

## **PART C**

### **7. THE ISLE OF MAN SYSTEM OF GOVERNMENT**

#### **i) Introduction**

- 7.1 The Tynwald resolution of 19<sup>th</sup> February 2002 required us to look at the government's handling of various matters. It was therefore incumbent on us to ensure that we sufficiently understood the Isle of Man system of government. To achieve this understanding we asked for and received statements from many politicians, civil servants and others. From these statements, and from the answers to the many questions which were asked of them, we received much relevant information, particularly in respect of the way in which the system worked, and works, in practice. To this information we added the result of our own researching of statute and guidance. We are consequently satisfied that we have achieved a good and sufficient understanding of the Isle of Man system of government over the last decade and more in order for us to approach our remit with knowledge of the relevant contextual system within which events took place.
- 7.2 Our enquiries have extended to two local authorities and, for this reason, we include a very brief outline of the structure and functions of local government, even though it is not at the forefront of our remit.
- 7.3 This section identifies the relevant basic elements of the Island's system of government within which the Department of Local Government and the Environment, including its Planning Committee and its planning office, operates. It is this system which allowed for the irregularities which occurred in the Planning Committee and in the planning office, which went uncorrected during the 1990s, and to which, later, we recommend some changes. We trust that it will also be of assistance to readers of the report who may not be especially familiar with this system, which is relevant background to many matters set out in this report.

#### **ii) Constitutional Status of the Isle of Man**

- 7.4 The Isle of Man is "an internally self-governing dependency of the British Crown"<sup>1</sup> or, more simply, a "Crown dependency".
- 7.5 The government of the Isle of Man includes a head of state in the person of Her Majesty the Queen; a legislature known as the Court of Tynwald; an executive headed by the Chief Minister and Council of Ministers; and an independent judiciary and system of Courts.<sup>2</sup>
- 7.6 His Excellency the Lieutenant Governor of the Isle of Man is the Queen's personal representative in the Island.<sup>3</sup>
- 7.7 By convention, the United Kingdom parliament does not legislate for the Isle of Man in matters of taxation and other matters of purely domestic concern.

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<sup>1</sup> Government and Law in the Isle of Man pages 92 and 98

<sup>2</sup> Government and Law in the Isle of Man page 92

<sup>3</sup> Government and Law in the Isle of Man page 102

iii) **Legislature**

- 7.8 Tynwald,<sup>4</sup> in its fullest sense, comprises the Sovereign; the Legislative Council, including the President of Tynwald, the Lord Bishop of Sodor and Man, the Attorney General for the Isle of Man and eight Members who are elected by the House of Keys; and the House of Keys, including its twenty-four Members.
- 7.9 The Legislative Council and the House of Keys are known as “the Branches” of Tynwald.<sup>5</sup> The Branches sit separately when they consider draft legislation in the form of Bills for enactment. When the Branches sit together, this is known as a “sitting of Tynwald”. Tynwald is primarily responsible for regulating the finances of the Isle of Man Government and for determining matters of policy which it does by resolution.<sup>6</sup>
- 7.10 The legislation for which Tynwald and its Branches are responsible<sup>7</sup> and which, for the most part, regulates the domestic affairs of the Isle of Man takes two forms, namely primary legislation which is brought before the legislature for consideration in the form of draft Bills which become Acts of Tynwald<sup>8</sup> at the completion of their legislative process, and delegated, subordinate or secondary legislation<sup>9</sup> in the form of Orders, Regulations, rules and resolutions which are made by Tynwald, the Governor in Council, government departments, statutory boards, as appropriate, in accordance with the provisions of respective Acts. Primary legislation requires Royal Assent<sup>10</sup> before it may be passed into law.
- 7.11 In addition to their primary function of the consideration of draft legislation, the individual Members of the Legislative Council have other responsibilities, including membership of Tynwald, ministerial appointments and appointments to membership of government departments, statutory boards and various Committees.
- 7.12 The twenty-four Members of the House of Keys are elected by the Island's fifteen constituencies at general elections which are held every five years.<sup>11</sup> There are no party politics in the Isle of Man in the conventional sense of two or three major political parties which compete for control of the legislature. While the Manx Labour Party has a small representation, and a group of Members of like mind comprise the Alliance for Progressive Government which is also known as “the APG” and which was formerly the Alternative Policy Group, the majority of Members are elected as independents, whether by public elections in the case of the Keys<sup>12</sup> or by the Keys in the case of the Legislative Council.<sup>13</sup>
- 7.13 The primary function of the House of Keys is the consideration and approval or rejection of draft legislation in the form of Bills,<sup>14</sup> but its Members have other responsibilities similar to the additional responsibilities of the Members of the Legislative Council as set out above.

