

PART F

RECOMMENDATIONS

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RECOMMENDATIONS

9. RECOMMENDATIONS

(Recommendation numbering follows on from the recommendation numbering in the Part One Report)

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i) Introduction

9.1 In putting forward the recommendations which follow, the Commission has primarily taken account of information in two areas. First, we have looked at those matters which we have considered and concluded upon in the earlier sections of this report, noting weaknesses in the ways in which government operated procedurally and which led to unsatisfactory actions and consequences. Second, we took advice from the chief officers of the Department of Tourism, and the Income Tax Division of the Treasury, and from the Chief Secretary,¹ as to what we saw as relevant aspects of procedure, as to what steps were being or had been taken as to advancing or changing procedures as at the present time, and, so far as material, what relevant areas might still be improved. We were given very helpful information by these chief officers, and have thereby been able to avoid recommendations duplicating actions already being taken within government, although in some instances we have indicated our particular support for some of those actions. Our recommendations therefore can generally be seen as complementary to actions already taken or envisaged by government.

¹ Letters and attachments respectively dated 12.3.2004, 21.1.2004, and 26.1.2004

ii) **Recommendations 24 to 36**

9.2 Recommendation 2 in the Commission's Part One Report included the recommendation that "The recorded minutes of committee meetings contain not only the decision or decisions made but also make clear the reasons leading to the decision or decisions made." The paragraphs preceding that recommendation explained the problems which arise from obscurity in minutes. While the recommendation was directed specifically to the Planning Committee of the Department of Local Government and the Environment, the Commission concludes that the problem was not limited to that department. The Commission has accepted the evidence that the 1991 Budget proposals, which are said to have included the proposal emanating from the Treasury for what became the Income Tax (Capital Relief) (Tourist Business Incentive Allowance) Order 1991 was presented to the Council of Ministers. However the evidence also shows that there is no record in the Treasury or the Council of Ministers of that presentation, nor of whether the tourist business incentive allowance proposals were presented, nor, if presented, whether there was any indication of their claimed advantages or their possible adverse consequences, or the views of the Council of Ministers on these matters. The Commission considers this to be a serious omission and is concerned that similar omissions may occur in the minutes of other agencies of government, including government departments, statutory boards and their various committees and sub-committees. Accordingly we **recommend that:**

- *The Council of Ministers take such steps as are necessary to ensure that the recorded minutes of the Council and all other agencies of government, including government departments, statutory boards and their various committees and sub-committees, contain all matters considered by such bodies, including not only the decision or decisions made but also make clear the reasons leading to them.*

Recommendation 24

- 9.3 Recommendation 24 above should be read in conjunction with paragraphs 9.4 and 9.5 and Recommendation 25 below, as they are very much related matters.
- 9.4 The Commission has accepted the evidence that, prior to 20th March 1991, the Treasury had resolved not to adopt the proposal of the Department of Tourism for the introduction of a 250% capital allowance for qualifying capital expenditure on tourist premises, but that the Assessor research the alternative option of a 100% capital allowance for qualifying capital expenditure on tourist premises. This resolution was never rescinded or varied at any subsequent meeting of the Treasury.
- 9.5 Similarly, the Commission has accepted the evidence that the Treasury resolved that the eligibility of the tourist business incentive allowance for group relief be restricted. This was initially proposed to be achieved directly by subordinate legislation, but ultimately by the enactment of primary legislation in the form of an Income Tax Bill which enabled the restriction by the making of subordinate legislation in the form of an Order made by the Treasury and approved by Tynwald. This enabling legislation is contained in the Income Tax Act 1995. Despite the enactment of this necessary primary legislation, eligibility of the tourist business incentive allowance for group relief has not been restricted and nor has the resolution of the Treasury been rescinded or varied. Indeed, there is no evidence that the Treasury has considered the matter since the enactment of the Income Tax Act 1995. It is self evidently unsatisfactory that either the Treasury or any other government department, statutory board and their various committees and sub-committees, should resolve to take a course of action but that the course of action should fail to be taken at the appropriate time because there is no procedure which provides for the resolution to be followed up and implemented. Accordingly we **recommend that:**
- *The Council of Ministers, government departments, statutory boards and their various committees and sub-committees adopt procedures which ensure that:*

