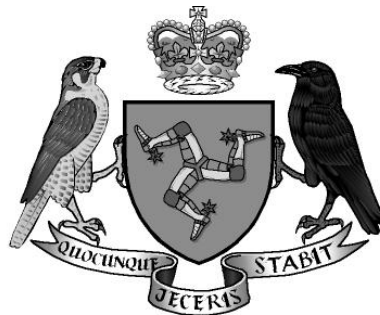


Appointment of HM Attorney General



Isle of Man
Government

Reiltys Ellan Vannin

Report by the Council of Ministers

CONSTITUTIONAL AND EXTERNAL RELATIONS COMMITTEE

Appointment of HM Attorney General

To: **The Hon. N Q Cringle, President of Tynwald and the Honourable the Council and Keys in Tynwald assembled.**

1. The First Report of the Standing Committee of Tynwald on Constitutional Matters for the Session 2004/2005 contained the recommendation:

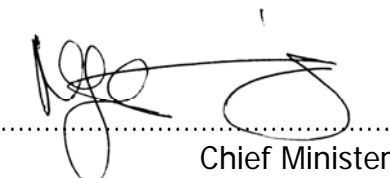
"That the appointment of the Attorney General should now become a matter for the Council of Ministers in the Isle of Man, and that the Council of Ministers should report to Tynwald by June 2005 on the progress of discussions with the Department of Constitutional Affairs in the United Kingdom."

2. An amendment to the recommendation, moved by the Chief Minister, was accepted and the recommendation as approved by the Court was:

"that the appointment of the Attorney General should be referred to the Council of Ministers, to consider and consult with appropriate bodies, including the Department of Constitutional Affairs in the United Kingdom, as to whether the appointment should now become a matter for Council of Ministers in the Isle of Man, and that the Council of Ministers should report to Tynwald by June 2005."

3. The Council of Ministers charged its Constitutional and External Relations Committee with considering this matter, consulting appropriate bodies and reporting back to Council.
4. The attached Report represents the outcome of the consultation exercise carried out by the Committee and its subsequent deliberations. The Council of Ministers endorses the Committee's Report and its recommendation.
5. The Council of Ministers recommends to Tynwald that the Constitutional and External Relations Committee's Report on the Appointment of HM Attorney General be received and its recommendation approved.

Signed on behalf of the Council of Ministers


.....
Chief Minister

Constitutional and External Relations Committee of the Council of Ministers

Appointment of HM Attorney General

1. Introduction

- 1.1 In December 2004 Tynwald debated the first report for the 2004/2005 session of the Tynwald Standing Committee on Constitutional Matters, which contained, *inter alia*, the recommendation:

“that the appointment of the Attorney General should now become a matter for the Council of Ministers in the Isle of Man, and that the Council of Ministers should report to Tynwald by June 2005 on the progress of discussions with the Department of Constitutional Affairs in the United Kingdom.”

- 1.2 An amendment to the recommendation, moved by the Chief Minister, was accepted and the recommendation as approved by the Court was:

“that the appointment of the Attorney General should be referred to the Council of Ministers, to consider and consult with appropriate bodies, including the Department of Constitutional Affairs in the United Kingdom, as to whether the appointment should now become a matter for Council of Ministers in the Isle of Man, and that the Council of Ministers should report to Tynwald by June 2005.”

- 1.3 At its meeting on 24th January 2005 the Constitutional and External Relations Committee agreed that the following persons and bodies within the Island should be formally consulted on this issue:

- Lieutenant Governor;
- Members of Tynwald;
- First and Second Deemsters;
- Attorney General;
- Former Attorneys General;
- Isle of Man Law Society.

- 1.4 The Committee also sought the formal view of the Department for Constitutional Affairs and agreed that the authorities of Guernsey and Jersey should be contacted for information on the procedure for the appointment of their Attorneys General and on how their legal systems were structured.

- 1.5 The Committee also reviewed the present procedure for appointing HM Attorney General for the Isle of Man.

2. Present Appointment Procedure and duties of HM Attorney General

2.1 The position of HM Attorney General of the Isle of Man has traditionally been a Crown appointment, with His/Her Majesty acting on the advice of the Secretary of State after consultation with the Island's Lieutenant Governor who will, in turn, have consulted as he thought fit within the Island. The present Attorney General was appointed in this way and on that occasion the Lieutenant Governor consulted the Chief Minister, Mr President and Mr Speaker amongst others.

