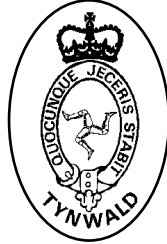


PP137/07



**FIRST REPORT OF THE SCRUTINY
COMMITTEE FOR THE SESSION 2007-08**

TYNWALD SCRUTINY COMMITTEE

Mrs B J Cannell MHK (Douglas East)
(Chairman)

Mr R P Braidwood MHK (Douglas East)

Mrs P M Crowe MLC

Mr E G Lowey MLC

Mr W M Malarkey MHK (Douglas South)

The remit of the Scrutiny Committee is to

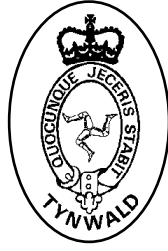
- (a) consider -
 - i. items of approved or rejected secondary legislation which have been referred by Members; and
 - ii. other items of secondary legislation as the Committee sees fit; andreport to Tynwald as and when the Committee sees fit.

- (b)
 - i. examine the Annual Tynwald Policy Decisions Report and consider whether the action taken has adequately responded to Tynwald resolutions,
 - ii. consider whether any of the Tynwald Resolutions which have not been fully implemented are appropriate for removal from the list; and
 - iii. lay an Annual Report before Tynwald, with recommendations for action where appropriate.

The powers, privileges and immunities relating to the work of a committee of Tynwald are those conferred by sections 3 and 4 of the Tynwald Proceedings Act 1876, sections 1 to 4 of the Privileges of Tynwald (Publications) Act 1973 and sections 2 to 4 of the Tynwald Proceedings Act 1984.

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All correspondence with regard to this Report should be addressed to the Clerk of Tynwald, Legislative Buildings, Finch Road, Douglas IM1 3PW.



**To The Honourable Noel Q Cringle, President of
Tynwald, and the Honourable Members of the
Council and Keys in Tynwald assembled.**

**FIRST REPORT OF THE SCRUTINY COMMITTEE FOR THE
SESSION 2007-08**

Introduction

- 1 Your Committee were elected at the sitting of Tynwald Court in January 2007, and this is accordingly our first annual report.
- 2 We have so far met on four occasions, though on several other occasions provisional meeting times have been set to allow a quick response to references regarding Orders or Regulations made during sittings of Tynwald, when it appeared that such references were likely. In the event, only two references of this kind have been made to us, neither in the context of a sitting of Tynwald.
- 3 The Committee's principal business has therefore been in the review of the Tynwald Policy Decisions Reports for 2006 and 2007. Since there is a number of issues common to both years, we deal with both of the Reports together.

Tynwald Policy Decisions Reports 2006 & 2007

(i) Tax Enforcement

- 4 In the Report of the Select Committee on the Petition for Redress of Grievance of Leslie and Winifred Cook, made to Tynwald in October 2005, recommendations were made that both the Customs & Excise Division and the Income Tax Division should take measures designed to enhance the enforcement of tax legislation.
- 5 We noted the Government's description of the action taken – item 02/05 of the 2006 Report - which we judged broadly satisfactory, but we were concerned at reports which reached us that there had been no contested appeals reaching the VAT & Duties Tribunal in the Isle of Man for more than a decade. We were disturbed that the apparent absence of such litigation in the Island could suggest an excessively lenient or undemanding attitude by Customs & Excise towards taxpayers. Enquiry was therefore made of the Collector of Customs & Excise about this position.
- 6 In the first instance, your Committee were supplied with information on the cases where there had been an initial appeal lodged, but the matter had not proceeded to a hearing. Because it might be possible for individual taxpayers to be identified in this context, we make no more detailed reference to this evidence than to say that we are satisfied that the reasons given for these appeals not proceeding to a hearing appear to be satisfactory.
- 7 The Collector, however, pointed us to further more general reasons why an initially contested tax assessment might not proceed to a full appeal or to a hearing. The first of these was the adoption in the Island of the practice used in the United Kingdom of the issue of a pre-assessment letter, explaining why an assessment was being made.

8 In this connection, the Collector observed:

“Some businesses, especially the smaller ones, can experience some difficulty in grasping immediately the explanation for an assessment given during the assurance visit [to the business] itself. Where this is the case, the pre-assessment letter acts as a useful aid for the trader and I believe projects a professional image of the Division.”¹

9 The second reason given in the same letter was that, unlike in the United Kingdom, the Douglas office represents a local office, and Customs & Excise here actively encourage business people to call in to discuss their plans, problems or disputes. But the Collector added that:

“The sittings and apparent availability of the Tribunal and the inevitable time lapse between appeals being made and heard, which can in some circumstances be over a year, act almost like an enforced cooling off period, and some of our prospective appeals have been settled/withdrawn”.

