

The Manx Emergency of 2020: Dealing with a global pandemic as a small island democracy.

*By*

Professor Peter W Edge.\*

## **Introduction.**

In 2020 the Isle of Man responded to the Coronavirus pandemic with the declaration of a State of Emergency under the Emergency Powers Act 1936 (EPA), and exceptional governance of the Isle of Man under a regime of Emergency Powers Regulations (EPR). This brief note describes the legal structure underpinning the Emergency, outlines the extensive body of EPRs, and argues that the distinctive Manx response is best understood as the consequence of the Isle of Man's status as a small island democracy dependent upon the UK Crown.

## **The legal structure.**

The Isle of Man is a Crown Dependency which throughout the twentieth century became increasingly autonomous in relation to internal affairs. Today, the dominant institution is Tynwald. Tynwald consists of twenty-four directly elected Members of the House of Keys (MHKs), from whom the equivalent of the UK Cabinet, the Council of Ministers (CoMin), is drawn; and a second chamber, the Legislative Council, which consists of eight members appointed by the House of Keys, the Lord Bishop of Sodor and Man, the (non-voting) Attorney General, and the President of Tynwald. Unusually, as the only surviving tricameral legislature, there are occasions when the two Branches of Tynwald sit together as a third chamber, Tynwald Court – most significantly for our purposes during the consideration of secondary legislation.<sup>1</sup>

On the 16<sup>th</sup> of March 2020 the Lieutenant-Governor, acting on the binding advice of CoMin, proclaimed a state of emergency.<sup>2</sup> Such a proclamation was limited to one month,<sup>3</sup> but was periodically renewed. The proclamation allows the Governor-in-Council – again, the Governor acting on the binding advice of CoMin - to make EPRs. These may confer

“on any persons in the employ of the public service of the Isle of Man such powers and duties as the Governor in Council may deem necessary for the preservation of peace, for securing and regulating the supply and distribution of food, water, fuel, light and other necessities for maintaining the means of transport, communications and the

---

\* LLB, PhD (Cantab), SFHEA, FRSA, Professor of Law Oxford Brookes University.

<sup>1</sup> See more fully PW Edge, *Manx Public Law*, (Preston: Isle of Man Law Society, 1997) at 12-38, 134-142 (hereafter *Manx Public Law*); Lord Lisvane, *Review of the functioning of Tynwald*, (2016) GD 2016/0047 at 15-22.

<sup>2</sup> The 2020 pandemic crisis, as a “wide-spread disease epidemic” fits within a conservative view of how far public health concerns can justify a state of emergency. For a more encompassing view, see G Sunshine et al, “Emergency declarations for public health emergencies: Expanding our definition of emergency” (2020) *Journal of Law, Medicine and Ethics* 47(2), 95.

<sup>3</sup> EPA 1936 s.3(2).

supply of services and for any other purposes essential to the public safety and the life of the community”.<sup>4</sup>

Although created by the executive, and coming into effect immediately, there is an element of democratic control. EPRs must be laid before Tynwald within seven days of being made, and if not approved by Tynwald cease to have effect seven days thereafter.<sup>5</sup>

### **The Emergency Powers Regulations.**

The EPRs, as a body, constituted an unparalleled intervention into every aspect of Manx life. Eighty-six EPRs were made during the Emergency and, controversially, seven after the end of the Emergency. The peak of EPR creation was in the second week of the Emergency period, with 23 passed in the week commencing 22 March, and a consistent decline in the number of EPRs made thereafter.

EPRs may create criminal offences with a maximum penalty of a fine, imprisonment for three months, and forfeiture of “any goods or money in respect of which the offence has been committed”.<sup>6</sup> During the Emergency concern had been expressed that the EPA limit for the fine was not £10,000 – as all the EPRs assumed - but £5,000,<sup>7</sup> and as a result primary legislation clarified that the upper limit was the correct one.<sup>8</sup> These heavy penalties were not merely theoretical, as the Manx courts showed repeatedly during the emergency period.<sup>9</sup> Up to the 26<sup>th</sup> of May, for instance, 96 people had been arrested under EPRs, and 26 had been jailed.<sup>10</sup> One reason for the heavy penalties may be the undifferentiated approach to the maximum penalties under the EPRs, with all offences carrying the same maximum. Another may be the initial absence of a fixed penalty notice alternative to formal prosecution. This was addressed by an amendment to the Emergency Powers Act,<sup>11</sup> which quickly led to the addition of a fixed penalty notice for some EPR criminal offences.<sup>12</sup>

We can identify three central pillars to the Manx legal response to the pandemic.

