



Isle of Man
Government

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Council of Ministers' Single Legal Entity Sub-Committee

Continuing Evolution of the Isle of Man Government?

Consultation Document

April 2017

INTRODUCTION

Council of Ministers Sub-Committee

At its sitting in December 2016, Tynwald resolved as follows:-

'Tynwald notes the work done to date by the Council of Ministers around the Single Legal Entity and connected matters, and requires that the Council of Ministers establish a Sub-Committee to investigate the merits and practicalities or otherwise of organising Government on the basis of a Single Legal Entity, reporting back to Tynwald with recommendations by July 2017.'

The Sub-Committee has met on 4 occasions and now wishes to conduct a limited consultation (as the time available to us is short), in order to meet the Tynwald deadline.

Our Terms of reference are attached at **Appendix 1**.

In Chapter 1 of this consultation document we briefly describe the background to the issue.

In Chapter 2, we have examined some of the barriers to change which were raised in the Elvidge report and as part of the consultation exercise. In the remaining Chapters, we have considered four options for reform and these are set out as follows and upon which we now consult with key stakeholders:

Chapter 3	An incremental approach
Chapter 4	Single Legal Entity with a Department structure
Chapter 5	Single Legal Entity operating as a single organisation
Chapter 6	Executive Agency Model

Consultation

In order that we can now reach some conclusions on our recommended approach for the further evolution of the Isle of Man Government we are conducting a limited internal consultation exercise, to supplement the previous external consultation exercise and are inviting views from Tynwald Members and Departments, Boards and Offices, to elicit comment on the various options we have identified.

One of the key points to emphasise is that the options described in Chapters 3 to 6 below are not mutually exclusive but complement one another and could be progressed incrementally over time, if with each transition, it was considered desirable to do so.

We would be grateful to receive comments in writing by no later than **Friday 26th May 2017** addressed to jon.callister@gov.im

Single Legal Entity Sub Committee
April 2017

1. Background Information

Evolution of Government on the Isle of Man

By 1986, following a long period of evolution, the Isle of Man Government consisted of 27 Boards of Tynwald, the membership of which comprised members of Tynwald and some non-Tynwald members. The Board system had become characterised by slow decision making and a lower level of cooperation and coordination than should have been expected.

Pressure during the 1980s for the introduction of a Ministerial System to meet the need for a more decisive, efficient and effective form of Government resulted in the reorganisation and reduction in the number of the Boards of Tynwald. Transfer to a full Ministerial System was accomplished by the passing of the Government Departments Act 1987, leading to the establishment of nine Departments of Government, and the reconstitution of the Executive Council to a Council of Ministers being the chairs of the Departments, and a Chief Minister.

In legal terms, this provided for a standardised and simplified constitution for Departments, inter alia that each Department is a body corporate with perpetual succession and consists of the Minister, by whom its functions are exercised, and one or more other members, the Minister and members all being members of Tynwald. Legal proceedings were and continue to be taken by or against a Department in the name of the Department.

Single Legal Entity

The concept of the Isle of Man Government operating as a single legal entity was first explored, amongst many other issues, as part of the Review of the Scope and Structure of Government in the Isle of Man conducted in 2006¹.

The review identified concerns regarding a lack of joined up Government. This was described as each Government body (and, sometimes, each division of each body) existing in isolation from the rest of Government and communicating with the rest of Government with insufficient frequency and inadequately. The need to improve corporate Government was identified as one of the five general themes where improvements needed to be made alongside such other themes as reducing the scope of Government, achieving value for money and separating policy from operations.

The 2006 review concluded that there was merit in the Isle of Man Government being created as a single legal entity but only for the purposes of external and international relation, thus retaining the Departmental structure. However, this recommendation was not pursued.

In 2014, Sir John Elvidge was invited to the Isle of Man by the Council of Ministers to undertake a review in order to assess the appropriateness, or otherwise, of establishing Isle of Man Government as a single legal entity. He produced his report in October 2014². The report recommended a single legal entity to replace the separate legal identities of the constituent parts of Government in a structure that had been in place since the 1980's, as well as considering the relative merits of developing Isle of Man Government as a single organisation.

¹ <https://www.gov.im/media/626819/2012scopeofgovernmentreport.pdf>

² <http://www.tynwald.org.im/business/opgp/sittings/Tynwald%2020142016/2014-GD-0075.pdf>

Sir John stated that the Island, like most jurisdictions, is facing challenges of an increasingly complex nature against the backdrop of a rapidly changing external environment, and needs to respond effectively to those challenges. As such, the need for 'strategic agility' is greater than ever if the Island is to compete effectively at national and international level.

The status of a single legal entity could offer many positives that are particularly attractive to a small government like the Isle of Man, as it competes on the international stage. In particular, greater flexibility and agility could be achieved through a single point of authority, simplified legal processes and decision-making. This in turn, could provide greater clarity of vires, increased accountability and encourage communication and cooperation. It would also, in theory, resolve the concerns expressed by many regarding 'silo' working in Departments.

In his report, Sir John Elvidge stated that:

The main reason for this is that it (SLE) clearly creates a favourable context for the more integrated working of government. It removes potential inhibitors to joint action by different parts of the government structure. In terms of behavioural culture within government, which is much more important in practice than organisational and process changes, it encourages a predisposition towards communication and cooperation.

It opens the door to further changes of greater substance, without in any way forcing choices about the extent to which the Government decides to adopt those changes.

In all these respects, it offers a clear and compelling match to the improvements in effectiveness which those I consulted wish to see achieved. It also has advantages for the citizen in that, insofar as legal identity is of consequence to them, it relieves them of the need to unravel the complex structure of government to identify the legal entity relevant to their interest.

These arguments are so powerful and clear cut that I hope, in the interests of brevity in this report, that they do not require more extensive elaboration.

Sir John's report was debated in Tynwald in November 2014, and was consulted upon in the summer of 2015. The public consultation³ concluded that there was merit in establishing Government as a single legal entity, with a large majority of respondents (74%) in support of the principle and, whilst some concerns were expressed surrounding data protection issues, there was only limited opposition to the concept.

It was argued in the consultation that a Single Legal Entity would enable:

- Greater flexibility and agility in responding to the Island's external environment;
- More 'integrated' and 'joined-up' systems across Government;
- Policy making and service provision based around the needs of the whole citizen as opposed to 'patients'/'service users' being viewed from a Departmental perspective etc.;

³ <https://www.gov.im/lib/docs/hr/consultation/201604slefinalconsultationreport.pdf>

- The ability to make and enter into contracts and agreements as a Government entity, rather than individual Departments, etc., at local and international level
- More integrated working across Government;
- The removal of actual or perceived inhibitors to joint action by different parts of the existing Government structure(s).

Government as Single Organisation

Sir John's report also clarified that Government as a single legal entity is not the same thing as Government as a single organisation and although the arguments for a change to single legal status are strong, that change, in itself, is unlikely to have a powerful effect. As every jurisdiction is different, it is likely that some developments are likely to be more of a natural fit with the existing context than others. For this reason, he outlined a suite of options that the Island may wish to adopt, including:

- a single strategic framework for Government
- an integrated performance management framework
- a collective approach to political decision making
- common systems underpinning the operation of central Government e.g. finance, ICT, HR.
- integrated financial planning and budget management within central Government
- an integrated Civil Service structure, with a clear overall point of authority
- a basis for aligning the activities of centrally funded public bodies which are at 'arm's length' from central Government with the Government's strategic framework
- a basis for aligning the activities of municipal/local Government with the Government's strategic framework

It was noted in the report that Isle of Man Government had implemented, to some degree, many of the elements from the single organisation menu, and that process has continued in recent years as is noted further in the subsequent chapters.

Whilst the consultation responses indicated strong support for single legal entity status, 57% of respondents indicated a preference to retain the Departmental structure within a single legal entity, with responsibility and accountability delegated to Ministers from the single legal entity (Council of Ministers).

Despite the preference for a Departmental system, there was still strong support for initiatives aimed at improved corporate working. 92% of respondents believed there should be more cross cooperation between Departments when developing policy, 87% agreed that Government should adopt an integrated approach to financial planning and budget management and 76% agreed an integrated civil service structure should be in place with a clear point of authority via the Chief Secretary.

2. Barriers to Change

Data Protection

Concerns were raised about the potential negatives of a single legal entity in relation to Data Protection issues. This was addressed in the Elvidge Report after seeking clarification from the Information Commissioner who confirmed that if the Isle of Man Government were to become a Single Legal Entity the processing of personal data would still have to comply with the provisions of the Data Protection Act 2002. One of the fundamental principles of the Act is that personal data must be processed lawfully and where mandated to do so by statute.

Therefore, if Isle of Man Government were to become a single entity this would not in itself permit personal data to be processed where statutory powers to do so did not exist. He therefore concluded that establishing IOM Government as a single entity would not affect how personal data was processed or shared. Arguably, single legal entity status strengthens rather than diminishes understanding of data protection principles, whilst allowing effective data sharing where there is statutory power to do so in compliance with data protection principles.

Equal Pay

A further concern related to equal pay legislation and the impact this may have on IOM Government employment structures. Single legal status would remove any potential barrier to the application of forthcoming equalities legislation across the whole of Government. The pay and conditions of jobs in one part of government would be open to comparison with those in another part of Government.

In that regard it is important to note that in other single legal entity Governments such as Scotland and Sweden the workforce covered by the single legal entity is generally restricted to the civil service and does not include groups such as health and social care or education. Those services tend to operate within separate legal structures such as NHS Scotland or local authorities. Whilst it would of course be possible to develop harmonised pay and grading structures for the whole Government workforce, it would likely have significant cost implications, both in terms of its implementation and the ongoing maintenance of an equal pay system. This issue is explored further, in respect of each of the four options for reform in Chapters 3 to 6 below.

