



**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, 1st May 2012

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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 M Lambden, Third Clerk of Tynwald.

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The Council adjourned at 12.46 p.m.

Legislative Council

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The Council met at 10.30 a.m.

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[MADAM PRESIDENT *in the Chair*]

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The President: Moghrey mie, Hon. Members.

Members: Moghrey mie.

The President: The Lord Bishop will lead us in prayer.

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PRAYERS

The Lord Bishop

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Leave of absence granted

The President: The learned Attorney General continues to have leave of absence.

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Question for Oral Answer

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INFRASTRUCTURE

Towed caravans

Legislation to control increasing numbers

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1. The Hon. Member of the Council, Mr Downie, to ask a Member of the Department of Infrastructure:

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(a) If the Department has received any concerns regarding the increasing number of towed caravans being left at various places in the Isle of Man; and

(b) if the Department has any plans to introduce legislation to effectively control the use, storage and siting of towed caravans?

The President: We come to the first business on our Order Paper, a Question for Oral Answer, and I call on the Hon. Member, Mr Downie.

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Mr Downie: Thank you, Madam President.
I beg leave to move the Question standing in my name.

The President: I understand Mr Callister is responding on behalf of the Department.

55

A Member of the Department of Infrastructure (Mr Callister): Thank you, Madam President.

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In answer to part (a) of the Hon. Member's Question, I can advise that the Member of the House of Keys for Douglas West, Mr Geoff Corkish, has also raised concerns with the Department about towed caravans and expressed a wish to regulate their use. The Department has not received complaints about any increased use of towed caravans on the Island, and they remain a relatively rare sight on our roads. The majority of towed caravans brought to the Island are used in TT, Manx Grand Prix and during the Southern 100, when they are used for temporary accommodation,

after which they return home.

65 Whilst the Department does not perceive a current problem, it is aware of the sensitivities
around a possible increased use of caravans and is considering pre-emptive measures to address
and control the situation, should it become necessary. From a Highways perspective, a towed
caravan is treated in the same way as any other towed trailer and is not currently a problem while
being towed on public roads. There are some existing regulations that prevent unhitched trailers,
including caravans, being parked in restricted areas, such as housing estates.

70 In answer to part (b), there are existing planning restrictions regarding the use of caravans and
there are currently no plans to introduce additional or amend existing planning legislation with
regard to caravans. At the moment, towed caravans can be located and occupied at campsites
benefiting from planning approval or where the existing use has been established as lawful use.
75 Alternatively, unoccupied caravans may be kept by owners within the curtilage of domestic
properties that they live at, depending, of course, on there being no restrictive relevant issues to
prevent this. Planning approval would normally be required for the siting of a caravan outside the
areas that I have mentioned.

80 Madam President, Road Traffic Regulation Orders can already be made to specify particular
roads where certain types of vehicle may not be used. However, in order to simplify any future
regulations, the Department has issued drafting instructions to enable a change to the Road Traffic
Regulation Act, which would enable caravans or undesirable vehicles to be prohibited from using
all roads in the Island or all roads in a specific locality, or to restrict the use of caravans or other
vehicles to, for example, a particular route.

85 **The President:** A supplementary question, Mr Downie.

Mr Downie: Thank you, Madam President.

90 In thanking the Hon. Member for his very extensive and really constructive reply, would he
accept that in the last few years there have been a number of caravans imported into the Isle of
Man? We are now seeing them on local authority properties. We are seeing them left in the street.
There is a problem building up here, and would he not agree with me that, if we do not tackle this
problem sooner rather than later, it is likely to get out of hand?

95 At the present time, the only legislation that we have to cover towed caravans, whether they are
left in the countryside or left on the highway, is this planning 30-day rule, and would he not agree
that we need something a little stronger than that to rely on?

The President: Reply, Mr Callister.

100 **Mr Callister:** As I mentioned, there is some legislation being drafted at the present time, and
the purpose of that is to deal with all kinds of vehicles and not necessarily only towed caravans.
When that legislation comes out, probably firstly for consultation, it will deal with making
decisions that certain roads in certain localities – specified localities – could be free from
particular classes of vehicle. It is something that would probably be imposed generally in relation
105 to various classes of vehicle, or indeed any class of vehicle perhaps, but one of the most important
things would be that a visiting caravan could be required to use one dedicated route, or two
dedicated routes perhaps, and be parked in a proper caravan park, which would have to be a high-
facility park. I think that might well be some distance away, but legislation is in process. I do not
have a timescale for it. It would come in the form of an Order to Tynwald for Tynwald approval.

110 **The President:** Supplementary question, Mr Braidwood.

Mr Braidwood: Thank you, Madam President.

115 Is the member of the DOI aware and just following on from his comments that a few years ago,
there were talks between the Caravan Club of the UK, the Isle of Man Steam Packet and then the
Department of Transport to have a designated car and caravan park and also a designated route,
where the caravans would come over on the night sailing to the Isle of Man on the dedicated route
to the caravan park. The caravans then would be parked there and they would only then use their
cars to move around the Island. That is a number of years ago and from the comments already
120 made I do not think there has been much progress since.

The President: Reply, Mr Callister.

Mr Callister: Yes, thank you, Madam President.

125 I am aware of that situation. I cannot tell you, which years that applied, but certainly I
understand the Caravan Club in the UK had offered the Isle of Man £1 million at that time to assist
in creating a caravan site. That is some information I have been told. However, there has always
130 been this problem; it is a controversial area, where many people on the Island do not want to see
caravans, but as far as the Steam Packet Company is concerned, it would be very good business
for them, but it *cannot* take place, certainly in my view – and in the view of the Department, I am
quite sure – unless we do have a proper, designated caravan park or parks, perhaps and the
incoming caravans, I think it was necessary at the time that the incoming caravans would also have
to have a return date on the ticket. In other words, they have a return ticket, so that could be
checked on, if they had actually left the Island. So I am aware of that situation and I think it may
135 well be now under consideration again, but I have no details of that.

The President: A supplementary, Mr Downie.

Mr Downie: Thank you, Madam President.

140 I would just like to ask the Hon. Member then... We have had an offer of £1 million from the
Caravan Club –

Mr Callister: A long time ago.

145 **Mr Downie:** Yes, which really has not been acted upon by the Department, not been
progressed. Is the Hon. Member aware that, some years ago, a Member of the other House, Mr
Charles Fargher, also introduced a draft Bill, which would have effectively controlled the use of
caravans in the Isle of Man and, to some extent, provided what we are trying to seek to do now?

150 Could I just state that I am not against caravans *per se*, but I, like a lot of other people... They
would provide a useful revenue stream for the Isle of Man, but they do need to be properly
regulated so that we do not finish up having a problem with them sitting out on the beauty spots
and being abandoned and, when people cannot afford to get them back to the UK, they fall into
decay.

The President: Reply, please.

155 **Mr Callister:** Yes, I think that is true: they would have to be properly regulated. I think some
of this legislation that is coming forward would hope to do that. The question is that the scheme
which Mr Braidwood referred to previously I think would have worked quite well, but I do not
160 think we had the money to match the £1 million, which would have perhaps cost more than that to
create the camp, or maybe two areas, and I think, as far as I can remember, going back to the
former Member for Rushen that you are talking about – I think we are back in the 1980s there – I
do not recall the Bill, but nevertheless, I think it was a political decision that brought the end to the
idea that Mr Braidwood referred to, but quite who was behind that I am not aware.

165 **The President:** A supplementary question, Mr Wild.

Mr Wild: Thank you, Madam President.

170 Simply to make more of an observation that the dynamics surrounding tourism and
accommodation in the 1980s and the 1970s have changed so dramatically with the reduction in
hotel beds, as we can see during the TT Festival. I would have thought – to pick up on hon.
colleagues' concerns and remarks about caravans – it might be an opportune time to revisit the
whole proposition. We can bring in proper regulation, possibly an income stream for the Isle of
Man, and work with Economic Development to possibly revitalise that link with the Caravan
175 Club. Just an observation.

The President: Convert it to a question and, Mr Callister, you may answer.

180 **Mr Callister:** I think the Hon. Member makes a very good point. As far as the income to the
Isle of Man is concerned, it may not be a huge amount. It would depend on the number of vehicles
that were passing backwards and forwards. Certainly I think the Steam Packet Company has
always been fairly keen on bringing in caravans because it is a fairly useful revenue for them.

There was, I am being told – and I have no evidence for this, but there was, I think – something
of a gentleman's agreement that we would just leave caravans alone, particularly after the decision
was made to not go ahead with the original plans, but certainly the plans that were referred to, the

185 ideas that came forward in the 1980s, are definitely worth revisiting, in my opinion.

The President: Supplementary, Mr Lowey.

190 **Mr Lowey:** As someone who still bears the scars of the caravan debates; I do not know where the £1 million came in, I must have had one of those moments where I missed £1 million. I have no recollection of the Caravan Club of Great Britain offering the Isle of Man £1 million, I can assure you, Mr Callister. However, having said all of that, that is history, that is yesterday. Today, I think the very question that I have to ask is, who is monitoring *what is happening now*? Not what happened before: who is monitoring what is happening now? Like Mr Downie, I can see more and more *towed* caravans; I am not talking about the mobile homes, because there is another debate there, the caravan with an engine in the front – a rose by any other name, but however – and we all know those too.

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200 Having said that, I want to know from the Department who is monitoring the situation now? Do we monitor it? There is only one way they can come in and that is by boat. Therefore, we should be able to keep rick on who is coming in, the numbers that have come in over the last few years, just by simply going to the manifest of the ships plied between the Isle of Man and the adjacent isles.

205 **The President:** Reply please, Mr Callister.

Mr Callister: I am not in a position to answer who, specifically, is monitoring them. I can find that information out obviously. I think part of the answer will be that the numbers of personnel now available to do this kind of work have been reduced greatly within the Department. Really the Department is now down to almost the minimum number of people, particularly as far as harbours are concerned, that are available to carry out this work. It is difficult, but I will seek an answer for the Hon. Member, precisely, who is responsible for checking on towed caravans.

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Orders of the Day

Casino (Amendment) Bill 2012
Second Reading approved

220

2. Mr Lowey to move:

That the Casino (Amendment) Bill 2012 be now read a second time.

225 **The President:** We will move on, I think, to Item 2, Hon. Members. I call on the Hon. Member, Mr Lowey, to take the Second Reading of the Casino (Amendment) Bill 2012.

Mr Lowey: Thank you, Madam President.