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<sup>4</sup> Tynwald Companion 2000, page 1.14

<sup>5</sup> Government and Law in the Isle of Man page 214 & Tynwald Companion 2000 page 1.1

<sup>6</sup> Tynwald Companion 2000 page 1.3

<sup>7</sup> Tynwald Companion 2000 page 1.1

<sup>8</sup> Tynwald Companion 2000 page 1.2

<sup>9</sup> Tynwald Companion 2000 page 1.3

<sup>10</sup> Tynwald Companion 2000 page 1.4

<sup>11</sup> Government and Law in the Isle of Man page 266

<sup>12</sup> Government and Law in the Isle of Man page 266

<sup>13</sup> Government and Law in the Isle of Man page 258

<sup>14</sup> Tynwald Companion 2000 page 1.6

**iv) Executive prior to 1980s**

7.14 Prior to the implementation of the changes which were made in the 1980s, the Lieutenant Governor presided over Tynwald and exercised significant executive powers.<sup>15</sup> He was assisted in the exercise of his functions by an Executive Council and a wide variety of boards and Committees of Tynwald whose functions were frequently advisory rather than executive.

**v) Changes in the Executive in the 1980s**

7.15 During the early 1980s, there were a series of moves to reform the manner in which executive powers were exercised in the Isle of Man. The main effects of the reforms were to constitute a Council of Ministers, in succession to the former Executive Council;<sup>16</sup> determine and, where appropriate, transfer the functions of the various boards and Committees to the boards of Tynwald which were to be re-constituted as the government departments and statutory boards; re-constitute the boards of Tynwald as government departments<sup>17</sup> and statutory boards<sup>18</sup>, in succession to the various boards and Committees which were then in existence; and transfer various executive functions which were exercised by the Lieutenant Governor to the Council of Ministers, the government departments and the statutory boards. In summary, the process culminated in the complete rationalisation of the responsibilities of what were some twenty seven boards at the beginning of the decade into nine major departments each headed by a minister and two other Members of Tynwald.<sup>19</sup>

7.16 These reforms followed after the publication in September 1985 of a Report of the Select Committee of Tynwald advocating such reforms.

**vi) Executive in the 1990s – the Ministerial System**

7.17 By the end of the 1980s the reforms were in place so that the Executive in the 1990s became as explained below.

7.18 Executive authority is vested in the Chief Minister, who is appointed from among the Members of Tynwald, and his nine ministers who are Members of Tynwald. The Chief Minister and his nine ministers comprise the Council of Ministers. They are responsible for the nine government departments, together with the seven statutory boards, subject to the overall direction of “the Governor in Council”.<sup>20</sup>

7.19 The Council of Ministers, the government departments and the statutory boards are responsible to Tynwald for the exercise of their functions. In addition, there are a number of other “offices” which serve to meet prescribed objectives, but which are outside the strict confines of the ministerial system. These several other “offices” are such as the Chief Secretary’s Office and the Attorney General’s Chambers.<sup>21</sup> The day-to-day affairs of these “offices” are administered in each case by a staff of civil servants.<sup>22</sup>

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<sup>15</sup> Government and Law in the Isle of Man page 103

<sup>16</sup> Council of Ministers Act 1990 Document L15

<sup>17</sup> Government Departments Act 1987 Document L14

<sup>18</sup> Statutory Boards Act 1987 Document L17

<sup>19</sup> C21 Poole Report paragraph 1.2

<sup>20</sup> Council of Ministers Act 1990 Document L15

<sup>21</sup> Government and Law in the Isle of Man page 410

<sup>22</sup> Guide to Departments, Statutory Boards and Offices section 4 Document L25

7.20 The Chief Minister, Council of Ministers and the government departments are explained further below. The statutory boards, about which it is not necessary to say anything further, are responsible to Tynwald for the exercise of their respective statutory functions.

**vii) Chief Minister and Council of Ministers**

7.21 The Council of Ministers Act 1990 requires that the Chief Minister is appointed from among the Members of Tynwald by the Lieutenant Governor on the nomination of Tynwald.<sup>23</sup>

7.22 The 1990 Act also requires that the ministers are appointed from among the Members of Tynwald by the Governor, acting on the advice and with the concurrence of the Chief Minister.<sup>24</sup>

7.23 As a matter of practice, it is usual for the Chief Minister to seek to appoint ministers from among Members of the House of Keys. This is borne out by the fact that the Council of Ministers which was appointed in 2002 comprised the Chief Minister and eight ministers who were Members of the House of Keys and only one minister who was a Member of the Legislative Council.

7.24 The Council of Ministers meets weekly or at such intervals as the Chief Minister shall direct and the proceedings are confidential.<sup>25</sup>

7.25 The document entitled “The Council of Ministers: Notes for Ministers”<sup>26</sup> (November, 2001) states,<sup>27</sup> in relation to the role of the Council of Ministers, that “The role of the Council of Ministers is an evolving one. Historically, the classical distinction between the Legislature and the Executive on the Island was somewhat unclear... With the development of Ministerial government and the creation of a Council comprising the Ministers, a clearer distinction between the Legislature and Executive is possible and the vesting of Departmental authority in the various Ministers places considerable authority in the hands of a separately identifiable group of Members within Tynwald and allows the Council to begin to be seen as ‘the Government’ or as a Cabinet...” The Council of Ministers exercises both statutory and non-statutory functions. The functions include determining policies and priorities; resolving difficulties and providing information; and developing unity.

