



Isle of Man
Government

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**Council of Ministers'
Single Legal Entity Sub-Committee**

**Continuing Evolution of the
Isle of Man Government?**

INTERIM REPORT

June 2017

EXECUTIVE SUMMARY

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

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

During our deliberations it became evident that the scope of the work and its potential impact was such that, rather than seek to conclude our investigation by July 2017, we would publish an interim report for debate in July. Subject to the outcome of that debate, we will continue to analyse the matter further with a view to submitting a further report for consideration at a later date. The report which follows is therefore an interim report.

We have considered four options for reform as follows:

- An incremental approach
- Single Legal Entity with a Department structure
- Single Legal Entity operating as a single organisation
- Executive Agency Model

We have also considered some potential barriers to change, which are:

- Exercise of Power
- Collective Responsibility
- Equal Pay
- Data Protection
- Cost/Benefit

The Committee has concluded that the progression of reforms on an incremental basis, whilst retaining the intention to move towards a single legal entity, is the most desirable option. The Committee has also concluded that the concept of single legal entity should be retained and the work should commence on the drafting of an Isle of Man Government Act along the lines described in Chapter 4. This should be introduced as a Bill as soon as practicable, but subject to completion of a comprehensive cost/benefit analysis.

The committee has not, in the time available, had the opportunity to conduct a detailed cost/ benefit analysis. But it has established that the cost of developing the legislation necessary to form a single legal entity would be minimal and could mostly be undertaken as part of "business as usual", primarily within the Cabinet Office and the Attorney General's Chambers.

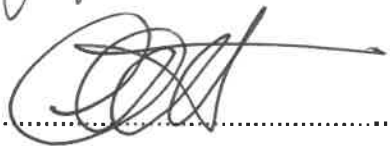
Putting an "Isle of Man Government Act" onto the statute, even if not immediately implemented, would ensure that the opportunity would exist to move forward should it be considered in the Island's best interest to do so. And, it would demonstrate the Island's strategic agility in responding to any threat where a move towards a single legal entity would put us into a stronger position.


The Committee therefore recommends to the Council of Ministers that it should:

- a) progress incremental reforms to legislation in order to give greater emphasis and commitment to requirements for joined up working; and
- b) introduce a Bill to provide for a Single Legal Entity Government so that, should it be in the Island's interests at a future date for it to be implemented, it could be done so relatively quickly¹.

¹ Mr Boot requested that it be recorded that his support for this recommendation extends only to asking the Council of Ministers to give consideration to the introduction of a Bill.
SLE Sub-committee Interim Report – June 2017


..... Chris Thomas, MHK (Chairman)


..... Geoffrey Boot, MHK


..... Clare Bettison, MHK


..... Daphne Caine, MHK


..... Chris Robertshaw, MHK

Single Legal Entity Sub Committee
June 2017

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INTRODUCTION

Council of Ministers Sub-Committee

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

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

We were appointed as the Sub-Committee in February 2017 and our Terms of Reference are attached at **Appendix 1**.

The Sub-Committee has met on a regular basis and conducted a supplementary internal consultation (in addition to the previous public consultation) and held two briefing sessions with Members of Tynwald.

During our deliberations it became evident that the scope of the work and its potential impact was such that, rather than seek to conclude our investigation by July 2017, we would publish an interim report for debate in July. Subject to the outcome of that debate, we will continue to analyse the matter further with a view to submitting a further report for consideration at a later date.

The report which follows is therefore an interim report, the purpose of which is threefold:

- a) to focus a debate on the issues relating to single legal entity;
- b) to highlight the possible options for structural reform which we have identified, and
- c) to make recommendations on how to take the matter forward, in an incremental and/or evolutionary manner.

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

In Chapter 2, we have examined some of the barriers to change which were raised in the Elvidge report and as part of the consultation exercise.

In Chapters 3 to 6, we have considered four options for reform and these are set out as follows:

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

In Chapter 7 we report on the responses received following our internal consultation exercise.

In Chapter 8 we set out our conclusions and recommendations.

1. Background Information

Evolution of Government on the Isle of Man

- 1.1 By 1986, following a long period of evolution, the Isle of Man Government consisted of 27 Boards of Tynwald, the membership of which comprised members of Tynwald and some non-Tynwald members. The Board system had become characterised by slow decision making and a lower level of cooperation and coordination than should have been expected.
- 1.2 Pressure during the 1980s for the introduction of a Ministerial System to meet the need for a more decisive, efficient and effective form of Government resulted in the reorganisation and reduction in the number of the Boards of Tynwald. Transfer to a full Ministerial System was accomplished by the passing of the Government Departments Act 1987, leading to the establishment of nine Departments of Government, and the reconstitution of the Executive Council to a Council of Ministers being the chairs of the Departments, and a Chief Minister.
- 1.3 In legal terms, this provided for a standardised and simplified constitution for Departments, inter alia that each Department is a body corporate with perpetual succession and consists of the Minister, by whom its functions are exercised, and one or more other members, the Minister and members all being members of Tynwald. Legal proceedings were and continue to be taken by or against a Department in the name of the Department.

Single Legal Entity

- 1.4 The concept of the Isle of Man Government operating as a single legal entity was first explored, amongst many other issues, as part of the Review of the Scope and Structure of Government in the Isle of Man conducted in 2006¹.
- 1.5 The review identified concerns regarding a lack of joined up Government. This was described as each Government body (and, sometimes, each division of each body) existing in isolation from the rest of Government and communicating with the rest of Government with insufficient frequency and inadequately. The need to improve corporate Government was identified as one of the five general themes where improvements needed to be made alongside such other themes as reducing the scope of Government, achieving value for money and separating policy from operations.
- 1.6 The 2006 review concluded that there was merit in the Isle of Man Government being created as a single legal entity but only for the purposes of external and international relation, thus retaining the Departmental structure. However, this recommendation was not pursued.
- 1.7 In 2014, Sir John Elvidge was invited to the Isle of Man by the Council of Ministers to undertake a review in order to assess the appropriateness, or otherwise, of establishing Isle of Man Government as a single legal entity. He produced his report in October 2014². The report recommended a single legal entity to replace the

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

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

separate legal identities of the constituent parts of Government in a structure that had been in place since the 1980's, as well as considering the relative merits of developing Isle of Man Government as a single organisation.

- 1.8 Sir John stated that the Island, like most jurisdictions, is facing challenges of an increasingly complex nature against the backdrop of a rapidly changing external environment, and needs to respond effectively to those challenges. As such, the need for 'strategic agility' is greater than ever if the Island is to compete effectively at national and international level.
- 1.9 The status of a single legal entity could offer many positives that are particularly attractive to a small government like the Isle of Man, as it competes on the international stage. In particular, greater flexibility and agility could be achieved through a single point of authority, simplified legal processes and decision-making. This in turn, could provide greater clarity of vires, increased accountability and encourage communication and cooperation. It would also, in theory, resolve the concerns expressed by many regarding 'silo' working in Departments.
- 1.10 In his report, Sir John Elvidge stated that:

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

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

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

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

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

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

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

- Greater flexibility and agility in responding to the Island's external environment;
- More 'integrated' and 'joined-up' systems across Government;
- Policy making and service provision based around the needs of the whole citizen as opposed to 'patients'/'service users' being viewed from a Departmental perspective etc.;
- The ability to make and enter into contracts and agreements as a Government entity, rather than individual Departments, etc., at local and international level
- More integrated working across Government;
- The removal of actual or perceived inhibitors to joint action by different parts of the existing Government structure(s).

Single Legal Entity – Further submission by Sir John Elvidge

1.13 As part of the Sub-Committee's deliberations, Sir John Elvidge agreed to provide further commentary describing the arguments in favour of single legal entity governments. His submission is set out below:

1. There are four main elements to the argument in favour of governments adopting a single legal entity model:
 - encouraging joined up government
 - improved accountabilities
 - citizen friendliness
 - potential for reducing cost and improving effectiveness.

Encouraging joined up government

2. Almost everybody argues in favour of more joined up government. Governments in all developed countries have been talking about the desirability of this for at least 40 years. As those governments did increasingly well over the first three post-war decades in securing the main services expected of governments in the modern era – education, health, social services, pensions, transport – an increasing awareness has developed of those social and economic challenges which cannot be met successfully through single functions. Despite the length of time for which there has been a focus on the challenge of bringing together more than one function there is still not a sense that this is something which most governments find it easy to do, particularly in a consistent and sustained way.
3. For some time, there has been a shared diagnosis across governments that there is a need to break down what are often described as 'silos' within the way governments operate. Despite this there has been a tendency to retain the frameworks of legal and financial responsibilities which grew up around separate functions of government. It is not surprising that having legal frameworks which place clear boundaries around the responsibilities and legal and financial authority of organisations and the people employed in them creates both behavioural and formal problems. The behavioural problems are summed up in the attitudes "that's not part of my job" and "why should I give time/money to helping you with your job/achieve your outcomes". Even if those attitudes can be overcome, the formal

problems are summed up by the often genuinely held view “I would like to help but that is outside my authority to act/spend money”. It is inherent in having separate legal entities within a government that each of those entities must be subject to different boundaries to their legal and financial powers. Consequently, it is not just understandable but proper that people are careful not to cross those boundaries, even where the evidence suggests that it would have a beneficial effect if they did so.

4. Single legal status removes these formal problems. It gives the necessary scope to those who want to commit to joined up government and opens the way to tackling the behavioural problem of those who are reluctant to do so. In a single legal entity, everyone operates within the same set of formal boundaries. Individuals are given narrower operational roles and personal authorities, as part of the managerial division of responsibilities which happens in any large organisation, but those roles and authorities can be adapted by senior managers to operational needs.
5. Often the alternative approach proposed to creating joined up government takes the shape of co-ordination mechanisms of one kind or another, perhaps involving Ministers and/or senior officials with the ostensible authority to bring about coordinated behaviour among those under their command. This does not change the fact that individuals are constrained legally by the limits on the legal and financial authorities of the separate organisations of which they are part. A less abstract challenge is to ask where the examples are that yield evidence to demonstrate lasting transitions to joined up government through such coordination.

Improved accountabilities

6. A single legal entity allows for improved accountability in two ways.
7. Most simply, it brings ultimate accountability for everything together in one place. Political accountability rests ultimately with the Chief Minister and accountability for the performance of the civil service and accounting officer responsibilities rest ultimately with the Chief Secretary. This does not preclude clear accountabilities resting with other Ministers and officials but it means that there cannot be a situation in which the involvement of more than one Minister or senior official creates such a complex set of accountabilities that it is difficult to hold someone ultimately accountable. With a single legal entity the buck always stops somewhere.
8. The other side of the accountability coin is that within a single legal entity accountabilities can be allocated flexibly, in a way which can cover shared responsibilities more clearly and effectively than if accountability always has to be deduced from the responsibilities of whichever separate legal entity someone is attached to. Where one or more Ministers or senior officials is engaged in contributing to a piece of joined up government, there is no obstacle to allocating overall accountability clearly to one of them rather than having each of them accountable for their Department’s part in a complex mix of contributions. There is a strong incentive under a single legal entity to create that clarity of accountability, given that the alternative is for accountability to pass to the Chief Minister or Chief Secretary.

9. Consideration of accountability must logically focus on circumstances in which more than one Minister or senior official is involved and potentially accountable. For activities which fit solely within the responsibilities of a single Minister, there is no difference between a move to single legal entity and the status quo. A move to a single legal entity would not diminish the accountability of an individual Minister in those circumstances.

Citizen friendliness

10. Most citizens, in any jurisdiction, think of “the Government” as a single entity. They are likely to regard discussion of separate legal entities within government as a technicality at best, or possibly an irritating source of confusion which they should not be expected to trouble themselves with. At worst, citizens will see this as a piece of sleight of hand to allow buck passing, particularly if the existence of separate legal entities has practical consequences for them in exercising their legal rights or seeking some form of legal redress.
11. There are straightforward practical arguments that government should be as easy as possible for citizens to conduct business with. Requiring citizens to know which bit of government deals with a particular function or to deal with more than one organisation in relation to something which, from the citizen's perspective, is a single issue does not meet the objective of ease of access.
12. In many jurisdictions, surveys suggest a substantial decline in the level of trust in governments expressed by citizens. Various explanations are offered for this but there is general agreement that it poses risks for the health of democratic processes. One explanation put forward is that difficulty in understanding the structures and operation of governments contributes to a lack of trust and that governments should seek to reduce complexity and increase transparency. The creation of a single legal entity can contribute to those objectives.

Reducing cost and improving effectiveness

13. A single legal entity structure makes it easier to adopt some other beneficial changes, although it does not automatically bring them about. These changes can both reduce costs and, where they involve the pooling of scarce expertise, improve effectiveness.
14. One set of changes which many organisations, both commercial and governmental, seek to adopt is the creation of common services which serve the whole organisation. Most commonly, this involves backroom services such as HR, IT, property management and sometimes procurement and some aspects of finance. The skills and expertise relevant to these services tend not to vary significantly from one part of a large organisation to another and there can be significant cost savings from pooling them, including cost savings from not duplicating the employment costs of specialist staff. Separate legal structures are not an absolute barrier to achieving such benefits but they make it more likely that there will be obstacles or that the unified structures will be eroded and that cost savings will not be optimised.
15. The potential benefits of pooling expertise are not confined to backroom services. In many organisations which have a strong operational dimension but which also require strategic effectiveness the same approach is applied to high level strategic

and policy development skills. There are high profile examples of this in the commercial world but it is particularly evident in the government sphere. Both small governments and many local authorities (which are single legal entities in the UK and tend to be elsewhere in the world)) have a pooled strategic/policy function. This overcomes the difficulties of expecting senior operational staff to display equal ability in the very different demands of strategic analysis and policy design and can make an important contribution to effectiveness. A single legal entity model can be particularly important in assisting the achievement of the full benefits of this approach, which is more likely to encounter cultural resistance in organisations where senior operational staff are reluctant to acknowledge that they are not equally skilled and effective in relation to strategy and policy development.

Government as Single Organisation

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

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

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

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

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

2. Barriers to Change

Exercise of Power

- 2.1 One of the concerns expressed about single legal entity is the perception of too much concentration of power within the hands of the Chief Minister and Chief Secretary.
- 2.2 This issue was explored in the Review of the Scope and Structure of Government in 2006, which stated:

The position of Chief Minister is the foundation stone of the whole Ministerial system. The Chief Minister nominates and is able to recommend the dismissal of individual ministers; he/she allocates ministerial portfolios and chairs the Council of Ministers. He/she speaks for the Government within the Island and represents the Island externally. The Chief Minister has few statutory powers but the post potentially has significant influence over Government and its work and is pivotal in matters of collective policy. It is a matter of leadership and we would not wish to see any of this changed.

Although some have suggested otherwise, we see no necessity for the Chief Minister to be given any additional statutory powers in order to strengthen his leadership role. But, there is a list of ad hoc Chief Minister statutory functions which have grown up over the years and which, in a number of cases, are merely occasional distractions from the main purpose of leading the Government. It would be useful if that list was to be reviewed and the statutory functions reallocated to the greatest extent possible.

- 2.3 As indicated above, the Chief Minister has only limited statutory powers, and it is important to emphasise that this would not change with a single legal entity in whatever form it takes based on the options described in subsequent chapters. With a single legal entity, authority would be vested in the collective body of the Council of Ministers, who would delegate authority as appropriate or make decisions jointly.
- 2.4 For example, in the model described in chapter 4 (single legal entity with Department structure), all statutory functions would be vested in the Council of Ministers. The Council of Ministers would then delegate those functions to Ministers of Departments. Ministers would then, in turn, delegate specific responsibilities to Members of Departments. In that sense, the political system would be almost identical to that which currently exists. However, there would be other benefits, which are explored in more detail in Chapter 4.

Collective Responsibility

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

- 2.6 Following the General Election in 2016, the rules on collective responsibility for the Isle of Man Government have changed and now provide that Ministers are automatically bound by collective responsibility only on matters included within the Programme for Government and the annual Budget.
- 2.7 Collective responsibility also applies to policy decisions on matters of national importance which may be taken from time to time, and which in the normal course of events, would be expected to feature within the Programme for Government or the Budget. The Council of Ministers will, by a majority vote, determine whether a policy decision on a matter of national importance, should be subject to the doctrine of collective responsibility.
- 2.8 Consideration needs to be given to whether this model of collective responsibility would be sustainable within a single legal entity Government.

Equal Pay

- 2.9 A further concern related to equal pay legislation and the impact this may have on IOM Government employment structures. In his report Sir John stated that:

Single legal status would remove any potential barrier to the application of forthcoming equalities legislation across the whole of Government. The pay and conditions of jobs in one part of government would be open to comparison with those in another part of Government.

- 2.10 In that regard it is important to note that in other single legal entity Governments such as Scotland and Sweden the workforce covered by the single legal entity is generally restricted to the civil service and does not include groups such as health and social care or education. Those services tend to operate within separate legal structures such as NHS Scotland or local authorities.
- 2.11 We have also examined the employment structures within other single legal entities including the Republic of Ireland Government and UK Local Authorities. The Irish Government is a single legal entity and Departments of State do not have legal personalities. However, the single legal entity government is the employer only of the 37,000 civil servants and not the wider public service, which are separate legal entities delivering specific public services such as the Health Services Executive, the Garda and individual schools and colleges. UK Local Authorities are the employer predominantly of single status employment groups (including manual & craft workers, management & administration, social services and fire services), but many include some groups which are normally within NHS or Education employment structures. In each case the employment groups are linked to nationally agreed pay and grading systems. This has militated against any significant equal pay issues. It is understood that where local authorities have had difficulties with equal pay, it has mainly been where they have failed to implement the single status agreement⁴.

⁴ IDS Employment Law Handbook – Equal Pay, August 2011, p.10/11

“This surge in the number of equal pay claims can largely be accounted for by the multiple claims being brought against local authorities and the NHS following the introduction of new job evaluation schemes aimed at combating decades of unequal pay”. “Councils were faced with the task of negotiating local pay structures in the context of cash shortages due to budget constraints imposed by successive governments and progress in implementing single status was therefore very slow”

- 2.12 Therefore, whilst the formation of a single legal entity encompassing a broader range of employment groups presents some risks, there is precedent for it in UK local authorities. Furthermore, there is a trend emerging in the UK towards the establishment of combined authorities⁵, given responsibility for health and social care budgets.
- 2.13 One such example is the Greater Manchester Combined Authority which is made up of the ten Greater Manchester councils and Mayor, who work with other local services, businesses, communities and other partners to improve the city-region. The Greater Manchester Health and Social Care Partnership is the body made up of the 37 NHS organisations and councils in the city region, which is overseeing devolution and taking charge of the £6bn health and social care budget. Governed by the Health and Social Care Partnership Board, which meets in public each month, the Partnership comprises the 37 local authority and NHS organisations in Greater Manchester, plus representatives from primary care, NHS England, the community and voluntary sectors, Healthwatch, Greater Manchester Police and the Greater Manchester Fire and Rescue Service.
- 2.14 Whilst at present the separate organisations continue to be separate employers, it is possible that in future alternative organisational models are developed as the partnership arrangements in local government are developed further.
- 2.15 It is acknowledged, however, that equal pay law is complex and there will be a requirement for these issues to be researched further before any firm policy decisions are made in respect of Government employment structures. Furthermore, and as pointed out in part three of the Department of Economic Development's consultation response, there may well be, in any event, potential to bring equal pay claims under the existing structure of Government once the Equality Bill 2016 is implemented.

