

**REPORT OF PROCEEDINGS OF
LEGISLATIVE COUNCIL**

**Douglas, Tuesday, 2nd March 1999
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), the Attorney-General (Mr W J H Corlett), Hon C M Christian, Messrs E A Crowe, D F K Delaney E G Lowey, 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 this morning from the hon. Mr Kniveton, who is off the Island on government business.

Villa Marina – Situation re Refurbishment – Question by Mr Lowey

The President: So turning now to our agenda paper and item 1, I call upon the hon. 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 present situation as to the refurbishment of the Villa Marina?

The President: The hon. Dr Mann to reply.

Dr Mann: Thank you, Mr President. The Department of Local Government and the Environment received a fax from Douglas Corporation just before 7 p.m. on the evening of 10th February 1999 stating that the corporation had decided to withdraw from the joint project. The Department of Local Government and the Environment made it clear that they did not accept that the letter represented a valid termination of the agreement. The two reasons given for seeking to terminate the agreement are delays in progressing the scheme and its excessive costs, and neither of these grounds stand scrutiny. The Department of Local Government and the Environment and the Department of Tourism and Leisure are presently finalising an appraisal exercise to identify the options for dealing with the Villa Marina. It is likely that this paper will be brought before the Council of Ministers within a month.

Mr Lowey: Would the minister not agree that the department gave an undertaking that they would be coming to Tynwald with a definitive answer on the future of the Villa Marina project last October/November and they gave a deadline for January, and yet in February when they got this fax they were behind schedule then, and yet nobody had been informed about the delay? Is that not to be regretted?

Dr Mann: Well, I am not associated with the details of the progress of this proposal. If what you say is true then, yes, it is regrettable, but there are so many things about this proposal that are regrettable that that would go almost into insignificance.

Mr Lowey: The minister says there is a paper to go to the Council of Ministers. When will it actually be coming to the public domain? If it is in the Council of Ministers it could go on again, this uncertainty, for how long after that? Is it going to be made public and do the public not have a right to know? This is an important site.

Dr Mann: All I can assure the hon. member is that as soon as decisions have been made within the Council of Ministers, I am sure that they will be made public. I will certainly take your message back to the Council of Ministers to see that that does in fact happen.

Mr Lowey: I thank the hon. member for his reply, sir.

Statistics Bill – Second Reading Approved – Clauses Considered

The President: Very well, we move on to item 2 on the order paper, and I call upon the hon. Mr Radcliffe to take the second reading of the Statistics Bill.

Mr Radcliffe: Thank you, Mr President. The Statistics Bill has three main purposes, and the first of these is to bring the legislation under which the Treasury carries out the decennial test up to date. The Revenue Returns Act dates from 1894; this is the one where data is collected for the decennial test. Over the years that Act has brought in considerable sums of money to the Isle of Man as it forms the basis for an addition to the revenue of the Island as an allowance for spending by tourists. That additional revenue presently stands at around £6 million per year. However, as may be appreciated, the Revenue Returns Act is now rather dated after 105 years and is in need of replacement.

The second major purpose of the Bill is to give the Treasury new powers to make co-operation by employers in the earnings survey compulsory. The earnings survey has been running since 1988 and has relied totally on voluntary co-operation by employers. Only around one half of the employers contacted in the private sector reply, and this has resulted, on occasions, in a major lack of confidence in the earnings survey, and that same lack of confidence has been expressed again. After careful consideration it has been decided that the best way to cut off this source of disquiet is to make co-operation by employers compulsory. Suggestions that the data are either presently available or could be made easily available through the tax and national insurance system are based on a serious misunderstanding. Neither of these administrative systems presently include either hours of work, split into basic and overtime hours, or earnings, split into overtime, premium payments and basic earnings, nor do the records indicate whether the employees' wages have been affected by absence or other factors. Neither income tax nor social security need or want this information to be included in their administrative systems, and to do so for the 36,000-odd people on the ITIP system, for example, would clearly be a far greater burden on the public and private sector than requiring the data for round about 16,000 people through a sample survey. By making co-operation compulsory it is expected that there will be a slight decrease in public administration costs and certainly no overall increase in the compliance costs borne by the private sector as the number of forms sent out will be drastically cut. In other words, you are looking for a pure sample.

The third purpose of the Bill is to give the Treasury new powers to collect other statistics subject to an order by Tynwald. This purpose has been included as it was thought unwise to introduce primary legislation with a strict restriction in the possible types of information to be

collected. There are no plans to use these additional powers at present or in the very near future.

