

REPORT OF PROCEEDINGS OF THE LEGISLATIVE COUNCIL

**Douglas, Tuesday, 5th November 2002
at 10.30 a.m.**

Present:

The President (the Hon. N Q Cringle), The Lord Bishop (the Rt Revd Noël Debroy Jones), the Attorney-General (Mr W J H Corlett QC), Hon. C M Christian, Mr D F K Delaney, Mr D J Gelling CBE, Mr J R Kniveton, Mr E G Lowey, Dr E J Mann and Mr G H Waft, with Mrs M Cullen, Clerk of the Council.

The Lord Bishop took the prayers.

Items Considered

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Apologies For Absence

The President: Hon. members, we have a full house this morning, with apologies from the hon. member Mr Crowe, who is grateful for the messages of support which he has received.

Waste Disposal Costs – Future Financing – Question by Mr Waft

Question 1. The hon. member (Mr Waft) to ask the member of the Department of Local Government and the Environment (Mr Lowey):

Has the policy yet been decided as to the financing of future waste disposal costs?

The President: We turn then to our order paper and item 1 is a question for oral answer. I call on the hon. member Mr Waft.

Mr Waft: Thank you, Mr President, I beg to ask the question standing in my name.

The President: I call on the member for Local Government and the Environment, Mr Lowey.

Mr Lowey: Thank you, Mr President. Can I thank my hon. friend for his question. Mr President, the simple answer to the hon. member's question is no. The department has been considering the issue of charges for some time, and as is known, the principle of 'user pays' is well established as government policy, having been endorsed by Tynwald in successive policy review reports since 1994. The Waste Management Board which Tynwald has agreed should be brought into operation on 1st April 2003 - and it should have been in operation this year, 2002 - will operate as a trading board. I have had the privilege of having been invited to become its chairman, subject to Tynwald's approval.

It is my belief that the time has come for charges to be introduced by the local government department in order to cover at least part of the costs involved in waste disposal. The problem with dealing with waste generated within the Island is something government cannot ignore, and I wrote recently to all local authorities inviting their views as to how the charges should be introduced and over what period and I have taken the liberty, Mr President, of circulating the letters to the hon. members.

The waste management strategy was approved by Tynwald in 1990 and reaffirmed in 1994 and 1995. So all local authorities have been aware for a very long time that the 'user pays' principle was to be applied. This is more particularly the case since the department gave a presentation to representatives of all local authorities in February 1999 indicating and spelling

out what those charges were and when they were to be introduced. Consequently local authorities have had more than adequate time to think about the issues and how they might play their part in waste minimisation and recycling in order to reduce the amount of waste taken to the new energy from waste facility, when it comes into operation.

I can confirm the department intends to consider the representations, which we hope to be received from all local authorities before inviting the Council of Ministers to make a definitive decision on specific proposals which the department is in the course of finalising. However, I do not want to dodge any issues; it is my firm belief that charges should begin to be introduced from 1st April 2003.

The President: Mr Waft.

Mr Waft: Thank you, Mr President. I do not think anybody would disagree that payment has to be made. I think the concern of people I have been talking to is regarding the fortnight that the department has given for local authorities to reply, given the understanding that there is no significant agreement from government as to who pays what - in other words, whether the local authorities pay for delivery to the incinerator and what charges they will bear from central government, i.e. the taxpayer, on the understanding that the polluter pays or the user pays. There seems to be a variation into what is pollution and what is not pollution. I think Tynwald has agreed that payment has to be made, but it is the cut-off point - to give the local authorities the decision to reply within two weeks, not knowing how much of that payment will be borne by local authorities in order to try and find some agreement as to the rateable cost in next year's rates. I think that two weeks is rather short and there should be more time given for consultation and a more explicit definition of the fact of exactly who pays what, where and when, as you mentioned in your reply.

The President: I think two supplementaries: the fortnight, and more explicit definition of what is the solution.

