

**REPORT OF PROCEEDINGS OF
LEGISLATIVE COUNCIL**

**Douglas, Tuesday, 19th May 1998
at 9.30 a.m.**

Present:

The President (the Hon Sir Charles Kerruish OBE LLD (hc) CP), the Attorney-General (Mr W J H Corlett), Hon C M Christian, Messrs E A Crowe, D F K Delaney J R Kniveton, E G Lowey, Hon E J Mann, Messrs J N Radcliffe and G H Waft, with Mr T A Bawden, Clerk of the Council.

Introduction Of New Member, Mr E A Crowe

The President: Hon. members, in keeping with tradition, with the sitting of Tynwald to follow, prayers will be taken in Tynwald.

Now, the first item on our agenda, hon. members, is the introduction of Mr Edward Alan Crowe who, having been duly elected by the House of Keys, has been sworn a member of the Council by His Honour the First Deemster and Clerk of the Rolls. I therefore invite Mr Crowe's sponsors to conduct him into the chamber.

Mr Radcliffe and Mr Waft conducted Mr Crowe into the chamber.

Mr Radcliffe: Mr President, we have the pleasure of introducing to you Mr Edward Alan Crowe, the newly elected Member of the Legislative Council.

The President: Sir, in extending the warmest of welcomes to you this morning on behalf of the members of the Council, may I offer my congratulations on your election by the Keys and, in keeping with that practice, I ask you to accept a copy of our standing orders as I now invite you to take your seat and express the wish that you will find your service both rewarding and enjoyable. Congratulations.

Mr Crowe: Thank you, Mr President.

The President: Please be seated, hon. members.

**Financial Supervision Commission - Members' Directorships -
Question By Mr Lowey**

The President: Now, we have one question, hon. members, for oral answer and I call upon the hon. Mr Lowey.

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

- (a) *Does Treasury consider it acceptable to have a senior member of the Financial Supervision Commission accepting directorships while in office; and*
- (b) *what guidelines on policy are there for such officials on taking directorships, et cetera, during or immediately after their employment within the government?*

The President: The hon. member to reply.

Mr Radcliffe: Mr President, although the hon. member does not mention any names, the question clearly refers to the recent press coverage given to the forthcoming appointment of Mr J E Noakes as a director of NatWest Offshore.

In the interests of openness Mr Noakes notified the Chief Minister, the Minister for the Treasury and the Financial Supervision Commission of his forthcoming appointment as a director and the imminent announcement of that in the press. This notification was made now, although he is not due to take up his position until October of this year. Because notification has been given now, the Financial Supervision Commission has been able to take steps to ensure that no conflict of interest arises from Mr Noakes. Another non-executive commissioner has been appointed to be the person responsible for any matter or discussions about NatWest Offshore which would previously have been referred by the FFC officers to Mr Noakes.

The Treasury is of the opinion that Mr Noakes is to be congratulated on his openness and honesty in his dealings with the commission. He is not due to take up his post until after his employment ceases. In the meantime, everyone knows that he will be appointed a director and so all steps necessary and desirable have been taken to ensure that no conflict of interest arises.

Whilst employed by the Financial Supervision Commission it is a condition of employment - and this is in part (b) of the question - that staff do not engage in any other occupation, profession or business work for any other company or persons without first obtaining the written consent of the chief executive or, in the case of the chief executive, the chairman of the commission, and any consent given may be withdrawn at the chief executive's or the chairman's discretion. There is also a policy for Financial Supervision Commissioners to declare any conflict of interest - and this is normal, of course, anyway - and withdraw from discussions and meetings. Mr Noakes is a commissioner as well as chief executive, so the policy does apply to him, and his interest in NatWest Offshore has been declared.

A guidance note has been issued by the Council of Ministers to assist members of statutory boards in discharging their responsibilities, and the hon. member, of course, will have seen this. This, of course, only applies whilst there is a contract between government and the individual. The only provision applying after employment within government has ceased is the Official Secrets Act and this would provide a legal remedy if any former employee of government who is bound or had been bound by the Official Secrets Act made any public disclosure of knowledge gained as a direct result of their employment. Thank you, Mr President.

