



**LEGISLATIVE COUNCIL  
OFFICIAL REPORT**

**RECORTYS OIKOIL  
Y CHOONCEIL SLATTYSSAGH**

**P R O C E E D I N G S**

**D A A L T Y N**

**(HANSARD)**

**Douglas, Tuesday, 25th May 2004**

## Present:

### The President of Tynwald (The Hon. N Q Cringle)

The Lord Bishop of Sodor and Man (The Rt. Rev. Graeme Knowles), 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, Mr L I Singer and Mr G H Waft,  
with Mrs M Cullen, Clerk of the Council.

## Business transacted

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*The Council sat in private at 11.37 a.m.*

## Legislative Council

*The Council met at 10.30 a.m.*

### PRAYERS

*The Lord Bishop*

[MR PRESIDENT *in the Chair*]

### LEAVE OF ABSENCE GRANTED

**The President:** Hon. Members, leave of absence has been granted to the Hon. Member, Mrs Crowe, this morning.

## Questions for Oral Answer

### COUNCIL OF MINISTERS

#### Safety and security of Island Government promotion

1. The Hon. Member (Mr Singer) to ask a Member of the Council of Ministers:

*The initial results of a branding survey indicated that safety aspects were of more importance than economic success. What is the Government doing to promote, protect and develop the Isle of Man as a safe, secure place?*

**The President:** We turn, then, to our Order Paper and, dealing with the Questions for Oral Answer, I call on the Hon. Member, Mr Singer.

**Mr Singer:** Thank you, Mr President. I beg leave to ask the Question standing in my name.

**The President:** The Member of the Council of Ministers to reply. Mrs Christian.

**Mrs Christian:** Thank you, Mr President.

The Island has always historically promoted itself as a safe, secure place and continues to do so. Literature promoting the Island stresses the fact and there are many examples from different departments that have been here, all of which emphasise the importance of security.

Successive Governments, including the present one, have been well aware of the importance of security and the Isle of Man Government Plan specifically states one of its six overriding aims as:

*'to enable the people individually and collectively to live healthily and fulfil their lives within a secure environment.'*

First, personal security for individuals and their families.

We have maintained high levels of policing, as shown by the 2004 benchmarking study by KPMG, which shows we have a significantly higher level of police officers per head of population than in the UK, Jersey or Guernsey. The police are building strong community links and try to respond to specific security concerns, such as they achieved with Douglas promenade at night.

Latest crime figures show that crime in the Isle of Man has fallen by a third in the last two years and the primary strategic aim of the Isle of Man Constabulary is improving community safety.

Secondly, consumer security. We have increased the role and resources of the Office of Fair Trading, by, for example, introducing the Financial Services Ombudsman.

Thirdly, commercial security. We have invested in high-quality, regulatory bodies to build business confidence in the security of the Manx economy.

Fourthly, political security. Our system of consensus government provides a sense of continuity in the security to both residents and the business community. We have also consciously managed Government spending versus income, such that the Island now ensures that Government spending is kept within the bounds of economic growth.

Fifthly, infrastructure security. Government and the private sector have invested at unprecedented levels in recent years in the hospital, schools, water, power and telecommunications networks to maintain our independence. We have also supported the domestic agriculture sector to retain our own supplies of, for example, bread and meat. The branding survey has, in this instance, confirmed the actions that have already been taken. Of course, it is always possible to do more and, as the world becomes ever more conscious of the value of security, the results of the branding survey will help us promote precisely these aspects of Island life.

**The President:** Hon. Member, Mr Singer.

**Mr Singer:** Thank you, Mr President. Can I thank the Hon. Minister for a very full Answer, which I appreciate.

Is the Minister aware that the present branding exercise that is taking place... that a survey poll carried out under that umbrella, to people both living on and off the Island, indicated that living in a safe place was more important to the people – businessmen and ordinary people – more important than low tax or the good education provision. Does the Government, therefore, accept that – and the Minister used the word 'security' – the provision of identity cards could help promote safety within the population, especially as a recent poll shows 80 per cent of people would accept identity cards.

Therefore, will the Government consider the pros and cons of such, with a view to introducing identity cards without waiting for a similar decision by the UK Government, all for the reason of promoting the Island, as living in a safe place?

**The President:** Identity cards. We struggle to reach that on the Question Paper, but, nevertheless, Mrs Christian to reply.

**Mrs Christian:** Mr President, I am aware of the results of the branding survey. With regard to identity cards, some might argue that they improve security. Government is looking at the question of the plethora of cards which

### Prayers

### Leave of absence granted

### Safety and security of Island – Government promotion

are presently being considered, in terms of their issue via different Departments for different purposes and will, no doubt, give consideration to the issue of a particular singular identity card which can carry much information. However, I am not in a position to say whether they would support that going forward or not at this time.

**The President:** Mr Singer.

**Mr Singer:** Could the Minister, therefore, take it back to the Council of Ministers, because, as we know, identity cards are accepted as a norm throughout many parts of the world and, perhaps, we would be forward looking to introducing it before the United Kingdom if we felt that it was going to help the promotion of the Isle of Man.

Would the Minister take it back to the Council of Ministers to ask them to look at it, with a view to possible early introduction if they felt that was the right way?

**The President:** Minister.

**Mrs Christian:** Mr President, I will report to the Council of Ministers the view of the Hon. Member.

**The President:** Hon. Member, Mr Delaney.

**Mr Delaney:** One of the supplementaries has been answered: the Minister will take this back to the Council of Ministers, but would the Minister, also, in putting the argument forward on behalf of the Hon. Member, point out –

**Mrs Christian:** Mr President, I am reporting the view of the Hon. Member. I am not putting an argument forward on behalf of him.

**Mr Delaney:** Okay, then. Well, I will put the argument to them by letter. The situation is that most people have to have an identity now even to get on a plane or to actually get access to anything in a secure area, which is more and more common. As the question here is with security, will this not be a practical time, instead of waiting for Britain to bring in identity cards, for us to do it first to show more security in the Isle of Man than on the land across the sea?