2.2 The Letters Patent appointing the Attorney General traditionally provided for the Secretary of State to have the power to make Regulations governing the role.

2.3 In 1979 the Home Office wrote to then Lieutenant Governor in the following terms:

"...we have been looking again recently at the very long-standing problem of the Regulations made by the Secretary of State for your Attorney General, with a view to up-dating or removing them altogether when the occupant of the post next changes. We find that we are inclined to think that they may have outlived their usefulness.

Provision for Regulations has been made in the letters Patent appointing the Attorney General since 1866. Regulations were first made in 1898, when the post was a part-time one, and they have been twice revised since, in 1921 and 1945. The Attorney General has of course been a full-time Crown Officer for well over 50 years now, and there does not seem to be, or to have ever been, any doubt over his role.

The Isle of Man suggested to the Commission on the Constitution that the Attorney-General should be appointed by the Lieutenant Governor, but the Commission did not endorse this. There can ... be no real dispute that as a Crown Officer, the Attorney General is subject to the instructions of the Secretary of State and of the Lieutenant Governor, and owes his first allegiance to the Crown."

2.4 It was agreed at that time that the Regulations should be dispensed with. There was however no question that the post would continue to be a Crown appointment, and the Letters Patent would henceforth state:

"...said Office shall be held by the said [name of new Attorney General] upon such terms and conditions as the said Office was held by the said [name of retiring Attorney General] and in accordance with any instructions which may be given from time to time by one of Our Principal Secretaries of State..."

2.5 The Letters Patent however only provide a very limited definition of the duties and terms of appointment of the Attorney General and the Isle of Man Government therefore prepared, in consultation with the Secretary of

State, a document which provided a fuller description. A copy of the document as provided to the present Attorney General upon his appointment is attached for information at annex 1.

- 2.6 In November 1998 the Committee, in its Report on *“The Constitutional Status and Responsibilities of the HM Attorney General, the Chief Secretary and the Chief Financial Officer”*, noted that in 1996 the United Kingdom Government had rejected the suggestion that the Attorney General should be appointed by the Council of Ministers with the consent of the Crown on the grounds that the proposal would be inconsistent with the existing constitutional relationship. The Committee did not consider that it would be appropriate to re-open the discussions on the appointment of the Attorney General at that time. The Report did however contain the following recommendation:
- “That it should continue to be the aim that the right and responsibility to appoint the Attorney General of the Isle of Man be transferred from the Crown to the Council of Ministers”.*
- 2.7 In May 1999 His Honour Deemster Cain drafted a “Memorandum on the Appointment of the Deemsters and the Attorney General” (hereinafter referred to as the Memorandum). Following consultation with the Lieutenant Governor, the Chief Minister, the Second Deemster and the Chief Secretary a further draft of the Memorandum was produced in October 1999. Paragraph 2.10 below sets out the Memorandum’s proposals in respect of the appointment of HM Attorney General.
- 2.8 In anticipation of Deemster Cain’s retirement the Lord Chancellor’s Department (now the Department for Constitutional Affairs) was consulted on the Memorandum’s proposals. In July 2002 it confirmed, subject to minor amendments, its acceptance of the Memorandum. The Memorandum, incorporating these minor amendments, was noted by the Council of Ministers in September 2002.
- 2.9 The Committee noted that the procedures in the Memorandum had already been used in respect of the appointment of the present Deemsters and Deputy Deemster. The Committee agreed that it would expect, without further developments, the procedure set out in the Memorandum to be used for the appointment of the next Attorney General rather than the procedure by which the present Attorney General was appointed.
- 2.10 The procedure under the Memorandum for the appointment of HM Attorney General would be as follows:
- a) The post would be advertised in the local press and in professional journals off Island. The advertisement would state that the post was a Crown appointment and applicants would be expected to have a sound knowledge of the constitution, legal system and law of the Island, with experience of Manx law and practice being desirable. The Memorandum did not require membership of the Manx Bar as a pre-requisite for appointment but it

suggested that it was unlikely that a person who was not a member would have the necessary knowledge and experience.

