



**LEGISLATIVE COUNCIL  
OFFICIAL REPORT**

**RECORTYS OIKOIL  
Y CHOONCEIL SLATTYSSAGH**

**P R O C E E D I N G S**

**D A A L T Y N**

**HANSARD**

**Douglas, Tuesday, 27th March 2012**

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**Volume 129, No. 8**

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**Present:**

**The President of the Council (Hon. C M Christian)**

The Lord Bishop of Sodor and Man (The Rt Rev. R M E Paterson),  
Mr R P Braidwood, Mr D M W Butt, Mr D A Callister,  
Mr E A Crowe, Mr A F Downie OBE, Mr E G Lowey, Mr J R Turner and Mr T P Wild,  
with Mrs E M Lambden, Third Clerk.

**Business Transacted**

	<i>Page</i>
Leave of absence granted.....	81
<b>Orders of the Day</b>	
1. Gambling Duty Bill 2012 – Second Reading approved.....	81
Gambling Duty Bill 2012 – Clauses considered.....	82

*The Council sat in private at 11.26 a.m.*

## Legislative Council

*The Council met at 10.30 a.m.*

[MADAM PRESIDENT *in the Chair*]

5 **The President:** Moghrey mie, Hon. Members.

**Members:** Moghrey mie.

**The President:** The Lord Bishop will lead us in prayers.

### PRAYERS

*The Lord Bishop*

### Leave of absence granted

**The President:** Hon. Members, the learned Attorney General has leave of absence.

## Orders of the Day

### Gambling Duty Bill 2012 Second Reading approved

10 1. Mr Braidwood to move:

*That the Gambling Duty Bill 2012 be now read a second time.*

15 **The President:** We proceed today with the Gambling Duty Bill.  
Mr Braidwood to move the Second Reading, please.

**Mr Braidwood:** Thank you, Madam President.

20 The Gambling Duty Bill 2012 is promoted by the Treasury and is intended to update and, insofar as is possible, to simplify the law concerned with the administration of excise duties on gambling, for which the Customs and Excise Division is responsible. The various duties involved, with the exception of that on national lottery games, are replaced by a single gambling duty. The Bill repeals and replaces a number of Acts and parts of others to provide a comprehensive, but flexible duty structure that allows for adequate control and administration, whilst being capable of catering for ongoing developments in technology and the nature of the gambling industry.

25 The Bill provides powers for Customs and Excise to provide assurance as to the compliance of operators with the law of the Island, to enforce duty debts and to co-operate with authorities in other jurisdictions to combat unlawful activity connected with gambling, including corrupt practices in sport.

30 Madam President, part 1 of the Bill consists of clauses 1 to 7, which deal with the short title, commencement and the interpretation of many of the various terms used in the Bill.

Clause 7 allows for the Treasury to be able to amend definitions contained in part 1, as and when required to react to commercial or technological changes, but any regulations making such a change will still need to be laid before Tynwald.

35 Part 2 of the Bill consists of clauses 8 to 11 and describes a new gambling duty and the basis to liability to the duty. Duty rates remain as before and any change to them has to be approved by

Tynwald before taking effect. The basis of liability remains as now, being either stakes less winnings or the retained profits of the operator.

40 Part 3 of the Bill consists of clauses 12 to 20 and is concerned with payment of the duty by operators and how it is accounted for. It includes provisions for situations where more than one operator are linked in a group or network.

Clause 17 provides scope for double duty relief, subject to conditions laid down in an order made by Treasury.

45 Part 4 of the Bill consists of clauses 21 to 26 and is concerned with aspects of enforcement and protection of the revenue. Regulations may be made to deal with general administration and enforcement. Security or other conditions may be imposed in connection with the payment, remission or a payment of duty.

Clauses 23 to 25 deal with recovery of unpaid duty, including the use of distraint or Treasury warrants. Finally, clause 26 provides statutory protection for officers engaged in investigations or enforcement.

50 Part 5 of the Bill consists of clauses 27 to 29 and deals with the assistance Customs and Excise may provide to other bodies, both on and off Island, to counter fraud and other crime and the assistance that other bodies can provide to Customs and Excise in its role of administering gambling duty.

55 Part 6 of the Bill consists of clauses 30 to 33 and is concerned with offences and penalties, including civil penalties. It should be noted that, as is now, the norm for the indirect taxes administered by Customs and Excise decisions and assessments made by that division on behalf of Treasury will be open to review and carry the right of appeal to the wholly independent VAT and Duties Tribunal.

60 Part 7 of the Bill consists of clauses 34 to 37 and is concerned with general matters, the procedure for making regulations and for any increase in expenditure arising from the Bill to be met by the Treasury.

Clause 36 and schedule 1 deal with the amendment of existing enactments and clause 37 and schedule 2 with appeals.