**The President:** Similar question. Minister, do you wish to reply.

**Mrs Christian:** Similar answer, Mr President.

## TREASURY

### FSC and IPA

#### Removal of political membership

2. The Hon. Member (Mr Lowey) to ask the Member for the Treasury:

*A. In the proposed reshuffle, will you take the opportunity to remove the political membership of the Financial Supervision Commission and the Insurance and Pensions Authority, and*

*B. do you agree with a senior off-Island Finance Executive, who suggests that this should be done without delay?*

**The President:** We turn, then, to Question 2. Hon. Member, Mr Lowey.

**Mr Lowey:** Thank you, Mr President. I beg leave to ask the Question standing in my name.

**The President:** I call on the Member for Treasury, Hon. Member, Mr Gelling, to reply.

**Mr Gelling:** Thank you, Mr President.

The Treasury is, of course, well aware of the IMF Report of November 2003 which made reference to shortcomings in the independence and accountability of both the FSC and the IPA. It did also state, and I quote:

*'These shortcomings have not been a major concern to date. However, they are likely to become a more significant issue going forward as the jurisdiction's financial sector continues to develop.'*

I would, then, Mr President, emphasise the point that the IMF took the view that it was not an immediate problem, but it was an issue of perception that should be addressed to avoid potential future difficulties.

I am aware that the Treasury Minister has been developing proposals in relation to the political membership of the FSC and the IPA and does intend to come forward before the summer recess with such proposals. Therefore, Mr President, it would be premature to comment on those proposals in advance of their finalisation, but I would emphasise that, since the illness and retirement of Mr Allan Crowe in February 2003, the FSC has functioned with its vice-chairman, Mrs Rosemary Penn, acting as chairman and, on behalf of the Treasury, I would like to express to her our appreciation of the hard work and dedication in taking on this role and, as such, the FSC has been, in fact, working throughout that period without any political membership.

**The President:** Mr Lowey.

**Mr Lowey:** I thank the Hon. Member for his reply, but he says the IMF said there had been no immediate problem with political representation. That was not the view of Edwards, which is prior to IMF, so there has been a concern expressed prior to that. I happen to share that view, although I did not share the setting-up of Edwards. However, would he not agree that post-Edwards, generally, now, it is accepted for Manx practice not to have political presence on regulatory bodies?

**The President:** Mr Gelling.

**Mr Gelling:** Yes, indeed, Mr President, Edwards was the first to raise this. I think it was raised in the knowledge of how other jurisdictions, perhaps, were behaving in their regulatory form and it was never in any doubt that the Isle of Man was absolutely top of the pile when it came to regulation.

I must admit, Mr President, I always argued that, during the period of building, the regulations for the finance sector, it was an excellent thing to be both the Treasury Minister and the Chairman of the FSC, to actually drive that regulation through, but it is an accepted thing today throughout the

world that political membership of regulatory bodies is not something that is advised.

So, as I have said, Mr President, certainly I know that this is being addressed and I think you will find that the Minister will come forward, as I have said, before the recess with his proposals as to how that will be achieved.

**The President:** Mr Lowey.

**Mr Lowey:** A final comment. It is about timing and that is the reason why I put the Question down – to encourage decisions to be made along the lines that he hinted at.

I, too, would share the compliments that have been paid to Mrs Rosemary Penn, because I think she is an outstanding business lady and leader in that particular field and I would concur with what the Member has said about Mrs Penn.

**The President:** Mr Waft.

**Mr Waft:** Yes, Mr President.

Would the Member agree with me that, prior to the IMF and prior to the Edwards Report, it was Government's intention to look at the chairmanship of this group and this is nothing new?

**Mr Gelling:** It is something, I think, that has always been in the mind. In fact, we changed the legislation to enable us to do so, some time ago, so that we could, but it has got to be done step by step, because, when you eliminate the political membership, not just the chairman, but a member, you are actually taking away a conduit through which information can flow.

Therefore, what I am saying is, when a political membership of these regulatory bodies is taken away, it has to be replaced with some formal reporting by that regulatory body, to make sure that they are actually carrying out the policy in the legislation that we actually put through our parliament.

So, there is a bit of work to be done, but I can assure the Hon. Member, Mr Lowey, and other Members that that will be addressed and there will be an announcement very soon.

## HEALTH AND SOCIAL SECURITY

### Westmoreland Road Hospital Reopened wards

3. The Hon. Member (Mr Lowey) to ask the Minister for Health and Social Security:

- A. How many wards at the Westmoreland Road Hospital have been reopened;*
- B. how many patients have been treated in those wards; and*
- C. will this affect the proposed future use of this site for educational purposes?*

**The President:** We turn, then, to Question 3 and, again, I call on the Hon. Member, Mr Lowey.

**Mr Lowey:** Thank you, Mr President. I beg leave to ask

the Question standing in my name.

**The President:** Minister for Health and Social Security, Mrs Christian, to reply.

**Mrs Christian:** Thank you, Mr President.

In answer to the Hon. Member's Question, I can inform Council that no wards have been re-opened at old Noble's Hospital.

The Department is utilising part of the old day hospital for outpatient clinics. For the most part, these are viewed as more community-focused services and it is in the interests of the patient, therefore, for them to be incorporated into a community-based facility. We are also using some rooms in the old ward block, mainly for NHS dental services.

With regard to the future usage of the site, the Department has established a working party to investigate the options to meet the needs of both the Department of Education and the DHSS for the future.

**The President;** Mr Lowey.

**Mr Lowey:** The Minister uses the word 'utilising' the old ward blocks, but how many old ward blocks are being utilised for dentistry and how many wards are there? If I remember rightly, I think there are six?

**Mrs Christian:** Mr President, when I talk about the old ward block, it is the ward block which was demolished down to ground floor level because of the concrete cancer. It had not been used as wards for many years. Yes, it is that area in which the NHS dental facility is currently provided.

