

The Government Code

**Issued with the authority of the
Council of Ministers**



**Isle of Man
Government**

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**The Council of Ministers
The Ministerial Code
Members of Departments
Ministers and Civil Servants
The Civil Service Code
Members of Statutory Boards and
Other Statutory Bodies
Department Boards**

**Cabinet Office
Government Office
Bucks Road
Douglas
Isle of Man**

**February 2017
Updated October 2022**

| Key Changes Control Sheet | |
|---|---|
| Paragraph | Amendment |
| Throughout | Updated reference from Delegations to Authority to Exercise Functions |
| Throughout | Update references to Freedom of Information Act 2015, Data Protection Act 2002 and Code of Practice on Access to Government Information |
| Throughout | Update references to Public Service with Civil Service |
| Throughout | Update references and definition of Department, Board and Office, and Council of Ministers |
| Throughout | Addition of reference to Electronic Communications and Social Media Policy, Standards and Guidelines |
| Throughout | Addition of reference to Minute Taking Guidance |
| 1.26 – 1.34 | Updated collective responsibility guidance |
| Annex 1.1 | Updated Seating Arrangements for Council of Ministers |
| 2.12 | Addition of Standards and Members Interests paragraph |
| 2.36 | Updated Hospitality values |
| Annex 2.2 | Updated Members of Tynwald required Standards of Conduct |
| Annex 2.3 | Removal of Annex 2.3 Provision of Information to Members of Tynwald pending further revision |
| Annex 4.3 | Updated Model Authorisation to Exercise Functions |
| 6.40 | Updated Hospitality values |
| Appendix 1 | Addition of Minute Taking Guidance |
| Appendix 2 | Addition of Electronic Communications and Social Media Policy, Standards and Guidelines |
| Part 7: Department Boards | Addition of Chapter providing for the appointment of Non-Executive Directors to Departments |
| Amendments made by Executive Office, Cabinet Office | |

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Part 1: The Council Of Ministers

Membership

- 1.1 The Council of Ministers ("Council") comprises the Chief Minister, Minister for Policy and Reform, and Ministers of the following Departments:

The Cabinet Office
Department of Economic Development
Department of Education and Children
Department of Environment, Food and Agriculture
Department of Health and Social care
Department of Home Affairs
Department of Infrastructure
The Treasury

Ministers are members of Council ex officio, and are not able to delegate membership to another person. However, if a Minister is going to be absent from a particular Council meeting and there is an item of business on the Agenda where there is a particular Departmental line to be explained, an arrangement can be made, with the prior approval of the Chief Minister, for a Member of the Department to attend Council for that item only.

Meetings are attended by the following officers:

Chief Secretary
Attorney General
Chief Financial Officer
Secretary
Communications Executive

Section 40 of the Interpretation Act 1976 (and once in force section 96 of the Interpretation Act 2015) states "**Power of majority of more than two persons**, save as is expressly provided by an enactment, whenever any act or thing is required to be done by more than two persons, a majority of them may do it".

As such in order for there to be a quorum at a meeting of Council, a majority of the Ministers (including the Chief Minister or someone appointed to chair the meeting in his or her absence) must be present.

- 1.2 Annex 1.1 shows a seating plan for the Council meetings.

Meetings

- 1.3 Council meets weekly on a Thursday at 10:00am in the Council Chamber, Third Floor, Government Office, Bucks Road, Douglas. The meeting is scheduled for the full day; however on occasion is completed by lunchtime. Special meetings of the Council can be convened at any other time.
- 1.4 Council meetings take precedence over all other Government business. Requests by Ministers for permission to be absent should be made to the Chief Minister and should only be made in exceptional circumstances. In the event that a Minister has permission to be absent, the Minister's views and feedback on the agenda items should be provided to the Chief Secretary for inclusion at the meeting.

- 1.5 Items of Government Business to be included on a Tynwald Order Paper are considered on the Thursday immediately preceding the deadline for submission of motions to the Clerk of Tynwald. Time is taken during the meeting on the Thursday immediately following a Tynwald sitting to review the sitting.
- 1.6 The agenda for a routine Thursday meeting, together with supporting documentation, is normally circulated on the preceding Friday. Supplementary items of an urgent nature may, with the approval of the Chief Minister, be circulated subsequently or, exceptionally, tabled at the meeting but this practice is discouraged. Any invited guests delivering presentations are required to contact the Cabinet Office in advance to ensure time of attendance and compatibility of equipment.
- 1.7 Normally, each item on the Council agenda will have a matching Council Paper which will form the basis of the discussion. A Department submitting a matter for consideration should submit a concise Council Paper in accordance with an agreed template, setting out its proposals and the points on which Council's advice or decision is required. There should be a concluding paragraph setting out the recommendations and the reasons supporting the recommendations for Council to consider. This procedure not only makes for the expeditious handling of Council business but also ensures that there is no doubt in anyone's mind on the point at issue. Further details on submission procedures are available in the document 'Guidance on Submission of Papers, Reports, Legislation to Council of Ministers'.
- 1.8 In the absence of standing orders governing the procedures of Council, meetings will be conducted in accordance with this Code. Decisions are normally arrived at by consensus in which the view of the majority will prevail rather than by vote.

Minutes of meetings are taken and circulated as part of the documentation for the following meeting. (Refer to Minute Taking Guidance Appendix 1)

- 1.9 The decisions taken by Council are communicated officially to the Chief Officer of the relevant Department and the Responsible Department Officer by the Chief Secretary in writing via email.
- 1.10 A summary of Council proceedings is agreed by Council each month, issued to Members of Tynwald and published to the Government website. In addition, a summary of "Outstanding Matters" is produced on a quarterly basis, which records the status of issues which have been referred to Council, but about which final conclusions have yet to be reached. Examples include items referred for further research, awaiting Treasury concurrence or awaiting view from Tynwald or a Committee of Tynwald.
- 1.11 Under section 6(2) of the Council of Ministers Act 1990 "the proceedings of the Council of Ministers shall be confidential and no member thereof, without the leave of the Chief Minister, shall divulge to any unauthorised person any matter or thing said or done therein".

Section 6 (2A) of the Council of Ministers Act 1990 states "Subsection (2) does not affect the operation of the Freedom of Information Act 2015 in respect of information created on or after the 11 October 2011". This removes the automatic confidentiality attached to the business of Council for information created on or after this date.

In all matters relating to the business of Council, particular care should be taken in the use of electronic communications and social media to maintain confidentiality and impartiality. (Also refer to Electronic Communications and Social Media Policy, Standards and Guidelines at Appendix 2)

The Functions of the Council of Ministers

1.12 Council's functions are considered below under the headings of:

- (a) Statutory Functions
- (b) Governor in Council functions
- (c) Advice to the Governor
- (d) Determining Policy and Priorities
- (e) External Relations
- (f) Resolving Difficulties and Providing Information

(a) Statutory Functions

1.13 The Council of Ministers Act 1990, which came into operation on the 1 October, 1990, is silent on the functions of the Council save for Sections 6 (5) and 8 (1), which provide respectively:

"6. (5) *The Council of Ministers shall consider any papers submitted to it by the Governor.*"

"8. (1) *Where by any statutory provision or resolution it is provided that a member of any body (other than a committee of Tynwald) shall be elected by Tynwald, the provision or resolution shall have effect as if it provided that the member shall be appointed by the Council of Ministers subject to the approval of Tynwald.*"

1.14 Apart from the foregoing, the statutory functions of Council are limited. In the main, they are items that arise infrequently and were formerly matters for the Governor or they are concerned with the making of orders imposing sanctions in line with wider international initiatives. These have been transferred to Council as part of the review of the Governor's functions and are generally functions for which no other more suitable authority has been identified.

1.15 An important statutory reserve power which Council has is the ability to issue directions to Departments and Statutory Boards in relation to any matter which appears to affect the public interest.

(b) Governor in Council Functions

1.16 The "Governor in Council" was introduced to the Isle of Man in its present form in 1980 by the Governor's General Functions (Transfer) Act 1980 and the Constitution (Executive Council) (Amendment) Act 1980 which inserted into the Interpretation Act 1976 the following definition:

'The Governor in Council' means the Governor acting on the advice and with the concurrence of Executive Council but not necessarily in the Council assembled.

The words "*but not necessarily in the Council assembled*" were added by the Constitution (Executive Council) (Amendment) Act 1980 when the Governor ceased to preside personally at meetings of the Council.

1.17 The range of functions where the Governor and the Council act together in this way has been considerably reduced over the years, with the functions being transferred to Departments or to Council acting alone. Some examples of residual Governor in Council functions are:

- i) recommending certain appointments;
- ii) the power (with Tynwald approval) to transfer functions between Departments, establish new Departments, dissolve existing Departments and change the name of a Department.

(c) Advice to the Governor

1.18 Apart from the Governor in Council position where the Governor acts on the advice and with the concurrence of Council, there are other instances where Council may be called upon at the Governor's discretion to offer advice to His Excellency on his statutory or non-statutory functions.

(d) Determining Policy and Priorities

1.19 Council's work in this area may be looked at under a number of sub-headings:

i) Central Planning Assumptions

In order for Government to develop policies and priorities, it needs to have some expectations as to the way in which the Island will develop over the coming years. Council reviews annually a set of central planning assumptions regarding the Island's national income and population and Government's finances and manpower. These assumptions are used to assist Departments to plan their activities in a consistent and co-ordinated way and to assist Council itself in assessing Departmental proposals.

ii) Corporate Government and Business Planning

Council is responsible for setting out the overall strategic direction for Government. It does this by producing and updating its Programme for Government which is used by the Departments, Boards and Offices of Government to set policies and priorities which help to achieve the aims set out by Council. The plan also contains national performance indicators which help to demonstrate performances against Council's aims.

iii) Council of Ministers sub-committees

The sub-committees of Council have an important role to play in co-ordinating and prioritising Departmental policy to ensure it is aligned to the overall strategic aims of the Council of Ministers. The committees will also review new policy proposals and refine them before they are presented to Council for approval.

iv) The Budget

Council approves the Treasury proposals for the Budget. Although the statutory authority "to determine priorities of expenditure" is granted to the Treasury [Treasury Act 1985, Section 3 (1) (f)], Council has a significant informal influence in the Budget process.

v) Legislative Programme

Following a General Election, Council agrees a five year legislative programme (which may be updated during an administration).

vi) Committees

Council is able to appoint Committees, either standing Committees or ad-hoc Committees, to consider and report on specific issues. It is not necessary for such Committees to be comprised entirely of members of Council.

vii) Personnel Policy

Responsibility for determining general personnel management policies applicable across the whole of Government rests in the Council. Council is advised by the Cabinet Office and more particularly the Office of Human Resources.

viii) Individual Issues

Individual issues requiring policy decisions come before the Council. These may be particular capital projects or schemes to be funded from revenue where they are especially large or controversial or where they establish a new principle. Individual Government Bills require approval before submission to the Branches in accordance with the Standing Orders of the House of Keys.

ix) Quarterly Reports

A system of succinct quarterly reports exists through which Council receives information on Government's programmes and resources, on the economy and on key policy areas.

(e) External Relations

- 1.20 The United Kingdom is the Island's principal neighbour and is constitutionally responsible for the Island's international relations. The Island's external relations, including European Union matters, are therefore conducted with or through the appropriate Department of the United Kingdom Government presently The Ministry of Justice. The Council is deemed to speak on behalf of the Island. Therefore, European Union matters, issues relating to Treaties and Conventions, and questions between the Island and the United Kingdom Government come before Council for consideration.

(f) Resolving Difficulties and Providing Information

- 1.21 Council has a role in acting as final arbiter in resolving disagreements between Departments. However, there is an expectation that the Departments concerned would have made every endeavour to resolve their differences before the matter is referred to Council for consideration.

- 1.22 Council is also used by Departments as a sounding board for testing proposals which, although clearly within the ambit of the Department concerned, may be controversial and on which the Department seeks a wider political view before a commitment is made. A variant of this is where there is a particular problem within a Department's remit and the views of Council are sought in an advisory capacity.
- 1.23 In addition, Council provides a forum for the exchange or receipt of information. It is an opportunity for Ministers to advise their colleagues on matters of interest from within their Departments and to receive background information of various sorts which do not require a decision.
- 1.24 It is inherent in this function of Council that there should be nothing of significance placed on the Tynwald agenda, or announced in public, which is a cause of unwelcome surprise to Council.

Where a Department is to publish a consultative document on a major aspect of policy, the Minister should advise Council and, where appropriate, provide copies of the consultative document for circulation to Council in advance of publication.

- 1.25 Although there is a facility for Members to bring Departmental matters before Council for information or advice, there is a need for self-discipline to be exercised to ensure that the flow and duration of items is not so excessive that Council becomes preoccupied with matters which are not of particular priority.

Collective Responsibility

- 1.26 At the beginning of each administration the Council will set out a Statement of Intent of its Policies and Priorities which will be followed, as soon as practicable, by the publication of a detailed Programme for Government.
- 1.27 Ministers will be bound by collective responsibility on all matters included within the Statement of Intent, the Programme for Government and the annual Budget.
- 1.28 Collective responsibility will also apply 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.
- 1.29 An issue of national importance is defined as relating to:
- i) the good governance of the Island
 - ii) national security or defence
 - iii) public safety
 - iv) the economic or fiscal stability of the Island
- 1.30 Collective responsibility requires that Ministers should be able to express their views frankly and freely in private, while maintaining a united position when decisions have been reached in relation to the matters described in paragraphs 2 and 3 above.
- 1.31 Where it applies, collective responsibility has the following features:

- i) A Minister may speak against any proposal in the Council, but he or she must subsequently either support the policy decided upon or resign.
 - ii) Where the policy of a particular Minister is being challenged, it is the Council as a whole which is being challenged. Thus, the defeat of a Minister on relevant policy decisions represents a defeat for Council.
 - iii) Every Minister must be prepared to support those Council decisions not exempt from collective responsibility both inside and outside Tynwald and the House of Keys.
 - iv) Collective Responsibility does not apply to a Minister's responsibility for his or her personal mistakes.
 - v) Any major shift of policy proposed by a Minister must be cleared by the Council before it is announced.
- 1.32 Ministers should uphold the principle of collective responsibility where it applies, save where it is explicitly set aside by the Chief Minister in relation to a "free vote" (most commonly used on an 'issue of conscience') or "agreement to differ" (as the Chief Minister may determine in exceptional cases).
- 1.33 Where a Minister exercises the right to a free vote or to speak publicly against a decision of the Council which is not covered by collective responsibility, it is important that any expression of difference should be made in a responsible manner. Even in disagreement, courtesy and respect are due to a fellow Minister and the Council. A display of personal abuse, criticism or animosity would be unacceptable in such circumstances.

