



**HOUSE OF KEYS
OFFICIAL REPORT**

**RECORTYS OIKOIL
Y CHIARE AS FEED**

P R O C E E D I N G S

D A A L T Y N

(HANSARD)

Douglas, Tuesday, 5th May 2009

Present:

The Speaker (Hon. S C Rodan) (Garff);
 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);
 Hon. G M Quayle (Middle); Mr R W Henderson (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 R Phillips, Secretary of the House.

Business transacted

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The House adjourned at 11.10 a.m.

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House of Keys

The House met at 10.00 a.m.

[MR SPEAKER *in the Chair*]

The Speaker: Moghrey mie. Good morning, Hon. Members.

Members: Good morning, Mr Speaker.

The Speaker: The Chaplain will lead us in prayer.

PRAYERS

The Chaplain of the House of Keys

Leave of absence granted

The Speaker: Hon. Members, I have given leave of absence from today's sitting to the Hon. Member for Douglas North, Mr Houghton, and the Hon. Member for Onchan, Mr Karran.

Questions for Oral Answer

CHIEF MINISTER

FSC Chief Executive Salary increase over two years

1.1. The Hon. Member for Michael (Mr Cannan) to ask the Chief Minister:

- (1) *Whether the Council of Ministers considers it appropriate that the Chief Executive, Financial Supervision Commission, should have been awarded a salary increase in excess of 24 per cent over two years (2008 – 12 per cent and 11 per cent in 2009) amounting to £48,000 raising the salary to £249,750 per annum;*
 (2) *how this salary increase can be justified when civil servants are being advised that there should be a zero salary increase in the current year; and*
 (3) *how this salary increase can be justified when considering the perceived failure by the Financial Supervision Commission in matters relating to the Kaupthing, Singer and Friedlander (Isle of Man) Limited Bank?*

The Speaker: That being so, Hon. Members, we now turn to Item 1 on the Order Paper, Questions for Oral Answer, and I call on the Hon. Member for Michael, Mr Cannan.

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

The Speaker: I call on the Chief Minister, Hon. Member for Castletown, Mr Brown.

The Chief Minister (Mr Brown): Thank you, Mr Speaker.

The Council of Ministers have not specifically considered the salary increase of the Chief Executive of the Financial Supervision Commission as this is a matter for the Financial Supervision Commission, who are an independent Commission, as set out in paragraph 5 of the Financial Supervision Commission Order 1983. As I advised Tynwald at its sitting on 1st April, the increase was determined by the independent Commission in March 2008.

In answer to part (2) of the Question, the salary increase was determined over one year ago.

In answer to part (3), at this time I am not aware of any actual evidence that the Financial Supervision Commission failed to exercise its responsibilities.

Thank you, Mr Speaker.

The Speaker: Hon. Member for Michael.

Mr Cannan: Thank you.

Will the Chief Minister inform Tynwald, actually in response to the Minister, to whom the Financial Supervision Commission are accountable: are they accountable to the Council of Ministers; are they accountable to Members of Tynwald; or are they solely accountable to themselves for whatever action they take?

The Speaker: Chief Minister.

The Chief Minister: Mr Speaker, my understanding is that, as an independent statutory authority, clearly the Council of Ministers are able to seek information from the Financial Supervision Commission, and ultimately, of course, Tynwald Court – not individual Members of Tynwald, but Tynwald Court – I am sure the Commission would be ultimately answerable to.

The Speaker: Hon. Member for Douglas North, Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

Could the Ard-shirveishagh give us an explanation as to this particular individual's salary, inasmuch as can he clarify if this is paid for completely out of public funds or other funding from elsewhere outside the public purse? Notwithstanding that clarification, could he confirm, given the current climate and what is happening to other highly paid executives in the quarter-of-a-million pounds a year bracket, that in fact they are having their pay renegotiated?

The Speaker: Chief Minister.

The Chief Minister: Thank you, Mr Speaker.

As far as I am aware, the pay that is given to the Chief Executive of the Financial Supervision Commission, when it was determined by the board of the Financial Supervision Commission, excluding that Chief Executive, took into account what would be the rate that they would assess to

pay a person in this high position. As far as the funding of it is concerned, the Financial Supervision Commission are, as I understand it, partly funded by Government but they also have an income generation through licences and that in itself, therefore, is what overall funds the Financial Supervision Commission.

I think it is very important to remember that one of the issues that came out of, I think it was the Edwards Report and also from the IMF, is in fact the independence of the Commission from Government – and also, of course, from Tynwald, but especially from Government – and I think we do have to keep that in mind. Again, I remind Hon. Members that the increase in salary was determined in March 2008, over one year ago, prior to the present climate that now prevails in the financial world.

The Speaker: Hon. Member for Rushen, Mr Watterson.

Mr Watterson: Will the Chief Minister just confirm, from the independence point of view, that the relevant parts of the schedule to the Statutory Boards Act, allowing Council of Ministers to give directions to statutory boards does not actually apply to the Financial Supervision Commission?

The Speaker: Chief Minister to reply.

The Chief Minister: Thank you, Mr Speaker.

As far as I am aware, that is the case, because of course clearly it was set up to be independent of Government so it could not be cajoled and influenced in its decision-making and therefore have a clear separation that was required by international organisations to ensure that our financial services are properly regulated.

The Speaker: Hon. Member for Douglas West, Mr Corkish.

Mr Corkish: Thank you, Mr Speaker.

Can I ask the Chief Minister if the Chief Executive is in receipt of a bonus and, if so, who determines that bonus?

The Speaker: Chief Minister.

The Chief Minister: Thank you, Mr Speaker.

The Chief Executive is in receipt of a bonus. That information was circulated to Members, I think, about two, if not three, weeks ago in a comprehensive Answer to a Question that was asked in this hon. place some time ago, and that is determined, as I understand it, by the board of the Commission. I would also make the point, of course, that the Chief Executive of the Financial Supervision Commission does not receive a pension. In fact, he has to provide his own pension, if he so wishes, sir.

The Speaker: Hon. Member for Michael, Mr Cannan.

Mr Cannan: Thank you, Mr Speaker.

While I fully respect and concur with the principle of the independence of the FSC in terms of regulation, surely in terms of administration – nothing to do with regulation – it must have, or bear in mind, the economic policies of the Government and the economic climate. I will ask, therefore, are other members of staff at the FSC receiving similar pay increases? Will the Chief Minister inform Members of

Tynwald of the pay increase for staff at the FSC (a) for the financial year 2008-09 and (b) for the current year 2009-10, so that there can be a comparison of what other sections of public service employees are receiving and what the staff of the FSC are receiving?

The Speaker: Chief Minister to reply.

The Chief Minister: Thank you, Mr Speaker.

I think it is important to keep in mind that, whilst it is important to have regulation that is monitored separate from Government on this important area, it is important and identified as being important by the international organisations that, in fact, Government does not endeavour to curtail or influence the operation of the FSC by, in fact, restricting the amount of funds available to it or the pay given to its officers. That is, therefore, why they are determined by the board of the Commission, sir.

As far as the increases for staff of the FSC, I will endeavour to get that information and, if so, circulate it, sir.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

Could the Ard-shirveishagh explain, then – given this independence behind what is being publicly perceived at the minute as a lavish empire hiding behind the skirts of international scrutiny – who actually scrutinises the value for money for the people of the Isle of Man with regard to this organisation and keeps a rick on the same?

The Speaker: Chief Minister to reply.

The Chief Minister: Mr Speaker, we appoint independent persons to sit on the board of the Commission. They are not politicians; they are people with professional abilities who are put onto that board with a responsibility to ensure that the FSC operates effectively and efficiently and of course, that responsibility also falls on the Chief Executive of that board. Therefore, there are clear responsibilities there and ultimately, of course, as I said, I suspect they would be able to be answerable to Tynwald Court, sir.

Independent Review of British Offshore Financial Centres

Mr Foot's indications for Isle of Man

1.2.&1.3. The Hon. Member for Douglas North (Mr Henderson) to ask the Chief Minister:

1.2. Following the visit to the Island by Mr Michael Foot CBE and his team in charge of the Independent Review of British Offshore Financial Centres, and the recent visit with the Treasury Minister to meet the Foot team, if he will make a statement as to their line of inquiries, what it is they are interested in and what concerns they have in relation to the Isle of Man?

1.3. Whether, following his recent visit and meetings with the Chief Minister and others, Mr Michael Foot CBE has indicated any areas in which the Island is deficient that he would recommend for improvement and, if so, what these are?

The Speaker: We move now, Hon. Members, to Question 2. In fact, I am content take Questions 2 and 3 together.
Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.
Ta mee shirrey kied ny feyshtyn y chur ta fo my ennym.
I beg to ask the Questions in my name.

The Speaker: I call on the Chief Minister to reply.

The Chief Minister (Mr Brown): Thank you, Mr Speaker, and I thank the Hon. Member for allowing me to answer Questions 2 and 3 together, as they clearly cover the same subject matter.