**Mr Lowey:** Is the Minister, then, saying that the new extension which is proposed for educational purposes – or is hinted at – is that empty and is it able to be utilised for the purposes for which it was going to be, which was the replacement of a school?

**The President:** Minister.

**Mrs Christian:** The ground floor of that element, which was the day hospital, is currently being used for community services. The discussions currently taking place with Education – reviewing their requirements for educational facilities, along with our Department's requirement to produce community facilities and various other office space requirements – the working party is looking at the whole of the DHSS site and facilities in that area, not only the footprint of Noble's Hospital, but also the footprint of Crookall House and the nurses' home, to work up schemes which will, hopefully, accommodate the needs of both Departments.

**Mr Lowey:** Can I, then, ask the Minister: how many actual patients are utilising the ground floor area of this particular hospital?

**The President:** Minister.

**Mrs Christian:** Mr President, I cannot say how many are using it: they are outpatients and I have not got statistics on how many outpatients have been through the service. The old ward block, where the NHS suites are, has 2,771 patients registered currently and the other services provided

are physiotherapy, phototherapy, orthodontics, wheelchair assessment, podiatry, occupational therapy, in that particular part of the old hospital.

**The President:** Mr Singer.

**Mr Singer:** Minister, I was just going to ask you what was now in Noble's, at the old Noble's, and the Minister has given us this.

Can she tell me how many of these would have gone back to old Noble's, if there had been space in the new hospital to accommodate these particular items?

**Mrs Christian:** So, how many would be private and –

**Mr Singer:** Yes, if there had been space in the new hospital, how many of those particular services would have been in the old hospital, if there had been room in the new hospital?

**Mrs Christian:** Mr President, the only service that has moved back from the new hospital is orthodontics and phototherapy. All the other services were intended to be provided at the community health facility, which we always envisaged would be based at Westmoreland Road after the evacuation of the acute hospital facilities.

**The President:** Mr Kniveton.

**Mr Kniveton:** Mr President, Mrs Christian has just answered the question I was going to ask and it is this, am I right, I always understood your Department was going to have the acute hospital at the old Ballamona site and the community hospital at Noble's and that has been understood by me for a good number of years, so, really, what has happened is as planned.

**The President:** Minister.

**Mrs Christian:** Yes, Mr President.

However, there are other services which now need to be provided, which were probably not anticipated at the beginning of the plan. Indeed, there is pressure for further general practice in the area and, as you know, a need for further dental chairs.

So far as our development in what was the Jane Crookall wing, where we hope to put core community facilities, it is anticipated that there will be a development there of further GP services, or, maybe, the relocation of a GP practice to that area and further provision of dental facilities in that area.

**The President:** Mr Singer.

**Mr Singer:** The facilities that are now present in the old hospital, these are now permanent, or are there any plans in the future to expand the new hospital, build onto the new hospital? Are there any plans for that in the future?

**Mrs Christian:** Mr President, there is no intention of putting these facilities in the new hospital. These are community facilities, they are not acute facilities and they are best placed in the community. It was always intended they be there and there is no intention that they be now relocated to the acute hospital.

**Mr Singer:** Would the Minister accept, Mr President, that there is any need in the near future, or the distant future, to expand the present hospital. Are there any plans to expand the new hospital?

**Mrs Christian:** No, Mr President.

**The President:** Mr Gelling.

**Mr Gelling:** I am rather confused now, Mr President, because I thought that was the original idea and then the acute hospital came along, and Noble's and Ramsey and Southlands in the south all went by the board, and I know there were Members in the House from the south, who were very much behind the new hospital because there was going to be a cottage hospital in the south, so, if there is a cottage hospital now going to be in Douglas, does this mean there will be one in the south of the Island?

**The President:** Minister.

**Mrs Christian:** Mr President, let us get it right, it is *not* a cottage hospital, it is a community health centre. It will not have nursing beds, it will have these outpatient facilities.

#### **National Insurance Fund Investment company responsible**

4. The Hon. Member (Mr Lowey) to ask the Member for the Treasury:

*On page 40 of the Detailed Government Accounts for the year ended 31st March 2004, the loss on sales of investments for the year 2002-03 is £26,550,843 and for the year 2003-04 is £10,220,382 -*

*A. which investment company administers the National Insurance Fund and is responsible for this 'success'; and*

*B. do you intend to continue to use this investment company to administer this important Fund?*

**The President:** Right, we turn then to Question 4 and, again, I call on the Hon. Member, Mr Lowey.

**Mr Lowey:** Thank you, Mr President. I beg your leave to ask the Question standing in my name.

**The President:** And, again, this time I call on the Member for Treasury, Mr Gelling, to reply.

**The Member for Treasury (Mr Gelling):** Thank you, Mr President.

In the year just passed, 31st March 2004, ending that particular year, the external funds of the National Insurance Account were managed by two companies, CMI Fund Managers Isle of Man Ltd and Merrill Lynch Investment Managers Isle of Man Ltd, and, as at 31st March 2004, the market value of the funds managed by CMI was £94.4 million and Merrill Lynch £236.1 million.

Treasury, Mr President, reviews the performance of the Fund and that of the investment managers through regular meetings with the managers and the receipt and review of

their reports. Treasury has no plans at this time to discontinue its contract with either of the two fund managers.

The Question from the Hon. Member refers to the loss on sale of investments over the last two years. The investment managers carry out investment transactions as and when they identify better investment opportunities and also to reposition the funds to reflect changes in the economy and markets. These losses generally represent investments that were purchased when the equity markets were higher than when they were sold.

Hon. Members will be aware that the world equity markets declined significantly over the last three years and have only recently started to recover. These results, though unwelcome, only reflect the last two years. It is worth noting that, notwithstanding these losses, if we were to total the realised profits and losses for the last ten years, we have a net realised profit of £76.8 million.