7.26 The Chief Minister and the Council of Ministers are served by a permanent staff of civil servants.

**viii) Government Departments**

7.27 The nine government departments carry on much of the day-to-day administration of the government of the Isle of Man. Their constitution and the manner of the exercise of their functions are embodied in the Government Departments Act 1987.

7.28 The four government departments which were primarily involved with the development at Mount Murray were the Treasury; the Department of Transport which was formerly known as “the Department of Highways, Ports and Properties”; the

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<sup>23</sup> Council of Ministers Act 1990 section 2(1) Document L15

<sup>24</sup> Council of Ministers Act 1990 section 3(1) Document L15

<sup>25</sup> Council of Ministers Act 1990 section 6(1) Document L15

<sup>26</sup> Notes for Ministers Document L16

<sup>27</sup> Notes for Ministers paragraph 12 Document L16

Department of Local Government and the Environment; and the Department of Tourism and Leisure which was formerly known as “the Department of Tourism, Leisure and Transport” and, before that, “the Department of Tourism and Transport”.

- 7.29 Each department consists of the minister and one or more other members who are Members of Tynwald.<sup>28</sup>
- 7.30 The members of each department (other than the minister) are appointed by the Governor in Council.<sup>29</sup>
- 7.31 The minister may authorise any member or officer of the department, or any other person, to exercise any functions of the department in his place, either alone or jointly with him or her or with any other person<sup>30</sup> and such persons as are so authorised may authorise any officer of the department to exercise any of those functions in his or her place.<sup>31</sup>
- 7.32 Section 6 of the 1987 Act, as amended, has particular relevance in our view as it provides for the supervision of the departments by the Chief Minister and Council of Ministers. First, it allows that “The Council of Ministers may, after consultation with any Department, give to the Department directions as to the exercise of its functions in relation to any matter which appears to the Council of Ministers to affect the public interest, and the Department shall comply with any such directions”. Second, it requires that “Every Department shall supply to the Chief Minister such information, and render such other assistance, as the Chief Minister may from time to time require.”
- 7.33 The day-to-day affairs of each of the nine government departments are administered in each case by a staff of civil servants.<sup>32</sup>
- 7.34 The accountability of ministers and civil servants is explained in a guidance note<sup>33</sup> as follows “Constitutionally, Ministers are responsible and accountable for all actions carried out by civil servants of their Departments in pursuit of Government policies or in the discharge of responsibilities”. They are responsible to Tynwald for ensuring that action is taken to put matters right and prevent a recurrence of mistakes made in their Department. There are established means available, e.g. internal inquiry and disciplinary proceedings whereby the Head of a Department or the [Civil Service] Commission can bring an individual civil servant to account and can penalise him if necessary.<sup>34</sup>

**ix) Department of Local Government and the Environment**

- 7.35 The Department of Local Government and the Environment was established by means of the Department of Local Government and the Environment Order 1986 (Government Circular No. 192/86).

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<sup>28</sup> Government Departments Act 1987 section 1(2) Document L14

<sup>29</sup> Government Departments Act 1987 section 2 Document L14

<sup>30</sup> Government Departments Act 1987 section 3(2) Document L14

<sup>31</sup> Government Departments Act 1987 section 3(3) Document L14

<sup>32</sup> Government and Law in the Isle of Man page 366

<sup>33</sup> Ministers & Civil Servants: Duties and Responsibilities paragraph 7 Document L1

<sup>34</sup> Ministers & Civil Servants: Duties and Responsibilities 7 Document L1

