



**Isle of Man**  
**Government**

*Reiltys Ellan Vannin*



## Council of Ministers

### Report on Consultation Findings on Election Candidate Funding

April 2011

## **Foreword by the Chief Minister**

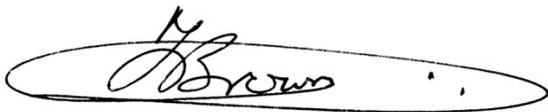
The matter of transparency and fairness within the House of Keys election process was first raised during the Douglas East by-election held in May 2010. For the first time in my memory, a public debate emerged about the source of election funding which discussed the apparent limitation of the legal framework in terms of transparency of donations and expenditure incurred by candidates themselves or on their behalf.

Council has been conscious of the tight timescale to enact any legislative changes however, since that time much work has been undertaken to consider and progress this matter. Firstly, a panel of three independent reviewers was appointed to look into this matter and they asked the public for contributions. Both the Governance Committee, which is a standing committee of the Council of Ministers, and the Council of Ministers itself, reviewed the recommendations and then publicly consulted on the proposals. All this was done with a view to ensuring that improvements are put in place before the General Election which will be held on 29 September 2011.

Conscious that time is now of the essence if we are to achieve the passage of the Bill through the Branches and allow time for Royal Assent, before announcement of the same to Tynwald by no later than July 2011, Council has decided to promote a Bill which focuses on achieving only the legislative change that is key to dealing with the transparency issues at this stage.

This consultation feedback report proposes that a formal post General Election review is undertaken to deal with the remaining proposals and any new issues which arise. The feedback received as part of this consultation will also be used to inform the post General Election review to ensure that the points raised are given full consideration.

The scope of the proposed Bill may be somewhat narrower than had originally been hoped, but it is a very important step in the right direction towards improving transparency and governance of the election process.

A handwritten signature in black ink, appearing to read 'J A Brown', enclosed within a hand-drawn oval shape.

**Hon J A Brown MHK**  
**Chief Minister**

## **1. Background**

- 1.1. At the May 2010 sitting of Tynwald, in answer to a question, the Chief Minister announced that the issue of candidate funding for those standing for public election was to be referred for consideration by the Governance Committee.
- 1.2. The Governance Committee agreed that an independent review should be carried out into the appropriateness of the current rules and transparency of processes applying to candidates standing for election in the Isle of Man. The Committee also agreed that the review should be carried out by a panel of suitably qualified independent persons.
- 1.3. In summary the Committee requested the Independent Review Panel to examine the appropriateness of the current rules and transparency of processes in the following areas:
  - Party funding
  - Third party funding
  - Candidate funding
  - Limits on campaign expenditure (to take into account differing constituency sizes)
  - Use of loans, donations, gifts, writing off debts , “in kind” benefits etc within candidate election funding
  - The appropriate period of the election window, in which rules would be enforced
- 1.4. The Independent Review Panel appointed to conduct the review was comprised of local advocate Mr Seth Caine, former High Bailiff Mr Michael Moyle and former Chief Minister Sir Miles Walker.
- 1.5. The panel worked on a voluntary basis during the period between June and September 2010 to produce a written report for the consideration of the Governance Committee.
- 1.6. Due to the tight timescale presented to the Independent Review Panel to carry out their considerations and report, the Panel made an early decision to seek the views of interested parties on the matters within their remit. Letters were sent to Tynwald Members and various parties in July 2010 inviting them to submit views for the Panel’s consideration on any of the items within the remit. In addition a press release was issued inviting submissions to the panel from any interested member of the public.
- 1.7. The Panel completed their consideration over the summer and provided their report to the Governance Committee for consideration by the end of September 2010.
- 1.8. The Governance Committee considered the report of the Independent Review Panel into Election Candidate Funding in detail. The Committee specifically considered each of the 18 recommendations detailed in the Panel’s report and agreed a response to each recommendation. The Governance Committee then submitted the Panel’s report and

their response to each of the recommendations to the Council of Ministers for their consideration.

- 1.9. The Council of Ministers considered the report of the Independent Review Panel and the responses of the Governance Committee to each recommendation, and agreed that a period of public consultation take place, so that members of the public and other interested parties may contribute to the development of a Bill to amend the Representation of the People Act 1995.