10 We therefore asked the Collector for further details of this problem. The reply on his behalf was that appeals to the VAT & Duties Tribunal in the Isle of Man are handled by the United Kingdom Courts Service Tribunal Centre in Manchester. The reply continued:

“The [Manchester] Tribunal Centre is responsible for arranging and scheduling hearings in the Island. There is no regular schedule, and the Tribunal prefers, given the cost and inconvenience of holding hearings here, to arrange hearings of more than one appeal. Straightforward directions may be given without a hearing, if not opposed. Furthermore, a Chairman [of the Tribunal] may issue a direction on procedural matters from Manchester without a hearing.”²

¹ Letter of 19th March 2007.

² Letter of 8th November 2007.

- 11 The Collector added that in 2002, following representations made by the Customs & Excise Division, it was agreed with the Lord Chancellor's Department and the United Kingdom Courts Service that the Manchester Tribunal Centre manager would be personally responsible for Isle of Man appeals, and an undertaking was received that Isle of Man appeals would be scheduled for hearing as soon as practicable.
- 12 This information has left your Committee with the uncomfortable impression that the mechanism for resolving indirect tax disputes in the Isle of Man is liable to be distorted by considerations of "*cost and inconvenience*"³ in so far as the United Kingdom Courts Service is concerned. The figures given to us by the Customs & Excise Division show that, since 1985, some 50 appeals have been received in the Isle of Man and, since the turn of the century, they have run at approximately six a year.
- 13 Whether this built-in discouragement to a rapid resolution of disputes works in practice to the advantage of the taxpayer, or of Customs & Excise, must be uncertain, but we do not see that it is satisfactory in principle for a significant part of the judicial system in the Isle of Man to be dependent on administrative convenience in the United Kingdom.
- 14 We bear in mind, moreover, that the correct working of the indirect tax administration is of major significance to the Treasury, and that business taxpayers in particular need the assurance that matters of dispute can be dealt with by independent and timely arbitration.

³ Letter of 8th November 2007.

- 15 It is to be noted that there are, as we are told, no *"specific time limits for appeals to be heard"*⁴ contained in the Rules of the VAT & Duties Tribunal, which offers no incentive to overcome the evident tendency to delay which seems to be inherent in the present arrangements.
- 16 **We therefore recommend that the Treasury should review the adequacy of the appeals system for the indirect taxes, and report their findings to Tynwald in the Government's 2008 Policy Decisions Report.**

(ii) Manx National Heritage

- 17 A resolution was passed by Tynwald in July 2006 calling upon the Council of Ministers to review the statutes and constitution governing Manx National Heritage, in order that that organisation *"becomes more accountable to this Honourable Court"*.

- 18 In the 2006 Report, at item 40/06, the Government stated that:

"A supplementary report [to the Scope and Structure of Government Committee's Report] dealing separately with the constitution and accountability of Manx National Heritage will be produced in the near future".

- 19 The 2007 Report stated that a supplementary report was duly put to Tynwald in November 2006, as a result of which a working party chaired by Hon Anne Craine MHK was established in February 2007, and was expected to report to the Council of Ministers by December 2007.

- 20 Meanwhile, the Government's Strategic Plan 2007-11 submitted to Tynwald in October 2007 seemingly anticipated this deadline, and the decisions to be taken following the report of the working party, by referring (at page 14) to there being already

⁴ Letter of 8th November 2007.

an intention to establish responsibility for matters of culture and heritage in a Department. The Chief Secretary subsequently explained this apparent inconsistency by saying that:

“The working party will be reporting to the Council of Ministers when it has completed its work (now anticipated as being Spring 2008). Any discrepancy here can be attributed to the change in Administration from 2006 to 2007.”⁵

- 21 We draw attention to the slow progress made in implementing Tynwald’s resolution of July 2006 on Manx National Heritage.
- 22 **We recommend that the Council of Ministers report to Tynwald no later than July 2008 on the proposed revisions to the statutes and constitution of Manx National Heritage.**

(iii) Car Parking

- 23 The Economic Initiatives Committee reported to Tynwald in July 2006 recommending that both the Treasury and the Council of Minister should report to the Court by December 2006 on two matters to do with car parking, namely the extent to which the General Development Fund could be made available for the construction of out-of-Douglas car parking facilities, and the possibility of introducing budgetary provision for deficiency payments to local authorities for the funding of such facilities – see item 38/06 in the 2006 and 2007 Policy Decisions Reports.
- 24 A report was duly made to Tynwald in December 2006 by the Treasury covering both matters, but the resolution to approve it was extended by adding a requirement that the Department of Transport should make a report to the March 2007 sitting on their discussions with local authorities, the proposals by then agreed with them and the timetable for their implementation. It was pointed out in the debate that this timetable was very tight, and no report was in the event made by March 2007.