However, Hon. Members, the most important consideration for Treasury is to prudently and consistently maximize the total return, that is capital performance plus income over long periods of time of up to 30 years. Over this time period, market values will fluctuate and this will be reflected in the profits or losses incurred when investments are sold as part of the day-to-day management of the funds in order to purchase more attractive assets.

**The President:** Mr Lowey.

**Mr Lowey:** Yes, thank you, Mr President.

I cannot say I am particularly pleased with the reply I got. Can I ask the Minister: would he not agree – he has named the companies – how they are paid for their performance? Do they get paid a percentage? Because, however you dress that up, it is a catastrophic loss. We are talking multi-million pounds over a short period of time and it is no answer to say that they bought when it was dear and they are selling now when it is low, I thought the reverse would have been true. You do not need to be a financial analyst to know that. And, surely, the people who advised buying these had a long-term interest in view. Why sell and make this catastrophic loss?

Would the Member for Treasury also not agree, that to lose £39 million of the National Insurance Fund, when the annual income of all National Insurance Fund is £101 million, is worthy of note? I notice this has not been highlighted in this report at all, you have got to plough through it to pick up this bad news.

So my question, really, is when will these people be shown – I presume they have been shown a yellow card – when are they going to get a red card?

**The President:** Mr Gelling.

**Mr Gelling:** Thank you, Mr President.

Well, first of all, the easy answer is the one to the first question and that is they are paid on a percentage of the capital they manage, right, not on their performance. It is a percentage of the amount of capital they manage.

Then, if I can come onto the next one, which is a little more complicated, and that is, of course, that the losses that are shown are realised losses, that is what is in the blue book, of stock that they sold. So, in other words, you do not see the market values of increased stock in other areas, it is only when they sell the stock and, obviously, sell it at a much less price than what they bought it for, is it recorded. Okay?

So what they have done in this particular case, they have seen particular stock that they had. You might recall, in another place, a similar answer given by the Minister and that was, there were a lot of Members' concerns about equities: why didn't we get out of equities? Of course, this is where the crystal ball comes in. The ideal thing would be to get out of them before they start dropping, then, when they do start dropping, you are always in with the hope that that drop will stop and they will start... which they have always done over many years – I think we have been in equities since 1963 – they have always risen.

The managers, in this case, decided that the stock that was dropping was going to drop further, so they sold to get out of those equities, at that time at a calculated loss.

What I can say, that, through the accounts that we have there, the losses incurred on the sale of the investments, we should also note that the balances held by the investment managers at 31st March which is the figure I used before, were book costs £325.3 million, market value £330.5 million. So, if we compare those results with those of exactly a year previously, when the book cost was £335.5 million, the market value is £272 million and we see there not only the degree of recovery in the markets, but also the importance of looking at the total value of the Fund and also – just trying to give a bit of confidence to the Hon. Members – the market value of the Fund during this last year has increased by 21.5 per cent.

So, as I have already explained, Mr President, we have to look at it over a long-term period. Those losses jump out of the book at you because they are what they did take as a calculated loss to buy better stock. That, in fact, has proved to be the right way to have done it. If they had hung in, probably those equities might very well have disappeared and were valueless. So it is a management tool: that is why we employ them.

**The President:** Hon. Member, Mr Delaney.

**Mr Delaney:** You have answered one question. Mr President.

Can you tell us, of all the money, whether it be the book stock, the value stock, or the actual cost of purchase, what the percentage return was when you talk about the percentage, but what is that percentage return we got over that year's period? That is my first up there: I have two actually.

**The President:** Mr Gelling.

**Mr Gelling:** The percentage on...? Sorry, I am not –

**Mr Delaney:** The percentage profit margin on the investments this Island has with these companies, against what the return was.

**Mr Gelling:** I am sorry, Mr President, I have not got that figure –

**Mr Delaney:** That is the interesting figure.

**Mr Gelling:** - but again it will vary from book value to market value, every week virtually, as and when they buy and sell stock and when the stock value goes up and when it comes down, but I will take that on board.

**Mr Delaney:** Well, that is the interesting one, because

they are getting guaranteed... On the amount of money they have got is what they get paid on, and what we are interested in is what return we got for them playing with the money on the exchange.

Could I ask my second supplementary? On the figures given and on the question where the written answer is, the Member has responded. We talk about roughly £75 million coming back, going up in value and £25 million loss, according to that report.

The companies that sold this stock, bought it when they were high and sold when they were low, which you said in the Answer is now coming back. Would you agree with me, then, that the decision to sell may have been the wrong one, if they are coming back up in value?

**Mr Gelling:** Could very well have been, Mr President –

**Mr Delaney:** That is the point.

**Mr Gelling:** - and I think this is where the crystal ball comes in.

We were condemned, it is fair to say – Treasury – a few months ago in another place, because that equity stock had not been put into bonds. Actually it is now reversed, the equities are increasing and the bonds are not so healthy. It is a very difficult area to manage, but what I am trying to say is, you have got to take it over a long period of time, not on a year to year basis.

I think the question I did not answer from the Hon. Member, 'Have they been given a yellow card?' It is fair to say they have, sir. They have had letters from the Minister, drawing their attention to the fact that we have now got a committee which was formed in July 2002, which sits as an investment committee.

The investment managers used to come in twice a year to report, now they have to come in quarterly and actually discuss the investments, but we do not want to get into the position where Treasury is telling the managers what they should invest in, because that is an extremely dangerous way to go about. They are employed to manage our funds.

**The President:** Mr Lowey.

**Mr Lowey:** Could I, then, follow that on? Do you have to wait for a £29 million or £39 million loss before you get them in to talk to them? That is the first question.

Secondly, again, I agree with the Member when he says you do not have to take it over a short term, you take it over a long term, but is it not a fact that, over ten years, the value has gone up £76 million. We are talking about a £350 million plus portfolio, which is not spectacular by any stretch of the imagination, but, in this two-year period, we have actually lost £37 million and isn't that one of great concern? It is to me.

