

**REPORT OF PROCEEDINGS OF  
HOUSE OF KEYS**

**Douglas, Tuesday, 26th May 1998  
at 10.00 a.m.**

Present:

The Speaker (the Hon N Q Cringle) (Rushen); Mr L I Singer and Hon A R Bell (Ramsey); Hon R E Quine OBE (Ayre); Mr J D Q Cannan (Michael); Hon H Hannan (Peel); Mr W A Gilbey (Glenfaba); Mr S C Rodan (Garff); Hon D North (Middle); Mr P Karran, Hon R K Corkill and Mr G T Cannell (Onchan); Mr J R Houghton (Douglas North); Hon D C Cretney and Mr A C Duggan (Douglas South); Mr R P Braidwood and Mrs B J Cannell (Douglas East); Messrs J P Shimmin and A F Downie (Douglas West); Hon J A Brown (Castletown); Hon D J Gelling (Malew and Santon); Sir Miles Walker CBE LLD (hc), and Mrs P M Crowe (Rushen); with Prof T StJ N Bates, Secretary of the House and Mr T A Bawden, Acting Secretary of the House.

*The Speaker took the prayers.*

**Introduction Of The New Member For Onchan, Mr G T Cannell**

**The Speaker:** Hon. members, a supplementary agenda has been circulated and we will of course take the supplementary agenda first. Will the hon. members for Onchan, Mr Karran and Mr Corkill, as the sponsors for the new member for Onchan, Mr Geoffrey Thornton Cannell, escort him to the chair.

**Mr Karran:** Vainstyr Loayreyder, I have the honour to present Mr Geoffrey Thornton Cannell, the new member for Onchan.

**The Speaker:** Thank you, hon. member. Mr Cannell, you are of course no stranger to your new colleagues, having reported on the proceedings within this House and within this chamber over many years. I am confident that you will carry out your duties to the House and to the constituency of Onchan in a straightforward and forthright manner. Your enthusiasm, of course, is well known throughout the Island and I am quite sure that the dexterity, the skill and the stamina that you have learned over many years of trials riding will stand you in very good stead when the going gets tough, as from time to time it does within this chamber. On behalf of all the members, Mr Cannell, I have great pleasure in welcoming you to this House.

**Mr Cannell:** Thank you very much, Mr Speaker.

**The Speaker:** May I have your certificate of election, sir? The certificate is in order and I have pleasure in presenting you with a copy of the standing orders of the House and ask you to sign the Record of Standing Orders on the Secretary's desk.

*Mr Cannell signed the Record of Standing Orders.*

**The Speaker:** Can I invite the sponsor members to escort Mr Cannell to his seat, please.

*Mr Cannell took his seat in the House.*

**All-Island Water Rate - Question By Mr Singer**

**The Speaker:** Hon. members, we now turn to our order paper and item 1 on the order paper. I call upon the hon. member for Ramsey, Mr Singer.

**Mr Singer:** Thank you, Mr Speaker. I beg leave to ask the Chairman of the Water Authority:

*Has your department considered the introduction of an all-Island water rate?*

**The Speaker:** I call upon the Chairman of the Water Authority to reply.

**Mr Karran:** Vainstyr Loayreyder, the Water Authority raises its water rates based on a rateable value on properties. The water rates apply equally to all properties on the Island, so you might say that we already have an all-Island water rate. Any differences which do occur in the water rates bill do so as a result of the variations of rateable values of properties.

The Water Authority realises that this is an issue which is determined by the Treasury: the rateable value of properties throughout the Island.

**Mr Singer:** Thank you, Mr Speaker, I expected a longer answer, especially from Mr Karran. Could I ask the hon. member does he agree with me that it is extremely unfair that a person, say, in Santon should pay less than a person in a similar house, say, in Douglas, Onchan or Ramsey purely because the rateable value of the house in Santon is less than those in larger conurbations?

**Mr Karran:** Vainstyr Loayreyder, I have a great deal of sympathy with the hon. member as far as this is concerned. You may recall that in Tynwald Court in March of this year I raised the issue of the valuation of property and the need for a review as far as rateable values are concerned. Certain areas have so much discount. Of course you have the absurdity of some areas where you have mansion houses that have a rateable value of less than a Pulrose semi and I think this is an issue that is long overdue, that needs to be rectified, and I do believe that my hon. colleague, whilst we had the usual 'No, we're not doing anything', will actually be resolving this issue in the near future. So I do hope that this anomaly will be sorted out but it is out of the hands of this hon. member.

