



**LEGISLATIVE COUNCIL  
OFFICIAL REPORT**

**RECORTYS OIKOIL  
Y CHOONCEIL SLATTYSSAGH**

**PROCEEDINGS  
DAALTYN  
(HANSARD)**

**Douglas, Tuesday, 30th November 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),  
Mrs C M Christian, Mrs P M Crowe, 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.

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*The Council sat in private at 11.16 a.m.*

# Legislative Council

*The Council met at 10.00 a.m.*

[MR PRESIDENT *in the Chair*]

## PRAYERS

*The Lord Bishop*

**I**ask your prayers this morning for Noël Jones, who has gone blind in one eye and has worry about the future and the sight in the other eye.

May the grace of our Lord Jesus Christ and the love of God and the fellowship of the Holy Spirit be with us all evermore. Amen.

**Members:** Amen.

## Procedural

**The President:** Hon. Members, making an early start this morning has created one minor problem, insofar as the Question Paper and our Questions are concerned: I understand that the Chief Minister wishes to come in to answer the Question on behalf of Government that Mr Lowey has got on our Question Paper this morning, and, as he is currently answering Questions in the Keys, there may be a little break at such time as we reach that, Hon. Members, to allow the Chief Minister to come back to this House to answer those Questions.

## Chief Minister's Statement on Manx Electricity Authority read by Mr D J Gelling

**The President:** Now, before we do start on our Oral Question Time, Hon. Members, I understand that the Hon. Member, Mr Gelling, wishes to make a statement which, as I understand, is equally being made by the Chief Minister in another place this morning.

Mr Gelling.

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

The statement which I read is from the hand of the Chief Minister, and he has sought permission to make it this morning, in the Keys, sir. Therefore, it was felt that the Members of Legislative Council should be aware of that statement, so I read from his statement that he is making:

'Mr Speaker, I wish to take this first available opportunity to inform Hon. Members, and the public, about certain matters relating to the Manx Electricity Authority. I thank Hon. Members for granting me this chance to speak on what is a matter of public importance.

As Hon. Members will now be aware, the process of auditing the accounts for the MEA is underway, and discussions are ongoing with the Treasury and with the auditors. Until such time as those discussions

have been concluded, it would not be appropriate, or, indeed, possible, to report to Members fully.

However, because of the public profile, and the obvious interest of Hon. Members, regarding the Manx Electricity Authority accounts, I have consulted the Treasury Minister, and it is our intention to bring a resolution to Tynwald at the earliest opportunity, asking for support from Hon. Members for the appointment of an independent firm of accountants to prepare a report to Tynwald Court on financial issues appertaining to the Manx Electricity Authority.

As a result of concerns expressed by the Treasury and the Council of Ministers, and after a number of meetings at officer and political level in recent weeks, I wrote to the Chairman of the Manx Electricity Authority, invoking the Statutory Boards Act provisions, whereby the Chief Minister prescribes that information must be provided to persons specified by a direction. I understand that the work is still in progress.

More recently, I have written on behalf of the Council of Ministers to direct that the preparation of the MEA accounts should be to GAAP principles, and not as at present. I am also about to write to the Standing Committee on Public Accounts, whom I believe have recently scrutinised matters in relation to MEA borrowings, in order to ascertain whether they have had any concerns which they could share with Hon. Members, or which may be of use to the discussions between the Treasury and the MEA.

I apologise to Hon. Members, who have learnt of issues via the media. However, the Treasury Minister on the radio was asked some very direct questions, which it would have been wrong of him to avoid answering, and which I would not expect him to avoid, once they were asked. Also, there has been press comment from the Chief Executive of the Manx Electricity Authority. No disrespect to Hon. Members has ever been intended.

I would respectfully ask Hon. Members to refrain from any premature conclusions, until the facts have been produced for our scrutiny, but I fully appreciate that Hon. Members will have as many questions as Government does, in relation to the MEA borrowings, and must feel equally frustrated.

I hope, at the appropriate time, Members will support the resolution I have referred to, whereby the facts will be independently presented to us for our consideration.

Mr Speaker, I hope my statement is of some assistance to Members at this stage and Government will endeavour to keep Hon. Members as up to date as possible.'

And I end the statement, Mr President.

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

**Mr Delaney:** It would be unfair to ask any supplementary questions of the Member for Treasury, but I would like to ask a couple of questions on that statement.

**The President:** Depending what they are, sir, yes.

**Mr Delaney:** Well, first of all, on the issue of avoiding answering questions, to my knowledge it is commonly done where Ministers who have confidential information say, 'I cannot answer that question because of confidential information.' So why is it different in this case than it is in all the other cases I have come across in the last 28 years? That is one.

**Mr Gelling:** The answer to that, I would respectfully say, Mr President, is that it is not withholding information; the information is not available to the Council of Ministers or the Treasury Minister to be able to give any further information.

**Mr Delaney:** No, the answer specifically. I am not blaming the Treasury Minister here, but I want to get clear, as I tried to on *sub judice*: when is the case clear? It is common in my 28 years where the Members have not been informed

of certain information, to withhold the information from the public till at least Members have been informed, where possible. It was quite possible in this case: what makes it different?

**Mr Gelling:** I think I explained, Mr President, that the Minister was preparing the evidence for Members and I am quite sure that that evidence would have been put out today at Question Time, in both the lower Chamber and Legislative Council. But the Treasury Minister was asked the straight question on the radio, and he did not avoid the question; he answered the question.