Mr Speaker, I can confirm that no specific concerns in respect of the Isle of Man have been identified or discussed with us. The focus of the Foot Review is basically to work with financial centres to analyse their assessment of the risks flowing from the current and forecast macro economic environment. The visit and discussions undertaken so far have been fact finding and we have outlined the way in which the Island is structured and our financial position; how we undertake our business, our strategy in developing our economy and securing employment; how we develop and provide extensive public services for our people; how we have invested in our infrastructure; and confirmed that we comply with our international obligations.

Mr Speaker, to assist Hon. Members, I have arranged to have circulated to them in their pigeonholes later this morning Mr Foot's interim report, which sets out very clearly the work that Mr Foot and his team intend to carry out and the areas in which they are interested.

Thank you, Mr Speaker.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

I am pleased to note that there is no particular concern for Mr Foot's examination of the Isle of Man, but I would ask the Chief Minister if he and his Government are making it patently clear to this review that any risk management here is highly dependent on the regulation and risk management from other jurisdictions, as it is their management strategies and protocols that seem to me to be, would the Chief Minister agree, causing the current situation to a large extent, and that indeed is through no fault of the Isle of Man?

The Speaker: Chief Minister.

The Chief Minister: Mr Speaker, I think it has to be recognised that, as the Isle of Man now is involved in international matters and international business, we cannot therefore be immune to decisions made in other countries. What we are conscious of, and have been for some time, and which the Foot Review is endeavouring to do, is identify whether or not the Isle of Man is in a position to sustain itself if a situation arose that put pressure on the Island.

I think it is important to make the point that, of course, this Review covers all overseas territories throughout the world – that is UK overseas territories – as well as the Crown dependencies. I believe the Isle of Man is in a very strong position because of prudent planning in its finances over many years, sir.

The Speaker: Mr Henderson, finally.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

Could the Chief Minister confirm that he will be making it patently clear to the Foot Review and providing whatever information that, in fact, the current economic crisis has nothing whatsoever to do with the Isle of Man and we cannot really form any part of the recovery, as it is outside of anything we have done here?

Further to that, will he also be making it patently clear that what we do here is quite likely, from what we are told by Government information, of a higher standard than even the UK so that the benchmark we are running on can be shown quite clearly to the UK to be of a higher standard than itself in some areas?

The Speaker: Chief Minister.

The Chief Minister: Yes, thank you, Mr Speaker.

I think it is fair to say, after the briefings that Mr Foot received when he was on the Island and after the meeting that I and the Treasury Minister and Chief Financial Officer had with Mr Foot and his team, in fact they are under no misunderstanding or illusion as to the Isle of Man, how it operates, what it does, how it looks after its people and how, in fact, it endeavours to be responsible in terms of international affairs and monitors those very carefully.

He is not, in my opinion, on a witch hunt. What he is endeavouring to do is provide a report to the United Kingdom Chancellor, which will clearly set out how all the different territories, including the Crown dependencies, in fact operate to sustain themselves, whilst being in this international area of business.

The Speaker: Mr Cannan.

Mr Cannan: In the Chief Minister's discussions with Mr Foot, did he at any time indicate that it is likely in the near future that international tax exchange agreements on request will be superseded by automatic tax exchange to all countries where foreign residents have their assets in the Isle of Man? This was indicated this morning in a radio interview with the Treasury Minister. Was there any indication of that in your discussions with Mr Foot?

The Speaker: Chief Minister to reply.

The Chief Minister: Mr Speaker, certainly it might well have been touched on. I cannot remember every detail, but what I can say is I think it is fair to say that the Isle of Man Government is of the view that automatic exchange of information is an objective of the international countries and therefore we have to look at whether or not we can move forward in that area, being very conscious of the businesses in the Isle of Man. Hence, as the Treasury Minister has indicated, consultation is presently being undertaken, sir.

The Speaker: Final supplementary, Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.

Can the Ard-shirveishagh give an undertaking that he will be making it very clear to the Foot Review that, in fact, the way we do business here – the transparent way we do business here – and the high standards we have aspired to, have effectively taken us away from the current problems that have caused the economic crisis?

Would he be making it very clear to the Foot Review

that it is other jurisdictions' – far larger than ourselves – poor banking practice and regulation that is the main problem here, and far be it from a well-run, offshore jurisdiction such as ourselves?

The Speaker: Chief Minister.

The Chief Minister: Yes, Mr Speaker, I think we have to be careful that this is not, 'let's get out and blame whoever we can'. What we are trying to do and certainly my understanding from the meeting with Mr Foot... certainly, he comes over as a very professional person. He has been on both sides of the fence within the financial services, he understands not only regulation but, in fact, the business side of it.

Certainly, he came across as very understanding, listening very carefully to what was being said and it was obvious from his briefing in the Isle of Man, that he had taken on board a lot of the information he had been passed at that briefing and found it most helpful.

My view is, quite clearly, that we should work with the Foot Review to ensure the Isle of Man has a positive outcome to that review and hopefully then, that in itself will be of benefit in settling another area of concern down, which is being floated by the United Kingdom Government.

I think it is also making the point, Mr Speaker, that the other issue, of course, is this is an ongoing matter. Whatever it is we are doing, because we are classed as an offshore centre and we know that the larger countries of the world are continually monitoring how they undertake their business and that, of course, includes the Isle of Man.

TREASURY

United Kingdom Budget 2009 Implications for Isle of Man

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

If he will make a statement with regard to the implications for the Isle of Man of the United Kingdom Budget 2009?

The Speaker: Turning to Question 4, I did indicate, Hon. Members, I had given leave to Mr Karran – he is, in fact, indisposed this morning – and therefore Questions 4, 9 and 10 of Mr Karran's will be answered in writing.

Moving then to Question 5, Hon. Member for Michael, Mr Cannan.

Mr Cannan: Thank you, Mr Speaker.

I ask the Treasury Minister the Question standing in my name.

The Speaker: I call on the Minister for the Treasury, Mr Bell.

The Minister for the Treasury (Mr Bell): Mr Speaker, the United Kingdom Budget contains both good and bad news for the Isle of Man. The increased rate of taxation for higher earners represents an opportunity, if those individuals decide to leave the United Kingdom and may see the Isle of Man as an alternative. On the downside, however, the

continued recession is clearly impacting upon receipts that we share with the United Kingdom, although our share of those receipts will depend on local spending patterns, relative to those in the United Kingdom. These do indicate some slowdown, but not a recession such as that being experienced in the United Kingdom.

Additionally, we had already assumed modest growth in duties on alcohol, tobacco and fuel, which did materialise, and that the rate of VAT would revert to 17.5 per cent on 1st January 2010, which was also confirmed by the UK Chancellor.

The Speaker: Mr Cannan.

Mr Cannan: I am interested to hear the Treasury Minister's response, but in view of the predicted – by outside sources – reduction in indirect taxation and VAT income over and above that envisaged in the Manx Budget in February, which only budgeted for a surplus of £200,000, what action, if any, is the Treasury taking to restrict non-essential departmental expenditure in the current year?

The Speaker: Minister for the Treasury.

The Minister: The full extent of any change in our projected VAT receipts is still being assessed, Mr Speaker, and therefore I cannot give a comment on that at this time. It is though, Treasury's policy and the message was very clear at Budget time, that all Departments have got to strip out all but essential spending from now on – not wait until the end of this financial year to do it, but as a matter of course, from the start of this financial year, any inessential spending *has* to be removed, if we are going to stay in balance at the end of this financial year.

The Speaker: Mr Watterson.

Mr Watterson: No doubt the Treasury Minister will also be aware that there was money put aside in order to combat abusive tax havens? Has the Treasury Minister been able to offer his support to the UK Treasury in assisting them with ridding the world of such poorly regulated centres? Does he foresee any other impacts on the Isle of Man on that?

The Speaker: Mr Bell.

The Minister: Mr Speaker, the Isle of Man Government always is willing to offer its services to anybody in the improvement of world regulation and we will play our part, as we have done to date. We work with the IMF, we are working with the United Kingdom Government on a number of areas and will continue to do so and indeed, continue our work through the OECD, so that will continue as it has done before.

The Speaker: Hon. Member for Michael, Mr Cannan.

Mr Cannan: One of the items in the United Kingdom budget was that there would be a refund on a trade-in of motor vehicles, in order to purchase new motor vehicles. Would this apply to the Isle of Man and, alternatively, how would it affect people in the Isle of Man with cars over nine years old, taking them to the United Kingdom to obtain a refund and purchase a replacement car there?

The Speaker: Mr Bell to reply.

The Minister: This measure only applies to the United Kingdom, Mr Speaker, and therefore does not apply to the Isle of Man.