## **2. Consultation Response**

- 2.1. The consultation opened on the 31 December 2010 and ran for three weeks, closing on the 21 January 2011. Responses received during this period, and those received after the closing date, were collated and the results were presented to the Governance Committee for further consideration.
- 2.2. 22 responses were received, but not all responses covered all of the 18 recommendations. A list of those parties providing a response to the consultation exercise is included at Appendix 2.
- 2.3. Appendix 1 provides a summary of the Independent Panel recommendations, together the deliberations of the Governance Committee and the Council of Ministers. The table shown in Appendix 1 also provides a summary of the consultation responses received regarding each recommendation.
- 2.4. A number of other assorted miscellaneous issues, unrelated to the recommendations, were raised by respondents in the consultation exercise. These were noted by the Governance Committee and it was agreed that they should be included as part of the wider review, following the 2011 General Election.
- 2.5. The results of the public consultation process have supported the drafting of the Representation of the People (Amendment) Bill 2011.
- 2.6. This Bill will be presented to the House of Keys for First Reading on the 5 April 2011 and will be available to the public, via the Tynwald Library, following publication of the Order Paper for that sitting.

## **3. Representation of the People (Amendment) Bill 2011**

- 3.1. The Bill aims to principally focus on transparency of donations received by a candidate and the limitation of expenses incurred. It introduces relevant time periods and it is accepted that this legislation will not be applied retrospectively. Where a relevant period appears to start before this Bill is enacted (for example 'in the previous five years') the relevant period will start on the day of enactment.
- 3.2. In line with existing legislative powers regarding elections, any amendment to the Bill will be made by the Governor in Council and will be subject to approval by Tynwald before having effect.

- 3.3. Under the proposed legislation, Candidates in elections will be required to declare all donations above a 'minimum amount'. The amount will be set at £50, but the amount may be amended in the future.
- 3.4. Multiple donations made by the same person or by persons who are connected, must be aggregated for the purpose of determining whether the minimum amount has been exceeded. For this purpose, the definition of 'connected persons' will be the same as that found in section 119C of the Income Tax Act 1970, which deals with individuals who are connected as well as connections with trusts and corporate bodies.
- 3.5. The Bill will prohibit the retention of any donation that is anonymous. The term anonymous donation will be defined and any such donation must be submitted to the Chief Financial Officer of the Treasury who will then pay it over to the benefit of the Manx Lottery Trust.
- 3.6. All candidates will be subject to a limit on the amount they can spend on their election campaign. The limit will reflect the number of registered electors in a given constituency, which may be higher in some and lower in others. This will be achieved by limiting expenses to £2,000 plus 50p for every registered elector in the constituency. These amounts can be amended by Tynwald.
- 3.7. All Candidates will be required to provide details of donations received above the minimum amount not later than five working days before the day of the Poll.
- 3.8. All Candidates, whether successful or unsuccessful, will be required to provide details of expenses incurred, but only if a complaint is made regarding excess expenditure within three months of the day of the Poll.

#### **4. Future changes to the Representation of the People Act**

- 4.1. A full review of the Representation of the People Act 1995 will be carried out as soon as practicable after the 2011 General Election.
- 4.2. Further changes proposed which are not included in the 2011 Bill will be considered during the wider post General Election review. The further changes proposed by the Independent Panel included the registration of political parties and candidate advertising using broadcast media. The Council of Ministers will review these issues following the 2011 General Election.

**Summary table of consultation responses**

<b>No.</b>	<b>Recommendation of Independent Review Panel</b>	<b>Response of Governance Committee</b>	<b>Response of the Council of Ministers</b>	<b>Summary of Feedback</b>
7.1	The panel recommends that a candidate standing for election should be required to publicly disclose all donations received towards their candidature for the House of Keys ,which are in excess of a nominal set amount, say £50. The candidate should disclose the details of the source of the donation and the amount donated.	The Committee accepted the recommendation in principle and agreed to look further at ensuring that cumulative donations which in aggregate exceed the permitted amount are disclosed.	Council of Ministers endorsed the response of the Governance Committee to the recommendation.	<ul style="list-style-type: none"> <li>• Total respondents = 9</li> <li>• Respondents broadly supporting the recommendation = 7</li> <li>• Alternative nominal set amount of £100 was suggested by 2 respondents whilst an alternative nominal set amount of £2,000 was suggested by a single respondent</li> <li>• A requirement was suggested that candidates record <u>all</u> donations, to assist with reporting of cumulative donations (and to disclose donations that in total exceed the nominal set amount)</li> </ul>

