

**2. Select Committee on the Road Traffic Legislation (Amendment) Bill 2016 –
Report and recommendations –
Amended motion carried**

Mr Turner to move:

That the Report of the Select Committee of the Legislative Council on the Road Traffic Legislation (Amendment) Bill 2016 [PP No 2017/0105] be received and the following recommendations approved:

Recommendation 1

That notwithstanding any previous decision of the Council the Clauses stage of the Road Traffic Legislation (Amendment) Bill 2016 should recommence at Clause 1.

Recommendation 2

That the Bill should not be read a third time before the amendments necessary to give effect to this resolution have been drafted, moved and decided upon.

Recommendation 3

That the Bill be amended to remove the extension of driving offences to animal-drawn vehicles.

Recommendation 4

That the Bill should not be read a third time before the Department of Infrastructure has given a commitment to develop separate legislation for the use of animals on the roads.

Recommendation 5

That the table in Clause 6 of the Bill be amended to introduce a limit of zero for all psychoactive substances not otherwise named in the table.

Recommendation 6

That the Bill be amended to provide that all road users other than pedestrians be subject to drink and drug testing.

Recommendation 7

That the Bill be amended to provide that an authorised examiner is a person appointed by the Department who has undergone a background check; does not have any unspent convictions; holds a valid driving licence; is appropriately qualified for the task; uses a marked Departmental vehicle; and wears a high-visibility uniform that identifies the individual as an authorised examiner.

Recommendation 8

That the Bill should not be read a third time before the Department of Infrastructure has given a commitment to undertake an information campaign regarding authorised examiners' new powers to inspect driving licences.

Recommendation 9

That the Bill should be amended to make it clear that the provisions of Clause 24 relating to non-payment of fines should apply to non-payment of fines issued for motoring offences only.

Recommendation 10

That Clause 34 be removed from the Bill.

Recommendation 11

That the Bill be amended to provide that any regulations made under the proposed new Section 6 of the Local Government (Miscellaneous Provisions) Act 1984 be subject to the approval of Tynwald.

The President: Item 2: Report of the Select Committee on the Road Traffic Legislation (Amendment) Bill.

The motion is that the Report be received and the recommendations, of which there are 11, as set out, be approved.

I call on Hon. Member, Mr Turner.

Mr Turner: Thank you, Mr President.

This Committee was established on 24th May 2016, almost exactly 13 months ago. Bill Committees are not always a quick process, but nevertheless I think I need to say a little about why this one took so long.

The Road Traffic Legislation (Amendment) Bill 2016 did not start in the House of Keys, but was introduced into the Council, as first Branch, on 26th April 2016. It passed its Second Reading, but by the time we got into the Clauses Stage some of us were clearly not happy and it was referred to the Committee after the debate on clause 15.

Soon after we formed the Committee, we issued a public call for evidence and we obtained written evidence from the Department and others before the end of the summer. However, at that point, we then had to take into account the General Election. A new Minister for Infrastructure was appointed in October. There would not have been much point in producing a detailed report if the new Minister did not wish to progress the Bill, so we asked him. It is quite common that, when new administrations, new Ministers, come in they have new priorities and it was right that we should owe the new Minister the courtesy of seeking his direction as to whether this Bill was a priority for his new Department.

The Department gave us an answer to that question in December 2016. It was only at that point we were able to get going. We analysed evidence we had received from the Island Road Transport Association and the Department. We formulated some questions and had a very good public evidence session in February 2017, with both the Island Road Transport Association and with departmental officers and the legal drafter. Inevitably, this session resulted in some further questions for the Department. The answers to those questions did not come through until 21st April 2017. Again, from that point, we were then able to finalise our thoughts.

So, Mr President, I think it is important for this Council to understand the reason for the delay, that our aim was to improve the Bill and that was what we set out to do. It may be that, for the large part of the past 12 months, the Committee has actually been waiting for answers from the Department. Maybe that shows where the Bill did, in fact, lie in their priorities of what they were progressing.

Our remit covers the whole Bill, and we have some amendments to suggest to the early clauses of the Bill. For that reason, our recommendation 1 is that the Clauses Stage be re-started from clause 1.

In recommendation 2, we are saying that we have not produced any amendments for agreement at this stage, but once today's debate is over amendments will need to be drafted. Once drafted, the amendments could be debated at our next scheduled sitting, which will be on Tuesday, 24th October.