Exceptions

- 1.34 There are circumstances, as follows, under which Ministers have freedom to speak publicly against policies and decisions of the Council or without reference to Council:
- i) Matters of conscience:** There will inevitably be issues where Ministers will be guided by a fundamental religious or moral belief [rather than political ideology]. Such issues are readily identifiable whether they arise in a Tynwald motion or in a Bill. Ministers will always have the right to a free vote on such issues.
 - ii) A declared position:** A Minister brings to the Council a unique personal set of views and opinions. These may, in some cases, include a strongly held and publicly declared position on a particular subject. It would be unrealistic to expect such a Minister to change position on that subject for the sake of Council's solidarity. Equally, however, it would be unacceptable for that Minister to "crusade" in support of the declared position in the knowledge that the Council does not share this view.
 - iii) Constituency matters:** Issues may arise where there is a strong and specific constituency interest which conflicts with a Council decision. In these circumstances, a Minister from that constituency must have the right to represent that interest if desired. Where this is so, the Minister concerned must make the position clear to Council. Provided, as a courtesy, a Minister gives advance warning to any other Minister, he may ask a written question on a constituency matter making sure that the question is framed in an appropriate way.

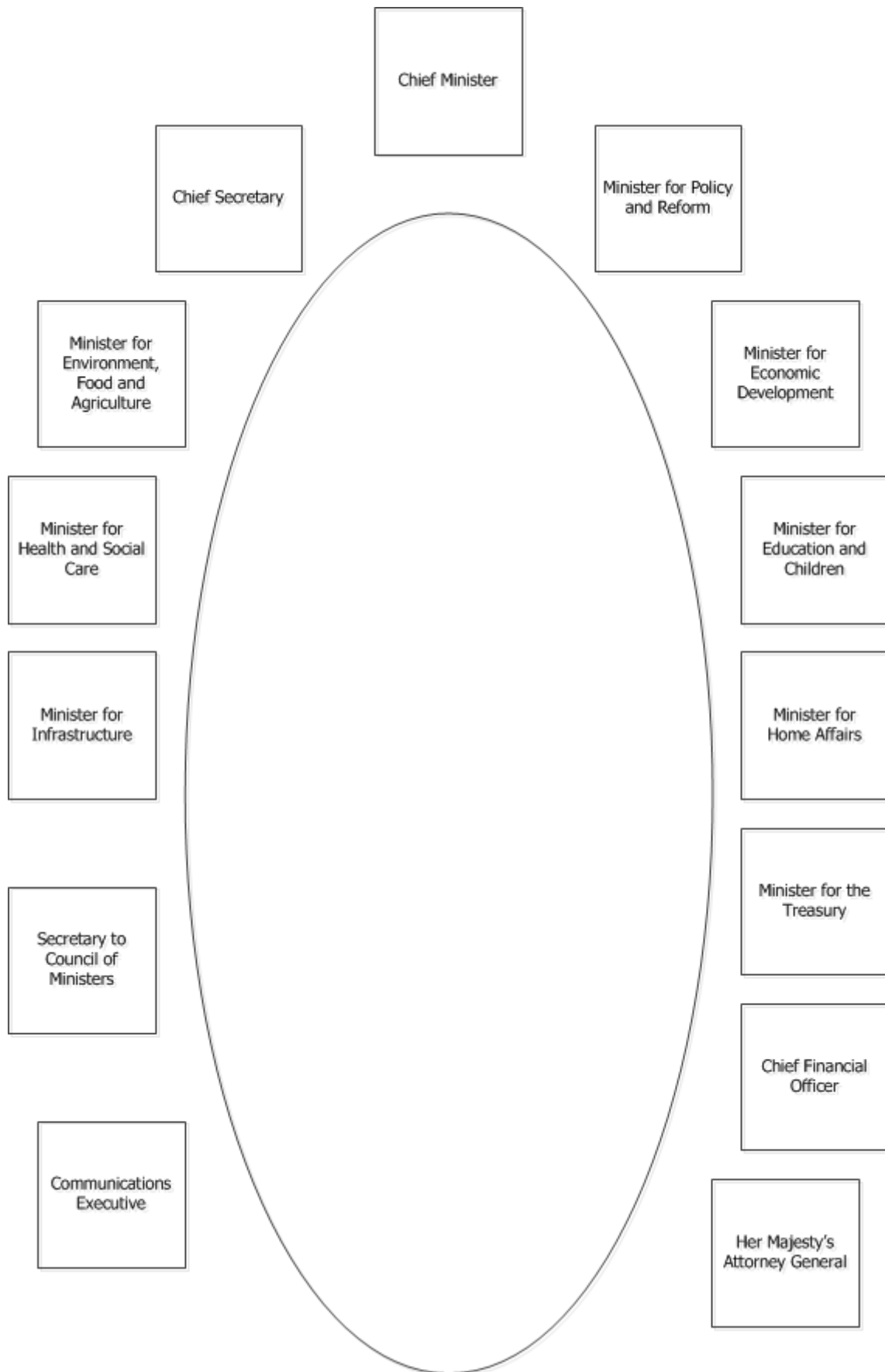
iv) Inconsequential matters: Collective responsibility applies to Council policies and decisions. Where small matters of detail arise, where there can be room for disagreement without those policies or decisions being called into question, Ministers will have the freedom to express themselves. Ordinarily such matters will not come before Council.

v) Unresolved issues: Issues will be raised from time to time which Council has not considered or on which Council has not taken a decision. Until a Council position is established, Ministers will be free to express themselves. However, such issues are likely to emerge on the agenda for Tynwald or one of the Branches and an opportunity will arise for the matter to be discussed in Council before debate in public. Ministers should therefore, as a general rule, where possible, seek to refrain from comment until after Council has considered the matter.

Access to and Retention of Council of Ministers Documents

- 1.35 Where there is a change of Chief Minister and/or Minister(s) there should be a general presumption in favour of making documents of the previous Council/Department available.
- 1.36 Notwithstanding paragraph 1.35, an outgoing Chief Minister/Minister may specify which documents should not be available to the incoming Chief Minister/Minister, without express permission. Permission to release documents should not be unreasonably withheld.
- 1.37 A Chief Minister or Minister or an Official leaving the service of the Council should be requested to return any remaining documentation to the Chief Secretary for destruction.
- 1.38 Ministers should not receive papers, or take part in discussions, on matters where they might be regarded as having a personal interest (See also Paragraph 2.14.)

Annex 1: Council of Ministers Seating Arrangements for Meetings



Part 2: Ministerial Code

- 2.1 Ministers are expected to behave according to the highest standards of constitutional and personal conduct in the performance of their duties. This Code provides guidance to Ministers on how they should act and arrange their affairs in order to uphold these standards.
- 2.2 Ministers are personally responsible for deciding how to act and conduct themselves in the light of the Code and for justifying their actions and conduct in Tynwald. The Code is not a rulebook, and it is not the role of the Chief Secretary or other officials to enforce it or to investigate Ministers, although they may provide Ministers with private advice on matters which it covers.
- 2.3 The Code should be read against the background of the overarching duty on Ministers to comply with the law, including international obligations, to uphold the administration of justice and to protect the integrity of public life. They are expected to observe the Seven Principles of Public Life set out in the first report of the Nolan Committee, repeated in Annex 2.1, and the principles of Ministerial conduct, below and at Annex 2.2:
- i) Ministers must uphold the principle of collective responsibility [see paragraphs 1.26 to 1.31];
 - ii) Ministers have a duty to Tynwald to account, and be held to account, for the policies, decisions and actions of their Departments;
 - iii) Ministers must give accurate and truthful information to Tynwald, correcting any inadvertent error at the earliest opportunity;
 - iv) Ministers should be as open as possible with Tynwald and the public, refusing to provide information only when disclosure would not be in the public interest, which should be decided in accordance with the relevant statutes including Freedom of Information Act 2015, Data Protection Act 2002 and the Code of Practice on Access to Government Information;
 - v) Ministers should be aware that subject to any limitations imposed by a Minister or by the general interest of Government, officers should provide such information regarding their Department and the discharge of its functions as a Member of Tynwald may reasonably require. This principle confirms that officers are to be as helpful as possible in providing information to Members and in the event of any doubt about the release of any information the relevant Minister must decide.
 - vi) Ministers should similarly require civil servants who give evidence before Tynwald Committees on their behalf and under their direction to be as helpful as possible in providing accurate, truthful and full information;
 - vii) Ministers must ensure that no conflict arises, or appears to arise, between their public duties and their private interests [see paragraphs 2.10 to 2.29];
 - viii) Ministers should avoid accepting any gift or hospitality which might, or might reasonably appear to, compromise their judgement or place them under an improper obligation [see paragraphs 2.30 to 2.39];

- ix) Ministers in Tynwald must keep separate their roles as Minister and constituency Member and must not use Government resources for non-Government purposes [see paragraphs 2.10 to 2.14];
- x) Ministers must uphold the political impartiality of the Civil Service and not ask civil servants to act in any way which would conflict with the Code of Conduct for Public Servants 2009 [see paragraphs 4.18 to 4.21].

Ministers and Tynwald

2.4 Each Minister is responsible to the Chief Minister, and Tynwald, for the conduct of his or her Department and for the actions carried out by the Department in pursuit of Government policies or in the discharge of responsibilities laid upon him or her as a Minister. Ministers are accountable to Tynwald in the sense that they have a duty to explain in Tynwald the exercise of their powers and duties and to give an account to Tynwald of what is done by them in their capacity as Ministers or by their Departments. This includes the duty to give Tynwald including its Branches, Select Committees, and the public as full information as possible about the policies, decisions and actions of the Government and not to deceive or mislead Tynwald, its Branches or the public.

2.5 It is generally understood that:

- (a) statements on Government matters of importance should be made first in Tynwald (or less frequently, and where the statement cannot be held over until the next Tynwald sitting, in the House of Keys and Legislative Council simultaneously);
- (b) business which is on a Parliamentary Order Paper or Agenda should not normally be the subject of political debate in the media in advance of the Parliamentary debate.

However, Government business appearing on an Order Paper or Agenda is able to be reported and commented on quite properly by the media and this business can and should become the subject of public interest and comment. There is, therefore, a balance to be struck which ensures that there is sufficient information in the public domain to facilitate proper media and public comment and discussion without pre-empting the Parliamentary process. The following points are intended to assist the striking of that balance:

- i) It is acceptable, and in many cases desirable, for a Department or Statutory Board to make available to the public, through the media, information in support of items of Government business which are to be dealt with in Tynwald.
- ii) This information may be provided by written news release or press conference/presentation and should normally be timed to coincide with, or follow shortly after, the publication of the relevant Order Paper or Agenda.
- iii) Where the information is provided by means of a press conference or presentation, this should normally be led by the Minister or relevant Departmental Member (the Chairman and Board in the case of a Statutory Board).

- iv) The information provided should explain clearly what is being proposed and why. It should be essentially factual and should not seek to anticipate the political debate.
- v) The information should make clear that the matter is subject to Tynwald approval.
- vi) The information should always be provided to Members before it becomes public.
- vii) Where a statement is to be made in Tynwald or in the Branches, neither the text of the statement nor the gist of it should be revealed in advance of the statement being made. Please see Section 2.2 of the Guidance on Submission of Papers, Reports, Legislation to Council of Ministers (available from the Executive Office, Cabinet Office).
- viii) In the case of a Parliamentary Question, a Department or Statutory Board should not make public the answer or the gist of that answer to the Question in advance of the relevant Question Time. (Discretion may be used in relation to this guideline in the event that it is necessary to provide information to address any incorrect statement which seriously misrepresents the situation made in advance of the Parliamentary sitting by a Member in relation to a Question.)

2.6 When a Minister is elected to serve on a Standing Committee or Select Committee of Tynwald or one of the Branches, his or her primary purpose is to act in a parliamentary capacity. However, the Ministerial status cannot be disguised and Ministers must seek to avoid being drawn into a situation whereby their membership of a Committee could result in the belief that Ministerial support is being given to a particular policy or funding proposal that is contrary to a declared Council position.

Ministers and their Departments

2.7 A Minister's general statutory authority in relation to his or her Department is set out in the Government Departments Act 1987. Section 3 (1) of the Act states:

"Subject to subsections (2) and (3) [which deal with delegations], the functions of each Department shall be exercised by the Minister in the name and on behalf of the Department."

The effect of the Act is to give each Minister authority to exercise all the functions of his or her Department or to delegate authority where this is desired. Generally, it is desirable that Ministers should devolve to their Departmental Members responsibility for a defined range of Department work (See Part 3).

2.8 Although Ministers are accountable for the conduct of their Departments, it is not the case that Ministers are required or expected to resign in respect of any and every mistake made by their Departments, though they are clearly responsible to Tynwald for ensuring that action is taken to put matters right and prevent a recurrence.

2.9 When conducting Departmental business the Minister may as he or she deems appropriate invite:

- (a) the Minister and Members to meet collectively to agree policy, budgetary and legislative priorities in accordance with any timescales agreed by Council;

(b) the Minister and Members to meet collectively to receive reports on a regular basis on the Department's financial and operational performance.

When meeting individuals external to Government the Minister, and Members (if acting under authority to exercise functions), should ensure that a note-taker is present at all such meetings and that such notes are filed. (Refer to Minute Taking Guidance Appendix 1)

When meeting with individuals who are accompanied by a legal adviser (Advocate etc.) then the Minister, and Members (whether acting under authority to exercise functions or not, but are acting for the Department), should have a legal adviser present at all times, as well as a note-taker and notes of the meeting shall be filed.

Ministers and Members Constituency and Non-Government Interests

2.10 It is wrong in principle for Ministers, and Members to use for non-Government work those facilities provided at Government expense to enable them to carry out their official duties. Ministers and Members should undertake their constituency work outside of Government, as they would in their capacity as a non-Government Member of Tynwald.

2.11 Government property should not generally be used for constituency or non-Government political activities if that property is not equally available to Members who are not Ministers.

2.12 Representation of constituents' interests is a core role of Members, as is seeking information on a matter of public policy. The custom often is for Members to contact civil servants direct, rather than to contact a Minister or political Member of a Department. Members should consider that when they contact civil servants direct, they may expose themselves to allegations of bullying and harassment.

