



LEGISLATIVE COUNCIL OFFICIAL REPORT

RECORTYS OIKOIL
Y CHOONCEIL SLATTYSSAGH

PROCEEDINGS

DAALTYN

HANSARD

Douglas, Tuesday, 22nd March 2016

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Present:

The President of Tynwald (Hon. C M Christian)

The Lord Bishop of Sodor and Man (The Rt Rev. R M E Paterson),
The Acting Attorney General (Mr J L M Quinn),
Mr D M Anderson, Mr M R Coleman, Mr C G Corkish MBE, Mr D C Cretney,
Hon. T M Crookall, Mr R W Henderson, Mr J R Turner and Mr T P Wild,
with Mr J D C King, Clerk of the Council.

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Legislative Council

The Council met at 10.30 a.m.

[MADAM PRESIDENT *in the Chair*]

The President: Moghrey mie, Hon. Members.

Members: Moghrey mie, Madam President.

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

PRAYERS

The Lord Bishop

The Lord Bishop: Today we should remember those in Belgium who are suffering as a result of yet another atrocity, and pray for those across the world who suffer from acts of terrorism.

Order of the Day

1. Road Races Bill 2015 – Clauses stage completed

The President: This morning, Hon. Members, we return to the Road Races Bill and see if we can untangle the tangle. (*Laughter*)

10 We had considered some clauses and now we return to clause 9, which has been moved and was adjourned, you may recall. So we now proceed to continue to debate clause 9.

We have an amendment in the name of the Hon. Member, Mr Henderson. I call on Mr Henderson.

15 **Mr Henderson:** Gura mie eu, Eaghtyrane.

Following the confusion relating to this clause which led to its adjournment until today, the Department of Infrastructure reassessed clauses 9, 10 and 11 of the Bill. As a result of that review, the Department has asked me to bring forward amendments to clauses 9, 10 and 11, which it believes simplify and clarify the operation of the Bill. The intent and policy of the Bill has not
20 changed as a result of the amendments that I intend to bring forward on behalf of the Department.

In addressing clause 9 specifically and my proposed amendment to it, it was pointed out by Mr Turner that the current wording did not make explicit the need for a marshal's identity card to contain the name of the marshal. The Department of Infrastructure has considered the issue and wishes to remove any doubt, in that an identity card must contain the full name of the marshal. The

25 amendment standing in my name stipulates that the marshal's identity card, issued by the organiser, must contain the marshal's full name.

Eaghtyrane, I beg to move that amendment 9 do stand in my name:

Amendment to clause 9

1. Page 13, after line 10, insert —
«(d) state the full name of the marshal;».
Renumber subsequent paragraphs.

The President: Do we have a seconder?

30 **Mr Crookall:** I beg to second, Madam President.

Mr Cretney: I am happy to second.

35 **The President:** Does any other Member wish to comment on either the amendment or the clause?

In that case, I call on the mover to reply.

Mr Corkish: Thank you, Madam President.

40 I thank Mr Henderson for moving the amendment and also thank those Members who have taken part in the debate regarding this and helped to satisfy what the clause is meant to bring to the Bill.

Madam President, I beg to move that clause 9 stand part of the Bill.

45 **The President:** Hon. Members, the motion is that clause 9, which was printed at clause 8, stand part of the Bill.

To that, we have an amendment in the name of the Hon. Member, Mr Henderson. I put to you the amendment first, Hon. Members. Those in favour of the amendment, please say aye; against, no. The ayes have it. The ayes have it.

50 I now put to you the clause as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We continue then, Hon. Members, to clause 10, which is printed as clause 9 in the Bill you have before you. I call on the Hon. Member, Mr Corkish.

Mr Corkish: Thank you, Madam President.

55 Clause 10 sets out the functions and powers of a marshal, and clause 11, which follows, details the power to remove. However, together they give the marshals the powers required to marshal both a racing and spectator event. They limit the powers to those of marshalling an event, but the powers are applicable to both the race track and land and roads other than the race track.

60 Clause 10 identifies the two key functions of a marshal: (a) to marshal the race for which the marshal is appointed; and (b) to administer and enforce the racing authorisation in accordance with the directions given to the marshal by the organiser.

65 A marshal, in performance of those functions, may do the following: (a) move or cause to be moved a vehicle, person or animal using, if necessary, reasonable force and assistance to do so – the term 'reasonable force' is an established legal phrase that takes account of the circumstances prevailing at the time of an action; (b) require any person to stop doing anything which, in the marshal's opinion, puts the safety of the competitors, officials or spectators at risk – for example, if a passive protestor lights a smoky grass bonfire in their garden, disrupting a race by causing smoke to blow across the course, the marshal can instruct them to stop; (c) detain a person for as long as is necessary to secure the person's or the public's safety; (d) stop or otherwise control traffic – this can

70 be on the lead up to, during and after the race in compliance with the racing authorisation; or (e) erect, maintain or remove apparatus to close a road or otherwise control traffic.

There may be a slight misconception that this Bill will give marshals many additional powers: it does not. The 1982 Act gives marshals the wide-ranging powers of a constable. The new Act will limit these powers to those that might be needed to marshal a safe event. The Department expects the
75 organisers to issue guidance to marshals on the use of these powers and it will support the organisers in the development of that guidance. This means that although there are strong legal powers available to marshals, some organisers may choose not to approve the use of these powers for their marshals or limit them to specific situations.

80 A marshal, when performing the functions in the Bill, must show his or her identity card when requested. If the identity card does not contain a photograph, then the marshal must also produce relevant photographic identification in support of the marshal's identification card.

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

The President: Hon. Member, Mr Crookall.

85

Mr Crookall: I beg to second, Madam President.

The President: The Hon. Member, Mr Henderson.

90 **Mr Henderson:** Gura mie eu, Eaghtyrane.

I have put forward amendments to clauses 10 and 11 that, with your permission, Eaghtyrane, and that of the Council, should be taken as one as they are linked and do not –

95 **The President:** I am sorry, Hon. Member, clause 11 has not yet been moved, so you will need to move the amendments separately.

Mr Henderson: They are interlinked, Eaghtyrane – that is the problem. As far as I am given to understand, they are actually bolted together.

100 **The President:** Well, there is an amendment to clause 10 printed in our Order Paper, which you can ... They may be similar, but unless the mover ... Clause 10 has been moved. If you can address your remarks to the amendment to clause 10, which is a new clause set out on page 5 on the Order paper ...

105 **Mr Henderson:** Yes, I understand what you are saying, Eaghtyrane, and I understand the instructions that have been given to me, so I will try my best with that, but I must just say that there is an interlinkage here, which I will try my best with.

110 The amendments standing in my name simplify the operation of clause 10, and they also would have an effect, if enacted, to clause 11 by eliminating the considerable overlap that exists in the current Bill. This overlap is unnecessary and could be confusing for those who have to use the legislation on a day-to-day basis.

As I said in my opening remarks to clause 9, the amendment standing in my name does not change the policy or intent of the Bill as drafted, but it does have the effect of clarifying and simplifying.

115 The amendment to clause 10 bring to life the functions and powers of a marshal. The functions of the marshal remain the same: to marshal the race and to administer and enforce the racing authorisation in accordance with any directions given by the organiser. Marshalling the race includes taking any reasonable steps to secure safety and to prevent any person, animal or vehicle from obstructing or otherwise hindering the conduct of the race.

120 In performing a marshal's functions, a marshal may remove a person, animal or vehicle from any land, road or position and detain a person until it is safe to release the person or until the person is

125 passed into the custody of a constable. The marshal may also require a person to stop doing anything that puts the safety of competitors, spectators or the public in danger. It is perhaps important to remember that these powers are only in relation to the marshalling of the race or the enforcement of the racing authorisation and that an organiser may decide to limit the actions of its marshals if it sees fit.

130 To facilitate the race, marshals may stop or otherwise control traffic and erect, maintain or remove apparatus to close a road or otherwise control traffic. This will be done in accordance with the traffic management plan agreed with the Department of Infrastructure as part of the racing authorisation. In many cases this power legitimises what already happens on the ground at many race events. Some may not support the current situation, but the days when the Police and/or the Department of Infrastructure employed the staff and had the budgets to carry out all road closures and diversions are long gone.

135 As in the Bill, my amendment facilitates a marshal using reasonable force and assistance. Again, an organiser may decide to limit or place conditions on the actions of its marshals. Any person assisting a marshal has the same powers and immunities as the marshal and is subject to the same liabilities. Before exercising her or his powers in relation a person, a marshal must warn the person that their actions constitute an offence and inform the person of the marshal's powers.

Eaghtyrane, I beg to move that the amendment at clause 10 stand in my name:

Substitution of clause 10

2. For line 15 on page 13 to line 11 on page 14, substitute —

«10 Marshals: powers and functions

(1) The functions of a marshal are —

(a) to marshal the race for which the marshal is appointed; and

(b) to administer and enforce the racing authorisation in accordance with any directions given to the marshal by the organiser by whom the marshal was appointed.

(2) For the purposes of subsection (1)(a), marshalling the race includes taking any reasonable steps to —

(a) secure the safety of competitors, officials, spectators or the public; and

(b) prevent any person, animal or vehicle from obstructing or otherwise hindering the conduct of the race.

(3) A marshal, in performing those functions, may —

(a) remove, or cause to be removed, a vehicle, person or animal from any road, land or position;

(b) detain a person for so long as is necessary to secure the person's safety or public safety or until he or she can be delivered into the custody of a constable;

(c) remove a person from any road, land or position and thereafter detain that person for so long as is necessary to secure the person's safety or public safety or until he or she can be delivered into the custody of a constable;

(d) require any person to stop doing anything which, in the marshal's opinion, puts the safety of competitors, officials, spectators or the public at risk;

(e) stop or otherwise control traffic;

(f) erect, maintain or remove apparatus to close a road or otherwise control traffic.

(4) In exercising the powers conferred by this section the marshal may, if necessary, use reasonable force and assistance.

(5) Any person assisting a marshal in the exercise of the marshal's powers and in the performance of the marshal's functions has the same powers and immunities as the marshal and is subject to the same liabilities as the marshal.

(6) Before exercising the powers conferred by subsection (3)(a) to (d) in relation to a person, the marshal must —

(a) warn the person that the marshal considers the person's conduct constitutes an offence; and

(b) inform the person of the marshal's power under this section.»

140 **Mr Cretney:** I am happy to second that, Madam President.

Can I make it clear that I think it is good that this matter is clarified, because there was some confusion even in this Chamber until clarified by the Bishop with our discussion in here. So I welcome the move here because I do believe it makes the situation much more clear.

Thank you.

145

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

150 I do have some concerns about some of the powers that are being introduced here. The bulk of them I think are perfectly sensible:

- (1) The functions of a marshal are —
(a) to marshal the race ...

— that goes without saying —

- (b) to administer ... the racing authorisation

— which effectively is the situation now, where they enforce the road closing order, as it currently is. And then it says ... This is the amendment, Madam President:

- (2) For the purposes of subsection (1)(a), marshalling the race includes taking any reasonable steps to —
(a) secure the safety of competitors, officials, spectators or the public;

— that again is what you would expect, and —

- (b) prevent any person, animal or vehicle from obstructing or otherwise hindering the conduct of the race.

