

**REPORT OF PROCEEDINGS OF  
LEGISLATIVE COUNCIL**

**Douglas, Tuesday, 4th May 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 J R Kniveton, E G Lowey, Dr E J Mann, Messrs J N Radcliffe and G H Waft, with Mrs M Cullen, Acting Clerk of the Council.

*The Lord Bishop took the prayers.*

**Apologies for Absence**

**The President:** Hon. members, we have apologies for absence from our Clerk, Mr Bawden, who remains indisposed and to whom of course we extend our good wishes.

**Members:** Hear, hear.

**Work Permit Applications – Criminal Record – Verification – Question by Mr Delaney**

**The President:** Hon. members, we have on our agenda paper two questions for consideration and I call upon the hon. Mr Delaney.

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

*What attempts have been made to resolve the problems outlined recently by the Minister for Home Affairs which have been encountered by the Work Permit Committee in verifying claims made by applicants for permits to have no criminal record?*

**The President:** The hon. member of the Council, Mrs Christian, to reply.

**Mrs Christian:** Yes, Mr President. If I can I will try and clarify the situation with regard to the Work Permit Committee and access to criminal records as it stands at the moment. Schedule 2, part 1,4 of the Control of Employment Regulations requires the Department of Trade and Industry to have regard to any conviction for a criminal offence of an applicant for a work permit. This applies whether the conviction is on the Island or elsewhere, and an application for a work permit requires the individual to declare if he has a criminal conviction, advises the Rehabilitation of Offenders Act does not apply in the Isle of Man and requires a signed declaration from the individual to give permission for a police check of computerised criminal convictions under the provisions of the Data Protection Act.

The applicant's details are taken from the applications and forwarded to police headquarters to enable those checks to be undertaken. However, the Isle of Man Constabulary have access to the police national computer on which details of criminal records are currently held through the Association of Chief Police Officers. The access is for policing purposes.

The Association of Chief Police Officers have a policy on disclosure from police records which states, 'Police information should not be used except for the purposes for which it was

acquired and therefore should not be disclosed to persons in authority, however responsible, other than those concerned with police functions, unless the consideration of the public interest is sufficiently weighty to justify departure from this general rule.' This statement also conforms with one of the basic principles of the Data Protection Act that information can only be used for the purpose for which it was acquired.

The United Kingdom Home Office with the Association of Chief Police Officers drew up three criteria for defining when the public interest required disclosure against the normal presumption of confidentiality. These are national security, the protection of vulnerable members of society, the need to ensure probity in the administration of the law. All users of the PNC, including the Isle of Man Constabulary, must comply with these criteria when making disclosures. Clearly, therefore, no information on criminal records can currently be passed to the Work Permit Committee, although prospective employers who satisfy any of the above criteria will be able to request such information. No attempts have been made to change the situation with regard to access to the PNC.

However, in June 1996 the United Kingdom Government produced a white paper entitled On the Record, The government's proposals for access to criminal records for employment and related purposes in England and Wales. The major proposals outlined in the white paper were subsequently enacted in part V of the Police Act 1997, and the Home Secretary announced in December 1998 plans for the setting up of a Criminal Records Bureau. The bureau is to be run by the Passports Agency and will carry out criminal record checks and issue certificates for employment purposes.

Discussions have been ongoing between the Isle of Man and the Home Office since those proposals were made in order to ensure that the Isle of Man maintains and secures access to the centralised criminal records for police purposes, for vetting prospective employees of government and for vetting prospective employees in the private sector.

**The President:** A supplementary, sir?

**Mr Delaney:** Thank you, Mr President. I thank the minister for giving me that comprehensive reply. Could I ask the following? In the public interest, as she quoted from the answer, national security and the protecting of society, when all those cases apply, I would suggest, and I hope she would agree, to the Isle of Man, can she tell us how long it is going to be before some agreement on this white paper on the criminal records and the certification will be brought back in to protect the Island community against the influx of persons with criminal records, which is probably and possibly, and I am aware of at least one, happening at the moment?