- 7.36 In 1991, the total number of staff of the Department of Local Government and the Environment comprised some 68 people including 12 in the planning office. The current establishment is 157, including 19 in the planning office.<sup>35</sup>
- 7.37 In November 2001, a guide entitled “Isle of Man Government - A Guide To Its Departments, Statutory Boards and Offices” was published by the Chief Secretary. It records that the functions and responsibilities of the department include “performing the role of planning authority for the Island, through its Planning Committee” and that the main departmental policies of the department include aspirations in respect of planning - “To:  
“(a) refine and improve the system of land use planning, by:-  
(i) establishing an all Island Strategic Plan;  
(ii) revising and introducing Area Plans in response to local changes and needs;  
(iii) making one or more Appointed Day Orders to bring into operation Parts 2 to 5 of the Town and Country Planning Act 1999 and introducing secondary legislation to underpin the same;  
“(b) maintain an effective development control regime which ensures that all material considerations are taken into account in the determination of applications for planning consent, and that enforcement action is taken against those who carry out unauthorised development, wherever appropriate.”
- 7.38 The statutory basis for, and nature of, development control remains as set out in section 8 and 9 below.
- 7.39 The planning office<sup>36</sup> administers the system of town and country planning in the Isle of Man in support of the Planning Committee (see also paragraph 8.7 below). In addition to its responsibilities for the Development Plan (including Local Plans) and for planning policy, it receives applications for development proposals, examines them and presents them, with recommendations, to the Planning Committee for determination.<sup>37</sup> It is staffed by members of the Isle of Man Civil Service, comprising: the Director of Planning & Building Control; five planning officers, two conservation officers, an enforcement officer, ten administrative support staff including the Secretary to the Planning Committee.<sup>38</sup> In 1991 it was staffed by the Chief Architect and Planning Officer, three planning officers, an enforcement officer and seven administrative support staff including the Secretary of the Planning Committee. We understand that the planning office is also known as the Office of Planning<sup>39</sup> but, in practice, it is rarely referred to as such.
- 7.40 The Minister for Local Government and the Environment is responsible for the determination of appeals against decisions of the Planning Committee in accordance with paragraph 7 of schedule 1 to the Isle of Man Planning Scheme (Development Plan) Order 1982, (Government Circular No. 140/82) as amended.<sup>40</sup>
- 7.41 The Attorney General has advised that it is not appropriate for the Minister for Local Government and the Environment to discuss the merits of a planning application, whether in principle or a detailed application, with any person who is interested in the outcome of the application. The reason for this being that the minister may have to adjudicate a recommendation by an independent planning inspector and, to that

<sup>35</sup> Mr McCauley P12 letter 31.1.2003

<sup>36</sup> Mr Hamilton P10 letter 27.8.02

<sup>37</sup> Mr Hamilton P10 Document P10 page 2

<sup>38</sup> Mr McCauley P12 letter 31.1.2003

<sup>39</sup> Mr Hamilton P10 letter 27.8.02

<sup>40</sup> Document C3

extent, would have to act in a quasi judicial capacity. It is therefore considered important that any person acting in a judicial or quasi judicial capacity should not discuss the merits of the case with an interested party or witness.<sup>41</sup> It should be noted however that the advice does not restrict the minister from dealing with matters outside the “merits of the case” but still pertaining to it. This is an important distinction to which we return later in sections 8 (v) and 11 (ix). The full text of the advice given to the Department of Local Government and the Environment by the current Attorney General which accords with previous advice is “I concur with the advice you have previously received that it is not appropriate for the Minister of the Department of Local Government and the Environment to discuss the merits of a planning application, whether in principle or a detailed application, with any person who is interested in the outcome of the application. The Minister may have to adjudicate a recommendation by an independent planning inspector and, to that extent, would have to act in a quasi judicial capacity. It is important that any person acting in a judicial or quasi judicial capacity should not discuss the merits of the case with an interested party or witness. Whilst, inevitably, the Minister of the Department of Local Government and the Environment will wish to contribute to a debate on general matters involving the development of the Island and the broad policy to be adopted by Government in the context of proceedings in the Council of Ministers, I do not consider that it is appropriate that the Minister should express a view or become involved in discussions in relation to particular planning applications whether of principle or of detail, again for the reasons mentioned above.”

**x) Department of Tourism and Leisure**

7.42 The Department of Tourism and Leisure was established as the Department of Tourism and Transport by means of the Department of Tourism and Transport Order 1986 (Government Circular No. 122/86).

7.43 The main departmental policies of the department in 1991 were described in a then current document entitled “Isle of Man Government - A Guide To Its Departments, Statutory Boards and Offices” which was published in November 1991, as including: “Tourism - To develop, promote and encourage tourism to bring economic and social benefits to the Isle of Man”; and “Leisure - To promote opportunities for all sectors of the community to participate in sporting, leisure and recreational facilities and to encourage excellence in sport.”

7.44 The functions and responsibilities of the department were described in the same publication under headings which included the following objectives - “Tourism – Development - To encourage and attract new development through commercial sources ... ; Marketing/Promotions – To market the Isle of Man in association with the Industry ... and act as a catalyst on matters concerning tourism;...” and “Leisure - To promote and operate the various facilities under the Department’s control.” The policies, functions and responsibilities are stated differently today,<sup>42</sup> but not in any way which needs to be brought to attention.

7.45 In June 1990, the department published a document entitled Tourism & Reality: A Tourism Development Strategy for the Isle of Man. The opening paragraph of the minister’s introduction states, so far as relevant “Tourism is a key-component of all developed economies. The Isle of Man is no exception, to turn our backs on tourism

<sup>41</sup> Mr McCauley P12 letter 10.12.2002

<sup>42</sup> Guide to Departments Statutory Boards & Offices page 24 Document L25

would be potentially devastating and extremely ill advised. I am, therefore, determined that we should ... strive confidently towards a new era in which tourism will once again be a major force.”<sup>43</sup>

- 7.46 Under the heading “Principal Aims and Objectives” a reasoned explanation of these is set out. We need here identify only that there is set out an aim to increase the tourism contribution to the Gross Domestic Product by 25% in real terms within five years. Also, we note separately that the condition of tourism in the early 1990s was a factor which played a part in the events surrounding the consideration of the applications at Mount Murray.