**Mr Delaney:** Well, why not? That is my question: why not?

**The President:** He cannot speak for somebody else.

**Mr Gelling:** I cannot speak for the Minister; I do not know why, Mr President.

**Mr Delaney:** Well, I will ask the Treasury Minister.

**The President:** Mr Lowey.

**Mr Lowey:** Yes, indeed, I thank the Member for the statement. But I, again, come to the point that the administration used the media, both radio and television last night, prior to this Court, to give out what was common knowledge anyway. The Minister should not have put himself in that position, surely. What did he expect to be asked on the programme? He had already answered the question. There are Questions before the parliament on Tuesday – that was enough, surely.

**The President:** It is the same question, I think, that was asked by Mr Delaney.

**Mr Gelling:** Mr President, that is in the Minister's actions. He took that action, he did that. I am not sure why he did, because, as Members of Treasury – I look at my colleague over there – we were just as surprised to hear it as, I think, other Members, because we were not aware of it.

**The President:** Mr Delaney.

**Mr Delaney:** My second question, Mr President, is to you, sir. I am asking the same question to you then: is it not protocol of Tynwald as a whole that, until Members are informed, to keep that information until informed, before the public are generally given it?

**The President:** It is. That is the accepted line.

It is, I think, becoming more and more difficult for Members, particularly for Ministers or the Chief Minister, to hold that line when we live in a world of continual perpetual questioning by Members of the House of Keys and others. It is becoming more difficult.

Mr Delaney, you and I both started our life in politics when, in fact, there was a monthly Question Time, and now there is a repeated Question Time both in this House and in another place, weekly, with ongoing running questions during the week, as well.

So, I think the whole scenario is changing – certainly as far as I am concerned – and I think, for the protection of Members, it is better, on every occasion, if, in fact, the Answers are given to the assembly.

**Mr Delaney:** No comment, until the Members have been informed.

**The President:** Mr Lowey.

**Mr Lowey:** Independent auditors being brought in, so the statement says. Mr Gelling, could you perhaps explain why you need to be almost a forensic accountant to read...? Does he think that we need to have independent accountants when we have Internal Audit? We have our own accountants in the Treasury; what is an independent auditor going to find that our auditors could not find?

But much more worrying, I think, Mr President, is the fact that the MEA must have auditors, as well. What is the difference between an auditor for the MEA, an auditor for the Treasury and an independent auditor?

**The President:** Okay; Mr Gelling.

**Mr Gelling:** Mr President, I think that is where the problem actually lies: that there is a difference of opinion between the MEA and the Treasury accountants in what actually is being said and the way accounts are being prepared. So, therefore, I can only assume – I am the messenger with this statement, I was not aware that there was an independent until I read it – that that is a way in which someone independently can actually arbitrate between the two, because we are down to technical details of the legalities of taking the MEA Act and the Treasury Act together and making the two actually gel.

**Mr Lowey:** I was going to ask a technical problem: you used a technical phrase which I do not know what it means, so that is why – in my ignorance – 'gap' or something?

**The President:** General auditing principles or something on that line, I would think.

**Mr Gelling:** Even I hold my hands up, Mr President, so that I would be able to answer your question: generally accepted accountancy principles.

**Mr Lowey:** Tell me what it means. Okay.

**The President:** Now, Hon. Members. You have heard the statement Hon. Members.

## Questions for Oral Answer

### H M ATTORNEY GENERAL

#### Statutory Boards

#### Refusal to answer questions from Ministers

1.1. The Hon. Member (Mr Lowey) to ask H M Attorney General:

*Can a Statutory Board refuse to answer questions from the Chief Minister and the Council of Ministers?*

**The President:** We will revert now to our Order Paper and Questions for Oral Answer at Item 1. The first is in the hands of the Hon. Member, Mr Lowey. Mr Lowey.

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

**The President:** I call on Her Majesty's Attorney General to reply.

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

I feel that the most constructive Answer I can give to the Hon. Member is by reference to paragraph 12 of schedule 2 to the Statutory Boards Act 1987.

The first part of that paragraph empowers the Council of Ministers, after consultation with the relevant Board, to give to the Board such directions as to the exercise of its functions in relation to any matter which appears to the Council of Ministers to affect the public interest. The Board must comply with any such directions.

The second part of that paragraph provides that a Statutory Board shall supply to the Chief Minister such information and render such other assistance as the Chief Minister may, from time to time, require. For that purpose, the Board shall permit any person appointed for the purpose by the Chief Minister, to inspect and take copies of the Board's accounts, books, documents and papers and give such explanation of them as that person may reasonably require.

Insofar as a Council of Ministers' direction is concerned, provided that there has been proper prior consultation with the Board, and otherwise a proper exercise of their powers, by the Council of Ministers, the Board must comply with the direction, which relates to the exercise of that Board's functions.

Insofar as the wider path for the Chief Minister to obtain information and assistance is concerned, again, provided that the power is exercised reasonably, the Board must provide that information and assistance.

**The President:** Mr Lowey.

**Mr Lowey:** I would like to thank the Attorney General for his reply.

Could the Attorney General, then, explain to me why there has been some doubt in recent months about Statutory Boards? And here, again, you will forgive me if I refer to the Water Board: the Water Board seems to have an interpretation of the law – and it seems to be catching, if I may say so, Mr Attorney – that, somehow, when one Statutory Authority seems to nudge, then all of them join in nudging, and saying,

'we do not have to answer'. Is that a fair comment and is there any direction given?