United Kingdom Budget 2009

Implications for Island and Scrutiny by Michael Foot

1.6. The Hon. Member for Douglas North (Mr Henderson) to ask the Minister for the Treasury:

If he will make a statement on the implications of the United Kingdom Budget of 22nd April and its implications for the Island with special reference to (a) the current economic environment and (b) the continuing scrutiny of the Island being carried out by Mr Michael Foot CBE; and if he will brief Hon. Members further at the earliest opportunity?

The Speaker: We turn now to Question 6. I call on the Hon. Member for Douglas North, Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder. Ta mee shirrey kied yn eysht y chur ta fo my ennym.

The Speaker: Again, I call the Minister for the Treasury, Mr Bell.

The Minister for the Treasury (Mr Bell): Mr Speaker, this two-part Question covers, in fact, the answers already given in Question 2 and in my previous Answer. So if I could refer the Hon. Member to those two Answers, I would be happy to answer any supplementaries beyond that.

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder. I am quite happy for the Shirveishagh Tashtee to manage the Questions in that fashion.

Could he answer... As we saw with last year's UK Budget, the devil was in the detail, in the small print – pages and pages behind the headlines – of some possible effects for us here with regard to tax exchange information and so on. Have he or his officers this time round, having had time to scrutinise the finer detail, discovered anything of the ilk or otherwise that may be *unbeneficial* for the Island?

The Speaker: Mr Bell to reply.

The Minister: The Hon. Member is absolutely right, Mr Speaker. It is traditional with all Mr Brown's budgets in the United Kingdom that the devil has been in the detail and the sting in the budget usually comes a week or two later, when we actually find out what he has been plotting. At the moment, though, I can give the Hon. Member the assurance that we have not discovered anything which would cause us undue concern at this point, but my officers are consulting with the industry currently on a number of issues which have been raised in the small print and I may have to review that comment at a later date.

The Speaker: Hon. Member for Douglas East, Mrs Cannell.

Mrs Cannell: Thank you, Mr Speaker.

Can I ask the Treasury Minister therefore that, once his officers have finished their consultation with the industry that have picked up on detail that they might have concerns about and he has all the answers to some of the questions that were posed by the previous Question from the Hon. Member for Michael, he will arrange a briefing for Hon. Members to bring us up to speed?

The Speaker: Mr Bell.

The Minister: Mr Speaker, I am hoping that there will be a briefing for Members on the international agenda in the not-too-distant future, and I will do my best to include that in that briefing.

HEALTH AND SOCIAL SECURITY

Hyperbaric Medical Facility Number of patients; funding

1.7. The Hon. Member for Onchan (Mr Quirk) to ask the Minister for Health and Social Security:

How many patients have had treatment at the Isle of Man Hyperbaric Medical Facility from 2007-08 to date; and how this medical facility is funded?

The Speaker: Question 7, Hon. Member for Onchan, Mr Quirk.

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

The Speaker: I call the Minister for Health and Social Security, Mr Teare.

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

In response to the Hon. Member's Question, I can advise that the operation of the hyperbaric chamber is undertaken outwith the Department by the Kevin Gray Memorial Charity Ltd. The charity has kindly supplied the Department with information regarding the number of patients who received treatment at the facility in 2007, which was a total of 210.

Unfortunately, the charity was unable to provide more recent figures, but advised that the number of patients treated during 2008 was not thought to differ greatly from the previous year. It should be noted that most of the treatment provided falls outside National Health Service provision.

With regard to the funding of the facility, the Department provides annual grant assistance to the charity in the sum of £90,000. I understand that the Department of Transport paid a retainer fee of £10,000 per annum for the provision of emergency cover for their works diving team. These sources of income are supplemented by charitable donations.

The Speaker: Mr Quirk.

Mr Quirk: Thank you, Mr Speaker.

Can I ask the Minister, does he support the use of the Isle of Man hyperbaric medical facility? Does he see the benefits that this facility provides to the community and to the community further out?

The Speaker: Mr Teare to reply.

The Minister: I have to say, sir, that the medical profession are divided on the benefits that the hyperbaric chamber provides, or is thought to provide, but what I would say is that, from the Department's point of view, the assistance given to the hyperbaric chamber has increased by 125 per cent over nine years, whereas the health budget has increased by 100 per cent in 10 years, so I do not think they have done too badly, sir.

The Speaker: Mrs Cannell.

Mrs Cannell: Thank you, Mr Speaker.

Can I ask the Health Minister: of the grant that is provided by his Department towards the running of this facility – which is greatly thought of by our people, incidentally – has he got any intention of reducing that grant support, or is he reviewing it? Is he aware that there are concerns out in the public arena that, in fact, he is doing that and we might lose the facility?

The Speaker: Minister for Health.

The Minister: We are currently in negotiations with the Kevin Gray Memorial Charity trustees on the way forward. They have been seeking extra funding from the Department, and I have to say the Department does not have the resources to meet that request. In addition to this particular charity, we are receiving requests from other charities to increase our funding and we cannot make the budget go any further.

Hon. Members may remember that, in response to a Question which was placed in another place, I did say that the Department had faced, and successfully met, extra treatment costs for patients from the Isle of Man in the UK during the last year of £2 million. In addition to that, we have already paid a further £500,000 in patient and patient escort transport costs to the UK during the same period, without having an increase in our budget. So I think we have done rather well, even though I do say it myself.

The Speaker: Mr Quirk.

Mr Quirk: Thank you, Mr Speaker.

Can I ask the Minister, would he not agree with me, if it is 125 per cent of £90,000 compared with 125 per cent of £500,000, it is a big difference? Would he not agree with me that this facility...?

Can I ask a further question: has his Department ever done an analysis for the treatments that have taken place at the particular chamber for the benefits of those who are returning to work to pay their taxes and National Insurance contributions back into the economy, to re-circulate?

The Speaker: Mr Teare to reply.

The Minister: We have asked the Clinical Recommendations Committee to look at this particular facility. It was thought that it was outwith the mainstream

NHS provision and it was, from the Department's perspective, a low priority, sir.

The Speaker: Further supplementary, Mrs Cannell.

Mrs Cannell: Thank you, Mr Speaker.

Can I ask the Health Minister: he said that they were in negotiation, or in discussion with, the charity, in terms of looking at future budgets, and that the charity has requested some extra funding. Is he able to provide for Hon. Members this morning what that extra funding amounts to? How much more does the charity need and what is their case for requiring that additional money? Would it mean, for example, that if the Department, as the Minister has said this morning, is unable to provide any additional funding, this facility might close? Could he give us a little bit more detail, please.

The Speaker: Minister to reply.

The Minister: I am, unfortunately, unable to give any more details because we have a group from the DHSS meeting representatives of the charity later this week, when full details will be sought from them, including a business plan, and also how much they are looking for to stay in operation. What I would say is that there are other ways of funding this, too. It may be that the charity should have a look at providing a fee for the service, because if we go and seek private treatment for facilities outside the NHS, we do expect to pay, so maybe that is an avenue that they might like to progress.

The Speaker: Hon. Member for Malew and Santon.

Mr Cregeen: Thank you, Mr Speaker.

Can the Minister confirm that he will not be reducing the grants or assistance?

The Speaker: Minister.

The Minister: I cannot give that undertaking to any charity, any organisation whatsoever. I cannot because, basically, we are facing very substantial increases in our cost pressures and, unfortunately, what we will do is we will put service agreements – service level contracts – in place, and we will meet those contract obligations. So what I would say is to our partners that we need to put contracts in place to resolve this uncertainty.

The Speaker: Final supplementary on this Question, Mr Quirk.

Mr Quirk: Thank you, Mr Speaker.

Could I just ask the Minister, is he aware – he probably is – that the facility has been going for 30 years? As part of that facility which, in the original stages, was the hyperbaric chamber, it is now called – and it is in your latest profile of your Department – the *Isle of Man* Hyperbaric Chamber.

Would the Minister not agree with me that the service that it does provide, considering it is the Isle of Man Hyperbaric Chamber, to the community as a whole and to those divers who use the facilities round our own shores and come here for recreation purposes – and not only for the persons who come here, which is the nearest contact point to seek decompression treatment – there is quite considerable value in this particular facility? Can I seek an assurance that he

will do a cost-benefit analysis of that treatment if it had to be done elsewhere?

The Speaker: Minister.

The Minister: The cost-benefit analysis really is only part of the equation, sir. The other thing, too, is whether the facility should be provided here – whether it should be provided locally. I really would not want to go down that route. But the argument that the Hon. Member who has just resumed his seat has adduced, that it is an Isle of Man facility, there are a considerable number of charities who have ‘Isle of Man’ in their title. So that argument can be extended to a significant number of charities.

TRANSPORT

Environmentally friendly vehicles Vehicle duty

1.8. The Hon. Member for Rushen (Mr Watterson) to ask the Minister for Transport:

What the vehicle duty is in the Isle of Man, and United Kingdom, for a Toyota Prius (hybrid car); what progress he has made on the commitment made in Tynwald of July 2007 to restructure the vehicle licensing and registration duty to encourage people to use more environmentally friendly vehicles such as hybrid vehicles, and to tax them accordingly?