In recommendations 3 and 4, we try to take animals and animal-drawn vehicles out of the Bill. The Bill proposes that drivers of animal-drawn vehicles should be subject to many of the same laws as drivers of mechanically propelled vehicles. We are not saying this is necessarily wrong, but think it is not urgent and it begs a lot of questions. For example, if an offence of drunk driving is being applied to horse trams, should it not also be applied to a person riding a horse on the road? We think that the use of animals on the road opens up a can of worm and should be handled and dealt with separately in a separate Bill.

Recommendations 5 and 6 are concerned with driving under the influence of drugs. The aim of recommendation 5 is to bring the Bill up to date with the latest developments in the law relating to psychoactive substances.

In recommendation 6, we are saying that the drink and drug laws should apply to all road users, not just cars and motorbikes, but we have to draw the line at pedestrians because – clearly I do not think we really have to explain that, but – you would not be able to walk home from a pub. The whole point is road users of vehicles that are using the highway network, and I am sure Members will wish to discuss this in the debate.

In recommendations 7 and 8, we deal with the authorised examiners. Given the absence of an annual MOT-style roadworthiness test in the Isle of Man, the Department of Infrastructure periodically undertakes roadside safety checks. A police officer is currently required to be present at these checks in order to confirm the identity of the driver. The Bill proposes to give authorised examiners the powers to ask a person to produce his or her driving licence for inspection, meaning that a constable will not have to be present. We are not recommending against this proposal, but we think that greater safeguards are needed and the new regime needs to be explained to the public.

Sections 47A and 47B of the Road Traffic Act 1985 provide powers for the police to seize motor vehicles which have been driven by an unlicensed or uninsured driver or have been used or kept on the road without a valid vehicle licence. Clause 24 of the Bill proposes a new power to seize vehicles where the owner has failed to pay a fine. The Bill does not specify the fine needs to have anything to do with motoring, so recommendation 9 would correct this, because the way it is drafted – and it was in the evidence in the *Hansard* with the legal drafter – ‘any fine’ could mean any fine across Government, so it could be a fine for litter, for example. It was just open-ended; it needs clarifying, so recommendation 9 would do that.

Clause 34 inserts a new section 73A into the Road Traffic Act 1985, which gives the Department of Infrastructure powers to make safety regulations under the Consumer Protection Act 1991. The effect is basically to enable the DoI to work around the Office of Fair Trading, which is normally in charge of consumer protection. We do not think this is a sensible use of the Department's ability to initiate primary legislation. It should concentrate its efforts on persuading the OFT of the merits of this argument and, if the OFT is not convinced, the DoI should accept that.

Now, unfortunately, Mr President, an error has crept into the drafting of recommendation 10. As drafted, it goes wider than the Committee had originally intended. With apologies to you, Mr President and Hon. Members, I would like to move recommendation 10 in a modified form. Now, it might be, procedurally, one of our fellow Committee Member may have to formally move that, but I will just explain what it is and we can see what the best procedure is going to be.

What I would like to do is move recommendation 10 in a modified form. Instead of, ‘That clause 34 be removed from the Bill’, this recommendation should read, ‘That the proposed new section 73A in clause 34 be removed from the Bill.’

Now, I am happy to explain that again if Members have not got that. So, at the moment, it says clause 34 be removed; the recommendation should read, 'That the proposed new section 73A in clause 34 be removed from the Bill.'

Finally, I come to recommendation 11. This deals with the powers in the Local Government (Miscellaneous Provisions) Act to remove vehicles. The Bill would enable the removal, by the Department, a local authority, or a constable, of an abandoned vehicle that is considered to be offensive to the public but cannot be removed because it is displaying a valid road licence.

Personally, Mr President, I am not happy about this idea at all, but we have had a long discussion in the Committee about this and the consensus we reached was that the provision should remain in the Bill. We did notice, however, that the exercise of the power was subject to regulations, but there was no procedure for Tynwald to have any oversight of those regulations. In recommendation 11, we are saying that the regulations should be subject to Tynwald approval.

So, that, Mr President, is the work of our Committee. It is a wide-ranging Bill and we have come up with a wide-ranging set of proposals on how this Bill could be improved. I hope Hon. Members and the public will appreciate that we have not brought about delay for its own sake; rather, we have examined the Bill in its entirety and offered our considered opinion for the benefit of the Council and, ultimately, the public.