- *their decisions are followed up and implemented; and*
- *in the event that a decision is not capable of being implemented immediately, the decision is returned to the decision making body at an appropriate time or times in order that it may be reviewed, varied or rescinded; and that.*
- *so far as the Treasury is concerned in the interests of transparency and to ensure that the position is clarified for the commercial and financial interests on the island, the Council of Ministers should require the Treasury, in consultation with the Assessor of Income Tax, to advise it, and Tynwald if felt appropriate, whether it remains the Treasury's interest under the powers provided by the Income Tax Act 1995 to legislate to restrict the availability of group tax relief, what date such legislation is expected to be made and from what date it would apply. In the event that such restriction is no longer the intent, a formal decision should be made by government recording the reasons for it.*

Recommendation 25

- 9.6 The Commission notes that the annual Budget is prepared by the Treasury and presented to the Council of Ministers prior to its announcement to Tynwald for approval on Budget Day. The Commission also accepts that the annual Budget process demands a measure of secrecy and confidentiality which is not always required at other times. This appears to have led to a belief that urgency and the need for secrecy and confidentiality somehow excuses failure to research and document Budget proposals. The result in 1991 was that not only was there no record of the Budget proposals being presented to the Council of Ministers, but there is no evidence that in the case of the tourist business incentive allowance the financial impact in tax terms had been properly evaluated, and the evidence before us leads us to the clear conclusion that it was not properly evaluated.
- 9.7 The Commission believes that the Budget proposals must be researched and documented with the rigour which is usually devoted to such proposals at other times. The need for secrecy and confidentiality must not be used

as an excuse for not researching and documenting Budget proposals with the usual rigour. Accordingly we **recommend that**:

- *The Council of Ministers and the Treasury introduce formal procedures to ensure the same standards for researching documenting and adoption of the annual Budget proposals as are applied to the researching, documenting and adoption of such proposals outside the annual Budget process.*

Recommendation 26

9.8 The Commission has noted in section 7 (i) that there were no statutory guidelines in relation to meeting the requirements of the certification process introduced under the Income Tax (Capital Relief) (Tourist Business Incentive Allowance) (Amendment) Order 1992 and therefore no established basis for requiring proper evaluation of whether the three requirements underpinning certification had been met. This contrasted sharply with the specific statutory requirements to be satisfied with regard to the provision of grants and loans. Both Mr Kelly, the Assessor, and Mr Caley, the Senior Research Officer within the Economic Affairs Division of the Treasury, acknowledged in evidence that such a requirement as part of the certification process would have been prudent but could not explain why checks on applications for tourist business incentive allowance were not part of the legislation introducing the certification process. The Commission draws particular attention to paragraphs 7.45 and 7.46 above and their supporting evidence references, especially the transcript of evidence for Day 41 at pages 35 to 42.

9.9 This discrepancy appears to have remained fully in place until 1997 when the Department of Tourism formulated guidance for persons wishing to claim under the 1991 Order as amended. Indeed up until that time there were not even informal guidelines. The 1997 guidance formed the basis for a set of procedures which in the opinion of the Department of Tourism and the Treasury made the formal issue of guidelines unnecessary. This is obviously a significant improvement on the circumstances prevailing in the

early to middle 1990s but in the Commission's opinion the difference in requirements between a grant application and that for a tax allowance remains considerable, particularly given the contrast between the sums involved. The Commission considers that there should be comparable statutory guidelines, or tests, for satisfying the requirement of certification under the 1991 Order as there are in place in relation to grants and loans. An example of the nature of these latter requirements is set out in paragraph 7.8 above. It is however recognised that if Article 6 (3) of the Income Tax (Capital Relief) (Tourist Business Incentive Allowance) Order 1991 as amended, is to be revisited as we suggest, it is likely to be considered appropriate to make a wider review of the effectiveness and clarity of the certification procedure, e.g. the question of the stage at which a certificate should be issued, or whether there should be staged certificates. In the event that this might cause delay, at the very least the guidelines which indicate what is needed to satisfy the requirements of certification should be formalised and published and made available to all applicants for tourist business incentive allowance. Accordingly we **recommend that:**