The Speaker: We turn now to Question 8, Hon. Member for Rushen, Mr Watterson.

Mr Watterson: Thank you, Mr Speaker.
I beg leave to ask the Question standing in my name.

The Speaker: I call on the Minister for Transport, Hon. Member, Mr Anderson.

The Minister for Transport (Mr Anderson): Thank you, Mr Speaker.

The vehicle duty on a hybrid car, which is powered by both a petrol engine and an electric motor, is payable according to the capacity of the petrol engine. In the case of a Toyota Prius, which has a 1,500 cc petrol engine, the duty payable is £112 per year at the current rate. This compares with a duty of £15 which would be now payable for the same vehicle in the UK.

With regard to the commitment made to Tynwald in July 2007 to restructure the vehicle licensing and registration duty to encourage people to use more environmentally friendly vehicles, I can confirm that the following actions have been taken. In September 2007, two new duty bands for vehicles with engine capacities of less than 1,000 cc and greater than 5,000 cc were introduced. This allowed a reduction in duty for the smallest engine vehicles to £50 and an increase to £300 for the largest vehicle engines.

In April 2009, vehicle duty was increased by 5 per cent across the board, with the exception of the £50 duty, which was not increased. This means that drivers of the largest engine vehicles now pay £315 a year.

The Department is considering the feasibility and

effectiveness of introducing emissions-based duty, similar to that in the UK and other European countries. The Department introduced a new vehicle registration and licensing system, in September 2008, which allows details to be recorded of the emissions data for newly registered vehicles. By September 2009, it is anticipated that sufficient emission data will be available for a review to take place of the effect of proposals to change the charging structure from being based on engine capacity to one based on CO₂ emissions, hopefully sometime next year.

The Speaker: Mr Watterson.

Mr Watterson: Would the Minister accept that this has been an issue going back as far as at least Minister Braidwood’s time there in July 2006, and that at that time it was the policy of the Department to move forward on this ground? Can he just confirm that there is no change to that policy to pursue emissions-based vehicle duties in line with the timetable that he has outlined?

The Speaker: Minister to reply.

The Minister: No, Mr Speaker, there are no changes to that intended policy to move forward to an emissions-based system, but for the Hon. Member’s information, consideration was given to a concession to allow hybrid vehicles to be charged duty at the lowest rate of £50 but this was not considered appropriate, as some of these vehicles emit more CO₂ emissions than the average petrol or diesel engine. However, that information will be taken into consideration when we move to the emissions-based system.

The Speaker: Mr Watterson.

Mr Watterson: When we move to the emissions-based system, will it be purely running emissions or will the Department have a system which will be sophisticated enough to allow the capital considerations of the emissions of actually producing the car and the battery to be taken into account?

The Speaker: Mr Anderson.

The Minister: I am sorry to say the Department’s system is not likely to be so sophisticated as that and it will be based purely on a CO₂ emission basis.

The Speaker: Hon. Members, that brings us to the end of Questions for Oral Answer. There are three Questions for Written Answer and replies will be distributed.

Questions for Written Answer

CHIEF MINISTER

Residence Act 2001 Commencement order

1.4. The Hon. Member for Onchan (Mr Karran) to ask the Chief Minister:

What plans he has to make a commencement order in respect of the Residence Act 2001; and if he will make a statement?

Answer: My views were made clear in the statement I laid before Tynwald Court when I sought election to the position of Chief Minister.

My statement stated:

‘Immigration continues to be a matter that needs careful and ongoing monitoring; it is important to keep under review the matter of when it may be necessary to implement the Residency Control Act and, if so, how it will be progressed, making clear to residents the implications of the Act.’

My position has not changed.

TRANSPORT

Cyclists on public roads without lights Enforcement of law

1.9. The Hon. Member for Onchan (Mr Karran) to ask the Minister for Transport:

What plans he has to mount a campaign in relation to safety of cyclists on public roads who are without lights; if he will consider introducing spot fines for cyclists who do not have front or brake lights and make parents responsible at law for their children who break the law?

Answer: The Department of Transport and the Department of Home Affairs undertake a road safety campaign in the autumn each year to remind all highway users including cyclists to use their lights when it is dark. In addition, the Department carry out annual school road safety cycling proficiency training for nine and ten year old school children which emphasise the requirement to maintain and use lights on pedal cycles and a recommendation to wear high visibility clothing. The Department staff will be carrying out a further public awareness campaign later this year to remind all highway users to use their lights in the dark. This campaign is scheduled to take place in October to coincide with the occurrence of the darker autumn peak traffic periods.

The existing offences specifically connected with riding a pedal cycle are detailed in Sections 11 to 15 of the Road Traffic Act 1985 and these are as follows:

Dangerous cycling	Section 11
Careless and inconsiderate cycling	Section 12
Cycling under influence of drink or drugs	Section 13
Regulation of cycle racing on highway	Section 14
Restriction on carriage of persons on bicycles	Section 15

Sections 11 and 12 have relevance to this Question and these state the following:

Section 11

(1) A person who rides a cycle, not being a mechanically propelled vehicle, on a road dangerously is guilty of an offence.

(2) For the purpose of subsection (1) a person is to be regarded as riding dangerously if (and only if) –

(a) the way he drives falls below what would be expected of a competent and careful cyclist, and

(b) it would be obvious to a competent and careful cyclist that riding in that way would be dangerous.

(3) In subsection (2) ‘dangerous’ refers to danger either of injury to any person or of serious damage to property; and in determining for the purposes of those subsections what would be expected of, or obvious to, a competent and careful cyclist in a particular case, regard shall be had not only to the circumstances of which he could be expected to be aware but also to circumstances shown to have been within the knowledge of the accused.

Section 12

If a person rides a cycle, not being a mechanically propelled vehicle, on a road without due care and attention, or without reasonable consideration for other persons using the road, he shall be guilty of an offence.

This legislation does not require somebody to be injured or killed before it can be used. However, the police officer would have to prove a likelihood of injury to a person or serious damage to property which could be foreseen by a competent and careful cyclist. In this case I would expect a competent cyclist to have knowledge of the rules in the Highway Code (revised 2004) which states cyclists MUST use lights at night and when visibility is seriously reduced, generally when you cannot see for more than 100 metres (328 ft). These rules are afforded the following legal status by Section 31(5) of the Road Traffic Act 1985:

‘(5) A failure on the part of a person to observe a provision of the Highway Code shall not of itself render that person liable to criminal proceedings of any kind, but any such failure may in any proceedings (whether civil or criminal, and including proceedings for an offence under this Act or the Road Traffic Regulation Act 1985) be relied upon by any party to the proceedings as tending to establish or to negative any liability which is in question in those proceedings.’

The Road Vehicles (Construction, Lighting and Use) (Amendment) Regulations 2007 legalised the use of a flashing white light to the front and a flashing red light to the rear of a pedal cycle. The specification for these flashing lights are prescribed in these regulations.

The existing legislation allows the Police to take action against dangerous, careless and inconsiderate cycling caused through not using lights when it is dark and the Department does not intend to bring forward additional legislation in this regard.

LOCAL GOVERNMENT AND THE ENVIRONMENT

Douglas Quayside Development Scheme Askett-Hawk Developments Limited

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

If he will make a statement on the Douglas Quayside Development Scheme involving Askett-Hawk Developments Limited?

Answer: I would like to thank the Hon. Member for giving me the opportunity to update Members on the progress of the Quayside Development Scheme.

Members will be aware that at the March 2008 sitting of Tynwald, approval in principle was given for my Department to enter into a 999-year lease agreement with the preferred developer of the site, Askett-Hawk Developments (IOM) Ltd. This followed a lengthy debate during which an assurance was given by the Chief Minister to Tynwald Members that the final approval as to whether the Scheme should be progressed or not, would be sought from Tynwald.

To this end, Members of the Quayside Working Group in conjunction with Askett-Hawk Developments (IOM) Ltd, worked together to produce an expanded set of Heads of Terms that provided greater detail and information that could be considered by Tynwald Members. Furthermore, a presentation in support of the proposals was given to Members on 17th December last year and a motion seeking approval to the Douglas Quayside Scheme proposals was tabled for debate at the January 2009 sitting of Tynwald.

The decision subsequently taken to withdraw the motion from the Tynwald Agenda was not taken lightly. The Quayside Working Group were approached by members of the Chamber of Commerce who had some reservations over the level of retail space being proposed within the Scheme and the reliance that had been placed upon the findings of the draft Retail Sector Report.

After due consideration it was decided to temporarily withdraw the motion and I wrote to all Tynwald Members to personally inform them of my decision (letter dated 12th January 2009). The main reason for this action was that I was aware that the Department of Trade and Industry were anticipating that the revised Report on the Retail Sector of the Isle of Man would be published shortly.