The Standards and Members' Interests Committee First Report for the Session 2015-2016 – Standards of Behaviour for Members recommended that Members accept and are bound by the principles as set out in Annex to the Report, which are included in Standing Orders of Tynwald and any breach shall be taken to be a serious failure of a Member's duty. The principles are repeated at Annex 2.1.

2.13 Where Ministers and Members have to take decisions within their Departments which might have an impact on their own constituencies, they should take particular care to avoid any possible conflict of interest.

2.14 Ministers are free to make their views about constituency matters known to the responsible Minister by correspondence, leading deputations or by personal interview provided they make clear that they are acting as their constituent's representative and not as a Minister.

Particular problems arise over views expressed on planning applications and certain other cases involving exercise of discretion by Ministers in which representations intended to be taken into account in reaching a decision may have to be made available to other parties and thus may well receive publicity.

Ministers are advised to take particular care in such cases to represent the views of their constituents rather than express a view themselves; but when they find it unavoidable to express a view they should ensure that their comments are made available to the other parties, avoid criticism of Government policies, confine

themselves to comments which could reasonably be made by those who are not Ministers, and make clear that the views they are putting forward are ones expressed in their capacity as constituency MHKs. Ministers should be conscious of the position of their colleague Ministers when considering matters for determination. Once a decision has been announced, it should be accepted without question or criticism.

It is important, in expressing such views, that Ministers do so in a way that does not create difficulty for Ministers who have to take the decision and that they bear in mind the Government's collective responsibility for the outcome. Ministers should also take account of any potential implications which their comments could have on their own Department's responsibilities.

Ministers Private Interests

- 2.15 Ministers will want to order their affairs so that no conflict arises or is thought to arise between their private interests and their public duties. They should normally make their own decisions on how best to proceed but some guidance is given below. Where there is a doubt, it will usually be better to relinquish or dispose of the interest but where such an interest is to be retained; the Chief Minister must be advised in writing. Interests may include financial interests as well as relevant non-financial private interests such as links with outside organisations, and previous relevant employment.
- 2.16 Where it is proper for a Minister to retain any private interest, he or she should declare that interest to Ministerial colleagues if they have to discuss public business in any way affecting it, and the Minister should remain entirely detached from the consideration of that business. Ministers may consider it prudent to have their interest recorded in the minutes and withdraw from the meeting to prevent any accusation that their continued presence may influence the judgement of the other Ministers present. (Refer to Minute Taking Guidance Appendix 1)
- 2.17 On leaving office, there is no restriction on former Ministers taking up or resuming posts or other private sector interests, although they should avoid any course which would reflect adversely on their or the Government's reputation for integrity or the confidentiality of its proceedings.

Public Appointments

- 2.18 When they take up office, Ministers should give up any other public appointment they may hold, which may potentially bring them into conflict or into dealings with Government. Where it is proposed that such an appointment should be retained or it is proposed that such a position is to be accepted then the Chief Minister must be consulted.

Non-public bodies

- 2.19 Ministers should take care to ensure that they do not become associated with non-public organisations whose objectives may in any degree conflict with Government policy and thus give rise to a conflict of interest. Hence Ministers should not normally accept invitations to act as patrons of or otherwise offer support to pressure groups, or organisations dependent in whole or in part on Government funding. There is normally no objection to a Minister associating him or herself with a charity (subject to the points above) but Ministers should take care to ensure that, in participating in any fund-raising activity, they do not place, or appear to place, themselves under an obligation as a Minister to those to whom appeals are directed

(and for this reason they should not normally approach individuals or companies personally for this purpose). In any case of doubt, the Chief Minister should be consulted before a Minister accepts an association with such bodies. Ministers should also exercise care in giving public support for petitions, open letters, etc.

Financial Interests

- 2.20 Ministers must scrupulously avoid any danger of an actual or apparent conflict of interest between their Ministerial position and their private financial interests. In order to avoid such a danger, they should be guided by the general principle that they should either dispose of any financial interest giving rise to the actual or apparent conflict or take alternative steps to prevent it. The Department Chief Executive Officer as Accounting Officer has a personal responsibility for financial propriety and regularity across the Department's business, and his or her advice must be given particular weight where such issues arise.
- 2.21 Examples of ways in which a conflict of financial interest, or the perception of it, can arise are as follows:
- (a) from the exercise of powers or other influence in a way that does or could be considered to affect the value of interests held; or
 - (b) from using special knowledge acquired in the course of their Ministerial activities in ways which bring benefit or avoid loss (or could arouse reasonable suspicion of this) in relation to their private financial interests.
- 2.22 Apart from the risk to the Minister's reputation, it must be borne in mind that any exercise or non-exercise by a Minister of a legal power or discretion or other influence on a matter in which the Minister has a pecuniary interest could be challenged in the courts and, if the challenge is upheld, could be declared invalid.

Financial interests: alternatives to disposal

- 2.23 If, for any reason, the Minister is unable or unwilling to dispose of a relevant interest, he or she should consider, with the advice of the Department Chief Officer, what alternative measures would sufficiently remove the risk of conflict. Measures fall into two types: those relating to the interests themselves, and those relating to the handling of the decisions to be taken or influenced by the Minister.
- 2.24 Any steps, other than disposal of assets which the Minister may consider in relation to financial interests should be taken following legal advice from the Attorney General.
- 2.25 Another step which (perhaps in conjunction with other steps) might provide a degree of protection would be for the Minister to accept an obligation to refrain from dealing in the relevant shareholdings, etc., for a period. The Minister may however consider it prudent to establish why it was both appropriate to seek an alternative course of action and unreasonable to dispose of his or her assets. Discussions with the Attorney General would greatly help this process.
- 2.26 Unless adequate steps can be taken in relation to the financial interests themselves, the Minister and the employing Department must put processes in place to prohibit access to certain papers and ensure that the Minister is not involved in certain decisions and discussions. The extent to which this can be done depends on the specific powers under which the Minister would be required to take decisions.

- 2.27 In some cases, it may not be possible to devise such a mechanism to avoid actual or perceived conflict of interest, for example because of the nature or size of the investment or the nature of the Department's work. In such a case, or in any case where, after taking legal advice and the advice of the Department Chief Executive Officer, the Minister is in doubt whether adequate steps have been or can be taken, he or she should consult the Chief Secretary. In such a case, it may be necessary for the Minister to cease to hold the office in question.

Partnerships

- 2.28 Ministers who are partners, whether in professional firms, for example advocates, accountants, etc., or in other businesses, should, on taking up office, cease to practise or to play any part in the day-to-day management of the firm's affairs. They are not necessarily required, however, to dissolve their partnership or to allow, for example, their annual practising certificate to lapse. Beyond this, it is not possible to lay down precise rules applicable to every case; but any continuing financial interest in the firm would make it necessary for the Minister to take steps to avoid involvement in relevant decisions. Ministers in doubt about their personal position should consult the Chief Minister.

Directorships and non-public bodies

- 2.29 Ministers should seek the advice of the Attorney General when continuing with any directorships they hold when taking up office whether in a public or private company or charitable undertaking. Ministers should be particularly sensitive to areas where a conflict of interest may be more likely to arise or appear to arise (e.g. income generation, funding, decision making) whilst recognising the statutory requirements of a boardroom position, so as to avoid any possible conflict arising between the obligations of the individual, the interests of the company or undertaking and the Government. Ministers should not normally accept invitations to act as patrons of, or otherwise offer support to, groups or organisations dependent in whole or in part on public funds. There is less concern in the case of association with a charity, however if participating in any fundraising activity Ministers should ensure this does not place, or appear to place them under any obligation as Ministers. For this reason it would be prudent to refrain from approaching individuals or companies personally during any fundraising drive.

Acceptance of gifts and hospitality and travel

- 2.30 It is a well-established and recognised rule that no Minister or civil servant should accept gifts, hospitality or services from anyone which would, or might appear to, place him or her under an obligation. The same principle applies if gifts, etc., are offered to a spouse, partner or member of their immediate family. At all times the acceptance of gifts should reflect and be in compliance with the Register of Members Interests, as notified to the Registrar of Members Interests.
- 2.31 This is primarily a matter which must be left to the good sense of Ministers. But any Minister in doubt or difficulty over this should seek the Chief Minister's guidance. The following rules apply:
- (a) Tokens, mementos of official occasions, visits or conferences are not to be regarded as gifts unless they exceed an apparent value of £50;

- (b) Receipt of gifts should, in all cases, be reported to the Department's Chief Officer;
- (c) Gifts of small value (i.e. up to £100) may be retained by the recipient;
- (d) Gifts of a higher value should be handed over to the Department for disposal, except that:
 - i) The recipient may purchase the gift at its cash value (abated by £100);
 - ii) If the recipient wishes to reciprocate with, and pay for, a gift of equivalent value, the gift received may be retained;
 - iii) If the Department judges that it would be of interest, the gift may be displayed or used in the Department;
 - iv) If the disposal of the gift would cause offence or if it might be appropriate for the recipient to use or display the gift on some future occasion as a mark of politeness, then the gift should be retained in the Department for this purpose.

2.32 Gifts given to Ministers in their Ministerial capacity become the property of the Government unless the Minister wishes to keep the gift (if it is below the threshold of £100) or to purchase it.

2.33 Ministers or Members must declare details of any gift with an apparent value greater than £100, in accordance with Financial Regulations issued by the Treasury (See Financial Directive 1).

Hospitality

2.34 Travel within the Island and hospitality provided within normal bounds which are infrequent or reciprocated cause no difficulty (e.g. attendance as a guest at formal dinner, reception, etc.)

2.35 Travel and hospitality, including accommodation, provided off the Island cause no difficulty if the Minister is fulfilling an engagement at the request of the donor, which is of promotional or other sufficient value to the Island.

2.36 Where attendance at conferences, dinners, exhibitions, etc., off-Island involve offers of costs towards travel and/or accommodation which exceed an apparent value of £165, such offer should not be accepted. (Refer to Subsistence Allowances GC0036/12)

Travel

2.37 Off-Island travel by Ministers should normally be arranged, so far as possible, to avoid absences from Tynwald or its branches and the Council. An absence from the Council should have the Chief Minister's prior approval.

2.38 Where it is proposed, in the public interest, that a Minister be accompanied by his or her spouse/partner at public expense, the Chief Minister's prior permission should be sought.

2.39 When Ministers travel off-Island on official Government business (not Tynwald business), their travel expenses should normally be borne by the Department. When any expenses are not met in this way, Ministers will wish to ensure that no undue obligation is involved; recognising that accepting offers of free travel can be misinterpreted.

Annex 2.1: The Seven Principles of Public Life

Selflessness

Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Holders of public office should promote and support these principles by leadership and example.

Annex 2.2: Members of Tynwald required Standards of Conduct

Working relationships

The Required Standards of Conduct in the Clerk of Tynwald's Office: Staff Management Procedures are generally adopted as applying to Members. It is important for Members and Tynwald staff and staff in Government and public sector organizations that good working relationships are maintained. In Members' communication with others they should remember that people are different and that what may be acceptable to some people may not be acceptable to others.

Relations between Members of Tynwald and staff

Members of Tynwald should seek to maintain a constructive working relationship with all staff. In particular, they should:

- try to establish constructive helpful relationships, whilst maintaining a professional courteous demeanour
- be clear and concise without being abrupt;
- maintain appropriate courtesies at all times, recognising the value of all staff members.

Members of Tynwald must not:

- allow any staff member (especially a Tynwald staff member) to canvass their support in relation to a staff matter;
- otherwise interfere with staffing issues, except through the appropriate channels, namely the Clerk of Tynwald in the first instance and, if the response is unsatisfactory, the Tynwald Management Committee by way of its Chairman, the Speaker.

Relations with the public

Members of Tynwald are frequently asked to assist members of the public in matters which are of concern. In doing so, Members of Tynwald:

- must not interfere in private disputes between citizens as an active advocate or adviser for one side; settling disputes is the prerogative of the courts system and Members of Tynwald should not interfere in this role;
- must never use the status of Member of Tynwald for any private advantage of themselves, their family or friends, or otherwise in circumstances which may be perceived as creating an unfair advantage;
- must never give legal advice, but should refer constituents to a lawyer, the Office of Fair Trading or other qualified body, such as The Law Society.

Relations with colleagues

Members of Tynwald should seek to maintain a constructive working relationship with other Members. In particular:

- attempt to resolve any difficulties by mutual agreement;
- treat other Members of Tynwald as Honourable Members.

Members of Tynwald should on no account:

- take a hostile or demeaning approach to other Members or make unfounded allegations;
- continue with comments or behaviours that are offensive to colleagues.

Relations with Presiding Officers

Members should maintain a constructive working relationship with Presiding Officers. The President and Speaker are there to assist Members of Tynwald in tackling any difficulties. They should be treated at all times with the respect due to their office, both publicly and privately. Failure to do so is a serious discourtesy to Tynwald and its relevant branch.

Policy against bullying and harassment

Members of Tynwald accept the principles set out in the Office of the Clerk of Tynwald Management Procedures in relation to bullying and harassment as they affect Tynwald staff and staff in Government and public sector organizations. Members of Tynwald are under a duty to assist in the application of these principles. These are:

- (a) The Clerk of Tynwald has a personal responsibility to ensure the safety and well-being at work of his or her employees and is opposed to workplace bullying and harassment in all their forms.
- (b) Bullying and harassment are disciplinary offences and can amount to gross misconduct.

Members of Tynwald accept the definitions of bullying and harassment in the Office of the Clerk of Tynwald Management Procedures. These are:

Workplace bullying is repeated inappropriate behaviour, direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment, which could reasonably be regarded as undermining the individual's right to dignity at work. An isolated incident of the behaviour described in this definition may be an affront to dignity at work but as a one off incident is not considered to be bullying.

Although conduct may not be considered bullying in terms of the above definition, a one-off incident committed by a Member of Tynwald which is an affront to dignity at work will nonetheless fall short of the standard of behaviour to be expected from Members of Tynwald.

Harassment singles out a person on the basis of a characteristic such as gender, race, disability, sexual orientation or religion.

Members of Tynwald will support the Clerk of Tynwald in pursuit of his responsibility to seek out and eradicate bullying and harassment, acknowledging the possibility that victims may be reluctant to come forward.

The Clerk of Tynwald's Office is committed to taking swift and decisive action where bullying or harassment is alleged. Any employee who makes such an allegation in good faith will be supported and not victimised; will be guaranteed confidentiality; and will not suffer any detriment as a result of coming forward.

