



TYNWALD COURT OFFICIAL REPORT

**RECORTYS OIKOIL
QUAIYL TINVAAL**

PROCEEDINGS

DAALTYN

(HANSARD)

STANDING COMMITTEE OF TYNWALD ON CONSTITUTIONAL MATTERS

**BING VEAYN TINVAAL MYCHIONE
COOISHYN Y REILL-CHEEREY**

Douglas, Monday, 2nd November 2009

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Members Present:

Chairman: The Speaker of the House of Keys (Hon. S C Rodan)
Mr R P Braidwood, MHK
Mr T M Crookall, MHK
Mr Q B Gill, MHK
Mr G M Quayle, MHK

Clerk:

Mr R I S Phillips, Clerk of Tynwald

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*The Committee adjourned for a short break
and resumed its sitting at 11.30 a.m., when Mr Gilbey was called.*

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Mr McDonald was called at 12.11 p.m.

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The Committee adjourned at 1.13 p.m.

Standing Committee of Tynwald on Constitutional Matters

*The Committee sat in public at 10.30 a.m.
in the Millennium Room,
Legislative Buildings, Douglas*

[MR SPEAKER *in the Chair*]

Procedural

The Chairman (The Speaker of the House of Keys, the Hon. S C Rodan): Good morning, everyone, and can I welcome you to this meeting of the Standing Committee of Tynwald on Constitutional Matters.

5 The Committee resolved in April to inquire into the proposed provisions of the Borders, Citizenship and Immigration Bill, which previously had, as part of its text, a clause amending the Immigration Act 1971, which would have potentially changed the right of travellers from the Isle of Man to enter the UK without a passport.

10 It reported its concerns to Tynwald in May and the Committee has also met with the Chief Minister and other officials privately. The Bill has now become law in the UK, but without the provision which caused this particular concern, both here and in the other Crown dependencies and elsewhere. Nevertheless, we understand that the United Kingdom Government plans to introduce provisions in the same terms as before, in a Bill to simplify immigration law in the UK.

15 We are meeting this morning to take our first oral evidence in public and we have invited Mr Tristram Llewellyn Jones, Mr Walter Gilbey and Mr Iain McDonald, the Data Protection Supervisor, to give oral evidence, and we have allocated 45 minutes to each witness. A further evidence session will take place on 16th November in public with the Chief Minister.

20 I would like to introduce my fellow members of the Committee. I am Steve Rodan, Chairman of the Committee. Mr Phillips, Clerk of Tynwald, is the Committee's Clerk. Mr Gill, Mr Crookall, Mr Braidwood and Mr Quayle are the other members of the Committee, and we have had apologies from Mr Corkish.

Mr Clive Alford is our *Hansard* Editor. He is recording this morning's proceedings, and if everyone would kindly ensure mobile phones are switched off we can avoid interference with the recording equipment.

25 Can I, at this stage, ask our first witness, Mr Llewellyn Jones, to come forward, please.
Good morning, Mr Llewellyn Jones.

Mr Llewellyn Jones: Good morning, Mr Chairman.

EVIDENCE OF MR T LLEWELLYN JONES

30 **Q1. The Chairman:** Thank you for accepting our invitation, and can I thank you also for the written evidence you have given to the Committee, which we have had a chance to examine.

I think the best way to start would be to invite you to make an opening statement and summarise, as you wish, the evidence and the particular points you would like to make to us, and then I will open up the questioning, if I may.

35 **Mr Llewellyn Jones:** Thank you, Mr Chairman.

Firstly, may I say that I do regard it as a privilege to be called to sit before a Committee of such a longstanding parliament, so thank you for inviting me.

I am a retired airline pilot and I have taken an interest in political issues arising initially out of my concerns about the United Kingdom Identity Cards Act and the potential that the Isle of Man might be embroiled. That is where I started, so I took an interest in political affairs and became aware of the e-borders issue. I saw that as a potential conduit by which the Isle of Man could get embroiled, in future, in identity card legislation.

The points about our freedom of movement resulting from Common Travel Area reform and e-borders concern me greatly, as I am British, I live in the British Isles and feel that I should be able to exercise my ancient right to travel across the islands unrestricted. So my enquiry into this has been extensive: following the debates in the House of Lords; reading the consultation papers; engaging in correspondence with my Member of the House of Keys, Mr Rodan, and the Chief Secretary's Office; and generally keeping abreast of all the issues.

Arising out of that is a range of concerns which really emanate from the extreme complexity of the issue that is put forward, that actually hides what is a very basic proposal, that the United Kingdom Border Agency should have the right to stop and search people and ask for documentation, really on the flimsiest of evidence, and that wish that the Border Agency should do that will have a lot of knock-on implications, which would become clear to the Island, if it were to become embroiled.

The matters relating to this are wide-ranging. They embrace constitutional issues, freedom of information, the structure of Government here, the use of personal data, and also bring in wide-ranging objections that have been made from a number of senior sources in the United Kingdom and in the EU, that the proposals do not actually fit with current law.

So that is the basis of my concern. I am now up to date with the clause 99 in the Crime and Policing Bill that is currently proceeding through the House of Lords and I gather will reach its final report stage this Thursday, 5th November.

That completes my statement.

Q2. The Chairman: Thank you very much, Mr Llewellyn Jones.

There are two broad areas we are looking at, as a Committee. There is the reform, so-called, of the Common Travel Area, and the issue of continued freedom of travel within the Common Travel Area – the Republic of Ireland, the UK and the Crown dependencies – in the traditional way without a passport or identity or document checks. Then there is the second issue of the common external border and the e-borders ring of security, which involves the collection and sharing of data on passengers entering the Crown dependencies, for example, from outside of the UK, so that the islands are included with that common system.

So perhaps starting with the broader e-borders issue first, do you think that the Isle of Man and other Crown dependencies should take part in the e-borders programme; and if not, what alternative arrangements do you think should be in place?

Mr Llewellyn Jones: I think there is a need for the United Kingdom to count people in and out of the external border, as a check – that is numbers coming in, numbers coming out. That arises because the Conservative Government ceased to do that some years ago, which has led to difficulties of immigration. So *per se*, to have a check of people coming in and out of the country is entirely reasonable and, as regards the Isle of Man, to have an external border – for example, a flight coming from Majorca to the airport at Ronaldsway – would be an immigration issue, so those people should be counted *in* to the British Isles, to the Common Travel Area, because they are crossing an external border. That in itself – the counting of people based on the passport data – does not present a significant issue. It is of practical use and would not, *per se*, concern me.

What does concern me, and concerns rights organisations, is the extended proposals to process additional personal data and to store it for 10 years, and the purposes for which the British Government intend to use that data.

Q3. The Chairman: So in principle you support the Isle of Man's participation in the e-borders system, so that we can play our part, in terms of security beyond the Common Travel Area.

Mr Llewellyn Jones: I do not support the participation of the Isle of Man or the UK in the e-borders programme that is proposed at the moment, because of the extensive data collection proposals – the proposals to collect all the booking data, which includes telephone number, credit card number, e-mail address and computer ID address – and for that information to be used to process effectively an electronic visa.

So that is the principal objection. It is the ability of the UK Border Agency to process this data, to drill down and to then use it as a kind of electronic exit or entry visa.

100 **Q4. The Chairman:** Is your concern, then, the extent of the collection of the data that the UK Government is intending, that is going beyond that which the European Commission in a framework decision following 9/11, and the new regimes for collection and sharing of data for international travel...? Is your issue the amount of data that the UK is collecting, the period being disproportionate, and the use to which that data might be put with third parties, rather than the principle itself of having basic passenger name records?

105 **Mr Llewellyn Jones:** We have to look at two distinct pieces of data. There is the passport data, which is contained in the machine-readable zone, which I gather is five pieces of data – your name, date of birth, passport number, sex, etc. That is one set of data, which in itself does not present a problem.

110 The additional data is what is called the passenger name record, which is the information that you supply to the airline or the ferry company, or indeed the holiday tour company, which could be quite extensive, and as I say, the provision and collection of e-mail address, computer address, credit card data, telephone number, allow the Border Agency with its powers, if they have an interest in you, to start drilling down and conduct a deeper investigation.

115 This leads to an issue of profiling, and this is what is so fundamentally difficult and objectionable to the e-borders scheme: they plan to use the data to pre-assess your travel movement and then grant permission to travel – an authority to travel, so-called. So in other words, your data would go in advance to the UK borders operational centre being created in Wythenshawe in Manchester, and you would be electronically screened. At the gate, when you swipe your identity document or passport, that is when you would learn whether your authority to travel has been confirmed.

120 **Q5. The Chairman:** In terms of striking a balance between the need for security against criminal or terrorist threats and the right to free travel, where do you think the correct balance should be struck, in terms of the legitimate need to have information about a passenger who is crossing a border and the potential use of data to track that person once they cross the border? You have talked about mining of information. Presumably you would include in that concern issues to do with length of residency in the Isle of Man.

130 **Mr Llewellyn Jones:** The balance... If I can describe the issue as maybe what is known as the Sir Humphrey thing: 'I need to look at everything, to know whether I need to look at it or not.' The data collection proposals are excessive, and that is a point that has been made by the European Data Protection Supervisor and, as a result of the Article 29 Working Party, by the UK Information Commissioner. It is also a point that is understood by the United States. For their own internal citizens, they had to withdraw the use of passenger data, after considerable pressure from their own civil liberties organisations. So the United States itself, which you might regard as the key sensitive state in this issue, actually was not able to progress passenger profiling for its own citizens, because it was deemed excessive.

140 To sum up how this can affect individuals excessively, the European Data Protection Supervisor said that it is difficult for an individual to defend him or herself against profiling, because decisions on one individual might be taken using as a reference, at least partially, patterns derived from the data of other individuals, and it is extremely difficult for individuals to defend themselves against such decisions.

145 At that point, that is where I would say the proposals are excessive. What we require of our security services is clever policing, to focus their resources at the target group, not to have a 100-per-cent *carte blanche* data set from which to trawl information, because it oversteps the mark on civil liberties because of the creation of false positives of the bulk of people who would be stopped unnecessarily, needlessly and will create an enormous amount of work for police time, to no potential use.

150 **Q6. The Chairman:** As the other side in debate at Westminster put it, if you have five Mr Smiths crossing a border, you are going to have to inconvenience, unfortunately, four of them to find out if you have got the right Mr Smith that you are trying to track.

155 **Mr Llewellyn Jones:** Yes, they say things like that but, to my knowledge, they have never caught a potential terrorist through the use of this data-mining technique, because necessarily,

160 somebody who is really seeking to hide a problem will simply adopt a normal profile. The 9/11 terrorists, in their data, were acting normally. They were fully documented people. So there is a big argument that this type of activity would not have stopped the Madrid bombers or the 9/11 terrorists, so we have to ask what the justification for it is.

165 **Q7. The Chairman:** This is my final question on this issue: if the regime for data collection by the UK Government was made to comply with the norms and the standards elsewhere, where the information sought was not excessive, there were safeguards against data mining, if it was a requirement for the carriers to supply the data to government, rather than giving government the power to demand and extract all sorts of data from the carriers... If, in other words, the UK system was not deemed excessive and disproportionate, and complied with US and EU standards, would that allay your concerns and consequently allay what concerns you might have in respect of the
170 Isle of Man's engagement in data protection issues?

Mr Llewellyn Jones: I would have no problem with a system similar to that used in America for its own citizens, of passenger watch lists: where they have a known suspect travelling, there is an all-ports watch that a dangerous individual might be crossing through that port and that allows
175 that individual to be detained at that point. That is fair and proportionate.

What they are doing goes beyond this, and it becomes increasingly hard to justify, in terms of practicality, because of the mass of data they are going to collect. I have heard arguments that the blanket collection of data is not necessarily something which the security services support, because it potentially makes their job harder. What they need to do is use their intelligence and
180 focus their resources at the target group, in the time-honoured fashion.

Q8. The Chairman: If numbers are to be counted in and out of the UK – as you said, you had no problems with that – if the Isle of Man was seen as a port of entry to the UK, we would have no option but to operate in the same UK system. We would not be able, would we, to operate to a
185 more desirable standard, as you would see it?

Mr Llewellyn Jones: In practical terms, Mr Chairman, if the security services think a terrorist is routing from Majorca to the Isle of Man, then they know that individual is coming and the passenger watch list takes care of that, but they have already known about that individual from
190 their wide-ranging other sources, rather than creating the suspicion from the travel data in the first case.

The Chairman: Thank you very much.
I turn to my colleagues: Mr Gill.

195 **Q9. Mr Gill:** Thank you.
Mr Llewellyn Jones, can I ask you what is your understanding by 'intelligence-led practice'?