That again is what you would expect the functions to be.

But where I do have concerns is where ... During earlier drafts of this Bill there were some quite draconian powers wanting to be introduced, which thankfully we have had removed, but the next section here, which I know is in the amendment, and the amendment is tidying up of what we have in the green copy but it says:

- (3) A marshal, in performing those functions, may —
(a) remove, or cause to be removed, a vehicle, person or animal from any road, land or position;

155 Whilst I accept if there is the example of a bonfire being lit, with smoke billowing across the road, then clearly that is an action which is affecting the race, and indeed I think there are even powers that if that is going across a general highway that can be dealt with, but what I would like to know is if we get a case where we have marshals who do not think people should be stood in their gardens, their private property, their rightful property — they may not even be watching the race — it says they
160 can 'cause to be removed', so it is giving these marshals powers to have a say over what is happening on that land. That is what it says in the Bill — 'from *any* road, land or position'.

So I would ask the question, certainly maybe from the Attorney General: does this give them the powers to venture into people's gardens? If people are in and on their property, their rightful property — (**Mr Henderson:** Danger.) Well, the Member says about danger, but I am sorry, the
165 landowner is not organising the race, and as in common in many other places in the world, where a race organiser is organising a race, if there is a danger of debris going on to private land or into a dangerous area, they have to erect catch fences. It is wholly unacceptable to start depriving people of their property and their land, and this is something I have been saying to the Department on many occasions, that if they are going to organise a race — they have done it in other areas — they
170 should put sufficient barriers up to ensure that people's private property is not put in danger.

I think that what we are seeing here is some of these powers coming in by stealth, where we are appointing people who effectively can start dictating to people what they can do with their private property that they own, and that is a concern to me. I think we have to be very cautious here and I would like to know just exactly ... Do they have the right to go on to the land and tell people they cannot be in their garden? As I have said to the Department, they may not even be involved in watching the races; they may be enjoying, rightfully, their land, in which case why isn't the Department insisting that the organiser of a race or a rally or anything else that is going on ... If the corners are so dangerous, then they should be taking the necessary steps to mitigate that, and there is appropriate ...

You have only got to look at the absolute eyesore we have got along the Grandstand at the moment with the concentration camp style fencing in front of the scoreboards. It is the most appalling-looking thing going –

Mr Henderson: I would agree with you on that, Juan.

Mr Turner: – but it has been put there because they have identified a risk. If that is the case, then why aren't they doing it in other areas? This is a very important point – they will do it when it suits them; they will not do it when it does not suit them – and I think it needs to be clarified.

The President: I think, learned Acting Attorney General, you have been asked to comment – please.

The Acting Attorney General: Yes, thank you, Madam President.

Looking at subclause (3), which sets out that:

A marshal, in performing those functions, may –

(a) remove, or cause to be removed, a vehicle, person or animal from any road, land or position;

– that has got to be read in the context of what it refers to, namely the functions, or 'those functions', and the functions are set out in subsections (1) and (2), which subsection (3) clearly follows.

The marshal would, looking at subsection (2)(b), have the power, when marshalling the race, including 'taking any reasonable steps' – which is the important part there – to 'prevent any person, animal or vehicle from obstructing or otherwise hindering the conduct of the race.' So, bearing that in mind, if, acting reasonably, the marshal considers that steps need to be taken to prevent any person, animal or vehicle from obstructing or otherwise hindering the conduct of the race, then he could cause a person, vehicle or animal to be removed from land – so he could actually access the land for that purpose.

So it is a power and the marshal is under an obligation to act reasonably in that regard.

The President: Do you wish to further clarify?

Mr Turner: Yes, thank you, Madam President.

It does say that is then down to the opinion of the marshal, and we have seen some decisions that clearly are not reasonable – they are overzealous. Subclause (c) does say if it is 'necessary to secure the person's safety', so it would be up to the individual to decide whether somebody is in a safe position or not. Again, we are getting down to the opinion of the individual at the particular location, and that – the point I am making – is intruding into people's rightful private property.

The President: The mover to reply.

Mr Corkish: Thank you, Madam President.

Can I thank the mover of the amendment, can I thank the Attorney General for his helpful clarification, and thank Mr Turner, whose long-time views regarding road racing on the Isle of Man I respect.

220 Can I just add that, in the marshal's job ... 'may remove' etc. – and I think we mentioned this at the First Reading – is only in relation to the racing authorisation that the marshal is working to, not on any place. So, if the land is not prohibited, then they cannot be moved.

And it is right to point out the dangers, that we are endeavouring through this Bill to make road racing in the Isle of Man a lot safer.

225 Madam President, I beg to move.

The President: Hon. Members, the motion is that clause 10 – the printed clause 9 on your green Bill – stand part of the Bill.

230 To that, we have an amendment in the name of the Hon. Member, Mr Henderson, which seeks to substitute the whole of clause 10 with a new clause. I put to you the amendment in the name of Mr Henderson, Hon. Members. Those in favour of the amendment, please say aye; against, no. The ayes have it. The ayes have it.

I now put to you the clause as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

235 We turn to clause 11, Hon. Members. I call on the mover, Mr Corkish.

Mr Corkish: Thank you, Madam President.

240 Clause 11, formerly 10, makes clear the marshals' powers to detain, remove or remove and detain a person who is in contravention of a prohibition having effect by virtue of clause 7, formerly clause 6, or who is in such a position to obstruct or hinder the conduct of a race pursuant to a racing authorisation. The person can be detained until they can be delivered into the custody of a constable. Again, reasonable force and assistance can be used. However, before using these powers, the marshal must warn the person that the marshal considers the person's action constitutes an offence, and inform the person of the marshal's powers.

245 If a marshal finds an animal or vehicle on a road closed under prohibition having effect by virtue of clause 7, formerly 6, or on land where they could obstruct or hinder the conduct of a race, then the marshal may remove the animal or vehicle from the road, land or position. Again, a marshal must show the marshal's identification and relevant photographic identification, if requested.

250 Jointly, clauses 10 and 11 ensure that the organiser has the powers to marshal a safe event. An organiser may limit its marshals' powers, but the proposed legislation is permissive in order to cater for a wide range of racing events and the passage of time.

Following the first consideration of clauses debate a couple of weeks ago, the Department has reviewed the operation of clauses 10 and 11, and Mr Henderson has kindly agreed to bring forward both of these amendments.

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

The President: Do we have a seconder?

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

260 **The President:** The Hon. Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

265 The amendment to clause 11 which stands in my name specifies that, when performing the functions of a marshal, the marshal must produce the identity card for inspection upon request or have it displayed. If the identity card does not include a recent photograph, then the marshal must also produce relevant photographic identification.

A marshal must only produce identification if it is reasonable and safe to do so. There may be some instances where a marshal needs to act quickly and it would not be reasonable or safe for the marshal to produce his or her identity card.

270 Eaghtyrane, I beg to move the amendment standing in my name:

Substitution of clause 11

3. From line 12 on page 14 to line 4 on page 15, substitute —

«11 Production of identity card

(1) When performing the functions of a marshal under section 10, a marshal must, if it is reasonable and safe to do so —

(a) produce the marshal's identity card for inspection upon request; or

(b) have the identity card displayed so that it is clearly visible,

and inform any person in relation to whom those functions are to be exercised that the marshal is empowered to exercise them under section 10.

This is subject to subsections (2) and (3).

(2) If the marshal's identity card does not contain a recent photograph of the marshal, the marshal must also —

(a) have relevant photographic identification in his or her possession, and

(b) produce that identification for inspection upon request.

(3) A person assisting a marshal in accordance with section 10(4) does not need to have an identity card (and as a result does not need to comply with the requirements of this section).»

Mr Cretney: I am happy to second that, Madam President.

If I could just ask the Member, or the mover of the Bill, in relation to subclause (3), where it states that a person assisting a marshal does not need to have an identity card etc., does the Member or the mover of the Bill agree with me that such circumstances will be quite rare, that a marshal would call upon somebody who is not in such position to assist?

275

The President: Could we clarify about which subclause (3) you ...

Mr Cretney: Sorry, on the amendment, the 3 in brackets.

280

The President: On the amendment?

Mr Cretney: Yes.

The President: Right, okay, thank you.
The Hon. Member, Mr Turner.

285

Mr Turner: Yes, I too have a query about subclause (3) regarding a person assisting the marshal. I wonder if the mover, or the mover of the amendment maybe, could clarify what circumstances that would be, because if it is somebody who is not involved in the event then clearly they are not signed on, so there are implications there. And of course the marshal is authorised to be on the closed roads, so I think, from the advice we have had previously through the Department ... who would the assistants be?

290

Could he clarify what circumstances that is designed to cover?

295

The President: The mover to reply.

Mr Corkish: Thank you, Madam President.

300 Can I thank Mr Cretney for his observation. Yes, indeed, it would be a rare occasion that that situation would arise, and that would be when the marshal indeed would need help and assistance, and I think that is part of the safety aspect that a marshal could hopefully rely upon to help a race.

Mr Turner, who I think is well aware of what we are trying to do here, in moving this Bill –

305 **Mr Turner:** I am not sure.

Mr Corkish: Is this regarding the powers to detain that the Member is concerned about? Because there may be times when there will be people around the course who repeatedly will want to, for whatever reason, walk into prohibited areas as racing machines pass. The marshal has the power to remove them from the track or the prohibited area in order to maintain safety and the progress of the event, and the marshal can detain them until they get the help from usually a constable.

310 I do not really understand where Mr Turner is coming from. Is it purely you are wanting to know why an ordinary person can be drafted in to assist a marshal?

The President: I think for clarity we will allow you to come back, because we need to be sure that everybody knows what this Bill is about.

Mr Corkish: And it may even be ... and I thank other people for helping here. It may also be a vehicle and/or a large animal that may need to be removed. It may even be an escaped cat or a dog from a house on the course, where he or she may need assistance to remove that animal. The assistance may be a member of the public or a vehicle removal company.

320 I think whilst we cannot address every possible term here, what the Bill is trying to do is to drive safety as much as possible for the road racing in the Isle of Man.

The President: Hon. Members, the motion before Council is that clause 11 stand part of the Bill. To that, we have an amendment moved by the Hon. Member, Mr Henderson, which is the amendment numbered 3 and printed at page 6 on your Order Papers, which introduces a total substitution of clause 11. I put to you the amendment, Hon. Members. Those in favour of the amendment, please say aye; against, no. The ayes have it. The ayes have it.

330 I now put to you the clause as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, our Order Paper sets out further amendments to the Bill to clauses which have already been considered. Normally, these would be dealt with at our Third Reading stage. However, with your agreement, because they are all related to the two clauses we have just dealt with, I propose to deal with them at this point. Are you content with that, Hon. Members? (**Members:** Agreed.)

335 I would invite the Hon. Member, Mr Henderson, to move his amendments to clauses 4, 13 and 14 at this point.

I would just make it clear, Hon. Members, that as printed there is further confusion.

340 I think this is an absolutely salutary lesson that when we have an amended Bill from another place it would be wise to have a printed copy with the numbering corrected for this Council to consider, because in these amendments the sections we are amending are a mixed bunch referring to the old numbering but introducing new numbering.