No.	Recommendation of Independent Review Panel	Response of Governance Committee	Response of the Council of Ministers	Summary of Feedback
7.2	The panel recommends the retention of anonymous donations by candidates be prohibited. The panel recommends that the definition applied to anonymous donations includes those where the ultimate source of funding cannot be sourced or traced back satisfactorily.	The Committee agreed with this recommendation.	Council of Ministers endorsed the response of the Governance Committee to the recommendation.	<ul style="list-style-type: none"> <li>• Total respondents = 8</li> <li>• Respondents supporting the recommendation = 6</li> <li>• One respondent stated: "If we interpret this as meaning that campaign expenditure must exceed total donations or the surplus be returned, then we can endorse it." <i>This is not the intention. Recommendation 7.2 deals with individual donations that are 'anonymous', it does not link donations to expenditure.</i></li> <li>• Concern was raised in relation to 'donations' received after the election, based on a promise made before or during the election. <i>This is an important issue, but would already be covered by the declaration of Members' Interests, when paid to a sitting Member.</i></li> </ul>

No.	Recommendation of Independent Review Panel	Response of Governance Committee	Response of the Council of Ministers	Summary of Feedback
7.3	The panel recommends that political parties that intend to support or nominate candidates standing for election to the House of Keys should be required to be formally registered. The panel recommends that any registration system should be akin to that presently in place for trade unions in the Island.	The Committee agreed with this recommendation and also agreed that organisations and groups who nominate or support candidates standing for election are subject to the same requirements regarding registration as political parties.	Council of Ministers endorsed the response of the Governance Committee to the recommendation.	<ul style="list-style-type: none"> <li>• Total respondents = 9</li> <li>• Respondents supporting the recommendation = 7</li> <li>• One respondent suggested a registration fee (£41) be paid, equal to that to register a business</li> <li>• Concern was raised by one respondent that should Trade Union principles be adopted (in particular requirement to have 7 or more active members) this may suppress existing parties or stop new parties from forming</li> <li>• One respondent agreed that political parties should be registered, but suggested organisations or groups should not.</li> </ul>
7.4	The panel recommends that any registered political parties should not be permitted to accept anonymous donations, and that, the definition of "donations" set out at paragraph 7.8 below in relation to candidates should apply in the same way.	The Committee agreed with this recommendation and also agreed that it should apply equally to organisations and groups who nominate or support candidates standing for election.	Council of Ministers endorsed the response of the Governance Committee to the recommendation.	<ul style="list-style-type: none"> <li>• Total respondents = 8</li> <li>• Respondents supporting the recommendation = 5</li> <li>• One respondent suggested greater clarification needed on whether organisations &amp; groups supporting candidates cannot accept anonymous donations either – concern centred on 'bucket' style donations where small, mostly anonymous, donations received at meetings and during fundraising events.</li> </ul>

No.	Recommendation of Independent Review Panel	Response of Governance Committee	Response of the Council of Ministers	Summary of Feedback
7.5	The panel recommends that the participation of third parties in the Isle of Man's elections be kept under a watching brief and should the introduction of restrictions on the funding of third parties become necessary that these are kept symmetrical to those in place for candidates and political parties.	The Committee agreed with this recommendation.	Council of Ministers endorsed the response of the Governance Committee to the recommendation.	<ul style="list-style-type: none"> <li>• Total respondents = 9</li> <li>• Respondents supporting the recommendation = 5</li> <li>• One respondent was unable to support the recommendation as the term 'watching brief' was not clearly defined.</li> <li>• One respondent suggested third parties should be registered in a similar manner to political parties and their expenditure controlled in a manner similar to that of a candidate</li> </ul>
7.6	The panel recommends that the Governance Committee consider the information in this report and note the split in the panel's views when considering whether they wish to introduce a limit on the level of the campaign expenditure of candidates.	The Committee considered the information in the report and noted the split in the panel's views regarding the introduction of a limit on the campaign expenditure of election candidates.	Council of Ministers endorsed the response of the Governance Committee to the recommendation.	<ul style="list-style-type: none"> <li>• Total respondents = 8</li> </ul> <p>See also 7.7 below</p>