- *The Council of Ministers direct the Department of Tourism and Leisure, in consultation with the Income Tax and Economic Affairs Divisions of the Treasury, to review procedures leading to the issue of a certificate under Article 6 (3) of the Income Tax (Capital Relief) (Tourist Business Incentive Allowance) Order 1991, as amended, for the purpose of specifying the nature and extent of the documents and information required in respect of applications for certification regarding tourist business incentive allowance, and that the model for grants or loans as exemplified at paragraph 7.8 above be noted with regard to the nature and depth of material which should be required, and that having completed such review appropriate legislation regarding these requirements should be promoted in accordance with that review; alternatively and as an interim measure*

- *The Chief Executive of the Department of Tourism should, in consultation with the Assessor of Income Tax, undertake an immediate review of the procedures now followed with respect to applications for tax relief under the Income Tax (Capital Relief) (Tourist Business Incentive Allowance) Order 1991 with a view to supplementing these procedures with formal published guidelines setting out the precise requirements which applicants will be expected to meet to demonstrate project viability, the quality and the competitiveness of the costs to be incurred, and the overall economic criteria required under Article 6 (3) of the Income Tax (Capital Relief) (Tourist Business Incentive Allowance) Order 1991, as amended.*

Recommendation 27

- 9.10 The Commission has accepted the evidence which supports the conclusion that the decision to introduce the tourist business incentive allowance was taken by the Treasury Minister either at or shortly after his meeting with the Minister for Tourism and a member of the Department of Tourism on 20th March 1991. There are no minutes of the meeting and there is no evidence that any paper or other document was presented at the meeting. The Treasury Minister appears to have made the decision without any examination of the potential consequences for the General Revenue of the Isle of Man in terms of income tax likely to be foregone or deferred. This may be acceptable in the context of a decision on a minor matter with only minimal likely consequences, but is quite unacceptable in the context of a decision which may involve many millions of pounds.
- 9.11 The Commission recognises that the current Isle of Man Government Financial Direction 20 requires that "Each department promoting primary or secondary legislation must ensure that the additional costs of implementation both throughout Government and beyond are fully identified" and that "Every Bill promoted by a department (except one which will have no effect on public revenue, expenditure or personnel) must be submitted to the Treasury (Administration Division) for approval before it is submitted to the Council of Ministers for authority for its introduction in the

Legislature. Such submissions must include as full an explanation of any financial and personnel implications as is possible at the time of submission."

9.12 In addition the Commission recognise that the current Isle of Man Government Financial Direction 21 requires that "Whenever a department is proposing the introduction of a new or enhanced service then an economic appraisal must be undertaken in a framework to be agreed by the Treasury."

9.13 The Commission welcomes these requirements. However, two matters of importance are noted. First, Financial Direction 20 applies different standards for understanding the implications of primary and subordinate legislation. Subordinate legislation promoters are required only to identify additional costs, although certain types of proposals with financial consequences do, under certain procedures, require prior Treasury concurrence under section 10 of the Treasury Act 1985. Primary legislation promoters have to meet more rigorous requirements. This difference can be seen in paragraph 9.11 above and the practical consequence can be seen in the tourist business incentive allowance subordinate legislation. The tourist business incentive allowance was introduced in 1991 by means of an Order made by the Treasury and approved by Tynwald; that is by subordinate legislation. The financial consequences of this Order were capable of being very high indeed, very many millions of pounds. This illustrates how subordinate legislation can be very high cost and should be as well understood as primary legislation in this regard. Indeed the form, not at all unusual, of some legislation is that the primary legislation simply empowers subordinate legislation, and it is only in the detail of that subordinate legislation that the cost of the primary legislation can be properly understood. Second, Financial Direction 21 provides a valuable requirement with regard to services. A careful study of the wording of the two Directions indicates that it is in fact more rigorous than the requirement for Bills under Financial Direction 20. It specifically requires an economic appraisal, whereas Financial Direction 20 simply requires as full an

explanation as possible. Such explanation may not be capable of providing a proper appraisal, or understanding, of the financial consequences without taking further steps to achieve that objective, while an economic appraisal would ensure such understanding. This cannot be a sound basis for promoting legislation. Accordingly we **recommend that:**

