THE ISLE OF MAN : CONSTITUTIONAL RELATIONSHIP WITH THE UNITED KINGDOM

INTRODUCTION

407. The Isle of Man lies in the Irish Sea within sight, on a clear day, of the coast of Cumberland, and is virtually equidistant from England, Scotland and Ireland. It has an area of about 230 square miles and a population (1976 census) of 60,496.

408. The basic principles governing the present day constitutional relationships with the United Kingdom are the same for the Isle of Man as for the Channel Islands. The differences are to be found, not in the matter of constitutional status, but in the Islands' historical backgrounds and developments. (There are also differences in the financial relationships, as discussed in a later section). The constitutional history of the Isle of Man is outlined in the Home Office memorandum to the Commission appointed by the Lieutenant Governor to inquire into the internal constitution of the Island, ,which reported in 1959 (the MacDermott Commission). Subsequent developments are described in later sections of the present memorandum. Reference should also be made to the Joint Evidence of the Home Office and Tynwald to the Royal Commission on the Constitution of February 1970, printed in the Minutes of Evidence, Volume VI, beginning at page 18. In broad summary, the main historical and other significant features are as follows.

409. Whereas the Channel Islands have been under the English Crown since the Norman conquest (and were under the Dukes of Normandy for more than a hundred years before then) the Isle of Man has a more chequered history. Until the 10th century it was under Celtic tribal rule. Following its settlement by the Vikings (Norsemen) during that century, it was under the suzerainty of the Kings of Norway (together with the southern islands of Scotland, it formed the "Sodorensis") until it was annexed by Scotland following a Scottish victory over the Norsemen at the Battle of Largs in 1263, and the formal cession of the territory by the Kings of Norway to the King of Scotland took place in 1266. After a English victory over the Scots at the battle of Neville's Cross (1346) the Island came under English domination (though there was no formal cession) but actual dominion was exercised not by the Crown, but by a succession of English barons, culminating in the grant of the Island and its "regalities" 1405 to the Derby family. While ultimate power rested with the Crown, (which at one time in the 17th century threatened to recall the "franchise" of the Island) and a few Acts of Parliament applied to it, eg section 10 of the Habeas Corpus Act 1679 (see para 140 above) applied to the Isle of Man as well as to the Channel Islands, the Derby family and later the Atholl family was for long virtually the only source of administrative power in the Island, and except for a brief interlude between 1595-1605 it was not until the Revestment Act of 1765 that it came under the direct administration of the Crown. The modern relationships with the United Kingdom, and the Island's own modern constitutional structure, date from 1866, when the Isle of Man Customs, Harbours and Public Purposes Act (of the United Kingdom Parliament) gave Tynwald a limited measure of control over insular expenditure, and the insular House of Keys Election Act instituted a popularly elected legislative body.

410. All this has meant, among other things, that, in contrast to the Channel Islands, there has been no early history of legislation by way of Prerogative Order in Council. The transition has been from the pre-1765 "Derby" administration (when such insular legislation as there was required Derby approval, and not that of the Crown) to the present day system, common to the Channel Islands and the Isle of Man, of legislation by way of enactment of the United Kingdom Parliament as applied either directly or by Statutory Order in Council or, more commonly, insular legislation requiring the approval of Her Majesty in Council. It could be added that, whereas there has accordingly been no occasion for clashes with the Island arising from Prerogative Orders, like those with Jersey referred to in paras 219-228 above, it so happens that in more recent times there

has, as indicated later, been more trouble with the Isle of Man that with either Jersey or Guernsey over Parliamentary and insular legislation.

411. Other constitutional differences between the Isle of Man and the Channel Islands - not all of them necessarily deriving from history - will emerge from the following account of the principal officers and institutions of the Isle of Man.

Recent investigation of the constitutional position of the Isle of Man

(a) The Joint Working Party of 1967

A Joint Working Party on the Constitutional Relationship between the Isle of Man and the United Kingdom was set up in September 1967 under the Chairmanship of Lord Stonham, then Minister of State at the Home Office. Its terms of reference were: "To consider

a. the instances during the past where it has been felt that Her Majesty's Government in the United Kingdom has intervened in affairs domestic to the Isle of Man which should be the sole province of Tynwald;

b. the ways, if any, in which the Isle of Man wishes to see a change in the manner in which Her Majesty's Government in the United Kingdom operates the principles set out in the Home Office Memorandum to the MacDermott Commission;

c. the development of the constitutional relationship between Her Majesty's Government in the United Kingdom and the Isle of Man; and to report and to make recommendations thereon to Her Majesty's Government in the United Kingdom and to Tynwald."

The Report was published in 1969, and its Appendices in particular are a useful source of information about the state of the relationship between the United Kingdom and the Isle of Man at that time. Action on the recommendations, in paragraphs 47 and 48 of the Report, was affected by the setting up in 1969 of the Royal Commission on the Constitution, which considered (inter alia) the relationship between the United Kingdom and the Isle of Man. The chief recommendations which were implemented (see CIM/67 400/3/21) were the setting up of a "Standing Committee on the Common Interests of the Isle of Man and the United Kingdom"; the establishment of the principle that communications between the two Governments should (except where otherwise agreed) be between the Home Office and the Government Secretary in the Isle of Man; and the proposal that the post of Clerk to the legislative Council should cease to be a Crown appointment. It was subsequently found that a recommendation about delegation of the Royal prerogative of mercy (paragraph 48(i)) was otiose, since delegation already operated except in capital cases (CIM/67 400/3/25).

(b) The Royal Commission on the Constitution (1969-1973)

See paragraphs 8 to 11.

1. PRINCIPAL OFFICERS AND INSTITUTIONS

A. THE LIEUTENANT GOVERNOR

412. The Lieutenant Governor is appointed by the Sovereign. His powers and duties have changed dramatically during the last two decades, and particularly in recent years and a new organ of government, the Lieutenant Governor in Council, has emerged. The Lieutenant Governor has been divested of practically all of his executive functions and his role is now much more akin to that of his counterparts in the Channel Islands than it was twenty years ago.

413. It is interesting to trace the course of the changes that have taken place. Paragraph 13 of the Home Office memorandum to the MacDermott Commission, dating from 1958, describes the Lieutenant Governor's powers, as does paragraph 7 of Part B of the joint Home Office and Tynwald evidence to the Royal Commission on the Constitution in 1970. The most significant change between 1958 and 1970 was the establishment of a statutory Executive Council under the Isle of Man Constitution Act 1961 "to consider and advise the Governor upon all matters of principle and policy and legislation". This step followed a recommendation of the MacDermott Commission (see paragraph 552 below). The Lieutenant Governor was not normally obliged to accept the Executive Council's advice.

414. Paragraph 14 of the 1958 Home Office memorandum to the MacDermott Commission described the Lieutenant Governor's powers in the field of finance. A summary of the position in 1970 is contained in paragraph 8 of Part B of the Joint Home Office and Tynwald evidence to the Royal Commission on the Constitution, as follows:

> "The Lieutenant Governor is in ultimate control of the Isle of Man's finances and has traditionally had the function of "Chancellor of the Exchequer". His responsibilities in that area have, however, been considerably modified in recent years since the 1957 Agreements abolished Treasury control of Manx finances, although he still retains, in the view of the United Kingdom Government, such power of initiating and regulating expenditure as is necessary for the maintenance of good government in the island. In 1961, an Act of Tynwald carried into effect the recommendation of the MacDermott Commission that there should be an insular Finance Board, described by the Commission as "an essential step in the progress to more complete self-government": the intention was to "spread the area of (financial) responsibility". The Board must inter alia "consider all matters of financial policy affecting the present and future prosperity of the Island and advise the Governor thereon". In practice the Lieutenant Governor and Finance Board now share financial responsibilities: whereas the Lieutenant Governor retains a power of veto, he cannot compel the Board to pursue a particular financial policy against its will".

415. During the 1970s the powers and duties of the Lieutenant Governor were under scrutiny by a Select Committee of Tynwald. (CIM/70 415/2/9). Various Bills were put forward in 1973-4 seeking to modify the powers of the Lieutenant Governor in various ways, either in accordance with recommendations of the interim report of this Select Committee (made in 1972), or on the initiative of individual members of the House of Keys. This movement for reform, which went beyond the powers of the Lieutenant Governor, is described in Sir John Paul's letter of 26 March 1974 on CIM/66 400/2/31.

416. The two constitutional Bills of this period with the most far reaching implications both failed to carry. (CIM/66 400/2/31). The Governor's Powers (Transfer) Bill, forwarded in December 1973, sought to transfer from the Lieutenant Governor to Boards of Tynwald a long list of order making

powers. This Bill was based on the reports of the Select Committee of Tynwald (see above) and its progress up to March 1974 is explained in Sir John Paul's letter of 26 March 1974. The Home Office found no cause to object in principle to the Bill, but took up various points of detail (letter of 30 May 1974). The Bill later became the Governor's Financial and Judicial Functions (Transfer) Act 1976. (CIM/66 400/2/31 CIM/70 415/2/26).

417. The Isle of Man Constitution (Amendment) Bill was first drafted in May 1973 and sent to the Home Office in December of that year along with the Governor's Powers (Transfer) Bill. (CIM/66 400/2/33). This Bill removed the Lieutenant Governor from the Legislative Council in accordance with a proposal of the first interim report of the Select Committee of Tynwald on the Governor's Powers and Duties. This proposal was rejected by Tynwald in May 1972 and not re-submitted in the second interim report of December 1972. The Home Office was concerned lest exclusion of the Lieutenant Governor from the Legislative Council could be interpreted as excluding him also from Tynwald, but in the event this Bill never got off the ground (see Sir John Paul's letters of 26 March 1974 and 24 March 1975). For subsequent developments see paragraph 525. (CIM/66 400/2/33 CIM/70 400/2/3).

418. Four Bills did become law in 1974 which bore on the powers of the Lieutenant Governor. The General Control of the Economy Act 1974 provided for Orders to be made by the Lieutenant Governor to control the economy of the Isle of Man if it was essential to do so to counter inflation. An amendment proposed to the Bill in the House of Keys in March 1973 provided for these Orders to be made by the Lieutenant Governor only with the concurrence of the Executive Council. In the course of the debate on the new amendment fear was expressed of giving the Lieutenant Governor unbridled powers, particularly in view of the fact that the incumbent of the office was due to change later that year. (CIM/72 529/15/2).

419. The Supplementary Benefit, National Insurance etc (Miscellaneous Provisions) Act 1974 provided for the Lieutenant Governor to make Orders in the National Insurance field, provided that the Finance Board had approved them first. (CIM/67 551/5/10). The provision about the approval of the Finance Board was not included in the first draft of the Bill, but was put in at the request of the Finance Board (see letter of 22 January 1974).

420. The Isle of Man Water and Gas Act 1974 transferred the financial powers which the Lieutenant Governor had possessed under the previous Water Act of 1972 to the Finance Board. (CIM/72 404/109/1). The Shop Hours Act 1974 transferred to the Lieutenant Governor to the Chairman of the Local Government Board the power to exempt certain shops from the effect of the Act and to vary and amend specified closing hours. (CIM/66 404/32/2). A minute of 3 January 1974 on the file records that "many power comparable to that which the Bill transfers from the Lieutenant Governor to the Chairman of the Local Government Board are already vested in chairmen of Tynwald".

421. Three other Constitutional Bill relating not to the Lieutenant Governor but to the Legislative Council may be briefly mentioned in this survey of moves to reform in 1973/4: the most important Bill became the Isle of Man Constitution (Amendment) Act 1975, and removed the First Deemster from the Legislative Council (see paragraph 524 below). The other two Bills failed to carry: the Chairman of Boards Bill sought to restrict the Chairmanship of all important Boards of Tynwald to members of the House of Keys (see note of 31 December 1974). (CIM/66 400/2/32,38 CIM/66 400/2/24). This Bill was discharged by the House of Keys on second reading in 1972 and again in 1974. The Isle of Man Constitution (Amendment) (No.2) Bill 1974 sought to reduce the term of office of members of the Legislative Council from 8 years to 5. (CIM/66 400/2/36).

422. The Home Office had for long envisaged that the development of the constitution of the Isle of Man would involve the devolution of powers held by the Lieutenant Governor, either directly to Boards of Tynwald, or else in a way that gave a greater share in decision making to other parts of

Tynwald. (CIM/400 2/14). Sir Austin Strutt wrote to the then Lieutenant Governor in 1957: "I think one must recognise that in the long run the Lieutenant Governor's position as Chancellor is not necessarily sacrosanct: it may be that the path of reform will lead eventually to elected representatives taking a larger share in the executive, including responsibility for the initiation and control of expenditure; and so long as the executive operates on the principle of collective responsibility there would be nothing offensive to constitutional propriety in such a change. (CIM/400 2/22). But this is merely to take a long view.....". When the Finance Board Bill was submitted for Royal Assent in 1961, Sir Charles Cunningham pointed out that, if the Finance Board was a success, the Lieutenant Governor's executive responsibilities for financial matters could be increasingly devolved upon it. When Sir John Paul was approached with a view to becoming Lieutenant Governor, his letter of invitation in November 1973 included the following:

> "Tynwald is showing signs of wishing to reduce the executive role [of the Lieutenant Governor] and it is unlikely that we would oppose an orderly progress in that direction provided that we can be satisfied it would be assumed responsibly by the Manx". (CIM/70 415/2/19).

Submissions to ministers in January and March 1974 set out the implications of the various Bills submitted during the preceding few months, and sought and obtained approval for a general policy of treating individual measures on their merits, while aiming in the longer term to ensure that the Lieutenant Governor continued to preside in the Executive Council and Tynwald. (CIM/66 400/2/30,31).

422(a) During the late 1970s and early 1980s the movement for constitutional reform in the Isle of Man gathered momentum and the Lieutenant Governor's position was transformed. His executive powers in the field of finance were transferred to the Finance Board by the Governor's Financial and Judicial Functions (Transfer) Act 1976 (CIM/70 415/2/26); no longer was the Lieutenant Governor also the Chancellor of the Exchequer. 1980 saw the passing of 4 significant Acts. (CIM/78 415/5/1). The Governor's General Functions (Transfer) Act 1980 transferred numerous executive powers of the Lieutenant Governor to Boards or Departments of Tynwald or to the Lieutenant Governor in Council. The Legislative Council was empowered to choose its own president under the Constitution (Legislative Council) Amendment Act 1980 (see paragraph 526(a) below). The Lieutenant Governor also ceased to preside over the Executive Council under the Constitution (Executive Council) Amendment Act 1980 (see paragraph 553(b) below), and finally certain of his functions relating to the police were devolved to the Police Board (and later to the Home Affairs Board - see paragraph 539(a)) under the Police (Amendment) Act 1980. The establishment of a Home Affairs Board under the Home Affairs Board Act 1981 (CIM/81 404/22/1) took several more areas of responsibility away from the Lieutenant Governor (see paragraphs 539(a) and (b)). The final report of the Select Committee of Tynwald on the Powers and Duties of the Lieutenant Governor contains a useful summary of the present powers attaching to the office, including the remaining statutory powers. (CIM/80 400/2/5).

Appointments: Term of Office, Qualifications etc

423. Until the earlier part of this century, the Lieutenant Governor was appointed for life. The Departmental Committee on the Constitution of the Isle of Man (the MacDonnell Committee) which was appointed in 1911 by the then Home Secretary (Sir Winston Churchill, as he later became) to enquire into a petition of the House of Keys and other representations about the constitution and administration of the Island, felt that there was considerable force in the request in the petition that the appointment should be for a term of years only. (113941/132). The Committee recommended that the appointment should be for not less than 7 years nor more than 10 years "with power in the government to give an extension of office at their discretion". (Report

1911 Cd.5950 paragraph 14).

424. From 1919 until 1952, the Lieutenant Governor's term of office was 7 years and this period was written into the warrant of appointment. As regards extensions of the term of office, in 1926 the House of Keys passed a resolution by a majority of 14 to 10 asking that the term of office of Sir William Fry, the first Lieutenant Governor to be appointed for a period of 7 years, should be extended "for a year or two". The Home Office, while recognising that an extension for 3 years would not be inconsistent with the recommendations of the MacDonnell Committee, considered that it must be careful not to grant an extension which might establish a regular practice under which future Lieutenant Governors might claim extensions as of right and that a concession should only be made if there were very strong reasons for continuing a Lieutenant Governor in office. In this instance, there were serious objections on personal grounds, as well as on grounds of public policy to extending the term. Sir William Fry had frequently displayed a weakness in exercising authority (a note on the file contains various examples) and the editor of the "Isle of Man Times" had frankly told the Home Office that the reason why the Islanders wanted to retain Sir William was their fear that a stronger Lieutenant Governor would be energetic in his support of the United Kingdom Government in connection with the question, which was then arising, of financial contributions. Otherwise, Sir William was not particularly popular, and the editor did not conceal the fact that "his only attraction is his weakness". The official reply to the Government Secretary merely expressed the Secretary of State's regret that he did not see his way to give effect to the wishes expressed in the House of Keys resolution. In a personal letter to the Lieutenant Governor, the Home Secretary (Sir W Joynson-Hicks) said "I think that on general principles there are strong grounds for not extending a Governor's (SIC) Office beyond 7 years.....if I were now to extend your term I should at the outset create a precedent which may at a subsequent date gravely embarrass either myself or my successors".

425. Despite all this, the next Lieutenant Governor, Sir Claude Hill, was granted an extension of term of 6 months at the end of his 7 year period. (51799/18). The Lieutenant Governor himself had requested an extension for personal reasons, and Home Office officials were prepared to support this request on the grounds of administrative convenience - the Lieutenant Governor was due to retire just before a budget had to be introduced and Sir Claude Hill had been closely involved in a scheme of unemployment insurance which was due to come up before Tynwald a few months after the end of his term of office. A fresh warrant of appointment was issued for 6 months. In 1944 the Earl Granville's term of office was extended for 1 year because "in the special circumstances arising out of the war it would be in the public interest that....he should continue in office for a time". A minute on the file records "Secretary of State announced the extension in Tynwald and in these circumstances a fresh warrant was not considered necessary. This is not to be taken as a precedent".

426. In 1952 the form of the warrant of appointment was altered so that the office of Lieutenant Governor was held "during Our Pleasure". The Lieutenant Governor was informed by Home Office letter that the period of appointment was 7 years; but in any case in which an extension beyond that period is necessary, no new warrant is required. Sir Peter Stallard remained in the Island a few months over 7 years in 1972. In 1973 the normal period of appointment was reduced from 7 years to 5 (see paragraph 441 below), but the first office holder under this new arrangement Sir John Paul, was given a year's extension of tenure to enable him to remain in the Island for the millennium celebrations. (CIM/70 45/2/28).

427. In contrast with the Channel Islands, it is the exception rather than the rule to appoint a retired officer from one of the Armed Services and when the then Home Secretary visited the Island in 1965, the Speaker of the House of Keys and the First Deemster told him that the Island much preferred a Lieutenant Governor "with previous administrative service". (CIM/415/2/6). From the

insular point of view this may have been partly prompted by the fact that the "Service" Lieutenant Governor who took office after the war (Air Vice-Marshal Sir Geoffrey Bromet, appointed in 1945) "took umbrage and offence every time that the Keys disagreed with anything he proposed". But personalities apart, the post has generally been felt to be one more suitable for a former Colonial Governor or the like, because it still has executive as well as representational aspects. The Insular authorities confirmed that they still took this view in 1972 (see paragraph 436 below), Sir Claude Hill and Sir Montague Butler (father of Lord Butler), both of whom had been in the Indian Service, were Lieutenant Governors during the 1930s and Sir John Paul, who served from 1974-80, was an ex-Colonial Governor, as were his 3 predecessors. In asking Sir Peter Stallard whether he would like to be considered for appointment, Sir Charles Cunningham said (in a letter of 25 February 1966) "the post is much more than a representational appointment, although it has that side as well. (CIM 415/2/6). It calls for wide and varied experience, particularly in matters of the finance and in the handling of politicians". At other times, for example in a letter of 5 January 1959, mention has been made of the need for the Lieutenant Governor to lead the Keys, unobtrusively to have a good presence, to be a fluent and practised speaker and a skilful and patient negotiator, and "experience in handling politicians in communities advancing towards self government would be a most desirable qualification". (CIM/415/2/2).

427(a) In 1980, unusually, a serving officer become Lieutenant Governor of the Isle of Man. (CIM/70 415/2/31). Rear Admiral Sir Nigel Cecil was the candidate favoured from the short list considered confidentially in the Island, and the view was expressed that, as a general rule, diplomats by instinct, training and experience tend naturally to more attuned to the interests of the country they represent than those of the country to which they are accredited, and that the appointment of a senior diplomat could establish a precedent whereby the post would come to be regarded as a comparatively soft option for such officers on retirement (doc 34 Lieutenant Governor's letter of 28.8.1979).

Consultations about Appointments

428. Within Whitehall, although the Ministry of Defence are asked for suggestions, or may volunteer them, and any "applications" that come direct or through MPs will also be considered (these have recently included one from a former Isle of Man Government Secretary - see CIM/70 415/2/6), it follows from what has been said above that our main consultations are normally with the Foreign and Commonwealth Office.

429. As regards consultation with the Isle of Man, the practice up to and including the appointment of the last Lieutenant Governor but three is set out in Mr North's note of 2 December 1965 in CIM 415/2/6. There was nothing comparable to the practice with the Channel Islands, under which an "insular authority" (in the shape of the Bailiff) is consulted on the person proposed to be appointed with discretion to take such other sounding of insular opinion as he thinks fit. Indeed no undertakings as to consultation had been given - as they had in 1948 as regards the Channel Islands - and the most that usually happened was some informal consultation with the outgoing Lieutenant Governors. (In 1952, in connection with the pending retirement of Sir Geoffrey Bromet the Speaker of the House of Keys had an interview with the Home Secretary in response to the Speaker's request to put forward confidentially certain views of the majority of his colleagues on the subject of the appointment of the next Lieutenant Governor. It was felt that there was nothing improper in such an approach "provided that the Island authorities do not discuss personalities or nominate persons whom they would like", and indeed the Speaker's letter had said "we cannot of course have any views on the individual candidates for the post, we are merely concerned with their training and experience").

430. In 1966, however, the field of consultation was widened. The outgoing Lieutenant

Governor (Sir Ronald Garvey) asked whether a "small committee" consisting of the First Deemster, the Speaker of the House of Keys and Sir Ralph Stevenson (a member of the Legislative Council appointed by the Lieutenant Governors) could be "taken into the Home Secretary's confidence". (CIM/415/2/6). No objection was seen to this request and the "committee's" opinions on the 4 short listed candidates were submitted by the Lieutenant Governor who reported that "all 3 found it difficult to assess the suitability of the candidates purely on the basis of the synopsis of their careers.....(The Speaker) also considered that consultation should be widened to include all the members of the Executive Council..... If, however the Executive Council were consulted, I think they would wish to have an appreciation of the characters and personal attributes of all candidates put forward.....". (Letter of 18 January 1966).

431. The Department felt (Mr North's memorandum of 2 February, and Mr Guppy's minute of 23 February 1966) that to accept the Speaker's suggestion would be to put the Executive Council almost in the position of a selection committee, which could be embarrassing since the appointment is made by the Crown. It might also lead to a demand to interview the candidates, an inappropriate course for persons of the kind likely to be considered for appointment. Moreover, to give the Executive Council "an appreciation of the characters.... and Mr Guppy thought that at most members of the Council might be informed orally of the name of the person whom it was proposed to invite to serve, so that if they had any serious objections, these could be considered: though Mr Guppy doubted whether this limited further consultation would give much satisfaction or serve any other useful purpose: probably none of those consulted would know anything of the person concerned. In the event the Lieutenant Governor, Sir Ronald Garvey, was asked, after a submission had been made to the Palace, to tell the Executive Council that the Home Secretary had recommended Sir Peter Stallard as his successor, and the Council expressed their appreciation at being taken into the Home Secretary's confidence.

431(a) Tynwald's written evidence to the Royal Commission proposed that the advice of the Executive Council should be sought in confidence before an appointment is made to the office of (among others) Lieutenant Governor (paragraph 22 and 23 of Tynwald evidence, published in the Commission on the Constitution Minutes of Evidence, Volume VI). In 1966 the Speaker had suggested consultation with the Executive Council (see letter of 18 January 1966 on CIM 400/2/6), and a similar recommendation was made by the Insular representative on the Joint Working Party on the Constitutional Relationship between the Isle o Man and the United Kingdom, under the chairmanship of the then Minister of State, the late Lord Stonham, which reported in 1969. The relevant extracts from the Stonham report are conveniently reproduced at Appendix C to the Tynwald evidence to the Commission on the Constitution. (The Appendices to the evidence by Tynwald were not published by the Commission, but are included in the full copy of the evidence on CIM/68 605/5/20). In brief, the Home Office accepted that the advice of the Isle of Man ought to be available (channelled through the Lieutenant Governor) and taken into account before advice is tendered to the Queen, "If, however, the words "on the advice of the Executive Council" are meant to imply a veto on the one hand or a sole right of nomination on the other.....then the proposal would not be acceptable...." (paragraph 13 of Appendix 6 of the Joint Working Party Report - Home Office evidence).

432. The Isle of Man representatives on the Stonham Working Party and those who subsequently gave oral evidence to the Royal Commission confirmed that they did not intend that the advice of the Executive Council should be binding, or that the Council shave have a veto, and while they considered that, if a list of candidates were available, the Executive Council ought to have the opportunity of expressing an opinion, they agreed that the initiative and the final decision on the recommendation of a candidate should rest with the Home Secretary.