230 This Bill is promoted by the Treasury on behalf of the Gambling Supervision Commission to make provision for a more flexible regime for an Isle of Man casino licenceholder. It allows premises other than its own to be used for the purpose of gaming. The main purpose of the Bill is to amend the Casino Act 1986 by adding in an entirely new part which introduces temporary premises certificates. Such certificates will allow a casino to operate outside its traditional venue for a very short period of time. The maximum, just for Members' consideration, that these temporary licences could operate for would be up to a maximum of 21 days. These tournaments, I am led to believe, really could take usually a week, but it needs setting up – a few days for setting them up and a few days to take them down – and it is always felt that there should be a bit of leeway, so it is up to a maximum, but very rarely, I would suggest, would it be 21 days.

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240 Such tournaments are commonplace in the world of gambling, as I said last week, and attract significant interest from the gaming community. A typical tournament consists of a series of rounds which are staged over a number days culminating in a final which may be televised.

The Bill also amends the Gaming, Betting and Lotteries Act 1988 and makes consequential amendments to the Gaming (Amendment) Act 1984, the Value Added Tax Act 1966 and the proceeds of Crime Act 2008. In other words, it is all joined up so there are no loopholes.

245 The Bill creates an opportunity for the Isle of Man to participate in an activity that has a proven success record of attracting people to various parts, wherever these competitions are held. As I spoke about last week at the First Reading, I believe the Isle of Man would be doing a disservice to itself if it did not participate and take advantage of our reputation as a well regulated area where gambling is concerned.

250 Therefore, I move the Second Reading of the Casino (Amendment) Bill 2012.

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

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

Mr Callister: Thank you, Madam President.

260 It seems that we do not actually know what the economic benefit of this will be – it is a shot in the dark, perhaps, to see what might happen – but as far as I can see – and I never have anything to do with gambling in any form – these huge poker competitions are immensely popular around the world in numerous countries and are played by what you would certainly call professional gamblers. They are career poker players. The prizes to be won are phenomenal. Mind you, the money that can be lost is equally phenomenal, I think, but there are many of these people who would probably be attracted.

265 I just wonder, on two points, to what extent we would be putting money to advertise these events, because you would have to... Just a few bits in the *Isle of Man Examiner* are not going to work. It has got to be a costly exercise to advertise the events. Surely, also, the cost of hosting any event here as well needs to be taken into account. I just wonder if any consideration has been given to that.

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

275 **Mr Downie:** I would like to speak in support of the Bill. I do not see this being any different from bringing a large, significant conference to the Isle of Man, only in this particular case, the people who get involved in poker activities are generally fairly high-net worth individuals. If you look at the spend ratio within the local economy, they will all want to go out and eat in the best restaurants, drink the best wine, but I actually think there would be a significant benefit by having some of these events here. The only reason we do not have them here at the present time is that we have not got a facility large enough to accommodate them.

280 Mr Callister made the point about advertising and so on. I would have assumed that the people running the event themselves would be doing the advertising. They know what their customer base is. One company that is based here, in particular, Poker Stars, they have one of the biggest and most prolific books in the world now for peer-to-peer poker and they are recognised as a very good quality organisation. They work to the very highest standards and, of course, as we know, their corporate headquarters is here in the Isle of Man.

285 So all we are doing with the legislation is allowing something to happen and the intelligence on the ground says that, if we do bring this legislation in, the people who are involved in organising the games will seek very actively to promote something to take place here in the Isle of Man.

290 **The President:** The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

295 The way I read this is that this enables, as Mr Downie says, the existing operators to hold an event in other premises and gives them the opportunity to do so. For example, I think somebody mentioned at the First Reading that, if there was to be an international tournament, a venue that may be suitable could be the Royal Hall, for example. This enables the existing licensed operators – I do not think this is designed as the Treasury putting on tournaments; quite the opposite – this is giving the Gambling Supervision Commission the ability to license other venues to enable the commercial sector to put these events on.

300 I think with regard to the advertising, a lot of these industries now are very much gaining profile within their own industry publications online and other such methods of advertising it. So I think if we were to see either the existing casino operator, or a new one and there is talk of a second licence being issued, then they will undoubtedly put together their package for planning one of these events. Should they have a viable business model to bring a vast number of people and attention to the Isle of Man, then I am sure there would be various Government funds and tourism funds open for them to apply. It would be then up to the Departments to decide whether

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the model stacks up for any public funding. This is enabling, it is, as I said at First Reading, giving the GSC the ability to have the can-do attitude, which is one of the concerns I raised when we passed the legislation to form the GSC into a statutory board, was that it must have the right legislation to enable things to happen. It is no use setting up these bodies, if their hands are tied.
310 We embarked on a policy of e-gaming and if we are going to do it, we have to do it right, or not at all in my view.

So I support this Bill's Second Reading.

The President: The Hon. Member, Mr Braidwood.

Mr Braidwood: Thank you, Madam President.

As I said at the First Reading, I am supportive of this legislation. As it has already been mentioned by my hon. colleague, Mr Turner, where the different venues can be used to hold peer-to-peer gaming events... The Hon. Member, Mr Callister, was concerned about the advertising and whatever, and as Mr Downie said, this would be put on by the operator themselves. However, the legislation, what it does do is it does regulate the advertising that can take place and the entertainment that can take place. So, if the sponsors wanted to, say, put some pole dancers at the event, the regulations could stop that sort of entertainment. So the regulations are there to prevent any problems with advertising or some of the entertainment which *may* be introduced. Apart from that, I am supportive.
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The President: The Hon. Member, Mr Wild.

Mr Wild: Thank you, Madam President.

Firstly, acknowledging the concerned reservations expressed by the Lord Bishop, I think it is important that with any type of legislation in this particular area, we have robust regulation controls to make sure that it is properly managed, but having said that and acknowledged those concerns, I do believe that this gives the Island a competitive advantage taking the industry and this key sector forward. What we are simply saying is, it is giving the industry the flexibility to hold events, where it needs to and in the right accommodation with the right regulations. In that sense, it has my full support.
330
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Thank you.

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Madam President.

The essence of this Bill is really in the second paragraph of the explanatory notes, which really is to say we are adding an entirely new part, which introduces temporary premises certificates. I think this is the core of the Bill, as others have mentioned. It will just allow a casino to operate outside its traditional venue for a short time, so I think this is the core of the Bill and very straightforward. Everything else –
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Mr Lowey: Makes it happen.

Mr Crowe: – is addendum to all of that, to that core principle.
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The President: The Hon. Member, Mr Butt.

Mr Butt: Thank you, Madam President.

I will support this Second Reading.

I think Members who have some doubts about the merits of gambling... I think I share their concerns. In particular, poker, I find, is not a game of skill and is more a game of chance, where the hand you are played is not one you can actually control.

I think people who give the impression that maybe we would be looking at people drinking fine wine and looking at basking sharks etc have perhaps got a mistaken impression of what sort of people play these games. I think they will have more bodily needs.
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Mr Braidwood: The hard-nosed gamblers.

Mr Butt: I think they will be here for other reasons than those sort of – (*Interjection by Mr Lowey*) Yes, they have more corporeal needs than those.
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I think this Bill actually does not make any great difference to what we can do now. Currently, these things can happen anyway under the current law. We can have these gambling competitions, we can have them televised. This is really a Bill about geography. This is purely about where the venue can actually take place, and as such it does not make any difference to what can happen anyway, so I think the Bill does not need to be seen as an extension of what goes on now.

The President: Lord Bishop.

The Lord Bishop: Thank you, Madam President.

I will support the Second Reading on the basis of an agreement to amend it, but I am concerned about the Bill. I think it is too easy to present a delightfully innocent picture of this, even though there might not be any pole dancing. Of course, I do not know what pole dancing is. *(Laughter)*

Mr Braidwood: You had them close the last one!

The Lord Bishop: I didn't know poles danced anyway.

There is this delightful sort of picture with lambs gambling in the fields and sharks basking around the coast *(Laughter)* –

Mr Lowey: And plankton.

The Lord Bishop: – and pigs wallowing in their 'pokers' and –

Mr Braidwood: It will be lambs to the slaughter.

The Lord Bishop: – maybe even ponies running free.

It is all a bit surreal, because I think actually what you are handling here is something that potentially is much more serious to a society. I know it is supposedly people coming in and engaging with their poker habits and so forth and then leaving, but I think actually that this might have more serious social consequences than we realise, and I think, therefore, it is a sad day, but I will support the Second Reading on the basis of wanting to see if other Members have any amendments to make to the Bill.

The President: Mr Lowey to reply, please.

Mr Lowey: First of all, thanks to all the Members again for taking part. It highlights once again what this Council is about. Most of it has been a recitation, really, of what we had last week, but having said that I think it is important, people feel strongly and they feel they want to express their views.

Could I just come to Mr Callister. It is a shot in the dark. Nobody can give guarantees, all we are doing is saying we could enable another venue to host and be called a casino for a short period of time and the reason for that is everybody who knows the existing casino, knows it is a very small, claustrophobic. I have been in: it is a claustrophobic little building and when we did host an international gaming, it was held in the car park – hardly the thing that you want to sell, if you are selling your business.

Why has this been done? Why is the Gaming Commission asking for the ability to do it? We want to do it for two reasons. First, people who are operating on the Isle of Man now internationally... and I did spell out last week that some of the firms we have here have run these competitions in South America, in the Far East and in other countries – and also around Britain. Unlike Mr Callister, who thinks they are only going to be professional, hard-nosed poker players with big stakes; that is part, I suppose, of the overall, but not the only one.

Take what happens in the United Kingdom: they have tournaments in various places and the winners come to play in the final. Yes, they play against professionals, if needs be, but that is part of whatever they call their business. It is not for me to tell them how to run their business. My job is to make sure that whatever business they conduct from the Isle of Man is well regulated.

I think we have a proud record of regulation in the Isle of Man for the last 40 years. That is why international business has been attracted here, because they sell themselves as based in a well-regulated country. The Isle of Man is often used as a template. Even now and throughout Europe who would turn their face against gambling, they still use the Isle of Man as a template of control, of the right controls to be put in place to allow gambling to take place on their soil.

430 So yes, nothing guaranteed, nothing ventured, nothing gained. At this moment in time, there is one very large – and I am not going to name names – company that wants to put on an international tournament in a venue other than in the existing casino. So there is somebody there and ready to take it up, I am sure, if this legislation is passed. I did say at the First Reading this is, as Mr Butt rightly says, enabling it to happen but in another venue.

435 I did not want to paint a picture of sheep gambling and sharks basking, and if I did then that was Mr Lowey again in his usual... What was the name of that comedian who used to... rambling, bumbling... (*Interjection*) That's me! You've got me in one! I was trying to say that the Isle of Man can sell itself, can take the opportunity.

440 The Gambling Commission will not be putting any money into this; they will be taking money from them in fees. Everything else then is for them to promote and to sell their event, and that, I think, is right. I can understand... Look, drink and gambling: they are the excess of everything that is wrong in this world, and therefore I come back to that word 'regulation'.