I believed, and still do, that all parties will benefit from having access to the contents of this Report before being asked to consider the future development of the Quayside site.

CHIEF MINISTER

Public service pensions

No review for those currently in receipt

2.1. The Hon. Member for Michael (Mr Cannan) to ask the Chief Minister:

If the Council of Ministers will give an unequivocal assurance that persons currently in receipt of a public service pension will not have that pension reviewed?

Answer: There is no intention at this time of reviewing pensions already in payment.

TREASURY

Kaupthing, Singer and Friedlander (Isle of Man) Bank Full compensation for charities

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

(1) Whether he is aware that the House of Commons Treasury Committee has made the recommendation that United Kingdom charities which lost money in the Kaupthing Bank should be compensated in full; and
(2) whether he will recommend to Tynwald that Isle of Man charities which lost money in the Kaupthing, Singer and Friedlander (Isle of Man) Bank should be compensated in full?

Answer: (1) On 4th April 2009 the House of Commons Treasury Committee published a report entitled 'Banking Crisis: The impact of the failure of the Icelandic banks'.

In its summary the report stated:

'We recommend that, on this occasion only, all charities should be compensated for losses incurred as a consequence of the failures of the Icelandic banks.'

One of the key issues the report highlighted was the classification of charities as 'wholesale depositors'.

The United Kingdom Chancellor's statement on 8th October 2008 guaranteed that all retail depositors in Landsbanki, Heritable and Kaupthing Singer & Friedlander would receive their money in full. A large number of these United Kingdom charities were not classified as retail depositors and were faced with trying to recover their funds from the administrators.

HM Treasury will also consider the report's recommendation to 're-examine the criteria for the classification of charities as retail or wholesale depositors'.

HM Treasury will study the recommendations the report made 'for providing charities with further statutory guidance relating to the management of a charity's finances and investments'.

(2) At the present time I believe that those Isle of Man registered charities which held deposits in Kaupthing, Singer and Friedlander (Isle of Man) Bank are covered by the existing Depositors Compensation Scheme and will, in due course, recover a substantial return on their deposits through the Scheme of Arrangement or Liquidation. I will therefore not be recommending to Tynwald that the Depositor Compensation Scheme be further amended in order that Isle of Man charities should be compensated in full.

ENERGY POLICY WORKING GROUP

Energy Policy Working Group Terms of reference

2.3. The Hon. Member for Douglas East (Mrs Cannell) to ask the Chairman of the Energy Policy Working Group (Mr Cretney):

What the terms of reference of the Energy Policy Working Group are?

Answer:

Introduction

The Government Strategic Plan's Aim for Energy is:

To provide for growing energy needs, which allows economic growth whilst minimising environmental impacts – we will:

- Encourage people to be more energy efficient in their homes and businesses
- Develop policies in relation to energy efficiency in public buildings and workplaces
- Aim to reduce our reliance on energy imports
- Explore options for alternative energy sources
- Review planning policies and financial support systems for the introduction of alternative energy installations

The Energy Aim initiated a number of Government actions relating to energy, such as the setting up of an Energy Initiatives Fund and actions to manage the demand for energy, for example through the cosy homes initiatives. These actions and initiatives are taking place without a politically agreed policy on Energy which embraces the actions identified under the Energy Aim.

The case for an Energy Policy framework has never been as strong. The Island will face increasing competition for energy sources and increasing politicisation of access to those energy sources. The Government's ability to source a diverse range of secure, competitively priced energy supplies will be one of Government's most important challenges and will affect the economy, environment and possibly national security.

In recent months Government work has rapidly increased as a result of the recent acceleration in the cost of fuel, coupled with pressure from the private sector and environmentalists to consider renewable energy at both macro and micro levels. However Government's work has focused on specific tasks and a number of *ad hoc* working groups have been established, including the Officer Working Group on Sustainability, the Renewable Energy Working Group and the Energy Conservation Working Group.

In September 2008 the Council of Ministers considered the *ad hoc* arrangements for dealing with energy and decided that it was necessary to combine energy policy under one Policy Group. This new Group, the Energy Policy Working Group (EPWG), brings together the Tynwald Members who have the key roles and responsibilities for energy and environment within Government and will make it far easier to make joined-up decisions in an area which is crucial for the Isle of Man.

1. Constitution

In September 2008, the Council of Ministers approved the formation of the Energy Policy Working Group (EPWG). Council further agreed the purpose of the Group is:

- a. The development of high level policy for the security of generation of energy including renewable energy,
- b. The development of policy to reduce energy demand through the conservation of energy and
- c. To explore the opportunities for exportation of renewable energy subject to security of generation in (a)

2. Membership

The Chairman of the Energy Policy Working Group, appointed by the Council of Ministers is the Minister for the Department of Trade and Industry.

Membership of the Group will also comprise the following:

- Minister for Agriculture Fisheries and Forestry
- Minister for Local Government and the Environment
- DTI Member for Energy
- Chair of Manx Electricity Authority
- Chief Secretary
- Chief Executive Officer of the Department of Trade and Industry

- Director of Environment, Safety and Health, Chair of the Energy Officer Working Group
- Chief Executive of the Manx Electricity Board Administration, co-ordination and minutes shall be provided for the Energy Policy Working Group by the Chief Secretary's Head of Administration.

3. Meetings and Minutes

Formal meetings will be held at least every quarter.

Minutes and any actions arising from each Group meeting will be recorded and distributed on a timely basis to all Members and CoMin members.

4. Authority

The Group was established as a working group of the Council of Ministers in September 2008 and replaces previous energy related working groups, including those addressing sustainable development, renewable energy and energy policy officer group.

The Group will be supported by the Energy Officer Working Group, a separate body chaired by the Director of Environment Safety and Health and comprising the Energy Initiatives Officer, the Development Manager of Trade and Industry and officers from the Manx Electricity Authority and Treasury. Other officers will be co-opted to the Officer Group as and when required. This Energy Officer Working Group is subject to separate terms of reference, approved by the Council of Ministers.

The organogram for the governance for energy policy and strategy is presented in Appendix 2. This highlights the relationship between CoMin, Energy Policy Working Group, Energy Officer Group etc.

5. Roles and Responsibilities

The Energy Policy Working Group has been established to provide policy direction and strategy in accordance with the requirements of the Isle of Man Government Strategic Plan (2007-11). In detail this includes:

Security of Supply

1. Examine opportunities and threats to the current and future energy sources within and beyond the Isle of Man and develop an energy policy to harness the best energy opportunities for the Island and manage the threats to energy security

2. Develop and maintain a risk management framework to determine, inform, support and prioritise the development of the Energy Policy, thereby ensuring the current and future energy needs of the Isle of Man are secure and sustainable in the short, medium and long term (5, 10, 20 years)

Reduction of Energy Demand – Energy Conservation

3. Ensure policies and practices are developed and adopted that demonstrate a measured reduction in energy consumption within the domestic, transport, business and public sectors.

4. Facilitate inter-departmental co-ordination to provide best value for the delivery of energy efficiency support, services and products.

Explore opportunities for exploitation of renewable energy

5. Prepare a renewable generation strategy to assist the determination of renewable targets and investment opportunities within all energy sources.

6. Develop and maintain a consultation network with other jurisdictions for the monitoring, assessment and development of renewable energy, low carbon sources, energy efficiency and adaptation to climate change policies and their impact upon the Isle of Man.

6. Funding

In order to support energy policy and strategy development, funding may be required supporting specific projects, including research and development opportunities. Whilst some funding may be derived from individual Department and Board budgets, additional funding may be sought from the Energy Initiatives Capital Fund. Appendix 2 provides a financial control instruction regarding the approval, control of expenditure and reporting arrangements.

On 31st July 2008 the Council of Ministers approved the former Renewable Energy Working Group to utilise the EICF up to £650,000 for the investigation of strategic renewable investment opportunities/developments on the Isle of Man. The EICF procedures require Treasury to control and account for these approved costs. This work is ongoing, the outcomes of which shall be reported to the Energy Policy Working Group by the Chairman of the Energy Officer Group.

7. Outcomes and Deliverables

The following initial phase is prepared to ensure the energy policy and strategy is progressed and reported to the Council of Ministers. During 2009-10 the Energy Policy outcomes and deliverables will be reviewed based on successful achievements during the initial phase.