The safeguards against disclosure by government of information and the penalties for failure to disclose information to government when requested in writing to do so are modelled on the provisions of the Livestock (Import and Export Statistics) Act 1996 and essentially, again, information can only be released in a form which would not allow identification of an individual employee or employer.

The proposals contained in the Bill were issued with consultation with the various private sector bodies, and I suppose it would not be unfair to say that they were not generally welcomed. However, it must be said that many of the organisations that expressed concern are amongst the most insistent on pressing for more information on the Manx economy and indeed this is what this Bill will provide. Little further to say at this stage, so I would formally move the second reading of the Statistics Bill 1998, Mr President.

Dr Mann: I beg to second.

Mr Waft: Mr President, I wonder if the member can clarify the situation with regard to the economic section of the Treasury. When they were seeking information from the private sector, 52 per cent did not bother to reply at all; it was only 48 per cent, in fact, actually who replied. If we are to seek out definitive information as regards, for instance, the wages of certain sections of the community, how then are we going to actually get that 52 per cent to make returns when the actual Bill only sets out for samples of the people who are going to be contacted? So that 52 per cent then may still not be making returns and you are only going to be judging it by the sample returns. Maybe the member might clarify that.

Mr Crowe: Mr President, just some points for clarification from the hon. Mr Radcliffe, please. I can see that the Bill does present a better way forward, giving some compulsion to companies to return information, but there must be a balance between getting legitimate information for statistical purposes and the danger of creating too much red tape, and I was pleased that Mr Radcliffe thought that there would be no extra costs on the private sector, because this was a concern that I had, that if there was going to be a lot more form filling it does put extra costs onto the private sector. But on to a specific, there does not seem to be a right of refusal by a company if it was an issue that concerned commercial confidence or client confidentiality, that a business would appear not to have a legitimate right to refuse this, and perhaps the member could just clarify that? And there does not seem to be any detail on having a time limit for the retention of the data and whether there is a time limit that is going to be imposed after which then all the information would be shredded or destroyed. Perhaps the hon. member could just comment on those issues?

Mr Lowey: I believe that the private sector, Mr President, under this Bill have only themselves to blame because of their reluctance over the years to actually conform to a voluntary code of conduct. Why is there this reluctance to disclose basic information, which they already have to disclose to the tax authorities anyway? My only concern is one of alarm, really, to hear the member in charge of the Bill saying there would be no extra charges and the Bill only provides for a sampling exercise to be undertaken when this Bill has been signalled as an all-embracing fact-gathering exercise. My hon. colleague said it is one of balance in this particular Bill. I wonder, are the mover of the Bill and the Treasury satisfied that the penalties

for non-compliance are satisfactory? The maximum that we have now is £5,000. That is about what we put on an individual for minor offences in the courts now and I just wonder whether he thinks that the penalties imposed on it send the right signals out of what he is trying to achieve, because if they could not get the facts and figures in on a voluntary basis over many years, does he think that this particular Bill, with its very watered down penalties in it, is going to achieve the end result, and are the government and the Treasury going to be in the same position as they were maybe two or three years ago?

The President: Reply, sir.

Mr Radcliffe: Thank you, Mr President. The hon. member Mr Waft mentioned the fact that over half of those people contacted did not reply to the sample surveys which have been undertaken in the past, and how will we get over this particular hurdle? Well, if it is going to be, as it is in the Bill, compulsory for people to comply, that question will not arise. It will not be one hundred per cent who are contacted, of course; there is a sample survey which will be taken, but those who are asked for their particular figures will have to comply. If I could revert to the hon. member Mr Lowey, the whole purpose of the Bill or this particular part of the Bill, is to get an accurate, accurate return.

Mr Lowey asked the question, why the reluctance to disclose? But I think you have got to acknowledge, when the earnings survey comes out, what you are getting, the better employers - no problem, the ones who are paying high wage bills. Some of the poorer employers, one has to say, are reluctant to disclose the information because their wages are low. The result is, when all this is totted up, you get this figure which is bandied around, who in the Isle of Man is earning x number of pounds per week? Seventy per cent of the population says, 'Certainly not me!' It may be higher than that, but that is one of the reasons why the whole figure is questioned all the time. As I say, your better employers happily oblige; the poorer employers are most reluctant.

