



**HOUSE OF KEYS
OFFICIAL REPORT**

**RECORTYS OIKOIL
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**PROCEEDINGS
DAALTYN
(HANSARD)**

Douglas, Tuesday, 27th November 2007

Present:

The Deputy Speaker (Mr P Karran) (Onchan);
 The Chief Minister (The Hon. J A Brown) (Castletown);
 Hon. D M Anderson (Glenfaba); Hon. A V Craine and Hon. A R Bell (Ramsey); Hon. W E Teare (Ayre);
 Mr J D Q Cannan (Michael); Mr T Crookall (Peel); Hon. A J Earnshaw and Mr D J Quirk (Onchan);
 Mr R W Henderson and Mr J R Houghton (Douglas North);
 Hon. D C Cretney and Mr W M Malarkey (Douglas South); Mr R P Braidwood and Mrs B J Cannell (Douglas East);
 Mr C G Corkish MBE and Hon. J P Shimmin (Douglas West); Mr G D Cregeen (Malew and Santon);
 Mr J P Watterson, Hon. P A Gawne and Mr Q B Gill (Rushen);
 with Mr M Cornwell-Kelly, Secretary of the House

Business transacted

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The House adjourned at 11.51 a.m.

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House of Keys

The House met at 10.00 a.m.

[MR KARRAN *in the Chair*]

PRAYERS

The Chaplain of the House of Keys

LEAVE OF ABSENCE GRANTED

The Deputy Speaker (Mr Karran): Hon. Members, Olteynyn Onnoroil, I have given leave of absence today to the Hon. Member for Middle, Mr Quayle, who is on Government business.

As Members will recall, the Speaker has also been given leave of absence for today – in his case, to attend the British–Irish Parliamentary body.

Emergency Questions for Oral Answer

Urgent matter of public importance Questions approved by the Deputy Speaker

The Deputy Speaker: Questions of urgent public importance – Hon. Members will be aware that I have approved, under Standing Order 3.5.1(4), the putting, as a matter of urgent public importance, of two Questions: one to the Shirveishagh Tashtee, the Minister for the Treasury, and one to the Shirveishagh son Slaynt as Shickyrys y Theay, the Minister for Health and Social Security, circulated in the name of the Hon. Member for Michael.

These Questions clearly fall in the context of the very alarming events in the United Kingdom, concerning the loss of personal data of HM Revenue and Customs.

I call on the Hon. Member, Mr Cannan, to put his Questions now and I will extend the ordinary time for Questions by that time, to deal with the two urgent Questions.

HEALTH AND SOCIAL SECURITY

Isle of Man residents' personal details Information held by UK Government

1. The Hon. Member for Michael (Mr Cannan) to ask the Minister for Health and Social Security:

Can you indicate the extent to which personal details of

Isle of Man residents are routinely passed by virtue of the reciprocal agreement to the United Kingdom Government Agencies which are then held on national computers or disks (e.g. National Insurance contributions, state pensions etc)?

[Approved by the Deputy Speaker under Standing Order 3.5.1(4) as relating to an urgent matter of public importance.]

The Deputy Speaker: Mr Cannan, Hon. Member.

Mr Cannan: Thank you, Mr Deputy Speaker.

In relation to Question 1 on our Paper, which is addressed to the Minister for Health and Social Security, I ask the Question standing in my name.

The Deputy Speaker: I ask the Minister to reply.

The Minister for Health and Social Security (Mr Teare): Thank you, Mr Deputy Speaker.

It is apparent that the Hon. Member's Question has arisen as a result of the problems experienced by HM Revenue and Customs in the UK, regarding the loss of two computer disks containing detailed information in relation to families and claimants of Child Benefit.

Mr Deputy Speaker, before answering this specific Question, may I take the opportunity to reaffirm what I said last week in another place, and to reassure the House and the public of the Island that Isle of Man Child Benefit data is held quite separately from that of the UK, and for persons who have only lived on the Island and claimed benefit here, there is no possibility that such data will be included on the UK files referred to.

In respect of the actual Question, I can confirm that the information is routinely shared with the UK authorities in a number of areas relating to social security, to ensure that benefits covered by the reciprocal agreement between the two countries can be paid by either country.

However, such data, which typically will include National Insurance number, dates of birth, details of National Insurance contributions paid and the relevant benefit claimed history, is only transferred to the UK when an individual moves from the Island to the UK, and would not occur where an individual has solely worked and resided on the Island. Under normal circumstances, this data does not extend to bank account details, except in the case where the customer has specifically asked that the payment of the particular benefit should still be made to an Isle of Man bank account.

Mr Deputy Speaker, whereas I remain confident that the processes within my Department are sufficiently robust to ensure the safeguarding of data for which the Department is responsible, however, notwithstanding the announcement of a review of internal processes by the Treasury Minister, the Department had already commenced a review of its arrangements with its UK counterpart.

Thank you.

The Deputy Speaker: Supplementary, Hon. Member.

Mr Cannan: I thank the Minister for his comments, but I would ask for clarification.

In terms of the reciprocal agreements, are all National

Leave of absence granted

Isle of Man residents' personal details – Information held by UK Government

Insurance contributions of Isle of Man residents passed to the National Insurance centre at Newcastle, in respect of Isle of Man residents who have made contributions both in the Isle of Man and in the United Kingdom?

The Deputy Speaker: Reply, Hon. Member.

The Minister: I think I covered that point in the original Answer to the Question. What I did say, Mr Deputy Speaker, is that for those people who have not worked in the adjacent isle and have been Isle of Man resident and have an Isle of Man National Insurance number, then all the records are maintained on the Island.

In respect of those people who have an Isle of Man National Insurance number but who currently work in the UK, there will be an exchange of the contributions paid by that individual passed from the UK to the Isle of Man, and likewise those with UK National Insurance numbers who currently work on the Island will have details of their contributions passed over to the UK, who maintain the relevant database, sir.

The Deputy Speaker: A further supplementary.

Mr Cannan: A further supplementary: the problem of extracting information from the Minister is difficult, but in this exchange of information, are the addresses of the Isle of Man residents included in that exchange of information?

The second part: are all state pension details of Isle of Man residents with the centre in Newcastle, or are they retained wholly in the Isle of Man? If so, why are pension details available in the United Kingdom in transfer?

Thirdly: are the names and addresses of Isle of Man pensioners available in the United Kingdom in this exchange of state pensions?

The Deputy Speaker: Reply, Hon. Member.

The Minister: Taking pensions first – retirement and also widow's pension – where an individual moves between the Isle of Man and the UK, the benefit payments continue to be made by this office on the Isle of Man for a period of six months. At the end of this period, all the necessary information in respect of the customer's identity and a breakdown of their benefit award is forwarded to the UK authorities to enable them to take over payment of the benefit in question.

The transfer of the information is paper based and contains three pages of data for each customer that will include: the customer's name; date of birth; UK address; National Insurance number; in some cases, bank account details; spouse details, where applicable; and the rate of benefit payable, together with a breakdown of the separate component parts which make up the total benefit.

The information is transferred on an as-and-when-required basis. In the 12-month period from 1st November 2006 to 31st October 2007, information in respect of just under 90 customers was transferred to the UK. The information has to pass, as I have said, to enable the payments to continue. Without that, there would be no basis for the payments to be made by the UK authorities.

I would stress that not all the details of Isle of Man pensioners are passed to the UK. It is only in respect of those pensioners who have, as I previously said, moved from the Isle of Man to the UK and after a period of six months, then the

responsibility for paying that pension is transferred over to the UK authorities, sir.

Mr Cannan: One final supplementary: who holds the master record on National Insurance contributions of Isle of Man residents between the UK and the Isle of Man, bearing in mind that a very large number of Isle of Man residents who have Isle of Man registered insurance numbers have also at some time had their contributions paid in the United Kingdom, in particular, all those who at *any* time – in particular pensioners – served in HM Forces?

The Minister: It is not exactly straightforward who maintains the master record, because it depends how long they have been working in each jurisdiction, sir, but where an Isle of Man resident holds an Isle of Man National Insurance number, then the contributions records will be maintained here until they move to the UK, and then the records will follow them.

In respect of UK residents who are working on the Isle of Man and who hold a UK National Insurance number, then details of the contributions paid by that individual during their residence on the Isle of Man will be returned to the UK to enable the UK authorities to keep their database and their contributions record up to date, sir.

The Deputy Speaker: A supplementary, Hon. Member for Douglas East.

Mrs Cannell: Thank you, Deputy Speaker.

Can I, just on the last answer that the Minister gave us, seek some clarity there: in respect of people who have moved to the Island and, say, have been here in excess of 20, 30, 40 or 50 years even, but did in fact work in the United Kingdom, paid contributions in the United Kingdom, subsequently came to the Island and worked here and paid contributions but are now at pensionable age, who in fact holds the records, or do both camps – both Newcastle and the Isle of Man – hold the records?

When that does happen, does the Isle of Man inform Newcastle of the address of the person who has moved from the United Kingdom to the Isle of Man? In other words, do an Isle of Man resident's details and addresses stay with Newcastle, or is everything withdrawn from Newcastle and relocated here with the individual?

The Minister: As far as I am aware, there will be a data footprint left in the UK, sir.

The Deputy Speaker: Thank you, Hon. Member.

TREASURY

Isle of Man residents/businesses' tax details Information held by UK Government

2. The Hon. Member for Michael (Mr Cannan) to ask the Minister for the Treasury:

Can you indicate the extent to which personal details of Isle of Man residents and businesses are routinely passed by virtue of the Customs and Excise Agreement and other

tax information agreements to HM Revenue and Customs and other United Kingdom Government Agencies which are then held on national computers and disks?

[Approved by the Deputy Speaker under Standing Order 3.5.1(4) as relating to an urgent matter of public importance.]

The Deputy Speaker: We go on to Question 2. Hon. Member for Michael, your second Question, please.

Mr Cannan: Mr Deputy Speaker, I ask the Question in my name, sir.

The Deputy Speaker: I ask the Hon. Shirveishagh Tashtee, the Hon. Member for Ramsey, to reply.

The Minister for the Treasury (Mr Bell): Mr Deputy Speaker, with regard to Customs and Excise, there are only relatively few instances where personal details are routinely passed to the UK which are likely to be held on UK national computers.

The exchanges that do occur relate to VAT registrations by such traders as sole proprietors, partnerships, companies etc, where the personal information exchanged relates to the registered name, VAT number, date of registration, registered business address etc. The bulk of these details can be found on any full tax invoice issued by the trader to a customer. It does not include details of NI numbers, bank or accounting details, family or any other personal information.

This information is used in order that the Island's relationships with the UK and the EU with regard to indirect taxation procedures and customs movements can be undertaken, and Manx businesses can operate with the UK, EU and rest of the world with minimum disruption.

Where Manx residents import new means of transport, for example cars, from mainland Europe for personal use, or other occasional imports are actioned, then details of name, address and amount of VAT paid are provided. This ensures that there are no future problems regarding suspected import irregularities.

Other exchanges are not of a routine nature, including those made by virtue of the double-taxation agreement between the Isle of Man and the United Kingdom and generally only relate to situations where transactions between jurisdictions are being checked for audit-type purposes, where some illegal activity is believed to have occurred.

The Deputy Speaker: Hon. Member to reply.

Mr Cannan: To summarise the Treasury Minister's reply, will he confirm that the particulars of every VAT-registered business in the Isle of Man are available to the United Kingdom?

Secondly, will he confirm that the VAT records of these businesses are available for scrutiny by HMRC, Her Majesty's Revenue and Customs, if they so wish, in terms of our Customs agreement?

The Deputy Speaker: Reply, Hon. Member.

The Minister: That is correct, Mr Deputy Speaker.

The Deputy Speaker: If there are no others, I shall go on –

Mr Cannan: Mr Deputy Speaker!

The Deputy Speaker: Hon. Member for South Douglas.

Mr Malarkey: Thank you, Mr Deputy Speaker.

Could the Treasury Minister confirm or deny for me that all Isle of Man residents' medical records are now actually held and hosted on the Treasury system?

The Deputy Speaker: Reply, Hon. Member.

The Minister: They are obviously held on the Government system, Mr Deputy Speaker. I would have to check whether you are talking about a specific Treasury system or the DHSS system.

The Deputy Speaker: A further supplementary, Hon. Member.

Mr Malarkey: Does the Treasury actually have access to the medical records within the Treasury? That is what I am asking.

The Deputy Speaker: Reply, Hon. Member.

The Minister: Treasury does not have access to individuals' medical records, because of the data protection arrangements.

The Deputy Speaker: Hon. Member for Ayre.

Mr Teare: Is the Treasury Minister aware that the new health administration system, the patient administration system, is a system that has recently been installed in Noble's Hospital and there are firewalls in place to ensure that those people who access the information are appropriate medical professionals: therefore, there is no medical data held by the central Government computer system, sir?

The Deputy Speaker: Hon. Member for Ramsey to reply.

The Minister: I would concur with that, Mr Deputy Speaker.

The Deputy Speaker: Supplementary, Hon. Member for East Douglas.

Mrs Cannell: Thank you, Deputy Speaker.

Can I just, again, seek clarity from the Treasury Minister? I will make it simpler, so that perhaps we might get a straight answer. Is he aware that it is alleged that Isle of Man residents' personal medical records are being hosted on an Isle of Man Government server, under the auspices of the Treasury's Information Systems Division? Is he aware of that, and if he is not could he look into it and advise us whether or not, in fact, that is the case?

Is he also aware that it is alleged that the general practitioners have been passed a faulty password to access the Government IT system, and that when they asked for the password to be changed to a private one of self-choice, they have been denied? Does this not actually pose a risk?

If he does not know the answer, could he look into it and

come back and assure the House, please?

The Deputy Speaker: Hon. Member for Ramsey.

The Minister: Mr Deputy Speaker, in relation to the medical records, the Minister for the DHSS has already answered that.