Mr Lowey: Could I again, in replying, say that timing is important. The timing and the lack of it, or alleged lack of it, is relevant. As I said in my reply, in 1999 all representatives of all local authorities were invited to lunch by the department and were given a presentation about the charges and the timing, and as I referred to in my opening remarks - remember the board, which is a trading board, which has been approved by Tynwald, all of us here, was supposed to be in operation on 1st April this year - I believe the local authorities know exactly what is in the pipeline. They should have been making some preparation for it and the timing now, of course, is . . . I was appointed in late July and I will remind the hon. member that local authorities are now making their preparations for

next year. If I had left it for another fortnight the same people would be saying to me now, 'Sorry, you have missed the boat, we have already fixed the charges for next year and we cannot revisit them.' So it is important that their minds are focused on the fact that as from 1st April next year there will be charges associated with refuse handling.

Now to the specifics and how much and how little: I am not in a position, Mr President, to fix. I can recommend to the department, the department will recommend to the Council of Ministers and they will decide then if they are to pick the whole of the cost, part of the cost or how it will impact. There were two principles given to me by the Chief Minister when invited to take over this job: one was that it was going to be a trading board and therefore had to pay its way; and secondly, the standards to be applied of dealing with refuse had to be to the highest possible European standards. Those were the two guiding lights. Now all I can do is act on the remit that has been given to me and make recommendations. Then if they do not like what I recommend, it is up to them to give me direction. I cannot be fairer than that. I get on very well with the local authorities: I am on first name terms with, I think, most of them, so they know exactly where I come from, they know the problems that are faced. I have to say to the hon. member, waste management has been put on a back burner. I do not think members realise just what is involved, and the need to have it co-ordinated and focused is long, long overdue.

The President: Hon. member Mr Kniveton.

Mr Kniveton: Thank you, Mr President. I do not know whether the hon. member has covered the point that I will bring out, in all that he has just said. I accept in general what he has said, but in his opening reply he mentioned recovering part or all of the costs. Can I ask him: would he be prepared to recommend to his department - because as he says, he cannot make the decision himself - that the introduction of the charge, rather than be hammered in straight away to the poorer people, the less well-off, the one person per household, could be introduced over a period of a number of years, say four years?

Mr Lowey: Yes, I have no difficulty accepting the point that people who are poorer will be hammered at £2 a week, if I use it. There are 35,000 tonnes of domestic waste raised and there are 35,000 households on the Island: if you want to average it out there is a tonne, and it costs about £100 a tonne to deal with it, so if you want there is a variety of ways of charging. There is the technology where you can put a weight on a bin and you pay for what you produce - but that technology has got to be paid for initially, so somebody has got to pay for it - or you can just average it out and say it is one tonne a household and £100 a year a household. Bear in mind, the year after, when the energy from waste complex comes on to stream, that is the charge that they will be charging. It

will not come to the Waste Management Board; that will be going to the company that operates it. Now that has been approved and agreed. I have no say in the matter. Whether you are rich or poor, that is going to be the charge of the stuff that is going into the incinerator. And it is much wider than that, I have to say to the hon. member: there are charges, there are about between 50 and 60 cars a month being abandoned on the roads, which is costing money. We have got to deal with that. I have to deal with clinical waste - my hon. friend from the hospital when the incinerator comes on . . . There is a variety of things which, if I was starting from scratch, I would not start from here, but we have got to deal with them.

So I am making it public that as from 1st April the board as a trading board will have liabilities, and the remit that has been given to me is that we have to meet those costs. I am identifying those costs, real costs, and saying, 'These are the figures, these are my proposals on how they should be met.' Now, if the Council of Ministers or others think there are alternative ways, we are receptive to them, but time is of the essence. April 1st next year is galloping on and I think people should be aware of it before . . . I have tried to be fair with the local authorities. I have tried to give them as much time as I could. A fortnight may not be a long time, but they have known for a long time what the realities of the situation are. If they have chosen not to do anything about it and left it to the very last; delaying it is an option, by government circumventing, but it comes out - at the end of the day the money has got to be found to deal with the problem that the board, whether I am, or anybody else is, the chairman, will have to address after 1st April.