Who advises these Statutory Authorities on the legal position? Is it your officers, as the legal officer of the Crown, or is it private practice where, if you put it to lawyers in the room – with great respect to the profession – you will have two different answers?

**The President:** Mr Attorney.

**The Attorney General:** Well, Mr President, I would like to think that my Chambers are always available to give advice to Statutory Boards and, indeed, to Government Departments, and invariably we do.

On the other hand, I am aware that certain Boards and Departments, from time to time, do consult lawyers in private practice, which, again, is entirely appropriate and, indeed, sometimes necessary, because Chambers is often, as it were, in a conflict position. We are already advising one party to a dispute, and, therefore, we cannot advise the other party.

Insofar as the construction of the Statutory Boards Act is concerned, and the legal advice, it seems to me that the way I have interpreted paragraph 12 is absolutely clear, and I cannot see that there is any room for doubt whatsoever.

**The President:** Mr Lowey.

**Mr Lowey:** I am grateful to the Attorney General, Mr President.

**The President:** Mrs Crowe.

**Mrs Crowe:** I would just like to clarify one position first from the other questioner: not all Statutory Boards are nudging away from Treasury's very helpful advice. Indeed, the Isle of Man Post Office works very closely with Treasury, and likes to keep them fully informed.

What I would like to ask the Attorney General, please, Mr President, is: what sanction is there against these Statutory Boards that choose to ignore a direction of Council?

As you know, I was trying to progress the building of housing for first-time buyers and was being deliberately opposed, I felt, by one Statutory Board at that time. So what is the sanction that is available, or is it just the ultimate sanction that the Council of Ministers will propose to remove the Board in total?

If there is no sanction, it is really pointless in having a direction that can be ignored.

**The President:** Mr Attorney.

**The Attorney General:** Mr President, a very interesting question. There is no obvious answer in the Act itself. I suppose that the draftsman of the Act would never contemplate that a Board would ignore a formal direction given by the Council of Ministers, particularly if there has been consultation with that Board.

However, the Hon. Member is absolutely correct, sir, that the ultimate, as it were, 'nuclear weapon' is that the Council of Ministers, by virtue of section 3 of the 1987 Act, can remove a member of a Statutory Board, and, indeed it follows, I think, that they could remove all the members of the Statutory Board. And that, I would suggest, would be a power to be exercised only as a matter of last resort, because

it cannot be in the public interest to have a vacuum in relation to the management of these important Boards.

## TREASURY

### MEA financial affairs Compliance with Treasury guidelines

1.2. The Hon. Member (Mr Lowey) to ask a Member of the Treasury:

- (a) Are you completely satisfied with the financial affairs of the Manx Electricity Authority;  
 (b) have any further loans been negotiated in addition to the £185M bond and, if so,  
 (i) when; and  
 (ii) did the loan(s) comply with Treasury's financial guidelines?

**The President:** Right, we will turn then, Hon. Members, to Question 2, and I remind Members that we have already had the statement this morning. Mr Lowey.

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

**The President:** Mr Gelling.

**A Member of the Treasury (Mr Gelling):** Thank you, Mr President.

In answer to the first part (a) of the Question: at this time I cannot unequivocally answer yes or no to that Question. There are main issues which the Treasury have raised with the Manx Electricity Authority and which remain the subject of continuing attempts by the Treasury to conclude with the Manx Electricity Authority.

In answer to (b)(i), the answer is yes, the directors of Manx Cable Company Limited, a wholly-owned subsidiary of the Manx Electricity Authority, sanctioned a £70 million loan on 4th July 2003, and a further loan to Manx Cable Company Limited of £50 million was approved by the Manx Cable Company Limited on 27th February, this year, 2004.

So, in answer to the second part, (ii), section 5 of the Electricity Act 1996 states:

'(1) the Authority shall not borrow any money except in accordance with this section;

'(2) the Authority may borrow temporarily by way of overdraft or otherwise, either from the Government or with the consent of the Treasury, from any other person such sums as the Authority may require for meeting its obligations or performing its functions;

'(3) the Authority may borrow otherwise than by way of temporary loan from the Government or, with the consent of the Treasury, from any other person such sums as the authority may require.'

The view of the Treasury is that no consent was sought or given to any borrowing by the MEA, either formally or in an implied sense.

However, the board of the Authority have the view that the Treasury knew the detail of the Authority's capital expenditure and its use of a subsidiary company borrowings, and believe that consent was implied. Further and, in any

event, the Authority also have the view that borrowings of subsidiary companies do not require Treasury consent. The Manx Electricity Authority, its board and its officers regret any and all misunderstandings that might have occurred in this regard.

Mr President, as I stated earlier, the Treasury takes a different view to that of the Manx Electricity Authority. However, the matter remains the subject of continuing discussion between the Treasury and the MEA, sir.

**The President:** Mr Lowey.

**Mr Lowey:** Well, I am very mindful of what the Member making the Chief Minister's statement said – and we are all on the same side, all of us are horrified, to put it politely. Would the Hon. Member not agree that the expenditure... I presume it has been expended, but on what? Has anybody asked why they needed £70 million or £50 million in February? What was it for?

And secondly, when one considers that we built a new hospital for less than £120 million, which was the biggest major scheme this Island has had in the last 100 years, about, how any Government Authority could think that the expenditure of £120 million could be done without public scrutiny and openness – does that not give concern?

