

**REPORT OF PROCEEDINGS OF  
LEGISLATIVE COUNCIL  
Douglas, Tuesday, 10th February 1998  
at 10. 30 a.m.**

Present:

The President (the Hon Sir Charles Kerruish OBE LLD (hc) CP), the Attorney-General (Mr W J H Corlett), Mr B Barton, Hon C M Christian, Mr E G Lowey, His Honour A C Luft CBE, Hon E J Mann, Messrs J N Radcliffe and G H Waft, with Mr T A Bawden, Clerk of the Council.  
*The Chaplain of the House of Keys took the prayers.*

**Apologies For Absence**

**The President:** Hon. members, we have apologies for absence from the Lord Bishop and from Mr Delaney, and you will be pleased to know that Mr Delaney is making slow but steady progress in hospital.

**Financial Legislation And Regulation In Crown Dependencies -  
Meeting Re Review - Statement On Behalf Of The Chief Minister**

**The President:** Now, hon. members, I have given permission to the hon. Dr Mann, the Minister for Education, to make a statement on behalf of the Chief Minister at this point.

**Dr Mann:** Thank you, Mr President. I am grateful to you for giving me the opportunity of making this statement to the Council.

I am sure hon. members will be aware that on Wednesday of last week the Chief Minister visited Lord Williams of Mostyn at the Home Office. He was able to relay to Lord Williams his concerns and the concerns expressed by members regarding the lack of prior consultation with the Isle of Man by the United Kingdom Government concerning the proposed review of the Island's financial regulation framework and the way the review was made known to the Chief Minister and the Island authorities generally.

Lord Williams has confirmed that the Home Office genuinely regrets any implied discourtesy to the Isle of Man Government and has stated clearly that it was not the intention of the United Kingdom Government to neglect the normal arrangements of consultation. Lord Williams has given a full explanation of the constraints placed upon him by the requirement not to publicise details of a parliamentary question in advance of such a question being answered in Parliament. He has also explained the background to the early notification of the Lieutenant-Governor, by which it was intended to provide some initial information to enable the Isle of Man Government to prepare a response to the announcement. The Chief Minister explained to Lord Williams that the consequence of this step was to place officers in an invidious position and could have been interpreted as an implied lack of confidence in the Island's elected representatives. Lord Williams has acknowledged our views on the subject and has agreed that the usual cordial relationship between the Home Office and the Isle of Man Government is in the interests of both jurisdictions and should not be allowed to suffer as a result of the misunderstandings in this instance which should be avoided in the future.

As far as the proposed financial review itself is concerned, the Chief Minister had an opportunity to meet informally with Mr Andrew Edwards, who is to conduct the review. Whilst the Chief Minister was present at the Dependent Territories Association conference, about which I will comment in a few moments, officials of the Home Office introduced Mr Edwards to him and he confirmed our already stated willingness to participate fully in the review. The

logistics of the review are still to be arranged and Mr Edwards will visit the Island in due course when the details are finalised.

The Dependent Territories Association conference provided a valuable opportunity for the Chief Minister and other representatives from the Island to hear at first hand the United Kingdom Government's current thinking in relation to its dealings with its overseas territories and to hear the responses of representatives from many of those territories. Perhaps the most significant aspect of the conference was the speech by the Foreign Secretary, Robin Cook, in which he gave details of the various areas in which it was felt enhancements can be made to the relationship between the UK and its overseas territories. Hon. members may be aware that foremost amongst these were his remarks concerning those territories which have offshore financial sector industries, such as Gibraltar, Bermuda and the Cayman Islands. The Foreign Secretary identified the wish of the United Kingdom Government for these territories to work towards achieving regulatory legislative and fiscal control arrangements that meet standards recognised by the international community as safeguarding the reputation and probity of those industries. In giving details of his checklist of effective controls, the Foreign Secretary identified areas which are already integral to the monitoring of financial sector business undertaken by our own regulators.