Exercise of Power

Another concern expressed related to the perception of too much concentration of power within the hands of the Chief Minister and Chief Secretary and too much collective responsibility in the Council of Ministers. At present, the Chief Minister and Chief Secretary have only limited statutory powers as individual office holders, and this would not change with a single legal entity, as authority would be vested in the collective body of the Council of Ministers, who would make decisions jointly, or delegate authority as appropriate.

Collective Responsibility

Collective responsibility is a constitutional convention where members of a cabinet must publicly support governmental decisions made by the governing body, even if they do not privately agree with them. Such a process supports accountability for the formation of policy and drives forward decision-making.

Following the General Election in 2016, the rules on collective responsibility for the Isle of Man Government have changed and now provide that Ministers are automatically bound by collective responsibility only on matters included within the Programme for Government and the annual Budget.

Collective responsibility also applies to policy decisions on matters of national importance which may be taken from time to time, and which in the normal course of events, would be expected to feature within the Programme for Government or the Budget. The Council of Ministers will, by a majority vote, determine whether a policy decision on a matter of national importance, should be subject to the doctrine of collective responsibility.

Consideration needs to be given to whether this model of collective responsibility would be sustainable within a single legal entity Government.

Cost

One of the key issues informing this debate concerns cost. The sub-committee has not, at this stage, conducted a full analysis of what the costs might be of progressing each of the options in the Chapters below, as it is consulting on concepts and principles rather than detailed organisational design. Nonetheless, it is acknowledged that Tynwald will expect greater clarity on this issue before any decisions are taken on the way forward, and the sub-committee will ensure that a suitable analysis of potential costs and savings is provided when a final report is laid before Tynwald in July.

3. An Incremental Approach

Previous Reforms

The reforms to the structure of the Isle of Man Government over the last 30-40 years show a clear trajectory of progress towards it becoming a more cohesive and joined up organisation. This period began by loosening the control of the Lieutenant Governor in areas such as determining the budget and chairing the Executive Council, and has included the abolition of the Boards system, the development of the Ministerial system and the refinement of that system including the reduction in the number of Ministers and Departments and the strengthening of "the centre", as part of the Modernising Ministerial Government programme. During the same period the Government has moved from an essentially departmentally minded policy review process through a corporate planning process to the new Programme for Government published this year. The Programme for Government is now based on a national outcomes framework, introducing the concept of shared contribution towards a common purpose or goal. This was unanimously agreed in Tynwald in January 2017. The accompanying performance framework will be considered by Tynwald at its sitting in April 2017.

In respect of collective decision making, the new Council of Ministers has reformed its system of Policy Sub-Committees and introduced a process which encourages much greater collaboration in the formulation of policy rather than being driven by Departmental silos. A copy of the draft Guidance Note describing the new process is attached at **Appendix 2**. The terms of reference for each Council Sub-Committee are attached at **Appendix 3**.

The work of these committees, including the move towards a joint commissioning approach being advocated by the Social Policy Committee, further demonstrate Government's progress towards greater collective policy development and decision making.

In respect of an integrated civil service structure the Modernising Ministerial Government programme in 2014 introduced a reform whereby Ministers delegated their authority to the Chief Secretary to manage Chief Officers in relation to corporate matters and this has now been codified and includes all elements of the Programme for Government.

In respect of integrated budgeting there is a view that policy decisions should drive priorities and spending rather than the Treasury's fiscal imperatives driving policy decisions. It is expected that the Programme for Government will help to change this perception, and in recent months this has been given effect to some degree with the Minister for Policy and Reform working closely with Treasury during the commencement phase of the Programme for Government and the SAVE initiative. However, it remains the case that the Council of Ministers does not have statutory powers to determine priorities of expenditure nor to consider financial and economic policy issues.

There is an argument therefore to leave the Departmental structure as it is, and allow more time for these incremental reforms to bed down and succeed. If, however, they fail to deliver a sufficiently integrated and joined up Government, then perhaps the time would be right at that stage to consider more radical options. If we pursue an incremental approach there are some lessons which could be learned from other jurisdictions, including recent developments which could be applied in the Isle of Man. These are considered briefly below.

Recent developments in other Jurisdictions

In terms of its national outcomes, Scotland has recently given them statutory force and legislation has now been introduced under the Community Empowerment (Scotland) Act 2015⁴, which will phase in 11 aspects aimed at helping communities to do more for themselves and have more say in decisions that affect them.

In part 1, the Scottish Government must publish its national outcomes, which must be reviewed every five years. The remaining parts provide a framework for communities to engage directly with government in a number of areas including, amongst other things, community planning, asset transfers and participation in public decision-making.

In respect of budgets, the Scottish Parliament agreed in 2011 that management against the overall budget should take precedence over management against Minister's individual portfolio budgets.

In Jersey, the system of executive government was changed significantly by the States of Jersey Law 2005. Until then, the States had both executive and legislative functions, the Government of the island being conducted through a large number of committees of elected members. The States of Jersey Law effectively introduced a Ministerial system of Government and five scrutiny panels to cover the work of all the Departments of the States.

Although Jersey's Government is a similar structure to the Isle of Man, an ongoing programme of reform is taking place aimed at working collaboratively across the States and reducing bureaucracy.

In Guernsey, a major review of the constitution of the States has been taking place since 2014. Amongst the recommendations to date, it has been determined that there is a need for a single senior committee with responsibility for the States-wide planning and co-ordination of policy and resources. The committee develops the main responsibilities for policy co-ordination, resource allocation and external and constitutional affairs which were previously divided between two committees (Policy Council and Treasury and Resources).

Previous Recommendations

It is also noted that some other previous recommendations about the machinery of Government within an incrementally reformed structure have not been given effect, but are, perhaps, worth considering again. For example the 2006 report stated:

It did seem to us, however, that the Council of Ministers Act 1990 was unhelpful in explaining the role of the Council and that anyone seeking an understanding of the functions of the Council would not find it in the statute. We would, therefore, recommend that the policy formulation and strategic coordination and leadership roles of the Council of Ministers should be added to the Act, with the proviso that any statutory definition of the role of the Council should not be so narrowly drawn or restricting that it inhibits the Council's work or natural evolution.

We have therefore added this to the options for an incremental approach set out below.

⁴ <http://www.gov.scot/Topics/People/engage/CommEmpowerBill>

It is also noted that, as part of the 2006 Scope of Government review, a research team supporting the review reported, among other things, on the absence of any statutory authority within the Council of Ministers in relation to determining fiscal priorities. Their report stated:

It is notable that in the United Kingdom the Prime Minister is First Lord of the Treasury, and the Chancellor of the Exchequer is Second Lord of the Treasury. Thus, the Prime Minister has enhanced powers compared to the Chief Minister in relation to the allocation of financial resources which enable him to ensure that his policies are carried through.

In the absence of a party in power with a Manifesto, this prioritisation does not exist in the Isle of Man and we recommend that consideration be given to replacing the current Council of Ministers Act with a new Act which clearly sets out the policy making remit of the Council of Ministers and establishes a clear authority which enables the Council of Ministers to carry out that policy by formalising its control of financial and other resources.

This, we would suggest, could be done by transferring to the Council of Ministers the powers currently held by Treasury by virtue of sub-sections (1)(f) and (g) of section 3 of the Treasury Act 1985 in relation to the approval and prioritisation of expenditure, with the role of Treasury being re-defined to give it responsibility for advising the Council of Ministers on these matters and ensuring that adequate revenue is raised to enable the policies to be carried out.

We recognise, of course, that the Council of Ministers would still need to bring changes of Government policy to Tynwald for approval, through the relevant Minister. Naturally, the Council of Ministers, when setting policy centrally, would have to have regard to the will of Tynwald.

Accordingly, there may be merit in further amending the Council of Ministers Act 1990, to provide for Council to assume some powers over budgetary matters.

Options for Incremental Approach

The common theme emerging from these ongoing reforms (both on and off the Island) is that of streamlining and simplification of structures and processes and the removal of overlapping responsibilities. It is possible that some of the external developments could be explored in more detail for adoption within the Isle of Man Government.

In summary, this might include amending the Government Departments Act 1987, Council of Ministers Act 1990, and the Treasury Act 1985, as appropriate, to:

- a) Impose a statutory obligation to consult and cooperate in the formation of policy.
- b) Establish the role of Chief Secretary as Chief Executive of the Government to whom Chief Officers would be accountable on all matters.
- c) Give statutory force to the Programme for Government based on national outcomes and indicators.
- d) Simplify the process for the transfer of functions between Departments.

- e) Give the Council of Ministers statutory powers describing its functions, including the requirement to determine priorities of expenditure and to consider financial and economic policy issues.
- f) Enable budgets to be allocated according to national outcomes rather than functional areas.
- g) Allow for Government to be accountable for budget performance on an aggregated basis not a Departmental basis.
- h) Encourage greater use of directions of the Council of Ministers.
- i) Simplify systems of delegation of authority.

The incremental reforms above, would involve the retention of Departments as separate legal entities. The equal pay issues referred to in Chapter 2 would not therefore arise.

4. Single Legal Entity with a Department Structure

Even if incremental reforms were progressed, the option would remain to move towards a single legal entity and in doing so, to retain a Departmental structure. In this case authority would be delegated from the Council of Ministers to individual Ministers to perform specific functions, in much the same way as now, but, perhaps, coupled with a greater concentration of policy making functions and resourcing decisions at the centre of Government.

This would enable functional activity to continue to be apportioned in a suitable manner reflecting the types of operational activity performed. This was effectively the position adopted by the Review into the Scope and Structure of Government in 2006. The 2006 Review Team stated in reporting the outcome of its consultations:

It was accepted by all that Government cannot be a single monolith but has to be sub-divided to allow it to be controlled and managed and there was very wide support for the Departments, as a structural concept, as the building blocks of the Government structure below the Council of Ministers.