Mr Lowey: Mr President, can the member for the Treasury confirm that Mr Noakes sought permission before accepting the directorship and, while I note the member says these are the rules that are applying at the moment about people not taking directorships only on matters of security, is it a desirable practice that the Chief Executive of the Financial Supervision Commission, which is a very, very sensitive decision, should in fact be engaged in the financial business in the Isle of Man immediately upon retirement? I think it is highly undesirable. I do not doubt his honesty and his sincerity and as for openness, well, I do feel there is no-one questioning the openness, but is it right? I believe it is not right.

Mr Radcliffe: Mr President, to the best of my knowledge Mr Noakes did let the commission know, before it became public, that he was to be a director. Whether it is a

desirable practice or not, I would say that perhaps it is not but this has happened. One has got to say that a person of Mr Noakes's experience is too valuable a person to be allowed to go to waste when retired and it is only natural that he should be sought for other posts.

Mr Lowey: Mr President, another supplementary because the member for the Treasury really did not answer the question that I posed - 'did he ask permission before he actually applied? - not that he actually told them after he has got the job; therefore there is a contradiction there and, no matter how polite we are, whether he is a good man or not, I think it is the public perception. If this was happening elsewhere we would be sniffing the air.

The President: The question, hon. member.

Mr Lowey: The question, Mr President, is, does the Treasury think it is acceptable practice? As basic as that!

Mr Radcliffe: Well, as I said in my answer, Mr President, the Treasury accepts that this has happened and the gentleman concerned is to be congratulated on his openness, and that is the best I can say, really, on this one. I am not a member of the Financial Supervision Commission and to the best of my knowledge and belief he did let the commission know.

Mrs Christian: A supplementary, Mr President. Does the member for the Treasury consider that it was entirely inappropriate of any body in the financial sector approaching a member of the Financial Supervision Commission whilst he was still in office? The hon. member may wish to comment on whether it is also appropriate that the Financial Supervision Commission should then have to take steps to ensure that no conflict of interest arises, and would he not concur that that should not have to have happened?

Mr Radcliffe: I agree with the hon. questioner, Mr President, that it was perhaps inappropriate but, as I said, the gentleman concerned is too valuable a person not to be chasing.

Welcome Back To Mr Delaney

The President: Hon. members, before proceeding to the next item on the order paper, I wish to extend the warmest of welcomes to Mr Delaney, back in his accustomed place. (**Members:** Hear, hear.) Delighted to have you back, sir, and we missed you in our deliberations and it is a pleasure to have you join us once again to advance the work of this Court.

Mr Delaney: Thank you, Mr President and my colleagues. I appreciate the concern and the letters and communications of goodwill to me, and I see you have been decorating while I have been away. Mr Kneale will not like this! (*Laughter*)

Police Powers And Procedures Bill - Third Reading Approved

The President: Now, hon. members, we turn to item 2 on the order paper and I call upon the learned Attorney-General to take the third reading of the Police Powers and Procedures Bill, and I can inform you that there will be no amendment tabled to it. The learned Attorney.

The Attorney-General: Thank you, Mr President. In the course of my summary of the Bill in this third reading I will endeavour to respond to the specific enquiries from hon. members which were held over from the second reading. I would also, Mr President, like to thank you for allowing the reading to take place today, by this special arrangement, and I

should also like to thank hon. members for their keen interest in this long and often difficult Bill. Their questions have been a great assistance to me in my consideration and preparation for the Bill.