The initial phase from December 2008 until 31st March 2010 will include:

i. Energy policy

1. Review energy policy and make recommendations to Council on a revised energy policy

ii. Security of supply

1. Oversee the preparation of a risk management framework to support the development of an energy policy.

2. Oversee the preparation of advice on the potential opportunities and problems with the BIC Celtic Grid proposals

iii. Renewable strategy

1. Oversee the preparation of a renewable energy appraisal strategy for the EPWG.

2. Propose short, medium and long-term renewable energy targets.

iv. Energy conservation – direct the Energy Policy Officer Group to -

1. Establish energy advice service

2. Establish in partnership with Age Concern an energy doctor service.

3. Review the Building Control Regulations relating to energy and climate change adaptation

4. Assist in development of planning guidance for energy conservation and climate change adaptation

5. Review energy data from House Conditions Survey and bring forward recommendations

6. Act as advisers on the IRIS review and development task force

v. Transport – direct the Energy Policy Officer Group to -

1. Assist DTL in developing a sustainable strategy for the bus service

2. Assist DOT in wave height data capture for future climate change mitigation/adaptation and business development purposes.

vi. Climate Change

1. Oversee the development of an adaptation policy framework.

vii. Legislation

1. Consider the need for an energy/climate change bill.

Appendix 1: Extract from Energy Policy and Strategic Plan

The Government's Energy Policy, agreed in October 2006 by Tynwald, gives further policy support to consider renewable energy generation as follows:

- To maintain the security of energy supply;
- To secure the efficient use of affordable energy and
- To minimise the impact of our energy use on the Environment.

The Government Strategic Plan (2007-11) identifies the need to consider energy as follows in the following strategic aim for energy:

'Policy Four: Quality of Life:

Energy

To provide for growing energy needs, which allows economic growth whilst minimising environmental impacts – we will:

• Encourage people to become more energy efficient in their homes and businesses

• Develop policies in relation to energy efficiency within public buildings and workplaces

• Aim to reduce our reliance on energy imports

• Explore options for alternative energy sources

• Review planning policies and financial support systems for the introduction of alternative energy installations"

Climate Change and Sustainability

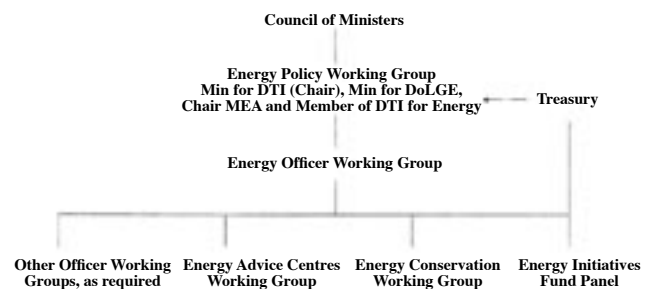
To ensure the Island can respond to the impact of climate change and plan its services and infrastructure developments to safeguard the Island – we will:

• Develop and review policies that take into account the long-term impact of climate change in relation to the Island's infrastructure

• Consider means by which the Isle of Man can contribute to actions which reduce harmful emissions to the environment

• Develop strategies for determining the action necessary to respond to the negative effects of climate change on our communities

Appendix 2 – Organogram Governance for Energy Policy and Strategy



Appendix 3 – Financial Control: Financial Control Procedure

1.1 This procedure confirms the actions and authority required for the Energy Policy Working Group and sub-groups to utilise funding from the Energy Initiatives Capital Fund (EICF).

1.2 In accordance with the Energy Initiatives Capital Fund (EICF) Governance and Procedures, CoMin and Treasury are required to approve funding for strategic projects relating to energy provision and infrastructure development.

1.3 The Energy Policy Working Group or sub-groups ('the Groups') are to identify the scope of works and brief required, and the lead members Department/Board/Office are to progress with the selection of consultants and conduct any interviews/critique of interested parties.

1.4 Official order/engagement letter is subject to Treasury approval/sign off and the Financial Controller, Treasury or his delegated representative to approve.

1.5 The lead Department/Board/Office will set up memorandum accounts to capture expenditure and report monthly on actual costs incurred to the Financial Controller, Treasury.

1.6 In the event that any other Department/Board/Office wishes to incur or recharge costs to this project the prior written approval of the Financial Controller, Treasury (or their reserve) will be required.

1.7 Any such costs or recharges to be administered through the Government Department/Board/Office accounts and reported upon as an integral part of this instruction.

1.8 Reimbursement of project expenditure from the EICF will take place at the end of the financial year and reimbursement general ledger codes should be set up to receive the credit and not the general ledger codes which will have been debited with the project expenditure. It is an accounting requirement that the expenditure and reimbursement amounts are recorded gross.

Orders of the Day

BILL FOR FIRST READING

Payment of Members' Expenses (Amendment) Bill 2009

3.1. Mr Braidwood to move.

The Speaker: We turn now to Item 3, Bill for First Reading and I call upon the Secretary of the House.

The Secretary: The Bill for First Reading, Payment of Members' Expenses (Amendment) Bill 2009. Member in charge, Mr Braidwood.

BILLS FOR THIRD READING

Constitution Bill 2007 Third Reading approved

4.1. Mr Quayle to move:

That the Constitution Bill 2007 be read the third time and be sent to the Council.

The Speaker: Turning now to Item 4 on our Order Paper, Bills for Third Reading: Constitution Bill 2007. I call upon the Hon. Member for Middle, Mr Quayle, to move the Third Reading.

Mr Quayle: Thank you, Mr Speaker.

I think it is worthwhile just giving a résumé as to why we find ourselves now at the Third Reading of this particular Bill. As we all know, there have been different moves within the life of this House of Keys to try and crack this nut of constitutional change that is required to give us a popularly

elected Legislative Council. The reason that I moved this particular Bill in my name – and I am grateful for the support of so many Members who have got the Bill to this stage – is that this represented a more palatable way forward for many Hon. Members, rather than the totally unpalatable propositions that were put forward effectively to sweep away with the House of Keys, potentially to just have Tynwald sitting for one day a year.

There was a range of different variations and combinations and this one that we have ended up with is the one that garnered the most support, and in fact it passed all its clauses apart from one clause, I think, and the repealing schedules which dealt with repeals of the legislation that would be put aside with this new Bill coming into effect.

I am more than happy to deal with any points that are made. Again, I would like to thank the Hon. Members who have voted consistently for this – I think their stance is one of the utmost integrity – and I also respect fully those who have been forthright in their opposition to the Bill. Certainly that position, if the Hon. Members in opposition to it have been consistent, that too is a position that everybody can respect. For the others... I am not doubting anybody's integrity, but there have been a lot of political shenanigans, and for those who wavered within the middle of potentially supporting some clauses and not others, then that is a matter for their own conscience.

However, I do say that most of the Hon. Members elected to this House did, I feel, commit themselves at the last General Election to work towards a popularly elected Legislative Council. This is the best opportunity for us to make that step, and in the absence of any other moves that have come forward to bring about this constitutional change, I do still believe this represents the best way forward to achieve the change that the public indicated at the last Election that they were in favour of.

With that, Mr Speaker, I would like to move the Third Reading, but I would also say that the Bill, whilst not intact because of the missing clause which contained the schedules to repeal certain enactments... I feel that if this proceeds to the Legislative Council, then the Legislative Council will presumably seek to come up with sufficient of the legislation to be put back into the Bill to make it complete, but that would be a matter for the Legislative Council.

Thank you, Mr Speaker.

The Speaker: Hon. Member for Onchan, Mr Quirk.

Mr Quirk: Thank you, Mr Speaker.

I am rising to second, to move the particular issue along, and just to put on record the thanks to the Member for Middle for actually compiling all the information, digesting all the information. The number of meetings that Members have had with each other – it is always difficult to get some Members together – but it is quite pleasing to see that quite a lot of Members, at the early stage anyway, came together quite fluidly to discuss this particular Bill.

I am still a supporter of the Bill and I know it will be the vote today which will make the difference. I will be supporting the Bill today because I believe that when Members did go to the Election in 2006, there was... not a total groundswell, but there was a groundswell for people to have the Legislative Council elected publicly. I believe that, and we have been through a number of ordeals, electing Members of the Legislative Council, and I know other

Members will say, 'That's down to us; we are the Chamber that makes that particular decision.' Well, so be it. We do make those decisions and, finally, we can make a decision when time goes on.

Just with reference to the particular Bill in itself, as I said, I just want to put on record, finally, to say that I support this particular Bill, and I am conscious of saying it might not be the best one, (**Mr Braidwood:** Hear, hear.) but it was the only show in town – (*Laughter*)

Mr Bell: That's no reason to support this! (*Laughter and interjections*)

Mr Quirk: I know other Members have tried to put other Bills forward to try and put other issues together. I hope that if the particular mover of the Bill actually succeeds today, it will be welcomed; if he does not succeed today, we will be able to put our support behind other initiatives that may come forward or other ideas, because something needs to be done, and the life of the House is probably only 18 months away.

A Member: It's longer than that!

Mr Quirk: Well, two years then – 18 months, two years. (*Laughter and interjections*)

A Member: Maybe in Onchan!

Mr Quirk: But I am led to believe, too, we have still got a Legislative Council election, sometime in February, and I hope that... Well, all Members would be looking forward to that, I suppose. But I do support the Member.

The Speaker: Hon. Member for Michael.