However it was also stated that:

The majority were in favour of a strong centre to Government, with the implication that the Council of Ministers should be able to dictate policy strongly to Departments and Statutory Boards.

It would be true to say that there was very strong support for the concept of a strong central leadership for Government which adopted a business-like approach and concentrated on policy and strategy and long-term planning.

In reaching their conclusions on a future structure, the Review Team stated:

We were presented with a cornucopia of suggestions for making changes to the structure of Government – ideas for moving specific functions from one Department to another, for wholly recasting the functions of particular Departments, for creating new Departments and abolishing others, for changing or eliminating Statutory Boards, for various amalgamations and so on. There was merit in many of the suggestions, for the whole spectrum of Government's activities can be divided and re-divided, with plausible justification, in any number of different ways and there is no single or perfect solution. What we propose below is, therefore, just an option. We recommend it, but we do not pretend that it is the only alternative.

In formulating our ideas for the future we have been guided by a number of principles:-

- *The Department should remain as the principal delivery mechanism for Government services;*
- *Each Department should have a manageable span of responsibility, there should be no conflicts of interest within a Department and the component parts of a Department should have a unifying synergy;*

- *Where possible, the complexities of the Government structure should be reduced by bringing into the Departmental structure those Statutory Boards, Offices and other bodies which do not need to stand alone.*

The Review Team also devoted a whole Chapter to “Strengthening the Centre of Government”, which they repeated in their follow up report in 2012.

There may be merit therefore in retaining a Departmental structure within a single legal entity, but with more policy making functions and resourcing decisions being transferred to the Cabinet Office, and the retention of Departments primarily as operational delivery agents for public services. The move to centralise certain policy functions within the Cabinet Office began on its creation in 2014, following the recommendations of the Modernising Ministerial Government Report which was unanimously approved by Tynwald. In the foreword to that report the then Chief Minister stated:

I do not suggest further reform lightly, but I do need to put the foundations in place for improved policy making. Corporate working must start at the centre and there can be no doubt that the role of Chief Minister has developed considerably over the last 25 years. I have identified certain things that need to be very different going forwards. One of those is that, ironically, the number of separate entities we now have is approaching the number we had under the old Board structure which predated Ministerial Government. This is an obvious cause of many problems. It follows that the higher the number of separate bodies then the higher the number of silos we have created for people to operate within. This creates difficulties for effective communication and adds cost to the system of Government, which we can no longer afford.

The proposals outlined in this report are just the start of a bigger journey of making Government smaller, simpler and stronger as advocated in the Agenda for Change . It tackles preparations for the further reforms required by suggesting a stronger foundation for corporate policy making and an overall reduction in separate entities. I have often said that form must follow function. It is increasingly clear to me that there are some structural changes that could be put in place relatively quickly which would improve the foundations for further reforms and the customer centred approach we are trying to achieve.

The Cabinet Office has evolved since its formation and now comprises the following functions:

- The Chief Secretary’s Office (including COMIN support, Crown & External Relations, Policy & Strategy, Business Change & Reform, Welcome Centre, Planning Policy, Regeneration Policy)
- The Office of Human Resources; and
- Government Technology Services

It would represent a further evolution to gradually transfer more corporate policy development functions (including the staff and resources) into the Cabinet Office. In the first instance, this might include a corporate policy team, comprised of subject matter experts brought in from Departments, from time to time, to support the Council in the development of policy. Whilst this has been a feature of policy development in recent years, it has never been formalised sufficiently to become embedded in departmental culture.

Arguably, it remains the case that policy ideas are being developed in silos and with insufficient cross-departmental consideration.

Other examples of activity which could be transferred to the Cabinet Office include Public and Occupational Health and the development and drafting of legislation.

Legislative Requirements

In order to establish Government as a single legal entity it would be necessary to replace a number of individual corporate structures with one single corporate structure. But, whilst it would be necessary to replace the Government Departments Act 1987 and the Council of Ministers Act 1990, many of their elements would inform the drafting of an "Isle of Man Government Bill" and, indeed, would need to be reflected in it.

As a minimum, the following elements would need to be dealt with in the Bill:-

- Establishment of the Council of Ministers as the single legal entity
- Identification of the members of the SLE and the method of and qualifications for their appointment, removal, resignation, etc
- The proceedings of the SLE
- Vires, capacity and corporacy of the SLE
- Execution of the functions of the SLE, powers to delegate
- Organisation of the SLE into functional areas (Departments), and means by which functions can be moved from one Department to another
- Organisation of the civil service/management and administration of the SLE and the designation of the Chief Secretary as the Chief Executive

The majority of the work would then be in the identification of the consequential amendments to the Statute Book (including those which will need to be made to UK Orders in Council and UK legislation applied to the Island under Manx statutes), which would flow from an analysis of the various statutory powers, functions and other references once a decision is made about what functions should be within the SLE and what functions should remain outside.

Boundaries of the Single Legal Entity

It is our view that those Statutory Boards and other bodies which currently sit outside the Department structure (such as the Post Office, MUA and Independent Regulators) should continue to operate outside of the single legal entity to preserve their independence or commercial freedoms as appropriate. However, there may be some functions currently residing within the Department structure, which may be better placed outside the single legal entity. This might include both regulatory and commercial functions, for which more detailed consideration will be necessary.

In addition, we are aware that the Cabinet Office is currently conducting a separate review into the many other quasi government and quasi legal bodies operating outside the Department structure (e.g. Committees, Quangos and Tribunals) and it will be important that their relationship with a single legal entity is also fully considered.

As part of the SLE consultation in 2015, Manx National Heritage provided a detailed written submission exploring the issue of the boundaries of a single legal entity, which is attached at **Appendix 4**.

Options for a Single Legal Entity with a Department Structure

In summary, the establishment of Government as a Single Legal Entity, whilst retaining a Department structure but centralising more policy making functions, could be progressed as a further reform by:

- a) Replacing existing legislation with an Isle of Man Government Act.
- b) Retaining a Statutory Board and Office structure, and COMIN control systems (e.g. powers of direction etc) for functions which should remain outside central Government.
- c) Transferring all Government functions into the Council of Ministers.
- d) Providing for those functions to be delegated to Departments.
- e) Increasing the policy making and resourcing functions within the Cabinet Office.

The reforms above would involve the retention of Departments, but no longer as separate legal entities. The equal pay issues referred to in Chapter 2 would therefore need to be addressed.

5. Single Legal Entity operating as a Single Organisation

The Elvidge Report stated that:

It is important to be clear that, although the arguments for a change to single legal status are strong, that change, in itself, is unlikely to have a powerful effect. It is more a matter of removing an obstacle to the Government's ambitions than of creating a tool to achieve those ambitions.

In other words, government as a single organisation, or even government as a well-integrated organisation, does not flow automatically from a government being a single legal entity.

Sir John's report therefore focussed mainly on Government operating as a single organisation, but emphasised that there is no 'one size fits all' model. As such, the report provided a range of options that could be adopted in terms of where the boundaries of the entity might lie and what the organisation could comprise.

A single organisation, within a single legal status, would potentially offer many advantages that are currently more difficult to achieve in the current structure. For example, more integrated systems, policy making and service provision based on a holistic rather than Departmental mind-set and a collective approach to decision making and accountability.

However, on the negative side, a single organisation may in fact lead to slower decision-making with a blurring of lines of accountability. And, there are some arguments that the desired outcomes of greater accountability and integration could still be progressed within the existing structure.

The key issues explored in the Elvidge Report regarding single organisation concerned the following issues:

- a single strategic framework for Government
- an integrated performance management framework
- a collective approach to political decision making
- integrated financial planning and budget management within central Government
- an integrated Civil Service structure, with a clear overall point of authority

As indicated in the introduction, these ideas were broadly supported by the consultation responses and, indeed, the Elvidge report identified that the Isle of Man Government has already made significant progress on these issues even within its existing Departmental structure as noted in Chapter 3. However, one option for further reform would involve removing the Departmental structure and arranging for the senior political leadership (Council of Ministers) and Civil Service leadership (Chief Officers and Directors) to operate in a more collegiate way.

In Scotland this was achieved in 2007 by abolishing Departmental structures (but not the structure of Executive Agencies within the wider Scottish Government structure e.g. the Scottish Prison Service or Transport Scotland). In formal terms, this was simply a matter of terminology, including the job titles of several of the most senior posts, but in substance it involved redefinition of responsibilities of the most senior staff to give much greater emphasis to their responsibility to contribute to delivery of the whole of the Scottish Government's objectives.

This change did not directly affect the structure of Ministerial portfolios, although the numbers of both senior Minister and official posts were reduced to promote greater emphasis on team working in both groups. It meant that organisational boundaries within the single legal entity existed only within the core Directorates of which there were approximately 40, and the Directors of each were required to devote at least 50% of their activity to corporate work in support of the "Scotland Performs" Framework.

Adopting a similar approach within the Isle of Man Government, would represent a significant change, but might enable a truly corporate approach to be applied to the implementation of the Programme for Government.

Options for a Single Legal Entity as a single organisation

In summary, the establishment of Government as a Single Legal Entity, operating as a single organisation could be progressed as a further reform by:

- a) Replacing existing legislation with an Isle of Man Government Act.
- b) Retaining a Statutory Board and Office structure, and COMIN control systems (e.g. powers of direction etc) for functions which should remain outside the single legal entity.
- c) Transferring all Department functions to the Council of Ministers.
- d) Providing for some of those functions to be delegated to Directorates.
- e) Retaining all policy making and resourcing functions within the Council of Ministers supported by a central policy function (Chief Officers).
- f) Establishment of executive 'delivery agencies' for some operational functions.