**xi) Treasury**

- 7.47 The Treasury produces the annual budget and administers the general revenue of the Island for the government.<sup>44</sup>

- 7.48 The Chief Financial Officer is the principal financial adviser to the Treasury.<sup>45</sup> The Treasury is divided into a number of divisions including the Income Tax Division which is headed by the Assessor of Income Tax and which administers the Isle of Man Government’s system of income tax and the Internal Audit Division which is headed by the Chief Internal Auditor and which carries out internal audit procedures within the Treasury and the other government departments and statutory boards of the Isle of Man Government.<sup>46</sup> The head of each division reports directly to the Chief Financial Officer and, by extension, to the Treasury.<sup>47</sup>

**xii) Department of Highways, Ports and Properties**

- 7.49 The Department of Highways, Ports and Properties was established by means of the Department of Highways Ports and Properties Order 1986 (Government Circular No. 190/86).

- 7.50 The responsibilities of the Department included the regulation and maintenance of drainage (including sewage disposal) and the transport infrastructure (including roads) in the Island.<sup>48</sup>

**xiii) Inter-relationship between Ministers when Issues Overlap**

- 7.51 The document<sup>49</sup> produced in relation to the role of the Council of Ministers in “Resolving Difficulties and Providing Information” states that:  
“Council does not have a network of Cabinet committees that the United Kingdom has in order to deal with issues which affect more than one Department or to resolve inter-Departmental disputes. Such issues and disputes should be resolved by ad hoc inter-Departmental discussions. Where agreement is not possible, Council may act as the final arbiter.  
“Council is also used by Departments as a sounding board for testing proposals which, although clearly within the ambit of the Department concerned, may be controversial and on which the Department seeks a wider political view before a

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<sup>43</sup> Tourism & Reality page 2 Document L37

<sup>44</sup> Treasury Act 1985 Section 3(1) Document L38

<sup>45</sup> Treasury Act 1985 section 5(1) Document L38

<sup>46</sup> Government and Law in the Isle of Man page 340

<sup>47</sup> Government and Law in the Isle of Man page 340

<sup>48</sup> Government and Law in the Isle of Man page 352

<sup>49</sup> Notes for Ministers paragraphs 25, 26, 27 28 and 29 Document L16

commitment is made. A variant of this is where there is a particular problem within a Department and the views of Council are sought in an advisory capacity.

“In addition, Council provides a forum for the exchange or receipt of information. It is an opportunity to advise their colleagues on matters of interest from within their Departments and to receive background memoranda of various sorts which do not require a decision.

“It is inherent in this function of Council and in the function of developing unity, discussed below, that there should be nothing of significance placed on the Tynwald agenda, or announced in public, which is a cause of unwelcome surprise to Council.

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

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

- 7.52 These are important passages because if the evidence on this point of witnesses who were ministers is accepted, as it is, the Mount Murray matters in which we are interested were never brought to the Council of Ministers notwithstanding the above explained pragmatic functions of the Council of Ministers. The minutes of the Council of Ministers<sup>50</sup> corroborate that evidence. Some Mount Murray matters did go to the Council of Ministers but never those which exercise this Commission. We find this remarkable and strong evidence of a breakdown of systems. We were told that Mount Murray was especially important for tourism in the Isle of Man. If so, it is perverse that its progress was never formally reported to the Council of Ministers by the Minister for the Department of Local Government and the Environment.

#### **xiv) Investigatory Powers of Government**

- 7.53 The Council of Ministers, the government departments and the statutory boards devise and carry out policies through a variety of procedures which are embodied in Orders, Regulations and Circulars. In the event that something is perceived to have gone wrong in a government department and requires investigation, there are several courses of action which the Chief Minister, the Council of Ministers or the minister for the department can adopt to investigate or otherwise rectify the matter, some “internal” and some “external”.

- 7.54 In answer to a request from the Chairman of the Commission that he explain how “overseeing and scrutinising is done”, Mr Kissack, the then Chief Secretary, stated “I suppose the shorthand version of that is by normal parliamentary process. The normal avenues of parliamentary process are open and Members of Tynwald, both House of Keys and the Legislative Council, are able to put questions to any member of the administration, either oral questions or written questions. Tynwald or indeed either of the Branches is able to set up Select Committees of Inquiries into individual matters on the basis of a resolution promoted by any member. If Tynwald accepts the proposition they will set up a Select Committee. There are a number of Standing Committees which look at specific issues. I suppose most particularly is the Public Accounts Committee which will look at financial matters, and they have their own discretion as to what issues they will pick up and look at and will forward on to Tynwald. These are, I think, those which are probably the main matters”.<sup>51</sup>

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<sup>50</sup> Confidential but examined by the Commission