The President: Dr Mann?

Dr Mann: No.

The President: Mr Waft?

Mr Waft: Yes, Mr President. Would the member acknowledge the problems that local authorities have when trying to budget, as he realises they are going to have to do very shortly, with their budget for next year's rates? They have been asked virtually to have an open cheque book ready to pay for the cost as a proportion to them - if it is not from the chairman, it is from the Council of Ministers' decision - and apart from the recognition that the local authorities have been slow in reacting, actually the Council of Ministers have been slow in reacting with regard to who pays what - whether it is all going to be borne on the rates, whether some of it is going to be borne by the taxpayer - and to try and ask the local authorities to prepare a budget for next year without that knowledge is very, very difficult.

Mr Kniveton: Hear, hear.

The President: Mr Lowey.

Mr Lowey: Yes. The answer to that is that the local authorities all know how much waste arises from their particular domestic round at the moment, because of the weigh bridge, and they know exactly how it is. They could plan on a worst case scenario, that they pay the lot, and therefore they should make preparation now. Again, I cannot stress too strongly the presentation that was made to the local authorities in late 1999, and if the members would like a copy of that presentation they are very welcome to it. In it, spelt out clearly, are the costs that were arising then and that have been updated now and also that they would be expected to pay. All of it was spelt out in 1999, so I think they have been warned that it was coming. They knew exactly the timescale, it should have been introduced this time last year, so the delay . . . But the direct answer to the question 'Have the Council of Ministers been slow?' - as I said to the hon. member, I am not trying to score any points or be particularly pedantic. I said I am open to persuasion: if they can give me a very good case why all or part of it should be persuaded, then that obviously will be a recommendation that I will really consider. I am again telling the Council that, come 1st April, if what happens is to happen, the trading board will have legal responsibilities of accepting charges and incurring debt. I have to have an income, and it is a simple question. It costs a lot of money to deal with the waste, I have to raise it in various ways, and these are suggestions that I am putting out for consultation at this moment in time.

The President: Okay, hon. members. We will move on, then, after our only question on the order paper this morning.

Transfer of Deemsters' Functions Bill – Second Reading Approved

The President: We move on to item 2 on our order paper, the Transfer of Deemsters' Functions Bill down for second reading, and I call on the hon. member, Mr Gelling.

Mr Gelling: Yes, thank you, Mr President. First of all, during my last attendance to the Legislative Council I found the first reading was more fully debated than I had anticipated, having come from Keys, so there were a lot of questions. Obviously I think in that reply I was able to answer nearly all of them, except the one that was thrown in very late on, which I will come to, Mr President. For this second reading I would like to move that this particular transfer of functions Bill, which is a Bill that resulted from deliberations by the Constitutional and External Relations Committee of the Council of Ministers - actually from a suggestion of the then Clerk of Tynwald - that it was quite a strange thing that the deemsters were doing the administrative and the financial work, whereas the Treasury was doing it in

every other respect. So during 2001 the committee considered whether the deemsters were the appropriate authority to make orders and set out fees for such functions as witness allowances, coroners fees and so on, and the committee considered that there was no case for divesting the deemsters of their legislative functions. However, it recommended that their powers to fix fees, rates of interest and other financial amounts should be transferred to the Treasury.

Now these are all powers that have been in existence for many years, before the Treasury was even created in 1985, and were presumably given to the deemsters because there was no other suitable authority at that time. So what I am saying, hon. members, and Mr President, is that what we have in this Bill is actually what the deemsters had. There is no change, except for the amendment that has been put forward in the Keys to clause 4 on page 2, where it is deleting the 8 per cent and reducing it to 4 per cent; also the question that was put on clause 4 in respect of the wording, 'This clause transfers from the deemsters to the Treasury the power to alter the rate of interest which is now 4 per cent, payable on an execution order, for example any execution granted by the High Court, except one relating to a maintenance order or one which is expressed to include interest.' Now that has created a lot of interest, Mr President, and I have to say that even consulting the legal draftsman his reply to me was that he was not quite sure, because this all happened before his time and, of course, it is all wrapped up in the 1981 Act and the maintenance orders. So in other words, we are only transferring what the deemsters had to the Treasury, but it has raised this question as to why it is for one and not for the other.

