

**REPORT OF PROCEEDINGS OF
HOUSE OF KEYS**

**Douglas, Tuesday, 23rd March 1999
at 10.00 a.m.**

Present:

The Speaker (the Hon N Q Cringle) (Rushen); Mr L I Singer and Hon A R Bell (Ramsey); Hon R E Quine OBE (Ayre); Mr J D Q Cannan (Michael); Hon H Hannan (Peel); Mr W A Gilbey (Glenfaba); Hon D North (Middle); Mr G T Cannell (Onchan); Messrs J R Houghton and R W Henderson (Douglas North); Hon D C Cretney and Mr A C Duggan (Douglas South); Mr R P Braidwood and Mrs B J Cannell (Douglas East); Messrs J P Shimmin and A F Downie (Douglas West); Hon J A Brown (Castletown); Hon D J Gelling (Malew and Santon); Sir Miles Walker CBE LLD (hc), and Mrs P M Crowe (Rushen); with Prof T StJ N Bates, Secretary of the House.

The Chaplain took the prayers.

Apologies for Absence

The Speaker: Hon. members, the hon. member for Garff, Mr Rodan, and the hon. member for Onchan, Mr Karran, have both had permission to be absent this morning.

Expression of Sympathy to Mr Corkill

The Speaker: I have to report to the House this morning also - and I am sure the House would wish us to pass on its regards - that the hon. member for Onchan, Mr Corkill, is also missing as his mother passed away last evening after a troublesome time. I am sure that you would wish the sympathy of the House to be expressed to the hon. member and his family.

Members: Agreed.

**Employment Tribunals – Selection of Chairpersons – Monitoring –
Question by Mr Henderson**

The Speaker: Hon. members, we will then turn to our order paper and item 1 on the order paper. I call upon the hon. member for Douglas North, Mr Henderson.

Mr Henderson: Thank you, Mr Speaker. I beg leave to ask the Minister for Trade and Industry:

- (1) *What criteria are used to select persons to chair employment tribunals; and*
- (2) *how is the performance of the tribunals, and those who chair them, monitored and evaluated?*

The Speaker: I call upon the Minister for Trade and Industry.

Mr North: Mr Speaker, under the provisions of schedule 4 to the Employment Act 1991 the Council of Ministers are responsible for appointing two persons appearing to them to be suitably qualified, one to be chairman and the other to be deputy chairman of the employment tribunal. A legal qualification is considered to be essential for such an appointment.

Turning to the second part of the question, there is no formal procedure for monitoring or evaluating the performance of the employment tribunal or its members, and I am advised that such procedure would not be considered appropriate for a judicial body such as the employment tribunal.

Mr Henderson: Mr Speaker, a supplementary. Is the minister satisfied with this present system which seems to effectively set its own criteria, picks from within itself and is almost self-regulatory, then? Is this fair and equitable in the best interests of an employee seeking a hearing for an unfair dismissal case?

Mr North: Mr Speaker, the employment tribunal, as I have said, is appointed by the Council of Ministers and if it is felt that any of the procedures need revisiting, then I am sure that that would be carried out if it was felt necessary.

Mr Henderson: Mr Speaker, I thank the hon. minister for the previous answer but would he further not agree that a review is required, with special reference to the recent situation where a tribunal virtually sacked itself and it is a long time overdue, sir?

Mr North: Mr Speaker, it is not for me to say that it needs to be reviewed or not at this stage. I am sure that we will if the hon. member feels that there is some great wrong that has been created by the employment tribunal, but certainly as far as we are concerned the employment tribunal operates quite efficiently and I am sure that the chairman of the employment tribunal will examine the procedures after every case to make sure that it is operating correctly.

The Speaker: A final supplementary, sir.

Mr Henderson: Thank you, Mr Speaker. Would the hon. minister also not agree that in the criteria for a chairman of an employment tribunal, one of the overriding factors of a selection criterion would be industrial relations experience?

Mr North: As I have said, Mr Speaker, this is an independent judicial body and I would imagine that the chairman will liaise with various people with that knowledge from time to time and will acquire knowledge of industrial relations.

Employment Tribunals – Remedies for Dissatisfied Persons – Question by Mr Henderson

The Speaker: Item 2, hon. members. Again I call upon the hon. member for Douglas North, Mr Henderson.

Mr Henderson: Thank you, Mr Speaker. I beg leave to ask the Minister for Trade and Industry:

What remedies are available to a person who is dissatisfied with

- (1) the decision of an employment tribunal; or*
- (2) the conduct of a member of an employment tribunal?*

The Speaker: The Minister for Trade and Industry, the hon. member Mr North.

Mr North: Mr Speaker, a person who is dissatisfied with the decision of an employment tribunal may make application under rule 12(2) of the Employment Tribunal Rules 1992 that the tribunal exercise its power, under rule 12(1), to review and to revoke or vary any decision

on the grounds that (a) the decision was wrongly made as a result of an error on the part of the tribunal staff; or (b) a party did not receive notice of the proceedings leading to the decision; or (c) the decision was made in the absence of a party or person entitled to be heard; or (d) new evidence has become available since the conclusion of the hearing to which the decision relates provided that its existence could not have been reasonably known of or unforeseen; or (e) the interests of justice require such a review.