Because the Office takes bullying and harassment so seriously, the making of an unfounded or vexatious allegation of bullying or harassment against a member of staff is itself a disciplinary offence. Members making or actively assisting such unfounded allegations are in serious breach of their duty.

Part 3: Members of Departments

General

3.1 Section 1 (2) of the Government Departments Act 1987 (see Annex 4) provides that:

"Each Department shall consist of:

- (a) the Minister; and*
- (b) one or more other members, who shall be members of Tynwald."*

It is, therefore, a statutory requirement that each Department shall have at least one Member to support the Minister.

3.2 Whilst the relationship between a Minister and his or her Departmental Member(s) depends very much on the personalities of the individuals involved, it is important, in the public interest, that the relationship be both positive and productive. This involves the Minister and Members sharing information and working together, recognising their respective roles and assuming a collective responsibility for the work of the Department.

Authority to Exercise Functions

3.3 Section 3 of the same Act goes on to say:

"(1) Subject to subsections (2) and (3), the functions of each Department shall be exercised by the Minister in the name and on behalf of the Department.

(2) The Minister may authorise any member or officer of the Department, or any other person, to exercise any functions of the Department in his place, either alone or jointly with him or with any other such person or persons.

(3) Any person authorised under subsection (2) to exercise any functions of the Department may authorise any officer of the Department to exercise any of those functions in his place.

(4) The Department may make standing orders regulating the exercise by any person of any functions of the Department which he is authorised to exercise under subsection (2) or (3).

(5) Where any person has under subsection (2) or (3) authorised any other person to exercise any functions of the Department in his place, he is not thereby prevented from exercising those functions himself."

3.4 The effect of section 3 (1) of the Act (see above) is to vest all the functions of the Department in the Minister but the Minister is able to delegate some or all of those functions, albeit final responsibility for all the functions will remain with the Minister.

3.5 The section includes a reference to Members and, whilst full Departmental authority is vested in the Minister, the Member is a specified class of person to whom the Minister may delegate functions of the Department.

- 3.6 The extent to which Departmental responsibilities are delegated to Member(s) of a Department is a matter for the Minister, but Ministers are encouraged to put in place authorisation to exercise functions which:
- (a) give decision making responsibilities to Member(s) of the Department in defined areas of Departmental activity, and
 - (b) provide cover in the event of the Minister being not available by virtue of absence from the Island, illness, etc.
- 3.7 Where an authorisation to exercise functions is made of a Department's functions to a Member [or other person(s)], it should be in the form shown at Annex 3.1.
- 3.8 Where an authority to exercise functions is made to a Member [or other person(s)] to provide cover in the event of the Minister not being available, it should be in the form shown at Annex 3.2.
- 3.9 Where it is proposed to transfer authority to exercise functions from one Member to another, this can only be undertaken by the Minister.

Legal and Financial Constraints

- 3.10 A Department is not able to take an action for which it has no legal authority nor may it incur the expenditure of money if authority to expend that money does not exist. It follows that a member with authority to exercise functions may not take or direct an action for which there is no sufficient legal or financial authority.

The advice of the Department's Chief Executive Officer should be taken in any case of doubt.

Collective Responsibility

- 3.11 Unless they have been positively excluded from the process of formulating the policy, Members of a Department are collectively responsible with the Minister for departmental policy in the sense that they should support that policy in public. This collective responsibility for departmental policy extends to departmental policy as a whole, and not simply to those policy areas for which a Member has been given authority to exercise functions.
- 3.12 There are circumstances, as follows, under which Member(s) have freedom to speak publicly against policies and decisions of the Department:
- i) Matters of Conscience
 - ii) A Declared Position
 - iii) Constituency Matters
 - iv) Inconsequential Matters
 - v) Unresolved Issues

A fuller discussion of collective responsibility is set out in Part 1, paragraphs 1.26 to 1.31.

- 3.13 A personal or political dislike of a Departmental decision is not in itself a sufficient justification for an exemption from collective responsibility.
- 3.14 Where Members exercise their right to a free vote or to speak publicly against a policy or a decision of the Department, in accordance with one of the recognised exceptions, it will be important for them to express themselves towards the Minister and other Members in a responsible way. Even in disagreement, courtesy and respect are due to a fellow Member of Tynwald. A display of personal abuse, criticism or animosity would be unacceptable in such circumstances.

Inter-Departmental Issues

- 3.15 It is occasionally necessary for an issue between Departments to be resolved by discussions between the relevant Ministers or for the Council to resolve the issue by means of a Direction or otherwise. Where, within a Department, that issue falls within the authority of a Departmental Member to exercise functions, the resolution may be contrary to the views of the Member. In such an event, collective responsibility applies and the Member should respect the decision of the Department and Council.

Confidentiality

- 3.16 It is Government Policy to be as open as possible in providing information publicly about its activities. However the Freedom of Information Act 2015 provides exceptions to this which are deemed necessary to maintain a balance with the rights to privacy, effective government and value for the tax payer. These principles are noted in the Code of Practice on Access to Government Information

Whilst Members are encouraged to explain and discuss openly the declared policies of the Department, it is important for the effective working of Departments that information in relation to developing policies or activities is not divulged prematurely so as to pre-empt a determination by the Department. Members should, therefore, be sensitive to the interests of the Department in discussing the work of the Department with others and, in the event of doubt, to discuss with the Minister whether outside discussion would be premature. (Also refer to Electronic Communications and Social Media Policy, Standards and Guidelines at Appendix 2)

- 3.17 The provisions of the Ministerial Code at Part 2 of this document apply, as appropriate, to Members of Departments when fulfilling their Government responsibilities. Advice on the application of the Ministerial Code to Members of Departments in particular instances, can be obtained from the Chief Secretary.

Annex 3.1: Model Authorisation to exercise functions relating to [Area of Activity]

Government Departments Act 1987

Department of [Name of Department]

In exercise of the powers conferred to me by section 3 of the Government Departments Act 1987, I hereby authorise

[Name of Member or other person]

a member of the Department of **[Name of Department]** until further order to exercise the functions of the Department specified in Schedule 1 below, subject to any standing orders made by the Department under section 3 (4) of that Act and to the conditions and limitations specified in Schedule 2 below.

Nothing in Schedule 1 shall be taken to impinge on the authority of the Chief Executive to manage the staff of the Department, nor to execute his responsibilities as Departmental Accounting Officer.

Dated **[Date]**

[Signature of Minister]

Minister for **[Name of Department]**

Schedule 1

[Description of Functions]

1. The functions of the Department, whether created by statute or otherwise, in connection with **[Name of Service or Function]** including the powers, duties and responsibilities of the Department arising therefrom.
2. Without prejudice to the generality of paragraph (1), the functions of the Department under:

[List of specific statutory functions, if appropriate]

3. Without prejudice to the generality of paragraph (1) the functions to which this Schedule refers include:
 - (a) power to consider or prepare proposals in respect of **[Name of service or function]** including matters ancillary thereto whether within the enactments referred to in paragraph (2) or otherwise, and
 - (b) power to prepare annual revenue or capital expenditure programmes in respect of **[Name of service or function]** for submission to the Minister.

Schedule 2

(Conditions and Limitations)

1. The authority to exercise the functions referred to in Schedule 1 shall not be taken to include powers to:

[The following are examples]

- (a) promote new or amending primary or secondary legislation;
- (b) request Tynwald, Council of Ministers or Treasury authorities;
- (c) implement non-legislative policy changes having financial implications beyond existing budgetary provision;
- (d) determine annual revenue or capital expenditure programmes;
- (e) subject to paragraph (2), increase or modify approved expenditure programmes;
- (f) dispose of land for which Treasury consent is not required by virtue of paragraph 1 (4) of Schedule 1 to the Government Departments Act 1987;
- (g) increase service charges;
- (h) increase staffing establishments;
- (i) alter staff employment terms and conditions; or
- (j) engage consultants;

in relation to those functions without reference to and approval from the Minister (in addition to any other approvals required by statute, rule or otherwise).

2. The Member may only authorise financial expenditure in relation to those functions delegated to him/her and within agreed annual revenue and capital vote codes. Any proposed virements between expenditure codes or any proposed changes in agreed personnel budgets require prior Ministerial approval.
3. The member must hold formal meetings with relevant officers in connection with their relevant areas of responsibility at least **[once a month]**. Notes of all such meetings must be taken and copies forwarded to the Minister and Chief Executive ideally within two days of the meeting. (Refer to Minute Taking Guidance Appendix 1)
4. The Member may delegate, in turn, any or all of the functions delegated to him/her but only to an officer of the Department and by a formal authority, which must secure the prior written consent of the Minister.
5. If the Member requires to be absent from the Island on Departmental business, he or she must seek the approval of the Minister.
6. For the avoidance of doubt, nothing in Schedule 1 or in this Schedule shall be taken to permit the exercise of a function which could not have been exercised by the Minister, nor, to permit the exercise of a function in such form or manner as would not have been available to the Minister.

7. Nothing in Schedule 1 shall be taken to permit the exercise of a function which has been delegated under Section 3 (2) of the Act to another person, save to such extent as the Minister may direct either generally or in any particular case.

Annex 3.2: Model Authorisation to exercise functions during Periods of Absence of the Minister

Government Departments Act 1987

Department of [Name of Department]

In exercise of the powers conferred on me by section 3 of the Government Departments Act 1987, I hereby authorise

[Name of Member or other person]

a member of the Department of **[Name of Department]** during any period when I am not available due to illness or absence from the Island to exercise the functions of the Department not otherwise delegated, provided that:

- (a) this authorisation shall not apply in respect of business which can, in the opinion of **[Name of Member]** be deferred to await my return;
- (b) a copy of the record of any decision taken in accordance with this authority to exercise functions is passed to the office of the Chief Executive of the Department;
- (c) any order, regulation, etc., made by **[Name of Member]** acting in accordance with this authority to exercise functions shall bear the following -
"Signed by authority of the Minister for **[Name of Department]**"

Nothing in this authorisation shall be taken to impinge on the authority of the Chief Executive to manage the staff of the Department, nor to execute his responsibilities as Departmental Accounting Officer.

Dated **[Date]**

[Signature of Minister]

Minister for **[Name of Department]**

Part 4: Ministers and Civil Servants Duties and Responsibilities

The Role of the Minister

- 4.1 A Minister's general statutory authority is set out in the Government Departments Act 1987. (The relevant sections are reproduced in Annex 4.1). The effect of the Act is to give each Minister authority to exercise all the functions to his or her Department or to delegate authority where this is desired.
- 4.2 A Minister is responsible to the Chief Minister, and Tynwald, for the conduct of his or her Department and for the actions carried out by his or her Department in pursuit of Government policies or in the discharge of responsibilities laid upon him or her as a Minister.
- 4.3 A Minister is accountable to the Chief Minister, and Tynwald, in the sense that he or she has a duty to explain the exercise of his or her powers and duties and to give an account of what is done by him or her in his or her capacity as a Minister or by his or her Department.

The Role of the Civil Service

- 4.4 A civil servant is an employee of the Public Services Commission and his or her general responsibilities as a civil servant are set out in Section 9 of the Public Services Commission Act 2015 (reproduced at Annex 4.2).
- 4.5 Within Departments*, civil servants are responsible to their Ministers for their actions and conduct. They are responsible for the provision of impartial advice to Ministers for the implementation of policy decisions and for the management of services provided in accordance with statutory requirements and Government policy.

* (Where a civil servant does not serve within a Department, his or her responsibility is to serve the appropriate authority as though that authority were a Minister.)

Authorisation to Exercise Functions

- 4.6 Section 9(1) of the Public Services Commission Act 2015 provides that:

"An employee of the Commission is required to perform such duties and observe and comply with such reasonable instruction as his or her stationed employer or any person duly authorised by the stationed employer may require."

The stationed employer in this case is the Department, Statutory Board, Office of government or other public sector entity to which an employee of the Commission is assigned.

- 4.7 In order to provide a framework within which functions are performed by officers, each Department should have in place formal systems of delegation which include an authorisation to exercise functions from the Minister to the Chief Executive in respect of:
- (a) section 9(1) Public Services Commission Act 2015

- (b) the power to determine the duties to be performed by all other employees of the Department and to give such reasonable instructions to such employees as may be necessary from time to time; and
- (c) an authorisation to exercise functions from the Minister or Chief Executive Officer to relevant management/supervisory staff enabling such staff to:
- i) determine the duties to be performed by the civil servants on the staff of the Department, within their individual spans of control, and to give to such staff reasonable instructions; and
 - ii) as required, determine the duties to be performed by all other employees of the Department, within their individual spans of control, and to give to such employees reasonable instructions.

4.8 The Minister is free to determine the precise format and content of Ministerial or Managerial Authorisations, but should ensure that they contain as a minimum the information shown in the suggested model Authorisation to Exercise Functions at Annex 4.3.

4.9 Similar authorisations should be applied, modified as necessary, to Offices of Government, Statutory Boards and the following additional public bodies staffed by civil servants:

- Manx National Heritage;
- The War Pensions Committee; and
- The Road Transport Licensing Committee.

Basic Principles Governing the Relationship between Ministers and Civil Servants

4.10 Ministers have a duty to give fair consideration and due weight to informed and impartial advice from civil servants, as well as to other considerations and advice, in reaching policy decisions; a duty to uphold the political impartiality of the Civil Service, and not to ask civil servants to act in any way which would conflict with the Code of Conduct for Public Servants 2009; a duty to ensure that influence over appointments is not abused for partisan purposes; and a duty to observe the obligations of a good employer with regard to terms and conditions of those who serve them. Civil servants should not be asked to engage in activities likely to call in question their political impartiality, or to give rise to the criticism that people paid from public funds are being used for non-Governmental purposes.

4.11 The Civil Service has no constitutional personality or responsibility separate from the duly constituted Government of the day, although some civil servants are involved, as a proper part of their duties, in the processes of presentation of Government policies and decisions.

4.12 It is the duty of civil servants to serve their Ministers with integrity and to the best of their ability.

4.13 The determination of policy and monitoring its implementation is the responsibility of the Minister, (within the convention of collective responsibility of the whole Government for the decisions and actions of every member of it). Provided that the civil servant implements agreed policies and strategies, reflecting statutory and administrative law and processes, it should be supported by the Minister.