Now, my research to date, going through the judiciary, has brought up the fact that they believe that the maintenance order, as it is separate legislation, does not have any powers to award interest, so therefore they are excluded by other legislation, but I was not convinced, Mr President. I have not got it in writing, so what I would like to say to hon. members is that it has raised a very interesting point, one which at this second reading I cannot give an absolute answer, but I would suggest that when we come to the clauses I will then, having now put Mr Attorney on notice, have an answer to that specific question. It does not alter any other facts that we are only transferring the functions, but it is a very interesting point, which I think we should get an answer to before we get to the clauses stage, sir.

So, having said that and having answered the other questions posed by members at the first reading, I would like to move that the second reading of the Transfer of Deemsters' Functions Bill is approved today, sir.

The President: Hon. member, Mr Kniveton.

Mr Kniveton: Yes, thank you, Mr President. I am very happy to second that. I can add little to what I said at the first reading of this Bill. I certainly remain

of the opinion that it is rather a simple, easy and sensible Bill and one with which I can find no real problem, sir. Thank you.

The President: Mr Lowey.

Mr Lowey: Just taking - and I do not wish to split hairs - again the interest: I wonder why we actually put a fixed figure in when we have in (b) 'such other rate as the Treasury' - this is in clause 4(1A)(b) - 'may by order prescribe.' Why put a fixed rate in at 8 per cent or 4 per cent as it is now? Why not carry interest at the prescribed rate, such rates to be as the Treasury may by order from time to time prescribe? That gives you flexibility. Interest rates go up and interest rates go down - why nail ourselves to a fixed interest rate to start with and then give the power to the Treasury to alter it? It is better to have it in and no fixed rate. Is there any particular reason why that should be?

Mr Gelling: Oh, I am sorry. I was looking for -

Mr Lowey: I am sorry, the question is: why put a fixed rate in at the start when you do not need one and when you have got the power to vary it from time to time?

The President: Mr Delaney?

Mr Delaney: Oh, no, I have not got the answer to that one.

The President: Okay, right. Mr Gelling.

Mr Gelling: I think all will come clear, because it is all wrapped up in that clause 4 as to why interest is charged on one particular area and not on another, to which I -

Mr Lowey: Yes, okay.

Mr Gelling: - would also wrap up why there is a set rate, which of course was 8 per cent and has been reduced to 4 per cent.

Mr Lowey: All I am trying to say is: in my mind, if you have got the power to vary it, it is better to have it - I think that is right because it goes up and down and you have got to be able to fix it from time to time (**Mr Gelling:** Yes.) - but then if that is the case, why put a fixed rate in at the beginning? That is just reciting my query here.

Mr Gelling: I think possibly, Mr President, if I was really brave I would say that it was a guide to the deemsters, rather than the Treasury having the ultimate knowledge and power to have the flexibility.

The President: Dr Mann.

Dr Mann: Thank you, Mr President. I realise I was absent at the first reading. Although we are seeing

this as a simple transfer, in fact the deemsters are very close to the problems of the level of allowances, and although I am quite happy to support the transfer, would the deemsters still be in a position to alert the Treasury to needs to alter these allowances from time to time? They are very close, they are on the ground, as you might say, and they realise the difficulties.

Mr Gelling: Basically, yes, Mr President, I very much think so, because of course anything that does come forward has to come by an order also to Tynwald. So there is an area, whereby anybody could question it, and I would think that the first question that would be put would be: 'Has this been consulted with the deemsters?' I think if you said no, you would be on a sticky wicket, so I would suggest that that would be the case: there would be still a close working.