Mr Henderson: Mr Speaker, I thank the hon. minister for his comprehensive reply and explanation to my question but, further to that, in the case of somebody who is seeking an unfair dismissal case and who is dissatisfied with a employment tribunal decision, would he not agree that it seems somewhat unfair that in seeking a review of that decision, it is the same panel who is going to review their own decision in the first place?

Mr North: Mr Speaker, such a person may also appeal on a point of law from the employment tribunal to the High Court under the provisions of section 79 to the Employment Act 1991 and, in response, which I did not give in fact, to part (2) of his question, I am advised that a person who considered that a member of the employment tribunal had acted so improperly that the decision of the tribunal was unsafe could in certain circumstances make a petition of dolence to the High Court, seeking to have the decisions quashed.

Mr Henderson: Mr Speaker, in the light of the hon. minister's answer, would he not further agree, then, that somebody appealing to the High Court on such a decision would be in the distressful position of being unemployed in the first place and would find the pecuniary strains on them would make the line of inquiry that the hon. minister has said very, very difficult under these circumstances, sir?

Mr North: I am sure that every help would be given in that particular instance, Mr Speaker.

Manx Electricity Authority – Chief Executive – Rules and Conditions of Service – Question by Mr Henderson

The Speaker: Item 3, hon. members, and again I call upon the hon. member for Douglas North, Mr Henderson.

Mr Henderson: Thank you, Mr Speaker. I beg leave to ask the Minister for Trade and Industry:

- (1) *Is the chief executive of the Manx Electricity Authority subject to the same rules and conditions of service as other employees of the Manx Electricity Authority; and*
- (2) *if not, what exceptional rules and conditions apply to the post?*

The Speaker: The Minister for Trade and Industry to respond.

Mr North: Mr Speaker, I am advised that the chief executive of the MEA is one of some 12 personal contract post holders on the staff of the authority. The contracts on which these officers are employed are all subject to the same basic terms and conditions. The other class of agreement, covering employees of the authority, is known as the MEA terms and conditions agreement. This is negotiated with three recognised trade unions on a single table basis. Apart from a minor difference relating to retirement age, the main difference between the two categories is that the MEA terms and conditions agreement provides for enhancements to

basic pay for overtime, weekend and shift working. These are not available to the personal contract staff.

Mr Henderson: Mr Speaker, I thank the hon. minister for his reply to this question and would further ask, in the light of his response, is the chief executive officer of the Manx Electricity Company due to comply with these conditions of service and in special reference, is he exempt from any conditions of service with reference to disciplinary actions or any ongoing legal inquiries?

Mr North: Mr Speaker, not that I am aware of. Those conditions are the same.

Mr Cannell: Mr Speaker, a supplementary question, if I may, to the hon. minister? Why are two members of the Manx Electricity Authority board also directors of the Manx Cable Company Limited when there is an obvious serious conflict of interest?

The Speaker: I do not know that it is relevant to the particular question, but the minister can reply if he wishes.

Mr North: Mr Speaker, I totally disagree. It is a fact that two members of the MEA are on the board of the Manx Cable Company in which the MEA holds 50 per cent and there is no conflict of interest. That is a normal commercial relationship.

Mr Henderson: Mr Speaker, given the minister's previous answer in terms that the executive of the Manx Electricity Authority is not exempt from most conditions, then, surely, given that the chief executive is involved in an ongoing investigation at the minute, why then is he not subject to the same conditions which apply to other members of employment whereby, if they were in this situation, they would be suspended from duty? Why is that, sir?

Mr North: Mr Speaker, I am sure that has been fully considered by the board and taken into account.

Mr Henderson: Mr Speaker, a final supplementary then. Surely, would the hon. minister not agree that this is giving out a signal of double standards, sir?

Mr Houghton: Hear, hear.

Mr North: Mr Speaker, I do not think so.

Jurby Airfield – Proposal for Film Studio – Question by Mr Cannan

The Speaker: Item 4, hon. members, and I call upon the hon. member for Michael, Mr Cannan.

Mr Cannan: Mr Speaker, I ask the Minister for Trade and Industry:

Is your department continuing to progress the development of a film studio on a site adjacent to Jurby airfield?

The Speaker: Again I call upon the Minister for Trade and Industry.

Mr North: Mr Speaker, I regret to inform the hon. member that my department is not presently progressing its proposal for a film studio at Jurby. I should perhaps explain that since we were granted planning approval in principle for the project, early in 1997, there have been several factors which have led to the present position. Principally a number of private sector studio-type facilities have been developed on the Island and another major development has

been proposed for the north of the Island. This project, which has the full support of my department, already has planning approval in principle and is currently in the process of seeking detailed approval. If this project is completed, the expenditure of public funds to compete with it would be very difficult to justify, certainly in the foreseeable future. There were also questions as to the suitability of our proposed site at Jurby on technical grounds. Although these might not turn out to be insurmountable, they would affect the costs and timing of the project.

Mr Cannan: Mr Speaker, is the minister aware the Chief Minister stated in Tynwald last week that he is anxious to see development at Jurby and that his proposal to abandon the siting of a film studio is not helpful? So can I ask the minister if he could possibly spare a few minutes of his valuable time, as he jetsets around the world, returning to the Island last Saturday, departing this afternoon, to reconsider his decision?