As far as the further point that the Hon. Member for East Douglas has made, there was a problem back in January 2005. That has been resolved and the individual who has circulated the information to the Hon. Member for East Douglas is fully satisfied with the new arrangements.

The Deputy Speaker: Thank you, Hon. Member.

Questions for Oral Answer

LOCAL GOVERNMENT AND THE ENVIRONMENT

Sewage sludge storage tanks, Jurby List of regulations

1.1. The Hon. Member for Michael (Mr Cannan) to ask the Minister for Local Government and the Environment:

- (1) *When is your Department providing to the Department of Transport the list of regulations that require compliance so as to permit the continued use of the sewage sludge storage tanks on the Jurby Industrial Estate; and*
(2) *will you provide a list of these regulations to both Jurby Parish Commissioners and to me?*

The Deputy Speaker: We will now turn to the Order Paper. I call upon the Hon. Member for Michael, Mr Cannan, to ask the Question standing in his name.

Mr Cannan: I ask the Question standing in my name, Mr Deputy Speaker.

The Deputy Speaker: I ask the Minister for Local Government and the Environment to reply.

The Minister for Local Government and the Environment (Mr Shimmin): Thank you, Mr Deputy Speaker.

The Hon. Member may recall that, at the Keys sitting on 13th November 2007, the Minister for Transport confirmed that he would be submitting drawings and details of the sewage sludge activities at Jurby to enable my Department to consider the operation and to decide what permissions may be required.

I am pleased to confirm that my Department has now received drawings and a method statement, detailing the sludge transfer operation. This helpful information is being considered by my Department in the context of its various statutory duties and responsibilities.

Apart from the various Health and Safety responsibilities under the Health and Safety at Work Etc Act 1974, applied to the Isle of Man as the main law, the other principal controls

include the provisions of the Town and Country Planning Act, together with possible licensing provisions under part 4 of the Public Health Act, as amended, and also potentially the nuisance provisions under that legislation that control odour emissions caused by any trade or trade process considered sufficient as being prejudicial to health, or a nuisance.

I can confirm that the use of the hangar for a sludge transfer operation does not constitute a change of use within the meaning of planning law and therefore the current operation will not require any new planning approval.

The operation of a sludge transfer station is a process for which a licence will be required under the Collection and Disposal of Waste Regulations 2000. Therefore, the Department of Transport has been invited to apply for such a licence and will be working with officers from my Department to ensure that any licence conditions that are set will be fully met.

As requested by the Hon. Member in part (2) of his Question, my Department will, as a matter of courtesy, issue the Jurby Parish Commissioners with a copy of the licence application once it is received. It will also supply them with a copy of the Collection and Disposal of Waste Regulations 2000 for information and this same information will be provided to the Hon. Member.

The Deputy Speaker: Supplementary, Hon. Member.

Mr Cannan: I thank the Minister for his comprehensive and open reply.

Does the Minister think it irregular, to say the least, that this operation by the Department of Transport has been going on since May this year and yet they have not seen fit to obtain or apply for the necessary licence?

The Deputy Speaker: Reply, Hon. Member.

The Minister: I think that answer has been given previously, that we were disappointed when we became aware of it.

However, it is certainly true to say it is not a clear-cut situation. Indeed, my own regulatory parties within my Department have had to grapple, at some stage, to try and find out which they need, because it is not an identified use. Therefore, the Department of Transport has been fully open with us and, indeed, my understanding is they have already taken action which has put in an odour control on the operation in that area and are genuinely trying to work with my Department, to ensure that all of the reassurances that have been given by myself, by other colleagues, cause no problems to the public and will actually allow this operation just to continue, without it being drawn to the attention every week.

The Deputy Speaker: Supplementary, Hon. Member for Douglas East, please.

Mrs Cannell: Thank you, Deputy Speaker.

Can I just ask the Minister: does he agree with me that, in fact, when he talks about odour emissions, if there are still odour emissions, it is highly likely that there is probably methane leakage, as well?

Can he advise the House, what is the method of testing by his officers and how frequent is that testing undertaken to make sure that there is no methane leaking into the area?

The Deputy Speaker: Reply, Hon. Member.

The Minister: Mr Deputy Speaker, I think we attempted to answer this – was it last week or the week before, I am not sure? Methane is an odourless gas. The Department and others have looked into the emissions in this area. There is no health risk. There is no issue which is causing concern under the Health and Safety at Work Act.

Therefore I would like to, once again, give reassurance that we are trying to make a mountain out of something which does not exist.

The Deputy Speaker: Hon. Member for Michael.

Mr Cannan: Final supplementary.

Are the Minister or his Department aware that there are at least considerations, if not proposals, within the Department of Transport to transfer further operations to the Jurby Industrial Estate?

Will his Department insist that before they do anything, they actually get their licences and consents in order, before just carrying out operations in this cavalier manner which they have done in respect of sewage sludge?

The Deputy Speaker: Hon. Member.

The Minister: Mr Deputy Speaker, I am not aware of that. However, the Minister and the Member responsible are here in the Chamber. They are fully aware that they have every expectation and intent to work with all parties.

This is to the benefit of the people of the Isle of Man. This is not something that is being done in order to try and cause problems. Therefore, if there are any further changes to their operation in that area, I would expect them to work with my Department, so that we can avoid constant questions regarding operations in this area.

Mr Cannan: Thank you, Minister.

The Deputy Speaker: Further supplementary from the Hon. Member for Douglas East, please.

Mrs Cannell: Thank you, Mr Deputy Speaker.

Can I ask the Minister whether or not, in terms of the odour and the possibility of methane leakage, has he taken any advice from an engineer who works in this field, who may well advise him that, in fact, if there is odour, then there is highly likely to be leakage of methane as well?

And for the second time, can I ask him, what is the method and frequency of testing undertaken by his Department in respect of this area?

The Deputy Speaker: Hon. Member, please, a reply.

The Minister: Yes, Mr Deputy Speaker.

I am afraid I do not know the method and the frequency. I know that under questioning from the Hon. Member for the area, Mr Cannan, we have had our expert field officers going out. Whether they are as qualified as the engineer referred to by the Member for East Douglas, Mrs Cannell, I do not know.

I will, once again, revert to my officers to find out and supply that information to the House, so that the engineer who is dealing with Mrs Cannell can be reassured that we

have some experience and knowledge in dealing with these matters and try and move on, Mr Deputy Speaker.

Mrs Cannell: Thank you.

House Condition Survey Costs; participation of householders

1.2. The Hon. Member for Michael (Mr Cannan) to ask the Minister for Local Government and the Environment:

*In respect of the current House Condition Survey –
(1) What is the estimated total cost of the survey including all fees, travelling expenses, etc; and
(2) do householders have the freedom to decline to participate in the survey?*

The Deputy Speaker: Question 2, the Hon. Member for Michael.

Mr Cannan: Mr Deputy Speaker, I ask the Question standing in my name.

The Deputy Speaker: I ask the Member for Douglas West to reply.

The Minister for Local Government and the Environment: Thank you, Mr Deputy Speaker.

The Department has allocated a budget of £70,000 for the completion of the survey. It is expected to be satisfactorily completed for less than this budget.

In answer to part (2), taking part in the survey is entirely voluntary and householders who have been approached to permit the survey to be carried out can opt to not take part. The initial letter to each household provided a freephone number which allowed householders who had any concerns to refuse to take part.

The Deputy Speaker: Supplementary, Hon. Member.

Mr Cannan: I am pleased that he has confirmed that householders are under no obligation to partake.

Will he ensure that there is no record of those householders who do not wish to participate, so that they are not penalised in future in any way?

The Deputy Speaker: Reply, Hon. Member.

The Minister: Mr Deputy Speaker, I am absolutely delighted to give that reassurance and to go much further than that. Anybody who does take part in this cannot be identified by their property. I have only been aware personally of two people who have been unhappy with the letter that has gone out. That has caused concern, in this case, to persons of pensionable age.

Certainly, we require the participation of people to try and make this valid, but there are no individual records maintained. There is no identification of the people who do or do not take part.

I would encourage anybody who has any concerns to use the freephone number and be reassured that if they do not wish to take part, that is perfectly acceptable. We are not

trying to cause anybody any problems; we are trying to get data which will be helpful for the Island in general. That is done randomly and is anonymous, once the investigations have taken place, sir.

Mr Cannan: Thank you, Minister.

Green waste DoLGE policy

1.3. The Hon. Member for Onchan (Mr Quirk) to ask the Minister for Local Government and the Environment:

- (1) *Could you please provide the tonnage figures of green waste that has been delivered to the Energy from Waste Plant for the last two years to date;*
- (2) *who from your Department instructed Civic Amenity Sites to deliver green waste to the Energy from Waste Plant; and*
- (3) *what is your Department's policy with reference to green waste?*

The Deputy Speaker: Question 3, Hon. Member for Onchan, please.

Mr Quirk: Thank you, Mr Deputy Speaker. Can I ask the Question standing in my name.

The Deputy Speaker: I call on the Member for West Douglas to reply, please.

The Minister for Local Government and the Environment (Mr Shimmin): Thank you, Mr Deputy Speaker.

With regard to part (1) of the Hon. Member's Question, neither the Department nor SITA, the operators of the Energy from Waste Facility (EfW), have records of the tonnage of green waste delivered to the EfW, as the loads delivered to the site are only recorded by weight and not content.

With regard to part (2), no-one in the Department has instructed Civic Amenity Sites to deliver green waste to the EfW. The local authorities running the Civic Amenity Sites decide on the disposal or recycling route for the wastes delivered to them.

The green waste from the Western and Northern Civic Amenity Sites are taken to Ballanevin to be composted; and the Southern Civic Amenity Site has its own composting facility.

The only Site that still takes green waste to the EfW is the Eastern. Due to an ongoing legal dispute with the current operators of the Site, appointed by the former Eastern Civic Amenity Site Committee, of which the Hon. Member was a member, the Department has been unable to change the disposal route for green waste decided by that former Committee.

With regard to part (3), the Department is currently undertaking an organic waste survey to determine the amount of this type of waste produced on the Island. This will inform the Department's policy and strategy for all green waste.

Once again, I am not prepared to pre-empt the outcome of the survey or the policies that will come from the results. At present, the Department has promoted home composting

for household green waste and encouraged Civic Amenity Site operators to compost the waste if possible.

A green waste policy will be wrapped into a policy for all organic wastes, which we hope to have in place next year.

The Deputy Speaker: Further supplementary, Hon. Member for Onchan.

Mr Quirk: Thank you, Deputy Speaker.

Can I ask the Minister: is he not concerned, as I was a former member of the Eastern Civic Amenity Committee, that an instruction was given by a member from his Department for the Eastern Civic Amenity Site Committee to take the green waste to the EfW – that was by an instruction? Could he look into that?

Could I also ask a further supplementary regarding: is he not concerned that from the Eastern Civic Amenity Site, the green waste is delivered separately? Therefore, it must be recorded going into the SITA EfW site: would he look into that as well?

The Deputy Speaker: Reply, Hon. Member, please.

The Minister: The Hon. Member asks if I am concerned that he was a former member of the board of the Eastern Civic Amenity: at times, I am concerned about that, yes! *(Interjection by Mr Quirk)*

The instruction he refers to I am not aware of – I will investigate that. My information is that has not taken place.

Unfortunately, there is not a formalised body, as he will see in the Answer to the Written Question he has asked today. Therefore, I will quite happily go through that with him, in order to find out whether there is any evidence of an instruction being given or whether that was an interpretation.

Certainly, with regard to the waste which is collected separately at the Eastern Site, we would like to have the control and operation of that site, to be sure that when it is deposited, it is taken purely as green waste, so that we can get proper records into the future.

The Deputy Speaker: Further supplementary, Hon. Member for Onchan.

Mr Quirk: Final supplementary from me, Deputy Speaker.

Could I ask the Minister, would he not contact... as the operator of the Eastern Civic Amenity Site is his Department, could he not issue an instruction to himself to actually ask for the green waste to be delivered to a composting facility for the benefit of this nation?

The Deputy Speaker: Reply, Hon. Member.

The Minister: Mr Deputy Speaker, I would love to make contact with the Hon. Member for Onchan in a room where we can talk about all of these issues *(Laughter)* **(A Member: Ooh!)** to the benefit of the Island and everybody else!

We are not – as he should well know – the operator of this facility –

Mr Quirk: You are.

The Minister: – because, under legal challenge by his former colleagues and others, we are not able yet to take operation and control of this site. We wish we could.

We are still in legal battles. We are hoping to get possession in January, when we will be able to operate it and take control. Until that time, he is aware that there is a legal matter at stake, and I would love to have a chance to talk with him, explain where the Department is, what our future plans are... When we get through that stage, I am sure he will be able to contribute a great deal to the debate and assist me in my understanding of these matters.

The Deputy Speaker: Further supplementary from the Hon. Member.

Mr Quirk: Definitely final supplementary, Deputy Speaker.

Could I ask the Minister: his Department regularly meets, I believe, with the administrator for the site, who is an officer of Douglas Corporation; the administrator of the site cannot give instructions on his own, so therefore how does he take the instructions? Where do the instructions come from, if not from his Department?

The Deputy Speaker: Reply, Hon. Member.

The Minister: Mr Deputy Speaker, my understanding is that the administration of this, as was previously the case under the joint board... sorry, from the Eastern Committee... It was not even Eastern Committee! What did we call it in those days? It seems so long ago! It was the Eastern Civic Amenity Site Committee.

Douglas are the administrators of that, I believe. We deal with them. However, we cannot instruct the operators, Tel's Ltd, to do things, because the contract with them is questionable, and certainly is not one that is controlled by us – which is why, as the Hon. Member knows, they do not use the weighbridge, they do not use the other facilities on site, because that is not part of the contract negotiated by the three local authorities.

