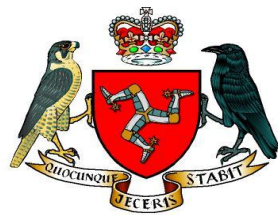


GD 2014/0004



**Isle of Man**  
**Government**

*Reiltys Ellan Vannin*

## **Council of Ministers**

**Response to the Economic Policy Review Committee Report on  
the Government Support for the Sefton Group**

**February 2014**

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## **Foreword**

### **To the Hon Clare Christian MLC, President of Tynwald, and the Hon Council and Keys in Tynwald assembled**

The Council of Ministers welcomes the Report of the Economic Policy Review Committee on Government Support by the Sefton Group. The Report is the result of a balanced inquiry by the Committee into what was a difficult decision sanctioned ultimately by the Council of Ministers in the national interest of the Isle of Man. Whilst Members of Tynwald and the public may have been concerned with the size of the financial support being provided to the Sefton Group, Council of Ministers, following careful consideration, agreed that the impact on the economy of not supporting the Group, was significantly more detrimental.

The Committee were content with how Government handled any potential conflict of interest and found no evidence that the Sefton Group received any 'special' treatment. Council of Ministers is pleased that the Committee recognised that the decision was based on the importance of the Sefton Group to the economy and on the impact of its failure to unemployment and business confidence.

Council of Ministers supports three of the report's six recommendations, and is committed, along with the Department of Economic Development, to ensuring the required work to improve the framework for the provision of support to businesses on the Isle of Man is delivered.

However Council of Ministers does not agree with two of the Committee's recommendations which refer to amending existing legislation or creating additional statutory powers to deal with circumstances perceived as being those posed by the position of the Sefton Group. The Department of Economic Development and the Treasury are content that current legislation, namely the Enterprise Act 2008 and the Financial Provisions and Currency Act 2011, provide the necessary powers. However, the Department of Economic Development will conduct a full review of the Enterprise Act to ascertain whether it is providing sufficient clarity.

Neither can Council of Ministers support the recommendation that Treasury should become involved effectively with the day to day running of the Sefton Group by monitoring the payment of creditors. Council of Ministers is reassured in the confidence held by Treasury and the Department of Economic Development in the present arrangements with the Sefton Group for the submission of financial information.



**Hon A R Bell MHK**  
**Chief Minister**

## **Contents**

Foreword.....	3
General Response to the Economic Policy Review Committee Report .....	5
Specific Responses to the Recommendations of the Economic Policy Review Committee .....	6
Appendix – Addendum to Financial Assistance Scheme Guidelines.....	10

## **General Response to the Economic Policy Review Committee Report**

1. The Economic Policy Review Committee's Report provides an overview of the position Government found itself in, on receipt of the request for financial assistance from the Sefton Group.
2. The Department of Economic Development notes the comment in the report which states that "*The general guidelines set out in the Financial Assistance Scheme Policy Document were not followed.*" It should be noted the Financial Assistance Scheme Policy Document is provided for general guidance and there are situations which are significantly different from the normal applications dealt with by the Department. The application from the Sefton Group was one such application. The guidelines state "*It is important to emphasise that this paper is providing general guidance on financial assistance. The scheme is discretionary so the decision whether to provide assistance for a specific application will be judged on its merits and the Department is not bound by this general guidance.*" This was included as the Department knows from experience that situations never previously encountered or envisaged will occur. There will always be circumstances which are outside of those normally encountered.
3. Members have been critical in the past at the level of professional fees spent on due diligence examination for this type of transaction. The Committee have made the following point "*We conclude that the Government conducted research into this matter with appropriate care. We are satisfied that due diligence was present in relation to this decision.*" It should be noted that due diligence and transactional legal work was undertaken by Government employees saving a significant amount in professional fees.
4. A response to the Committee's recommendations is covered in the following section of this report.