Mr North: Mr Speaker, the hon. member for Michael knows that I visit Jurby, where we have some manufacturing operations, on a regular basis and the hon. member has our full co-operation and support for any ideas that he may put forward for Jurby. Many have put forward ideas for that area. Unfortunately it is an ongoing matter. My department will continue to work with the Department of Local Government and the Environment, who are the owners of the site, in any overall plans they may put forward for the development of the Jurby airfield. In the short term the hangars do offer the possibility for some basic weather cover for filming and have been used for this purpose in the past, and I can assure the hon. member that we are aware of the potential this site offers and that it is considered when any possible major developments come to light.

His comments about me jetsetting are totally inappropriate. I am trying to bring business to this Island. He appears to be very negative these days.

Mr Cannan: A supplementary. Can I respond, Mr Speaker, to the minister -?

The Speaker: You can ask a supplementary question, sir.

Mr Cannan: - in a supplementary question, Mr Speaker, to his reply he stated? Will the minister agree that in my seeking to have development at Jurby I have continually put proposals to his department and particularly that he provides a sliding scale of industrial grant so that maximum grant goes to the area most in need and a smaller grant to areas that are already well provided with industrial units?

The Speaker: Hon. member, that is really of no relevance to the question which is on the question paper.

Mr Cannan: A point of order, Mr Speaker. I suggest that the supplementary was a supplementary to his reply, sir.

TT Period – Provision for Additional Promenade Parking – Question by Mr Braidwood

The Speaker: Item 5, hon. members, I call upon the hon. member for Douglas East, Mr Braidwood.

Mr Braidwood: Thank you, Mr Speaker. I beg leave to ask the Minister for Transport:

Will your department make provision for additional parking during the TT period to alleviate the problem of parking, particularly in the Drives area of the promenade?

The Speaker: I call upon the Minister for Transport, the hon. member for Castletown, Mr Brown.

Mr Brown: Mr Speaker, during each TT period my department endeavours to alleviate the problems of parking associated with the large influx of visitors to the Island. My department will again this year endeavour to alleviate parking problems during the TT period and we will also continue to take any appropriate and practical action in an endeavour to alleviate parking problems associated in the Drives area of Douglas promenade. However, I can confirm that parking on the central promenade walkway will not be available for the 1999 TT as the new surface will still be within the maintenance period of the contract. Any ideas that the hon. member, or any other hon. member, may have which could assist my department in accommodating the large influx of vehicles will be welcomed and carefully considered. Thank you, Mr Speaker.

Mr Braidwood: Mr Speaker, I thank the minister for his reply, but would he agree with me that with the walkway not being used last year, this caused a great amount of problems in the Drives area, with bikes parking on the pavement, in the road and, as he is well aware, the Drives is a very narrow area, not such like the promenade where there are wide pavements, and this caused great problems to the emergency vehicles in trying to obtain access up the Drives and into Palace Road?

Mr Brown: Yes, Mr Speaker, we are well aware of the difficulties of the Drives and I think the point is that last year we put special signs up which were clear and marked saying 'Emergency access required. Keep clear' and clearly we have to endeavour to meet the needs of the large influx of motorcycles in the area and the needs of access and the people who live there, and it is just a matter of a bit of give and take by everybody in trying to make sure that we can accommodate a large influx of motorcycles and vehicles onto the Island during this special period.

Mr Cannell: Mr Speaker, if I could ask the hon. minister a supplementary question, please? Although safety is obviously paramount, would he agree with me that the Isle of Man TT races are one of the world's great sporting events and that everyone in the Island is obliged to put themselves out to accommodate them for the obvious benefits to taxation from tourism?

Mr Brown: Yes, Mr Speaker. All I can say is all my life the TT period has been a very special period and the only way the Island has been able to secure the TT is through a lot of give and take by the community and, of course, respect by those visiting our Island, which means we have to do what we can to accommodate them.

Members: Hear, hear.

Mr Braidwood: Mr Speaker, I know the surface went down last year and they were trying to stabilise the surface but is there any way the minister's department could put a covering on the promenade, such as a plastic covering, so that the bikes could park on the prom to alleviate the problem in the Drives with the emergency vehicles? I know the TT is extremely popular with a number of people coming over but we have to allow for the safety of people who come to visit the Island.

Mr Brown: Mr Speaker, we are very conscious of the need to balance up the safety of those visiting the Island and those who live in the area. It is impractical, I would think, to put

any surface on top of the new surface, plastic or whatever. Clearly it is a matter I will raise with the officers in the department, but what we must do is protect the taxpayer's investment and ensure we do not nullify any sort of insurance period of the contract, and I would really be very concerned about that.

Jurby Airfield – Future Plans – Question by Mr Houghton

The President: Item 6, hon. members. I call upon the hon. member for Douglas North, Mr Houghton.

Mr Houghton: Thank you, Mr Speaker. I beg leave to ask the Minister for Transport:

What are your future plans for the Jurby airfield site?

The Speaker: I call upon the Minister for Transport, the hon. member for Castletown, Mr Brown, to reply.

Mr Brown: Mr Speaker, I would refer the hon. member to the answer given by the Chief Minister in Tynwald on Tuesday last at which the hon. member was present. Briefly, as the Chief Minister advised in Tynwald, in answer to the question from the hon. member for Michael, a review is to be undertaken of the Jurby airfield, Jurby industrial estate and Jurby former army camp site, co-ordinated by the Department of Local Government and the Environment with a view to formulating a comprehensive policy for the area. As indicated by the Chief Minister in Tynwald, my department will be involved in that review.