65 Madam President, I beg to move the Second Reading of the Gambling Duty Bill 2012.

**Mr Lowey:** I beg to second and reserve my remarks.

**The President:** If no Hon. Member wishes to speak, the motion is that the Bill be read the second time. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

### **Gambling Duty Bill 2012 Clauses considered**

70 **The President:** Moving now to the clauses.

Part 1 of the Bill comprises clauses 1 to 7 and the Hon. Member wishes to move them in a block, I understand.

**Mr Braidwood:** Thank you, Madam President.

75 Clause 1 contains the short title of the Bill.

80 Clause 2 is in regard to commencement. Whilst the Bill as a whole comes into operation upon Royal Assent, its various operating divisions are to be brought into operation by an order or orders and different provisions may be implemented at different times. The Appointed Day Order or Orders may also contain any necessary savings or transitional measures. Not all of the Bill would need to be brought in at once.

Clause 3 deals with general interpretation. This clause contains definitions of various words and terms used in the Bill, most of which are already in use or are taken from existing legislation.

85 Clause 4 provides that the term 'gambling' includes gaming, betting, participating in a lottery, but not in a national lottery game and online gambling, where the operator is acting in the course of business and regardless of whether or not that operator is licensed.

90 Clause 5 defines a lottery and includes games that involve skill or judgement or a degree of knowledge, but which are still to be regarded as games of chance and liable to duty. The definition is based upon that found in section 14 of the Gambling Act 2005 of Parliament, which was itself intended to give statutory effect to the broad definition, which the courts have involved over several years previously. An arrangement will be a lottery if participants are required to pay to

enter and those competitions that do not require a minimal level of skill to determine the winner or winners would be treated as relying wholly on chance and therefore be regarded as a lottery. National lottery games are excluded from the scope of the Bill by clause 4.

95 Clause 5 defines the term of ‘operator’ as someone involved in the organisation, management or provision of gaming or a lottery, carrying on the business or negotiating or receiving bets, maintains or permits to be maintained on the Island a computer or other device by which means a game or lottery takes place or bets are received of being a betting intermediary.

100 Clause 7 permits the Treasury to amend any of the definitions contained in Part 1 by regulations. Given the fast changing nature of the gambling industry and in particular the application of new and developing technologies which it embraces, it is considered essential that the law be flexible and adaptable in order to enable adequate control to be exercised to avoid any potential revenue loss and to facilitate the continued success of the sector.

Madam President, I beg to move that clauses 1 to 7 do stand part of the Bill.

105 **Mr Lowey:** I beg to second, Madam President, and reserve my remarks.

**The President:** Mr Callister.

**Mr Callister:** Thank you, Madam President.

110 Looking at the general interpretations on clause 3, where it tells us that ‘betting’ means making or accepting a bet on the outcome of a race, if you move then to (c) under ‘betting’, it tells us that this:

115 ‘includes spread betting made with a bookmaker in the Island who holds a bookmaker’s licence and pool betting but not on-course betting’.

The way I read that, it would mean that should horseracing, dog racing or similar events be introduced on the Isle of Man, it would not be possible to have a bookie on the course, which would deter many people from actually even attending an event. I know we do not have horseracing on the Isle of Man now, but it is not impossible that we would have it in the future, so if I am right and read it right, this would prevent bookies being on a racecourse.

If the mover can dissuade me from that... I hope he has an argument for that.

125 **The President:** Mr Crowe.

**Mr Crowe:** I was interested in clause 3(a) where ‘betting’ means betting on the outcome of a race, competition or other event or process, including when the event is in the past. This struck me as slightly odd and then I realised that I have been in situations where you have horse racing nights for charities where there would be a film of a race in the USA, the Kentucky Derby, or something like that, or a race that none of the people in the Island would likely know about the event, but the event has happened in the past and it is a known event. So I can see the sense of including a race or an event in the past where only one person knows the result. So it just struck me as slightly odd and then I realised the need for that particular clause.

135 **The President:** Hon. Member, Mr Butt.

**Mr Butt:** I have a query on clause 5(2) and I think I understand what it means, but I presume from this that this is about whether some skill is being used, skill or judgement. I presume this means that if, say, there was a competition where you paid money to win a prize and there may be a question of something like, ‘What is the capital of France?’ and you had the choice of Paris, London and Dublin, if you were taking money off people and the chances of them winning that one prize with that, this would cover that. I am presuming that is what it means.

145 I just want some clarity on that. It seems to be fairly self-obvious that that is what it is. I wonder how it affects some local organisations when they have quiz nights etc, but of course I see later on there is scope for community benefit being covered.

**Mr Callister:** Coming back onto that, Madam President, it seems to me that the two references that have been made would be outside the scope of this Bill because they would be in those elements, presumably, that are not covered here – church events and socials and all that sort of thing.