The hon. member also mentioned about the penalties for non-compliance perhaps being too low, but I think this is one which is a standard figure, as I understand it, and Treasury certainly are happy that the penalty available is sufficient.

The hon. member Mr Crowe asked about compulsion and no right of refusal. Well, under the Bill there would be no right of refusal, but I think one has to say there will be a certain amount of discretion perhaps at our economics division if an employer says, 'Well, this is a major thing. I really cannot disclose this information.' I think there is a certain amount of discretion there on the odd rare occasion.

The question of confidentiality is not an issue because it is covered in the Bill in clause 3 that disclosure is an offence and the information which will come out of the survey will be unidentifiable as to the source. It will be a gross figure.

A time limit for data being kept - well, obviously we do not want to keep information to hand for ever, so there will be a trimming out of past data on occasions but I cannot give the member an accurate figure as to the number of years that may be involved. So I cannot reassure him, but perhaps at a subsequent stage I can gain that information for the hon. member. I think that has answered the queries raised, Mr President, and I beg to move the second reading.

The President: I will the resolution, hon. members, that the Statistics Bill be now read a second time. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Let us proceed now to clauses. Clause 1, sir.

Mr Radcliffe: Thank you, Mr President. Clause 1 confers on the Treasury the power to require information to be given to the Treasury, by persons carrying on an undertaking on receipt of a notice in writing from the Treasury and the information that may be required is given in schedule 1. At present the Treasury has powers under the Revenue Returns Act 1894 to require persons importing dutiable items such as spirits and tobacco to give details of these items during decennial test year, and this information is used to calculate the Island's share of revenue to be allocated in respect of visitors under the Customs and Excise Agreement. As I said in my remarks a few minutes ago, the allocation to the Isle of Man is presently around about £6 million a year. However, the Act being, as I said, 105 years old, it is decidedly dated and does not meet the modern-day requirements, hence the first purpose of the Bill before us is to replace the Revenue Returns Act 1894. Schedule 1 also includes various classes of information which would make co-operation by employers in the annual earnings survey compulsory.

Clause 1(3) allows schedule 1 to be amended by order of the Treasury to add or delete classes of information.

Clause 1(4) specifies that this order shall not come into operation unless it has been approved by Tynwald.

Clause 1 also allows the information collected to be released in statistical form, and this is specified in more detail in clause 4. I beg to move, sir, that clause 1 stand part of the Bill.

Dr Mann: I beg to second.

The President: We are dealing with clause 1 and schedule 1, hon. member?

Mr Radcliffe: Yes, sir.

The President: Does any hon. member wish to speak to the clause or the schedule? The hon. Mr Lowey.

Mr Lowey: Speaking to the schedule - I did not raise it at the first meeting - the schedule can be amended by the Treasury with the concurrence of Tynwald, but are the regulations to be submitted of a broad heading such as those outlined in schedule 1 or are they to be more detailed? If you take the first part of the schedule, 'the economic activity of an undertaking' - well, that seems rather painting with a broad brush. It means any activity, then, of any company - the information can be sought by the Treasury. So why the other three? I do not know, but any economic activity of a company can be asked for. Really, what I am saying is, is the order to be as broad-based as that or is it to be more specific, the orders that will flow from this? I know that it is an enabling part, but I really do think that we should know whether the detail is to be placed before Tynwald.

The President: Reply, sir?

Mr Radcliffe: Thank you, Mr President. I think that the language used in sub-clause (1) is a certain amount of legalistic language which covers every eventuality, or tries to, but the fact is that if an order is made by Treasury, I would say, from what my information is, it will be

specific. It certainly will not be a very broad thing, and of course every Tynwald member has the chance to have a say on what is or what is not in an order which comes before it. So if members feel that the question covered in an order is far too broad they have the option of refusing to pass that order for Treasury, and Treasury would have to go back and have a second think.

The President: Hon. members, I will now put the resolution that clause 1 along with schedule 1 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 2, sir.

Mr Radcliffe: Clause 2, Mr President, makes it an offence, subject to the defence of due diligence, to refuse to give information when required by the Treasury. Clause 2 also makes it an offence to supply false information, and the penalty for this offence is custody for a term of six months, though this has been amended in the other place anyway, or a fine not exceeding £5,000, or both. The scale of penalties both here and in clause 3 match those which are in the Livestock (Import and Export Statistics) Act 1996. The clause was amended in the other place and I beg to move that clause 2 as amended stand part of the Bill.