It is, of course, the case that the Isle of Man Government is not a dependent territory but a Crown dependency. Nonetheless, any assessment of our own regulatory framework, conducted according to the criteria established by the Foreign Secretary, would, I believe, confirm the rigorous and effective controls that have been in place for some time in the Isle of Man and which have always been the policy of the Isle of Man Government to adopt and apply.

Hon. members, the events of recent weeks, the announcement of the review without prior consultation, the notification of the review and the subsequent dialogue with the Home Office have been an unfortunate blip in our otherwise cordial relationship with the United Kingdom Government. The Chief Minister is confident that his discussions with Lord Williams have provided a clear understanding of the Isle of Man Government's disappointment at recent events, and the Chief Minister believes that he has cleared the air to allow for a resumption of the previous relationship. The Edwards review will proceed in due course and, as has always been the case, the Isle of Man Government will participate fully in this review, by which our comprehensive and robust legislative and regulatory measures can be acknowledged. Thank you.

**Mr Lowey:** Could I ask two questions of the minister, please? I notice the word 'cordial' has been used on, I think, three occasions in the speech; I think 'cosy' perhaps might be a better adjective to use, and I am afraid we are going to get back into a cosy relationship. Could I ask the minister if the Chief Minister, when he was down, actually asked the Home Office, when if ever had the Island breached any confidential or sensitive information that had been forwarded to the Island, and why should it have been assumed that it would happen on this occasion? I think that is a reasonable question to pose, and was it posed? And when the minister said in the Chief Minister's speech there that officers could have been placed in an invidious position, I think the verb there should not be 'could'. They certainly were placed in an invidious position, and again I think which has been played down, even if we are generous and assume that the Chief Secretary, because of his connection as Government Secretary, had a role to play, it still does not. . . and it has been played down, the invidious position that other officers who have a prime responsibility to their ministers were placed in because of the chain

reaction, and I do not think that has been satisfactorily explained, or what happens if it happens next week or this week? I know last week we were told that you were looking at the situation. Has anything happened, apart from looking at it, and has any action been taken?

**The President:** Reply, sir?

**Dr Mann:** Well, of course, first of all I was not present so I do not know what actually was said to Lord Williams. I entirely agree with you that officials were placed - not could be but had been placed - in an invidious position. I think, as a result of the consultations, it does appear that there was a genuine misunderstanding of the true relationship, and how that arose I do not think we really have got an answer to. I think there is a clear understanding that this must not happen again, in the the way in which it happened; I do not think there is any doubt about that.

**Mr Barton:** Mr President, I wonder if the minister could tell me, in the light of the comments re the Foreign Office statement by Robin Cook and the transcript which we have had copies of, have the Council of Ministers had time to examine and discuss that part? One talks about the Foreign Office and dependent territories and the Home Office which we come under as a Crown dependency - do they get a feeling there was going to be a merging arrangement so in fact we will all come under the same umbrella?

**Dr Mann:** Well, if I can answer the last part first, I do not think there is any intention of all coming under the same umbrella - that is, I think by umbrella you mean a department of the United Kingdom Government.

**Mr Barton:** Of the Foreign Office.

**Dr Mann:** I think as a result of the Dependent Territories Association conference it became evident that the action taken in relation to the dependent territories such as ourselves and Crown dependencies was a desire to achieve the same levels of competence within the financial sector of both groups. I think that is possibly a way of looking at how the situation developed. In fact, really, that could be the only way of explaining how the situation developed. I think the other aspect which possibly we may have found some difficulty in understanding was the fact that apparently the Speaker of the House of Commons has taken great exception to a public answering of a question before a question was asked in the House of Commons, and it seems that it was this - or this is the explanation given to us - was why there was not an earlier and wider consultation before the question was answered in the House of Commons.