Data Protection

- 2.16 Concerns were raised about the potential negatives of a single legal entity in relation to Data Protection issues. This was addressed in the Elvidge Report after seeking clarification from the Information Commissioner who confirmed that if the Isle of Man Government were to become a Single Legal Entity the processing of personal data would still have to comply with the provisions of the Data Protection Act 2002. One of the fundamental principles of the Act is that personal data must be processed lawfully and where mandated to do so by statute.
- 2.17 Therefore, if Isle of Man Government were to become a single entity this would not in itself permit personal data to be processed where statutory powers to do so did not exist. He therefore concluded that establishing IOM Government as a single entity would not affect how personal data was processed or shared. Arguably, single legal entity status strengthens rather than diminishes understanding of data protection principles, whilst allowing effective data sharing where there is statutory power to do so in compliance with data protection principles.

⁵ <https://www.local.gov.uk/sites/default/files/documents/combined-authorities-plai-fb6.pdf>

Cost/Benefit

- 2.18 One of the key issues informing this debate concerns costs and benefits. The sub-committee has conducted some analysis of what the costs and benefits might be of progressing each of the options in the Chapters below and this is reported on in Chapter 8.

3. An Incremental Approach

Previous Reforms

- 3.1 The reforms to the structure of the Isle of Man Government over the last 30-40 years show a clear trajectory of progress towards it becoming a more cohesive and joined up organisation. This period began by loosening the control of the Lieutenant Governor in areas such as determining the budget and chairing the Executive Council, and has included the abolition of the Boards system, the development of the Ministerial system and the refinement of that system including the reduction in the number of Ministers and Departments and the strengthening of "the centre", as part of the Modernising Ministerial Government programme. During the same period the Government has moved from an essentially departmentally minded policy review process through a corporate planning process to the new Programme for Government published this year. The Programme for Government is now based on a national outcomes framework, introducing the concept of shared contribution towards a common purpose or goal. This was unanimously agreed in Tynwald in January 2017. The accompanying performance framework was unanimously approved by Tynwald at its sitting in April 2017.
- 3.2 In respect of collective decision making, the new Council of Ministers has reformed its system of Policy Sub-Committees and introduced a process which encourages much greater collaboration in the formulation of policy rather than being driven by Departmental silos. A copy of the draft Guidance Note describing the new process is attached at **Appendix 2**. The terms of reference for each Council Sub-Committee are attached at **Appendix 3**.
- 3.3 The work of these committees, including the move towards a joint commissioning approach being advocated by the Social Policy Committee, further demonstrate Government's progress towards greater collective policy development and decision making.
- 3.4 In respect of an integrated civil service structure the Modernising Ministerial Government programme in 2014 introduced a reform whereby Ministers delegated their authority to the Chief Secretary to manage Chief Officers in relation to corporate matters and this has now been codified and includes all elements of the Programme for Government.
- 3.5 In respect of integrated budgeting there is a view that policy decisions should drive priorities and spending rather than the Treasury's fiscal imperatives driving policy decisions. It is expected that the Programme for Government will help to change this perception, and in recent months this has been given effect to some degree with the Minister for Policy and Reform working closely with Treasury during the commencement phase of the Programme for Government and the SAVE initiative. However, it remains the case that the Council of Ministers does not have statutory powers to determine priorities of expenditure nor to consider financial and economic policy issues.
- 3.6 There is an argument therefore to leave the Departmental structure as it is, and allow more time for these incremental reforms to bed down and succeed. If, however, they fail to deliver a sufficiently integrated and joined up Government, then perhaps the time would be right at that stage to consider more radical options. If we

pursue an incremental approach there are some lessons which could be learned from other jurisdictions, including recent developments which could be applied in the Isle of Man. These are considered briefly below.

Recent developments in other Jurisdictions

- 3.7 In terms of its national outcomes, Scotland has recently given them statutory force and legislation has now been introduced under the Community Empowerment (Scotland) Act 2015⁶, which will phase in 11 aspects aimed at helping communities to do more for themselves and have more say in decisions that affect them.
- 3.8 In part 1, the Scottish Government must publish its national outcomes, which must be reviewed every five years. The remaining parts provide a framework for communities to engage directly with government in a number of areas including, amongst other things, community planning, asset transfers and participation in public decision-making.
- 3.9 In respect of budgets, the Scottish Parliament agreed in 2011 that management against the overall budget should take precedence over management against Minister's individual portfolio budgets.
- 3.10 In Jersey, the system of executive government was changed significantly by the States of Jersey Law 2005. Until then, the States had both executive and legislative functions, the Government of the island being conducted through a large number of committees of elected members. The States of Jersey Law effectively introduced a Ministerial system of Government and five scrutiny panels to cover the work of all the Departments of the States.
- 3.11 Although Jersey's Government is a similar structure to the Isle of Man, an ongoing programme of reform is taking place aimed at working collaboratively across the States and reducing bureaucracy.
- 3.12 In Guernsey, a major review of the constitution of the States has been taking place since 2014. Amongst the recommendations to date, it has been determined that there is a need for a single senior committee with responsibility for the States-wide planning and co-ordination of policy and resources. The committee develops the main responsibilities for policy co-ordination, resource allocation and external and constitutional affairs which were previously divided between two committees (Policy Council and Treasury and Resources).

Previous Recommendations

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

It did seem to us, however, that the Council of Ministers Act 1990 was unhelpful in explaining the role of the Council and that anyone seeking an understanding of the functions of the Council would not find it in the statute. We would, therefore, recommend that the policy formulation and strategic

⁶ <http://www.gov.scot/Topics/People/engage/CommEmpowerBill>

coordination and leadership roles of the Council of Ministers should be added to the Act, with the proviso that any statutory definition of the role of the Council should not be so narrowly drawn or restricting that it inhibits the Council's work or natural evolution.

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

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

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

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

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

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

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

3.17 A further issue which could be explored as part of incremental reforms is the opportunity to remove from within the Departmental structure some of the regulatory functions which exists within it, and might be better placed in external statutory bodies. Examples include registration and inspection of health and social care facilities, health and safety at work inspectorate, waste management licensing and land use planning.

3.18 In the 2014 report, Sir John Elvidge stated:

There is no doubt, from the evidence of practice elsewhere and from the consistent views put to me in the Isle of Man, that regulatory functions which require to be independent from Ministerial intervention would constitute one major category. [to be outside a single legal entity] This does not preclude some regulatory functions, for example land use planning permissions, remaining within government. In other jurisdictions, it is not considered an inherent source of difficulty that government may occasionally have to regulate itself. This is dealt with by ensuring that officials and Ministers seeking regulatory permission or subject to regulatory scrutiny are isolated from the regulatory process to the same degree as an external applicant or subject would be.

3.19 However, due to the nature of scrutiny and risk of perception of bias on the Island, it may be appropriate, for the avoidance of doubt and conflict, to transfer a greater number of regulatory functions out of central government and into alternative delivery models (including as Statutory Boards), reporting to Tynwald.

Options for Incremental Approach

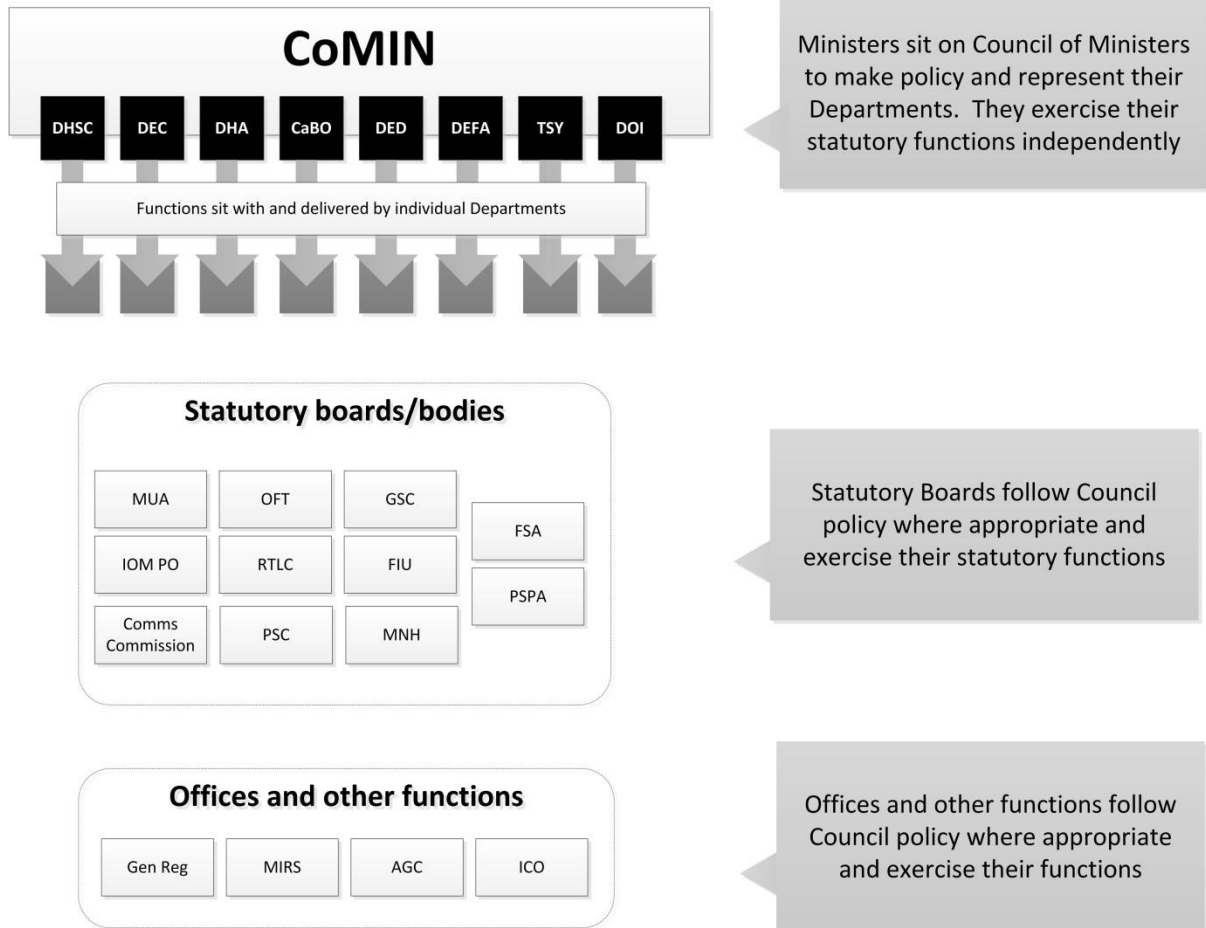
3.20 The common theme emerging from these ongoing reforms (both on and off the Island) is that of streamlining and simplification of structures and processes and the removal of overlapping responsibilities. It is possible that some of the external developments could be explored in more detail for adoption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

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

- a) Impose a statutory obligation on Government Departments to form appropriate consultation and cooperation arrangements.
- b) Establish the role of Chief Secretary as Chief Executive of the Government to whom Chief Officers would be accountable on all matters.
- c) Give statutory force to the Programme for Government based on national outcomes and indicators.
- d) Simplify the process for the transfer of functions between Departments.
- e) Give the Council of Ministers statutory powers describing its functions, including the requirement to determine priorities of expenditure and to consider financial and economic policy issues.
- f) Enable budgets to be allocated according to national outcomes rather than functional areas.
- g) Allow for Government to be accountable for budget performance on an aggregated basis not a Departmental basis.
- h) Encourage greater use of directions of the Council of Ministers.
- i) Simplify systems of delegation of authority to Members and employees.
- j) Allow for the transfer of regulatory functions to new delivery models, if considered desirable.

3.22 In order to give effect to these changes it would be necessary to introduce a Bill to amend existing legislation. A Graphic illustration of what a Government structure might look like based on an incremental approach is set out over page. This broadly reflects the current structure.

Current situation – individual Departments



4. Single Legal Entity with a Department Structure

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

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

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

4.3 However it was also stated that:

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

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

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

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

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

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

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

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

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

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

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

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

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

4.8 It would represent a further evolution to gradually transfer more corporate policy development functions (including the staff and resources) into the Cabinet Office. In the first instance, this might include a corporate policy team, comprised of subject matter experts brought in from Departments, from time to time, to support the

Council in the development of policy. Whilst this has been a feature of policy development in recent years, it has never been formalised sufficiently to become embedded in departmental culture.

- 4.9 Arguably, it remains the case that policy ideas are being developed in silos and with insufficient cross-departmental consideration.
- 4.10 Other examples of activity which could be transferred to the Cabinet Office include Public and Occupational Health and the development and drafting of legislation.

Legislative Requirements

- 4.11 In order to establish Government as a single legal entity it would be necessary to replace a number of individual corporate structures with one single corporate structure. But, whilst it would be necessary to replace the Government Departments Act 1987 and the Council of Ministers Act 1990, many of their elements would inform the drafting of an "Isle of Man Government Bill" and, indeed, would need to be reflected in it.
- 4.12 As a minimum, the following elements would need to be dealt with in the Bill:-
- Establishment of the Council of Ministers as the single legal entity
 - Identification of the members of the SLE and the method of and qualifications for their appointment, removal, resignation, etc.
 - The proceedings of the SLE
 - Vires, capacity and corporacy of the SLE
 - Execution of the functions of the SLE, powers to delegate
 - Organisation of the SLE into functional areas (Departments), and means by which functions can be moved from one Department to another
 - Organisation of the civil service/management and administration of the SLE and the designation of the Chief Secretary as the Chief Executive
- 4.13 The majority of the work would then be in the identification of the consequential amendments to the Statute Book (including those which will need to be made to UK Orders in Council and UK legislation applied to the Island under Manx statutes), which would flow from an analysis of the various statutory powers, functions and other references once a decision is made about what functions should be within the SLE and what functions should remain outside.

Boundaries of the Single Legal Entity

- 4.14 It is our view that those Statutory Boards and other bodies which currently sit outside the Department structure (such as the Post Office, MUA and Independent Regulators) should continue to operate outside of the single legal entity to preserve their independence or commercial freedoms as appropriate. However, there may be some functions currently residing within the Department structure, which may be better placed outside the single legal entity. This might include both regulatory and commercial functions, for which more detailed consideration will be necessary.
- 4.15 In addition, we are aware that the Cabinet Office is currently conducting a separate review into the many other quasi government and quasi legal bodies operating outside the Department structure (e.g. Committees, Quangos and Tribunals) and it

will be important that their relationship with a single legal entity is also fully considered.

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

Options for a Single Legal Entity with a Department Structure

- 4.17 In summary, the establishment of Government as a Single Legal Entity, whilst retaining a Department structure but centralising more policy making functions, could be progressed as a further reform by:
- a) Replacing existing legislation with an Isle of Man Government Act.
 - b) Retaining a Statutory Board and Office structure, and COMIN control systems (e.g. powers of direction etc.) for functions which should remain outside central Government.
 - c) Transferring all Government functions into the Council of Ministers.
 - d) Providing for those functions to be delegated to Departments.
 - e) Increasing the policy making and resourcing functions within the Cabinet Office.

- 4.18 In order to give effect to these changes it would be necessary to introduce a Bill to amend existing legislation. The Sub-Committee has prepared an outline of proposed legislation for a single legal entity, which is set out below:

Outline of Proposed Single Legal Entity Legislation

- 4.19 In order to establish a single legal entity ("SLE") government in the Isle of Man, primary legislation ("the SLE Act") would be required which would not only establish such a legal entity in place of the present Departmental system (and thus would repeal and replace the Government Departments Act 1987 and the Council of Ministers Act 1990) but would also make provision for its internal organisation and administration. The precise form of the SLE Act would depend on the detailed policy decisions which would have to be made in the event of the policy being adopted to move to a single legal entity government. The following is an outline of the issues which would have to be dealt with in the SLE Act but should not be seen as exhaustive.

Part 1 – Establishment of the single legal entity

1. A single legal entity is to be established, which would replace the existing Departments of the Isle of Man Government and any other bodies which are inherent constituent parts of the executive. The name of the SLE, for example "The Isle of Man Government", would be stated in the SLE Act

Part 2 – Vires, capacity and corporacy of the SLE

1. The SLE would be established as a body corporate with perpetual succession, thus reflecting the legal status of the present individual Departments. Equivalent provision would be made for the SLE as is presently set out in relation to Departments in Schedule 1 to the Government Departments 1987 ("the 1987 Act"),

in relation to the acquisition and disposal of property and the taking/defending of legal proceedings.

Part 3 – Identification of the members of the SLE and the method of and qualifications for their appointment, removal, resignation, etc.

1. As a corporate body, the SLE would require a body of individuals, akin to a Board of Directors, who would be responsible for the exercise of the functions of the SLE and for its internal structural and administrative arrangements.
2. The body would comprise the Chief Minister and the Ministers and would be known as “the Council of Ministers”. The provisions in the SLE Act for the appointment and tenure of the office of Chief Minister and of the Ministers would reflect those in the present Council of Ministers Act 1990 (“the 1990 Act”). Thus, the Chief Minister and the Ministers would be members of Tynwald appointed by the Governor, in the case of the Chief Minister on the nomination of Tynwald, and in the case of the Ministers acting on the advice and with the concurrence of the Chief Minister.
3. Rather than the number of Ministers being subject to a maximum, as under the 1990 Act, the number of Ministers should be specified in the SLE Act, with provision for the Council of Ministers to vary the number by Order approved by Tynwald. It is suggested that the number of Ministers specified in the SLE Act reflect the number of Ministers in the Council of Ministers immediately prior to the commencement of the SLE Act. The Chief Minister and the specified number of Ministers must be separate individuals, that is to say that the number of individual persons who are members of the Council of Ministers would be equal to the sum of the Chief Minister and the specified number of Ministers at the relevant time. This would avoid the possibility of the executive effectively comprising a smaller number of individuals than has been agreed by the legislature, either at the time of the passing of the SLE Act or by Tynwald approval of an Order which subsequently alters the number of Ministers.
4. Provision would have to be made regarding the liability and indemnification of the members and officers of the SLE, such as those contained in paragraphs 6 and 7 of Schedule 1 to the 1987 Act.

Part 4 – The proceedings of the SLE

1. Provision would be required in the SLE Act for the following, in similar terms to those contained in the 1987 and 1990 Acts:-
 - i. The proceedings of the Council of Ministers, including specifying the quorum
 - ii. The making of resolutions
 - iii. The execution of documents

Part 5 – Execution of the functions of the SLE, power to delegate

1. The SLE Act would provide for all of the statutory functions, powers and duties presently vested in the Departments and any other body which is to be subsumed into the SLE to be vested in the SLE and to be exercised by the Council of Ministers. Provision would be required for the authorisation by Council of Ministers of one or more individuals to exercise those functions, such as is currently provided by section 3 of the 1987 Act. Provision would also be required for the transfer to the

SLE of all the real and personal property vested in or held by a Department or other relevant body.