First, border control. From early in the Emergency detailed regulations prohibited entry to the Isle of Man for both residents and non-residents, subject to specified grounds for licensing admission.<sup>13</sup> Although the Emergency has ended, tight border controls have been retained by the Continuation EPR, discussed below.

Second, control of internal movement and interaction. Restrictions on movement of persons who were potentially infected, including those who had come from the UK, were included in

---

<sup>4</sup> EPA 1936 s.4(1).

<sup>5</sup> EPA 1936 s.4(2).

<sup>6</sup> EPA 1936 s.4(3).

<sup>7</sup> For a fuller discussion of this point, see PW Edge, “Emergency Powers (Amendment) Bill 2020”, (2020) Edgelawblog March 30 (at <https://edgelawblog.wordpress.com/2020/03/30/emergency-powers-amendment-bill-2020/> (Accessed 1 September 2020)).

<sup>8</sup> Emergency Powers (Amendment) 2020 s.4(4) amending EPA 1936 s4(3).

<sup>9</sup> Indeed, beyond. A number of continuation EPRs include criminal offences, which continue to result in custodial sentences – see for instance the case of Fraser Nolan, reported at <https://www.bbc.co.uk/news/world-europe-isle-of-man-53827020> [Accessed 19 August 2020].

<sup>10</sup> Minister for Home Affairs, HK 2 June 2020 at 875-8 K137.

<sup>11</sup> Emergency Powers (Amendment) Act 2020 amending Emergency Powers Act 1936 s.4(3)(b), 4(3C).

<sup>12</sup> Fixed Penalty Regulations 2020, created 17 April.

<sup>13</sup> Entry Restrictions Regulations 2020, created 26 March.

the first EPR.<sup>14</sup> Of much broader reach were Regulations which introduced a general prohibition on leaving a residence, subject to a number of detailed exemptions which were changed over time,<sup>15</sup> and restrictions on gatherings of people from different households.<sup>16</sup> These generally applicable restrictions were not in effect at the end of the Emergency.

Thirdly, closure of businesses. A very early Regulation closed restaurants and bars, and a range of leisure destinations such as museums and galleries.<sup>17</sup> This was quickly supplemented by an EPR allowing the closure of schools.<sup>18</sup> The two sets were consolidated in a single Regulation<sup>19</sup> which created three categories of premises – those required to close, those which could remain open subject to conditions related to their sector, and those which could remain open. As with the control of movement regulations, these changed considerably over time as more businesses were allowed to reopen. These Regulations were not in effect at the end of the Emergency.

### **The end of the Emergency.**

After the 7<sup>th</sup> of June, no active cases of coronavirus were recorded on the Island for several months.<sup>20</sup> The government had already lost, for the first time, a motion to have Tynwald approve an EPR, a loss described as indicative of “a new spirit abroad in this Honourable Court now”.<sup>21</sup> One theme from critics in Tynwald was that the regulations were “unnecessary at this time ... clearly not proportionate to the current emergency”,<sup>22</sup> and better addressed by “normal legislative means”,<sup>23</sup> as well as a scepticism about the continued need for an emergency powers regime.<sup>24</sup> The need to bring the Emergency period to an end was recognised by CoMin.<sup>25</sup> Only two further EPRs were approved by Tynwald during the Emergency: an amendment to the closure of premises rules,<sup>26</sup> and the continuation regulations.<sup>27</sup> One EPR was lost,<sup>28</sup> while seven were not moved for approval, including a key regulation addressing both internal movement and closure of businesses.<sup>29</sup>

The Emergency ended at 18.00 on the 26<sup>th</sup> of June. During the Emergency, it was recognised that some EPRs might need to continue past the end of the state of Emergency. The EPA allowed the creation of continuation regulations which could last up to six months after the ending of the Emergency. The Continuation Regulations were surprisingly expansive. All

---

<sup>14</sup> Potentially Infectious Persons Regulations 2020, created 19 March.

<sup>15</sup> Prohibition on Movement Regulations 2020, created 27 March.

<sup>16</sup> First created by the Events and Gatherings Regulations 2020, created 26 March.

<sup>17</sup> Closure of Premises Regulations 2020, created 22 March.