I very much hope hon colleagues will be able to support our recommendations in full, and I look forward to the Bill continuing its passage.

I thank Hon. Members this morning and look forward to debating the work of this Committee here now.

I beg to move.

The President: Mr Coleman.

Mr Coleman: Thank you, Mr President.

I beg to second and reserve my remarks.

The President: I think, Hon. Members, if we deal with the wording of recommendation 10 first, for the sake of good order. Could I hear a proposal that the wording of recommendation 10, as set out in the Order Paper, be amended to read, 'That proposed new section 73A in clause 34 be removed from the Bill.'

Mr Coleman: Mr President, I so move:

After the word 'That' in recommendation 10 to insert the words 'proposed new section 73A in'.

Mr Henderson: I second.

The President: Thank you.

Is that agreed, Hon. Members? We are not voting on the recommendation; we are voting simply on the wording. Thank you, Hon. Members.

Now, we are open for discussion. Mr Henderson. Sorry, Mr Anderson. *(Laughter)*

A Member: Ouch!

Mr Anderson: As long as you do not say 'Mr Speaker', Mr President, that is fine!

Thank you, Mr President.

Since the Bill went to the Committee, not only has the Minister changed but the Member with responsibilities for highways, Mr Corkish, has gone on to a greater calling, and I have now taken this area of responsibility under the Minister and I am responding on behalf of the Department.

Mr President, we have a very large report in front of us. As I was coming in this morning and I started my car up it started bleeping as if I had not got my seatbelt on. Well, the problem was I had put the report on the passenger seat! *(Laughter)*

Seriously though, I would like to thank the Members of the Committee for the work they have put in to investigating the Road Traffic Legislation (Amendment) Bill 2016 and for the comprehensive report they have produced.

Following discussions with the Minister, the Department supports some but, not surprisingly, does not agree with all of the recommendations. As such, I would like to discuss each item in turn and, presumably, Mr President, at this stage, can I ask that we can vote on the recommendations individually?

The President: Yes, is that agreed, Hon. Members? **(Members:** Agreed.)
Thank you.

Mr Anderson: Thank you.

I turn then to recommendation 1, and that is:

That notwithstanding any previous decision of the Council the Clauses stage of the Road Traffic Legislation (Amendment) Bill 2016 should recommence at Clause 1.

– paragraph 18.

We disagree with this approach to the progress of the Bill. The reasoning within the report suggests the Committee have issues with clause 4, which extends a series of offences that currently only apply to the driving of mechanically propelled vehicles to the driving of animal-drawn vehicles, and clause 21, which introduces a new statutory code of practice for horse-drawn vehicles.

Clause 4 was originally agreed by the Council before the Bill was sent to Committee. Should it be agreed by Hon. Members that this clause should be removed, the Department would be happy to move an amendment in another place with regard to clause 21 as this is yet to be debated and its future involvement with the Bill can then be decided.

We feel clauses should continue from where they were left last time we were at the Clause Stage. If I can then go to recommendation 2:

That the Bill should not be read a third time before the amendments necessary to give effect to this resolution have been drafted, moved and decided upon.

– paragraph 19.

Should Hon. Members decide to remove these clauses from the Bill, the Department agrees to prepare an amendment to the Bill for further debate.

That deals with recommendation 2.

Then we move on to recommendation 3. Basically, recommendation 3 is one we are agreeing with:

That the Bill be amended to remove the extension of driving offences to animal-drawn vehicles.

As I said earlier, should Hon. Members decide the clause relating to animal-drawn vehicles should be removed then the Department will arrange the required amendments to be prepared for further debate. So, we are accepting that recommendation.

Recommendation 4:

That the Bill should not be read a third time before the Department of Infrastructure has given a commitment to develop separate legislation for the use of animals on the roads.

Again, following on from the last one, the Department is happy to accept that.

Recommendation 5:

That the table in Clause 6 of the Bill be amended to introduce a limit of zero for all psychoactive substances not otherwise named in the table.

The Department is against this recommendation as we believe it is for the Chief Constable. The provisions included in the Bill reflect those currently in place in England and Wales and are due to be introduced in Scotland in 2019. The Police have requested the Isle of Man legislation in this area is as tightly aligned as possible to the provisions in the UK. The Police utilise proprietary systems and equipment and any deviations from this results in significantly increased expenditure and modification to training practices.