Mr Houghton: Mr Speaker, bearing in mind the need to retain the airfield and its runway for contingencies, could the hon. minister please advise this House as to how much the recovering of the runway would cost and whether that would be viewed as a priority?

Mr Brown: Mr Speaker, the hon. member is assuming that we have to retain the airfield. That question is a matter that is being considered by my department and will be taken into account with the overall review and seeing whether or not the airfield and the runway are necessary to be retained.

Mr Cannan: Can the minister give an undertaking that when he makes this review it will be positive rather than negative, his commitment to Jurby and the airfield?

Mr Brown: Mr Speaker, my contributions are always positive. *(Laughter)*

Basking Shark Initiative – DTL Support – Question by Mrs Cannell

The Speaker: Item 7, hon. members. I call upon the hon. member for Douglas East, Mrs Cannell.

Mrs Cannell: Thank you, Mr Speaker. I beg leave to ask the Minister for Tourism and Leisure:

What action is your department taking to support the basking shark initiative, both on grounds of its inherent environmental importance and to promote Manx eco-tourism?

The Speaker: I call upon the Minister for Tourism and Leisure, the hon. member for Douglas South, Mr Cretney.

Mr Cretney: Thank you, Mr Speaker. Firstly, I would like to thank the hon. member for providing me with a further opportunity to advise of my department's position with regard to the

basking shark initiative. Members may recall that this issue was previously discussed at the October 1998 and January 1999 sittings of Tynwald, when questions were asked by the hon. member for Garff, Mr Rodan. I shall commence by reiterating some of the comments made in responding to those questions.

During 1997 an interdepartmental working group, led by the Department of Local Government and the Environment and including the Department of Agriculture, Fisheries and Forestry, reviewed the Isle of Man basking shark project. In December 1997 this group concluded it was unable to recommend that government should provide any financial assistance on the basis of the five-year business plan, as submitted. Following on from that and in accordance with an undertaking given at the October 1998 sitting of Tynwald, my department has met with representatives of the basking shark project and appraised the new business plan promoting the project as having potential for eco-tourism. In this respect I advised members at the January 1999 sitting of Tynwald that 'there are elements of that plan which I am sure we can assist with. However, there are other elements which are more specifically scientific and it would not be appropriate for tourist money to be used for that purpose.' Therefore we have not found it possible to offer financial support further at this stage.

In principle, my department supports this project, a fact previously demonstrated in 1994 when a grant of £5,000 was awarded in respect of a new engine for the vessel which was in the UK at that time. On the basis that some potential for tourism does exist from this market, this support has continued by way of arranging journalists' visits. Recently my department prepared a paper which was considered by the Council of Ministers. Following such consideration, it has been recommended that a further interdepartmental working party be established, consisting of representatives from the Department of Tourism and Leisure, the Department of Agriculture, Fisheries and Forestry, the Department of Trade and Industry and the Treasury. The working party will be tasked with developing a policy and associated strategy on eco-tourism generally and specifically in relation to the basking shark project. Furthermore, the working party will be seeking to determine whether closer links can be forged with the Port Erin marine laboratory to maximise the benefit of any research associated with the project.

Finally, whilst recognising that conservation is the key factor in maintaining the environment and/or ecology of our Island, responsibility for such does not rest on my department and, bearing this in mind, perhaps the hon. member might like to refer this part of her question to the Minister for Agriculture, Fisheries, and Forestry. Thank you, Mr Speaker.

Mrs Cannell: Mr Speaker, I thank the minister for his positive reply. Can I ask him, is he aware that the basking shark season runs from early June through to September and that, indeed, last year was the very first time that the Basking Shark Society ran eco-tourism package tours and indeed was over-subscribed, and is he further aware that this year has also been a sell-out and indeed more slots are actually needed in order to assist with the eco-tourism aspect, of which I believe he is a supporter?

Mr Cretney: Yes.

**Financial Supervision Commission – Annual Fee for 'A' Register Companies –
Question by Mr Singer**

The Speaker: Item 8, hon. members. I call upon the hon. member for Ramsey, Mr Singer.

Mr Singer: Thank you, Mr Speaker. I beg leave to ask the Chairman of the Financial Supervision Commission:

- (1) *What will be the annual registration fee for the proposed 'A' register for those companies administered in, but not having a place of business in the Island; and*
- (2) *are there analogous registers in other jurisdictions?*

The Speaker: I call upon the Chairman of the Financial Supervision Commission, the hon. member for Glenfaba.

Mr Gilbey: Mr Speaker, I would like to thank the hon. member for Ramsey for his question, which enables me to emphasise that, as hon. members will be aware, the Financial Supervision Commission has, for some time, at the request of the Council of Ministers, been looking at ways in which companies operating in or from the Isle of Man might be made more accountable to the authorities in this Island.

The Financial Supervision Commission has been involved in an ongoing dialogue with the industry on these issues over the last few years. The problem is that difficulties are encountered from time to time with foreign companies which are incorporated outside our jurisdiction but nevertheless are operated from or have an element of administration here in this Island. These companies might typically be incorporated somewhere in the Caribbean but display prominently, and often more prominently than the display of their home jurisdiction, the fact that their administration office or their head office is in the Isle of Man. Thus, if mischief is made through or by these companies their customers believe that such companies are based in the Isle of Man. Accordingly, there is significant capacity for these companies to bring the Island into disrepute, and this is a growing problem for law enforcers in the Island.