Part I of the Bill, as we have seen, dealt with the power to stop and search persons or vehicles. A police officer was empowered to stop and search a person or vehicle found in a public place or in any other place which is not a dwelling house to which people have access. The police officer must, however, have reasonable grounds for suspecting that the search will reveal stolen or prohibited articles. A senior police officer may authorise all persons and vehicles in a given locality to be stopped and searched over a period of 24 hours if he believes that incidents involving serious violence may take place in that locality. This authority may be extended if it is considered expedient to do so. Clauses 4, 5 and 6 within part I were added to the original Bill and give power to the police to stop and search persons or vehicles leaving or entering the Island through a port or aerodrome. The power to stop and search must be authorised in writing by an officer of the rank of inspector or above who believes that a person is unlawfully at large or a serious arrestable offence has been committed on or off the Island and the person who committed the offence will attempt to leave or enter the Island as the case may be, or that property which obtained from such an offence will be removed from or brought into the Island. This part also enables the police to set up road checks and provides that the chief constable's annual report shall contain information about the use of powers of stop and search and of road checks.

Part II of the Bill enables a police officer, if authorised by a warrant issued by a justice of the peace, to enter and search premises and seize and retain anything he finds which is relevant to the purpose of the search. Before a justice of the peace gives the necessary authority, he must be satisfied that there are reasonable grounds for believing that a serious arrestable offence has been committed and there is material on the premises which is likely to be of substantial value to the investigation of the offence and is likely to be relevant evidence. Safeguards are contained within this part of the Bill to ensure that the powers of entry and search are not exercised oppressively. Moreover, a special application must be made to a deemster if a warrant is requested in relation to searches for items which are subject to legal privilege or for other sensitive material. A police officer is empowered to enter and search premises without a warrant if it is for the purpose of arresting persons, recapturing persons unlawfully at large or for saving life or limb. An officer may also enter premises occupied or controlled by a person who has been arrested in order to search for and secure evidence.

Part III clarifies powers of arrest. It defines what is meant by an arrestable offence and prescribes the conditions on which a person, other than a police officer, may exercise a power of arrest and those on which a police officer may arrest a person. It also deals with the taking of fingerprints, the information to be given to an arrested person and the power to search an arrested person. Clause 30(4) refers to recordable offences. A question was raised by an hon. member as to what offences were likely to be within the definition of recordable offences. As to that, it seems likely that the department will introduce regulations similar to those which were introduced in England by the National Police Records (Recordable Offences) Regulations 1985 as amended. In essence, the regulations prescribe that offences punishable with imprisonment are those which are likely to be recordable offences. There were some additional offences which were added, such as offences contrary to the Telecommunications

Act 1984 and the Road Traffic Act and then, subsequently, the Malicious Communications Act and the Criminal Justice Act. All these are Acts of Parliament but the equivalent Acts of Tynwald will similarly be categorised as recordable offences.

Part IV of the Bill makes new provision for the conditions and duration of detention of persons at police stations. It is made clear that a person cannot be kept in police detention other than as provided for in this part. If there are no grounds for detaining a person in custody, he must be released without bail unless there is need for further investigation of any matter or proceedings may be taken against him, in which case he must be released on bail. Police stations which are used for detaining arrested persons must be designated for that purpose. At least one custody officer is to be appointed for each designated police station. The duties of the custody officer in respect of arrested persons who have not been charged and of those who have been charged are prescribed, as are the responsibilities vested in the custody officer to ensure that detained persons are correctly treated. The detention of persons in police detention must be reviewed on a regular basis and the different times at which reviews must take place are prescribed both in respect of arrested persons who have been charged and those who have not been charged. A person who has not been charged shall not normally be kept in police detention for more than 24 hours. A senior officer may authorise a person who has not been charged to be detained for a further period of 24 hours and the High Bailiff may extend further the period that a person can be detained. The maximum period for which a person can be held without charge is 96 hours. A person who has been charged must be brought before a court as soon as possible after being charged if he is not released on bail, and clauses 50 to 52 deal with the release of persons on bail after being charged.