**Mr Lowey:** A bit thin though, isn't it?

**Dr Mann:** Well, I had best not pass a comment on that -

**Mr Lowey:** Why not?

**Dr Mann:** - but you have passed a comment, I think!

**Mr Barton:** Again, could I come back, the first point was about the Council of Ministers -

**Dr Mann:** No, we have not had a full assessment of Robin Cook's -

**Mr Lowey:** Could I ask the minister, have you taken steps to rectify the ambiguity, if that is the right word, of the present Civil Service Act which defines the role of the Government Secretary, and if not, why not, and what happens if it happens this week or next week?

**Dr Mann:** Well, I think there is no doubt at all that the way in which this had been done on this occasion will not be repeated by the Home Office.

**Mr Lowey:** Until the next time.

**Dr Mann:** It will not be repeated by the Home Office, so we are assured.

**Mr Lowey:** And I will repeat it again, till the next time.

**Dr Mann:** And the position of the Chief Secretary obviously has got to be looked into and is already being looked into, to see how this split functioning can be handled in the future.

**Mr Lowey:** Could I ask by whom?

**Dr Mann:** Well, by the Council of Ministers.

**Mr Lowey:** Collectively or a committee?

**Dr Mann:** At the moment, collectively.

**Mr Lowey:** I am trying to pressurise you, but with urgency, please!

### **Companies (Transfer Of Domicile) Bill - Third Reading Approved**

**The President:** Thank you, hon. members. We move on, then, to the agenda paper and I call upon the hon. Mr Radcliffe to take the third reading of the Companies (Transfer of Domicile) Bill.

**Mr Radcliffe:** Thank you, Mr President. Could I just remind hon. members that at the clauses stage, the last sitting of this hon. chamber, one or two points were raised which I undertook to clarify at this third reading stage.

The first point which was raised referred to the mention in the Bill, the Companies (Transfer of Domicile) Bill, of the Banking Act, which has not been yet passed and indeed has got its first reading later on this morning in this chamber. The advice that I am given is that the intention that the Bill, when enacted, will have the effect which it is originally intended it will. . . . If it is going to have the effect that it is intended it will, it will be necessary for the 1999 Banking Act to be in force. However, the legislative draftsman further commented that there is scope for the Bill to operate even if the Banking Act is not in force or indeed if it is not even passed. The Companies (Transfer of Domicile) Bill can operate, but clearly it will be better for the two items of legislation to come into operation at the same time. So even if the Companies (Transfer of Domicile) Bill stands alone, it will still be able to fill the function that it is intended.

The second point referred to at the clauses stage referred to a company's continued listing on a foreign stock exchange if that company moved to the Isle of Man. I am advised that if the foreign law does permit a transfer, then it is felt that the position of the company within the stock exchange of that foreign jurisdiction must be a matter for the authorities and the law of that jurisdiction. The law of the Isle of Man, of course, can have no jurisdiction in respect of compliance and other requirements in the law of a foreign jurisdiction. There has been no attempt, nor indeed was the draftsman asked to attempt, to make the scheme of the Bill consistent with the law of any jurisdiction outside of the Isle of Man. So they will still have to abide with restrictions, requirements, whatever, from the domicile that they move from to the Isle of Man.

I hope that these observations satisfy the queries which were raised, and if I could say that this Bill is promoted by Treasury to introduce into the Manx law a facility by which companies meeting certain criteria will be able to effect a transfer of their domicile to the Island from another jurisdiction, and indeed the Bill provides for the reciprocation of this action. And I would say again that the eligibility to take advantage of this facility has been made very narrow, as it is intended to be aimed only at public companies whose securities are listed on a recognised stock exchange and their subsidiaries. So we are, as I said earlier on, at second reading stage talking about a relatively small number of companies being attracted and the intention of the Bill, as I said then, is to attract quality not quantity.

The Bill forms part and parcel of Treasury policy to widen and diversify the financial and corporate base forming the make-up of the business sector of the Island, and since it is

intended to be selective in its operation, it is generally welcomed as an initiative which will have its own small part to play in helping the Island position itself as a jurisdiction of quality in the competitive international marketplace in which we do operate.

Mr President, I beg to move that the Companies (Transfer of Domicile) Bill 1997 be now read a third time and do pass.