<sup>18</sup> Schools Regulations 2020, created 23 March; replaced by Educational Institutions Regulations 2020, created 27 March.

<sup>19</sup> Closure of Businesses and Other Premises Regulations 2020, created 26 March.

<sup>20</sup> <https://covid19.gov.im/news-releases-statements/no-active-cases-of-coronavirus-4pm-7-june-2020/> [Accessed 1 September 2020]; <https://covid19.gov.im/news-releases-statements/chief-ministers-statement-on-covid-19-6-september-2020/> [Accessed 30 November 2020].

<sup>21</sup> Mr Robertshaw, TC 26 May 2020, at 2059 T137.

<sup>22</sup> Mrs Caine, TC 26 May 2020, at 2056 T137.

<sup>23</sup> Mrs Lord Brennan, TC 26 May 2020, at 2057 T137.

<sup>24</sup> e.g. Mr Peake, TC 26 May 2020 at 2059-60 T137.

<sup>25</sup> See for instance the statement by the Chief Minister, TC 5 June 2020, at 2084 T137.

<sup>26</sup> Closure of Businesses and Other Premises (Amendment no.9) Regulations 2020, created 22 May.

<sup>27</sup> Continuation (no.2) Regulations 2020, created 26 June.

<sup>28</sup> Educational Institutions (Amendment) Regulations 2020, created 4 July.

<sup>29</sup> Peoples, Places and Regulations Regulations 2020, created 30 May.

EPRs were continued for the same period, the maximum allowed under the primary legislation; and the majority of extant EPRs were continued with or without modification. This last point should not be over-emphasised - key features of the Emergency period EPRs had already been repealed during the Emergency. Nonetheless, the scope of the Continuation EPR suggests that the continued existence of each provision of each EPR was not seen as an anomaly which needed to be justified, and even where justified retained for as short a period as practical.

Most controversially, on the 17<sup>th</sup> of July the Lieutenant-Governor purported to create a new EPR, amending these Continuation Regulations. The Attorney-General indicated to Tynwald, which approved the measure, that:

“Although the original regulations were required to be made during the period of an emergency proclamation, given the purpose for which continuation regulations are authorised to be made under section 4A, namely to secure the intended effect of the regulations during the 6 month period, there is implied within the section a power to amend them during that period in the light of changing circumstances”.<sup>30</sup>

It is difficult to reconcile this view with sub-section 4A(1) of the EPA, which states “This section applies where a proclamation of emergency is in operation”. The approach of the Attorney General undermined the crucial distinction between a state of Emergency – a constitutional enormity which allocates legal powers exceptionally – and the post-Emergency continuation period, and so risks normalising these exceptional powers.<sup>31</sup> Although the EPR was passed by Tynwald, a query was raised as to the basis for the power to create EPRs during the continuation period. The government remained confident of its power to do so, making a further six purported amending EPRs, each approved by Tynwald, making substantial changes to the border control regime from August through to November.<sup>32</sup>

Even such an expansive view of the power to amend the Continuation EPRs could not justify doing so beyond six months after the Emergency,<sup>33</sup> and the border control regime is to be moved into Regulations based on the Public Health Act 1990 after that point.<sup>34</sup>

### **The Isle of Man as a Democratic Small Island Dependency.**

Many of the issues identified elsewhere in relation to the pandemic apply to the Manx response – for instance the blurring between guidance and regulation,<sup>35</sup> the rule of law implications of

---

<sup>30</sup> <https://www.tynwald.org.im/business/hansard/20002020/t200722%20Early%20Written%20Answers.pdf> [Accessed 1 September 2020]

<sup>31</sup> See further M de Wilde, “Just trust us: A short history of emergency powers and constitutional change” (2015) *Comparative Legal History* 3(1), 110.

<sup>32</sup> The last being the Continuation (no.2) (Amendment) (no.7) Regulations 2020, created 19 November.

<sup>33</sup> Acknowledged by the Attorney General, LC 3 November 2020 at 755-60.

<sup>34</sup> See more fully, the Chief Minister, HK 13 October 2020 at 2425-2595.