**Mrs Christian:** Mr President, whether or not every application for a work permit raises issues of national security and protection for the vulnerable members of society is something which might be debated, I suspect, and obviously is debated in that the information is not released on every application that goes forward. However, I think that we ought to look forward to an improvement in the situation when the Criminal Records Bureau is up and running. This is anticipated to be within 18 months to two years from the December 1998 announcement. When that is established the Isle of Man will set up its own equivalent bureau, and this principle has been endorsed in the Island through the Council of Ministers. This does require primary legislation and it also requires the Rehabilitation of Offenders Bill to be accepted in the

Island. These are scheduled for next year's legislative programme and when these two agencies are up and running it will greatly simplify the issue of obtaining information about criminal records for employment purposes.

It will be necessary for the Work Permit Committee to amend their own rules and application forms and in the future it is envisaged that a person will be asked to obtain a certificate from the bureau setting out what the position is in relation to convictions.

**Mr Delaney:** Thank you for that second answer. One other supplementary if I may, Mr President.

**The President:** Certainly.

**Mr Delaney:** Thank you. The 18 months, I am sure the minister will agree, could be a difficult time for the Island, bearing in mind that with the work permits a major part is criminality, is being able to detect people who have criminal records. Could I ask this? In Britain a lot of people who are released from prison and also people who are convicted of child offences et cetera are looking for safe havens where they are not known by the general public. What are they doing or what can they do at the moment to make sure those people do not see a haven in the Isle of Man and come here to reside?

**Mrs Christian:** Mr President, I would suggest that if a person is likely to be employed in any area where their offence has a significant bearing, such as child offenders seeking employment in relation to work with children, then clearly the employer in those circumstances would be free to ask for the information from the police national computer, and I would suggest under the criterion of vetting records against the prospect of them being employed with vulnerable people would allow the information to be released.

**Mr Delaney:** Are we sure of that, Mr President, or is that just an assumption?

**Mrs Christian:** Mr President, I can think of no reason why it should not be if the employer clearly indicates that this person is going to be employed where there are vulnerable people concerned, whatever the nature of that vulnerability.

**Mr Delaney:** Thank you very much. Thank you, Mr President.

#### **External Relations – UK Government Interpretation – Question by Mr Waft**

**The President:** Question (2), the hon. Mr Waft.

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

*Is the scope of responsibility for the external relations of the Isle of Man a matter solely for the interpretation of the United Kingdom Government?*

**The President:** Reply, minister.

**Mrs Christian:** Mr President, in international law the United Kingdom is responsible for the Island's international relations and does speak on the Island's behalf. There are circumstances where the United Kingdom Government consults with the Island, particularly in relation to international agreements or where the Island has been invited to be represented at international meetings.

There is nothing to prevent the Isle of Man Government expressing a view on any external relations matter if it so wishes.

**The President:** A supplementary, sir?

**Mr Waft:** Mr President, would the minister agree with me that to delegate our external relations to a United Kingdom group of politicians elected by another country, interpreting their views on our behalf, irrespective of their political persuasions, is totally contrary to most people's view of our independent Island, also that it is, to say the least, discretionary, imprecise and should be reviewed from time to time?

**Mrs Christian:** Mr President, it is my understanding that where the Island has a view it wishes to express which is contrary to the United Kingdom view the United Kingdom are asked - and I have some examples that are in existence of this, our view is expressed to whatever party is concerned, notwithstanding the fact that it does not accord with the United Kingdom view on the particular issue.

**Mr Crowe:** Mr President, could the hon. minister just let us know in her opinion if she feels there is enough consultation between the government of this Island and the Home Office on major issues concerning the Island, and I would cite two examples: the forthcoming visit of the Financial Action Task Force and the ongoing OECD review?

**Mrs Christian:** Mr President, I would suggest that where the Council of Ministers feels that there is not sufficient consultation, then they seek that consultation.