Talking of regulation, if you care to look at clause 5, there are 16½ pages of regulation which spell out exactly what it is that they will have to comply with.

445 I think this is a Bill that enables something to happen that is already happening. I do not see – with great respect to my friend, the Bishop – that this will expand that. I do think it gives the opportunity for the Isle of Man to take a decision that will *maybe* – and I am only putting *maybe* – have economic benefits. I think that is the right way to address it, and with that, I would like to move the Second Reading of the Bill.

450 **The President:** The motion is that the Bill be read a second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

455 **Casino (Amendment) Bill 2012**
Clauses considered

The President: We move then to clauses. I think we could take clauses 1 to 3 together, Mr Lowey, with your agreement.

460 **Mr Lowey:** Thank you, Madam President.

Clause 1 contains the short title of the Act, the Casino (Amendment) Act.

465 Clause 2 actually deals with the commencement. Clause 2 explains the commencement provisions. The Act will be brought into operation using an Appointed Day Order made by the Treasury. The Appointed Day Order may also contain any necessary saving or transitional measures.

470 And the third clause provides for the automatic repeal of the Act once it has performed its amending function – that is to say, this is a technicality. This Bill exists simply to perform a one-off function, namely to enact to modify the wording in a number of Acts, principally the Casino Act 1986, and then to disappear leaving behind the reworded Acts. Clause 3 makes the Act disappear once it has done its job and stops it from clogging up the statute books.

I beg to move clauses 1, 2 and 3 stand part of the Bill.

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

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

480 **Mr Crowe:** Madam President, yes, just on clause 3. It is interesting, this automatic repeal, which in fact must be a new (**Mr Braidwood:** It is.) practice of the legislative draftsman because it appears in the three Bills before us today. So it is just an interesting mechanism to automatic repeal of the Bill once the amendments are in the primary legislation. So no answer required. It is just an interesting development in legislation in the Island.

Mr Lowey: You are absolutely right.

485 **The President:** The motion is that clauses 1, 2 and 3 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 4.

490 **Mr Lowey:** Clause 4 is the removal of obsolete references to the Gambling Supervision Commission old constitution. This clause removes a provision about the composition of the Gaming Board of Control from the Casino Act which has been superseded by a provision in the Gambling Supervision Act 2010.

495 The draftsman took the opportunity of amending the Act to tidy up obsolete elements of the Casino Act 1986. This clause is an example of that. When the Casino Act was first drafted in the 1980s, the supervisory body was called the Gaming Board of Control and was given a constitution. Now it is called the Gambling Supervision Commission and its constitution was re-established in the Gambling Supervision Act 2010. So it is getting rid of the old. It is a tidying-up exercise.

I beg to move clause 4 stand part of the Bill.

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

The President: The Hon. Member, Mr Callister.

505 **Mr Callister:** Thank you, Madam President. Just in relation to clause 4(b), it says:

‘for the marginal note, substitute “Isle of Man Gambling Supervision Commission”.’

510 It looks to me as if there are certainly no marginal notes within this Bill. Is it that marginal notes now have been abandoned, and they will be there in the original Bills but they do not come now in the form of marginal notes? I am not quite sure what has happened with the changes to legislation in there.

515 **The President:** Are there any further questions on the clause? If not, Mr Lowey to reply, please.

520 **Mr Lowey:** I would love to be able to reply to the Hon. Member, but *I do not know* and I have not got the learned Attorney alongside me. I know the formats of our Bills now have changed quite significantly and I do not know whether there will be marginal notes or not, but, as I say, it does not affect, in my view, this particular one.

The Gambling Board, as it then was called, no longer exists. It is the Gaming Commission that now acts as the controlling agency and it is wiping the slate clean. I will try and find out for the Third Reading for my hon. friend, but I just do not know and that is the truth of the matter.

525 **The President:** The motion is that clause 4 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Clause 5.

530 **Mr Lowey:** Deep breath! (*Laughter*) I will give you the shortened version.

535 Clause 5 inserts a new part IIA into the Casino Act 1986 in such a way that the amendments collectively, called part IIA, are just before the beginning of the existing part III in that Act. There are 14 new sections to this part, which are IIA, and they are annotated 12A to 12N and cover such things as the granting of a temporary premises certificate, the supervision of the same, appeals, new tribunals, dealing the operators and the measures that the Gambling Supervision Commission can take in so discharging their functions. That is covered in 16½ pages of my notes and it is covered in a very lengthy...

Now if Hon. Members would like me to read 16½ pages of, what I would call, explanatory notes, I am very happy so to do, but that is the essence of clause 5.

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

Mr Downie: I would like to say something, Madam President.

545 **The President:** Mr Downie.

Mr Downie: In this age of technology, the part IIA – Temporary Premises Certificates... If we turn to page 11 of the Bill – Casino (Amendment) Bill 2012 – the top of the page says ‘Section 5’. It is page 11. On 12B(3):

550 'Before making the application, the applicant must ensure that a notice has been published in 2 newspapers published and circulating in the Island to the effect...'

Then, when we come down to subsection (6):

555 'Upon receipt of an application, the Board must –
(a) within a reasonable time, publish notice of the application on its website; and
(b) wait at least one month...'

560 Surely, in this day and age... Why are we continuing to –

Mr Braidwood: Use newspapers.

Mr Downie: – have things published in newspapers? To my knowledge, the Government only publishes in one newspaper now, which is the *Courier*, and there seems to be an official Government page in there, and we put Government notices and planning applications and so on. I am not aware it is published in the *two* newspapers, in the *Examiner* as well. I am just aware that it is in the one. If anything did happen to the two newspapers that we have, for whatever reason – and we know we are in fairly straitened times in the newspaper world – we might finish up with one newspaper. Do we have to come back then and amend this legislation? The question is: why, if somebody is making an application, can't that just be published on the Government website and go out as a release from Government to say that someone has applied for an application for a certificate under this legislation? It just seems to me that we are dealing with gaming legislation in the year 2012 and we are still linking what we are trying to do with what we did 50 or 100 years ago, and advertising in two newspapers published and circulating in the Island.

575 **The President:** Does any other Member wish to comment? Hon. Member, Mr Crowe.

Mr Crowe: I think this could well be part of the original Casino Act and it might be a requirement following on from the original Casino Act. When you are having a gambling tournament in premises, local people who might want to object to this, may not have access to the internet, so it might be a safe way of protecting local residents who are not internet connected to make a valid representation if they felt those premises were not suitable for a gaming competition or a gambling competition.

585 **The President:** The Hon. Member, Mr Wild.

Mr Wild: Thank you, Madam President.

I would concur with my hon. colleague, Mr Crowe. I think at the moment we are still a society between two worlds of going electronic and still being paper based and while we are in that transitional period, it still makes sense to me to allow people – and there a lot of people out there who do not have access to technology and computers – to have the chance to see something in newspapers which are still a traditional form of communication. Thank you.

595 **The President:** Mr Lowey to reply.

Mr Lowey: Going through this Bill over the weekend, I too spotted the two newspapers. I do think Mr Wild makes a very valid point, that 30% of the population, even nowadays, do not use or do not have access to the internet, but I have read somewhere later on in the regulations, where the GSC can actually change the role of advertising, if conditions change. So I think that has already been taken into account later on in the Bill on some of these clauses. I do come back to the point that Mr Wild made, that I think we are dealing with this particular thing at this moment with the particular instruments that we have, but I do take note and I will certainly draw it to the draftsman's attention in future legislation to make sure that we take recognition of the changing world in which we live. I think it is a valid point, it is a point that I have raised in the past and which I share with him, but on this occasion I do believe it is reasonable to be placed in the Act.

600 I will check with my advisers for the Third Reading on whether my interpretation of some of the powers that are given to the GSC can allow them to alter the regulations and the safeguard, of course, is that regulations will have to be approved. There will be a debate, if there is a change, so I think from the public's point of view, they will not be changed on a whim, they will be changed after consultation with the general public. Okay?

610

Mr Butt: 12M.

615 **Mr Lowey:** Which page?

Mr Butt: Page 21.

The President: Does the Hon. Member have a –

620 **Mr Lowey:** Could I draw your attention to page 21? It has been drawn to my... I know I was busy looking at this Bill and on that particular one, I went through to make sure. It is:

625 ‘(i) to regulate –
(i) the giving of notice of application for certificates; and
(ii) the advertising of gaming to be carried out on the premises;
(j) to regulate any entertainment...’

630 so, again, there is, in my view, flexibility there to meet the concerns of the Hon. Member, if there should be no newspapers on the Isle of Man. That could be a possibility – I do not wish it, but if it did, then of course, the primary legislation says it has to be advertised in two Isle of Man newspapers – just makes it impossible. The general public would still need the right and the ability to know if these things are going on and that gives, in my view, the comfort factor that the Hon. Member is looking for.

635 **The President:** The motion is that clause 5 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 6 – page 22! (*Laughter*)

640 **Mr Lowey:** Yes, we can turn over the 16½ pages.
Clause 6: section 15 is amended. Clause 6 amends section 15 of the Casino Act so as to extend the court’s power to exclude certain persons from entering a casino, to include the power to exclude them from a venue operating under a temporary certificate. In other words, this is exactly the same that applies to the existing casino, but it applies now to the temporary premises that are being used.

645 I beg to move clause 6 stand part of the Bill.

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

650 **The President:** The Hon. Member, Mr Turner.

655 **Mr Turner:** Just a query for the mover on this. If the casino in question has banned an individual in house rules, would it only be the court that could prevent that person from entering the extended premises, shall we say, than the new premises as opposed to the existing ones, or could it only be a court that could prohibit those persons? Would the operator have to make an application to the court to have somebody excluded? Then, what rights would they have, because it is obviously... If a licensed premises banned somebody from the premises, that is within their gift; but if they are holding an event somewhere else, how would that operate if they did not want that person present?

660 **Mr Lowey:** The onus is on the operator to run a proper... to conduct and run gambling on set terms that have been laid down by the Commission. I would imagine that if the operator is using temporary provisions, then exactly the same rules would apply and so if they were banned from one, they would be banned from the other because the onus is still on the supplier of those premises, whose premises are licensed premises, and if you are banned from one... It is like casinos have in hotels, blacklists of people who are banned in one hotel, and they are banned in all the hotels. I would imagine the same applies to the casinos.

The President: The Hon. Member.

670 **Mr Turner:** May I come back on that, Madam President? Thank you.

I appreciate the answer. The point I am going to make is not to be obstructive; it is to ensure there is not a loophole here. I know we keep mentioning the Royal Hall and that is just an option open as anywhere, but for example, if the individual was to try and enter the Villa Marina

675 premises, a house ban for say, for example, the Palace Hotel, would not be... Unless the operators
of the Villa Marina extended the ban to that person via an agreement, what would the rights of the
person be?