<sup>35</sup> See Andrew Borrowdale v Director-General of Health and Others CIV-2020-485 194 [2020] NZHC 2090; R Hogarth, “The government must draw a clear line between law and guidance during the coronavirus crisis”, (2020) *Institute for Government* 1 April (at <https://www.instituteforgovernment.org.uk/blog/government-law-and-guidance-coronavirus-crisis>) [Accessed 1 September 2020]; R Cormacain, “Covid-19: When is a rule not a rule?” (2020) *Bingham Centre for the Rule of Law* 24 April (at <https://binghamcentre.biicl.org/comments/88/covid-19-when-is-a-rule-not-a-rule> [Accessed 1 September 2020]).

broad restrictions on individual rights,<sup>36</sup> and the implications of loosely defined criminal offences on the individual.<sup>37</sup> In this section I argue that the Manx response was a distinct reaction to the challenges of the pandemic, driven by a scale, intimacy, geography, and history.

*The importance of scale: capacity.*

One of the challenges the Isle of Man faced was the possibility of public services, especially the health service,<sup>38</sup> being overwhelmed by a relatively small increase in demand.<sup>39</sup> Much of the pandemic legislation was aimed at reducing the demand for these public services by controlling the spread of the virus; other provisions sought to maximise what capacity there was in the Isle of Man. For instance, the restriction on a member of the legislature holding an office of profit,<sup>40</sup> was relaxed to allow an MHK qualified as an intensive care nurse<sup>41</sup> to volunteer for the health service.<sup>42</sup> There were also a number of bans on particular types of public sector employee being allowed to leave the Isle of Man.<sup>43</sup>

Creation of the EPRs themselves posed serious challenges of capacity for a small jurisdiction drafting team.<sup>44</sup> On the 31st of March the Chief Minister recognised this pressure: “I have got my team working a hundred hours a week at the moment.”<sup>45</sup> There were limits to how far the Manx capacity for drafting could be stretched, however, and one of the notable features of the EPRs is the number of drafting errors in individual EPRs.

By drafting errors I mean errors which render an EPR incomprehensible, or incoherent in relation to the policy it was intended to implement,<sup>46</sup> rather than EPRs which are implementing a poor policy. Taking for examples only errors which were corrected by a subsequent EPR, this includes omission of a key noun in a description of facilities that could reopen,<sup>47</sup> application of the fixed penalty regime to only one of the offences in a section,<sup>48</sup> failing to identify the

---

<sup>36</sup> D Russell and T Graham, “Gottterdammerung” (2020) *Trusts & Trustees* 26(5), 381; M Lynch, “Is the rule of law under threat?” (2020) *Gazette of the Law Society* 114(6), 48.

<sup>37</sup> D Omerod, “Coronavirus and emergency powers” (2020) *Criminal Law Review* 6, 473.

<sup>38</sup> As occurred in Barbados during the 2009 H1N1 outbreak. See N Sobers-Grannum et al, “Response to the challenges of pandemic H1N1 in a small island state: The Barbadian experience” (2010) *BMC Public Health* 10(1): S10.

<sup>39</sup> In contrast to other small island democracies, although continuity of food supply was a concern, it was not a paramount concern – contrast P Teng, “Assuring food security in Singapore, a small island state facing COVID-19” (2020) *Food Security* July 2020 (early access).

<sup>40</sup> Fully discussed in A Twomey, *Office of Profit Under the Crown*, (2018) Parliament of Australia Parliamentary Library Research Paper, 14 June 2018.

<sup>41</sup> Claire Barber MHK; confirmed by personal correspondence 8 August.

<sup>42</sup> Emergency Assistance by Members of the Keys Regulation 2020, created 22 April.

<sup>43</sup> Initially in the Home Affairs Staff Regulations 2020, created 24 March; superseded by the broader Public Sector Employees (Travel Restrictions) Regulations 2020, created 3 April.

<sup>44</sup> See further TW Cain, “The legislative draftsman in a small jurisdiction” (1990) *Statute Law Review* 11(2), 77; R Hewagama, “The challenges of legislative drafting in small Commonwealth jurisdictions” (2010) *Commonwealth Law Bulletin* 26(1), 117.

<sup>45</sup> The Chief Minister, TC 31 March 2020, 1536 T137.

<sup>46</sup> As A McHarg, “Legislative quality and the Scottish Parliament”, (2017) *Edinburgh Law Review* 21(1), 109 argues at 114, assessing the technical quality of legislation is not necessarily straightforward.

<sup>47</sup> Closure of Businesses and Other Premises (no4) 2020, created 1 May, reg.3(3); correcting Closure of Businesses and Other Premises (no3) 2020, created 29 April, reg.3(3)(a).