The important thing, however, is the line number, the page and lines, and the amendment that you are introducing. If we focus on those things I think we will get it right.

345 So, Hon. Member, if you would move the amendments to clauses 4, 13 and 14 – as printed on your Order Papers, Hon. Members, at page 7.

Mr Henderson: Gura mie eu, Eaghtyrane.

350 The proposed amendments to clauses 4, 13 and 14 are purely consequential and textual amendments to ensure the numbering and cross-referencing of the Bill operates correctly.

Eaghtyrane, I beg to move those amendments:

Amendment to clause 4

4. Page 8, on line 4, for "9(1)" substitute «10(2)».

Amendment to Clause 13

5. Page 15, lines 14 and 15, for "section 6, 9 or 10" substitute «section 7 or 10».

6. Page 15, line 17, omit "other than section 9(3), (4) or (5),".

7. Page 15, line 18, for "sections 6, 9 and 10" substitute «sections 7 and 10».

Amendment to Clause 14

8. Page 15, line 29, for "section 9(2)(b)" substitute «section 10(3)(d)».

Mr Cretney: I am happy to second.

355 **The President:** Hon. Members, the motion is that the amendments standing in the name of the Hon. Member, Mr Henderson, to clauses 4, 13 and 14 do stand part of those clauses. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

I now move the clauses as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

360 We are slightly deviating from normal practice, but I hope we have now got those clauses all concluded.

We have left just one clause to consider, Hon. Members. That is clause 12, which is printed at 11 on your green Bills. I call on the Hon. Member, Mr Corkish.

Mr Corkish: Thank you, Madam President.

365 Can I thank you for your guidance and thank again Mr Henderson for moving the amendments.

Can I also accept that there has been a modicum of inconvenience in the moving of the Bill and the salutary lessons pointed out by you, Madam President.

In moving clause 12, formerly clause 11, under the Bill as drafted, marshals will have the same liabilities and immunities as a constable.

370 The liabilities of a constable and the immunities enjoyed by a constable are not all written down in statute – some have evolved from case law, i.e. the common law.

In certain circumstances a constable has immunity from negligence claims. There are a number of English cases on this point. The effect of clause 12(1) is that marshals would enjoy the same immunity, where applicable.

375 Constables can also be liable for a number of statutory and common law offences in carrying out their duties. Section 12(1) provides that marshals would be subject to the same liabilities as constables in exercising the powers and performing the functions of their appointment. Relevant offences would include the use of unreasonable force, false imprisonment or criminal damage to property.

380 The effect of clause 12(2) is to ensure that 12(1) does not affect the vicarious liabilities of the organiser for anything done by the marshal, i.e. the organiser remains responsible for the actions of its marshals.

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

385 **The President:** The Hon. Member, Mr Henderson.

Mr Henderson: I beg to second, Eaghtyrane, and reserve my remarks.

The President: The Hon. Member, Mr Coleman.

390 **Mr Coleman:** Thank you, Madam President.

I am particularly interested in 'Marshals: liabilities ... (1) A marshal, in exercising the powers ...' I think we have seen previously that the marshal can call upon someone to assist them. I just wonder whether, from a legal point of view, it should actually read 'a marshal or someone assisting a marshal, in exercising the powers' should have exactly the same indemnities as the marshal.

395 It does say earlier that the assistants will have the powers, but it has ... the person has the powers. This says 'a marshal, in exercising the powers'. It does not say someone who is assisting a marshal at the marshal's request'. If anyone can point out to me anywhere else in this Bill which would actually provide all the indemnities of a marshal to a person assisting ...

400 Thank you, Madam President.

The President: The Hon. Member, Mr Turner.

Mr Turner: I think Mr Coleman has a fair point, because the example we had from the mover when I queried the person assisting ... he used an example of a vehicle recovery business. I know in the past where vehicles have been parked on slip roads, for example – and I thank the mover for that example, because that was what I was looking for, some clarification of examples – a vehicle recovery firm has been brought in on many occasions to move vehicles. So surely then, if we are putting into statute for these persons to assist, there needs to be some protection in there, because if they remove the vehicle there could be a claim perhaps of criminal damage. So would that not be best clarified in there, as Mr Coleman says, to ensure that there is the correct wording?

410 **The President:** Is it not already accommodated? (**The Acting Attorney General:** Yes.) It is already in the Bill, Hon. Member.

415 **The Acting Attorney General:** Madam President, in the new clause 10(5), it provides that:

Any person assisting a marshal in the exercise of the marshal's powers and in the performance of the marshal's functions has the same powers and immunities as the marshal and is subject to the same liabilities as the marshal.

Mr Turner: Okay. I thank the Attorney.

The Acting Attorney General: So it is covered in the Act.

420 **The President:** If there are no further queries, I call on the mover to reply.

Mr Corkish: Thank you, Madam President.

Can I thank Mr Coleman for his observations, shared by Mr Turner, and thank the Acting Attorney General for his clarification on clause 10(5), which is offering the same liabilities and immunities to an assistant.

425 Madam President, I beg to move that clause 12 do stand part of the Bill.

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

430 Hon. Members, that concludes consideration of the clauses.

**Road Races Bill 2015 –
Standing Order 4.3(2) suspended to take Third Reading**

Mr Corkish to move:

That Standing Order 4.3(2) be suspended to enable the remaining stages of this Bill to be taken at this sitting.

The President: I understand the mover wishes to seek suspension of Standing Orders. The Hon. Member, Mr Corkish.

Mr Corkish: Thank you, Madam President.

435 I beg to move the suspension of Standing Order 4.3(2) to enable the Third Reading of this Bill to be taken today.

The President: The Hon. Member, Mr Henderson.

440 **Mr Henderson:** I beg to second, Eaghtyrane.

The President: The Hon. Member, Mr Turner.

Mr Turner: Madam President, I would strongly disagree with suspension of Standing Orders.

445 We have had some quite technical changes here. The Member has not made a case as to why Standing Orders should be suspended to take the remaining stage of the Bill. There is a parliamentary process and we had no prior warning that we would be looking to move two readings of this Bill along at this sitting.

450 **The President:** It is on the Order Paper, Hon. Member.

Mr Turner: Is it? I do apologise. The copy of this I had with my notes on I left behind. I had to get another copy from Jonathan. So I do apologise, but I do disagree with suspension of Standing Orders to take multiple versions of Bills without there being a good reason to do so, and the Member has not given us that case, Madam President.

455 I will not be supporting suspension of Standing Orders.

The President: The Hon. Member, Mr Cretney.

460 **Mr Cretney:** Thank you.

I will be supporting suspension of Standing Orders on the basis that the Department, in good faith, after matters being raised in this hon. place, has gone away and has made alterations to the betterment of the Bill, and I think we should support the Hon. Member now in getting on with the progress.

465

The President: We have a motion for suspension of Standing Orders, Hon. Members. Those in favour, please say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

FOR

The Lord Bishop
Mr Coleman
Mr Cretney
Mr Anderson
Mr Wild
Mr Corkish
Mr Henderson
Mr Crookall

AGAINST

Mr Turner

The President: Hon. Members, we have the required 5 votes, so suspension is agreed.

**Road Races Bill 2015 –
Third Reading approved**

470 **The President:** I call on the mover to take the Third Reading.

Mr Corkish: Thank you, Madam President.

Before I do so, can I just comment. I thank Mr Turner. I respect his views. What we wish to do here is the Department wishes to progress the Bill, which has been well scrutinised, quite rightly, by
475 this Council, and the Department in turn has acted upon those amendments which have been suggested by Council. I am grateful for the Council's wish to proceed with the Third Reading.

In moving the Third Reading of the Bill, I will reflect upon the main themes and, if I may, address some points during the reading of the clauses debate, many of which will still be fresh, and perhaps raw, in our minds.

480 First, however, I will take the opportunity to thank the many Hon. Members who contributed to the debate so effectively and diligently; in particular, the Lord Bishop, Mr Turner and Mr Cretney. Indeed, the Lord Bishop's keen eye avoided any doubt when he successfully amended Mr Singer's amendment from another place.

I would also like to thank Mr Henderson for his support in seconding the Bill and for the
485 amendment that stands in his name.

Coupled with that, Mr Crookall. This amendment puts beyond doubt the need for the marshal's name to be on the marshal's identification.

We debated at length the marshal's identity card and the need for a recent photograph to be either on the identity or carried in support of the marshal's identity card. We have clarified that a
490 marshal's identity cannot be issued for a year and cover multiple events. It must be issued on an event-by-event basis after the organiser has been identified in a racing authorisation. The Department hopes, however, that this new legislation will allow authorisations to be issued months in advance rather the weeks or days in advance.

We have debated the change to the creation of prohibited areas, which puts the onus on the
495 landowner and occupier to object to land being made prohibited. We appreciate that there are different views on this issue, but also hope that Hon. Members will recognise that the Department has tried to find a practical, reasonable and balanced solution.

Again, we have seen differing views as to the appointment of a marshal. Whilst the Department believes that there was wide support for the organiser to appoint marshals, disagreements remain,
500 we feel, about the ability of this legislation to stop some unsuitable people becoming marshals. The Bill offers safeguards, but the Department recognises that decisions could be challenged perhaps in terms of an individual's human rights. Again, the Department has provided pragmatic legislation. It is the organiser's right to determine who it appoints as marshals; it is not an individual's right to be a marshal just because they want to.

505 This comprehensive Bill seeks to replace the Road Races Act 1982, which has served us well for many years, with a new and updated Act.

First and foremost, the Bill creates clarity around roles and responsibilities. Ambiguity between the roles of the organiser, DOI and the Police has been removed. It is now clearly the responsibility of the race organisers to organise, plan and implement a safe sporting and spectator event. Recent
510 tragedies in a nearby jurisdiction have reinforced the importance of this approach. Road racing is dangerous. The competitors in these events risk their lives, and we as a community have accepted this fact for many years. This is not to say that we have stopped trying to improve safety. We have not, and neither have the governing bodies. Less comfortable is the fact that spectators also accept risks when they attend these events. Indeed, it is one of the enduring attractions of some of our events that spectators can be close to the racing action. This should not stop us trying to make
515 events safer and the Department believes that this legislation will do that by giving the Clerk of the Course and marshals the powers they need to implement a safe sporting and spectator event.

520 This Bill will reduce considerably the amount of unproductive administration, and in doing so we believe that there will be a net improvement in safety. The Coroner, reporting on the unnecessary deaths at the 26th milestone inquest, was critical on many fronts: the lack of overall co-ordination and management, the failures of process and the complexity of consent for prohibited areas. Mr Moyle, in his summing up, noted:

As a matter of urgency, section 2 of the 1982 Act should be re-examined to see if a more simplified system can be brought into force.

525 The Department believes that this Bill simplifies the system and balances the needs of event organisers with the rights of landowners and/or occupiers.

Through its application, the Bill introduces a risk-centred approach to racing events on closed public highways. Road racing with significant risks will be authorised through the new road races legislation. Low-risk racing events – perhaps termed entertainment – will be authorised through the Highways Act.