The reforms above would involve the removal of Departments and the equal pay issues referred to in Chapter 2 would therefore also need to be addressed.

6. Executive Agency Model

Separating Policy from Operations

In the Report into the Scope and Structure of Government published in 2012, The Review Team reaffirmed its recommendations from 2006 regarding the adoption of alternative means of service delivery, but refined their approach to give greater emphasis on the use of Executive Agencies. It is worth repeating elements of that report as they provide valuable context for a further reform option regarding the future structure and legal status of the Isle of Man Government.

The first extract concerns the Review Team's general approach, which was as follows:

For the purposes of this report, we are using a wide definition of 'Alternative Means of Service Delivery'(AMSD), which includes three distinct types of organisational structure, all of which are distinct from the traditional norm described above:-

- *Services delivered involving Outside Agencies;*
- *Services delivered within the Government Structure (using Executive Agencies);*
- *Services delivered through the Local Government Structure.*

We will look at these three alternatives in more detail in the next three chapters. What we recommend, as a general principle, is that there should be a presumption that, subject to certain exceptions, all those Government services which are now delivered in the traditional way should, in future, be delivered through one or other of the AMSD that we have identified. The exceptions that we envisage are services:-

- *In support of a Minister or the Council of Ministers in relation to the formulation of policy and strategy, the setting of standards and the monitoring of performance, budgetary control and enactment of legislation;*
- *Where it can be demonstrated an issue of over-riding national interest could be prejudiced e.g. defence, security of supply, major economic or fiscal policy;*
- *In support of the Government to which a high degree of confidentiality is attached e.g. Crown and External Relations, Legal Advice to Government Officers of a sensitive nature;*
- *Where, on examination, it is demonstrated that the introduction of AMSD would result in poorer value or some other over-riding disadvantage.*

We would also confirm that there are some services which for reasons of probity or public interest will need to continue to be staffed by public employees. These would not be suitable candidates for being delivered by the first of our AMSD (involving Outside Agencies). Examples of such services would be central elements of policing and judicial services and certain regulatory functions. They could, however, be candidates for one of the other options of AMSD.

These exceptions apply to only a relatively small part of the present Government service and the scope for using AMSD is wide. In examining traditional Government services for candidates for AMSD, attention should focus initially on those services which:-

- *Are relatively distinct within the Government structure e.g. an existing separate Department, Division or Office;*

- *Are relatively large in staff and/or monetary terms;*
- *Have a limited day to day political involvement.*

The report then went on to explore in more detail the potential use of Executive Agencies, and how this might improve public service delivery. In particular, it stated:

It seems to us that the case for Executive Agencies is even stronger now than in 2006. At a time of overall Government retrenchment the great need is for politicians to manage the public debate and to concentrate on strategic and big picture issues and to avoid micromanaging the cost-cutting that is necessary. Managers, on the other hand, given greater managerial freedom, have the scope within politically-determined parameters to be more imaginative and effective in delivering slimmed-down but effective services.

Our relevant recommendation in 2006 was:-

'Government should look seriously at the Executive Agency model developed in the United Kingdom and should be willing to adopt that model and establish Executive Agencies within Departments, where the service provided and the internal structure of the Department make it likely that the model would produce a net benefit in terms of efficiency and effectiveness.'

We repeat and re-emphasise that recommendation and add a further one, in the light of events since our earlier report.

It is clear from the response to our 2006 Report and from our discussions with politicians and officers this time around that there is nervousness about the possible candidates we have identified for the various alternative means of service delivery involving outside agencies. A number of ostensibly plausible reservations have been put to us. To what extent those reservations are well-founded and to what extent they owe more to inertia, self-interest and fear of the unknown is difficult to know. But, as a compromise or as a stepping-stone to something more radical, we would offer the Executive Agency as a low risk alternative, where the practicalities of separating services out from day to day Government control could be tested with a view either to them remaining as Executive Agencies for the long term or being moved on to some more radical solution when sufficient experience and confidence within the Executive Agency model has been gained.

In the United Kingdom, the Executive Agency arrangement is flexible. The Agency is an administrative creation, not a statutory one, so a Department can create or modify an Agency without the necessity of new legislation. Executive Agencies are part of the Crown. They do not usually have their own legal identity, but instead operate under powers that are delegated from Ministers and Departments. If it is necessary for an Executive Agency to have a legal identity - for instance for control of assets or liability purposes - legislation may be required, or an alternative legal personality chosen.

Since 2006, the Government has responded to and adopted many of the recommendations in both the 2006 and 2012 Scope of Government reports. However, there has been only a lukewarm response to the recommendations regarding the separation of policy from operations or exploring the Executive Agency model.

The establishment of separate entities for service delivery which are responsible for implementing policy decisions made at the "Centre of Government" might be worth pursuing. In the short term they could be established as per the UK model, operating within the existing Departmental structure. However, in the longer term, and if the model is successful, it might be appropriate to remove the existing Departmental structure, and replace it with a Central Government function as a single legal entity with operational service delivery agencies sitting on the outside.

Local Government Transition

An effective and responsive system of Local Government is crucial in the longer term to the success of any reform of central Government. Local Government could be ideally placed to deliver some of the services currently provided by central Government due to its close relationship with the local community. The current structure of Local Government is not conducive to this approach.

The 2012 Report into the Scope and Structure of Government also reaffirmed its view on the need for a reformed system of Local Government and recommended that:

'Government should commit to a restructuring of local government such that, after restructuring, local authorities should be large enough and have the capability to deliver a wider range of public services, including services devolved from Government.'

Some progress has been made on the reform of delivery structures for the two most significant local government activities, housing and waste management as part of the local authority transition process which has taken place in recent years. In each of these areas work is underway to develop delivery platforms on a regional basis encouraging a joined up approach between local authorities and central government e.g. civic amenity sites and regional housing lists.

This regional approach could be extended to cover a greater number of functions.

There may also be opportunities for service delivery agencies, whilst remaining as single units, to operate some of their services on a regional basis. By doing so, it will be possible to ensure greater cooperation and joined up activity at a local level, where it matters to the public, between all the various public services. There are already several examples of Central and Local Government public services operating on a regional basis, or where efforts are being made to develop this model. This includes:

- Isle of Man Constabulary
- Health and Social Care Community Hubs
- Housing & Waste Management

Therefore, the extension of these "community hubs" to cover a broader range of local services may be a sensible approach to follow.

Strengthening the Centre

In 2014 the Council of Ministers implemented the Modernising Ministerial Government programme which created a Cabinet Office, reduced the number of Departments and Statutory Boards and resulted in the merger of utilities and health and social care. This programme was introduced partially in response to proposals within the Scope of Government Reports to "Strengthen the Centre of Government".

The Cabinet Office was formed to provide an improved mechanism which would ensure that corporate policy decisions are fully implemented and that Government budget priorities are determined based on achieving policy outcomes. The post of Minister for Policy and Reform was established with responsibility to lead the implementation of corporate decisions of the Council of Ministers, with authority to transcend Departmental boundaries to ensure implementation of policies. The Minister was to be mandated by direction of the Council of Ministers to work across Departmental boundaries to focus on various service areas requiring intervention across the full range of Government activity.

There is an argument that this does not go far enough and that policy expression and strategic thinking for the whole of Government must be collected in the centre, together with responsibility for allocation of resources. The concept, for example of a Policy and Resources Committee, has been well established in local government and other national jurisdictions for many years, but never adopted within the national government on the Isle of Man.

There may be merit in considering combining many of the functions of Treasury and Economic Development with those of the Cabinet Office, together with the policy development functions of other Departments, into a single cohesive whole called the Isle of Man Government. This would be a single legal entity, under the direction of the Council of Ministers, where Ministers are allocated portfolios for the development of policy linked to the Programme for Government.

This approach, combined with the separation of policy from operations through the development of service delivery agencies and the establishment of community hubs to provide cohesive local services, could result in a Government structure as depicted in **Appendices 5 & 6**.

The service delivery agencies and community hubs would be required to deliver services in accordance with the policy framework established by the Council of Ministers be accountable through the Council of Ministers to Tynwald for their performance.

There is a requirement to consider the role of Ministers and Members in respect of service delivery agencies and community hubs, but it is our view that they should be "light-touch" responsibilities enabling the political leadership to focus on the bigger issues of policy and strategy and away from matters of detail, so that, in the words of the Scope of Government reports "the quality of Government will be improved".

Options for an Executive Agency Model

In summary, the establishment of Government as a Single Legal Entity operating through an executive agency model, could involve:

- a) Combining many of the functions of the Treasury and Economic Development with those of the Cabinet Office, together with the policy development functions of other Departments, into a small central Government function as a single legal entity.
- b) Developing service delivery agencies, as separate legal entities, for the provision of operational services, based on the existing Departmental Structure for delivery of public services, namely:
 - Environment, Food & Agriculture
 - Education & Children
 - Health & Social Care
 - Home Affairs
 - Infrastructure
- c) Establishing service delivery agencies for the functions of the Treasury and Economic Development which do not form part of the single legal entity.

The reforms above, whilst removing Departments as separate legal entities as they currently exist, would retain their functions as separate legal entities outside the core legal entity of Isle of Man Government. The equal pay issues referred to in Chapter 2 are therefore unlikely to arise.

COUNCIL OF MINISTER SUB-COMMITTEE

SINGLE LEGAL ENTITY

TERMS OF REFERENCE

File Reference:		Date Created:	1 st February 2017
Created by:	Jon Callister, Cabinet Office		
Approved by:	Council of Ministers - Minute 053/17 refers		

MEMBERSHIP

Members

Hon C Thomas, Minister for Policy & Reform (Chair)
 Hon G Boot, Minister for Environment, Food & Agriculture
 Mr C Robertshaw, MHK
 Ms C Bettison, MHK
 Ms D Caine, MHK

Permanent Officers

Jon Callister, Executive Director, Office of Human Resources
 Dan Davies, Director of Change & Reform
 Mr W Wannenburg, Solicitor, General, Attorney General's Chambers
 (Deputy: Miss Michelle Norman, Attorney General's Chambers)

Consultation

As and when necessary, the Sub Committee may co-opt in an advisory capacity or take evidence from, persons from within Government, Tynwald or the community, to assist with the consideration of issues referred to the Sub Committee.