**The President:** Mr Gelling.

**Mr Gelling:** It is a great concern, obviously, because this is where you have your managers and their performances. We now have four managers, so we look at the four managers and their performance. Some out-perform the others and it is obvious that that is how you do your re-selection when you come to three years' time when you have your beauty parade and your tender to bring them in.

Now, I did say in my original Answer, one of these has been very long standing, in fact right back to 1963, a long-standing fund manager, but the other is very new; in fact, they came in only recently, so it is obvious that we are looking at this and, as I say, we have got a committee which sits virtually, I would not say on a weekly basis, but it is chaired by a political Member of the Treasury and it is looking at this investment and how those investment managers are performing. If they are not performing, they are brought in specifically to ask why, in fact, they have not been able to increase our Fund, but I must emphasise, again, Mr President. I know Mr Lowey has said ten years, but it is a sustainable growth you are looking for over a long, long period without *too* many problems in the way of taking risks, because they are all down to a certain amount of risk.

They are only allowed to invest if they could give us a far better return, Mr President. If we give them an open chequebook to go and invest wherever they like, we could also get a colossal loss.

**The President:** Finally, Mr Lowey.

**Mr Lowey:** Finally, well, with the greatest respect, Mr President, the Member thinks that £37 million is not a spectacular loss. According to him, you could have a spectacular loss.

That is spectacular, however you dress it up. Would the Member of the Treasury tell me, since 2002-03, which is the year that made a spectacular loss and the £10 million for last year, how many times did the Treasury have these people in and were they aware of these sort of losses? Why haven't they been highlighted in this book, which is supposed to be an audit report? You have got to plough through this book to pick up these figures and I think the National Insurance Fund of £360 million, when we have got pressures on it, should be highlighted. I think it is an absolute scandalous state of affairs.

**Mr Gelling:** I take it on board what the Hon. Member is saying, that it is not brought out in the book, that you have got to plough through it. That is fine, but I think, also, you have got to consider that, if you demanded a management of our funds to do, something like, 'go and sell all your equities now', and then they did and the whole jolly stock they bought went down, it is very difficult to be able to manage them. But, in answer to your question, yes we do think £37 million is a lot to lose on your equity stocks that you have sold; bought high: sold low, but we are meeting them on a regular basis, not just at the Treasury, but with this investment committee. I would say, rather than have two presentations in a year, they are probably in six times a year, every other month, actually, talking either with the committee or with Treasury. So, I can assure you something did concern the Treasury, but the difficulty was, of course, by then, not rushing in and doing something that would have been probably worse than what we have already got.

**The President:** Mr Kniveton.

**Mr Kniveton:** Yes, just one this morning. I do not know whether the Hon. Member can answer this one?

I am referring to the losses, as specified in the Question, and, Mr Gelling, you did say that there have been some improvements since then. Presumably, you are referring to

the proceeds of the sale being re-invested, as we all do from time to time in our own lives on the stocks, but can you tell us to what extent has there been improvement to date?

**Mr Gelling:** Well, I think, basically, the figure I have is that the funds have increased, that particular fund by 21.5 per cent during the last year, because, although they sold at a lot less than what they bought, what they have now invested in, obviously has been a good investment and we have now got back to where we were and increased it.

**Mr Kniveton:** We have recovered.

**Mr Gelling:** Yes.

## Orders of the Day

### European Union (Accessions) Bill Second Reading approved

**The President:** We will turn, then, on to the second Item on our Order Paper. This is to deal with the European Union Accessions Bill. It is down for Second Reading, Hon. Members at this stage and I call on Her Majesty's Attorney General to move.

**The Attorney General:** Thank you, Mr President.

Mr President, at the First Reading of this Bill I detected a concern that Hon. Members wished to be better advised about developments in the European Union and how those developments might affect the Island. As one Hon. Member put it, 'the more information the better'.

I believe that the Government has recognised that plea for further information and the Chief Minister has, therefore, arranged for the External Relations Division of the Chief Secretary's Office to organise regular briefing sessions for Hon. Members.

As an example, Mr President, as you will know, there was a briefing on 13th May, with reference to the Savings Directive and related matters, and the Chief Minister has followed that up with further information on State Aids and a copy of a White Paper issued by the United Kingdom's Foreign and Commonwealth Office, which identifies some important issues within the Union.

Mr President, I mention these matters by way of introduction to this Second Reading because it would seem to me, that, whereas there are perfectly understandable concerns about the EU's impact on the Island, which the Government is seeking to address, I would suggest that this Bill, which concerns the accession of the ten new member countries, does not raise matters of fundamental concern.

I do not in any way, Mr President, underestimate the concerns of Hon. Members. Indeed, that was shown by the fact that there was a very close vote for a committee to be appointed to look into these matters. I acknowledge that, Mr President, but I simply suggest that this Bill need not provoke those fundamental concerns.

There was, however, Mr President, one particular matter on which I feel I must comment. I believe it was the Hon. Member, Mr Delaney, who enquired as to benefits which

may be payable to persons from the ten countries who might come to live on the Island.

I have received a very helpful summary of the position from an officer in the DHSS by way of general guidance and, if I may, Mr President, I will very briefly refer to the headline points from that email.

Of course, Mr President, Social Security benefits are a very complex business and this is just a guide, but, in relation to contributory benefits, entitlement to these benefits depends, of course, on the claimant having paid or having been treated as having paid, sufficient National Insurance contributions in the relevant tax years. It is not only Isle of Man National Insurance contributions which count towards entitlement to contributory benefits on the Isle of Man. Under the provisions of our reciprocal agreement on Social Security with the United Kingdom, contributions paid there also count towards benefits here and vice versa.

The Isle of Man, not being a member state of the European Union means that migratory workers do not enjoy the same advantages here as they would do within the European Union, in terms of contributions they have paid in any member state counting towards benefits in that or any other member state.