**The President:** Mr Wild.

155 **Mr Wild:** Just to make a very similar comment, in that I would just like to be reassured that, if we are revising the legislation, it does have the flexibility to accommodate course events in the future.

160 **The President:** I think you will find it does, actually, in the explanatory memorandum, but it is defined and I am sure the hon. mover will respond to that.

**Mr Braidwood:** I am sorry, Madam President, I did not actually catch what Mr Wild –

165 **The President:** When we come to the winding up, making provision for on-course betting in the future: as I read it, it is already defined, but I will leave that to you.  
I call on the mover to reply, please.

**Mr Braidwood:** Thank you, Madam President.

170 In regard to Mr Callister's query, when the horseracing comes back to Great Meadow, so he can place a bet on the winning horse down there, yes, on-course bookmakers would be allowed to be there.

**The President:** Can I draw your attention to page 7, second paragraph down. The difference between betting and on-course betting.

175 **Mr Callister:** Sorry, Madam President, but if you look at clause 3(c) it says you cannot have on-course betting. So there is a confliction, surely, between those two.

180 **The President:** It does not mean you cannot have it. It says that it is not called betting; it is called *on-course* betting.

**Mr Callister:** It is a devilishly fine distinction, then. Thank you. (*Laughter*)

**The President:** I am sorry, I am going to ask the mover to – (*Laughter and interjections*)

185 **Mr Braidwood:** That is fine! I am glad that you have been able to explain to Mr Callister, you will be able to go down and put a bet on the winning horse down in Great Meadow, and Mr Wild as well.

**The President:** Is there anything further you wish to add, Mr Braidwood?

190 **Mr Braidwood:** In regard to Mr Butt, yes, although the Gambling Commission in the United Kingdom is querying TV game shows at the present time as being possible gaming... I do not know if anybody has seen the Noel Edmonds one where they have these boxes with money in and I think there is a query there, because in actual fact there is no chance... there is no skill to the game at all. You are just picking a box and hoping that there is a quarter of a million in it. When you get down to the last two boxes and you can open your box in front of you and if it has got £250,000 then fine, or you could get one penny. So really it is just luck, there is no skill in the game at all. So the Gambling Commission in the UK is looking at that.

200 In regard to Mr Crowe, I think he has answered his own question, Madam President.  
I beg to move clauses 1 to 7.

**The President:** The motion is that clauses 1 to 7 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

205 Part 2, Scope of Gambling Duty, clauses 8 to 11.

**Mr Braidwood:** Thank you, Madam President.

210 Clause 8 defines 'gambling duty' as a duty of excise, who has to pay it and when. The duty is payable by an operator and regardless of whether the gambling is lawful and licensed in the Island. However, it is only due where a significant part of the activity takes place in the Island. Subsection (4) provides examples of when this would apply.

Clause 9 defines a profit or 'gambling yield', which forms the basis of an operator's liability to duty. The two basic methods of establishing liability are: 'net stakes receipts', which uses the

operator's receipts, calculated in accordance with clause 10, less the operator's expenditure of payment of winnings to punters and that is calculated in accordance with clause 11; or 'retained profits', which uses the profits accruing to an operator in the form of commission, entrance fee, or other amount in consideration of a punter being able to participate in gambling.

Clause 10 determines how to arrive at the amounts used in the 'net stakes receipts' method of calculating duty liability. This is the default method for determining duty liability. Most typically, it is used by bookmakers where a straightforward calculation offsets the payout to punters against the stakes placed by them. Any VAT or 'free bets' are disregarded when calculating duty liability.

Clause 11 is used to determine the value of winnings used in calculating an operator's liability to duty, using the 'net stakes receipts' method. It includes provisions, where more than one operator is involved in linked games, which offer a single prize or prizes, and also provides for the value of winnings in other than sterling money, that is in the form of prizes or in a foreign currency to be determined in accordance with regulations.

Madam President, I beg to move that clauses 8 to 11 stand part of the Bill.

**Mr Lowey:** I beg to second, Madam President, and reserve my remarks.

**The President:** The Hon. Member, Mr Butt.

**Mr Butt:** Thank you, Madam President.

I know this Bill is aimed at much bigger organisations than local charities, but I think charities will be interested in this. Clause 8(3) obviously shows that a local charity organising a race night or a tombola would pay no gambling duty – I presume that is the effect of this – this may be outside this Bill, but, as they pay no gambling duty, do they still need to get a licence to run a tombola? Do they still need a licence to run a race night? I wonder if he could clarify that with us, because they are no longer paying any duty, is that still a condition of them running these charity events?

Thank you.