433. The Joint Working Party recommended that further consideration should be given by HM

Government and the Isle of Man Government to the proposal that the advice of the Executive Council should be sought before an appointment was made to the post of Lieutenant Governor. Paragraph 34 of the Joint Working Party Report could be read as implying that the proposal had been accepted as far as the appointment of a Lieutenant Governor is concerned, but the Home Office evidence to the Royal Commission stated:

> "The Home Office sees no objections to such consultations being on a wide basis, provided that confidentiality can nevertheless by guaranteed. The Home Office would doubt the wisdom of prescribing formally the extent of consultation to be undertaken, since circumstances change and the Islands might wish at some subsequent date to vary or widen the practice".

(Paragraph 24 of Home Office evidence to the Commission on the Constitution, published in Minutes of Evidence Volume VI).

434. The findings of the Royal Commission on the Constitution on the matter of consultation are contained in its Report, Relationships between the United Kingdom and the Channel Islands and the Isle of Man, at paragraph 1441-1444 and 1525-1526. The Royal Commission was entirely sympathetic to the Home Office view that there should be consultation over the appointment of a new Lieutenant Governor, that such consultation should be wide but strictly confidential, and that the nature of the consultation should not be prescribed so as to preserve flexibility for the future (paragraph 1526 of the Report).

435. In 1972, while the Royal Commission on the Constitution was sitting, preliminary steps were taken towards the appointment of a successor to Sir Peter Stallard, whose term of office as Lieutenant Governor of the Isle of Man began in September 1966. The Foreign and Commonwealth Office, the Ministry of Defence and the Civil Service Department were consulted about possible candidates, and the Permanent Under Secretary of State wrote to the Lieutenant Governor on 13 December 1972 giving brief details of 5 candidates for the post and their careers, and suggesting that the Lieutenant Governor used his discretion in consulting others on as wide a basis as was consistent with confidentiality. (CIM/70 415/2/7). The candidates suggested included 2 service officers, and the letter was sent before the candidates had been approached and before any submission had been made to the Secretary of State.

436. Sir Peter Stallard replied on 4 January 1973 stating that he had consulted the First Deemster and the Speaker and the full Executive Council, which meant that his consultation had been wider than ever before. He stated that the opinion of all whom he had consulted was that a Service candidate was not yet acceptable and that they would prefer someone with constitutional experience until the office of Lieutenant Governor became almost wholly representational. Two of the candidates were preferred above the others.

437. The Home Office proceeded to seek ministerial authority to approach the candidate preferred by the Manx (although he had not been at the top of the Home Office list). (CIM/70 415/2/7). It was suggested to him that the term of office would be "a period of not less than 5 years and not more than 7" (letter of 30 January 1973), the change from a period of 7 years being made at the suggestion of Sir Peter Stallard, who considered it too long a spell. The Home Office felt that no commitment to alter the period should actually be made until the contents of the report of the Royal Commission on the Constitution were known, and so at this stage a flexible period was suggested. (CIM/70 415/2/9).

438. When the first candidate approached declined to accept the post of Lieutenant Governor (he offered to serve for 3 years, which the Home Office considered too short a period), an approach

was made to the second candidate without any further suggestion of consultation with the Isle of Man authorities. The second candidate, Sir Hugh Norman Walker, accepted the offer, and was duly appointed by The Queen in April 1973. (CIM/70 415/2/12). Sir Peter Stallard agreed to remain in the Island for a few months until Sir Hugh could take up his post. No fresh warrant of appointment was necessary for this purpose, as the Lieutenant Governor's appointment is "during Pleasure".

439. It subsequently came to light that Sir Hugh Norman Walker's wife had not accompanied him to his posting in Hong Kong and did not intend to accompany him to the Isle of Man. When it was realised that the fact might be a source of difficulty with the Isle of Man authorities, Sir Hugh offered to resign, but as his appointment had already been approved by Her Majesty the Home Office decided that it should stand. The matter came to the attention of various influential people on the Island, with whom the Lieutenant Governor designate had been corresponding, among them the then First Deemster, Mr G E Moore, who made various heated representations to Home Office officials. (CIM/70 415/2/12). The culmination, less than a week after the First Deemster had had a discussion with the Permanent Under Secretary of State, was a resolution passed by Tynwald at a private sitting asking that a deputation of 3 members (including the First Deemster) should visit the Home Secretary "to convey to him the unanimous concern of Tynwald that the Lieutenant Governor will not be accompanied by his wife during his term of office". (CIM/70 415/2/15). A press release was issued in the Isle of Man drawing attention to this request for a deputation. The upshot was that Sir Hugh Norman Walker visited the Permanent Under Secretary of State shortly after he reached the United Kingdom from Hong Kong, and after discussion said that he felt it would be right in the public interest for him to withdraw from the appointment. This decision was conveyed to the Lieutenant Governor, Sir Peter Stallard, in a letter from the Permanent Under Secretary of State on 30 October 1973, and replies to the Clerk of Tynwald (who had written direct to the Permanent Under Secretary of State instead of following the normal course of submitting his letter through the Lieutenant Governor) were sent direct by the private secretary, and also through the Lieutenant Governor.

440. Tynwald effectively achieved what it sought and, for the first time ever, directly influenced the matter of the appointment of a new Lieutenant Governor. The move against Sir Hugh was linked to a report of a Select Committee of Tynwald which pointedly purported to set out the social role that the Lieutenant Governor and his wife were expected to play (CIM/70 415/2/9).

441. Steps were immediately taken to find an alternative Lieutenant Governor. Sir Peter Stallard was authorised to consult on the basis of 2 candidates: as before he consulted with the Executive Council, the Speaker and the First Deemster, all of whom favoured one candidate rather than the other. This candidate, Sir John Paul, was therefore formally approached, having already indicated to the Permanent Under Secretary of State his willingness to accept nomination. (CIM/70 415/2/19). The letter of invitation of 14 November 1973 includes the decision that the appropriate period for the term of office should, in normal circumstances, be 5 years rather than 7 (the Home Office felt free to make this change because by then the report of the Royal Commission on the Constitution had been published and did not bear on this question) and included the following sentence: "Tynwald is showing signs of wishing to reduce the executive role of the Lieutenant Governor and it is unlikely that we would oppose an orderly progress in that direction provided that we can be satisfied that it would be assumed responsibly by the Manx".

442. The reduction of the Lieutenant Governor's normal term of office from 7 years to 5 accorded with a recommendation by the Select Committee of Tynwald on the powers and duties of the Lieutenant Governor in its report of April 1972 (CIM/70 415/2/9). Sir John Paul was appointed to the post without further difficulty, and was sworn in as Lieutenant Governor on 10 January 1974 (see also paragraph 426). Sir Peter Stallard left the island at the end of November 1973, returning

to preside over a meeting of Tynwald in December. For the remainder of the interval the First Deemster acted as Lieutenant Governor. No warrant of appointment was necessary for this purpose, as the Lieutenant Governor's own warrant provides for the First Deemster, or failing him the Second Deemster, to act in his stead if he (the Lieutenant Governor) is away from the Island or otherwise unable to discharge his duties. (CIM/70 415/2/20 CIM/70 415/2/18).

The Lieutenant Governor's Warrant of Appointment

443. A copy of the most recent Warrant of Appointment issued in June 1980 is on CIM/70 415/2/32.

444. Until 1919 a Lieutenant Governor of the Isle of Man was appointed for life (373899/8). In 1919 a change was made in the period of appointment, following a recommendation of the MacDonnell Commission in 1911 and the office was held for 7 years. The wording of the Royal Warrant stated that the office was held "during Our Pleasure, but for a period not exceeding 7 years from the date of these Presents, ...". An example of such a warrant is to be found on file 651799/56.

445. In 1952 a further change was made, and the wording of the warrant was brought into line with the form of the Channel Islands' warrants by providing for the office to be held "during Our Pleasure". The period for which the Lieutenant Governor was expected to remain in post was made clear to him by the Home Office and continued to be 7 years until 1974 when it was reduced to 5 (see paragraph 441). (651799/75).

446. There is now no need for a fresh Warrant of Appointment if it is necessary for a Lieutenant Governor to remain in office for slightly longer than the normal period. As regards extensions of office in the 1919-1952 period, see paragraph 424-5.

447. Until 1931, the Lieutenant Governor's Warrant of Appointment made no provision for a deputy to act if he were unable to do so - see for example the warrant issued to Sir Claude Hill in 1926 on 373899/37. If a Lieutenant Governor became ill, or if there was a gap between the expiry of a term of office and the appointment of the next Lieutenant Governor, a warrant under the Royal Sign Manual was issued if it was necessary to appoint a Deputy Governor. Normally this was the First Deemster, but in 1924 the Second Deemster was appointed (373899/17). In 1926 the First Deemster was appointed Deputy Governor during an interregnum, and held office until the new Lieutenant Governor was sworn in, following a precedent in a similar situation in 1902. (373899/32, 38). On this occasion the Deputy Governor was paid half of his salary as First Deemster and half of the salary of a Lieutenant Governor. There is an interesting historical survey of the appointment of Governors and Deputy Governors, written by Sir James Gell in 1885, on 373899/19. (373899/40).

448. In 1931 the procedure was altered at the suggestion of the then Lieutenant Governor, Sir Claude Hill. An additional warrant was issued which included the paragraph "We do hereby ordain that Our First Deemster and Clerk of the Rolls, or in the event of his inability to act Our Second Deemster shall, after taking the usual oaths discharge the duties of Lieutenant Governor on being notified by you that owing to your absence from the Island or any other cause you are unable to discharge the duties of your office, until such time as you shall resume the duties or until We signify Our further pleasure in that behalf". (373899/48). This paragraph was subsequently incorporated into the warrant issued when the Lieutenant Governor was appointed. The Home Office asked to be notified of any occasion on which it was necessary for a Deputy Governor to act. (373899/46). The last warrant appointing a Deputy Governor was issued in 1930.

449. A deputy was not always sworn in simply because the Lieutenant Governor was not in the Island. (651799/28). In 1933 there is an example of an interregnum - albeit only for one week - during which it was not felt necessary to swear in a deputy.

450. The wording of the part of the warrant relating to a Deputy for the Lieutenant Governor was amended in 1952. It was felt that the provision for a Deputy to act "on being notified" by the Lieutenant Governor would not enable a Deputy to assume office in the event of the sudden serious illness or unexpected death of a Lieutenant Governor, and the warrant was altered to provide that the First or Second Deemster should "discharge the duties of Lieutenant Governor whenever owing to your absence from the Island or any other cause you are unable to discharge the duties of your office.....". (651799/75).

451. Also in 1952 an alteration was made in the punctuation of part of the first substantive paragraph of the Warrant of Appointment, to bring it into line with a similar phrase occurring in the Revestment Act of 1765. (651799/75).

452. The Speaker of the House of Keys made a suggestion in 1966 that the warrant of appointment of the incoming Lieutenant Governor should revert to the earlier practice of having a specific warrant for a deputy Governor when an appointment was necessary, and he also argued against the inclusion of the Second Deemster in the line of succession to deputy Governor on the grounds that he no longer held a seat in Tynwald or the Legislative Council. The points do not appear to have been pursued. (CIM 415/2/6).

453. In 1966 as a consequence of a reconsideration of the warrant of appointment following a change in the oath of office made in 1959, the paragraph of the warrant relating to a deputy for the Lieutenant Governor was altered so that the words "taking the usual oaths" became "taking the oath". (CIM 415/2/2 CIM 415/2/6). A copy of the oath is to be found in the printed programme for the swearing in of Sir Peter Stallard in 1966 on CIM 415/2/6).

454. Consideration was given in 1973 to the possibility of making a further alteration to the wording of the warrant of appointment so far as it relates to a deputy for the Lieutenant Governor. It was felt that the existing wording could be interpreted as meaning that the provision for a deputy took effect every time the Lieutenant Governor left the Island, for whatever reason and for however short a period, and the outgoing Lieutenant Governor felt that this was unsatisfactory because it was not always necessary for a deputy to assume his role every time he happened not to be in the Island. It was decided to leave this question over for closer consideration at the end of Sir John Paul's term of office, when the form of the Royal Instructions would also be reviewed. (CIM/70 415/2/18). It emerged in 1976 that it had become customary for both Deemsters to take the Governor's oath when they or a new Lieutenant Governor took office, so that they could assume office without delay if the need arose. (CIM/70 400/1/5).

455. Although the warrant of appointment does not indicate the title of the Lieutenant Governor's Deputy, it is customary for him to be called the Deputy Governor. (CIM/70 415/2/20) 373899/46). When deputies were appointed under the Royal Sign Manual the warrant authorised the appointee "to act as Deputy Governor...", and in 1926 the then Government Secretary (Mr Sargeant) wrote to enquire whether this was the correct title to use during an interregnum. The Home Office replied:

> "The real crux of the matter is in the continued existence of the post of Governor. Although no Governor seems to have been appointed since the death of the fourth Duke of Atholl in 1830, there is nothing to indicate that the post of Governor was abolished and if it has not been it is perfectly correct to appoint a Deputy Governor,

whether or not there is a Lieutenant Governor. If the post of Governor no longer exists it is equally incorrect to appoint a Deputy Governor if the Lieutenant Governor is indisposed or non-existent. Unless, therefore, you have historical evidence that the post of Governor has been abolished I do not think that we need alter the form of nomenclature, which has the merit of comparative antiquity, although the form of words "to act as Deputy Governor" appears to me to be somewhat tautological. One would expect either "to act as Governor" or "to be Deputy Governor". So far as the present appointment is concerned I do not think you need have any qualms with regard to the validity of the warrant". (373 899/33).

The Royal Instructions

456. On appointment, the Lieutenant Governor of the Isle of Man receives from the Monarch a document known as the Royal Instructions which tell him, in general terms and ancient form, how to set about his duties. The most recent version on CIM/70 415/2/18. The history of the Royal instructions is set out in doc 24 on the same file. The Instructions date from 1756 when the Isle of Man came under the permanent and direct administration of the Crown (see paragraph 409). King George III appointed a man called John Wood to be Governor of the Island and sent him a Commission and a separate set of Royal Instructions concerning the way in which he was to carry out his duties and to convey to the people the will and intentions of the Monarch. The original Instructions have not yet been traced, but it seems likely that something very like existing instructions 2, 4 and 7 were in the 1765 Instructions. Numbers 1, 3 and 5 may also date from the eighteenth century.

457. Certain minor amendments have been made this century, as set out in paragraph 12 of doc 24 on CIM/70 415/2/18; in 1952 to Instruction No 1 (651799/75), in 1959 to No 5 (CIM/415/2/2), in 1966 to numbers 1, 6, 7 and 8 (CIM/415/2/6) and in 1973 to numbers 2 and 4 (CIM/70 415/2/18). When Rear Admiral Sir Nigel Cecil was appointed Lieutenant Governor of the Isle of Man in 1980, the First Deemster suggested the insertion of the words "when needful" in paragraph 4 of the Instructions so that the phrase in question would read ....."you will particularly explain to them when needful the advantages to be derived from the protection of our Government .....", but the Home Office did not favour this alteration and it was not made (CIM/70 415/2/18).

458. As a result of a review of the Royal Instructions carried out in 1979 (CIM/70 415/2/18) it was decided that although they were not strictly necessary, the Instructions were an interesting part of the history of the Isle of Man and should be allowed to continue in being until their use was called seriously into question.

459. The Select Committee of Tynwald on the Powers and Duties of the Governor recommended in its second interim report (December 1972) that "the Lieutenant Governor be furnished with a memorandum as to the official and social duties pertaining to his office". (CIM/70 415/2/9). The then First Deemster was informed in a letter of 15 October 1973 from the Permanent Under Secretary of State that there was "no prospect whatever that the Home Secretary would endorse a memorandum on the lines apparently envisaged by the Select Committee".

459(a) In January 1981 the Final Report of the Select Committee of Tynwald on the Powers and Duties of the Governor concluded that ....."it is considered that the Royal Instructions contain outmoded expressions, and do not appropriately reflect the constitutional position of the Lieutenant Governor". (Paragraph 12.2 see doc 1 on CIM/81 415/2/1). Amendments were suggested to paragraphs 1, 2 and 3 and the omission of paragraph 5. It was also suggested in the Report that arrangements for delegating the power to grant Royal Assent to Acts of Tynwald should be made by way of amendment to the Royal Instructions (CIM/80 400/2/5), but these were later made by Order

in Council (see paragraphs 603 to 606). The Lieutenant Governor, when consulted about the amendments suggested to the Royal Instructions, took the view that they did still broadly cover his overall responsibilities for the maintenance of good government and should be regarded as historical documents and not perpetually be altered and rephrased in modern terminology.

The Lieutenant Governor Subject to the Control of Secretary of State

460. A general statement is given at paragraph 13 of the 1958 Home Office Memorandum to the MacDermott Commission. There has been at least one occasion in the past when the Lieutenant Governor had to be forcefully reminded of the constitutional position. The Isle of Man (War Legislation) Act 1914, an enactment of the United Kingdom Parliament, empowered His Majesty, by Order in Council, to extend to the Island any United Kingdom war time measures with such adaptions as might be necessary. In 1917 certain regulations were extended to the Island which the Lieutenant Governor, Lord Raglan, who had been consulted, considered were unnecessary so far as the Island were concerned. Lord Raglan then wrote to the Home Secretary challenging the power of His Majesty's Government to take such action without his concurrence, and said that if His Majesty's Government claimed this power he felt that he must lay the matter before Tynwald. The Home Office reply (3 August 1917) contained the following passage:

> "The Secretary of State must take strong exception to the attitude which Your Lordship has assumed in regard to this matter. The Lieutenant Governor is the representative in the Island of the Imperial Government; and, while it is the practice of the Imperial Government to ask for the advice of the Lieutenant Governor on matters of Imperial Legislation affecting the Island, the final decision rests with the Government alone. The Secretary of State cannot admit for an instant the claim which is put forward in this letter that the Government should not exercise in regard to the Island any of the powers which it possesses under the Defence of the Realm Act and the Isle of Man (War Legislation) Act for the defence of the Realm except with your concurrence.
>
> The Secretary of State must impress upon Your Lordship that the Imperial Government expects that you as its representative will accept and carry out loyally any decisions it may come to. If you were, as suggested in the last paragraph but one of your letter, to take action calculated to raise difficulties with the Island Legislature, the Government would have to take a very serious view indeed of the matter".

461. The Lieutenant Governor sent a reply which was regarded in the Home Office as "singularly beside the point" on the issue in question, though it contained assurances which the Lieutenant Governor was told the Secretary of State "noted with satisfaction" of the Lieutenant Governor's "desire and intention to carry out to the best of his powers the decisions of the Imperial Government". The Government Secretary then wrote, on behalf of the Lieutenant Governor, seeking the Home Secretary's agreement to the correspondence being laid before Tynwald "since the decision of the Secretary of State creates a constitutional position which very closely concerns the Island Legislature". (262174//273, 280, 286).

462. The Home Office replied that the Secretary of State did not regard the decision as affecting the constitutional position; he saw no occasion for any communication being made to Tynwald "and cannot approve of such a course being taken by the Lieutenant Governor".

463. In 1921-22, the Lieutenant Governor (Sir William Fry) was rebuked for entering into commitments for expenditure from Imperial Funds without consulting the Home Office. The

original files have been destroyed, but the circumstances are summarised in a note in 373899/24, which also records that in 1925 the same Lieutenant Governor was instructed that there should be a reduction of wages of men employed on unemployment reliefs, but he directed the Attorney General to move a resolution in Tynwald that there should be no reduction. The Lieutenant Governor was told that if a similar disregard of instructions occurred in future a serious view would be taken of the matter.

464. As regards recent Lieutenant Governors, the Home Office felt that Sir Ronald Garvey (1959-66) "was often at fault in seeming to encourage the Islanders in putting forward extravagant and impracticable proposals when he ought to have exercised some restraining influence" (Mr Guppy's minute of 29 September 1966 in CIM 415/2/2). Sir R Garvey also at one stage asked the then Permanent Under Secretary of State at the Colonial Office to suggest someone who might act as a "constitutional adviser" to the Island. (In his letter he referred to the fact that Island legislation depended on the Privy Council for Royal Assent in terms that suggested that he thought the arrangement should be changed). He was told by the Colonial Office that this was a matter for the Home Office. (CIM 415/2/22).

465. A similar instance occurred early in the tenure of office of Sir Peter Stallard. Following the seamen's strike of 1966, in which the Islanders were dismayed to find how dependent they were for essential supplies and services or factors outside their control, the emergency committee which had been set up during the strike recommended that "the Island's constitutional relationship with the United Kingdom be examined immediately with the advice of the most eminent constitutional lawyers that the Island can engage with a view to obtaining a greater measure of independence". Without telling the Home Office (though he did so later) the Lieutenant Governor invited Lord Stow Hill (who, as Sir Frank Sasquatch, had been Solicitor General and Attorney General in the Alee Government, and Home Secretary from 1964-65) to accept the post of "constitutional adviser". (CIM/66 400/2/13). Lord Stow Hill replied that he would not be able to accept the invitation without the agreement of the Home Secretary. Subsequently, in
connection with the setting up of the Joint Working Party referred to earlier, the Home Office suggested the names of two persons (a former Legal Adviser to the Commonwealth Relations Office and Colonial Office, and a former constitutional adviser to the Kenya Government among others) whom the Island might like to consider approaching if they desired to bring in a constitutional adviser. In the event, the Island appointed two other persons as their legal advisers - cf p.1 of the Working Party's Report.

466. In December 1966, Sir P Stallard, without consulting or informing the Home Office, took part in an ITV "This Week" programme about the Island, in the course of which various participants, including the Speaker of the House of Keys, expressed some rather strong "nationalist" views. Sir P Stallard, while giving no support to these sentiments, said that Whitehall Departments - other than the Home Office to whom he paid almost fulsome tribute - sometimes failed to consult the Island and generally treated it tactlessly. (CIM/70 415/2/10). Sir Philip Allen wrote to him as follows:

> "We did not know that the Isle of Man was to be featured in the ITV programme 'This Week' on 1 December and unfortunately none of us saw it. A transcript has, however, been brought to my notice and there are points arising which I think I should mention to you. The theme of the programme was greater independence for the Isle of Man and one cannot complain of the statements made by the candidates at the election to the House of Keys on this subject or in criticism of the United Kingdom Government in its dealings with the Island. This is, after all, the proper stuff of politics, particularly at election time. It was, however, a little surprising to find the Lieutenant Governor appearing in a programme of this kind and apparently

> giving his support to some of the criticisms. While I note your remarks about the Home Office, I think it unfortunate if you made the remarks attributed to you in the transcript about the lack of co-operation by other Departments. I have no reason to believe that the Isle of Man has been handled tactlessly or pushed around by the bureaucrats in Whitehall or that legislative instruments are made without reasonable consultation with the Isle of Man Government. I am well aware that these views are held in the island. But this does not mean that there is justification for them. If in your view the criticisms can be sustained I very much hope that you will put them to us in specific terms so that we may make any necessary enquiries and do what we can to remove any legitimate grounds for complaint. I think this is likely to be more fruitful, as well as being more appropriate, than criticisms made in the most general terms on a public occasion."

467. In reply, the Lieutenant Governor cited three instances on which he thought the Island had valid complaints: one of them was the Marine etc Broadcasting (Offences) Bill (later the Act of 1967) which is referred to later as one of the relatively few examples of United Kingdom legislation being "imposed" on the Island. The Home Office thought his points misconceived, but that it would be unprofitable to argue about the past, and that the best course would be to have a talk with him about the future, and Sir P Allen saw him in April 1967. The brief prepared by Mr Guppy for the interview deals fully with these and other points; the file also contains a copy of a personal letter of 20 February 1967 from the Lieutenant Governor to Mr Guppy giving his personal comments on problems and personalities in the Island.

468. The above instances show that difficulties can and do arise from time to time with Lieutenant Governors - almost inevitably perhaps in view of their dual status as head of the Island's administration and representative of the United Kingdom Government, but the impression should not be given that the Home Office is in a state of perpetual conflict or argument with them. The general position remains as stated in paragraph 13 of the 1958 Home Office Memorandum: "in the main.... it is left to the Lieutenant Governor to keep the Home Secretary informed on matter affecting the Government of the Isle of Man, and to seek instructions on these matters as he thinks it necessary and desirable".

Salary and expenses

469. These are fixed from time to time by resolution to Tynwald. They do not therefore require the approval of the Privy Council, as they would if they were fixed by insular legislation and, in contrast with the Channel Islands, the Home Office is not normally consulted or informed about any changes. According to present records (1981), the salary is £10,000 and the expenses allowance £6,000. The Home Office has no formal powers of intervention in this field but would regard itself as having a general right to raise with the Island authorities, if necessary, the question whether the salary and expenses of the Lieutenant Governor were adequate to enable him to perform his functions properly and to maintain the dignity of the office (see note on CIM 415/2/4).

469(a) When Rear Admiral Sir Nigel Cecil was appointed Lieutenant Governor of the Isle of Man in 1980 the Civil Service Department raised the question of abating his pension, the aim being to avoid overpayment from public funds to an individual who is receiving a public service pension. (CIM/70 415/2/31). In fact however when the appropriate sums were done relating to Sir Nigel Cecil it was found that there would need to be little o r no abatement so the Civil Service Department agreed to overlook the matter, but reserved their position in relation to future appointments (docs 28, 29, 45, 46, 48).

ADC/Private Secretary to the Lieutenant Governor

469(b) One of the recommendations of the first Interim Report of the Select Committee of Tynwald on Constitutional Issues 1979, was that a permanent post of ADC/Private Secretary to the Lieutenant Governor be created. (CIM/79 425/6/1). The post of ADC had previously been an honorary part-time one. The new position was advertised by the Isle of Man Civil Service Commission in September 1979, and in June 1980 it was filled by Mr Michael Wood, who was educated in the Island and worked for a bank there from 1961-80.

Audiences with The Queen

470. As in the case of the Channel Islands, the Lieutenant Governor and his wife are received in audience by The Queen on appointment but not on retirement.