- *The Council of Ministers extend the full requirements of the Isle of Man Government Financial Regulations 20 and 21 to Orders, Rules and Regulations, that is to say subordinate legislation.*

Recommendation 28

9.14 At paragraph 19.31 of its Part One Report, the Commission referred to the process of consultation by the Department of Local Government and the Environment with other departments and official bodies on matters of development control. Weaknesses in the process had given rise to irregularities at Mount Murray and we recommended that it be reviewed (Recommendation 19). In a similar way, the Commission has expressed some concern in this report about the manner in which the Treasury consulted with an outside party in relation to Mount Murray in the development of proposed financial legislation. We have recognised that some consultation was needed and was an important part of the process. However the Commission considers that it is quite unacceptable that the only party to be consulted about the contents of an item of subordinate legislation to be made by the Treasury was the party which had sought the legislation and which would be a principal, if not the only, beneficiary of the legislation. We make a general recommendation concerning consultation and the relationship between staff and with outside parties at Recommendation 35 below, but we consider the particular circumstances relating to the introduction of legislation to merit separate comment. Accordingly we **recommend that:**

- *The Minister for, and members of, the Treasury introduce formal minimum procedures for Treasury consultations with outside parties in*

the development of proposed legislation, whether primary or subordinate, with a view to ensuring that consultation shall not be solely with a single interested party.

- *The Treasury identifies and publishes for consultation a schedule of relevant professional bodies whose professional interests include Manx income tax. The schedule, when agreed, should give the right to such bodies as are named to be consulted and make representations on matters they consider to be relevant in the development of proposed Manx income tax legislation, whether primary or subordinate.*

Recommendation 29

- 9.15 The Commission is aware that, under House of Keys Standing Order number 147, "A Bill that is introduced into the House to be passed in law shall be printed and published; and a copy should be furnished to each member with a memorandum stating the objects and financial implications of the Bill." It is also aware that the statement of financial implications is considered by the Legislative Council when the Bill passes to that body.
- 9.16 In contrast, the evidence available to the Commission indicates that subordinate legislation is not subject to any statutory or standing orders requirement to include a statement of financial implications in the accompanying Explanatory Note which is required to do no more than set out briefly, in plain English, what the instrument does. At present the financial consequences are rarely, if ever, set out in the Explanatory Note and Standing Order number 147 applies only to primary legislation. This means, for example, that an Order or Orders may be set down for approval by Tynwald without any indication of the likely true costs to the General Revenue of the Order or Orders being given to Tynwald as happened with the Income Tax (Capital Relief) Order 1991 (see Annex 11) and the Income Tax (Capital Relief) (Tourist Business Incentive Allowance) Order 1991 (see Annex 11). This is a different issue to the requirement under section 10 of the Treasury Act 1985 that certain legislative proposals have to be submitted to the Treasury.

9.17 The Explanatory Note to the Income Tax (Capital Relief) (Tourist Business Incentive Allowance) Order 1991 states "This Order introduces additional tax relief in respect of capital expenditure on tourist premises. The relief is intended to operate as an additional incentive to the improvement of tourist premises. The maximum relief available under the Order will, when taken with government grants, be 50% of gross expenditure." This is misleading. First, it implies that the tourist premises are already in being and, by extension, that expenditure on new premises is not eligible. Second, in the event of a government grant, the value of the grant and the available tax relief will as a matter of fact exceed 50% of the gross expenditure, as explained in the accompanying "Additional Information" in Annex 11. Third, "50% of the gross expenditure" tells the reader nothing about the likely cost to the General Revenue. 50% of a small expenditure is after all a small cost to the General Revenue. However 50% of the gross expenditure on a new hotel estimated to cost some £20 million means that the likely cost to the General Revenue would exceed £10 million. It is relevant to note here that at paragraph 8.95 of this report, the Commission records the Assessor's reference to the desirability of introducing economic and regulatory impact assessments for primary and appropriate subordinate legislation. The Commission supports the view of the Assessor. In all these circumstances there should be available to members a similar understanding of the financial implications of subordinate legislation as there is for primary legislation. Accordingly we **recommend that:**