<sup>51</sup> Evidence of Mr Kissack P3 Notes Day 2 page 2

- 7.55 Mr Kissack added “but perhaps there is something unique to the Manx parliamentary system. There is a right of individual petition for redress every year. I refer to Tynwald in July. There is a facility for any aggrieved member of the public to present a petition to government at that ceremony and, providing the Standing Orders are met, any member of Tynwald can propose that any one of those petitions be picked up and be dealt with by a Select Committee...”<sup>52</sup> No such petitions were presented in respect of the development at Mount Murray.
- 7.56 The internal courses of action, as the Commission would call them, include the power of the Council of Ministers to direct a department to investigate and report in accordance with the provisions of section 6 of the Government Departments Act 1987, as amended. In addition the minister or the Chief Executive for a department may commission a member of staff of the department, or external auditors, or the Internal Audit Division of the Treasury to investigate and report.
- 7.57 The external courses of action, as the Commission would call them, include questions in Tynwald and/or in the Branches, reference to the Committee on Expenditure and Public Accounts, if appropriate, appointment of a Select Committee, and appointment of a Committee of Inquiry under the Inquiries (Evidence) Act 1950.
- 7.58 The roles of the external auditors and the internal auditors are referred to in paragraphs 16.22 to 16.38 below.
- 7.59 Notwithstanding the realisation by Mr Gelling, sometime in 1997/98 when he was Chief Minister<sup>53</sup> and the disclosure to the Planning Committee by Mr Vannan on 20<sup>th</sup> June 1997<sup>54</sup> of the true nature of the planning permissions in respect of Mount Murray, no minister, Chief Executive or chairman of the Planning Committee seems to have contemplated instituting an internal investigation to ascertain what had happened and how it had happened. In the event, it was left to the Council of Ministers<sup>55</sup> in the year 2000 to appoint Professor Crow to carry out his investigation and report.
- 7.60 In response to his enquiry as to the statutory authority for the appointment of Professor Crow, the Attorney General advised Mr Willers in his capacity as a director of Conrad Hotels Limited “In so far as the power to institute the Enquiry is concerned I am satisfied that the Council of Ministers, representing Executive Government in the Island, and in exercise of its general power as it thinks fit to review a matter which Council considered was of significant importance, was justified in instigating the Enquiry. Clearly the planning and development history of the Mount Murray site was a matter of significant importance and, given that the concern related primarily to planning, it was not surprising that the Department of Local Government and The Environment had resolved to co-operate fully with any investigation which Council might decide to initiate. Moreover, it was entirely appropriate that Professor Crow, as a former senior planning inspector, should be invited to carry out the Enquiry. I do not consider therefore that it is necessary to identify a statutory authority for the carrying out of the [Professor Crow’s] Inquiry but I believe that the Inquiry would fall squarely within the powers contained within section 6(2) of the Government Departments Act 1987.”<sup>56</sup>

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<sup>52</sup> Evidence of Mr Kissack P3 Notes Day 2 page 2

<sup>53</sup> Mr Gelling Document Q23 page 3

<sup>54</sup> File A page 166

<sup>55</sup> Professor Crow Document P11 page 2

<sup>56</sup> HM Attorney General letter to Mr Willers 12.02.2001 F27

7.61 It was only after Professor Crow had reported and Mr Karran had proposed the setting up of a Commission of Inquiry that the Chief Minister proposed the establishment of a Select Committee.

**xv) Civil Service and Ministers**

7.62 Mr G H Waft, Chairman of the Civil Service Commission, and Mrs B Skillicorn, Secretary to the Civil Service Commission, gave helpful evidence in explanation of the Isle of Man Civil Service. The following paragraphs set out in summary form some relevant contextual aspects from their written evidence to us.

7.63 The day-to-day affairs of each of the nine government departments are, together with two of the statutory boards and several “offices”, administered in each case by a staff of civil servants. There are currently approximately 1,850 civil servants.<sup>57</sup>

7.64 The basic principles governing the relationship between ministers and civil servants are explained in a guidance note<sup>58</sup> and include “Ministers are expected ... to refrain from asking or instructing civil servants to do things they should not do” (paragraph 3.1); and “It is the duty of civil servants to serve their Ministers with integrity and to the best of their ability.” (paragraph 3.3)

**xvi) Isle of Man Civil Service**

7.65 The Isle of Man Civil Service is a unified service.<sup>59</sup> This means that the members of the Isle of Man Civil Service may transfer, whether or not on promotion, from one government department or statutory board to another and, by extension, one job to another provided that the Personnel Office or Civil Service Commission, as appropriate, is disposed to make the appointment. The unified form of Civil Service was introduced in 1962 because it was considered that this form of service was more sensible and efficient, given the size of the Isle of Man Civil Service.<sup>60</sup>

7.66 We have not sought to enquire in any depth into the nature and extent of the training which is provided for civil servants in the Isle of Man, but we have nevertheless, formed the view that proper training and supervision is imperative if error and oversight by civil servants transferring between one department and another is to be avoided.

**xvii) Civil Service Commission**

7.67 The Isle of Man Civil Service is under the general direction of the Civil Service Commission. Section 2(7) of the Civil Service Act 1990 provides that the Chief Minister may, after consultation with the Commission, give to the Commission such directions as to the exercise of its functions in relation to any matter which appears to him to affect the public interest, and the Commission has to comply with any such direction.