530 Through this Bill, as amended, racing will be allowed to take place on a Sunday. This is now common place and creates the opportunity for races to be organised at the weekend when more people will be able to enjoy them. The Department think that a compromise has been obtained through the Bill's progress in another place. Whilst some might think the arrangements for Sunday racing overly proscriptive and untrusting, the changes have brought acceptance from opposing camps and we should all be pleased for that.

535 The Isle of Man has a celebrated history of road racing, Madam President, and it is an important part of our unique cultural identity. All in all, the Bill makes a material improvement to our road racing law, and in doing so promotes the public interest by protecting the future of road racing on the Isle of Man.

540 As such, I commend the Bill to the House and beg to move the Third Reading of the Bill and that it do pass.

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

545 **The President:** The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I wish to move an amendment at this point to clause 19, which was clause 18.

550 Section 38 of the Highways Act is the means through which the Highway Authority closes roads to facilitate entertainment on the roads. Entertainment can range from cycle and walking races through to street parties and carnivals. The organisers of such events sometimes require powers similar to those for road racing, i.e. the appointment of marshals, the powers to put out signage, direct traffic etc. These powers are currently given through the Road Races Act 1982 and they continue to be given through the Bill before you.

555 This amendment stops the requirement of clause 6 of the Bill applying to section 38 of the Highways Act. Clause 6, the new clause brought forward in another place, restricts the circumstances in which road racing can take place on a Sunday. In practice, this will mean that entertainment on a Sunday does not require the prior approval of the Council of Ministers, unlike a racing authorisation for Road Racing.

Eaghtyrane, I beg to move the clause standing in my name:

1. Page 18, lines 20 and 21, for "sections 5 to 9 and 12 to 16" substitute «sections 5, 7 to 12 and 14 to 16».

560 **Mr Cretney:** Happy to second that, Madam President.

The President: Hon. Members, I am happy to have that proposed and seconded, but I would like to ensure that we all know exactly what we are considering, because the amendment as printed on our Order Papers – and this is for my clarity as much as anybody else’s – refers to numbers printed on the original Bill from the Keys, which has subsequently been amended. So we have got a mixture here. We are talking about, on the face of our paper, clause 19, which I agree was 18, and we are referring to page 18, lines 20 and 21 – that is clear – and we are referring to the numbering as it originally was, not as it was subsequently amended from another place.

So, if we are clear about the fact that we are changing the numbering as was originally printed, what I would like confirmation of is that the amended section, the substitution which is being proposed, refers to the clauses as they are now currently standing. So we are talking about a renumbered clause ... We are talking about the new clause 7 as it came from another place, and not the printed version. We have a mixture here of printed numbers and revised numbers, as I see it. I would just like clarification from the mover that the sections we are referring to – 5, 7 to 12 and 14 to 16 – are as revised in another place, where that is appropriate. There was no change to 5 –

Mr Henderson: That is correct, Eaghtyrane.

The President: – but there has been a change to the numbering in the other clauses.

Mr Corkish: I can confirm that is the case, Madam President.

The President: Right, well, it is a salutary lesson in drafting, I am afraid, (Mr Corkish: Hear, hear.) amendments.

Lord Bishop.

The Lord Bishop: Thank you, Madam President.

May I ask the mover: as far as I can see, this simply says – but, of course, in the form that it has to say it – in other words omit sections 6 and 13 from the previous provision. Is that right? Because if we look at sections 5 to 9 and 12 to 16, and then you replace that with 5, 7 to 12 and 14 to 16, that seems to suggest that the change is that sections 6 and 13 no longer apply. If that is the case, could somebody explain to me what the significance of this is, rather than ...? Is there any significance?

The President: You are not quite right about the numbering, in that the numbering should have changed.

Mr Coleman: As I read it, Madam President, it is actually now clause 19.

The President: Well, that is why I want to be ... No, clause 19, we are clear about that: clause 18 has become clause 19. What I do want to be clear about is that where, in clause 18(2), was printed ‘5 to 9 and 12 to 16’, that subsequently was changed by the introduction of a new clause in another place, so it should have been amended for our consideration to 5 to 10 and 11 to 16 by the renumbering.

The Clerk: You mean 13 to 17.

The Lord Bishop: Yes.

The President: Sorry, yes, 13 to 17 – 5 to 10 and 13 to 17. That is what we should have been amending, because that is what came from another place. So I want to be clear –

The Lord Bishop: What happened to 11?

The President: Sorry?

615

The Lord Bishop: What happened to 11?

The President: Well, this is why I want the Department to be clear what we are talking about.

620

Mr Cretney: Raised eyebrows.

Mr Corkish: Madam President, I am advised the change means that the Council of Ministers ... It is not the approval for holding such a thing as a carnival on a Sunday.

625

Mr Cretney: Absolutely. Hear, hear.

The President: Can you just confirm for me, please, that when you are referring in the amendment to sections 5 to 9 you are referring not to the printed numbers but to the numbers as they have been revised – ‘and 12 to 16’; or are you referring to the numbers as on the original green Bill?

630

Mr Corkish: Madam President, I have the Director of Highways here. Could I ask the Council’s indulgence to ask Mr Robinson to explain? I believe the answer is yes.

635

The President: We just want to make sure the new numbering is correct.

Mr Corkish: I think that is the case.

The President: Could you announce your name for the purposes of Hansard, and your office, please.

640

Mr Robinson: Jeffrey Robinson, Director of Highways in the Department of Infrastructure.

Madam President, my understanding is that the reference to sections 5 to 9 and 12 to 16 is referring to the green paper as printed, (**The President:** Yes.) and then the sections referring to 7, 12, 14 and 16 are as amended.

645

The President: As amended, thank you. So 7 was 6?

Mr Robinson: That is my understanding, yes.

650

The President: Okay, so we have got a mixture there of old printed and revised. Are Members clear now, or have we muddied the waters even further? Lord Bishop.

655

The Lord Bishop: Madam President, might we ask Mr Robinson whether he could give us the amendment in the new numbers, please, so that we can make some comparison. I do not think we can do it in the old numbers, but we could do it in the new numbering, so that at least we know which ones are being omitted or added.

660

Mr Robinson: The intention is to omit new numbering 6 and new numbering 13 from the provisions.

The Lord Bishop: Which is what I asked five minutes ago, exactly. Thank you, I’ve got it.

665

The President: Have we all got it?

Mr Cretney: Yes, I think we've got it!

Mr Corkish: By George, they've got it!

670 **The President:** We do not want to send it to another place and find it is wrong.

Mr Turner: I hope they get a reprint of it.

675 **The President:** Is there any further comment on the Third Reading, Hon. Members, or the amendment put as proposed?

The Hon. Member, Mr Turner.

Mr Turner: Yes, just to comment at Third Reading that I hope when we do send it to the other place maybe it should be renumbered and they get a copy which will mean something to them.

680 I am disappointed that despite the modernisation of this Bill it has failed to do certain things.

I think it does fail to deal with the unsuitable people, on which we had confirmation from the Attorney that yes, the process is still open to maybe petitions of doleance. The mover did acknowledge that it is quite within the rights of organisers to decide who are marshals. I think, though, if the likes of law enforcement agencies have a concern and instruct the organiser via the Department to remove a particular person, then they can, at the public's expense, go and take court action. I think that is quite an unsatisfactory situation, and surely when making primary legislation we should be able to put provisions in. I think it is important for the protection of the public.

685
It was interesting, when talking to an advocate who is involved in road racing, that they said the original 1982 Act did actually have sufficient provisions to deal with many of the issues that they are trying to address in this and there seemed to be a lack of will to acknowledge that, which I think is unfortunate.

690
I think, as the mover mentioned the coroner's report into the 26th milestone, we have to remember the lack of organisation and the failure of process was in an event that the Isle of Man Government were putting on. It was not in an event that was put on by outside parties, and that is something I have kept saying all the way through – that the fallout from the Government's own failures in their organisation has impacted on other organisations, which in my view should have been used as examples on how to put events on. There are very well structured events taking place all over the world, and yet the fallout from that was that they created a working group, they appointed people on huge contracts of substantial amounts of money – it was meant to be a one-year contract and yet we seemed to be employing these people for years and years. So what came out of that was a very expensive process, and it is unfortunate that it has taken this long to get this Bill. It has gone through all the bureaucracy when they could have spoken to people on the Island very early on and got the advice they needed. So I am surprised it has taken from 2007 to now in 2016 to get this through, and I have my own views on that as to why it has taken so long. Again, the expertise was here. There are some very senior people – international-grade stewards in motorcycling – on the Island, and in the early stages of this they were not even consulted, which I think is unfortunate.

700
I will support the Third Reading of the Bill, as there are a few new provisions in there which are sensible. Many of the re-enactments of older provisions that have just been tidied up, again makes it a little easier.

710
But I will say that I am disappointed that the process for Sunday racing has been made quite cumbersome in this Bill. I think that is unnecessary. I think that what we are basically saying is we are going to give the Department the powers, but we do not trust them so we are then going to have certain decisions filtering up to the Council of Ministers, which I have questioned on a number of occasions. We then have the Cabinet of the Isle of Man dealing with what are quite low-level operational issues, and I think that is just incredible. The Department should have strong policies in place to deal with requests for Sunday racing on its merits. They should have the ability to decide

based on a number of factors and based on strong consultation with people affected. But I think what we have done is we have made it a very complicated, convoluted process, which was totally unnecessary.

720

I hope that we do not lose any weekend events because of this, because, as I have said at earlier readings, the UK is looking to embrace events now with road closing. We could have enthusiasts' weekends. Tourism are always saying that weekend interest groups are very important for the tourism sector. So, if we have got classic car clubs wanting to come here of a long weekend – they do proportionally spend a high amount of money – what we have got to do is make that process quite simple for them to be able to come here and organise their weekend. I have said before that closing off the likes of the Sloc for a classic car hill climb on a Sunday morning is not going to affect people – close people in. They may have to go a few miles round, but that is not closing people in and closing down the likes of places of worship. But we have got to make it easy and I do not think this Bill does that. I think it is a shame that after all these years ... We talk about modernising 30-year-old legislation, we have had the opportunity, and we have gone in and made it ... as we have been going along we have been tinkering with it and making it more complicated.

725

730

I think the powers for marshals need to be exercised very carefully, both for the individuals who are volunteering ... they need to know where they stand, they need to know what they can and cannot do, and I would hope that the Department publishes suitable guidance and training, because there are changes in this and the way we have always done it is simply not going to be good enough. Everybody needs to know exactly what this Bill means for them.

735

I will support the Third Reading, but I am disappointed that the final version of it is not entirely as I think it should be.

740

The President: The mover to reply.

Mr Corkish: Thank you, Madam President.

Can I thank Mr Turner again for his views. I accept and respect his views, they are long held and valid, and I think it fair to say that there are certain aspects between the Department of Infrastructure and Mr Turner which will always be a matter that may have the handle 'agree to disagree'.

745

What the Bill is trying to do is to modernise, despite the disappointment from Mr Turner, and make safer and sustain road racing in the Isle of Man. The Department have tried to be pragmatic and make safer the event and cover as many likelihoods, I believe, as possible.

750

Madam President, again, I beg to move.

The President: Hon. Members, the motion is that the Bill be read a third time.