- b) Applications would be made to the Chief Secretary. The First Deemster would prepare a shortlist to be considered by a panel consisting of the Lieutenant Governor, the Chief Minister and one of the Deemsters, with the Chief Secretary as an adviser.
 - c) The panel would consult the President and Speaker (and more widely if they considered it to be appropriate) prior to interviewing the candidates.
 - d) Following the interviews the panel would list the candidates in order of preference (excluding any deemed unsuitable for appointment) and the Lieutenant Governor would forward the list to the Secretary of State with a recommendation. (In practice the Crown Division of the Chief Secretary's Office would forward the interview panel's recommendation to the Department for Constitutional Affairs.)
 - e) The appointment of the selected candidate would then be made by Her Majesty by Letters Patent as at present.
- 2.11 The full text of the Memorandum, as noted by the Council of Ministers in September 2002, is attached at Annex 2.

3. Results of the Consultation Exercise

- 3.1 The Committee received responses from:
- Lieutenant Governor;
 - Hon A F Downie MHK;
 - Mr J D Q Cannan MHK;
 - The Lord Bishop;
 - Clerk of Tynwald (on behalf of the Tynwald Standing Committee on Constitutional Matters);
 - HM Attorney General;
 - His Honour Deemster Kerruish;
 - His Honour J W Corrin;
 - His Honour T W Cain;
 - Isle of Man Law Society.
- 3.2 With a single exception, none of those who responded suggested that HM Attorney General should not continue to be a Crown appointment and were content for the procedure set out in the Memorandum to be used.
- 3.3 One response suggested that HM Attorney General should remain a Crown Appointment with Isle of Man input, but did not support application and interview process in the Memorandum (for the Deemsters or Attorney General) and preferred the appointment to be by the Lieutenant Governor after consultation.

- 3.4 One response proposed that the roles of the HM Attorney General as advisor to the Crown and advisor to the Government should be separated and that consideration should be given to the possibility of appointing a Solicitor General.
- 3.5 One response whilst supporting the appointment procedure set out in the Memorandum proposed that candidates should be members of the Manx Bar of at least ten years' standing.

4. The view of the Department for Constitutional Affairs

- 4.1 The Department for Constitutional Affairs reiterated that if the Attorney General were appointed by someone other than Her Majesty, the post would cease to be a Crown Appointment.
- 4.2 The DCA identified that the following aspects of the Attorney General's role as raising particular issues in relation to the Crown:
- i) Giving advice to the Crown;
 - ii) Exercising functions under UK legislation such as initiating proceedings;
 - iii) Prosecuting on behalf of the Crown.
- 4.3 DCA was concerned about the appropriateness of someone who was not a Crown appointee giving advice to the Crown and prosecuting on behalf of the Crown. DCA was also concerned that the Attorney General's independence could be undermined if he was not appointed by the Crown.
- 4.4 The DCA suggested that both primary and secondary UK legislation would require amendment so as to ensure that the Attorney General's role remained unchanged. This would include amending references to HM's Attorney-General. Whilst this was a practical issue, rather than one of policy, DCA suggested that it was likely to be very difficult to get a legislative slot in the UK Parliament and a strong business case would need to be made.

5. The Position in Guernsey

- 5.1 Guernsey has two Law Officers appointed by the Crown by Royal Warrant under the Sign Manual: they hold office at Her Majesty's Pleasure, subject to a retiring age of 65 years. They are both legal advisers to the Crown and to the States of Guernsey. H. M. Procureur (Attorney-General) is the senior appointment, the other being H. M. Comptroller (Solicitor-General).

- 5.2 When a vacancy arises the Bailiff⁽¹⁾ circulates details of the vacancy to the Guernsey Bar. The Bailiff then consults with senior members of the States and the Royal Court as to the suitability of candidates following which he recommends a name to the Crown, through the Department for Constitutional Affairs.
- 5.3 The two Law Officers are primarily responsible for giving legal advice to the States and Government Departments and Committees, although on a day to day basis advice will normally be given to senior civil servants by designated qualified lawyers in the Law Officers' Department.
- 5.4 The Law Officers are members of the States with a voice but no vote. They are responsible for criminal proceedings which are brought by and in the name of the Law Officers of the Crown. They are also responsible for drafting legislation. They are currently supported by 12 qualified lawyers, one trainee lawyer and 12 administrative/secretarial staff.