- *Subordinate legislation which is made by the Treasury or any other government department or agency, whether in the form of an Order, Rules or Regulations, to be approved by or to be laid before Tynwald or either of its Branches before it shall have effect, shall be accompanied by a meaningful statement of its financial implications and objects in a memorandum a copy of which shall be furnished to each member together with the proposed subordinate legislation.*

Recommendation 30

9.18 In the preceding paragraph the Commission referred to the views of the Assessor. The Assessor also referred to the desirability of the greater use of parliamentary committees to scrutinise legislation, in particular tax legislation. The Commission considers this to be a matter worthy of further consideration by an appropriately placed body. Accordingly **we recommend that:**

- *The Council of Ministers direct the Legislation Committee to consider the methods of reviewing legislation as suggested by the Assessor, or as otherwise considered appropriate.*

Recommendation 31

9.19 The Commission has concluded from the evidence that the Treasury Minister is supplied with briefing notes for use when moving the approval of subordinate legislation in Tynwald and that, when actually so doing, he may choose not to refer to them. On 26th January 1993 the Treasury Minister moved the approval of the Income Tax (Capital Relief) (Tourist Business Incentive Allowance) (Amendment) Order 1992. He was supplied with a briefing note and, on the same day, the Assessor issued a practice note in which it was stated that "In view of the high level of support now being given by way of tax relief, the Treasury Minister announced his intention to consider restricting the manner in which any unrelieved incentive allowances may be utilised. In particular, consideration is being given to restricting group relief claims for 1994/95 and subsequent years." Although included in his briefing note, the Treasury Minister omitted to mention to Tynwald the intended restriction of group relief. Potentially this was a serious omission for the timing of the introduction of the restriction. In this context, a briefing note usually takes the form of a speech which the member is to make to Tynwald when moving the approval of subordinate legislation and may include such relevant statements and announcements of policy as the member wishes to deliver. It differs from the Explanatory Note which, as its name implies, is simply a note which is appended to the Order or other item of subordinate legislation, and from the memorandum referred to in Recommendation 30 above.

9.20 The Commission has concluded that, where such subordinate legislation bears on matters of major public policy or cost such as the potential foregoing or deferral of substantial amounts of Manx income tax, or may require the future restriction of a relief, the member of Tynwald moving such an approval owes a duty to his or her colleagues to be properly briefed and to present the brief in full. Accordingly we **recommend that:**

- *The appropriate Committee of Tynwald consider the introduction of guidelines relating to the nature and extent of the information which is to be presented by members of Tynwald who move the approval of subordinate legislation in Tynwald. Such information shall be included in the brief prepared by or for the member of Tynwald who proposes the legislation and such brief should be presented to Tynwald in full.*

Recommendation 32

9.21 From the evidence available to the Commission it appears that there has been no formal monitoring of the 250% income tax allowances which were introduced in 1991 in respect of qualifying capital expenditure on tourist premises. In the light of the potential cost of the allowances and the non restriction of group relief, the granting of allowances should have been monitored. The Assessor conceded that the oversight of the allowances could have been improved. The Commission considers that, where significant legislative changes are made with consequences which are less than certain, it is clearly desirable for the consequences to be monitored. Failure to do so may give rise to a damaging and unwarranted depletion of revenues or resources which may go undetected for years. Accordingly we **recommend that:**

- *Where significant legislative changes are made. the financial consequences of which cannot be forecast with any certainty, the government department responsible for administering the new legislation should be charged with the responsibility of monitoring the effects of the change. The result of such monitoring should be reported on not less*

than an annual basis to the Treasury, except in circumstances where the responsibility for monitoring falls to the Treasury itself, in which case the outcome should be reported to the Council of Ministers where the implications are deemed to be significant, the criteria for which should be as determined from time to time by the Council of Ministers.