The President: Well, hon. members, if every hon. member is content, I will put the motion that the Transfer of Deemsters' Functions Bill 2002 be given its second reading. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Now, hon. members, it is at this juncture really that we decide whether we treat this as a whole committee or a special committee. I take it that we will be dealing with it as a whole committee when we come to clause stage, and I think Mr Gelling has already indicated that the clause stage will come at a subsequent sitting.

Mr Gelling: Yes, please, Mr President.

The President: Thank you.

Agriculture (Miscellaneous Provisions) Bill - First Reading Approved

The President: We therefore turn to item 3 on our order paper, which is the Agriculture (Miscellaneous Provisions) Bill which is down for first reading, and I call on the hon. member, Mr Waft.

Mr Waft: Thank you, Mr President. The Department of Agriculture, Fisheries and Forestry has licensing régimes for certain products under the Agricultural Marketing Act 1934. Whilst it is illegal to import products without a licence, illegally imported products can nevertheless be sold. The Bill closes this loophole. Illegal imports have sometimes come to light outside the period set for prosecutions by the statute of limitations. The Bill enables prosecution within six months of an offence coming to light, provided that it is no more than three years since the offence was committed. A similar amendment regarding the prosecution time limit is made to the Animal Health Act 1996, where failure to mark animals or to practice acceptable husbandry may not come to light until after the six months provided by the statute of limitations.

In two aspects this Bill arises from comments made during court cases. Courts accepted the circumstances of cases brought by the department, but found that the legislation was deficient. The High Bailiff pointed out that the Cruelty to Animals Act 1997 provided an offence of actively ill-treating an animal, for example by beating it, but not of omission, however horrendous the acts involved, for example, by neglecting an animal and allowing its condition to deteriorate even to death. The Deputy High Bailiff pointed out that the Animal Act 1996 dealing with welfare did not enable the court to imprison or ban someone from keeping animals in the event of serious offences. Where treatment of an animal does not constitute cruelty, but causes unnecessary pain and distress by poor animal husbandry, it is an offence under the Animal Act. The Deputy High Bailiff considered that there should be a provision for a custodial sentence and for debarring a person from keeping animals. These matters and auxiliary issues are dealt with in the Bill. Mr President, I beg to move the first reading.

The President: Mr Lowey.

Mr Lowey: I beg to second, sir, and reserve my remarks.

The President: Mr Kniveton.

Mr Kniveton: I have no trouble, sir, with the first part dealing with the importation of meats for resale and I will not dwell on that particular part this morning. However, I wish to add my name to support of this Bill insofar as animal welfare legislation is concerned. I believe it is very, very important and it is time we give consideration to this subject, as we are doing today.

In recent years, sir, we have had the outrageous situation where it has been proved that animals have been mistreated in one way or another, and even where a person has been convicted before that particular case, or similar offences, yet it has not been possible for a court to disqualify a person from keeping those or different animals and I believe the Bill will get over that situation.

I will go on to one further point which I am sure will interest another hon. member here today, Dr Mann. Mr President, perhaps the hon. mover will tell us what is the position over battery hens and indeed battery cattle, if that is the expression for them, the way they are kept, the movement they have or the lack of movement they have - hens, I believe, kill each other in cages because of lack of movement. So what is the view of the department in this connection? I am asking: is battery living truly acceptable or considered to have an element of cruelty? I look forward, sir, to what the hon. mover has to say in this respect.

The President: Mr Delaney.

Mr Delaney: I would like to give this warning now: I will be interested at the next reading in relation to the licensing of the importation of meat and the effect that has on the consumer in the Isle of Man. I will be raising that issue, and I just give the hon. mover warning of that.

The President: Dr Mann.

Dr Mann: I would naturally welcome this Bill. It has been a long time coming, delayed by the election, I gather, and it does cover a gap in the law. I fail to understand why this gap ever was allowed to take place, but it is so and I congratulate the department on bringing forward this amendment to ensure that it is covered in future.