PURPOSE

Resolution of Tynwald

At its sitting in December 2016, Tynwald resolved as follows:-

'Tynwald notes the work done to date by the Council of Ministers around the Single Legal Entity and connected matters, and requires that the Council of Ministers establish a Sub-Committee to investigate the merits and practicalities or otherwise of organising Government on the basis of a Single Legal Entity, reporting back to Tynwald with recommendations by July 2017.'

The sub-committee will review the 2014 report into the concept of Government as a Single Legal Entity by Sir John Elvidge, together with the documentation produced as part of the subsequent consultation exercise including, but not limited to, the consultation response document dated April 2016.

Issues for Consideration

In considering the merits and practicalities or otherwise of organising Government on the basis of a Single Legal Entity consideration will be given, in particular, to:

- a) Government operating as a single organisation.
- b) The key elements of a single organisation (e.g. single strategic framework, integrated performance management, collective approach to political decision-making, common systems, integrated Civil Service structure)
- c) The boundaries of a Single Legal Entity
- d) The relationship with Council of Ministers sub-committees
- e) Legislative implications
- f) Parallel work streams of relevance (e.g. Reviews of Tribunals and Committees, Lisvane Report)
- g) Data Protection
- h) Equal Pay
- i) Any other issue of importance raised as part of the discussions

Outputs

The Sub-Committee will consult as necessary with Tynwald Members and other interested parties.

The sub-committee shall prepare a report, with recommendations, for consideration by Tynwald at its sitting in July 2017.

SUB-COMMITTEE PROTOCOLS

Meetings

Meetings of the Sub Committee will meet fortnightly as per the timetable below. The meetings shall be chaired by the Minister for Policy & Reform.

Where a Member is unable to attend they should submit apologies for absence to the Secretary in advance.

Documentation

Agendas are compiled with the approval of the Chair.

Minutes will be prepared in accordance with the Minute Taking Guidance prepared by the Cabinet Office and should be issued to the Sub Committee no later than 10 working days following each meeting.

All documentation issued in relation to the Sub Committee including the Sub Committee's terms of reference, proceedings and papers are subject to the same statutory confidentiality as applies to the meetings and proceedings of the Council of Ministers, and should be therefore treated accordingly.

Documents should not be circulated for wider distribution other than to nominated officers without the necessary permission which will be secured by the secretariat.

In accordance with practice agreed by the Council of Ministers, Minutes of the committee must be circulated to Council members by the Secretariat once they have been approved. Approval of the minutes will be by email, as soon as practicable after their circulation. Once unanimously agreed by email, they will be circulated to Council of Ministers.

Quorum

In order for there to be a quorum at a meeting of the Sub Committee at least 3 Members must be present.

Responsibility for Projects

Where the Secretariat is charged with delivering specific projects all appropriate Officers of the Sub Committee are responsible for supporting the Secretariat in the delivery of the required project.

Contracts & Finance

The Sub Committee has no authority to contract out work and no finance is allocated. Any costs to be incurred require appropriate Cabinet Office approvals in accordance with Financial Regulations.

PROVISIONAL TIMETABLE

DATE	TASK
23 January	Cabinet Office Consideration of TOR
26 January	COMIN Consideration of TOR & membership
Mon 20 February	Meeting (10am – 12pm)
Mon 6 March	Meeting (2pm – 4pm)
Wed 15 March	Meeting (10am – 12pm)
Fri 31 March	Meeting (2pm – 4pm)
Mon 10 April	Meeting (10am – 12pm)
Wed 3 May	Meeting (10am – 12pm)
Wed 10 May	Meeting (10am – 12pm)
Mid to end May	Report Drafting
Mon 5 June	Meeting to finalise report
8 June	Submission of Report to COMIN
15 June	COMIN consideration of Report
3 July	Submission of business to Tynwald
18 July	July Sitting of Tynwald

**DRAFT GUIDANCE NOTE ON MATTERS FOR CONSIDERATION BY
SUB-COMMITTEES OF COUNCIL OF MINISTERS**

Introduction

1. This note provides guidance on which matters are to be referred to one or more of the policy sub-committees of Council of Ministers (CoMIN).

Background

2. There are three policy sub-committees which sit below CoMIN:
 - National Strategy Group
 - Environment and Infrastructure Committee
 - Social Policy and Children Committee
3. The purpose of the sub-committees is to coordinate the development and delivery of integrated policy which supports the Council of Ministers' Programme for Government.

Matters which are to be considered by the Sub-Committees prior to referral to CoMIN

4. There are two main ways that an issue can be brought to CoMIN:
 - i. Department/Office/Board » CoMIN
 - ii. Department/Office/Board » Sub-Committee(s) » CoMIN
5. In most cases, issues to be considered by CoMIN will fall within one of the five themes of Programme for Government and contribute to one of the 20 outcomes. It will therefore be appropriate for the matter to be referred to the relevant sub-committee(s) with responsibility for the applicable outcome prior to consideration by CoMIN. This will ensure that the issue or policy is considered from a cross-Government perspective.

Matters which are not required to be considered by the Sub-Committees prior to referral to CoMIN

6. There will be some instances where matters do not require consideration by the sub-committees. For example, where the matter is a core or statutory function of a single department, office or board and there are no implications for other parts of Government. In this case, a paper should be submitted to CoMIN for consideration in the usual way.

Matters arising with insufficient notice for consideration by the Sub-Committee(s) prior to referral to CoMIN

7. It is recognised that there may be situations where due to the timeliness of a particular matter it is not possible to allow consideration by the relevant sub-committee(s) prior to referral to CoMIN. Whilst every effort must be made to avoid such situations, the appropriate action to be taken is for the lead officer to make the sub-committee aware via email, describing the issue, setting out the reason that it cannot be considered via the relevant sub-committee(s) and providing a briefing on the matter. This should also clarify when CoMIN will be considering the matter.
8. The lead officer should ensure that any relevant and material feedback received from the sub-committee members prior to the consideration by CoMIN, is acknowledged by their Minister during the CoMIN consideration of the matter.
9. The Cabinet Office secretariat of the relevant sub-committee will be able to assist and advise officers on the appropriate course of action.

COUNCIL OF MINISTERS SUB-COMMITTEES

TERMS OF REFERENCE

NATIONAL STRATEGY GROUP

1. Purpose

1.1. This Committee has been set up to ensure that the utmost priority is given to the three strategic objectives within the Programme for Government, being:

- An inclusive and caring society
- An Island of enterprise and opportunity
- Financially responsible Government

In doing so, the Committee will ensure that these objectives are achieved within the life of the administration and that any issues with delivery of related priority projects are identified at the earliest stage and appropriately addressed.

1.2. The Committee will set direction and establish work streams which will undertake detailed policy development on strategically important issues. Together with the Committee on Social Policy and Children and the Committee on Infrastructure and the Environment the Committee will identify and draft policies to recommend to Council of Ministers. The Committee will also monitor key current issues which have the potential to impact on the Island's economy and/or reputation.

2. The Programme for Government

2.1 The Programme for Government details the priorities that will be delivered by Government over the term of its administration (to September 2021). All Council of Ministers Committees must be focused on delivery of these priorities which will also form the basis for Departments, Offices and Statutory Boards planning.

2.2 The National Strategy Group is responsible for ensuring the delivery of the relevant priorities, targets and objectives within the Programme for Government. The Committee will also be responsible for reconciling any issues and seeking to ensure that Council's priorities are delivered.

2.3 Government's progress towards delivering the Programme for Government's targets and objectives will be reported quarterly and available publicly on the performance management website.

2.4 The National Strategy Group will be invited to comment on quarterly updates before submission to Council of Ministers for consideration prior to publication.

2.5 The relevant priorities and objectives from the programme for Government will be listed in the Appendix at 9.

3. Constitution

- 3.1. The National Strategy Group was established by the Chief Minister and its constitution was formalised as a Sub-Committee of the Council of Ministers by Council on 22 March 2012 (Council Minute number 194/12 refers).

4. Membership

- 4.1. The Committee shall comprise:
- Hon R H Quayle MHK, Chief Minister, Chairman
 - Hon A R Cannan MHK, Minister for the Treasury
 - Hon L Skelly MHK, Minister for Economic Development
 - Hon C Thomas MHK, Minister for Policy and Reform

Officers routinely in attendance –

- The Chief Secretary
- The Chief Financial Officer
- The Attorney General
- The Chief Executive of the Department of Economic Development
- The Director of Financial Services, Department of Economic Development
- The Executive Director of External Relations, Cabinet Office
- The Executive Director, Policy & Strategy, Cabinet Office
- The Assessor of Income Tax, Treasury
- The Head of Communications, Cabinet Office
- The Senior External Relations Officer, (secretariat)

- 4.2. In order for there to be a quorum at a meeting a majority of the political members must be present.
- 4.3. The Crown and External Relations Directorate provide administrative and research support to the Group. Other officers will be co-opted to attend as and when required by the Group.
- 4.4. The National Strategy Group may co-opt persons from within Government or the community, in an advisory capacity, to assist with the consideration of issues referred to the Committee.