Dr Mann: I beg to second.

Mr Lowey: Can I just say, in his opening remarks to the second reading of the Bill, the hon. mover said that on occasion the survey results are not accepted by the broad church of the population of the Isle of Man; they are rather suspicious of the figures that have been gathered under the old. . . Will the member in charge be prosecuted under this particular clause, because can he recall any time that the Treasury figures have ever been accepted by anybody on the Isle of Man as a correct record of what is being paid? Have your £5,000 ready, Norman!

Mr Crowe: Mr President, could I just ask the hon. mover for clarification on a point I raised earlier, that what you were saying before was that it would still be a sampling exercise; it would not be a survey sent to a hundred per cent of a certain category of employer but, because it is now compulsory or will be compulsory to return the information, the information will be more accurate so it will still be a sampling exercise?

Mr Waft: Could I make a suggestion, Mr President, that the sampling exercise begins with the 52 per cent who have not put any returns in at all? It might be a better idea of what happening. Thank you, Mr President.

The President: Reply, sir.

Mr Radcliffe: Thank you. Well, the hon. member, Mr Waft - it is an interesting suggestion he is making there and it is one which could well be taken up, not for the 52 per cent but for, again, a part of them.

The hon. member Mr Crowe - I belaboured the point earlier on, that it is a sample only but, because it is compulsory, the figures given will be much more accurate and indeed the hon. member Mr Lowey touched on the same subject. False figures - well, I suppose that is going a bit far but certainly figures which are suspect have been issued over the years and we all know the comments which are made by certain sections of the community about these figures. Hopefully, when this Bill is law, figures will be accurate, or much more accurate at least anyway, because although it is an offence to supply false information - I do not know how

exactly how we are going to follow that one up to see whether it is true or false but we have to accept a certain amount of what information given as correct anyway - certainly the figures in the future will be much, much more accurate and will stand scrutiny. I beg to move, sir, that clause 2 stand part of the Bill

The President: Hon. members, I will put the resolution that clause 2 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 3, sir.

Mr Radcliffe: Thank you. Clause 3, Mr President, makes it an offence to disclose information obtained by the Treasury other than in the circumstances permitted by the Bill. This clause protects both the individual and individual undertakings from disclosure. A little more detail is given in clause 4. If data on an individual or individual undertaking is released without written permission from that individual, then the Bill will provide for an offence liable to a fine not exceeding £2,500 in the original Bill, but that has been amended in the other place, Mr President, to £5,000. I beg to move, sir, that clause 3 stand part of the Bill.

Dr Mann: I beg to second.

Mr Crowe: Mr President, could the hon. mover just clarify clause 3, sub-clause (1)(b), where it says the information submitted by an individual or an individual undertaking might lead to proceedings in a court and the information would be freely available? I am not sure if one follows the other, or would this be in a situation where incorrect information had been submitted or for some other purpose? There seems to be a wide discretion there as to companies giving information which might lead to court proceedings.

The President: Reply, sir?

Mr Radcliffe: I am at this stage unable to give the hon. member the full information he seeks there. I just wonder whether the learned Attorney is able to comment on that particular portion, Mr President, or not.

The Attorney-General: Mr President, my interpretation of that sub-clause is that if information has been supplied relating to an individual - and of course the general rule is that that should not be disclosed because it is confidential, and we know that necessarily the statistical information is on a broad brush basis and there is a suggestion that somebody has supplied inaccurate information in the return which has been required by the Treasury and the Treasury wish to enforce the section, section 2, then of course it would be necessary for the Treasury to disclose to the court precisely what the person had said and what he had disclosed in his return, and therefore, to that extent, for the purposes of the proceedings the information may be disclosed to the court.

The President: Hon. members, I will now put the resolution set out at clause 3. Those in favour of clause 3 standing part of the Bill please say aye; against, no. The ayes have it. The ayes have it. Clause 4, sir.

Mr Radcliffe: Clause 4, Mr President, specifies the manner in which information may be released by the Treasury. The disclosures must be in the form of summary statistics presented in such a way that identification of the individual person or undertaking supplying the information is unlikely. This is standard statistical practice and has been long since adopted by the Treasury. I beg to move, sir, that clause 4 stand part of the Bill.

Dr Mann: I beg to second.

The President: I will put the resolution, hon. members, that clause 4 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 5, sir.