6. The Position in Jersey

- 6.1 Both the Attorney General and Solicitor General are appointed by the Crown and hold office by a warrant from Her Majesty the Queen. Before an appointment is made, the position is advertised and applications are made to the Lieutenant Governor. The Governor reports to the Department for Constitutional Affairs on the views of the Island authorities in relation to the applications. These views are ascertained by the Bailiff⁽²⁾, who consults with the existing Crown Officers, the Jurats of the Royal Court, the President of the Jersey Law Society, the elected Head of the Jersey Bar, possibly some other senior lawyers, and with senior politicians. The Bailiff has a Consultative Panel of politicians with whom he would also consult. It falls to the Bailiff to draw together the results of the consultation process and advise the Lieutenant Governor of the Island's preferred candidate.
- 6.2 Both the Attorney General and Solicitor General are members of the States who can speak but have no vote.
- 6.3 There are currently 16 qualified lawyers within the Law Officers' Department, of whom two work part-time, in addition to the Attorney General and the Solicitor General. Consideration is currently being given to an application to increase the numbers of lawyers engaged. The Department also has a Chief Clerk, 9 secretaries, an Information Manager and a part-time accounts and court officer.

⁽¹⁾ The Bailiff in Guernsey is both Presiding Officer of the States and Chief Judge. (There is no trial by jury in Guernsey; instead a group of 12 Jurats, elected by the States of Election, sit in judgment on serious cases with the Bailiff presiding.) He is appointed by Her Majesty by Letters Patent and holds office until 65. There is a clear distinction between the Bailiff's role as Judge and his role as Presiding Officer. He does not have a vote - not even a casting vote - any tied vote is deemed lost. He appoints Acting Presiding Officers who preside when neither he nor the Deputy Bailiff can preside. He is also Acting Lieutenant-Governor.

⁽²⁾ The Bailiff (and Deputy Bailiff) in Jersey is appointed by the Crown by Letters Patent and holds office at the pleasure of Her Majesty usually until the age of 70. The appointment is made after consultation with the Island. The Bailiff is President of the States, the presiding officer of the States Assembly where he may speak in debates but does not vote.

- 6.4 The Attorney General does not currently have any responsibility for law drafting, unlike the position in Guernsey. There is no current intention to review that position. For information, the Law Draftsman's Department currently comprises one Law Draftsman and six full-time Assistant Law Draftsmen.
- 6.5 The general rule is that States' Departments should refer any request for legal advice to the Attorney General. Sometimes it is considered appropriate that external lawyers should be appointed, and these are either appointed directly by the Department with the consent of the Attorney General, or by the Attorney General on behalf of the Department.
- 6.6 Sundry litigation is dealt with by private sector advocates appointed by the Attorney General on a case by case basis. These usually involve cases where there is a reasonable prospect of the fees being recovered from one of the other parties to the litigation.
- 6.7 In his capacity as Head of the Jersey equivalent to the Serious Fraud Office in the UK, the Attorney General appoints private sector lawyers and forensic accountants from time to time in the investigation of serious crime. There is a Serious Crime Group within the Attorney General's Department which deals with international mutual legal assistance requests and with some of the serious crime investigations run by the Attorney General. This Group also assists in the larger investigations which are carried out. The policy however is not to maintain a full complement of staff able to cope with all the serious crime enquiries that might need to be made, but rather to buy in the legal and forensic accounting talent for specific cases as and when necessary. The view of Jersey's Attorney General is that this is a cost effective and practical method of delivering good results.

7. Conclusions

- 7.1 The Committee noted that the responses to the consultation exercise showed very little support for the appointment of HM Attorney General being made by the Council of Ministers at this time. The large majority of the consultees, including Tynwald's Standing Committee on Constitutional Matters, found the appointment procedure in the Memorandum to be acceptable.
- 7.2 The Committee noted that in Guernsey and Jersey both HM Attorney General and the deputy position of HM Solicitor General were appointed by the Crown and were both advisors to the Crown and the Government and States of the Islands. The Committee also noted that the legal and legislative drafting resources available to the Governments in Guernsey and Jersey appeared to be significantly greater than those available in the Isle of Man.