Mr Llewellyn Jones: My understanding of intelligence-led practice comes from the report by the Northern Ireland Human Rights Commission on Operation Gull, where they ran a trial in
200 Belfast International Airport of stopping people, basically, for immigration reasons. That is a very interesting report to read because firstly, the reasons for stopping people appear to be entirely subjective. Somebody would be acting suspiciously, in the view of that Border Agency official. It could be they appeared to be an illegal immigrant, in terms of foreign accent or foreign colour, or
205 whatever.

So the idea of the intelligence-led control is very curious, because what is the intelligence-led control? If they know that individual is routing through a port, then they will make themselves apparent when they check in; or you are looking for somebody who is a known suspect and you have a photograph and you look for that individual in the terminal. But the intelligence-led patrol
210 seems to be something that is conflated with basically a gut suspicion of an individual in a port, and that has led to big problems.

Q10. Mr Gill: So, as a general rule, would you say it is potentially open to unaccountable misuse?
215

Mr Llewellyn Jones: Yes, and there was a case recently highlighted in Northern Ireland, where a doctor from a state in Africa was legitimately on a six-month visa in the UK. He made a journey into Belfast and, because of his skin colour and accent and other subjective matters, they took a

220 view that he might be trying to gain illegal entry into Southern Ireland, and that individual was detained and subsequently held in five different Border Agency detention centres, quite illegally.

225 **Q11. The Chairman:** Thank you. It is a problem though, would you not agree, that there is an issue of people – criminal groups, for example – getting people into one part of the Common Travel Area from where they can then, unhindered, travel to another part of the Common Travel Area? The point about Belfast is that with the Republic of Ireland and the UK, because of the common travel arrangements between the two at the moment, there is real potential for abuse there, and there is a hole that needs to be plugged somewhere.

230 **Mr Llewellyn Jones:** There is a different approach to this, and that is that the British and Irish Governments negotiate on a common visa application, and so a visa granted to an individual entering Southern Ireland means they have automatic entry into the rest of the UK and then vice versa, and then all this need or desire to check people for immigration purposes disappears.

235 That point has been made in the House of Lords and it is a very valid point. I would be interested to know if the visa rules between Ireland and the United Kingdom are significantly different anyway.

240 **Q12. The Chairman:** I understand that they are, for historical reasons – the traditional Commonwealth links with Africa, in the case of Britain, for example. You would then see that common visa adopted by the Republic of Ireland and the UK as a way of strengthening external security, without the need for internal Common Travel Area checks.

245 **Mr Llewellyn Jones:** It would satisfy a requirement that they could be relaxed about people crossing the very porous Northern Ireland-Southern Ireland border, but you have to stand back from the whole issue and look at the geographical nature of the British Isles. I believe Ireland has a coastline of 7,000 miles. It is a very porous border. The notion that you can fully protect a border by focusing electronic checks and controls at key points like the port of Heysham or the port of Birkenhead is specious.

250 It is already known that the drugs trade to the Isle of Man takes place on fast speedboats on calm nights. You cannot fully protect an external border. It is not realistic. There is only so much you can do. If it becomes a ring of electronic steel at every port then quite simply those who wish to traffic illegally in the UK can find many other ways of doing it.

255 For example, there is, I understand, a very popular tourist trade in yachts coming down from Scandinavia and using ports on the north-western seaboard of the United Kingdom. It is very porous, so it is not possible to fully protect a border.

The Chairman: Mr Quayle.

260 **Q13. Mr Quayle:** Just picking up on that point, thank you, Mr Chairman, if you are mentioning that it is a very porous border and impossible to protect it fully, you are almost suggesting we might as well not bother, in conjunction with the United Kingdom, to actually make sufficient controls where the vast majority of people are travelling in and out.

265 **Mr Llewellyn Jones:** No, because it is entirely reasonable and sensible to check people's passports as they come in and out of the country, because that is where the bulk of people travel.

Where is the balance to be struck? That is a very difficult question to answer; but it is not, again, practical for the UK to focus this issue so closely on this Island – the Isle of Man – when, for example, you could come across the English Channel to the Isle of Wight and hop on the ferry there. Why not an immigration check in the Isle of Wight?

270 **Q14. Mr Quayle:** I am not sure what arrangements they will have for the Isle of Wight –

Mr Llewellyn Jones: Well, probably none.

275 **Q15. Mr Quayle:** But if we are dealing particularly with the Isle of Man, I put it to you that the British Government will wish to ensure that its borders are as reasonable as is practicable to do so, to ensure that there is not a weakest link within the British Isles, and that is why they would be looking to the Isle of Man to be co-operative, to ensure that we are not a... that that weakest link –

The Clerk: A gateway.

280 **Mr Llewellyn Jones:** Yes, but there is a wider issue there. I am familiar with the theory of displacement, that if you make every single port secure bar one, then those who wish to infiltrate the borders will find the weakest link and flood through there. I would beg to suggest that in such a small place as the Isle of Man, if there was a surge of people moving through the port, we would notice it.

285 What I would like to do, if I may, is draw the Committee's attention to the evidence given to the Home Affairs Committee, in June, by a variety of representatives from the UK travel industry, about the actual problems they are having in implementing the UK e-borders system, and if you would allow me to just quote from them, you will see that we are actually up against a rather different problem than is necessarily being considered. Would I be able to do that, Mr Chairman?

290 **Q16. The Chairman:** Yes, by all means. What you are quoting from, was that within the written evidence that you supplied the Committee?

Mr Llewellyn Jones: No, it was not, Mr Chairman. This is subsequent to that.

295 The Home Affairs Committee examined the work of the UK Border Agency in June, and a Mr Reardon, who is from the Chamber of Shipping, extensively explained the problems that they are having at the main trunk route in and out of the UK, i.e. the Dover to Calais shipping route. He described the problems that he is having explaining the practical difficulties of the e-borders scheme to the Border Agency.

300 Some of the things he said to the Chairman, Mr Keith Vaz:

'A way is yet to be found of capturing that data when the coach arrives at the terminal without bringing the terminal to a halt. We have been looking at it for nearly four years and not found a way.'

305 What Mr Reardon is saying is that the bulk of cross-channel ferry traffic is on a turn-up-and-go basis on a coach. The coach is booked some weeks in advance. The passengers fill up almost to the last minute. If you were to stop and check every single passenger, you would bring the port of Dover to a halt. It is not possible to expedite the flow and, in his view, maintain the e-borders programme.

310 He further stated:

'... the rigid prescription which is designed to suit pedestrian travel at airports is proving very difficult to fit to the very different environment of vehicle traffic of ferries.'

315 And this is of June:

'We are still at the stage of trying to identify practical means of capturing this data.

320 ... there is the question of European law and whether what the UK is devising as its e-borders scheme is compatible with the Data Protection Directive, and indeed with the general rules of rights of free movement of European citizens within the EU. We see problems there – or, at least, we see questions there. We have referred that later point to the European Commission and received guidance from them that there is a problem.'

The European Commission:

325 'saw difficulties on three grounds: first that the Advanced Passenger Information Directive, which the Home Office cites as providing grounds for this, does not apply to travel between European Community countries, nor does it apply to travel other than by air, so it cannot provide a basis for the e-borders scheme's application to ferry travel; secondly, they [the European Commission] saw questions about the compatibility of the e-borders scheme with the Data Protection Directive; and, finally, they gave the opinion that making travel conditional upon providing a citizen's data in advance to a frontier control agency would be incompatible with the right of free movement.'

330

There was a representative from Thomson Airways, TUI Travel, who said:

335 'We have been led to believe that the Home Office had checked with all 27 Member States. It would appear that that check has only been happening in the last month, as different countries have raised data protection concerns.'

Finally, from Eurostar:

340 'We believe and the legal advice we have had is that it is not legal to export the sort of data required by e-borders within the EU and it is only legal to export that data outside of the EU. We have been waiting for a response from the Home Office to that question. Also, on the right to ask for passport information and the data that Mr Reardon set out in his evidence, it is not lawful for somebody who is not a law enforcement officer in France and Belgium to demand that data at the check-in process.'

345 Now, my point is that we are focusing on the Isle of Man, but the Home Affairs Committee
took in evidence that there is a wider problem with e-borders on the main trunk route in and out of
the UK, never mind the local difficulties that we might yet encounter.

350 **Q17. Mr Quayle:** Thanks for that. It really just links into the other point I have. You
mentioned earlier on about profiling and you saw it fundamentally as pre-assessing data ahead of
travel, and the first that anybody might know that they were going to be stopped from travel would
be if they turned up at the airport. Would you agree with that?

355 **Mr Llewellyn Jones:** Precisely. The system is that, essentially, it is a form of Home Office
electronic visa, where there is no actual immigration control requirement for a visa, and the data
would be sent to the terminal at the airport and you are asked to swipe your identity card or
passport, and it would simply flash up and alert that you have been denied travel.

360 **Q18. Mr Quayle:** But if somebody was seen as a particular threat or danger, they would not
presumably wait until somebody arrived at the airport; they would act in advance of that.

365 **Mr Llewellyn Jones:** Well, that is the simple notion of the watch list: that you simply put an
alert out to ports that an individual is going to travel, and when that individual checks into the
desk, then they are detained. But that is using information that is gained from a wide variety of
other sources, from the clever targeted policing that has historically been used.

370 **Q19. Mr Quayle:** And the final question, Mr Chairman, is: would you acknowledge that the
United Kingdom, having a permanent seat on the United Nations Security Council, and its
involvement on the world stage to a higher profile than many other nations, will therefore
probably look to have something more vigorous, in terms of security arrangements for the British
Isles and the United Kingdom in particular?

375 **Mr Llewellyn Jones:** On that I would be... I think it is worth noting what the Tory Party
position is, on the basis that we are likely to get a change of Government and finding a detailed
view from that party as to whether they actually are interested in counting all this background data
or whether they would be happy to default to the traditional watch list, so that is really beyond my
scope to answer.

380 **Q20. Mr Quayle:** They will still need the same Civil Service which is dealing with the
administration, and it could well be suggested that, if a Conservative Government comes in next
year, or before, then the indication is that they may very well, with the arrangements currently
being progressed by the Labour Government... that would carry on with the Conservatives.

385 **Mr Llewellyn Jones:** Well, I know that there are individuals within the Conservative Party like
Damian Green MP, for example, who had strong views about this type of issue, so I would expect
there to be some kind of political battle between the UK Civil Service wishing to progress this
Scheme, given that £1.2 billion has been invested in the Trusted Borders scheme, run by
Raytheon... There will be a Civil Service push and there will be a political difference of opinion,
and who am I to say how that will pan out?

390 **Mr Quayle:** Thank you.

395 **Q21. The Chairman:** At the end of the day, Mr Llewellyn Jones, whatever form the UK e-
borders system takes, there will be no option but that the Isle of Man has to comply and fit in.
There is no question of us being able to devise a system that has the features that we have been
talking about this morning and not the onerous features of the UK system. We have no option but
to comply, have we? So really a lot of this discussion boils down to the fact that there is not much
the Isle of Man can do about it, surely?

400 **Mr Llewellyn Jones:** The key arguments against the imposition of this type of scheme need to
be aired in the public domain and, to my mind, they can be aired equally in the Isle of Man or by
the Information Commission in the UK, or at EU level, or by the other Crown dependencies.

So I do not see why we should not have an equal voice in flagging up what are fundamental
Human Rights and data protection concerns, that arise within our existing laws.

405 **Q22. The Chairman:** Being driven by the UK.

Mr Llewellyn Jones: That is correct.

410 **The Chairman:** Yes. Thank you, you make that point clearly.

Q23. Mr Braidwood: So really, Mr Llewellyn Jones, the argument you are putting forward is that, basically, all the information is totally irrelevant, because of the problems associated – which you have gone through, such as from Dover–Calais – with EU legislation, and transmitting all the evidence which can be gathered or is supposed to be gathered in the EU, which cannot be, because
415 of the constitutional rights of the individual in Europe travelling to the UK.

Mr Llewellyn Jones: I am reporting that there are two issues. There are the legal issues about the collection of data which have been articulated by the European Data Protection Supervisor and the UK Information Commissioner, and there are the practical difficulties with complying with
420 this scheme that have been reported to the Home Affairs Committee. At the present stage, it does not seem that the UK Border Agency is any further down that road of actually overcoming the legal difficulties and implementing the practical measures. They are still at a difficult stage at the main trunk route into the British Isles.

425 **Q24. Mr Braidwood:** So it is unworkable; do you just feel that everything should be evidence-led?

Mr Llewellyn Jones: Yes. It is clear that there is a political push for this to happen that is ignoring the practicalities that have been flagged up as being very difficult in the Home Affairs
430 Committee.

What is going to be the outcome, where the port of Dover says, ‘We cannot physically check everybody’s passport going through the port’, and yet the Border Agency says, ‘But you must do this’?

435 **The Chairman:** Okay. I want to move on to the Common Travel Area now, but Mr Gill, you have a final point?