In the determination of policy, the civil servant has no constitutional responsibility or role distinct from that of the Minister. Subject to any decision to limit the access of Ministers to papers of previous Ministers (Para 1.32 to 1.34 refers), it is the duty of a civil servant to make available to the Minister all the information and experience at his or her disposal which may have a bearing on the policy decisions to which the Minister is committed or which he is preparing to make, and to give to the Minister honest and impartial advice, without fear or favour and whether the advice accords with the Minister's view or not.

Civil servants are in breach of their duty, if they deliberately withhold relevant information from their Minister, or if they believe they can give, or if they seek to obstruct or delay a decision simply because they do not agree with it. When, having been given all the relevant information and advice, the Minister has taken a decision, it is the duty of civil servants (subject to the requirements of the Code of Conduct for Public Servants 2009) to loyally to carry out that decision with precisely the same energy and good will, whether they agree with it or not.

- 4.14 Civil servants are under an obligation to keep the confidences to which they become privy in the course of their work; not only the maintenance of the trust between Ministers and civil servants but also the efficiency of Government depend on their doing so. There is and must be a general duty upon every civil servant, serving or retired, not to make disclosures without authority which breach that obligation. This duty applies to any document or information of knowledge of the course of business, which has come to a civil servant in confidence in the course of his or her duty.

Any such unauthorised disclosures, whether for political or personal motives, or for pecuniary gain, and quite apart from liability to prosecution under the UK Official Secrets Act 1989 (as applied in the Isle of Man), result in the civil servant concerned forfeiting the trust that is put in him or her as an employee and making him or her liable to disciplinary action including the possibility of dismissal, or to civil law proceedings.

He or she also undermines the confidence that ought to subsist between Minister and civil servants and thus damages colleagues and the Service as well as him or herself. Civil servants should continue to observe their duties of confidentiality after they have left employment.

Departmental Members and Civil Servants

- 4.15 Where any Departmental Member (or other person) has been authorised by a Minister to exercise any functions of the Department by virtue of Section 3 (2) of the Government Departments Act 1987, civil servants shall in relation to those functions and subject to the limitation of any instructions from the Minister, be responsible to that Member as though he or she were the Minister.
- 4.16 In all other circumstances, so far as is consistent with their responsibilities to their Minister, civil servants shall regard the basic principles governing the relationship between Ministers and civil servants set out in paragraphs 4.10 to 4.14 above as applying to their relationship with Members of their Department. In particular and subject to any limitations imposed by the Minister, civil servants shall provide such information regarding their Department and the discharge of its functions as a Member of the Department may reasonably require.

- 4.17 Any directives issued by a Member of a Department acting under authority to exercise functions should be issued through that Department's Chief Executive Officer.

Political Neutrality of Civil Service

- 4.18 The Civil Service is a non-political and professional career service subject to a published code of rules and disciplines. Civil servants are required to serve the duly constituted Government of the day, of whatever political complexion. It is of the first importance that civil servants should conduct themselves in such a way as to deserve and retain the confidence of Ministers, and to be able to establish the same relationship with those whom they may be required to serve in some future administration. That confidence is the indispensable foundation of a good relationship between Ministers and civil servants. The conduct of civil servants should at all times be such that Ministers and potential future Ministers can be sure that that confidence can be given freely, and that the Civil Service will at all times conscientiously fulfil its duties and obligations to, and impartially assist, advise and carry out the policies of, the duly constituted Government of the day.
- 4.19 The alternative to political neutrality within the Civil Service is for Ministers to be able to make politically motivated appointments at senior level within or in parallel to the Civil Service, and for such appointments to terminate with each change of Minister. This is not an acceptable alternative. The Minister (or Board) has an active role in the appointment of the Chief Executive by virtue of Section 7 (4) of the Public Services Commission Act 2015 where the appointment may not have the effect without the concurrence of that Department (or Board).

Such consent should not be withheld on political grounds.

- 4.20 Where in the rare event that a Minister finds that he cannot work reasonably with a particular official in a key position, it is open to the Minister to bring this to the attention of the Chief Executive Officer of the Department (or to the Chief Minister or Chief Secretary if the official concerned is the Chief Executive Officer). In such circumstances, every effort would be made, involving the Public Services Commission where appropriate, to secure a satisfactory resolution to the situation.
- 4.21 Where a Minister seeks advice or guidance of a political nature this should be sought from fellow Ministers or from Members of the Minister's Department.

Legal and Ethical Considerations

- 4.22 A civil servant should not be required to do anything unlawful. In the very unlikely event of a civil servant being asked to do something which he or she believes would put him or her in a clear breach of the law, the matter should be reported to the Department's Chief Executive Officer or the Chief Secretary, who should, if necessary, seek the advice of the Attorney General. If legal advice confirms that the action would be likely to be held to be unlawful, the matter should be raised formally with the Minister by the Chief Executive Officer or the Chief Secretary.
- 4.23 Civil servants should always recall that it is Ministers, and not they, who bear political responsibility for determining the policy and strategy for the services provided by his or her Department. A civil servant should not decline to take, or abstain from taking an action because to do so would conflict with his or her personal opinions on

matters of political choice or judgement between alternative or competing objectives and benefits.

However, there may exceptionally be circumstances in which a civil servant considers that he or she is being asked to act in a manner which appears to him or her to be:

- (a) Either improper, unethical or in breach of constitutional conventions, or to involve possible misadministration, or to be otherwise inconsistent with normal standards of conduct or professional judgement. In such a case he or she should report the matter to the Department's Chief Executive Officer or the Chief Secretary.
- (b) Or directly contrary to deeply held personal conviction on a fundamental issue of conscience.

- 4.24 A civil servant who feels that to act or abstain from acting in a particular way, or to acquiesce in a particular decision or course of action would raise for him or her a fundamental issue of conscience, or is so profoundly opposed to a policy as to feel unable conscientiously to administer it in accordance with the expected standards, should consult a senior officer. If necessary, and if the problem cannot be resolved by any other means, the civil servant may take the matter up with the Department's Chief Executive Officer and he or she also has a right in the last resort, to have the matter referred to the Chief Secretary through the Department Chief Executive Officer. If the matter still cannot be resolved on a basis which the civil servant concerned is able to accept, he or she must either carry out his or her instructions or resign from the Civil Service – though even after resignation he or she will be bound to keep the confidences to which he or she has become privy as a civil servant.

Accountability

- 4.25 Constitutionally, Ministers are responsible and accountable for all actions carried out by civil servants of their Departments in pursuit of Government policies or in the discharge of responsibilities laid upon them by Tynwald. The authorisation to exercise functions to managers at all levels, which is an important part of the efficient and economic use of resources in the Civil Service, involves internal accountability within Departments and does not conflict in any way with the external accountability of the Minister to Tynwald. Any attempt to make civil servants directly accountable to Tynwald, other than in the strictly defined case of the Accounting Officer's responsibility, would be difficult to reconcile with Minister's responsibility for their Departments and civil servants' duty to their Ministers.
- 4.26 This has implications for the position of civil servants appearing before Select Committees of Tynwald. Civil servants so appearing generally do so, on behalf of Ministers and give evidence which is subject to any constraints placed upon them by Ministers. Where a civil servant declines to provide information to a Select Committee on instructions from the Minister, it would not be appropriate for the Select Committee to seek to enforce its rights to secure information from the Government at a level below that of the Minister since such a practice would tend to undermine rather than strengthen the accountability of Minister to Tynwald. Additional guidance from the Attorney General relating to the power of Select Committees to compel witnesses and the production of documents is available in the Corporate Governance Handbook.
- 4.27 Chief Executive Officers are appointed as Accounting Officers. The essence of the role is a **personal** responsibility for the propriety and regularity of the public finances for which he or she is responsible; for keeping proper accounts; for the

avoidance of waste and extravagance; and for the efficient and effective use of resources. Accounting Officers answer personally on these matters.

- 4.28 Accounting Officers have particular responsibilities under Financial Directive 2, including the requirement to see that appropriate advice is tendered to Ministers on all matters of financial propriety and regularity and more broadly as to all considerations of prudent and economical administration, efficiency and effectiveness and value for money. If a Minister in charge of a Department is contemplating a course of action which would involve a transaction which the Accounting Officer considers would breach the requirements of propriety or regularity, the Accounting Officer will set out in writing his or her objection to the proposal, the reasons for the objection and the duty to inform the Director Audit Advisory should the advice be overruled. If the Minister decides nonetheless to proceed, the Accounting Officer will seek a written instruction to take the action in question and send the relevant papers to the Director Audit Advisory. A similar procedure applies where the Accounting Officer has concerns as regards the value for money of a proposed course of action.
- 4.29 The individual civil servant is accountable through his or her senior officers to his or her Minister and, if he or she has done amiss, it is to his or her Minister and ultimately the Public Services Commission that he or she is answerable. There are established means available, e.g. internal inquiry and disciplinary proceedings, whereby the Head of a Department or the Public Services Commission can bring an individual civil servant to account and can penalise him or her if necessary.

Some Practical Aspects

- 4.30 The purist model of the Minister being concerned with policy and the Civil Service being responsible for the management and delivery of services in accordance with policy, whilst unassailable in principle is subject to certain qualifications in practice.
- (a) The distinction between policy and management is not always clear and implementation of a policy may involve the Minister getting into some detail, particularly if the policy is relevant to service delivery or the way the Department functions, for example:
- i) Setting targets
 - ii) Monitoring performance
 - iii) Distributing resources
 - iv) Assessing managerial arrangements
- (b) All these functions may be part-political and part-managerial. For the Minister to stand back totally on these issues would be to surrender the policy element involved to the Civil Service.
- (c) The scale of operations and the accessibility of Ministers coupled with the small size of some Departments can tend to draw the Minister into questions of detailed administration, and there remains some expectation within Tynwald that this should be so.
- (d) It must also be recognised that managerial decisions can cause controversy and raise political issues. A Minister has the right at all times to question means and

methods of policy implementation and, depending upon the circumstances, to instruct alternatives. As the defender of individual interests, a Minister is entitled to raise constituency or small issues which may involve him in procedural and managerial details.

- (e) Conversely the purist model makes no allowance for the civil servant to contribute to the policy debate apart from tendering advice. The very fact that it is difficult to distinguish in any absolute way at the margin between what is policy and what is management means that the senior civil servant may be involved in decision making which has a policy element.

4.31 Central to the day-to-day workings of the relationship between Ministers and the Civil Service is the need for a common understanding of what is or is not to be regarded as a policy issue. The most important requirement for a good understanding between a Minister and his or her Officers is having clear, well understood policies and adequate formal authorisations to exercise functions. Decisions are only taken by those with the authority to take them. Where policy is not sufficiently clear, issues will rise through the Department, to the Minister if necessary, so that whoever has the authority can decide. As a principle, it is best that decisions are taken at the lowest possible level and well established, clear policies, accompanied by a formal authority to exercise functions, pass authority down the organisation. This aids efficiency and clarifies the respective roles of Minister and Chief Executive Officer.

4.32 The relationship between a Minister and his or her Chief Executive Officer is a partnership (not of equals), which is dependent on the knowledge and ability of the two. It is a flexible relationship which changes over time. In the relationship the Minister's role is dominant and the approach and style of individual Ministers will vary.

4.33 Whilst the Chief Executive Officer will be the Minister's principal Civil Service adviser, it is important that a Minister should recognise some particular aspects of the Chief Executive Officer's position and responsibilities and that the provision of services to the Minister by his or her Department should impact on the Chief Executive Officer as little as possible:

- (a) The Chief Executive Officer has a set of responsibilities of his or her own concerned with the management of the Department and the delivery of services. The Minister should seek to avoid getting involved in minor issues.
- (b) The Department, where it has appropriate resources, should appoint an officer, other than the Chief Executive Officer, to perform a role as Personal Assistant to the Minister and to have a particular responsibility for attending to a Minister's "Private Office" requirements. (Follow up enquiries, collation of Tynwald business, dealing with correspondence etc.)
- (c) Although much of the Minister's liaison with his or her Department will be via the Personal Assistant, this should not become a means of by-passing the Chief Executive Officer and establishing routine direct links with second tier officers in the Department. In particular, any Ministerial directions should be issued through the Chief Executive Officer.
- (d) Ministers should avoid placing a Chief Executive Officer or other officers in a position where their political neutrality may be called into question. Dealing with constituency correspondence, resolving constituency problems and pursuing

other political initiatives not related to the work of the Department are examples of work which would call into question an officer's political neutrality.

4.34 Equally it is important that the Chief Executive Officer should be able to recognise the needs of the Minister and preserve his or her own political neutrality:

- (a) The Chief Executive Officer should recognise and understand what is a "political" or potentially "political" issue and should avoid making managerial decisions on those issues without consulting or advising the Minister.
- (b) A Chief Executive Officer should keep his or her Minister informed of developments of what is going right and what is going wrong within the Department. This may not be for the purpose of the Minister making decisions but simply to ensure that he is informed. External political interest in a Departmental issue should normally be regarded as something the Minister ought to know about.
- (c) In order to mitigate the vulnerability of the Government, a Chief Executive Officer should ensure that appropriate staff resources are provided to support the Minister at meetings with individuals and bodies external to Government should resources be available. In this context a Chief Executive Officer may consider it prudent to provide a note taker etc. in meetings with third parties and legal officers. For the avoidance of any perceived conflict the decision about whether to utilise this resource rests ultimately with the Minister. (Refer to Minute Taking Guidance Appendix 1)
- (d) Chief Executive Officers should recognise the long-term importance of their political neutrality and should avoid situations and actions which might be seen as compromising or prejudicing that neutrality.

Annex 4.1: The Statutory Responsibility of a Minister

A Minister's responsibilities are defined by the Government Departments Act 1987 in the following terms:

Section 1 (2) Each Department shall consist of:

(a) the Minister; and

(b) one or more other members who shall be Members of Tynwald

Section 3 (1) Subject to subsections (2) and (3), the functions of each Department shall be exercised by the Minister in the name and on behalf of the Department.

(a) The Minister may authorise any member or officer of the Department, or any other person, to exercise any functions of the Department in his place either alone or jointly with him or with any other person or persons.

(b) Any persons authorised under Section 2 to exercise any functions of the Department may authorise any officer of the Department to exercise any of those functions in his place.

(c) The Department may make standing orders regulating the exercise by any person of any functions of the Department which he is authorised to exercise under subsection (2) or (3).

(d) Where any person has under subsection (2) or (3) authorised any other person to exercise any functions of the Department in his place, he is not thereby prevented from exercising those functions himself.