We want to get to a stage where we can actually deal with the operation of that site for the benefit of the people, and until we deal with the legal issues, we cannot get on and take control.

The Deputy Speaker: Further supplementary from the Hon. Member.

Mr Quirk: Final one – I will sit down after this, Deputy Speaker. *(Laughter)*

How can an administrator of an Eastern Civic Amenity Committee not get instructions? Where does he get them from? The Committee does not meet; there are five local authorities involved; so how does an administrator run the day-to-day operation of a site? Does he have a little handbook or does he take instructions from *your* Department?

Mr Houghton: Don't you know that?

The Deputy Speaker: Reply, Hon. Member.

The Minister: I am sorry, Mr Deputy Speaker. There is an administrator and there is an operator. The administrator, we do have some control over. The operator, which the

former member and his Committee put in place, is not directly answerable to us. We wish it were. But when you have got legal matters ongoing, then we would be foolish, were we to take control of issues that would leave us legally exposed.

Therefore, we are not the operators; Tel's Skips Ltd are, and until such time as the legal issues are resolved, we will continue to have an unsatisfactory relationship.

Refused planning applications Number approved by Minister

1.4. The Hon. Member for Michael (Mr Cannan) to ask the Minister for Local Government and the Environment:

For the period 1st September 2007 to date –
(1) how many planning applications, refused by the Planning Committee and then refused by the independent UK Appeals Inspector, have been subsequently approved by either yourself or your appointed person; and
(2) on what grounds have these approvals been given?

The Deputy Speaker: Go on to Question 4, the Hon. Member for Michael.

Mr Cannan: I ask the Question standing in my name, sir.

The Deputy Speaker: I ask the Shirveishagh, the Member for West Douglas, to reply, please.

The Minister for Local Government and the Environment (Mr Shimmin): Thank you, Mr Deputy Speaker.

In response, I can advise as follows: for the period from 1st September to date, there have been three instances where planning approval has been granted on appeal, notwithstanding a refusal at the first stage and a recommendation for refusal from the appeal inspector. Two of these decisions were taken by me and the other by Mr Butt, acting as my deputy.

In each of these instances, the reasons for the decision are stated in the decision letter, as is required by the Development Procedure Order.

One of the three involved an agricultural worker's dwelling, where the inspector concluded that the site would be satisfactory, but that approval would be premature, even though the business was, and I quote:

'clearly on the threshold of meeting the DAFF standard for a full-time business.'

I judged that this was a finely balanced case, where the benefit of any doubt should be accorded to the young farmer. **(Mr Cretney and Mr Cannan: Hear, hear.)**

The other two cases involved change of use and the possibility of adverse impact on residential amenity arising from activity and disturbance.

In one case, it was judged that approval should be granted, but only for 12 months, so allowing the applicant time in which to secure a more appropriate site.

In the other case, it was judged that the scale of activity

was so modest that if it were controlled in terms of the hours of operation, the impact would not warrant refusal.

Mr Deputy Speaker, I have not identified sites or the names of those involved, since it seems to be inappropriate discussing such details in the House; but I can advise that, as matters of public record, the reports and decision letters are available for inspection at the Planning Office and copies are placed in the Members' Room and the Tynwald Library.

Thank you.

The Deputy Speaker: Further supplementary, Hon. Member for Michael.

Mr Cannan: Would the Minister agree that, in the instances given, the matter of having to go to all the expense of appeal was not in the public interest, when these matters could have been sorted out in the planning stage itself – in particular, the application for an agricultural dwelling, which is in accordance – and the Minister's decision is correct – with the legislation?

So were the Planning Committee not at fault in the first instance for refusing this application; and in the other minor trivial applications, was it really necessary to go again to the expense of an appeal?

The Deputy Speaker: Reply, Hon. Member, please.

The Minister: I do take seriously on board the comments from the Hon. Member for Michael. I know that he has had concerns regarding the number of appeals that we go through.

With regard to the Committee decision on the agricultural worker's property and whether or not it was a valid decision, I would quote from the inspector's report, which states:

'The business requirement has increased from 0.53 full-time people at the time of the initial consultation in January 2007 to around 0.85 persons as at 10th July 2007.'

So in half a year, there had been an increased amount of work, and it was my interpretation that (**Mr Cannan:** Correct.) if that growth continues, therefore it would be another hurdle, where they would have to come back in six months, when they did satisfy the criteria.

I think this is one of the difficulties of having any system that, if it is applied rigorously, it may appear to be overly bureaucratic. However, I would point out that some Hon. Members are aware that one of the other cases I have referred to in my answer has caused deep concern to an adjoining neighbour, who feels that their rights have been overlooked because the decision went against them.

So, we do genuinely attempt to balance the needs of both parties, although not everybody realises how hard we try to make that work. I am concerned about the number of appeals. I am concerned about the number of times the decisions are disagreed with. However, I am hoping that under the Strategic Plan and, more importantly, the Area Plans, there will be a great deal more clarity, which should avoid the number of appeals, because all members of the public and, indeed, developers would have a clarity, once the Area Plan has been approved.

Unfortunately, we have got some years to go before we are at that happy outcome.

Mr Cannan: One final supplementary.

The Deputy Speaker: Hon. Member for Michael. Hon. Member for East Douglas, supplementary, please.

Mrs Cannell: Thank you, Deputy Speaker.

Bearing in mind only three cases where this instance has occurred – which is very few, so I would suggest it is rare – can the Minister advise what the criteria guidelines are for a Minister of the Department when making judgements like this?

Am I correct in believing that if the Planning Committee made a refusal, but a planning inspector recommended an approval, there is more flexibility and freedom there for a Minister to either approve or reject an application; and that, in fact, it is normal if a planning approval is given and refused by the planning inspector, again there is freedom; but then if both areas – both the Planning Committee and the inspector – go against or both go for, it is very unusual for a Minister, or anybody appointed to act as Minister, to take an entirely different decision?

So can he advise us on what the criteria guidelines are? I do believe they are laid down somewhere.

The Deputy Speaker: Reply Hon. Member, please.

The Minister: Unfortunately, it is slightly shifting sands, Mr Deputy Speaker.

When the Hon. Member refers to only three cases as being not very many, that is actually only in a three-month period, so it is not actually infrequent. I think, at one a month, that is quite unusual – not just to overturn an inspector's decision, but one where the Planning Committee and the inspector had both suggested refusal, to be then overturned once a month, it strikes me that we are not getting everything accurate at this stage. (**Mr Cannan:** Hear, hear.)

The issue regarding guidance – and I say it is shifting sands – is: following the ruling on the Cregneash case, it does give the Minister very little flexibility, but that is often because the flexibility is allowed when the planning inspector or the Committee make determinations which discuss it as being very much in the balance. It is easy when it is black and white. It is easy when it is unequivocal, which is what I hope to get to with the Area Plans, and we would only deal in the smaller margins.

At the moment, if there are grey areas the planning inspector can put down, 'On balance, I believe it should go one way. However, if the Minister disagrees, we can go the other.'

So, unfortunately, the advice in the process is that when I get the appeals – of which there seems considerable regularity, as the Hon. Member for Michael will be aware – if I am not satisfied in supporting the planning inspector, I will then seek advice of a consultant, who is a former senior planning officer in the Department, who will then take me through the options available to me and will look more closely at the options available to me as Minister. Ultimately, it will be my decision.

We are attempting to get through the reviewing stage to see if this system is adequate. However, Hon. Members will be aware we are under a range of conflicting pressures from various bodies at the moment, so we are doing our best.

The Deputy Speaker: Hon. Member for Michael.

Mr Cannan: Final supplementary.

Would the Minister agree that, in order to cut down the

endless bureaucracy that seems to have grown over planning applications, the reintroduction of the review stage, where the applicant and the planning authority can discuss the matter across the table, discretion used and then, after two bites of the cherry – the original application and the review stage, where both parties have discussed the matter... it could go to appeal and hopefully will reduce this burdensome bureaucracy of appeals procedures? It is costing the applicants – who are not corporate bodies – private persons, a large amount of money.

The Deputy Speaker: Reply, Hon. Member.

The Minister: Yes, Mr Deputy Speaker, one of the difficulties is that the review that we were due to be carrying out since the changes in 2005 is still yet to be done and is a year overdue. We are conscious of that: we are attempting to work towards it.

Indeed, when the review was withdrawn, that was felt by the bodies and, indeed, Tynwald at that stage as having limited value, because what was happening was it actually extended the planning process, because you had the planning application, the determination, then had the review, and then the majority were going to appeal after that case.

What we have to do in our subsequent evaluation of the new regime is to see indeed whether Mr Cannan is right that we should have a review. If that is the general wish of the public and Members, then we can reintroduce it.

I do believe there are arguments on both sides of that and there are various Select Committees looking at some of these aspects. We do hope to go public on our own review... some months ago! So we are attempting to get to that, in between Select Committees, petitions and Questions, sir.

The Deputy Speaker: Hon Member for Malew and Santon.

Mr Cregeen: Thank you, Mr Deputy Speaker.

Can the Minister clarify one point: he mentioned a consultant – is this the same consultant who is re-employed on other duties in the Department, as well?

The Deputy Speaker: Reply, Hon. Minister.

The Minister: I do not think it is a widely-kept secret: the officer or the consultant that we use is Mr Brian Sinden, former experienced planning officer of the Department, who, having retired, has come back into the Department, so that he is able to operate outwith his normal roles and is no longer doing planning applications.

The ludicrous situation is that a Minister of my Department, if not satisfied with the appeal inspector's report, would have to go to the Chief Executive, who would have to go to a planning officer to get the information, to go back to the Chief Executive to come back to the Minister, because we have to have all these Chinese walls in between.

Therefore, this is an opportunity for somebody who is experienced, who knows our systems and who can give impartial advice, without being one of the planning officers involved or attending the Committees. We believe that Brian offers a considerable benefit to me as an adviser and I think it is fortunate that we were able to keep him in service, albeit a slightly different situation.

Mrs Craine: Hear, hear.

TOURISM AND LEISURE

Villa Marina bowling green Long-term plan

1.5. The Hon. Member for Douglas South (Mr Malarkey) to ask the Minister for Tourism and Leisure:

What is your Department's long-term plan for the Villa Marina bowling green and surrounding buildings?

The Deputy Speaker: Hon. Member for Douglas South to ask your Question now, please.

Mr Malarkey: Deputy Speaker, I stand to ask the Question standing in my name.

The Deputy Speaker: I ask the Shirveishagh, the Hon. Member for Onchan, to reply.

The Minister for Tourism and Leisure (Mr Earnshaw): Thank you, Mr Deputy Speaker.

I would like to thank the Hon. Member for South Douglas for placing this Question today.

In reply, I would say that, following the decision by Douglas Bowling Club in July this year not to accept our offer of a new five-year lease, the Department considered the possible alternative use of both the Villa Marina bowling green and the adjacent disused areas, which I understand were once putting greens.

The Department receives regular customer feedback regarding lack of car parking on the Villa Marina site, and therefore decided to take the opportunity to investigate the possible conversion of the area into additional car parking.

Pending the feasibility study, the Department offered Douglas Bowling Club the opportunity to extend its use of the green for a further year, but this has also very recently been rejected.

The Deputy Speaker: A supplementary from the Hon. Member for Douglas South.

Mr Malarkey: Thank you, Deputy Speaker.

Will the Minister agree with me that the reason for the Douglas Bowling Club refusal to sign the five-year lease with the Department was that the new lease incorporated an awful lot of additional costs, including maintenance of building etc. That is why they asked to come back round the table and discuss with your Department?

Would he also confirm that he has now come back and discussed a more reasonable proposal, but this time only allowing it for 10 months?

Would the Minister also agree that, from the Bowling Club's long-term plan and the investment required, the reason that they have not actually signed this lease is that it would not be worthwhile them spending the type of money that your Department requires for a 10-month lease extension?

The Deputy Speaker: Reply, Hon. Member.

The Minister: Yes, it is with considerable regret that the situation that we have has arisen, but there is a demand from users of the Villa Marina concert hall and the Gaiety Theatre for car parking. The opportunities in that area for

providing a car park are very limited.

The lease that was on this bowling green was with Douglas Corporation and it expired in, I think it was, June 2006. Since that point, when I joined the Department, there was no lease in existence. We have worked to try and establish a lease. Offers have been made, and the most recent offer was quite favourable in that respect, insofar as we offered to maintain the buildings for next year from a safety point of view, as well as taking a fairly modest... well, I think the rent is still the same as it was when Douglas Corporation was running the bowling green.

The Deputy Speaker: A final supplementary from the Member for Santon and Malew.

Mr Cregeen: Thank you, Mr Deputy Speaker.

I do not know whether the Minister is aware of the Chester Street car park, which is probably about 100 yards away: is that unacceptable for people to walk from, to the Gaiety or the Villa Marina?

Similarly to the Member for Douglas South, when he said that the Douglas Bowling Club has put a lot of investment into this: it comes back to something very similar to the TT arrangements, where part of the negotiation was, 'Well, we are not happy with it, let us come back and talk about it,' and the Department has not come back, until they have got a worse offer than they originally had.

The Deputy Speaker: Reply, Hon. Member for Onchan, please.

The Minister: Yes, thank you, Deputy Speaker.

What we want to conduct here is a feasibility study. Nothing may happen at the end of the feasibility study, but it is to create an opportunity. So I do not want to give this legs. This is all we are trying to do: have an opportunity to look at other options.

If the Bowling Club decides not to continue on this green – which is a suggestion that has been made to me – I would be rather disappointed, because I would like, if the feasibility comes to nothing, for them to continue bowling there.

The Deputy Speaker: Supplementary from the Hon. Member for Onchan.

Mr Quirk: Thank you, Deputy Speaker.

Can I ask the Minister, would he not agree with me that this particular facility is in a nice location in the town centre, and it is one of the facilities that is used for the International Bowling Festival, which happens once every year?