Part V deals with the questioning and treatment of persons who have been arrested and are in custody at a police station. Provision is made for searching persons detained by the police. Clause 58 deals with intimate searches and re-enacts and expands the provisions of the Criminal Justice (Intimate Body Searches) Act 1994 which is to be repealed. An arrested person has the right to have a friend or relative informed of his arrest. In exceptional circumstances the exercise of this right can be delayed for up to 36 hours on the authority of a senior officer. Additional provisions exist for children and young persons. An arrested person may consult an advocate privately if he so wishes. Again, the exercise of this right can be delayed for up to 36 hours in exceptional circumstances. A duty advocate scheme is to be established to enable legal advice and assistance to be available to arrested persons who are held in custody. The hon. member Mrs Christian raised a question about financial qualifications and, in so far as that is concerned, there will be no particular financial qualification. If a person is in custody he is entitled to the benefit of legal advice from advocates manning the duty advocate scheme without reference to his financial qualifications. A provision is made for the tape recording of interviews with suspected persons and the circumstances in which a detained person's fingerprints can be taken without his consent are set out. Clause 65 sets out the circumstances in which an intimate sample may be taken from a detained person and clause 66 deals with non-intimate samples. There are supplementary provisions about fingerprints and samples which have been taken from arrested persons, and clause 68 requires such fingerprints and samples to be destroyed if the person from whom they have been taken is subsequently cleared of the offence for which he has been arrested.

Part VI covers the situation where a person has been charged with an offence and, upon being questioned and a caution, he fails to mention any fact which he relies on in his defence and which he could reasonably have been expected to mention when he was so questioned. Clause 70 makes it clear that the court may draw such inferences from the failure as appear proper. Again, where a person is being tried in court, the court or jury, in determining whether the accused is guilty, may draw such inferences as appear proper from the failure of the accused to give evidence or to answer any question. Furthermore, if in the course of his investigations a constable arrests a person and that person fails or refuses to account for the presence of a particular distinguishing object, substance or mark which indicates that the person arrested has been involved in the commission of an offence, then the court or jury may draw such inferences from the accused's failure or refusal as appear proper. The constable must tell the accused in ordinary language what the effect of his failure or refusal will be. Similarly, if a person fails or refuses to account for his presence at a particular place at or about the time when an offence was committed, a court may draw such inferences from that failure or refusal as appear proper.

Part VII provides that the department shall introduce codes of practice dealing with the exercise by police officers of their powers under the Bill and generally with regard to their exercise of statutory or common law powers. Any order or code must be laid before Tynwald for approval. If a police officer fails to comply with any provision of a code which is approved, then he is liable to disciplinary proceedings. The codes will be the same as the codes issued by the Home Office under the Police and Criminal Evidence Act 1984 of Parliament.

Part VIII deals with miscellaneous and supplementary matters.

Mr President, with that summary of the main provisions of this Bill, I now move that this Bill be read a third time and do pass.

Mrs Christian: I beg to second, Mr President, and recognise that, though there have been some concerns about the Bill, I believe it represents a sensible way forward. The proof of the pudding will be in the eating for those who are concerned and no doubt, if it does not turn out to be interpreted in the way that most of us anticipate it will be, I expect that there will be changes forthcoming, but at this stage I believe we need to express faith in the police force and the powers that they are being given and the way in which they will exercise them. So I am happy to second, Mr President.

Mr Waft: Mr President, my main concern is to do with the way in which those who suffer from psychiatric illness or learning difficulties are treated by the prosecution service and those difficulties, perhaps, are not covered in the Bill. Whilst I appreciate that this Bill does not cover procedures within the prison service, I am particularly concerned as to the possibility of those who fall under this category when placed in a remand situation. Sir Montague Levine was appointed coroner covering the death of a paranoid schizophrenic who died in Belmarsh prison after being transferred there from a hospital cell. The psychiatrically ill prisoner had been arrested on 1st November and he died in custody, whilst awaiting trial, on 26th November 1995. He had no previous convictions and the alleged attempted burglary was that he was in effect trying to gain entrance to his girlfriend's home. The coroner, at that stage, made several recommendations. He was concerned to find that there was no information passed between the prison and the DHSS the whole time the prisoner was in prison and he was only on remand. He was critical of the magistrates who failed to order psychiatric reports.