However, Mr President, we are party to bilateral agreements with the majority of member states, that make certain provisions for the reckoning of contributions paid in those countries, when assessing entitlement to benefit in the Isle of Man and, of course, vice versa.

We, then, Mr President, have so-called universal, non-contributory benefits. Entitlement to *these* benefits does not rely on the payment of contributions, nor is it means-tested, but there is a residence test usually, that is, the person must have been resident in the Isle of Man or the United Kingdom for at least 26 of the 52 weeks immediately prior to the claim being made.

The reciprocal agreements on Social Security and child benefit with the United Kingdom provide that residence in the United Kingdom will count as if it were residence on the Isle of Man, and vice versa, and for the transfer of claims between the countries. So, Mr President, it would not be possible for someone coming to the Island, having resided in a member state other than the United Kingdom, or, indeed, in any other country for the whole of the previous year, to gain entitlement to those non-contributory benefits. They would have to wait for at least 26 weeks.

Similar provisions, Mr President, apply in relation to child benefit, except that payment can be made to the claimant earlier if they or their partner – if they have one – commences work and starts paying National Insurance contributions here and they intend to stay here for at least six months, or they have received child benefit in the Isle of Man or the United Kingdom at any time within the previous three years and they intend to stay here for at least six months, or, Mr President, finally, they are coming from a country with which the Island has a reciprocal agreement covering child benefit.

Then, finally, Mr President, there are non-contributory income-related benefits, such as income support, income-based jobseeker's allowance, family income supplement and disability working allowance. Mr President, entitlement is subject to the satisfaction of a residential qualification which applies to all claimants, so, broadly speaking, the claimant or their partner – if they have one – must be an Isle of Man worker, as defined in our Control of Employment Act.

There is, of course, a safety net if the denial of income support or income-based jobseeker's allowance would be exceptionally harsh or oppressive in any particular case.

Mr President, I apologise for, perhaps, having dwelt a little long on that, but I think it does show that there will not be, in my respectful view, an influx of migratory workers who will be entitled, as of right, to benefits which will have a significant impact on our economy.

Mr President, in this Second Reading I would not wish to repeat all the points I made at the First Reading, save to re-iterate that our relationship with the Union, as enshrined within Protocol 3, will not be affected. I would suggest that there is well-established legislative precedent for this Bill. When new countries have joined the community in the past, we have made the necessary legislative amendments and this Bill seeks to follow those precedents.

So, Mr President, with those comments, I beg to move that this Bill be read a second time.

**Mrs Christian:** I beg to second and reserve my remarks.

**The President:** Mr Singer.

**Mr Singer:** I would briefly like to talk about the same items I talked about last time.

The move that was made in the other place to remove from the European Communities Act (Isle of Man) 1973 a section which was felt permitted any European legislation to come into Isle of Man law, without it having been scrutinised by the House of Keys or this Legislative Council, and this amendment, which was moved to remove part of Section 1 of the European Communities Act 1973, was at the centre of debate outside of the other place in the correspondence which we have before us between the learned Attorney and the Clerk of Tynwald.

They both seemed to have diametrically opposed views and I felt that it was important that, perhaps, it went to a committee. Then the committee... because, obviously, we all here respect both of you, I would hope we respect the views of the Attorney General and the Clerk of Tynwald, but these views are diametrically opposed, as to what this means when new legislation is introduced and put into our Statutes.

At the time, Mr President, of the discussion and the introduction of the European Communities Act 1973, there was considerable disquiet in the upper house at the way that this legislation was introduced, the fact that it was unusually introduced into the upper house and it was absolutely rushed through, and I have got a quote here from Mr Nivison, who said at the time:

'It is a little unfair to Members to have a Bill of this nature given to them about three days before it should be moved and not only that it should be moved, but that we should be asked to, subsequently, possibly, suspend Standing Orders and take further Readings.

A further protest I would like to make is that the literature relating to the Treaty of Accession and to Protocol 3, which is quite complicated material, is placed on our desks as we enter this afternoon.'

And he then said:

'One of these days somebody is going to draw attention to the fact that we hastily passed the European Communities (Isle of Man) Bill 1972. We had only one afternoon to do it in because of various reasons and we have made this mistake, that mistake and the other mistakes. These words will come out sooner or later and this is why in our constitution

we have such things as Standing Orders which do not permit, as a general rule, Bills of this importance to be rushed through.'

So there was considerable concern at that time because the Attorney General was not present at that particular meeting, nor the Governor. It does seem to me that the difference in interpretation should be investigated. It does make a difference, in my view, as to whether this part remains in the Bill.

I think the Attorney General has said, and he would probably confirm this, that, if this particular section was repealed, then that would breach our obligations to Europe, but the Clerk of Tynwald – who I am sure we accept is a credible witness, as a solicitor of the Supreme Court, and who has appeared in European Courts – his opinion is that, if we do not repeal this particular section, we will not have the transparency because the legislation would just automatically appear as part of Isle of Man legislation. His argument, perhaps, is that we should have a more transparent mechanism for European Union Treaties that are applied to the Isle of Man, in that it should go before the legislature. I do think that this is important and I believe we need to hear from both sides why there is this diametrically opposed opinion.

Therefore, Mr President, with respect – and I have great respect for both the Attorney General and the Clerk of Tynwald – I really believe that, before we go any further, we should understand what we are doing at this particular time and I would again move, Mr President, that this goes to committee to gain that explanation, so, when we do come back, we will be able to make decisions which we fully understand.

**The President:** Mr Attorney to reply.

**The Attorney General:** Yes, thank you, Mr President.

Can I say at the outset that, of course, I also respect the views of the Clerk of Tynwald and I would regard him as a credible witness. However, Mr President, with the greatest respect, it seems to me that the Hon. Member, Mr Singer, is dwelling on a matter which has been before another place. It concerned an amendment to the Bill which failed in that other place. I do think it would be counter productive now to review correspondence which passed between the learned Clerk of Tynwald's office and my chambers.