**Dr Mann:** I beg to second.

**The President:** Does any hon. member wish to speak to the resolution? If not, I will put the resolution that the Companies (Transfer of Domicile) Bill be now read a third time and do pass. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Bill read a third time.

### **Banking Bill - First Reading Approved - Second Reading Approved**

**The President:** Turning next to the Banking Bill, I call upon the hon. member Mr Radcliffe to move the first reading.

**Mr Radcliffe:** Thank you, Mr President. I will be very brief in this first reading. This is a Bill which is intended to consolidate with amendments Acts relating to banking. The Bill makes fresh provision with respect to the regulation of banking business. There are certain amendments to enactments relating to the regulation of investment businesses. The Bill amends enactments relating to companies and the Bill amends the law relating to the bills of exchange, and there are various other connected purposes which I will go into in greater detail at a later stage. Mr President, with those brief remarks, I would move that the Banking Bill be read a first time.

**Mrs Christian and Dr Mann:** I beg to second.

**The President:** Now, are there any comments on the first reading? If not, I will put the resolution, hon. members, that the Banking Bill be now read a first time. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Now, the hon. member has indicated to me that while the Bill is down for first reading, he would be happy to take the second reading but hold over the clauses until the next sitting of the Council. In that case, would you move the suspension of standing orders?

**Mr Radcliffe:** Yes, Mr President, thank you very much. I beg to move:

*That Standing Order 22(2) be suspended to enable the second reading of this Bill to be taken.*

**Mrs Christian:** I beg to second.

**The President:** Is that agreed, hon. members?

**Members:** Agreed.

**The President:** Thank you. Hon. member, would you proceed then, sir, with the second reading of the Banking Bill.

**Mr Radcliffe:** Thank you very much. I am greatly obliged to Council, Mr President. But if I can endeavour to explain the intricacies of this Bill at this second reading stage, it is of knowledge that a sound banking industry is crucial for the future of the Isle of Man if it is to remain successful as an international finance centre. The Island's regulatory and business standards have so far stood the test of time and are well regarded by the international community. However, in order to ensure that our standards remain effective and meaningful, we must take heed of international developments and, where appropriate, change our system to meet the changing environment. It is with this in mind that the Financial Supervision Commission first introduced the possibility of a new Banking Bill as long as two years ago.

The Bill is not radical in its approach and indeed the majority of the provisions within the Bill simply repeat the existing provisions. We are, however, doing what is necessary to bring the powers into line with international standards and the environment we foresee. It is not solely about preventing or avoiding bank failure but ensuring that we can participate fully in cross-border supervision, as promulgated by the Basel Committee of International Banking Supervisors. Failure to adhere to these standards and co-operate with other regulators in the major countries could jeopardise our ability to do business with them and in their markets. By the time this Bill becomes law, as I said, at least two years will have passed since the minimum standards for supervision of international banks were formally adopted at the international conference of banking supervisors, and this was in 1996.

This Bill is needed to enable the Island to fulfil its commitments and maintain its reputation as a well regulated jurisdiction. The financial supervision commenced the consultative process on the new Banking Bill in September 1995 when a first consultative document was issued on the principles to be addressed by the Bill. This received the broad support of the industry and as a result, a second consultative document was issued in April 1997 which included a draft of the Bill itself.

A variety of submissions were received by the financial supervision, 22 in all, and they were broadly supportive. They did also raise a small number of more minor issues, many of which have been taken on board in the final Bill which is before us today. So it is fair to say, I think, that the Bill carries and enjoys general support from the financial services industry in the Isle of Man.