<sup>48</sup> Fixed Penalty (Amendment) Regulations 2020, created 25<sup>th</sup> April; correcting Events and Gatherings (Amendment no.2) Regulations, created 23<sup>rd</sup> April;

primary legislation which an EPR was modifying,<sup>49</sup> excluding child minders from the scope of an EPR which specifically sought to control child minders,<sup>50</sup> and omitting a schedule from an EPR which referred to that schedule for detailed provisions.<sup>51</sup>

Part of the stress on Manx drafting capacity was caused by the fast moving nature of the pandemic, and the need for a very high volume of legislation. It was exacerbated, however, by two features of the Manx response.

Firstly, EPRs were created by the executive and became law when signed, and only later subjected to scrutiny by the members of the legislature, all members sitting together in a single chamber (Tynwald Court). Early in the crisis there were complaints that legislators were not being given sufficient time to consider EPRs before they were debated,<sup>52</sup> leading the President of Tynwald to express concern to CoMin.<sup>53</sup> This problem appears to have been largely addressed, although we find references to the difficulties of timely communication throughout the Emergency.<sup>54</sup> Legislators frequently identified drafting errors both within and outside the legislative chamber,<sup>55</sup> and in some cases voted in favour of an EPR only on the basis that an error would be speedily addressed,<sup>56</sup> or upon receiving an assurance that issues raised in debate would be dealt with by “further legislation”.<sup>57</sup> EPRs which became law only after scrutiny by Tynwald – which given it was meeting weekly for most of the Emergency would not have excessively impeded many of the measures implemented by EPRs – might have been better drafted EPRs.

Secondly, many of the EPRs were extremely detailed, and became increasingly complex as the Emergency progressed. This was a particular concern of Mr Robertshaw MHK, who in April noted “we are seeing this afternoon the limit of the reach or the ability of the emergency regulations to make sense”.<sup>58</sup> The complexity of the EPRs being amended was an additional strain on Manx capacity. Towards the end of the Emergency, CoMin sought to address this not by broader EPRs, but by removing the detail of key EPRs from the text of EPRs, and so from the democratic oversight of Tynwald entirely, through the People, Places and Activities Regulation. This approach did not seem set to receive approval from Tynwald, leading to the failure to move the Regulation.

#### *The importance of scale: intimacy.*

As a small democracy, governmental power is comparatively focussed. In particular, the national legislature, Tynwald, consists of 24 democratically elected MHKs sitting in the House of Keys, who sit together with the Legislative Council as Tynwald Court. Although only one Act of Tynwald was passed to deal with the Emergency, the EPR system required every EPR

---

<sup>49</sup> Road Transport (no.2) Regulation, created 2 April; correcting Road Transport Regulation, created 26 March.

<sup>50</sup> Child Care Services (Amendment) Regulations, created 2 April; correcting Child care Services Regulations 2020, created 27 March.

<sup>51</sup> Special Constables (no.2) Regulation, created 2 April; correcting Special Constables Regulation, created 27 March.

<sup>52</sup> Raised by Mr Speaker, at the first debate of the first EPR – see TC 24 March 2020, 1465 T137.

<sup>53</sup> The President, TC 27 March 2020, at 1473 T137.

<sup>54</sup> For instance, by Mr Ashford, TC 7 April 2020, at 1604 T137;

<sup>55</sup> See for instance Mr Baker, TC 31 March 2020, at 1536 T137.

<sup>56</sup> For instance Ms Poole-Wilson, TC 27 March 2020, at 1492 T137.

<sup>57</sup> For instance The Chief Minister, TC March 27 2020, at 1497 T137.

<sup>58</sup> Mr Robertshaw, TC 28 April 2020, 1805 T137.

to be laid before Tynwald within seven days of passage. As a result Tynwald met at least once each week, and often more frequently, throughout the Emergency.

As a relatively small chamber, accommodating social distance was less of a challenge than for the UK Parliament. Socially distant physical sittings were carried out with all members present,<sup>59</sup> but these were clumsy – especially during voting – and because of the gender divide between MHKs and MLCs,<sup>60</sup> led to a physical marginalisation of female members into overflow seating. For the majority of the Emergency, Tynwald sat via teleconferencing, with no need for demand management,<sup>61</sup> with a return to physical sittings on the 16<sup>th</sup> of June. This was a clear advantage of the intimacy of the Manx political scene.