Mr Malarkey: Hear, hear.

Mr Cretney: Twice a year.

Mr Quirk: This is the place for the final. Would we not miss that?

The Deputy Speaker: Reply, Hon. Member.

The Minister: Yes, I do agree with my colleague, the Hon. Member for Onchan, Mr Quirk, that it is indeed a pleasant location for people to bowl; it is used for the annual Bowling Festival. All the greens in Douglas are used at the

moment for the twice-yearly Bowling Festival.

But there are other options around the Island, I understand, in equally pleasant surroundings.

The Deputy Speaker: The Hon. Member for Douglas South.

Mr Malarkey: Thank you, Mr Deputy Speaker.

Is the Minister aware that Douglas Bowling Club has been there for some 85 years and has no real wish to leave the site?

Can I ask the Minister, has he himself personally walked round the particular site lately, as I did yesterday, where the only well-kept piece of the site is the actual green itself, while the bowling green and all the other areas have been left – and the pathways – to become virtually destroyed?

Would the Minister not agree with me, if it was not for the Douglas Bowling Club, that area up in that part of the Villa Marina would be a total and utter shambles?

Can I reassure the Minister that the Douglas Bowling Club does not wish in any form to re-site from somewhere it has been for the last 85 years, but just wishes to have a little bit more co-operation from the Department, which is supposed to be encouraging tourism in the Isle of Man – not allowing what little facilities we have left go to rack and ruin.

The Deputy Speaker: Reply, Hon. Member.

The Minister: Yes, thank you, Deputy Speaker.

Yes, I am aware that the Bowling Club has been on that green for many years. I could not say whether it is exactly 85 years, but I will take that as a correct observation from the Hon. Member.

I have walked the site: I have visited that site about six times this year. Every time I visited the site, the site has been locked, nobody has been bowling on that green at all.

I am not an expert bowler, but the condition to me looks good enough. I am aware there is only a small membership of this Club. I think it is used pretty well exclusively for the Club. I think there are 40 members and the numbers are dwindling at the moment.

So that is the situation that we are faced with regarding the Bowling Club. I do not know what expansion plans they have or what they have applied in the last few years, but they have told me that their numbers are dwindling.

The Deputy Speaker: Hon. Member for Michael – supplementary.

Mr Cannan: Is the Minister of Tourism not aware that he is acquiring an Isle of Man reputation for a dead hand of bureaucracy, whether it is the Bowling Club, the Peel Bay Festival or anything else that is for the benefit of tourism? He is putting the dead hand of bureaucracy to prevent it.

Several Members: Hear, hear.

The Deputy Speaker: Reply, Hon. Member for Onchan.

The Minister: No, I do not agree with that statement, Mr Deputy Speaker.

Mr Cannan: Everybody else does!

The Deputy Speaker: Hon. Member for Douglas East.

Mrs Cannell: Thank you, Deputy Speaker.

Will the Minister accept that, as a Member for Douglas East, in which this particular site lies, my colleague and I have a great deal of knowledge regarding it? (**A Member:** Ooh!) (*Laughter*)

Is he further aware that the lane that services access to that site currently would be inappropriate to be used as an entrance and exit to any future feasibility study that might recommend a car park, because it falls short of the minimum requirement laid down by the Department of Transport, which was confirmed by a planning appeal hearing which I attended, which halted halfway through when the developer realised its shortcomings? That was in respect of a development of a site right opposite the bowling site.

Would he further agree that this Club needs a great deal more comfort than that which the Department is offering, by only offering less than one year's lease, for the time being, bearing in mind that considerable investment by this small Club will have to be made, in order to continue its operation? Will he please reconsider giving them at least two years, I would suggest, to extend the lease by, until his feasibility study?

But further, Deputy Speaker, can I ask: why is the Department looking to have a feasibility study on this particular site, bearing in mind the shortcomings which I have just outlined, but particularly in view of the fact that there is no budget within the Department for this type of capital expenditure, at a time when we are all supposed to be tightening our belts?

Mr Watterson: Just been approving car parking at the back of the Grandstand, Mrs Cannell.

The Deputy Speaker: Reply, Hon. Member for Onchan.

The Minister: Yes, I would like to thank the Hon. Member for her observations. I would be very happy to have a further conversation with her about this. I have not had the opportunity to do that, but I would welcome her input and the other Member for East Douglas, Mr Braidwood, if he wishes to input regarding this.

I have already stated, Mr Deputy Speaker, that this may come to nothing. If it does come to nothing, I would be very happy to see the Bowling Club continue on that site. I would not like to see it wasted.

Mrs Cannell: Hear, hear.

The Deputy Speaker: Supplementary, Hon. Member for Douglas South.

Mr Malarkey: Thank you, Deputy Speaker.

Would the Minister not agree with me, it is very easy to quote figures like... and the actual figures are 46 members for the Douglas Bowling Club – but when taking this into consideration, between 1st April and 30th September this year, with the June and September Festivals, over 2,000 bowlers actually used that particular green. (**Mr Cannan:**

Hear, hear!) I do not consider that to be a small amount – certainly on an Island where we are trying to encourage tourism?

Mr Cannan: Hear, hear!

The Deputy Speaker: Reply, Hon. Member, please.

The Minister: I am not quite sure what the question was in that, Mr Deputy Speaker. (*Laughter and interjections*)

Mr Cannan: You're not quite sure what tourism is about!

Mr Malarkey: The Club has 46 members – that is what they generate.

The Minister: Well, I am grateful to him for correcting me that it is 46 members; I think I said just over 40.

The Deputy Speaker: And 2,000 people who use it, Hon. Member. (**Several Members:** Ooh!) (**Mr Cannan:** Hear, hear!) (*Interjections*)

If there are no other supplementaries, that brings us to the end of the Question Time. The Answers for Written Questions will be distributed shortly.

Questions for Written Answer

LOCAL GOVERNMENT AND THE ENVIRONMENT

Civic Amenity Sites Accounts and minutes

2.1. The Hon. Member Onchan (Mr Quirk) to ask the Minister for Local Government and the Environment:

Please will you provide –

(1) a detailed breakdown of accounts for all Civic Amenity Sites for the last two years to date;

(2) a list of members' names with reference to the above for the last two years to date; and

(3) a copy of all minutes where your Department has been involved with the above for the last two years to date?

Answer: (1) The Southern Civic Amenity Site is the only civic amenity site operated by a joint board, which has a statutory designation to produce audited accounts. Accounts are prepared and audited and are available from the Tynwald Library. The audit of the accounts for 2006 have not been completed due to difficulties in the accounts of one of the local authorities which sits on the board.

The Western Civic Amenity Site is operated by a committee and, as such, does not have to prepare accounts, merely charging all the Western Authorities for the costs of operating the Site. There is presently no committee operating the Eastern Civic Amenity Site, as the Department has taken over the role of the Committee, but is still having to use the operators appointed by the old committee. However, the

billing of each Authority in the East operates in the same way as that for the Western Civic Amenity Site. The Northern Civic Amenity Site has always been operated and run by the Department. However, the costs of operation of the Site are charged to the Northern Authorities, pro rata, based on the rateable values of each local authority. The cost of operation for 2006-07 were £133,000 and for 2007-08 £137,000.

(2) A list of Members' names is provided at Appendix A to this Answer. There are no members for the Northern Civic Amenity Site as it is operated by the Department.

(3) The notes of the Joint Civic Amenity Site Committee meetings (on 24th October 2005, 26th September 2006 & 25th May 2007) which are the only record the Department has of meetings with civic amenity site representatives, are attached at Appendix B.

Appendix A

Representation on Civic Amenity Site Boards and Committees (during the past 2 years to date)

Eastern Civic Amenity Site Committee (the Committee expired in March 2006 so membership below is up to February 2006)

<i>Name</i>	<i>Local Authority</i>
Mrs M Hodge	Braddan
Mr I A Faragher	Douglas
Mr R H McNicholl	Douglas
Mr R W Noble	Douglas
Mr S T Black	Onchan
Mr D J Quirk	Onchan

Southern Civic Amenity Site Board	
<i>Name</i>	<i>Local Authority</i>
Mr M Cringle	Arbory
Miss D Faragher	Castletown
Mrs B Crellin	Malew
Mr D J Bennett	Port Erin
Mr W Hansen	Port St Mary
Mr D Cain	Rushen

Western Civic Amenity Site Committee	
<i>Name</i>	<i>Local Authority</i>
Mr W Corlett	German
Mr T Miles	Marown
Mr B R Corlett	Michael
Mr J O'Hanlon	Patrick
Mr R Gimbert	Peel

Appendix B

DEPARTMENT OF LOCAL GOVERNMENT AND THE ENVIRONMENT

Notes of the Joint Civic Amenity Sites held on 24th October 2005 in 1st Floor Meeting Room Murray House Mount Havelock Douglas

Present: Mr S Harrison, Waste Operations Manager
Ms S Gray, Waste Minimisation and Recycling
Manager
Mr J Powell, Landfill Manager

Mrs A Butler, Southern CA site
Mrs M Hodge, Chairman Eastern CA site

In Attendance: Mr J Quayle, Acting Secretary

Apologies for absence: Mr P Whiteway,
Mr S Harrison, Ramsey Town Commissioners
Mr D Bennett, Chairman Southern CA site
Mr W Corlett, Chairman Western CA
Mrs C Faid, Western CA site

Mr Harrison confirmed the remit of the meeting was to hold general discussions on Civic Amenity issues.

At previous meetings the Dept had been requested to set Key Performance Indicators (KPI's), Targets and standards. However due to the different size and operations undertaken in the four Civic Amenity (CA) sites it was agreed these are very difficult to set. The dept felt it would be better to look at how the sites are run and target particular waste for recycling e.g. fluorescent tubes batteries etc and not volumes.

Mr Harrison circulated a suggested pick list with invites to the meeting from which he asked for feedback. He commented it would be ideal for the new Eastern CA (ECA) site but could also be used on the other sites.

Although not on the list it was confirmed cardboard can be included as it does provide a useful service. It was noted Douglas Corporation had voiced an objection to any commercial waste going to the ECA site, but it was recognised that commercial waste could be accepted at the new ECA site on a commercial basis. Operators have expressed interest to recycle cardboard at the New ECA which will be discussed at the next ECA meeting.

It was confirmed the waste licence for the new ECA will be submitted imminently.

Ms Gray confirmed the UK use weight based targets which place an onus on the operator, and with Waste Electrical and Electronic Equipment (WEEE) goods there is a cost issue which is borne by the person bringing it in.

Mrs M Hodge thought the ECA will continue to accept refrigeration units for free but this and the permit system is to be discussed at the next meeting.

Southern Civic Amenity Site (SCA)

Mrs Butler questioned how targets etc could be measured and felt it would help if the general public were educated e.g. a lot of their customers don't separate waste and don't see why they should do. She felt that the education was a Government job.

Mrs Butler commented the Board system, which manages the SCA, works well as people are clear about their role and area of responsibility. The New ECA will be operated by an interim committee and it is assumed this will be the case when the permanent controlling body takes over. Douglas Corporation is in favour of a Committee system, but Braddan Commissioners favour a Board with Onchan District Commissioners not expressing a preference either way.

The Dept wanted a Board system but changes to the Local Government Act will increase the Depts powers in this area.

Standards of Operation

- Complying to Licence & working plan
- Full documentation of risk assessments
- Staff training, safety & emergency drills

- Issue & wearing Personal Protective Equipment (PPE)
- Full documentation & scheduling maintenance and repairs to Plant & Machinery
- Site maintenance fully logged
- Bric-a-brac site
- Security
- Generic procedures to deal with complaints, abuse.
- Daily site diary to include complaints, abuse rec'd & compliments

It was noted most of these points would be looked at during an Environmental Protection Unit (EPU) site inspection. All the above should be internally monitored at the moment. EPU have inspected/visited NCA & ECA sites. Health & Safety Directorate Inspectors (HSDI) will visit if there is an issue/incident or upon request. Mr J Powell felt it was better to build up a good working relationship with HSDI making regular visits. CA sites in the UK tend to be safe place but it helps to have a fresh pair of eyes look over the site and HSDI can pass on observations.

Opening Hours

Long term aim to have consistent opening times for all CA sites with the possibility the public could use any site. It was commented bank holidays, especially Easter, are busy however licensing and logistical issues need to be addressed before consistency could be achieved.

Key Task Indicators

The Dept suggested the following waste/recyclables can be used to set & measure performance

- Oil
- Batteries
- Aluminium
- Metal
- Paper
- Glass

It was noted the Dept holds current data regarding the recycling of the majority these streams which enable comparisons.

Other Issues discussed

- Fly tipping – Mr Harrison commented the Northern CA site deals with a lot of refrigeration units fly tipped when the site is closed, the cost of processing i.e. de-gassing etc was a possible reason
 - Waste Electrical & Electronic Equipment (WEEE) – sites to accept WEEE goods e.g. fluorescent tubes, however budgetary considerations would need to be addressed
 - Segregation – Mrs Butler commented contaminated loads of green waste had to go to the EFWplant but with better segregation by the public prior to visiting the Ca sites would increase recycling.
 - Signage – various options were discussed including colour co-ordinated signs, it was hoped new signage at the New Eastern CA site were proved beneficial and be adopted Island wide. Notice boards informing the public recycling figures to date/per month and where the waste/recycled product goes. Website(s) for the CA sites.
 - Inert material – Due to Wrights Pits closing 31st December 2005 Inert material to go to private inert landfill sites; Mr Harrison to provide a list of current licenced sites.

- PVC Window frames – Can go to the EFWplant preferably without glass. The glass can go to Corlett's, with sites possibly dedicating a bin for this glass and green house glass.