To that, we have an amendment in the name of the Hon. Mr Henderson, an amendment to clause 19, or 18 as printed on your green Bill. I put to you the amendment, Hon. Members. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

755

I put to you the Bill as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

The Bill is read a third time and passes, Hon. Members.

2. Concessionary Travel Schemes Bill 2016 – Second Reading approved

Mr Corkish to move:

That the Concessionary Travel Schemes Bill 2016 be read a second time.

760 **The President:** We turn now to Item 2 on our Order Paper, the Concessionary Travel Schemes Bill 2016. I call on the Hon. Member, Mr Corkish to take the Second Reading and clauses.

Mr Corkish: Thank you, Madam President.

765 I would firstly like to thank those Members who supported the Bill at the First Reading earlier this month. I would also take the opportunity to cover a couple of queries that Hon. Members raised at the First Reading stage.

770 Mr Turner made a point that this appeared as unnecessary red tape and cited the wish for simpler government regarding concessionary fares. However, such a concessionary fare is providing a benefit to qualifying members of the community and legislation is required to do that. A private bus company would be reimbursed for each passenger carried. However Bus Vannin, as a publicly owned undertaking, receives an annual subvention from which such costs are covered.

775 Mr Crookall mentioned the powers to adjust the times the concession is offered, particularly in respect of hospital appointments. The current arrangements see half fare paid until 9 a.m. and again in the evening peak period. I can say there is no change proposed to those existing arrangements, or indeed would be without public consultation.

Finally, Mr Cretney sought reassurance that the concessions were not being diluted. I can say the same in answer to Mr Cretney.

780 Madam President, I beg to move the Concessionary Travel Schemes Bill 2016 be read for a second time.

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

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.

Concessionary Travel Schemes Bill 2016 – Clauses considered

785 **The President:** Clause 1.

Mr Corkish: Thank you, Madam President.

790 This clause gives the Act resulting from the Bill its short title. The Bill does not have any commencement provisions so all its provisions will come into force upon the passing of the Bill.

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

Mr Crookall: I beg to second, Madam President.

795 **The President:** The motion is that clause 1 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 2.

Mr Corkish: Thank you, Madam President.

800 Clause 2 amends the Isle of Man Passenger Transport Act 1982 by the insertion of a new section 23A into Part V of that Act.

805 The new section 23A will comprise seven subsections covering the following: subsections (1) and (2) will enable the Department of Infrastructure to make concessionary travel schemes for eligible persons travelling on eligible services. The meaning of 'eligible services' and 'eligible persons' is defined in subsection (7).

Subsection (3) provides that a concessionary travel scheme must include provision for determining the rate for all rates of travel concessions and for specifying the days and times during which travel concessions apply. This will allow the Department to ensure that any travel concessions do not apply at times when, for example, the buses are carrying lots of commuters.

810 Subsection (4) provides that a concessionary travel scheme may allow a person to publish background information relating to the scheme and for the electronic transmission of any information or documents that may be referred to in the scheme. The new subsection (4) also allows a person to exercise discretion in dealing with any matter in the scheme and to make provision for other matters that the Department may consider appropriate – for example, requesting certain
815 documentation, perhaps proof of identity, address etc., in order to verify the validity of the information on the application form. Provision is also included to allow the Department to levy a fee under the scheme, for example, to cover the administration costs involved in the processing of any applications for concessionary travel.

820 Subsection (5) provides for the modification or revocation of any concessionary travel scheme which is currently being used by the Department at the time this new section comes into operation. The current scheme provides for concessionary travel for persons over a certain age limit and persons who are substantially and permanently handicapped and in need of assistance towards travel costs.

825 Subsection (6) provides that the Department must consult with the Treasury before making any scheme. As some Hon. Members may already be aware, the Department is currently consulting with the Treasury about the details of a new concessionary travel scheme and, whilst it is not a statutory requirement, the Department does intend to consult publicly with all interested parties on the details of this new scheme.

830 Subsection (7) provides the meaning of certain terms that may be referred to in any scheme. As well as defining ‘eligible person’ and ‘eligible service’ the Department will also be able to define what level of travel concession will apply to a journey. At the moment the current scheme allows for eligible persons to either pay half the standard adult fare, or no fare at all.

Madam President, I beg to move that clause 2 stands part of the Bill.

835 **Mr Crookall:** I beg to second, Madam President.

The President: The motion is that clause 2 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 3.

840 **Mr Corkish:** Thank you, Madam President.

Clause 3(1) provides the Act to cease to have effect on the day after its promulgation.

Subclause (2) also provides for a transitional provision so that subclause (1) does not affect the ongoing validity of the amendments made by clause 2.

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

Mr Crookall: I beg to second Madam President.

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

**3. Equality Bill 2016 –
Second Reading approved**

HM Acting Attorney General to move:

That the Equality Bill 2016 be read a second time.

The President: We move to Item 3, Hon. Members.

855 The Equality Bill 2016 for Second Reading and Clauses stage. I call on Her Majesty's Acting Attorney General.

The Acting Attorney General: Thank you, Madam President.

860 I will be extremely brief in moving that the Equality Bill be read a second time. There are two reasons for this. Firstly, I think that I covered the main principles of the Bill during the First Reading, which was supported by Members present, so I would not wish to subject Council to a repeat of my then so-called short introduction. *(Laughter)*

865 I do apologise to the Hon. Member, Mr Wild, who was not present for the First Reading but, as I said at the First Reading, the second and more important reason for being brief is rather than debating the principle of the Bill again today, I believe that this is very much a Bill which will benefit from discussion of the detail during the clauses stage. This will provide Members with as much time as they need to raise any matters that they would like to have considered.

Before I move the Bill be read for a second time, there is one point from the First Reading debate which I would wish to clarify and correct. I said at the First Reading:

The Bill does not provide for positive discrimination, clearly.

870 Those were the words I used. Although I proceeded to go on at the First Reading to clarify that statement, I need to make it clear that Division 2 of Part 11 of the Bill does in fact allow positive action, and I apologise if I gave any wrong impression. However, under no circumstances is positive action of that sort obligatory. And if a person or organisation does choose to undertake positive actions to support particular disadvantaged groups it must be a proportionate means of achieving a relevant aim.

875 In the case of employment, an employer can only choose to take a protected characteristic into consideration in relation to positive action if there is a choice between candidates who are equally qualified. And even then the employer can only take positive action in support of groups who may be under-represented or disadvantaged and the action must also be a proportionate means of addressing such disadvantage or under-representation. By 'under-representation' I mean in relation to the general population of the Island.

885 I shall also say, Madam President, that the public sector equality duty in Part 11 of the Bill is also not about positive discrimination. What it does mean is that public bodies have to consider all individuals when carrying out their day-to-day work. It also requires them to have due regard to the need to eliminate discrimination, advance equality of opportunity, foster good relations between different people when carrying out their activities.

Hon. Members will wish to note that the public sector equality duty already applies to the protected characteristic of race under the Race Relations Act 2004.

I hope this clarifies the position and I beg to move that the Equality Bill be read a second time.

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

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

**Equality Bill 2016 –
Clauses stage deferred**

895 **Mr Anderson:** Madam President, may I make a procedural observation and proposal.

We have in front of us a very heavy-weighted Bill today, that is quite complex, detailed and very long. It has been proposed that we take the clauses in bite-sized stages. As it is such a complicated Bill, some of us think that taking it in consecutive weeks would be more helpful than to take one bite before Easter, have two weeks off, take a second bite after Easter, have another break over Tynwald sitting week, before having our final bite.

900 So, Madam President, what I am proposing is that we adjourn the clauses stage until we have three consecutive sittings. The first would be 26th April. I have spoken to the mover of the Bill to make sure I was not out of order and it would not hinder the progress of this Bill and I think he shares my understanding of where I am coming from on this.

905 **The President:** Hon. Members, we have a proposal that we do not consider clauses today. Does anyone wish to speak?

Mr Henderson: I second that.

910 **The President:** Does anyone wish to speak to that, Hon. Members?

Mr Crookall: Madam President, can I also propose if we do that that we propose that we start earlier in the day rather than 10.30 a.m., as I have mentioned before in this Hon. Chamber?

915 **The President:** On what basis?

Mr Crookall: That there is an awful lot of work to get through. We have seen there was a small Bill before us this morning and it just gives us more time, Madam President rather than rushing it through.

The President: I will give that consideration.

Mr Henderson: I am happy to second that, Eaghtyrane.

925 **The President:** Lord Bishop.

The Lord Bishop: Madam President, I entirely agree with this proposal. Not least because this is a Bill which is beginning its passage in this Council for the declared reason that we should give it considerable thought. Therefore, the longer and the more consecutively we can consider it the better. I assume it will be passed and it will be better for a good consideration.

The President: Hon. Members, do you wish to make any observations? Attorney General.

935 **The Acting Attorney General:** Madam President, as I have said at both the First Reading and in the Second Reading, my concern in presenting the Bill to Council for its consideration has been to ensure that Council has every opportunity, ample opportunity, to give the Bill its detailed consideration. On that basis I have got no views contrary to what has been suggested, Madam President.

940 **The President:** Thank you.

The proposal is then, Hon. Members, then that we do not go ahead with clauses today, is that agreed?

Members: Agreed.

945

The President: And that we run them in three consecutive weeks. I ask the Clerk to table them in that fashion.

I note your observations about time, Hon. Members. We have never sat in the afternoon yet, so I am not quite sure what your concern about time is! However, I will give it some thought.

4. Preferential Payments (Amendment) Bill 2016 – Second Reading approved

Mr Anderson to move:

That the Preferential Payments (Amendment) Bill 2016 be read a second time.

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The President: Under these circumstances, Hon. Members, we will move now to Item 4 on our Order Paper, the Preferential Payments Bill. I call on the Hon. Member, Mr Anderson.

Mr Anderson: Thank you, Madam President.

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There was no comment made at First Reading stage on the Preferential Payments Bill, so I will just recap for Hon. Members what we are all about.

The Preferential Payments (Amendment) Bill will amend the preferred creditor regime to place deposit amounts eligible for compensation under the Isle of Man Depositor Compensation Scheme, above all other preferred creditors, except liquidator expenses and secured creditors. This will ensure that for the future when the Depositor Compensation Scheme is triggered then a rapid payment can be made to depositors.

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The latest international standard regarding the Depositor Compensation Scheme require payments to depositors to be made within seven days from the default of a bank. This will also address recommendation 3R-2 of the Report of the Select Committee on Kaupthing Singer & Friedlander (Isle of Man) Limited, which stated:

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We recommend that Government consider all options to enhance the position of and speed of repayment to depositors in the review of the Depositors' Compensation Scheme.

Madam President, I beg to move that the Preferential Payments (Amendment) Bill be read for a second time.

The President: The Hon. Member, Mr Henderson.

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Mr Henderson: I beg to second, Eaghtyrane, and reserve my remarks.

The President: The motion is that the Preferential Payments (Amendment) Bill 2016 be read for a second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Preferential Payments (Amendment) Bill 2016 – Clauses considered

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The President: Clause 1.

Mr Anderson: Madam President, the Preferential Payments (Amendment) Bill will amend the Preferential Payments Act 1908. Clause 1 gives the Bill its short title.