We would not want a situation where we had somebody try to enter these premises quite
legally and fall foul of the law because of the rights of that individual, who would argue they are
680 not banned from those premises. Is it robust enough to ensure that if an operator has banned
somebody from their premises they will be able to extend that ban to the premises they holding the
event at?

The President: I think it is clear that this clause does not deal with that.

685 **Mr Turner:** I understand it is to do with courts prohibition.

Mr Lowey: Yes, it is.

690 **Mr Turner:** It builds on that –

Mr Lowey: It does.

Mr Turner: – because there are people obviously banned from –

695 **Mr Lowey:** Various places.

Mr Turner: – the local casino.

700 **Mr Lowey:** But having said, I want to make it quite clear, this is an enabling thing. We have
put into place rights to appeal for people who feel aggrieved, and they have the ability to do that
under this particular piece of legislation, not this particular clause, but under this legislation –

Mr Turner: But there is provision.

705 **Mr Lowey:** There is an appeal procedure, indeed there is.

The President: Mr Braidwood.

Mr Braidwood: Thank you, Madam President.

710 I was coming in to try to clarify the problem raised by Mr Turner. I think if somebody is
banned from premises, which is just the premises, that is completely different from this section or
this clause, where this is the power of the court. If the court says they are not allowed to enter such
as gaming establishments, then that is throughout the Isle of Man, no matter where it is set up and
as has been mentioned by Mr Lowey, if a court bans people from licensed premises, it covers all
715 licensed premises on the Island. Therefore, if it is the court which bans them from entering gaming
establishments, then they would not be able to go into this temporary casino.

The President: Mr Butt.

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

I was going to make more or less the same point, but in addition, if the owners, or the operators
wanted to ban somebody, it will also be licensed premises, if there is drink involved, they can ban
whoever they wish at any time. They can refuse right to entry, so whichever way, they can be
725 covered to do it.

The President: Do you want to come back, Mr Turner?

730 **Mr Turner:** If I may, yes. I appreciate this was dealing with court bans. What I was looking
for was assurance that... wider from this, and I think the hon. mover has mentioned that if an
operator has banned somebody, they will be able to deal with that at an outside premises. So thank
you for the clarity.

The President: Do you want to add anything further, Mr Lowey?

735 **Mr Lowey:** No. I would like to thank all the colleagues – firstly, Mr Turner for his question – and I think the points have been answered very ably by Mr Braidwood, and I appreciate that. Thank you.

740 **The President:** The motion is that clause 6 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 7.

745 **Mr Lowey:** Clause 7 deals with repeals. Clause 7 repeals certain provisions of section 16 of the Casino Act 1986, which refers to legislation that is no longer extant. Section 16, for example: section 16 of the Casino Act 1986 makes reference to law that no longer exists, specifically 16(2)(b) refers to the Licensing Act 1961, which is no longer on the statute books. Section 16(5) refers to references within section 16 itself, which no longer can be found in the section references to prescribed games. Section 16(6)(b) refers to the Local Government Consolidation Act 1916, which is no longer on the statute books. This particular clause removes it.

750

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

755 **The President:** The motion is that clause 7 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 8.

760 **Mr Lowey:** Clause 8 amends section 19 of the Casino Act 1986 so as to give a constable the right to enter premises under the temporary premises certificate. This right mirrors the constable's existing right to enter casino premises for the same function. This clause extends the ability for the Police to enter the live tournament, if necessary.

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

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

765 **The President:** Hon. Member, Mr Turner.

770 **Mr Turner:** Could I ask the mover – I do not whether he has got this information to hand, it may well be in the main Act – but with the right of constables to enter the casino, is there any liaison between, or what is the liaison mechanism between the Police and the regulator, the Commission, who ultimately are responsible for enforcing some of the provisions here? In other words, are we sure that the left hand knows what the right hand is doing?

775 **Mr Lowey:** I have stated at the very outset that the Isle of Man is well regulated. It is well regulated in the sense that the officers and the Gaming Commission liaise regularly and with the Police and *vice versa*. There will be occasions when the Police may want to enter premises, maybe at the direction of the operators of the casino, who may have suspicions and bring the Police in. There may be other times where the Police may wish to talk with the Gaming Commission. I think there is a very healthy... This does not add anything new, it just extends what is existing and I am rather pleased with the co-operation of the Police and the Commission in the way in which they
780 operate, safeguarding. The left hand *does* know what the right hand is doing. I can give the assurance to the Hon. Member that they are co-ordinated.

785 **The President:** The motion is that clause 8 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 9.

790 **Mr Lowey:** Clause 9 amends section 21 of the Casino Act to provide that all regulations made under the new part IIA must also be approved by Tynwald before coming into force. So the safeguard there is that all these new regulations which will come to guide the new temporary premises will have to be approved by Tynwald. Therefore, once again, people will know exactly what it is and all Members will have the right to debate those regulations when they come before Tynwald.

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

The President: The motion is that clause 9 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 10.

800 **Mr Lowey:** Clause 10: section 22 is amended.

Clause 10 amends section 22 of the Casino Act 1986 which contains the definitions of key words within the Act. It amends the definition of 'the Board' to remove the reference to the Isle of Man Gambling Board of Control. The clause also modifies the definition of the word 'prescribed' to broaden the regulation-making powers to include those regulations that can be created under the new part IIA.

805 Madam President, I beg to move that clause 10 stand part of the Bill.

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

810 **The President:** The motion is that clause 10 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 11.

815 **Mr Lowey:** Clause 11: schedule 1 is amended by clause 11.

Clause 11 amends schedule 1 of the Casino Act to extend the modifications that already apply to the application of the Licensing Act 1995 in respect of the casino in order to include those premises operating under the new temporary licence. In other words, once again, it is a replication. There is differentiation.

820 I beg to move that clause 11 stand part of the Bill.

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

The President: The motion is that clause 11 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 12.

825 **Mr Lowey:** Thank you, Madam President.

Clause 12 amends section 7 of the Gaming, Betting and Lotteries Act 1988 to extend the exemptions within that Act that already exist for casino advertising to those events which will run under a temporary premises certificate. This amendment refers to advertising the event in order to attract publicity and interest, and not the advertising of the application for the temporary premises certificate mentioned in the commentary to clause 5, section 12B above, in order to alert potential objectors to the proposal. In other words, this is an amending section so that they are able to advertise the event that they are hosting in temporary accommodation.

835 I beg to move that clause 12 stand part of the Bill.

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

840 **The President:** The motion is that clause 12 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 13.

845 **Mr Lowey:** Clause 13 amends section 8 of the Gaming, Betting and Lotteries Act 1988 to create a general exemption for gaming taking place under a temporary premises certificate. All gaming in the Isle of Man is illegal, unless specifically enabled by the Gaming, Betting and Lotteries Act 1988. The mechanism that the Gaming, Betting and Lotteries Act 1988 uses is a list of exemptions. The amendment in this clause adds into that list the playing of prescribed games under a temporary premises certificate.

850 Madam President, I beg to move that clause 13 stand part of the Bill.

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

The President: The motion is that clause 13 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

855 I think we can take clauses 14 and 15 together – although it does introduce the schedule as well.

860 **Mr Lowey:** Clause 14 amends section 48 of the Gaming, Betting and Lotteries Act 1988 so as to update the definition of a 'prescribed game' within that Act to include those games played under a temporary premises certificate. No games may be played in a casino or, by extension, under a temporary casino licence, unless they are on a list of games that can be found in the Casino Regulations 2011. Those games at the moment are: Roulette, Blackjack, Pontoon, Punto Banco, Bingo, gambling on horse races on a film or video, Casino Brag, Poker, games using dice, Baccarat – and here it is called 'Chime-de-fer' – (Mr Braidwood: Chemin-de-fer.) – it says 'chime-de-fer' so I am reading as from my script – Backgammon, Keno, Super Pan 9, Wheel of Fortune and the playing on automatic machines. Some list!

Mr Butt: No Whist then!

870 **Mr Braidwood:** No Snap either!

Mr Lowey: Clause 15 introduces a schedule of consequential amendments. Paragraph 1 amends the Gaming (Amendment) Act 1984 to enable regulations under section 12M to provide controlled machines, such as fruit machines, may be deployed under the temporary premises certificate.

875 Paragraph 2 amends the Value Added Tax and paragraphs 4 and 5 perform the same function for the following codes; Proceeds of Crime, Money Laundering and the Prevention of Terrorist Financing. All of those are actually in place and will be in place to make sure that it is not used as a front for laundering money, which gambling, we know, can be and is ruthlessly pursued in the Isle of Man, I may add.

880 I beg to move that clauses 14 and 15 stand part of the Bill.

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

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

Mr Callister: I am just smiling at Mr Braidwood's reference to Snap! It brings back to me, again, that we used to play as kids, a game called 'Strip Jack Naked'.

890 **Mr Braidwood:** Yes, that's right! *(Laughter)*

Mr Callister: It kind of links in to your pole dancing! We are glad to see that Snap and Strip Jack Naked are not on the list.

895 **Mr Lowey:** That's banned.

Mr Butt: I am sorry there are no Beetle Drives in there!

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

Partnership (Amendment) Bill 2012
Second Reading approved

905

3. Mr Braidwood to move:

That the Partnership (Amendment) Bill 2012 be now read a second time.

910

The President: We move now to Item 3 on our Order Paper, the Partnership (Amendment) Bill 2012, and I call on Mr Braidwood to move, please.

915 **Mr Braidwood:** Thank you, Madam President. A Bill which is a little bit more conservative than the Casino (Amendment) Bill.

Madam President, the purpose of the Bill is to insert additional accounting requirements into the Partnership Act 1909 in respect of limited partnerships. This is to ensure that the Island

920 complies with the recommendation of the OECD in respect of limited partnerships and that the
accounting records of those partnerships reflect the OECD standard. Care has also been taken to
ensure that compliance with the recommendation has not been at the expense of the commercial
attractiveness of the Isle of Man.

Madam President, I beg to move the Second Reading of the Partnership (Amendment) Bill
2012.

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

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

930

Partnership (Amendment) Bill 2012
Clauses considered

935 **The President:** We move on to clauses. Perhaps we could take clauses 1 and 2.

Mr Braidwood: Thank you, Madam President.

Clause 1 provides the short title of the Bill.

940 Clause 2 provides for the Act resulting from the Bill to be repealed on the day after its
promulgation. At this point, the amendments to the Partnership Act 1909 will have taken effect.
The automatic repeal does not affect the continuing operation of any of the amendments to
enactments made by this legislation.

Madam President, I beg to move that clauses 1 and 2 stand part of the Bill.

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

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

Clause 3.

950

Mr Braidwood: Thank you, Madam President.