⁵ Letter of 19th November 2007

- 25 The 2007 Policy Decisions Report at item 54/06, however, **incorrectly promised** that a Report by the Department of Transport would be laid before Tynwald in October 2007, which the Chief Secretary now says is not the case. In fact, a statement on the discussions with local authorities was made to Tynwald in April 2007.
- 26 That statement disclosed that discussions with Ramsey Commissioners had resulted in the Department of Transport obtaining Treasury concurrence to proceed with the design stage of an integrated transport interchange and multi-story car park for the town. In the case of Castletown, the Minister stated that a requirement for an additional 64 car parking spaces at Farrant's Way for public use had been included in a planning approval for development.
- 27 In Peel, the statement indicated that discussions had resulted in an agreed initial strategy involving the refurbishment of the four existing car parks. Beyond that, it added only that the Department indicated to the Commissioners, in November 2006, that it would also be prepared to look at funding a feasibility study to cover future off-street car parking needs including, if justified, potential multi-storey car parking associated with the overall regeneration of Peel.
- 28 It appears therefore that satisfactory progress is in general being made with regard to out-of-Douglas car parking facilities.
- 29 **We recommend, however, that a further statement on the position in relation to longer-term car parking plans for Peel should be made by the Minister for Transport by the end of July 2008.**

(iv) Nursing Care in Nursing Homes

30 At item 14/07 of the 2007 Report, it was stated that the Department of Health and Social Security was continuing to explore options as to how provision of free nursing care to those resident in nursing homes could be funded, pursuant to the principle in the *Coughlan* judgment. Your Committee therefore asked the Chief Secretary to clarify the timescale in which developments were expected to occur, and the extent of nursing care to be provided in residential homes.

31 In reply, the Chief Secretary said:

“Provision has been made within the forthcoming Social Services Bill for the introduction of free nursing care. The definition of nursing care for this purpose is that care which could only be delivered by a registered nurse or health care professional, as defined in section 40 of the National Health Service Act 2001. In effect, this would only refer to specialist care or procedures and not general care. This will be subject to professional assessment that such care is required. This will be introduced as soon as funds can be made available to the Department for this purpose, and it is presently intended to phase in the payments over a three year period.”⁶

32 **Your Committee see this as an important clarification of an unacceptably vague statement in the 2007 Report.**

Regulation of Surveillance (Prescription of Offices, Ranks & Positions) (Amendment) Order 2007

33 This Order was approved by Tynwald in July 2003. The Hon Member for Onchan, Mr Karran, unsuccessfully moved its reference to your Committee at that sitting, but subsequently (as he was entitled to do) referred it to us by letter dated 23rd July 2007.

⁶ Letter of 6th December 2007

34 In his letter of reference dated 23rd July 2007, Mr Karran said:

"I am deeply concerned over the issue of extending powers as far as regulations of surveillance to senior civil servants together with great concerns when people make stupid statements that 'they can do what they like now' – this is not the case and it is a criminal offence to bug somebody without the power to do so. ... I do hope the Committee will look into this and will not just accept this and 'nod it through' "

35 Your Committee took this reference as one in which the Member was concerned that the levels of the officers who could authorise surveillance were too low. We therefore undertook a very thorough comparison of the official levels at which the same or similar acts of surveillance could be authorised in the Isle of Man, the United Kingdom, Northern Ireland and Scotland.

36 Our detailed survey, which is at Annex 1 to this Report, found that variances in surveillance authorisations within the United Kingdom made direct comparisons problematic. **However, it was clear to us that the Isle of Man appeared to have adopted a conservative approach to the allocation of surveillance authorisations, and that there was no case in which surveillance could be authorised in the Isle of Man at a lower level of official than in the three comparator jurisdictions we had considered.**

37 In addition to that, oversight of authorisation can expect to be strengthened with the appointment of a Deputy Surveillance Commissioner in 2007-2008. The first full Surveillance Commissioner's report, to be laid before Tynwald in early 2008, will provide an insight into the use of the relevant legislation to date. Continued attention to adequate staff training and management, the monitoring of changes in legislation, and any impact new technologies may have on existing legislation will also prove important.