**The President:** Hon. Member, Mr Callister.

**Mr Callister:** Thank you, Madam President.

On clause 8 gambling duty, again subsection (3) tells us that gambling duty is not payable in respect of bets made for community benefit. Community benefit is not defined, as far as I can see, but does it mean that lotteries, for instance, held, basically, for charity purposes, would not be subject to gambling duty, whether that would cover that particular area?

**Mr Butt:** It is defined in section 9.

**The President:** The Hon. Member, Mr Crowe.

**Mr Crowe:** Thank you, Madam President.

Just referring to clause 10(3), it is interesting to see that – and I will read the clause out:

'Where a user makes a bet in pursuance of an offer which permits the user to pay nothing or less than the amount which the user would have been required to pay without the offer, the user shall be treated for the purposes of this section as being due to pay that amount...'

So, what in effect – and I suppose it is quite a clever catch-all – is that the promoter cannot give away bets. He has to account for that gift, or that free bet as part of his gambling receipts. So that is a nice saving grace, shall we say, for the... so they cannot just give bets to a lot of people and not account for that as part of the gambling receipts. So you do not need to answer that, that is just a fact. *(Laughter)*

The other thing that is stating slightly the obvious is in clause 11(3):

'Prizes provided by the operator to one user on behalf of another are not to be treated as prizes provided by the operator.'

So, again that is stating the obvious and I am not quite sure of the benefit of that clause, unless the prize might carry a lifetime guarantee or... But again, you do not need to comment on that necessarily, Mr Braidwood.

275 **The President:** The Hon. Member, Mr Lowey.

**Mr Lowey:** Can I reassure my old friend, Mr Callister, that if he goes to clause 8 and if he turns over the page and sees subsection (9):

280 'In this section "bets made for community benefit" –

and then it goes on to define what community benefit is. It actually is:

285 'the operator is an organisation established and conducted for charitable purposes only or wholly and mainly for the purposes of enabling participation in or of supporting education, sport or culture...'

So there is a wide definition there of what 'community' means, so to reassure, that is to be found within the Bill itself and in the very same place.

290 **The President:** Mover to reply please.

**Mr Braidwood:** Thank you, Madam President.

The first thing I wrote down, when Mr Butt asked his question, is that this comes under the Gambling Supervision Commission, who would give the licence and it is up to them.

295 In regard to community benefit, this is controlled by interpretation and notice and licences again from conditions from the Gambling Supervision Commission. Slightly different in the UK: guidance requires 20% gross proceeds to good causes and 80% maximum to prizes and expenses.

300 In regard to the obvious from Mr Crowe, I think there is an example in the Bill, where you will see it on the television at times, where they are given £10 free bets. If the person wins £15, that is a negative to the gambling operator of minus £5 and he would allow for that in his duty, which is payable. I hope that clarifies –

**Mr Crowe:** No, it was clear.

305 **Mr Braidwood:** Madam President, I thank Mr Lowey for his advice and I beg to move that clauses 8 to 11 stand part of the Bill.

**The President:** The motion is that clauses 8 to 11 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

310 We move on then to part 3, payment of gambling duty. I think there are rather a lot of clauses here to deal with in one. Right, so if we take clauses 12 and 13, please.

**Mr Braidwood:** Clauses 12 and 13, certainly, Madam President.

315 Clause 12 is concerned with the payment of the duty. The default position is that duty is to be paid by the operator. However, the Treasury can recover the duty from a person responsible for the management of the gambling business, a director where the operator is a company, or such other persons as may be specified in an order made by the Treasury. This allows flexibility in cases involving evasion or avoidance or other cases involving serious irregularity and reproduces the current position in the law covering betting under the Betting Act 1970.

320 Clause 13 allows for two or more operators to be treated as a single operator for the purpose of accounting for gambling duty. The circumstances where such grouping may be permitted are: where one operator controls the other or others, or one person controls both or all of them, or where two or more operators are linked in a network under arrangements permitted by the Gambling Supervision Commission. Regulations would deal with how applications for a grouping are to be made, how any approval may be granted or withdrawn, and any conditions that may be applied to such approval.

Madam President, I beg to move that clauses 12 and 13 stand part of the Bill.

330 **Mr Lowey:** I beg to second and reserve my remarks.

**The President:** Hon. Member, Mr Crowe.

335 **Mr Crowe:** Subject to my being corrected on the typographical error, which could, if I am right, be done with the printing of the Bill – it does not need an amendment – I think, under clause 13(4):

'Regulations may –  
(a) provide for the making applications...'

340 – the word 'of' is missed out. I think it is just a typographical point that you might like to... when  
the Bill is being printed for the Act, if my reading of English is correct.

**A Member:** Or delete the 'the'.

345 **Mr Crowe:** Either way, yes, but I will leave that to the mover.