The concentration of political power in a small number of people had two further implications. One was the possibility of acting with a high degree of consensus, and so unity in the absence of a political system based on parties; another was the possibility of radical executive action not being subject to appropriate scrutiny.<sup>62</sup> At the beginning of the Emergency, consensus dominated the debate. The earliest EPRs were confirmed by Tynwald without a division. The first call for a vote was on the 3<sup>rd</sup> of April,<sup>63</sup> by which point 22 key EPRs had already been approved. It was not until the week of the 12<sup>th</sup> of April, by which time a very large number of EPRs had been approved, that Tynwald amended an EPR during the approval process.<sup>64</sup> As discussed above, the first rejection of an EPR was on the 26<sup>th</sup> of May. A theme in the later debates is a concern that the CoMin had become too casual in using the exceptional powers in the emergency regime, and needed to plan a speedy return to normal constitutional structures.

#### *The importance of geography: insularity.*

Taking advantage of the potential for border control due to being an island with control over its ports of entry was key to the Manx response to the pandemic. A major point of controversy both in Tynwald Court and nationally was the return of Manx residents to the Island. The first Regulations to permit such a return came into effect on the 9<sup>th</sup> of April, had a narrow definition of resident, required the resident to have left the Island before the 27<sup>th</sup> of March, and were proscriptive on how return was to be effected.<sup>65</sup> The latter remained intensely controversial, with returning residents being required to pay “all the costs incurred and associated with his or her re-entry into the Island”, including all costs concerning a mandatory policed quarantine period upon return.<sup>66</sup> The extent to which this legal requirement was enforced administratively

---

<sup>59</sup> 24 March 2020; 27 March 2020; 31 March 2020.

<sup>60</sup> See further PW Edge, “Lisvane’s Legacy? Constitutional Reform in the Isle of Man” (2020) *Legal Studies* 40(1), 22.

<sup>61</sup> For the view of the Speaker of the House of Keys on this process, see J Watterson, “Isle of Man: World’s oldest parliament goes online” (2020) *Electoral Reform Society* 6 April (at <https://www.electoral-reform.org.uk/isle-of-man-worlds-oldest-parliament-goes-online/> [Accessed 1 September 2020]).

<sup>62</sup> On which, see EC Ip, “Hong Kong – The Unprecedented Promulgation of public health emergency regulations against the COVID-19 outbreak”, [2020] *Public Law* 580 at 582.

<sup>63</sup> On the Entry Restrictions (Amendment) Regulations 2020, which was approved with only two dissenting MHKs – see TC 3 April 2020, at 1575 T317.

<sup>64</sup> Entry Restrictions (no.2) Regulations 2020, created 8 May; approved with amendment 12 May.

<sup>65</sup> Entry Restrictions (Amendment no.2) Regulations 2020, created 9 April; creating a new Entry Restrictions Regulations 2020 s.6A.

<sup>66</sup> Entry Restrictions (Amendment no2) Regulations 2020, reg.6A(9).

is unclear, as the scheme had a contribution limit of £1000, rather than “all costs”.<sup>67</sup> From the 13<sup>th</sup> of May returning residents were able, in most cases, to opt for self-isolation instead.<sup>68</sup>

With the elimination of coronavirus on the Island, and the end of the state of Emergency, border control became the foundation of the continuing Manx response. The border control regime was continued by the Continuation Regulation. CoMin policy was to modify the regime as circumstances outside the Isle of Man changed, but – as noted above - the legal structures for facilitating this are unclear. Since September 2020, after the end of the Emergency, a small number of cases of coronavirus have been identified in the Isle of Man, all either in individuals who had recently travelled from the UK or other high-risk area, or directly linked to such travel. There has been some local transmission, but no community transmission.

### *The importance of history: Dependency.*

The Isle of Man is a Crown Dependency. What this means in relation to autonomy has changed tremendously since the purchase of the Manx Crown in 1765. The Emergency showed one remnant of the emphasis on the powers of the Crown, with the Lieutenant-Governor acting on the binding advice of CoMin, rather than CoMin acting themselves.<sup>69</sup> The propriety of this in an era when executive government is exercised by a Chief Minister and Council of Ministers responsible to Tynwald has been queried, but was upheld on the basis that an emergency might require use of UK military forces, which only the Lieutenant-Governor was placed to request.<sup>70</sup> This recognition that the Isle of Man does not control military resources arose during the Emergency itself, when border controls needed to be modified to allow the passage of UK military personnel. Royal Assent to Acts of Tynwald is also granted by the Crown, on many occasions delegated to the Lieutenant-Governor, which meant that the amendment to the Emergency Powers Act required formal Assent on the advice of the UK government. Otherwise, as with the other Crown Dependencies, it is striking how far the Emergency was dealt with at the national level.