Date of next meeting

Next meeting to be held on 25th January 2006 at New Eastern Civic Amenity site Middle River Industrial Estate, Douglas

Certified a correct record: Mr S Harrison, Chairman
Notes compiled by: John Quayle, Acting Secretary

DEPARTMENT OF LOCAL GOVERNMENT AND THE ENVIRONMENT

Notes of the meeting held on Tuesday 26th September 2006 12.00 at Murray House, Mount Havelock, Douglas

Present: Mr D Butt (DB), MLC
 Mrs Yvette Mellor (YAM), Deputy Chief Executive, DLGE
 Mr J Faragher - Lonan
 Mr H Benson, Santon
 Mr S Budd - Santon
 Mr A J Moore, Laxey Commissioners
 Mr P Cowin, ECA Administrator
 Mr R McNicholl, Dgls Corporation
 Mr S Clucas, Lonan Commissioners
 Mr D Quirk, Onchan District Commissioners
 Mrs M Hodge, Braddan Commissioners

In Attendance: Mr J Quayle note taking

Mr D Butt recapped

- Original agreement to run the Eastern Civic Amenity (ECA) site ended 31st March 2006
 - May 2006 Mr D Butt met with representatives from Douglas Corporation (Dgls), Onchan District Commissioners (ODC) & Braddan Commissioners (Brad) from which all parties agreed a way forward i.e. Dgls to have 4 representatives on the new Joint ECA committee and one per other Local Authority (OVC, Brad, Lonan, Laxey & Santon). Additionally, any Authority had the right to veto/challenge any decision made by the committee. This challenge would be heard by DLGE and if the Committee were still not satisfied then the matter could be referred to the Law Society
 - A further meeting was then held with the five other local authorities, where it was indicated that Douglas may be amenable to reducing their representation from 5 to 4. Following this, in September 2006 Mr. Butt met with Douglas Corporation Policy and Resources Committee. At this meeting the Policy and Resources Committee agreed to representation on the ECA committee of 4 members, but were not happy that the administration should be done by other than Douglas Corporation. It was pointed out that the financial arrangements were run by the Borough Treasurer and were complex.
- At this point, Mr. McNicholl, on behalf of Douglas, stated that since that meeting the Corporation had changed

their stance and now asked for 5 members to be on the ECA committee.

Mr D Butt summarised that two problems still need to be resolved:

1. Dgls want 5 reps and the other 5 LA's will only allow them 4

2. Who will undertake the administration function?

Both the Dept and ECA committee have sought legal advice regarding the current agreement ending 31st March 2006 and the Dept's advice says the agreement does run out on the 31st March 2006. Some Members of the Local Authorities indicated that they had advice to the contrary.

Mr D Butt stated his role was purely trying to mediate with the local authorities to assist them in forming their own committee for the ECA. He commented that he favoured local authorities retaining control over their own affairs and the agreement of six authorities running an ECA site was a good example of how co-operative Local Government could work.

It was commented that 5/6ths of the parties had agreed a way forward however Dgls pointed out that they contributed 72% of the ECA's running cost and did not agree with the other 5 Local Authorities.

Mr D Quirk (OVC rep) stated he had no mandate to agree alterations to the previous agreement.

Comment was made that it was not acceptable for 1/6 of the committee (Dgls) to have 5 representatives and 50% of the votes.

Dgls asked what the problem was with 5 reps as opposed to 4 reps. It was commented that the previous committee had come under criticism for its size hence the proposal to cut reps from all members.

Lonan stated they were happy to continue paying Braddan on a permit basis but Mrs Mellor informed all that Tynwald had agreed all Civic Amenity sites would be funded from rates so this option was no longer available.

The Dept was neutral as to the matter of the number of representatives of each authority, but wanted to assist the six authorities to come to an agreement which was mutually acceptable.

Mr. Butt pointed out that Mr. McNicholl had been happy with 4 representatives at previous meetings but had obviously to conform to the wishes of the Corporation Policy and Resources Committee.

Dgls informed all present that they could not agree to 4 reps on the new committee.

Comment was made that as the draft agreement from Dgls was only circulated last Friday 22nd Sept 2006, members had had little time to study it closely or seek feedback.

Mr D Butt stated there appeared to be no likelihood of an agreement at the present time between the six authorities and the alternative options were that the Dept would run the site or set up a Board to run the site. If the Dept decided to run the site it would set up a consultative committee comprising of reps from all the Eastern LA's so they could be informed of any decisions taken by the Department and contribute ideas and suggestions to the Department.

It was mooted setting up a Board would solve the problems, and this was an option for the future, though not favoured by Douglas.

The Dept was asked to arbitrate between the two

agreements. Mrs Mellor commented there are a lot of differences between the two proposed agreements with the question of who would administer the site being a major factor.

The difference between a Board and Committee run site was explained. As a Committee the rep refers matter back to their respective LA for a decision whereas as a Board the rep makes the decision independent of their LA.

Mr D Butt felt there no material difference between 4 & 5 reps for Dgls and could not see a why an agreement could not be reached.

Mr. Butt said that the ECA is a great asset which could be improved and made fully functional. The Dept had the ability and resources to run the site and is aware it will come in for criticism if it does not do so properly.

The Dept will serve notice on the current contractor, Tels and open the recycling shed, fully implementing all the potential facilities at the site.

Mr D Butt was asked to put his proposal in writing to all LA's for consideration and possible comment.

Mr Moore questioned why the whole process of setting up a new committee was being stalled over the issue of whether Dgls have 4 or 5 reps. He questioned what decisions the committee would make that would require arbitration, probably only ones with a financial impact. He felt those present should move on to who will administer the ECA site as it was within everyone's interest for the LA's to be running the site rather than DLGE. He also stated that even if Dgls has 5 votes the Arbitrator acted as a safety facility. Mr. Moore stated that the six authorities had the chance to run their own site and the opportunity should be grasped, the differences between parties were minor and could be overcome by small compromises

Mr D Butt stated the Dept will run the site if no agreement is reached and will endeavour to the run the site better, cheaper, expand recycling and seek the best contract.

Mr Quirk stated he had no mandate to alter the agreement giving Dgls 4 votes but all parties would look at Dgls draft agreement.

Mr D Butt stated the Dept had asked Dgls, OVC & Braddan to serve Tels notice to quit operations but this notice has not been served therefore the Dept will serve Tels their notice.

The whole position was summed up that

- Dgls concede to having 4 reps on the committee or the other LA's concede Dgls have 5 reps
- and
- Administration of the site is undertaken by an independent person/body; however as a committee one of the LA's would have to employ the person/body. If a Board was formed the Board could employ the person/body in its own right.

DB agreed he will

- serve Tels their notice as the agreement with Tels was site specific (i.e. for Snugborough)
- Write to all ECA LA's with the Depts proposals

The meeting concluded with no agreement between the six authorities as to a new committee to run the site.

**DEPARTMENT OF LOCAL GOVERNMENT
AND THE ENVIRONMENT**

**Meeting of representatives from the Four Civic
Amenity site on the Island to be held at 2.00pm on
Friday 25th May 2007 in Committee Room 1, First Floor,
Murray House, Mount Havelock, Douglas**

Present:

Mr D Butt, MLC	DB
Mr J Robinson, General Manager SITA	JR
Mr R Gimbert, WCA	RG
Mrs A Butler, SCA	AB
Mr J Quayle, Acting secretary	JQ
Mr Ian Lewandowskyj, Waste Manager DLGE	IL

Apologies for absence:

Mr B Bennett, SCA
Ms Gray

ACTION

Jnt CA

25.5.07/01

Introduction

Mr D Butt confirmed the joint CA meeting had been called so the Dept can work with the 4 CA to agree generic standards of service.

Jnt CA

25.5.07/02

WEEE –

It was confirmed the EU directive on WEEE doesn't apply to the IOM but best practice and the need to be compliant for export means the Island should adopt the principles.

The Dept will fund for 1 year the cost of recycling TV's, monitors & fluorescent tubes from all 4 CA sites. This will enable a data collection exercise to take place to establish the actual cost of this waste stream. It is the Dept's intention to let the CA sites know the numbers & cost involved as it is envisaged this cost will transfer to the CA sites. It was then questioned why this cost should be rate born, to which it was commented all domestic waste is a rate born cost. A further comment was made that some non-domestic organisations (e.g. Dept of Education) use the CA sites and are not charged. Mr D Butt agreed to look into Govt Dept's using CA sites and requested examples.

DB

AB confirmed the Dept of Education uses the SCA but are charged similarly to commercial users.

DB confirmed it was the Dept's ultimate aim that all 4 CA sites would accept commercial waste.

WCA

RG asked about future expansion plans for the WCA site. It was confirmed the Dept is looking at expanding the current site but no detailed plans were available. RG commented the WCA committee knew little about the plans and requested further information ASAP. It was confirmed once funding approval had been given by Treasury detailed plans & a timescale would be drawn up.

It was confirmed the QEII school was classed as producing domestic waste, which raised the question of waste classifications.

It was commented the ECA closing early over Easter meant WCA received more waste, although this equated to only 1 additional skip load.

RG confirmed following consultation with their Health & Safety advisers the WCA cut the plug off electrical goods before they are offered back to the public.

SCA

AB confirmed Manx Waste Solutions (MWS) provided a small skip for the public to place TV's & monitors, this has its problems i.e. trip hazard & manual handling issues.

AB confirmed following consultation with their Health & Safety advisers the SCA leave the plug on but a disclaimer sticker is placed on all electrical items before they are offered back to the public.

NCA

IL confirmed TV & monitors are stacked at the NCA site

SITA

Mr J Robinson confirmed the EFW plant accepts *de minimis* amounts of TV's etc but small items of WEEE are not a problem.

Recently a Hoover was rejected which was predominantly metal and should have gone to a scrap metal dealer. Likewise other similarly rejected goods with a high metal content.

The cost of funding WEEE recycling was discussed with a suggestion that it could be funded by central Government, and it was noted the

Jnt CA 25.5.07/03	UK CA sites received financial assistance via UK Govt from EU	confirmed the operative is also the person designated in charge.
	EFW plant –	RG confirmed any vans/trailers using the site are required to complete a form.
	SITA were instructed by the Dept not to accept large items of WEEE. JR confirmed SITA undertake spot checks on all loads due to the delivery of large amounts of none conforming (i.e. metal). Monthly non-conforming reports will be sent to the relevant operator, however the CA sites requested immediate notification if a large or major amount of waste was non-conforming/rejected, JR agreed	Jnt CA 25.5.07/05
	JR	Expansion of accepted waste streams –
	This lead to a discussion on how to deal with large items taken to the CA site which comprise of incinerable (wood) & non-incinerable (metal). Two examples quoted were pianos & table tennis tables. It was agreed that it wasn't practical nor the job of the CA staff to be breaking up such large items. It was suggested the CA sites contact their local scrap dealer who may be prepared to break up these items removing the scarp metal and return the incinerable waste to the CA site.	This issue of acceptance of Dept of Education waste i.e. TV's, monitors & fluorescent tubes was discussed
	ALL CA sites	Jnt CA 25.5.07/06
	SCA to contact SITA direct to arrange visit for members etc.	Standards of operation
	AB & SITA	DB confirmed the Dept's aim to standardise operations at the CA sites.
Jnt CA 25.5.07/04	Waste definitions	<i>Rent</i>
	All present were uncertain as to what size constituted commercial or domestic waste, it is difficult to say a vans certain size is commercial, likewise with a trailer. Also a plumber could use his van to bring in green waste so a specific size etc couldn't be determined and agreed.	WCA – pays no rent SCA – pays £14,900 p.a. ECA – paid by Dept NCA – no rent payable
	WCA	<i>Opening times</i>
	RG confirmed 1 operative runs the WCA site and this practice although not to all presents' favour has the backing of WCA CA Bd's H & S Consultant. It was thought the working plan state two operatives are on site at any one time. The dangers of a loan worker policy were discussed but it was noted a panic button & mobile phone are in use. RG noted more staff will be required when the site is expanded. It was	With the exception of the SCA site closing during at midday for half an hour all four sites operate similar core opening times (i.e. 10am – 4pm). DB felt there was no need to standardise further.
		Jnt CA 25.5.07/07
		<i>Re-use/Recycle</i>
		SCA – operates set aside area WCA – operates set aside area, commented as the best feature of the site NCA – no room for set aside area ECA – set aside area not yet in use
		Jnt CA 25.5.07/08
		Liquid waste
		IL reported the Dept has planning permission to site a liquid waste interceptor separator machine at DoT's Meary Veg plant. The machine will take 12 weeks to arrive and DoT will also use 2 large storage tanks. This will result in DoT recommencing the collection service whilst also separating and disposing the waste.
		Size of Amenity sites
		NCA Current site is small and never intended as being the permanent site. The proposed site (Shellags, Bride) is big enough for two ECA sites.
		WCA
		The current size is small which restricts

activities however the Dept is in negotiation with DAFF who own the surrounding land. Initial feedback is that additional land will be made available.

WCA

RG agreed the WCA Board would look into a suitable temporary site for WCA to be relocated whilst expansion works take place.

RG also agreed to forward previous plans/drawings of the proposed new WCA site.

RG

SCA

AB confirmed the long term aim was to expand the site however availability of land could be a major issue.

Jnt CA
25.5.07/09

Costs

WCA

RG confirmed operating costs have increased by 14% and if the CA sites are to fund WEEE contributions from LA's will increased dramatically

NCA

2007/08 is the second year the Northern Authorities have financially contributed to the whole running cost. Once the new NCA is built it is envisaged full control will pass to a NCA Board who will be financially responsible for the site. It was confirmed the NCA's green waste is processed at Ballaneven for £10 p/t.

ECA

DLGE pay the rent but all other costs are rate born

SCA

Dept funds the green waste shredding contract with all other costs rate born.

DB commented the Dept's aim is to standardise financial contributions to the CA sites and as such will give full consideration to paying the rent for all sites and report back.