Mr Cannan: Thank you, Mr Speaker.

As one of those who had a Bill for change in the election to the Legislative Council and failed to find the support of the House, I accept the democratic will, as I always have. The Bill that we have before us is not perfect. It is not what I would wish, but as has already been said, it is the only show in town and there are times when one has to be pragmatic.

The importance of having the Legislative Council elected is vital to the democratic process in the Isle of Man, which has gone on now for 150 years from the first elections of the House of Keys way back in the 1850s

Mr Watterson: 1860s.

Mr Cannan: Pardon?

Mr Watterson: The 1860s!

Mr Cannan: The 1860s, 1850s. (*Laughter*) They were debated in the 1850s and came into fruition in the 1860s.

Members: Hear, hear.

Mr Cannan: The process has been long and slow, but it is time that we had a Legislative Council elected. It is time for this House to... or those, certainly, who came to this House with an election manifesto to have the Legislative Council elected. Let it be elected. Let the Legislative Council make amendments to the Bill; they cannot stop the Bill. They have

a timeframe in which to bring it back to this House.

I believe that, as has already been said, the sands of time for this House are beginning to run out. We are now on the second half of the term of office and I urge Members to be pragmatic, to put aside the small differences, look at the main picture. Elections to Legislative Council might not be perfect, might not be what you want, but at least it is a start and let us go forward.

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

Mr Braidwood: Thank you, Mr Speaker.

I have been pragmatic all the way along from this Bill by constantly voting against it! (*Interjections and laughter*) On 27th January, the mover of the Bill tried to introduce two new clauses, which lost.

Mr Speaker, I feel this Bill now is toothless. It should be resigned to the scrap heap. (**Members:** Hear, hear.) It should be like the dodo, dead. (**Members:** Hear, hear)

Mr Brown: What a way to talk about Martyn!

Mr Braidwood: Mr Speaker, I personally think, yes, the Legislative Council should be popularly elected, but not this way. We should all be on... if we go along that path, we should all be on an equal footing –

Mrs Cannell: Hear, hear.

Mr Cannan: Hear, hear. Well, that was my Bill.

Mr Braidwood: – and it was Mr Cannan's Bill and I supported that Bill of 16 two seats, but this way, where a Legislative Council of eight Members has the popularly elected of the whole vote in the Isle of Man against the Keys of 24 is not the way forward and I will be consistent, Mr Speaker, and vote against the Third Reading of this Bill.

Mrs Cannell: Hear, hear.

Mr Cretney: Very useful contribution. (*Laughter*)

The Speaker: Mover to reply.

Mr Quayle: Thank you, Mr Speaker.

I am grateful to the Hon. Member for Onchan, Mr Quirk, for seconding this Third Reading, and my grateful thanks to him and others who have been staunch and steadfast in their support (**A Member:** Hear, hear.) for this particular Bill. He made a number of points in that regard and I thank him for his appreciation of the efforts that have gone into bringing the Bill this far.

Mr Cannan, the Hon. Member for Michael: of course, he accepts that this is not perfect, and I would also say that this is not perfect, particularly when the missing clause is now out of it. There are so many people who will say this is not perfect legislation, and of course we strive to get the best that we can, (**A Member:** Hear, hear.) but, equally, Hon. Members would say... They seem to have a knack of saying, 'Well, we want an elected Legislative Council, but we don't want this particular model', (**Two Members:** Hear, hear) and then, when there is another model put forward, 'Well, we do want an elected Legislative Council, but we don't

want this particular model.' (A Member: Hear, hear.) And so it goes on, and so it has borne down on successive Houses of Keys for a generation or more. This is why this is such a crucial moment in history, that this represents, I believe, the last time, at least for another few years, before a popularly elected Legislative Council could be achieved.

I also would like to respond to the Hon. Member for East Douglas, Mr Braidwood, who, instead of being pragmatic, has actually been consistent in voting against it, and I respect him for that, but in terms of him mentioning that there were two new clauses that were not supported, by the narrowest of margins – I think it was a 12-12 vote –

Mr Braidwood: And 13-11.

Mr Quayle: And 13-11 was the other one.

A Member: Close, though.

Mr Quayle: Again, I should just mention the point that Hon. Members had one or two concerns. In seeking to address those concerns, those who then found that their concerns were addressed found fault then with why they still could not support it because of something else, so I think there was an air there of bluster and political manoeuvring to try and find a reason not to support the Bill, and that is why it failed by the narrowest of margins.

In terms of it being toothless, actually the main aspects of the Bill are all there. It is far from toothless! This legislation, if passed at Third Reading now, could go through to the Legislative Council, and I think the advice from the former Clerk, or Secretary to the House, was that while it would not be a perfect situation or entirely desirable, (*Laughter*) the fact was that the main parts of the Bill were intact and would allow for a popularly elected Legislative Council.

The reason it would be less than perfect would be that the old legislation that would have been repealed, had the previous clause been approved, would have allowed for all the legislation to have been repealed.

If this does not get altered by Legislative Council, it could still continue and make progress. So for all the reasons, Mr Speaker, that I have mentioned, I believe that it should be supported today.

I should also like to, finally, mention the fact that there would be the eight individual Members of Legislative Council elected by the people and all I would say is, if we look around us, there are 24 Members of the House of Keys who could, at any time, override the wishes of the elected Legislative Council. Not only that, this particular Chamber has the benefit of having the override mechanism, where it can impose its will on a far smaller number of people, being eight in number, in terms of those popularly elected legislative members.

So, Mr Speaker, with that, here we go with the Third Reading and we will be judged on this vote today.

The Speaker: Hon. Members, the motion is that set out in the Order Paper, that the Constitution Bill be read for the third time. Those in favour, say aye; against, no. The noes have it.

A division was called for and electronic voting resulted as follows:

FOR
Mr Quirk
Mr Anderson
Mr Quayle
Mr Teare
Mr Cannan
Mr Cregeen
Mr Henderson
Mr Malarkey
Mr Shimmin
Mr Cretney
Mr Watterson
Mr Gawne
The Speaker

AGAINST
Mr Earnshaw
Mr Brown
Mr Crookall
Mrs Craine
Mr Bell
Mrs Cannell
Mr Braidwood
Mr Corkish
Mr Gill

The Speaker: With 13 votes for, 9 votes against, the motion therefore carries.

Terrorism (Finance) Bill 2009 Third Reading approved

4.2. Mr Earnshaw to move:

That the Terrorism (Finance) Bill 2009 be read the third time and be sent to the Council.

The Speaker: Hon. Members, we now turn to the second of our Third Readings, the Terrorism (Finance) Bill, and I call on the Hon. Member for Onchan, Mr Earnshaw. (*Laughter and interjections*)

Mr Earnshaw, please.

Mr Earnshaw: Thank you, Mr Speaker.

I would like to thank Hon. Members for their input into the debate during the Second Reading and for their support for the Bill through the clauses stage last week, where amendments were agreed to insert a sunset clause into the Bill and provisions to grant statutory indemnity to the Financial Supervision Commission and the Insurance and Pensions Authority respectively.

To summarise what we have done so far, Mr Speaker, the main purpose of the Bill is to enable the Treasury to act where one or more of the following three concerns are met in relation to a person or persons engaging in regulated business.

First thing, the Financial Action Task Force has called for action to be taken against a country because of the risk of money laundering or terrorist financing.

Secondly, if the Treasury reasonably believes that a particular country poses a significant risk to the Island's national interest because of the risk of money laundering or terrorist financing.

Thirdly, the Treasury reasonably believes a country poses a risk to the Island's interests because of the production of nuclear, radiological, biological or chemical weapons or the facilitation of such developments.

If the Treasury is satisfied that one of these conditions is met, it may issue a direction to a person, a business or any class or description of regulated businesses, requiring them to perform certain duties or to cease trading with a certain person, business or country. The Department is aware business relationships involve contractual arrangements and so the Bill makes provision, in paragraph 11 of the schedule, for a licence which may be granted to a person, a business, or

persons or businesses, which may contain exemptions from specified provisions of a direction requiring a cessation or limitation of his or her or their business relationship with specified others.

Mr Speaker, I want to emphasise an important point made in my Second Reading speech, about the power given to Treasury to make directions, as this Bill is about the Island's national interests. It would not be in the Island's interests to issue directions to any business, person, or class of business, without being satisfied there are (a) pressing reasons for doing so and (b) there are no alternative means of securing the national interests of the Isle of Man.

Turning to some of the points raised during the clauses stage, I will start with the questions from the Hon. Member for Rushen, Mr Watterson, about provisions within the schedule. His first question related to the fact that power in paragraph 2 is limited to those business relationships with an element of duration. The response is that a single business transaction will be caught by the money laundering code and the guidance my Department has issued to all designated non professional businesses. In addition, in the case of other businesses licensed by the FSC, the IPA or the OFT, these will be caught under their guidance and code. I appreciate there is no cross-referencing to other 'Know Your Customer' legislation, but it does not affect the fundamental purpose of this Bill. Regulated businesses are required to comply with the anti-money-laundering requirements, whether terrorist related or not.