**The President:** Well, it might be concern, but I think we have got to stick to what are specific questions. Mr Gelling.

**Mr Gelling:** It is of concern, absolutely, there is no problem in answering that question.

But the detail which the Hon. Member is asking is actually the detail that we are calling for, as to try to rationalise a £185 million bond that was taken out through the Treasury, so, therefore, with Treasury and Government approval. How much of that has been drawn down and, therefore, what was the necessity of another £70 million plus another £50 million, and where, in fact, that has been spent.

We know that it has been taken on sanction by the subsidiary company and that is one of your questions, 'Does the subsidiary company require Treasury consent?' And, in fact, where has it been spent? Has it been spent in the MEA? Has it been spent for the MCC cable company? Those are the questions we are now awaiting from the Electricity Authority; hence the statement that I read from the Chief Minister that he has requested this from the MEA.

**The President:** Mrs Crowe.

**Mrs Crowe:** Just some simple questions, if the Hon. Member of Treasury could possibly answer them. I would like to know: who are the directors of the Manx Cable Company?

I would also like to know – as, indeed, I am sure we all find it extraordinary – but the normal way of things would be that one would put a proposal to Treasury of any business case or any plans one had, either in a Department or a Statutory Board, and it would either be accepted or it would be refused. I would like to know if this business case came to Treasury, and was it refused?

I would also like to know – and I am sorry about this – how was the borrowing secured, and from whom did the borrowing come?

**The President:** Mr Gelling, if you have that answer fair enough; if not, I think we have to await the result of the inquiry which is taking place. Mr Gelling.

**Mr Gelling:** First of all, the directors, Mr President, are: Messrs McCallion – that is John McCallion and Mr Ferrer, both of whom are board members of the MEA; Messrs. Proffitt and Spencer – Mr Spencer is an employee of National Grid, that is the Manx Cable Company – I am just taking them in turn. But the MEA Board are Messrs. McCallion, Ferrer, Taylor, Mackay and Mr Charles Fargher, the accountant. Those are the directors and the others were the directors of the cable company.

Formal application to the Treasury for the borrowings did not occur, so there was no formal application to the Treasury for the borrowings. The borrowings were made from Barclays Private Clients International Bank, and I understand that it was subject to the MEA going out to tender to other banks.

So, basically, they went out to tender to other banks for these loans and Barclays was the selected bank to provide it.

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, two questions, please. First of all, I wonder if the Hon. Member is in a position to say who the directors of that bank are.

And, secondly, perhaps Mr Attorney could assist in answering this one, any normal person reading the legislation would believe that a specific request for Treasury approval is required. Is there any legal precedent that indicates that implied consent can be interpreted as a consent in the way which has been suggested that the MEA have interpreted the legislation?

**The President:** Mr Gelling, first.

**Mr Gelling:** Yes, the directors of Barclays I have to confess I am not clear, but I do know that Mr Proffitt is Chairman, but I do not think he is chairman of the Barclays Private Clients International, from whence the loan was taken, but he is connected, trying to be helpful.

Sorry, then the implied consent, I think again, just to try to help Members, I think the Board are more or less saying: 'we thought consent was there, implied or otherwise, because we would just naturally expect that to happen'. That, again, we are trying to resolve with the directors of the MEA what it is they really did think, or expect, or consider, at that time.

**The President:** Mr Delaney.

**Mr Delaney:** Very good question from my colleague; I have one question: on all contracts entered into by Departments, it is required in the financial regulations to tender out for so many companies to tender for the work to get a fair quotation. Could I ask the Member of Treasury who has got the responsibility to answer these questions that when the check is done and the expending of £120 million of public money is eventually sorted out, could they look at the tendering process entered into by the Electricity Authority, for the work that was paid for by the £120 million, to make sure it complies with the financial regulations. Could you do that for me?

**Mr Gelling:** I am sure, Mr President, that that will be the case. But I understand that the actual tender for the borrowings was done in an accepted exercise –

**Mr Delaney:** The spending.

**Mr Gelling:** – although we were not part of it. The spending, I understand.

**The President:** Mr Lowey.

**Mr Lowey:** Is it deemed acceptable by the Treasury that a director of a bank can actually lend vast sums of money to a public-owned company – which is the Government – and of which he is chief executive and director? Is that accepted practice normal?

**The President:** Mr Gelling.

**Mr Gelling:** Mr President, I would say it was unusual. It is unusual, inasmuch as I would have thought it is up to the person in that position, to put that position in their own mind into context, as to whether it is a conflict. And he obviously felt that his association, although by name, is there, that it was not anything that was done through him, it was done via the actual Barclays lending department, of which he is not chairman.

**The President:** Mr Singer.

**Mr Singer:** Thank you.

Some of the statements are obviously very confusing and, for example, we were told there was definitely no consent from Treasury, that there was no formal application to Treasury and then Mr Gelling has said that, from what he understands, the Board have said that Treasury knew about it and that it was implied consent. Does he know any reason why they believe there was implied consent? Who told them there was implied consent? Has he any information on that?

But then a further statement was made that the Board have said that they believed that borrowing by a subsidiary company does not need Treasury consent. So why should they say there was implied consent, when they also believed they did not need consent? They seem to be grasping at some kind of a straw here.