Manx incorporated companies are required to file certain details at the company's registry so that law enforcers, legal advisers and those wishing to trade with such companies may check certain basic details on the public register. In the case of law enforcement, the companies registry is usually the first port of call to ascertain the registered office of the company concerned to enable further inquiries to be made.

At the beginning of the next legislative session, members will be asked to consider a new Bill which provide for a regulatory framework for those who form and administer companies in this Island. This Bill has been subject to debate and very detailed consultation with the industry over the past five years. As part of its provisions it will include a provision for the costs of regulation to be met by imposing a small charge upon the underlying companies which the corporate service providers administer. This is felt, both by the commission and by the majority of those in the industry who have commented on the issue, to be the fairest way of spreading the costs.

The commission and the Treasury are concerned to ensure that by introducing such a change Manx registered companies do not become less commercially attractive. There must be a level playing field so that where the Isle of Man is being used as a base for companies, whether they are Manx or whether they are foreign, those companies should comply with fundamental requirements and meet the spread costs of regulation. Not to do so would expose

the Island to the risk that, once the new provision starts, business would shift out of Manx incorporated companies into foreign companies administered from here. This would result in the risks of the Island being brought into disrepute still being the case, but no income would be received from such companies here. Similarly, unless a register of some form is introduced for foreign companies administered here, law enforcers within the Island will continue to have difficulty pursuing their investigations when mischief is conducted by such companies using the Island's name.

Thus the commission has recently floated with the industry the idea of an 'A' register - that is, a register, probably a private one, although that latter point has not yet finally been decided, of those foreign companies which are incorporated elsewhere but which nevertheless have an element of administration here. This idea is still in its formative stages. It has yet to be researched and consulted fully upon. It is by no means a firm proposal but what I can assure the hon. member for Ramsey is that the question of whether or not there should be an 'A' register will be fully researched and consulted on with particular regard being given to the commercial implications of such a proposal and the existence of such registers in other competitive jurisdictions. Furthermore, the annual registration fee, if there is one, will be minimal. Any proposal to introduce an 'A' register would, of course, require primary legislation and would therefore be brought before this hon. House before it could be implemented.

At this stage we are not sure whether an 'A' register exists in any other jurisdiction. It certainly does not exist in the United Kingdom. However, the Isle of Man is in a unique position in that we are probably the largest company administration centre in the world and therefore we have a higher level of foreign companies administered here, and I believe it is totally in the Island's interests and in the financial sector's interests that we should be able to have some knowledge of and control over companies which, while not registered here, have offices here and use the name of the Island to their trading advantage.

Mr Singer: May I thank the Chairman of the Financial Supervision Commission for that very comprehensive reply. Could I ask him: he was referring to the consultation process - has the Financial Supervision Commission run into opposition from various professional advisers and administrators' organisations during this consultation process? What in fact are their main points and is it not at this time better for the Financial Supervision Commission to announce that it will not pursue this 'A' register proposal because there is considerable concern and doubt now being experienced by the finance sector on this matter?

Mr Gilbey: Mr Speaker, first of all I personally believe most strongly, and so does the commission and, I think I can say, the Treasury that it is in the Island's overall interests that people who have companies registered in other jurisdictions but have those companies with administrative offices here, head offices here, and use the Isle of Man's name and reputation for their advantage should, first of all, be known by the authorities and, secondly, should be able to be approached by the authorities should this be necessary. I believe this is a fundamental point and I am surprised that anyone should disagree with such a fundamental matter regarding the control of our financial sector. Frankly I was not aware of many companies, corporate service providers, objecting to this. Frankly I cannot see why they should, because I believe that it is in the interests of all parts of the financial sector that we should have the highest standards. This has been very much borne out by the Edwards report where we have been congratulated on our high standards and indeed a vast amount of

business only comes to this Island because it is not only perceived but it is known that our standards are infinitely higher than those in many other jurisdictions. So I believe we are right to pursue this and I certainly have not heard of major objections, but I would say that the Financial Supervision Commission and the Treasury always consider all objections made to their consultative documents, although obviously they cannot always please everyone who puts forward views, and if people have put forward views opposing this proposal I suspect that is going to be one of the cases when we cannot agree with their objections.

Mr Singer: Mr Speaker, if I could ask a final supplementary? The hon. member states that this is a fundamental item. If so, could he tell me why it has been so long delayed, and has he considered that the consequences of introducing this 'A' register in the Isle of Man will be to encourage local providers, who may be forced to move some business out of the Island, to relocate all their businesses to other financial centres such as London, Dublin, Gibraltar or the United States where there in fact is no similar register? Should we not be considering introducing this register when it is introduced in other jurisdictions and only then?

Mr Gilbey: Mr Speaker, regarding the time, as I have said, this has been an ongoing process. We are very thorough in the Financial Supervision Commission and the Treasury in our consultations and the fact that on behalf of, no doubt, some constituent the hon. member is raising this point shows that they have been consulted and are aware of it. Again, I would say the Treasury and the Financial Supervision Commission are always balancing on one hand the need for proper controls and on the other hand the possible deterrents that such controls might be to existing or new business. This is a very fine balance which is always taken into account and will be in this particular case. I am bound to say that, as I stand here, it seems to me that the balance is in favour of having control of this kind of company and I quite honestly cannot see why any respectable corporate service provider or company should object to it. As I have said, the register is likely to be a private one and the fee per company is likely to be extremely low, something like £10 per company, which is totally marginal in relation to the overall costs of operating a company. So at this stage I cannot see any objection to these general proposals but, as I keep emphasising, the Financial Supervision Commission and the Treasury always take into account the views of the industry before coming to final decisions and, indeed, that is why the consultations have gone on for so long already.