DB

Jnt CA
25.5.07/10

Site Staffing

NCA

Site staffed by 3 full time staff. Site

Manager in charge of 2 operatives reporting to Waste Manager.

ECA

Mr P Cowin (Douglas Corporation) administers the site on behalf of the Dept, with Tel's Ltd operating the site

Jnt CA
25.5.07/11

Financially accountable person

Not discussed

Other issues discussed

- It was confirmed 11/2% of paper from the public bring banks is contaminated and is disposed via EFWplant.
- WCA commissioner will be arranging a visit around the EFWplant.
- Dept is promoting waste education through schools, Interest groups and its website. Also it receives very good positive feedback from the public through it's stand at shows (e.g. Tynwald day, Agricultural shows & Govt/commerce road shows)
- Peel Town Commissioners are about to commence a kerbside collection trial using Malew Commissioners vehicle.
- CA signage was discussed and was agreed to include this as an Agenda item for the next meeting. However it was agreed to follow signage used by WRAP with the incorporation of the IOM 3 Legs of Man as in use at the ECA.
- The EFWplant will be open longer hours over the TT fortnight i.e. Mon – Fri till 8 pm & Sat & Sun 8am – 6 pm.

Jnt CA
25.5.07/12

Date of Next Meeting

The date of the next meeting to be agreed however the WCA & SCA both requested site specific meetings in the mean time.

Certified a correct record:

Dudley Butt, MLC, Chairman

Notes compiled by:

John Quayle, Acting Secretary

HEALTH AND SOCIAL SECURITY

Residential, nursing and EMI facilities State funded in homes/on waiting lists

2.2. The Hon. Member for Douglas South (Mr Malarkey) to ask the Minister for Health and Social Security:

In respect of residential, nursing and EMI facilities –
 (1) *how many people are in each of the above homes;*
 (2) *of those, how many of them are state funded;*
 (3) *how many are on each of the waiting lists;*
 (4) *of those how many will be state funded;*
 (5) *what is the current cost to the state per person in each of the three areas;*
 (6) *what is your Department's projected need in respect of numbers in five and ten years' time; and*
 (7) *what are your Department's projected figures in regard to those who will require state funding in five and ten years' time?*

Answer: (1) On 19th November 2007 there were 543 people in residential facilities, 362 people in nursing facilities and 71 people in EMI facilities. This does not include short term (respite) care spaces. This figure can, and does, vary daily.

(2) By 'state funded' it is assumed the Hon. Member is referring to the receipt of income support, in which case 266 in residential facilities (including 35 in MPE beds, that is those older people who have mental health problems not associated with the ageing process) and 183 in nursing facilities (including those in EMI beds). It is not possible at this time to confirm a separate figure for EMI cases as, for state support purposes, these are not identified separately from nursing homes cases.

(3) The Social Services Division do not operate a waiting list system. Places are allocated on the basis of need. Independent providers may operate alternative arrangements but the Department would not be privy to these.

(4) In the absence of data based on waiting lists, the Department is unable to speculate on potential state funding.

(5) The total cost per annum at today's rates are: in respect of residential facilities (including MPE) £3.075 million and in respect of nursing facilities £4.126 million (including EMI cases). The average weekly costs of state support per person are: for residential facilities £222.35 and for nursing facilities £433.59.

(6) If the Department were to continue providing care using existing models of provision then, based on demographic projections, the numbers would increase by 3.05 per cent in five years' time, leading to figures of 560 in residential facilities, 373 in nursing facilities and 73 in EMI facilities. The projection for ten years' time is an increase of 6.05 per cent, equating to 576 in residential facilities, 384 in nursing facilities and 75 in EMI facilities. However, the Isle of Man has a large proportion of very elderly people in population and this is projected to increase at a greater rate than the elderly population in general. Therefore, the figures for EMI and nursing care should be considered as very conservative estimates.

It is not the Department's policy to replicate existing models of care in the future. It is the Department's intention to move the focus of care provision from institutions to

community based care. As a result, the Department would be looking to stabilise residential based care at current figures and increase the provision of domiciliary based care in people's own homes. The exception to this is EMI care, where the Department accepts that, due to the nature of care required and the likely increase in demand, there is likely to be a continued, and growing, need for residential facilities.

(7) Given the comments above, it is not possible to estimate at this time what the costs of state support will be in five and ten years' time.

Orders of the Day

Management and Members' Standards Committee Report Motion withdrawn Statement by the Acting Chairman

3.1. The Hon. Member for Glenfaba (Mr Anderson) to move:

That the First Report for the Session 2007-08 of the Management and Members' Standards Committee be received.

(Report previously circulated)

The Deputy Speaker: Hon. Members, Item 3 – the Standards Committee Report: the Hon. Member for Glenfaba, Mr Anderson, has informed me that he does not propose to move this Committee Report today, but he seeks leave to make a brief Statement explaining why. I call on the Hon. Member for Glenfaba to do so.

Mr Cannan: Mr Deputy Speaker, point of order, sir.

Can we have the Statement distributed first, so we can follow it, before the Chairman makes it?

Thank you.

The Deputy Speaker: I am happy to do that. Can you wait one minute, sir? *(Interjection by Mr Anderson)* We are trying to have equality now, Hon. Members. **(Mr Cannan: Hear, hear.)**

Could you move your Statement now, please, Hon. Member for Glenfaba.

The Acting Chairman of the Committee (Mr Anderson): Thank you, Mr Deputy Speaker.

I do not propose to move the Standards Committee Report at this sitting. However, you have kindly given me leave to make a brief Statement explaining why.

This Report was originally due to be moved at the sitting of the House on 13th November, and the Committee's Report, therefore, entered the public domain the previous week. That is nearly three weeks ago.

I was therefore surprised and somewhat dismayed to receive, on Saturday, a letter from the Chairman of Manx National Heritage containing detailed comment on the Report. The letter is dated 23rd November. I understand that this letter has been circulated to all Members of Tynwald.

It is disappointing, Mr Deputy Speaker, at this late hour, that Mr Moore has chosen to put forward comment on the Report. Be that as it may, however, this letter must obviously be taken into account, and that is what the Committee would seek to do.

Much of the letter goes over ground, yet again, which has been covered exhaustively in the correspondence annexed to our Report. It does, however, raise the issue of the desirability of our seeing in its original form the advice provided to Manx National Heritage by the Attorney General's Chambers.

Deputy Speaker, we note from this latest letter that Mr Moore himself would now be content to release the advice and we are given to understand that this will shortly take place. Mr Moore did suggest previously that the Committee should ask the Attorney for its release, but we did not do so.

Why we did not do so was for two reasons. First, Mr Moore had insisted all along the advice was fully translated into his letters to the trustees, particularly that dated 23rd May 2007, which will be found at appendix 1 of our Report.

He said, in the letter of 12th June, also annexed to this Report:

'I can confirm that the letter I sent to all trustees, dated 23rd May 2007, accurately presents the advice I have received on this matter.'

That being the case, the Committee took the view that there could be no special advantage in merely seeing the advice in its original form. There was obviously no reason to think that Mr Moore, an advocate himself, had not replicated the advice accurately in his letters.

Second, it would have been quite inappropriate for your Committee to have approached the Attorney General for consent to see the advice when, at the time, Mr Moore apparently wished to abide by the convention that such advice is not disclosed. We understand that Mr Moore is now happy for the legal advice to be released and that the Attorney is content to do so. However, the Committee has yet to see it.

Mr Deputy Speaker, Mr Moore has also made comment on the procedure adopted by the Committee, mentioning that we did not give him enough opportunity to comment on the Report in draft before laying it before the House.

Mr Deputy Speaker, there has been no unfairness in the procedure we have followed so far, and nobody's human rights have been infringed. Mr Moore was asked in a letter, dated 16th October, if he wished any further evidence to be taken into account. He did not submit any such evidence.

I can confirm that we will submit our draft supplementary report to Mr Moore for any comments before releasing it any further. We will also afford the same opportunity to Mr Speaker. (**A Member:** Hear, hear.) Any comments they make will be appended to the supplementary report.

Taking all these stages into account, it is, in practice, unlikely that we will be able to come back to this House this side of the new year.

That is really all I can say at this moment, Mr Deputy Speaker. Mr Moore has raised issues at the 11th hour which need to be dealt with. In the circumstances, it would not be right to trouble the House with this motion today.

Mr Brown: Hear, hear.

The Deputy Speaker: Hon. Member for Michael. Do

you want to ask a question, not make a statement?

Mr Cannan: A question on the Statement, Mr Deputy Speaker.

Would the Acting Chairman of the Committee now agree that this Statement that he has made this morning could be seen as contentious and one-sided, firstly?

Secondly, why did the Committee not seek oral evidence from the Chairman of Manx National Heritage before it wrote its Report – take oral evidence from him before it wrote its Report? Perhaps then this state that we are in now would not have occurred.

The Deputy Speaker: Reply, Hon. Member, please.

Mr Anderson: I would not agree with the Hon. Member.

Mr Cannan: Of course you wouldn't!

Mr Anderson: The Statement that has been prepared today and made with the full consent of your Committee is factual, Mr Deputy Speaker.

Quite clearly, within that Statement, I have given an explanation why we did not take oral evidence. (**Mrs Craine:** Hear, hear.) All evidence was asked for by the Committee. Mr Moore had ample opportunity to supply that evidence. In fact, he wrote to the Committee and suggested that it was not for us, at one stage, to receive that; we were a third party.

The Deputy Speaker: Question, Hon. Member for East Douglas.

Mrs Cannell: Thank you, Deputy Speaker.

Why is the Committee surprised at the 11th-hour intervention from Mr Moore, bearing in mind that he did not have a draft Report on which to comment to the Committee?

Finally, in this particular questioning, why did the Committee not see fit to ask for a copy of the MNH trustees' minutes or recording of the meeting which took place that the whole Report is concentrating on?

Mrs Craine: Point of order, Mr Deputy Speaker. Would the Hon. Member wish to declare an interest?

Mrs Cannell: Mr Deputy Speaker, I am happy to declare an interest, in that my husband is an employee at the Manx Museum. This has been recorded in previous sessions of the House and in Tynwald, and has been accepted as my not having a conflict of interest that prevents me from contributing to a debate.

Mr Cannan and other Members: Hear, hear.

The Deputy Speaker: Hon. Member for Glenfaba.

Mr Anderson: Mr Deputy Speaker, in relation to the questions posed by the Hon. Member, I would like to say we were surprised because it is now three weeks since the Report was made available. Therefore, on the Saturday morning before the sitting, I think it is very late in the day to make comment.

Mr Earnshaw and another Member: Hear, hear.

The Deputy Speaker: Hon. Member for Michael, have you got a question?

Mr Cannan: Yes, I have.

Has the Acting Chairman now availed himself of a copy of the Attorney General's advice? Has the Clerk to the Committee acquired, and does he have available, a copy of the Attorney General's advice? I think he has, and when will that advice be distributed to Members of this House?

Mr Shimmin: This is our Committee!

The Deputy Speaker: Hon. Member, you would like to reply?

Mr Anderson: Yes, Mr Deputy Speaker.

I quite clearly said in the Statement read out that we had not received that information yet. I thought Hon. Members were following my Statement, as I was reading it! *(Laughter)*

Mr Cannan: We have, but it is incorrect.

Mrs Craine: It is not incorrect.

Mr Anderson: That information will be annexed to the Report when we come back, hopefully.

Mr Cannan: The Clerk has the...?

The Deputy Speaker: Hon. Member, the Hon. Member for Rushen has a question. Mr Gawne.

Mr Gawne: Gura mie eu, Lhiass-loayreyder.

In relation to the change of heart on the part of the Chairman of Manx National Heritage, in relation to him requesting the Attorney General to give him permission to release the advice of the Attorney General, has the Chairman given any indication as to why, in September, he was unwilling to ask this question, but now he seems apparently willing to do so?

The Deputy Speaker: Reply, Hon. Member, please.

Mr Anderson: No, I have no information why there has been a change of heart, Mr Deputy Speaker.

The Deputy Speaker: The Hon. Member for Ramsey.

Mrs Craine: Would the Acting Chairman confirm, please, Mr Deputy Speaker, that the Clerk has *not* as yet received the information required from Mr Moore in respect of the Attorney General's statement?

The Deputy Speaker: Reply, Hon. Member.

Mr Shimmin: But Mr Cannan said he had.

Mr Anderson: No, we have not received it, Deputy Speaker.

Mr Cretney: Perhaps he had the wrong advice.

Mr Cannan: No, he had it yesterday afternoon.

The Deputy Speaker: Hon. Member for East Douglas.

Mrs Cannell: Thank you, Deputy Speaker.

Does the Acting Chairman agree with me that the Attorney General does issue a ruling to us all that we are not to copy third people in on any correspondence that he issues and that, in fact, is a formal ruling?

The Deputy Speaker: Reply, Hon. Member.

Mr Anderson: The information regarding that is within my Statement, Mr Deputy Speaker.

The Deputy Speaker: Right, Hon. Members, I trust that our Standards Committee will be able to come back to this Hon. House no later than the first sitting following the Christmas recess. This issue is at the heart of this Report.

It is, in my judgement, a matter of fundamental concern to us, as elected representatives of the people, touching as it does the respective rights of all of us who want to fulfil our role as parliamentarians in dealing with the executive.

I do hope that the Committee will take on that ruling.

The Chief Minister: Point of order, Mr Deputy Speaker.

It is nothing to do with the executive, and I think we need to be clear on that.

And when the Committee reports, sir, is in the hands of the Committee.

Mrs Craine: Independent.

BILL FOR FIRST READING

Income Tax (Pensions) Bill

The Deputy Speaker: We go on to Item 4.

We will have now the First Reading. I call upon the Secretary of the House.

The Secretary: Mr Deputy Speaker, the Bill for First Reading is the Income Tax (Pensions) Bill, introduced by the Hon. Member for Douglas East, Mr Braidwood.