The Bill has been designed to serve three purposes. It introduces new provisions in order to take on board the global lessons learned as a result of recent international banking problems, and one can give, for example, BCCI and Barings. The Basel Committee on banking supervision, which is the leading body for international banking regulation comprising members from all G10 countries, into which the Isle of Man is affiliated, has made a number of recommendations designed to strengthen regulatory systems, thus making international banking groups safer for deposits. The Isle of Man wishes to play its part in this world initiative, so that the Island's community can safely flourish in a sound and up-to-date regulatory environment. The Bill also updates provisions which currently exist in the Banking Act 1975, which is being repealed by this Bill, provisions which have over the course of time become outdated or have proved less effective than originally envisaged. The Bill also consolidates provisions which are currently contained in several pieces of legislation with the aim of making one piece of legislation more user-friendly, I guess one would say, for the practitioners in the market place.

The Bill, as I said, repeals and replaces the Banking Act 1975 and it covers various aspects of banking business: regulatory and supervisory powers, auditors and reporting, accountants, compensation, the right to review, fraudulent inducement or provision of false information to the financial supervision. And there are modifications within the Bill to other legislations: the Bill of Exchange Act 1883, the Financial Supervision Act 1988, the Investment Business Act 1991, and one or two miscellaneous changes to the Company Acts. It is a far-reaching and wide-reaching Bill. It is a consolidation instrument. I am happy to go into more detail for hon. members at the clauses stage and I would beg, sir, to move that the Banking Bill be read a second time.

**Dr Mann:** I beg to second.

**Mr Lowey:** I would hate the hon. member to feel that he was not wanted this morning, when he got his first reading without a comment! Perhaps the mover would like to tell us why the delay in the Bill from another place, because of what I would best describe as the Manx cheque saga? I was not really particularly perturbed about it until I saw the rumpus that came from that and they actually made me feel that I had become a nationalist, because whereas I started off lukewarm with supporting that particular clause, I became a red-hot supporter of the clause. And when he says the bankers are happy with the Bill, that should make us consumers, customers, perhaps a little chary and a bit wary, because if the bankers are happy, then the consumers - it means that their business, which is a very thriving business, could very well be at risk. So I am not too over-enamoured of that, and perhaps when he moves the clauses stages he could tell us where these amendments that came from the advisory committee are actually being put in place, so we could look at how they have amended the original Bill to what is before us now. I am a little prone, now that the Bishop is not with us this morning, to quote the Bible, but when the mover talked about the practitioners in the market place, I am reminded of the moneylenders and how they were dealt with in biblical times. They did not amend the Banking Act to meet the needs of the bankers of the day, they turfed them out of the temple.

**Mr Luft:** Mr President, it would be very useful for members in considering the clauses stages if the hon. member were able to give us, whereas the Bill is largely consolidating, those provisions which do make amendments to the present law. That would be most useful if he at this stage, or whenever the hon. member is able to do so, could give us that information.

**Mrs Christian:** Mr President, I would just comment in the light of the remarks made by the hon. member Mr Lowey and say that I think in terms of this Bill we should not see the bankers and customers being on opposite sides. I think we should see them being on the same side, because it is detrimental to the banks to operate in a regime which is not properly regulated, and any self-respecting bank recognises that, so I think that we ought to -

**Mr Lowey:** As long as it is in favour of the customer, yes.

**Mrs Christian:** I think as long as it is in favour of the jurisdiction maintaining its reputation for proper regulation; that is the area we should be concerned about and I think that the changes in this Bill are aimed to strengthen that particular regime.

**Mr Lowey:** It has been two years in gestation.

**Dr Mann:** I obviously support a Bill that is going to bring banking regulation up to date. Perhaps the mover could just indicate whether the system of regulation more or less by instrument was part of the original Banking Act that is now being replaced, because there is a vast amount of power under this Bill that is not within the Bill. The power is in clause 10, which sets out the ability of a commission to regulate on about 10 or 11 areas by regulation, and we sitting here have no idea what that is going to be. Presumably they would come before Tynwald for approval before they became law. I cannot see that actually in the Bill.

**Mr Barton:** Through you, Mr President, I think it is actually in the amendments which were covered in the other place.