38 The substance of these conclusions was conveyed to the Hon Member referring the matter, and he was asked whether there were any specific objections to the Order he wished to raise, but he expressed himself satisfied that the Committee had reviewed the matter in depth and had come to the conclusions that they had – see paragraph 36 above.

**Borough of Douglas Parking Places (Consolidation) (Amendment)
(No 2) Order 2006**

39 This Order, which appears at Annex 2 to this Report, was referred to your Committee by the Hon Member for Onchan, Mr Quirk. It governs parking in the bay immediately adjacent to the Legislative Buildings in Stanley Mount and, as will be seen, it restricts parking as follows:

“A permit issued by Government Offices must be displayed at all times.”

40 The Order was made by the Minister of Transport, and enquiries were therefore made of that Department as to what “Government Offices” meant, and as to who was issuing the permits.

41 The Director of Highways replied to us admitting that the term “Government Offices” was not defined, but saying that:

“Parking in the two parking places at the rear of Government Offices is provided solely for use by ‘service vehicles’ with a ‘permit’ issued by the Government Offices caretaker”.⁷

⁷ Letter of 2nd November 2007.

42 The Chief Executive of the Department of Local Government and the Environment, told us that:

“The Department of Transport provides the Estates Office [name of official] this Department with a number of permits for contractors. These are then given to the caretaker of Government Office [sic] who can be contacted through the Government Office Reception.”⁸

43 Your Committee do not see this Order as an example of best practice or of good drafting, and it may well be unenforceable. The use of a term such as “Government Offices” (especially in the plural) is inadequate, since the term could quite fairly be taken to mean either the Central Government Office in Buck’s Road, or any of the offices of the various Departments or Boards of Government, and (incorrectly) the Tynwald Office.

44 It should be remembered that although parking Orders do not have to be approved by Tynwald, they are nonetheless pieces of public legislation which should be intelligible, not merely to the officials who have drafted them, but to the public who are bound by them. Moreover, the intention of the Minister of Transport is clearly that permits should only be issued to tradesmen attending to work within the public buildings nearby.

45 In response to comment that this is not clear to a member of the public from the wording of the Order, the Director of Highways replied to us that:

“The public don’t need to be informed as they may not use these parking spaces”.⁹

46 That response is, in your Committee’s view, very inappropriate: if it is intended that only works vehicles should be permitted to use the spaces, the Order should say so in terms. In summary, our assessment of this Order is that it is badly drafted, opaque, of doubtful legality, and that it should be replaced.

⁸ Letter of 8th November 2007.

⁹ Letter of 20th November 2007

47 **We accordingly recommend that the Borough of Douglas Parking Places (Consolidation) (Amendment) (No 2) Order 2006 be revoked and replaced by an Order which says plainly what is intended.**

Petitions for Redress of Grievance

48 The Hon Member for Onchan, Mr Karran, also referred to us a letter of complaint from a constituent regarding the small number of Petitions for Redress of grievance presented at St John's on Tynwald Day which are, in the event 'picked up' by Members and made the subject of investigation by a select committee. The issue was clearly outside our remit, and we were obliged to reply to the referring Member to that effect.

Answers to letters

49 We have noted, in the course of our investigations, that the Government's normal target of 10 days¹⁰ for responses to letters seeking information is not always being met, and we draw attention to the importance of the Civil Service adhering to this discipline.

Recommendations

50 **Your Committee recommend-**

(i) that the Treasury should review the adequacy of the appeals system for the indirect taxes, and report their findings to Tynwald in the Government's 2008 Policy Decisions Report (para 16);

(ii) that the Council of Ministers report to Tynwald no later than July 2008 on the proposed revisions to the statutes and constitution of Manx National Heritage (para 22);

¹⁰ Code of Practice on Access to Government Information, paragraph 5.

(iii) that a further statement on the position in relation to longer-term car parking plans for Peel should be made by the Minister for Transport by the end of July 2008 (para 29);

(iv) that the Borough of Douglas Parking Places (Consolidation) (Amendment) (No 2) Order 2006 be revoked and replaced by an Order which says plainly what is intended (para 47);

B J Cannell (Chairman)

R P Braidwood

E G Lowey

W M Malarkey

December 2007

ANNEX 1

Comparison of levels of surveillance authorisation

ANNEX 2

Borough of Douglas Parking Places (Consolidation) (Amendment) (No 2) Order 2006

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