**The President:** I think we are in danger, Hon. Members, of going round to try to find answers which are, at this stage, unanswerable by the Hon. Member. However, if he can –

**Mr Gelling:** First of all, I think it is important to inform Members that, of course, they submit their capital expenditure programmes in the normal way that all Departments do, and I think what they are implying is that, because they had submitted their spending over the next number of years, Treasury should have immediately seen the amount of money they were spending, which was over and above the £185 million that they had already borrowed so, therefore, because Treasury did not call them to task at that time, it was implied.

Considering we only got the draft accounts, I think it is something like three weeks ago, we... I am saying, 'we': Treasury did not; our accountants did. It is impossible at this

time to actually ascertain how those figures actually stack up and whether or not all of the £185 million has been drawn down. That is the question we are asking.

**The President:** Mrs Crowe.

**Mrs Crowe:** Mine is rather a simple question to the learned Attorney General, please, Mr President, and I think it would be helpful at this time for all members of Statutory Boards. It is my reading of the legislation that it is the function of the members of the board of a Statutory Board to make the decisions and for the executive to carry out those decisions. I think we, perhaps, do not place sufficient emphasis on either guidance notes for members of Statutory Boards or, indeed, correct information when they take these offices, which are held, I might say, for very little monetary advantage and really are as part of the public good.

So, I just think it would help for the Attorney General to actually stress what the function of a member of the Statutory Board is.

**The President:** Mr Attorney, do you wish to answer, sir?

**The Attorney General:** Yes, thank you, sir.

Mr President, I think there are two questions which Hon. Members have asked. Perhaps, could I deal with, firstly, the question raised by the Hon. Member, Mrs Crowe? I think she is absolutely right in saying that the control and management of the business of a Statutory Board is vested in the members of that Board. Indeed, schedule 2 of the Statutory Boards Act says that:

*'the board shall hold meetings for the transaction of business, at such times as may be necessary for the proper exercise of its functions.'*

So it is quite clear that the executive decisions, policy decisions are vested in the Board –

**The President:** They are responsible.

**The Attorney General:** – and, of course, it is entirely open to the Board, then, to delegate certain of their functions, either to a committee, a member of the Board or an officer of the Board. So, it is entirely appropriate, if the Board thinks fit, to delegate certain functions to an executive officer, such as the Chief Executive of the Manx Electricity Authority. But the ultimate powers and responsibilities remain vested in the Board. The Board develops policy, the executive would carry it out.

Insofar as the other question, Mr President, raised by the Hon. Member, Mrs Christian, is concerned, I think it is quite an important point to make, that the consent to be given by Treasury does not have to be in writing. On the face of the statute – the Hon. Member, Mr Gelling, has referred to it – section 5 (3) – and I will just curtail this slightly:

*'The Authority may borrow, with the consent of the Treasury, from any other person, such sums as the Authority may require for certain purposes.'*

Having said that, Mr President, I must say, my personal view would be that it would be quite extraordinary, if borrowing of such magnitude did not attract a formal written consent of Treasury. However, again – and I do make these

views in a provisional way only, Mr President, because, like every other Member round this table, I do not have the full facts and far from it – I think, in theory, if there is a close relationship between a Statutory Board and the Treasury, such that the course of dealings between them would lead a reasonable Board member to conclude that Treasury had consented to a certain course of conduct, then that would be appropriate.

But there would have to be a very, very close relationship between Treasury and the Statutory Board and, again, I would tentatively suggest that, with transactions of such magnitude, it would be unwise for the Board to rely on an implied consent.

Can I just emphasise, Mr President, those are very provisional views and it very much depends on what was precisely minuted and agreed by the Board members.

**The President:** Mr Gelling, would you like –

**Mr Gelling:** Could I just, to be absolutely sure that Members have got fact, I answered Mr Lowey about the relationship with the bank and I did say, Mr President, that I was not sure, in fact, I did not think, that the person concerned was a member of this particular division. I have now been corrected and it is believed that he is the chairman of the bank that has provided the funds.

And the second part, again, which I think it was Mr Singer asked, was about how did they feel it was implied and they said it was because they had produced figures.

I have now been given the information that Treasury's review of the capital expenditure proposals, reveals that there was no reason to suppose that the MEA was going to use more money, over and above the £185 million from the bond. In other words, there were not any flashing lights, because the capital expenditure did not give that impression, therefore, it was not until the draft accounts became available that it was seen that there was more money available.

So, it is just to correct, to make sure that Members are aware of that.

**The President:** Mr Delaney.

**Mr Delaney:** In the opening statement just to get the... I thank the Member for reading the statement and the information he has given us all, but could you correct me, you said, 'report to Tynwald Court'. Have you some idea of when that might be? Is it in a year's time, is it 20 years' time or is it in two months' time? Could you give me an idea of when that report is going to get to us?

**Mr Gelling:** No, I am sorry, Mr President, I have no idea because that, as I say, was new knowledge to me this morning, that that was going to happen. But I would assume that it would be as soon as possible that the situation is cleared up, because I think it is the situation being cleared up, and people understanding and knowing exactly what the situation is, that is important.

**The President:** I think that is important, too, Hon. Members, that we realise that, in fact, we are asking questions this morning, fine, but we are asking questions and until the research is done, you cannot really give the answer.

Mr Lowey.

**Mr Lowey:** Could the Member of the Treasury agree with me that when the Manx Electricity Authority asked Tynwald for the approval, and Treasury concurred, for the £185 million, that was the total cost for all the schemes that they were involved in at that particular time?

**The President:** Mr Gelling.

**Mr Gelling:** Yes, the £185 million bond was actually through the Treasury. It was actually requested through the Treasury and that was the capital sum that was required at that time.