Presents to a retiring Lieutenant Governor

471. In 1918, the Government Secretary told us that "the police and certain other servants of the Crown" in the Island would like to make a presentation to the retiring Lieutenant Governor (Lord Raglan) and asked whether this would be in order. He referred to a Colonial Regulation which prohibited the acceptance or giving of presents "during the continuance of their service" but wondered whether this applied to a present on departure. We expressed the view that it would be very undesirable for retiring Lieutenant Governors to receive presents from subordinate officials or the police. (101219/24). There was nothing to prevent him receiving presents from personal friends, but the appropriate method, if the police or any other body of Government officials wished to express their appreciation, would seem to be the presentation of an address.

The Lieutenant Governor's Uniform

472. No uniform is prescribed for the Lieutenant Governor's of any of the Islands, because the posts have invariably been filled by people entitled to wear uniform in some other capacity (651799/58, 1938). In 1926 it was stated (373899/41) that the Lieutenant Governor wears civil uniform for a Lieutenant Governor unless he was a flag officer in the navy or a general officer in the army, in which case he wears his naval or military uniform in lieu.

Use of Royal Coat of Arms

473. There is no objection to the Lieutenant Governor using the Royal Coat of Arms on eg invitation cards, but it is preferable that they should be "in lozenge" with the words "Lieutenant Governor - Isle of Man" around the border, which accords with practice in the Channel Islands. (CIM 590/6/1).

The Government Secretary

474. Until the Isle of Man Civil Service Act 1962 (see paragraph 475 below) the Government Secretary was appointed by the Lieutenant Governor. (CIM 426/5/4). There has been no move, as there was in the Channel Islands (see paragraph 40 above) to alter the title to "Secretary to the Lieutenant Governor", or "Government Office" to "Office of the Lieutenant Governor", and such an alteration would not be called for since, in contrast with the Channel Islands, the Lieutenant Governor of the Isle of the Isle of Man and his Office are in effect the seat of Government. The Government Secretary is, moreover, Secretary to the Isle of Man Government. The Lieutenant

Governor has his own Private Secretary.

475. In 1940, the Home Office rejected a suggestion made by the Government Secretary (who was reaching the normal retiring age) with the concurrence of the Lieutenant Governor, that the post of Government Secretary and Treasurer (see below) should be filled by someone from Whitehall. (447473/22). We thought that a "Whitehall" appointment would be unpopular in the Island, and that it was doubtful whether anyone in the Home Office or Treasury would agree to serve in the Island, even for a limited period, except possibly for reasons of health. We thought however that we might well take part in the process of selection or make the selection ourselves, though the Lieutenant Governor would continue to issue the warrant of appointment. (447473/22,24,25). In the event, the Government Secretary was given an extension of office - and the Home Office upheld the Lieutenant Governor's view that this was not a matter on which the Keys has any right to be consulted. These points are now of historical interest only, since under the Isle of Man Civil Service Act 1962, which implemented the recommendation of the MacDermott Commission for a unified Civil Service in the Island (in place of each Board of Tynwald having its own separate staff), and for a Civil Service Commission (consisting of a Chairman and two other members of Tynwald elected by Tynwald, one person appointed by the Lieutenant Governor, and the Government Secretary), the Government Secretary is a Civil Servant appointed by the Commission, with the consent of the Lieutenant Governor. (CIM 426/5/4).

476. Until 1961, under arrangements agreed with the Treasury following the passing of the Isle of Man Customs, Harbour and Public Purposes Act 1866, the Government Secretary was normally also Treasurer. (447473/23). In 1941, an Assistant Government Secretary and Treasurer was appointed on a temporary basis "for the duration of the war". The posts were made permanent in 1946 by the Lieutenant Governor after consultation with the Keys and with Home Office and Treasury sanction, though the then Permanent Under Secretary of State (Sir A Maxwell) took the Lieutenant Governor to task for not obtaining Whitehall clearance before putting the matter to the Keys. (447473/40).

477. The Finance Board Act 1961 (an insular measure) implemented recommendations of the MacDermott Commission by setting up a Finance Board, consisting of a Chairman and two members, all elected by Tynwald, to advise the Lieutenant Governor on insular finances and subject to his approval to determine priorities of expenditure. (CIM 515/1/4). The Act also provided for the appointment of a Treasurer, and it is clear from paragraph 85 of the MacDermott Commission Report that this official is expected to exercise wider functions than the rather routine accounting ones exercised by the Government Secretary, as Treasurer, and his assistants. "We are of opinion that the Manx Government should now have the services of an official of high standing, with suitable qualifications and experience in the field of public finance, who would be responsible for the entire machinery of Government finance and for advising on questions of policy as well as on matters of organisation and method." He should also act as a link between the Lieutenant Governor and the Finance Board.

478. Like the Government Secretary (paragraph 475 above) the Treasurer is appointed by the Manx Civil Service Commission, with the consent of the Lieutenant Governor.

479. Until November 1972 the Government Secretary also held the post of Clerk of the Legislative Council which up till then was a Crown appointment. (CIM/67 400/3/26). In 1970 The Queen agreed that, in accordance with a recommendation by the Stonham Working Party, the post of Clerk of the Legislative Council should cease to be a Crown Office when it ceased to be held by the existing incumbent and that appointments should thereafter be made by the Lieutenant Governor, and that the Lieutenant Governor should be empowered to accept the resignation of the existing holder when he chose to tender it. The resignation occurred in November 1972. (CIM/67

416/3/2).

B. THE DEEMSTERS

480. The office of Deemster is the oldest in the Island, going back, though not continuously under the name of Deemster (which was introduced when the Island came into English possession) to pre-Norse times. The Island was for long split, for administrative purposes, into a northern and southern division. Each had its chief man of law, who eventually became known as the Deemster, and until the Isle of Man Judicature Amendment Act 1918, the two were known as the Northern Deemster and the Southern Deemster. Since 1918, the titles have been First Deemster and Second Deemster. The Deemsters are the Judges of the Island's High Court of Justice and have the powers of an English High Court Judge. (See paragraph 503 below as to appeals). There is an interesting account of their powers and duties appended to a letter of 28 February 1958 from the then Lieutenant Governor on CIM 417/1/6.

481. In earlier times, the Deemsters assisted the Keys in the passing of laws and the First Deemster was a member of the Legislative Council until 1975 (see paragraph 524). The Second Deemster was also a member until 1965. His removal from the Council implemented a recommendation of the MacDermott Commission, which considered (paragraphs 33-4) that it was not desirable that more than one judge should be an ex officio member of the legislature.

481(a) In the antiquity and dignity of their office, their mode of appointment (see below), their judicial functions and the fact that, as also indicated earlier, one of the Deemsters acts as Lieutenant Governor in the latter's absence or incapacity, the Deemsters could be compared with the Channel Island Bailiffs. But that is as far as the comparison can go. Unlike the Bailiffs, they do not preside over the legislature nor are they the head of the insular administration -both these functions being exercised by the Lieutenant Governor. It follows, among other things, that in contrast with the Bailiffs, the Home Office has little occasion to correspond with the Deemsters.

482. The First Deemster is also Clerk of the Rolls, in which capacity he has certain duties relating to the payment of moneys, public records, the Rolls Office and the Registry Office. Until 1918, the Clerk of the Rolls was a third judge, and as there were three judges, two were available for hearing appeals against the decisions of the third. Under the Act of 1918 mentioned in paragraph 480 above and on the decease of the then Clerk the administrative functions of the Clerk were given to the First Deemster, and provision was made for an additional Judge of Appeal, who unlike the Deemsters must be an English QC.

483. The Deemsters are appointed by the Crown, by Royal Sign Manual on the recommendation of the Home Secretary, who in turn is advised by the Lieutenant Governor. The Office is held during Pleasure, but Deemsters may retire after 65 and are required to retire at 72, although there is a possibility of annual extensions to 75. The Lieutenant Governor takes local soundings, for example of former Deemsters or of the Judge of Appeal, and discusses in his letter of recommendation to the Home Office the merits of all the possible candidates. There has been no instance this century where the Home Office has not accepted the Lieutenant Governor's advice - though it may on occasion be discussed with him at some length - and there appear to have been only two occasions, both in the 1920's, where the Home Office has sought further advice: on one of these the Judge of Appeal was consulted about the Lieutenant Governor's recommendation.

484. The warrant of appointment of the Second Deemster was altered in 1963 so as to omit references to the salary and to the Treasury. (CIM 417/1/10). The file was subsequently mislaid, however, and warrants required in 1969 for the First and Second Deemster were based on the earlier unamended versions. It was not until 1974 that the situation was remedied. (CIM/68

417/1/4).

485. In 1963 consideration was given to the question whether it would be necessary to amend the terms of the Second Deemster's warrant if his role were to be altered by legislation (the prospective legislation at the time concerned the removal of the Second Deemster from the Legislative Council). It was agreed on all sides that exercises of the Royal Prerogative were subject to present and future statute law, so that an Act of Tynwald would be bound to prevail over the wording of a warrant under the Royal Sign Manual (CIM 417/1/10). The warrant could confer no claim to rights or privileges which were withdrawn by statute.

486. The MacDermott Commission gave consideration to the question of whether two Deemsters were necessary or whether one would suffice, and concluded that two should be retained (paragraph 31 of the Report). There is an interesting note on this topic by the then Lieutenant Governor, Sir Ambrose Dundas, appended to his letter of 28 February 1958 on CIM 417/1/6.

487. There is no statutory requirement that a Deemster should be a member of the Manx Bar, but it has been invariable practice to appoint either the Attorney General, the High Bailiff (the stipendiary magistrate)[1] or a senior member of the Manx Bar. It is also usual for the Second Deemster to be appointed in due course First Deemster (cf, paragraph 84-90 of the brief for Sir P Allen on the Home Office evidence to the Royal Commission on the Constitution). (CIM 68 605/5/30).

488. As regards the Island's view, expressed to the Joint Working Party and the Royal Commission on the Constitution, that appointments to post of Deemster should be made on the advice of the Executive Council, the Home Office considers that flexibility in matters of consultation is important and prefers to leave the extent of consultation to the discretion of the Lieutenant Governor. In the case of the Deemsters there is also the point that it would be unfortunate if questions of appointment were to be freely discussed in the Island or become a question of politics, since the independent position of the judiciary would be hound to suffer. The Royal Commission on the Constitution recommended no changes in the method of appointing the Deemsters (Relationships between the United Kingdom, the Channel Islands and the Isle of Man, paragraph 1539(13)).

489. A Deemster is entitled to be addressed as "His Honour" both before and after retirement. (476332/3). The practice was approved by King George V in 1925, after the Home Office had consulted the Lord Chancellor's Office in view of the similar style of address accorded, with earlier Royal approval, to English county court judges.

490. As regards the action to be taken on the death of a Deemster, see paragraph 286.

Precedence over Attorney General

491. In 1817 the Prince Regent, on the advice of the English Law Officers, ruled that the Isle of Man Attorney General was on all occasions to take precedence over the Deemsters (this was

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[1] The High Bailiff is appointed by the Lieutenant Governor. There were originally four High Bailiffs, but at the time of the MacDonnell Committee (1911) the work was being carried out by two. In accordance with the Committee's recommendation the number was formally reduced to two by an Act of Tynwald in 1921. Subsequently an Act of 1933 reduced the number to one. At that time, the Home Office thought that the post should be abolished altogether, but by 1951 we were of opinion that, in view of the increased work of the courts, it would not be advisable to try to do away with it. (929572).

apparently in confirmation of a previous Royal decision of 1770, and in firm rebuttal of any claim by the House of Keys to have a say in the matter, which was one solely for the Royal Prerogative). (B25535/4). In 1897 however the Lieutenant Governor reported that the outgoing Attorney General and the one about to be appointed both considered, and the Lieutenant Governor agreed, that the Attorney General should take precedence after the Deemsters. The Home Office thought it unnecessary to consult the English Law Officers and a submission was made to and approved by Queen Victoria for reversal of the previous order of precedence. The Attorney General therefore now takes precedence after the Second Deemster.

C. THE ATTORNEY GENERAL

492. The Attorney General is appointed by the Crown, on the recommendation of the Home Secretary, by Letters Patent. The latest appointment file is CIM/69 418/1/5.

493. The Attorney General, like those of Jersey and Guernsey, is the principal legal adviser to the Crown on all matters affecting insular law, and also principal legal adviser to the insular government. Unlike his Channel Islands colleagues his duties are set out in Regulations made by the Secretary of State.

494. The Manx Attorney General has been subject to Regulations since 1898, when the Letters Patent appointing Mr G A Ring as Attorney General of the Isle of Man provided that "the said Office shall be held by the said George Alfred Ring subject to such Regulations as to the duties to be performed or discharged by the said George Alfred Ring in respect of the said Office or for the Department of Woods or for any other Department of Woods or for any other Department of Our Government as one of Our Principal Secretaries of State may from time to time think proper to make in respect thereof". A note on file B25535/42 records that it appeared that these words had been included in the Patent of Mr Ring's predecessor, Sir James Gell, who was appointed in 1866 but that no Regulations had in fact been made before 1898. The then Lieutenant Governor saw no necessity for Regulations, but suggested that if required they could be made at any time as the necessity arose. It was, however, decided that it might be safer to frame a code and this was done (B25535/8, 10, 13).

495. The Attorney General's Regulations were revised in 1921 on the appointment of Mr Ramsay Moore when a number of changes were made as a result of the deliberations of the MacDonnell Committee in 1911. The Committee had agreed that there was not sufficient work to occupy the Attorney General and that to keep him 'au courant' with legal practice he should be allowed to continue in private practice, but should be bound to conduct all legal work for the insular government and all government boards and to draft all government bills, (paragraph 32(3) of the Report summarised on B25535/28). The conditions attaching to the appointment were considered in 1920 when the next vacancy occurred (B25535/35, 38, 40), when it was decided that the new Attorney General should be debarred from private practice and give his whole time to the duties of his office; that he should conduct and defend, if so required, the Bills of the Isle of Man Government in both Houses of the Manx Legislature; that he should act for Departments of the Imperial Government and advise them on legal points in relation to insular matters, and should act for and advise all Boards of Tynwald, provided that if any matter of dispute arose between the Imperial Government and any Department of the insular government he should act for the Crown unless granted permission by the Secretary of State on behalf of the Crown to act for the insular government. These conditions were embodied in the 1921 Regulations. It was agreed that (as recommended in the MacDonnell Report) in cases where the Crown was concerned as owner of property the Attorney General would not appear against the insular government. The Regulations were again revised in 1945 but the duties remained unchanged (B25535/43).

496. In 1979 the need for the regulations was reviewed, and it was decided that they were no longer required (CIM 69 418/1/4). There was no doubt about the role of the Attorney General who as a Crown Officer was subject to the instructions of the Secretary of State and the Lieutenant Governor and owed his first allegiance to the Crown. The Lieutenant Governor was consulted about the proposal to dispense with the regulations, and concurred. Their use was discontinued on the appointment of Mr T W Cain as Attorney General on 11 January 1980, and the Letters Patent were amended to omit references to the regulations. (CIM 79 418/1/1).

497. In addition to his responsibilities towards the Crown and the Isle of Man Government, the Attorney General is responsible for the enforcement of the criminal law in the Island. Also, under section 8 of the Isle of Man Constitution Act 1961, he is able to appear before the House of Keys. (CIM/400/2/22).

498. The Attorney General is an ex officio member of the Legislative Council. The MacDermott Commission considered (paragraph 35) that this accorded with sound principle and should continue. The Commission said:-

> "in rejecting the views of those who consider that the Attorney General should not have a seat in the Council as of right, we cannot but think that the range and constitutional importance of his functions may not have been fully appreciated. It is not a complete description to say that he is the servant of either of the Branches or of Tynwald. He is appointed by Royal Warrant; he serves the Government, and of his duties in that capacity those as legal adviser and as draughtsman and obvious exponent of much of the Island's legislation make it, in our view, expedient and desirable that his status in the Legislature should be that of a member and not that of an official. Further it must be borne in mind that the Attorney General is responsible for the due enforcement of the criminal law and that in the performance of this essential function he stands apart from the Executive Government and is not subject to its directions. We think he ought to remain in Tynwald if only to answer for the manner in which he has discharged this particular duty, should it become necessary to do so. To leave that to others might involve the Executive in matters from which, in the interest of good government, it would be best to keep aloof."

The Attorney General had, until 1971, a vote in the Legislative Council. The MacDermott Commission did not recommend any change in this respect, but legislation to deprive him of the vote - a development advocated by the then Attorney General and consistent with the position in the Channel Islands - was later passed by Tynwald (The Isle of Man Constitution Act 1971). (CIM/66 400/2/22).

499. Unlike the Channel Islands, there is no Solicitor General. The Attorney General has qualified assistants, the Government Advocate for court work and legislative draughtsmen, but they cannot appear before the Legislature.

500. The Attorney General has always been a member of the Manx Bar, which at present has about 28 practising members.

501. The Island representatives on the Joint Working Party, and Tynwald in its evidence to the Royal Commission on the Constitution, proposed that the Attorney General should be appointed by the Lieutenant Governor, on the advice of the Executive Council. The Home Office representatives on the Joint Working Party saw real difficulty in this proposal, primarily because the Attorney General is the Crown's agent in enforcing the law. The matter was considered on CIM/67 400/3/28, and paragraph 26 of the Home Office Memorandum to the Royal Commission on the Constitution (1971) stated that the Department "sees no prospect of meeting the wishes of Tynwald

on this matter". The Royal Commission Report concluded "we recommend no change in the methods of selecting persons for appointment to Crown Offices in the island", (paragraph 1539(13) of the Report on the Relationships between the United Kingdom and the Channel Islands and the Isle of Man).

502. On the question of seeking the advice of the Executive Council over the appointment of the Attorney General (which Tynwald did not wish to claim should be of a mandatory nature) the general answer, as stated in paragraph 24 of the Home Office Memorandum to the Royal Commission on the Constitution, is that the Department doubts the wisdom of formally prescribing the extent of consultation in connection with any Crown appointment. In the case of the Attorney General there is also the point that to specify that the Lieutenant Governor must consult the Executive Council might restrict the consultation to that body, and preclude consultation with persons who might be better qualified to advise, such as the Deemsters and the Judge of Appeal.

D. THE JUDGE OF APPEAL

503. The post of Judge of Appeal, which must be held by an English QC, was created by the insular Judicature Amendment Act 1918. The Judge has appellate functions only and for this purpose sits as a Judge in the Staff of Government Division (the civil appeals court) or as a Judge of the (insular) Court of Criminal Appeal - the latter was established by the Criminal Code (Amendment) Act 1921. He sits, in either court, with the Deemster who has not judged the case under appeal, and enjoys all the legal rights and privileges of a Deemster. Under the 1918 Act, the appointment was for one year, but by the Judicature Amendment Act 1921 it was extended to five years, in both cases with power to re-appoint.

504. The Judge has hitherto always been a member of the Northern Circuit. He ceases to hold office if appointed an English High Court Judge or Crown Court Judge, but it was confirmed in 1928 that there is no objection to his acting as an English Recorder (the relevant papers 425581/3 are at the Lord Chancellor's Office).

Consultations about Appointments

505. The Judge is appointed by the Crown on the recommendation of the Home Secretary. It appears from the Home Office notebook that in 1950, when the question of responsibility for recommending appointments to various judicial offices was discussed between the Home Office and the Lord Chancellor's Office, it was accepted that it was for the Home Secretary and not the Lord Chancellor to make the recommendation (the relevant papers 958361/1 were subsequently taken over by the Lord Chancellor's Office as they referred mainly to appointments which were agreed to be the Lord Chancellor's responsibility).

506. (CIM/69 430/1/2). In 1972 the then Lieutenant Governor suggested the name of a QC who was the son of a former first Deemster of the Isle of Man to be Judge of Appeal. (It is quite rare for a Lieutenant Governor to take the initiative in proposing a person for appointment, though he may do so in a case of reappointment). The Lord Chancellor, whose advice is invariably sought on suitable candidates, did not approve of this recommendation because of the difficult situation in which the person concerned might be placed by virtue of his close connections with the Island. He suggested another name which was put to the Lieutenant Governor, who consulted the First Deemster and, for the first time, the executive Council (as Tynwald had desired in its evidence to the Royal Commission on the Constitution, paragraph 22 of Part D). This consultation preceded any approach to the prospective candidate; the First Deemster was consulted before the matter was submitted to the Secretary of State, and the Executive Council afterwards.

507. Consultation with the Isle of Man over the post of Judge of Appeal goes wider than consultation with the Channel Islands over appointments to their panel of judges (when only the Bailiff - apart from the Lieutenant Governor - is approached) but the Channel Islands have not indicated any dissatisfaction with the existing procedure.

508. The Judge of Appeal appointed in 1972 (His Honour Judge Clothier, QC) sought advice on the question of corporal punishment. The Home Office replied "... the only proper way of exercising your function is to administer the law of the Island as it stands, while recognising that it is nevertheless right for you to give a lead to the Island courts in matters of sentencing policy and to use your own assessment of the fitness of the penalty, both generally and in relation to the case in question." (CIM/69 430/1/2).

E. THE BISHOP OF SODOR AND MAN

509. The Island constitutes the Diocese of Sodor and Man which is a constituent part of the Province of York. The Bishop is appointed by the Crown but, like English Bishops (and unlike the Deans of Jersey and Guernsey) on the advice of the Prime Minister, and not on that of the Home Secretary. The Home Office (E1 Division) is however responsible, as with other Bishops, for procedural arrangements for the appointment. A memorandum on the procedure, including the variations which apply to the appointment of the Bishop of Sodor and Man, is in CHU/65 20/5/2. The Bishop is a member of the Manx Legislative Council, but it has always been held that he is not entitled to a seat in the House of Lords, and a claim made by the then Bishop in 1951 was rejected by the Lord Chancellor (then Lord Jowitt). (CHU 31/35/1).

Other Ecclesiastical Appointments

510. There are 13 livings in the Island which are in the full gift of the Crown, and two are alternatively in the gift of the Bishop and of the Crown. (CIM 130/4/1 & 4).

F. THE RECEIVER GENERAL

511. The Receiver General in the Isle of Man was for long an historical anomaly, having lost all his duties save that of being a Harbour Commissioner. The MacDonnell Report of 1911 suggested (paragraph 22) the abolition of the title of Receiver General as a misnomer, and there is a Bill of 1924 seeking to abolish the office on 392753/34. Similar proposals can be traced back to 1920, but on 392753/32 it is stated that it was essential to fill the office of Receiver General so as to comply with the terms of the (Westminster) Isle of Man Harbours Act 1872, under which the Receiver General had to be a Harbour Commissioner. By 1947 the Receiver General, though still appointed by the Crown, was no more than the Chairman of the Harbour Commissioners, and unpaid. Then the (Westminster) Isle of Man Harbours Act 1947 paved the way of Tynwald legislation setting up a Harbour Board (916524/1) and this was done in the (Tynwald) Isle of Man Harbours Act 1948 (916524/2). The post of Receiver General disappeared. Subsequent legislation relating to Manx harbours is on the CIM 450/2 series - see paragraphs 771-774.

G. THE LEGISLATURE

512. The legislative authority is the Tynwald Court (generally referred to as Tynwald) which comprises the Lieutenant Governor, the Legislative Council and the House of Keys sitting together, a total of 35 members.

513. The name Tynwald derives from the Norse words "Thing" (assembly) and "wald" (field or meeting place) and Tynwald was originally the annual open-air assembly of the freemen of the Island at a central place "where new laws were announced, disputes settled and other necessary business dealt with" (Kinvig: History of the Isle of Man paragraphs 62-3). This custom is still perpetuated in the meeting held every Tynwald Day, 5 July, on Tynwald Hill when the titles of the laws enacted during the previous twelve months are formally promulgated, being read in English and Manx, and signed by the Lieutenant Governor and the Speaker of the House of Keys.

514. King George VI presided at Tynwald Hill on 5 July 1945 (698970/2) and Queen Elizabeth the Queen Mother was there in 1963 (CIM 556/2/9). In 1961 the Lieutenant Governor with the concurrence of The Queen and the Foreign Office invited (through the Norwegian Embassy) Crown Prince Harald of Norway to attend the ceremony but, as the Embassy warned at the outset might be the case, the Crown Prince was unable to accept (CIM 556/2/5). Her Majesty Queen Elizabeth II visited the Isle of Man in 1955 (CIM 556/2/1-4) and 1972 (CIM/67 556/2/5), and presided at Tynwald Hill in July 1979 during the millennium celebrations (CIM/76 403/5/4,20). Various other members of the Royal family attended functions in the Isle of Man in 1979 in connection with the millennium (CIM/76 403/4 series).

515. Up to 1916 Acts of the Isle of Man always included at the end of a recital dated 5 July that the Act, having received the Royal Assent, "as this day promulgated and published on the Tynwald Hill, according to law." This recital does not appear in modern Acts and whatever view may have been held in earlier times on the point, it is clear that an Act does not have to await the 5 July promulgation to become effective. To take one example of a standard commencement provision, section 12 of the Finance Board Act 1961 provided that the Act should come into operation when the Royal Assent thereto had been announced by the Lieutenant Governor to Tynwald and a certificate had been signed by him and the Speaker but should take effect on such day as the Lieutenant Governor might by order appoint. Royal Assent was announced to Tynwald on 12 December 1961, and the "appointed day" fixed by the Lieutenant Governor was 13 February 1962. The Act was therefore in force for 5 months before its formal promulgation on 5 July 1962.