Q25. Mr Gill: Just briefly, Mr Speaker, is there any evidence to support your assertion about the fast speed boat drug importation argument?
440

Mr Llewellyn Jones: Well, no, that is anecdotal with the Isle of Man; but it makes the point that the British coastline is very porous.

Q26. The Chairman: Okay. Moving then from the e-borders issue, accepting that a lot of the detail on that and the form that will finally take is unclear, but we have well documented views
445 about what might happen, turning to the matter of reform of the Common Travel Area, you brought to the Committee’s attention, earlier in the year, the UK Borders, Citizenship and Immigration Bill and the particular clause within part 3, which would have amended the 1971 Immigration Act and would have given a legal basis for introducing fixed border controls between
450 the Republic of Ireland and the UK, but in doing that would also have created the legal basis for such controls between the Crown dependencies, the Isle of Man and the UK.

That clause was ultimately dropped from the Bill. The Bill is now law, but one of the safeguards that was negotiated during the passage of the Bill by the Isle of Man Government was a memorandum of understanding to make clear that there was no policy intention to have fixed
455 controls or checks of passports between the Isle of Man and the UK. Were you satisfied with that outcome and satisfied with the fact the memorandum of understanding had been developed to protect Isle of Man travellers?

Mr Llewellyn Jones: As an individual citizen, a memorandum of understanding does not satisfy me: firstly as I may not be able to see that memorandum of understanding – as a document, it may not be accessible under the Freedom of Information Act; and, secondly, because it was said
460 in the House of Lords that Parliament itself does not like memorandums of understanding.

Now, in my correspondence with the Chief Secretary’s Office, it is made quite plain that memorandums of understanding, like legislation, can be changed. So what I cannot see, I do not
465 know about, I cannot judge and I cannot debate in a vacuum.

Q27. The Chairman: As things stand at the present moment, the clause to bring in these changes to the Common Travel Area, motivated for checks between the Republic of Ireland and the UK – that is the real motivation – and stopping this loophole that we mentioned earlier, of foreigners entering one part of the Common Travel Area and being able to end up in another, that would be a perfectly worthy objective, would it not? What was being attempted here, to plug this loophole and the leakage within the Common Travel Area...?

Mr Llewellyn Jones: It is a worthy objective if you consider that it arises from different visa rules. If you are saying that somebody who has a visa to visit the United Kingdom, for example like the individual I mentioned from Africa, you do not want that individual to get into Ireland because his visa does not allow him to go there, then that is a reasonable check.

But then look what happens in practice. The nature of the United Kingdom, with its land border with Ireland, is that it is so porous, it cannot be policed. I believe there is an A-road which actually straddles the Northern Ireland border 17 times: you go in and out of the border. There is a pub where the border goes through the pub, so you can drink on a Sunday in one side, but not in the other. It is very, very local.

The practical way of doing that, of separating these two countries, is just not achievable without imposing onerous restrictions, coming up with false positives and arresting and detaining the wrong people. It is just not practical.

Q28. The Chairman: You refer to Operation Gull, which you say has given rise to Human Rights concerns to do with racial profiling. Is it the case there that there has been inappropriate use of legislation for detention purposes, detaining people on suspicion of breach of UK immigration rules, that in turn gives rise to Human Rights concerns and possible lack of legal advice being on hand? Do you have a concern that intelligence-led checks or random checks or spot checks could be abused in a similar way, if ultimately they were brought in with a reform of the Common Travel Area, as was being intended for travel between the UK and the Isle of Man? Do you think there was a danger inherent in that?

Mr Llewellyn Jones: There is a fundamental danger of that. There is a widespread concern about the rate of immigration in the UK, and it would be easy for that to spread to racial discrimination and profiling, and that has been the nature of the very extensive work that the Northern Ireland Human Rights Commission, a statutory body, has put forward. Their firm view is that it will lead to some form of racial profiling of the very basic level – ‘you’re brown; what are you doing here?’ – and without the safeguards, it is not possible to actually prevent that situation. The concern is that safeguards into these arrangements are not built in and there will be widespread abuse. The arrangements, the nature and the conduct of the UK Border Agency come in for *widespread* criticism, so it is a valid concern. It has been flagged up.

Q29. The Chairman: Well, anyway, it would appear to be off the agenda, because that particular clause was dropped from the Bill. We understand, though, that there is a longer-term intention to reintroduce it, to bring this legal change to the Immigration Act, through what is called the Immigration Simplification Bill.

Now, you referred earlier to clause 99, which is for a different piece of legislation, it is a policing Bill currently before the House of Lords. Could you just tell us what your concern is about clause 99, because it is not doing the same thing as the old clause 50 to the Borders Bill.

Mr Llewellyn Jones: Well, my concern about clause 99 is that it is a power being used for customs purposes that could be conflated with a power for immigration purposes because, quite simply, a Border Agency official is also a customs official. So what they are asking or suggesting a customs official does is to stop an individual and inspect their travel documentation and ask them questions for a customs reason, and then if they find that individual is in default of immigration rules, they are supposed not to share it with themselves.

This is a nonsense. You have one man with one hat; you cannot have one man wearing two hats. It is a default power to circumvent the opposition to Common Travel Area reform that was in the Lords earlier in the year, and that is my position on it.

The Lords position on this – and I have broken down the very valid arguments that were made last week, on 20th October, in the Lords – is that they oppose this clause 99 because they do perceive a risk of racial discrimination emanating from land border checks; there are a lack of explicit safeguards to prevent that racial discrimination occurring; there is no reference in the legislation to the Common Travel Area being exempted; the obvious risk of abuse of borders

officers holding customs powers as well; and the fact that, although they say this will not affect the Isle of Man, necessarily the Isle of Man *is* a through-route from Southern Ireland to the UK, via Dublin, Douglas and Liverpool. So although, at this stage, the Government might say that we are not implicated, I think we could become implicated very quickly, post the legislation, through finding excuse to exercise it.

Q30. The Chairman: The Isle of Man, of course, is in customs union with the United Kingdom, and therefore travellers do not routinely go through customs channels or meet customs officers, or would be asked under this clause, should it go through... they would not be in a position to be asked to produce a passport, because the travel is no different from a train between London and Edinburgh, as far as customs checks are concerned. So do you not accept that for the Isle of Man, it really is a groundless concern, this particular clause? It simply does not apply to us.

Mr Llewellyn Jones: No, I do not, Mr Chairman, because in the Common Travel Area impact assessment of July 2008, there was mention of mobile response teams within the Common Travel Area. In the final impact assessment of the Common Travel Area reform from the Borders Agency, in January 2009, there is a single line entry which says:

‘... mobile teams will be deployed in Wales and the Northwest of England.’

That indicates to me that there is budgetary provision for people in the port areas of Heysham and Liverpool, for teams to actually be able to stop and search randomly, in just the same way as was used in Operation Gull. I do not see them withdrawing that wish to have a random stop-and-search requirement.

I would draw your attention to a wider concern that a lot of UK legislation emanating from the new Labour Government is enabling legislation: so they have the main Bill, and then they find a way of extending it, mission creep, by introducing statutory instruments, which do *not* get the scrutiny of Parliament. So everything becomes a way of extending a power further and further: at every point, it is deemed reasonable and proportionate for this power at this stage, and then there is an extension.

We know the desire of the United Kingdom Government to have these random checks. It is in writing. I think, quite simply, if clause 99 goes through, there will be function creep, and you will see this type of activity, the Operation Gull activity, affecting people who leave the Isle of Man.

Q31. The Chairman: Given that it is a stated intention in the forthcoming Immigration Simplification Bill to reintroduce the reform to the Common Travel Area, isn't regarding what has been done in clause 99, which relates to customs officers being given certain powers... is it not a bit paranoid, to think that this is a backdoor method by which Government is reintroducing the measure that was defeated in the summer?

Mr Llewellyn Jones: No, I do not, because they keep coming back to this point. They are very persistent on it. This is a known objective from the Common Travel Area impact assessment and, in just common-sense terms, they were defeated in the House of Lords on the immigration issue. The new Labour Government does not like U-turns; they do not like defeat; they spent the summer trying to find another way in; and it is by conflating this power of customs and immigration in one individual. It is simply not possible to expect a border guard, using his customs hat, to find an immigration problem and then not exercise his immigration powers. It is just not practical.

The Chairman: Thank you. Now we have exceeded the allotted time, but I would like to give my colleagues an opportunity for a final quick question. Mr Crookall? Mr Gill?

Q32. Mr Gill: Can I just come back to your view about the shared visa arrangement between the Republic of Ireland and the UK. Would that require both jurisdictions to issue it, and what would the situation be if one, for their own reasons, decided not to issue a visa?

Mr Llewellyn Jones: I could not comment on that. This is negotiation between the Governments of Britain and Ireland. First, there has to be a will to solve this Common Travel Area issue via a common visa. If they arrived at a common visa and then an individual state decided not to issue a visa to a foreign national, then I do not see why that should not apply across the whole Common Travel Area – if that is the point you are making.

The Chairman: Mr Crookall.

590 **Q33. Mr Crookall:** Yes, thank you very much indeed.

You stated right at the beginning about your ancient rights to unrestricted travel: do you not accept, in this day and age, something has to change? Although I take on board the great case you have put across this morning, and the fact that the data might be lost or misused, something must give somewhere.

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Mr Llewellyn Jones: Well, what is the justification for the change?

Mr Crookall: Thank you.

600 **Q34. Mr Braidwood:** Mr Llewellyn Jones, I presume you are in receipt of the news release which was out from the Chief Minister's Office, on the 'no proposals for passports for UK travel'. Are you in receipt of that?

605 **Mr Llewellyn Jones:** Yes, I am.

Q35. Mr Braidwood: So, in actual fact, where our Chief Minister says that he was quite content with clause 99, because it would not impose new and more restrictive requirements on travellers between the Island and the UK, you feel that with the enabling legislation, they will introduce this anyway, through backdoor methods.

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Mr Llewellyn Jones: There will be an attempt to introduce this. My puzzlement over the Chief Minister's press release is that... where is the political oversight of this? On 20th October, we had concerted opposition in the House of Lords to this proposal; the report stage of the Bill is on 3rd and 5th this week. I think there is every possibility that clause is going to be thrown out, because I do not think the Government are going to be able to advance cohesive arguments for the clause to progress, because they will come up against the same arguments they had earlier in the year.

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So my question is that: he is standing back from it; where is the political oversight of that situation; and why was the Chief Minister not able to take cognisance of the very valid arguments that were made on the floor at the House of Lords in *defence* – in support of the Isle of Man's position?

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Q36. The Chairman: Thank you very much.

Well, thank you very much, Mr Llewellyn Jones. We are most grateful to you. We appreciate your assistance to the Committee this morning and for your written evidence also. Thank you very much, indeed.

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Mr Llewellyn Jones: It is a pleasure. Thank you, Mr Chairman.

630 **The Chairman:** I appreciate we are running a little bit behind time, but I am prepared to adjourn until half past 11, just for a three-minute comfort break, for those that wish.

*The Committee adjourned for a short break
and resumed its sitting at 11.30 a.m., when Mr Gilbey was called.*

EVIDENCE OF MR W GILBEY

Q37. The Chairman: I do not think any introductions are necessary, but thank you very much for your evidence that you submitted on 11th June, and for coming in this morning at our invitation.

635 So, Mr Gilbey, I would just like you, for the record, to begin by introducing yourself and, also, if you would care to make an opening statement summarising your evidence, we would be very happy to take that. Then we will have some questions thereafter.

Mr Gilbey: Thank you very much, Mr Speaker.

640 There are two things that I think I should add. I understand that, since my evidence on 11th June, there have been some further developments. I think I heard that clause 48 has been withdrawn, but may be reintroduced in some other form; but the MoU would carry an undertaking that any reintroduction would not affect the Isle of Man.

645 As I have said in my earlier evidence, I think an MoU is quite insufficient, and it is not just me saying that: as I have quoted at the bottom of the first page, there is a number of far more eminent persons who have pointed out that no reliance can be based on an MoU at all. So, I personally feel that we have got to be absolutely sure as we possibly can that there is no power to introduce the kind of controls that have been suggested between the UK and the Isle of Man.

650 Throughout history, travel between this Island and the adjacent isles has been unrestricted for individuals, and I feel most strongly that it should remain the same, just in the same way that travel is unrestricted between England, Scotland and Wales.

655 I did read in the paper recently that some people had been checked when they arrived in Glasgow, because they had come from London, which seemed a possibly dangerous precedent that was starting. I believe there should be completely free travel between this Island and particularly England, Scotland and Wales. If the UK wishes to have controls between itself and the continent, that would obviously mean they want controls with the Republic of Ireland. It may be we would have to introduce some for journeys to the Republic of Ireland, but that is a separate matter and, in my opinion, there is no reason why that should lead to controls between the Isle of Man, England, Scotland and Wales.