If *being* a Crown Dependency had relatively little influence on the Manx response, *having been* one had somewhat more. Before the 21<sup>st</sup> century, the dominant model of Manx external relations was that of hub and spoke. With rare exceptions, external relations concerned the relationship with the UK. As a result, substantial practical aspects of infrastructure were entwined with that of the UK, and in particular England. We can see this in areas as diverse as the provision of specialist medical services, detention of long-term prisoners, investigation of air accidents, and training of the Manx legal profession. This intertwining has survived an increase in Manx autonomy, and a broadening out of the external relations agenda.

We can see this most clearly in the development of the border control regime. The first iteration allowed exemptions for persons vital to critical Manx infrastructure, including essential

---

<sup>67</sup> Confirmed at a number of points in the debate by The Minister for Health and Social Care, TC 14 April 2020 from 1634 T137.

<sup>68</sup> See TC 12 May 2020, from 1904 T137.

<sup>69</sup> Before 1980, the substantive decisions as to emergency powers were made by the Lieutenant-Governor themselves. The change was part of a broader reduction in the role of the Lieutenant-Governor effected by the Governor’s General Functions (Transfer) Act 1980 and the Constitution (Executive Council) (Amendment) Act 1980.

<sup>70</sup> See in the 2006 debates over the Criminal Justice, Police and Courts Bill, the defence of the position on this basis by Mr Shimmin, at HK 3 May 1057 K123.



medical experts, and for persons returning to the Island after essential medical treatment.<sup>71</sup> The final iteration, which outlasted the Emergency, included exemptions for persons returning from medical treatment, members of the Armed Forces, visiting judges, temporary advocates, Air Accident Investigators, search and rescue and air ambulance services, and (most broadly) key workers necessary to support either Manx or UK infrastructure.<sup>72</sup> The constantly growing list demonstrates the extent to which the Isle of Man is dependent in certain areas on external resources – a recognition which prompted the decision to develop on-Island coronavirus testing capacity early in the pandemic.<sup>73</sup>

## **Conclusions.**

The 21<sup>st</sup> century emergency was responded to with Manx resources – political leadership, technical drafting, and legislative scrutiny of executive action. The extent to which exceptional powers have been exercised by Manx political figures is unique in Manx history. It would be optimistic to assume that similar powers will not need to be exercised in the future. In the 1920s and 1930s, for instance, the public health restrictions on influenza became routine in the Isle of Man.<sup>74</sup> If this specific type of emergency becomes similarly routine, the 2020 EPRs provide a resource – but by some distance not a perfect model – for future responses.

Now that the Isle of Man has experienced its first *national* National Emergency, a review of the Emergency Powers regime – repeatedly promised since 2005 - has become a matter of more than theoretical significance. Such a review will need to be informed by emergency powers regimes in other democracies, but as this brief article shows, not all democracies are the same. Such a review needs to take account of the extent to which the shape of the 2020 response was conditioned by legal and extra-legal characteristics of the Isle of Man, primarily smallness but also insularity and dependency.

More broadly, this detailed analysis of the Manx response throughout the state of Emergency caused by the 2020 pandemic may provide a framework for analysis for similar small island democracies such as the Cayman Islands. A significant number of democracies have activated emergency powers as part of their response to the 2020 pandemic, in some cases modifying their international law obligations on the basis of the emergency. There are lessons to be learnt for small democracies from the experience of larger democracies, particularly those with similar legal systems. These lessons should not obscure the importance of scale, insularity, and dependency for these small island democracies.

---

<sup>71</sup> Entry Restrictions Regulations 2020, reg. 6.

<sup>72</sup> Entry Restrictions (no.2) Regulations 2020. reg.6 and reg.8.

<sup>73</sup> Entry Restrictions (no.2) Amendment Regulations 2020, creating new reg.6(12).

<sup>74</sup> See Mr Crellin, TC 27 January 1933, at 344.