**The President:** Does any other Member – ?

350 **Mr Braidwood:** I am quite happy to either put 'of' in or remove 'the'. I am sure that Mr Todd,  
from Customs and Excise, has taken that on board.  
I beg to move that clauses 12 –

**The President:** Did any other Member wish to speak?

355 **Mr Braidwood:** I beg to move that clauses 12 and 13 stand part of the Bill, Madam President.

**The President:** The motion is that clauses 12 and 13 stand part of the Bill. Those in favour,  
please say aye; against, no. The ayes have it. The ayes have it.  
Clauses 14 and 15.

360 **Mr Braidwood:** Thank you, Madam President.

Clause 14 provides that the default accounting period shall be a calendar month, but that the  
Collector of Customs and Excise may authorise different periods. The clause also provides for  
regulations to allow adjustments at the end of any 12-month period where the duty liability is  
based on turnover, and this may be necessary because the level of profits accrued may affect the  
365 duty rate or threshold that should be applied. If any operator ceases business for more than 28  
days, they must pay any duty due within the following 28 days.

Clause 15 deals with the submission of duty returns and *inter alia* allows for the making of  
regulations detailing the form and content of the return. It also permits the Treasury to designate  
which member of a grouping is responsible for submission of the composite return.

370 Madam President, I beg to move that clauses 14 and 15 stand part of the Bill.

**Mr Lowey:** I beg to second and reserve my remarks.

375 **The President:** The motion before you is that clauses 14 and 15 do stand part of the Bill.  
Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
Clauses 16 and 17.

**Mr Braidwood:** Thank you, Madam President.

380 Clause 16 permits operators whose gambling yield in any accounting period is a negative  
figure to carry forward that amount to offset it against their liability in the following period. If the  
offset produces a negative figure for that following period, then that figure may be itself carried  
forward. However, there is no entitlement to refunds of any negative amount.

385 Clause 17 allows the Treasury to make provision by order to allow offset of liability to  
gambling duty, where an operator has paid an equivalent tax or duty on the same transactions in  
another jurisdiction. If the operator subsequently received a refund of the foreign tax or duty,  
subsection (3) allows for Treasury to recover any unpaid gambling duty. The arrangements would  
only apply to countries or territories specified by order, and other conditions and requirements  
may be prescribed by order. These can include the charging of an application fee and setting a  
390 minimum or maximum amount of relief available. Any order would not have retrospective effect  
and would only apply to duty payments due to the Treasury on or after a date specified in the  
order. This is a new provision and is considered necessary to allow for flexibility in response to  
developments that may take place in markets targeted by Island-based operators.

Madam President, I beg to move that clauses 16 and 17 stand part of the Bill.

395 **Mr Lowey:** I beg to second and reserve my remarks.

**The President:** The motion is that clauses 16 and 17 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Perhaps we could take clauses 18 to 20, please.

400

**Mr Braidwood:** Thank you, Madam President.

Clause 18 is concerned with the making of regulations by the Treasury to prescribe how operators should submit returns and how they should make payment of any duty due. This includes the conditions that may be applied where returns are submitted or payments made by electronic means.

405

Clause 19 allows for application of the revenue trade provisions of the Customs and Excise Management Act 1986 to operators, with such modifications as may be required, and included in an order made by Treasury. The revenue trade provisions are standard ones that are applied in respect of all revenue trades – that is, those involved in Excise Duty and revenue traders are defined in section 184(1) of the 1986 Act.

410

Clause 20 provides for the making of an order detailing how duty overpaid to the Treasury may be recovered by an operator. It includes provision for evidence in support of the claim to be provided and sets a four-year time limit for seeking such repayments. The clause also provides that the Treasury need not repay any overpaid amount if this would unjustly enrich the claimant – that is where the payment would benefit someone who had not in fact borne the original charge, perhaps where an operator has passed on the charge to a customer but was then unwilling or unable to compensate them.

415

Madam President, I beg to move that clauses 18 to 20 stand part of the Bill.

420

**Mr Lowey:** I beg to second and reserve my remarks.

**The President:** The motion is that clauses 18 to 20 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We move on then to part 4, enforcement and protection of officers. Perhaps we could take clauses 21 and 22, please.

425

**Mr Braidwood:** Thank you, Madam President.

Clause 21 provides for the making of regulations that would govern the general administration of gambling duty and for the enforcement of the rules and legislation necessary to ensure proper administration and to protect the revenue. Regulations may be made without prejudice to those made under other clauses.

430

The matters that may be the subject of regulations under this clause include: the keeping and preservation of records and their inspection by or production to Treasury; permitting officers to enter premises used, or suspected of being used, for the purpose of gambling to inspect those premises and to inspect, remove and copy any records found there which relate to, or appear to relate to, a gambling operation on the premises; and requiring persons carrying on, or suspected of carrying on, a gambling operation to produce specified records or information.