5. Meetings and minutes

- 5.1. Meetings of the Working Group will be scheduled and agreed with the Chairman but shall take place at least monthly.
- 5.2. Minutes will be prepared in accordance with Minute Taking Guidance prepared by the Chief Secretary's Office and will be issued to the Committee no later than ten days following each meeting.
- 5.3. Agendas are compiled with the approval of the Chief Minister.
- 5.4. A request for an item to be included on the agenda should always be accompanied by supporting documentation. The agenda and papers will, wherever possible, be distributed to members at least one week before each meeting by the Secretariat. In normal circumstances late papers will not be accepted, in exceptional circumstances approval for late papers to be circulated must be obtained from the Chair otherwise

papers should be brought to the meeting under AOB and considered at the discretion of the Chair.

- 5.5. All documentation issued in relation to the National Strategy Group including the terms of reference, proceedings and papers are subject to the same statutory confidentiality as applies to the meetings and proceedings of the Council of Ministers, and should be therefore treated accordingly, unless agreement is given.
- 5.6. Documents should not be circulated for wider distribution other than to nominated officers without the necessary permission which will be agreed by the relevant document owner (which may be at political level).

6. Reporting

- 6.1. The National Strategy Group will report to the Council of Ministers; along with other Sub committees, the minutes will form part of a routine distribution process to all Ministers.

7. Contracts and finance

- 7.1. The National Strategy Group has no authority to contract out work and no finance is currently allocated.

SOCIAL POLICY COMMITTEE

PURPOSE

- 1.1 The purpose of the Sub Committee is to coordinate the development and delivery of integrated social policy to ensure that well-targeted, effective, efficient public services are provided to support Government's three policy priorities, namely:
- An inclusive and caring society
 - An Island of enterprise and opportunity
 - Financially responsible Government
- 1.2 Social policy is the means to maximise the welfare of all in our community to help each individual achieve their full potential. It is intended to address key social issues including crime, addiction, family breakdown, social disadvantage including for those with disability, mental illness, the young, the old and those who care for all such individuals. It includes the public, private and third sectors as well as all affected members of the public who need care or help to give care. As a result, the main branches of Government for addressing social policy are social security, housing, social services, health, education, criminal justice (police, courts, prison, probation/rehabilitation), social inclusion/cohesion and employment.

THE PROGRAMME FOR GOVERNMENT

- 2.1 The Programme for Government details the priorities that will be delivered by Government over the term of its administration (to September 2021). All of Council of Ministers Committees must be focused on delivery of these priorities which will also form the basis for Departments, Offices and Statutory Boards planning.
- 2.2 The Social Policy and Children's Committee is responsible for ensuring the delivery of the relevant priorities, targets and objectives within the Programme for Government. The Committee will also be responsible for reconciling any issues and seeking to ensure that Council's priorities are delivered.
- 2.3 Government's progress towards delivering the Programme for Government's targets and objectives will be reported quarterly and available publically on the performance management website.
- 2.4 The Social Policy and Children's Committee will be invited to comment on quarterly updates before submission to Council of Ministers for consideration prior to publication.

The relevant priorities and objectives from the programme for Government will be listed in the Appendix at 9.

CONSTITUTION

- 3.1 The social policy and children's committee was established as a sub-committee of the Council of Ministers by authority of the Council of Ministers, minute number 594/11, on 8th December 2011 and minute 598/11, on 15th December 2011.

- 3.2 The aim of the social policy and children's committee (the sub committee) is to ensure cross organisational cooperation in order that the council of ministers' priorities are delivered.
- 3.3 The sub committee will report to the council of ministers to ensure that council has a clear line of sight to progress of work streams which it has decided are key to delivering strategic priorities. The sub committee must be cognisant of the key deliverables identified by the national strategy group on the development of the economy.
- 3.4 The Sub Committee will provide advice and support to the Chief Minister and the Council of Ministers.

4 MEMBERSHIP

4.1 Members

Minister for Policy & Reform (Chair)
Minister for Home Affairs
Minister for Education and Children
Minister for Health & Social Care

Attendees for relevant items:

Member for Economic Development (Member for Employment & Skills)
Member for Treasury (Member for Social Security)
Member for Infrastructure / DEFA (Member for Housing)

4.2 Permanent Officers

Chief Executive Officer, Department of Education and Children
Chief Executive Officer, Department of Health and Social Care
Chief Executive Officer, Department of Home Affairs
Director of economic affairs, Cabinet Office
Chair of Children's Services Partnership
Minute Secretary

4.3 Lay Membership

As and when necessary, the Sub Committee may co-opt persons from within Government or the community, in an advisory capacity, to assist with the consideration of issues referred to the Sub Committee.

4.4 Secretariat

Secretariat support will be provided by agreement of the Lead Officer Group to the Committee.

5 ROLE

5.1 The role of the Sub Committee is to ensure that:

- the principal social needs of the Island are understood,
- the appropriate social policies are developed to meet those needs,
- joint action plans are developed and executed to deliver the policies,
- social outcomes and the associated costs are assessed to ensure the desired outcomes are achieved in a manner that gives best value for money,

- appropriate information is developed for regular reporting publicly that will enable Tynwald and the general public to understand the social issues facing the Island and the value of Government's interventions to help to address these issues,
 - the Council of Ministers, the Tynwald Social Policy Scrutiny Committee, Tynwald and the public are involved in this process.
- 5.2 To direct the SPCC Lead Officer Group and to work closely with the Children's Services Partnership and Safeguarding Adults Partnership to protect vulnerable individuals in society. The Lead Officer Group will ensure the Sub Committee's will is carried out and appropriate information is provided to the Sub Committee.
- 5.3 The Sub Committee will oversee the delivery of a single framework for key social policies across Government that is focused on the achievement of key outcomes for the principal groups in the community, notably:
- Children and young people
 - Adults, particularly those adults requiring significant assistance from Government
 - Older people.

6 MEETINGS AND MINUTES

- 6.1 Meetings of the Sub Committee will be scheduled monthly, if there is business to attend to or as required by the Chair.
- 6.2 The meetings shall be chaired by the Minister for Home Affairs.
- 6.3 Where a Member is unable to attend they should submit apologies for absence to the Secretary in advance.
- 6.4 Agendas are compiled with the approval of the Chair.
- 6.5 A request for an item to be included on the agenda should have been progressed through the Lead Officer Group and always be accompanied by supporting documentation. The agenda and papers will, wherever possible, be distributed to members at least one week before each meeting by the secretariat. In normal circumstances late papers will not be accepted, in exceptional circumstances approval for late papers to be circulated must be obtained from the Chair.
- 6.6 Minutes will be prepared in accordance with the Minute Taking Guidance prepared by the Cabinet Office and should be issued to the Sub Committee no later than 10 working days following each meeting.
- 6.7 All documentation issued in relation to the Sub Committee including the Sub Committee's terms of reference, proceedings and papers are subject to the same statutory confidentiality as applies to the meetings and proceedings of the Council of Ministers, and should be therefore treated accordingly.
- 6.8 Documents should not be circulated for wider distribution other than to nominated officers without the necessary permission which will be secured by the secretariat. In accordance with practice agreed by the Council of Ministers Minutes of the committee must be circulated to Council members by the Secretariat once they have

been approved. Approval of the minutes will be by email, as soon as practicable after their circulation. Once unanimously agreed by email, they will be circulated to Council of Ministers.

6.9 Quorum

In order for there to be a quorum at a meeting of the Sub Committee all of the Ministers must be present.

6.10 Responsibility for Projects

Where the Secretariat is charged with delivering specific projects all appropriate Officers of the Sub Committee are responsible for supporting the Secretariat in the delivery of the required project.

7 KEY RELATIONSHIPS

7.1 The Sub Committee will -

- report to the Chief Minister and Council of Ministers;
- direct the work of the SPCC Lead Officer Group and to work closely with the Children's Services Partnership and Safeguarding Adults Partnership to protect vulnerable individuals in society; and
- liaise with key public, private and third sector stakeholders where appropriate.

8 CONTRACTS AND FINANCE

8.1 The Sub Committee has no authority to contract out work and no finance is allocated to the Sub Committee

ENVIRONMENT & INFRASTRUCTURE COMMITTEE

1 PURPOSE

1.1 The purpose of the Environment and Infrastructure Committee is to coordinate the development and delivery of integrated policy in relation to the Island's environment and the infrastructure necessary to ensure that well-targeted, effective, efficient public services are provided to support Government's three strategic objectives:

- An inclusive and caring society
- An Island of enterprise and opportunity
- Financially responsible Government

2 ROLE

2.1 The role of the Committee is to consider strategic policy, prioritisation and resource allocation related to the Isle of Man's environment and infrastructure in the context of the Programme for Government.

2.2 The role of the Committee is also to ensure that:

- the principal environmental, infrastructure and energy needs of the Island are understood;
- appropriate policies are developed to meet those needs;
- joint action plans are developed and executed to deliver the policies;
- associated costs of implementing policies are to be assessed to ensure the desired outcomes are achieved in a manner that gives best value for money;
- Departmental delivery against the Programme for Government is monitored and progressed
- appropriate information is developed for regular reporting publicly that will enable Tynwald and the general public to understand the environmental, infrastructure and energy issues facing the Island and the value of Government's interventions to help to address these issues;
- Council of Ministers, the Tynwald Environment and Infrastructure Policy Review Committee, Tynwald and the public are involved in this process.

3 CONSTITUTION

3.1 The Committee was established by the Council of Ministers in March 2012 as part of the structure of standing sub-Committees⁵:-

- National Strategy Group (NSG)
- Social Policy and Children's
- Environment and Infrastructure Committee

3.2 The Committee will report to the Council of Ministers and NSG as appropriate. The Committee must be cognisant of the key deliverables identified by NSG on the development of the economy. The Committee will provide advice and support to the Chief Minister and the Council of Ministers.