As far as the Financial Action Task Force is concerned, there has been a communication about that and I do not think there is any inadequacy in the liaison where that is concerned.

In relation to the OECD, the hon. member will be aware that the Island has made strenuous representation with the Home Office in regard to that particular issue.

**Mr Waft:** Mr President, how many times in the past five years has our government made any comment or expressed our concern, for instance on the sale of United Kingdom arms to Indonesia, the Kosovo crisis apart from sending aid, and the reciprocal agreement on health and social services?

**Mrs Christian:** Mr President, I do not have the statistics available on how many times that has happened. I would suggest that where pronouncements are made on these international issues one has to be fairly careful that we understand fully the international complications which might arise from any comment that we do make, but it is not to say that we cannot if we choose to do so.

**Dr Mann:** Mr President, would the hon. member agree that at the moment no minister in the Council of Ministers is directly responsible for external relationships?

**Mrs Christian:** Yes, I would have to agree with that, Mr President.

**Mr Lowey:** Could I ask who is responsible then if there is no minister?

**Mrs Christian:** Perhaps I should modify that to say that if there is no minister, then clearly the Chief Minister has a role in this, but the Constitutional and External Relations Committee reports to the Council of Ministers.

**Mr Waft:** Mr President, our government is quite rightly is setting out our attractions as an international finance sector worldwide. Should we not, therefore, have the right to fight our case directly with regard to tax harmonisation with the OECD over their view that we are a tax

haven, or are we relying solely on the UK who have, in their own conflicts of interest, to act on our behalf?

**Mr Christian:** Mr President, in this instance we are making our own representations in relation to the OECD issue as well as working in conjunction with the UK, but the Isle of Man is making its own representation.

**Mr Delaney:** Mr President, the minister may recall some six years ago I made a call in Tynwald for the appointment as portfolio of one of the ministers to be given the direct responsibility for Europe and the external relations and at that time no move was made. Would she not agree with me that the time is more than appropriate for such an appointment to be made?

**Mrs Christian:** Chief Minister, I think that is a matter which Tynwald would probably want to take a view on.

**Mr Delaney:** It is the Chief Minister's actual portfolio at the moment which gives him the power to do so without going to Tynwald. Would you not agree with me?

**Mrs Christian:** Certainly I think it is. Well, I am not sure whether statutorily -

**Mr Delaney:** It is.

**Mrs Christian:** - a change in the law is required to enable another minister to be appointed.

**Mr Delaney:** The Chief Minister's appointment.

**Mrs Christian:** I would take advice from the Attorney-General on that.

**Mr Delaney:** We have got a spare Chief Minister already and there is a vacancy for another minister anyhow.

**Mr Waft:** Mr President, my last supplementary. The United Kingdom has agreed, minister, to give us a degree of external relations with regard to our competence, with the inclusion of ourselves in the British-Irish Council. Should we not be building on this relaxation in other areas perhaps?

**Mrs Christian:** The Island is following the developments of the British-Irish Council. I am not quite sure what the implication is of the hon. member's question. It will be interesting to see how its functioning within that Council sits with its representation through the Home Office and international affairs.

**Mr Waft:** Well, should we be looking at extending our external relations with regard to the crack in the wall, as it were, with regard to the British-Irish Council and perhaps we can see our way to furthering our external relations from the Isle of Man rather than from the Home Office?

**Mrs Christian:** Yes, Mr President, it will be interesting to see if the British-Irish Council does develop and we obviously can be party and players in that forum. It will be interesting to see how that sits with the constitutional position in relation to the UK representing the Island in external relations matters.

**Dr Mann:** Would the hon. minister agree that it is well within the competence of the Isle of Man to set up a network of representation in as many countries as it wishes, if it relates those to trade, business and relationship that do not involve international agreements?

**Mrs Christian:** I believe that to be the case, Mr President.

**The President:** Right, hon. members, that concludes our examination of questions and unusually this morning the bulk of our work is in private and in consequence the Council will now sit in private.

*The Council sat in private.*