660 I think it is absolutely vital and I am sure that – unfortunately, I am not Manx born and bred, but a come-over – those who are Manx born and bred will feel that it is even more appalling that, after centuries of free travel, there should be a suggestion that it should be subject to checks and possible restrictions.

665 Some of the restrictions are totally ridiculous, such as the suggestion that I have referred to under 7, on page 2 of my evidence, that advanced information should be given, if you were travelling, of up to 24 hours. Well, very often, people have to make urgent journeys for all kinds of reasons. So, I am very concerned about the threat that faces us on this front.

670 I, personally, would say that, even if the Customs and Excise Agreement was for good reasons ended, that is not the reason to stop free travel by individuals, because going through airports, etc., customs controls are separate from immigration controls. So, even if we had an ending of the Customs and Excise Agreement and customs at ports both in the Isle of Man and in the adjacent isles, there is really no reason why this should extend to immigration checks on individuals.

Q38. The Chairman: Thank you very much, Mr Gilbey.

675 Do you accept that the clause, as drafted, provided the power to impose controls on any Common Travel Area route by amending the Immigration Act 1971, amending that part of the Act which created the exemptions from such controls? So, the power to impose controls was aimed at introducing fixed or more regular controls on passengers travelling by air and sea between the UK and the Island and, really, they were not interested in going beyond *ad hoc* intelligence-led checks – land border, North and South of Ireland and the Crown dependencies.

680 However, they have said, by way of explanation, that it was not possible, in terms of legal drafting, to differentiate in the law between the Republic of Ireland and other parts of the Common Travel Area and, therefore, the change to the law which is required to control travel to the Republic of Ireland could not be differentiated in the case of the Isle of Man and the other Crown dependencies. However, they had no intention of applying fixed controls.

685 Do you accept that the law was not able to differentiate between different parts of the Common Travel Area?

Mr Gilbey: Well, I am not sufficiently versed in the law to accept or not accept, Mr Speaker, but it is quite clear to me that, if the UK wanted to have controls regarding the Republic of Ireland,

690 they could ask us to have similar controls, but merely between ourselves and the Republic of Ireland. It seems to me a perfectly simple thing to do. After all, I cannot see why they could not do that at all.

But, I think that we should be in the same position as Scotland and Wales who have semi-autonomous government. It is, after all, the aim of the Scottish nationalists to have virtually
695 complete independence. They have got no border checks. I cannot see why there should be any between –

Q39. The Chairman: They are part of the United Kingdom.

700 *Mr Gilbey:* Yes, they are, but there is no reason why there should be controls between us and the United Kingdom. There never have been. Why should there be now? What is the justification?

Q40. The Chairman: Well, what we are saying is the UK and the Home Office have made it clear, they do not intend to introduce controls between the Isle of Man and the United Kingdom. That is not what they want to do at all. What they want to do relates to the Republic of Ireland
705 which, of course, is a foreign state and they are entitled to that, but to change the law in respect of the Common Travel Area to enable them to introduce controls for Ireland, it is the same bit of law that affects the Isle of Man. They do not intend to apply any changes to the arrangements for the Crown dependencies, but the law is not able to differentiate. It cannot limit it or restrict the
710 frequency with which checks are made in law: hence the memorandum of understanding about what the policy is.

Mr Gilbey: I am not a lawyer, but I cannot believe... If there was the will, a way would be found. I cannot believe that we could not say that we would have checks on people going to and coming from the Republic of Ireland. After all, we have direct flights to other places and there are checks on them, why could we not have the same to the Republic of Ireland, if that was necessary? I do not believe that necessitates a check between the UK and ourselves.

The whole thing, the more you look at it, is ridiculous, because in the context of Europe... Actually, our grandchildren have been show jumping through Europe, representing Great Britain, and they just drive a horse box across the boundaries. There are no checks there. It is perfectly
720 ridiculous that there should be checks between the UK and us.

If they want it between the UK and Europe, that is their prerogative and to help them regarding that, it would seem to me, totally fair that we should have checks between ourselves and the Republic of Ireland or any other country in Europe, because I think it is totally unacceptable in principle that there should be checks, after a 1,000 years, between this Island and the UK.
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Q41. The Chairman: You think it is reasonable to have checks between the Isle of Man and the Republic of Ireland; but there is no legal ability at the moment to impose such checks or controls in the Isle of Man, because we are governed by the law as it relates to the Common Travel Area. We need to change the law.
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Mr Gilbey: Mr Speaker, we would need to change the law, but we and the UK have changed the law on many things. I would still argue, if there is the will, the way could be found. If it is the will of the UK to have travel controls between themselves and the rest of the EU, which includes
735 the Republic of Ireland, as we do so much with the Republic of Ireland, clearly, to fall in and help them, it would not be unreasonable for us to do the same.

But it is a totally different thing, with the greatest respect, to having controls between ourselves and the UK.

740 **Q42. The Chairman:** If you accept, for the sake of argument, that it is not possible to amend the law in such a way as to exempt, theoretically, the Isle of Man from checks to travel, would you accept that a memorandum of understanding is better than nothing or would you say it is not worth the paper it is written on?

745 *Mr Gilbey:* Oh, I certainly would not say that, Mr Speaker. As I said in my evidence, I congratulate the Chief Minister and the Council of Ministers in getting that. It is better than nothing.

But, quite frankly, in my humble opinion, it is not good enough and I, frankly, do not believe lawyers who say the law could not be changed to get the result we require. I have always, frankly,
750 taken the view that the job of lawyers is to find a way to reach the solutions that those who employ

them want. Frankly, if we, as a nation, wanted that solution, that we have free travel, and the UK accept that, I just do not believe there is not a way of producing suitable legislation. It is just a question of the effort and determination.

755 **The Chairman:** Thank you, very much. Can I turn to my colleagues. Mr Quayle.

Q43. Mr Quayle: Thank you, Mr Speaker.

760 Just really picking up, Mr Gilbey, on the fact that you were suggesting we could more easily have controls between the Republic of Ireland and the Isle of Man, which would potentially satisfy the requirements of the United Kingdom, but the whole of the island of Ireland... The Republic of Ireland: there is a border there with the Northern Ireland portion. We have heard earlier on today there is a road that weaves across the border many times – 17 times – in a short distance. Would you not agree that it would be difficult to have sufficient controls between the Republic of Ireland and the Isle of Man when, in fact, people from the Republic would, presumably, be able to have
765 easy access to the Northern Ireland area, and then come into the Isle of Man via Northern Ireland.

Mr Gilbey: I take your very good point, but surely it shows the whole thing is even more ridiculous. How ridiculous it is to say that we should need to have these controls with the Republic of Ireland, when the UK cannot police it themselves. The first step is for them, if they wish to
770 control the borders properly between the Republic and the North of Ireland, that is number one; and if they have then done that, it is reasonable for them to ask us to control travel between the Isle of Man and the Republic of Ireland. The two go together. It is totally ridiculous to ask us to have controls and then for them to have an uncontrolled border with the South of Ireland.

775 **Q44. Mr Quayle:** Thanks for that. As you know, the stance of the Isle of Man Government is, ideally, not to have that clause in legislation. As we know, it has been withdrawn, but we understand there is a will to reintroduce a new Bill, most likely, now, after the general election, and that would be taken up by the government of the day. However, with the fact that that would be potentially coming back within an Immigration Simplification Bill, and the impact of the memorandum of understanding that has been brought about, we are advised that any power would
780 be used flexibly to control entry proportionate to the level of risk. In line with this, if the United Kingdom Border Agency made very modest use of this power on routes between the Crown dependencies and the United Kingdom, because the risk is much lower, and there was, for example, no requirement to carry a passport or national identity card, and also e-borders data would not be collected on these routes for immigration purposes, would that remove, to some extent, your objections to the provisions that I have identified?
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Mr Gilbey: I am afraid it would not, because I think the power should not be included anywhere. They should not have the power without needing primary legislation to bring it in. Once they have got the power, whatever MoUs there are, it is perfectly clear, as the Chief Minister of Jersey has said, Lord Goodlad has said, Lord Rowlands has said, and far more distinguished people than me believe, there is no certainty that they will keep to an MoU.
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Let us be quite blunt, anyone who reads history will know you cannot trust governments of any complexion in the adjacent isles or probably most other parts of the world. So I think, though an MoU is better than nothing and the Chief Minister is to be warmly congratulated in managing to get that, it is certainly not good enough and I would place no reliance on it at all, any more than Hitler's promise to Chamberlain.
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800 **The Chairman:** Thank you. Mr Braidwood.

Q45. Mr Braidwood: Thank you, Chairman. Mr Gilbey, good morning.

You have said in your evidence that you say the memorandum of understanding is totally inadequate, and that you would rather see this by legislation in the UK Parliament; but as you know yourself, being a former Member of the House of Keys, that legislation can be changed. So,
805 therefore, even having it in legislation does not guarantee.

What you are actually saying is that, as we are British citizens, we should have unfettered travel between the Isle of Man and the UK. But legislation can be changed. If the UK change government and, if that was actually in legislation, by their powers... You have heard it today, again, the majority of Bills which come through have enabling powers which can be changed by statutory documents or orders. So do you believe that, even if it was in legislation, it would have
810 any more guarantee?

Mr Gilbey: Well, I believe that there should be no legislation that allows it to happen. Of course, I totally accept that any government in the UK can bring in fresh legislation, but there should be no primary legislation that would allow it to happen or allow orders to be brought in that would permit it to happen. I am quite clear on that. That is what we should aim for: nothing that, without new primary legislation, would enable them to do this.

Of course, Mr Speaker, it is absolutely correct that they could always bring in new legislation and we could not stop them; but the best thing is to have no legislation that gives them the power to do it by order or in any other way. If we cannot get that, with no legislation in place, an MoU is better but, really, a poor second best. I, personally, think the whole thing is extremely concerning.

The Chairman: Right, Mr Crookall.

Q46. Mr Crookall: Would you be happy to say, Mr Gilbey, you would be happy to see the status quo retained, except for maybe then the crossing of the border with us and the Republic of Ireland?

Mr Gilbey: Well, I believe the status quo... I would not say happy; I believe it is essential it should be maintained, as it has been for the past millennium. But if the UK, itself, is going to have controls with the Republic of Ireland, it would be, I personally feel, acceptable for us, of our own free will but at their request and in the spirit of co-operation, to do the same. After all, we have controls on people going to other parts of the world, so I think that would be perfectly reasonable.

The Chairman: Okay. Mr Gill.

Q47. Mr Gill: Mr Gilbey, you have not mentioned this, but I would be interested in your views about the basis of practice, more and more, being about intelligence-led information: intelligence-led practice. What is your understanding by that principle of practice?

Mr Gilbey: Well, as I understand it, that is no problem when it is a matter between the police forces. Those of us who go through Heysham and here see that the policemen are there, and I think by co-operation between our Constabulary and the Police across, they do get quite a number of people with drugs and other criminals. There is nothing wrong with that, but that has been going on, I would suggest, for the lifetimes of all of us in this room. I cannot say what happened years and years ago, but that does not affect the travelling of the vast majority of *bona fide* honest people.

Q48. The Chairman: Okay. I think you accept there is no evidence that the Isle of Man is a loophole for illegal immigration. There is no evidence that that has actually been happening, but how would it be possible, without changing the Common Travel Area, to have passport controls and greater controls between the Isle of Man and the Republic of Ireland? It is a foreign state. How can we do that without changing the law, in the interests of preventing the Isle of Man being used as a loophole? There is a lot of money to be made out of getting illegal immigrants into the Common Travel Area: the loophole, potentially, exists.

Mr Gilbey: I think, Mr Speaker, one would have to change the law and it would apply to people travelling to the Republic of Ireland or from the Republic of Ireland in the same way as it does... If you take a direct flight – and there are some – from the continent to here, you have controls then and no-one is objecting to that. We have seen advertised locally direct flights to Switzerland, skiing, and other places. I think people have been over to the daffodil fields in Holland, and I think all of those are probably subject to passport controls. You would just have the same with the Republic of Ireland. Quite honestly, it is not very difficult from our point of view, because there are only two places where people come in from Ireland: first of all, the Airport; and, secondly, the Sea Terminal – although, occasionally, a ship may go to Peel, but the same would apply there.

So, quite honestly, I do not think it is very difficult or onerous to pass a law and administer it. But, I would only do it, if the UK pressed us to do it, because they were doing the same and doing the same effectively and, as Mr Quayle has pointed out, they would have to do the same effectively on the border between Northern and Southern Ireland.

Q49. The Chairman: Effectively, the moment you do that, you have done away with the Common Travel Area by definition, because there is no longer common travel between the Isle of Man and the Republic of Ireland.