The Development of Tynwald's Power to Legislate

516. Reproduced below is part of a note by Mr Gordon Brown dated 29 July 1958 from CIM 400/2/17:-

> "The domestic responsibility of the Isle of Man legislature is ... something which has just grown up. Originally the Deemsters, with the Keys, were the repositories of the Laws, none of which were written, and their function was judicial rather than legislative. It was the practice to summon the Deemsters and Keys to Tynwald (which was called after the place of meeting of the General Assembly for the management of Insular affairs, an institution of Norse origin which in its early days comprised all the freemen of Man) to give advice to the Governor and his Council of chief advisers on judicial questions and to declare or interpret the Law. When fulfilling this function they formed part of the Court thus assembled, which was called the Tynwald Court. It was only natural that the Deemsters and Keys in Tynwald should take to filling gaps in the law by declaring what should be the Law in fields which the "breast law" (the Insular equivalent of common law - it was locked in the breasts of the Deemsters) did not cover. But such declarations did not have force of Law unless the Lord agreed. It was also occasionally the practice for the Lord to issue ordinances, either on his own account or on the advice of his Council. During the 15th and 16th centuries there was no completely settled legislative practice.

By a natural process of evolution it gradually became established that the law making body was the Tynwald Court, subject to the approval of the Lord. Following the revestment the approval of the Crown, as Lord of Man, was required. The two Branches of the Legislature developed in their different ways, and began to discuss draft laws separately before Tynwald day. But no law came into effect until it had been approved by Tynwald Court and read out in the Court on Tynwald day. It is only in this century that an Act of Tynwald was passed allowing for laws to be brought into force on the announcement of the Royal Assent to the Court on other days than Tynwald day. It has also become the practice to save time by reading out each year on Tynwald day only the side headings of the Acts passed during the preceding year. As for the extent of Tynwald's legislative competence, the Court is by nature and origin a domestic body; and if it attempted to trespass into wider fields the Royal Assent could be withheld. So far as I can discover a precise delimitation of the boundary of the Court's competence has never been attempted."

The Legislative Council

517. The Legislative Council may be regarded as the "upper house" in the Isle of Man, although, as will be apparent from the description which follows, comparisons with the House of Lords in the United Kingdom Parliament cannot be taken too far. The Council now consists of the Attorney General, the Bishop of Sodor and Man, and 8 members elected from the House of Keys (who are then replaced in that House in a by-election). The most recent detailed examination of the history and role of the Legislative Council is contained in paragraphs 21-46 of the MacDermott Commission Report of 1959. The present constitution of the Council reflects a process of increasing the proportion of elected members, and of dividing the legislature from the judiciary. The Lieutenant Governor ceased to preside over the Legislative Council in 1980 (see paragraph 526(a)).

518. Historically, the Council was formed to advise the Lieutenant Governor, and when the Isle of Man Constitution Amendment Act 1919 reconstituted the Council the Lieutenant Governor was not included as a member. He presided over the Council, and it could not meet except in his presence (unless in committee, when he could appoint someone else to preside). Various interesting papers about the position of the Lieutenant Governor were written at the time when the first Standing Orders for the Legislative Council were drawn up, in 1928-31 (246668/43, 46, 50). The Home Office opposed a suggestion in 1931 that the Lieutenant Governor should be able, under Standing Orders, to designate a member of the Council to preside if he were unable to do so, saying "To the best of our knowledge the Council has never been regarded as properly constituted in the absence of either the Lieutenant Governor or a duly appointed Deputy Governor, and if this is so the Standing Orders of the Council could not properly be used to introduce so radical a change of constitutional practice." (246668/50).

519. The question of a deputy for the Lieutenant Governor as president of the Legislative Council or Tynwald in the event of the Lieutenant Governor having to leave a meeting of either body was raised in 1974. (CIM/70 400/1/5). In accordance with the Standing Orders of the Legislative Council and Tynwald, only the Governor or Lieutenant Governor or a deputy sworn in to act as Lieutenant Governor could preside, so if the Lieutenant Governor were called away from a meeting of the Legislative Council (or Tynwald) the meeting would have to be adjourned until it could be resumed under an authorised president.

520. The use of the Lieutenant Governor's vote in the Legislative Council became the centre of a

controversy in 1928, when Sir Claude Hill voted twice on an issue before the Council, once as a member and then a casting vote. (520373/0-6). The Home Office declined to be drawn into comment on the propriety of his actions, but subsequently a memorandum was drawn up by the legal members of the Legislative Council concluding that the Lieutenant Governor had the right to vote in the Council but not a casting vote. (246668/46). A draft of the first Standing Orders of the Legislative Council, submitted to the Home Office in December 1928, declared that "The Governor is entitled to vote on amy motion before the Council." A later draft (March 1931) read "The Governor has the right of exercising, if he so wishes, a vote in the Legislative Council, as he has in Tynwald." We do not appear to have a record of the final form of the Standing Orders. (246668/43 24668/50).

521. In 1959 the MacDermott Commission recommended that the First Deemster should take the chair of the Legislative Council and should have a casting vote only. The proposal relating to the chair did not progress, but the relevant Standing Order of the Legislative Council was amended in 1966 to read "The Governor has a right of exercising if he so wishes, a casting vote." There do not appear to be any Home Office papers about this revision of Standing Orders.

522. The Isle of Man Constitution Amendment Act 1919 was the first to provide for the House of Keys to elect some of its members (4) to the Legislative Council (as recommended by the MacDonnell Committee of 1911). Legislation in the 1960s and 1970s increased the number of Keys elected members to 8. (CIM 400/2/22). The Isle of Man Constitution Act 1961 increased the Keys members from 4 to 5; the Isle of Man Constitution Act 1969 withdrew the power of the Lieutenant Governor to appoint two members of the Legislative Council, and provided for two more members to be elected by the House of Keys, and the Isle of Man Constitution (Amendment) Act 1975 removed the First Deemster from the Legislative Council and provided for him to be replaced by an elected member from the House of Keys, bringing the number of elected members up to the present 8. The Isle of Man Constitution Amendment Act 1965 removed the Second Deemster from membership of the Legislative Council, as recommended by the MacDermott Commission, and the Isle of Man Constitution Act 1971 provided that the Attorney General should cease to have the right to vote in the Legislative Council (or in Tynwald), though he remains an ex officio member of both bodies. (CIM/66 400/2/21), (CIM/66 400/2/32,38) CIM 400/2/26) (CIM/66 400/2/22).

523. The procedure for electing the Keys representatives on the Legislative Council was originally set out in the Isle of Man Constitution Amendment Act of 1919, and clarified by the Isle of Man Constitution (Elections to Council) Act 1971 (CIM/66 400/2/23).

524. A Bill to remove the First Deemster from the Legislative Council was one of a number of constitutional measures brought forward in 1973/4 - see paragraphs 414 to 422 above. It was introduced as a Private Members Bill into the House of Keys, and followed a recommendation in the report of the Select Committee of the House of Keys on Constitutional Development. The sponsor of the Bill was a member of the Select Committee. The Home Office expressed some concern about the intention of the Bill, particularly in view of the fact that another Bill had been submitted from the Island at the same time proposing to remove the Lieutenant Governor from the Legislative Council (letter of 15 February 1974). (CIM/66 400/2/30). But the Measure commanded a good deal of support in the House of Keys and subsequently became the Isle of Man Constitution Amendment Act 1975. (CIM/66 400/2/32,38). The Keys Report for February 1974 covering this Bill contains a historical survey of the Legislative Council. It is interesting to note from Home Office papers that as long ago as 1923 a motion came before the House of Keys to remove the Deemster from Tynwald and the Legislative Council, and a Bill which sought to achieve this end failed in 1926 (246668/31 and 35). One repercussion of the 1975 Act is that the First Deemster (like the Second Deemster) is now excluded from Tynwald, over which he might on occasions

have to preside as Deputy Governor. See in this connection the correspondence on CIM/70 415/2/25.

525. Two other Bills relating to the Legislative Council were produced in 1974. The Isle of Man Constitution (Amendment) (No 2) Bill 1974 sought to reduce the term of office of members of the Legislative Council from 8 Years to 5. (CIM/66 400/2/36). This Bill, a private members Bill, was lost at second reading in June 1974. Far more important for its constitutional implications was the Isle of Man Constitution (Amendment) Bill 1974, which sought to remove the Lieutenant Governor from the Legislative Council, over which he presided "as a matter of long standing practice" (the MacDermott Report, paragraph 40). (CIM/66 400/2/33). The fate of this Bill is described in paragraph 416 above. The Lieutenant Governor continued until 1980 to preside over the Legislative Council and could exercise a casting vote; by 1980 however the Home Office saw no objection to a proposal to replace the Lieutenant Governor as president (see paragraph 526(a)).

526. At the time of the MacDermott Commission Report (1959) the Legislative Council had a power to stop the progress of legislation by refusing to agree to Bills that had been passed by the Keys. The Report recommended (paragraphs 44-46) that this power should be limited, and it was accordingly limited by section 10 of the Isle of Man Constitution Act 1962. (CIM 400/2/22). Broadly speaking the Legislative Council may now delay legislation for up to two years, but may not ultimately stand in its way in the face of Keys insistence. A Bill to reduce this period from 2 years to one, the Isle of Man Constitution Amendment (No 2) Bill, passed by the Keys, was rejected by the Legislative Council in 1963 and again in 1965, but was not reintroduced into the Keys. (CIM 400/2/27). An example of the Council using its delaying powers to the full arose in the case of the Bill to remove the Second Deemster from its membership.

526(a) The first interim report of the Select Committee of Tynwald on constitutional issues (see paragraph 553(a) below) recommended in 1979 that the Lieutenant Governor should cease to preside over the Legislative Council. By this time the proposal was felt to uncontroversial and the change was effected by the Constitution (Legislative Council) Amendment Bill 1980 which received Royal Assent on 28 July 1980. (CIM/70 400/2/3).

527. As regards the post of clerk to the Legislative Council see paragraph 479.

The House of Keys

528. The House of Keys consists of 24 members elected for a period of five years. A person is entitled to the franchise provided he or she has attained the age of 12 (the Representation of the People (Franchise) Act 1971), been resident in the Island for six months and is not subject to any legal disabilities. (CIM/68 401/1/4). The membership of 24 dates from Norse times, when that number were chosen from among the chief landowners to represent the freemen of the Island at Tynwald. According to Kinvig's "History of the Isle of Man" (pages 65-7) the number of 24 dates from the time when the "Sodorensis" (of paragraph above) consisted of the Isle of Man and eight Hebridean Islands or "Out Isles". The Isle of Man then sent 16 representatives to the Tynwald Court, and the eight "Out Isles" one each. When the "Out Isles" were ceded to Scotland in 1266, the Manx "refused to accept their defeat as final" and continued to fill the places formerly occupied by the representatives of the "Out Isles" by appointing eight additional representatives of the "Out Isles" by appointing eight additional representatives from the Isle of Man.

529. As regards the terms "Keys", Kinvig points out that the Manx name for it is Yn Kiare-as-feed ("the four and twenty"). "Kiare-as" might have sounded to the ears of the first English officials like "Keys" -which was also an appropriate description of the function of the body in its original form, which was to "unlock" or solve the difficulties of the law, and in the earliest document of the Statute Book of 1418, shortly after the grant of the Island to the Derby family, the Keys are given the Latin title of "Claves Manniae et Claves Legis" (Keys of Man and Keys of the Law).

530. The function of the Keys was originally to decide what the law was: later it was extended to making new laws. In both respects the Keys were assisted and advised by the Deemsters and this used to be reflected in the preamble to an Act of Tynwald, which read "We, your Majesty's most dutiful and loyal subjects, the Lieutenant Governor, Council, Deemsters and Keys ... do humbly beseech your Majesty that it may be enacted ... by and with the advice and consent of the Lieutenant Governor, Council, Deemsters and Keys, in Tynwald assembled ..." (After the Second Deemster ceased to be a member of the Legislative Council in 1965 the preamble referred to "Deemster", and when the First Deemster was removed in 1975 the word was taken out of the preamble altogether).

531. For a considerable period the Keys perpetuated themselves by co-opting members of the occurrence of vacancies. They became an elective body in 1866 as part of the package deal under which Tynwald obtained some control over insular expenditure.

532. Detailed provision for the election of Members of the House of Keys is made in the Representation of the People Act 1951.

The Speaker of the House of Keys

533. The Speaker of the House of Keys is elected by the members from among their number and presides and maintains order in the House like the Speaker of the House of Commons. Unlike the latter however, he can take part in the debates and has an original as well as a casting vote. (Section 6 of the Isle of Man Constitution Act 1961 specifically provides, as recommended by the MacDermott Commission that he may abstain from voting unless there is an equality of votes, in which event he must exercise a casting vote whether or not he has previously voted on the matter in question). In contrast again with the Speaker of the House of Commons, there is no convention against the Speaker of the House of Keys being an active politician - and the present Speaker, like some of his predecessors, can be so described.
In recent years however, the feeling grew in Tynwald that the Speaker should not be eligible for membership of the Executive Council or of any Board of Tynwald, and the Isle of Man Constitution (No 2) Act 1968 so provides. (CIM/66 400/2/5)

534. In 1962, on the occasion of a State visit to Edinburgh by the King of Norway, the Speaker and his wife met the King at one of the receptions. The original approach came from the Foreign Office, who thought that it would be appropriate in view of the historical link between the Isle of Man and Norway for a member of Tynwald who was a Manxman (this ruled out the Lieutenant Governor) to meet the King, and the nomination of the Speaker was made through the Manx Government Office. The Speaker was among the Isle representatives at the State funeral of Sir Winston Churchill in 1965. The other representatives were the Lieutenant Governor, the First Deemster and the Mayor of Douglas (Jersey and Guernsey also sent three representatives each, including the Lieutenant Governors and the Bailiffs).[2]

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[2] The Island was not invited to be represented at the funeral of King George VI (1952). The Lieutenant Governor told

Title of "The Honourable"

535. In 1902 the Lieutenant Governor proposed that the Speaker should be styled "Honourable", as a corollary to his main proposal that members of the Legislative Council should be so styled, as were members of corresponding Councils in many of the Colonies. The Home Office rejected the proposal, which it was felt might lead to demands for a similar title not only by the Channel Islands, "but also by the London County Council and other similar bodies which for wealth, intelligence and power to spend money are on a par with the Legislative Council of the Isle of Man." The proposal has not been revived by the Island, but the Home Office had occasion to consider the point, in relation to the Speaker only, in 1971 because the Island styled him as "The Honourable" in their section for inclusion of the next edition of the Year Book of the Commonwealth. The Lieutenant Governor told us informally that the Speaker was invariably so styled in the Island and that he would favour according the distinction but without any formal notification which would be seen by the Speaker as a snub. We consulted the Foreign and Commonwealth Office who told us that in overseas dependent territories the question whether a person should be styled "The Honourable" was largely a matter of local custom, and it was not considered necessary for a proposal to be made to the Foreign and Commonwealth Office unless it was proposed that the title should be retained on retirement, in which case a recommendation would be made to The Queen. The Home Office therefore decided that the best course would be to reflect on each occasion the practice adopted by the Island (which was not always consistent). If the Speaker was styled "The Honourable" in the copy for the Year Book, we would submit it unchanged, and we would list him among those present at a meeting according to the manner in which his intended attendance was notified to us, but the Home Office would not, as a general rule, use the title spontaneously. The Home Office thought that, if the matter should be raised formally, it would not be worth while to make an issue of it - the arguments used in 1902 "have a somewhat faded appearance now."

Procedure in Tynwald

536. (References to sections are to sections of the Isle of Man Constitution Act 1961). (CIM 400/2/22) The Legislative Council and the Keys sit in separate chambers to discuss legislation. However, when a Bill which has been passed by the Council is being considered by the Keyes, a member of the Council may, with the authority of the Governor and the consent of the Speaker, appear before the Keys and speak with regard to the whole of the Bill, or such part or aspect of it as may be agreed between the Governor and the Speaker (section 8) and section 9 contains corresponding provisions for a member of the Keys to appear before the Council, with the authority of the Speaker and the consent of the Lieutenant Governor, with regard to a Bill which has been passed by the Keys and is being considered by the Council. These provisions accord with recommendations of the 1959 MacDermott Commission Report.

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the Home Office that he had been informed that the Island had been represented at the funeral of King Edward VII, and that it was the wish of Tynwald that the Isle should be represented officially on any future national occasion. Sir A Strutt told the Lieutenant Governor that he had brought this to the notice of the Earl Marshal's office, and that there would be a record in the Home Office "for the benefit of, I hope an official generation yet unborn" of the question of representation of the Isle of Man and of Guernsey and Jersey at the funeral of the Sovereign as one of the matters to be raised.

537. A Bill must be passed separately by both the Keys and the Legislative Council, but section 10 gives the ultimate supremacy to the Keys by providing (as recommended by the MacDermott Commission) that if a Bill is rejected in two successive sessions by the Council, and the keys pass the Bill again in the third session, it becomes law (subject to Royal Assent) whether or not it is then also passed by the Council (this is roughly equivalent to the restrictions which were first placed on the powers of the House of Lords by the Parliament Act 1911, but the Lords' powers of delay are now less). A Bill to amend any of the Isle of Man Constitution Acts which are in force (this would include a possible Bill to amend section 10 of the 1961 Act so as to reduce the Council's delaying powers) can only be passed "over the head" of the Council if, in the third successive session, at least 16 members of the Keys (ie a two thirds majority) vote for its Third Reading.

538. The Keys and the Legislative Council sit in the same chamber on matters other than Bills, but vote on them separately except that, as recommended by the MacDermott Commission:-

a. Where it is necessary to take a vote on the election or appointment of persons to serve on any Committee or Board of Tynwald, the Keys and the Council vote as one body (section 1).

b. If a motion is carried in the Keys but rejected by the Council, the mover of the motion may call for it to be considered again within six months, and on this second occasion the keys and Council vote as one body, and the motion is carried if it receives not less than 18 votes.

Boards of Tynwald

539. The executive functions of government are discharged by Tynwald through Boards, to which the remaining executive functions of the Lieutenant Governor are increasingly being diverted. The composition etc of the Boards is governed by the Boards of Tynwald Act 1951 and subsequent amending legislation, the most recent of which, the Members of Boards (Miscellaneous Provisions) Act 1976, provides for a standardised term of office for all statutory bodies in the Isle of Man (CIM/67 420/1/4).

Home Affairs Board

539(a) A Resolution was passed in Tynwald in July 1980 to set up a Home Affairs Board which was to be the nearest Manx equivalent to the Home Office and would take over the functions of the Police Board, the Civil Defence Commission, civil aid services, local government relating to the fire service, and the functions of the Lieutenant Governor in relation to prisons, probation officers, inspection of voluntary homes, probation hostels, remand homes and the police. In January 1981 the final report of the Select Committee on the Powers and Duties of the Lieutenant Governor recommended that his responsibilities for immigration, passports, drink and drugs policy, pedlars and broadcasting should also be transferred to a Home Affairs Board. (CIM/80 400/2/5)

When the Home Affairs Board Bill was submitted to the Home Office in March 1982 it was found to cover all the items included in the Tynwald Resolution, but of the Select Committee's recommendations only broadcasting was acted upon. (CIM/81 404/22/1) The Home Office

commented on two aspects of the Bill, broadcasting and the police. It was pointed out that the Bill carried the constitution of the Isle of Man Broadcasting Commission even further away from the United Kingdom model by providing for the members to be drawn entirely (as against partly) from Tynwald. It was a fundamental feature of broadcasting policy in the United Kingdom that the broadcasting authorities should be independent of Government and of political interference in the performance of their duties, and it was suggested that the Manx authorities should reconsider whether this provision of the Bill was desirable. Secondly, in the context of the clause providing that appointments to the police force should be on the recommendation of the Chief Constable to the Home Affairs Board instead of to the Governor, the need to avoid the danger of the operational independence of the Chief Constable being undermined by political influence was drawn to the attention of the Isle of Man Government. The particular desirability of leaving promotions in the force to the Chief Constable, as provided in the Bill, was also pointed out. No alterations were made to the clauses on which the Home Office had commented, and the Bill received Royal Assent on 28 October 1981.

The Executive Council

540. The Executive Council was set up as a statutory body under the Isle of Man Constitution Act 1961; but it has a long and chequered history. (CIM 400/2/22)

541. One of the proposals by the House of Keys which was considered by the 1911 MacDonnell Committee was that the Lieutenant Governor should be assisted by an Advisory Council partly elected by the Keys and partly nominated (but not by the Lieutenant Governor) from members of the Legislative Council. (113941/132) The Committee rejected the proposal on the grounds, inter alia, that any advice the Lieutenant Governor wanted, he could obtain from the Legislative Council, that the chances of friction with Tynwald and its Committees would be very great if a council were imposed on the Lieutenant Governor which he would be obliged to consult, whether or not its members had his confidence, and that, in so far as there was anything in the belief of the Keys that some Lieutenant Governors paid inadequate regard to their representations (the Keys had in fact recently "gone on strike", and were to do so again in 1930, because they considered that the Lieutenant Governor had not given them a proper say in some financial matters) the defect could be adequately met in other ways such as providing for some members of the Legislative Council to be elected by the Keys, and the creation of a Financial and General Purposes Committee of Tynwald. A copy of the MacDonnell Report is to be found on 689462/30A.

542. Following a recommendation of the MacDonnell Report, and after a delay occasioned by the First World War, the Isle of Man Constitution Act 1919 altered the constitution of the Legislative Council to bring elected members from the House of Keys into its ranks (see paragraphs 522 to 523). There followed a period of doubt over what had happened to the previously existing Executive Council, which the Lieutenant Governor was bound to consult for certain statutory purposes; did it still exist regardless of the 1919 Act, or could it now only consist of members of the newly defined Legislative Council? The Home Office view was that the Council, which existed well before 1919 and had Executive and Legislative functions, had not been abolished and that the Legislative Council embodied the old Council. The Home Office felt that any doubts on this score should be removed by supplementary legislation to make it clear that members of the Legislative Council were also members of the Executive Council, and so suggested in 1920. (246668/29)

543. The Lieutenant Governor introduced a Bill as recommended by the Home Office in 1921, but it failed to carry because the Council could not accept the amendments made by the Keys. In 1922, 1924 and 1926 further Bills were introduced into the Keys seeking to exclude the Deemsters from the Executive Council and to make the Council up to 3 members of the Legislative Council

nominated by the Lieutenant Governor and 3 elected Keys members, but on each occasion these Bills were rejected by the Legislative Council (and were not approved of by the Home Office). (246668/31, 33, 355, 36)

544. In 1927 there were several developments. A memorandum on 246668/38 states that the then Manx Attorney General considered that there was no Executive Council at that time. The Home Office researches are embodied in a long and interesting memorandum on 246668/39, together with the conclusion that the 1919 Act did not create a new Council, but altered the composition of the existing one. In July 1927 the Lieutenant Governor, Sir Claude Hill, discussed at the Home Office a proposal that he should set up a Governor's Council (246668/38). His scheme was modified as a result of Home Office suggestions, and in December 1927 the House of Keys was asked to nominate a four-man Consultative Committee, together with the Speaker, which would confer with the Lieutenant Governor. There seems to be surprisingly little information on Home Office files about this innovation. It is mentioned in various reports, for example on 689462/6, 22 and 23, but there is no assessment of its role or indication of its value. In 1929, according to the House of Keys Report on 689462/6 (1937), the newly formed Consultative Committee and the existing Finance Committee and the existing Finance Committee were combined, and it is stated that the next Lieutenant Governor, Sir Montague Butler, sought the advice of the Consultative Committee far more than Sir Claude Hill had done, especially in relation to financial questions. After the outbreak of war in 1939, Tynwald passed a resolution that a Committee of Tynwald should be appointed "to consult with His Excellency on all matters, questions and actions to be taken in connection with the National Emergency" (page 11 of the Attorney-General's Report on The Constitutional Position of the Isle of Man with Relation to the Imperial Government, 1944, 689462/23). The War Committee of Tynwald came to be consulted by the Lieutenant Governor (then Lord Granville) on a range of issues far wider than those stipulated in the resolution, and at weekly intervals. In 1944 it consisted of the Attorney-General, the Government Secretary, 2 Council members, 5 Keys members and the Secretary of the House of Keys (see the Government Secretary's letter of 28 January 1944 on 689462/17). The Lieutenant Governor selected the members of the committee - see manuscript addition at end of note of 28 August 1943 on 689462/11. The success of this Committee paved the way for the establishment of the present Executive Council.

545. During the Second World War years the Keys pressed on with plans for constitutional reform, one of their chief aims being the formal setting up of some kind of Advisory Council. The Keys petition to this end of January 1944 is on 689462/17. The more moderate Tynwald Report produced a few months later is on 689462/25. The suggestions regarding the powers of the Executive Council have been made considerably less extreme. The Report suggests that an Executive Council should be established by Act of Tynwald "to advise the Lieutenant Governor on all matters relating to the Government of the Island, including the work of the Civil Service and the police, the raising and expenditure of revenue, and the introduction of Government legislation", and that the Governor shall usually accept and act upon the advice of his Executive council "unless he saw good grounds for differing in principle from the Council", and that where the Governor found himself "unable to accept the advice of the Executive Council the Executive Council should be free to tender their resignation and to explain the matter of difference to Tynwald". The Report proposed that the Council should have 7 members, 5 of whom should be elected by Tynwald as Chairman of such Boards as Tynwald may from time to time determine, and that 2 other members should be elected by Tynwald and one of them should be elected as Financial Adviser, whose special function would be to keep in closest touch with all proposals for the raising and expenditure of revenue.