- 7.3 During the Committee's discussions HM Attorney General advised that he supported the view expressed in one of the responses to the consultation exercise that candidates for the post of Attorney General should be members of the Manx Bar of at least ten years' standing. The Committee concurred with this proposal and agreed that any advertisement should include this condition as a preference.
- 7.4 The Committee also considered whether there was merit in separating the roles of HM Attorney General as advisor to the Crown and advisor to the Government. Whilst this could remove any perception of a conflict of interest in the performance of his duties, it was not felt that there had been a real problem in practice.
- 7.5 The Committee noted that the Attorney General in the United Kingdom was also a political appointee and was advisor to both the Crown and the Government.
- 7.6 As only one response to the consultation exercise advocated separating the roles of HM Attorney General as advisor to the Crown and advisor to the Government, the Committee's view was not that it should not be progressed at this time.
- 7.7 Mr Rodan, however, wished it to be recorded that he believed there should be a separation of the roles of advisor to the Crown and advisor to the Government and Mr Braidwood concurred with this opinion.
- 7.8 The Committee therefore agreed to propose that HM Attorney General of the Isle of Man should be appointed with the existing duties and terms of appointment and by the procedure set out in the Memorandum, subject to the additional condition referred to in paragraph 7.3.

8. Recommendation

- 8.1 That the Attorney General of the Isle of Man should be appointed with the existing duties and terms of appointment, and by the procedure set out in the Memorandum finalised in 2002, with the additional preference for candidates to be members of the Manx Bar of at least ten years' standing.**

THE ATTORNEY GENERAL OF THE ISLE OF MAN

1. **Duties of the Attorney General**

- (1) To act as prosecutor in the Court of General Gaol Delivery.
- (2) To advise the Chief Constable as to prosecutions generally including cases of Summary Jurisdiction.
- (3) To act and appear for the Crown and the Departments of the Isle of Man Government and such Statutory Boards as the Council of Ministers may determine in court and other matters.
- (4) To advise the Lieutenant Governor, the Council of Ministers and the Departments of the Isle of Man Government and such Statutory Boards as the Council of Ministers may determine not only in matters of Law but in official matters generally.
- (5) To consider and advise upon matters affecting public interests generally; also as to charities where any action by the Attorney General is required.
- (6) To draft any Bills for introduction into the Legislature in accordance with instructions given by the Council of Ministers.
- (7) To advise on the extension to the Island of parliamentary legislation.
- (8) To attend as a non-voting Member sittings of the Legislative Council and Tynwald.
- (9) To attend meetings of the Council of Ministers and such other Committees as required.
- (10) To discharge such other functions as may be specified in statute.
- (11) To be the Accounting Officer and be responsible for the management of the Attorney General's Chambers.

2. **Private Practice**

The Attorney General shall be debarred from private practice, and shall give his whole time to the duties of his office.

3. **Terms of Appointment**

- (1) The Appointment is made by Her Majesty and is at pleasure subject to a normal retirement age of 65.
- (2) The salary is analogued to that of Group 6 judicial appointments in the United Kingdom.
- (3) The post is superannuable in accordance with the Judicial Pension Scheme 1992.
- (4) Thirty working days annual leave are allowed, plus eleven public and privilege holidays.

Annex 2

MEMORANDUM ON THE APPOINTMENT OF THE DEEMSTERS AND THE ATTORNEY GENERAL

1. The Deemsters

The Office of Deemster in the Isle of Man is an ancient one. The role of the Deemsters at Tynwald was described in the Customary Laws Act of 1417. There have always been two Deemsters, originally a northern Deemster and a southern Deemster, except for a short period at the end of the 18th century when there was only one Deemster. The Deemsters were members of the Lord's Council, which became the Legislative Council, until by the Isle of Man Constitution (Amendment) Act 1965 the Second Deemster ceased to be a member of the Legislative Council and by the Isle of Man Constitution (Amendment) Act 1975 the First Deemster ceased to be a member of the Legislative Council. Traditionally the two Deemsters have been the principal judicial officers, although until the beginning of the 20th century the Lieutenant Governor was the senior judicial officer. Another official, the Clerk of the Rolls, also had judicial functions.