## Specific Responses to the Recommendations of the Economic Policy Review Committee

<p>Recomm. 1</p>	<p><b>We recommend a review of the law specifically to allow departmental discretion, with Treasury approval, to support a company where a company falls foul of the Enterprise Act 2008 (Eligible Businesses) Regulations 2009, regulation 4(2) and 4(3) by reason of difficulties with payment of income tax and national insurance, or satisfying other legal obligations, where there is no suggestion of dishonesty.</b></p>
<p>Commentary</p>	<p>The Department of Economic Development agrees that to ensure clarity the Enterprise Act 2008 (Eligible Businesses) Regulations 2009 should be reviewed in relation to all items in regulation 4. The Regulations were drafted in 2008 and have never been interpreted by the Department to disallow applications where there has been filing defaults. The Department has undertaken its checks at the time of payment not application as payment can occur a year or more after the application and hence a business's situation can change significantly. The debate surrounding the Sefton loan highlights the differing interpretation of regulation 4 and to ensure clarity the Department will work with both Treasury and the Attorney General's Chambers to amend these Regulations.</p> <p>All grant support of £100,000 or more and all other types of support, no matter the amount offered, require Treasury approval and therefore Treasury would be part of the process in such circumstances as outlined above.</p> <p>The Department will also take the opportunity to review the list of obligations that entities should comply with, as there are issues appropriate to some applications such as Data Protection and Waste Disposal Licences which should also be considered.</p> <p>The Department believes a distinction should be made in the Regulations between grant support, which is support only repayable under certain circumstances and loan support on which interest is normally charged and is fully repayable.</p> <p>The Department will also add to the application form and the claim for payment form a self-declaration form asking entities applying for assistance to confirm their compliance or otherwise with all the items in regulation 4. This will help ensure a transparent application process and enable the Department and Treasury to make an informed decision. A copy of this form will be included as part of the application appraisal report for the information of the Minister and Members of both the Departments of Economic Development and, where relevant, Treasury.</p>
<p>Response</p>	<p>Accept</p>

Recomm. 2	<b>We recommend that the Government should review the Financial Assistance Scheme Guidelines to set out more clearly the process for handling applications for support by enterprises that are in financial difficulty.</b>
Commentary	<p>The Department of Economic Development accepts the recommendation and has prepared an addendum to the Guidelines detailing the process which is included as an appendix to this report. This appendix was approved by the Department on 8/1/14. It will now be considered by Council of Ministers prior to being put into effect.</p> <p>The Department of Economic Development and Treasury will work together to develop referral guidelines in relation to unsuccessful applications for assistance under the Enterprise Act 2008 which might nonetheless trigger Treasury intervention under the Financial Provisions and Currency Act 2011 in appropriate cases.</p>
Response	Accept

Recomm. 3	<b>The emphasis in debate in the branches on the purpose of the Enterprise Act 2008 was placed on growing the economy. This is a piece of legislation which is aimed at encouraging new projects rather than saving established businesses. The Government should propose amendments to the Act to create a specific statutory framework for assisting enterprises which are of strategic importance economically and which find themselves in temporary difficulties.</b>
Commentary	<p>The Department of Economic Development believes that Section 2 of the Enterprise Act 2008 enables the Department to assist enterprises of strategic importance economically and which find themselves in temporary difficulties. Section 2 of the Enterprise Act 2008 states that "<i>The Department may provide assistance to an eligible business where, in its opinion</i></p> <ul style="list-style-type: none"> <li>a) <i>the eligible business undertakes or will undertake an economic activity in the Island;</i></li> <li>b) <i>the assistance is likely to encourage sustainable economic growth in the Island;</i></li> <li>c) <i>the form and the amount of the assistance is reasonable having regard to all the circumstances."</i></li> </ul> <p>Therefore it is not believed necessary that an amendment to the Enterprise Act is required to provide a clear framework under which enterprises which are of strategic importance economically and which find themselves in temporary difficulties are helped.</p> <p>That said, the Department is agreeable to reviewing the Enterprise Act, Guidelines and Regulations to ensure there is sufficient clarity. The review will involve both Treasury and Attorney General's Chambers. This matter will be considered when recommendation 4 is being carried out.</p>

	As per the response to recommendation 5 below, it is considered that Section 4 of the Financial Provisions and Currency Act 2011 provides general well-being powers to Treasury to deal with those situations which do not fall within the relatively wide ambit of the Department of Economic Development's powers to provide financial assistance under the Enterprise Act 2008.
Response	Amend

Recomm. 4	<b>The Enterprise Act should be re-examined with a view to creating a better framework for supporting businesses on the Island.</b>
Commentary	<p>The Enterprise Act 2008 is a relatively straightforward piece of enabling legislation, supported by Regulations and Guidelines, which provide the framework under which support is offered.</p> <p>The Department of Economic Development will carry out a detailed review of the Enterprise Act, Regulations and Guidelines with a view to ensuring greater clarity of the support mechanisms and the way this is delivered.</p>
Response	Accept

Recomm. 5	<b>The Government should consider taking powers to cover specific emergencies of the kind represented by the Sefton Group.</b>
Commentary	<p>It is hoped that this type of situation does not occur with regularity. However, Treasury believes that the powers envisaged are in place already under the Financial Provisions and Currency Act 2011 (the Act).</p> <p>Section 4(1) of the Act states "<i>The Treasury has the power to do anything which it considers is likely to achieve one or more of the following-</i></p> <p style="padding-left: 40px;"> <i>(a) the promotion or improvement of the Island's economy;</i>  <i>(b) the promotion or improvement of the social well-being of the Island;</i>  <i>(c) the promotion or improvement of the Island's environment...."</i> </p> <p>Furthermore, Section 4(3) of the Act states that the power in Section 4(1) of the Act, quoted above, includes power for the Treasury to :</p> <p style="padding-left: 40px;"> <i>(a) "incur expenditure;</i>  <i>(b) give financial assistance (including assistance by way of guarantee or indemnity) to any person;</i>  <i>(c) enter into arrangements or agreements with any person;</i>  <i>(d) co-operate with, or facilitate or co-ordinate the activities of, any person;</i>  <i>(e) exercise any of a person's functions on that person's behalf;</i>  <i>(f) provide staff, goods, services or accommodation to any person; and</i>  <i>(g) subscribe for, or invest in, stock or securities issued by a body corporate."</i> </p>