546. A deputation from the Island to discuss this report was received by the Home Secretary, Mr Herbert Morrison, on 17 October 1944. The printed report of the discussion is on 689462/27. The

Secretary of State was remarkably non-committal. the following year he visited the Island and again discussed the question of the development of an Executive Council (689462/28). He emphasised particularly the problems which could arise out of proceeding by legislation, and advised that so far as possible the Isle of Man should follow the British constitutional practice of building up precedent and trying it out. The Tynwald Committee on Constitutional Development nevertheless felt that there was a need for "some concrete embodiment of the changes contemplated", and signified after the second meeting with the Home Secretary that it would be prepared to accept official minutes instead of legislation on the understanding that future Governors would be bound by the terms of such minutes. Very shortly after this visit to the Isle of Man Mr Herbert Morrison ceased to hold the office of Home Secretary and the matter was pursued by his successor Mr J Chuter Ede. The details of a scheme for setting up an Executive Council to replace the various bodies which had functioned from 1927 (the War Consultative Committee was replaced by a General Advisory Committee at the end of the war - see the Government Secretary's letter of 15 December 1945 on 689462/30A) were worked out in correspondence between the Home Office and the Lieutenant Governor, and the end result was a letter of 20 February 1946 from Sir Alexander Maxwell to the Lieutenant Governor.

547. The letter began by accepting that the Chairman of the Boards of Tynwald should be elected by Tynwald, after due consultation between the Governor and the representatives of the Council and the Keys. It went on:-

> "As regards the constitution and functions of the Executive Council, Mr Ede shares the doubts expressed by Mr Morrison as to the wisdom of proceeding by legislation. As stated in the memorandum prepared by the Committee of Tynwald after its interview with Mr Morrison in May last, Mr Morrison pointed out "that legislation is in its nature rigid and inflexible and would be likely to hinder the natural process of development under which the British constitution has evolved."
>
> The Secretary of State would propose, therefore, that it should be placed on record, for the guidance of the present Lieutenant Governor and of future Lieutenant Governors, that in place of the existing General Advisory Committee, the Lieutenant Governor will appoint and consult an Executive Council consisting of 7 members of Tynwald - the majority being persons who have been elected by Tynwald as Chairman of the principal spending Boards and the remainder being not necessarily Chairman of Boards but being recommended by a resolution of Tynwald - but on the understanding that there will be a procedure by which before any proposal comes before Tynwald for the election of a Chairman of any such selected Board or for a resolution recommending other members, there will be prior consultation between the Lieutenant Governor and the representatives of the Council and the Keys as to the suitability of such persons for appointment as members of the Executive Council."

548. The letter went on to reject the idea that one member of the Executive Council should be "financial adviser to the Insular Government".

549. A resolution approving the proposals contained in the letter of 20 February 1946 was passed unanimously at a sitting at Tynwald in April 1946. (689462/30A)

550. In 1959 the MacDermott Commission commented that the setting up of an Executive Council was intended to promote a form of Cabinet Government, and that this purpose had not been achieved - the Executive Council met regularly and reached decisions ut some were of minor importance and few seemed to determine questions of broad policy. (CIM 400/2/17) The Commission noted that the failure of the Council to provide a form of representative Government

was often ascribed to the fact that it was composed mainly of Chairman of Boards of Tynwald and that Board loyalties were too strong to accept the authority of this comparatively new body or to give its members a chance of generating a sense of collective responsibility. The Commission accepted that there was substance in this explanation, but remarked that it exemplified an underlying trait of the Manx people: "their sturdy democracy and spirited individuality are not attuned to a tradition of local leadership ..." The then Lieutenant Governor, Sir Ambrose Dundas, put the point more pungently in an off-the-record note which he showed the MacDermott Commission: "Tynwald clamoured for an Executive Council, but resents it having, or trying to exercise, any authority."

551. The MacDermott Commission were, however, "reluctant to think that the possibility of the Executive Council's further development is now extinct" and hoped that, with the establishment of a Finance Board (a recommendation which was implemented by the Finance Board Act 1961 - see paragraph 770) the Council "would have more time and more desire to concentrate on the weightier questions of the day." The Council's business "should concern matters of principle and policy, rather than administrative details, and should include settling the Government's legislative programme, the extent to which British legislation should be adopted, and the allocation of Bills between the Branches (of Tynwald)."

552. The MacDermott Commission's recommendations as to the construction and procedure of the Executive Council were implemented by sections 14-22 of the Isle of Man Constitution Act 1961, under which the Council consisted of the Chairman of the Finance Board, the Chairman of 4 of the Boards of Tynwald, elected by Tynwald, and 2 members of Tynwald - other than the ex officio members - appointed by the Lieutenant Governor (this has now been amended - see below). (CIM 400/2/22) The Lieutenant Governor presided over the Council, with provision for a Chairman appointed by the Council to preside when the Lieutenant Governor was absent. The Council met weekly, or at such other intervals as the Lieutenant Governor decided, and its proceedings were confidential. The function of the Council was to consider and advise the Lieutenant Governor "upon all matters of principle and policy and legislation" (section 21 of the Act).

553. The Isle of Man Constitution Act 1968 amended the constitution of the Council (but not the other provisions referred to above). No members were appointed by the Lieutenant Governor, and the Council consisted of 2 members of the Legislative Council and 5 members of the Keys, elected by Tynwald. (CIM/66 400/2/8) The Chairman of the Finance Board was however "ipso facto" a member of the Executive Council, and accordingly if he is a member of the Legislative Council, only one member of that Council is elected to be a member of the Executive Council, and if he is a member of the Keys, only 4 members of the Keys are elected, and, as noted earlier, the Isle of Man Constitution (No 2) Act 1968 provided that the Speaker of the House of Keys should not be eligible for election to the Executive Council (at one time he was its Chairman). (CIM/66 400/2/5)

553(a) In February 1978 there was set up a Select Committee of Tynwald on Constitutional Issues. The chief recommendations in its first interim report in June 1979 were that the granting of Royal Assent on all internal legislation be delegated to the Lieutenant Governor on the advice of the Executive Council (see paragraph 603); that the Lieutenant Governor should cease to preside over Executive Council and that the Lieutenant Governor should cease to preside over Legislative Council (see paragraph 526(a)). A meeting was held between the Secretary of State and the Select Committee in January 1980 to discuss the report (doc 12 on CIM/80 400/2/2). One outcome of this meeting was the setting up of a new Standing Committee under the chairmanship of the Minister of State (see paragraph 556(a)).

553(b) Following the first meeting of the new Standing Committee in April 1980, legislation was

prepared to provide for a Chairman of Executive Council other than the Lieutenant Governor. The new chairman was to be appointed from among the Executive Council Members (other than the chairman of the Finance Board), with the appointment approved by Tynwald. The right of the Governor to attend and participate in meetings of the Council was preserved; the Council was to consider any papers put to it by the Governor, and all the council papers were to be supplied to the Governor, who could endorse the minutes of its meetings. The Constitution (Executive Council) (Amendment) Act 1980 received Royal Assent on 28 July 1980. (CIM/80 400/2/3) The method of appointing the Chairman of the Executive Council was altered the following year. The Constitution (Amendment) Act 1981 provided for him to be elected by Tynwald. (CIM/80 400/2/6) The Executive Council now consists of a Chairman, two members of the Legislative Council and five members of the House of Keys, all elected by Tynwald. The Chairman of the Finance Board is ex officio a member of the Executive Council, and the posts of Chairman of the Executive Council and Chairman of the finance Board may not be held by the same person at the same time. The Lieutenant Governor retained the rights to attend and participate in Executive Council meetings given to him under the Constitution (Executive Council) (Amendment) Act 1980. The Constitution (Amendment) Act 1981 also provided for a normal date of dissolution of the House of Keys.

The Civil Service

554. Until 1962 each Board of Tynwald employed its own staff. A unified civil service for the Island was recommended in 1947 in a report by Home Office officials (917722/2) and a Bill was prepared (929113/11), but progress was deferred until the general proposals for financial reform had been agreed. The organisation of the Civil Service was considered by the MacDermott Committee, who recommended a unified structure in paragraphs 94-98 of their 1959 Report. This goal was ultimately achieved with the passing of the Isle of Man Civil Service Act 1962. (CIM 426/5/4

555. Civil servants are Crown servants (section 4) who are appointed by the Governor and may be dismissed by him (section 3(1)) - this is an example of delegation of a prerogative power of the Crown to the Lieutenant Governor (see CIM/72 590/1/2).

Joint Standing Committees

556. A Standing Committee of the Common Interests of the Isle of Man and the United Kingdom was set up in 1969 in implementation of one of the recommendations of a Joint Working Party under the chairmanship of Lord Stonham. The Committee was intended to meet twice a year, under alternating Manx and United Kingdom chairmanship, to consider matters raised by either Government. It has met much less frequently and all the items discussed have been raised by the Manx. The most recent meeting was in October 1980 (CIM/80 400/3/2).

556(a) A further Standing Committee, on Constitutional Issues, was set up in 1980 under the chairmanship of the Minister of State, to consider the recommendations for change made by the Select Committee of Tynwald on Constitutional Issues (see paragraph 553(a)). The first meetings were in April 1980 and February 1981.

H. THE COURTS

557. The Higher Courts have been referred to in the section dealing with the Deemsters, and

there are no further significant points relating to their organisation or function which require special mention. There is an ultimate appeal from the courts to the Judicial Committee of the Privy Council but, as stated in paragraph 11 of Part A of the joint evidence of the Home Office and Tynwald to the Royal Commission on the Constitution, only five such appeals are recorded within the present century, the last of them as long ago as 1938.

558. Summary jurisdiction is exercised by the High Bailiff who, as indicated earlier, is in effect a stipendiary Magistrate, appointed by the Lieutenant Governor, or by three or more lay justices from a panel appointed by the Lord Chancellor, on the recommendation of the Lieutenant Governor. (This is the only instance in either the Isle of Man or the Channel Islands in which the Lord Chancellor makes judicial appointments). The Island is divided into four petty sessions districts, as defined in section 3 of the Summary Jurisdiction Act 1960, which are identical with the High Bailiff's districts. The 1960 Act also extended the powers of the summary courts to order corporal punishment of juveniles and young persons convicted of certain offences of violence or threatening behaviour. This led to some controversy here which in turn raised the question how far it was open to the House of Commons to intervene in Isle of Man legislation (see Paragraphs 575 to 578 below).

2. LEGISLATION

559. In contrast with the Channel Islands, there has been no legislation in the Isle of Man by way of Prerogative Order in Council. As regards Acts of the United Kingdom Parliament and insular legislation, the same general principles apply as in the Channel Islands, in particular as to the ultimate supremacy of Parliament, and the following sections for the most part take these principles as read and are confined to points of interest which are specific to the Isle of Man.

A. ACTS OF PARLIAMENT

Registration

560. There is no procedure comparable with that in the Channel Islands for the "registration" in the Isle of Man of an Act of Parliament which applies to it.

Legislation "imposed" on the Island

561. There have been 2 post-war instances (as opposed to none in the Channel Islands).

a. The Borrowing (Control and Guarantees) Act 1946 (890521 series and CIM 405/1/3).

The Isle of Man gave an undertaking to introduce parallel legislation for the control of capital issues which the Act provided as regards the United Kingdom but the Manx Bill for this purpose was rejected by the Keys. The United Kingdom Government therefore decided to exercise control through the Defence (Finance) Regulations, which were kept in force for the Isle of Man only (see paragraph 809).

b. The Marine etc Broadcasting (Offences) Act 1967 (CIM 64 494/1/20).

The purpose of this Act was to suppress "pirate" broadcasting stations, in implementation of a Council of Europe Agreement. To be effective, the Act had to apply to the Channel Islands and Isle of Man. The Channel Islands raised no objection, but Tynwald petitioned the Privy Council against extending the Act to the Island on the ground, inter alia, that an insular measure in similar terms had been rejected by the House of Keys. The petition was rejected and an Order in Council made extending the Act to the Island. The United Kingdom Government would otherwise have been in breach of an international obligation. The circumstances are set out in paragraphs 609 to 617 below.

Objections by the Isle of Man to a Private Bill

562. A "Private Bill" in the United Kingdom Parliament (which is quite distinct from a Private Member's Bill) is one promoted by a local authority, or some corporate body, seeking to obtain powers which can only be conferred by Parliament. There is a special procedure for consideration of such a Bill, mainly by way of a Committee before which the promoters, and any persons who have petitioned against the proposals may be heard in person or through Counsel. If the Home Office wishes to object or draw attention to certain points, this is done by way of a "report" by the Secretary of State and officers of the Department may be called before the Committee.

563. In November 1970 the Isle of Man Government Secretary expressed to us some concern

about the Mersey Docks and Harbour Board (Anglesey Terminal) Bill, on the ground that the establishment of an oil terminal off the north coast of Anglesey for which the Bill sought powers could pose a threat of pollution to the shores of the Isle of Man, and asked us what action the Island could take to safeguard its interests. (CIM/70 453/2/2/) In considering the point, we noted that the Department had successfully reported in 1963 against the application of provisions of a Salvation Army Bill to the Isle of Man and the Channel Islands (BPO/62 2/83/1 & 3), but the present Bill was not on all fours, since there was no proposal to apply any of its provisions to the Island. However, the Clerk of the Private Bill Office at the House of Commons advised that, as we suspected, our only course, if we thought there was merit in the Island's case, would be to proceed by way of a report, since it would not be appropriate for the Island to petition against the Bill (and there was no record of objections being made by other Governments, eg France or the Republic of Ireland to similar Bills).

564. In the event, the Mersey Docks etc Bill was withdrawn, but as it seemed best to give a direct answer to the Government Secretary's enquiry, he was told that "the appropriate course would have been to inform the Home Office of the detailed grounds of objection, to enable the Home Secretary to consider whether the circumstances were sufficiently exceptional to justify his making a report on them to Parliament." The reply was designed to make it clear that while the Manx voice would be heard in the Home Office there would need to be a very strong case before the Secretary of State could contemplate a report to Parliament.

Petitions to Parliament Through an MP

565. The advice of the Private Bill Office that it would not be appropriate for the Isle of Man to petition against a Private Bill was in the context of the special procedure relating to such Bills and does not of itself cast doubt on a view expressed by the then Home Secretary in 1916, in reply to an enquiry by an MP whether the Island had the right through an MP to present a petition to Parliament praying for a new Lieutenant Governor that, while the question was one for the officials of the House rather than for the Home Office "so far as I am aware it is open to the inhabitants of the Isle of Man to present a petition to the House through an MP in the usual way." (101219/20) This view was based on a study by Mr Eagleston of the then current edition of Erskine May's "Parliamentary Practice" which indicated that the ancient practice was to receive petitions from the Channel Islands and the Isle of Man, though not represented in Parliament. Mr Eagleston's minute pointed out however that under the standing orders of the House, a petition cannot be discussed unless "it complains of some present personal grievance for which there may be an urgent necessity for providing an immediate remedy."

566. It will be seen that these points about Private Bills, and about other petitions, apply to the Channel Islands as well as to the Isle of Man.

B. ACTS OF TYNWALD

567. In contrast with the Channel Islands (see paragraphs 175 to 176 above) the Manx Government normally consults the Home Office before a measure is considered by Tynwald (though this procedure may not be followed in respect of Private Members Bills). The Home Office in turn consults other interested Departments and passes any comments to the Manx Government. Unless classified, these comments may be made available to Tynwald (see CIM/75 408/3/1). Normally, therefore further consultations are necessary at the stage of submission of a Bill prior to

Royal Assent. It is moreover possible, to a considerable extent, to ensure that any objectionable features are withdrawn before a Bill is passed by Tynwald, and instances where legislation has been withdrawn or altered as a result of our representations are set out at paragraph 574 below.

568. The Home Office may however decide that it is impolitic to press objections to a proposed measure which is clearly within Tynwald's competence as one of a "domestic" nature even if it has distinctly undesirable features from our point of view, or that of other United Kingdom Departments. (CIM/69 522/1/1) The Coinage (Manx Crowns) Bill 1970 provided for the issue by the Manx Government of pre-decimal crown pieces of 2 types, one of silver and one of cupro-nickel to a total denominational value of £45,000. The issue of such coins only a few months before decimalisation was not likely to ease the transition to decimal coinage in the Island; and, though it did not appear on the face of the Bill, it was known that many of the coins would be issued at a premium, as collector's pieces rather than true currency, which the Home Office and the Treasury found distasteful. At the instance of the Treasury these criticisms were expressed to the Lieutenant Governor, but the Treasury were anxious that they should not be pressed to the point of giving offence to the Manx Government and causing them to place the order for the coins with a foreign firm instead of with the Royal Mint, with whom the Manx were in touch. (The order in itself did not matter much, but if it were placed abroad the prestige of the Mint would suffer and the small Manx order would, it was feared, be followed by a spate of larger orders from elsewhere).

569. The Lieutenant Governor took the view that it would be difficult to convince Tynwald of the validity of the objections. (CIM/69 522/1/1) The Treasury agreed that they should not be pressed further and (though with some astringent comment on the part of the then Minister of State, Mrs Shirley Williams) the Bill was submitted to the Privy Council with a recommendation for Royal Assent.

570. Also, as with the Channel Islands (see paragraphs 171-3 above) Isle of Man legislation does not have to keep in step with United Kingdom or English legislation in the same field. (CIM 404/3/8) The then Home Secretary, Mr Roy Jenkins, was concerned that the Isle of Man Sexual Offences Bill 1967 took no account of the change in the law of England and Wales about to be made with regard to homosexual offences, but accepted that the law on this subject was so far as the Island was concerned a matter for Tynwald and that it would not be right to recommend withholding of Royal Assent. (See also paragraph 577).

Refusal of Royal Assent

571. If there were grounds for rejecting a Manx Bill, this could theoretically be done by way of Order in Council (as could theoretically also happen with Channel Islands legislation) and this course was taken in 1849, in connection with a Bill which have abolished the death penalty in certain cases. (This particular instance may be contrasted with the present position, where the Island has retained the death penalty for murder notwithstanding its abolition in Great Britain). However while, as indicated in paragraph 570 above, the Home Office does not generally attempt to make the Island follow changes in United Kingdom law, it would not be likely to acquiesce in any proposed new Manx law which would be fundamentally contrary or repugnant to current United Kingdom principle, and no doubt the 1849 proposals were of this nature, in the light of the penal policy then obtaining. By the same token, in the highly unlikely event of Tynwald now passing a Bill to extend the death penalty to offences other than murder, the Home Office would no doubt feel bound to recommend its rejection - (of the submission quoted in paragraph 577 below). Another example of rejection of a Manx Act by Order in Council is the Companies (Winding Up) Act 1900 - see note on 484611/23.

572. A House of Keys Report on CIM 430/4/20 mentions 3 very ancient examples of Royal Assent being withheld until changes were made in the legislation concerned:- an Act for the Punishment of Forgery and Perjury and Swindling Practices 1796; the Bishop's Temporalities Act 1876, and the Licensing Act 1903. A slightly more recent example is the Old Age, Widows and Orphan's Pension Bill 1928 (484611/23).

573. There is an interesting analysis of the refusal of Royal Assent, written in 1948, on 567948/21:-

> "On what grounds can the Home Secretary refuse to submit an Insular Bill for the Royal Assent? The answer to this is that he has an unrestricted right to refuse to recommend a Bill if it would not be in the public interest for it to become Law (484611/23). The right is not exercised unless the matter is a serious one and notification of rejection of a Bill must be conveyed to the Insular Authorities in a reasoned statement. A mere "sullen non possumus" would only exasperate.
>
> Although no attempt has been made to put into writing the practical limits of the exercise of the right to reject a Bill a statement of some of the more obvious grounds for exercising it may be helpful. It must be remembered, however, that these are only instances illustrating the exercise of the right; they do not indicate its limits.
>
> The Home Secretary might refuse to submit a Bill for the Royal Assent on any of the following grounds:-
>
> a. That the interests of another Department are adversely affected;
>
> b. That the interests of His Majesty's subjects in the United Kingdom are adversely affected;
>
> c. That the Royal Prerogative is infringed;
>
> d. That the constitutional position of the Island concerned is affected by the Bill;
>
> e. That the Bill is so contrary to all ideas of justice that it ought not to become law in His Majesty's dominions. So if an Island were to submit a Bill whereby a person might be convicted of a criminal offence without an opportunity of being heard in his own defence, the Home Office would refuse to submit the Bill to the Privy Council. In such cases, however, full account would have to be taken of local condition sand it must not be supposed that ideas of justice are the same in the Islands as in Great Britain. Trial by jury for serious criminal offences is regarded as indispensable for justice in this country, but in Guernsey the jury is unknown. (See also Renouf v Attorney General for Jersey 1935 AC).
>
> f. That the Bill fixes penalties which are regarded as unduly harsh (890528/6).
>
> After the Home Office has sent the Bill to the Privy Council and recommended that the Royal Assent be given, the Bill is sent to the Law Officers of the Crown ....
>
> An Insular Bill may be rejected by the Privy Council after it has been recommended by the

Home Secretary and the Law Officers. There are many cases in old papers (referred to in 102581/2) of the Privy Council returning Jersey Bills and this practice is also referred to in 484611/23 (Isle of Man). The current practice seems, however, to have changed considerably and although the Privy Council has the undoubted right to reject a Bill it does not seem to have exercised this right for many years."

574. Nowadays, however, the normal course, where the Secretary of State feels unable to recommend an Act of Tynwald for Royal Assent, is for the Department to return the Act to the Island with an explanation of the reasons. Tynwald can then either drop the measure or re-submit it with suitable amendments. The following instances have occurred over the past 20 years.

a. Douglas Corporation Electricity Bill, 1951 (499254/65).

When this Bill was submitted for Royal Assent it was discovered to contain a provision which would enable the Corporation unilaterally to break a contract with holders of electricity stock by suspending a sinking fund and deferring dates of repayment. The Treasury felt that these provisions were objectionable and after discussion the Corporation of Douglas gave an undertaking under seal to the Treasurer of the Isle of Man that notwithstanding the Bill they would repay stockholders on the dates originally fixed. The Home Office drew the attention of the Privy Council Office to this when the Bill was submitted for Royal Assent but the Privy Council Office consulted the Attorney General (of England and Wales) who advised that Her Majesty could not properly be advised to approve a Bill containing an objectionable provision which was subject to a covenant having no statutory force and which individual stockholders might not be able to enforce. The Isle of Man was informed of this, and withdrew the Bill. A revised Bill, in an acceptable form, was subsequently submitted and ratified.

b. Wireless Telegraphy (Isle of Man) Bill, 1962 (CIM/62 494/3/1 & 2)

The submission of this Bill was connected with the request for the revocation of the Orders in Council extending to the Isle of Man the Wireless Telegraphy Act 1949 and the Television Act 1954. The Island Government proposed to establish a commercial sound broadcasting station that would be received in the United Kingdom and parts of Western Europe and a commercial television station that would serve part of the United Kingdom. The view was taken that the Isle of Man proposals would result in a breach of international obligations and the Lieutenant Governor was informed that Ministers had come to the conclusion that they would not be justified in recommending Her Majesty in Council to accede to these requests.

c. General Development Bill 1964 (CIM/64 404/73/1/ & 2)

The purpose of this Bill was to enable and facilitate major development of a nature which the Governor was satisfied would materially benefit the economy of the Island. Serious objections were raised to the Bill, in particular to the fact that it would confer power on the Governor to grant monopoly rights. The Bill was withdrawn after submission to the Home Office, amendments made and the amended Bill received Royal Assent.

d. Copyright Bill 1965 (CIM 402/1/6)

This Bill was submitted in draft and would have freed Manx Radio, if the Attorney General thought it necessary, from all restrictions on the broadcasting of sound recordings. Serious

criticisms were raised by the Patent Office and the Board of Trade and the Lieutenant Governor was informed that the Secretary of State would feel unable to recommend the Bill for Royal Assent. Nothing more was heard of the matter.

e. The Judicature (Matrimonial Causes) Bill (CIM/61 404/61/3)

As originally introduced this Private Members measure would have provided grounds for divorce differing from those provided by the Divorce Reform Act 1969. The Private Member was persuaded to withdraw the Bill and sponsor a new one more in keeping with English Law.

f. Court Proceedings (Restrictions on Publicising) Bill 1970 (CIM/69 404/95/1)

This Bill contained unacceptable and unworkable restrictions on the supply of information to the press and was withdrawn.

g. Children and Young Persons Bill 1972 (CIM/64 543/1/13)

This Bill was submitted to the Home Office in draft for comments but was introduced in the House of Keys before comments were forwarded. The legislation included a provision for the imprisonment of 14-17 year olds. The Home Office made it clear that there was "an element of doubt whether the Home Secretary would feel able to commend the Bill ... to The Queen in Council for ratification." A deputation from the Isle of Man to discuss the matter was received by the Minister of State in February 1973. The offending clause was later withdrawn from the Bill.

Position of Parliament with regard to Manx Legislation

575. As mentioned in paragraph 558 above, this question arose in connection with the Island's Summary Jurisdiction Bill 1960. In March 1960, after the Bill had been passed by Tynwald but before it had been submitted to the Home Office for obtaining Royal Assent, Mr T Driberg MP tabled an "Early Day" Motion in the House of Commons "That an humble address be presented to Her Majesty, praying her ... to withhold her Assent from the ... Bill ... which gives magistrates in the Isle of Man wider powers of imposing corporal punishment on children and young persons." An "Early Day" Motion is not usually debated, or expected to be (it is rather a recognised means whereby a member of parliament or a group of them give expression to their views on a particular matter) and the Home Secretary, Mr Butler (as he then was) told Mr Driberg, in reply to a letter, that, while he would tell him when the Bill reached the Home Office, he could not see any prospect at present of finding time for his Motion. The Home Office, had, moreover when originally consulted by the Clerks at the House of Commons expressed strong doubt whether such a Motion would be in order, since the function of advising the Sovereign whether to assent to insular legislation rests with the Privy Council. However, Mr Driberg was able to raise the matter on the Adjournment and at such short notice that there was no time for the Department to give the Minister of State a full brief for his reply. The Minister (Mr - now Sir David-Renton) took the line that the Privy Council did not advise the Sovereign to withhold assent to a Manx Bill on a domestic matter purely on the ground that Parliament would not have passed similar legislation in this country, and that, while he would bring the Debate to the attention of the Home Secretary "I express no opinion whether he has any constitutional answerability to this House in the matter."