The United Kingdom introduced these provisions following a report from a panel of experts and two drug-driving consultation exercises, the second to agree on provisions concerning relevant levels for amphet ... (**Mr Coleman:** Amphetamines.) Thank you, amphetamines. The second was to agree on provisions concerning the relevant levels of amphetamines.

The report supporting the recommendations refers to the Psychoactive Substances Act 2016 and the Application Order 2016. The Act has effect with regard to the production, supply, possession, importing and exporting of the psychoactive drugs. It does not refer to driving under the influence of these drugs, which is covered in section 5A(1) and (2) of the Road Traffic Act 1988.

The provisions the Department are trying to move reflect the exact same provisions, with a caveat that the table of drugs can be amended by Tynwald-approved Order should other drugs be added in future. The list of drugs was based on the criteria to set the lowest accidental exposure limit for eight controlled drugs most associated with illegal drug use and road safety risk-based limits recommended by an expert panel for a further eight controlled drugs.

On this basis, the Department feels that for the Bill to be amended to introduce a limit of zero for all psychoactive substances not otherwise named in the table does not reflect the UK provisions, which the Police have asked the Department to replicate.

There are existing provisions within section 5 of the Road Transport Act 1985 which allows the Police to arrest a person who is suspected of driving under the influence of drink or drugs. One change the Department would like to introduce to the list of drugs is to include amphetamine, which would be added to the UK list since the provisions were originally introduced there in March 2015.

That is one we do not agree with.

Moving on to recommendation 6, that recommendation is:

That the Bill be amended to provide that all road users other than pedestrians be subject to drink and drug testing.

That is paragraph 41.

The Department strongly disagrees with this recommendation and this is also a concern for the Chief Constable. When obtaining supporting evidence for or against the suggestion following the February meeting, the Police advised, 'The current provisions for cycling under the influence are adequate and proportionate to the issue. Having reviewed a large amount of data last year, I cannot recall a collision involving a pedal cyclist which involved impairment.'

Further to this, the Chief Constable advised the Committee that he was only aware of two incidents of this nature and, in his view, although the provisions could be amended for clarity, he felt the number of incidents did not warrant any change in this area. So, we are recommending refusal of recommendation 6.

Moving on to recommendation 7:

That the Bill be amended to provide that an authorised examiner is a person appointed by the Department who has undergone a background check; does not have any unspent convictions; holds a valid driving licence; is appropriately qualified for the task; uses a marked Departmental vehicle; and wears a high-visibility uniform that identifies the individual as an authorised examiner.

– paragraph 49.

The Department feels this recommendation is perfectly reasonable and will make arrangements to draft a suitable amendment to reflect this recommendation. **(A Member: Hear, hear.)**

Moving on then to recommendation 8:

That the Bill should not be read a third time before the Department of Infrastructure has given a commitment to undertake an information campaign regarding authorised examiners' new powers to inspect driving licences.

– paragraph 50.

Again, this seems perfectly reasonable to the Department and agrees to promote as widely as possible this change once it is introduced. So, once again, it is another recommendation we are accepting.

Moving on to recommendation 9:

That the Bill should be amended to make it clear that the provisions of Clause 24 relating to non-payment of fines should apply to non-payment of fines issued for motoring offences only.

– paragraph 52.

Following the February meeting, the Department discussed this issue with the Attorney General's Chambers and draftsmen who confirmed the existing wording could be misconstrued to mean any outstanding fine. We agree this needs to be clarified and we will arrange a suitable change to be drafted to clear up the ambiguity. So, that is three in a row, I think, we are agreeing with.

Mr Turner: It is doing well!

Mr Anderson: Pretty good! *(Laughter)*

Moving on then to clause 10 – **(A Member: Recommendation!)** Sorry, recommendation 10, thank you:

That Clause 34 be removed from the Bill.

– paragraph 60.

The Department does not agree with this recommendation. One of the purposes of the clause is to enable the Department to draft suitable regulations for enforcement by the Office of Fair Trading. The Department will not be involved in the operation of these regulations, but would produce, in conjunction with the Office of Fair Trading, safety regulations under the Consumer Protection Act 1991 with respect to road transport or related matters. This would include items such as safe cycling as well as the examples already discussed regarding tyres.