The Isle of Man Judicature Act 1883 created the High Court of Justice of the Isle of Man and provided that the judges of the High Court should be the Lieutenant Governor, the Clerk of the Rolls and the two Deemsters. By the Judicature (Amendment) Act 1918 the offices of First Deemster and Clerk of the Rolls were amalgamated and a new judicial officer, the Judge of Appeal, became a judge of the High Court. By the Judicature (Amendment) Act 1921 the Lieutenant Governor ceased to be a Judge of the High Court.

By the High Court Act 1991, it is provided that the First Deemster, the Second Deemster and the Judge of Appeal shall be the judges of the High Court. The Act provides that every judge of the High Court shall hold his office at the pleasure of Her Majesty, and that when the office of a judge of the High Court is vacant, Her Majesty may appoint a "qualified person" to that office. The Judge of Appeal must be an English barrister and a Queen's Counsel. He may be appointed

for a period not exceeding five years, but he may then be re-appointed. The Act provides that the Lieutenant Governor may appoint acting judges of the High Court. The Act also provides that a Deemster shall vacate his office on the date on which he attains the age of 70 years, although there is no age limit for the Judge of Appeal or an acting judge. There is no definition in the Act of a "qualified person" as applicable to a Deemster.

Under the authority of their various Warrants of Appointment, the First Deemster acts as Lieutenant Governor in the absence from the Island of the holder of that office, as he also does during the interval between the departure of one Lieutenant Governor and the arrival of his successor. He is designated Deputy Governor; the Second Deemster acts as Lieutenant Governor in the absence of both the Lieutenant Governor and the First Deemster.

In the present century all the Deemsters have been appointed from amongst the leading members of the Manx Bar, with the exception of Deemster Stevenson Moore, who was appointed Second Deemster in 1900. I understand that he was a member of the English Bar but not of the Manx Bar, although he belonged to a Manx family. While the High Court Act 1991 does not state what qualifications are required by a Deemster, they ought to include, besides the personal qualities appropriate to judicial office, a sound knowledge of the constitution legal system and law of the Isle of Man. Membership of the Manx Bar need not, of itself, be a formal requirement.

The procedure by which vacancies in the office of Deemster have been filled has been largely determined by the Lieutenant Governor in office at the time. It appears that in recent years Lieutenant Governors have consulted the Deemsters in office and the senior members of Tynwald before making a recommendation to the Secretary of State. I consider that it would be desirable to make the procedure more open and structured.

2. The Attorney General

The office of Attorney General, unlike that of the Deemsters, is not statutory. However, the Attorney General, like the Deemsters, is appointed by the Crown. The Attorney General is a non-voting member of the Legislative Council and of Tynwald Court itself, to which he gives advice on legal matters; he is the principal legal adviser to the Crown, and so to the Lieutenant Governor, but the vast majority of his duties are as legal adviser to the Isle of Man Government, that is the Council of Ministers and the Government Departments. He also has many statutory functions, including the conduct of prosecutions on behalf of the Crown in the Court of General Gaol Delivery, the investigation of fraud and in relation to charities. Until 1921 the office was a part-time appointment, but it has since been a full-time salaried position. The Attorney General now heads a department which includes seven other lawyers. The Attorney General is responsible for all aspects of the Government's legal work, including legislative drafting which is carried out by two lawyers with that specific responsibility.

The qualifications necessary for an Attorney General must include a sound knowledge of the Island's constitution, legal system and law, including the Island's relationship with the United Kingdom and the European Union. It is also desirable that the Attorney General should have had experience of Manx Law and practice, as he is responsible for the conduct of Government litigation in the Manx Courts, the conduct of non-contentious matters to which Government is a party, the prosecution of criminal cases, advising the police and other agencies and a wide range of other legal work.

Appointments to the office of Attorney General have been made on the recommendation of the Lieutenant Governor, after consultation with the Deemsters and senior members of Tynwald. The arrangements for the appointment of the Attorney General, like that of the Deemsters, should be more open and structured.