7.68 Section 2(1) of the Act, as amended, provides that the Civil Service Commission shall consist of a chairman, who is a member of Tynwald, one other person, not a member of Tynwald, both appointed by the Council of Ministers, and the Chief Secretary. Under the Act the chairman carries out or delegates the Commission’s

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<sup>57</sup> Mr Waft Document P4 page 4

<sup>58</sup> C8 Ministers and Civil Servants: Duties and Responsibilities paragraph 3

<sup>59</sup> C21 Poole Report paragraph 9

<sup>60</sup> C21 Poole Report paragraph 9.1.2

functions which include the appointment and terms of service of civil servants. More senior appointments require the concurrence of the department or board in question.

**xviii) Office of Chief Secretary**

7.69 Section 7 of the Civil Service Act 1990 provides that the office of Government Secretary is renamed 'Chief Secretary' and that the appointment of a person to the office of Chief Secretary has to be with the concurrence of the Chief Minister after consultation with the Governor. The Chief Secretary is, in effect, the Chief Executive Officer of the Chief Secretary's Office and head of the civil service.<sup>61</sup>

**xix) Personnel Office**

7.70 The Personnel Office is one of several "offices" which do not fall directly under the control of a government department or a statutory board. The Secretary of the Civil Service Commission is also the Chief Officer of the Personnel Office which "provides secretariat, research and support services to the Commission."<sup>62</sup> The Personnel Office "is the source of specialist advice to Chief Executives and Civil Service managers on matters such as interpretation of policy, terms and conditions of service and best practice in respect of industrial and employee relations."<sup>63</sup>

**xx) Management of the Civil Service**

7.71 Mr Waft explained to us that the position was that discipline is a matter for management and that it follows that day-to-day responsibility must rest with the Chief Executives and heads of divisions. The Civil Service disciplinary procedures are contained within the Manx Civil Service Regulations and provide the necessary authority for disciplinary matters to be handled without reference, in most cases, to the Commission. Heads of departments and divisions have a range of penalties open to them, where breaches of conduct are proven, from formal warnings to demotion to another vacant post.<sup>64</sup>

7.72 He further explained that where the Chief Executives or heads of divisions judge that misconduct is so serious that they cannot deal adequately with it, they are required to refer the papers to the Civil Service Commission with a recommendation for dismissal from the Civil Service. This is because only the Commission has power to terminate the appointment of a civil servant under the 1990 Act. Any decision taken by the Commission to terminate any appointment must be 'for good cause' in accordance with Section 4(2) of the Act and the person concerned has a right of appeal to the independent Civil Service Appeal Tribunal.<sup>65</sup>

7.73 He added that where as a consequence of an officer's under-performance which may be attributable to lack of capacity or ill-health, a Chief Executive or head of division judges that steps should be taken to terminate the appointment, reference must be made to the Commission with a substantive case for dismissal.<sup>66</sup>

7.74 Mrs Skillicorn told us that Chief Executives are accountable to the Commission for day-to-day management and the adherence to policies and procedures determined

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<sup>61</sup> Government and Law in the Isle of Man page 327

<sup>62</sup> Mrs Skillicorn Document P5 page 1

<sup>63</sup> Mrs Skillicorn Document P5 page 1

<sup>64</sup> Mr Waft Document P4 page 4

<sup>65</sup> Mr Waft Document P4 page 4

<sup>66</sup> Mr Waft Document P4 page 5

by the Commission. Similarly, Chief Executives are accountable to ministers for the implementation of departmental policy and strategy and that in practice operational management is delegated from the Chief Executive to the various management levels within their organisation as provided for under procedures set out in Manx Civil Service Regulations. These include such matters as poor performance, discipline and grievances.<sup>67</sup>

**xxi) Chief Officers' Group**

- 7.75 The Chief Officers' Group<sup>68</sup> first met on 21<sup>st</sup> March 1989. Initially, it comprised the Chief Secretary who was the chairman and the Chief Executives of the nine government departments. The Secretary of the group is provided by the Chief Secretary's Office. In November 1991 the membership of the group was revised to include the Chief Officer of the Personnel Office. The Chief Officers' Group is non-statutory. It shadows the work of the Council of Ministers.<sup>69</sup>
- 7.76 The group meets monthly. The current remit of the group dates from August 1993 and is:
- (a) to provide a forum for Chief Officers to raise issues of policy, management and common interest and to report on matters from their departments;
  - (b) to consider issues emanating from decisions of the Council of Ministers which have a bearing on the work of departments and the management implications thereof;
  - (c) to sit as a consultative and advisory forum on specific issues which are referred to it by, for example, the Council of Ministers, the Treasury, the Civil Service Commission, etc;
  - (d) to develop something of a 'think tank' role for the overall direction of government and to generate initiatives which are not covered by the remit of other groups or committees.<sup>70</sup>
- 7.77 Prior to each meeting of the group, each Chief Officer is given the opportunity to nominate an item or items for inclusion on the agenda for the ensuing meeting in order that problems or issues, which have arisen within one department and which are of general application, may be discussed and, where possible, resolved.<sup>71</sup>
- 7.78 The group receives briefings on the proceedings of the Council of Ministers in the same way as Members of Tynwald receive briefings and the group contributes to the work of the Council of Ministers by providing advice either directly to the Council or indirectly through the Chief Secretary.
- 7.79 The group also provides a forum where the Chief Officers can consider the government's Annual Review of Policies and Programmes and the Budget and it is a vehicle which can be used outside the routine monthly meetings for one-off briefings, presentations and discussions on major topics as they arise.<sup>72</sup>