**Mr Lowey:** Can the Member of the Treasury now confirm to me that the £185 million bond has been transferred from where they borrowed it in the first place to Barclays Bank?

**Mr Gelling:** I cannot confirm that, Mr President. I have not got that information available to me.

**Mr Lowey:** I am looking hard at the Hon. Member.

**Mr Gelling:** Yes. The only information I have got is where the £70 million and £50 million has come from Barclays, but I am not sure whether the bond that was originally through Treasury, because I would have thought that that would have again raised –

**Mr Lowey:** My information is that it is now with Barclays.

**The President:** Hon. Members –

**Mr Lowey:** And did Treasury concur?

**Mr Gelling:** No, I think we would have known, if that had been the case.

**The President:** Mr Attorney.

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

Mr President, if I may, may I just make one short statement.

Hon. Members, quite properly, are concerned about what appears to be a conflict of interest on the part of the chief executive. Mr President, at the tail end of last week, there was a meeting with representatives of the Statutory Board and with representatives of the Council of Ministers and officers of Treasury, and I would only say this: that it was made perfectly clear by the members of the Statutory Board that the question of borrowing from the bank was a matter that was not brought within the chief executive's remit at all. In fact, the members of the Board made it very clear that there was to be a sub-committee to deal with the borrowing from Barclays Bank, in which Mr Proffitt had no part to play whatsoever.

In other words, the conflict of interest had been declared, that members of the Board knew that and they conducted themselves accordingly. I only make that point, Mr President, because it is quite important to put a balance to a situation. It is very dangerous when we are speculating as to facts and I just wanted to put that as the other side of the situation.

**The President:** Fine. Now then, Hon. Members, I think

we have given the Question a very good airing this morning, along with the statement.

As I indicated earlier, Hon. Members, the Chief Minister wishes to answer the remaining Questions personally and, therefore, will be joining us from the Keys at a suitable time later. So we will hold over Questions 3 and 4, Hon. Members, until such time as the Chief Minister is able to attend upon us.

## Orders of the Day

### Housing (Multi-Occupation) Bill For Third Reading Motion withdrawn

2. Mrs Crowe to move:

*That the Housing (Multi-Occupation) Bill be read a third time.*

**The President:** That takes me, Hon. Members, to Item 2 on our Order Paper which is the Housing (Multi Occupation) Bill. It is down for Third Reading, and I understand, at this particular stage, that, in fact, the Hon. Member does not wish it to be taken, because there is still agreement to be reached, as I understand it, over suggested amendments from this particular branch.

**Mrs Crowe:** That is correct, Mr President.

### Veterinary Surgeons Bill For Third Reading

#### Motion withdrawn with leave of the Council

3. Mr Waft to move:

*That the Veterinary Surgeons Bill be read a third time.*

**The President:** In that case, Hon. Members, we turn to part 3 of our Order Paper, which is the Veterinary Surgeons Bill and, again, a matter which is for Third Reading, and in the hands of the Hon. Member, Mr Waft.

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

Could I just, with the Council's endorsement, answer the question of Mrs Christian, who was not here last week. The question was: were those on the supplementary register defined as 'vet practitioner', or is that an old definition of qualified vet, which is now removed from the legislation? The answer is: those on the supplementary register were called veterinary practitioners, as distinct from veterinary surgeons.

In common parlance, 'veterinary practitioner' is a term used interchangeably with veterinary surgeon. However, in the 1949 Act, the distinction is important, because it means that veterinary practitioners are not qualified. The Bill's consequential amendments to other enactments include

removal of reference to veterinary practitioners, as used in a specialised sense in the 1949 Act. With removal of the supplementary register, that distinction will no longer be an issue.

Also, the question was, subsequently: is a mouth defined as a body cavity? And the answer was: the mouth is a body cavity, therefore, no medical treatment or minor surgery can be given by unqualified persons. Such activities as cleaning, de-scaling and rasping of the non-sensitive parts of the teeth would not be considered a medical or surgical treatment.

However, an extraction or interference with any of the sensitive tissues of the mouth most certainly would be and would, therefore, be prohibited by schedule 1(1)(2.1).

There was a question, also from Mr Singer last week, with regard to the College of Veterinary Surgeons and the answer to his question is: if reciprocal agreements are in place for foreign vets, they need to be on the United Kingdom College list, to be able to practice in the British Isles; the answer is yes.

The other question was: if no reciprocal agreement is in place, can foreign vets practise after further instruction? The answer is yes.

And does every qualified vet of any other country need to be on the Royal College list to practise in the British Isles? The answer to that is yes. I think I said 'yes' last week, but, nevertheless, I am just confirming it.

Statutory framework for the Royal College registration. The entitlement to be registered as a Member of the Royal College of Veterinary Surgeons is determined by the Veterinary Surgeons Act 1966. The Act provides that only those named on the College register may practise veterinary surgery in the United Kingdom and that they must have the requisite knowledge and skills to do so. Eligibility for registration is based on having a recognised qualification or passing the RCVS statutory membership examination.

Qualifications currently recognised are: the degrees awarded by the six veterinary schools in the United Kingdom; the European Union qualifications listed in the Recognition Directive 78/1026 EEC, Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, the Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and Switzerland; foreign and Commonwealth qualifications recognised by the RCVS council for practice only within the United Kingdom, which currently are Australia and New Zealand; all qualifications accredited by the Australasian Veterinary Boards Council, including accordance with an agreement made in June 2000; South African BVSC, Pretoria, last visited by the RCVS in November 1999; United States of America and Canada – all qualifications accredited by the American Veterinary Medical Association (AVMA) will be considered in conjunction with the relevant AVMA visitation reports, in accordance with an agreement made in March 2000.