2. The SLE Act will have to provide for an internal structure for the SLE which supports effective policy development and the efficient delivery of government services. It would be for the Council of Ministers to determine that structure as this would be a matter of internal management/administration.
3. The scale and scope of the executive at any given time would dictate the shape of the internal structure and the SLE Act would need to provide for flexibility as regards the allocation of Ministerial responsibility, which could also envisage the appointment by the Council of Ministers of members of Tynwald in the role of Junior Ministers, who would provide support and assistance to individual Ministers in the delivery of functions allocated to the latter, in the way that Members of Departments do at present.
4. The proposed SLE model replicates the Departments in existence immediately prior to the commencement of the SLE Act. Therefore, transitional provisions would have to be made for the creation of internal departments (which would not be individual legal entities). The number of departments would be the same as in existence under the 1987 Act immediately prior to the repeal of that Act, to each of which a Minister would be assigned. Each Minister so assigned would bear a title which reflected one of the Departments previously in existence, for example "Minister for the Treasury", "Minister for Health and Social Care", etc., and he or she would be authorised to exercise the statutory functions of the SLE which had previously been vested in the Department of that name. Provision would also be made for the assignment of one or more Junior Ministers [*subject to the outcome of the debate on the Lisvane Report*] at the discretion of the Council of Ministers.
5. Thereafter, the Council of Ministers would be empowered under the SLE to make such changes to the internal structure and to the authorisations as regards the exercise of the SLE's functions as they considered appropriate. As matters of internal management/administration, the approval of Tynwald would not be required to such changes but the Council of Ministers would be required to make public all appointments, assignments and authorisations referred to in this Part.
6. The SLE Act should also provide for the making by the Council of Ministers of internal regulatory rules and codes, which would include the present Government Code.

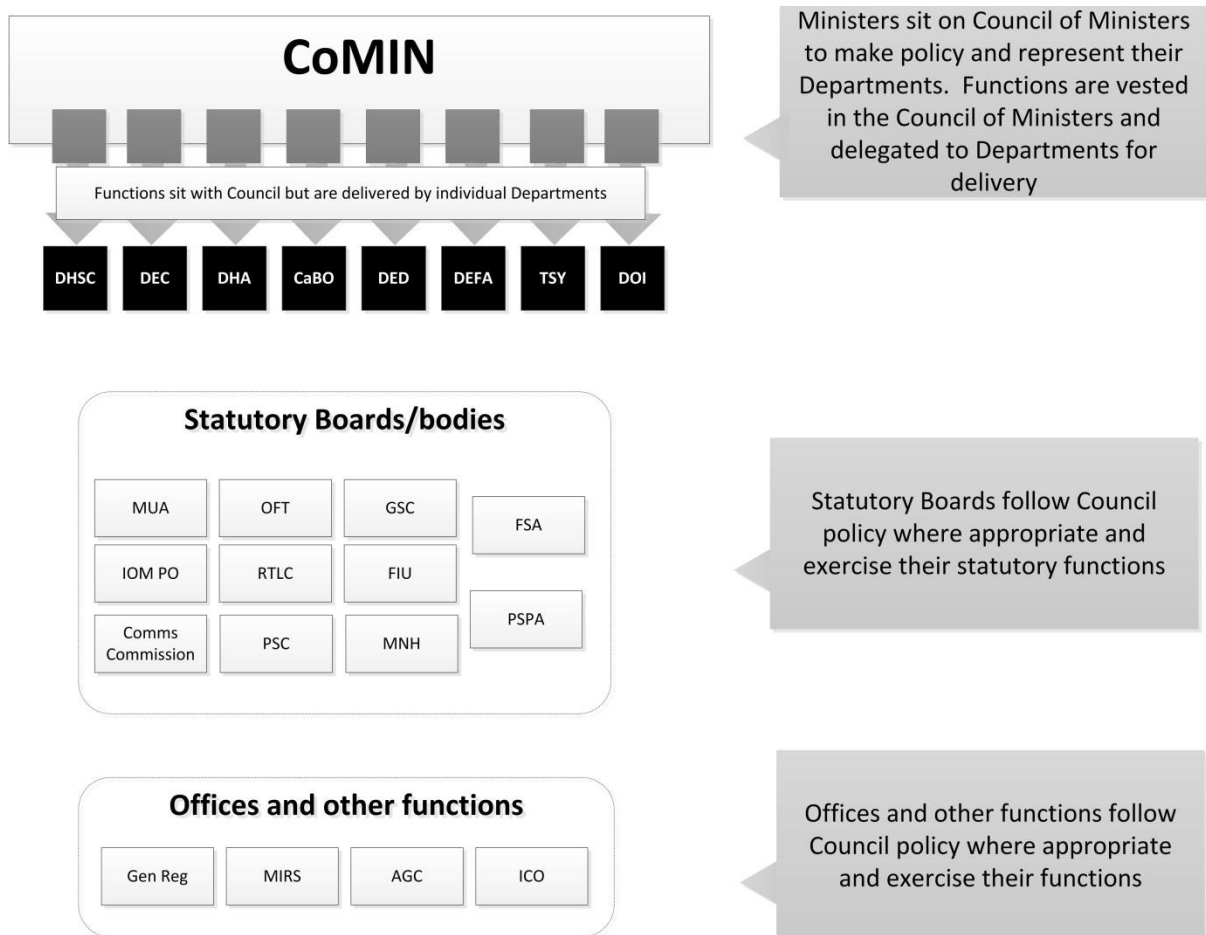
Part 6 – Organisation of the civil service/management and administration of the SLE and the designation of the Chief Secretary as the Chief Executive

1. Provision would be required in the SLE Act for the designation of the Chief Secretary as the Chief Executive and for him/her to take responsibility for the management/administration of the delivery of the functions of the SLE, which will include an officer/employee structure with reporting lines ultimately to him. The statutory provisions to allow for this would need to be drafted in consultation with the Public Services Commission and any necessary amendments made to the Public Services Commission Act 2015. Appropriate transitional arrangements would have to be provided to reflect any transitional arrangements as regards the delivery of the SLE's functions, such as those suggested in Part 5, paragraph 4.

Part 7 – Financial Provisions

1. The policy detail will dictate the extent to which changes will be needed as regards the budgetary process and the relationship between the Treasury and the other constituent elements of the SLE. Careful consideration will have to be given as to changes to the Treasury Act 1985 and whether some express provisions as to the management of the Island’s finances will need to be set out in the SLE Act. Again, transitional arrangements may be required.
- 4.20 A Graphic illustration of what a Government structure might look like based on a single legal entity with a Departmental structure is set out below. As with an incremental approach this broadly reflects the current structure.

How a single legal entity while retaining the Departmental structure might look



5. Single Legal Entity operating as a Single Organisation

5.1 The Elvidge Report stated that:

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

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

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

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

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

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

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

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

5.7 In Scotland this was achieved in 2007 by abolishing Departmental structures (but not the structure of Executive Agencies within the wider Scottish Government structure e.g. the Scottish Prison Service or Transport Scotland). In formal terms, this was simply a matter of terminology, including the job titles of several of the most senior posts, but in substance it involved redefinition of responsibilities of the most senior

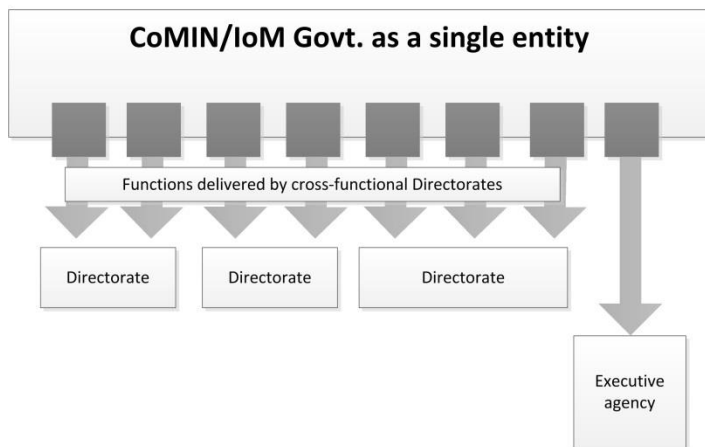
staff to give much greater emphasis to their responsibility to contribute to delivery of the whole of the Scottish Government's objectives.

- 5.8 This change did not directly affect the structure of Ministerial portfolios, although the numbers of both senior Minister and official posts were reduced to promote greater emphasis on team working in both groups. It meant that organisational boundaries within the single legal entity existed only within the core Directorates of which there were approximately 40, and the Directors of each were required to devote at least 50% of their activity to corporate work in support of the "Scotland Performs" Framework.
- 5.9 Adopting a similar approach within the Isle of Man Government, would represent a significant change, but might enable a truly corporate approach to be applied to the implementation of the Programme for Government.

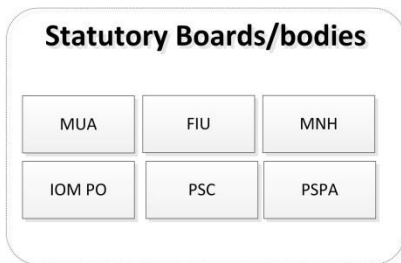
Options for a Single Legal Entity as a single organisation

- 5.10 In summary, the establishment of Government as a Single Legal Entity, operating as a single organisation could be progressed as a further reform by:
- a) Replacing existing legislation with an Isle of Man Government Act.
 - b) Retaining a Statutory Board and Office structure, and COMIN control systems (e.g. powers of direction etc.) for functions which should remain outside the single legal entity.
 - c) Transferring all Department functions to the Council of Ministers.
 - d) Providing for some of those functions to be delegated to Directorates.
 - e) Retaining all policy making and resourcing functions within the Council of Ministers supported by a central policy function (Chief Officers).
 - f) Establishment of executive 'delivery agencies' for some operational functions.
- 5.11 A Graphic illustration of what a Government structure might look like based on a single legal entity operating as a single organisation is set out over page.

A further option for development – a single legal entity Government, delivering services through directorates and executive agencies



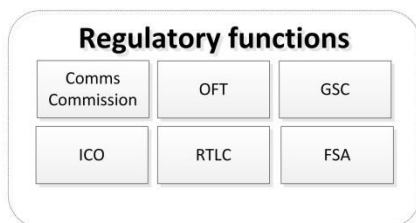
Ministers sit on Council of Ministers to make policy and represent broad policy areas. Functions are vested in the Council of Ministers and delegated to cross functional directorates for delivery. Some specific functions are delivered by executive agencies outside of Government and political representation



Statutory Boards follow Council policy where appropriate and exercise their statutory functions



Offices and other functions follow Council policy where appropriate and exercise their functions



Regulators could be grouped together in whole or in part to deliver economies of scale

6. Executive Agency Model

Separating Policy from Operations

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

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

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

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

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

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

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

- *Are relatively distinct within the Government structure e.g. an existing separate Department, Division or Office;*
- *Are relatively large in staff and/or monetary terms;*
- *Have a limited day to day political involvement.*

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

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

Our relevant recommendation in 2006 was:-

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

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

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

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

of assets or liability purposes - legislation may be required, or an alternative legal personality chosen.

- 6.5 Since 2006, the Government has responded to and adopted many of the recommendations in both the 2006 and 2012 Scope of Government reports. However, there has been only a lukewarm response to the recommendations regarding the separation of policy from operations or exploring the Executive Agency model.
- 6.6 The establishment of separate entities for service delivery which are responsible for implementing policy decisions made at the "Centre of Government" might be worth pursuing. In the short term they could be established as per the UK model, operating within the existing Departmental structure. However, in the longer term, and if the model is successful, it might be appropriate to remove the existing Departmental structure, and replace it with a Central Government function as a single legal entity with operational service delivery agencies sitting on the outside.

Local Government Transition

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

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

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

- 6.9 Some progress has been made on the reform of delivery structures for the two most significant local government activities, housing and waste management as part of the local authority transition process which has taken place in recent years. In each of these areas work is underway to develop delivery platforms on a regional basis encouraging a joined up approach between local authorities and central government e.g. civic amenity sites and regional housing lists. This regional approach could be extended to cover a greater number of functions.
- 6.10 It is acknowledged that the local government structure is outside the executive and, thus, outside the considerations of a single legal entity government. Accordingly, the comments regarding local government are included only to reflect the importance of an overall governmental structure on the Island which is fit for purpose, which necessarily includes local government as well as the executive.
- 6.11 There may also be opportunities for service delivery agencies, whilst remaining as single units, to operate some of their services on a regional basis. By doing so, it will be possible to ensure greater cooperation and joined up activity at a local level, where it matters to the public, between all the various public services. There are

already several examples of Central and Local Government public services operating on a regional basis, or where efforts are being made to develop this model. This includes:

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

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

Strengthening the Centre

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

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

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

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

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

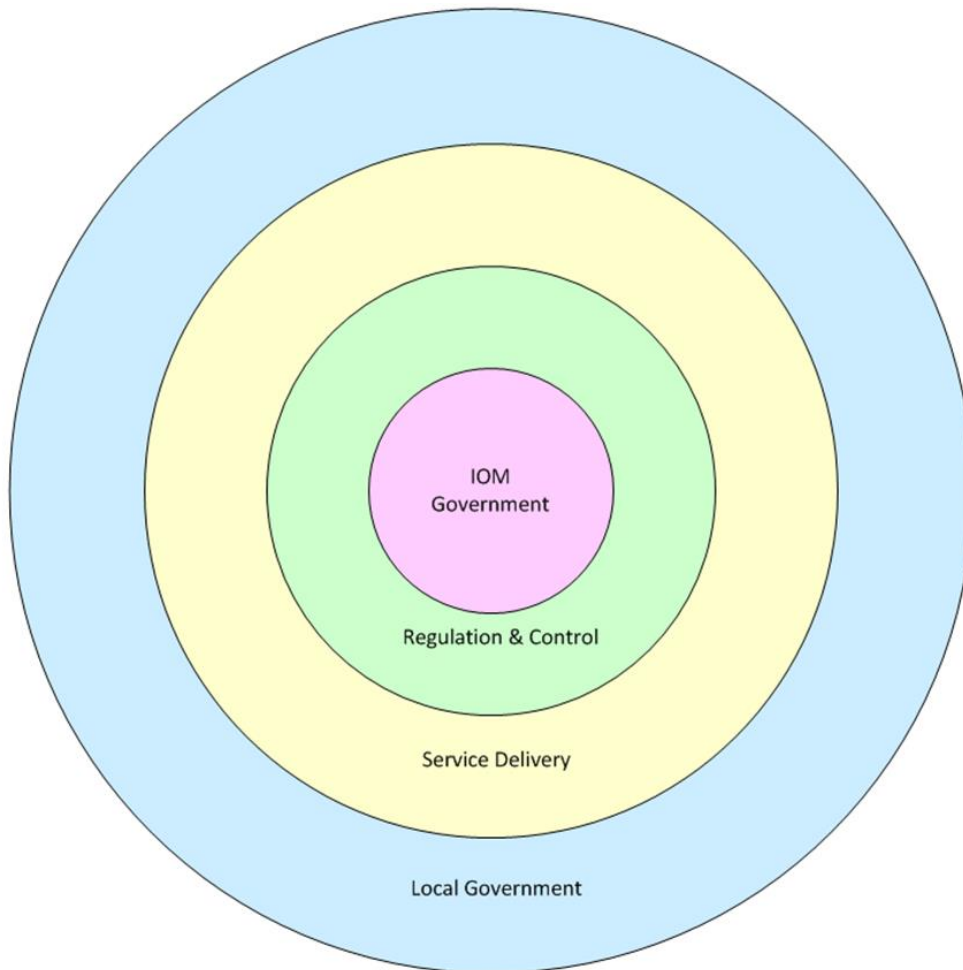
6.18 There is a requirement to consider the role of Ministers and Members in respect of service delivery agencies and community hubs, but it is our view that they should be “light-touch” responsibilities enabling the political leadership to focus on the bigger issues of policy and strategy and away from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

Options for an Executive Agency Model

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

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

6.20 Graphic illustrations of what a Government structure might look like based on a streamlined single legal entity Government combined with a series of executive agencies and regional platforms for service delivery is set out below and over page:





7. Internal Consultation

7.1 Having identified four options in support of the continued evolution of the Isle of Man Government, the sub-committee produced an internal consultation document, upon which views were sought from Members of Tynwald and Chief Officers of Departments, Boards and Offices. The sub-committee decided against conducting a public consultation, having noted that a full public consultation had been undertaken previously, and bearing in mind the document does not contain any firm policy proposals. However, the document was published on the Government website which led to one further response from an external party.

7.2 17 responses were received, as follows:

Members of Tynwald

- Hon J Watterson, SHK
- Mr AJ Allinson, MHK
- Mr DJ Ashford, MHK
- Mr TS Baker, MHK
- Mr RW Henderson, MLC
- Mr GR Peake, MHK
- Mr WC Shimmins, MHK

Departments, Boards and Offices

- Chief Executive, Department of Economic Development
- Chief Executive, Department of Environment Food and Agriculture
- Chief Executive, Department of Infrastructure
- Chief Executive, Communications Commission
- Chief Registrar, General Registry
- Chief Executive, Manx Utilities Authority
- Chief Officer, Office of Fair Trading
- Chair, Isle of Man Post Office
- Chief Executive, Public Sector Pensions Authority
- Chief Executive, Department of Health and Social Care

External

- Manx ICT Association

7.3 The consultation responses are attached at **Appendix 5**. The Committee would like to thank all respondents for their contributions.

7.4 The responses from within Government came from three main groups: Members of Tynwald, Departmental senior officers and Statutory Boards/Offices. Seven Members of Tynwald responded, with views ranging from full support for a single legal entity (3 responses), some support for a single legal entity but a preference for adopting the incremental approach in the first instance (3 responses) and a preference to retain the status quo (1 response).

- 7.5 Four comprehensive responses were received from Departmental senior officers. Again, responses were a mix of those favouring a move towards single legal entity and those which believed an incremental approach was the most appropriate, at least, in the first instance. A point strongly reinforced in these responses was that the establishment of a single legal entity will not in itself ensure changes in the way Government operates but simply open the door to such changes. However, the responses also indicated that there may be other, less distracting, ways to open those doors.
- 7.6 Six responses were received from Statutory Boards or Offices. Some of these responses were focused solely on the implications for the body responding, primarily confirming satisfaction at the Committee's conclusion not to include them within a single legal entity. However, a number of responses from Statutory Boards, including the Office of Fair Trading in particular, considered wider corporate issues regarding single legal entity, for which the Committee is grateful.
- 7.7 Overall, the internal consultation responses suggest a preference for adoption of the incremental approach, but with continued work being undertaken to assess the merits or otherwise of a single legal entity, as something to be considered again in future.