980 Madam President, I beg to move that clause 1 stands part of the Bill.

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane. I beg to second and reserve my remarks.

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The President: The motion is that clause 1 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 2.

990 **Mr Anderson:** Madam President, this clause amends the Preferential Payments Act 1908 to give preferential creditor status to eligible deposits within the rules of the Depositors' Compensation Scheme Regulations 2010 as amended, ahead of other preferred creditors after liquidated expenses and secured creditors. Eligible depositors or the Depositor Compensation Scheme where it has paid compensation to the depositors, will receive preferential payment up to the level of compensation provided for in the Depositor Compensation Scheme.

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A new section is also inserted into the Act which will allow Treasury by order, subject to the approval of Tynwald, to add to vary or reduce the types of debts which are to be afforded preference to other debts. It also provides Treasury with the power to recognise a depositor compensation scheme of another jurisdiction as a preferred creditor if the scheme is equivalent, or similar to the Isle of Man Depositors' Compensation Scheme.

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Madam President, I beg to move that clause 2 stands part of the Bill.

The President: The Hon. Member, Mr Henderson.

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Mr Henderson: Gura mie eu, Eaghtyrane. I beg to second and reserve my remarks.

The President: The motion is that clause 2 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 3.

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Mr Anderson: Madam President, clause 3 provides for the expiry of the resulting Act once all of its provisions are in operation. This will not affect the amendments made by the resulting Act.

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

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The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane. I beg to second and reserve my remarks.

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

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That concludes consideration of Item 4, Hon. Members.

**5. Marriage and Civil Partnership (Amendment) Bill 2016 –
First Reading approved**

Mr Cretney to move:

That the Marriage and Civil Partnership (Amendment) Bill 2016 be read a first time.

The President: We turn now to Item 5, the Marriage and Civil Partnership (Amendment) Bill 2016.

1025 I call on the Hon. Member, Mr Cretney, to take the First Reading.

Mr Cretney: Thank you.

1030 Having been a Member of Tynwald a long time – 31 years next month, in my case – there are occasions when I look back and, with the benefit of hindsight, recognise I got it wrong. Thankfully, in terms of serious matters, I believe, only on a limited number of occasions. One such was in relation to my vote against the decriminalisation of homosexual acts in private by consenting adults. This has, in the almost 25 years since, on a number of occasions caused me concern. I did not participate in the vile rhetorical comments when the matter was being considered in our parliament, but I was complicit in not voting for. My silence when I should have spoken up in the interests of a truly
1035 integrated society, and for the good reputation of the Isle of Man, I sincerely regret and apologise for. I was cautious when I should have been bold.

1040 Today I am seeking the support of Hon. Members to stand alongside the growing and progressive international community by seeking to put in law the right of those in same-sex loving and committed relationships to enter into marriage. The House of Keys, by a large majority – 18 votes to 4 at the Second Reading, 18 votes to 3 at the Third – and despite being granted a completely free vote to Ministers, has voted for this legislation. It is my opinion that we should endorse the principle in this House.

1045 It is, of course, entirely accepted and respected that there are a range of strongly held personal views held on religious, moral and other grounds, and I want to make it clear that this proposed legislation will not undermine the Church of England or other religions and churches. The Established Church and others will continue, as I understand it, to maintain that marriage is constituted as being only between a man and a woman. As far as the Church of England is concerned, there is no such thing as a division between religious marriage and secular marriage, because the marriage of a couple in a registry office is traditionally accepted as being a marriage in
1050 the eyes of the Church. If this Bill is passed, I imagine the Established Church will maintain its view, as indeed may other denominations; and, as in other areas in law, the position of the Island's legislation will be somewhat different to the position of the ecclesiastical law. This is, of course, already the case in England.

1055 It is worth emphasising at this point, for the avoidance of any doubt, that the Church of England is entirely excluded from the scope of this Bill. Its clergy cannot marry same-sex couples and its buildings cannot be used for same-sex marriages. As for other religious bodies, the clergy will only be able to participate in same-sex marriages and their buildings will only be able to be used if the governing authority for the particular body has approved such participation.

1060 There is, however, an exception to the provision, and that relates to civil registrars and the Chief Registrar. As with existing civil partnerships, they may be required to participate in the same-sex marriage process. This is so that all couples can be treated equally in the provision of this important and, for civil marriage, secular public function.

1065 Having mentioned civil partnerships, some people may question that if civil partnerships are basically equivalent to marriage, why is the extension of marriage to same-sex couples needed at all. Let us be clear: when the Civil Partnership Act was introduced, what was being granted to same-sex couples at that time was legal recognition of their relationship that might be akin to marriage, but it definitely was not marriage. I am absolutely delighted that the House of Keys, by 18 votes to three,

determined to extend the civil partnership provisions, and this has resulted in a new long title for the Bill to include heterosexual relationships. This is about genuine equality and is a life choice for persons committed to each other but who do not wish to be married. It takes us ahead of the United Kingdom, but I believe in the not-too-distant future that administration will also introduce this provision.

There has been some comment made about the consultation on the Bill being five weeks rather than six. On the consultation documents published the reasons were given in advance. They were:

- although a significant issue, the content of the Bill is relatively simple and straightforward;
- members of the public took the opportunity to comment on the issue of same sex marriage during the consultation on the draft Equality Bill;
- the public was notified that the consultation would be published by the Chief Ministers' news release on October 2;
- this is likely to be an issue on which people have very clear views, either for or against; and
- it is not considered that the proposals would have any impact on the business or third sectors.

It then stated the closing date.

Although it was only a narrow majority in favour of the proposed Bill compared to those against, I do not believe this represents the actual view on the Island, which I believe to be significantly in favour. Unlike the Irish Republic vote on this issue, which was very much in favour, our consultation is not a referendum and ultimately it is for Government to bring forward its priorities, which it has done.

In a world where so much hatred prevails – referred to only this morning – the principle of two people of the same sex who are in a loving and committed relationship to marry resounds well with me and, I believe, the vast majority.

The Bill is a fairly short and straightforward piece of legislation if approached with an open mind and using clear thinking, closely based on the law in operation in England and Wales. Perhaps I can reiterate the main points.

It will allow same-sex couples to be married in the Island by way of a civil ceremony and in law those marriages will be equivalent to the marriages of opposite-sex couples.

The Church of England and marriage according to its rights is entirely excluded from the scope of the Bill.

It provides that there will be no obligation or compulsion on religious organisations or individuals to carry out or participate in the religious marriage ceremony of a same-sex couple.

It makes some consequential amendments to the Sharing of Church Buildings Act.

It allows the recognition in the Island of the marriages of same-sex couples that were lawfully entered into outside the Island.

It amends the Matrimonial Proceedings Act 2003 to provide for same-sex couples to be able to divorce.

And finally, it amends the Civil Partnership Act so that those who wish to can convert their civil partnership into a marriage, and by amendment extends the civil partnership option to heterosexual couples.

I started my comments by referring to the dark days of almost 35 years ago. The predictions of those who vigorously opposed the reforms then have not come to pass. Indeed, things have come a long way. Embracing the legislation before Hon. Members will only serve to enhance our reputation as a progressive society that takes seriously the rights of vulnerable people and minorities. Our message today must be that we are a tolerant, inclusive and open society, that we reject discrimination and are outward-looking and engaged with the wider world.

I would like to thank the Chief Minister for sharing his speaking notes with me, and so helpful were they that I have from time to time in my remarks replicated his.

I trust Hon. Members share the values I describe and the progress that has been and continues to be made and to which this Bill will significantly contribute.

I beg to move that this Bill be read a first time.

The President: Hon. Member, Mr Coleman.

Mr Coleman: Thank you, Madam President.

1115 I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Anderson.

Mr Anderson: Thank you, Madam President.

1120 At this stage I would like to register my opposition to this Bill, and in doing so I hope to explain briefly my reasoning.

It is unfortunate when one does take a minority view on these subjects that one can often get pilloried by the press, and I was disappointed to see the *Isle of Man Newspapers'*, in particular, reporting on the passage of this Bill through the Keys.

1125 I would like to start by asking the hon. mover how this Bill has suddenly become a top priority of this Government. When the Chief Minister published his manifesto for the position of Chief Minister there was no mention of it. The Hon. Member will recall the timetable for Bills for this administration when they were drawn up and we were both in the Council of Ministers. There was a category put on different Bills – categories A, B and C – as the legislative drafting was a precious commodity at that time and time was required to get the Bills through the Branches, and it was decided how to decide which should be A, B and C. If my memory serves me correctly – and maybe

1130 the hon. mover can correct my bad memory – this Bill was not in categories A, B or C at that stage. The hon. mover has already mentioned the background of only having a shortened period of consultation, that being five weeks. It is a bit surprising that, as this has become such an important Bill, it was not given the full consultation period. I note the comments the hon. mover makes about how even the contributions were made to that consultation. I would not go along with the interpretation of the hon. mover that there are far more people in the community who maybe are supportive than opposed to this Bill, because it all comes down to your interpretation of marriage. It is not the interpretation of people's relationships; it is the interpretation of the word 'marriage'.

1140 I note that the *Oxford Dictionary* has recently changed its definition of 'marriage'. For centuries, 'marriage' has meant the relationship between a man and a woman. However, the *Oxford Dictionary* now states that ... I will just quote this:

The legally or formally recognized union of a man and a woman (or, in some jurisdictions, two people of the same sex) as partners in a relationship

So they have changed their definition in relation to legislation that has been passed in other countries.

1145 However, I am maybe a little bit old fashioned in that I believe a marriage is between a man and a woman. Having said that, I fully supported the civil partnership legislation, recognising that there are loving relationships between people of the same gender, that had to be recognised, who had to have the same rights, and I believe they have those rights now in that civil partnership legislation.

As I say, however, the definition of marriage, in my eyes, is still between a man and a woman and it is in every major religion in the world and has been in every major society in the world up until present days.

1150 If this reading is passed, Madam President, I will consider proposing amendments, because I believe that the Bill that we are progressing at the moment through this Branch should be progressed ... the Bill that actually we have just delayed progressing should have been progressed here before this Bill came in, because the Equality Bill makes provisions for those people who have a different view.

1155 I will keep my comments to that at this moment in time, Madam President, but I will be opposing this legislation.

The President: Lord Bishop.

1160 **The Lord Bishop:** Madam President, I am very grateful to the mover of the Bill for his very helpful remarks and very charitable remarks.

There is much in this Bill we have before us that is good, not least the tidying-up of a number of useful changes to existing marriage law. It is also a welcome opportunity to think of a way forward that will be of benefit to the whole of society, including the LGBTI community and those who do not share their views.

1165 I speak as one who has seen the Anglican Communion worldwide divide over this issue, and who seeks truth and reconciliation and has been part of that process. However, I believe that the Bill we have before us contains matters that show all the signs of being hasty and misguided. Copied, as much of it is, from the Act of Parliament that was similarly rushed through, it commands less support among the public than it commanded in another place. That is, in itself, a subject worth
1170 exploring.