Mr Radcliffe: Thank you, Mr President. Clause 5 provides for the prosecution of officers of bodies corporate in relation to offences committed by such bodies. I beg to move, sir, that clause 5 stand part of the Bill.

Dr Mann: I beg to second.

The President: I will put the resolution, hon. members, that clause 5 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 6, sir.

Mr Radcliffe: Thank you, sir. Clause 6 is a simple one. It requires the expenses of the Bill to be paid out of money provided by Tynwald. I beg to move, sir, that clause 6 stand part of the Bill.

Dr Mann: I beg to second.

The President: I will put the resolution, hon. members, that clause 6 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 7, sir.

Mr Radcliffe: Mr President, clause 7 provides for the interpretation of expressions used in the Bill. The definitions of 'export' and 'import' include trade with the United Kingdom. Clearly it is important to be able record movements of dutiable items between the Island and the United Kingdom for the purposes of the decennial test. The definition of 'undertaking' includes any undertaking by way of trade or business, whether or not the trade or business is carried on for profit. It also includes statutory bodies and local authorities. I beg to move, sir, that clause 7 stands part of the Bill.

Dr Mann: I beg to second.

Mr Crowe: Mr President, can I just ask the hon. mover for clarification? The Island now is an international exporter. We seem to be limiting it to reference to the United Kingdom, and for something such as the decennial test, where I can recognise that there has to be clear recognition of goods moving to and from the Isle of Man and the UK, but if trade is going worldwide and it is transiting through the UK, would this cause any difficulty with the decennial test?

Mr Lowey: Following along that line, Mr President, I, too, had picked that up that the definition is the UK. With the freeport, we do not have to go through the UK and I think of some of our companies like Strix, where 70 per cent of all their products go worldwide, there is not a continent that does not deal with it. Does the UK cover that?

Dr Mann: I am sure that both hon. members have failed to read the definition correctly. The export to the United Kingdom is included within the term 'export', which everybody understands.

Mr Crowe: Yes, Mr President, I accept that. I knew that was there, but I did raise this position of goods transiting through the UK.

Dr Mann: It would still be included.

The President: Reply, sir.

Mr Radcliffe: I am informed, Mr President, that there is no difficulty of this particular part of the Bill. I would say that there is no cause for concern by hon. members at all, and I would beg to move, sir, that clause 7 stand part of the Bill.

The President: I will put the resolution, hon. members, that clause 7 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 8 and schedule 2, sir.

Mr Radcliffe: Thank you, sir. Clause 8 repeals the Revenue Returns Act 1894 and its associated legislation as set out in schedule 2 to this Bill. I beg to move, sir, that clause 8 stand part of the Bill.

Dr Mann: I beg to second.

The President: I will put the resolution, hon. members, that clause 8 along with schedule 2 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Finally, clause 9, sir, short title and commencement.

Mr Radcliffe: Finally, clause 9 provides a short title for the Bill and enables the Bill to be brought into force by an appointed day order. I beg to move, sir, that clause 9 stand part of the Bill.

Dr Mann: I beg to second.

Mr Lowey: Could I ask the hon. mover why it is felt necessary to have this particular add-on where it says the order 'may be so appointed for different provisions and for different purposes'?

The President: Reply, sir.

Mr Radcliffe: Thank you, sir. In answer to the hon. member, I did point out in my original remarks at second reading stage that there could be an occasion in the future when Treasury decided that they wished to bring in some other form of legislation to enable statistics to be gathered. I did say that at the moment - if I can find the exact wording - 'there are no plans to use additional powers at present or in the near future', but it is there in the Bill just in case Treasury does decide at some time in the future that it needs more information.' I beg to move, sir, that clause 9 stand part of the Bill.

The President: I will put the resolution, hon. members, that clause 9 do stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. The ayes have it. Bill read a second time.

Dr Mann: Will he have the nerve. . .?

A Member: Go on, Norman!

Mr Radcliffe: No, Mr President, despite the sort of amorous advances, almost, of those on the other side of the table (*Laughter*) I have no wish to proceed with further readings of this

Bill today, sir. In fact, there is one question which I have undertaken to answer for the hon. member Mr Crowe at a future occasion and I am quite happy and content that the Bill should come on the normal agenda at the normal time.

The President: Thank you, hon. member. Hon. members, that concludes our public business for the day. Council will now sit in private. Thank you.

The Council sat in private.