That really covers the Department's position. In summary, Mr President, I would like to – **(Mr Corkish: Number 11?)** I seem to have leapfrogged recommendation 11. Sorry about that.

So, with recommendation 11:

That the Bill be amended to provide that any regulations made under the proposed new Section 6 of the Local Government (Miscellaneous Provisions) Act 1984 be subject to the approval of Tynwald.

– paragraph 67.

Recommendation 11: the Department accepts this recommendation. Since the Bill was discussed with the Committee, it has been made aware of a possible issue that will require an amendment to this clause. We will therefore provide a suitable draft to reflect both the recommendation and the issue that has been identified.

In summary then, Mr President, I would like to confirm that the Department does not agree with starting the clauses again from the beginning. We will provide suitable draft amendments, as described earlier, and we do thank the Committee for the work they have done. I hope the Committee will accept that we have, I think, met them halfway in their recommendations.

The President: Thank you, Hon. Member.
Mr Coleman.

Mr Coleman: Thank you, Mr President.

I would like to go back to recommendations 5 and 6. We have had quite a lengthy journey in recognising psychoactive substances on the Island and we have done it on an emergency basis with legislation that has been through this Hon. Council.

In the Report, there is a link which you can go to to see the effects of psychoactive substances on people, where they will say, 'Well, once I have had three puffs, I am out for four hours.' This is actually in the video which is available. What we are saying here is that we will not put those substances ... Because only now do we have a way of testing for them through the CB1 and CB2s and various other receptors in the brain.

It is more insidious than alcohol. It is like someone who can hardly stand from alcohol when people have taken these substances. I think it is obdurate, to be perfectly frank, for the Department to be saying, 'Well, let's not include it in the list of things which we might be able to say, "You should not be taking if you are driving a vehicle."'

I understand the Chief Constable's reluctance to do this and get out of synchronisation, but sometimes, you know, maybe the UK, maybe Scotland and England, are behind and we should be ahead, and in this particular case ... And I have seen people under the influence of psychoactive substances, because at the prison we are already testing for these substances when people are evidencing intoxication.

Recommendation 6: I think we have been a little bit disingenuous here, because we are already testing for road users other than vehicle drivers. Cyclists are subject to being stopped for being under the influence of alcohol, except that the test is the subjective test of a police constable. What we are saying is that, if the police constable thinks that this person is under the influence of alcohol, maybe a binary test, like a breathalyser test, would be much better evidence in court than a subjective police officer's opinion. However, I recognise the fact that a police officer's opinion on this is regarded as actual, reliable evidence, but it seems to me that whenever you have a very clever defence attorney or advocate available then that could be subject to some questioning.

Drug testing: I think the view we took in the Committee was – and I am a Member of the Committee – the roads are now getting *very* complicated, and to have people making use of those roads and not subject to the same level of personal behaviour is wrong. You can have situations where, for instance, a cyclist who is over the limit pulls out of a pub car park, the car swerves, hits another car. You then have the situation, potentially, of the subjective view for the cyclist and breathalyser for the other two drivers. The roads are becoming far more complicated than they were previously. This is for all road users. I mean, someone on a mobility scooter can cause an accident. So, what we are really saying is that the standard of personal behaviour for people on the roads should be a standard and not dependent upon what mode of transport they are using.

Really, that is all I have to say on those.

Thank you, Mr President.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: Just on the last point on the standard, the Chairman of the Committee mentioned earlier on that you would have to draw the line with pedestrians because otherwise people could not walk home from the pub. In practice in the Isle of Man, we often have roads where there are no pavements and people are actually walking along the roadside. That example: I completely can see that, if you are on a bicycle and you swerve into the road, you could cause another road user to cause an accident, but I think one of the difficulties in practice is that pedestrians, potentially, can also have that impact in certain circumstances on our roads where we do not have pavements or some of our pavements are particularly narrow and people might come

off the pavement onto the road; similarly, people pushing buggies and so on. A lot of our pavements are quite narrow.