Mr President, it perhaps reveals a difference of opinion, a difference which is perhaps held in good faith on each side. The question of a committee, or not a committee, was fully aired at the last sitting, when we looked at the First Reading of the Bill, Mr President, and, of course, it is for Hon. Members and for yourself as presiding officer –

**The President:** It is not before us...

**The Attorney General:** – it seems to me, Mr President, that it really is a non-starter.

I do, however, Mr President, very much wish to make the point that the Chief Minister – and I believe Council of Ministers generally – are very keen to promote a more transparent review of European legislation and I do feel we are on the way to providing that more transparent review, as I have indicated in my comments earlier today.

Mr President, I do feel that, with respect, I really cannot add anything further at this stage.

**The President:** Right, Hon. Members, the motion that

I put to Council is that the European Union Accessions Bill be read for a second time. Those in favour, please say aye and against, no. The ayes have it. The ayes have it.

### **European Union (Accessions) Bill** **Clauses considered**

**The President:** We turn, then, to deal with the clause stages and I call on Mr Attorney to move clause 1.

**The Attorney General:** Yes, thank you very much, Mr President.

This is a short Bill consisting of only two clauses and clause 1 amends Section 1(1) of the European Communities (Isle of Man) Act 1973, so as to include the new Accession Treaty within the list of treaties implemented by the 1973 Act in Isle of Man law.

Simply put, Mr President, if Hon. Members approve the amendment, the definition of the Treaties or the Community Treaties in Section 1 will be amended to add a new category (m), so that the Treaty concerning the accession of the new countries will be added.

Mr President, with that, I move that clause 1 do stand part of the Bill.

**Mrs Christian:** I beg to second, Mr President.

**The President:** Seconded by Mrs Christian. Any Hon. Member wish to comment on clause 1?

In that case, Hon. Members, I put to Council that clause 1 do stand part of the Bill. Those in favour, please say aye and against, no. The ayes have it. The ayes have it.

Short title of clause 2, Mr Attorney, please.

**The Attorney:** Yes, Mr President, I move that clause 2 do stand part of the Bill.

**The President:** Mrs Christian.

**Mrs Christian:** I beg to second, sir.

**The President:** Hon. Members, the motion I put is that clause 2 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

### **European Union (Accessions) Bill** **Standing Order 22.2 suspended** **to take Third Reading**

**The President:** Now, Mr Attorney.

**The Attorney General:** Mr President, whilst I bear in mind the warning that was made by the Hon. Mr Nivison, a Member of Legislative Council, way back in 1973, that we must not rush through important pieces of European legislation, I would ask the indulgence of Hon. Members in, perhaps, suspending Standing Orders so that we can pass the Bill by taking the Third Reading.

It is a very short Bill. I think we have reviewed at length

the implications of it and I would, therefore, Mr President, move that Standing Orders be suspended.

**The President:** Mrs Christian.

**Mrs Christian:** I beg to second, Mr President. I think it is fairly straightforward.

**The President:** Now, Hon. Members, I put to you that we suspend the Standing Orders so that, in fact, the European Union Accessions Bill can be read a third time this morning. Those in favour of the suspension of Standing Orders, please say aye; against, no. The ayes have it. The ayes have it.

### **European Union (Accessions) Bill** **Third Reading approved**

**The President:** In that case, Mr Attorney, having made the case, we will take the Third Reading, sir.

**The Attorney General:** I am much obliged, Mr President, and to Hon. Members.

Mr President, I hope Hon. Members will forgive me for just referring to the explanatory memorandum of the Bill, which summarises the main points, that the Bill relates to the Treaty concerning the accession of the new member countries; the Accession Treaty provides for the accession of the new member states to the European Union on 1st May 2004.

So, clause 1, as we have indicated this morning, Mr President, amends section 1(1), so as to include the Accession Treaty within the list of Treaties implemented by the 1973 Act in our law and clause 2 provides a short title for the Bill.

Mr President, I have emphasised that our relationship, enshrined within Protocol 3, is not in any way affected by this short Bill and I, therefore, move that the Bill be read a third time and do pass.

**The President:** Mrs Christian.

**Mrs Christian:** I beg to second, sir.

**The President:** Mr Lowey.

**Mr Lowey:** Just on a matter of clarity: as the members joined the European Union on 1st May and here we are at the end of May, is there anything in the interim, or will this be backdated to 1st May to cover any actions that may or may not have been taken?

**The President:** Mr Attorney.

**The Attorney General:** Mr President, this Bill will only become effective in law when it is passed and we have Royal Assent. So, therefore, Mr President, there will be no question of backdating and it, perhaps, indicates the danger there would be, if there had been further delay in reviewing the implications of the Bill, putting it to a select committee and so on. There would, then, have been a danger that things might have slipped between the gap.

**The President:** Hon. Members, the motion that I put to Council is that the European Union Accessions Bill be read for a third time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

### Constitution Bill For First Reading

**The President:** We turn now to the Constitution Bill and my understanding is that, on this particular occasion, Mr Singer may wish to hold this one over. Mr Singer.

**Mr Singer:** Yes, Mr President. With being away this last week, I have not been briefed by the mover, Mr Rodan, and I hope to get all that completed this week.

**The President:** So, it is a wish to hold over the Constitution Bill and not move it this morning, Hon. Members.

### Fireworks Bill Report of the conference received Amendments approved

**The President:** We turn, then, to the Fireworks Bill and for a report of the conference. Mrs Christian to report.

**Mrs Christian:** Thank you, Mr President.

As Hon. Members will be aware, the Fireworks Bill has been the subject of a conference with those from another place. The conference has concluded the final form of the Fireworks Bill.

In essence, now, the Bill will require that, outside of certain specified periods, a person who wishes to purchase and let off fireworks must go through a procedure which at least notifies the public that such an action will take place, with certain exceptions.

It differs from the original Bill, Mr President, in that it does not put any onus on any Government Department to inspect where the fireworks may be let off, or in any way to monitor fireworks parties and so on.