576. Mr Butler wrote to the Speaker and, after referring to the very short notice of the Debate,

said that he would be grateful if the Speaker would authorise the Clerk of the House to have a discussion with Home Office officials so that "we could between us clarify the extent to which it is in order for the House to discuss Isle of Man legislation." The ensuing discussion was recorded in the following note by the Clerk of the House, which the Home Office agreed was "a completely fair statement."

"Mr Speaker

Isle of Man Legislation

Note from Clerk of the House

Following your note to the Leader of the House, I had a discussion this morning with Home Office experts on this subject. We agreed that legislation affecting the Isle of Man should be passed either by the Isle of Man or the United Kingdom Parliaments. In the former case the Royal Assent to such legislation is given by the Queen in Council. The Home Office contended that the United Kingdom Parliament could not interfere with the Isle of Man legislation though they could legislate themselves. I contended that Parliament could Address Her Majesty on any matter on which she was advised by Ministers responsible to the United Kingdom Parliament. On this aspect of the case we remained each of his own opinion and agreed to differ.

As regards Questions, we agreed that Ministers could be questioned on advice tendered to the Sovereign. They told me the Home Secretary was intending to answer Questions Numbers 8 and 9 on the Paper for Thursday by setting out the constitutional position and adding that he could not say in advance what advice he as a Privy Councillor would give to Her Majesty on any particular matter but that he would be ready to justify any action taken on the Privy Council's advice.

E A FELLOWES

26 April 1960"

577. These points were amplified in Sir Charles Cunningham's submission of 26 April 1960 to the Home Secretary (CIM 430/4/7). As regards the provision of the Bill relating to corporal punishment, Sir C Cunningham said in a separate submission:-

"The United Kingdom Government have always recognised the Isle of Man's right to differ from the United Kingdom on essentially domestic matters. The view we have taken is that the United Kingdom Government should intervene only if Tynwald passed legislation which went beyond the limits of what was tolerable in a civilized society. This, of course, is a matter of degree and no precise limits can be drawn. To take an extreme example, Tynwald would not be permitted to re-introduce capital punishment for theft. It seems equally clear that retention of corporal punishment is well within the limits of permissible differences. There is ample scope for different opinions among civilized people on this subject. We have accordingly never suggested to the Isle of Man, or to the Channel Islands, that corporal punishment as a judicial penalty should be abolished there. If the Isle of Man has the right to retain corporal punishment, it is difficult to deny the right to alter, and even

to extend, the powers of courts in the Island to impose this penalty so long as they are not enabled to order it in circumstances in which it would clearly be quite unsuitable or increase its severity to an inhuman degree. With one exception, this Bill does not extend corporal punishment in an unsuitable way.

This exception relates to the offence of using provoking language or behaviour tending to a breach of the peace, an offence which has no general equivalent in the criminal law of England and Wales. The Bill would increase the maximum penalties for this offence to a fine not exceeding £30.00 or imprisonment for up to 6 months, and in addition, in the case of male children or young persons, whipping. We urged on the Isle of Man Government the view that whipping was quite inappropriate for such an offence, and that the maximum imprisonment for this offence should at most be 3 months. The Isle of Man Government would not agree, although we pressed the point. Their views are stated briefly in paragraph 6 of the Attorney-General's letter.

This one point does not seem of sufficient importance to justify declining to submit the Bill in its present form for the Royal Assent. I therefore conclude that the proper course is to submit the Bill to the Council with a favourable recommendation, embarrassing though this may be to you in view of the provisions on corporal punishment."

578. In the meantime, the House of Keys passed a resolution expressing "grave concern and displeasure" at the tabling of Mr Driberg's Motion and deploring "this attempt to obstruct a decision of the legislature of the Isle of Man from taking effect", and appointed a committee of the House "to consider any appropriate action." However, we ascertained that the resolution was not in fact intended to question the propriety either of Mr Driberg's action or of the acceptance by the authorities of the House of his Motion, but was aimed solely at certain members of the House of Keys who were alleged to have approached Mr Driberg. We gave a warning that the Committee appointed by the Keys to consider the matter would be well advised to refrain from taking any action or issuing any reports which might appear to call in question the powers and privileges of the House of Commons. In the event, the Committee recommended that no action should be taken, but expressed the view that direct approach by any member of the Manx legislature to a Member of Parliament to induce him to move Parliament to pray Her Majesty to withhold Assent to an Act of Tynwald "would be misconceived and contrary to the political tradition of the Island. (CIM 430/4/20) If persisted in, such action would tend to nullify the effectiveness of Manx Democratic Institutions and ultimately to destroy the right of the Isle of Man to pass its own laws."

Position of the Crown in Relation to Manx legislation

579. In a letter of 10 May 1958 the Attorney General of the Isle of Man explained that the position of the Crown in relation to Acts of Tynwald was the same as that in relation to Acts of Parliament, except that there was no Isle of Man equivalent of the Westminster Crown Proceedings Act. The Crown could not be bound by an Act of Tynwald, or byelaws made under such an Act, unless bound specifically or by necessary implication.

580. Certain Acts of Tynwald refer to property being held "in trust for Her Majesty for the public service of the Isle of Man." The advantage of this terminology is that any debts due to the agency holding the property rank in priority as Crown debts - see letter of 15 March 1961 on CIM 450/2/7, and the Isle of Man Loans Act 1974 (CIM/71 520/2/3).

Petitions to the Privy Council against Manx Legislation

581. On 10 January 1964 a petition was made to the Privy Council against the Curragh's Acquisition Bill 1963; but Royal Assent of he Bill had been granted in December 1963, although this fact was not announced in Tynwald until 21 January 1971, so no action was taken over the petition. The most recent petition, which was considered and rejected, was against the Town and Country Planning Bill 1973. (CIM/62 404/66/2 CIM/72 440/10/2)

582. As mentioned in paragraphs 609 to 617, a petition was submitted in 1967 against the (United Kingdom) Marine etc Broadcasting (Offences) Act 1967. The subject of petitions is fully covered in the Channel Islands sections, paragraphs 184 to 189. (CIM/64 494/1/20)

Responsibilities of the Home Secretary and the Privy Council

583. On this, and on the question of scrutiny of legislation by the Home Office Legal Adviser, the same general principles and practice apply as in regard to Channel Islands legislation (see paragraphs 180-2 above), but the power to signify Royal Assent has been delegated in certain circumstances to the Lieutenant Governor (see paragraphs 603-609 below).

Private Members' Bills

584. As in the United Kingdom Parliament, Bills may be introduced in Tynwald by Private Members. When one such Bill, which later became the Tenancy of Business Premises Act 1966, was, in accordance with practice, submitted to us for comment by the Government Office before it was introduced in Tynwald, we found a number of substantial drafting defects, which we brought to the notice of the Attorney General, who said that it was the first time he had seen the Bill. (CIM/65 404/20/1) We commented that if it were feasible to arrange that Private Members Bills were seen by him before they were submitted to us, it would be very welcome to us and to other Departments whom we asked to advise on specialised aspects of the Bill, but we did not want to press the point if it would be awkward for him. The Attorney General replied that, while a number of Private Members Bill were if fact referred to him he did not think it would be wise to try to make this a general rule, "as sometimes these Bills are rather 'agin the Government' and members like to get them introduced into the Keys without any outside guidance." (A similar problem does not arise in Jersey or Guernsey, since any measures which the States agree should be introduced are drafted by the Attorney General and considered by the Legislation Committee).

Power Conferred on Lieutenant Governor to Make Consequential Repeals or Amendments

585. Section 39(2) of the National Health Service (Isle of Man) Act 1963 empowered the Lieutenant Governor, on the application of the Isle of Man Health Services Board, to make orders

repealing or amending any provisions in other Acts which were in force at the passing of the 1963 Act which appeared to the Board inconsistent with the provisions of the latter Act, or redundant.

586. When the matter first came to our notice in a 1960 draft of the Bill, we asked the Island for comments on the need for this provision and said that we would have strong reservations on giving any authority the power of altering Acts which had been approved by Her Majesty in Council. The Island did not comment at the time, and we failed to follow up the point until the Bill had been passed by Tynwald. The Attorney General then expressed the opinion that the power was merely one to alter old laws so as to conform to the new law contained in the Bill; it was quite clear that the Lieutenant Governor could not use the power to make new law. (CIM 470/1/6) He also pointed out that there was a precedent for such a power in an earlier Isle of man National Health Service Act; and the Home Office Legal Adviser's Branch drew attention to precedents for comparable powers in United Kingdom Acts. We therefore felt able to recommend the 1963 Bill for Royal Assent - and in retrospect it looks as though, while we were right to ask the Island for an explanation, some of the minutes on the file went rather far in suggesting that there was a fundamental principle at stake.

587. The issue arose again, twice, in 1974. (CIM/71 404/102/1) The Tribunals and Inquiries Bill 1974 contained a provision enabling Orders to be made with the approval of Tynwald which would make consequential amendments to other (Isle of Man) Acts. Precedents traced for giving power to amend an Act by subsequent Orders included the Shop Hours Act 1974 (CIM/66 404/32/3); the National Insurance (Isle of Man) Act 1971 (CIM/70 404/14/1); the Isle of Man Water Act 1972 (CIM/67 557/1/3) and the Isle of Man Gas and Water Act 1974 (CIM/72 404/109/1/). The Bill eventually failed to secure approval in Tynwald.

588. Section 110(3) and (4) of the Mental Health Act 1974 enable the Governor by order, subject to the approval of Tynwald, to repeal, amend or modify other Acts of Tynwald so far as necessary in consequence of that Act. (CIM/69 474/1/3) Examples cited of similar provisions (see letter of 28 March 1974) were section 102 of the National Insurance (Isle of Man) Act 1971 (CIM/70 404/14/1) and section 14 of the Isle of Man Water and Gas Act 1974 (CIM/72 404/109/1).

589. Other examples of Acts conferring powers on the Lieutenant Governor include section 2(1) of the Customs (Isle of Man) Act 1958, which enables the Governor to make orders relating to customs duties so that those of the Isle of Man conform with those of the United Kingdom, to comply with the terms of the customs agreement. The orders were to be laid before Tynwald as soon as possible for confirmation (CIM 519/3/9). Section 6 of the Diseases of Animals (Prevention) Act 1953 enabled the Governor to amend the Act so far as it related to compensation (499846/45).

590. The Finance Act 1962 enabled the Governor to amend or repeal the Act by order (section 6(3) - CIM 515/1/8). The Tenancy of Business Premises (Amendment) Act 1975 enables the Lieutenant Governor to extend the operation of the Act by order subject to the approval of Tynwald (CIM/65 404/20/3). The Home Office took exception to the wording of the Bill which appeared to enable the Lieutenant Governor to amend the legislation very widely by order.

Application in the Isle of Man of Regulations made under United Kingdom Legislation

591. Provision was made in the following Manx Acts for regulations made under United Kingdom legislation to apply in the Isle of Man by resolution of Tynwald, with provision for the regulations to be amended by Tynwald:- the Hydrocarbon Oil (etc) Customs Act 1973, sections 23-24 (CIM/73 404/114/1); the Social Security Legislation (Application) Act 1974, section 1 (CIM/67

551/5/11); and the Fertilisers and Feeding Stuffs Act 1974, section 20 (CIM/67 445/5/6).

Application of a United Kingdom Act to the Isle of Man

592. The Isle of Man Social Security Legislation (Application) Act 1974 enabled the isle of Man Board of Social Security by Order to apply an Act of Parliament (the Social Security Act 1973), and subordinate legislation made under it, to the Isle of Man as part of Island law, subject to any modifications required to meet local conditions. (CIM/67 551/5/11)

593. Orders made by the Board are subject to the approval of Tynwald and may be retrospective to the date on which corresponding legislation took effect in the United Kingdom. The fact that this power is given to a Board of Tynwald and not to the Lieutenant Governor may be seen as part of the general tide of reform in the Island at that time set to deprive the Lieutenant Governor of executive powers. The Home Office made it clear that legislation made under the Act would be *ultra vires* if it did more than adapt or modify the United Kingdom Act so as to accord with local conditions and the Isle of Man Government agreed to submit any proposed Orders in draft to the Home Office.

593(a) In 1976 the Isle of Man put forward another piece of proposed legislation, The Church (General Synod Measures) Bill 1976 which incorporated the principle of extending any measure of the General Synod of the Church of England which was intended to apply to the Isle of man by means of a resolution of Tynwald, instead of by an Act of Tynwald. (CIM/67 461/4/5) This alteration of procedure was intended to simplify and speed up the process of applying General Synod Measures to the Isle of Man. The Home Office took the view, however, that the Manx had not produced sufficient justification for making a departure from the usual procedure of enacting primary legislation requiring Royal Assent; it was felt that although in practice a new procedure in this particular field was unlikely to give rise to any difficulty, a concession could have embarrassing repercussions, especially as the principle of extension by resolution of Tynwald was being resisted in another field. (CIM/75 453/3/1) A letter was sent to the Isle of Man explaining the Home Office's reservations about the principle behind the Bill and saying that the Privy Council would look very carefully at a Bill that took Church of England measures outside the purview of The Queen in Council, and suggesting some possible alternative approaches to the matter. (CIM/77 461/4/3) The eventual outcome was the Church (Application of General Synod Measures) Bill 1979, in which the procedure was that General Synod Measures to be extended to the Isle of Man were to be prepared by the Legislative Committee of the Diocesan Synod, approved by a resolution of Tynwald and forwarded to the Home Office for Royal Assent to be sought as if they were Bills. This procedure is analogous to that followed in Parliament, in that General Synod Measures are subject to resolution of Parliament and require Royal Assent to be effective.

Correction of drafting mistakes

594. As in the case of Channel Islands legislation (see paragraph 193 above) a drafting mistake is sometimes discovered only after the Bill in question has been passed by the insular legislature and submitted for Royal Assent. In some such cases, eg the Judicature (Matrimonial Causes) Bill 1965, where references to United Kingdom Service Departments had become incorrect because of the creation of the unified Ministry of Defence, an amended Bill was "re-signed" by Tynwald in accordance with procedure under its Standing Orders. (CIM/61 404/61/2) (The Attorney General

was not too happy about concurring in our suggestion, made after consultation with the Privy Council Office, that this should be done, as he said that on a previous occasion it had led to "some uninformed and incorrect criticism"). (CIM 416/4/6) In another instance, (Church Bill 1963) where the mistake was simply in the date of one of the Acts referred to, we and the Privy Council Office were content for the correction to be initialled by the Lieutenant Governor and the Speaker of the Keys on the copy of the Bill submitted for Royal Assent.

Bill withdrawn from Royal Assent because unnecessary

595. Paragraph 571-4 above deals with Bills where Royal Assent was withheld on policy grounds. In the following instance, a Bill was withdrawn not because of any objectionable features, but because we advised the Island that it was unnecessary. The Merchant Shipping Bill, passed by Tynwald in November 1970, proposed to transfer to the Board of Trade the functions of the Minister of Transport under various insular Merchant Shipping Acts, in order to conform with the position then obtaining in the United Kingdom. Following Governmental re-organisation in the United Kingdom, the functions of the Board of Trade became exercisable by the Secretary of State for Trade and Industry and the functions of the Minister of Transport were transferred to the Secretary of State for the Environment. (CIM/69 452/2/1) It is constitutional doctrine that the office of the Secretary of State is one office, even though there are several Secretaries of States. Consequently there is no need in the United Kingdom for any formal transfer of functions from one individual Secretary of State to another, and it was assumed that this position must apply in the Isle of Man in relation to United Kingdom Secretaries of State. We advised the Island accordingly, and the Lieutenant Governor made a statement in Tynwald explaining that the Bill was unnecessary and would not be submitted for Royal Assent.

Extra-territorial legislation

596. The power of Tynwald to enact legislation having extra-territorial effect was considered in 1975, when the Isle of Man Government asked whether it could amend its Explosive Substances Act 1883 so as to apply it to offences in or relating to the Republic of Ireland, following the principle of the Criminal Jurisdiction Bill 1975. (CIM/74 30/12/2)

597. Previous learning on this topic is contained in the Joint Working Party papers. In the course of discussions over extra-territorial legislation the Home Office held that problems could arise if Tynwald so legislated because the legislation might not be recognised by other countries and there was a risk of legal conflict and confusion. (This was the line taken during the previous year when the Isle of Man proposed a Bill which would have had extra-territorial effect; a letter of 18 August 1966 on CIM/64 494/1/1 says "It will be appreciated that it is a novel proposition that Tynwald should promote legislation having extra-territorial extent ..."). Lord Stonham, in a statement recorded at page 53 of the Joint Working Party Report, went further and stated that Tynwald was not competent so to legislate. In 1972, when it was evident that the Island legislatures might need to legislate extra-territorially for certain purposes connected with the European Economic Community, specific power for that purpose was taken in section 2(6) of the European Communities Act 1972.

598. In the course of considering the Isle of Man enquiry about the Explosive substances Act 1883, a legal opinion was obtained from the Foreign and Commonwealth Office about the power of a subordinate legislature to legislate extra-territorially. The conclusion reached, based on quoted leading cases, was that if Tynwald had power to legislate for the peace, order and good government of the Isle of Man, then it could also legislate with extra-territorial effect for these purposes (document 26 on CIM/74 30/12/2). The Home Office took the view that this opinion need not mean that the Isle of Man could legislate in respect of subjects such as broadcasting or

maritime affairs, which are its chief concern in the field of extra-territorial legislation, and confined itself to agreeing that the Tynwald might pass legislation to amend the Explosive Substances Act 1883 on the lines of Clause 7 of the Criminal Jurisdiction Bill 1975.

C DELEGATION OF ROYAL ASSENT

599. The question of delegating to the Lieutenant Governor the power to grant Royal Assent to insular legislation (together with its companion, a proposal for a formal division of legislative competence between Westminster and Tynwald) has been raised on several occasions in recent years. It was considered by the Joint Working Party in 1969, and the conclusion reached is set out in paragraph 40 of its Report. "The Home Office representatives said that they did not wish to rule out altogether the possibility of delegation to the Lieutenant Governor of the power to give Royal Assent to Manx legislation in certain defined fields." In subsequent years the Home Office line hardened. The memorandum of evidence to the Royal Commission on the Constitution in 1971 stated (paragraph 20) "... the Home Office considers that the delegation [of the power to grant Royal Assent] advocated by Tynwald would be undesirable." The Report of the Royal Commission was not favourable to Tynwald's line (paragraphs 1434 and 1496).

600. In 1974 a Select Committee of Tynwald appointed to consider the Royal Commission's recommendations took up again the question of the delegation of the power to grant Royal Assent in certain fields (letter of 19 March 1974). (CIM/66 400/2/35) This time the Home Office concluded that delegation would be unacceptable (submission of 26 March 1974) because:-

a. the Lieutenant Governor could not provide a substitute for the scrutiny of legislation provided by Whitehall;

b. the problem of defining domestic issues would be awesome;

c. the interval between the passage of a Bill through Tynwald and the grant of Royal Assent provided an opportunity for petitions to be lodged with the Privy Council;

d. the involvement in the European Communities, the increasing interaction of developments in the Island with those in the United Kingdom and the tendency of Tynwald towards irresponsible legislation all pointed to the increasing importance of the existing procedure.

601. The reply to the Select Committee of Tynwald indicated that the Home Office views were those set out in evidence to the Royal Commission (paragraph 20 of the joint Home Office and Foreign and Commonwealth Office memorandum) and reflected in paragraph 1434 of the Report (letter of 9 April 1974). (CIM/66 400/2/35) A much longer letter of the same date to the Lieutenant Governor explained in full what happened in Whitehall to a Manx Bill submitted for Royal Assent, and set out the Home Office objections to delegating the power of Royal Assent. Nevertheless, the Third Report of the same Select Committee again recommended delegation. (CIM/70 415/2/25)

602. It is interesting to note that almost as soon as the Second World War had broken out the Government Secretary wrote to ask whether the power of giving Royal Assent to local Acts might be delegated to the Lieutenant Governor for the duration of the war, adding that there would be nothing constitutionally novel in this procedure as Governors of Colonies possed this power (letter of 6 September 1939 on 567948/13). The Home Office replied:- "I think it would be rather a serious innovation in constitutional procedure if Royal Assent to Isle of Man Bills were to be given by the Lieutenant Governor, as it is in the Colonies, and not by His Majesty in Council, and I am not sure that there is much to be gained, as regards expedition, as the Governor would have to

receive instructions from the Secretary of State in such case." As
regards the colonial situation, a brief on CIM/70 415/2/10 states "It is often said in the Island that they have less independence than some colonies of comparable size. This is true. Colonial legislation is usually given Royal Assent by the Governor, and The Queen's residual power of disallowed is never exercised. But a territory so intimately bound up with the United Kingdom, and so identified with the United Kingdom by foreign countries, must be subject to closer control than an island in the Pacific.

603. On 6 June 1979 the First Interim Report of the Select Committee of Tynwald on Constitutional Issues again claimed that all legislation which "patently does not transcend the national frontiers of the Island should receive the Royal Assent by the hand of Her Majesty's representative on the Island ..." (paragraph 3.4 of the Report), and recommended that "the granting of Royal Assent on all internal legislation be delegated to the Lieutenant Governor on the advice of the Executive Council. (CIM/80 400/2/1)

604. The Home Secretary met a delegatio from the Isle of Man on 21 January 1980 and at this meeting it was decided that the question of the delegation of Royal Assent (and other constitutional issues) should be referred for consideration to a new Standing Committee chaired by the Minister of State, Lord Belstead. The first meeting of this Committee was held on 2 april 1980 and considered (inter alia) a proposal from the Constitutional Issues Committee of Tynwald (paper SCC2) that power should be given to the Lieutenant Governor through the Royal instructions to grant Royal Assent to domestic legislation, with a requirement to reserve legislation for submission to The Queen in Council in certain circumstances. It was agreed that officials should consider the detailed arrangements and report back to the Standing Committee, but it was made clear that the United Kingdom Government was now prepared to countenance some delegation of the power to grant Royal Assent as part of its commitment to assist the development of the constitutional relationship between the United Kingdom and the Isle of Man.

605. Discussion between officials focused upon the agreement of a statement relating to the constitutional position in the field of legislation. The difference of approach was more presentational than fundamental, and was resolved by relying upon reference to statements in the Royal Commission Report (see paragraph 7 of the revised version of paper SCC4 on CIM/80 400/2/1). A further meeting of the Standing Committee on Constitutional Issues was held on 25 February 1981, where it was agreed that the right of the Home Secretary to scrutinise Isle of man legislation and advise whether or not Royal Assent be given was not affected by the discussions; that legislation relating to defence, international relations, nationality and citizenship, the Royal Prerogative, the powers and renumeration of the Lieutenant Governor and a constitutional relationship between the Isle of Man and the United Kingdom should as a matter of course be reserved for the signification of Her Majesty's Pleasure, and that it might be necessary from time to time to reserve other legislation thought, in the Royal Commission's phrase, "to transcend the frontiers of the Island." The Isle of Man representatives had considerable reservations about the United Kingdom's proposal to effect delegation by means of an Order in Council rather than by an addition to the Royal Instructions, because they thought this might lay Tynwald legislation open to greater scrutiny in Parliament, but they were eventually reassured and accepted this way of proceeding. a Prerogative Order in Council was then drawn up, allowing the Lieutenant Governor to grant Royal Assent but requiring him to reserve for the signification of Her Majesty's Pleasure any Bill which he considered should be so reserved or which he was required to reserve by the Secretary of State, and requiring him to consult the Secretary of State about the reservation of any Bills falling into the categories agreed at the meeting on 25 February 1981 (see above). Before signing, the Lieutenant Governor is required to satisfy himself that the Secretary of State does not wish to reserve the Bill. The Royal Assent to Legislation (Isle of Man) Order 1981 was made on 23

September 1981 and took effect on 1 November 1981. The Channel Islands were informed of the new arrangements.

606. The Lieutenant Governor set up an Advisory Committee consisting of both Deemsters, the Attorney General and the Government Secretary to assist him in the matter of Royal Assent (see letter of 13 November 1981 on CIM/80 400/2/1). In answer to his enquiry, the Home Office confirmed that it would be in order for a person formally acting as Lieutenant Governor to give Assent if the Lieutenant Governor were incapacitated or out of the Island.

Action in E2 Division

607. The new arrangements called for little alteration of divisional practices. Initial scrutiny of a Bill takes place as before. Where the Bill clearly falls within the reserved categories set out in the Order, the Government Secretary is given preliminary notification when the Home Office comments on the Bill are sent. In some other cases it may be possible to give any early indication of whether or not Royal Assent may be signified by the Lieutenant Governor, but the final decision cannot be notified until the legislation has been passed by Tynwald and is no longer open to amendment. Advice on delegation may sometimes need to be sought from other Departments or Divisions consulted during scrutiny of the Bill, or from Legal Advisers if there is a point of law at issue (this decision is to be taken at Principal level).

608. A Bill passed by Tynwald is submitted to the Home Office with the Attorney General's certificate and a statement of the Lieutenant Governor's views on whether he should signify Royal Assent. Any conflict of opinion between the Home Office and the Lieutenant Governor will have to be explored and perhaps the Secretary of State will have to be invited to give a decision. A submission is prepared for Secretary-of-State for every Bill, whether reserved or not, with a brief explanation of the appropriate means of granting Royal Assent.

609. When the submission is approved, a reserved Bill is transmitted to the Privy Council with a copy of the submission, and the Government Secretary is notified. He is later informed when Royal Assent has been granted. Where a Bill is to receive Assent under delegated powers, it is sent to the Lieutenant Governor. He then informs the Home Office when he has exercised his delegated powers and in due course the Government Secretary supplies two copies of the Act endorsed by the Lieutenant Governor, one for the file and the other for divisional records.