Looking at all the evidence, I think there is an interesting issue here about whether you cause another nuisance sometimes if you do subject all potential road users to the same standards, and that would be my only concern really. That, if you are on a cycle and you are just over 80 mg of alcohol in your blood but you are handling your cycle in a safe way that is not causing a problem to another road user, would it not be preferable, in an environment where we are trying to encourage more active transport and certainly not for people to get behind to drive a car, still that that person would cycle or walk as opposed to drive a car?

That would be my only question and my one point of reflection about the principle of the same standard for all road users.

Mr Coleman: Are we able to respond?

The President: Yes, please.
First, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I would just like to add a few comments into the discussion, if I might? I would like to support the commentary made by the Hon. Member, Mr Coleman, with regard to the two specific recommendations he mentioned to put what we feel as a Committee, as clarity, on the situation.

I am afraid there is a view outside of this place that says, 'Oh, it is disproportionate to apply this measure to a certain body of road users.' I am sorry, we are either having all or nothing, Eaghtyrane, and I think we need fair rules throughout and the same rules apply to all. I think that is the way forward.

I also feel strongly about the use of psychoactive substances and, in particular, when we know now there is a certain blood test that can be done. And it may cost a little bit more in the odd circumstance that it may be required, so let us not get carried away with the huge resource impact perception that has been pushed out. I think that is a very sensible way forward and, again, I think we should be moving towards zero-tolerance as far as that is concerned.

I would ask Hon. Members to consider those points as we go along in the debate towards voting.

The President: Mr Coleman.

Mr Coleman: Thank you, Mr President.

I would like to respond to Mrs Poole-Wilson. One of the things that has been said to us about cyclists, for instance, is, 'It is not fair to hold them to the same standard, because if there is an accident they are hurt far more than anybody else.' But then, if you carry that logic through, anyone who drives a four-wheel drive truck against my Nissan Micra, (**A Member:** Yes.) why can't I drink more than them on exactly the same logic?

We had quite a lot of discussion about the issue of pedestrians. I fully accept your point that we do have unmade roads and that is why we came down by basically saying pedestrians. I think, if anyone is behaving as a pedestrian then there are other legal remedies for that. If the Police see them drunk and disorderly, especially if there is a baby pushchair involved, I am sure they would go up and do something about it.

What we were talking about really is ... Certainly, in paved areas where there are pavements then there is not an issue, as you quite rightly said at the beginning, it is only if people are on the road, and at some point we do have to say that people have to take responsibility for their own actions. But, as far as permanent road users – and we are not trying to encourage cyclists to start going onto pavements either, because that already is not allowed – we feel that the standard needs to be the same for all of the normally accepted road users.

Now, we are not saying cyclists must not go on the road. What we are saying is they should not go on the road when they are incapable, caused by drink or drugs. That is what we are saying. We are not saying someone on a mobility scooter should not go on the roads. What we are saying is the people should be judged by exactly the same standard if they are using the roads.

As I said previously, there is already legislation there for policemen to be able to stop cyclists who they suspect. But how certain is it in court, when you cannot question a binary test like the breathalyser, and it would not be subject to smart advocates coming along and saying, 'Well, you have only been a police constable for six months; you do not really know that this person is under the influence of alcohol.'

In my view, recommendations 5 and 6 should stand.

Thank you, Mr President.

The President: Thank you, Hon. Member.
Mr Anderson.

Mr Anderson: Yes, can I just respond, Mr President, to some of the remarks that have been made?

The Department is quite strong about opposing recommendations 5 and 6. They have been put in by expert panel-based findings, on scientifically proven results, with a caveat that, as evidence is gathered, there will be the ability to add to that drug list. We think our proposals obviously allow us to do the same as in the UK. I think the Hon. Members protest too much in a way.

I would like to thank Mrs Poole-Wilson for her support in regard to comparing cyclists with pedestrians. There are similar issues really.

As far as Mr Henderson is concerned on psychoactive substances, I think we have to acknowledge it is going to be very difficult to have a complete zero-tolerance, because you have to allow for a slight accidental intake. The three main psychoactive substances we are talking about are alcohol, cannabis and cocaine. There is other legislation that covers these areas out there as well. I think we are using a sledgehammer, in a way, to crack a nut, when there is other legislation there.

I accept I am not going to change the minds of some Members of the Committee, but the Department is quite strong in opposing those recommendations 5 and 6.

The President: Yes, Mr Crookall.

Mr Crookall: Thank you, Mr President. Just a few comments.