When same-sex marriage was rushed through the UK Parliament, many observed that this radical, far-reaching change had never been presented to the electorate. Sadly, the same is true here, both in that this change has not been presented to the electorate and also that even the consultation period was foreshortened, so that presumably the Bill could receive Royal Assent
1175 before the end of this parliament. If the rough assessment of those for and against the Bill in the public consultation is representative of the population – and I have even noticed that some opponents were counted as supporters – then 45% of the general public are not in favour of the Bill. That should have given the proponents pause for thought: should we rush headlong into this, rather than leave it to the newly elected Members in the 2016-20 session?

1180 Madam President, immediately I hear cries, from certain circles, of homophobia – not in this Council, of course, but among those who want to sling mud without considering that all of us here have thought very carefully indeed about this Bill.

Perhaps you see, Madam President, where I am coming from. I hope I understand something of the complexity of sexuality that was not understood in former centuries. I have also studied and
1185 hold in very high esteem the Judeo-Christian scriptures as the Word of God – and, for good measure, we also take note of the ancient traditions of other religions. My task, as a contemporary believer and teacher of the faith, is to understand the Bible in the light of the world in which we live and, insofar as I can discern it, the guidance of God.

There is remarkably little in the scriptures about same-sex relations – the Isle of Man might be
1190 reminded that usury comes in for far more condemnation than homosexuality – but what there is, is negative, though I refuse to sweep that under the carpet. However, there is no single contemporary Jewish, Christian or Muslim view of sexuality; there are a range of views in all those religions. There are people who take firmly entrenched views on one side or another, but most of us adopt a range of views influenced by both head and heart. That, I suppose, is why we have necks – to connect head
1195 with heart.

Christians are not in the condemning business but on the side of forgiveness. So, when I recently heard of someone slagging off the Church of England by asking, ‘Would you want your daughter married by a lesbian vicar?’ I was utterly shocked and very grateful that this person was a critic of
1200 the Church to which I belong, for that kind of remark has no place in a gospel community and, thank God, the overwhelming majority of Christians today would share that view.

Let me tell you about one of my closest friends. We have known each other for well over 40 years. He is homosexual by orientation and has lived with a partner for many years. He takes a clear but moderate and charitable point of view in the kind of debate in which we are engaged. I take a
1205 similarly moderate and charitable point of view in this debate. But it is worth noting that seven out of eight people who have entered civil partnerships in England, Scotland and Wales since 2005 have not converted their civil partnerships into marriage. When we discuss this, my friend and I agree on a great deal but there are issues on which we firmly disagree, and this is one of them, yet we can both do that with respect, even with the deep affection that is the product of our long relationship.

1210 I recognise that harsh words have been spoken by those who hold pronounced views on both sides of this debate, words that have added heat rather than light and would have been better left unspoken.

1215 When I received an email from a supporter of this Bill in another place accusing the Church of hypocrisy and Christians of being afraid of the gay community, I realised that for some this is not about same-sex marriage and civil partnerships but about settling real and imaginary scores. That deeply troubles me, Madam President, because we are making law for the whole of society, for every citizen, not settling scores. And when we make something legal we also make its corollary unlawful. Slowing down this Bill for the sake of calmer consideration seems to me to be wiser than pushing it through at full speed.

1220 Let me reflect further on the principles behind the Bill itself and set the minds at rest of those in the churches that are worried about being forced to do something to which they have a conscientious objection, underlining what was said by the proposer of the Bill. If your church – that is, your denomination – has a conscientious objection, it would be protected. If you belong to the Church of England, your ministers are forbidden from solemnising same-sex marriages. You may have other issues, but being forced to do something you do not want to do is not one of them in this Bill.

1225 The Bill is not about equality of status. Why do I know that is true? Because the Bill has 28 clauses and three extensive schedules. If same-sex marriage and heterosexual civil partnerships *could* – I stress that ‘could’ – be equal, then we would need only three or four clauses, the crucial clause being simply ‘Marriage and civil partnerships shall henceforth be open to both sexes.’ The problem is the human body and the nature of sexuality, not legal draftsmanship or political ingenuity. So, whether we are in favour of the Bill or against it, or confused by it, talking about equality of status simply confuses things. It is spin.

1230 What is being asked for here is what is called ‘equality of nomenclature’. In other words, quite simply calling one thing the same thing as something else. Back to that fascinating subject for which I get teased in this place, the English language, Madam President. Collective nouns are singular words that denote a number of individuals – words like ‘team’, ‘government’ or ‘family’. The members of a family will be individual and have their own names, personalities and characteristics, but they have something fundamentally in common: their familial relationship. In relation to marriage and civil partnerships, we are being asked to judge whether a legally binding heterosexual relationship has the same familial characteristics as a legally binding homosexual relationship. In other words, we are being asked the question: are both of them marriage?

1235 If I make a cup of tea and a cup of coffee, almost all of what is in each cup will be the same: hot water. But if you asked me for the cup of coffee, Madam President, and I were to give you the cup of tea instead, you would be able to tell the difference, even though the different constituent flavours might amount to no more than 1% or 2% of what is actually in the two cups of hot water. So, we could introduce a Cups of Tea Bill that would make it legal for cups of tea to be called cups of coffee for those who wish to call their tea ‘coffee’, even though the drinks are different, because they think that being called a cup of tea is not equal to being called a cup of coffee.

1240 In the same way, equality of nomenclature – calling one thing the same thing as something else – does no honour or respect to either party. I do not sit here with any intent to judge or condemn committed and loving same-sex relationships any more than the difference between coffee and tea, but simply to ask whether legally binding same-sex and heterosexual relationships are both equally marriage. That question is one to be thought about.

1245 I realise, Madam President, that the appeal of this Bill is, for many, only about the heart, and I do not deny the love that can exist between people of the same sex: David and Jonathan in the Old Testament loved each other deeply, though there is no evidence whatever of a sexual relationship.

1250 How else might we approach the question that lies behind this Bill? For hundreds of years, we in this society have agreed on what we mean by the word ‘marriage’. There are four constituent characteristics, the first three of which form the current legal definition of marriage: (1) it is the union of one man and one woman; (2) it is intended to be lifelong; (3) it is a unique relationship from

1265 which all others are excluded; and (4) within it sexual intimacy is assumed. As practised, characteristic (1) is fundamental: one man and one woman. The second characteristic, that it is lifelong, may be set aside by divorce. The third characteristic, that it is unique, may be broken by adultery. Absence of the fourth characteristic, sexual intimacy, may be used as grounds for annulment.

1270 So, of the four defining characteristics of marriage, the only one which gives marriage its primary meaning and cannot be affected by events is that it is the union of one man and one woman. This Bill seeks to redefine, therefore, the only unalterable characteristic of marriage. It opens up the possibility that, in future, a polygamy lobby could argue that, as long as all parties agree, marriage may be extended to three or more individuals.

All this is nothing to do with minority rights, nothing to do with equality, nor is it to do with a 21st-century understanding of monogamy, sexuality or polygamy; it is simply a failure to value one of the most important of the institutions that hold society together.

1275 If we make this move to generalise marriage, we will, by this Bill, for the first time ever, have enshrined in law two definitions of marriage. There will be the traditional definition and there will be the new definition, and you will be able to choose which one to believe.

1280 Up until now, the churches have been able to say that they uphold the state's definition of marriage because it is the same as theirs in the four key characteristics. Some churches may add to the characteristics in some way, but none change them. Thus, before a wedding in some denominations a couple may be expected to observe particular qualifications, whereas in the Church of England, provided a couple are free to marry and one of them lives in the parish, a wedding can take place. Nevertheless, all the churches accept that if a couple are married according to the law of the land, they are married, full stop – and it was good to hear the proposer of the Bill acknowledge this.

1285 If this Bill is passed, there will become two parallel doctrines of marriage: the new doctrine that allows for two varieties of marriage together with two alternative versions of marriage, and the traditional one accepted by a proportion of citizens – as many as 45%, according to the consultation. That is not equality.

1290 I do apologise for the length of this speech, Madam President, and I draw to a conclusion, but vital principles require careful analysis.

1295 The amendments in another place would allow for civil partnerships to be contracted by heterosexual couples. This was something I myself attempted to suggest in this Council on the basis of equality during the passage of the Civil Partnership Bill, and was rightly voted down on legal advice. Incidentally, we were also at that time given an assurance on behalf of the Council of Ministers that there would be no possibility of a same-sex marriage Bill if we passed the Civil Partnership Bill.

1300 So why were heterosexual civil partnerships voted down? And why was this not introduced by parliament? Because it would not be equality at all; it would create an institution that is identical to heterosexual marriage, except that it would lack the vows of mutual and lifelong commitment that we have always assumed to be involved in marriage.

1305 Who would it be for? An advocate was recently quoted in the media saying that civil partnerships would appeal to people who did not want the religious connotations of marriage. That is curious: civil marriage without religious connotations has been around in these islands since 1836. Oh, yes, and because of the sexual element it does not solve the problem of close relations either, who are still excluded – unless, of course, we were to introduce a celibacy schedule.

Some people have suggested that these amendments are innovative, whereas I believe they would simply make the Island a laughing stock.

1310 This unsatisfactory Bill would leave us with two pairs of identical institutions with different names: marriage for heterosexual couples and marriage for same-sex couples; then, in parallel, alongside these, exactly the same thing as marriage for heterosexual couples and the same thing as marriage for same-sex couples, minus, in the latter case, public statements of public commitment to one another in both of those forms.

Peter Tatchell says it is farsighted. I would say it is myopic.

1315 I remain convinced that the way I suggested to the Chief Minister two or more years ago, after
the establishment of civil partnerships, would have been the sensible way forward. A simple Bill was
then drafted that would have transformed civil partnerships into weddings from little more than
1320 signing a piece of paper, which is the present way, into proper acts of mutual and lifelong
commitment. And if I had had my way, which of course was unlikely, I would also have removed the
word 'civil' from the title of 'civil partnerships', simply because I think the word lowers the tone of
the relationship.

It will not be a surprise, Madam President, that I will vote against this First Reading unless any of
my colleagues can still persuade me otherwise.

1325 I have no doubt that I will get fired on in the media from both sides, but at least I have given it
some thought. And they say we Anglicans are always in the middle of the road – which, just like the
Road Races Bill that we have passed, seems to indicate that that is where you get run over.
(Laughter)

Thank you, Madam President.

The President: The Hon. Member, Mr Corkish.

1330

Mr Corkish: Thank you, Madam President.

Rather than just oppose this Bill, I would like to explain some reasoning behind my views and
thinking at this stage.

1335 I certainly do not intend to quote religion. There are others who are much better qualified to do
that.

In any community of whatever size there must be and should be variances in opinion. We all hold
an opinion, and thank God that we have a society that acknowledges that right of individuals and
respects it. What strikes me and concerns me is the tone and general nature of the quite rigid views
expressed by word and letter from some of the supporters of this Bill and its intentions, strongly
1340 inferring that my views or stance, and many others who share them in this Island, are wrong,
outdated, antisocial, homophobic or even bigoted. I hope I identify with none of those, although will
admit to being a traditionalist and one who can and does strive to see both sides of an issue and
who accepts opinion and allows such opinion to be voiced. I am sure that we, as Members of the
Legislative Council and Tynwald Court, have each considered greatly and exercised much angst over
1345 this Bill, and like us all I have a right to freedom of conscience and a right to exercise it.