He also called for simple guidelines for the removal of prisoners from medical cells to strip cells, especially with regards to positional asphyxia. He also highlighted the need for a review of the communication procedures between the police and the courts and the DHSS when dealing with psychiatric patients.

Given our own situation here on the Island, care in the community will limit the number of psychiatric beds available within a secure environment. A health care management team within the prosecution service is of vital importance. However, I have been given assurance that the codes mentioned in clause 75 will be closely following the amended codes of practice as applied in the UK. The department will consider any representations made to it and will allow deficiencies to be addressed before these codes are implemented. I will be examining those codes with interest and make representations if necessary.

In view of that fact I believe that an amendment at this stage will not be necessary. However, I would ask the Attorney if some clarification might be possible as the rights of a responsible person to make a complaint on behalf of a person who is in police custody. Thank you, Mr President.

Mr Lowey: Mr President, I am far from happy with the Bill, as members know from my opposition throughout, and I think this is a very important piece of legislation and I concur with the hon. member of the Council, Mrs Christian, when perhaps my fears may, hopefully, be confounded in the practice. Having said that, I do not think we should be enacting law on hopes when we should be writing them down. This Bill was introduced by the learned Attorney and I think one of his opening remarks was that he wanted this Bill to bring certainty, that into an area where there was uncertainty. It is my contention, far from bringing certainty it will, because of its interpretive nature, bring more uncertainty. Where the existing judges rules have been accepted practice and are generally known, these new procedures will be bringing, as I said, uncertainty to the practitioners, namely the police.

The major clauses have been highlighted and presented to us as a safeguard for accused people in custody in police stations. I have to say, on examining the clauses as we have done, we find that every one of them has escape clauses. I have to say that even this morning the learned Attorney said the maximum time you can be held by the police is 96 hours. Well, whatever the length of time is makes no difference, because clause 82 says the police can hold you as long as they like. As long as they do not do it maliciously they have not committed an offence, and therefore there are no penalties against them. So what sort of safeguard is that to somebody being accused and being held? It is very worrying and of course we have only got part of the picture. The learned Attorney has pointed out that a lot of these troublesome and awkward areas will be dealt with by regulations and orders that will then have to be examined in Tynwald. Well, we all know, if we are honest, that clauses and regulations do not get the close scrutiny that legislation gets from the branches. So that is worrying. And this Bill is not unique in that, but it does highlight the difficulties of this particular Bill and the trust we are now having to place in the operating people, the prosecutors.

Now, I have said at the start, this is all about balances and rights and getting them right between the accused and the police authorities and, as far as I am concerned, the police have a duty and they need our support. That is why I am protesting at this, not to prosecute the police but in defence of the police.

I regret that this Bill did not get a very detailed examination in another place, partly due, I am sure, to genuine attempts by the department by seminars to inform members with the officials being present. That is a worrying development in the government of today, that a lot of it is not being done on the floor of the chambers but behind closed doors at seminars and I understand the reasoning for that. In a complex world we need to get the facts as best we can. However, I also think in this instance there is a nervousness by the body politic that you cannot or should not publicly challenge the police.

Orders and regulations, as I have said, do not as a rule receive the detailed examination that Bills get. This Bill was a very long time coming, a sure sign of apprehension by those who will have to practise it and implement it. The Bill is a potential instrument of conflict between the police and the policed and, while I congratulate the learned Attorney on the scholarly and gentlemanly way in which he has piloted his first piece of legislation through this Council, I hope my fears are confounded and his optimism is rewarded. However, it is with regret that I will be opposing this final reading of this piece of legislation, because I do not think at the end of the day that there are enough safeguards and that the balance is swinging too much towards the police.

The President: Does any other hon. member wish to speak to the third reading? The hon. Mr Crowe.