Can I congratulate the Committee on the Report we have in front of us and, with the 11 recommendations, I think it just shows the depth they have gone into this and the evidence that they have taken from the Department and everybody else.

Can I just ask the Attorney General: there was a comment that was made before about the pavement, and the pavement is actually part of the highway anyway, I believe? (**The Attorney General:** Yes.) That is correct, so cyclists on the pavement and things like that.

Also, just to disagree with Mr Anderson with regard to going back and starting from clause 1. I think, with the recommendations that we have here and with the new Member of Legislative Council, it is essential that we do go back and start from clause 1 as and when it comes before us again.

Thank you.

The President: Thank you, Hon. Member.
Does any other Member wish to speak before I call Mr Turner? No.
Mr Turner to respond to the debate.

Mr Turner: Thank you, Mr President, and can I thank Members for the debate this morning. This is the Legislative Council at work. This is what we are here for and it may be that really we should be doing this a bit more with legislation that comes before us – where appropriate, not just for the sake of it, but – where we have issues that arise during the passage of Bills. This is absolutely what we are here for.

I thank my Committee Members, Mr Coleman, Mr Henderson, and, albeit for a short period, the Lord Bishop was with us. Also, Mr King, the Clerk to our Committee, and Francisca Gale from the Clerk of Tynwald's Office who both put in an enormous amount of work in supporting the Committee.

Mr Coleman has outlined the Committee's position on recommendation 5 and 6. Certainly, through his experience with dealing with offenders at the Isle of Man Prison, he has a lot of experience in this particular area, and his view was a great asset to the Committee in reaching our decision. I would urge Members to seriously consider recommendation 5 because of that and because of the reasons that he has outlined.

We still do not feel that the method of testing is particularly onerous when you have such a serious situation. We could be talking about instances on the road where there could even be deaths caused and there needs to be that level of information when ultimately the Police are progressing their investigation. If they have not got the tests and the test results, then there is very little to go on.

That brings me to recommendation 6 ... I will deal with the other things that have come up but these appear to be the ones that have caused the most debate this morning. I do not see recommendation 6 as questioning the results of panels of experts. Recommendation 6 is about policy and it says:

That the Bill be amended to provide that all road users other than pedestrians be subject to drink and drug testing.

Now, the reason we are saying this is cyclists can be prosecuted for riding whilst unfit through drink but, as Mr Coleman outlined, it is down to the police officer's opinion; there is no reference point. So, if I give an example ... And I know it is always difficult dealing with a hypothetical situation, but our job is to explore the possibilities and legislate for them.

The cyclist causes the accident, as Mr Coleman's example said, but when that is presented to a court there is absolutely no reference point of just how much alcohol that cyclist has in their system. What possible objection could we have to having them breathalysed so that reference point is then presented, and so the various experts, whoever they may be, can argue in court the merits of the level of alcohol in that cyclist's system and present their case accordingly? But, at the moment, we are dealing with just an opinion: it was the officer's opinion they were drunk or they had alcohol in their system.

That is why we feel it is important that the Police have that ability to breathalyse the cyclist. And we are not just picking on cyclists; we have mentioned users of other vehicles, but in particular the vehicle driver is breathalysed, the others are not, and that is why we think this is vitally important. This is a policy question, not questioning levels and results. That is rightly for the experts.

I would urge Members to support recommendation 6. The Police have already indicated they are very pro-cycling and you kind of wonder why they are so against cyclists being breathalysed. I do not see any reason why they cannot be breathalysed, and that, I think, is important, so I would urge Members to support recommendation 6 in particular.

I am very pleased the Department has agreed with a number of our recommendations. I hope Hon. Members will agree they are sensible; they tidy the Bill up in various areas. I would still urge Members to support the Bill recommencing from clause 1. The Department has made a case; the Committee has put a recommendation to Council this morning and we would still reaffirm our view that recommendation 1 should be supported.

If I may then just briefly go to the recommendation to do with ... recommendation 10, I think it was. A lot of this came out of the sale of part-worn tyres, I think it was, and it was to do with the

regulation of things like part-worn tyres. We are not aware, and the evidence is not there, that this is a big problem in the Isle of Man.