BILL FOR CONSIDERATION OF COUNCIL AMENDMENTS

Constitution (Amendment) Bill Consideration of Council amendments Three Members elected for Conference

5.1. Mr Gawne to move.

The Deputy Speaker: I go on to Item 5. I call upon the Hon. Member for Rushen, Mr Gawne.

Mr Gawne: Gura mie eu, Lhiass-loayreyder.

Members will have received a copy of what I thought was a fairly modest little Bill with its two clauses, (*Laughter*) with now four sets of amendments attached to it. Not only was it amended twice in the House of Keys, but it has also been amended now twice in the Legislative Council.

Members will also have received a copy of a motion that I would wish to put on this matter, which is:

That a Deputation of three Members be appointed to confer with the Council with regard to their amendments to the Constitution (Amendment) Bill and to report to the House.

The reason for doing that is that the Council amendments, I do feel, alter the Bill quite significantly (**Mr Houghton:** Hear, hear.) from what was intended... well, maybe not so much what was intended when it left this House. Certainly, when the Bill left the House, we had a situation whereby if we fulfilled a process – which was a much more fulsome process than we currently have for elections to the Legislative Council... However, if after that process, we had not reached a conclusion, there was the opportunity for us to have a break from the election to then consider the election again in a further month, I think it was – possibly a longer time.

The other fairly significant change from the content of the Bill, as it left us in the House to go up to the Legislative Council, is that we now have a situation where, when we passed the Bill at Third Reading here, basically Members of the Legislative Council would go out of office at a certain date, then at that point the Speaker would call for nominations from Members of this House.

We then had two weeks to submit our nominations – or was it a month? I forget now; I ought to know, but... It was a month for submission of nominations, followed by two weeks then for consideration of those nominations, and then we would have pulled our election.

The Members of the Council, however, have amended this to the extent that the call for nominations would happen a month and 14 days before the Members of the Legislative Council were due to retire. Consequently, we would end up with a situation where the Members of Legislative Council would go out of office and pretty much the following week we would have an election to elect Members of Legislative Council back into office.

I do not believe, as it would appear Council did believe, that there was a fundamental weakness in the Bill. Council believed that there was this fundamental weakness in that there would be a six-week gap where we would only have four elected Members in Legislative Council. I do not necessarily see that that would have been a problem. However, Legislative Council have considered that to be a problem and they have amended my Bill to the effect that now elections would take place pretty much straightaway after the retiring Members would go out of office.

I could live with that, personally. I do not see a huge problem with that, although I do believe that it is for Members in here to decide how we wish to elect Members up there to the Legislative Council: hopefully, at some point in the not too distant future, we will have the wisdom to have directly-elected (**A Member:** Hear, hear.) Legislative Council elections, where the public actually elect Members. However, at the moment we are concentrating how we in this House elect Members and, as I say, I think there are

enough issues in the amendments that have come back from Legislative Council that I do not feel comfortable in moving the amendments without (**A Member:** Hear, hear.) having a conference (**A Member:** Hear, hear.) – so I am calling for a conference... that basically a deputation of three Members be appointed to confer with Council with regard to their amendments to the Constitution (Amendment) Bill brought to the House.

I have not put a specific date for reporting back, for the simple reason that if I had moved the amendments today and if the Hon. Members of the House of Keys had supported all those amendments, there was a slim chance that we would have received Royal Assent in time for the elections to Legislative Council at the end of February/early March. By moving, as I am, for the conference, I would say there is absolutely no chance of us having Royal Assent in time for this Bill to be in force in time for the Legislative Council elections next spring, so really speaking we are looking for the elections, I think it is three years after that. That will be the only time – I hope, anyway – that this Bill will be used and I hope, after that, we will be allowing the public to decide who they want in the Legislative Council.

However, I do not believe it is right to rush legislation. I do not believe, personally, that I can stand up here and comfortably move all the Legislative Council amendments and so, for that reason, I am calling for the deputation for a conference with Legislative Council.

I beg to move.

Mr Houghton: Hear, hear.

The Deputy Speaker: The Hon. Member for Douglas South, Mr Malarkey.

Mr Malarkey: Mr Deputy Speaker, I rise to second the amendment put forward by the Hon. Member, Mr Gawne.

I truly believe that this Constitution amendment has lost tracks since it has been in here in the last six months or so and I am certainly not very happy with part 4 of clause 1, where we all have to sit in here and put white smoke up a chimney to say when we have actually elected somebody for Legislative Council. (*Interjection*) So I think to rush this at this stage would be foolish. I think the way forward is to pick this committee, to let it have a look and let us try and get something more sensibly in place for the next election. With that, I second the motion.

The Deputy Speaker: Hon. Member for Douglas East, Mr Braidwood.

Mr Braidwood: Thank you, Mr Deputy Speaker.

I rise actually to support the Hon. Member for Rushen, Mr Gawne, in moving for a delegation of three Members. As he said, he could possibly live with the six weeks before the election for nominations... However, I think the Hon. Member for Douglas South has already commented that we would be sitting here, would be adjourned, we would be sitting the next day and if we could not complete the business then we would be sitting the next day –

Mr Houghton: Taking advice from the Vatican!

Mr Braidwood: – and I think (*Laughter*) the other business of the House, which is legislation, is far more important.

The Deputy Speaker: If there are no other Hon. Members, the motion is that a deputation of three –

Mr Cannan: Sorry, Mr Deputy Speaker.

Mr Shimmin: Allow somebody free speech.

The Deputy Speaker: The Hon. Member for Michael.

Mr Cannan: I was just going to say that I again support the conference. There is no urgent... legislation, unless it is in the national interest, should not be rushed (**Several Members:** Hear, hear.) and this is not in the national interest, in the extent that it should be rushed.

The present procedure is a procedure tried and tested and, for the election in February, I believe the present procedure should proceed and that this Bill, when it is eventually sorted out, can be used for the election in 2010.

The real, fundamental issue is, hopefully, we will get a Bill to have the public elect Members of the Legislative Council. (*Interjection*) In the 21st century it is a nonsense that, somehow, Members of the Legislative Council should have all the rights and privileges of a Member of Tynwald without a public mandate, public accountability or public election.

The Deputy Speaker: As there is no other Hon. Member, I will ask the Hon. Member to reply.

Mr Gawne: Gura mie eu, Lhiass-loayreyder.

I do not really have an awful lot to add: obviously, to thank my seconder, who I think highlighted the area of deepest concern that I have and also I would like to thank Mr Braidwood, who I think is indicating that he could live with the six-week advancement of the date of call for nominations. However, Pam's White Smoke Amendment (*Laughter*) does not appear to have found favour, either with Mr Braidwood or indeed with Mr Malarkey, and I am delighted, I have to say, with the Hon. Member for Michael in that he is happy to support the wisdom of the Rushen benches on this particular one. (*Laughter*) What more could I say?

I beg to move.

Mr Houghton: Did you see any?

The Deputy Speaker: The motion is, Hon. Members, that a deputation of three Members be elected to attend a conference with the Legislative Council. Do Members agree?

Members: Agreed.

The Deputy Speaker: Shall we go on, then, for nominations for the three representatives? Hon. Member for –

Mr Watterson: I propose Mr Malarkey, sir.

Mrs Cannell: I second Mr Malarkey.

Mr Brown: I propose Mr Gawne, the Hon. Member for Rushen.

The Deputy Speaker: Hon. Member for Glenfaba.

Mr Anderson: I propose Mr Braidwood, Hon. Member for East Douglas.

Mrs Cannell: I beg to second Mr Braidwood.

Mr Houghton: I beg to second Mr Gawne.

Mr Cregeen: I propose the Member for Castletown, Mr Brown.

Mr Crookall: I would like to second that, Mr Deputy Speaker.

Mr Anderson: Was Mr Braidwood seconded?

The Deputy Speaker: Are there any other proposals? Then we should... yes, by the Hon. Member for Douglas North. (*Laughter*)

An electronic ballot took place

The Deputy Speaker: Vote now, either for Mr Braidwood, or against.

Mr Earnshaw: Could you call out the nominations?

The Deputy Speaker: Mr Braidwood is the first nomination and I call upon Members to vote for or against Mr Braidwood.

Mr Quirk: Can we have all the names, please?

The Secretary: The names are Mr Braidwood, Mr Brown, Mr Gawne and Mr Malarkey.

The Deputy Speaker: Now can we have votes for Mr Brown, the Hon. Member for Castletown.

Hon. Members, votes for Mr Gawne, the Hon. Member for Rushen.

Hon. Members, the Hon. Member for Douglas South, Mr Malarkey.

Hon. Members, Mr Brown, Mr Gawne and Mr Malarkey are elected as your deputation to report back to this Hon. House.

BILL FOR CONSIDERATION OF CLAUSES

Agricultural (Miscellaneous Provisions) Bill Clauses considered

6.1. Mrs Cannell to move.

The Deputy Speaker: Finishing Item 5, I call upon the Hon. Member for Douglas East, Mrs Cannell, to move the clauses of the Agricultural (Miscellaneous Provisions) Bill.

Mrs Cannell: Thank you, Mr Deputy Speaker. I will be as quick as I can, but it is important to put on the record all the information in respect of the clauses.

Clause 1 and part 1 of the schedule repeals various

Acts of Tynwald that relate to the herring industry. These Acts are considered defunct, superseded or unnecessary. The Herring Fishery (Branding) Act 1916 provides for the branding of barrels filled with cured white herrings. The Act also makes it an offence to forge or counterfeit any mark on such barrels. The herring trade covered by this legislation no longer exists on the Island, therefore the Act is considered no longer necessary.

The Imported Kippered Herrings Act 1921 requires every box or package, whether open or closed, and imported into the Island to be branded and durably marked '*Imported kippers*'. This requirement has not been in force for many years and may well be considered unlawful, in terms of free trade – hence the repeal of the 1921 Act.

The Imported Kippering (Herrings) Act 1935. Whilst kippering was formerly based on the two- or three-month season during which herring shoals are found in the Irish Sea, it has been found to be impractical in the past 15 or 20 years. The number of vessels interested in fishing for herring has reduced drastically. Those that do so have either targeted a late roeing herring which is too poor for kippering, or catch fish in such a way that the size and quality is very diverse, leading to a great deal of unsustainable waste in catches bought by kipperers.

A further difficulty was in obtaining staff to process catches which were unpredictable and often at unsocial hours. The largest remaining commercial kipperer found that supplies of locally-caught herrings were largely unsatisfactory or non-existent. He started, therefore, to import herrings which were then kippered on the Island. This enabled the business to organise a consistent workload for staff within normal working hours and continue to do so throughout the year, rather than for a two- or three-month season.

The 1935 Act amended the 1921 Act by extending its scope to require any kippers which had been made from herring landed in any port or place outside the Island, or trans-shipped in any port or place outside the Island, before being imported, also to be branded and durably marked as '*Imported kippers*'. In the light of recent commercial development, this is considered an anachronism which, if applied, would lead to the virtual closure of bulk kippering, which promotes the connection of a well-regarded product with the Island worldwide.

The Fishing Herring Industry Act 1939 is an enabling Act, whereby powers are conferred on the Department to carry out a number of activities connected with the promotion of sales and market development in respect of herring, the fabric of the herring fishing fleet, the participation of boats, curers, salesmen, kipperers, processors and wholesalers of fresh herring and their commission, the operation of auctions, branding and marking and levies payable in relation to these activities.

The industry has not operated in this way for at least 30 years and some of these aspects were not regulated even during the very busy days of the 1970s, when many Scottish vessels joined Northern Ireland vessels and a very small number of Manx vessels when the North Sea herring fishery was closed. Another enabling Act, the Fishery Act 1948, gives the Department powers to regulate the production, marketing and sales of kippered herrings. These are now considered to be commercial matters for the kipperers themselves.

The Fishery (Herring Industry) Act 1961 confirmed the

Department's power to levy contributions on the first sale of herring each year. When herring auctions were held and the fishery was still being closely regulated, contributions were collected, but then the Board of Agriculture and Fisheries made donations to charity out of the accumulated funds at the end of the season. Levies have not been raised in this way for some 20 years.

Mr Deputy Speaker, I move that clause 1 and part 1 of schedule 2 stand part of this Bill.

The Deputy Speaker: Hon. Member for Rushen.

Mr Gawne: Gura mie eu, Lhiass-loayreyder, I beg to second and reserve my remarks.

The Deputy Speaker: The motion is that clause 1 and schedule 1 stand part of the Bill. Those in favour; those against. The ayes have it. The ayes have it.

We go on to clause 2, Hon. Member.

Mr Gawne: Lhiass-loayreyder, point of order. I noted that the mover mentioned schedule 2. There is actually only one schedule, just for –

The Deputy Speaker: I have seen that.

Mr Gawne: I noticed, in the speaking notes, that occurs later on, as well.

The Deputy Speaker: Hon. Members, I ask the mover of the Bill to move now clause 2 and part 2 of the schedule.

Mrs Cannell: Thank you, Deputy Speaker.

Clause 2 and part 2 of the schedule amends and repeals enactments relating to agricultural and rural industries which are considered defunct, superseded or unnecessary.

Section 4(1) of the Agricultural and Rural Industries Act 1914 sets out the Department's general duty of promoting the interests of agriculture, horticulture, forestry and rural industries in the Island. The remaining subsections contained in section 4 provide that the Department may undertake the collection and preparation of statistics relating to agriculture, horticulture, forestry and rural industries and may make or aid in making such inquiries, experiments and research, and collection, or aid in collecting such information relating thereto as they think advisable, which shall be the duty of the Department to promote, aid and develop instruction in agriculture, horticulture, forestry and rural industries and the Department shall take such steps as thought proper for the promotion and development of agricultural organisation and co-operation.

Finally, by virtue of subsection (5):

'the Department shall provide and maintain an experimental farm or farms.'