Annex 4.2: The Isle of Man Public Services Commission

Section 9 Public Services Commission Act 2015

Terms of employment of employees

9. (1) *An employee of the Commission is required to perform such duties and observe and comply with such reasonable instruction as his or her stationed employer or any person duly authorised by the stationed employer may require.*
- (2) *Without limiting subsection (1) the terms and conditions of employment of an employee of the Commission is governed by his or her contract of employment.*

Annex 4.3: Model Authorisation to exercise functions under Government Departments Act 1987

The below authority to exercise functions (usually known as a delegation) is intended to be used as a framework to inform the drafting of any required specific delegations under the Government Departments Act 1987. Particular reference should be made to the terms of any operative delegations executed by the Public Services Commission relevant to staffing matters and advice should be sought from Attorney General's Chambers and/or the Cabinet Office in cases of doubt or difficulty.

Government Departments Act 1987

Department of [Name of Department]

Authorisation for the Accounting Officer and other Officers to exercise functions

In exercise of the powers conferred on me, in my capacity as the Minister for **[Name of Department]**, by section 3(2) of the Government Departments Act 1987 and of all other powers enabling me in that regard, I hereby authorise, until further order:

- (a) the Accounting Officer; and
- (b) in the absence of the Accounting Officer, [the Finance Director **or** Chief Operating Officer **or** Another Named Position],
("authorised person")

to exercise:

- i) the functions of the Department, subject to any standing orders made by the Department under section 3(4) of that Act; and
- ii) certain functions and responsibilities relating to staff and the management of staff or employees stationed with the Department or directly employed by the Department, specified below (together referred to as the "authorised functions").

Authorised Functions:

1. Execution of Documents

- 1.1 In my absence powers to execute any documents on behalf of the Department, other than public documents¹.

2. Staff and staff management

In my place and taking over all such responsibilities from me:

¹ Per Section 3 of the Interpretation Act 1978, 'public document' means any order, proclamation, warrant, scheme, rule, regulation, byelaw, resolution, notice or other instrument made under any enactment

2.1 In relation to Public Services Commission employees stationed with the Department:

- i) as provided for in section 9(1) of the Public Services Commission Act 2015, authority on my behalf, to give such reasonable instructions to any and all public sector employees for which the Department is the stationed employer, in particular requiring such employees to perform such duties and observe and comply with any such reasonable instruction as may from time to time be stipulated; and
- ii) guided by any delegation of functions issued by the Public Service Commission relevant to its employees, the power to oversee and enforce on my behalf as may be required, matters relating to performance management and grievance, disciplinary and capability procedures in respect of such employees.

2.2 In relation to Department employees:

- i) authority on my behalf to give such reasonable instructions to any and all employees of the Department, in particular requiring them to perform such duties and observe and comply with such reasonable instruction as may from time to time be stipulated; and
- ii) the power to oversee and enforce on my behalf as may be required, matters relating to performance management and grievance, disciplinary and capability procedures in respect of the Department's employees.

3. Authorisation of Expenditure and Write-off Debts

In my place and taking over all such responsibilities from me [**or** subject to my concurrence **or** co-extensively with me] and subject at all times to Financial Regulations:

- i) powers to issue orders or authorise expenditure, subject to such expenditure being within the terms of the agreed annual revenue budget of the Department;
- ii) powers to authorise payments from agreed capital votes codes in respect of expenditure on capital projects already approved by the Treasury or Tynwald, as the case may be; and
- iii) powers to write off individual debts in accordance with financial regulations up to £250,000.

4. General

- 4.1 In my absence, power to exercise any administrative functions which would otherwise fall to be exercised by me but cannot await my return and which have not been delegated to any other Member.
- 4.2 Powers to act generally, in consultation with me, where appropriate, on behalf of, and in the best interests of, the Department, in all day-to-day matters in accordance with my policies and, for this purpose, to exercise any function or duty of the Department in my name.

Dated **[Date]**

[Signature of Minister]

Minister for **[Name of Department]**

NB: Conditions and Limitations

This authorisation is subject to the following conditions and limitations:

1. In exercising the authorised functions, the authorised person named may not:
 - i) promote new or amending primary or subordinate legislation;
 - ii) seek Tynwald or Council of Ministers authorities;
 - iii) implement non-legislative policy changes having financial implications beyond approved budgetary provisions;
 - iv) determine annual revenue or capital expenditure programmes;
 - v) increase service charges; or
 - vi) take any decision which would have the effect of increasing approved staffing establishments, without my prior approval.
2. The authorised person may only authorise financial expenditure in relation to those functions for which he is authorised and within agreed annual revenue or capital vote codes. The authorised person may approve the transfer of sums between main heads of service or transfers from a loan charges account code. However any proposed changes in approved salary budgets require my prior approval.
3. The authorised person must hold formal meetings with relevant Heads of Division in connection with their relevant areas of responsibility at least once a month. The agendas for all such meetings must be circulated at least four working days in advance and notes of all such meetings must be taken and copies forwarded to me ideally within two working days of the meeting. (Refer to Minute Taking Guidance Appendix 1)
4. As provided for in section 3(3) of the Government Departments Act 1987, the authorised person named may, in turn, authorise in writing an officer of the Department to exercise the authorised functions.

Schedules of Further Authorisations

In exercise of the powers conferred on me by Section 3 (2) of the Government Departments Act 1987 and of all other powers enabling me in that behalf, I hereby authorise the persons named in Schedules **xx** to **xx** hereto to exercise the functions of the **[Department]** specified in the said schedules, subject to any conditions set out therein.

Schedule 1

In exercise of powers conferred by paragraph 4(1) and (1A) of Schedule 1 to the Government Departments Act 1987 I hereby authorise any of the following, namely:

- i) to sign any document referred to in the said paragraph 4(1) and 1A of Schedule 1 to the Government Departments Act 1987 to be made by the **[Department]**, other than a public document.

Schedule 2

In exercise of powers conferred by Section 3(2) of the Government Departments Act 1987 I hereby authorise the following officers to exercise the functions of the **[Department]** as specified subject to any conditions set out thereunder:

Dated **[Date]**

[Signature of Minister]

Minister for **[Name of Department]**

Part 5: The Civil Service Code

(To be read in conjunction with the Public Services Commission's Civil Service Regulations and Code of Conduct for Public Servants 2009)

- 5.1 The role of the Civil Service is, with integrity, honesty, impartiality and objectivity, to assist the duly constituted Government of the Isle of Man² in formulating its policies, carrying out decisions and in administering public services for which they are responsible.
- 5.2 Civil servants are employees of the Commission and, subject to the provisions of this code; they owe their loyalty to the Government which they serve.
- 5.3 This code should be viewed in the context of the duties and responsibilities set out for Ministers in the Ministerial Code.
- 5.4 Civil servants should serve the Government in accordance with the principles set out in this code and recognising:
- (a) the accountability of civil servants to the Minister;
 - (b) the duty of all public officers to discharge public functions reasonably and according to the law;
 - (c) the duty to comply with the law, including international law and treaty obligations, and to uphold the administration of justice; and
 - (d) ethical standards governing particular professions.
- 5.5 Civil servants should conduct themselves with integrity, impartiality and honesty. They should give honest and impartial advice to Ministers, without fear or favour, and make all information relevant to a decision available to them. They should not deceive or knowingly mislead Ministers, Tynwald, or the public.
- 5.6 Civil servants should endeavour to deal with the affairs of the public sympathetically, efficiently, promptly and without bias or maladministration.
- 5.7 Civil servants should endeavour to ensure the proper, effective and efficient use of public money.
- 5.8 Civil servants should not misuse their official position or information acquired in the course of their official duties to further their private interests or those of others. They should not receive benefits of any kind from a third party which might reasonably be seen to compromise their personal judgement or integrity.
- 5.9 Civil servants should conduct themselves in such a way as to deserve and retain the confidence of Ministers and to be able to establish the same relationship with those whom they may be required to serve in some future Government. They should comply with restrictions on their political activities.

² The Government Code is written referring to Ministers and relates to civil servants working in Departments. Where civil servants are employed in Statutory Boards or Offices outside of Departments, reference to Ministers should be understood to include the Statutory Board or the Officer in Charge of the Office

- 5.10 Civil servants should not, without authority, disclose official information which has been communicated in confidence within the Government. Nothing in the code should be taken as overriding existing statutory or common law obligations to keep confidential, or to disclose, certain information. They should not seek to frustrate or influence the policies, decisions or actions of Ministers, by the unauthorised, improper or premature disclosure outside of Government of any information to which they have had access as civil servants. Civil servants should always refer to the Freedom of Information Act 2015, Data Protection Act 2002 and the Code of Practice on Access to Government Information when considering the release of information for any purpose. (Also refer to Electronic Communications and Social Media Policy, Standards and Guidelines at Appendix 2).

Subject to any limitations imposed by the Minister or by the general interest of Government, a civil servant should provide such information regarding their Department and the discharge of its functions as a Member of Tynwald may reasonably require. This principle confirms that civil servants are to be as helpful as possible in providing information to Members and in the event of any doubt about the release of any information the relevant Minister must decide.

- 5.11 Where a civil servant believes he or she is being required to act in a way which:

- (a) is illegal, improper, or unethical;
- (b) is in breach of constitutional convention or a professional code;
- (c) is required to act in a way which, for him or her, raises a fundamental issue of conscience;
- (d) may involve possible maladministration;
- (e) is otherwise inconsistent with this code; or
- (f) if he or she becomes aware of other breaches of this code,

he or she should report the matter to the Department's Chief Executive Officer. The Chief Executive Officer should report to the appropriate authorities any evidence of criminal or unlawful activity brought to his or her attention.

- 5.12 Where a civil servant has reported a matter covered in paragraph 5.11 and believes that the response does not represent a reasonable response to the grounds of his or her concern, he or she may report the matter in writing to the Chief Secretary.
- 5.13 Civil servants should not seek to frustrate the policies, decisions or actions of the Government by declining to take, or abstaining from, action which flows from decisions by Ministers. Where a matter cannot be resolved by the procedures set out in paragraphs 5.11 and 5.12 above, on a basis which the civil servant concerned is able to accept, he or she should either carry out his or her instructions, or resign from the Civil Service.
- 5.14 Civil servants should continue to observe their duties of confidentiality after they have left employment.

Part 6: Members of Statutory Boards and Other Statutory Bodies

Part A: The Statutory Boards

Constitution

- 6.1 The Statutory Boards are constituted under the Statutory Boards Act 1987, or by separate statute but are referred to in that Act.

Corporate Status

- 6.2 The Statutory Boards are listed in Schedule 1 to the Statutory Boards Act 1987 as follows:

The Isle of Man Office of Fair Trading
The Isle of Man Financial Services Authority
The Isle of Man Post Office
The Manx Utilities Authority
The Communications Commission
The Isle of Man Gambling Supervision Commission
The Public Sector Pensions Authority

- 6.3 Every Statutory Board is a body corporate with perpetual succession and a common seal.

Appointment of Members

- 6.4 Members are appointed to Statutory Boards by Council subject to Tynwald approval (except for the Financial Services Authority and the Gambling Supervision Commission whose members are appointed by the Treasury, subject to Tynwald approval).
- 6.5 A Tynwald member of a Statutory Board holds office until:
- (a) the expiry of a period of 2 years and 6 months beginning with the date on which the House of Keys was last dissolved;
 - (b) the dissolution of the House of Keys; and
 - (c) he ceases to be a member of Tynwald.
- 6.6 A non-Tynwald member of a Statutory Board holds office for a period of 5 years from the date of his appointment but he goes out of office if he becomes a member of Tynwald. Any member of a Statutory Board may be removed from office by a direction of Council or may at any time resign on giving to the Chief Minister notice in writing of his intention to do so.

Payment of Members

- 6.7 Members of Statutory Boards are eligible to be paid annual sums prescribed by the Treasury under section 2 of the Payment of Members' Expenses Act 1989. They are also entitled to claim, in respect of each meeting of the Board or committee thereof, the travelling allowance prescribed by the Treasury.

Statutory Functions

- 6.8 The statutory functions of the Statutory Boards are to be found in the various Acts of Tynwald which constitute the individual Boards and in associated subordinate legislation. The Statutory Boards Act 1987 (as amended) is also important in relation to their functions.

Council of Ministers Directions

- 6.9 Although in practice it is a rarely used power, the Statutory Boards Act 1987 provides that Council may, after consultation with the Board, give to any Board such directions as to the exercise of its functions in relation to any matter which appears to Council to affect the public interest, and the Board shall comply with any such directions.

Exercise of Functions

- 6.10 A Statutory Board has the following key functions:
- (a) to set the strategic direction of the organisation, within the overall policies and priorities of the Government;
 - (b) to ensure that the organisation is managed with probity and integrity;
 - (c) to oversee the delivery of planned results by monitoring performance against objectives, monitoring and managing risks to achieve those objectives and ensuring corrective action is taken when necessary;
 - (d) to ensure effective financial stewardship through value for money, financial control and financial planning and strategy;
 - (e) to ensure that the Board operates within the limits of its statutory authority, and in accordance with any other conditions relating to the use of public funds;
 - (f) to ensure that high standards of corporate governance and personal behaviour are maintained in the conduct of the business of the whole organisation;
 - (g) to ensure that there is effective dialogue between the organisation and the community on its plans and performance and that these are responsive to the community's needs;
 - (h) to ensure that effective management arrangements are in place to enable responsibility to be clearly delegated to senior executives for the main programmes of action and for performance against programmes to be monitored and senior executives held to account.

- 6.11 As a Statutory Board is a body corporate, all the Members share collective corporate responsibility for the decisions of the Board. The Chairman of a Statutory Board is not in the same position as a Minister of a Department in whose name and on whose behalf all the functions of the Department are exercised. [The Chairman has no authority to act or take decisions on behalf of the Statutory Board except as provided for in Schedule 2 to the Statutory Boards Act 1987 or in accordance with an authority to exercise functions approved by the Board.]