435

Clause 22 allows the Treasury to impose conditions on the remission or repayment of duty or to ensure the payment of duty. Such conditions include the production of evidence and the giving of security or further security. Regulations made under clause 18 would deal with actual procedural arrangements. This clause is based on paragraph 4, schedule 12 to the Value Added Tax Act 1996. The conditions are all concerned with the protection of the revenue and subsections (2) and (3) make protection of the revenue a specific prerequisite for the use of the powers therein.

440

Madam President, I beg to move that clauses 21 and 22 do stand part of the Bill.

445

**Mr Lowey:** I beg to second and reserve my remarks.

**The President:** Mr Callister.

450

**Mr Callister:** Yes, thank you, Madam President.

Looking at clause 21(2)(d), where it tells us it would permit an officer:

‘to enter on any premises used, or suspected of being used, for or in connection with gambling...’

455

etc, this, strangely to me, seems to require regulations to be made, whereas in a lot of Bills that have come before us, certainly in recent times, such permission to enter premises is covered in primary legislation. I just wonder why this is in just regulations. Within this clause, it does not tell

us if these regulations need to come before Tynwald, so I just wonder if the mover could cover those points.

460

**The President:** The Hon. Member, Mr Crowe.

**Mr Crowe:** Just on the point in clause 21(2)(c) it talks about the inspecting of the accounts records or other documents, etc. Does it include computer records, records held on computers, because it does not specifically state that, but I should guess you have covered it by words of such other documents or such other records as may be appropriate? I was just wondering, or just checking that computer records are covered there?

465

**The President:** The Hon. Member, Mr Downie.

470

**Mr Downie:** Yes, I would like the Hon. Member to clarify that, when enforcement measures are taken, officers can enter the premises utilising the powers that they have extended to them under HMRC, which is completely above all the legislation that anyone else has?

475

**Mr Lowey:** Again, I would like to reaffirm what the Hon. Member has said, that Customs and Excise do have powers, but any new regulations will have to have the approval of Tynwald under this Act, but quite apart from that, the existing law covers them to enter in pursuit of documents or if they suspect something is not quite right, they have that power.

480

**The President:** Mover to reply.

**Mr Braidwood:** Thank you, Madam President.

I thank Mr Lowey for clarifying the points raised by Mr Callister and Mr Downie. As Mr Downie said the powers attributed to the Customs and Excise officials are those of the highest, so they can enter the premises.

485

In regard to Mr Crowe, as has already been mentioned where revenue can be transmitted by electronic means, or whatever, therefore electronic means would be covered by 'any other' so, of course, they would be able to take anything on computers, appertaining to the duty or the revenue.

490

Madam President, I beg to move.

**The President:** The motion is that clauses 21 and 22 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
Clauses 23 and 24.

495

**Mr Braidwood:** Thank you, Madam President.

Clause 23 is on the recovery of unpaid gambling duty. Where gambling duty is due, this clause provides that it is recoverable as a civil debt by means of distress or through the courts. This puts the debt of gambling duty on the same basis as the other indirect taxes and duties administered by Customs and Excise.

500

Clause 24, which is based upon provisions found in paragraph 6 of schedule 12 to the Value Added Tax Act 1996, allows for the enforcement of a debt of gambling duty by means of a Treasury warrant, which has the same status as a debt judgment of the High Court. Treasury warrants have been used for many years as a cost-effective debt recovery mechanism being available for VAT and Income Tax debts. Enforcement is by means of the Coroners and the system is overseen by the Chief Registrar.

505

I beg to move, Madam President, that clauses 23 and 24 stand part of the Bill.

**Mr Lowey:** I beg to second, Madam President.

510

**The President:** The Hon. Member, Mr Butt.

**Mr Butt:** Thank you, Madam President.

I did have a query about what a Treasury warrant was, because the warrant issued here has the same power as if issued by the High Court and I have never come across before anybody other than the High Court issuing a warrant. I am interested to hear Mr Braidwood say that it has been in use for many years, so there are such things as Treasury warrants outside of this Bill.

515

**Mr Lowey:** Yes.

520 **Mr Turner:** Tax warrants.

**Mr Butt:** Can I ask, actually, what they do? Are they just purely for the recovery of a debt, or do they give any other powers to the person who has the warrant? That is my query.

525 **The President:** Mover to reply.

**Mr Braidwood:** As we said, there have been... I might be able to give the answer if –  
(*Laughter*)

530 I thank Mr Todd for his definition. Treasury warrants are really intended for compliant operators. Other means are available for non-compliant illegal bookmakers etc, so they would go to the courts. Income Tax and Customs and Excise both use such warrants just for debt.

**Mr Butt:** Thank you.

535 **Mr Braidwood:** Madam President, I beg to move that clauses 23 and 24 stand part of the Bill.