D BIRCHING

610. The penalty of birching is available in the Isle of Man under the Criminal Code of 1872, the Summary Jurisdiction Act 1960 and the Criminal Jurisdiction Act 1963. A convenient summary of the use of the penalty in the Isle of Man is given in a talk by the Island Attorney General in 1981, on CIM/81 430/6/8.

611. In the last decade the penalty has been imposed on young men for offences involving assaults. Feeling in the Island is very strongly in favour of retention of the penalty: a petition in 1978 on the issue gathered 31,000 signatures in favour of birching being available (out of an adult population of about 45,000) - see doc 5a on CIM/74 170/14/54; and in 1981 the Lieutenant Governor commented that no candidate in the forthcoming Tynwald elections could denounce birching and hope to be returned (doc 2a on CIM/80 170/14/3).

612. In 1972 an appeal was made to the European Commission of Human Rights by Mr A M Tyrer, who had been birched in April of that year (see paragraph 406(e) above) (CIM/74 170/14/55). The outcome was a finding (in April 1978) that Mr Tyrer had been subjected to degrading punishment within the meaning of Article 3 of the Convention. As a result of this case, a petition was presented to Tynwald in 1978 by Mrs M J Irving and Mrs Rita Garside, with two objectives: The holding of a referendum on the desirability of retaining birching as a judicial penalty, and requesting the United Kingdom Government to denounce the European Convention on Human Rights on behalf of the Isle of Man. The Home Office provided the Lieutenant Governor with a brief (CIM/74 170/4/54). A debate in Tynwald was held on the petition in October and November 1978, at the end of which the matter was referred to a Select Committee.

613. The Select Committee reported in an interim report in July 1978 in favour of a referendum being possible and the result was the Referendum Act 1979, which received Royal Assent on 14 November 1979. A point of interest about the legislation is that it takes the form of a general enabling Act, whereas such legislation in the United Kingdom has been drawn up to provide for a specific referendum.

European Convention on Human Rights

614. The final Report of the Select Committee on the petition of Mrs Irving (paragraph 612 above) dealt with the question of the withdrawal of the Isle of Man from the European Convention on Human Rights. (CIM/74 820/5/6) It recommended that HMG should be asked to forward to the Council of Europe a modification to the Convention in its extension to the Isle of Man designed to exclude the lawful penalty of birching from being subject to petition under the Convention. If this was unacceptable, the Report recommended that Tynwald should approve the drafting of a Manx Bill of Rights, with a view to the subsequent termination of the Human Rights Convention in the Island. Tynwald approved the report in June 1979.

615. The response from the Home Office in a letter of 14 November 1979 (CIM/74 820/5/6) was to decline to transmit the Isle of Man's application for a modification to the European Convention on Human Rights to the Secretary General of the Council of Europe, on the grounds that the modification sought amounted to a reservation which would have no legal effect. A modification to Article 63 of the Convention could no longer be made, nor could a modification be of a general nature or seek to exclude from the Convention a matter which the European Court of Human Rights had already ruled to be contrary to the Convention.

616. The next development in pursuance of the Select Committee's recommendations was the submission of the Fundamental Liberties Bill 1979 (CIM/79 404/140/1) in December 1979, later reconsidered and redrafted and returned to the Home Office in July 1980. Home Office comments were sent in a letter of 28 November 1980. The Bill was subsequently abandoned and replaced by the Manx Bill of Rights 1981 (CIM/79 404/140/2). The Home Office comments in a letter of 10 March 1981 concentrated on the difficulties experienced in the United Kingdom over proposals for a Bill of Rights. The Bill received a second reading in the House of Keys and on 12 May 1981 was referred to a Committee for consideration and report.

617. The Committee considered the Bill in the context of the question of judicial corporal punishment, which meanwhile had been brought even more into prominence by a sentence of birching passed on a youth called O'Callaghan in July 1981 (see paragraph 619). The Committee pointed out that judicial corporal punishment remained on the statute book despite the judgement

of the European Commission on Human Rights in the Tyrer case, and that the enactment of a Manx Bill of Rights Bill would not in any way affect the power of the Island's courts to impose such sentence. As regards the desirability of human rights legislation for its own sake, the Committee accepted that the practical difficulties seen by the Home Office would apply equally in the Isle of Man, and found that foremost among the objections to such legislation was the possibility of derogation from the political supremacy of Tynwald. It concluded that the enactment of a Bill of Rights in the form before the House would not be in the best interests of the Isle of Man. Concerning an alternative Bill, the Committee agreed with the opinions of many distinguished lawyers that the problems caused by the enactment of an alternative form of legislation, while continuing to subscribe to the Convention, would be insuperable. There would be doubt as to which set of principles prevailed and constant argument over details. Furthermore, whatever action the Isle of Man took with regard to the European Convention, the provisions of Article 7 of the United Nations Covenant on Civil and Political Rights would still apply to the Isle of Man: "No one shall be subjected to torture, or to cruel, inhuman or degrading treatment or punishment".

618. The Committee recommended that in no way would the Manx Bill of Rights Bill affect the power of the Island's Courts to impose sentences of judicial corporal punishment; that the Bill should lapse; and that the enactment of a Bill of Rights in a different form should not be considered whilst the Island remained subject to the European Convention on Human Rights. (CIM/79 404/140/2) The recommendations were accepted by Tynwald on 6 October 1981, which by chance was the day on which the appeal decision in the O'Callaghan case was given (see paragraph 620).

The O'Callaghan case, 1981

619. The action taken following the decision of the European Court of Human Rights in the Tyrer case (paragraph 406(e)) was designed to ensure that no further birching sentences were passed in the Isle of Man, though the penalty remained on the statute book. It seems clear from the debates in Tynwald on the Fundamental Liberties Bill 1979 and the Manx Bill of Rights Bill 1981 that this intention was fully understood because there are numerous references to bringing back birching. (CIM/80 170/14/3) Nevertheless, on 20 July 1981, three magistrates sitting in Douglas Juvenile Court sentenced a Glasgow youth of 16, Hugh O'Callaghan, to four strokes of the birch, after he pleaded guilty to malicious wounding in a drunken assault on another passenger on the Isle of Man Steam packet ferry from Ardrossan to Douglas. Notice of appeal against sentence was immediately given, and the Home office gave urgent consideration to the constitutional aspects of the situation and the possible use of the Royal prerogative. (In fact it came to light that there were some areas of uncertainty in the exercise of the royal prerogative of mercy in the Isle of Man, and the matter was examined on CIM/82 430/15/1).

620. The appeal decision to quash the sentence of birching was given on 6 October 1981. That morning the appellant gave notice of intention to abandon the appeal, but the court took the view that 3 clear days notice of abandonment was required and proceeded to deal with the appeal. The salient points in the judgement were that the decision of the European Court of Human Rights was binding on the Manx as to whether or not a particular act was in breach of the Convention, and consequently further sentences of birching if carried out would render the United Kingdom and the Isle of Man in breach of an International Treaty obligation. The sentence of the magistrates was however a perfectly lawful one, and the court rejected the idea that sentencing discretion should be exercised in such a way as not to permit birching to take place at all. The principle it accepted was that in exercising the discretion on sentence the policy should be as much in conformity with

the Isle of Man's Treaty obligation as was consistent with the operation of Isle of Man Law. There were nine disposals apart from birching available in the O'Callaghan case. The proper approach was for the justices to strive in every case to fit one of the other nine methods of disposal to the case before them. Only if they regarded each of them as unsuitable should they consider whipping. They should then consider whether any other contra indications exist. If any does, they must return to the other nine disposals and choose the least unsuitable one. If no contra indication exists only then may they pass a sentence of whipping. The contra indications were then explored in the judgement. As applied to the O'Callaghan case, it was held that there had been too much delay since sentence for the whipping to take place; that birching would not be a deterrent to a drunken boy; and that there was no evidence that the boy was either psychiatrically or temperamentally suited to be birched. The sentence was quashed and the case remitted to the justices for reports to be obtained and an alternative sentence imposed. The court recognised that "it must be apparent that it is unlikely that in any case can all our criteria be satisfied so as to enable a boy to be birched", but added that the possibility still remained.

E. BROADCASTING

621. The subject of broadcasting in the Isle of Man produced in the 1960's some of the most acrimonious disputes of the century between the Manx and United Kingdom governments. The desire of the Manx authorities to establish and control their own broadcasting service was intensified by the prospect of riches to be gained from advertising revenue, as evidenced by the runaway success of the pirate broadcasting station, Radio Caroline, but the United Kingdom government, with international obligations to control broadcasting which included an obligation to exercise control over broadcasts from the Isle of Man, was unable to allow the Manx authorities to fulfil their ambitions.

622. In summary, the broadcasting issue had the following repercussions:-

a. it gave rise to a Resolution of Tynwald on 9 January 1962 requesting the revocation of the Orders in Council extending to the Isle of Man and Wireless Telegraphy Act 1949 and the Television Act 1954. Tynwald subsequently asserted that it had the right to demand the revocation of Orders in Council extending Westminster legislation to the Isle of Man, and claimed the right to contract out of international obligations entered into by the United Kingdom Government in respect of the Isle of Man without their consent. The Attorney General (for England and Wales) 29 May 1962 which included the following statement: "where a United Kingdom enactment applies directly to the Island it would clearly not be in accordance with the constitutional relationship for the Island to enact legislation covering the same ground. In a case where the United Kingdom Act does not apply directly, but contains a power to extend the enactment to the Island by Order in Council, the position is less clear. In practice the Isle of Man Government are invariably consulted whenever it is proposed to extend a United Kingdom enactment by Order in Council, and all the extension orders have so far been agreed in draft with the Island before submission to the Privy Council. The position has hitherto been, therefore, that the power to extend United Kingdom legislation by Order in Council has always been operated in agreement with the Island authorities and they have never previously requested the revocation of any of these orders. In view of this practice Tynwald now argue that no extension order can be made unless they agree and that, just as they have the right to refuse the making of an extension order, so they have the right to demand that the extension to the Isle of Man of the legislation should be terminated."

"We do not think that this argument is well founded. The position would appear to be that where power to make an extending Order in Council is conferred by the Westminster Act, the sole responsibility for advising Her Majesty whether the power should be exercised rests with the United Kingdom Ministers, and there is no constitutional convention or understanding which provides that such an order can be made or continued in force only if Tynwald consents. We would not go so far as to assert that where power to make an extending order has been conferred, that power must be exercised and that the possibility of insular legislation on that topic is excluded. It seems to us that the question whether the order should be made or revoked is one of policy for United Kingdom Ministers."

The Attorney General replied on 20 June 1962: ".... In my opinion it is clear beyond any kind of argument that there is no limitation of law or convention on the power of the United Kingdom Parliament to legislate for the Island; and it is equally clear that the United Kingdom Government can bind the Island by treaty. I am consequently of the clear view

that the Government would be acting in accordance with the relationship between the United Kingdom and the Isle of Man if the request of Tynwald were not acceded to Ministers have tendered advice which involved the Royal Assent being refused to the local legislation. It follows also that there would in my opinion be nothing to prevent United Kingdom Ministers, if in policy they chose to do so, advising Her Majesty to revoke the Order extending the Television Act." The Isle of Man Lieutenant Governor was informed on 7 August 1962 that Tynwald's request for revocation of the Order in Council relating to the Wireless Telegraphy Act 1949 could not be granted but that, concerning the request relating to the Television Act 1954, "Her Majesty's Government would not wish to oppose it. (CIM/62 494/3/1);

b. the refusal of Royal Assent to a Bill submitted by Tynwald, the Wireless Telegraphy (Isle of Man) Bill 1962 (CIM/62 494/3/1, 2);

c. a difference of opinion between the governments of the United Kingdom and the Isle of Man over the definition of a "domestic" issue, the Isle of Man maintaining that broadcasting did not fall into the international category;

d. failure by the Manx legislature to pass local legislation following the passage of the United Kingdom Marine etc Broadcasting (Offences) Act 1967;

e. a petition from Tynwald to Her Majesty in Council praying that the Marine etc Broadcasting (Offences) Act 1967 should not be applied to the Isle of Man, together with a request for a deputation to appear before the Privy Council, which resulted in the Privy Council meeting to consider the petition and hear the views of the deputation, a very rare occurrence (CIM/64 494/1/20).

f. the application to the Isle of Man by Order in Council of a United Kingdom Act, the Marine etc Broadcasting (Offences) Act 1967, against the wishes of the Manx authorities (CIM/64 494/1/20);

g. an indication that Royal Assent would be refused to another proposed Isle of Man Bill, the Copyright Bill 1965 (CIM 402/1/6);

h. the major part of the dissatisfaction leading to the establishment in 1967 of the Joint Working Party which, under the Chairmanship of the then Home Office Minister of State, Lord Stonham, examined areas of difficulty in the relationship between the United Kingdom and the Isle of Man.

623. The United Kingdom has had some success in obtaining international sanction for a more suitable wavelength for the Isle of Man and the topic has excited less controversy during the last decade, perhaps because the hoped-for commercial bonanza for the Isle of Man cannot be realised. Details of the history of the issue are best summarised in a note prepared for the Royal Commission on the Constitution in 1971 which is reproduced in paragraphs 624 to 633(r) below (it was not published). Published material includes Appendices 8 and 9 of the Joint Working Party Report, and paragraphs 1421-1429 and 1507-1512 of the Report of the Royal Commission on the Constitution (Part XI of Volume 1). Appendix B to the Isle of Man evidence to the Royal Commission, not published in the Report, also covers broadcasting - a copy is on CIM/63 605/5/20. The question of sanctions available against the Isle of Man in the broadcasting field is examined on CIM/64 494/1/51.

Broadcasting in the Isle of Man (CIM/68 605/5/30)

Memorandum by the Home Office and the Ministry of Posts and Telecommunications (June 1971) [Note: this seems to run to the end of para 633(p)]

Early History

624. Until the early 1960s, it was not in dispute that the control of broadcasting in the Isle of Man was a matter for the United Kingdom Government and Parliament. The Wireless Telegraphy Act 1904, which first conferred power on the Postmaster General to licence and control broadcasting, applied in terms to the Island, and the Wireless Telegraphy Act 1949 which replaced the Act of 1904, was extended to the Island by Order in Council with the agreement of Tynwald. The Television Act 1954 was similarly extended, at Tynwald's express request. Tynwald had never proposed legislation on the subject of broadcasting.

625. A Government-sponsored company was set up in February 1960 with the object of providing and broadcasting wireless and television programmes. The moving spirit behind the venture was a local radio dealer, who proposed the establishment of a service similar to that provided by Radio Luxembourg, to be transmitted to the whole of the United Kingdom and to parts of Europe. The Isle of Man Government saw the establishment of a commercial station transmitting to the United Kingdom and Europe as a significant source of revenue at a time when the economy of the Island was facing considerable difficulty.

626. In May 1961 Max Radio applied to the Postmaster General for a sound transmitting licence and for the allocation of a frequency. In refusing the application, the Postmaster General informed the company that the whole future of broadcasting was being considered by the Pilkington Committee and that the United Kingdom Government did not feel able to authorise any important innovations until the Committee had reported. Subsequently a sub-committee of the Pilkington Committee visited the Isle of Man and took oral evidence there.

Wireless Telegraphy (Isle of Man) Bill 1962

627. Following the refusal of that application for a licence, the Isle of Man Government sought to obtain powers to establish itself as the sole licensing authority for the Island. In January 1962 Tynwald passed a resolution requesting the revocation of the Order in Council extending the 1949 Act to the Island. A few weeks later the Wireless Telegraphy (Isle of Man) Bill 1962 was introduced into Tynwald. The Bill aimed to take the sole licensing control of broadcasting in the Island out of the hands of the Postmaster General and to vest it also in the Lieutenant Governor under a system of dual control, but provided that it could come into operation only on the revocation of the Order in Council extending the 1949 Act. In April 1962, a delegation from the

Island came to the Home Office to discuss the Tynwald resolution and the new Bill with officials. The delegation was told that the United Kingdom was insuperable difficulties in meeting the Manx proposals. The reason for this was that there had to be one final authority to control the use of scarce frequencies in the United Kingdom and the Islands, in order that the United Kingdom Government could honour its international obligations. The Manx delegation expressed dissatisfaction and Tynwald subsequently re-affirmed its former requests. In August, the Isle of Man Government was informed that its request for revocation of the Order in Council had been refused and that the United Kingdom Ministers had been unable to advise Her Majesty to grant Royal Assent to the Bill. The essential reason was the one communicated to the Island representatives in April, the Island's reason for wanting the powers being overtly that of licensing the use of a high power frequency achieving coverage in Europe and the United Kingdom. The refusal was additionally based on the ground that no station could be set up employing a power beyond that necessary to maintain a reasonable service within the frontiers of the country.

The 1962 Agreement

628. A further delegation from the Isle of Man was received by the Home Secretary and the Postmaster General in September 1962. The delegation put forward proposals that the Manx Government should be given power to licence a television and radio station to transmit to the British Islands. The Postmaster General indicated that the new proposal, unlike the previous involving transmissions to Europe, did not raise the same difficulty as regards international obligations. It did, however, conflict with United Kingdom broadcasting policy, and, in particular, with the view of the Pilkington Committee, which was accepted by the Government, that no additional sound broadcasting services were needed at that time. After some discussion, the Manx delegation withdrew their proposals and substituted proposals for a radio station to broadcast to the Island alone. The Postmaster General offered to provide all the technical assistance he could for such a project. At the end of November officials from the Post Office visited the Isle of man to discuss the technical consequences of establishing a station in the Island. In discussion, Isle of Man representatives re-affirmed their intention to drop their proposal for broadcasting to the United Kingdom, and stated that they had wholly abandoned the idea of operating a wireless station as a revenue-raising service.

629. The technical talks between the Isle of Man and Post Office officials continued over a period of years (details of the technical history of this period are set out in paragraphs 5-10 of Appendix 8 to the Report of the Joint Working Party). An experimental broadcasting licence was issued in October 1964. The Broadcasting Commission (Isle of Man) Act 1965 became law and a commercial station was established in the Island. The broadcasting licence was issued to the company in October 1965 and renewed in October 1968.

Copyright (Isle of Man) Bill 1965.

630. In May 1965 the Attorney General of the Isle of Man sought Home Office comments on a draft Copyright (Isle of Man) Bill. The purpose of the measure was to provide that no action for infringement of copyright in a broadcast made by Manx Radio should be brought without the prior consent of the Attorney General of the Isle of Man. The Island hoped by that means to avoid the limitations on the broadcasting of sound recordings imposed by the owners of the copyright, since

the Island considered that its limited radio service could not afford to adhere to the restrictions on "needle time" in the use of gramophone records. Both the Board of Trade and the Home Office saw considerable legal difficulty in the measure. In general, it was felt that the provisions of the Bill were beyond the statutory powers of the Isle of Man, in that, while they appeared to affect only the remedy available to the owner of a copyright in the event of its breach, they in fact had the effect of restricting a copyright holder's substantive rights. In December 1965 the Attorney General was informed that the Home Secretary would not be able to advise Her Majesty to grant Royal Assent to the measure. Nothing further was heard of the Bill.

Marine etc Broadcasting (Offences) Act 1967

631. Following the appearance of the pirate broadcasting stations off the coasts of the United Kingdom in 1964, the Council of Europe drew up an agreement, which was later to become the Council of Europe Agreement for the Prevention of Broadcasts transmitted from Stations Outside National Territory. This provided a system of interlocking measures by national governments to suppress unauthorised broadcasting stations.

632. In June 1964 a copy of the Council of Europe Agreement was sent to the Isle of man in draft before the Untied Kingdom signature, for Island comments. In September 1964 the Island Government was informed that the United Kingdom assumed that the Island would wish the Agreement to be extended to the Isle of Man when it was signed by the United Kingdom. (It was thought at that time that the Isle of Man has as great an interest as the United Kingdom in preventing unauthorised competition for Manx Radio). There followed 3 years of considerable correspondence and a number of meetings on the issue, in the course of which it was made clear by the United Kingdom that the Agreement depended for its effectiveness upon securing the fullest geographical application. In 1965, the Joint Parliamentary Under-Secretary of State at the Home Office reiterated that view when on a visit to the Island, and later repeated it when he received a deputation led by the Lieutenant Governor at the Home Office in July 1965.

633. On 5 July 1964, Radio Caroline North, anchored a few miles off Ramsey, had begun her transmissions. Although there was initially a degree of hostility in the Island towards the new station it was later seen as a source of popular entertainment and of free publicity for the Island's tourist industry. In particular, the station provided travel information for United Kingdom tourists intending to come to the Isle of Man during the seamen's strike of 1966. Many Islanders, however, considered it insupportable that Radio Caroline should be able to do as it pleased while Manx Radio remained restricted.

633(a) In July 1966 the Marine Etc Broadcasting (Offences) Bill was sent to the Isle of Man for comments. The Bill contained an extension clause, and the Isle of Man Government was informed that the United Kingdom intended to extend the measure to the Island, in order to render the European Agreement effective, and that it would be necessary to make an Order in Council in due course. The Isle of Man Government, in reply, represented that it would ease the presentation of the matter in the Island if Tynwald were to legislate for as much of the subject matter as was within its constitutional competence. The United Kingdom Government did not seek to dissuade the Island from this course of action, although it was indicated that, since Tynwald cannot enact extra-territorial provisions, there would be a need for an Order in Council to extend part of the Imperial

Bill.

633(b) In November 1966 the Marine Etc Broadcasting (Offences) (Isle of Man) Bill was introduced into the Legislative Council and passed all its stages, in spite of a certain amount of opposition, particularly relating to the benefits that Radio Caroline conferred upon the Island. The measure passed to the House of Keys, where on 7 March 1967 it was refused a Second Reading by 19 votes to 3. In early April 1967 the Home Office wrote to the Island re-affirming the determination of the United Kingdom to apply the provisions of the Imperial Bill to the Island. On 19 April, Tynwald passed a motion petitioning The Queen, in considering any Order in Council that might be placed before her, to bear in mind that Tynwald had already rejected a similar measure and that the whole matter had been pursued without consultation with the Isle of Man. The petition was presented to the Privy Council, and 5 June a deputation from the Island appeared before the Committee of the privy Council charged with Island affairs to present the Island case. The Committee consisted of the Lord President of the Council, the Minister of State, Home Office, the Postmaster General and the Attorney General. The deputation complained of lack of consultation, of the economic loss to the Island caused by the disappearance of Radio Caroline, and of the inadequacy of the power of Manx Radio. The Committee took note of the views of the deputation, who then discussed the matter further with the Minister of State, Home Office, and the Postmaster General. The Manx representatives put forward the view that, should their petition be rejected, the loss of Radio Caroline and the free advertisement for the Island's tourist industry would be acceptable only if it were offset by an increase in the power of Manx Radio. The Postmaster General again asserted that to allow broadcasting from the Island to the United Kingdom would conflict with Government policy for the United Kingdom, but he undertook to reconsider the inadequacies of the power of Manx Radio, on the condition that any increase could be made only on the understanding that its transmissions should not be regularly receivable in the United Kingdom.

633(c) On 20 June a delegation from the Island visited the Post Office for further technical discussions. They proposed a 5-fold increase in power for the station, which would have led to considerable overspill into the north-west of England. Post Office officials suggested that reception in the Island could be best enhanced by providing a second booster station but this the Manx found unacceptable on financial grounds. In July, the Postmaster General wrote to the Lieutenant Governor informing him of the lack of progress on the technical discussions, but offering to provide further advice on how to improve the service to the Island alone.

633(d) On 28 July the Privy Council, having received a report from its Committee, rejected the Manx petition, and the Government of the Isle of Man was so informed on 31 July. Early in August, Tynwald passed a resolution criticising the action of the United Kingdom and requesting that the matter be placed before the Commonwealth Secretariat for the adjudication of the Commonwealth Prime Ministers. The Lieutenant Governor and the Speaker of the House of Keys were invited to the Home Office to enable the reasons for applying the Order in Council to the Island to be explained once more. At the meeting, on 17 August, the Minister of State, Home Office, made it clear that the United Kingdom was required by its international obligations to take action to suppress pirate broadcasting. She informed the Lieutenant Governor and the Speaker of the proposed timetable for the extension of the Act to the Island. The Speaker complained that it was not necessary to apply the Act to the Island, since Radio Caroline could not survive once it was deprived of advertising sources in the United Kingdom. The Speaker was assured that it was necessary to take comprehensive action against suppliers and operators as well as advertisers, to prevent an offshore station operating on advertising revenue deriving from non-

European sources. The Speaker asked that there should be an increase in power of Manx Radio. The Minister of State reminded him of the terms of the 1962 agreement, and said that the matter was not domestic to the Isle of Man. There was no reason why the United Kingdom should authorise the Isle of Man to take action against the United Kingdom's own interests and policy. Again, a promise was given that every effort would be made to improve coverage in the Island.

633(e) On 15 August 1967 the Marine Etc Broadcasting (Offences) Act came into operation in the United Kingdom. An Order extending it to the Isle of Man was made on 23 August and came into operation in the Island on 1 September.

633(f) At the end of July, the Lieutenant Governor put forward new proposals to the Postmaster General, asking whether there would be any objection to an increase in power for Manx Radio if the station were to become non-commercial (see paragraph 633(i) below).