8. Analysis, Conclusions and Recommendations

Cost/Benefit Analysis

- 8.1 It is clear to the Committee that if we were starting Government in 2017 from scratch, we would not start with a complex set of legally separated bodies. Instead, we are more likely to create a single organisation with separate divisions to focus control and strategy. Separate legal entities would only be required to protect against conflicts, ensure independence of certain functions or activities, protect intellectual rights or ensure legal separation on key risk activities.
- 8.2 However, to be successful such a structure has to ultimately be less costly and more efficient than the current arrangement and must allow for a much improved political and operational decision process that joins up relevant elements of the public service.
- 8.3 The committee has not, in the time available, had the opportunity to conduct a detailed cost benefit analysis. But it has established that the cost of developing the legislation necessary to form a single legal entity would be minimal and could mostly be undertaken as part of "business as usual", primarily within the Cabinet Office and the Attorney General's Chambers. It would be necessary to appoint a research officer for a short duration of, say, six months. As indicated earlier, the majority of this work would be in the identification of the consequential amendments to the Statute Book, which would flow from an analysis of the various statutory powers, functions and other references once a decision is made about what functions should be within the SLE and what functions should remain outside.
- 8.4 There would also be a requirement to devote parliamentary time to the matter, although that time is already built into the Parliamentary timetable and, arguably, is not always fully utilised.
- 8.5 Putting an "Isle of Man Government Act" onto the statute, even if not immediately implemented, would ensure that the opportunity would exist to move forward should it be considered in the Island's best interest to do so. And, it would demonstrate the Island's strategic agility in responding to any threat where a move towards a single legal entity would put us into a stronger position. It would also open the door to further changes of greater substance, without in any way forcing choices about the extent to which the Government decided to adopt those changes. This could include adopting some of the more "radical" options explored in this document which, it is believed, could bring about more substantial cost savings/efficiencies and service improvements.
- 8.6 Centralisation of functions either within the existing structure or whilst operating as a single organisation should inevitably lead to economies of scale. This was achieved through the Modernising Ministerial Government programme in 2014 with the abolition of one Department and the merger of other functions/departments.
- 8.7 A brief summary of the costs/savings, based on our limited examination of the issue, is set out below:

Single Legal Entity Cost/Benefit Appraisal				
Option	Research & Drafting (one-off cost)	Equal Pay⁷	Efficiency (headcount) per annum	Net costing (saving) per annum
Incremental	Nil ⁸	Nil	Nil	Nil
SLE Departments	£25,000 ⁹	£200,000	-£250,000 ¹⁰	(£25,000)
SLE Single Organisation	£50,000	£200,000	-£1,000,000 ¹¹	(£750,000)
Executive Agency	£50,000	Nil	-£500,000 ¹²	(£450,000)

8.8 The footnotes below explain the rationale for the figures contained within the table.

8.9 In conclusion therefore, the Committee believes that the progression of incremental reforms or the establishment of a single legal entity whilst retaining a Department structure does not carry any cost implications. It requires the resources of time, but arguably this is already built into legislative and parliamentary timetables, if it was considered a priority to undertake the work.

8.10 The progression of the single organisation and executive agency models have the potential to deliver significant efficiency savings. However, reduction in staff costs as suggested would likely need to be achieved through use of agreed schemes for compensation for loss of office. These would be one-off costs, equivalent to one year savings.

⁷ Assumes requirement to address pay anomalies across several employment groups, including the development with of revised and consistent pay and grading systems

⁸ Assumes absorbed within existing resources

⁹ Assumes Project Officer to co-ordinate drafting instructions but drafting itself absorbed within existing resources

¹⁰ Assumes small reduction in admin, legal and policy roles within Departments through centralisation of functions

¹¹ Assumes significant reduction in admin, legal, policy and other support roles with centralisation. In 2014 the MMC initiative resulted in staff savings of £1.5m (25 posts)

¹² Assumes small saving as centralisation of admin, legal, policy and support roles may be offset by requirement to manage the SLAs/Commissioning between IOMG and EA's/Local Government

- 8.11 There is also the question of the potential cost of doing nothing. Whilst this would very difficult to quantify in financial terms, the Isle of Man's historic economic success has been due, in part, to its ability to evolve and restructure. If it fails to continue that evolution, it could have negative consequences.

Fear of Change

- 8.12 In 2012, the Scope of Government review published a supplementary report¹³, which focussed on the need to look seriously at Government expenditure and identify means by which savings could be made. That report concluded with the following statements:

Difficult decisions will be needed if and when major savings need to be made. In practice, if the alternatives are properly researched and presented, the decisions themselves are unlikely to be that difficult. Given a series of choices and a requirement to choose at least one, it should be possible for Members to isolate those major saving items of services which if chosen, will cause least harm or be least missed.

The difficulty arises in terms of the fear of facing, subsequently, the reactions of those disadvantaged by the choice(s) made and those whose principles or emotions have been offended. It is that fear which may well motivate Members who are not up to the task to opt out of the decision. This is after all, unfamiliar territory to Members who may have spent their whole political careers championing individual constituent interests and pressing for more and ever better services.

It will be a time for Members of wisdom, courage and strong stomachs. We can only hope that there are enough of them to give the Island the leadership it needs.

- 8.13 The SAVE Committee, which was announced in the 2017 Budget, has been formed to identify savings opportunities within Government, and will no doubt, have to make difficult decisions.
- 8.14 Considering the future structure of the Isle of Man Government, to make it fit for purpose for the next generation, is also a difficult decision. However, the structure of Government on the Island has constantly evolved over previous generations and must continue to do so into the future. There must be an acceptance that change is constant and unavoidable.
- 8.15 The key questions to address are how much change should there be, how soon and in what form? The options we have identified for that change were set out in Chapters 3 to 6 above.
- 8.16 But, in considering those options, it is worth looking again at the Scope of Government Report from 2006, where it stated:

¹³ <https://www.gov.im/media/626825/scopereport2.pdf>

The Council of Ministers has to struggle to reconcile some not necessarily compatible forces. The Ministers each bring to the Council their individual views, their constituency interests and the separate priorities of their particular Departments. They seek to establish a consensus and a set of policies and strategies which reconcile their different interests and priorities. However, this has to be done against a multi-layered political backdrop of friendships and alliances which cut across the division between the Council of Ministers and Tynwald and within a political environment that is both increasingly demanding and critical of failure and is sometimes unpredictable in nature.

Ministers are required to try collectively to produce a top-down leadership. However, Government is a hugely diverse organisation, where the expertise on any issue lies within the individual Department and there are never sufficient resources to meet the aspirations of all Departments. Therefore the historic pattern is a bottom-up approach. Policy proposals emerge at departmental level and are assessed, by political judgement in the absence of any objective yardstick, in competition with an array of alternative and equally worthy proposals from other Departments for the scarce resources available.

For all its difficulties, we see no better alternative.

- 8.17 Arguably, the development of the Programme for Government has broken the historic pattern of a bottom-up approach. The Programme for Government is encouraging policy proposals to emerge at cross-departmental level. And, the Programme for Government is applying the yardstick of empirical evidence-based decision-making, driven by an outcomes based performance framework.
- 8.18 Therefore, and as indicated in Chapter 3, there is an argument to leave the Departmental structure as it is, and allow more time for the reforms introduced by the new administration to bed down and succeed.
- 8.19 But equally, there is a view that further reforms to the machinery of Government should be part of the continuous improvement of Government policy making and service delivery. This could take the form of incremental changes as advocated in Chapter 3 or something more substantial.

Conclusions

- 8.20 The Committee has concluded that the progression of reforms on an incremental basis, whilst retaining the intention to move towards a single legal entity, is the most desirable option and likely to be the most acceptable to Tynwald. It has therefore looked in more detail at the options for incremental reform and concluded as follows:

a) Impose a statutory obligation upon Departments to form appropriate consultation and co-operation arrangements

Whilst the development of the Programme for Government has engendered a strong collaborative approach to policy development, the Committee believes that the creation of a statutory duty might be beneficial. A similar duty, albeit

confined to Children's Services was recommended within the Commission of Inquiry into the Care of Young People in 2006, but has not been implemented¹⁴.

- b) Establish the role of Chief Secretary as Chief Executive of the Government to whom Chief Officers would be accountable on all matters.*

This proposal was broadly supported by those with whom we consulted, although as indicated by some contributors there would continue to be a requirement for separation and independence between the Chief Executive and those office holders with specific statutory functions of their own.

- c) Give statutory force to the Programme for Government based on national outcomes and indicators.*

Whilst there was some concern amongst contributors to our consultation that this might stifle the Programme for Government, it is our view that it is linked directly to option (e) below. The creation of statutory function which describes the role of the Council of Ministers would inevitably include within it, reference to the Programme for Government.

- d) Simplify the process for the transfer of functions between Departments.*

The Committee, supports this option, and believes that whatever mechanism is developed to simplify the process of transfer of functions should apply to all Government bodies and not be limited, as at present to Departments and Statutory Boards. Consideration should also be given to including powers to move functions between Government and Local Government.

- e) Give the Council of Ministers statutory powers describing its functions, including the requirement to determine priorities of expenditure and to consider financial and economic policy issues.*

The role the Council of Ministers performance is already codified within the Government Code, but does not have statutory force. It could be argued that the absence of such is deliberate, to give the Council of Ministers greater flexibility. However that could still be achieved by ensuring the description included within the Council of Ministers Act 1990 was sufficiently flexible itself. We are of the opinion, therefore, that it would be appropriate to introduce a statutory description of the functions of the Council of Ministers including the requirement to establish a Programme for Government, determine priorities of expenditure and consider financial and economic policy issues.

- f) Enable budgets to be allocated according to outcomes rather than functional areas.*

The development of budget setting linked to outcomes jointly shared by different Departments is currently being explored by Council of Ministers Policy Sub-

¹⁴ Recommendation 126

The Inquiry recommends that legislation is introduced to place a statutory duty on all departments of Government to co-operate with each other in safeguarding and promoting the interests of looked after children and in delivering the outcomes for all children identified in the Children and Young People's Strategy.

Committees. The Committee accepts that to immediately move to a system of full budget accounting against priorities would be very challenging and distracting. However the development of programme budgeting in certain instances would be a benefit, and the existence of a statutory basis on which to do so, even if only sparingly used, would be helpful.

The concept of integrated budgets is not new, and was also recommended in the Commission of Inquiry into the Care of Young people in 2006¹⁵.

- g) Allow for Government to be accountable for budget performance on an aggregated basis not a Departmental basis.*

The Committee believes that consideration should be given to enabling the Council of Ministers to adjust budgets within the financial year by transferring money between Departments and Statutory Boards.

- h) Encourage greater use of directions of the Council of Ministers.*

It is accepted that the use of powers of direction have always been the option of last resort, perhaps, because of the requirement to consult (in person) before doing so. The committee accepts that, in an ideal world, directing parts of Government to take certain courses of action should not be required as they would do so willingly. It is also acknowledged that the approach taken in support of the Programme for Government appears to be generating greater cooperation and consultation than was previously the case. That being so, the Committee does not see the need at this stage to pursue this option further.

- i) Simplify systems of delegation of authority.*

In response to our internal consultation most respondents supported this option which we believe should be progressed, in order to minimise bureaucracy and give greater clarity.

Single Legal Entity

- 8.21 The Committee has also concluded that the concept of single legal entity should be retained and the work should commence on the drafting of an Isle of Man Government Act along the lines described in Chapter 4. This should be introduced as a Bill as soon as practicable, but subject to completion of a comprehensive cost/benefit analysis.

¹⁵ Recommendation 81 para 26.78

The Inquiry recommends that [the Departments] should draw up proposals on how they can establish a Joint Commissioning Unit to integrate budgets where it is appropriate to do so and present their proposals to the Social Policy Committee.

Recommendations

8.22 The Council of Ministers should:

- a) progress incremental reforms to legislation in order to give greater emphasis and commitment to requirements for joined up working; and
- b) introduce a Bill to provide for a Single Legal Entity Government so that, should it be in the Island's interests at a future date for it to be implemented, it could be done so relatively quickly¹⁶.

Single Legal Entity Sub-Committee

June 2017

¹⁶ Mr Boot requested that it be recorded that his support for this recommendation extends only to asking the Council of Ministers to give consideration to the introduction of a Bill.

COUNCIL OF MINISTER SUB-COMMITTEE

SINGLE LEGAL ENTITY

TERMS OF REFERENCE

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

MEMBERSHIP

Members

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

Permanent Officers

Jon Callister, Executive Director, Office of Human Resources
 Dan Davies, Director of Change & Reform
 Mr W Wannenburg, Solicitor General, Attorney General's Chambers
 Miss Michelle Norman, Senior Legal Officer, Attorney General's Chambers

Consultation

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

PURPOSE

Resolution of Tynwald

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

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

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

Issues for Consideration

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

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

Outputs

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

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

SUB-COMMITTEE PROTOCOLS

Meetings

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

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

Documentation

Agendas are compiled with the approval of the Chair.

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

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

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

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

Quorum

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

Responsibility for Projects

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

Contracts & Finance

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

PROVISIONAL TIMETABLE

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

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

Introduction

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

Background

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

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

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

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

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

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

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

COUNCIL OF MINISTERS SUB-COMMITTEES

TERMS OF REFERENCE

NATIONAL STRATEGY GROUP

1. Purpose

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

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

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

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

2. The Programme for Government

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

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

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

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

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

3. Constitution

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

4. Membership

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

Officers routinely in attendance –

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

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

5. Meetings and minutes

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

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

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

6. Reporting

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

7. Contracts and finance

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

SOCIAL POLICY COMMITTEE

PURPOSE

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

THE PROGRAMME FOR GOVERNMENT

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

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

CONSTITUTION

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

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

4 MEMBERSHIP

4.1 Members

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

Attendees for relevant items:

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

4.2 Permanent Officers

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

4.3 Lay Membership

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

4.4 Secretariat

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

5 ROLE

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

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

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

6 MEETINGS AND MINUTES

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

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

6.9 Quorum

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

6.10 Responsibility for Projects

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

7 KEY RELATIONSHIPS

7.1 The Sub Committee will -

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

8 CONTRACTS AND FINANCE

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

ENVIRONMENT & INFRASTRUCTURE COMMITTEE

1 PURPOSE

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

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

2 ROLE

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

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

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

3 CONSTITUTION

3.1 The Committee was established by the Council of Ministers in March 2012 as part of the structure of standing sub-Committees¹⁷:-

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

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

¹⁷ Minute number 194/12, 22 March 2012

4 MEMBERSHIP

4.1 The Committee comprises:

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

4.2 The Committee is supported by the following permanent officers:

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

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

4.4 Secretariat will be provided by the Cabinet Office.

5 OFFICER GROUP

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

6 PROGRAMME FOR GOVERNMENT

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

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

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

7 GOVERNANCE

- 7.1 Meetings of the Committee will be scheduled every two months if there is sufficient business or as required by the Chair. The meetings shall be chaired by the Minister for Infrastructure or by a nominated deputy.
- 7.2 For a meeting to be considered quorate three Members must be present which must include the Minister for Infrastructure or nominated deputy.
- 7.3 Decisions will be normally arrived at by consensus. Nonetheless, at the request of any political member present, and with the consent of the Chair, a vote can be taken on any matter. Where a meeting is not quorate business can be transacted but decisions taken cannot be actioned until such time as the consent of a simple majority of the Committee has been obtained.
- 7.4 The Committee has no authority to contract out work and no finance is allocated to the Committee.
- 7.5 Officers will endeavour to ensure that all items included on the agenda are supported by documentation and have been progressed through the Environment and Infrastructure Officer Group. The agenda and papers will, wherever possible, be distributed to members at least one week before each meeting by the secretariat. In normal circumstances late papers will not be accepted, in exceptional circumstances approval for late papers to be circulated must be obtained from the Chair.
- 7.6 Minutes will be prepared in accordance with the [Corporate Minute Taking Guidance](#) prepared by the Cabinet Office and should be issued to the Committee no later than 5 working days following each meeting.
- 7.7 In accordance with the practice agreed by Council of Ministers, minutes of the Committee will be circulated to Council of Ministers via e-mail once approved.¹⁸

¹⁸ Minute number 194/12, 22 March 2012

Confidentiality

- 7.8 All documentation issued in relation to the Committee including the Committee's Terms of Reference, proceedings and papers are subject to the same statutory confidentiality¹⁹ as applies to the meetings and proceedings of the Council of Ministers and should be therefore treated accordingly.

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

¹⁹ Section 6, Council of Ministers Act 1990

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

Overview

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

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

Manx Museum and National Trust

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

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

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

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

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

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

Background

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

Definitions:

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

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

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

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

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

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

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

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

Oversight, sponsorship and performance

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

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

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

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

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

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

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

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

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

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

References

House of Commons Public Administration Select Committee
Smaller Government: Shrinking the Quango State
Fifth Report of Session 2010–11

House of Commons Public Administration Select Committee
Who's accountable? Relationships between Government and arm's-length bodies
First Report of Session 2014–15

Institute for Government
Read before Burning: Arms-length Government for a New Administration. 2010

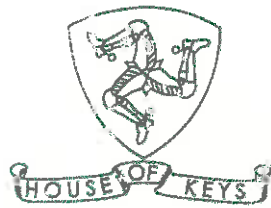
Figure 4: Types of arm's length bodies

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

Sources: CO 2010; Flinders 2008; Nuffield 2000

APPENDIX 5

CONSULTATION RESPONSES



House of Keys
Legislative Buildings
Douglas
Isle of Man
IM1 3PW
British Isles

Y Chiare as Feed
Oikyn Slattyssagh
Doolish
Ellan Vannin
IM1 3PW
Ny Ellanyn Goaldagh

The Hon Juan Watterson BA(Hons) FCA CMgr FCMI SHK
Speaker of the House of Keys
Loayreyder y Chiare-as-Feed

Our Ref: JW/sb/s

25th May 2017

Hon C Thomas MHK
Policy and Reform Minister
Cabinet Office
Government Offices
Bucks Road
Douglas
IM1 3PN

CABINET OFFICE	
02 JUN 2017	
READ BY C.S.	D Minister
FILE AWAY	
TO RELEVANT OFFICER ON FILE	
SCANNED	

Dear Minister Thomas

Thank you very much for the opportunity to respond to the Council of Ministers Single Legal Entity subcommittee consultation document dated April 2017. It is one of the more unusual consultation documents that I have ever seen on the basis that it does not specifically ask any consultation questions, so it is difficult to know what the committee's thinking is and how to engage with it at this point. It was with that in mind that I offered to meet the subcommittee, an offer which is still open. A discussion would cover far more useful ground than this response which is somewhat limited by the time I am able to give it, and may not match up with the committee's thinking or direction of travel.

During my five years as a Government Minister I have seen some of the potential benefits and many of the potential pitfalls that surround the creation of a Single Legal Entity.

Administratively I can see that a Single Legal Entity would have some advantages in obviating the need for transfer of functions orders and perhaps some other areas where the vires between areas are not clear. This I can understand, but it hardly makes for a compelling case.

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Email: juan.watterson@gov.im

The main thrust of my argument is that many of the concerns raised by proponents of the Single Legal Entity can actually be dealt with within the current system, which is not being used to its full extent. I do have concerns about the actual as well as perceived power that placing all Government functions in the Council of Ministers would give to the Chief Minister.

To deal with the latter point first, I have seen instances over the last five years where the Chief Minister has gone out and made announcements about Government policy without referral to the relevant Government Departments or the Council of Ministers. It is useful for Ministers on occasion to be able to keep the Chief Minister in check by reminding him of his vires. There is no doubt that the Chief Minister is the leader of the Government, but he does so with the consent of Tynwald and to a certain degree the consent of his Council of Ministers through which Government policy is created and delivered. This is quite different from the United Kingdom where the Prime Minister heads a party with a common manifesto, rather than leading a broader coalition as on the Isle of Man.