What we discussed in the evidence, which again is all in the public session, is that you could paint a picture of part-worn tyres as being bald tyres; therefore, they are dangerous; therefore, they should not be on the road, but essentially that is not what part-worn tyres are. Part-worn tyres could have been put on and been driven around for a couple of weeks and taken off for whatever reason. They could come off demonstrators. They are essentially tyres that are not new tyres.

We do not see that there is any evidence that this, in particular, requires the Department to be responsible for a range of enforcement on this subject. The Office of Fair Trading is the right body in Government to deal with consumer protection of goods that are not up to various standards, whether it be washing machines that are faulty, whether it is Christmas tree lights that are faulty and all these other things they are doing day in, day out. If people are selling tyres that are not up to the required specification or standards, then why shouldn't they be doing it? We should not be saying, 'Well, we will fix this little anomaly here.' We should be saying, 'No, that is the OFT's role.' If they have not got the powers to do it, well let's give them the powers to do it. Let's not try and skirt around the outside and create another Office of Fair Trading in the DoI. That was the thinking behind the Committee on that particular subject.

With that, Mr President, I again thank Members for their indulgence in this. The Committee was purely here to present the findings. It is not the Committee versus the Department or anything like that. We are here to scrutinise the Bill. We have presented our findings. We have come up with the recommendations, which we would urge Hon. Members to support.

With that, thank you very much. I beg to move.

The President: Thank you, Hon. Member.

The motion before us is that set out at Item 2. I will deal with each recommendation in turn. Those in favour of recommendation 1, please say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

FOR

Mr Turner
Mr Coleman
Mr Corkish
Mr Henderson
Mr Crookall
Mrs Poole-Wilson

AGAINST

Mr Cretney
Mr Anderson

The Third Clerk: Mr President, that is 6 for and 2 against.

The President: Five for and three against, did you say?

The Third Clerk: No, six and two.

The President: Six and two, I beg your pardon.

Recommendation 1, therefore, carries.

Recommendation 2: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Recommendation 3: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Recommendation 4: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Recommendation 5: those in favour, say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

FOR

Mr Turner
Mr Coleman
Mr Cretney
Mr Corkish
Mr Henderson
Mr Crookall

AGAINST

Mr Anderson
Mrs Poole-Wilson

The Third Clerk: Mr President, that is 6 for and 2 against.

The President: That recommendation, therefore, carries.
Recommendation 6: those in favour, say aye; against, no. The noes have it.

A division was called for and voting resulted as follows:

FOR

Mr Turner
Mr Coleman
Mr Cretney
Mr Corkish
Mr Henderson
Mr Crookall

AGAINST

Mr Anderson
Mrs Poole-Wilson

The Third Clerk: Mr President, that is 6 for and 2 against.

The President: Recommendation 6, therefore, carries.
Recommendation 7: those in favour, say aye; against, no. The ayes have it. The ayes have it.
Recommendation 8: those in favour, say aye; against, no. The ayes have it. The ayes have it.
Recommendation 9: those in favour, say aye; against, no. The ayes have it. The ayes have it.
Recommendation 10: those in favour, say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

FOR

Mr Turner
Mr Coleman
Mr Corkish
Mr Henderson
Mr Crookall
Mrs Poole-Wilson

AGAINST

Mr Cretney
Mr Anderson

The Third Clerk: Mr President, that is 6 for and 2 against.

The President: Recommendation 10, therefore, carries.
Recommendation 11: those in favour, say aye; against, no. The ayes have it. The ayes have it.
I put the 11 recommendations collectively. Those in favour, say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

FOR

Mr Turner
Mr Coleman
Mr Cretney
Mr Corkish
Mr Henderson
Mr Crookall

AGAINST

Mr Anderson
Mrs Poole-Wilson

The Third Clerk: Mr President, that is 6 for and 2 against.

The President: Thank you, Hon. Members, the Report with the recommendations, therefore, carries.

Hon. Members, that brings us to the end of the business before us. May I just say for the record that I think proceedings this morning have demonstrated – and I hope the media will take note – the value of Legislative Council as part of the Tynwald structure and, in particular, take note of the work that individual Members of Legislative Council actually do, as opposed to what we are wrongly perceived to do. (**Mr Henderson:** Hear, hear.) Media, please take note.

I look forward to Members joining me for lunch in a little while. In the meantime, Council will stand adjourned to the mid-summer Court of Tynwald in St John's on Wednesday, 5th July.

The Council adjourned 11.30 a.m.