Those with qualifications that are not recognised are required to sit and pass the RCVS statutory examination for membership designed to satisfy the RCVS council that they have the requisite knowledge and skill to be fit to practise veterinary surgery in the United Kingdom. Nationality is not a factor in determining eligibility to be registered, except in relation to those with European Union qualifications, who must be nationals of a European Union member state.

Registration of overseas-qualified veterinary surgeons wishing to practise in the United Kingdom: their recognised

qualifications are graduate of veterinary schools and colleges in the following countries are eligible for registration in the United Kingdom, provided they meet the specified criteria: Australia, Austria, Belgium, Canada, the Czech Republic, Denmark, Estonia, Finland, France, Greece, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, the Netherlands, New Zealand, Norway, Portugal, Poland, South Africa, Slovakia, Slovenia, Spain, Sweden, Switzerland, USA.

Graduates of other veterinary schools and colleges: the graduates of other veterinary schools and colleges outside the United Kingdom are normally required to sit and pass the RCVS statutory examination for membership. In exceptional circumstances, veterinary surgeons who are ineligible for registration in the United Kingdom may be granted temporary registration, in order that they can carry out specific, veterinary-related activities in a restricted capacity, providing services under restricted conditions.

Veterinary surgeons from a European Union member state can make an application to provide services in the United Kingdom without being a member of the RCVS.

**Mr Singer:** It was a simple question! (*Laughter and interjections*)

**Mr Waft:** Mr President, the Veterinary Surgeons Bill will consolidate and amend the provisions of the existing primary legislation, the Veterinary Surgeons Act 1949. The main problem with the 1949 Act is that there are no means of amending it. Some of the provisions set out in 1949 are no longer appropriate. In order to bring our legislative provisions up-to-date and to build in flexibility for the future, this Bill sets the current benchmark, but, more importantly, contains enabling powers for the Department of Agriculture, Fisheries and Forestry to come back to Tynwald and seek approval for necessary amendments as times change and technical skills and ethical considerations change with them.

In order to come into force, an Appointed Day Order will be necessary. It would be DAFF's intention to come forward with any necessary subsidiary legislation at the same time as an Appointed Day Order, in order to deal with matters such as rectal scanning, which I mentioned previously last week.

Mr President, I beg to move the Bill be read a third time and do pass.

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

**The President:** Hon. Members, before we open this discussion up too far, Mr Waft, I am a little confused myself now, apologies for that, but I think you mentioned the 1966 Veterinary Surgeons Act, immediately before you referred to the answer to Mr Singer's question which he posed last week, and gave the list of countries. And then, after that, you referred again to the 1949 Act, but the 1949 Act we are repealing in total. That Bill is repealed in total. How much of the 1966, if any, is left, do you know, sir?

**Mr Waft:** Not off hand, Mr President.

**The President:** Right, okay.

**The Lord Bishop:** I understood the 1966 Act to be a UK Act, not a Manx Act.

**The President:** No.

**The Lord Bishop:** There is not a 1966 Act.

**The President:** No, which is where the confusion, I think, comes in, Hon. Members. Mrs Christian.

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

I thank the Hon. Member for his reply to my questions, which were posed the week before last and, whilst supporting the general principles of the Act, my concern is to ensure that nobody is going to be caught out, in terms of minor procedures, by something that we are passing here. The reason I asked about the clarification on... Definitely, the mouth is a body orifice, body cavity for the purposes of the Act; I would like him to confirm... He has indicated the rasping of teeth and treating of teeth can be carried out by a non-veterinarian, assuming they have the necessary skills and training.

Would he also confirm that medical treatment does not cover – or does it cover? – the administration of medicines to animals? There are many people who give wormers or other medication when an animal is ill, perfectly adequate and able to do so.

I would certainly be concerned if it was felt that any of these provisions were to prevent that. They are normally done with the concurrence of the vet. Worming is not. Anybody can go and do that. Yes, injections are given by many people to their own animals; it is part of livestock husbandry and so I just really want to get some confirmation from the Hon. Member, that those practices are not going to be in any way outlawed by this provision.

It is clear which are being tightened up on, in relation to various procedures and the age of the people who can carry out exercises, such as castration or tail docking or dew claw removal and so on. But some confirmation and reassurance would be welcome from the Hon. Member, please.

**Mr Waft:** Thank you, Mr President –

**The President:** Mr Waft.

**Mr Waft:** The Act referred to is the 1966 UK Act, as far as I know – did I say a Manx Act?

**The President:** You just referred to the 1966 Act. You did not make it plain.

**Mr Waft:** Oh, I beg your pardon.

**Mr Lowey:** It is the UK.

**Mr Waft:** Right, sorry, apologies, Mr President.

With regard to the comments of Mrs Christian and all the treatments that are referred to, they would have to be checked out by the veterinary, so I will withdraw that and perhaps bring it back next week, Mr President.

**The President:** Remember we are on the Third Reading, sir. Are you wishing to stay the Third Reading this morning?

**Mr Waft:** I would have to stay the Third Reading in view of the comments, Mr President.

**The President:** Okay, Hon Members, in that case, with your agreement, Hon. Members, are you happy that we hold over the Third Reading of the Veterinary Surgeons Bill?