It simply now provides for an advice to be given to a Department, which will then indicate by response that the person can take a docket to a fireworks supplier and purchase fireworks and that that person will have to publish a public notice about letting the fireworks off. Other than that, during the traditional periods when fireworks are let off, in November and, perhaps, around New Year, there will be unrestricted – apart from the age restrictions – there will be unrestricted sale of fireworks without public notification of events having to be made.

Mr President, I beg to move that the amendment suggested by the conference be approved.

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

**The President:** Mrs Christian, your comment was that clause 4(1) part of the conference would relate to all periods

of the year, except from those traditional periods. Could you, just for the purposes of our record, give us the periods of the year when, in fact... or the time when those fireworks can be let off without 4(1):

no person shall let off a firework in any place unless he has---

Give us that period of time.

**Mrs Christian:** Yes, Mr President. They are set out in clause 3(a) and (b), which indicates that a person shall not supply fireworks, except during the period beginning 25th October and ending on 5th November and the period beginning 26th December and ending on 31st December. Those are the periods when you do not have to go through the process of placing public notices to indicate that you are going to be letting off fireworks.

**The President:** Is there not a difference between the person supplying a firework and the person letting off a firework, because I would have thought the supplier for fireworks is someone in a shop selling the firework. Letting off a firework is a totally different thing, in my book, but maybe I am misunderstanding that part.

**Mrs Christian:** I think you have to read it in conjunction, Mr President –

**The President:** I am sure we do.

**Mrs Christian:** - with clause 4, which deals with the people who let off the fireworks and, if you look at 4(4), you will see that nothing in subsection (1) applies to the letting off of a firework during the following periods – 25th October to 7th November and 26th December and 1st January.

**The President:** The same periods apply?

**Mrs Christian:** Well, slightly longer, actually.

**Mr Lowey:** New Year and 1st January, you are given one day extra. Yes.

**The President:** Having, maybe, felt a damp squib there, Hon. Members, (*Laughter*) are we in the business of approving or not the report of the conference. Those in favour, please say aye and against, no. The ayes have it. The ayes have it.

### PROCEDURAL

Hon. Members, could I, before we break for private session, for the case of our record, and so that I am sure of what we are doing on the first day of June, we were to adjourn to the first day of June.

I am aware that Mr Attorney and Mr Kniveton have leave of absence and I am given to understand, a long time ago, when the calendar first came out, I also gave Mr Delaney leave of absence. I am also aware that the Lord Bishop wishes to attend a Church Convocation next Tuesday morning, so there are five Members.

Whilst we could be dealing with the matters outstanding

on our Order Paper today, we have the European Accessions Bill, which has completed its passage. We have Mr Singer's Bill to start its passage.

There are, as I understand it, three sittings from next week. If we dealt with the First Reading of the Constitution Bill next week and any other matter which was to come from another place to us, would Members be happy that we continued with the five Members? I just want to make it plain, Hon. Members, that that is the position that we would be dealing with, as I understand it, the First Reading of the Constitution Bill next week. Two further sittings to continue its passage in this legislative session.

**Mr Lowey:** Mr President, I think that the constitution is a very important matter for Members, especially as it deals with this Chamber and I think the Members should be here if that is possible and, therefore, I would suggest that to start that debate with only half the Council is undesirable. Therefore, I think it would be unwise for us to meet.

As you rightly say, we can deal with the First Reading, Second Reading, and the clauses and Third Reading in two sessions quite adequately.

**The President:** We have two further sittings after next Tuesday, Hon. Members. If you are content that, in fact, you would be moving outside of the one, two, three set form.

Mrs Christian.

**Mrs Christian:** Mr President, I accept what Mr Lowey says. It is an important piece of legislation in relation to the Council, but I do think not to consider it, because we are only five, undermines the position of the Council quite substantially, in that there are so many people missing from one sitting does not help our cause. However, I think we might be criticised for not getting on with the business.

**The President:** You still have the two sessions to deal with Second and clauses and Third.

**Mr Lowey:** I think Mrs Christian may have a case, if that was one of generality, but it is not the case. It is very unusual and suggests that it is in a small setting, where four or five Members can be missing in 24 and not be – I would not say 'noticed' – but, in a small number like we are, I think it is noticed. I think it is important. I think it is controversial and I think it ought to be discussed, in my view, still, with as many Members present.

Most of these Members who are going to be absent

were of the opinion, I think, that we would not be meeting that particular week, anyway. I am here. It does not matter to me, but I do think putting the argument forward for a constitutional change of this Council that Members should be here to... They could have been, but they are not and I accept that there are other pressures, but we can deal with it quite legitimately and quite effectively in the timescale that is open to us anyway. It only means delaying it by a week and I cannot see the delay in this particular Bill is going to make that much difference.

**The President:** Mr Singer.

**Mr Singer:** I certainly think I agree with what Mrs Christian said. I think the fact is we do not wish anything to reflect badly on ourselves, especially with it involving ourselves, and I do not think there is a problem doing the First Reading next week particularly.

At least we can prove that it is on its way, because the Third Reading, with the amendment they put in, went unanimously through the other place and I think, perhaps, we can combine the Readings, if we are agreeable to get it through, but I really think we should do the First Reading next week.

**The President:** My thought, originally, was that we would take First Reading and just deal with the First Reading, but I did want Members to be aware that there would be four Members missing next week, so that you knew where we were coming from. So, I am content with that, Hon. Members, and Council will be, in that case, meeting on the first day of June, next Tuesday.

**Mr Lowey:** It is an assumption, Mr President, that the Council will support the Bill at its First Reading. It is frustrating, isn't it? We can defeat it.

**The President:** Absolutely. We are aware of that, Mr Lowey. Council –

**Mrs Christian:** However, Mr President, I think if we reject it on the basis of five Members, it would certainly raise a few... *(Laughter)*

**The President:** Hon. Members, the Council will now sit in private.

*The Council sat in private at 11.37 a.m.*