⁵ Minute number 194/12, 22 March 2012

4 MEMBERSHIP

4.1 The Committee comprises:

- Minister for Policy and Reform (Chair)
- Minister for Infrastructure
- Minister for Environment, Food and Agriculture
- Minister for Economic Development
- Chair of the Manx Utilities Authority

4.2 The Committee is supported by the following permanent officers:

- Chief Executive, Department of Environment, Food and Agriculture
- Chief Executive, Department of Infrastructure
- Director of Energy & Support Services, Department of Economic Development
- Chief Executive, Manx Utilities Authority
- Executive Director Policy and Strategy, Cabinet Office
- Head of Economic Affairs, Cabinet Office

4.3 As and when necessary, the Committee may co-opt persons from within Government or the community, in an advisory capacity, to assist with the consideration of issues referred to the Committee.

4.4 Secretariat will be provided by the Cabinet Office.

5 OFFICER GROUP

5.1 The Committee will direct the Environment and Infrastructure Officer Group, which comprises the Chief Officers of the Departments, Boards and Offices represented on the Committee. The Officer Group is chaired by Executive Director of Policy and Strategy. The Officer Group will ensure that the Committee's will is carried out and appropriate information provided to the Committee.

6 PROGRAMME FOR GOVERNMENT

6.1 The Programme for Government sets out the Council of Minister's priorities. All Council of Ministers Committees must be focused on delivery against the Programme for Government which will also form the basis for Departments, Offices and Statutory Boards planning.

6.2 The Environment and Infrastructure Committee is responsible ensuring the delivery of the targets, objectives and outcomes listed within the Programme for Government. The Committee will also be responsible for reconciling any issues and seeking to ensure that Council's priorities are delivered.

- 6.3 Government's progress towards the Programme for Government's objectives and outcomes will be reported quarterly and available publically on the performance management website.
- 6.4 The Environment and Infrastructure Committee will be invited to comment on quarterly updates before submission to Council of Ministers for consideration prior to publication.
- 6.5 The relevant priorities and objectives from the Programme for Government will be listed in the Appendix.

7 GOVERNANCE

- 7.1 Meetings of the Committee will be scheduled every two months if there is sufficient business or as required by the Chair. The meetings shall be chaired by the Minister for Infrastructure or by a nominated deputy.
- 7.2 For a meeting to be considered quorate three Members must be present which must include the Minister for Infrastructure or nominated deputy.
- 7.3 Decisions will be normally arrived at by consensus. Nonetheless, at the request of any political member present, and with the consent of the Chair, a vote can be taken on any matter. Where a meeting is not quorate business can be transacted but decisions taken cannot be actioned until such time as the consent of a simple majority of the Committee has been obtained.
- 7.4 The Committee has no authority to contract out work and no finance is allocated to the Committee.
- 7.5 Officers will endeavour to ensure that all items included on the agenda are supported by documentation and have been progressed through the Environment and Infrastructure Officer Group. The agenda and papers will, wherever possible, be distributed to members at least one week before each meeting by the secretariat. In normal circumstances late papers will not be accepted, in exceptional circumstances approval for late papers to be circulated must be obtained from the Chair.
- 7.6 Minutes will be prepared in accordance with the [Corporate Minute Taking Guidance](#) prepared by the Cabinet Office and should be issued to the Committee no later than 5 working days following each meeting.
- 7.7 In accordance with the practice agreed by Council of Ministers, minutes of the Committee will be circulated to Council of Ministers via e-mail once approved.⁶

⁶ Minute number 194/12, 22 March 2012
Single Legal Entity Sub-committee Consultation April 2017(2)

Confidentiality

- 7.8 All documentation issued in relation to the Committee including the Committee's Terms of Reference, proceedings and papers are subject to the same statutory confidentiality⁷ as applies to the meetings and proceedings of the Council of Ministers and should be therefore treated accordingly.

Documents should not be circulated for wider distribution other than to nominated officers without the necessary permission which will be secured by the secretariat.

⁷ Section 6, Council of Ministers Act 1990
Single Legal Entity Sub-committee Consultation April 2017(2)

MNH Response to Consultation on *Government as a Single Legal Entity*

Overview

The consultation document refers to “Regulatory” bodies (question 6), “commercial or semi-commercial” bodies (question 7), “regulatory functions” (question 8) and “commercial or semi-commercial” activities (question 9). The document does not quite reflect the wording used by Sir John Elvidge in his original report. Whilst MNH has no hesitation in considering it should fall outside the Single Legal Entity (SLE) – it begs the question of how all related arms-length bodies are considered. MNH would suggest that further work be done to review all similar arms-length bodies and their relationship with the proposed SLE together. A co-ordinated and comprehensive piece of work now will save considerable problems later particularly in terms of performance, financial arrangements and the issue of common systems.

It is worth noting that there are a number of functions which have been developed over time with Departmental support or which have been “rescued” or “nationalised” by Government. In most cases the reasons for these are not political but practical ones due to the small scale of the island’s economy. In other jurisdictions these functions would be contracted out to the private or voluntary sector, run by executive agencies or by voluntary bodies, in many cases with considerable public subsidy to deliver an element of “public good”, “quality of life” or “economic benefit”. Ownership of assets can of course be separated from their management and day to day operation. Examples quoted in the consultation paper include Heritage Railways and Bus Services which currently sit well together and there is no need to separate them but they should not be within the SLE. Other functions such as the Wildlife Park, Saw Mill, Arts Council, Culture Vannin, Isle of Man College are not mentioned in the document and for clarity should be included in an overall review.

Manx Museum and National Trust

The Manx Museum and National Trust (MMNT) is very similar in statute, governance and financial arrangements to the 20 or so National Museums in the UK and the 30 or so bodies sponsored by the UK Department for Culture Media and Sport such as the British Library. These are considered to be Executive Non Departmental Public Bodies – as defined in the table appended to this document, taken from the Institute for Government (IfG) 2010 report and itself based on UK Cabinet Office documentation.

Whilst these bodies have significant public funding to carry out their functions and the relevant minister is ultimately responsible for their performance, their day to day functions are operationally independent. Like MMNT they are governed by Trustees but also hold charitable status which reflects the public confidence in their independence and reputation. The heritage assets of such bodies are deemed to be held on behalf of the nation and as such are not on the Government balance sheet.

Sir John Elvidge refers to MNH/MMNT in his report – probably taking his information from the 2006 Scope of Government Report. The Governance of MMNT was changed by

legislation recently (2011) and a newly constituted Trust was established following public recruitment of Trustees in 2012. The Minister has a single representative on the Trust – who cannot hold office within it. Sir John correctly points out that MMNT is treated like a Government Department when it comes to its revenue budget – but fails to realise that this Government support is rapidly declining as a percentage of overall budget - down some 25% from the 98% it had been in 2006. Indeed Trustees view that a “Grant-in-aid” settlement in parallel with other UK heritage bodies might be more appropriate than being within the Government’s Revenue accounts.

The MMNT has some statutory functions and some advisory ones which stem from its technical expertise, its collections and the records it holds – particularly in the areas of the historic environment, the licencing of archaeological excavations and the export of archaeological material. These technical matters are widely accepted as best being carried out by an independent agency which can be demonstrably objective and impartial outside the Government. Indeed Trustees consider they are potentially well placed to advise Ministers on a broader range of issues such as Registered buildings.

The relationship between MMNT and its sponsoring Department is very informal but works satisfactorily. Performance measurement should be an essential part of the sponsoring relationship but that implies a more formal relationship than current exists. However, there is no point in MNH developing such a relationship with its sponsoring department in isolation from what other Departments and agencies do.

Background

This response focusses on the boundaries of a proposed Single Legal Entity and specifically what functions should fall outside this. The Elvidge report is relatively light in this area as he makes assumptions that the position on the Isle of Man is broadly similar to the UK in terms of arms-length bodies. However, he does not refer to the significant amount of work done over the last 20 years in the UK and the various reviews and reports on the subject which provide helpful advice. In particular the 2010 review of “Quangos” undertaken by the UK Coalition Government was the subject of research by the Institute of Government (IFG) before the review and significant scrutiny afterwards by the UK Parliament Public Administration Select Committee. That Committee revisited the subject in 2014. In addition recent relevant work has been done in England, Scotland and Wales where Non-Departmental Heritage Bodies have recently either been merged (Scotland), split into two (England) or unchanged (Wales).

Definitions:

An arm’s-length body (in the UK) is an organisation that delivers a public service, is not a ministerial government department, and which operates to a greater or lesser extent at a distance from Ministers. The term can include non-departmental public bodies (NDPBs), executive agencies, non-ministerial departments, public corporations, NHS bodies, and inspectorates.

The current Manx position is not dissimilar to the UK before 2010 in that the Isle of Man has a range of bodies with a range of functions. However, the rationale behind their position is

often unchallenged. This current consultation is an excellent opportunity to review the role and location of arms-length bodies.

Francis Maude, then Minister for the UK Cabinet Office, described how the 2010 review was to be conducted when he reported to the House of Parliament on its outcome:

I have led an intensive review into public bodies, subjecting each to four tests. The first test was existential and asked, does the body need to exist and do its functions need to be carried out at all? The answer to that question in some cases was no. [...]

If, as in most cases, the body's functions were deemed necessary, we then sought to establish whether those functions should properly be carried out at arm's length to government. If the body carries out a highly technical activity, is required to be politically impartial or needs to act independently to establish facts, then it is right for it to remain outside direct ministerial accountability.