The Speaker: Hon. members, items 9, 10, 11, 12, 13, 14 and 15 are all for written answers, which I understand have been circulated to hon. members.

European Court of Human Rights – Implications of Judgment for the Isle of Man – Question by Mr Cannan for Written Answer

Question 9

The hon. member for Michael, Mr Cannan, to ask the Chief Minister:

What are the constitutional implications for the Isle of Man of the judgment of the European Court of Human Rights in the case of Matthews v the United Kingdom?

Answer

It is assumed that the hon. member is concerned with the case *Denise Matthews v United Kingdom* (Application No. 24833/94) in which judgment was delivered by the European Court of Human Rights on 18th February 1999.

The applicant in that case was a British citizen born and resident in Gibraltar. She had applied to the electoral registration officer for Gibraltar to be registered as a voter at the elections to the European Parliament. The electoral registration officer refused the application on the basis that the franchise for European parliamentary elections did not extend to residents of Gibraltar.

The applicant had lodged with the European Commission of Human Rights a complaint that she had thereby suffered a violation of article 3 of protocol number 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms ('the Convention') and a violation of Article 14 taken together with article 3 of protocol number 1.

Article 3 of Protocol number 1 to the convention provides:

'Right to free elections

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature'.

Article 14 of the convention provides as follows:

'Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status'.

The Commission had found that article 3 of protocol number 1 did not extend to supranational representative organs. The European Parliament was not the legislature of Gibraltar. Therefore article 3 of protocol number 1 was inapplicable in the particular case.

As regards article 14 taken together with article 3 of protocol number 1, the Commission concluded that there had been no violation. The applicant had contended that she was discriminated against on the grounds that she was a Gibraltarian. The commission found that as article 3 of the protocol was inapplicable, article 14 was similarly inapplicable.

The constitutional implications for Gibraltar of the findings of the commission were no doubt of significance given that Gibraltar is part of the territory of the European Union and European Community legislation has a great impact on Gibraltar (it being estimated by one commentator that about one third of all Acts passed by the Gibraltarian legislature are European Community-inspired).

The case was referred by the Commission to the European Court of Human Rights ('The court') and in its judgment the court held:

- (a) that the United Kingdom was responsible for ensuring that Convention rights were guaranteed for the population of Gibraltar.
- (b) that the word 'legislature' in article 3 of protocol number 1 did not necessarily mean the national parliament and there was no justification for excluding the European Parliament from the ambit of the elections referred to in article 3 on the ground that it was supranational, rather than a purely domestic, representative organ.

- (c) that European Community law had precedence over domestic law and in that regard Gibraltar was in the same position as other parts of the European Union; the European Parliament was sufficiently involved in the legislative process and general democratic supervision of the activities of the European Community to constitute part of the 'legislature' of Gibraltar for the purposes of article 3 of protocol number 1.
- (d) that the status of Gibraltar was not such as to give rise to 'local requirements' which could, in accordance with article 56 of the convention, limit the application of the convention.
- (e) that the applicant had been denied any opportunity to express her opinion in the choice of members of the European Parliament, despite the fact that legislation which emanated from the European Community formed part of the legislation in Gibraltar and the applicant was directly affected by it; there had been a violation of article 3 of protocol number 1.
- (f) that it was not necessary to consider the complaints under article 14 of the convention in conjunction with article 3 of protocol number 1.

The position in the Isle of Man is quite different from that of Gibraltar given that the Isle of Man is not part of the European Union and given the limited impact of European Community legislation in the Isle of Man. The Island is treated as a member state only in so far as protocol 3 to the Act of Accession applies to the Island. For those reasons it is believed that there are no material constitutional implications for the island in consequence of the judgment.

**Report re EU Etc – Developments – References to Relevant Legislation Etc –
Question by Mr Cannan for Written Answer**

Question 10

The hon. member for Michael, Mr Cannan, to ask the Chief Minister:

In the report of the Council of Ministers to be tabled in the Keys on the developments within the European Union and other international bodies which have potential economic implications for the Island, and the response of the Council to the developments, will you ensure that the relevant legislative, and the other official, texts from those bodies are appended to the report, together with the text, or a full statement of the source, of advice received on their legal and economic implications, and not merely paraphrases of the texts and advice?

Answer

When the Council of Ministers submits its report to the Keys, it will be presented in the form that is considered most helpful and informative to members. Until Council has had an opportunity to consider the range and extent of the subject matter that should be contained in the report, it is clearly too soon to make decisions in relation to style and content.