No.	Recommendation of Independent Review Panel	Response of Governance Committee	Response of the Council of Ministers	Summary of Feedback
7.7	Should the Governance Committee support the introduction of a limit on a candidate's campaign expenditure then the panel would recommend the introduction of simple fixed amount cap (e.g. £3,500 for a single seat constituency, £7,000 for a double and £10,000 for a three seat constituency) or limit calculated on the basis of fixed amount plus amount per elector (£2,500 plus £1 per registered elector for example). Should a limit on expenditure be introduced the panel recommends that candidates should be required to make returns detailing their expenditure within 15 days of the election, providing invoices or receipts for amounts expended over £100	The Committee agreed that as the issue of the transparency of candidate funding will be addressed by the requirements on the disclosure of donations received, a cap on the amount spent by candidates in election campaigns is not necessary. However, it is recommended that this matter be kept under review and if necessary an expenditure cap introduced.	Council of Ministers agreed that House of Keys candidates' campaign expenditure should be subject to a limit. Council of Ministers agreed that a candidates' campaign expenditure should not exceed £ 2,000 + 50 pence per registered elector in the candidate's constituency. Council of Ministers agreed that this limit should be reviewed after the 2011 General Election.	<ul style="list-style-type: none"> <li>• Total respondents = 14</li> <li>• Respondents supporting the recommendation = 8</li> <li>• Respondents against the recommendation = 3</li> <li>• One respondent suggested further work needed to quantify fixed and variable costs – although respondent suggested review could take place after the Election</li> <li>• Constituency Newsletters issued by sitting MHKs should be excluded</li> <li>• Amount of limit should be set by an independent person and indexed linked</li> <li>• Suggestion that limit should be £2,500 plus £1 per elector</li> <li>• Council of Ministers formula is too complicated to enforce</li> <li>• Sitting MHKs may have advantage as new candidates may have additional 'set up' costs, e.g. new website, which the sitting MHK may already have established. Such costs may use up all of the available allowance for new candidates.</li> </ul>

No.	Recommendation of Independent Review Panel	Response of Governance Committee	Response of the Council of Ministers	Summary of Feedback
7.8	The panel recommends that the definition of the term 'donations' with regard to candidate funding includes and requires the valuation and disclosure of any loans made at less than commercial rates, gifts, writing off debts and "in kind" benefits above the minimum amount set for the disclosure and reporting of donations	Whilst the Committee, in principle, accepted this recommendation, the Committee requested further detail be supplied and that consideration be given to the definitions to be applied to ensure that these items are disclosed as donations where appropriate.	Council of Ministers endorsed the response of the Governance Committee to the recommendation.	<ul style="list-style-type: none"> <li>• Total respondents = 10</li> <li>• Respondents supporting the recommendation = 8</li> <li>• Concern was raised in relation to volunteers being included as a service ('in kind').</li> <li>• Various suggestions were made as to what should be included within the definition of "in kind" benefits.</li> </ul>

No.	Recommendation of Independent Review Panel	Response of Governance Committee	Response of the Council of Ministers	Summary of Feedback
7.9	The panel recommends that responsibility for monitoring the effectiveness of any measures introduced in relation to candidate election funding is clearly assigned to a body or person, who will keep the matter under constant review with a view to revising or updating the mechanism where necessary.	The Committee agreed that consideration will be given to an appropriate body or person to assign responsibility for monitoring the effectiveness of any measures introduced, keeping the matter under constant review with a view to revising and recommending to Government proposals for updating the mechanism where deemed necessary.	Council of Ministers endorsed the response of the Governance Committee to the recommendation.	<ul style="list-style-type: none"> <li>• Total respondents = 8</li> <li>• Respondents supporting the recommendation = 5</li> <li>• Several suggestions regarding who could be assigned this role, namely: <ul style="list-style-type: none"> <li>○ Chief Registrar</li> <li>○ Standing Committee on Parliamentary Standards</li> <li>○ Tynwald Auditor</li> <li>○ Independent Person, e.g. Data Protection Supervisor</li> </ul> </li> </ul>
7.10	The panel recommends that in the interests of transparency the existing requirement under the Representation of the People Act regarding the identification of the publisher and printer of election material is enforced.	The Committee agreed with this recommendation and has requested clarification on who enforces this aspect of the legislation presently and will ensure that such information is included in appropriate publications.	Council of Ministers endorsed the response of the Governance Committee to the recommendation.	<ul style="list-style-type: none"> <li>• Total respondents = 8</li> <li>• Respondents supporting the recommendation = 7</li> <li>• One respondent suggested the date of the election be included on election material</li> </ul>