3. Procedure for appointments

3.1 The First and Second Deemsters

When a vacancy occurs in the office of First and Second Deemster, the post of First and Second Deemster should be advertised in the local press and in an appropriate professional journal outside the Island. The advertisement would make it clear that the proposed appointment was a Crown appointment and that applicants would be expected to have a sound knowledge of the constitution, legal system and law of the Isle of Man. The criteria for appointment would include the personal qualities appropriate to judicial office but membership of the Manx Bar should not be pre-condition. It is highly improbable that anyone would have the necessary knowledge of the constitution, legal system and law of the Isle of Man, unless he or she had worked in the Isle of Man, but a person might have obtained the appropriate knowledge and experience by having been High Bailiff or Deputy High Bailiff or been employed in the Attorney General's department, or having held some other office in the Island, without necessarily having practised as a member of the Manx Bar. However, there might, quite exceptionally, be persons who had worked outside the Island who had acquired the necessary knowledge and experience of the constitution, legal system and law of the Isle of Man.

Since each appointment is a Crown appointment, applications should be made to the Chief Secretary of the Isle of Man Government. A panel comprising the Lieutenant Governor, the First Deemster, the First Deemster-designate (if any) and the Chief Minister should prepare a short list of three to five applicants and consult *inter alia* the President of Tynwald and the Speaker of the House of Keys before conducting interviews. The panel would be at liberty to involve a lawyer from outside the Island, such as the Judge of Appeal, as an adviser. It would finally be for the Lieutenant Governor to make his recommendation to the Secretary of State.

While it is likely that the Second Deemster would be appointed by First Deemster on a vacancy occurring in the office of First Deemster, there should be no similar presumption in favour of the Attorney General becoming the Second

Deemster, although this is the practice in the Channel Islands, and has frequently, but not invariably, been the practice in the Isle of Man in recent years. Experience as Attorney General is likely to be of value to a person who is appointed Deemster, but the functions of Deemster and Attorney General are different, and it does not necessarily follow that a person holding office as Attorney General would be the best candidate to fill a vacancy in the office of Second Deemster.

3.2 The Attorney General

On a vacancy occurring in the office of Attorney General the post should be advertised in the local press and in an appropriate professional journal outside the Island; and formal criteria for the information of applicants should be drawn up. As for the Deemsters, applications would be made to the Chief Secretary. The advertisement would state that the appointment was a Crown appointment and that applicants would be expected to have a sound knowledge of the constitution, legal system and law of the Isle of Man and that experience of Manx law and practice was desirable. Prior membership of the Manx Bar should not be a precondition to being appointed Attorney General, although it is unlikely that a person who had not been in practice at the Manx Bar would have acquired the necessary knowledge and experience. Following the receipt of applications for appointment, the First Deemster, consulting as appropriate, should prepare a short list of three to five candidates for consideration by a panel comprising the Lieutenant Governor, a Deemster and the Chief Minister, with the Chief Secretary as an adviser. Before interviews, the members of the panel should consult the President of Tynwald, the Speaker of the House of Keys, and more widely if appropriate. They would list the interviewed candidates in order of preference, excluding only those (if any) deemed unsuitable for appointment. The Lieutenant Governor would forward the list to the Secretary of State with his recommendations.

4. The Manx Bar

It is likely that most future appointments to the offices of Deemster and Attorney General will continue to be made from the Manx Bar, although there may well be exceptions. Fortunately the Manx Bar is now significantly larger, and, for the most part, better qualified than twenty years ago. There are now over 100 practising members of the Manx Bar. Since 1990 all those admitted as advocates have had to comply with the Advocates Admission Regulations 1987, which require that the applicant has, at least, a second class honours degree, has passed either the barristers' or solicitors' final examinations in England and has also passed the Manx advocates examination. This last examination is set and marked by the Deemsters as advised by three external examiners (currently from the Universities of Central Lancashire, Nottingham Trent, and Cardiff). The advocates examination is directed at the constitution, legal system and law of the Isle of Man and is extremely demanding. The Advocates Admission Regulations 1987 have undoubtedly raised the standing of the Manx Bar. In 1996 the Law Society of England and Wales amended its Regulations to provide that persons who have qualified as Manx advocates may become solicitors in England and Wales on application.

Amongst the Manx Bar there are many potential candidates for the offices of Deemster and Attorney General, and I believe that there will be an adequate number of suitably qualified candidates from whom future Deemsters and Attorney Generals can be chosen.

September 2002