The Role of the Chairman

- 6.12 The Chairman has particular responsibility for providing effective strategic leadership on matters such as:
- (a) formulating the Board's strategy for discharging its statutory duties;
 - (b) encouraging high standards of propriety and promoting the efficient and effective use of staff and other resources throughout the organisation;
 - (c) ensuring that the Board, in reaching decisions, takes proper account of guidance provided by Tynwald;
 - (d) representing the views of the Board to Tynwald and the general public; and
 - (e) providing an assessment of performance of individual Board Members, on request, when they are being considered for re-appointment to the Board or for appointment to the Board of some other public body.
- 6.13 The Chairman should ensure that the Board meets at regular intervals throughout the year and that the minutes of meetings accurately record the decisions taken, the reasons for those decisions and, where appropriate, the views of individual Board Members. (Refer to Minute Taking Guidance Appendix 1)
- 6.14 There should be formal approval by the Board of the Accounts at regular intervals, at least every 3 months. The Board Meeting minutes must record that financial information was included in the agenda papers, and that the Chief Executive, or another Officer, reported on the Accounts.
- 6.15 When financial decisions are made about which Treasury should legally, or as a courtesy, be informed, it must be recorded in the Board Meeting minutes that Treasury has been so informed in writing. It must not be assumed by the Board that Treasury has been informed, based only on verbal assurances to that effect by an Officer. (Refer to Minute Taking Guidance Appendix 1)
- 6.16 Communications between the Board and the Minister of the sponsoring department will normally be through the Chairman except where the Board has agreed that an individual member should act on its behalf. Nevertheless, an individual member has the right of access to Ministers on any matter which he or she believes raises important issues relating to his or her duties as a member of the Board. In such cases the agreement of the rest of the Board should normally be sought. The main point of contact between the body and the sponsor Department on day-to-day matters will normally be the Chief Executive Officer or another member of staff who is authorised to act on behalf of the body.
- 6.17 The Chairman should ensure that all members of the Board, when taking up office, are fully briefed on the terms of their appointment and on their duties, rights and

responsibilities. The Chairman and other members of the Board should each have a copy of relevant background material such as its latest Service Delivery Plan and Annual Reports and Accounts; the Financial Regulations; notes describing the body's organisational structure and statutory basis of operation; and any specific rules and procedures of the Board. The Chairman should encourage new Board members to attend an induction course on the duties of Board members of public bodies, Corporate Governance or some other suitable form of induction. (Refer to Minute Taking Guidance Appendix 1)

The Role of Individual Members

- 6.18 Board Members share the collective responsibility of the Board for the control and management of its business and are expected to exercise their best judgment in the interests of the organisation.
- 6.19 Members should regard themselves as guardians of the public interest in the Board's activities and in the discharge of its statutory duties. They should adopt a questioning approach to proposals put before the Board and should contribute independent advice and judgment, both to the Board as a whole and as appropriate to the Chairman.
- 6.20 Within the framework of collective responsibility, Members should take particular interest in seeing that challenging objectives are set and properly monitored. They should also seek to ensure short and medium term plans are considered against alternative strategies to meet the objectives set. It is important for Members to participate in regular reviews of the Board's progress against objectives, monitor and manage the risk to achieving those objectives, and should be aware of the performance of other similar authorities.
- 6.21 The members should aim to make a full contribution to the work of the Board with particular emphasis on increasing efficiency. They should not be inhibited in taking an interest in areas or aspects of the organisation's activities where they consider they can make a contribution.

Chairman and Chief Executive

- 6.22 The Chair and Chief Executive Officer share in the leadership role, although there is a clear division of responsibility between the Statutory Board and its Chief Executive Officer (by whatever title he or she is known). The Chairman's role is to lead the governing body, ensuring it makes an effective contribution to the governance of the organisation, and the Chief Executive's is to lead the organisation in implementing strategy and managing the delivery of services. A good working relationship between the two can make a significant contribution to effective governance.

Strategic planning and control

- 6.23 One of the main tasks of the Board is likely to be oversight of the production of the Service Delivery plan. The process of preparing such a document provides an opportunity for agreeing the policy and resources framework within which the body will discharge its duties; and for determining its key strategic objectives and targets. Such targets should normally cover areas such as the organisation's financial performance; the efficiency and effectiveness of its operations; and the quality of the services it provides. Some public bodies cannot easily measure final outputs. Where this makes it difficult to set suitable performance targets, the Board should aim to agree carefully formulated strategic objectives and milestones.

Authority to Exercise Functions

- 6.24 Responsibility for day-to-day management matters should be delegated to staff with a clearly understood framework of strategic control. A model of authority to exercise functions is available in Annex 4.3. Boards will want to consider internal guidance covering those matters delegated to staff and those reserved for decision by the Board. The latter are likely to include issues of corporate strategy; key strategic objectives and targets; major decisions involving the use of financial and other resources; and personnel issues including key appointments and standards of conduct.
- 6.25 The Board may decide to delegate, where it has power to do so, responsibility for specified matters to individual members, committees or companies of the Board. Decisions taken by individual members or committees of the Board under authority to exercise functions should be recorded in written minutes available to the Board as a whole. (Refer to Minute Taking Guidance Appendix 1)

Financial Regulations

- 6.26 Statutory Boards must comply with Financial Regulations. Copies of the Financial Regulations are held in the offices of all the Statutory Boards.

Personnel

- 6.27 Statutory Boards recruit, train and deal with all aspects of the service of their personnel except that any civil servants who are employed on behalf of any Statutory Board are the responsibility of the Public Services Commission. The Cabinet Office's Office of Human Resources is available to provide advice on corporate personnel policies determined by Council and on employee/industrial relations issues generally.

Conflicts of Interest

Register of Interests

- 6.28 Members of Statutory Boards should act impartially and should not be influenced by family, social or business relationships. Board Members should not use their public position to further their private interests.
- 6.29 The Chairman and other Board Members should declare any personal or business interests which may conflict with their responsibilities as Board Members, and those interests should be declared and recorded in a register.
- 6.30 The register should list direct or indirect pecuniary interests which members of the public might reasonably think could influence Board members' judgement. Board members are strongly encouraged to register non-pecuniary interests which relate closely to the body's activities, and interests of close family members and persons living in the same household as the Board Member.
- 6.31 Board Members should notify the Chief Executive if there is any relevant change in their personal situation or connections during the period of appointment, which may result in a conflict of interest. Board Members should in any case update the register of interests as changes occur.

- 6.32 Registers of interest should be open for inspection by Members of Tynwald, the Council, the Chief Executive Officer of the Board, Accounting Officer and other Board members and be available for inspection by the public auditors. Opening the register for public inspection would be a matter for the Board to determine, with due consideration to the Freedom of Information Act 2015, Data Protection Act 2002 and the Code of Practice on Access to Government Information.

Disclosing Interests

- 6.33 Members of Statutory Boards should not participate in the discussion or determination of matters in which they have a direct pecuniary interest. When an interest is not of a direct pecuniary kind, Members should consider whether participation in the discussion or determination of a matter would suggest a real danger of perception of bias. This should be interpreted in the sense that Members might either unwittingly or otherwise unfairly regard with favour or disfavour, the case of a party to the matter under consideration. In considering whether a real danger of perception of bias exists in relation to a particular decision, Members should assess whether they, a close family member, a person living in the same household as the Board Member, or a firm, business or organisation with which the Board Member is connected are likely to be affected more than the generality of those affected by the decision in question. This would cover, for example, a decision to invite tenders for a contract where a firm with which a member was connected was significantly better placed than others to win it. (Refer to Minute Taking Guidance Appendix 1)
- 6.34 Where, in accordance with the above, Members do not participate in the discussion or determination of a matter, the interest should be declared and recorded in the minutes and the Member should withdraw from the meeting. This is because the continued presence of someone who had declared an interest might be thought likely to influence the judgement of the other members present.

Acceptance of Gifts, Hospitality and Travel

Gifts

- 6.35 No Board Member should accept gifts, hospitality or services which would, or might appear to, place him or her under an obligation. The same principle applies if gifts, etc., are offered to a member of their family.
- 6.36 This is primarily a matter which must be left to the good sense of Members. But any Member in doubt or difficulty over this should seek the guidance of the Accounting Officer. The following rules apply:
- (a) Tokens, mementos of official occasions, visits or conferences are not to be regarded as gifts unless they exceed an apparent value of £50;
 - (b) Receipt of gifts should, in all cases, be reported to the Board's Chief Executive;
 - (c) Gifts of small value (i.e. up to £100) may be retained by the recipient;
 - (d) Gifts of a higher value should be handed over to the Board for disposal, except that:
 - i) The recipient may purchase the gift at its cash value (abated by £100);

- ii) If the recipient wishes to reciprocate with, and pay for, a gift of equivalent value, the gift received may be retained;
- iii) If the Board judges that it would be of interest, the gift may be displayed or used in the Board;
- iv) If the disposal of the gift would cause offence or if it might be appropriate for the recipient to use or display the gift on some future occasion as a mark of politeness, then the gift should be retained in the Board for this purpose.

6.37 Gifts given to Board Members in their capacity as Board Members become the property of the Board unless the Board Member wishes to keep the gift (if it is below the threshold of £100) or to purchase it.

Hospitality

- 6.38 Travel within the Island and hospitality provided within normal bounds, which is infrequent or reciprocated cause no difficulty (e.g. attendance as a guest at formal dinner, reception, etc.)
- 6.39 Travel and hospitality, including accommodation, provided off the Island cause no difficulty if the Member is fulfilling an engagement at the request of the donor, which is of promotional or other sufficient value to the Island.
- 6.40 Where attendance at conferences, dinners, exhibitions, etc., off-Island involve offers of costs towards travel and/or accommodation which exceed an apparent value of £165, such offer should not be accepted. (Refer to Subsistence Allowances GC0036/12)

Travel

- 6.41 Off-Island travel by Members should normally be arranged, so far as possible, to avoid absences from Board meetings.
- 6.42 When Members travel off-Island on official Government business their travel expenses should be borne by the Board. When any expenses are not met in this way, Members must ensure that no undue obligation is involved; recognising that accepting offers of free travel can be misinterpreted.

Confidentiality

- 6.43 It is Government Policy to be as open as possible in providing information publicly about its activities. However the Freedom of Information Act 2015 provides exceptions to this which are deemed necessary to maintain a balance with the rights to privacy, effective government and value for the tax payer. These principles are noted in the Code of Practice on Access to Government Information.
- 6.44 Whilst Members are encouraged to explain and discuss openly the declared policies of the Board, as appropriate, it is important for the effective working of Boards that information in relation to developing policies or activities is not divulged prematurely so as to pre-empt a determination by the Board. Members should, therefore, be sensitive to the interests of the Board in discussing the work of the Board with others and, in the event of doubt, to discuss with the Chairman whether outside discussion

would be premature. (Also refer to Electronic Communications and Social Media Policy, Standards and Guidelines at Appendix 2)

Interaction with the Media

- 6.45 If a Member is approached by the media for comment on any matter or issue, the Board member should politely decline to make comment at that time and seek the advice of the Chief Executive Officer or Chairman.
- 6.46 Upon advice, the Member may make specific comment to the media as deemed appropriate based on the advice tendered by the Chairman or Chief Executive Officer.
- 6.47 The Member may however make appropriate and informed comment, if prior authority has been received from the Chairman or in the absence of the Chairman the Vice-Chairman. (This may be necessary in circumstances when a Member may be Chairman of a sub-committee of the Board).

Indemnity

- 6.48 The Statutory Boards Act 1987 includes provision that the Board "may apply any money in its hands for the purpose of indemnifying itself against any costs or damages which it may incur in or in consequence of the exercise of its functions". This is achieved through the purchase of indemnity insurance which, for all Departments, Boards and Offices (except the Manx Utilities Authority and the Isle of Man Post Office) is provided by the Government's Official indemnity policy arranged by Treasury.
- 6.49 This insurance covers claims from third parties which arise from accidental errors or omissions. The cover extends to employees, political members and lay members of Departments, Boards and Offices subject to various conditions including that no indemnity will be provided to persons in respect of their own fraud, dishonesty or criminal act. The cover relates only to action taken by the Member as part of the Board's "business" and does not cover any other actions.
- 6.50 The Directors and Officers insurance policies taken out by the Manx Utilities Authority and the Isle of Man Post Office indemnify the insured against costs for which they are legally liable following a claim against them for a wrongful act. Again, these policies provide certain exclusions including acts which are found by any court to be fraudulent or dishonest or any personal profit or advantage gained to which such insured was not legally entitled.
- 6.51 Both types of policies provide for payment of damages and claimants costs and expenses for the financial loss arising as a result of a negligent act, accidental error or accidental omission. In addition the insurer will pay all costs and expenses incurred, with its written consent, in defending any claim which may be the subject of indemnity.
- 6.52 The Statutory Boards Act 1987 gives Members of Statutory Boards the same level of indemnity as that provided to officers, whereby:
 - (a) a Board Member will not be personally liable in respect of any act done by him in the performance or purported performance of his functions if he acted

reasonably and in the honest belief that his duty required or empowered him to do the relevant act;

- (b) where an action has been brought against a Member of a Board in respect of an act done by him in the performance or purported performance of his functions, and the circumstances are such that he is not legally entitled to require the Board to indemnify him, the Board may nevertheless indemnify him against the whole or any part of any damages or costs which he may have been ordered to pay or may have incurred, if the Board is satisfied that he honestly believed that the act complained of was within the scope of his functions and his duty required or empowered him to do it.

General Code of Conduct and Behaviour

- 6.53 As a member of the Board, a Member is expected at all times to exercise the highest standards of behaviour in line with the seven principles of public life as set out in Annex 2.2 of the Government Code. Members should not enter into any activity or discussion with any third party that may have the potential of bringing the Board into disrepute or compromising the reputation of the Board or the Isle of Man Government.
- 6.54 Any breach of the provisions of this Code of Conduct may result in removal from office of the Member at the direction of Council, under Section 3 (3) of the Statutory Boards Act 1987.

Application

- 6.55 The principles and requirements set out above represent minimum standards which must be adhered to by Board members. Individual Boards have the freedom however to introduce more specific standards to meet any specific needs of the boards concerned.