Mr Crowe: Can I just ask the Attorney-General about the codes of practice? He mentioned they were going to be taken completely from the UK Acts, but would they be tailored to suit Isle of Man conditions? Would they be geared, in view of Mr Lowey's remarks, to look at our special conditions and the concerns that he has raised, so that we have possibly other safeguards built into them?

The President: Reply, Mr Attorney?

The Attorney-General: Yes, thank you very much, Mr President. I do wholly recognise that there is to be imposed in the police force a very high duty of care and a great degree of trust. Without complying with that duty of care and without honouring that trust the sentiments expressed by the hon. member Mr Lowey will no doubt come to pass. There is no doubt that the practitioners of criminal law on the Island, the members of the Manx Bar, will be looking carefully to scrutinise how this Bill is implemented in practice. If I may take one point slightly out of order, I would suggest that there is no nervousness on the part of the members of the Manx Bar to challenge police powers in an appropriate case, and of course the law reports are quite replete with reports of challenges of that kind.

I am very grateful to the hon. member Mrs Christian for her vote of confidence in favour of this third reading, and indeed the proof of the pudding will be in the eating.

In so far as the points raised by Mr Waft, the hon. member, is concerned, as I, I believe, indicated at the second reading, it is the intention that the codes will give some further guidance, and indeed essential guidance, as to how the Act will operate in practice, and we do have the codes of practice issued by the Home Office which were published in 1995. At this time there is work being carried out by the department with a view to implementing these codes with the necessary amendments to deal with Manx law, if I could just make that point in answer to the hon. member Mr Crowe. In so far as psychiatrically ill patients are concerned, the code does provide, in the English rules at any rate, that a juvenile or a person who is

mentally disordered or mentally handicapped, whether suspected or not, must not be interviewed or asked to provide or sign a written statement in the absence of the appropriate adult. That is the general rule unless certain exceptions apply. We know one of the common themes is that people may be interviewed and may be asked questions if there is reasonable suspicion or reasonable fear that the person concerned may do harm to himself or to others or if evidence is going to be tampered with or destroyed. So, subject to those saving clauses, juveniles and psychiatrically ill patients are specifically catered for in the codes of practice.

The hon. member Mr Waft has referred to the tragic case of the gentleman who died in custody whilst on remand. As the world becomes older it becomes wiser, and I feel and hope that the codes of practice will be updated as time goes on and as experience is gathered, and let us hope that the codes will keep up to date with best practice, both in the Isle of Man and in the experience in England and Wales and Scotland.

In so far as the points made by the hon. member Mr Lowey are concerned, again I entirely accept his concern. It is a concern. I have tried in the course of dealing with this Bill to give him some comfort. There must be a balance between rights and duties. In so far as escape clauses are concerned, clause 82 provides that certainly, if the time limits are exceeded by a small margin, then the police officer is not to be found guilty of a breach of the code or not to be held liable and negligent by reason of that fact alone, but one can imagine that if the police officer wilfully or deliberately or negligently overstepped the mark by, shall we say, half an hour up to an hour, then the element of bad faith is going to creep in and he will not be allowed to rely on the defence in clause 82.

I would urge hon. members to accept that this Bill does create some certainty. Without certainty there is the potential for misconduct on the part of the police and the rights of the prisoner or the accused person are likely to be prejudiced. I believe that this is the best way we can find to provide the balance which is required and in the circumstances, Mr President, I would move that the Bill be read a third time.

The President: Hon. members, I will put the resolution that the Police Powers and Procedures Bill be now read a third time and do pass. Those in favour please say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

*For: Mr Waft, Dr Mann, Messrs Kniveton, Radcliffe, Mrs Christian, Messrs Delaney and Crowe
- 7*

Against: Mr Lowey - 1

The President: With 7 votes cast in favour of the resolution and 1 vote against, I declare the resolution carried and the Police Powers and Procedures Bill read a third time.

Now, hon. members, before the adjournment I would simply like to congratulate the hon. Mr Crowe on his early participation in our discussions this morning, and we will now adjourn and the adjournment will be to Tynwald at 10.30. Thank you, hon. members.

The Council adjourned.