No.	Recommendation of Independent Review Panel	Response of Governance Committee	Response of the Council of Ministers	Summary of Feedback
7.11	The panel recommend that the Governance Committee carefully consider the reasons that Manx Radio is currently not permitted to accept advertising from political candidates to see if this prohibition is relevant in the 21st Century.	The Committee accepts the point made by the panel and has agreed to give detailed consideration to this matter, including public consultation on the appropriateness of introducing such a change in legislation.	Council of Ministers endorsed the response of the Governance Committee to the recommendation.	<ul style="list-style-type: none"> <li>• Total respondents = 13</li> <li>• Respondents supporting the recommendation = 4</li> <li>• Respondents against the recommendation = 3</li> <li>• Respondents supporting a consultation exercise = 3</li> <li>• Detailed submissions received from radio stations and the Communications Commission – outlining the potential difficulties permitting political advertising may cause</li> </ul>
7.12	The panel recommends that the measures should not be introduced via a voluntary code.	The Committee agreed with this recommendation.	Council of Ministers endorsed the response of the Governance Committee to the recommendation.	<ul style="list-style-type: none"> <li>• Total respondents = 8</li> <li>• Respondents supporting the recommendation = 6</li> <li>• One respondent suggested voluntary code be used for all recommendations, other than recommendations 7.1 and 7.2</li> <li>• One respondent suggested these measures should not be in place for 2011 General Election</li> </ul>
7.13	The panel recommends the introduction of the changes via legislation with penalties set on a sliding scale.	The Committee agreed with this recommendation.	Council of Ministers endorsed the response of the Governance Committee to the recommendation.	<ul style="list-style-type: none"> <li>• Total respondents = 8</li> <li>• Respondents supporting the recommendation = 6</li> <li>• One respondent suggested a penalty of 200% of the amount received</li> <li>• One respondent urged caution, but did not offer any solution</li> </ul>

No.	Recommendation of Independent Review Panel	Response of Governance Committee	Response of the Council of Ministers	Summary of Feedback
7.14	The panel recommends consideration of use of the Public Elections (Expenditure and Donations) (Jersey) Regulations 2008 as a potential model (with any necessary amendments) for the Isle of Man statutory vehicle for the introduction of some of the recommended changes.	The Committee agreed with this recommendation.	Council of Ministers endorsed the response of the Governance Committee to the recommendation.	<ul style="list-style-type: none"> <li>• Total respondents = 8</li> <li>• Respondents supporting the recommendation = 4</li> <li>• Respondents against the recommendation = 2</li> <li>• Respondents opposing this recommendation suggested that it would lead to 'laziness in drafting'.</li> <li>• Suggestion that legislation is delayed and reviewed again after 2011 General Election</li> </ul>
7.15	The panel therefore recommends that the Governance Committee considers deciding on the priority order of the recommended changes and investigates the swiftest methods for the introduction of the highest priority changes, prior to the 2011 General Election.	The Committee agreed that its intention is to propose to the Council of Ministers that priority be given to introducing all of the agreed proposed changes prior to the 2011 General Election and that the other matters, where indicated, will be considered in further detail and subsequently reported upon.	Council of Ministers endorsed the response of the Governance Committee to the recommendation.	<ul style="list-style-type: none"> <li>• Total respondents = 8</li> <li>• Respondents supporting the recommendation = 5</li> <li>• Respondents against the recommendation = 2</li> <li>• Concerns: one respondent suggested the legislation should be delayed until after the 2011 General Election; knee-jerk reaction could lead to bad legislation</li> <li>• One respondent supported the recommendation on the proviso that further consultation be carried out on the draft Bill and Regulations</li> </ul>