Part B: Other Statutory Bodies

Corporate Status

- 6.56 Save as is otherwise provided for by statute or, by virtue of inclusion within schedules of this code, is expressly exempted, this code applies to all Government Departments, all Statutory Boards, and to all bodies or authorities (other than a local authority), constituted by any enactment for any purposes involving the expenditure of public monies or the receipt of public monies for the purposes of that body or authority or for the public revenue.
- 6.57 For the sake of completeness it is important to emphasise that many of the governance principles and requirements identified in respect of Statutory Boards, apply equally, as appropriate, to these other public bodies, principally:
- Exercise of Functions (Para 6.10)
 - The Role of the Chairman (Paras 6.12 to 6.17; & 6.22)
 - The Role of Individual Members (Paras 6.18 to 6.21)
 - Authority to Exercise Functions (Paras 6.24 & 6.25)
 - Conflicts of Interest (Paras 6.28 to 6.34)
 - Acceptance of Gifts, Hospitality and Travel (Paras 6.35 to 6.42)
 - Confidentiality (Paras 6.43 & 6.44)
 - Interaction with the Media (Paras 6.45 to 6.47)

Part 7: Department Boards

Department Boards

- 7.1 A Department **may** constitute a Department Board containing Non-Executive Directors. The objective of the Board is to provide advice to the Minister regarding the discharging of his or her functions, and ensure good governance and oversight of the delivery of those functions delegated from the Minister.
- 7.2 **When constituted**, Ministers should chair their Department Board. He or she will maintain a high standard of discussion and debate, helping to steer the Department by facilitating collective working and require that systems are in place to provide Board members with the support they need to carry out their role effectively, such as providing them with timely, relevant evidence on which to base their decisions.
- 7.3 Boards should comprise of other political Members, at least one Non-Executive Director but no more than two Non-Executive Directors. They will carry out business with the Chief Executive of the Department and other senior officials in attendance at Department Board meetings.
- 7.4 The Department Board will be chaired by the Minister and should ordinarily meet on at least a monthly basis.
- 7.5 Department Non-Executive Directors, appointed in accordance with the Governance Code for Public Appointments, will be experts from outside Government. They will come primarily from the commercial sector, and will have experience of complex organisations or with specific and relevant skills related to the work of the department.
- 7.6 Non-Executive Directors may be non-resident in the interest of gaining the most appropriate expertise, in line with the Departmental need identified by the Minister.
- 7.7 The appointment of NEDs will be subject to a recommendation made by the Minister following a public appointment process and panel and approved by the Council of Ministers which will subsequently require Tynwald approval. NEDs shall be appointed for three year fixed terms which may be renewable, provided that NEDs may not serve more than two consecutive terms at any one time within a single Department.
- 7.8 Non-Executive Directors will be subject to the same standards and scrutiny as the Department or Board in which they hold office.
 - Ministers will ordinarily oversee the appropriate conduct of NEDS but ultimate oversight of Non-Executive Directors will lie with the Chief Minister and the Council of Ministers with input from the Minister of the Department
 - Non- Executive Directors will be required to declare any interest and/or conflicts of interest to the Chief Minister and Minister of the Department
 - Non-Executive Directors can be removed from office at the discretion of the Chief Minister after consulting the Council of Ministers
 - Complaints or concerns about the conduct, efficiency or any other issue relating to a Non-Executive Director must be raised with the Chief Minister
 - Non-Executive Directors may be called to appear before Tynwald Committees.

- 7.8 Departments will support the contribution of Department NEDs by providing appropriate management information and direct access to officials outside Board meetings. Requests for information or support required by the Non-Executive Director from the Department will be made via the Minister or Chief Executive.

The role of the Board is to advise the Minister on issues within their remit and to require and assist in establishing a governance framework with the support of officials to ensure the Department meets its obligations and acts in the wider interests of the Isle of Man Government, direction set by the Council of Ministers, and delivery for the public. This will include financial performance and stewardship of funds by the Department. The Boards will ensure deliverability of policies is considered and scrutinise Departmental reporting on performance, and challenge progress to achievement of objectives.

- 7.10 Policy will be decided by the Minister and political Members alone, with advice from officials. Senior Officers will give advice and support on the operational implications and effectiveness of policy proposals, focusing on getting policy translated into results.

Boards will operate according to and require recognised precepts of good corporate governance in business: Accountability, probity, transparency and integrity.

- 7.11 Boards advise on, and seek assurance on five main areas from the Chief Officer, Accounting Officer and Senior Managers, requiring good management information;

- good corporate governance
- monitoring and measuring strategy
- financial stewardship
- monitoring performance and delivery
- risk management

The Role of Government Non-Executive Directors

- 7.12 Government Departments are not the same as for-profit corporations, but they face many similar challenges. They need to be business-like. They can do this by tapping into the expertise of senior leaders with experience of complex organisations in the commercial private sector.

- 7.13 These experts will be appointed as Non-Executive Directors to the Department to bring: independence, impartiality, wide experience, special knowledge, and exemplary personal qualities. They will provide challenge and support through their membership of the Department Boards, which will provide the collective strategic leadership of Government Departments.

- 7.14 They will exercise their role through influence and advice, supporting as well as challenging the executive. NEDs will work positively with officers as well as acting as a source of advice and wider perspective. They will assist oversight of performance and management of the Department (including agreeing key performance indicators) and aid the Minister and Members in anticipating issues and risks with operational and policy delivery, major projects and strategic decisions.

They will also provide support, guidance and challenge on the progress and implementation of departmental plans.

Key Principles for NEDs

7.15 All NEDs should uphold the seven principles of public life as outlined in Annex 2.1 to the Government Code (as amended from time to time).

7.16 NEDs should:

- Act in an independent manner bringing expertise, scrutiny, challenge and support to the Department, including supportive advice to officers
- Consider and act in the best interests of the public, the Department and its objectives, delivering the outcomes expected by the sponsor Department, Ministers and ultimately the public
- Consider the broader mission and duties of the sponsoring Minister, his or her Department, and the role of the Department in the wider direction and plans of Government.

7.17 For the sake of completeness it is important to emphasise that many of the governance principles and requirements as set out in the Government Code in respect of Statutory Boards, apply equally, as appropriate, to NEDs, principally:

- Exercise of Functions (Para 6.10)
- The Role of Individual Members (Paras 6.21)
- Authority to Exercise Functions (Paras 6.24 & 6.25)
- Conflicts of Interest (Paras 6.28 to 6.34)
- Acceptance of Gifts, Hospitality and Travel (Paras 6.35 to 6.42)
- Confidentiality (Paras 6.43 & 6.44)
- Interaction with the Media (Paras 6.45 to 6.47)

Appendix 1: Guidance Notes for Minute Taking and Recording Ministerial and Member Decisions

1. Introduction

Throughout this document the term "Committee" is used, however this guidance applies equally to the Council of Ministers, Departments, Boards and Offices, and the various committees and sub-committees.

It is a requirement of the Corporate Governance Code of Conduct, that Government is able to demonstrate integrity in the decision making process (Aspect 3 – Structures and Processes).

The Report of the Commission of Inquiry into Mount Murray Part Two (2003) states that:

"The recorded minutes of the Council of Ministers and all other agencies of Government, including Government Departments, Statutory Boards and their various committee and sub-committees, contain all matters considered by such bodies, including not only the decision or decisions made but also make clear the reasons leading to them."

The Report of the Standing Committee on Public Accounts on the handling of allegations by the Department of Home Affairs against a former Deputy Chief Constable (2009) recommends:

"That procedures be put in place to ensure the recording of official discussions where new information is received by a Department as a result of which significant costs are likely to accrue, even if such discussions are not part of a formal decision-making process."

The Final Report of the Select Committee on the Manx Electricity Authority (2013) recommends:

"It is not acceptable for the minutes to merely record that the Chief Executive or another officer reported verbally on the Accounts if there is no record of what was said and no financial information is included in the Agenda papers. There should be formal approval of the Accounts at regular intervals, at the very least every 3 months."

"If financial decisions are made about which Treasury should legally, or as a courtesy, be informed, it must be recorded in the minutes that Treasury has been so informed in writing. It must not be assumed by the Board that Treasury has been informed, based only on verbal assurances to that effect by an Officer."

Taking these recommendations into account, it is important to recognise that written records of all decisions should be made, in order that a clear audit trail is provided for future reference. Such written records need not be in a formal style, but should, in general, follow the principles of the minute contents as described below.

2. Minute numbering

Minutes should be produced as a MS Word document using Tahoma 11 typeset, aligned to the left with page numbering.

Each minute should have a separate heading and be allocated a unique minute number. The following numbering methodology is used for meetings of the Council of Ministers and its Sub-Committees.

- Minute numbers comprise two parts.
- Numbers used for the first part should be consecutive for each agenda item discussed during the year, and the second part should represent the year.

For example, 01/16 was the number used for the first agenda item discussed at the first meeting of 2016. In January 2017, a new consecutive sequence will commence, and the first agenda item discussed at the first meeting will be 01/17.

3. Content

Each minute should clearly set out:

- (a) The topic/issue discussed;
- (b) The options considered by the Committee in arriving at the decision and the reasons for that decision;
- (c) The decision of the Committee; and
- (d) A record of action points assigned to the officer(s) responsible for follow-up/implementation (in accordance with the recommendations of the Standing Committee on Public Accounts)

4. Approval

Best practice business guidelines suggest that, ideally, within 48 hours of the meeting, draft minutes should be circulated to the Committee Chair for amendment and approval. Once this has taken place, the minutes should be circulated to all Committee members.

At the next Committee meeting further amendments can be suggested and approved before the final text of the minutes is approved, signed and dated on the last page by the Chairman. The signed minutes must be retained in a dedicated minute file.

Committees may discuss matters arising from the approved minutes. This gives Committee members an opportunity to update colleagues on progress and supply additional information etc.

“Matters Arising” should therefore be the third item on the meeting agenda, as follows:

1. Apologies
2. Minutes of previous meeting
3. Matters Arising

Any matters discussed should be minuted under a separate sub heading appropriate to the topic and cross referenced with the original minute number, i.e. a topic/issue discussed in Minute 111/16 would be referenced:

111/16 Matters Arising

a. Topic/issue title – e.g. IT Equipment

Minute 099/16 refers
File number

The Secretary confirmed the new computers had now been installed.

5. Supporting documents

Matters on the agenda should, wherever possible, have supporting documents which present the agenda item, its background, make firm recommendations regarding the decision to be taken by the Committee and the reasoning for the recommendations.

Wherever practical, a Committee should not take a decision without reference to relevant background papers. If a Committee does not believe it has sufficient information required to make a decision, a further background paper may be requested, and a decision deferred until that information is provided.

The agenda item and the associated minute should include a file reference to provide a link into the Committee's records.

6. Procedure

If any person outside the Committee's membership is asked to attend for a specific item their attendance should be noted in the appropriate minute.

If a member of the Committee arrives following commencement of the meeting, or departs prior to the end of the meeting, the time of their arrival/departure should be recorded.

Matters which are not on the agenda can be raised by Committee members under 'Any Other Business'.

If the committee does not meet on a regular basis (i.e. every Wednesday afternoon at 2:30pm or monthly on the first Monday of each month at 10:00am) a date, time and venue for the next meeting should be agreed by the Committee.

The time the meeting ended should be recorded.

7. Format

Minutes should be formatted in the following basic structure:

7.1 Example showing format and style

**Minutes of the meeting of the [Name of Group]
held in [Venue, Location]
at 10:00am on [Date]**

Present: Minister
Chief Secretary
Chief Executive

In attendance: Mr J Smith, Secretary

Apologies: Mr Jones, Officer

| Minute number | Item | Action |
|----------------------|---|------------------|
| XXX/YY | <p>Minutes of the meeting of [Date]</p> <p>Having been previously circulated the minutes of the meeting held on [Date] were agreed and signed by the Chief Secretary, subject to the following amendments:</p> | |
| | <p>a) Topic</p> <p style="text-align: right;">Minute Ref: XXX/YY File Ref: XXX</p> <p>Text</p> | Secretary |
| XXX/YY | <p>Matters Arising [titled by each topic and cross referenced to last minute and file reference]</p> <p>a) Topic</p> <p style="text-align: right;">Minute Ref: XXX/YY File Ref: XXX</p> <p>Text</p> <p>b) Topic</p> <p style="text-align: right;">Minute Ref: XXX/YY File Ref: XXX</p> <p>Text</p> | Secretary |

| | | |
|---------------|---|------------------------|
| XXX/YY | <p>Title of first agenda item [e.g. IT Equipment] Paper Number: YY/XXX File Ref: XXX</p> <p>The Committee considered a paper submitted by the Department concerning the IT equipment. The paper outlined the following three options:</p> <p>a) b) c)</p> <p>In view of it was agreed to accept option....</p> | Chief Executive |
| XXX/YY | Any other business (titled by each topic) | |
| | <p>a) Topic</p> <p>Text</p> <p>File Ref: XXX</p> | |
| XXX/YY | <p>Date of next meeting (if not known)</p> <p>The Committee requested that the next meeting should be arranged on a suitable date in [Month].</p> | Secretary |

The meeting closed at [time meeting concluded]

Signed..... [Chair]

Date.....

Recording Ministerial and Member Decisions

8. Introduction

This guidance has been produced to ensure a consistent approach to the recording of Ministerial and Member decisions. The guidance also sets down the minimum level of information that is required to be recorded by Departments in relation to such decisions. This guidance applies to all decisions made by the Minister and by Departmental Member(s) using the authority to exercise functions.

8.1 Template for recording Ministerial and Member decisions

The recording of Ministerial and Member decisions should include as a minimum the completion of the information required in the template below:

| | |
|-----------------------------|--|
| Background: | |
| Current position | |
| Key issues | |
| Legal Advice | |
| Decision | |
| Reasons for decision | |

| | | | |
|--------------------------------------|---|------------------------------|------|
| Chief Executive comments | | | |
| Agreed by Chief Executive | YES / NO (delete as appropriate) | | |
| | | Signature of Chief Executive | Date |
| Ministerial / Member comments | | | |
| Agreed by Minister/ Member | YES / NO (delete as appropriate) | | |
| | | Signature of Minister/Member | Date |
| Signed copies to: | Chief Minister; Minister and/or Member Chief Executive Officer; Responsible Department Officer | | |

10. Procedure

An example procedure in relation to the recording of Ministerial and Member decisions is provided below:

- (a) The decisions template should be completed electronically by the responsible officer. All associated papers should be attached to the completed decisions document.
- (b) A register of decision numbers and associated decisions to be created and held in a central location.
- (c) Each completed decisions document to be assigned a unique reference number from the register.
- (d) Completed decision document submitted to Chief Executive for comment and signature.
- (e) Completed decision document submitted to Minister or Departmental Member for signature.
- (f) Once the decision document has been signed, the responsible officer to distribute copies to the Chief Executive and/or political members and other officers as appropriate.
- (g) Original copy of the signed decision to be submitted to the officer responsible for maintaining the register of decisions, to be retained on a central Ministerial and Member Decisions file.
- (h) Responsible Officer to file copy of the signed decision on appropriate Departmental file.