875 **Mr Gilbey:** Well, it is better to do away with common travel between the Isle of Man and the Republic of Ireland than risk losing the right to free travel between the Isle of Man and the UK. I am sure that the vast majority of people in the Isle of Man would much rather have – not that they want it, but if it is forced on them – controls on travel to the Republic of Ireland than have controls foisted on them in respect of travel to the UK. I have little doubt about that at all, because, as we
880 all know – and particularly Mr Quayle will from the Tourist Department – the number of people travelling between the Isle of Man and the Republic of Ireland is minuscule, unfortunately, compared with the number travelling between the Isle of Man and the rest of the UK.

Q50. The Chairman: You refer to the direct flights to Majorca and Holland and so on, and how easy that is nowadays. What is the big problem? We all have to show photographic ID, when we get on the plane. If we have to show it at the other end in an immigration channel, is that any worse than these flights to Majorca and Holland that you are talking about?

890 **Mr Gilbey:** One, we do not have to do it on the ships, thank goodness, at the moment. Two, it is bad enough, the red tape that you have on flying.

But I think an interesting thing, Mr Chairman, as I have quoted from personal experience, if you take a horse box across the Channel, once you have got to France, you can drive with no stops at all into Holland, Belgium, Germany. Yet we have all this fetter problem in just going across the sea to Liverpool or somewhere else in the UK. It is totally ridiculous, frankly.

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Q51. The Chairman: But, is it not reasonable to have these controls in, wherever the international gateways are and, for this purpose, a flight from Majorca to the Isle of Man is entry into the United Kingdom? It is a UK gateway.

900 **Mr Gilbey:** Yes, but I have said, we already have checks on that. That is fine: flights to and from Minorca, to and from Holland and anywhere else.

But the great thing, surely, that we all want to preserve is our complete freedom of movement between this Island and the UK, and, if we can keep it, to the Republic of Ireland; but if, in order to maintain freedom of movement between ourselves and the UK, we have to sacrifice it with the Republic of Ireland, I think that is a sacrifice worth making. I would not want to make it. I think it is terribly sad that it should have come about. I favour the time when we had complete freedom of movement between Ireland, England, the Isle of Man – complete freedom. I am sure we all remember that. There was a time when Irish citizens could come across with no problems at all.

910 But I think the great thing is to protect the Island's freedom of travel to the UK and, to my mind, this is something of absolutely paramount importance. I would have thought that the vast majority of people in the Island would feel the same. I think there is an unfortunate thing, and I am sure it is no fault of your Committee, but I think many people are totally ignorant of, or do not fully understand, the threat facing us on this front. I do not blame anyone for that, because the more it is talked about, the more complicated the legislative background to it is, but I would have
915 hoped that it could be made much clearer, what the problem is, what the threat is, so that people do appreciate it more.

Q52. The Chairman: Yes. Would you say that the problem of securing the common external border against terrorism, drug- and people-smuggling and so on, criminal activity, is being tackled from the wrong end – we are looking at what goes on within the Common Travel Area, instead of really securing the external border? We have heard evidence that a common visa, for example, between Ireland and the UK would introduce a greater level of control of entry. Would you agree with that: that we should be really focusing on the common external border, rather than introducing controls within the Common Travel Area?

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Mr Gilbey: Well, I certainly think that is a very important point. I cannot speak as an expert on this, because I have not studied it. I really have been concerned about the position of the Isle of Man; but quite obviously, the UK faces a serious threat with people from all over the world queuing up in Calais and trying to force themselves onto vehicles and get to the UK. Obviously, that is very serious and I think you could say that the EU nations probably are very weak at
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controlling their borders. But when you think of the size of the EU with 24 countries and all the borders they have got, I would not like to say how they could properly control them.

Certainly, I am sure the UK are right not to have limitless immigrants, wherever they come from. No nation can stand it and, for some reason, all these people seem to want to come to the UK, rather than stay in France or Europe.

Q53. The Chairman: One of the features of strengthening the border, in the way you suggest, is applying data on passengers who are travelling across the border. What is your view on the supply of data to a database – personal data – in the interests of stopping illegal trafficking and criminal elements, the illegal immigration in the way you have described?

Mr Gilbey: That is fair enough between... If the Government of the UK want it to protect themselves against the rest of the EU and the rest of the world; but my argument is you should not have such things between the Isle of Man and the UK, because we are British and we have had the present status for over a thousand years. I think to in any way hinder the free right of travel between the UK and the Isle of Man is something that should be resisted in every way that we possibly can.

The Chairman: Thank you. Mr Gill.

Q54. Mr Gill: Thank you, Chairman.

Mr Gilbey, we heard previously, from Mr Llewellyn Jones, the opinion that the amount of data that was supposed to be collected was excessive and potentially would lead to an extension of the surveillance state. Is that an issue you have a view on?

Mr Gilbey: I do not think there should be any data at all, quite frankly, apart from the booking with the carriers, and that should be private between them and the person.

Mr Speaker, if any one of you or any person in this room wishes to travel tomorrow on the Steam Packet to Heysham and come back a few days later from Heysham, that is their affair. I do not think that any records should be kept at all by anyone, except the travel companies. In the same way, if you take a train from London to Glasgow, no-one but the train company should know that you have booked that train. It is absolutely the same and it has been for a thousand years, and I see absolutely no reason to alter it, no reason whatsoever.

Q55. The Chairman: But if we are talking about not travel from London to Glasgow, but London to outside the United Kingdom, and there is evidence of penetration of our border security by criminal elements of one sort or another, and we want to better control that, one of the controls we need to have, or the Border Agency needs to have, is better data on who passengers are, who people are. You have said that you do not support that.

Mr Gilbey: No, I said I do not support it between the Isle of Man and the UK. What the UK decides to do regarding its borders with the rest of the world, other than its borders with the Isle of Man, is entirely its concern and its prerogative. We are not electors or politicians there. If they decide they want the most strenuous controls between them and Calais, or any other place, that is up to them. I quite see that we would then have to have the same controls between ourselves and these other places. That would only be right, or we could be a backdoor entrance to them.

But my argument is there should be no... provided we have the same external controls as them, to the countries they have controls to, there is absolutely no justification, reason or desirability in having controls between us in the Isle of Man and them in the UK.

Q56. The Chairman: And in the interests of stopping such internal controls by strengthening our external controls – and you have agreed the Isle of Man must play its full part in that, because it has got its links with the rest of the world – if that involved the Isle of Man supplying passenger data to the UK, to a common database in the UK, to allow better monitoring and controls – and we are doing it so that we do not need internal controls, remember – do you have any concerns over the amount of personal data that is passed on, the time it should be held and who should have access to it?

Mr Gilbey: Well, frankly, I hate bureaucracy of all kinds, as you probably know, Mr Speaker, and your colleagues do too, so I would keep it to the minimum. But insofar as it is necessary to

keep complete freedom of movement between ourselves and the adjacent isles in the form of the UK, I would accept whatever we had to.

I cannot say what it would be – the minimum bureaucracy I always believe in – but whatever was necessary in order to keep freedom of travel between ourselves and the UK, I would accept as a price for maintaining that, to me, invaluable freedom.

The Chairman: Thank you. Any final points, Mr Quayle?

Q57. Mr Quayle: Thank you, Mr Speaker.

I know, Mr Gilbey, you mentioned about the horse trailer going around the Continent. I just wondered, in terms of the checks that were undertaken there, presumably once you have got into France, if that is where you have sailed to from the United Kingdom, there would have been pretty strict measures to look at passports and everything, and once you are in then the Schengen Area, as I understand it, then that would get you free access through the countries that are signed up to the Schengen Agreement.

Mr Gilbey: That is absolutely right, as I understand it. I only heard it secondhand from Caroline, but quite frankly, once you have got there, you just drive across the borders. It is just like going from Marown to Patrick: you just drive along the road.

Q58. Mr Quayle: Which is leading me on to the other point then, which is that it appears to me there are significant checks, or more so, to those countries who have not just a land border but those who are adjacent to the sea, because on the continent of Europe, they have got more potential of people misusing the arrangements to get access onto the continent of Europe. So would you accept there are probably more likely to be extra checks from those countries that are adjacent to the sea, really?

Mr Gilbey: Well, to stop people getting into the Schengen Area, yes, I presume there would be, but I again accept: the size of Europe, it is probably impossible to do it totally effectively. Again, that is up to them.

I very much take the view that my concern is not who comes into Europe, but our rights in the Isle of Man. Also, I certainly take the view that the UK cannot take limitless numbers of immigrants from any parts of the world. So it is perfectly logical for the UK to have controls, but they do not need controls in people coming to and from the Isle of Man, provided we have controls to stop people using us as a back door.

Q59. Mr Quayle: I think the point would be that, while I would wish for the status quo to remain – a personal opinion – the fact is if there is to be change, then as long as we preserve the unfettered ancient rights to have free travel, then that would be the aim. Really, I was comparing continental Europe with what appears to be the case where the United Kingdom Government is wanting to make it a fortress United Kingdom, but at least, by arrangements that we can put in place, if we preserve the Common Travel Area that we have with them, that preserves our ancient rights.

Mr Gilbey: I agree with you: we want to maintain our ancient rights. That is the number one.

Q60. The Chairman: Thank you.

Thank you very much indeed, Mr Gilbey. We appreciate the way you have given your evidence, and thank you for your attendance this morning.

Mr Gilbey: Thank you.

Mr McDonald was called at 12.11 p.m.

EVIDENCE OF MR I MCDONALD

Q61. The Chairman: If I could now call forward Mr Iain McDonald, Data Protection Supervisor.

1045 Good morning to you. I will introduce the Committee, in the event that we are not all known to you: Mr Phillips, Clerk of Tynwald; Mr Gill; Mr Crookall; Mr Braidwood; and Mr Quayle.

Again, like the other witnesses, Mr McDonald, if you would be good enough just to state your name and position. I invite you to make an opening statement, along the lines of addressing the remit that we are following within the Committee, and then we will put some questions.

1050 **Mr McDonald:** Thank you, Mr Chairman.

My name is Iain McDonald and I am the Data Protection Supervisor for the Island.

1055 I have to say, the first thing I would like to say to the Committee is it was very pleasing, from my perspective, to see a Select Committee specifically ask, in my knowledge for the very first time ever, whether there were any particular data protection concerns with the particular proposal. Clearly and hopefully that is what my submission is about. It is about the data protection concerns, and not so much the political issue as to whether there should or should not be controls between here and the United Kingdom, but it is what data might flow, if there was such a control. So that is what I have tried to limit my submission to.

1060 I apologise for the size of it. The only thing I can assure you is that there has been so much considerable work in the international arena, I could have given you about four or five times that amount of information!

Q62. The Chairman: Your work, Mr McDonald, as Data Protection Supervisor, requires you to advise Government on the data protection issues arising from legislation – primary and secondary legislation. Of course, the environment that we operate in is an international one, and there will be international standards that the Isle of Man would wish to adhere to. As you look at this whole issue of immigration control, borders, the holding of personal data about passengers crossing those borders, what concerns, if any, do you have, and what can you, or what can the Isle of Man do about it? A wide question.

1070 **Mr McDonald:** Yes. I will deal with the concerns first.

Increasingly... I suppose if I go back very quickly and say what is in my submission, as a very quick resumé, where most of this started from was the 9/11 terrorist attacks on the United States. Very rapidly thereafter, although it had already mooted it beforehand, the United States brought in legislation requiring both airlines and indeed sea travel, as well... If you are passing to, from or through the United States, you had to provide this advance passenger information (API) they call passenger names records.

1080 The amount of information: this is going to be something I did not mention in my submission, but it is maybe important that you know now. Even what the UK was proposing to put in its entire... what they were proposing to collect, is actually in the travel agency systems. It is, in actual fact, all the data that a travel agency could hold about an individual.

Q63. The Chairman: So it is not just simple name and passport number. What sort of information are you referring to?

1085 **Mr McDonald:** It could go right down to the fact that if I was on a flight and I had asked for a kosher meal, for example, or a halal meal, had that information been recorded on the system, that would be passed on to the authorities.

1090 In the case of the United States, it started happening back in 2002. When it did happen, or when it started and when it was first imposed on the airlines... In the United States, the requirement is, if a carrier, for example, does not provide the information as required, if I remember rightly it is \$1,000 – it may even be \$5,000 – per person, the fine. So think of a jumbo jet going in from London with 500 people on board – quite a significant fine, if they have not provided the information.

1095 At that point, the European Union got involved and asked the European Commission. What was negotiated with the United States at that stage was a limitation on the use of the data, because one of the problems that there was with the US Government is that once data enters the Federal Government of the United States, it can actually be used for any purpose.

1100 The fundamental issue with data protection is that data protection, data and the use of personal data is purpose limited. You specifically say, 'This is what I shall use the data for and I cannot use it for another purpose.' So what the European Union successfully negotiated with the United States for was a limitation of purpose. It could be used by the Department of Homeland Security and the FBI and CIA for criminal and intelligence purposes, but not for any other purpose. So the first thing that was achieved was a purpose limitation.