Mr Watterson's second question related to ongoing monitoring. In respect of any requirements for ongoing monitoring, the direction from the Treasury would incorporate, if it is necessary, the exact level of enhanced customer due diligence required in the particular case. In addition, clause 20 requires the Treasury to provide assistance to supervisory bodies, such as, for example, the FSC in the preparation of the guidance material they provide to the businesses they supervise in the regulated sector. Furthermore, subclauses (3) of clauses 9 and 12 provide for the enforcement authority – that is the FCU – or the court, as the case may be, to take into consideration any guidance material published by a supervisory body in determining whether or not a person or a business has failed to comply with the terms of a direction.

Mr Watterson's third query was in relation to the point about the keeping of up-to-date information and documentation. It is for the Treasury to set the terms and requirements of the direction for this, and for the body nominated by the Treasury to supervise or verify compliance by those persons or businesses for which the direction is issued.

Finally, Mr Watterson made an important point about control by Tynwald, as set out in part 3 of the schedule. The power to issue a direction by the Treasury is an administrative power which need only be set out in a notice in writing if directed at a specified individual or specified individuals. Where the direction is issued to a business or a class or a description of businesses in general, the direction must be contained within an order which shall be laid before Tynwald at the next available sitting after it has been made.

If an order limits a business or a class or a description of business in its or their trade with another business or country, or requires the cessation of a business relationship, then it must be laid before Tynwald soon after it has been made and must then be approved by Tynwald, or it shall

cease to have effect, so that Tynwald has control over those directions contained within an order which most severely affect a business or businesses, or if Tynwald is not otherwise being asked to get involved in the operation of the regulated business sector here.

Looking at clause 5 of the Bill, which concerned the right to seek entry to business premises without having first obtained a warrant, the Chief Minister pointed out last week that the information provided to the Hon. Member for Rushen, Mr Gill, showed the number of occasions similar legislation has been used is very small, which would suggest the powers provided are not being abused. I think his colleague, the Member for Rushen, is mistaken in the view he expressed that the provision is useless.

As Mr Malarkey, the Hon. Member for Douglas South, said, it is a judgement call on the part of the enforcement authority as to whether or not they seek entry with or without a warrant. In my mind, a lot may be gained by the softly-softly approach of an enforcement officer visiting premises and asking if they may come in, see the business at work and inspect documents, citing, if necessary, clause 5 of the Bill. If the business co-operates without fuss, the enforcement authority will have obtained the information it required and that may be the end of the matter. It is surely better, though, for a business operating legitimately to permit entry and inspection by the enforcement authority, rather than requiring it to obtain a warrant.

It must be remembered the enforcement authority may only visit premises used as, or by, a business and only if the information or documents sought are reasonably required in connection with functions conferred under this Bill. If the enforcement authority does not receive the appropriate assistance, or is obstructed in any way, they will then have to obtain a warrant and gain entry that way. In so doing, it may well indicate to the enforcement authority there is an issue with this business, or the particular premises specified as the premises from which the business operates, which requires full investigation.

In relation to the questions about the use of a civil penalty rather than a criminal prosecution, this is a matter for the enforcement authority to determine. However, factors to be taken into consideration would include whether the failure to comply with the direction is relatively minor and a first offence, or so serious that only a criminal prosecution would be appropriate. Does the offence merit a criminal conviction? If not, then a civil penalty should be imposed. It should be noted that a civil penalty can only be of such amount as the enforcement authority considers effective, proportionate and dissuasive. The civil penalty may be seen as a significant deterrent in itself.

In relation to the question the Hon. Member, Mr Watterson, raised in respect of clause 15 and the time limit for bringing prosecutions, the limit of three years is in line with civil legislation enacted in the United Kingdom and there did not appear to be any reasons to provide for a different period of time. This question, as to the compliance of this Bill with Human Rights is an issue that has been considered carefully, taking into account the need to protect the rights of the individual or business and also the long-term, as well as the short-term, security of all the people of the Isle of Man.

This Bill seeks to address the threat of terrorism posed by tackling the finance needed by such persons to carry out their intentions against innocent people, whilst complying with the European Convention on Human Rights.

Finally, the Hon. Member for Rushen, Mr Watterson, asked about the appointment of a special advocate. Two points: firstly, the special advocate would need to be a person who has received the appropriate level of security clearance. Secondly, the special advocate's role is to ensure the court hearing an application to set aside financial restrictions follows correct procedure in terms of the law, rules of court and Human Rights issues, but is not otherwise there to represent any party. I therefore do not see that it would be necessarily appropriate to keep such a person's identity secret.

Mr Speaker, I think and I hope I have addressed the points raised during the clauses stage. I would like to thank my seconder, Mr Crookall, from the previous week (*Laughter*) – I didn't spot that when I checked it! I hope he will be again – the Chief Minister, Mr Malarkey and the Hon. Member for Douglas North, Mr Henderson, for their specific support at the clauses stage.

Mr Speaker, I commend the Bill to the House of Keys, and beg to move the Third Reading of the Terrorism (Finance) Bill 2009.

The Speaker: Hon. Member for Peel, Mr Crookall.

Mr Crookall: Thank you, Mr Speaker.
I beg to second and reserve my remarks.

The Speaker: Mr Watterson.

Mr Watterson: Only to rise to thank the Minister for taking the time to go through the detailed queries that I put to him at clauses stage, with apologies for not giving him a bit more advance notice on them. But thank you, nonetheless, for his assistance.

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

Mr Gill: Thank you.

Just to pick up on the point that the mover made about clause 5 and the purported power it has. Actually, let us face facts here: it does not have any power. If a business owner or person on the premises declines to afford anybody the entrance, it is not that person's judgement call, as we have heard. They have not got a judgement call, and there is no offence committed by refusing entry. It completely undermines the point.

But what we are enshrining is a lack of accountability in enforcement officers, requiring them to satisfy a magistrate or a Deemster to obtain a search warrant. They still have to do it, if the person... I would think it is quite reasonable to say you have got justification to come in. It is not your judgement call; it is that of a judicial officer and I would not infer any wrongdoing on anybody who maintained that civil liberty.

What we are doing by voting for that clause... and that is lost; I was in a small minority. What we are actually doing is a big tick on the checklist of a police state. Let us not pretend to ourselves any differently. It is not a judgement call of officers about how much power they should exert; it is those people who hold them to account. This Bill, unfortunately... as we have seen elsewhere, and the fact that it is not abused elsewhere is not the point. The point is we are making a

call: should we allow enforcement officers to enter premises without a warrant? Yes, we are saying we will. I think that is wrong and I have made that point.

Overall, the Bill is quite right and I do commend the Government for saying we will move our own legislation, as I said previously.

Finally, I very much commend the Chief Minister for convincing his erstwhile sceptical friends of the wisdom and the right to move to introduce a sunset clause. I hope that will continue to be the norm for all anti-terrorism legislation: perhaps the mover, as Home Affairs Minister, in summing up, could confirm that is the policy of his Department – and if not, why not.

The Speaker: I call on the mover to reply. Mr Earnshaw.

Mr Earnshaw: Briefly, thank you very much, Mr Speaker.

I would like to, first of all, thank my seconder, Mr Crookall, again.

The Hon. Member for Rushen, Mr Watterson: I am pleased we were able to satisfy his concerns regarding this, as a fair bit of work... We were not able to catch up with him, unfortunately, this last week – I think he has been off the Island – but I am pleased that we have been able to do that.

My friend, the Hon. Member for Rushen, Mr Gill, is not giving up on clause 5. I admire his determination in that respect but we will have to agree to disagree, I think, on that one. I am quite comfortable, and I think other Members are as well, regarding the sunset clause. I would not like to give any future commitments regarding that. We have done what we have done so far. I am pleased that that has satisfied him. It is something we may have to review in the future, so I do not want to box myself off by making a firm commitment in that respect.

With that, I would like to close, Mr Speaker, if I may, by thanking Members for their support regarding this Bill, and for the support of the officers. There is a lot of hard work gone into this. It has been a tricky Bill to frame in a short period of time. A massive amount of work went in with the Attorney General's Chambers, officers of the Chief Secretary's Office and the legislative office in my own Department, and I am very grateful to them for that. I cannot name everybody because I will probably miss somebody out, but there were seven or eight officers at least who were involved with that pretty closely and they have worked very hard, so I do thank them.

With that, Mr Speaker, I beg to move the Third Reading.

The Speaker: The motion is that the Terrorism (Finance) Bill be read for the third time. All those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, that concludes the business of the House today. The House will now stand adjourned until 10 o'clock on Tuesday 12th May in this Chamber.

Thank you, Hon. Members.

The House adjourned at 11.10 a.m.