955 Clause 3 amends section 30 of the Partnership Act 1909 by inserting a new subsection (2).
New subsection (2) introduces additional accounting requirements for limited partnerships that are
registered under the Partnership Act 1909. This is achieved by the insertion of a new section 48E
which sets out the additional requirements in detail.

Madam President, I beg to move that clause 3 stand part of the Bill.

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

960 **The President:** The motion is that clause 3 stand part of the Bill. Those in favour, please say
aye; against, no. The ayes have it. The ayes have it.

Clause 4.

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

A little bit longer than the other clauses. Clause 4 inserts new section 48E, limited partnerships
to keep accounting records. The detail as set out in new section 48E follows.

New subsection (1) makes it clear that the new section 48E does not limit the existing
accounting duties under section 30 of the 1909 Act.

970 New subsection (2) requires accounting records to be kept in respect of limited partnerships
that: correctly explain the partnership transactions; ensure that the financial position of a
partnership can be determined reasonably accurately at all times; allow for the preparation of
financial statements that give a true and fair value of the affairs of a partnership.

New subsection (3) details that records that a partnership must retain as part of the accounting
records. This includes invoices, contracts, details of assets and liabilities, sales and purchases.

975 New subsection (4) stipulates that the general partners must approve the partnership's financial
statements. Financial statements must include a written explanation of the transactions, assets and
liabilities of the partnership. Explanatory notes must be included where required, to ensure that
financial statements can be easily understood.

980 New subsection (5) clarifies that accounting records must be retained for at least six years after the year to which they relate.

New subsection (6) confirms that accounting records may either be kept at a partnership's principal place of business or elsewhere at the discretion of the partners. Records must be available for inspection by partners during office hours.

985 New subsection (7) clarifies that where accounting records are held outside the Island, copies must be sent to the Island.

Under new subsection (8), copies sent to the Island must be updated at least once every six months.

990 New subsection (9) creates the offence of not complying with the provisions of new section 48E.

New subsection (10) sets out the penalties for commission of an offence.

Madam President, I beg to move that clause 4 stand part of the Bill.

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

995 **The President:** Lord Bishop.

The Lord Bishop: Thank you, Madam President.

1000 Can I just ask a question on subsection (5) – records being kept for not less than six years. I have no doubt there is an easy answer to this, but I remember, when I was a parish priest in the UK, that we had regulations presented to us about church ordinary parish finances that had to be kept for 50 years under UK regulations, and it just seems six years is such a short period of time. I have experience on the Isle of Man of a number of cases where I would have liked to have gone back beyond six years.

1005 **The President:** The Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Madam President.

Yes, I think the six years is the statute of limitation, but I think it is in –

1010 **Mr Lowey:** The UK now.

1015 **Mr Crowe:** – Income Tax legislation which we passed a couple of years ago, where records have to be maintained on Income Tax for a limited period. So I think it is statute for six years, but I would just like to add that a lot of what you are putting into statute is good practice anyway. I would think partnerships will be keeping records, financial records, and will be maintaining those records. I think the important point that we are adding to this is the OECD recommendation that we comply with their broad principles and frameworks. So I think what is probably happening is that people who are in partnerships concurring or adhering to these good practice regulations and accounting regulations, but it is putting it into statute for the OECD purposes.

1020 **The President:** The Hon. Member, Mr Callister.

1025 **Mr Callister:** Yes, just in relation to this same section, this subsection (5) that we are referring to here and this preserving for six years. In the 1909 Act, was it less than six years or was it the same or was there no requirement whatsoever? Is it an actual change?

Mr Crowe: You would need to know when the statute of limitations was brought in and I do not know whether it predated the 1909 Act or not.

1030 **The President:** The mover to reply.

Mr Braidwood: Thank you, Madam President.

1035 The latter, first. In actual fact, I will check on that, but as I think it has been answered by Mr Crowe the statute of limitation is six years for all tax purposes. VAT is normally kept for six years, but I will check on the 1909 Act to see what time limitation was there. It is a little bit before my time, but I will return.

In regard to the Lord Bishop's comments, I think it is essential, such as parish records, whatever are kept, and probably kept for longer than 50 years –

1040 **The Lord Bishop:** I meant accounting records.

Mr Braidwood: I am sorry. Accounting records. Why that is the case, I do not know, Madam President. I would not like to comment on some of the parish records, which have not been kept recently (*Laughter*) in the Island.

1045 I beg to move clause 4.

The President: The motion is that clause 4 do stand part of the Bill. Those in favour, please say aye: against, no. The ayes have it. The ayes have it.

1050

Legal Aid (Amendment) Bill 2012
Second Reading approved

1055 4. Mr Lowey to move:

That the Legal Aid (Amendment) Bill 2012 be now read a second time.

1060 **The President:** We move on now to Item 4 and I call on Mr Lowey to take the Second Reading of the Legal Aid (Amendment) Bill 2012.

Mr Lowey: Thank you, Madam President.

1065 I would like to thank Hon. Members for their comments during the First Reading of the Bill last week, some of which contained – I am almost certain, because I shared it – an element of frustration in relation to perceived inconsistencies in relation to the award of Legal Aid; also in relation to the way in which cases funded by Legal Aid are mitigated.

1070 It was noted that the comments made included references to criminal Legal Aid, and I want to point out straight away that this Bill does *not* deal with criminal Legal Aid. There is currently a review going on in relation to current practices, processes and procedures involved within the criminal justice system. I think it is under the chairmanship of the Minister for Home Affairs. This will, no doubt, encompass the provision of criminal Legal Aid, but I am sure my hon. colleague will have had a wealth of opportunity to contribute, I hope, to that review.

1075 May I respectfully suggest, Madam President, that concerns in respect of criminal Legal Aid or the criminal justice system are not relevant to the debate of this particular Bill. I would like to reiterate the main objectives of the Bill, which, again I must stress, relate solely to the provision of civil Legal Aid and not criminal Legal Aid. They are as follows: to allow Legal Aid to be made available for mediation at the earliest possible stage of a dispute; to provide for greater recovery of Legal Aid costs by way of contributions from the assisted persons and the introduction of a statutory charge to create a Legal Aid Appeals Tribunal; and to reconstitute the existing Legal Aid Committee, so that its membership is predominantly made up of non-lawyers and to extend its functions to include oversight of the Legal Aid Certifying Officer and Legal Aid Administrator.

1080 Madam President, the provisions contained within the Bill enable regulations to be drafted for consideration, which of course will subsequently be subject to debate and, ultimately, Tynwald approval. All we are doing here is making ‘enabling’.

1085 Whilst I have noted, and as I have said, shared the concerns and frustrations raised by my hon. colleagues at the First Reading, it was with due respect that I suggested such concerns can only be addressed by approving this Bill because, if we approve the Bill, at least we have set up the machinery that will enable criminal Legal Aid to be looked at by independent external forces.

1090 Following the introduction of this Bill, I anticipate that the newly constituted Legal Aid Committee will be charged with a complete review of Legal Aid provision in the Isle of Man. This will provide an opportunity for concerns as exemplified by the comments of hon. colleagues last week and, as I say, at least it will be considered and, if appropriate, addressed.

1095 Clearly, the introduction of this Bill will lead to a requirement for new secondary legislation to be drafted and introduced very soon thereafter. However, in addition, once the newly constituted Legal Aid Committee have had an opportunity to undertake a complete review of Legal Aid – which could include a review of criminal Legal Aid – this will almost certainly lead to a further Legal Aid (Amendment) Bill being drafted for progression during this session.

1100 Madam President, before moving on to the clauses of the Bill, I would like to address the concern raised at the First Reading in relation to the availability of Legal Aid in relation to what can be described as pre-court negotiations. I can confirm that Legal Aid funding is available in

principle in relation to pre-court negotiations and furthermore, is actually encouraged. It is now normal practice for Legal Aid certificates, when granted, to be limited specifically to allow the assisted person to focus on and try and negotiate a settlement. Of course, this limitation may be lifted if the assisted person can then evidence that they tried to settle the matter without success. So it does not deny them continuous Legal Aid if they have to go to court.

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Madam President, as mentioned, one of the main objectives of this Bill is to enable Legal Aid to be provided for mediation at the earliest possible stage in a dispute, and of course in the majority of cases it is anticipated that mediation would take place well in advance of the parties seeking to try and resolve the dispute through the courts.

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Mediation is, of course, a mechanism which encourages and allows the parties to attempt to settle a dispute without the need to go to court. A number of benefits have been identified where parties have agreed to settle a dispute in manner and it is outwith the court process, which includes – and this is actually proven now in the United Kingdom, where this is actually in being – a less costly process for all involved; a reduction of conflict, which in child-related family matters is a significant benefit which cannot be understated; an increased likelihood that the parties will accept and adhere to the agreed solution; and a reduced likelihood that the parties will return to court in relation to the same issues, which in turn will lead to a reduction in cases being progressed before the courts.

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Madam President, I hope I have allayed the concerns raised by Hon. Members last week at the First Reading, and I will move the Second Reading of the Legal Aid (Amendment) Bill, to be read a second time.

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

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The President: The Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Madam President.

I will just touch on mediation, which I think is a very positive move forward and I think, as the hon. mover has said, is actually practised on the Island. I went onto the Isle of Man Law Society website and it is mentioned and is a feature of seven of the advocates' law practices. There were fairly brief references to mediation on some of the websites, so I went on to the English Law Society and there is a lot greater depth and this was followed by me going onto the website of the Family Mediation Council. It is very interesting that this has become quite a Council in its own right, where members get qualifications to mediate and it takes the angst out of family disputes and divorces, and I think it is a positive move forward to help marital breakdowns to reach a satisfactory conclusion with a mediator. Although people are encouraged to use mediation, it says that if one party refuses to be involved, then it has to go through the normal process: you can lead a horse to water but you cannot make them drink, so to speak.

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I will be supporting this Bill, but the mediation part is the one that interests me particularly.

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The President: The Hon. Member, Mr Butt.

Mr Butt: Thank you, Madam President.

I would like to thank the mover for clarifying that this Bill does not concern criminal Legal Aid, because I think myself and other Members last week perhaps were talking about criminal Legal Aid and in the amending Bill, there does not seem to be much reference to say that it is purely civil Legal Aid, although I suppose a reading of the 1986 Act would have shown that quite clearly.

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The fact that it is no longer criminal Legal Aid and it is purely civil has taken away a lot of my concerns, because my concern was, last week, that some of the changes would actually give people charged with criminal offences less ability to actually defend themselves, and when liberty is at stake it is very important that that ability should not be reduced.

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So I would like to thank the mover for actually spelling out that this is not criminal Legal Aid; this is civil Legal Aid and will make my task on this much simpler.

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The President: The Hon. Member, Mr Downie.