1105 They subsequently... I have to say, that original agreement was found to be illegal. It is a long story; I will not go into it. Basically, the European Commission could not make that agreement on behalf of the member states; it had to be made at member state level. But it has subsequently been replaced with agreements.

1110 Those agreements have actually restricted the use of data, so instead of all the data sets that were available on the travel agency system, it has been reduced to about 19 pieces of information. On top of that, there is a time limit added to it and the purpose limitation still remains. So we actually have this much tighter policy around that than what we are seeing with the UK at this moment in time.

1115 Similar systems now exist already with Spain. After Madrid, Spain brought in legislation. So even though it is inside Europe, if you have been on holiday to Spain, probably the travel agent actually asked you for your passport number, and it was passed to the Spanish authorities. It is a very limited amount of information that the Spanish authorities have been seeking in the last three or four years. A similar thing exists for Australia, which was put in place shortly after the Bali bombings.

1120 So there is a move around the world to do this, and data protection authorities do not – and this is a common position of all data protection authorities – disagree with it, with regard to a certain amount of information.

1125 In the submission, I have broken down what we call advance passenger information: what is passenger information, what is the travel document information, and what is other passenger information. None of the data protection authorities disagree that travel document information can be provided; nor do they actually disagree that it can be provided in advance. What they are saying there is that we all know there will be people flying that, for example, the authorities at one end may well have an interest in – whatever that interest is, whether that be terrorism, illegal immigration, whatever. So there is no reason why, for example, the advance passenger information cannot be provided 24 hours in advance. There is also no reason why the full passenger manifest, with regard to travel document information can be provided when the vessel sets sail or gets into the air, but it is limited to that very small amount of information.

1130 So they do not have a problem with that. What they then say is that it is excessive to pass anything more than that across routinely, but they also say that does not mean to say you cannot get the rest of the information. If you have got somebody who is of interest, by all means – and this is what has happened for years – the authorities can go back through the system and get the other information, and that is basically the stance of all data protection authorities.

1140 You then ask the question: how can we do it for the Isle of Man? We have a fundamental problem, and some of it is actually practical. With the exception of the Steam Packet, none of these databases reside in the Isle of Man. (**The Chairman:** Sorry?) None of the booking databases reside in the Isle of Man, so we actually have no control over them already.

1145 There is an issue between Ireland and the UK that I am aware of at the minute where, for example, the Irish authorities are telling the UK that Ryanair cannot provide the UK with the information that they are seeking when it is a flight that does not involve Irish air space. But of course all the data for Ryanair flights... Say it is a flight from London to Paris, for argument's sake, that Ryanair put on, the information is on the Irish authorities'... the database is in Ireland.

1150 **Q64. The Chairman:** So you are saying Ryanair would not be able to comply with the requirements of the UK database for passenger information.

1155 **Mr McDonald:** That is an argument that is going on in Ireland at this moment in time, that I am aware of. A similar argument exists with the French and the Belgian authorities, because the point that the sea carriers have made, in both France and Belgium, is that they are not legally entitled, under data protection laws in France and Belgium, to collect the information. Only the immigration authorities and the customs authorities in those countries are allowed to actually collect that information.

So the problem I think where we actually sit is that this is a classic case of... We have to be realistic, life is moving forward. We have these huge databases. Some of them, a certain amount of that data is obviously of interest and of benefit to the crime detection authorities and illegal

1160 immigration, but what we have to do is look much more carefully at what we are doing and who is gathering what information and what they are using it for.

I can give an example of that to you. What do you call crime? What is the allowable crime that you can say this can be used for? The debate that is going on with the Criminal Justice Bill at this moment in time: can we clamp cars for non-payment of a fine? Do we do that with this system? If you have a look at the data I gave you about the forerunner to the UK e-borders system – the data is in here – there were 1,700 arrests over a period of about 18 months, but 176 of those arrests were for road traffic offences. Is that what we use the system for, or do we limit it?

Let us take the Isle of Man again, for example. At this minute, if you travel on the Steam Packet, they do not know who you are. You have to, when you book online, give them a name, but I could say Mickey Mouse and they are still going to issue me a ticket. There is no validation that that is who it is.

Let us take, for example, if the UK brought this in, could they start using it for tax reasons? Because at the minute they certainly could. If you actually look at the legislation, it includes tax. So could we count people for the 90-day rule in and out of the UK, for example?

1175 So these are the issues where I think the Isle of Man, if it did come in, needs to actually think about the relationship. What can we use the information for?

Q65. The Chairman: So when the Isle of Man Government says it is happily signing up to the e-borders system, in order to be part of that and to play our part in the defence of the common external border, there are nonetheless issues about how it would work and, from what I understand you to say about the data, there are issues that are peculiar to the UK's requirements for data collection that are at odds with Europe and elsewhere. What can the Isle of Man do about that? The Isle of Man would have no philosophical interest in not adopting a European standard. Is it going to be in a position of, whether it likes it or not, being sucked into a UK standard that would require Isle of Man citizens to provide unreasonable levels of information?

Mr McDonald: I think the one thing that... That is the question: is it unreasonable? Again, you come back to things like, for example, the European Convention on Human Rights. As we have seen in one of the submissions that is in here, one of the appendices, one of the significant European bodies has turned round and said that even the Schengen proposals break European Human Rights Conventions at this moment in time. That is a point that we probably need to say to the UK: 'Hold on a minute, we believe you are in breach of the European Convention on Human Rights at this particular moment in time. Can we find a solution that everybody believes is compatible?'

1195 I do actually think that probably the long-term solution to all e-borders is an international agreement, probably at UN level. That looks like the more logical solution, because as a small country we have no chance of... We all know the reality is that the UK impose it. We can scream, we can shout, but we will probably have to give in.

1200 **Q66. The Chairman:** You said about travel agent held information and you went on, as I understand you to say, that that initial proposal was then watered down, so that it was just basic information that was required. Is the UK's position still that it requires this advanced information? Does that include credit card information, for example?

1205 **Mr McDonald:** Yes, at this moment in time, the UK proposal under e-borders is that you have to provide... the other passenger information is literally everything that would be on that system, including credit card details etc, and they are talking about holding it for at least 10 years – five years online, five years in an archive which could be recovered if necessary – and you have to ask why.

1210 Indeed, looking at the US experience, you can see where they have used profiling software. In fact, we know of cases where profiling software has been used and got the wrong answer, which is unfortunately the reality of using profiling software. There are not that many terrorists in the world, so if you are looking for terrorists on a system like this, the majority of positives that you will get in using profile will be false, will not be true, and it is how you then use that information.

1215 I have seen, for example... There was a case in the United States, where somebody ended up being denied entry into the United States for no other reason than that they sat beside somebody on a previous plane.

1220 **Q67. The Chairman:** So if these concerns... Can I ask to what extent have you been consulted about the Isle of Man's participation in e-borders, and to what extent were you consulted

about the then Borders, Citizenship and Immigration Bill, which had these changes that were going to affect us within the Common Travel Area? What input did you have?

1225 **Mr McDonald:** I have spoken with the Crown External Affairs part of the Chief Secretary's Office. I would not say I was consulted.

1230 We are very fortunate that, the way our office runs, we have very close relationships with the Information Commissioner's Office in the UK, and we also have our own ticker-tape messages that come through from the UK Parliament, so we get aware of issues very quickly, through some of the e-mail alerts, and certainly through the Information Commissioner's Office. They are very good at alerting us to anything that they think has a common issue between ourselves and the Isle of Man.

1235 **Q68. The Chairman:** Is there a failure then on the part of the UK data protection authorities to allow UK policy to be made to this degree?

1240 **Mr McDonald:** This has been a problem... You actually find that the Data Protection Act in the UK is just about to be strengthened under the... Was it the Coroners and Justice Bill? The fundamental problem that the UK Information Commissioner's Office has, and our Data Protection Act has, as well, is there is nothing that actually makes a breach of a data protection principle an offence in its own right or leads directly to some sort of damage implication for the data controller. The law in the UK is changing, because the Information Commissioner is now going to get fining powers for breaches of principle. Suddenly, rather than just saying, 'This is not right,' he will actually be able to impose fines, and people can challenge him in front of a tribunal, but they will have to go via the courts and the tribunal to do so.

1245 So you could argue that it is not that the Information Commissioner has not been saying it, because as you can see in here, he has been saying it. He has been to the Select Committee and told the Select Committee that, in his opinion, the UK's e-borders proposals were excessive. It is just he has not, until recently, had powers to actually do anything about that.

1250 **Q69. The Chairman:** So he now has those powers?

Mr McDonald: They are on their way.

1255 **Q70. The Chairman:** They are on their way. Does that mean he could take the UK Government, the Home Office, to court? For excessive use of data...?

Mr McDonald: Potentially, yes. Potentially, he could impose a fine notice upon whichever one of the UK Departments –

1260 **Q71. The Chairman:** What would be the offence? What legislation was being breached?

Mr McDonald: They would still be saying it was excessive processing. Unless they can justify the excessive nature of the –

1265 **Q72. The Chairman:** Is that with reference to European law?

1270 **Mr McDonald:** Well, yes, it is excessive, because... The UK Data Protection Act comes out of – as does ours – the European Data Protection Directive and, again, that is back to the bit where excessive processing is key. In fact, that is something else with the Lisbon Treaty, because there is a Charter of Fundamental Rights. Data protection is one of those things that becomes a fundamental right under the Lisbon Treaty. It is no longer just a piece of legislation. As the Lisbon Treaty is ratified, data protection becomes a fundamental right for European citizens.

1275 **Q73. The Chairman:** Did you discuss these issues, the reform of the Common Travel Area in particular... were you in discussion with your counterpart in the Republic of Ireland?

1280 **Mr McDonald:** Yes. The islands meet... and when we talk about the islands, it actually includes Gibraltar, Cyprus and Malta, because they have common law. The uniqueness of the European bit is that the common-law jurisdictions do extend to Cyprus and Malta, so with our way of interpreting the Data Protection Act, we meet on a regular basis.

1285 So yes, we met with the Irish authorities. This is why I am well aware of what the Irish position is. The Irish authorities themselves also want to have strong external border control. My understanding of it is that they had not envisaged that that was going to be between Ireland and the UK; they envisaged that as being Ireland and everywhere else. So it came as a bit of a surprise, apparently, to the Irish authorities, when the UK announced the proposals for the CTA.

Q74. The Chairman: Where Ireland would, in effect, be treated as just another foreign state?

1290 **Mr McDonald:** Yes. The Irish authorities fully accept that, but their argument is – and I, on a personal level, would agree with this, and being from Northern Ireland and someone who has driven that road which crosses the border 17 times, on many occasions, I know – that it is not realistic to actually control that internal border at all. For 30 years of the Troubles they tried to, and could not successfully do it.

1295 The other problem that you have as an island nation – and again, our history here on the Island shows it – you cannot protect people from bringing boats in and out. You have to ask, why focus on internal border controls, the ports, when it is so easy for people to come in via boat, by another way, and therefore should your focus not be your external borders? That is my personal view, and that is all it is.

1300 **Q75. The Chairman:** We had evidence from Mr Llewellyn Jones, earlier, to the effect that you would not need these internal controls, which are impossible to police, and guarantee that nothing will be breached anyway, so the attention should be focused on the common visa –

1305 **Mr McDonald:** The lesson of 30 years of Northern Ireland is that you cannot control a border.

1310 **Q76. The Chairman:** I will ask my colleagues in a moment, but from what you know of border checks, or checks at Belfast Airport, and the port – random checks of people undertaking internal travel within Britain, within the United Kingdom, being stopped quite uniquely through Operation Gull... Nowhere else in Britain are passengers stopped and questioned, but it was happening there, and as we have heard, there have been concerns from the Human Rights Commission about the criteria used for making those stops, and the law that was being utilised actually to make the detentions. What concerns did that flag up to you, when similarly for the Isle of Man, there was talk about intelligence-led random checks between the Isle of Man and the UK?

1315 **Mr McDonald:** You have got to turn around and say that Operation Gull shows you that, inevitably... If the main problem, as the UK suggests, is illegal immigration, you have got to say that, inevitably, anybody who does not look white European is more likely going to get stopped than someone who is white European. That has been the case with Belfast, in particular. We were finding people of Asian origin, in particular, being stopped and being questioned. Many of them
1320 turn out to be senior medical consultants in major hospitals throughout Britain, but unfortunately, that is the reality of the application that you do.

1325 **Q77. The Chairman:** And would you say then that, for example, our Filipino community in the Isle of Man could similarly encounter this?

