offenders) Bill and I call upon the hon. Dr Mann to take the first reading.

Dr Mann: Thank you, Mr President. This Bill will enable the criminal courts in the Isle of Man to order that offenders who are not resident in the Island shall be excluded from the Island for a specified period and it follows the recommendations of a committee who looked into a petition of grievance.

It confers the powers on courts to impose an exclusion order on a person who is convicted of an offence for which custody is a penalty. Under an exclusion order the person to whom it applies is prohibited for a period of five years from being in or entering the Island.

It does of course have considerable limitations. It does have the limitations that are imposed on the Island by international obligation. So an order cannot be made in respect of residents, Isle of Man workers, juveniles or persons with close family ties in the Island.

Although it is of limited application, when it is capable of being used it will be a positive additional power given to the criminal courts in this Island.

I beg to move the first reading of the Criminal Justice (Exclusion of Non-Resident Offenders) Bill.

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

Mr Lowey: Could I ask the hon. mover, does this comply with international law in the sense that if we take it upon ourselves to exclude non-residents, criminals, do other countries have the right to do the same thing, in other words export their problems? Because that is really what they do when you actually deport somebody from one jurisdiction into another. Doesn't the other recipient country have to accept the deportee and what happens if they say no?

Dr Mann: The hon. member is quite right in the latter part of his statement that in fact we could not exclude to a country that is not prepared to accept the individual who would ordinarily be a national of that country.

As we go through the clauses of the Bill it becomes quite clear that in fact exclusion is not an avoidance of the criminal facing up to the realisation of his offence here, because there is provision for the offender to serve his custody first in the Isle of Man and then be deported or excluded. So in fact they do not avoid their commitment of custody but would then be excluded after that, but this will come out in the clauses stage.

I know it will show the limitations but I was careful to say there were considerable limitations. But one can see in certain circumstances this will be a very positive power to have available.

The President: Right, may I put the resolution, hon. members, that the Criminal Justice (Exclusion of Non-Resident Offenders) Bill be now read a first time. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

**Agriculture And Fisheries (Miscellaneous Provisions) Bill
- First Reading Approved**

The President: Item 4, I call upon the hon. Mr Kniveton to move the first reading of the Agriculture and Fisheries (Miscellaneous Provisions) Bill.

Mr Kniveton: Thank you, Mr President. The Agriculture and Fisheries (Miscellaneous Provisions) Bill 1998 consists of only six clauses which incorporate some important changes and a few minor amendments which are necessary and of use to the Department of Agriculture and Fisheries.

Firstly, this Bill makes it an offence for any individual or body corporate to make false statements in order to obtain any benefit from any of the department's schemes.

One very important part of this Bill deals with amendments to the Sea Fisheries Act 1971. This displays the change from three miles to 12 miles in our territorial limits and, most importantly, this clause replaces UK delegated powers to issue sea fishing licences and will allow us to take responsibility and control of our 12-mile limit.

This clause also increases the maximum fine from £10,000 to £50,000, reflecting that we do have a problem with the salmon poaching which we have been experiencing for some time in the department, and this amendment will give greater power to the sea fishery officers.

There is also an amendment to the Wild Animals Act 1980 concerning alterations to legislation so as to facilitate the importation of wild animals, I suppose specifically for the film industry.

The final change involves the Animal Health Act 1996 where limited adjustment has been found necessary, following recent subsidiary legislation, to meet our international obligations in the transporting of animals. Here, where it was referred to previously as livestock, this is amended so as to deal with the welfare of all animals rather than just those currently covered under the word 'livestock'.

This Bill is not expected to affect government expenditure or income.

I therefore beg to move the Bill be read a first time, sir.

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

Mr Lowey: Could I just pass comment? It does seem extraordinary in the extreme that we are now making it an offence to - how is it put? - knowingly or recklessly make a false statement for getting assistance. Has it never been an offence to make a false claim to the Department of Agriculture prior to this particular Bill? It does seem an amazing inclusion of a clause, making it elementary, if you make a false statement to claim, you are guilty of an offence. I would have thought you would have been guilty of an offence if you had done that in the past, never mind. I find it strange, so perhaps the mover could highlight that for me, please.

The President: Are there any points that the member would wish to raise? Would you care to reply, Mr Kniveton?

Mr Kniveton: Yes, thank you, Mr President. I do have to agree with Mr Lowey on this point. 'False claims' is the title of the subject he has raised and it does seem odd that suddenly this is appearing when, as he says, it would normally have been taken for granted that false claims were a problem. So, yes, I will mention it and take it up with the department and see what their reaction is to that.

Mr Lowey: I am grateful to the hon. member.

Mr Kniveton: Thank you.

The President: I will now put the resolution, hon. members, that the Agriculture and Fisheries (Miscellaneous Provisions) Bill be now read a first time. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

In the absence of the learned Attorney-General, hon. members, item 5 on the agenda paper will be held over until the next sitting, and that concludes our public business for this day. The Council will now sit in private.

The Council sat in private.