The President: Mr Waft, your reply, sir.

Mr Waft: Thank you, Mr President. I thank the hon. Mr Lowey for seconding the first reading, and note the comments of the hon. Mr Kniveton with regard to his support for welfare legislation. His comments with regard to battery hens and cattle: this issue has been brought to the fore many times in Tynwald and the House of Keys. The latest information I can certainly get for this hon. House in future clauses.

The hon. Mr Delaney has concerns about the effect on the consumption of importation of meat products and the effect on the consumer. I can also find that information out for the hon. member.

The hon. Dr Mann does concede that there have been gaps in the law and congratulates the department. I am sure we are all conscious of the campaigns that there have been with regard to animal welfare. I do not think there is anything else that I can say at this time, Mr President.

The President: Okay, hon. members. I put to you the motion that the Agriculture (Miscellaneous Provisions) Bill be read for a first time. Those in favour please say aye; against, no. The ayes have it. The ayes have it.

Mr Waft: Mr President, I would just like to test my old friends, and request permission for the second reading and to suspend standing orders.

The President: Now, hon. members, that will be entirely up to this Council whether or not you are prepared to suspend standing orders this morning. In fact, is anybody prepared to second the proposition that we suspend standing orders this morning to take the second reading?

In that case, hon. members, we will simply turn on to item 4 on our order paper.

**Declaration of Members' Interests
Committee –
Member Elected**

The President: We will deal with the Declaration of Members' Interests Committee, where we need to elect one member in the place of our late colleague Mr Radcliffe. I call for nominations, hon. members.

Mr Lowey: Could I, Mr President, nominate Mr Waft. In doing so, I know Mr Waft is very keen on pensions, he has asked a load of questions in the past, and he seems to me to be an ideal candidate for that particular job. I would like to propose Mr Waft.

Mr Kniveton: Thank you, sir. I have great pleasure in seconding that. I find there is no better person I believe to do the job than Mr Waft.

Mrs Christian: Could I clarify, Mr President, that we are dealing with members' interests?

The President: The members' interests committee.

Mr Lowey: The members' interests committee, not emoluments?

Mrs Christian: No.

Mr Lowey: Sorry, I beg your pardon.

The President: No, no. We are dealing with the election of one member in place of Mr Radcliffe.

Mrs Christian: Not that I would not support the hon. member for that committee. The hon. member's comments implied that he was thinking of the next item.

Mr Lowey: I was, and I apologise to the President and Council. It is called Alzheimer's in my case!

The President: It is the members' interests committee, item 4.

Mr Gelling: I nominate Mr Waft, Mr President, for the members' interests committee.

Mr Lowey: Can I second that, Mr President?
(*Laughter*)

Mr Gelling: Yours is the next one.

The President: I have but the one proposal, hon. members, that Mr Waft be elected to fill the vacancy in relation to item 4 on our order paper, which is a vacancy on the Declaration of Members' Interests Committee. It appears that we are unanimous. All those in favour please say aye; against, no. In that case, hon. members, we will accept that Mr Waft become

our member on the Declaration of Members' Interests Committee.

**Joint Committee on the Emoluments of
Certain Public Servants –
Member Elected**

The President: Then we need to deal with item 5, which is over the page, the election of one member in the place of the late Mr Radcliffe in relation to the emoluments of certain public servants committee.

Mr Lowey: Can I not add to anything I said earlier, Mr President, but get it in its right order? I propose Mr Waft, sir.

Mr Kniveton: And I will second that, Mr President.

The President: Any other proposals, hon. members? In that case there is no need for a ballot, hon. members, I will simply put to you those in favour of Mr Waft serving on that committee please say aye; against, no. The ayes have it and we will deal with it in that manner due to the fact that it is straightforward that Mr Waft has been elected to serve on both the committees.

Now, hon. members, that draws to a conclusion all the business on our order paper this morning, and our adjournment will be until Tuesday, 12th November. Thank you, hon. members.

The Council adjourned.