1330 **Mr McDonald:** I would say, anybody who is non-white European. Inevitably, they are going to have to look at illegal immigration that way; or you end up doing what is allegedly happening in London, with the stop-and-search powers in London. Whereas now if you are a white European, do not go to the British Library or the British Museum, because the Metropolitan Police use that as a way to stop white Europeans and get their statistics up. That is an allegation that was in the press recently: that this is what they are doing, to show that they are not using the stop-and-search powers against non-white Europeans disproportionately. Get the stats up, go to the museum, wait for a white European and stop them under the stop-and-search... That is an allegation that was in one of the papers recently.

1335 **Q78. The Chairman:** Really? So that is inappropriate use of the wrong powers for the wrong purpose.

1340 You talked earlier about the overlap of customs and immigration, I think quoting Belgium and the Continent for not having... They only had customs powers and not immigration powers. This overlap of powers and experience of Operation Gull: do you see a parallel developing over the current Police Bill in the UK, with this clause 99, which is giving customs officers powers to

examine passports – albeit it would not apply on the Isle of Man route, because there are no passports, but presumably it would on the Channel Islands and the Republic of Ireland routes? Do you see this is an area of a possible overlap of power?

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Mr McDonald: The question I would have with clause 99 is – even if I am from the Isle of Man, as I travel across – I have got a son in Manchester and a son in Nottingham University at the minute... So if I am across in Manchester, I am driving around Manchester and they stop me, in theory, from what I can see of clause 99, to prove my right to be in the United Kingdom, the only absolute proof of it is to produce my passport. Even though I may have travelled with my driving licence, if they wanted to actually check, the only proof that I can have is my passport.

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That is equally what happened with one of the individuals who was arrested at Belfast Airport. He had no documentation to prove that actually he –

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Q79. The Chairman: Nor would he have expected to need to carry any.

Mr McDonald: No, he ended up going into... It was three immigration detention centres that he was held in before they finally released him back to his job in London.

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Q80. The Chairman: So, we have got a default position created, to make sure you are absolutely safe: have your passport or an identity card.

Mr McDonald: It is also saying... We have said to people, because of the use of ANPR – I know this is not... but it is an example of how the powers are being used. Because of automatic number plate recognition, if you are driving in the UK at the minute on a Manx plate, and ANPR is in a police car behind you, it may flash up. Hopefully in the not-too-distant future, it will not happen any longer, but up until recently, it would have flashed up as ‘no insurance’ and you would have got stopped for having no insurance.

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Again, this is a case of using a computer database, and in this case, the computer said no, wrongly. The police officer does not know, it was flashed up. We were actually recommending to people, ‘I would carry your insurance with you, just to prove to the Police that you are insured.’

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Q81. The Chairman: And were these really the sort of offences that were in the law-makers’ minds, when they were devising the e-borders strategy to counter terrorism?

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Mr McDonald: That is where we come back to that question of the purpose limitation of the use, and what crime is, and what serious crime is. That is certainly one of the arguments that is going on in Europe at the moment: define what you mean by crime and what you mean by serious crime. How far do we consider these powers to be acceptable?

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Q82. Mr Braidwood: Mr Chairman, I am just intrigued by what Mr McDonald said about the insurance database. If we have insurance in the Isle of Man, such as Tower or whatever, that would be on the motor insurance database in the UK, and therefore the Police would be able to get it. So you mean that the Isle of Man is excluded from that motor insurance database for the Police purposes?

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Mr McDonald: That is only just recently changing, and it should... I think by the time we get to March, if I am correct, then that problem will no longer exist, but it has been something that – I know we are digressing here – with the new vehicle licensing system, the changes have come into effect.

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Q83. Mr Braidwood: I knew that was coming in, but I just thought automatically that insurance companies put you on the insurance database?

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Mr McDonald: No, they were on there, but it was not available for police purposes, and it is now through the new system. I think by the time we get to the end of March of next year, all Manx vehicles will be available on the database.

1400

Q84. Mr Braidwood: Another thing you did mention, as well, is that you are concerned if there was such as card details put on, and too much additional information, particularly if it was for an Isle of Man resident, for the UK tax purposes. You mentioned about the 90-day rule, so in

actual fact they could check to see if you were staying in the UK longer than the 90 days, so that they would be able to tax you for those purposes.

1405 **Mr McDonald:** If you look at e-borders and the use of the data that the UK e-border system allows them to do at the minute, yes that would allow them to do that, if it extended to the Island.

1410 **Q85. Mr Braidwood:** And would they be able to know what purchases you were making as well, at all?

Mr McDonald: No. They would have your credit card details. To get to any other information, they would obviously need these other powers to be able to find out anything that you had been using.

1415 **Q86. Mr Braidwood:** So really, the only reason they would do that, is if it was intelligence-led?

Mr McDonald: Yes.

1420 **The Chairman:** Mr Gill.

Q87. Mr Gill: Could I add to that: intelligence-led, is there any definition of what is appropriate use of intelligence in that circumstance?

1425 **Mr McDonald:** That is exactly the point. The point is that is the argument where it needs to start. When you say intelligence-led, you have got to start from what crimes you are talking about that we permit the intelligence-led information for, and then the rest of it needs to flow out of that.

1430 **Q88. Mr Gill:** Is there any guidance or determination...?

Mr McDonald: Europe is attempting to do so. In this submission, there is a particular document where they are actually trying to agree that, at this moment in time. The reality is that, unfortunately, the UK is one of the biggest stumbling blocks in that definition, actually. You will find it is one of the appendices that is in here.

1435 **Q89. Mr Gill:** Just on a general point, is your Office... I think a lot of the information, the advice and the focus that you have brought to this has been extremely useful. Are you a regular consultee on legislation?

1440 **Mr McDonald:** Unfortunately not.

Q90. Mr Gill: Is there a reason?

1445 **Mr McDonald:** I just think it is an historic thing. You have got to bear in mind that until this legislation, the current Data Protection Act was created, the previous Data Protection Act was very much more narrowly focused to only the use of data on computers. Now, it is to the use of data everywhere, and apart from that, in the last 10 years, computers have gone from relatively large systems, but now it is in everyday use, in every walk of life, and unfortunately it is inevitable.

1450 **Q91. Mr Gill:** So, particularly crime and detection, where there is a Criminal Justice (Miscellaneous Provisions) Bill out for limited consultation, you have not been...?

1455 **Mr McDonald:** We have been provided it now, so we are part of the consultees, as in the document has been provided to us, but we – (*Interjection by Mr Gill*) It was actually sent to us, but prior to that, in the actual formulation of it, nobody came to us and asked us if there was anything that we wanted actually to contribute to it – although I have to say there are certain points that I am very pleased to see, from a data protection perspective.

1460 **Q92. Mr Braidwood:** I think, Mr Chairman, I am quite surprised at that because all legislation coming through is normally Human Rights... it is AOK for that way, so really what you are saying is that for data protection, you should actually see all legislation which is proposed?

1465 **Mr McDonald:** I would not say we need to see all legislation which is proposed, but it would be interesting to be able to see some of it. Whether that is a mechanism that is direct to us or via the Attorney General's Chambers is an issue that could be resolved, but if it did include the use of personal data, in particular the use of sensitive personal data, then I would think that it would be useful if you could actually comment on it.

1470 **Q93. Mr Braidwood:** So basically, apart from Human Rights compliance, it would be the legislative draftsman who would say, 'I have some concerns,' and then send you that legislation for yourself to peruse.

1475 **Mr McDonald:** To me that sounds more appropriate, and certainly I know that the main advocate that would give advice for Human Rights issues in the Attorney General's Chambers has referred stuff to me unofficially, as such, for review; but maybe that is something that needs to be looked at from the Attorney General's Chambers.

1480 **Q94. The Chairman:** You say you are not routinely consulted, but your last comment just now on... there are aspects of Human Rights compliance to do with data on individuals, and you say the relevant legal draftsman would consult you, in looking at legislation, to confirm or check on data protection compliance issues. Is that right?

1485 **Mr McDonald:** Not the legislative draftsman; there is an advocate in the Attorney General's Chambers who advises on Human Rights issues, who at times would actually contact me to say... because she feels it goes into the areas of personal data.

The reality is where personal data sits, or data protection sits, it is normally Article 8. What we say is that the right to privacy of Article 8 tends to be... if you are then processing personal data, does that impact upon Article 8 of the Convention? At times, the advocate would contact me about those.

1490 **Q95. The Chairman:** You said there were aspects of this Policing Amendment Bill that you were pleased to see, and you are one of the consultees. Are there aspects that you are less pleased to see that you will be commenting on?

1495 **Mr McDonald:** Yes, there are. *(Laughter)*

Q96. The Chairman: Okay. To whom do you report on issues of data protection as a matter of course? Is it the Chief Secretary's Office?

1500 **Mr McDonald:** Strictly, it is the Chief Minister and Council of Ministers. My appointment is still a Governor-in-Council appointment, so strictly it is either I can take a report straight into Tynwald – I have never felt the need to actually put it straight in to Tynwald – or you can actually send the report to the Council of Ministers or the Chief Minister as well.

1505 I have never had the issue when we have been dealing with issues that are solely the Isle of Man's – in other words, within our power – that I have not been able to do that at the Chief Executive level of the various Departments. So I have never felt the need...

1510 I always feel that the easiest way to do this job is to actually do it in the background, without creating too much of a song and dance, unless you really have to. That is the pleasing side of it: that generally our Chief Executives and our Departments, in the most part, do listen to what we are actually trying to say.

Q97. The Chairman: Can I just, on another matter, have your comments. The changes to UK passports and the biometric information that is being required – and, I think, we need it by 2011, is it, or 2012? – including finger printing, which is obtainable, I understand, through the Identity Card Act of the UK: we do not have any equivalent here. How is it being intended to put Isle of Man citizens' finger prints in these passports?

1520 **Mr McDonald:** That is a very good question. The problem is that, in the UK, they are proposing to put the two finger prints on to British passports. When you actually read their proposal, what they intended to do was, through the Identity Cards Act, under which they are entitled to legally obtain 10 finger prints, they were going to take a sub-set of two finger prints from that, and put them on the passport. Of course, the problem is that the Identity Cards Act does not extend to anybody who is not a UK resident, so it is not just the Isle of Man, but it is the

1525 Channel Islands, it is all the ex-pat community, wherever they happen to reside around the world, and they have a fundamental problem.

I have likened it to the similar issue with the CTA where, initially, they forgot that there was actually a land border – the UK has a land border. I think, genuinely, the UK forgot that actually we issue passports to people who are not UK residents.

1530 I, through the Chief Secretary's Office, have actually flagged that issue. There is no answer as yet. There is talk that I heard about, that maybe under the modernisation of government anyway, in the UK, that they bring in specific passport legislation. Maybe we have to wait and see what the next election does, because if, as appears to be the case, there is going to be a Conservative Government next time, they have said that they are scrapping the Identity Cards Act. If they do, then I have also got the same issue with the biometric passport: how do we collect the two finger prints for the biometric passport?

1540 **Q98. The Chairman:** Well, it raises the question about the whole e-borders strategy which relies on this information held in electronic form to be effective. The Isle of Man is intending to be a part of that, but these are pretty important details, aren't they, that are yet to be agreed or thought through, evidently?

1545 **Mr McDonald:** There is another issue, too, with the British passports, which maybe is something that is worth looking at at the minute, as well: the fact that we have been paying... They increased the price of the British passport to pay for the UK ID card system. I know that I have had to replace four of my family's five, and the increased cost to pay for, effectively, what is the UK ID card system.

But yes, there is a problem that fundamentally has to be resolved, that the UK still needs to resolve, with biometric passports, and no answer has come back, as yet.

1550 **Q99. The Chairman:** Because without biometric passports and machine-readable zones, it is impossible to administer an e-borders strategy, verifying passenger information.

1555 **Mr McDonald:** I think we need to be careful about the biometric passport here. The definition of what is on the passport – sorry, this is a bit of a sidetrack – the contents of a passport are defined by the International Civil Aviation Organisation (ICAO), which is a UN agency. It has been agreed that passports should include biometrics as in facial, but it does not agree – there has been no agreement – that passports have to carry fingerprints. But there has been a specification, created by the ICAO that says, 'If you want to do it, here is the specification to follow', which includes two fingerprints.

1560 So there is actually no international obligation on the UK to have fingerprints on passports at all. Certainly, Europe is – those Schengen countries, which Mr Quayle referred to earlier, are moving to biometric passports, including fingerprints, and there is a directive that covers it. Obviously, the UK wish to do so, as well.

1565 So they do not need to have them there, but if they going to put them there, they have to follow the ICAO specification, which is the two fingerprints, so they do not need it for e-borders. In fact, the fingerprints are really just an additional identification that, if, for some reason, they thought the rest of the passport was not right, they could use to actually check out whether it was a fraudulent passport, or whatever.

1570 So that is really its purpose; it is not directly linked to e-borders.

Q100. The Chairman: What safeguards are there for protecting data from being held and used inappropriately on a UK national database, that we are increasingly being obliged to engage with?