**Dr Mann:** So it has been observed in another place!

**Mr Waft:** Just going on from that, Mr President, I wonder if the mover might have a look at the number of times the word 'may' comes up with regard to the regulatory codes and not 'shall'; and also, with regard to the compensation, 'may' comes up again - for instance, 'may be able to establish a fund for which

compensation. . . ' Perhaps he might clarify why they have not gone so far as to say 'will' make regulations or 'shall' make regulations et cetera? The word 'may' be perhaps a little bit mild.

**The President:** Mr Attorney?

**The Attorney-General:** Mr President, by way, hopefully, of information to hon. members, the existing legislation which concerns the licensing of banks is that which is the Banking Act 1975, and when one looks at section 3 of the Banking Act 1975, that section is in fact very similar to the wording of the new Bill insofar as it is an offence for any person to carry on a banking business unless an application is made to the commission for the grant of a licence and that licence is approved. That, I think, is the basic regime which is preserved in this new Bill, so to that extent there is no radical departure from the existing law. It is certainly true that the commission has the power to impose conditions upon the grant of a licence, and perhaps one development in the new Bill is that the commission is given the power to modify the conditions and to withdraw the licence. It is also true that the existing legislation does impose duties on the commission but also grants various powers. There is a combination of duties and powers throughout the existing law which is also reflected in this new Bill. For myself, I do not think there is any radical departure from those basic principles.

**The President:** Would you care to reply, sir?

**Mr Radcliffe:** Thank you, Mr President. I am obliged, and could I just thank the learned Attorney-General for his comments there? As he has said, there are no radical departures from what is in law at the moment. This is a consolidation instrument with certain amendments. It is not changing things around altogether. The question of whether the wording is permissive or demanding - the word 'may' rather than 'shall' - I will endeavour to clear that up for the hon. member at a next stage. It is always a fine line somehow or other in members' minds as to what may be done or what shall be done, and I accept and in fact I have commented in the past on odd occasions on similar wording, but I will endeavour to clear for the hon. member the reason why it is in this particular Bill.

The hon. member Mr Lowey and the delay - it was held back in another place to enable proper discussions to take place on the question of Manx wording on cheques. Fairly amicable meetings were held which I attended. The bankers had certain reservations whether, like myself, the tellers were unable to say what it said on a cheque actually, if it was said in Manx, but the bankers have accepted that cheques do go through now in Manx with no problem. There are explanatory leaflets which are available and have been made available to banks which set out the formal wording for £10, £100, £20 and the particular date. So the bankers are not too perturbed - not as perturbed, it would appear, as the hon. member is.

**Mr Lowey:** I can only go by what I have read.

**Mr Radcliffe:** Well, one should not always take too much notice of what is in the media; however, that is just an aside. I will be happy to point out, for the hon. member Mr Lowey's benefit, and indeed other members who have commented, where the amendments are in this Bill and I will highlight those when we come to them in the clauses stages.

His comments about biblical times - well, we live in modern times and we have just got to get on with things.

I am obliged to hon. member Mrs Christian: bankers and customers are on the same side, and indeed what we are doing with this Bill is maintaining and enhancing our reputation in the international market, showing that we are up to date and forward thinking with this particular Bill.

I am obliged to our hon. friend Mr Luft on my right who supports the Bill, but again, as I have said to the hon. member Mr Lowey, I will point out the changes, sir, as and when we come to them.

The hon. member Dr Mann has commented about clause 10 but that has been picked up in the other place, and on the amendment sheet which we have before us it has been amended that regulatory codes should be laid before Tynwald as soon as practicable after they are made and if Tynwald at that sitting at which the regulatory codes are laid or at the next following sitting fails to approve them, the regulatory codes will cease to have effect, so Tynwald is certainly involved. I hope that reassures the hon. member on that point.

I think, Mr President, I have answered the various points which have been raised and I would beg to move, sir, that the Banking Bill be read a second time.

**The President:** Hon. members, I will put the resolution that the Banking Bill be now read a second time. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Hon. members, that concludes our public business this morning. The Council will now sit in private.

*The Council sat in private.*