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<sup>67</sup> Mrs Skillicorn Document P5 page 2

<sup>68</sup> Update, October 1996 Document L68

<sup>69</sup> Update, October 1996 Document L68

<sup>70</sup> Update, October 1996 Document L68

<sup>71</sup> Update, October 1996 Document L68

<sup>72</sup> Update, October 1996 Document L68

7.80 Notwithstanding the ever-widening consequences of the irregularities which attended the granting of planning permissions for the development at Mount Murray, the Chief Officers' Group has never considered the matter.<sup>73</sup>

**xxii) Summary Note on the System of Central Government as we conclude that it operates**

7.81 In theory, the Council of Ministers, under the chairmanship of the Chief Minister, acts as a unifying body which co-ordinates government policy and the activities of the nine government departments.

7.82 In practice, each of the nine ministers carries out his or her respective statutory duties without any requirement to report matters to the Council of Ministers. In addition, consensus government appears to have the effect that it is difficult for the Chief Minister to take real issue with his ministers for fear that he may have to dismiss a minister and then have to appoint a suitable replacement. One former Chief Minister's belief that the office held no powers, an incorrect belief as it happens, is referred to in sub-section 16 (iv) below. Although incorrect such belief is a useful pragmatic indicator of realities.

7.83 The Chief Officers' Group, under the chairmanship of the Chief Secretary, is also surely intended to be a unifying body which assists with the co-ordination of government policy and the activities of the nine government departments. The Chief Officers' Group was in being in 1991; it is reasonable to believe that it might have been an appropriate agency to resolve the cross-departmental interests in respect of the Mount Murray development, but it did not do so.

7.84 In the absence of a party system and having regard to the small number of Members of Tynwald, there is no easy solution to the problem.

7.85 The Council of Ministers seeks to adopt a "corporate" approach to the conduct of its business. It is difficult to see how this can be done if the Council is not privy to the making by government departments of major decisions which may well have major effects on the local community and its economy. We have noted that neither the applications for, nor the grants of, planning permissions, together with their attendant conditions, in respect of Mount Murray were notified to the Council of Ministers, notwithstanding the fact that the development is and was acknowledged to be a major economic advance for the Isle of Man.

7.86 There should not be such omissions from their considerations if the Council were to prepare a document specifying the nature and extent of the information which it expects each of the individual ministers to report to the Council in the ordinary course.

7.87 The current external audit arrangements to ensure compliance with legislation and procedures within government departments are not satisfactorily effective. We explain the deficiencies and our recommendations for overcoming these deficiencies in sub-section 15 (vii) and in sections 16 and 19 below.

**xxiii) Local Government**

7.88 In addition to the structure of central government in the Isle of Man, there is a network of local authorities which provide certain local services and which derive

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<sup>73</sup> Letter from Secretary, Chief Officers' Group 24.3.2003

income from three main sources; rates, grants from central government and income received from charges for service, rents and investment income.

- 7.89 The main legislation governing the constitution, proceedings and general powers of local authorities is the Local Government Act 1985. There are twenty four separate authorities with the separate categorisation of town districts, village districts, and parish districts. Apart from Douglas Corporation, local authorities are legally classified as Commissioners, which are corporate bodies, or Joint Boards. The Mount Murray site lies within the parish districts of Braddan and Santon from which authorities we received evidence, the former oral and the latter written.
- 7.90 The members of these authorities are elected by the electorates within each of their respective boundaries. Each authority is served by a Clerk and a staff commensurate with the services provided by the authority.
- 7.91 The authorities have a wide scope of functions of which only two are relevant to our interest. With regard to planning matters a local authority is consulted on all applications affecting land in its district, and is entitled to request a review or appeal against a decision and is automatically a party to any other review or appeal in respect of such land. With regard to sewerage, although the Department of Transport is now responsible for all sewerage and sewage disposal in the Island, under the Sewerage Act 1999 that department and a local authority may agree delegation to the latter on such terms as they agree.
- 7.92 A very helpful summary indicator of these functions (from which much of this subsection is derived) is contained in a handbook produced by the Department of Local Government and the Environment and entitled "General Information for Members and Officers of Local Authorities". It is Inquiry document L66.

End of Section 7