The Department's functions and duties are not, therefore, dependent on the existence of an experimental farm. However, the basic functions and duties set out in section 4, other than that relating to maintaining an experimental farm, are considered still to be appropriate. It is proposed, therefore, to amend section 4(5) by replacing the word 'shall' with 'may'. The Department intends to continue to promote, aid and develop instruction in agriculture,

horticulture, forestry and rural industries, as provided for in section 4(3).

Following advice of Her Majesty's Attorney General's Chambers, sections 6, 7 and 9 are to be repealed. Section 6 is a spent provision; sections 7 and 9 describe a financial process that no longer takes place. There is no longer an agricultural fund and farm income goes to general revenue. All Department of Agriculture, Forestry and Fisheries spending is agreed with Treasury before being approved by Tynwald as part of the Government budget.

The Agricultural and Rural Industries Amendment Act 1923 amended sections 6 and 9 of the 1914 Act, which are being repealed; thus the provisions within the 1923 Act are spent.

The Public Markets (Weighing of Cattle) Act 1929 requires market authorities to provide facilities for weighing cattle, sheep and pigs in or near to the market. Charges were set out in the schedule, which was amended by the Decimal Currency (Isle of Man) Act 1970 to be in the range from one new penny to three new pennies per animal. The provisions of the Act are old-fashioned: consumer protection, including proper calibration of weighing machines, is dealt with by the Office of Fair Trading. The Act is, therefore, being repealed.

The Public Markets (Weighing of Cattle) Act 1933 amended the 1929 Act to include a definition of fat cattle. This Act is spent, following the repeal of the 1929 Act.

The Agricultural Produce (Grading and Marking) Act 1931 empowered the Department to make Regulations prescribing grade designations to indicate the quality of any articles of agricultural produce. The Act refers to eggs, though it is capable of extension to other produce. Such matters are now dealt with under food and other labelling requirements of the Department of Local Government and the Environment and the Office of Fair Trading. Thus this Act is to be repealed.

The Agricultural Holdings and Dwellings Act 1951 enabled the Department to require landlords to install water and electricity on agricultural holdings and agricultural dwellings. This provision is no longer required.

Mr Deputy Speaker, I move that clause 2 and part 2 of schedule 2 stand part of the Bill.

The Deputy Speaker: Hon. Member for Rushen.

Mr Gawne: Gura mie eu, Lhiass-loayreyder, with the proviso that again there is no schedule 2, I beg to second and reserve my remarks.

The Deputy Speaker: Is there any other Hon. Member? Hon. Member for Glenfaba.

Mr Anderson: Mr Deputy Speaker, I am very supportive of what the Department is doing through this Bill.

I just wonder if the hon. mover can give some indication when the future plans for Knockaloe will be available to the general public?

The Deputy Speaker: Hon. Member for East Douglas, will you reply to the question?

Mrs Cannell: Thank you, Deputy Speaker.

I am unable to indicate a time and date yet, but I can assure the Hon. Member we welcome his concern. We are

equally concerned and the Department is actually focusing on a future for this particular site, but he will be aware, of course, there are competing desires for this particular site from a wide section of the agricultural industry. Hopefully, the Department will be in a position early next year to advise him otherwise.

I beg to move.

The Deputy Speaker: The motion is that clause 2 and part 2 of the schedule stand part of the Bill. Those in favour, say aye; those against say nay. The ayes have it. The ayes have it. Clause 3, Hon. Member.

Mrs Cannell: Thank you, Deputy Speaker.

Clause 3 amends section 29 of the Wildlife Act 1990 to make payments of compensation to landowners permissive, rather than mandatory, when an area is designated as an area of special scientific interest under the Act. Section 29 of the 1990 Act provides that compensation shall be payable where someone with an interest in an area can demonstrate that the value of that interest has been reduced through designation. There are no similar compensation provisions in the United Kingdom legislation.

Under section 27 of the 1990 Act, the Department has discretion whether or not to make a notification and, further, as to the operations or activities which are to be affected. Further, compensation is calculated with reference to the value of the land at the time the notification is made. Thus, in deciding to make a notification, the Department would have to consider whether it was in the public interest to do so, bearing in mind the financial consequences, which would obviously depend on the zoning of the land and its value at that time.

The effect on the value of land would depend on the extent to which activities etc would be restricted in the area of land so affected, as a proportion of the particular parcel of land. Advice from Her Majesty's Attorney General's Chambers is that it would be sufficient for the Department to have discretion to pay compensation rather than there being a right to it. In this way each case could be weighed on its merits and compensation paid where proportionality so requires. Further amendments to the Wildlife Act 1990 are included in this Bill, so as to extend offences which require intent to cover situations where a person is reckless.

The offence contained in section 9(4) of the 1990 Act is widened. All wild birds, some animals and some plants are protected by the Act. Some controls protect specimens in their natural habitat: for example, it is an offence to injure, kill or take such specimens from the wild. The measures being introduced by the amendments to the Act do not affect these controls significantly, or change the species to which they apply. The measures introduced will, however, increase the enforcement powers under the 1990 Act.

Further protection for certain birds is included in the amendments. It is already an offence to intentionally disturb birds listed in schedule 1 to the Act. However, it has proved difficult to prosecute the offence, mainly because of the need to prove that the defendant went with the objective of causing disturbance.

By including the lesser test of reckless disturbance, a prosecutor will have to show that a person either deliberately took an unacceptable risk or failed to notice an obvious risk and thereby caused disturbance. The offence of intentionally damaging any structure or place which a wild animal listed

in schedule 5 to the Act uses for shelter or protection, or intentionally disturbing any such animal while in such a structure or place, is amended so that the offences also cover reckless damage or disturbance.

However, due to their ecology, certain schedule 5 marine species, namely all species of whales, dolphins, basking sharks, seals and turtles, do not have such places of shelter for protection and it would be difficult to apply section 9(4) of the Act to them. These species are considered vulnerable to reckless disturbance, for example due to inappropriate use of motorised personal water craft. Therefore an offence of intentionally or recklessly disturbing a whale, dolphin, basking shark, seal or turtle in any place is to be added as section 9(4A).

Deputy Speaker, I beg that clause 3 stand part of the Bill.

The Deputy Speaker: Hon. Member for Rushen, Mr Gawne.

Mr Gawne: Gura mie eu, Lhiass-loayreyder, I beg to second and reserve my remarks.

The Deputy Speaker: Hon. Member for Rushen, Mr Gill.

Mr Gill: Thank you, Deputy Speaker.

Could the mover advise as to the compensation provisions in regard to the ASSI? Would it be the intention of the Department to have a specific fund maintained within the Department for that purpose or would it be the intention that, if the provisions demanded, that a request be made to, perhaps, the general revenue or some other funds held by Treasury? What tests would you be required to meet to satisfy the Treasury's demands in these cases?

Secondly, on the test of intentional recklessness in relation to bird life and also to the sea creatures you just listed, what would the test of intentional recklessness be, would it be a criminal test or would it be a test that would be provided under a civil remedy by officers within your Department?

The Deputy Speaker: Hon. Member for Rushen, Mr Gawne.

Mr Gawne: Gura mie eu, Lhiass-loayreyder.

I think, certainly in relation to the first point that my colleague, the Hon. Member for Rushen, has made in terms of establishing a fund, I think one of the reasons why we were minded, as a Department, to come forward with the amendment is that we are moving from a situation where we *must* pay compensation, to we *shall* pay compensation.

We were in a somewhat difficult position. It is possible that we could identify an area that we wished to designate as an Area of Special Scientific Interest, but be aware that there could be a real threat of us having to pay out compensation and, in that instance, we could be then left with a situation where we did not designate an area which was of great importance to the Isle of Man. So, for that reason, we are moving from 'may' to 'shall', as the Department... as I understand it anyway, Treasury do not allow us to hold slush funds in the Department, much as I would like to encourage the Treasury Minister to, maybe, do that sort of thing. We are not allowed just to hold funds on the off chance that we may

have to pay out compensation at some point, so I think that is one of the reasons, anyway, why we have moved to this.

Also I think it has been very eloquently explained by the mover that none of our surrounding neighbours' jurisdictions have this requirement to pay compensation – we are the only jurisdiction that does and, as yet, we have not actually paid out. So I think it is not that important by way of a clause in the existing legislation – it is one that we wish to change. Moving from 'shall' to 'may' still allows us to make compensation, if we feel that it is appropriate, so I think that... I would hope, anyway, that Members will be able to support that.

I would just like to go back briefly, if I may, on the two clauses that we have moved so far, just to confirm that the mover has actually moved schedule 2 in both cases to confirm that there is not a schedule 2 in the Bill. I am absolutely sure that the mover meant 'the schedule' rather than schedule 2, but I would just like to make sure that that is confirmed, because I would hate to find that we had clause 3 and clause 4 but not clause 1 and 2.

The Deputy Speaker: Hon. Member, would the hon. mover wish to reply?

Mrs Cannell: Thank you, Deputy Speaker.

In answer to the previous speaker, I can assure him that the observations which he made are, in fact, correct. It was a typographical error in my notes that led me to state what I did state. In fact, his recording of the situation is the correct one and so, therefore we do not want a Bill turning up which is only halfway there.

Can I also say, in respect of the Member for Rushen, Mr Gill, I think the question over the special site of scientific interest has properly been answered by the Minister for the Department, but of course the important amendment within the Bill is that, where at the moment we have to because the wording is 'shall' – 'that we shall make compensation' – the amendment is putting in a degree of flexibility by saying that we *may* make compensation, so it gives us a degree of flexibility.

As for the test for Treasury, that will be tested as and when we come to Treasury when we want to designate a site as having special scientific interest. No doubt it will be difficult for Treasury to agree, I would suggest, the setting up of a special fund, but they may consider requests such as this in a sort of capital scene in terms of the cost of doing it. The Treasury Minister is smiling at me, so no doubt he is awaiting the test to be placed upon his Department.

The 'reckless' provision: it would not be... it is a criminal offence to actually injure or hurt or harm any of these species and what we are wanting to do is to bring in the lesser extent of 'reckless' because the existing provisions within the law have been difficult to actually prosecute, but I do not believe that there is a civil way of resolving a dispute like this. We have to either... we either take the stand that we are going to protect our wild animals, our special species around our shores, or we take the decision that we are not bothered. I think the decision of the House has always been that we are bothered, we want to protect and we want to promote and it all forms part of a very important ecosystem which has positive spin-offs, such as ecotourism, for example. So I think the... it is a criminal matter: I will check just to make absolutely sure that there is not a civil opportunity to resolve these matters, but I would suggest that there is not, that it is firmly criminal.

Mr Deputy Speaker, I beg to move.

The Deputy Speaker: The motion is, Hon. Members, that clause 3 stands part of the Bill. Those in favour, say aye; those against, say no. The ayes have it. The ayes have it.

Clause 4, Hon. Member.

Mrs Cannell: Thank you, Deputy Speaker.

Clause 4 amends the Destructive Imported Animals Act 1963, to increase the level of fines. This Act makes provision for prohibiting or controlling the importation into, and the keeping within, the Isle of Man of destructive, non-indigenous animals and for exterminating any such animals which may be at large. The penalties have also been tidied up by removing a reference to an offence being committed in respect of more than four animals and by removing a reference to the continuous penalty.

This Act has had no amendment to the level of fines since it was passed. The rates of fines set in the 1963 Act range between £200 and £500, with a £5-per-day increase for every day the offence continues after conviction. The increased rate of fine being proposed reflects those in similar current legislation and are £2,500 up to £5,000, with the daily penalty removed.

Deputy Speaker, I beg to move that clause 4 stand part of the Bill.

The Deputy Speaker: Hon. Member for Rushen.

Mr Gawne: Gura mie eu, Lhiass-loayreyder. I beg to second and reserve my remarks.

The Deputy Speaker: Hon. Member for Rushen, Mr Gill.

Mr Gill: Deputy Speaker, just a point of clarity once more, if I may. The offences introducing destructive, non-indigenous animals: would that cover people who we hear periodically proposing the introduction of red squirrels into the Island?

The Deputy Speaker: Hon. Member, would you like to reply?

Mrs Cannell: Thank you, Deputy Speaker.

In answer to the previous speaker, Mr Gill, Member for Rushen, yes, indeed. In fact, this is one of the reasons why

this amendment was thought appropriate to bring forward to the House. It was following the disaster of somebody illegally importing the squirrel – and, of course, this was under a different Ministry at the time, it was under the helm of the Hon. Member for North Douglas, Mr Henderson, when he was Minister of the Department and he was wishing to push forward a greater fine, as it had been criticised within the Courts over that particular case in question.

Thank you, Deputy Speaker. I beg to move.

The Deputy Speaker: The motion is, Hon. Members, that clause 4 stands part of the Bill. Those in favour, say aye; those against, say no. The ayes have it. The ayes have it.

Clause 5, Hon. Member.

Mrs Cannell: Thank you, Deputy Speaker.

Clause 5 gives the Bill its short title. I move that clause 5 stands part of the Bill and, Deputy Speaker, I believe that completes the clauses stage of the Bill which is before the House.

I beg to move.

The Deputy Speaker: Hon. Member for Rushen, Mr Gawne.

Mr Gawne: Gura mie eu, Lhiass-loayreyder. I beg to second and reserve my remarks.

The Deputy Speaker: The motion is, Hon. Members, that clause 5 stands part of the Bill. Those in favour, say aye; those against, say no. The ayes have it. The ayes have it.

BILL FOR THIRD READING

Insurance Bill

Not moved

The Deputy Speaker: Item 7, Hon. Members, is not to be moved today, the Third Reading of the Insurance Bill.

That concludes the business before the House today, Hon. Members. The House will now stand adjourned until 10 o'clock on 4th December here in our own Chambers.

Gura mie mooar, Olteynyn Onnoroil.

The House adjourned at 11.51 a.m.