Quite rightly the Chief Minister has access to any records or information minutes of any part of Government which is essential to the effective leadership of the Government. However there is a good reason that it is the Council of Ministers, not the Chief Minister, which has the power to direct a particular Minister on a particular course. This mechanism is a safety valve against the unfettered power of the Chief Minister. Please note however that I am not making any accusations against the current incumbent of the office! To put the powers in the hands of Council of Ministers, which is headed by the Chief Minister would remove that process and that safety valve ending the symbiotic relationship between the Council and the Chief Minister. There would be nothing to stop the Chief Minister speaking on behalf of Council and short of a full rebellion Government would be tied to the wishes of that individual. In the limited time that I have had to consider this I have not been able to conceive a mechanism whereby powers can be adequately limited in order to achieve the end of having both a Single Legal Entity as an Isle of Man Government as well as preserving the necessary constitutional separation.

Turning to some of the other issues raised in the document, the most frequently cited reason is to ensure proper coordination and communication between different areas of Government. It is a fallacy to think that a Single Legal Entity would achieve this. Such problems are only remedied by having close working or even co-location of services and people to ensure common understanding of problems and a common language in solving them. Political buy-in is also useful. I would point the committee to the example of the Youth Justice Team which brings together social workers, a probation officer, careers advisor, health practitioner and police officers to a multi-disciplinary team which together achieve great things. This has to date been done without any separate legislation. Communication and coordination are only assured by putting people under the same roof, not the same banner.

I would also aver that the budgeting process itself provides a further barrier to coordination and cross departmental working. The existence of departments should not prevent setting a budget for a combined Government unit such as the Youth Justice Team provided that there is still accountability through an appropriate mechanism to an accounting officer.

I noticed that Sir John also suggested that unravelling the complex structure of Government in order to identify the officer best placed to solve their enquiry was another reason for doing this. Again I don't see how placing everyone under the single umbrella helps anybody in this respect at all, and removal of these identifying totemic departments may make things worse. I would suggest that it would be far easier to publish online and possibly in hard copy form the internal telephone directory of Government. Members will appreciate that the attempt to redesign the website along the lines more suited to more intuitive navigation have not been entirely successful. So I don't necessarily see that this is a quick fix solution. However a better search engine, better thought out website, and traditional print means of navigating your way around Government could all help a citizen find who they are looking for. I do not see how a Single Legal Entity helps with any of this.

I would also suggest that things that are owned get done. And whilst Government is not perfect in this respect having a Department responsible with a Minister at its head and various delegations certainly helps the accountability. And whilst this may not be entirely removed by the creation of a Single Legal Entity it certainly would be diluted. If the Isle of Man Government is going to achieve its policies it needs to ensure there are the appropriate political and officer resources directed at it in order to ensure that they are achieved. Again the existence or otherwise of a Single Legal Entity does not particularly matter in this respect.

It does not help the silo mentality when people get too hung up on titles. The Department of Education and Children is a case in point. Several attempts have been made over the years to ditch the reference to children. It reflects the Department's view that they are not solely responsible for this area of policy, but if we believe there should be, someone needs to be assigned it politically - whether or not it is in the title of a Department. (I would not advocate long Department titles, but perhaps a fuller job description can sit below the Departmental title.)

The list of bullet points on page five encompassing the suite of options the Island may wish to adopt can be entirely delivered within the existing framework. Again perhaps I need to say it maybe that there is insufficient push to achieve certain things, meaning it is easier to hide behind the system than it is just to change the system and hope that some of these outcomes will follow.

The tidying up at the top of the tree of the civil service by making the Chief Secretary ultimately responsible for the delivery of corporate objectives is a positive one, and one that should not be lost sight of. However I would go further and say that the Chief Secretary should be the head public service and not just the head civil servant giving him the ability to direct strategic policy in all areas of public service. However, it is still important to recognise the independence of certain decision makers such as statutory board members and regulators.

On page six of the consultation document the argument is made that Single Legal Entity status would strengthen rather than diminish the understanding of Data Protection principles. Again I would argue that it would make no difference what structure you have, it is about the proper training of staff - although admittedly with fewer entities there would be potentially fewer barriers to data sharing. However I think this could give the public concern about access to data which is currently clearer under a departmental structure. Greater data sharing should happen between departments, however there is a legislative framework for this and I would hope that data sharing could be enabled by Order as to what data can be shared between departments and for what purpose. Provided this was overseen by Tynwald that should provide sufficient safeguard.

On page seven of the consultation document the issue of cost is raised and whilst it is not known at this time what the financial cost of Single Legal Entity would be, the biggest cost I foresee is that of time. A significant amount of political and officer energy has been directed at a subject that really does not warrant it. The Government has great challenges to face and great decisions to make, and tinkering round with the legal structure of part of it I would suggest is far from the priority.

I would take issue with the comments on page eight that *"it remains the case that the Council of Ministers does not have any strategic powers to determine priorities and expenditure nor to consider financial and economic policy issues"*. Whilst these financial powers are statutorily vested in the Treasury I would suggest that Council of Ministers in reality if not statute has a significant role to play. In fact to suggest otherwise would be inconceivable. Council of Ministers are the policy and priority setting body. A budget could not realistically be sent to Tynwald as Government business without the approval of Council of Ministers. Finally, there is the ability for the Council of Ministers to direct the Treasury Minister on a certain course. These provide as a suite of measures and a sufficient safeguard to make sure that it is the Council of Ministers that is the policy and budget setting body, notwithstanding the statutory role of Treasury.

I have argued about budget reform for a long time, and I do not intend to make this submission about that subject but how the Treasury budgets is a matter of national interest and essential to the good functioning of Government and I would suggest there are significant areas for reform. I have written separately to the Treasury Minister on this issue. I did note the comment that the Scottish Parliament agreed in 2011 that Management against the overall budget should take precedence over

management against Ministers' individual portfolio budgets, however I believe that in reality this will dilute the accountability of individual Ministers to run their departments effectively and efficiently.

I do take the point that people looking solely at the Council of Ministers Act 1990 and the Government Departments Act 1987 would not gain a clear understanding of our system of Government. However the first question would be how many people seek to understand this in the first place; does it really matter to Joe Public? The Cabinet Office website does give a reasonably good summary of how things work in reality, although I do accept that a more comprehensive Government Code or Cabinet Office Manual may more usefully explain the inter relationships within Departments within Council of Ministers and the relationship between Government and Parliament. However I do not particularly see any urgency in this, as most people's interaction with Government are about the delivery of services at the front line not the rarefied constitutional air which this consultation is dealing with.

I hope this has provided sufficient content of interest for the subcommittee to consider. I would end by reiterating my offer to come and talk to the sub-committee about some of my experiences within the Council of Ministers that have led to this opinion.

Yours sincerely

A handwritten signature in black ink, appearing to read 'J. Watters', written in a cursive style.

From: Allinson, Alex (MHK)
Sent: 09 May 2017 17:06
To: Callister, Jon
Subject: Submission to Single Legal Entity Sub-Committee

Dear Mr Callister,

I would like to thank the sub-committee for producing such a detailed and thorough report which is very thought provoking and an excellent way of starting a meaningful consultation process.

I would agree with your statement that there has already been progress made to address some of the ideas from Sir John Elvidge. In many ways the Programme for Government leads the way in setting the pan-departmental agenda and encourages cooperative service delivery. The outcome framework and KPIs associated with the programme should lead to the desired collective approach to decision making. I feel that the COMIN sub-committees will be increasingly important in delivering the PFG and by their nature will foster more collective financial planning and shared budget allocation.

This administration faces a huge task of reforming legislation, encouraging a growth in the population and economy, whilst dealing with outside threats and challenges posed by changes in Europe and the wider world. Because of this I would support an incremental approach which would focus on legislating changes required to provide government and COMIN the statutory powers to describe its functions, delegate authority and enable departments to have sufficient vires to effect policy changes such as means testing.

At the moment I would support the retention of the Departmental structure. We are about to embark on a discussion of the Lord Lisvane report, and the possible removal of MLCs from direct governmental duties which may affect their placement as departmental political members. I would suggest that an overhaul of the departmental system at the same might be destabilising and result in policy inertia.

Any move towards departments being purely operational delivery agents for public services rather than making policy could be seen as a centralisation of power which could give Treasury undue influence on all policy decisions. The overriding direction for departments should come through the PFG as agreed by Tynwald and within a financial framework set out in the budget.

Whilst I recognise that what I have suggested spans several of the ideas in your consultation document I feel that a gradual and incremental approach is the most sustainable and will help gradually modify the position and functions of the civil service. It has become clear over the last two years that legislative deficiencies are impeding the provision of government policies and feel that amending the acts you have identified such as the Government departments Act 1987, Council of Ministers Act 1990 and Treasury act 1985 are key to allow a gradual evolution to a government established as a single legal entity.

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From: Ashford, David (MHK)
Sent: 02 June 2017 15:29
To: Callister, Jon
Subject: Single Legal Entity Submission

I am fully in favour of the introduction of Single Legal Entity and have been for a long number of years. Whilst I appreciate the point of view held by some that this could dilute the autonomy of departments and Ministers and could lead to further centralisation of power, I still feel it is the only thing that will truly break down the silo mentality and embed joined up thinking. I believe we should be pushing ahead with SLE alongside the current department structure.

I don't believe that an incremental approach to bring in the change would work. Personally, I think that would stall the whole process and lead to the change ending up only half completed. If we are going to go down the SLE route then we just need to bite the bullet and get on with it.

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The House of Keys, a branch of Tynwald, the oldest continuous parliament in the world. The House of Keys is the elected branch of the Manx Parliament. The Isle of Man is an independent nation with its own laws, legislation and police force. It also has its own unique, very special and world renowned culture, language, history, heritage, wildlife and countryside.

From: Baker, Tim (MHK)
Sent: 01 June 2017 20:50
To: Callister, Jon
Subject: RE: Single Legal Entity Consultation - Extended deadline for responses
Importance: High

Dear Jon

Further to your email, please find set out below my perspective on the future organisational structure to be adopted by the IOM Government.

In drafting my response I have considered the SLE Consultation Document (dated April 2017) and the presentation which was given to Tynwald members last month. I have drawn on my 8 months experience as an MHK, including my experience as a member of both DOI and DEFA. My response also reflects my 20+ years leadership experience within business organisations, including several which have undergone rapid and substantial organisational change. I believe that this experience is very useful in considering how we should progress, and also at what pace.

My overall view can be summarised as follows:

- There is no doubt that we need to achieve a more effective, more coherent, lower cost government which is more flexible and, as the paper states, has more “strategic agility”
- Structural reform of government is clearly necessary, but it is not sufficient on its own to achieve this and must be accompanied by much wider cultural, systems and process change
- We need to implement reform (both of structure and other aspects) at the right pace and time to ensure success – if we do the right thing but at the wrong pace or time it will undoubtedly jeopardise delivery of a successful outcome and cause significant collateral damage
- IOM Government is already facing extensive challenges as it adapts to its current financial climate, whilst attempting to deal with the impact of Brexit plus the major challenges being brought about through an ageing population, legacy pension issues and an erosion of the Island’s established economic sectors. We cannot afford to be unnecessarily distracted from addressing these key issues.
- I do believe that we need to move towards a more integrated Government and can see a potentially strong case for establishing a structure based on the principle of a Single Legal Entity – if an IOM Government was being created today then I would suggest that would be the model on which it would be set up.
- However, we start from where we are - and not from a blank sheet of paper. Accordingly I do not believe that the time for radical structural reform is right now.
- We need to recognise that we have limited resources of people, time and finances and we need to deploy them in the most effective manner possible. I believe it would be unrealistic to think we have the capacity to successfully address this structural change now in a “big bang” approach.
- We can of course choose to tackle this issue in a manner and at a time that suits. We do not need to rush headlong into a major restructuring of IOM Government, which would in all likelihood jeopardise our ability to address some of the key national issues I refer to above.
- It is also clear, as acknowledged in the Consultation Paper, that there is already an established direction of travel which is taking us towards a more integrated coherent government – and my view is that this will be magnified as the impact of the new administration’s approach feeds through in the coming months
- Accordingly, I am in favour for now of adopting the Incremental Approach outlined in the Consultation Paper, whilst actively reinforcing the desired behaviours, and outcomes that we are seeking to achieve. I believe that this needs to be our approach for at least the next couple of years, during which some of the major issues referred to above will have been dealt with.
- This will provide a period of reasonable stability during which I believe we will improve how government operates. In parallel we should work through our options and choices so that we are in a position to

make a fully informed choice in due course about which version of a SLE we envisage ultimately migrating to. It is clear that much more thought and analysis is required before we can make definitive choices between the various SLE and Executive Agency models and indeed how they affect each entity within Government. This will require a continued focus and we must ensure that this time is well used to secure the best ultimate outcome for the Isle of Man.

I trust that this gives you a clear sense of my perspective, which balances a consideration of both where we want to get to and how we should approach getting there.

I would be happy to discuss my response further, either with yourself or the Sub-Committee as a body, if you feel that would be useful.

With best wishes

Tim

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Consultation Response to 'Single Legal Entity / Single Organisation'

R. W. Henderson, MLC, 27th of April, 2017

I would fully support the implementation of SLE / SO as outlined in the 'Elvidge Report of 2014, and for the main reasons that are outlined there. SLE is but a move in the right direction, but I believe as Sir John does, in his report, that to achieve an SLE in the true sense an organisation must move to 'Single Organisation or SO status.'

It is also well past time to implement changes that have been highlighted for far too long in the development of the IOM Governmental Structure as we have seen in the various reports and assessments undertaken over the years, again highlighted in this current consultation document entitled 'the Continuing Evolution of the Isle of Man Government?'

I am a firm believer in dismantling the current system as it is essentially 'a departmental / silo system' in which each silo or department is only interested in its own self-preservation / self-interests, transmuting into distorted national decision making at Council of Minister level. This has been clearly evidenced at budget round meetings within the Council of Ministers, and personally.

We need a system which promotes, and I would say – demands, causes Ministers or however the Government Cabinet is to be constructed, to act at a national strategic level – making decisions and policy above departmental level, out with departmental ties. And where departments / directorates can be given direction, and the use of such directions making powers extended to promote and implement national / strategic policies. And where direction making is used more often. Or where it becomes common practice to give 'national steer' to a situation and directorates.

Also, where we ultimately have a governmental system where by each section of government knows what the other is doing, joined up, and consulting each other, joint working with each other for the 'national, strategic picture,' not in isolation as all too often happens, and is still happening.

I also support the 'Elvidge point' on moving towards directorates, as opposed to departments, and that CEO's and Directors need to spend more time advising the 'national strategic Government.' Or to the point where CEO's are out of a department altogether.

Barriers to change 'Elvidge page 6' – I would say the biggest barriers are: attitudes, culture, self-preservation, personal – and this is where I see SLE / SO playing a major role, if not the fundamental role in effecting change to develop the IOM Government structure to where we would like to see it. To change an embedded organisational culture such as we have within the whole of the IOM Government – will take 'a monumental unfreezing of the situation' – a 'sea change' to occur – such as the implementation of SLE / SO. Then, and only then, will we be able to develop proper, cohesive,

strategic direction to be given in the national interest. It will take such a seismic shift to break these kinds of barriers down, and those other barriers to which Sir John refers to in his report.

If we don't execute a major change factor, we will still suffer the slow, incremental approaches that have been implemented over the years, but in essence the main 'departmental silo' model has been retained, unchanged, and preserved I would argue, as the world is changing around us with its inherent weaknesses. We also see with this, the 'organisational psyche' coming into play, where there is a 'cultural reluctance' to organisational change and development in response to our everchanging socio / political and economic environment.

Incremental approaches to change in this way are a fudge, and illustrate a reluctance to move forward and failing to recognise that the world is constantly changing around us, and we have to change to fully operate and engage effectively in these circumstances.

Hanging on to 'what is now' – is just not working and self-propagating. Indeed, one could argue it is only serving to embed 'departmental siloism' - the culture of yesterday even deeper into 'the Organisational Psyche' making it even more difficult to effect any change as a result. When in fact what is required is a Strategically Agile, forward thinking Government structure able to engage fully and holistically with its operating environment, which in its self is fast changing. Government needs to be the same.

What we have currently with the departmental system and Council of Ministers system was fine for its day (1990) and has to be fully welcomed at its point of introduction, and the move away from the strategically paralysing Board Structure. In a way this could have been seen as radical as SLE / SO but it worked. However, I Believe we are again at a 'Governmental Cross Roads' and need to evolve and develop further in recognising the complex, changing political, socio, economic and environmental elements that we face.

We are facing changes at a greater pace, and of complexity in recent years, and we need to be able to respond and manage our coping strategies accordingly – strategic policy and direction, and indeed operational policy and direction to immediate situations. This also means 'getting to grips with the future now' – and not suffer strategic drift as we see with the Post Office. We also need to be far better at environmental and horizon scanning – anticipating, measuring and forecasting.

To face these changes and indeed challenges, and- face them more effectively and going forward we need to be increasingly more strategically agile and joined up. We need to have our executive government operating at high, strategic level, making decisions and developing national policy unfettered of departmental thinking. Departments need to evolve, and have their boundaries dissolved so we have a flatter structure, concerned with operational issues and more able to deliver the National Programme of Government in an outwardly looking model, rather than the 'silo self-interest model.' A structure that welcomes strategic direction from the centre.

From the Consultation Document – which I fully support –

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

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

In his report, Sir John Elvidge stated that:

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

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

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

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

In noting that SLE will not give us all the ‘strategic agility’ required in our changing environment, that SLE removes only some of the barriers, then I believe we have to go the full mile on this and institute SO as well as the ultimate outcome – and I quote again from the consultation document to back up my own views –

Government as Single Organisation

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

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

Comments to the Single Legal Entity Sub-Committee

There has been a weight of evidence and support for a positive change in the way the IOM Government acts and delivers its services to the public and I believe now is the time to acknowledge and deliver that desire for change.

75% of respondents to the Consultation on Isle of Man Government as a Single Legal Entity 2016 agreed that a single legal entity should replace the existing legal identities which currently exist.

The document went on to point out that a Single Legal Entity would enable:

- Greater flexibility and agility in responding to the Island's external environment;
- More 'integrated' and 'joined-up' systems across Government

92% of respondents to the same consultation believe there should be more cross cooperation between Departments when developing policy.

More over from an internal IOM Government workforce 'Have your Say' survey those who took part in the survey in 2015, only 11% responded positively to the question "Departments work well together across the IOM Government."

Regarding the Isle of Man Government operating as a Single Organisation, there was very strong support; in fact 86.25% supported the principle of developing a single strategic framework focusing on the outcomes Government wishes to achieve rather than inputs and outputs.

Let's take the results of these surveys as the impetus to make a change for the better.

We have the vision, the direction of travel, let's support this, work together and make it happen.

When the Council of Ministers was formed in 1990, the world was a very different place and over the last 27 years we have seen the huge pace of technical development and significant social improvements.

We would all benefit from a smarter, efficient and effective Isle of Man Government.

We have the opportunity to operate as a Single Legal Entity and as a Single Organisation, to remove duplication and layers of bureaucracy, which leads to higher costs and stakeholder frustration.

A smarter Government will increasingly focus on outcomes and prioritise outcomes in order of National importance and affordability, in a clear and transparent manner.