1575 **Mr McDonald:** At present, all they have got is a code of practice. This is where, as we have said and Mr Gill asked, the definition of serious crime... We do not know how far the authorities could use that information. It is defined as crime: it is actually defined as anything that the three agencies... in other words, the Police, Customs and Excise, and Immigration, for any of their purposes. So how far and wide is the remit of police purposes? How far and wide is the remit of revenue and customs purposes?

1580 That is the problem that the Information Commissioner in the UK has frequently said: there is nothing limiting the use of this information. Do we go to the extent... in comparison with school catchment boundaries, where local authorities have been out videoing parents, to find out whether they actually live in the catchment area or not? Could we end up in exactly the same scenario, where this data is being used for quite minor police purposes?

1585 **Q101. The Chairman:** Is there any reason why we should not go at a different pace to the UK? We can think through some of these issues for ourselves and, if the UK have not thought them through, why should we have to wait for what they decide?

1590 **Mr McDonald:** One of the questions that we could have for ourselves, to start with that very fundamental question, what do we define as serious crime? That is probably something... We have a different... For example, we do not have the regulation of investigatory powers here; we have the regulation of surveillance. So we could re-define how we want that to be used for those purposes, and maybe that gives the UK a guide.

1595 **Q102. The Chairman:** We could take a lead possibly.

Mr McDonald: Possibly. Whether with 80,000 people, we would be successful...

1600 **The Chairman:** Thank you. Mr Quayle.

Q103. Mr Quayle: Thanks, Mr Speaker.

It has just been covered, the point about the actual use of the data, but I would just like to ask about the safe storage of the data. When we think that people leave stuff on trains or aeroplanes and so on, and the NHS in the UK somehow lost millions of personnel... data relating to benefits, I just wonder what thoughts you had on that, because you mentioned, I think, a 10-year situation: five years on computer and five years filed elsewhere.

1610 **Mr McDonald:** These are some of the problems that we have got, and this comes back to what I talked about, the Information... It is actually one of the reasons why they finally changed the Information Commissioner's powers in the UK, because with Her Majesty's Revenue and Customs losing the 25 million records, and then very rapidly followed by the Ministry of Defence issues and NHS issues that you talked about, the Government, basically, put its hands up and went, 'Yes, we have to strengthen data protection laws.'

1615 It is a cultural problem. Realistically, that is what has happened, in several different ways. Suddenly, people are responsible for their own records. If we all think back 10 or 15 years ago, we would have had secretaries that would have made a copy of a letter and that would have gone onto the file. If I wanted to see the files, suddenly they would have produced the file, and I do not know how the information got there, but it did. Now we are actually all responsible for doing it ourselves, because we are all holding it electronically. People do not know how to look after records, and so we fundamentally have a cultural problem.

1620 By changing the legislation, you are actually forcing people to go, 'Oh, right. There actually is now an implication, if I do not start to think about this.' That is what they have actually done in the UK.

1625 **Q104. Mr Quayle:** Because there is historical evidence about people... obviously, they are working a lot more at home, now. They might take a lap top home, they have got the information on that. They, somehow, leave it in the back of a car: it has been stolen from the back of a car; it could be stolen from their own house.

1630 **Mr McDonald:** And the reality is – and, again, this is part of the cultural bit – the information that passes your desk each day, you get immune to. So it could be very, very damaging to an individual, but because you see it every day, you do not really appreciate that, unless somebody helps you refocus your mind on that.

1635 **The Chairman:** Thank you. Mr Braidwood.

1640 **Q105. Mr Braidwood:** I think there is only one point, Chairman. It is following on from Mr Quayle's question on holding the information, I think you mentioned right at the beginning that a lot of, say, information on Isle of Man residents is held in the UK. Now, can that be used? How can we control that, if it is being held in the UK? We cannot.

Mr McDonald: No, we cannot. Let us take Flybe, for example. If you book a flight with Flybe, the database is in the UK, so your information is already there. So, what protects you is actually the UK's Data Protection Act, at that stage. We have no control over it.

1645 This is why, to some extent, with e-borders, I never brought any attention to it, because whilst it started in the UK a few years ago, it was UK based. It did not affect the Isle of Man. It is only when they have brought it to the CTA that it starts to affect the Isle of Man, with regard to our ability to regulate on it, for example, the Steam Packet.

1650 But that is a fundamental problem that we have got and this is why, increasingly – and I think this is something that we are going to see increasingly – we do need global standards. It is not a case of the Island or it is not the UK; we need a global standard. I hesitate to say this, but that is where I am going tomorrow. I am going to Madrid tomorrow, because we are trying to create an international data protection standard, for the first time. The 79 countries, hopefully, this week are going to agree on an international standard for data protection, of which, we are one.

1655 **Q106. Mr Braidwood:** So there are quite large, fundamental, differences, then, between countries on access for that information, where ours can be quite stringent and others who are holding our information are quite lax.

1660 **Mr McDonald:** Absolutely. Take that American example I gave you at the start, where they still believe, the Federal Government believes, that once information enters their Federal Government, they can use it for any purpose. So, there is a fundamental difference in certain countries as to how you can use information. Yet, not too far away from the United States, Canada has one of the strictest data protection regimes of any country in the world.

1665 So, this is why we actually need to start looking, I think, more at the international arena and actually getting standards across the international arena.

Q107. Mr Braidwood: I think that is quite funny, because we talk about Northern Ireland and the Irish Republic, which is a nonsense, as you said, there are just so many crossings, people can do it... and it is the same, funnily enough, in the Canadian–American border. There are so many roads which go across the border and there are no immigration controls. There are only on the main borders, on the roads, but there are plenty of little side roads which you can slip from America into Canada and vice versa.

1675 **Mr McDonald:** And that is why, again, the States and Canada have the advance passenger information (API) on their external borders and not on the internal border, and that is what England does as well.

1680 **The Chairman:** Thank you. Mr Crookall.

Q108. Mr Crookall: Thank you, Mr Chairman.

Just to ask, really, how much feedback or how many questions and enquiries do you get from the public over this? When they phone you and say, ‘Do I have to tell them this? Do I have to ...? Or what right do they have to ...?’

1685 **Mr McDonald:** It comes in different ways. We will get about four or five irate phone calls a day from members of the public about various different things. It really depends on where things are in the news, for example. You will get people picking you up and then you get people that then get subjected to it. For example – and I should point out, by the way, we actually have had ... I know of one Isle of Man resident who was almost denied entry in the United States. When he arrived in the United States, they actually had a dossier about the size of this folder on him, and he spent the weekend before he was actually permitted entry into the United States. So, that shows you what can actually happen.

1690 Now, obviously, he was not a happy person when he came back and he started asking me about why, why, why, and I went through the history of telling him how passenger names records came about. He understood at the end of the day but, again, he was a person that, because of the way they profiled, they found a dossier about him that, okay, did not quite add up as far as the United States was concerned.

1700 So, yes, we get those sort of complaints and we do get them on a fairly regular occurrence, but it also depends on what is flavour of the month at the time and what is in the news.

Q109. Mr Crookall: But do they actually ask you, ‘Do I have to give this or that?’ or...?

1705 **Mr McDonald:** At times they do, and there are times... For example, in case you do not know, with regard to e-borders, under the Immigration, Asylum and Nationality Act, anywhere in the

1710 UK, police officers can ask for the information, already. For example, when Manx2 were laying on the charter flight for patients into Chester Airport, our DHSS was told that the Chester Police wanted passports and passport IDs in advance. We said, 'No, you don't need it.' But it was actually asked for because the Police believed, in the UK, that they actually had the right to ask for it.

Q110. The Chairman: A misunderstanding.

1715 **Mr McDonald:** There was a misunderstanding of what their powers were and where they were at that time, but that is more...

Q111. The Chairman: It could have been Anglesey: would they have still have asked?

1720 **Mr McDonald:** Who knows? Depends on which police authority it is. But, again, the question that came with... And, of course, that is one of the wider issues with regard to travel in and out, which has always been one of our arguments.

1725 If, for example, we were at the point when we were obliged to show passports between the Island and the UK, take someone like people going for a hospital treatment: they would have to have passports. Now, would you end up with... There are quite a lot of people on the Island who do not have passports. So, what do we then suddenly do? Do we have to manage to have some way of getting an emergency passport, so that someone that needs emergency treatment in Liverpool can actually get – ?

1730 **Q112. The Chairman:** When you say passport, do you really mean a travel document or photo ID?

Mr McDonald: Well, this is the point. If they change it to travel document and it is a photo ID, have they got a photo ID? I have seen people –

1735 **Q113. The Chairman:** A bus pass.

1740 **Mr McDonald:** If they have got one. I had the problem of bringing my mother over for Christmas a couple of years ago. She was already suffering from Alzheimer's. She did not have a passport because her last passport had expired some six or seven years earlier. She had not renewed her bus pass and they said, 'That's okay. Give her pension allowance.' I said, 'That is actually paid directly into the bank.' We actually had no documentation that we could actually get my mother on the plane with. We said, 'We do have her old passport, even though it is expired five years.' Now, as it was, fortunately, the airline company said, 'Yes. We will accept it.' I do not think an 82-year-old, somehow, was a threat to terrorism or anything anyway, but they accepted it on that basis.

1745 But those are some of the real issues that, okay, whilst it is a few people, we would actually have to face, if we did actually have those controls in place.

1750 **The Chairman:** Thank you. Mr Gill. No.

Q114. Mr Quayle: Sorry. Just a quick one, Mr Speaker. **(The Chairman: Yes.)**

You intrigued me earlier on by saying that Ireland somehow had the common standard with Malta and Cyprus, and I just wondered –

1755 **Mr McDonald:** Oh, sorry, common law jurisdictions. Our background, our historical laws are not based on European law, but British, English common law. Malta and Cyprus also have that background. So, this little meeting set up, initially, it was just, basically, the UK and the Crown dependencies, and then Ireland joined in, then Gibraltar joined in, then when Malta and Cyprus acceded in the EU, that is how they joined the little group.

1760 **Mr Quayle:** Thank you.

Q115. The Chairman: Just one final one. When Mr Braidwood was asking you about the e-borders strategy and you said, originally, the e-borders were a UK strategy, a UK issue, and did not affect us – you said that – and only since the Common Travel Area reforms... But, surely, the

e-borders strategy was always going to affect us, on the basis that we are periodically an international gateway to the UK, with flights – ?

1770 **Mr McDonald:** I must admit, I had not thought of that. You are quite right, because we have the charter flights coming in. It did actually affect us at that point.

Q116. The Chairman: I just wondered, on that, just that point. That is fine.

1775 Quite aside from that, I think, would it be true to say that the Government's acceptance in principle of being part of this strategy, although we do not know a lot of the detail, is to do with giving ourselves security controls over who is coming here? Given the earlier evidence that police co-operation and intelligence-led checks are taking place anyway, is that a sufficient justification, do you think, for the Isle of Man's involvement, that it gives us information from the UK authorities that we would not otherwise have?

1780 **Mr McDonald:** The thing with that is we have, even on the Data Protection laws, always been able to do it, where it is really focused, clear information to do with serious crime. So, the things that we would be interested in... well, even terrorists, possibly, using the place as a base. It is not impossible. Certainly, I know from Northern Ireland, these allegations were made of the Island, many years ago, that in the 1970s, there may well have been a terrorist bolthole at one stage. But, 1785 terrorism, drugs, in particular, which, I suspect, is probably our biggest issue – the potential for drugs smugglers coming in and out of the Island – that information has always been available for the police to actually transfer without the need for any formality built into it, because I think any reasonable person will look at that and expect, yes, you should be able to do that, and you should not really need a specific law to do that, either.

1790 **Q117. The Chairman:** So, is part of the problem, in formalising it in this way, with the undefined powers of what constitutes a crime: undefined crime or serious crime; what is not serious crime? Are you saying, by formalising this arrangement, you are then into the territory of information about unpaid parking fines and so on – concerns that we have had?

1795 **Mr McDonald:** That is where you start going on... As soon as you actually put the legislation into place, you start going, 'Okay, what can it be used for?' Unfortunately, it has, increasingly – this is what we have seen over the last years – powers that have been used that were intended for anti-terrorism legislation, for very serious crimes, being used for relatively minor...

1800 **Q118. The Chairman:** And potentially immigration control, as shown in Belfast?

1805 **Mr McDonald:** Yes. The problem with immigration control is you have got to be very careful it is not discriminatory, even if it is unintentional.

Q119. The Chairman: Well, I think that concludes our questioning. Sorry to have over-run, but it has been a very worthwhile session with you. I would like to thank you very much for coming in. Thank you, very much, indeed.

1810 **Mr McDonald:** Thank you.

The Chairman: Ladies and gentlemen, that brings us to the end of the public session of the meeting of the Standing Committee. I would like to thank the witnesses and members of the public very much for their attendance.

1815 Thank you very much.

The Committee adjourned at 1.13 p.m.