Mr Downie: Thank you, Madam President.

I just wish to speak in support of the Bill, but following on from our last sitting, I was drawn to a lot of work that has been done by the UK Lord Justice, Ken Clarke. As Hon. Members may not be aware, the UK are totally overhauling their Legal Aid system, both criminal and civil, and an

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1165 awful lot of work has been done in that particular area to try and deal with the problems that we are facing here on a much smaller scale, but in the UK, there is now a massive problem, because they physically have not got the money and they are forced to make some quite stringent changes to the way they go about things.

I think the Bill that is before us today does provide a really good framework. We have got an appeals panel and so on and perhaps unfairly, those making the decisions in the past have been in the position where they have not had the privilege of relaying this on to other people, or to get advice from other people and perhaps that is why there has been some criticism of the system in the past. I think the Bill that is before us will bring about a significant improvement in the system. All I would ask is that there are regular updates from the courts to actually show how much money is being spent in these areas.

1175 I think one of the issues that Ken Clarke has been dealing with is providing a system where people could see which part of the country the Legal Aid has been going to. There was a comment on today's Radio 4 programme about Mr Hamza, who they have already paid £900,000 in Legal Aid to, so you can understand why there is concern. A different set of circumstances, of course, on the Isle of Man, but there again we have got to be seen to be fair here as well and have a system that deals with the issue, but at the same time is open to some scrutiny. I think if we can bring that together, bring that to bear, a lot of people will be much happier about the Legal Aid system.

1180 **The President:** The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

1185 I am still rather concerned. The mover mentioned that the Legal Aid is available for negotiations, and I described it as a ping-pong of letters going backwards and forwards. I think this is the reason why we have so many complaints to Tynwald and petitions being lodged, because there are a vast number of people who are on an income which is sufficient for their day-to-day life, and then, when they are suddenly hit with a challenge by somebody who is legally aided, what this legislation does is provide for a huge disadvantage for the person who is not legally aided.

1190 In the petitions that have come – some of them over property and the likes – we have seen people literally running up thousands and thousands of pounds' worth of bills and, in some cases, ending up losing their home because of the costs that have been run up through other parties having the means to fight those cases. One of the concerns I have is that if a legally aided person is pursuing a property, they may well come into a property which could be worth a substantial amount of money, whereas the state has funded their case and the other person has had to fund it themselves. I think that was certainly one of the cases... Myself and Mr Butt were talking to somebody who was chatting to us about a property situation. So there are problems. Whilst this is aimed at helping people who genuinely need assistance, I think we have to bear in mind that the whole set-up can cause huge disadvantage to a lot of people. I think there should be a mechanism – and I would like to hear from the mover – where an unaided person is able to make representations and object to the granting of Legal Aid, I would like to know about that mechanism.

Thank you, Madam President.

1205 **The President:** The Hon. Member, Mr Wild.

Mr Wild: Just to give, Madam President, the Second Reading my support on the basis, like my hon. colleague, Mr Crowe, I do believe that mediation is an extremely important way forward, having experienced it from a personal perspective in my former commercial background, where it was found to be very effective, and hopefully in a civil basis it will be equally so.

1210 Likewise, I think the Bill itself will hopefully act as a catalyst to begin to evolve and improve the existing system to recognise the concerns expressed by my hon. colleague, Mr Turner.

Thank you.

1215 **The President:** The mover to reply please.

Mr Lowey: Yes, I thank Hon. Members for their comments on the Bill, especially Mr Crowe and his emphasis that it is about mediation; it is. Of equal importance though, it does create a framework that has been strongly recommended by select committees.

1220 Can I just deal with the point that was made by my hon. friend, Mr Turner, when he says, will the person agree to have the right to complain? Yes, they will, and in this instance they will have a tribunal that is independent and not of the legal profession, but mainly of lay people. So it is

already...

1225 Can I just give you one of the recommendations of the last Select Committee, which reported in... the Select Committee of Tynwald on Legal Aid in Family Matters (Petition of Redress of Grievance). One of them, recommendation 3:

1230 'That a new Board should be put in place with a general remit to oversee the administration of the legal aid system, and a specific responsibility to review the actions of the Certifying Officer in response to representations from the opponent of an assisted person. The Board should be unable to sit unless a majority of members present are non-lawyers.'

Well, that has already been included, they will be virtually all non-lawyers.

1235 The summary of the conclusions also says:

'We do not accept that the risk of vexatious abuse need be an insurmountable barrier to putting in place some improvement to the current procedures. In fact, we think an improved procedure may well reduce the number of complaints being submitted to the Advocates Disciplinary Tribunal.'

1240 For example, I agree with the Hon. Member, vexatious problems and genuine problems are to somebody who is aggrieved, it is a genuine problem, but maybe to another party it may be vexatious; but the system, I think, that we are going to put in place will ease the problem, not increase the problem.

1245 While I cannot give a guarantee that every case will be satisfactorily covered, I can give an assurance that what we are putting in place is a marked improvement on what we have got at the moment and meets all the requirements that have been set out over the years, and this has been going on – as I said at the First Reading – since 2002. So it is a long time in the coming, but I think we have learnt from other jurisdictions and we have put in place what I think is a reasonable framework to deal with civil Legal Aid.

1250 My hon. friend, Mr Butt, is absolutely right. Where you are dealing with the criminal Legal Aid, where the rights, the liberty of the individual can be taken away – he can be incarcerated – then there is a different ball game again for the granting of Legal Aid. Again, I have tried to spell out that already. As we speak there is an internal Government review of all Legal Aid matters, especially with criminal Legal Aid matters.

1255 Underpinning all of this equally – and I do not think we can get away from it – there has been a spiralling cost to Legal Aid of all types over the years. I have to say that in civil Legal Aid, for example, we have increased the bandwidths, if you like, on three occasions in the last three years, so in fact there is an increase in allowances that people do, but whenever you have a cut-off point, you will always have people just the other side of the line, no matter where you draw the line.

1260 I do think that we have not been denying the access to justice, but there has to be an eye on the cost. Hopefully, when we get less litigation in the civil courts, it will actually be money well spent. I think it will be a stitch in time. That is the evidence that we have picked up from the UK and I hope it will be reflected here in the Isle of Man.

1265 With that, I would move that the Bill be read a second time – the Legal Aid (Amendment) Bill.

The President: The motion is that the Bill be read a second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

1270

Legal Aid (Amendment) Bill 2012
Clauses considered

1275 **The President:** Moving on to clauses, can we take clauses 1 and 2 together, please?

Mr Lowey: Thank you, Madam President.

Clauses 1 and 2 provide for the Bill's short title and commencement. Except clauses 1 and 2, which would come into force when passed, commencement would require an Appointed Day Order to be made by the Treasury.

1280 Madam President, I beg to move that part 1 – that is clauses 1 and 2 – stand part of the Bill.

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

The President: The motion is that clauses 1 and 2 do stand part of the Bill. Those in favour,

1285 please say aye; against, no. The ayes have it. The ayes have it.
Clause 3.

Mr Lowey: Part 2 of the Bill – that is to say clauses 3 to 18 – amends the Legal Aid Act 1986. Clause 3 introduces the amendments.

1290 I beg to move that clause 3 stand part of the Bill.

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

1295 **The President:** The motion is that clause 3 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 4.

1300 **Mr Lowey:** Clause 4 amends section 1 of the 1986 Act so as to provide for Legal Aid in relation to mediation, and that where it is so given, the Legal Aid be unavailable for proceedings during the currency of the mediation. At present, there is a perceived lack of clarity as to the point at which Legal Aid is available for mediation. The amendment makes existing legislation clear and will allow Legal Aid to be issued for mediation at the earliest possible stage in a dispute.

1305 Madam President, it is anticipated that making Legal Aid available for mediation early in a dispute will provide a number of benefits, which include providing a less costly process for all involved; a reduction of conflict between the parties, which will mean the parties are more likely to focus on the best interests of any children involved, where the mediation relates to family law matter; and an increased likelihood that the parties will accept and adhere to the solution, therefore reducing the likelihood of the parties returning to court in the future.

1310 It is anticipated that this will lead to a reduction in cases being progressed to court, which in turn will lead to other cases that need to be heard in court being dealt with more quickly. It is a win-win situation, Madam President.

I beg to move that clause 4 stand part of the Bill.

1315 **Mr Braidwood:** I beg to second, Madam President, and reserve my remarks.

The President: The motion is that clause 4 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 5.

1320 **Mr Lowey:** Clause 5, Madam President, makes changes to section 2 of the 1986 Act for the purposes of clarification. An application for civil Legal Aid has to satisfy two main tests: a legal merits test and a financial means test. Madam President, this is a relatively minor amendment arising from the report of the Legal Services Commission. The Commission felt that it was necessary to provide greater clarity in relation to the legal merits test within family Legal Aid legislation.

1325 Clause 5 also clarifies that an application must pass both tests. It is no use passing one, if you cannot get them both.

Madam President, I beg to move that clause 5 stand part of the Bill.

1330 **Mr Braidwood:** I beg to second, Madam President, and reserve my remarks.

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

1335 In this, the mover mentions passing the legal merits test. Of course, the whole idea of any case is that the parties are in dispute and think it has merit to pursue forward, and the mechanism for settling the merits is decided ultimately by the court. So who, in this case, would pre-judge, I suppose, whether it has merit? I am interested in (b), where it says:

1340 ‘if it appears unreasonable that the person should receive it in the particular circumstances;’

This may well be going some way towards a safeguard towards what I was looking for, but who decides whether it is unreasonable? Obviously, the two parties would have opposing views, and then would the mechanism for objecting to that be the new panel that is set up?

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Mr Lowey: The person who would be adjudicating initially would be the Legal Aid Adjudicating Officer, or his deputy, as that refers to at the moment, and there is an appeal procedure if there is... People have the right to appeal. So I can give those assurances.

1350 **The President:** The motion is, then, that clause 5 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 6.

1355 **Mr Lowey:** Could I, with your and the Council's permission, move clauses 6, 8, 9 and 18 together? That does seem an odd choice I think, but these are all clauses relating to the same issues. But, if not, if you would prefer me to take them one at a time, I am very happy to take them one at a time.

1360 **The President:** We are quite content to take them in the order you seek to do so. They are related –

Mr Lowey: That is the manner in which they have been presented to me. They all fit the same criteria and should be dealt with at the same time.

1365 Clauses 6, 8, 9 and 18 introduce what are, in effect, housekeeping amendments to the identified provisions of the 1986 Act which removes specific reference to specific Social Security benefits – when I get round to them you will understand why – which presently provide automatic financial qualifications for Legal Aid from primary legislation, and instead enables qualifying benefits to be prescribed by regulations – so they can alter by making regulations – made by the Legal Aid Committee and approved by Tynwald. Once again, these cannot be done in isolation. They will
1370 have to be approved by Tynwald.