This will also encourage measurement of performance and effective delivery of service in a customer focused manner. This is a positive aspiration which can be delivered. Let's try it.

From: Shimmins, Bill (MHK)
Sent: 26 May 2017 16:24
To: Callister, Jon
Subject: Single Legal Entity Consultation

Jon

My views are;

It would be preferable for Government to operate as a single legal entity.

In the 8 months since I was elected I have observed the following;

At times, the Isle of Man Government appears to operate as a set of fiefdoms. Silo behaviour occurs in most organisations. This is more prevalent when accompanied by financial constraints.

The SLE advantages that Elvidge has identified are reasonable. I also concur with his comments around holistic and collective approaches to achievement. In our case moving to one legal structure removes some barriers but this in itself will not drive significant positive change. It needs to be accompanied by cultural change. This will take time as attitudes are embedded and many employees have very long service in one department. It is debatable whether or not IOMG rem and ben policies and practice encourage cross departmental teamwork.

In IOMG there is a wide range of capability and a varied outlook.

Greater mobility across the departments would aid understanding and enhance cooperation for the benefit of the public.

Each government department tends to have a number of internal sections or areas. Some of these sections are part of the department legal entity, others are separate boards or agencies. There are intra departmental tensions between these sections and areas as well as inter departmental tensions.

The transitory nature of political members adds a short term dimension. It is possible for those wishing to resist change to deploy delaying tactics. This is easier to do in the complicated multi legal entity structure we have at the moment.

Local authorities also have some tensions with Central Government, they should be included in any meaningful structural review..

We should always remember that the general public tends to be more focused on the quality, efficiency and availability of service rather than which body provides the service.

How pressing a priority is SLE?

We are juggling many challenges, some of which are clear and pressing. There are capacity constraints and SLE could be a major distraction which consumes scarce resource.

As such, if we are to progress a SLE programme then there must be a strong cost/benefit case. To be approved any business case needs to be compelling and comprehensive. It should include analysis of equal pay issues and also quantify what service improvements will be received by the public.

Other points;

Data protection is often highlighted as a barrier to SLE. It is important this is overcome as the lack of coordination across Government is a cause for public frustration.

The agency model feels attractive as it potentially offers a more nimble mind-set, less constrained by legacy issues. The fundamental challenge is does the public feel that the Government is well run and responsive? There is a view that it has been slow to adopt new working practices and processes and that not having a SLE has enabled vested interests to resist change. In this context any move to SLE needs to avoid additional administration bureaucracy to garner support.

Given our small population it is odd that this consultation only focuses on Central Government and does not include local authorities.

Summary

Whilst I am broadly in favour of SLE, I am unconvinced that this alone will revolutionise our Government. There are other important actions required to improve delivery.

A detailed cost benefit analysis will help with prioritisation and capacity debates. Including local authorities would produce a more joined up approach.

Regards

Bill

Bill Shimmins

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Department of Economic Development response to the internal consultation on a Single Legal Entity

1. Chief Executive Comments

I have long held the view that the move towards a single legal entity would be an important signal towards a culture and organisational structure that is more cohesive and collaborative and could be an enabler to many more operational improvements.

The challenge is that it is unlikely however to radically change anything in itself and much of what it could enable could be delivered through alternative means and against a broad set of priorities, it needs to have a clear set of benefits described in the business case to ensure it is sufficiently understood, resourced and optimised.

It is clear to me that if we were starting Government in 2017 from scratch, you would not start in with a complex set of legally separated bodies, but instead a single organisation with separate divisions to narrow and focus control and strategy with legal entities only where required as legislation would dictate to comply across separate jurisdictions, to protect intellectual rights or reduce risk of failure by legal separation on key risk activities.

Such a structure has to ultimately be less costly and more efficient than the current complex arrangement and could allow for a much improved political and operational decision process that joins up the elements of what is after all a public service serving a relatively small population.

As an enabling structure, it would remove what are perceived barriers to directing outcomes, delivering change and operating effectively through better information sharing. Shared Services have already made inroads into this space and further consolidation of common functions (such as policy forming and basic administration) could in my opinion lead to significant further cost savings and operational efficiencies.

A single legal entity would be a key enabler of such further consolidation, but again in its absence alternative legal agreements could be established.

Specific Models

Incremental Approach - I fully support the proposals under a-i including the appointment of the Chief Secretary as Chief Executive of the Government, simplifying the transfer of functions and allow for aggregated budget management. Again for a relatively small Island these appear logical changes that would make sense in isolation, or indeed would be effected if starting from scratch. **An incremental approach is probably the most cost effective and least risk option taking the organisation forward in stages over time towards an ultimate model.**

Single Legal Entity with Department Structure – On top of the above incremental approach, moving more policy to the centre inside the Cabinet Office and making it the ultimate “top co” legal entity appears to have real merit. This would help joined up policy formation and change execution and has increasingly been happening on a voluntary basis within the current culture. **Formalising this and accelerating this would appear low**

risk, and could deliver much of the improvements of a single legal entity over time, rather than trying to deliver a big bang approach in a single solution.

Single Legal Entity operating as a Single Organisation – Whilst an ultimate aim and the one that would be designed if implemented from scratch, this is clearly the most difficult in legal complexity to understand from today's operation, will carry the largest political risk and probably the largest cost to deliver and therefore need the most justification in a public context on what value it will deliver.

As an enabling step this could be hard to justify, and as previously outlined – the incremental approach, overlaid with a strengthened Cabinet Office at the top, would appear to give much if not all of the enabling benefits, but at less risk and preserving more of the political structure of present. **Consequently whilst theoretically perhaps the ideal target, it is probably far easier to deliver the incremental changes and strengthened cabinet office even if only initial steps to then be reviewed.**

Executive Agency – I see the discussion on Executive Agencies as a separate one and one that merits consideration on its own. There are some functions (commercial operations, business development) within the current Department of Economic Development that ultimately would sit better in an Executive Agency and will be considered, however even within this there are multiple routes to the agency, from simply working under delegated responsibility as a cooperative to a fully arms length commercial operation. As the consultation comments, in the UK the arrangement is flexible and do not usually have their own legal identity.

Combining much of the national policy making into a central Government body, whilst then developing service delivery agencies for public services is an alternative to the proposals outlined in the incremental approach and Single Legal Entity approach as previously discussed and would be a major cross government organisational change.

It is my personal view that much of the benefits from doing this could be obtained from this incremental approach and strengthening of the centre rather than radical change across the whole of Government which by necessity will carry a significant degree of cost, of risk and operational complexity to design and deliver, when there are probably more compelling priorities to be considered.

Collapsing all policy making into one body at the centre of Government is in my opinion an important natural step – and therefore I would support consolidating parts of Treasury, Economic Development and Cabinet Office, but also policy functions from across the whole of Government and do so using the incremental model outlined previously with a strengthened centre.

Executive Agencies should be considered on their own merits where value can be seen (for example in DED for business development working as a public private partnership) rather than a means to an end for a single legal entity.

**Mark Lewin
June 2017**

2. General Officer Comments

The Department of Economic Development officers involved in compiling this response agree that there is merit in establishing Government as a Single Legal Entity which replaces the existing legal identities which currently exist. We would envisage the retention of a Department structure with responsibility and accountability delegated to Ministers. We agree that there is merit in developing a single strategic framework focusing on outcomes and that this should be given statutory force with supporting legislation and an integrated performance management system to drive the culture change that is needed. There should be more cross co-operation between Departments and functions of Government when developing policy which should be facilitated by Government functioning as a Single Legal Entity with common systems and an integrated approach to financial and budget management.

It seems a sensible approach at this time to have a range of options which complement each other and can be progressed incrementally over time. It is essential for economic growth that we have systems, processes and decision making mechanisms which are fast, flexible, evidence based and encourage co-operation and collaboration. This enables change to be effectively managed and behavioural culture to support the delivery of outcomes, improving effectiveness and facilitating economic growth.

The barriers to change should be addressed incrementally over time when legislation is changed and as joined-up systems and processes evolve.

The option of a Single Legal Entity with a Department Structure (page 15) involving the retention of Departments but no longer as separate legal entities seems to offer a pragmatic approach.

The option of a Single Legal Entity operating as a Single Organisation (page 16) may be difficult to deliver and bring with it greater risks as there is no 'one size fits all' model and this approach may over-simplify more complex operational requirements.

The option of an Executive Agency Model (page 18 to 22) could support the requirements for economic growth in the future. Greater managerial freedom within the scope of politically-determined parameters would support economic growth by enabling a fast and flexible approach, giving the Island a strategic advantage.

The option of Local Government Transition (page 20) would be useful if it aligned services provided and the relationship with the local community with common strategic plans and outcomes to drive joined-up economic growth.

The option of Strengthening the Centre (page 21) combining many of the functions of the Treasury and Economic Development with those of the Cabinet Office should support joined up, effective policy making and so facilitate economic growth.

3. Technical Comments on Equal pay

Equal pay is discussed on page 6 and in chapters 3 to 6 of the consultation document -

"Single legal status would remove any potential barrier to the application of forthcoming equalities legislation across the whole of Government. The pay and conditions of jobs in one part of government would be open to comparison with those in another part of Government."

It is suggested that this may over-simplify the situation, and not reflect the potential to bring equal pay claims under the existing structure of Government once the Equality Bill 2016 is implemented. It is further suggested that the Sub-Committee should take legal advice regarding the scope for comparators both in respect of the present structure of Government and any alternative structures which may be contemplated.

The following is intended to provide general information as regards comparators.

Scope of comparators in the Equality Bill

Clause 71 (1) to (4) of the Equality Bill, (derived from section 79 of the Equality Act 2010) deals with the scope of comparators -

71 Comparators

P2010/15/79

- (1) *This section applies for the purposes of this Division.*
- (2) *If A is employed, B is a comparator if subsection (3), (4) or (5) applies.*
- (3) *This subsection applies if —*
 - (a) *B is employed by A's employer or by an associate of A's employer, and*
 - (b) *A and B work at the same establishment.*
- (4) *This subsection applies if —*
 - (a) *B is employed by A's employer or by an associate of A's employer,*
 - (b) *B works at an establishment other than the one at which A works, and*
 - (c) *common terms apply at the establishments (either generally or as between A and B).*
- (5) *This subsection applies if B previously held the employment held by A.*

Article 157 of the Treaty of the Functioning of the European Union

In addition, Article 157 of the Treaty of the Functioning of the European Union (TFEU) which sets out the right to equal pay, allows claims to be brought in member states where there is a 'single source' responsible for and capable of rectifying a disparity between men and women. While this is less restrictive than clause 71, as TFEU does not apply to the Island it is expected that the proposed Employment and Equality Tribunal would reject any claims based on Article 157 and disregard that case law which is derived from this principle. However, if a future UK Government were to decide to incorporate the effect of Article 157 into its domestic legislation (and the Conservative Party has stated there will be no rolling

back of employment rights post Brexit) it is possible that the Island would decide to keep its own legislation in line with the law in England, Scotland and Wales (ESW), possibly using powers under clause 165 of the Equality Bill [Application of UK and European equality legislation] to do so.

The EHRC Code of Practice on Equal Pay¹

The EHRC Code of Practice on Equal Pay, from which the extract below is taken, will be taken as the starting point for a comparable IOM code. It further illuminates the meaning of the ESW statute –

Who is the comparator?

50.

A woman can claim equal pay for equal work with a man or men in the same employment. It is for her to select the man or men with whom she wishes to be compared.

European Union law also allows a woman to compare herself to a man who is not in the same employment but where the difference in pay is attributable to 'a single source' which has the power to rectify the difference (see paragraph 57).

In the same employment

51.

A woman can compare herself with a man employed:

- *by the same or an associated employer at the same establishment or workplace, or*
- *by the same or an associated employer at a different establishment or workplace, provided that common terms and conditions apply either generally between employees or as between the woman and her comparator.*

52.

An associated employer means a company over which another company has control, or companies over which a third party has control (for example, the employer's parent company).

53.

The definition of establishment is not restricted to a single physical location. For example, a woman may claim equal pay with a man doing equal work employed by the same council but working in a different geographic location.²

54

Where the woman and her comparator work at different establishments, she has to show that common terms and conditions apply. An example of common terms and

¹The PDF version of the code has 185 paragraphs while the Word version has 187 paragraphs! The numbered paragraphs relate to the PDF version.

² *City of Edinburgh Council v Wilkinson and ors, EAT, 20/5/2010.*

*conditions is where they are governed by the same collective agreement, but the concept is not limited to this type of arrangement.*³

55.

*A woman can also compare herself with a comparator working at a different establishment if she can show that, had he been employed at the same establishment as her, he would have been working under the same common terms and conditions as those he and others in the comparator group are currently working under. The woman does not have to be working to the same common terms as him, and does not have to show that the comparator ever would, in reality, be employed at the same establishment as her.*⁴

56.

The Equality Act does not specify the geographical scope of the equal pay provisions but in most cases the woman and her male comparator will be based in Great Britain.

Comparing across employers: single source

57.

*Under European Union law differences in pay must be attributable to a single source which is capable of remedying an unlawful inequality. If this is different from the 'same employment' test in British domestic law, European Union law may be applied to produce a remedy. In practice, a woman and her comparator whose pay can be equalised by a single source are likely to be in the same employment.*⁵

Example:

A woman teacher can compare herself to a man employed by a different education authority where the difference in their pay is due to terms and conditions set by a national scheme and can be remedied by a national negotiating body.

Choice of comparator

58.

A woman must select the man or men with whom she wishes to make a comparison, although she does not have to identify them by name at the outset.

The selected comparator could be representative of a group of workers or he could be the only person doing the particular type of work.

³ Per Lord Bridge in *Leverson*, relied on in *Barclays Bank plc v James* [1990] IRLR 90 EAT; *British Coal Corporation v Smith and others* [1996] ICR 515 HL; *South Tyneside Metropolitan Borough Council v Anderson* [2007] IRLR 715 CA.

⁴ *British Coal Corporation v Smith and others* [1996] ICR 515 HL.

⁵ *Lawrence and ors v Regent Office Care Ltd and ors* [2003] ICR 1092 ECJ.

59.

A woman can select more than one comparator and from her point of view this may be prudent. Multiple comparators may be necessary for a term-by-term comparison of a woman's contract. However, an Employment Tribunal can strike out a claim with a particular comparator, or could in exceptional cases require a claimant who unreasonably cites too many comparators to pay some costs.

60.

The chosen comparator does not have to be working at the same time as the woman, so he may for example be her predecessor in the job.

61.

Where a woman has evidence of direct sex discrimination in relation to her contractual pay but there is no actual comparator doing equal work, so that a sex equality clause cannot operate, she can claim sex discrimination based on a hypothetical comparator.

Example:

A woman's employer tells her that she would be paid more if she were a man. There are no men employed on equal work so she cannot claim equal pay using a comparator. However, she could claim direct sex discrimination as the less favourable treatment she has received is clearly based on her sex.

Further information

See Chapter 4 "Comparators" of the IDS Handbook "*Equal Pay Employment Law handbook*" published by Thomson Reuters. The Handbook discusses general principles and relevant case law including the following cases -

City of Edinburgh Council . v. Wilkinson and ors 2010 IRLR 756, EAT [cited as a footnote in the Code of Practice] –

The EAT considered a whole Council to be a single establishment so that claimants working in schools, hostels, libraries and social work could compare themselves to gardeners, grave-diggers and refuse collectors. The Tribunal ruled that while an 'establishment' requires a clear identity it might be unduly restrictive to confine this to a single geographic location.

Department for Environment, Food and Rural Affairs v Robertson and ors 2005 ICR 750, CA

The CA ruled that civil servants in a government department were not entitled to compare themselves with civil servants of the opposite sex in other government departments for the purposes of claiming equal pay. The question for the Court of Appeal was whether there was a 'single source' responsible for Civil Service pay, meaning that the claimants' comparators were valid for Article 157 purposes. The Court held that there was no such source meaning that the claims must fail. In its view the fact that the civil servants shared common employment (in the sense that all civil servants are employed by the Crown) was not enough to satisfy the single source test where their pay levels were set by different government departments. Furthermore, it was not enough that, despite having delegated

pay-setting responsibility to individual departments, the Crown theoretically retained power to intervene and remedy pay inequalities. Given that responsibility for negotiating terms and conditions had been delegated by the Crown to individual government departments, there was no single source to which differences in pay could be attributed.

From: Lole, Richard
Sent: 02 June 2017 15:19
To: Callister, Jon
Cc: DEFA SMT
Subject: DEFA Officer submission to the Single Legal Entity consultation

Hi Jon

I have attached the general consensus of our SMT.

I think the recent good progress with the new administration has reduced the sense of value and urgency for the full SLE and increased the clarity of the role of culture, rather than structure, as the key to how we work together coherently.

There would be lots of benefits and some risks in full SLE, plus a distracting upheaval, so I think a key question is - Does progress in Scotland fully demonstrate the value we can gain from full SLE?

Happy to talk this through

Best regards

Rich

Single Legal Entity – Consultation Response

1. Basis of response

- 1.1. This response has been prepared by the Senior Management Team of the Department of Environment, Food and Agriculture and as such provides the views of the Senior Officers, not the Department and Political Leadership.
- 1.2. It is understood that political viewpoints will be obtained in other ways.

2. Observations

- 2.1. Section 5 of the consultation document on page 16 identifies that the issues (or benefits?) of an SLE operating as a Single Organisation would be:
 - A single strategic framework for Government
 - An integrated performance management framework
 - A collective approach to political decision making
 - An integrated financial planning and budget management within central Government
 - An integrated Civil Service structure, with a clear overall point of authority
- 2.2. However, given the recent progress with a collegiate culture, a performance management system for the Programme for Government and the explicit delegations of management authority to the Chief Secretary regarding the Chief Officers, there is a reasonable argument that these are currently being achieved which reduces the compelling case regarding the appropriateness of the solution, acknowledging that any structure will have strengths and weaknesses. However, it is also important to acknowledge that culture changes according to the priority and approach of the Political and Officer leadership.
- 2.3. Strengthening the financial role of the Chief Minister and Council of Ministers would seem to inherently improve the real control and power to achieve change, as noted with the UK Prime Minister system and this is an attractive aspect of the all the approaches identified.
- 2.4. The relatively small scale of the Isle of Man and its administration means that the cost of the different approaches seem likely to be disproportionately high if, for example, with the Executive Agency Model and the extensively centralised policy model, there is a risk of significant duplication of highly paid specialists associated with separate policy and delivery functions. The separation of Planning Policy and Planning Service delivery could be argued to have substantially severed the previous approach of shared resources across the teams according to a common sense of priority coming from a single point of leadership for the previously combined Directorate. There remains a clear single point of leadership in the Chief Secretary, however, the scale of this role makes individual Directorate involvement exceedingly challenging for anybody in that role.