**The President:** The motion is that clauses 23 and 24 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
Clauses 25 and 26.

540 **Mr Braidwood:** Thank you, Madam President.

Clause 25 is based upon provisions found in schedule 12 to the Value Added Tax Act 1996 and is concerned with how Treasury warrants for debts of gambling duty may be set aside if the debt has already been paid or there has been some error on the face of the warrant or in the manner in which it was served. Application to set aside the warrant would be made to the Chief Registrar.

545 Clause 26 ensures that where officers are acting to enforce the Act they will, in doing so, not be guilty of an offence relating to gambling. This would protect officers particularly if undertaking covert investigations – for example, placing bets with an unlicensed operator or holding themselves out as an operator in a sting operation against suspected illegal operators.

550 Madam President, I beg to move that clauses 25 and 26 stand part of the Bill.

**Mr Lowey:** I beg to second and reserve my remarks.

555 **The President:** The motion before you is that clauses 25 and 26 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Part 5, Mutual assistance and international co-operation – I think we will take all three clauses, Mr Braidwood, please.

**Mr Braidwood:** Thank you, Madam President.

560 Clause 27 is intended to permit Customs and Excise to co-operate and exchange information with: other relevant regulatory and enforcement agencies in the Island; and the Police. The Treasury may by order add to the list included in the clause.

565 Clause 28 allows the Treasury to make an order allowing the exchange of information with a specified body or person outside the Island. The information involved would have to be obtained under this Bill, or be capable of being used in its enforcement and would have to relate to the prevention or investigation of crime.

Clause 29 would allow the Treasury to make an order giving effect to an international tax agreement, insofar as that agreement related to gambling duty and its foreign equivalents. Arrangements that could be involved, include the exchange of information, recovery of revenue debts and the service of documents.

570 Subsection (4) requires that the standards of confidentiality applying in respect of any information in the other territory must be at least as strict as those in force in the Island, before any disclosure to that territory may take place.

Madam President, I beg to move that clauses 27 to 29 stand part of the Bill.

575 **Mr Lowey:** I beg to second and reserve my remarks.

**The President:** Hon. Member, Mr Crowe.

580 **Mr Crowe:** Yes, just on this international tax enforcement arrangement, I was under the  
impression or had read somewhere in this that the Attorney General had some involvement, but I  
do not see it in subclause (4). I know that the mover, Mr Braidwood, said that it would not happen,  
unless satisfied the authorities in the country, that the equivalent standards were applicable there,  
so I am querying whether the Attorney General is involved in any of these international tax  
enforcement arrangements?

585 **Mr Lowey:** I think this particular clause, if I may, is part of the changing world of gambling. If  
I take Europe as a whole, they were very against online gambling. They have now come to the  
conclusion that it really is better, because it goes on anyway, to regulate it, and this is part of that  
jigsaw to make sure that we are able to co-operate with people of like mind, with like regimes in  
590 their countries. Therefore, I think it is very important that... I find it very hard to believe that any  
action would be taken by the Manx authorities without the concurrence of the Attorney General,  
the chief legal adviser. I know the Hon. Member is looking to see it written down.

595 **Mr Downie:** I think, Madam President, there are two issues here. Are we talking about issues  
that come to light and need to be investigated through a TIEA agreement where it is purely tax, or  
are we looking to investigate issues where there is a bilateral agreement between the Isle of Man  
Gaming Commission and one of the European Union countries or another European country? I  
would suggest that what we are looking at here is probably more akin to what we have in TIEA,  
600 where there is information exchange through the two jurisdictions and it is purely for taxation  
purposes.

**The President:** Mover to reply.

605 **Mr Braidwood:** Thank you, Madam President.  
I think it has actually been answered by Mr Lowey and Mr Downie. As we know with the Tax  
Information Exchange Agreements which have been signed with a number of countries, it is  
always... Concern was expressed, when these TIEAs were coming through, that there would not  
be any fishing expeditions, and the same thing as I have said in the clauses, that everything has to  
be the same as basically the Isle of Man, that there would not be any fishing expeditions.

610 As Mr Lowey quite rightly pointed out, it is a changing world in the gaming industry. Italy  
now and France are starting to put their own legislation together and I know that our Gambling  
Supervision Commission had been already in touch with them, Madam President.  
I beg to move.

615 **The President:** The motion is that clauses 27, 28 and 29 do stand part of the Bill. Those in  
favour, please say aye; against, no. The ayes have it. The ayes have it.  
Part 6, legal proceedings: clauses 30 and 31.