**Employment Tribunals and Industrial Relations Service – Statistical Information –
Appeals – Question by Mr Henderson for Written Answer**

Question 11

The hon. member for Douglas North, Mr Henderson, to ask the Minister for Trade and Industry:

- (1) *What statistical information is available on the work of the employment tribunals and the industrial relations service; and*
- (2) *how many appeals have there been to the High Court from decisions of employment tribunals since the appeal procedure was introduced?*

Answer

- (1) (a) Although no statistical information is published on the work of the employment tribunal, both applications to, and decisions of the employment tribunal are, in accordance with the provisions of the Employment Tribunal Rules 1992, entered into a register which is open to the inspection of any person without charge at all reasonable hours. Consideration is currently being given to the production and publication of such statistics following representations from an interested party.
- (b) The number of enquiries made to the Industrial Relations Service each year, is published in the Isle of Man Government *Budget Extract*.
- (2) Records show that in the period from 6th May 1992, when the first application to the employment tribunal was made under the provisions of the Employment Act 1991, there have been two appeals made to the high court from decisions of the employment tribunal, under the provisions of section 79 of the 1991 Act. The first appeal was made in 1994 and the second in 1995.

**Employment Tribunals – Procedure for Dissatisfied Members –
Question by Mr Henderson for Written Answer**

Question 12

The hon. member for Douglas North, Mr Henderson, to ask the Minister for Trade and Industry:

What procedure is available to a lay member of an employment tribunal who is dissatisfied with the guidance from the chair?

Answer

the procedures of the employment tribunal are prescribed by the Employment Tribunal Rules*. Rule 11(1) provides that the decision of the majority is to prevail. It is thus open to any member of the tribunal to dissent from the decision of the chairman (except that if only one lay member is sitting with the chairman, the chairman has a casting vote).

* The Employment Tribunal Rules 1992 (GC No 107/92)

**Manx Electricity Authority – Breakdown of New Domestic Tariff –
Question by Mr Henderson for Written Answer**

Question 13

The hon. member for Douglas North, Mr Henderson, to ask the Minister for Trade and Industry:

Can you state the elements which comprise the price per unit of the domestic tariff to be charged by the Manx Electricity Authority from 1st April 1999?

Answer

Utility domestic tariffs generally comprise of two elements, a charge per unit which recoups the variable costs of supply and which is dependent on how much electricity is used, and a standing charge (sometimes known as a line rental or fixed charge), which recoups the fixed costs of supply and are the same for all consumers irrespective of usage.

The Manx Electricity Authority charges its customers -

- a cost per kilowatt hour (the unit cost);
- a fuel cost adjustment per kilowatt hour (the FCA); and
- a standing charge.

The domestic tariff unit rate to be charged to customers from the first meter reading after 1st April 1999 recoups the following element costs -

- cost of generation and fuel;
- cost of transmission;
- cost of distribution;
- depreciation;
- capital funding and servicing;
- asset replacement; and
- finance and administration.

The standing charge, which is fully rebated by government at present, recoups the cost of metering, meter reading, billing and cash collection, which are common to all customers.

Although the 'weighting' of the various elements within the basket of costs recouped within the unit rate move from time to time, the principal variable is the cost of oil. Due to the often volatile nature of oil costs, the MEA has, since its establishment, followed the practice of passing on increases and reductions in oil prices through the mechanism of a fuel cost adjustment. The level of the FCA has been held at the same level since July 1997, and despite recent increases in duties announced in the latest UK budget (21 per cent increase in duty on fuel oils), and rises in crude oil prices in the last few weeks, the MEA intends to hold it at this level unless very exceptional circumstances prevail.

In general terms oil prices have been stable recently and, although crude prices have been low, refining costs, transport, duty and taxes, all of which have risen with inflation and taxation policy, make up a large part of the price paid by the MEA. Oil is purchased by the MEA both through fixed price contracts and on the spot market in order to even out fluctuations in price. The validity of this strategy is confirmed by the fact that, despite its relatively small size and customer base and the consequent absence of real economies of scale, increases in the domestic tariff have been held at well below the rate of Isle of Man inflation for the last 12 years, while this year's 1.5 per cent increase will be the first rise since April 1996.

Carbon Monoxide Poisoning – Treatment in Manx Hospitals – Question by Mr Singer

Question 14

The hon. member for Ramsey, Mr Singer, to ask the member for Health and Social Security:

- (1) *How many cases of carbon monoxide poisoning were treated in Manx hospitals in each of the years 1994 to 1998; and*
- (2) *what is the standard treatment in Manx hospitals for carbon monoxide poisoning?*

Answer

(1) Hospital information systems only record cases of patients treated on an in-patient basis due to the toxic effect of gases, including carbon monoxide (which in some cases may be a side effect). The following table states the number of in-patient cases recorded as suffering from poisonous gases for each of the three years since 1996 (the date coding was introduced):

Year	Cases
1996	7
1997	5
1998	4

NB Data in respect of patients presenting to the accident and emergency department with suspected inhalation of poisonous gases is not separately recorded.

(2) In severe cases (alteration of conscious level, neurological signs - i.e. high carboxy-haemoglobin levels, et cetera) - patients are managed within the intensive care unit, with transfer to the hyperbaric chamber as appropriate.

Less severe cases (patients attending accident and emergency) - patients are managed in the accident and emergency department and transferred to a ward for oxygen treatment as appropriate.