I too can say the Chief Minister was eager to share correspondence with us for support of the
introduction of the Bill from Mr Peter Tatchell – we received an email from him – who declared it as
being farsighted. For me, that does not make it feel any more right, or make me feel perhaps guilty
or wrong for not agreeing and supporting this Bill. Indeed, there are many other notables in the
1350 wider society who could have been found and would have been eager to correspond to the contrary.
However, the Chief Minister has said that he acknowledges the difficulties of this Bill.

Madam President, if I can just digress into the musical world for a moment, W S Gilbert, the
wordsmith of the Savoy Opera twosome, Gilbert and Sullivan, penned words to a song, the chorus of
which noted that following birth 'one is either a little Liberal or else a little Conservative'. I use this
1355 illustration to suggest that in this Bill before us one is either for it or against it and, put simply, could
vote either yes or no as a freedom of conscience. And perhaps it is that head-and-heart reasoning
that we so often employ on how to balance in this place.

This Island of ours and its people continue to adopt a reasoned and tolerant and respectful view
on society and those who make up that society, and long may that continue. It was this sense of
1360 fairness and understanding that allowed the Civil Partnership Bill to pass through parliament –
although not a unanimous vote perhaps accepted by many that it went far enough and met the
demands wanted. It accepted and recognised the love and commitment between couples of the
same sex. The Bill before us is regarded by a great many people, who are entitled by right to express
their view, as a step too far. And I too remember, through an exchange with the Chief Minister in

1365 Tynwald Court, that an assurance was given by CoMin at the time that there would be no possibility of a same-sex marriage Bill if the Civil Partnership Bill was passed.

Madam President, there are parts of this Bill before us that are good, and it clears up and defines some grey areas of present marriage law, but I would agree with others that it is being rushed in – and I am concerned at this – and probably all for the reasoning of receiving Royal Assent before the
1370 end of this parliamentary session. I am not condemning the principle behind this Bill for those supporting it, but I have a problem as to whether what we would term as legally binding, for those of the same sex, marriage and heterosexual relationships can both be described as being marriage in an equal phrase. We then have two types of marriage.

So I cannot, however much I try, accept that marriage and the term ‘marriage’ can be interpreted as being anything else but a union between a man and a woman. It is a legal definition and has been
1375 revered and respected as such for being valued and sacred to society and part of the building blocks and foundations upon which our society has been framed. I am often nervous when at times we, as a sophisticated society, think it is a good idea to embrace modernity and move with the times by dismantling the tenets of tradition and value for no other reason than that some think it is what we
1380 should be doing.

Madam President, we all enjoy our personal lifestyles, our beliefs and our personal rights, which we defend, and quite rightly. We rejoice in the fact that we live in a society celebrating free speech and opinion and understanding of each other’s personality and orientation. We will all acknowledge that around this Island there will be no unanimous vote on this Bill, and indeed we have just heard
1385 this morning from the Lord Bishop that a rough assessment in numbers would perhaps make as much as 45% of people being opposed to the Bill. There is no one permissive opinion. I obviously will not be voting against the Bill, and I trust that those in its support, and indeed the press, will respect my views and those of many others in this Island.

Could I ask, finally, the mover, at this point – and I apologise if I have missed it in his First Reading
1390 speech, or indeed through the Bill ... Reference is abundantly clear regarding the rights for ministers of religion to be able to opt out or refuse to solemnise same-sex marriages, and reference is made to the Chief Registrar regarding his or her permission to marry in certain places. Can the mover tell me if such an opt-out is available or applicable to the registrar or registrars here in the Isle of Man?

Thank you, Madam President.

1395

The President: The Hon. Member, Mr Coleman.

Mr Coleman: Thank you, Madam President.

I will be voting for this Bill.

1400 I am not a man of deep faith, though I firmly respect the people who have a much deeper faith than myself. I have spent a long time thinking about this particular piece of legislation, and I went back to how many times perhaps religion has been wrong.

I can remember a time when divorced people could not get married in church. I suffered from that: I could not get married in the church that my family had traditionally married in for 200 years,
1405 because the local bishop said that because I was marrying a divorced woman he would not allow it.

I can also remember when there was outrage about the concept of female priests, (**Mr Cretney:** Hear, hear.) and time has moved on. I can also remember outrage against female bishops, and time has moved on.

So we could be looking at situations where perhaps religion is a little bit behind. Or maybe we
1410 have to wait for the older clerics to pass on, because I have seen statistics which say that the younger clerics are perhaps more in favour than the older ones, and maybe this is evidence that the younger people in religion – and I am not picking on any particular religion at all – are perhaps more in tune with their parishioners than the older ones.

Let me talk about marriage between one man and a woman. I wonder what Muslims would think
1415 about that, with their wives, where they have polygamy. You look in other dictionaries –

Mr Corkish: We are not voting on that.

Mr Coleman: Sorry?

1420

Mr Corkish: We are not voting on that.

Mr Coleman: No, we are not, but what we are saying is that the one word does not cover all flavours, and in fact there is a meaning of 'marriage' which is a combination of flavours. Okay?

1425

I have to confess with this I am not totally voting with my head, I am really not. I am voting for the fact that there could be two people of the same sex in a loving relationship who would like more fulfilment by going through a marriage ceremony, and I do not think it is within my gift (**Mr Cretney:** hear, hear.) to say 'no, you cannot do that'.

Thank you, Madam President.

1430

The President: The mover to reply.

Mr Cretney: Yes. Could I thank, first of all, Mr Coleman for his support, both seconding and also his remarks just made. I certainly agree with him in relation to the final comments he made.

1435

Mr Anderson was the first to speak. He opposed. I expected, before I came along today, that those who would verbally oppose would be Mr Anderson, the Lord Bishop and Mr Corkish, and they are perfectly entitled so to do.

If I can address Mr Anderson's point – he asked how it had suddenly become a top priority and said that it was not in the Chief Minister's manifesto. A number of Bills have gone on to the agenda which never even appeared on the ABC priority list. This morning in the Legislative Council the Concessionary Travel Schemes Bill was discussed. That is an example. The drafting team in the Attorney General's Chambers is now up to full strength and the legislative programme is not set in stone and has changed over the life of the administration. That is a further reason to indicate that what might have been said at a certain time is not set in stone – even a tablet of stone!

1440

What I believe is that this Bill recognises that the world is a moving, dynamic place, and that more and more people are moving on and recognising that, in a world which is full and trouble and hatred and bad things, we should recognise the opportunity that people have and people wish to have endorsed to be in a loving relationship and to legalise that.

1445

The world has moved on since the commitment about no same-sex marriage was given. The US Supreme Court ... Ireland, which I think was the most outstanding change in terms of the referendum – that was ground-breaking in terms of the decision that was made there. And we have also got the legislation in England, Wales and Scotland.

1450

So I believe, to answer Mr Anderson, we have moved on even in the five years since the Chief Minister has been in position and came forward with his manifesto.

The Hon. Member also referred to the five weeks' consultation and I have explained that in the preamble to the consultation it was made absolutely clear why the consultation was going to be five weeks, and I set out what was written for people to read when they made their comments. I do not believe it has stopped anybody from making any comments about the Bill.

1455

Whilst thinking about the Chief Minister's agenda, the Hon. Member might recall that the Preferential Payments Bill was not in his agenda either. That is a new Bill.

1460

The Lord Bishop: again, he was courteous enough to thank me for my comments. I equally want to do the same to him. I like the Bishop and he does a good sermon. (*Laughter*) He does do a good sermon, and I do not think anybody this morning had any time out how long he was going to be, but it was well thought out, it was well considered and I appreciate where he is coming from, obviously. He has a lifetime of experience. But like his friend, he and I today ... I hope we will remain friends, but we are going to disagree on this point. (**The Lord Bishop:** Absolutely.) Yes. And whilst praising his sermon, I am not sure about his tea and coffee analogy, because even if it may sound plausible I am not really convinced about that one – but it added colour to his words of wisdom.

1465

1470 The English language develops and changes over time, as does the meaning of words. The Bill is
 not proposing polygamous marriage, simply equality of treatment for same-sex unions. There is
 absolutely no suggestion that marriage should be open to more than two people. Far be it from me
 to quote from religion, but I have, like others, sought advice from people who do have a particular
 1475 knowledge of certain aspects. If I can just raise one or two things, the advice to me is that ... I accept
 that the biblical text does not provide for it, but the idea that marriage was fixed for all time as
 monogamous and heterosexual in the era of the early New Testament Church is debateable. By that
 time it had changed from the time of the Old Testament patriarchs, all of whom had more than one
 wife – Jacob had four. Thus it cannot be said that the status of marriage has ever been settled by
 God from the dawn of creation. Marriage was, in Christian societies, originally viewed as
 1480 indissoluble, except on grounds of adultery, and exclusively monogamous and heterosexual, but the
 Island is no longer an exclusively Christian community.

Even when Lord Penzance, a very distinguished canon lawyer, ruled in *Hyde v Hyde and
 Woodmansee* that ‘marriage according to the law of this country is the union of one man and one
 woman for life’ in 1866 it was possible to dissolve a marriage by divorce, although the grounds were
 appreciably tighter than now but were certainly not restricted to the single ground recognised by
 1485 the canon law. It follows that even in the 1860s the concept of marriage as understood by the
 Christian churches and by the state had diverged. (**A Member:** Absolutely.)

The argument that this is the start of a slippery slope to polygamy, and presumably also
 polyandry, is mere supposition and cannot be proved either way. No one has suggested that either
 should be introduced into western society, although the former is tolerated in South Africa and the
 1490 latter is found only in Tibet.

So I think what I am proposing for Hon. Members’ consideration today is a modern, progressive,
 inclusive society taking the Island forward.

I would emphasise again that the directly elected House, the House of Keys, voted by a strong
 majority in favour of this measure and I do not think we should disregard their views. It is they who
 1495 will be facing the electorate later this year, not us.

Finally, Mr Corkish’s comment. I did say in my opening remarks that the opt-out for churches was
 explained but there is no opt-out for registrars. That was a matter which was discussed in the House
 of Keys in some depth, and I think there was an amendment but it certainly was not agreed that
 there would be an opt-out for registrars because they are public servants and they are here to serve
 1500 what is required of them. The existing staff of the Registry who would conduct the ceremonies do
 not have any problem with the proposals. Anyone recruited hereafter would have to be able to
 perform the full duties of the office as required.

I would like to thank all Members who have made their contribution. I would like to hope that
 those Members who have not made a contribution will be prepared to allow this matter to proceed
 1505 today. I think it would be very disappointing if that were not the case.

I beg to move that the Bill be read a first time.

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

1510 *A division was called for and voting resulted as follows:*

FOR

Mr Turner
 Mr Coleman
 Mr Cretney
 Mr Wild
 Mr Henderson
 Mr Crookall

AGAINST

The Lord Bishop
 Mr Anderson
 Mr Corkish

The President: Hon. Members, 6 votes in favour and 3 votes against. The motion therefore carries.

That concludes consideration of our business this morning, Hon. Members.

As we now approach the Easter break, our adjournment will be until 26th April in this Chamber. I wish you all a restful, peaceful Easter.

The Council adjourned at 12.50 p.m.