620 **Mr Braidwood:** Thank you, Madam President.  
Clause 30 is concerned with creating offences under the Bill and specifying the penalties for  
such offences. The offences themselves are similar in nature to those found in other revenue law  
concerned with gambling, including: making false statements or providing false information;  
obstruction of an officer in the exercise of those functions; carrying on unlicensed gambling and  
not accounting for any duty due; and advertising or promoting the taking of bets, etc for operators  
625 located outside the Island, and hence on which no duty would be due unless the operator  
concerned was licensed or exempt from such licensing in the United Kingdom or other European  
Economic Area state. However, as with existing gambling revenue law, it would not be an offence  
for an individual to place a bet etc with an off-Island operator.

630 Clause 31 is concerned with situations where an offence is involved and provides that someone  
cannot face criminal proceedings if they have had imposed upon them a civil penalty for the  
breach giving rise to the alleged offence and criminal proceedings cannot be commenced except  
by the Treasury, by the Attorney General or with the consent of the Attorney General.

Madam President, I beg to move that clauses 30 and 31 stand part of the Bill.

635 **Mr Lowey:** I beg to second and reserve my remarks.

**Mr Crowe:** Madam President, Mr Braidwood has answered this question under clause 31(2)  
about the consent of the Attorney General, so that is the answer I was looking for earlier.

640 **The President:** The motion is that clauses 30 and 31 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
Clauses 32 and 33.

645 **Mr Braidwood:** Thank you, Madam President.  
Clause 32 applies if an offence has been committed and it can be shown that an officer of the body corporate concerned was involved in some way in committing the offence. If this is the case, then that officer, as well as the body corporate, is liable for any penalty. This is essentially the same as existing provisions in section 14 of the Pool Betting (Isle of Man) Act 1961 and paragraph 6 of the third schedule to the Betting Act 1970.

650 Clause 33 allows for the imposition of civil penalties under section 9 of the Finance Act 1994, an Act of Parliament as applied in the Island, for certain contraventions of the Bill: failure to provide Treasury with the requisite seven days' notice of intention to commence operations that give rise to a duty liability; failure to declare liability to duty; providing false information to reduce duty liability; or contravention of any provision contained in regulations made under this Bill. As outlined in relation to clause 32, a person cannot be liable to both a civil penalty and a criminal penalty for the same breach.

655 Madam President, I beg to move that clauses 32 and 33 stand part of the Bill.

660 **Mr Lowey:** I beg to second and reserve my remarks.

**The President:** Mr Crowe.

**Mr Crowe:** Thank you, Madam President.

665 It is just a point I raised with Mr Braidwood before the sitting and this was the use of the expression, 'a director, secretary or other similar officer'. I know Mr Braidwood said that it appears in other legislation, but I would... I have seen in other Bills or Acts, where we talk about a director, an alternate director, a secretary, or assistant secretary, or manager. So I think the words 'similar officer' are meant to be a catch-all for any person representing a company or in a position of trust or responsibility, but I would like to confirm that

670 **The President:** Mover to reply, please.

**Mr Braidwood:** Thank you, Madam President.

675 I do have a definition of what is 'similar' and it is wording supplied by Chambers to deal with transitional matters regarding legislation being replaced, which covers fairly wide variety areas, hence the use of 'similar' to reflect this wide variety so as not to limit use of any transitional arrangements. So that is the definition that I have been given, Madam President. I ought to seek more clarification and come back at Third Reading, if I am not –

680 **Mr Crowe:** No, that is absolutely fine. I am quite satisfied with that answer.

**Mr Braidwood:** I beg to move, Madam President.

685 **The President:** The motion is that clauses 32 and 33 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Part 7, General. I think we can deal with clauses 34 to 37 and the schedules, please.

**Mr Braidwood:** Thank you, Madam President.

690 Clause 34 deals with the procedure for making of orders and regulations. Regulations, except for those made under clause 8(8), these being concerned with changes to duty rates and duty rate thresholds, must be laid before Tynwald as soon as practicable after they are made. Regulations made under clause 8(8), however, would require formal approval by Tynwald before they can come into operation.

695 With the exception of commencement orders bringing into operation the various provisions of the Bill, any orders must be approved by Tynwald before they can come into operation.

Clause 35 allows that any increase in expenses resulting from this Bill is to be paid by the Treasury.

700 Clause 36 and schedule 1 lists consequential amendments required to the Pool Betting (Isle of Man) Act 1961, the Gaming, Betting and Lotteries Act 1988 and the Online Gambling Regulation Act 2001.

Clause 37 and schedule 2 lists the repeals arising as a consequence of this Bill.

Madam President, I beg to move that clauses 34, 35, 36 and schedule 1 and clause 37 and schedule 2 stand part of the Bill.

705 **Mr Lowey:** I beg to second and reserve my remarks.

**The President:** The motion is that clauses 34, 35, 36 and schedule 1, clause 37 and schedule 2 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

710 That concludes our public business. Council will now sit in private.

*The Council sat in private at 11.26 a.m.*