Recommendation 33

9.22 The terms of reference of the Development Consultant appointed on contract to the Department of Tourism were construed by him as restricting his accountability to the Minister for Tourism and not including accountability to the Chief Executive. Almost inevitably, this arrangement gave rise to tension between the Development Consultant and the Chief Executive and, the Development Consultant also refused to supply information to one of the political members of the department. Accordingly we **recommend that:**

- *Where it is considered necessary to engage consultants or other such advisors who are not to become members of the Isle of Man Civil Service, such consultants and advisors shall without exception report to and be directed either by the Chief Executive of the government department in question or by such working arrangement as shall be determined and agreed with the Chief Executive.*

Recommendation 34

9.23 The Commission has concluded that the Minister and the Development Consultant at the Department of Tourism exceeded their authority in the manner in which they conducted negotiations with the Tax Advisor of the developer. It is a most unsatisfactory situation for a department of government which has no competence or authority in a particular area of expertise to be found to have been giving advice and/or undertakings on behalf of government in that area.

9.24 However the Commission is aware from the statement of the Chief Secretary and from supplementary information provided by the Assessor and by the Chief Executive of the Department of Tourism that there have

been improvements in the way the departments liaise and co-ordinate and in the manner in which relations with outside bodies and groups are conducted. We also recognise that this is an evolving process and some departments have guidance or codes of practice in place (as in the case of the Department of Local Government and the Environment) while others do not. Bearing that in mind, the Commission do not consider a recommendation purely in relation to what is said in paragraph 9.23 above would be appropriate.

9.25 Nevertheless, there do not at present appear to be established corporate guidelines covering the process of consultations between departments or discussions with outside organisations or companies or their agents. We are aware of the requirement for all departments and staff to comply with the Isle of Man Government Financial Regulations and of the Code of Conduct for the Civil Service, including the seven principles of public life, but there is a need for guidelines to be more specific and for greater consistency of approach to be secured. Accordingly we **recommend that:**

- *The Council of Ministers introduce guidelines governing the relationships between the staffs of the various government departments and statutory boards and the manner in which the staff of such departments and boards represent themselves, both within government and outside, to external organisation, the business community and the public at large.*
- *Guidelines be introduced which separate out the need, on the one hand, for core guidance across government on matters covering consultation between departments and the business community, which should be applicable to all, and more specific guidance or codes of conduct reflecting particular needs and the progress individual departments have already made.*
- *That the Council of Ministers consider formalising arrangements whereby no Department other than the Treasury shall undertake discussions or consultation on matters of taxation with any outside body, organisation, company or their agents other than with the*

explicit written pre-agreement of the Treasury as to the scope and content of any such meeting and, where appropriate, the attendance of a Treasury officer.

Recommendation 35

9.26 The Commission made recommendations in its Part One Report related to the need for improved training and development in particular areas of the Department of Local Government and the Environment. It has become clear from the evidence submitted to us for this Part Two Report that for Chief Executive and for Chief Officer posts, the multi tasking roles which such posts demand give rise in turn to the need for a training and development programme at a high level. Accordingly we **recommend that:**

- *The Council of Ministers give consideration to the preparation of a report to be compiled by the Chief Secretary identifying the particular training and development needs of Chief Executives and of Chief Officers and setting out the means by which they may be met.*

Recommendation 36

iii) **Concluding Comment**

9.27 The Commission recognise that its enquiries in relation to taxation matters have centred upon the implementation of two Orders which concern the tourist business incentive allowance. While the introduction of the tourist business incentive allowance represents a cost to the General Revenue of the Isle of Man, we recognise that new legislation whether primary or subordinate, may also serve to increase receipts attributable to the General Revenue. Our recommendations in this area are accompanied by presumption that legislation, whether primary or subordinate, which is devoted to raising revenue is and will be subject to comparable procedures and quality of scrutiny as measures which represent a cost to the General Revenue.

9.28 In concluding this section of the report we would wish to stress again that we see the preceding recommendations as very much supplementing and supporting the progress already achieved by the government in securing better co-ordination between departments and improved corporate governance, both of which are clearly evident from the statements and supporting documentation provided to us by the Chief Secretary. Our information about, and our understanding of, the present position has been greatly assisted by this contribution, helpfully supplemented by the observations of the Assessor and by material supplied to us by the Chief Officer of the Department of Tourism.

END OF SECTION 9