**Mr Singer:** Can I just make a comment on the explanatory note in regard to this particular matter which says:

'Section 1(1)(b) of the Act enables the Department to make orders subject to consultation with the Council of the Royal College of Veterinary Surgeons, specifying other minor treatments, tests or operations which may be carried out by unqualified persons.'

Now, does that cover the point Mrs Christian made?

**The President:** I would just make the point that ultimately what controls is not explanatory notes; it is what is written in the law which actually holds.

Anyway, Hon. Members, we have decided that we would hold over the completion of the Third Reading of the Veterinary Surgeons Bill 2004 to another sitting.

### **Congratulations to Mrs Christian re champion Clydesdale horse**

**The President:** Hon. Members, whilst we are dealing with the rasping of the teeth, it might be an appropriate time to congratulate the Hon. Member, Mrs Christian. Some of you may not know but, last weekend, one of her horses became the supreme champion in Scotland in the Clydesdale classes, so I think congratulations to Mrs Christian. (*Interjections*) It is a mark of respect, Hon. Members, any time, when an animal bred on the Isle of Man can go (**Several Members:** Hear, hear.) to another country and become the supreme champion, I think it is...

### **Veterinary Surgeons Bill Further questions**

**Mr Waft:** Can I just ask, Mr President, if I might, for any more questions that might... (*Laughter*) My knowledge of worming and medications given to cows is really limited, so I need to find out if there are any more questions prior to next week.

**The President:** Fair is fair. If Members have any specific questions, I would ask them to direct them to Mr Waft before next week's Third Reading. Nevertheless, Mr Gelling.

**Mr Gelling:** Last week I raised the points in the absence of Mrs Christian – I thought I held up the side quite well! (*Interjections*) – and Mr Attorney seemed to suggest, and I would like confirmation, that I think it is (iii) gives the... in an emergency, and I think it was said, that if a sheep was lambing and it was in difficulty and somebody did enter and retrieve it, it would be looked upon as an emergency. It would be just nice to have that one confirmed also. Not that I doubt Mr Attorney's opinion on this, he is a country lad, Mr President! (*Laughter*)

**Mrs Christian:** Unlike myself!

**The President:** Okay, Hon. Members.

### **Constitution (Legislative Council) Bill** **Motion withdrawn**

4. Mr Delaney to move:

*That the Constitution (Legislative Council) Bill from the Keys be read for the first time.*

**The President:** Okay then, as I understand it, again, Hon. Members, in relation to Item 4, which is the Constitution (Legislative Council) Bill, in the hands of the Hon. Member, Mr Delaney, my understanding on that, having spoken to Mr Delaney, is that he wishes to take further consultation with the mover in the Keys, Mr Rodan, before he does come forward with the First Reading of that Bill. Mr Delaney.

**Mr Delaney:** Mr President, on this very important Bill, as far as the Constitution is concerned, I have found some snags with the Bill, and I want clarification from the mover of the Bill in another place. I also want to give Members here a chance to do as much canvassing as possible, (*Laughter*) so I would like to defer the Reading for at least a week.

### **Procedural**

**The President:** Okay, that, Hon. Members, means that, with the exception of the two Questions which are still to be answered by the Chief Minister, we have come to the conclusion of our Order Paper this morning.

I still cannot give you any direction as to what time the Chief Minister will be available to come from Keys to the Legislative Council. Can I suggest, Hon. Members, that it might be appropriate, if we were to take, say, a 15-minute break at this stage, and return at quarter past eleven when, at that stage, I should be able to give you more information as to whether the Chief Minister will be available. Are you agreed, Hon. Members?

**Several Members:** Agreed.

**The President:** Thank you.

*The Council adjourned at 11.00 a.m.  
and resumed its sitting at 11.15 a.m.*

## **Questions for Oral Answer deferred**

### **A MEMBER OF THE GOVERNMENT**

#### **Code of conduct for former public servants Control over Statutory Boards and Departments Questions deferred**

3. & 4. The Hon. Member (Mr Lowey) to ask a Member of the Government:

3. *In respect of public servants and politicians leaving office –*

(a) *do you intend to introduce a code of conduct governing the taking up of certain directorships and employment, and*

(b) *would you consider the introduction of a code similar to the UK system where there is a two-year moratorium?*

4. (a) *Are all Government Departments, Statutory Boards and wholly-owned Government Companies subject to the same auditing regime;*

(b) *can Statutory Boards and wholly-owned Government Companies be directed by the Council of Ministers; and if not;*

(c) *when will legislation be introduced to enable the Council of Ministers to do so?*

**The President:** Well, Hon. Members, following our break, Mr Lowey did give me the undertaking – I appreciate he is not back in at this stage – but as I understand it, Hon. Members, he is happy and content that the Questions be carried over for another week, bearing in mind that it could be some time before the Chief Minister would be available to return to us.

So, with Mr Lowey's concurrence that we hold those two Questions over, Hon. Members, that does, in fact, bring us to the conclusion of our Order Paper.

### **PROCEEDINGS IN THE COUNCIL OF MINISTERS**

#### **Summary of Proceedings in the Council of Ministers (October 2004) considered in private**

**The President:** The Council will now sit in private to consider Council of Ministers' proceedings.

Thank you.

*The Council sat in private at 11.16 a.m., when it was also agreed that future Legislative Council sittings would commence at 10.30 a.m.*