	<p>Treasury will develop and publish a clear framework of the application of such powers and conditions under which they may be used to ensure transparency and consistency of treatment thereby minimising any potential for misunderstanding.</p> <p>As the powers suggested by the Committee would appear to already be in existence and no further additional powers are required, Council of Ministers will seek to move an amendment to this recommendation to reflect this.</p>
Response	Amend

Recomm. 6	<b>Treasury should examine the situation in respect of the Sefton Group and the impact on local suppliers who did business with it on a quarterly basis.</b>
Commentary	<p>It would be entirely inappropriate for the Treasury to monitor the many trading relationships of any private sector enterprise, let alone a PLC, with its creditors. The repayment of creditors is entirely the matter for the Directors of any company. The law establishes various priorities for the payment of creditors which the Directors are best placed to attend to.</p> <p>The agreement with the Sefton provides that the Department of Economic Development and Treasury continue to receive and monitor quarterly financials and Treasury continues to maintain oversight on Government debts and statutory payments as normal. It is however, apparent from the ongoing relationship and liaison maintained between the Sefton Group and Government for this purpose that the creditor indebtedness position of the Sefton Group has improved. Treasury and the Department of Economic Development are satisfied that existing arrangements are adequate and reflect ongoing exposure and risk.</p> <p>The Council of Ministers does not believe that Treasury would have the statutory basis to act as required by the recommendation. The Committee does not give details of the statutory power that it believes to be in existence that would allow Treasury to intervene in the affairs of the company, in this manner.</p>
Response	Reject

## **Appendix – Addendum to Financial Assistance Scheme Guidelines**

### **Assistance for A Business Experiencing Financial Difficulties**

The Department may consider supporting eligible businesses that are experiencing financial difficulties. The criteria and the process are outlined below.

It is recognised that each case is different and prompt resolution is often required in such cases, therefore it is recommended that any business which may be seeking such support speaks to the Department before making an application.

#### **Criteria**

To be eligible for support, a business must satisfy the following two criteria:

**1. Type of business**

In order to be eligible for such assistance, a business must fall within the sectors as set out in the Financial Assistance Scheme Guidelines.

**2. Sustainability of the business**

There must be credible evidence that the business will be able to trade on a profitable and sustainable basis if support is given. It would not be an appropriate use of taxpayers' money to support a business which is not viable.

If a business meets the above two criteria, then the following criteria will also be assessed:

**3. Impact on the economy if the business were to cease trading**

There can be significant adverse consequences if a business were to cease to trade, for its employees, customers, the wider economy and the taxpayer. The business needs to provide relevant information to help to assess these consequences including the potential impact upon employees and creditors.

**4. Growth prospects**

The Financial Assistance Scheme is principally intended to aid the growth of the Isle of Man's economy. The business needs to provide evidence of potential prospects for growth including the potential to create additional revenues, jobs, spending in the local economy and Government income.

**5. Sources of capital**

Businesses experiencing financial difficulties typically require additional capital to enable them to survive and thrive. It is not expected that in these situations Government would be the only provider of finance. It would be expected that shareholders and/or third parties would also be providing finance to the business. Where a business operates in more than one sector it is expected that any Government support would be proportional to the eligible part of the business.

Assistance is at the discretion of the Department once an assessment has been made.

## **Information Required**

- Full disclosure of the background relating to the current situation
- Accounts for the last three years
- Management accounts from the last financial year end to the date of application
- Business plan detailing the forward plans of the business and the sources of the capital required
- Full disclosure of all creditors
- Letters of authority to enable debts to be checked if appropriate

## **Government Process**

Applicants should expect a minimum of three weeks for a decision.

Note that the normal application process for the Scheme has a target time of eight weeks.

The steps are as follows:

1. The business approaches the Department to verify whether an application can be made
2. The business submits all relevant information
3. A meeting is held between officers of the Department and the applicant to discuss information. It may be helpful for other parties to be involved, notably the bank(s) involved and any parties which may be providing significant additional capital
4. A report is prepared for Department approval
5. Significant financial assistance also requires the approval of the Treasury. If this is the case, additional time will be required by the Department to seek such approval
6. The applicant is then informed of the decision.