Whilst the Select Committee concluded that these tests had not been thoroughly or consistently carried out - the basic principle is sound. The Institute for Government (IfG), during its research for its report *Read Before Burning 2010*, conducted its own evaluation of public bodies and the level of independence they need to discharge their functions properly. Their evidence states that: *The key issue for deciding to put a function at arm's length is the degree of independence from day-to-day ministerial intervention needed to enable the body to command public confidence that it can perform its function in the public interest.*

The IfG said that its analysis "*put less emphasis on technical expertise and more on the need to give independence to bodies which need to command public confidence in their ability to scrutinise government and to develop regulatory or standards regimes*"

Oversight, sponsorship and performance

Any discussion of arms-length bodies must also include the way they are seen by their sponsoring Departments. The Isle of Man seems to be no different from the UK. One of the key findings of the IfG's report on arm's length bodies, *Read Before Burning*, was that:

The role of sponsorship is often undervalued in Whitehall, meaning that sponsors receive relatively little specialised professional development, and sharing of best practice is limited. Good performance management is essential for effective arm's length government, yet Whitehall's capability in this area is particularly weak. Many departments do not make clear their expectations in terms of performance, nor the sanctions for different levels of overspending.

The UK Select Committee stated: *Departments are not clear about how they should interact with the bodies they sponsor; failing to strike the right balance between oversight and independence. The Cabinet Office should issue clear information on the proper relationship between departments and public bodies.*

One reason for this lack of clarity is the complexity of the public bodies' structures; non departmental public bodies, arm's length bodies, quangos, public bodies, executive

agencies, non-ministerial departments, and independent statutory bodies all clutter the landscape. We recommend that the Government gradually implement a simplified system so that it is clear to everyone who is responsible for what, and how much input it is right for the Government to have...

The UK Cabinet Office's own guidance on non-departmental public bodies also requires sponsoring departments to have an oversight of public bodies that fall within their remit: NDPB managers should have: clear objectives and the means to measure output and performance against them, clear responsibility for best use of resources including output and value for money; and access to the necessary management information, training and expert advice.

How these functions are dealt with should be left to the NDPB; but it is important that the sponsor department's Accounting Officer should ensure that adequate arrangements are in place.

The Select Committee looked again at the issue of arms length bodies in 2014 following the major flooding in parts of England in the winter of 2013/4. Many of its conclusions repeat the 2010 report:

The Government should establish a clear taxonomy of public bodies: constitutional bodies, independent public interest bodies, departmental sponsored bodies, and executive agencies. All public bodies should sit in one of the categories, so that it is clear how each is to be governed and sponsored. This is essential in order to clarify who is accountable for what. This would promote understanding of what is expected of relationships and explain the rationale for locating functions in particular organisational forms. Up to date, plain English statements of statuses, roles and relationships are needed even if the underlying arrangements are complicated.

In the next stage, with the taxonomy of public bodies clarifying accountability structures, the reform agenda can then concentrate on training and learning to improve sponsorship of, and leadership in, public bodies. The Cabinet Office cannot micromanage public bodies, but can improve sponsorship skills in the Civil Service and leadership in public bodies by promoting good practice and highlighting examples of success. The Civil Service must motivate and educate talented people in this important work, and ensure that sponsorship is managed at the right level in departments. This is above all how to improve efficiency, transparency and accountability in public bodies.

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Fifth Report of Session 2010–11

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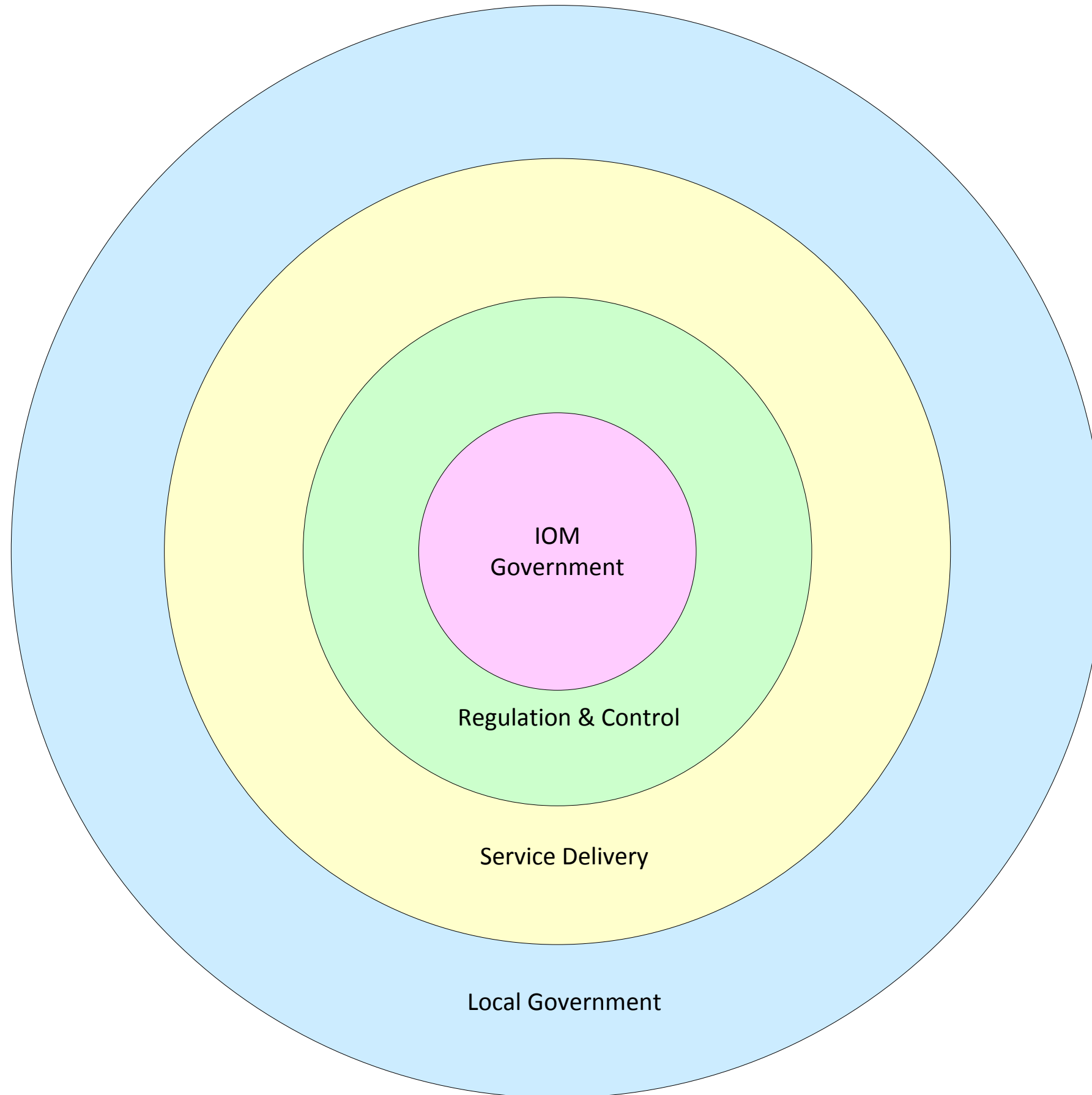
Figure 4: Types of arm's length bodies

- 1 **Advisory NDPBs:** Committees or boards which provide expert advice to ministers on specific policy issues. Usually set up without legislation and supported by staff from the parent department, with no significant budget.
- 2 **Executive NDPBs:** Bodies which play a role in national government but are not part of any department, deliberately established to operate at arm's length from ministers. Usually set up by statute, they can hire their own staff and the chief executive is accounting officer for the budget allocated to them. They are, however, sponsored by a parent department which holds the body to account and whose ministers are responsible for appointments of board members. Most executive NDPBs receive a significant grant-in-aid from their parent department to fund all or some of their work. Some also raise funds from other sources (e.g. regulatory levies).
- 3 **Independent monitoring boards ('other' NDPBs):** Every prison and immigration removal centre (and some short-term holding facilities) has an independent monitoring board which monitors day-to-day life to ensure proper standards of care and decency.
- 4 **Tribunal NDPBs:** These bodies have jurisdiction in a particular area of law. They are coordinated by the tribunals service, an executive agency, and supervised by the Administrative Justice and Tribunals Council.
- 5 **Executive agencies:** Agencies carry out services or functions with a focus on delivering specific outputs. They usually have no statutory basis and, in law, are indistinguishable from their parent department. However, their chief executives are accounting officers and responsible for their expenditure; they will also have a separate organisational identity from the parent department and often have more human resources and financial flexibilities available to them than the parent department.
- 6 **NMDs:** A department not headed by a government minister but represented by the minister of another department in Parliament. NMDs are normally set up under legislation and funded through the Treasury.
- 7 **Public corporations:** Market bodies that derive more than 50% of their income from the sale of goods and services. Some charge for regulatory activities where these provide a significant benefit to the person paying the fee. They are owned or controlled by central government but they have substantial day-to-day operating independence so that they should be seen as institutional units separate from their sponsor departments. Otherwise may have similar features to executive NDPBs as detailed above.
- 8 **Independent statutory bodies:** These bodies (which include the five HM inspectorates) enjoy statutory powers and are not part of government departments but receive their budget through a departmental vote.
- 9 **Special health authorities:** Special health authorities are health authorities set up to assume a delegated responsibility for providing a national service to the NHS or directly to the public. They are established under statute. Ministers retain a formal power of direction to ensure ultimate control over their activities. In terms of governance, they are in most respects akin to an executive NDPB.
- 10 **Parliamentary bodies:** There are currently five independent parliamentary bodies or 'constitutional watchdogs': Comptroller and Auditor General, Parliamentary Ombudsman, Parliamentary Commissioner for Standards, Electoral Commission and Office of the Information Commissioner. These are formally independent institutional units that review the actions of government on behalf of (and report to) Parliament rather than the executive.
- 11 **Central bank:** The Bank of England appears to have a unique constitutional position.

Sources: CO 2010; Flinders 2008; Nuffield 2000

Appendix 5

Option 4 - Executive Agencies - Illustrative Purposes only



Appendix 6

Executive Agency Model - Illustrative Purposes only