- 2.5. Most changes seem likely to affect the Corporate Leadership level of the organisation, with the upper Directorate management level and their teams' roles being fairly consistent under the range of models, subject to aspects of the Policy management arrangements. The relatively confined number of officers involved does suggest that the culture of that group could reasonably be expected to be influenced and aligned to achieve these outcomes irrespective of structure. Indeed it is probably also true to say that unless their culture is aligned, the scope for disconnect will continue, irrespective of structure – be that current or future structure.
- 2.6. Increasing organisational flexibility and fluidity would enable faster change and alignment of resources to priority which has clear advantages. Centralising strategic policy should improve policy coherency, though may reduce sense of ownership and buy in by the delivery teams. The effectiveness of this approach will depend on the willingness to put appropriate resources in place to deliver the central policies and the ability to ensure the perspective of the delivery teams is considered, despite the increased disconnection between the two functions. There is inevitably some risk of duplicated specialist competency, as most current Department policy development will substantially be led by the Directors and their senior specialists who also drive the service delivery.
- 2.7. Issues such as property ownership, shared services, vires to act, customer service and many aspects of data sharing would be simplified across the current Department boundaries.
- 2.8. Any material dilution of strong reporting lines at Director level risks an increase of silo effects, should this dilute the relationship and understanding with their Chief Officer and Chief Secretary. However, if the SLE is successful in creating a fluid and priority led organisational structure, this is likely to enhance succession management through increased flexibility to steadily develop future talent which should improve career opportunities and organisational resilience.
- 2.9. Currently the Chief Officer Group, under leadership of the Chief Secretary seems to enable a corporate approach, with occasional issues associated with individual misunderstandings, cultural perspectives or communication issues. These seem to be the inevitable challenges of a group of committed humans working hard on overlapping agendas, rather than inherent organisation flaws and as such are likely to be risks irrespective of the organisational structure.
- 2.10. The existing Council of Minister Sub Committees, under the consistent Chairmanship of the Policy and Reform Minister provide a very effective means of ensuring coherent cross Department policy and delivery, providing all relevant matters are taken to those Committees, in line with the recently introduced TORs.
- 2.11. There are a range of non-statutory services provided by government which, elsewhere, would be of a scale to enable successful private sector business to provide them and these would benefit from a commercial management approach in one Executive Agency or an outsourcing initiative based on the combined operations. This approach should enable the Management to focus on delivering the most appropriate and efficient service to maximise utilisation and therefore minimise operating costs.

Examples include the Villa Gaiety, Curragh's Wildlife Park, the Sawmill, heritage attractions, heritage railways and bus services. We would support the observations of the MNH on this aspect in appendix 4, though suggest some aspects of the Heritage attractions and associated visitor proposition could also be considered for operation by the agency/operator, though the custodianship aspect should remain under the MNH.

- 2.12. The new administration has laid out an ambitious manifesto in Programme for Government and a key consideration regarding the scope for a SLE should be; whether the inevitable interruption associated with significant organisational change result in a scale of improvement in capacity, focus and delivery, to the extent that the disadvantage of the interruption is clearly outweighed by the future benefits.

3. Conclusions

- 3.1. Irrespective of the outcome regarding SLE, there is scope and value to merge more of the regulator activity and move this into an external body, removing scope for concerns about conflict of interest, minimising concerns around possible political expediency and gaining resilience and efficiency through critical mass.
- 3.2. There seems to be value to be gained from moving many of the non-statutory, commercial type services outside the Department structure, to allow a more commercial management approach, which should increase service uptake and efficiency, whilst reducing the operating costs.
- 3.3. To enable the management of the work of Government there is a need for there to be some kind of department structure, however, there is clear and significant value in being able to best align the structure to current priorities.
- 3.4. A future approach which enables Government Acts with responsibility more flexibly devolved to departments, rather than Acts being the responsibility of specific departments would be of significant benefit. The SLE proposal would make the legal change easier, though there are regular examples of Transfer of Function Orders currently being used to achieve such changes.
- 3.5. Whilst SLE is not intended to address the needs or issues associated with any one administration, the current collective and corporate approach of the new administration and their success in introducing a sub-committee structure and accountability through the transparent performance monitoring, all combine to reduce the current pressing need to address this change. However, whilst these current improvements do not address the underlying and long-term benefits there may be from an SLE, but they do impact on the balance between the scale of organisational disruption which is required in the short term versus the expected subsequent performance improvement which forms the basis of the business case.
- 3.6. The real value of these options seems to come from improving clarity on the role of the Chief Secretary as the executive leader of the Public Service and the role of the Council of Ministers and especially the Chief Minister. However, this could be addressed through legislative changes, without the risk of wider organisational disruption. For this reason, the incremental approach seems appropriate.

3.7. Regarding the Options for incremental approach on page 10, we would support these measures with the exception of two aspects which seem excessive;

- statutory obligation to consult (a) – as there are already guidelines to this effect
- encourage greater use of directions of the Council of Ministers (h) – this seems to contradict the collaborative approach and should not be necessary if (e) *Give the Council of Ministers statutory powers describing its functions* has better defined the role of CoMin.

3.8. Noting that the SLE approach is substantially based on the Scottish example, it would be helpful to clarify the effectiveness of the model which is now in operation there, to ensure their new reality is delivering the expected improvements in focus and productivity. This context would help inform the urgency and value of developing beyond the incremental approach, which is not currently clear.



**Isle of Man
Government**

Reilrys Ellen Vannin

Jon Callister
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infrastructure

bun-troggalys

Office of the Minister
and Chief Executive

Contact: Christine Wilson
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Christine.wilson@gov.im
Date: 2nd June 2017

Dear Mr Callister 

Single Legal Entity

Thank you for inviting comment on the draft paper on the potential for a single legal entity. In accordance with your second instructions, this response has been prepared and submitted to contain my views as Accounting Officer and as Chief Executive of the Department of Infrastructure. It has not been endorsed by the Minister nor has his opinion been sought on the contents. The views are my own. References to the Department should be construed as a reference to the operational organisation that I lead under delegated authority and neither to the Department of Infrastructure in the proper sense as defined in the Government Departments Acts 1987 as amended nor to the Minister as assigned to the Department under the Council of Ministers Act 1990.

Echoing the comments raised as part of the formal consultation on this issue in August 2015 the Department is of the view that the efficient delivery of good quality public services is of paramount concern and improvement of this delivery is the yardstick against which the proposed changes should be measured. Assurance will need to be given to all involved as to how these proposals will achieve this.

It is noted that the document does not contain any firm policy proposals and as such it is assumed that when these are formulated that the Department and indeed the wider public and the local authorities will have an opportunity to respond to the details of the proposals. It is suggested that when consulting on these the document is explicit about the improvements to service delivery that will be achieved as a result of the proposed changes. The commitment to provide a clearer indication of the cost of these proposals by July Tynwald is welcomed and this, alongside the indication of the impact on service delivery should be the key factors used to determine the outcome of this review.

Whilst the principles of moving towards a single legal entity are interesting there is a need to give adequate consideration to the mechanics of how this move will be achieved and adequate reassurance that such a move will bring about good quality service delivery.

The focus of this Department is predominantly on the delivery of services to the public and the provision of the infrastructure needed to support the socio-economic well-being of the island. The comments made in this response are set against that background, in the belief that the public is concerned almost solely with the output of Government- services, costs and quality for example – and has little interest in the process of how the organisation operates internally. There is at first

sight little in the proposals that clearly shows how a single legal entity will deliver improved services.

In the last 5-10 years, Isle of Man Government Departments have significantly changed their relationship with each other. The default position is now helpfulness, support and joint working. The days of fighting over priorities and quibbling over small amounts of budget are thankfully gone. Integration seems most evident at senior levels but good working relationships exist at all levels from direct delivery to areas of strategic thinking. The Department of Infrastructure is a large organisation with many origins. Many colleagues are still happy to work for the long-defunct Highway Board; steam railway engineering staff rarely work on the electric railway system; school cleaners are more likely to associate themselves with their school than the Sea Terminal. A single legal entity will make no operational difference to these colleagues. However we structure the whole, the loyalty of my 1,350 colleagues is to their teams and team leaders. Staff surveys evidence the extent of this view.

The Department welcomes the concept of developing an incremental approach to the possible changes. Again as with other elements of this document there is a need to give further detailed consideration as to how the principles set out on pages 10-11 of the document will be put into practice. The importance of the Programme for Government is recognised by the Department and is now the key driver for operational performance. When this document was formulated and debated through Tynwald reassurance was given that this was not a document "set in stone" and that it was a living document capable of reacting to a change in circumstances. There is a fear that by becoming a statutory document some of this flexibility and adaptability may be lost.

The Department would support the view that the incremental approach is employed but that there is a clear direction and programme put in place for achieving the overall single legal entity if Tynwald ultimately determines that this is the right structure and approach. There is a need to ensure that the change is managed and programmed and that all those involved are clear with regards to the proposals.

On an initial review of the options the Department would be more supportive of a single legal entity with a Department structure on the basis that this may be an easier transition from the current structure. As recognised in the report to move to a single legal entity operating as a single organisation could result in a lack of accountability which would not be in the public or wider Island interest.

With regards to the Executive Agency model, the Department does have concerns with the way which this model would operate. Further consideration of the detail involved is required and this should include factors such as developing adequate and timely feedback loops between the proposed central element of Isle of Man Government and the service delivery aspects. There will be a need to ensure that policy and legislative functions are closely related and aligned to the operational delivery elements to ensure both effective service delivery and formulation of policy and legislation. The Department would be keen to engage in further developing these mechanisms to ensure that this operationalisation of the broad principles is achievable should this delivery mechanism be further developed.

Another area which the Department would welcome greater clarity on is the "light touch" responsibilities of Ministers and Members in relation to the operation of service delivery agencies and community hubs. How will such a light touch approach work in practice, especially against a culture whereby members of the public expect Ministers and Members to be able to immediately influence service delivery?

Given its role in supporting the Island's local authorities, it is important that the Department comments on the proposal of putting in place "community hubs". The document sets out that

these will have some linkage to reforming the structure of Local Government. It will be imperative that Local Authorities are engaged in this process.

Whilst it is noted that the diagram included in the paper is for indicative purposes it is also important in this context that proper consideration is given to what would constitute a local authority that would be "large enough and have the capability to deliver a wide range of public services". The Department is not aware of any research that has been undertaken to support the view that 5 regions would deliver this. It may well be that in some areas of service delivery there is only a requirement for one body; indeed, it is highly unlikely that the same structure will work best for each area of service delivery. In such circumstances would it be expected that some elements will move from a community hub function to a service delivery agency?

Should a decision be made to undertake a move to a single legal entity, using any of the models proposed, full consideration will need to be given to the discrete elements of the Departments to ascertain where best they may sit. The separation of policy and operations through the creation of a corporate policy hub to avoid the risk of the development of policy in departmental isolation would clearly have some benefit but will certainly create the risk that policy is in this model developed in isolation from operational knowledge and requirements.

The reference to departmental silos at the top of page 13 of the draft paper is anachronistic. Departments co-operate willingly at all levels, from sharing on-site construction resources to aligning senior policy decisions. There may be a counter argument that the only remaining silo is the centre of Government, something that this element of the proposal will do nothing to improve and could potentially worsen. It is easy to accept that Departments should support each other and share resources to the benefit of the tax-payer. The paper argues for a structural solution without consideration of using values and behaviours as an alternative and more empowering approach. Many Departments have developed and published their own desired values and behaviours and a great deal of commonality is to be expected in the results. If all public servants put customer service first and are empowered to work together to improve delivery and efficiency the change in service delivery will surely be far more powerful that would be achieved simply by joining up the drafting and dissemination of policy.

There is much of value in the single legal entity concept but it could be argued that more work should be done to differentiate between the ends and the means. The creation of an organisation that delivers efficient and effective public services is unarguably the right direction to follow; there is a risk that the structural approach proposed focusses too much on an internal belief that how we do something is more important than what we do. The real test must surely be the improvement of public services.

Members of the public want good services that they can afford; unless the progression of a single legal entity improves public services it could be seen by the public as a self-serving and introverted. It is likely that only a small proportion of service users care about the politics and principles of service delivery; proposals for a single legal entity will be well supported if they can be clearly evidenced to create better services being delivered by committed and capable public servants. If they do not improve services or staffing, those proposals must surely be questioned and indeed even be questionable.

Yours sincerely



N J Black
Chief Executive



Oaseirys Çhellinsh
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Jon Callister
Executive Director

By Email

Our Ref: CMcL/2259

30/05/2017

Dear Jon

Response to Single Legal Entity Consultation

Thank you for the opportunity to respond to the Single Legal Entity consultation document. The Communications Commission read the consultation with interest and was pleased to note that there is acceptance that some organisations and regulators need to remain at arm's length from Government – the Communications Commission being one of these.

The sentence on page 14 of the document sums up the position very well: "It is our view that those Statutory Boards and other bodies which currently sit outside the Department structure (such as the Post Office, MUA and Independent Regulators) should continue to operate outside of the single legal entity to preserve their independence or commercial freedoms as appropriate."

We would like to reiterate the importance of this, as there is a requirement for the Commission to be demonstrably independent from Government.

The priorities of regulators may be different from those of Government and they must be seen to act independently and be free from pressure in respect of individual licensees and from any form of political interference in relation to broadcasting and telecommunications.

Free and pluralistic media are amongst the most essential democratic values. In this context Broadcasting regulators are independent of Government in order that they can preserve these values.

Similarly with regards to telecoms, EU law requires Member States to "guarantee the independence of national regulatory authorities...Member States shall ensure that national regulatory authorities exercise their powers impartially, transparently and in a timely manner...Member States should guarantee the independence of the national regulatory authority with a view to ensuring the impartiality of their decisions"

We note that Scotland was used as a benchmark and comparator jurisdiction, however, it is important to note that Scotland does not have its own communications regulator. It is regulated by the Office of Communications (Ofcom) an independent regulator which sits outside of Government and regulates the entire of the UK mainland. For this reason, we cannot necessarily use Scotland's experience to aid our thinking with how to manage communications regulation alongside the Single Legal Entity discussions.

Sweden has adopted an approach of Government as a single entity, yet the Swedish Post and Telecom Authority (PTS) has remained independent. An extract from the PTS website reads: "The authority is an independent agency according to the Swedish public authority model. This means that the Government is not allowed in any case to govern how PTS should apply an act or decide in a particular matter relating to the exercise of official power. PTS is headed by a board appointed by the Government. The Director-General is the executive manager."

Whilst we welcome any changes intended to improve efficiency or reduce costs of Government activities, our concern is that the Communications Commission must remain independent if it is to carry out its functions effectively.

Yours sincerely



Dr Carmel McLaughlin

Director



General Registry *Oik-Recortyssee*

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Mr J Callister
Cabinet Office
Government Office
Douglas

Our ref:

Your ref:

Date: 23rd May 2017

Dear Mr Callister

Council of Ministers' Single Legal Entity Sub-Committee
Continuing Evolution of the Isle of Man Government
Consultation Document

I write with reference to the above consultation document, and provide the following comments.

It is noted that Government continues to consider the options for developing a Single Legal Entity (SLE). It is important that in-depth consideration is given to the various proposals as the consequences of the changes could be significant in the future and there needs to be a clear understanding across the public service and beyond as to the impact.

I note it is the view of the Sub-Committee *"that those Statutory Boards and other bodies which currently sit outside the Department structure (such as the Post office, MUA and Independent Regulators) should continue to operate outside the single legal entity to preserve their independence or commercial freedoms as appropriate."*

I assume that, although not included specifically within this view, the General Registry is also intended to be outside the scope of the SLE in view of its core functions of providing administrative support to the judiciary, courts and tribunals. The administrative support provided within such functions is wide ranging and includes, for example, the making by court officers - (these officers being members of the administrative staff of the General Registry) - of various categories of judgments and orders (for example the granting of default judgments and the issue of certain execution orders) in the name of the High Court.

There are currently some functions which still fall under the General Registry which do not come under these areas e.g. administration support for the Appointments Commission and Advocates Disciplinary Tribunal and certain functions covered by election registration which should be transferred in order that there is no perception of conflict.

In the consultation document there are a number of references to the Chief Secretary being designated Chief Executive of the legal entity to whom the operational Chief Officers would be accountable. I assume this would only relate to those Chief Officers who were within the

SLE. Whilst the Chief Secretary is the Reporting Officer for the Chief Registrar, it is important to recognise that by virtue of section 28 of the High Court Act 1991 the Chief Registrar is an officer of the High Court and shall discharge his duties under the direction and supervision of the First Deemster. In addition, by virtue of section 2 of the Administration of Estates Act 1990 the Chief Registrar is responsible for the making of a grant of representation in common form and such grants under the hand of the Chief Registrar are in the name of the High Court. This is not an exhaustive list. There are other statutory functions which are the responsibility of the Chief Registrar which would similarly mean that it would not be appropriate for the Chief Registrar or staff who are responsible to him to be under the direction of the Chief Secretary if in making such direction it could impact on the decision making of the Chief Registrar.

On considering the consultation document the creation of a SLE raises other issues which need to be considered so as to not adversely impact upon the functions of the General Registry which are as follows:

1. Staffing
2. Information technology
3. Budgets
4. Executive Agencies

1. Staffing

Staff employed in General Registry are public servants and responsible on appointment to the Chief Registrar. It will be necessary to ensure that any changes in the structure of the Isle of Man Government do not give the perception that the staff can come under the direction of the Cabinet Office or the Chief Secretary as their independence is almost important as the independence of the judiciary due to the close working between the administration and the judiciary.

2. Information Technology

Previously the General Registry had its own I.T. staff who were responsible for the departmental systems operated within General Registry. As part of the centralisation of certain functions the I.T resources were transferred to what is now GTS. In agreeing to the transfer it was accepted that processes had to be in place which prevented unauthorised access to data from the Courts either by staff from GTS or under the direction of officers or politicians due to the nature of some of the material which the courts and tribunals were privy to. Whilst ideally the courts I.T. should be clearly separate from the Isle of Man Government's it is acknowledged that there are benefits in data storage being combined as long as safeguards are in place. In addition the development of a SLE would require the courts and tribunals to move away from the gov.im platforms and instead utilise the courts.im interface.

3. Budgets

The consultation document makes reference to budgets being allocated to national outcomes rather than to functional areas. It will remain necessary to ensure that the courts and tribunals are funded adequately to deal with the matters that come before them. It would not be appropriate if resources were restricted which required the organisation to seek funding from Treasury on a case by case matter especially when matters could involve

Government. This could be seen as Government seeking to limit the abilities of the courts or tribunals to act independently.

4. Executive Agencies

From the chapter on Executive Agencies it is assumed that there is no proposal to incorporate the courts and tribunals within one of the agencies referred to, otherwise the issues highlighted above about independent judicial process would be equally relevant.

I hope the above comments will assist the Committee in its deliberations. The importance of an independent judicial process is to the reputation of the Island especially at a time when it is seeking to expand the economy by providing confidence to businesses which it is seeking to attract-is fundamental.

Yours sincerely

A handwritten signature in blue ink that reads "Stephen Cregeen" followed by a horizontal line.

Stephen Cregeen
Chief Registrar

Mr J Callister
Executive Director
Cabinet Office
3rd Floor, Government Offices
Bucks Road
DOUGLAS
Isle of Man IM1 3PZ

5 June 2017

Dear Jon

SINGLE LEGAL ENTITY CONSULTATION

I am writing on behalf of the Manx Utilities Authority ("the Board") in respect of the email sent on 26 April 2017 on behalf of the Chair of the Single Legal Entity Sub-Committee.

