

**REPORT OF PROCEEDINGS OF
LEGISLATIVE COUNCIL**

**Douglas, Tuesday, 2nd November 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 QC), Hon C M Christian, Messrs E A Crowe, D F K Delaney E G Lowey, Dr E J Mann, Messrs J N Radcliffe and G H Waft, with Mr G C Haywood, Acting Clerk of the Council.

The Lord Bishop took the prayers.

Apologies for Absence

The President: Hon. members, we have apologies for absence from the hon. Mr Kniveton, who continues to be indisposed.

Judicial Review – Introduction – Question by Dr Mann

The President: And now, hon. members, if you look at the agenda you will see that because of a lack of Bills for consideration it is a very modest agenda for our consideration this morning, and turning to the one and only item I call upon the hon. Dr Mann to ask the question standing in his name.

Dr Mann: Mr President, I beg leave to ask H M Attorney-General:

Under what circumstances could a process of judicial review be introduced in the Isle of Man?

The President: The Attorney-General to reply.

The Attorney-General: Thank you, Mr President. The hon. member asks, 'Under what circumstances could a process of judicial review be introduced in the Isle of Man?' By 'judicial review' I take it that the hon. member refers to the judicial review of the Acts, decisions, determinations, orders and omissions of individuals and bodies performing public functions.

In all developed legal systems there is recognition of a fundamental requirement for principles to govern the exercise by public authorities of their powers. These principles provide a basic protection for individuals and prevent those exercising public functions from abusing their powers to the disadvantage of the public.

In England a litigant wishing to challenge administrative actions by public authorities normally does so by making an application for judicial review in accordance with the procedures set out in order 53 of the Rules of the Supreme Court. In the Isle of Man, Mr President, a litigant wishing to challenge administrative actions by public authorities has for many years had the right so to do by presenting a petition of doleance in the Chancery Division of the High Court.

As long ago as 1889 Sir James Gell, Clerk of the Rolls, delivering judgement in the case of Watson and Moore, stated that the court in the Island, when dealing with a petition of doleance, was able to exercise the same jurisdiction which the court in England had with

respect to the prerogative writs by which the High Court in England controlled administrative functions. One has only to consider the subject matter index to the *Law Reports of the Isle of Man* for the period 1952 to 1998 to appreciate that the petition of doleance is alive and well and provides for litigants in the Island all the necessary remedies by way of judicial review which are available to litigants in England but without the necessity to comply with a somewhat rigid procedure in so far as time limits and certain other matters are concerned which pertains in England.

I feel, therefore, that there is no necessity to consider the introduction of a process of judicial review in the Island; it is already here.

Dr Mann: I thank the learned Attorney for his answer, but would he not agree that the procedure of judicial review as practised in the UK, or certainly in England, is a stronger and more positive and more easily accessible procedure to the ordinary man in the street than a petition of doleance?

The Attorney-General: Mr President, I would not agree with that, sir. The position in the Island, as I have endeavoured to explain, is that all the procedures and all the remedies available in England are available in the Isle of Man under the composite heading of 'petition of doleance'. Moreover, there is no formal procedure or formal requirement in the Isle of Man that a petition of doleance has to be brought within a particular time limit. In the United Kingdom the time limit, as I understand it, is three months whereas in the Isle of Man there is no particular time limit, provided of course that the petition is brought within a reasonable period of time. So to that extent I believe that applicants and members of the public are better protected here than they are in the United Kingdom.

Mr Lowey: Can I ask a supplementary? Is legal aid available to people? It is all right saying the man in the street has access to justice and protection, but it is like saying to a poor man, 'You are free to dine at the Ritz.' Is legal aid available to anybody to take a petition of doleance in the High Court in the Isle of Man or/and is it available for judicial review in the United Kingdom?

The Attorney-General: Mr President, I can only answer as to the position in the Isle of Man. So far as legal aid is concerned, yes, legal aid is available to petitioners who wish to file a petition of doleance.

Dr Mann: Mr President, could I ask a further supplementary? Is it not true that in England the application is at a much lower court and much more easily and more cheaply done than in the Isle of Man, where you have to go to the Chancery Court to one of the deemsters?

The Attorney-General: No, Mr President, as I understand it and having read the rules of court in England, an application for judicial review lies in the High Court in the Queen's Bench Division of the High Court. In the Isle of Man the position is that the application is made to the Chancery Division of the High Court, so we are on all fours with the UK.

Mr Radcliffe: Mr President, a supplementary. The Attorney in his own words said a petition brought in 'in reasonable time.' Could he state perhaps what is in his mind a reasonable time for a petition to be brought forward?

The Attorney-General: Mr President, as is inevitably the case when one is discussing reasonableness it depends on all the facts and circumstances, and the deemster, when

assessing an application for judicial review in a petition of dolence, will look at all the circumstances and my understanding and my reading of the cases is that there is a fairly liberal approach to this - in other words, the deemsters are very reluctant to rule out an application for judicial review unless the applicant has very obviously slept on his rights and has not brought the case as he ought to have done. But generally speaking, as I say, Mr President, there is an advantage in the Manx procedure: there is no formal time limit as there is in England where there is a three-month limit.

Dr Mann: I have two supplementaries. Can I do them separately or together? Separately? Firstly, is the learned Attorney aware that a reasonable number of members of the Law Society would actually look with favour upon the introduction of such a procedure in the Isle of Man? And do the learned deemsters agree with his present view?

The Attorney-General: Well, Mr President, I am aware that there is a good liaison between the deemsters and the Law Society in so far as there is a standing committee where representatives of the society meet with, certainly, His Honour the First Deemster to discuss matters of High Court procedure and so on, and as ever I feel sure that the First Deemster would be more than amenable to any suggestion that we ought to have a more formal process for dealing with judicial review. I am not aware that there has been an approach by the Law Society to the deemsters. As I say, the deemsters, I am sure, would look at it in an open way.

Dr Mann: Could I correct that? I did not say there had been any approach, I just said, 'Were you aware of . . . ?' but there has not been, as far as I know, any approach between the members of the Law Society and the deemsters.

The Attorney-General: I cannot comment, sir, no.

Mr Waft: Could I ask, Mr President, about the finality of judgment of a petition of dolence as opposed to a judicial review? If the decision goes against the plaintiff in those situations, where does he go from there or is that the final outcome?

The Attorney-General: Mr President, the position is that a judgment given by the deemster in the Chancery Court when dealing with a petition of dolence is open to an appeal in much the same way as any other judgment would be, so there is no particular finality of judgment in so far as a petition of dolence is concerned. There is always an appeal.

Mr Waft: Would this be the same then, please, Mr President, for judicial review?

The Attorney-General: Yes.

The President: Right, hon. members. That, I think, concludes our scrutiny of that particular question and as there is no further public business the Council will now sit in private.

The Council sat in private.