Wireless Telegraphy Act 1967

633(g) The principal purpose of the Wireless Telegraphy Act 1967 was to provide for the registration of television dealers and the recording of transactions in an effort to combat licence evasion, and to provide certain miscellaneous amendments to the 1949 Act including an increase of penalties for evasion. First drafts of the Bill were sent to the Attorneys General in the Channel Islands and the Isle of Man in February 1967, but the Islands indicated that the principal substantive provisions relating to registration of dealers were more suitable for local legislation, since otherwise it would have appeared that dealers were being regulated by Westminster. The Home Office accepted those arguments and agreed that no extension of the Bill would be made except with the agreement of the Insular Authorities. The subsequent Wireless Telegraphy (Isle of Man) Order 1967, as amended by the Wireless Telegraphy (Isle of Man) Order 1968, therefore applied only to some of the provisions of the Act. In July 1968 the Attorney General of the Isle of Man submitted a draft Wireless Telegraphy (Isle of Man) Bill embodying most of the other provisions of the Imperial Act including those which related to television dealers. The terms of the Bill seemed likely to cause certain technical difficulties (for example, there was doubt whether the Postmaster General had statutory authority to receive money for work done on the Island under the Bill), and since the proposed measure omitted some of the important provisions of the Imperial Act it was felt that the measure would not be wholly effective. There were also some doubts about the propriety of a Tynwald Act conferring powers and duties on a Minister of the Crown (as the Bill proposed to do). In February 1969, the Home Office informed the Isle of Man Attorney General of the difficulties surrounding the measure and suggested that, since it might not prove effective in combating licence evasion, the Government of the Isle of Man might consider that there was little purpose in pursuing it. If the Island wished it to be pursued, the United Kingdom Government offered technical assistance in re-drafting but the Attorney General decided to drop the measure.

633(h) The significance of the 1967 Act is that, at a time when the application of the Marine Etc Broadcasting (Offences) Act was causing considerable difficulty in relationships between the Isle of Man and the United Kingdom in the broadcasting field, it was possible to reach agreement on the extent to which an Act on a related subject should be applied to the Island.

Joint Working Party

633(i) In September 1967, Lord Stonham discussed with the Isle of Man Government certain contentious issues to which it had drawn attention. In the course of these discussions it was agreed that a Joint Working Party should be set up to consider the constitutional relationship between the Isle of Man and the United Kingdom and Lord Stonham indicated that the question of Manx Radio could be discussed in the context of the Working Party. In October 1967, the Postmaster General replied to the Lieutenant Governor's new proposal (see paragraph 617 above) by saying that further consideration of it should await the outcome of the discussions in the Joint Working Party.

633(j) In January 1968, Tynwald passed a resolution proposing that the Isle of Man Government should purchase the shareholding and assets of the Isle of Man Broadcasting Company. It was tentatively suggested by the Island that, once Manx Radio was Government-owned, the Wireless Telegraphy Act could not bind Tynwald in relation to the granting of a licence, since it would be possible to claim Crown exemption from the statute. (In the view of the United Kingdom, Members of Tynwald are not the Crown and the purveying of visual and audible entertainment is not, in any event, a function exercised by the Crown; the question of Crown exemption cannot therefore arise).

633(k) The question of Manx Radio was discussed at 2 meetings of the Joint Working Party. On 26 March 1968, the Working Party considered the memorandum prepared by the Post Office which now forms Appendix 8 of the Stonham Report. In paragraph 16 of that memorandum, the United Kingdom Government put forward its case that the control of broadcasting within the United Kingdom must remain in the hands of the Government itself. In paragraph 17 of the memorandum, the United Kingdom referred to the international convention that a station shall not use more power than is necessary for effective broadcasting within the frontiers of the country concerned. That argument had been put forward in the 1962 discussions relating to the Manx proposals to broadcast to Europe. It is, of course of no direct relevance to Manx proposals to broadcast to the United Kingdom alone, but was referred to in paragraph 17 of the memorandum as an illustration of the point of principle. At the meeting at which the memorandum was considered, the Isle of Man representatives re-affirmed that they no longer wished to transmit to Europe but to the British Islands alone. The Postmaster General referred again to the difficulties that had been indicated on other occasions and said that the United Kingdom was much concerned that broadcasting to the United Kingdom should not be divorced from answerability to the United Kingdom Parliament.

633(l) Following the meeting, the Isle of Man representatives prepared a paper of detailed proposals which was considered at the meeting of the Working Party on 13 September 1968. The new Postmaster General rejected the Manx proposals, because they did not place the control of broadcasting in the charge of a public authority directly answerable to the United Kingdom Parliament.

633(m)The matter was not discussed further in the Joint Working Party, and the Stonham Report, which was published in 1969, recorded at paragraphs 44 and 45 the disagreement of the issue and indicated that it had been agreed that discussion of the broadcasting question should be carried forward on a government-to-government basis.

Recent Developments

633(n) In August 1969, the Isle of Man reverted to the proposals raised in the Lieutenant Governor's letter of July 1967 (see paragraph 617 above) for the expansion of the radio service on non-commercial lines. Discussion of these proposals had been postponed to await the outcome of the Joint Working Party, and the Isle of Man sought a further meeting to consider them. In January 1970 the Home Office replied that the United Kingdom was willing to offer technical advice on the expansion of reception in the Island, but could hold out no hope of any change of policy on the issue of transmissions to the United Kingdom. In March 1970 the Isle of Man replied refusing technical discussions, which they considered to be of little point unless progress were achieved on the main broadcasting issue. In June 1970 Tynwald appointed two Members of the House of Keys to directorships of the Isle of Man Broadcasting Company and authorised the Isle of Man Broadcasting Commission to operate a broadcasting service. The Isle of Man then wrote to the Home Office seeking further talks on an increase in power. In August 1970 the Home Office replied that the United Kingdom Government would be happy to hold further discussions, but could contribute to them only on the basis that United Kingdom policy on the main issue remained unchanged.

633(o) In February 1971 the Isle of Man Government adverted to the letter of August 1970 and requested a meeting. At the meeting, which took place on 22 March 1971, the Isle of Man Broadcasting Commission agreed to put aside for the time being the arguments surrounding the main broadcasting issue and to concentrate discussion upon the best technical method of providing an adequate coverage for Manx Radio within the Island, while avoiding significant overspill to the United Kingdom. In the course of discussion it became apparent that certain incompatibilities existed between the premises of the Broadcasting Commission and those of the Ministry of Posts and Telecommunications; and that certain factual information would need to be reconciled. It was agreed, therefore, that a team from the Ministry should visit the Island at the earliest possible opportunity to review the situation on the spot, with the aim of reaching agreement on the factual elements of the problem and on the practical consequences of the proposals of both sides.

The United Kingdom Case

633(p) As the licensing authority under the Wireless Telegraphy Act 1949, the Minister of Posts and Telecommunications must decide upon the allocation of frequencies and the technical conditions under which they may be used, but in those areas of the British Islands that lie outside the United Kingdom he does not purport to exercise control over the broadcasting services as such, since he is not answerable for them to the United Kingdom Parliament.

The reasons why the Government finds it necessary to deny the Isle of Man the right to broadcast to the United Kingdom are:

i. that the Island has no right to demand better treatment from the United Kingdom under the Wireless Telegraphy Act 1949 than it would obtain if it were a sovereign state and a member of the International Telecommunication Union (when the Island would be less well served as regards the right to use medium frequencies that at present). The Government's policy in this matter is not peculiar to the Island: steps are taken to dissuade other countries, eg France and the Republic of Ireland from broadcasting to the United Kingdom.

ii. that if, by virtue of a licence granted by the Minister, Isle of Man programmes were normally and regularly received in a part of the United Kingdom, Members of Parliament representing constituencies in which the programmes were received would have a right to raise questions about them; and Parliament would not for long tolerate a refusal to answer by the Minister who had licensed the transmissions. Nor would the situation be, in any way, similar to that which applies in the relation between Government and the United Kingdom broadcasting authorities (the BBC and ITA). They are public authorities ultimately responsible to the United Kingdom Parliament. The Isle of Man Broadcasting Commission is not. The Minister's position would be that he could not delegate responsibility to the Commission (which could not answer to the United Kingdom Parliament). Yet he could not, either, avoid responsibility for what had been done under the authority of his licence. Hence, the end result would be that unless the Minister were prepared to set up a public authority itself answerable, Parliament would expect him to answer for the programmes themselves. He would have to make judgments in complete contravention of the established principle that the Government does not intervene in the day-to-day running of broadcast services. (It is most unlikely that the Minister would be prepared to set up an Authority to assume responsibility for broadcasts from the Isle of Man to the United Kingdom, but it would be necessary for any such hypothetical body to be under the direction and control of the Minister and for its members to be appointed by him).

iii. that if the Island were given its own licensing power the Minister would still be responsible for maintaining frequency discipline in the area (including the Island) covered by the United Kingdom's adherence to the International Telecommunication Union Convention; even if no breach were to occur, it would be an impossible position for him to have responsibility without the power of ensuring that international conditions were met.

iv. that it has never been part of the United Kingdom case that the Isle of Man should not take steps to improve the service within the territorial limits of the Island. On the contrary, the Ministry has always been willing to offer technical advice to that end and believes that, for a very small expenditure, coverage on the Island could be improved without extending overspill.

633(q) Island representatives have claimed on a number of occasions that there would be no real risk of the Minister being embarrassed internationally by anything that the Isle of Man might do if freed from the licensing requirement. The United Kingdom Government considers, however, that there would be some risk involved. The Isle of Man, in the past, has raised the possibility of broadcasting to Europe (and the Republic of Ireland in particular would be a tempting area for their transmissions). If given a licensing power, the Island would acquire powers over frequencies without being subject to the constraints of the International Telecommunication Union Convention, a piratical situation without parallel in the international scene that could endanger not only broadcasting but even safety of life, since the licensing power covers the use of radio frequencies of all kinds, including those used in marine and aeronautical communications. Furthermore, an Island of 50000 inhabitants would, in exercising a licensing power, acquire the

right to pre-empt the use of frequencies in the United Kingdom over areas inhabited by millions of people. There are already insufficient such frequencies to meet existing needs.

633(r) The Isle of Man has also referred on a number of occasions to the examples of Radio Luxembourg and the BBC external services as an illustration of the right of a country to broadcast beyond its own frontiers. Radio Luxembourg's international broadcasts are an anomaly tolerated internationally for historical reasons, and the BBC external services exist like the external broadcasts of other major powers, as a projection of foreign policy, and are thus different in kind from a normal broadcasting service and irrelevant to a territory that does not conduct its own foreign policy.

633(s) In 1975, the United Kingdom delegation to the LF/LM Regional Administrative Broadcasting Conference negotiated the assignment of a new medium frequency (1368 kHz, the equivalent of 219 metres) to Manx Radio, for broadcasting in the Island. (CIM/75 494/1/14). Manx Radio previously broadcast in the main on 1295 kHz, which was only available from one hour after sunrise to one hour before sunset. The new frequency came into operation in November 1978 and is available by night as well as day.

633(t) Subsequently, a BBC local radio station was established at Lincoln on 1368 kHz. The Manx objected on the grounds that this arrangement might interfere with Manx Radio's service in the Island and that it would preclude any further expansion by Manx Radio on 1368 kHz. The United Kingdom Government has never conceded that Manx Radio has an exclusive right to use the 1368 kHz frequency and was not prepared to reserve it for possible future use by Manx Radio, but in order to improve the poor quality of radio reception in parts of the Island an increase in the power output of the Foxdale transmitter was authorised, and international agreement to this step was obtained. In May 1980, a new VHF frequency was obtained for the Isle of Man Broadcasting Commission.

3. MISCELLANEOUS

A. THE POLICE

634. The Island has a regular police force, headed by a Chief Constable who is appointed by the Home Affairs Board which in 1981 took over from the Police Board (which was established by the Police (Isle of Man) Act 1962 in accordance with recommendations of the MacDermott Commission). (CIM/7/3 432155/85). A Police Bill was first prepared in 1950 as part of a general programme of reform designed to give Tynwald greater control in financial fields. Progress was delayed until after the negotiations leading to the Isle of Man Act 1958 had been completed and then the question of the control of the police force was considered by the MacDermott Committee. (CIM 400/2/17). Paragraphs 60-76 of the MacDermott Report summarise the previous history of the control of the police force. The Police Board consisted of a Chairman and two other members (all of whom were members of Tynwald) elected by Tynwald, and two non-Tynwald members appointed by the Lieutenant Governor. Its primary duty was "to provide and maintain the constabulary in the manner required by the Lieutenant Governor to ensure the effective preservation of law and order", and for this purpose it has the duty and power to provide the necessary buildings and equipment, and to determine rates of pay after consultation with the Lieutenant Governor, the Finance Board, the Isle of Man Police Federation (also established by the Act) and with the approval of Tynwald. The Board was not however responsible for appointments, promotions, discipline etc which remained primarily a matter for the Chief Constable. The Home Affairs Board is now responsible for appointments, but not promotions (see paragraphs 539(a) and (b)). The force was inspected by HM Inspectors of Constabulary in 1973 for the first time for many years and s now inspected regularly (every two years). (CIM 431/3/4 73).

B. PRISONS AND PRISONERS

635. Each of the Islands has a small prison, the most modern being that is Jersey which was opened in 1975. The Isle of Man prison is under the over-sight of the Home Affairs Board, (see paragraph 539(a)). There have been very long standing arrangements under which island prisoners who cannot, for one reason or another, be accommodated locally are transferred to the United Kingdom, the cost being borne by the island concerned. Brief details are given below. Transferred prisoners are treated under United Kingdom law and are for example considered for parole, although none of the islands has a parole scheme.

636. The Penal Servitude Act 1891 enabled English prisons to accept Manx penal servitude cases (468883/4), and on file 136360/51 there is a 1922 reference to an arrangement in 1914 with Liverpool prison regarding penal servitude cases from the Isle of Man. In 1910 the Manx authorities asked for their juvenile adults to be detained in the United Kingdom (202173/1-3,7), and their Criminal Code Amendment Act of 1911 provided for sentences imposed on juvenile adults to be served in the United Kingdom. (468883/4). There was however no provision in the United Kingdom law enabling the Manx offenders to be received into English prisons, and therefore the Manx law was ineffective. A clause to remedy this defect was drafted for inclusion in the Criminal Justice Administration Act 1912 but was dropped before the Act reached the statute book, and a similar thing happened in 1914. (468883/4,7,9).

637. The Criminal Justice Act 1925 enabled borstallers from Jersey, Guernsey and the Isle of Man

to come to the United Kingdom borstal institutions, and was followed by insular legislation providing for sentences of borstal training (202173 series).

638. In 1924 it was discovered that the cost of island prisoners was erroneously being borne by the Prison vote, and steps were taken to ensure that the islands were presented with the bill for this service in the future. At the time there was a total of 10 island prisoners in United Kingdom institutions. (468883/0,2,6,8).

639. It was not until Section 61 of the Criminal Justice Act 1948 was brought into force that it was possible for transfers or ordinary prisoners from the island to the United Kingdom to take place (468883/11 and 929002/2). The Prison Act 1952 enabled the Secretary of State to order the removal to an institution in England and Wales of any person sentenced in the Channel Islands or the Isle of Man to penal servitude, imprisonment, corrective training, preventive detention, detention in a borstal institution, borstal training or detention in a detention centre.

640. In 1954 the United Kingdom government agreed to a request from the Isle of Man to take into English prisons its women prisoners sentenced to one month's imprisonment or more (CIM 32/3/3) but by 1963 women prisoners were accommodated locally - see CIM 432/1/8/. In 1955 it was agreed that the United Kingdom would accept Isle of Man prisoners sentenced to 12 months or more with at east 6 months still left to serve. Only about 4-6 prisoners a year were involved (CIM 32/3/5). In 1947 and 1954 and again 1966 the Isle of Man suggested that some of its vacant prison accommodation might be put at the disposal of the United Kingdom, but the scheme was not regarded as practicable (468883/10, CIM 32/3/1 and CIM/67 432/5/1.

641. The Criminal Justice Act 1961 enabled prisoners to be transferred to serve sentence in the United Kingdom from the Channel Islands and the Isle of Man on the authority of the Secretary of State (Section 27). (CIM 32/3/6). The notes on clauses (CIM 32/3/6) record that this provision was made because there were no proper facilities in the Channel Islands or the Isle of Man for detaining prisoners serving long sentences or for training borstallers. Provision was also made for the arrest and return of prisoners released on licence who might need to be recalled from one of the islands, and for the temporary transfer of prisoners from the United Kingdom to the islands (CIM 32/3/6 and CIM 69 32/3/6). CIM 32/3/9 contains details of the financial arrangements made following transfers, and there is further correspondence with the Isle of Man on this question on CIM/67 432/5/3.

642. On CIM/69 32/3/5 it was again pointed out that facilities of the island prisons were inadequate for longer term sentences, and it was undesirable to refuse to take island prisoners into United Kingdom prisons. The average number of transfers to England each year from all three islands for the period 1966/70 was 33. The figures for transfers in 1971-75 are given in paragraph 6 of a memorandum for the Minister of State on CIM/69 32/3/18.

643. The Isle of Man prison has been inspected on 3 occasions, in 1950 (254303/7), 1963 (CIM 432/1/8) and in 1975 (CIM/64 432/3/6). Slow progress is being made in implementing the recommendations of the 1975 report (CIM 76/432/4/3).

644. In September 1975 the prison population was 36, including one woman prisoner and conditions were described as "overcrowded" in the Inspector's report. (CIM 64 432/4/6).

The Prerogative of Mercy

645. The Lieutenant Governor of the Isle of Man, unlike his counterparts in the Channel Islands, has the power to exercise the Prerogative of Mercy in all non-capital cases (the Island still retains the death penalty for murder under the Criminal Code of 1872) where a person has been convicted and sentenced in the Island and is serving his sentence there, or where the court has made a non-custodial order, such as a fine, or conviction. In such cases The Queen also maintains her ultimate power to exercise the Prerogative (on the advice of the Home Secretary). The Stonham Working Party, which seems to have been unaware of the Lieutenant Governor's existing powers, recommended (Report, Paragraph 48(i)) that further consideration should be given to the possibility o delegating prerogative powers to the Lieutenant Governor. It was decided, after consultation with the Criminal Department (C3 Division) that the existing position went as far as practicable to fulfil the terms of the Working Party's recommendation. It is not considered feasible to extend the delegation of the exercise of the Prerogative to capital cases occurring within the British Isles, since the exceptional gravity of such cases renders it essential for The Queen always to consider the exercise of her ultimate power, and it is also necessary for the exercise of the Prerogative to be retained, in general, by the Crown in those cases where prisoners convicted and sentenced in the Isle of Man are serving their sentences in the United Kingdom. Official notification of this decision was given to the Isle of Man in 1974. (CIM 67 400/3/25).

646. A Bill to abolish the death penalty for murder in the Isle of Man was prepared in 1966 (the Homicide Bill) but a resolution put to Tynwald on 16 January 1968 requesting the Lieutenant Governor to introduce such legislation was defeated. (CIM 430/4/26).

647. In 1973 James Richard Lunney was sentenced to death for murder under the Criminal Code Amendment 1872. The case was dealt with in accordance with a memorandum agreed in 1931 (580339/3, copy on CIM/67 400/3/25). The Secretary of State recommended a reprieve, and The Queen granted a pardon on condition that Lunney be imprisoned for life. He was transferred to prison in England and the Isle of Man pays for his upkeep (CIM/67 432/5/5) (CIM 73 430/12/1.

648. This was the first murder in the Island since 1930, when Thomas Edward Kissack was found guilty but insane and spent the rest of his life in Broadmoor (BRP 2/798/6). On BRP 2/798/5 is a list of previous murders in the Island; in 1916 John Williams was found guilty but insane (file 319329); in 1914 and 1910 there were murders without a subsequent prosecution and in 1872 John Kewish was hanged in the Island for the murder of his father (file 14207).

648(a) In 1980 Graham Ralph Frankland was convicted of murder in the Isle of Man and sentenced to death. His appeal against conviction was dismissed. The sentence was commuted to one of life imprisonment by Her Majesty The Queen, acting on the advice of the Home Secretary. (CIM/80 430/15/1).

C. THE MANX EMBLEM

649. The "Three Legs of Man" appears on the Sword of State still used at the Tynwald ceremonies, which is thought to date back to the 13th Century, and seems to have been the "official" crest of the Island since the Scottish conquest in 1266. The emblem as such goes back to pagan times when, like the swastika (which existed long before it acquired its more recent notoriety) it derived from a design showing the rays of the sun and was thus associated with sun worship. At one time, the emblem was particularly connected with Sicily, and it is thought that it

may have been brought from there to the Isle of Man by the Scandinavians, who were connected with both Islands and Alexander III of Scotland who took over the design of the crest for the Island was brother in law of a King of Sicily. The Latin motto which now encircles the crest "Quocunque Jeceris Stabit" is now no doubt regarded by the Manx as singularly appropriate - it could be colloquially though not precisely rendered as "However much you push me about, I'll land on my feet".

650. For about a hundred years from 1830 ships of the Manx Steam Packet Co flew the Red Ensign "defaced" by the Manx emblem. In the absence of a warrant specifically authorising the practice, it was an offence under section 73 of the Merchant Shipping Act 1894 (and under earlier corresponding provisions of 1853). In 1932, at the instance of the Board of Trade, the Home Office drew attention to the illegality of the practice, and the Steam Packet Company regretfully agreed to withdraw the "defacement", and adopted the practice, to which there was no objection, of flying the Red Ensign and a flag with the Manx emblem separately.

651. In 1969, the Isle of Man Government, at the instance of the Steam Packet Co, asked whether steps could be taken to authorise all ships and boats registered in the Island to fly the Red Ensign "defaced" with the Three Legs of Man. Although one of the grounds put forward - that this would accord with permission given to ships of the Associated States of the Eastern Caribbean - did not correspond with fact, the Home Office felt that the intention behind the proposal, namely to import a distinctive character to the flag born by Manx registered vessels, was appropriate and acceptable in present day circumstances, and in 1971, with the concurrence of the Foreign and Commonwealth Office and the Ministry of Defence and after consultation with Garter King of Arms, a recommendation was made to and approved by The Queen for a Royal warrant authorising the "defacement" of the Red Ensign.

CIM/65 454/2/2 652. The relevant file contains, among a number of interesting minutes and letters, a copy (document 16A) of the Home Office letter of 3 March 1932 which, in addition to confirming the then illegality of the Steam Packet Co's practice, explained the respective status of national and local flags, and referred to the position in the Channel Islands.

D. SHOULD THE SOVEREIGN BY CALLED "LORD OF MAN" ?

653. The Lieutenant Governor, Sir Geoffrey Bromet, raised this question with us on the accession of the present Queen. He enclosed a copy of an opinion of 1901 by the then Attorney General of the Island, Sir James Gell, that the title of "Lord of Man" which had been held by the Derbies and later by the Atholls prior to the Revestment Act of 1765 was not part of the Royal title. This opinion had been approved by the then Lieutenant Governor. It had however, Sir Geoffrey Bromet pointed out, been the practice in loyal Toasts and the like to include the words "Lord of Man" (in the case of Queen Victoria, "Lady of Man" but Sir Geoffrey Bromet thought that "Lord" was preferable even in the case of a Queen) and, pending a final decision on the matter, he had given instructions, for the sake of uniformity, that the Toast would be "Her Majesty the Queen, Lord of Man."

654. In a demi-official letter of 4 March 1952 we said:-

> "Lord of Man" is not and never has been part of the Kingly title; it was the title borne, as Sir James Gell's note shows, by the owners of the Island until they surrendered their subordinate suzerainty to the Sovereign in the 18th Century. It is true that references were

made to King George V as "our Lord of Man" when the late Prince George visited the Island in 1932. Strutt, however, feels very strongly that a mistake was made then in not taking up this issue when we had the opportunity of considering the difficulty."

"Nevertheless, although the practice is wrong, we would not wish to raise the matter and fight in the last ditch over it, but on the analogy of the Loyal Toasts in Lancashire and in the Channel Islands (the last surviving part of the possessions of the Dukes of Normandy) as "The Queen, Our Duke", we feel that you are right in suggesting the description "Lord of Man" and not "Lady of Man".

655. Sir Geoffrey Bromet, instead of leaving well alone, then asked that The Queen's approval should be sought. We replied as follows:

"it is not our intention to approach The Queen on this matter partly because we feel somewhat diffident about troubling Her Majesty on such matters at the present time but also partly because if we went into the matter at length it is by no means certain that we should not have to recommend that the Home Secretary should tender advice in a sense contrary to the view we were prepared to accept in the last paragraph of my letter of 4 March".

656. The title was considered in a more formal context in 1963 when the Isle of Man proposed to inscribe a coin "Elizabeth II Lord of Man". (CIM 522/1/4 59). The view taken was that this style or the alternative "Queen of Man" would be inappropriate as they were contrary to the proclamation made under the Royal Titles Acts 1953 (see RYL 315/1/15). A copy of the proclamation made under the Royal Titles Acts 1953 to be used on the coinage of dependencies is "Queen Elizabeth the Second" or "Elizabeth II" as the Isle of Man was reminded in 1970 after submitting a proposal to inscribe a coin "Elizabeth Regina Manniae et Insularum". (CIM 522/1/1 69).

657. The letter from Sir Charles Cunningham to the Lieutenant Governor of 7 July 1963 includes the following:

"The expression "Lord of Man" is not - and so far as we can discover never has been - part of the Kingly Title..... I think a distinction can be made between the formal use of the expression, such as would be involved in its use in an inscription on a coin, and the informal use in the Loyal Toast. It has never been thought right to object to this pleasant custom; and as you know there is a similar practice in the Duchy of Lancaster, where The Queen is commonly toasted as The Duke of Lancaster although this forms no part of the Sovereign's Title".

E. THE HOME OFFICE CAT

658. The Home Office traditionally had a cat in the Whitehall building from the 19th Century, the earliest mention in Treasury papers being 1883. The cat has traditionally been male and named Peter. When the current Peter died in 1964 at the age of 16, an offer of a pedigree tail-less Manx cat was received from the Lieutenant Governor of the Isle of Man. A six month old kitten, female and consequently known as Peta, was presented to the Home Secretary in May 1964. She died in 1980 having been cared for at the home of a member of the Home Office staff during her old age. (ESG 499/1/1 69).