**Public Housing Stock – Funding of Maintenance through Rents –
Question by Mr Houghton for Written Answer**

Question 15

The hon. member for Douglas North, Mr Houghton, to ask the Minister for Local Government and the Environment:

What is the current percentage of public housing rental income which is devoted to maintenance of the housing stock by -

- (1) *local authorities; and*
- (2) *your department?*

Answer

1. The current percentage of public housing rental income which is made available for maintenance of the housing stock is;
 - (a) housing authorities - 30 per cent of rents collectable;
 - (b) Department of Local Government and the Environment - (1998-99) approximately 34 per cent.

2. The department's higher percentage for maintenance reflects the need to service housing stock on an Island-wide basis which incurs higher transport and travelling costs.
3. Although it is reviewed annually, the housing authorities percentage for maintenance has remained at 30 per cent for several years. However, this figure does not include moneys allocated within the capital programme for planned maintenance schemes.
4. The maintenance allowance is intended for small repairs, major works are dealt with as capital schemes.
5. There is some inconsistency in the performance of housing authorities in progressing capital schemes.
6. The 1999-2000 local authority housing estimates indicate a total of £2.25 million are available under the 30 per cent maintenance allowance. This is supplemented by a sum of £5.8 million for planned maintenance in the capital programme (excluding replacement housing at Lower Pulrose), giving an overall expenditure budget of £8.05 million, equivalent to 107 per cent of rent receivable for the year.

Public Records Bill – Third Reading Approved

The Speaker: Therefore it takes us to item 16, the Public Records Bill for third reading, on our order paper in the name of Mr Corkill. As members are aware, the Treasury member, Mr Gilbey, has handled this in all its passage through the House so far and it is the intention of Mr Gilbey to continue to handle the Public Records Bill. So I call upon the hon. member for Glenfaba to take the third reading.

Mr Gilbey: Thank you very much, Mr Speaker. This legislation sets out, as I have said previously, to meet both international practice in public records management and archival retention and to make special provision for the Manx situation. Its central principles are the provision of management of public records throughout their life under the guidance of the archive body. It is important that the body responsible for the preserved records is involved from the very beginning, particularly with electronic records where provision to keep such records for ever must be made when they are set up.

The establishment of a statutory regime over the management of all public records ensures not just the preservation of the records of long-term value for historical research but also improved efficiency and improved accountability, the establishment of responsibility for such records under an arm of executive government with involvement at the highest ministerial level. As record-keeping within government departments is involved, the body made responsible for overseeing this must be part of government, the General Registry. The roles of the Council of Ministers and Tynwald provide for accountability. Then there is a wide definition of public records. The definition seeks to cover the records of public bodies in the Island. It also covers all such records, including those which will be discarded to ensure that proper selection can take place. The establishment of a right of public access to preserved records is made available at a certain date and consequent protection of confidential information is

arranged. This provides for access to Manx public records on a similar basis to that available to citizens elsewhere in the world.

Then the legislation applies to the application of all public records wherever they are held or by whoever they are held. This is a central principle regarding both their preservation and access to them.

I am convinced that this legislation is right and in the interests of the Isle of Man and does mean that important historic records will be preserved for the benefit of future generations rather than being destroyed or tipped down mine shafts as they have in the past. I have much pleasure, Mr Speaker, in moving the third reading of this Bill.

Finally, I would like to very much thank the officers who have done so much work in consulting on the Bill; I have explained already the vast amount of consultation they undertook, and for the excellent guidance notes which they have given me.

Sir Miles Walker: I beg to second, Mr Speaker, and reserve my remarks.

The Speaker: The hon. member Sir Miles.

Sir Miles Walker: Yes, thank you, Mr Speaker. If there looks like being no debate I would just like it to go on record that I can recall you raising this particular issue in Tynwald - I am not certain when it was in 1984 or 1985, something like that, a long time ago, and I think that it is true to say that when you raised the issue at that stage that was the turning point for record-keeping for the Manx Government, and since that time records have been kept, albeit in temporary accommodation, but a number of valuable records have been saved which probably otherwise would have been lost. I think the exercise over the years has been a good one and there is a lot of interesting and valuable stuff now in store. It seems to me that this legislation is in fact the ultimate step of the beginning of the process and it gives the whole exercise a statutory backing and, like the hon. member who is in charge of the Bill, I am aware of the immense amount of work that has been put into this Bill by the Chief Registrar and his staff and people from the Manx Museum and National Trust. I think it has been a very thorough exercise and a good one, and I think that the way the process has finished up and the legislation we have in front of us will stand us in good stead right into the future. I am on my feet, Mr Speaker, just to express my appreciation and, I am sure, the appreciation of others to yourself for raising this particular matter some 15 years ago. Thank you, sir.

The Speaker: Hon. members, the motion is that the Public Records Bill be read a third time. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Procedural

The Speaker: Hon. members, that draws to a conclusion our order paper for today. However, hon. members, I must report to the House that currently my office has no Bills to place before hon. members. It is with some considerable concern that I note that last year's policy document, accepted by Tynwald, proposed 24 new Bills to be considered by this House prior to the year 2000 which I have not yet seen. My concern for the House is that we achieve a regular throughput rather than feast or famine in order that the Bills are properly scrutinised. I am content that Bills be subject to advance consultation. However, it is this House's duty to scrutinise publicly, and I would ask that departments of government either bring forward in

orderly fashion their proposals or notify my office of the intention not to proceed with the suggested legislation.

Hon. members, we will now stand adjourned till Tuesday next, 30th March, at 10 a.m. Thank you, hon. members.

The House adjourned at 10.47 a.m.