As these clauses all deal with the same issue it is convenient to take them all together. Primary legislation should be enabling legislation with the prescription appearing in regulations. These amendments will render it easier and quicker to amend or update the list of qualifying benefits. For
1375 example, if either more state benefits become automatic qualifying benefits, as happened in 2008, or if the name of the benefit changes, as happened in January 2012 for example, clause 6 also contains a consequential amendment which arises from clause 7.

Really, what I am saying there is it is really to deal with the type of name that is given to a benefit that will entitle somebody automatically to get it. That can change. We need the ability to
1380 be able to change quickly. Those clauses actually enable that to happen.
I beg to move clauses 6, 8, 9 and 18 together, please.

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

1385 **The President:** The Hon. Member, Mr Turner.

Mr Turner: Madam President, I support the provisions in this clause; however, I feel it should go further, really, because I do not think there should be any automatic entitlement to Legal Aid whatsoever. I think it should be subject to the scrutiny, and I think when you start giving automatic
1390 benefits it opens up whole other problems that can occur. I would much rather have seen this clause go further, in that it removed all entitlement to *automatic* benefits to Legal Aid and that each case, as it comes forward, should be given scrutiny on its individual merits, *not* automatically because of some link to benefits issued by another Department.

1395 **The President:** The mover to reply, please.

Mr Lowey: I can have a bit of sympathy with that point of view. The reality is though that many of these benefits are what I would call basic. The history must be that they automatically qualify because they are on what I would call the basics of living. You and I may differ on what is basic, but I understand the point that the Hon. Member is... If everybody starts off with the same,
1400 that they have to prove what they are getting... I think it is more from an administrative point of view that these benefits have been chosen as the basics. If you are on that, and only that, you should automatically get it. It is a point of view, but it is in the Bill and I would ask us to keep the Bill intact.

1405 **Mr Turner:** I support the clause, yes.

The President: The motion is, then, that clauses 6, 8, 9 and 18 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 7.

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Mr Lowey: Thank you, Madam President and I thank Council for, what I would call, doing the (**The President:** Leapfrog!) leapfrog – it was a leapfrog and a half!

Clause 7 replaces section 4 of the Act and deals with the payment of contributions from assisted persons and the way in which such contributions may be paid or recovered.

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Madam President, clause 7 is an enabling provision, which will allow regulations to provide for Legal Aid to be funded, either wholly or partly, by contributions made by assisted persons.

Clause 7 also enables regulations to provide for the recovery of any unpaid contributions plus any interest that may or may not accrue, which may include placing a charge upon property recovered or preserved following conclusions of the proceedings.

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Madam President, both the Legal Services Commission and the Select Committee of Tynwald made recommendations that a statutory charge be introduced in relation to civil Legal Aid. Clause 7 addresses those recommendations.

It will have been noted by my fellow Members, following consideration of the Bill, that clause 7 will *potentially* allow regulations to be introduced which would make civil Legal Aid available by way of a loan. At present, approximately 90% of persons awarded civil Legal Aid passed the financial means test, by virtue of their receipt of an income-based state benefit and are therefore not required to contribute towards the cost incurred under their Legal Aid certificate.

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Madam President, in 2011, the Council of Ministers agreed that a subcommittee of Council, consisting of the Treasury Minister, the Minister for Home Affairs, with the support of officers from Treasury, the Department of Home Affairs and the General Registry, should consider the options in relation to extending the criteria for paying contributions and report back to Council for consideration. There are two main issues which are being considered by the subcommittee and they are: (1) the amount of funding required to operate and maintain a Legal Aid scheme on the Island; (2) to focus persons in receipt of Legal Aid on the part they play in the proceedings and to provide a clear incentive for them to reach an early and amicable settlement and resolution.

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It is acknowledged that my fellow Members will have concerns in relation to the level of current Legal Aid expenditure and the level of income currently received by way of contributions. However, whilst Members may wish to address this situation, they will also quite properly be concerned as to the impact new regulations made under clause 7 will have on persons seeking Legal Aid and as a consequence, access to justice. I acknowledge those concerns and as a consequence of this, I can confirm, that any recommendations or proposals in relation to the making of regulations under clause 7 of the Bill will first be subject to the approval of the Council of Ministers, following on from which they will be referred to the newly constituted Legal Aid Committee for consideration, before then being subject to a period of public consultation. The regulations will then, of course, be subject to final consideration and approval of Tynwald in the usual manner.

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So the question of costs is one that is actually keeping the Government's mind very finely attuned and the balance between justice, and also the costs involved. I think everybody who avails of them, no matter whether you are on a minimum wage and somebody on a minimum Income Benefit, if one can afford to pay a contribution, then everybody should be able to pay a contribution. That may seem strange, coming from Eddie Lowey, but I believe it to be correct and proper.

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Knowing that they will have the further opportunity to comment and determine the extent of the relevant regulations made in relation to Legal Aid funding, I am hopeful, Madam President, that this will provide comfort to my fellow Members which will allow them to agree to this clause.

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Madam President, I beg to move that clause 7 stand part of the Bill.

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

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The President: The Hon. Member, Mr Downie.

Mr Downie: I have got a couple of queries here, and forgive me for bringing them up at this point, but it is just something I noticed in the Bill and if the Hon. Member does not have the answer now, perhaps he could give it to me at the Third Reading.

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Firstly, when earnings are taken into consideration in this particular clause, are we using the benchmark of, I think it is, £14,500 a year, the same as we use for a benchmark for benefits? There is so much a person is allowed to have in their own savings before they qualify for benefits.

1470 The other question that I want to ask is in this clause, in (1)(b), we mention expenditure being by way of loans to be repaid to assisted persons and I would just like to say that if the mediation process or the court process, there are provisions within the civil side of Legal Aid for the courts or the mediator to impose an order where they can remove from a person's income, the same as they can do with other issues that come before the court, because I think in the past what has happened is a lot of promises have been made about repayment and so on, and I think we are still waiting for the money, in some cases.

1475 Wouldn't it be much better, when these matters come before the courts, if somebody says, 'Right, we are giving you a loan which has to be repaid, but in order to make sure that it will be repaid we are going to attach an order to your earnings,' so that at least there is some money coming back into the system?

1480 I notice later on in the legislation we have got regulations for the recovery of unpaid contributions or outstanding loans, together with interest at a prescribed rate. Wouldn't it be better off nailing it down on the day and having an order on the earnings, so at least you know that there is money being taken from the person's earnings, and at least you are going to get something, instead of spending a fortune trying to get the Coroner to run round getting money out of people that they are never going to have?

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Mr Braidwood: Attachment.

The President: The Hon. Member, Mr Crowe.

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Mr Crowe: Thank you, Madam President.

Just picking up on Mr Downie's point, looking at the clause, it is not clear if a decision will be made at the outset: if an applicant is for Legal Aid and there are two parties involved, will the adjudicating officer say, 'Yes, we will fund you for x pounds as a gift or grant, and the balance will be by way of loan'? So that is one way of doing it at the outset.

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Or is it at the conclusion of the legal proceedings, is it retrospectively determined as to which is granted and which is loan? It is just a technical point and presumably the regulations will determine it when they come to Tynwald anyway, as to whether it is at the outset or retrospective. So it may not be part of the Bill, but it will probably come in the regulations. (**Mr Lowey:** It is.) So I have answered my own question.

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Mr Lowey: You have. (*Laughter*)

The President: If no other Member wishes to speak, the mover to reply, please.

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Mr Lowey: I think, on the principle, Mr Downie is right that most of the Select Committees that have reported since 2002, and the committee set up by the Council of Ministers, have come to the conclusion that charging somebody for the service makes them more responsible. They are more likely to do it if they are having to pay for it, or pay a part of it.

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I am told the attachment of earnings and the financial means test is linked to the test used by the Department of Social Care in relation to employed persons' allowances, so there is a fee. That will be judged by the adjudicating officer and that is the formula that they will use when you start to pay. The attachment of earnings and other mechanisms to recover contributions will be considered by the newly formed Committee looking into Legal Aid – this is the job of the Legal Aid Committee – and will be, again, part of regulations that will be set up by them.

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Of course, I come back to the point those regulations will all have to be approved by Tynwald. So again, any concerns that Members may have that it is either too harsh, it is too punitive or it is not harsh enough, or it needs to be extended a bit, you will have the opportunity, when those regulations are placed before you, to comment on it. But there is a formula and that is the formula that is to be applied and again, the saving grace all of this time is that we have brought the whole thing up to date.

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It is now... the Legal Aid Committee, of course, used to consist of all judiciary. It was the Chairman of the Magistrates, it was the First Deemster. I do not know how they had time to sit in court, really, but those were the people who were dealing with the matter. Now it has changed completely. It is nearly all lay people who will be sitting in adjudication, and the adjudicating officers are overseen and are being monitored as to what their job is. So again, there is an audit trail that is in place, or will be in place when this Bill is actually passed.

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So, with that, I would ask Members to support clause 7 of the Bill as printed.

1530 **The President:** The motion is that clause 7 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 10.

Mr Lowey: Thank you, Madam President.
1535 Clause 10 amends section 14 of the Act, which deals with the disclosure of information supplied to the Legal Aid Office as part of a Legal Aid application.

Clause 10 amends section 14 of the Act so that the consent of the assisted person and/or author is required to be provided in writing to the Legal Aid Office before disclosure can be given. The receipt of written consent will evidence that section 14(2) has been complied with and will also evidence that consent was given at the time that any information was disclosed.

1540 Clause 10 also introduces specific provision for records to be made available for internal audit purposes. So, again, it is a clear audit thing of where permission has been granted. Clause 10 deals with that.

I beg to move clause 10 stand part of the Bill.

1545 **Mr Braidwood:** I beg to second, Madam President, and reserve my remarks.

The President: The motion is that clause 10 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 11.

1550 **Mr Lowey:** Clause 11 amends section 16 of the 1986 Act so as to make provision that regulations may specifically provide for the appointment of a Legal Aid Certifying Officer and Deputy Legal Aid Certifying Officers.

1555 It should be noted that regulations made by the Legal Aid Committee under section 16 of the Act already contain a provision in relation to the appointment of the Legal Aid Certifying Officer and Deputy by the Lieutenant-Governor. However, in July 2011, Tynwald received the Council of Ministers' Report on the Functions of the Lieutenant-Governor under the Acts of Tynwald and approved all of the recommendations. The Report referred to the appointment of the Legal Aid Certifying Officer and Deputy Legal Aid Certifying Officer and included the following proposal:
1560 consideration should be given to who appoints the Legal Aid Certifying Officers in the regulations made by the Legal Aid Committee under the Legal Aid Act, as part of the process of taking forward the Legal Aid (Amendment) Bill.