No.	Recommendation of Independent Review Panel	Response of Governance Committee	Response of the Council of Ministers	Summary of Feedback
7.16	<p>The panel recommends that consideration be given to the creation of an independent Election Commissioner to enforce the recommended requirements in relation to the disclosure of donations and potential limits on campaign expenditure. Alternatively the panel recommend consideration of the use of the Chief Registrar and his staff as the repository for the information which is required to be publicly disclosed with any discrepancies being reported to the Attorney General's Chambers.</p>	<p>The Committee agreed to consider the issue of who would be responsible for overseeing and administering the proposed requirements regarding disclosure of donations and registration of political parties and groups. The Committee noted the options of creating an independent Election Commissioner or using the Chief Registrar and his staff as the repository for the information which is required to be publicly disclosed with any discrepancies being reported to the Attorney General's Chambers.</p>	<p>Council of Ministers endorsed the response of the Governance Committee to the recommendation.</p>	<ul style="list-style-type: none"> <li>• Total respondents = 9</li> <li>• 3 respondents support the appointment of the Chief Registrar for this role</li> <li>• Other suggestions included the Tynwald Auditor, Electoral Commissioner, Senior Returning Officer, Attorney General's Chambers or the Data Protection Supervisor</li> </ul>

No.	Recommendation of Independent Review Panel	Response of Governance Committee	Response of the Council of Ministers	Summary of Feedback
7.17	The panel therefore recommends that a candidate standing for election should declare all donations that have been received, above an agreed figure (see section 7.1) in respect of their candidature, or potential candidature, for the previous 5 years (or such other time as appears appropriate).	The Committee agreed with this recommendation.	Council of Ministers endorsed the response of the Governance Committee to the recommendation.	<ul style="list-style-type: none"> <li>• Total respondents = 8</li> <li>• Respondents supporting the recommendation = 4</li> <li>• Respondents against the recommendation = 3</li> <li>• One respondent suggested a voluntary declaration of interests is made by candidates, when standing for election</li> <li>• Respondents who opposed this recommendation suggested it was superfluous, over-restrictive &amp; unenforceable</li> </ul>
7.18	Should the Governance Committee support the introduction of a limit on the campaign expenditure of candidates, then the panel recommends that the candidate must detail the expenditure incurred in the 12 months preceding the date of the election or since the last election for that seat in the case of a by-election that occurs less than 12 months since the last election for that seat.	The Committee agreed that it does not support the introduction of a limit on campaign expenditure by election candidates (see 7.7 recommendation response).	Council of Ministers agreed that there should be a limit on campaign expenditure by candidates standing for election to the House of Keys (see 7.7 recommendation response).	<ul style="list-style-type: none"> <li>• Total respondents = 8</li> <li>• Respondents supporting the recommendation = 1</li> <li>• One respondent suggested the Panel recommendation (re. 12 month reporting) is not reflected in the 'view of the Council of Ministers', which deals only with the proposed limit on campaign expenditure</li> <li>• Suggestion that 12 months was too long, alternative suggestion of 12 weeks</li> <li>• Concern raised in relation to the definitions, for example are newsletters issued by sitting members considered to be 'electioneering'?</li> </ul>

**Consultation on Candidate Election Funding  
List of Respondents**

**Members of the Public**

1. Mr Paul G Deakin
2. Ms Elizabeth Green
3. 'Elaine and Chris'
4. Mr Rodger Gimbert
5. Mr John W Karran
6. Mrs R Quirk
7. Mr G Boot

**Members of Tynwald**

8. Mr A F Downie OBE MLC
9. Mr J Watterson MHK
10. The Hon S C Rodan SHK

**Businesses**

11. Manx Radio
12. 3FM

**Local Authorities**

13. Marown Parish Commissioners
14. Maughold Parish Commissioners
15. Ramsey Town Commissioners
16. Douglas Borough Council

**Organisations**

17. Liberal Vannin Party
18. Mec Vannin
19. Communications Commission
20. Manx Labour Party
21. Government Officers Association
22. Positive Action Group



This document can be provided in large print or audio tape on request

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