The Board has now considered this matter at some length and wishes to provide the following views:

- Whilst the Board considers that there remains only limited information available, the Board supports the general concept of Executive Government being a Single Legal Entity and investigating this concept further;
- Based on the information provided, the Board considers Manx Utilities would be best positioned to discharge its strategic and commercial duties and objectives outside the Department structure. However, the Board remains open to continuing engagement with the Single Legal Entity Sub-Committee and would value providing feedback to specific proposals in the future; and
- The Board notes that the boundaries of any Single Legal Entity are important. Manx Utilities (and the Isle of Man Post Office) operates as a commercial body and, as such, it is intended that its operating costs are met by specific charges for services and not from general taxation. Similarly, regulatory bodies should remain sufficiently independent from Executive Government so as to avoid any actual or perceived political bias in regulatory decision making. The current Statutory Board structure (with the bodies being corporate bodies separate from central Executive Government) gives transparency of operations and also provides the bodies with commercial flexibility with regards to revenue and costs or regulatory independence. The structure of these bodies has been reviewed on numerous occasions since the *Review of the Scope and Structure of Government in the Isle of Man* was published in September 2006. These reviews have each provided evidence as to why it is appropriate that these bodies should operate at 'arm's length' from Executive Government.

Whilst the Board is providing its views as set out above, it also wishes to assure the Sub-Committee that, whatever the outcome agreed by Tynwald, it is committed to working in partnership with Government colleagues to achieve satisfactory implementation.

Should you have any queries, please do not hesitate to contact me.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'Philip King', with a large, sweeping flourish extending to the right.

Philip King
Chief Executive

Isle of Man Office of Fair Trading

Oik Dellal Cair Ellan Vannin

Mr J Callister
Cabinet Office
Government Office
Douglas
Isle of Man

Director

M J Ball

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Telephone: (01624) 686500
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Email: iomfairtrading@gov.im

Date:

25th May 2017

Dear Jon

Council of Ministers Legal Entity Sub-Committee Response to Consultation

Thank you for your email of 27th April enclosing the Consultation Document in relation to Single Legal Entity, which was considered by the OFT Board at its meeting on 4th May.

At the outset, the OFT is pleased to note the proposal that, should progress towards an SLE be made, there is a clear recognition of the need to mitigate conflicts of interest by ensuring that regulatory and other relevant functions are delivered at arm's length from Central Government.

The OFT feels that it is vital to consider the issue of Single Legal Entity in the wider context of the Programme for Government itself. The Programme commits the Council of Ministers, its Committees, Departments, Statutory Boards and others to the delivery of a very ambitious range of actions. The success of that delivery will require not only effective leadership but also a highly motivated workforce. It would, in the view of the OFT, be unwise to embark on a programme of significant structural change, which will inevitably cause uncertainty and impinge upon morale and motivation, at the same time as attempting delivery of such an ambitious Programme.

The development of the Programme for Government in such a short timescale has been possible because of enhanced political engagement and the willingness of legally independent bodies to work collaboratively for the corporate good.

It therefore seems to the OFT that, thus far in the current administration, many of the benefits which might be anticipated to derive from Single Legal Entity are in fact already being substantially delivered through leadership and cooperation without a need for legislative or structural change. Indeed, it could be argued that the new administration is delivering significant cultural change. It is accepted that it is often easier to develop coherent policy than actually deliver it. The effective delivery of the Programme for Government will, therefore, represent a stern test for the new approach. The OFT feels that

the Council of Ministers should adopt a very cautious approach to the issue of Single Legal Entity; and give the new approach an opportunity to deliver.

Accordingly, the OFT, at this time, would strongly favour an Incremental Approach to Single Legal Entity. It would, however, go further and suggest that, unless the new approach fails to deliver the anticipated benefits in terms of corporate working, there may not be benefits in further movement towards a Single Legal Entity.

In broadly supporting the approach in Chapter 3 of your Consultation Document, the OFT wishes to comment on the specific actions as follows:

a) Impose a statutory obligation to consult and cooperate in the formation of policy.

It seems to the OFT that the development of the Programme for Government has engendered a strong collaborative approach to policy development. If the Council of Ministers feels that it needs the creation of a statutory duty to give it sufficient authority to ensure collaboration, there would be no objection, but from the OFT perspective, Council appears to be successfully achieving the outcome through leadership

b) Establish the role of Chief Secretary as Chief Executive of the Government to whom Chief Officers would be accountable on all matters.

The OFT would support this proposal

c) Give statutory force to the Programme for Government based on national outcomes and indicators.

The OFT would broadly support this proposal, but would emphasize the need to implement the changes in a way which avoids the need for unnecessary bureaucracy.

d) Simplify the process for the transfer of functions between Departments.

The OFT would support this proposal, but would suggest that the transfer mechanism and the associated ability to make consequential amendments to legislation should apply to all Government bodies and not be limited, as at present to Departments and Statutory Boards. Consideration might also be given to including powers to move functions between Government and Local Government.

e) Give the Council of Ministers statutory powers describing its functions, including the requirement to determine priorities of expenditure and to consider financial and economic policy issues.

The OFT would support this proposal

f) Enable budgets to be allocated according to national outcomes rather than functional areas.

Whilst the OFT can appreciate the sentiment behind this proposal, the complete restructuring of the budget would be a major piece of work involving the same senior officers who will need to be totally committed to delivering the Programme for Government. The OFT believes that the objective of enabling the budget flexibility to target national outcomes could be achieved by giving the Council of Ministers the ability to adjust budgets within the financial year by transferring money between Departments and Statutory Boards.

g) Allow for Government to be accountable for budget performance on an aggregated basis not a Departmental basis.

This concept is supported by OFT and would, in fact, be achieved by the proposal made in response to paragraph f) above.

h) Encourage greater use of directions of the Council of Ministers.

The OFT does not support this proposal. The OFT believes that whilst it is entirely appropriate for the Council of Ministers to have powers of direction, the use of those powers should always be the option of last resource. In developing the Programme for Government the Council of Ministers has used leadership and influence to produce a corporate approach. Regardless of the perceptions, Departments and Statutory Boards do endeavour to work together and failings which appear to be 'silo thinking' are normally a result of lack of communication rather than conscious decisions. There is evidence that the Council Committees are leading to enhanced communication and thus facilitating a more corporate approach.

i) Simplify systems of delegation of authority.

The OFT would support this proposal.

The OFT hopes that these comments are of assistance to the Council of Ministers Legal Entity Sub-Committee.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Mike Ball', written in a cursive style.

Mike Ball
Director

Copy to: Richard Lole, Chief Executive, Department of Environment, Food and Agriculture

26th May 2017

Mr Jon Callister
Executive Director, HR
Secretary, Public Services Commission
Cabinet Office
Office of Human Resources
2nd Floor, Illiam Dhone House
Circular Road
Douglas
Isle of Man
IMI IAG

Dear Jon

SINGLE LEGAL ENTITY CONSULTATION

Further to the email from the Hon Chris Thomas MHK, Isle of Man Post Office would like to thank you for the opportunity to provide its input into the consultation regarding organising Government on the basis of a Single Legal Entity.

Isle of Man Post Office notes from the consultation document provided that it is the view of the Single Legal Entity Sub-Committee “that those Statutory Boards and other bodies which currently sit outside the Department structure (such as the Post Office, MUA and Independent Regulators) should continue to operate outside of the Single Legal Entity to preserve their independence or commercial freedoms as appropriate.”

Isle of Man Post Office is pleased that this has been recognised by the Committee as it strongly believes that it should not form part of the Single Legal Entity and does not believe that there are any cost efficiencies or service improvements that can be made by its inclusion.

The Post Office is a Statutory Board of Tynwald and has a Board comprising of five members, two of which are members of Tynwald. Post Office employees do not share any terms and conditions with other Government bodies. They are also not part of the central Government pension scheme.

Whilst Isle of Man Post Office is a profitable area of Government, returning a levy to Treasury each year, it is facing significant commercial pressures as its core markets decline. Isle of Man Post Office’s inclusion within the Single Legal Entity would damage its ability to compete successfully and to react in a timely and appropriate way to the fast changing commercial environment it competes in. The business’ changing culture away from a “public sector” model into a commercially focused model has been a key part of its success.

You will be aware that the corporate status of Isle of Man Post Office has been debated a number of times, firstly in 2003 and more latterly in 2016. Whilst no conclusion has yet been reached, a commercial culture is imperative to ensure that it continues to deliver increased profitability through commercial diversification.

Isle of Man Post Office fully acknowledges that the Council of Ministers currently has the powers to direct the Post Office and agrees that this should continue under any of the options proposed under the Single Legal Entity structure in the future.



Cont'd./page 2
Mr J Callister

Isle of Man Post Office hopes that your recommendation regarding the Post Office is approved by the Council of Ministers and that it receives full support from Tynwald when it is debated in July.

Yours sincerely

A handwritten signature in blue ink that reads "J Edge".

JULIE EDGE MHK
Chairman
Isle of Man Post Office

Single Legal Entity Consultation

Comments from the Chief Executive of the Public Sector Pensions Authority

I have read the consultation document entitled "Continuing Evolution of the Isle of Man Government." This provides a comprehensive review of the possible options for IoM Government going forward and in particular, issues around Government as a single entity and closer working between Government, Departments and Boards. Rather than try to pick my way between the various options, several of which to me sound "broadly similar", I have highlighted below some thoughts on the issues raised for input into the overall debate. These are my own thoughts as Chief Executive of the PSPA and may not reflect those of the PSPA Board.

Firstly, I absolutely support the need for Government to work better together in a more "joined up" manner. In my view the focus on individual Departmental priorities often means that what may be an issue or priority for one Department is not for another, therefore sometimes it appears that "whoever shouts loudest" wins the argument. Government at the centre therefore needs a better way of co-ordinating priorities between the often conflicting needs of the Departments.

Secondly, some of the work undertaken by Board's such as the PSPA does not appear to fit neatly into the current structure of Government. Public Sector Pensions affect all individual Departments and Boards, and also form a key part of Treasury financial considerations and OHR recruitment and retention needs. Because of this, having a co-ordinated approach to sustainable future pensions change is often difficult to achieve, again because:

- Departments have conflicting priorities when it comes to pensions – the need to recruit and retain staff v cost of pension provision to Government (sometimes they just "don't care" what it costs Government to retain excellent pensions provided it doesn't impinge on their staffing needs);
- Departments vying with each other for greater or (more usually) lesser pensions changes for their groups of staff (I've plenty of examples of this);
- Some Departments arguing they are a "special case" but no-one centrally appears to be able to determine if indeed they are;
- Lack of a joined up approach to pensions within an overall reward package e.g. the teaching unions complain that we do not take into account their recruitment, remuneration and pensions positions overall when we consider pension changes. However, no-one appears willing to take this overall view, which should involve input from the Department, Treasury, OHR and possibly then an overall decision by Council, taking into account both the priorities and changes made (or enforced) on other Departments.

As a result, we in the PSPA often feel we are being pulled in all directions because no-one takes overall responsibility for the decision making. Also, when we have argued the "special case" card in Council for particular groups of employees, again no-one appears willing to take account of the overall position or to make a co-ordinated decision.

Therefore, certainly for the PSPA, a more co-ordinated and joined up approach appears a must. Someone needs to consider and determine what the conflicting priorities are particularly around public sector pensions.

Thirdly, it would appear impossible to remove altogether the Department and Board structure as these are the centres of expertise which have the personnel and experience to see through change. Therefore perhaps this structure does need to be maintained in some form but with greater overall control and co-ordination centrally such that the "silo mentality" is not retained.

Fourthly, it would appear that some of the smaller boards might undertake their work in a broadly similar manner with similar responsibilities if they were moved into a relevant Department. It is unlikely that this will save money (possibly some overall internal administrative savings?) but may facilitate a more co-ordinated approach to issues. Such Board's would probably want to see that they retained some degree of autonomy to operate within a new structure and that their identity and focus was not just "lost" within a much bigger Department. This also gives senior personnel within a smaller Board access to and input into future changes as part of a larger Departmental senior management team thus enhancing closer co-operative working.

Fifthly, establishing the role of Chief Secretary as Chief Executive of the Government to whom Chief Officers would be accountable on all matters appears a progressive idea. However, this begs the question would the Chief Secretary have the time and resources to take on presumably a further additional workload? The Chief Secretary's role and responsibilities would therefore need to be carefully defined. This also then leads to the further question as to how Chief Executives would be ultimately responsible to their Minister's and the Council of Ministers? Presumably the answer is changes within the overall structure of Government with revised responsibilities clearly laid out.

Finally, it appears that it is certainly simpler for the average Isle of Man citizen to deal with Government as a single entity rather than having to identify the relevant entity, Department or Board appropriate to their interest. Freedom of Information might dictate there needs to be a simpler way for members of the public to raise issues with "Government as a whole" but there will probably still need to be Departments with centres of excellence which need to respond.

Hope the above is of help.

Regards,

Ian Murray
Chief Executive, Public Sector Pensions Authority
30 May 2017

From: Kurt Roosen [mailto:kurt@micta.im]
Sent: 26 May 2017 23:20
To: Callister, Jon
Subject: Consultation: Continuing Evolution of the Isle of Man Government
Importance: High

This reply is in relation to the Internal Consultation Document produced by the Single Legal Entity Sub-Committee in April 2017 and is an amalgam of ideas collected together from MICTA, by its CEO, Kurt Roosen, for consideration:

Firstly, we would like to state a position as the IT Trade body on the island that we are very supportive of all efforts that the Government are making towards increased digital capability. Whilst part of this is the potential for this to stimulate work and the production of exportable systems within our existing and attracted companies on the Island, at least an equal potential is for this work to enhance the lives of citizens and this is why we believe that work in this area should progress in all haste and barriers should be sensibly removed.

Back in 2015, in conjunction with the Cabinet Office we produced the following video, which supported an ambitious, citizen centric, programme of work

<https://www.youtube.com/watch?v=iwtecJwF1Do>

In this context we would first question a couple of premises made in the paper specifically around data. Firstly the point about the 75% support for the amalgamation of data from public consensus, in my understanding, was on the basis of "...if it made my interactions with government easier". It does seem to me that sometimes that is made a secondary message when it should actually be the primary one. Although changes to the sharing of data etc should make Government processes simpler and therefore potentially save money for Government, it is not enough that this "saving" is represented as *the* benefit to the public in better spending taxpayers money. The reality is that many of the savings are not immediate because they require the re-distribution of personnel. Therefore there should be more emphasis placed on the direct cost and time and convenience savings to the general public. It is the amalgamation of these benefits that the subject of single legal should be focussed on the legal structures and the process of Government is not really what people are interested in, it is the direct effect on them and the future citizens we want to attract that is key.

The second is around data protection regulation. Both the current and the new (GDPR) regulation are very focussed on the rights of the owner or subject of the data. Therefore, with their permission you can do almost anything. However, this puts an extreme emphasis on making Government data citizen centric where they have the ability to see where data is being used, why, and have the ability to approve or decline. This is the crux of the video that we made. To achieve this properly requires a great deal of systems coordination within a trusted framework. In short, if you have single legal entity, if you don't sort out a centralised ID mechanism that is recognised by all the different systems of Government and beyond (and note the definition of ID is completely different from another Government database) then the fact that you have legal surety of sharing of data will not mean a thing when challenged by the Citizen from a data perspective against principles of their control and of appropriate use. Therefore we strongly recommend that the most important definition is of the Citizen centric ID framework. We suggested a definition of this over a year ago and the report that we created is attached. This does not meant to be a prescriptive definition of an ID solution, but it is a well researched thought provoking exercise that suggests a possible way forward that has great similarities to that of Canada.

On another point of the use of a revised Government structure to strengthen the strategic development capability, we feel that this has a couple of significant flaws when compared with other jurisdictions. All the suggested structures assume that strategic development capability sits entirely within some aspect of Government as an internal function. We feel that this does not take into account the relatively small size of Government Strategic capability and hence their limit on expertise. In addition to this, the fact that the Isle of Man has no research Universities and no think tanks or Quangos means that it has very reduced capability that can only be supplemented by Private Sector involvement in the strategic development areas being created within Government to define strategy. This is a fundamental difference in capability that we do not believe the various

reports have properly taken into account and that there are a relatively small number of existing organisations that could assist – MICTA is one of them.

Finally, one of the definitions of types of arms length bodies laid out in Appendix 4 Figure 4 is 7. Public Corporation where the definition is where more than 50% of their income comes from the sale of goods and services. This immediately fits a number of Corporate Bodies such as the Post Office and the MUA. In the case of the former, we believe that it certainly has a role to play in the necessary identity framework, particularly for address verification, but it cannot do this as a branch of Government with Political involvement at the operational level. If Executive Agencies are being produced to move strategy away from operations, then it is untenable to retain an operation that is already virtually independent. This would not be supportable by the private sector if the Government were to be involved in what was intended to be an independent trust body that could also hold the Government to account but was part of Government – this represents untenable conflicts of interest at various levels. The same is true of regulators, all of which should be independent of Government influence if they are to hold the Government to account. So, for instance, the Communications Commission needs to be independent in this manner.

Although these may seem to be something that can be sorted out post the single legal structure, we do feel strongly that if they are not done at the same time then all that will be actually achieved is a shuffling of the internal chairs and a stopping of the music to see who falls on the ground. We do need to be ambitious but in delivery as well as structure or it is in danger of becoming inconsequential to normal people or businesses.

I am happy to answer questions on any of these points.

From: Couch, Malcolm
Sent: 15 June 2017 17:58
To: Callister, Jon
Subject: RE: Single Legal Entity Consultation - Extended deadline for responses

Dear Jon

I realise that this response is well beyond your deadline, but some additional thoughts might help.

I did circulate the consultation to my Board members and got a single reply: *viz* support for single legal entity with the retention of a departmental structure. This in itself indicates either: that even senior people are profoundly uninterested; or, that they feel helpless, and consider that Tynwald will decide one way or the other and we will then have to get on with it. I have to say that in all of the many meetings and forums which I have attended in the DHSC, this subject has not come up once.

Single legal entity has been raised regularly in safeguarding circles, as it is thought instinctively that it will solve the conundrum of joint commissioning of services such as early help for children. Notwithstanding the opinion of the Information Commissioner as set out in the document, a number of professionals whose work involves safeguarding also feel that the SLE might make it easier to create multi-disciplinary teams which may share confidential information more easily.

For myself, which is probably a personal view coloured by being a Chief Executive (if that makes sense to you) I favour a SLE executive agency model, as this fits in well with the target operating model agreed by my directors a good while ago. In the DHSC context, we see the steady move towards having a tight centre which concentrates on policy, commissioning and contract (of whatever kind) oversight and a number of more or less arm's length organisations: which could range from Noble's Hospital *à la* Beamans, through a publicly-owned corporate entity (a fair amount of social care is going this way in the UK) to co-production via a fusion of government and/or third sector and/or local authority contributors. The arm's length organisations should largely be freed from political direction; as the politicians work should be based at the policy hub and not the operational spoke.

Sir John was canny enough to realise that SLE will in itself solve nothing or deliver change. I support the concept, however, because it is highly likely to act as a catalyst for change, and that is something which we need. In closing, I will return to a theme which you have hear me espouse many times. A SLE Isle of Man Government should have a single staff group (with divisions of course) wherein the largest feasible percentage of terms and conditions of employment are the same.

Best regards Malcolm

Malcolm Couch
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