Madam President, further consideration will be given as to who should appoint the Legal Aid Certifying Officer and Deputy Legal Aid Certifying Officer, following the introduction of this
1565 Bill, by the newly constituted Legal Aid Committee. As part of that process, it is necessary to introduce specific reference to the appointment of those officers within primary legislation.

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

1570 **Mr Braidwood:** I beg to second, Madam President, and reserve my remarks.

The President: The Hon. Member, Mr Turner.

Mr Turner: Can I just ask the hon. mover then, does this potentially mean that the
1575 appointment of these posts change from a Crown to a political appointment, in effect, depending on where and who is going to make the appointment?

Mr Downie: I would just like to comment on that.

1580 **The President:** Mr Downie.

Mr Downie: I would like to comment on that. I would assume, as the Isle of Man Government is paying for the justice system at the present time, it is right and proper that we have some control over this particular area and we have the ability, as we do now, to make our own legislation. I think it is another example where we are moving on as a jurisdiction and although justice is carried
1585 out in the name of Her Majesty the Queen, at the end of the day, the buck stops with us and we have to foot the bill.

The President: The mover to reply please.

1590 **Mr Lowey:** Yes, it is one of the things we do and have done for a while. What have we done
with the powers of the Lieutenant-Governor? And this is not a reflection on the present incumbent
or previous ones, but the fact of the matter is, we have consistently removed powers from the
Governor's power to appoint. To that extent, we set up an independent Appointments
1595 Commission, who then would deal with the appointments at arm's length from Government. It is
appointed by the Council of Ministers, but it then has the role to appoint.

So this particular clause allows the system to go on, but it will then be considered by the Legal
Aid Committee, once that independent body is set up in operation and they will then decide who
will appoint the Legal Aid qualifying officers.

1600 I beg to move.

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

Clause 12.

1605 **Mr Lowey:** Clause 12, Madam President, makes consequential amendments to the definitions
contained within section 17 of the Act in line with the amendments contained throughout the Bill.
You will note that, most notably, the definition of 'mediation' is introduced as a consequence of
the use of that term in clause 4 of the Bill.

I beg to move that clause 12 stand part of the Bill.

1610

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

The President: The motion is that clause 12 do stand part of the Bill. Those in favour, please
say aye; against, no. The ayes have it. The ayes have it.

1615

Clause 13.

Mr Lowey: Clause 13 replaces section 23 of the 1986 Act so as to provide for the
reconstitution of the Legal Aid Committee.

1620 Section 23 currently requires the Committee to consist of the First Deemster and Clerk of the
Rolls, the Attorney General, the President of the Isle of Man Law Society and the Chairman of the
Isle of Man Magistrates' Association. The introduction of this reconstituted Legal Aid Committee
is in line with the recommendations put forward by the Select Committee, specifically that the
Committee should be made up of a majority of members who are not lawyers and whose functions
1625 should include the determination of general policy with respect to Legal Aid; to oversee the Legal
Aid Certifying Officer, Deputy Legal Aid Certifying Officer and Legal Aid administration; and to
adjudicate upon any complaints which are outside the authority of the Legal Aid Tribunal, which
in the next clause we will be referring to.

1630 Clause 13 provides for the appointment of the members of the Legal Aid Committee by the
Appointments Commission. It is to consist of between five and seven members, of which not more
than three are to be lawyers. Non-lawyers are to be in the majority at each sitting of the Committee
and the Committee's functions are expanded to include oversight of the administration of Legal
Aid and to adjudicate on any complaints, other than matters within the jurisdiction of the Legal
Aid Appeals Tribunal as to the exercise by the Certifying Officer and other officers which are
appointed under section 16(2)(c)(ii), of any of the officers' functions.

1635 Madam President, during the reading of the clauses of the Bill in the House of Keys, an issue
arose as to the appointment of members to the Legal Aid Committee and the Legal Aid Tribunal. I
would like to take the opportunity to provide clarity in relation to the issue, in case my fellow
Members shared the same concerns.

1640 Members of both the Legal Aid Committee and the Legal Aid Tribunal will be appointed by
the Appointments Commission. The Appointments Commission is an independent body which
was established by the Council of Ministers under the auspices of the Tribunals Act 2006. The
principal function of the Appointments Commission is to make appointments in accordance with
relevant legislation to various tribunals and other bodies. The Appointments Commission currently
1645 consists of five members who are individually appointed by the Council of Ministers, following
consideration of an application and interview process.

1650 Following the introduction of this Bill, the General Registry, following discussions with such
bodies as they consider relevant, will provide the Appointments Commission with a person
specification, which will detail the appropriate skills and experience required of members to be
appointed to the Legal Aid Committee and the Legal Aid Tribunal. Therefore, they will set a job
description, but it will be the Appointments Commission that will actually pick the individuals.

Madam President, I beg to move that clause 13 stand part of the Bill.

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

1655 **The President:** The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

1660 I support the provisions here to move away from the judiciary dealing with this to a more lay-person-based committee. I would like to ask the mover – and I apologise, as I cannot remember the answer to this – but when the Appointments Commission appoint a body, does that come for Tynwald approval or not? We have a variety of bodies that do come for Tynwald approval, and I am not too sure whether it applies in the case of the Legal Aid Committee and the Legal Aid Appeals Tribunal.

1665 **The President:** The mover to reply please.

Mr Lowey: I wish I could give a definitive answer. I would assume the... I would rather reserve judgment on that and give him the answer after clear consideration at the Third Reading. You are right. Some do and some do not. I do not know whether this falls into which category.

1670 **The President:** The motion is then that clause 13 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 14.

1675 **Mr Lowey:** Clause 14 introduces a new section 23A which establishes a Legal Aid Appeals Tribunal.

1680 Madam President, during their deliberations the Legal Services Commission who, as I previously mentioned, sat in 2002 and reported in 2003, performed a recommendation that Legal Aid legislation should contain provision for the existence of two separate Legal Aid Authorities: firstly, a Legal Aid Committee, who should consider regulations, Legal Aid policy and oversee the administration of Legal Aid; and secondly, a Legal Aid Appeal Tribunal which should determine appeals from the assisted persons where there has been a refusal to grant Legal Aid or a refusal to amend or extend the scope or limitation of their Legal Aid Certificate.

1685 Clause 14 establishes the Legal Aid Tribunal as a part 2 Tribunal, within the meaning of the Tribunals Act 2006. It is intended to replace the Committee as the body responsible for the determination of Legal Aid appeals and it is to have such jurisdiction as may be prescribed by regulations made by the Legal Aid Committee. Such regulations also require, by the way, the approval of Tynwald Court.

1690 Madam President, as I mentioned a few moments ago, members will be appointed to the Legal Aid Tribunal by the Appointments Commission.

1695 Hon. Members will recall that during the First Reading of this Bill I mentioned that the issue of Legal Aid appeals was also considered by the Select Committee, focusing principally on the unassisted person. The Select Committee endorsed the creation of a Legal Aid Tribunal and further recommended that the remit of the Tribunal be extended to include appeals from the opponent of the assisted person, in relation to the decision to award or continue to award Legal Aid to an assisted person. I think that answers the point that my friend, Mr Turner asked earlier.

1700 Clause 14 does not, of course, itself set out the detail of remit of the Tribunal, but I remind my colleague that the functions of the Legal Aid Committee will include the making of regulations to prescribe the jurisdiction of the Tribunal and I have no doubt that the recommendations of the Select Committee would be one of the matters to receive detailed consideration by the newly constituted Legal Aid Committee.

Madam President, I beg to move that clause 14 stand part of the Bill.

1705 **Mr Braidwood:** I beg to second, Madam President and reserve my remarks.

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

1710 The Legal Aid Appeal Tribunal, am I right in assuming that members cannot be a member of both, or can they be a member of both the Legal Aid Committee and the Appeals tribunal, or are they remaining completely separate?

Mr Lowey: I think to be complying with Human Rights legislation, they would have to be completely separate.

1715 **The President:** The motion is that clause 14 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
Perhaps we could take 15 and 16 together?

1720 **Mr Lowey:** Clauses 15 and 16. Clause 15 is a transitional provision which includes power for regulations to contain supplemental, incidental, consequential or transitional arrangements. That's a mouthful!

Clause 15 also confirms that regulations made under the Legal Aid Act shall not come into effect unless they are approved by Tynwald.

1725 Clause 16 makes a consequential amendment, which is the inclusion of the definition of the Appointments Commission in section 27 of the Act. Madam President, the effect of amendments contained in this Bill is that the Appointments Commission will be responsible, under the Act, for the appointment of members of the Legal Aid Committee and the Legal Aid Appeals Tribunal.

Madam President, I beg to move that clauses 15 and 16 stand part of the Bill.

1730 **Mr Braidwood:** I beg to second, Madam President, and reserve my remarks.

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

Clause 17.

1735 **Mr Lowey:** Clause 17 is a transitional provision, which is a consequential amendment to section 29 and is pursuant to clause 14 of the Bill, relevant to the creation of the Legal Aid Appeals Tribunal. Clause 17 will allow the Tribunal to make procedural rules in relation to appeals submitted to them for determination.

1740 Madam President, I beg to move that clause 17 stand part of the Bill.

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

1745 **The President:** The motion is that clause 17 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. We have already dealt with clause 18. Perhaps we can take part 3, clauses 19 and 20 together.

Mr Lowey: Thank you, Madam President.

1750 Clause 19 adds the Legal Aid Appeal Tribunal to the list of tribunals set out in part 2, schedule 2 of the Tribunals Act 2006. This is a consequential amendment, referable to clause 14 of the Bill, and that is clause 19.

1755 Clause 20 contains an amendment to section 18 of the Advocates Act 1976 to enable the Advocates Disciplinary Tribunal, where a complaint is proved, to discharge the advocate against whom it is made, either conditionally or unconditionally, in addition to existing penalties. The power to award costs against the advocate is extended to cover an advocate made subject to the new penalty but the requirement to report the findings and penalty matter to the Law Society and publish them is not.

1760 This amendment to the existing powers of the Advocates Disciplinary Tribunal has been put forward by the Tribunal itself as a useful and desirable addition to its powers, particularly in cases where the Tribunal is considering an unintentional or technical breach of the rules of professional conduct. In other words, it is for minor offences that really can be dealt with in house.

Madam President, it does not deal with the more serious where the public is concerned.

Madam President, I beg to move that clauses 19 and 20 stand part of the Bill.

1765 **Mr Braidwood:** I beg to second, Madam President, and reserve my remarks.

The President: The motion is that clauses 19 and 20 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

1770 That concludes our Order Paper, Hon. Members. The Council will now adjourn until 8th May. Thank you.

The Council adjourned at 12.46 p.m.