I must also say, with the possibility of other charges being levied in the Island such as for sewerage and for incineration, I do hope that the government sees this as a priority because it is going to have a very big effect on a lot of people in this Island and I do hope that a rate rebate scheme comes along in its wake.

**Mr Rodan:** Mr Speaker, can I ask the Chairman of the Water Authority, in the event that the supply of fresh water and the disposal of waste water is brought together in a combined authority, as is logical and standard practice elsewhere, how does he view the water rate operating in relation to a sewerage rate?

**Mr Karran:** Vainstyr Loayreyder, I think that the present administration is very keen on putting sewerage and water together and I think that the hidden agenda will be for a way of funding the process of sewerage disposal, not at the taxpayer's expense, but at the ratepayer's expense. So I think the hon. member is quite right to be concerned about the all-Island rate basis of making sure that the rateable value is right across the Island.

**Sir Miles Walker:** Mr Speaker, I was going to ask the hon. member, the Chairman of the Water Authority, if he could tell us the address of this mansion which has a lesser rateable value than a Pulrose semi in order that the matter can be investigated properly?

**Mr Karran:** Vainstyr Loayreyder, I would expect this hitting nerves when you are talking about the agricultural industry where you have a situation. I understand the hon. member's concern as far as me raising the issue but it happens to be that I know, for example, that we have a situation where we have a discount in rural areas. I am told that that is the case, that there are areas with a substantial discount within the parishes, and the rateable value of a property in Douglas and the rateable value of a property in Michael are two different things and worked on a discount basis.

**Mr Gilbey:** Mr Speaker, would not the hon. chairman agree that in fact most agricultural properties are not charged for water on the basis of rates but on the basis of metered supplies, so it is a totally different matter?

**Mr Karran:** Vainstyr Loayreyder, the hon. member would be right if he was talking about properties that are in existing agricultural areas but when they get changed from agricultural areas out of the agricultural operation I would suggest to the hon. member that there is no review of the rates on that property when it stops becoming a farmhouse. It does not get a review of its rates when it becomes a private house.

**A Member:** It does.

**Mr Karran:** It does not.

**The Speaker:** A final supplementary, I think, hon. members. The hon. member for Ramsey, Mr Singer.

**Mr Singer:** Having listened to the chairman, I thank him for his answers. Can I ask him, does he expect to see a fairer system of charging for water supplied to domestic properties within the next couple of years?

**Mr Karran:** Vainstyr Loayreyder, as far as the Water Authority is concerned, the issue of how the rateable values are assessed is a matter for the Treasury. They are out of the hands of the Water Authority. As we saw in March of this year in Tynwald, hopefully the Treasury will be reviewing the rateable values of properties throughout the Island and that will be one way of dealing with it. I think it will be something that needs to be done as a matter of urgency.

### **School Curtilage - Responsibility For Pupils - Question By Mr Singer**

**The Speaker:** Item 2 on the order paper, hon. members. Again I call upon the hon. member for Ramsey, Mr Singer.

**Mr Singer:** Thank you, Mr Speaker. I beg leave to ask a member for Education:

*From what time in the morning do schools accept responsibility for pupils within the school curtilage?*

**The Speaker:** I call upon a member for the Department of Education to reply. I call upon the hon. member for Michael, Mr Cannan.

**Mr Cannan:** Mr Speaker, I am able to tell the hon. member for Ramsey that the time schools accept responsibility for pupils will vary from school to school, depending upon each school's start time. However, once schools' start times are identified, the answer to the question will be 10 minutes before the start time of the school day. This is because the conditions of tenure and sick pay regulations for the employment of teachers requires teachers

normally to be in attendance not less than 10 minutes before the stated opening time. Clearly schools should not accept responsibility for pupils earlier than this since they cannot guarantee the attendance of staff at an earlier time, and if the hon. member's question refers to primary schools in Ramsey, I would advise him that the Albert Road School has a start time of 8.55 a.m. and Auldyn Infants School has a start time of 8.55 a.m. Therefore the responsibility for pupils commences at 8.45 a.m. in both schools.

**Mr Singer:** Mr Speaker, I thank the hon. member for his answer. Could I ask him, are you aware that despite protests from parents, head teachers and myself changes in the new bus network, in particular the Ramsey skipper service, will now result in some infant and junior pupils being dropped off at the local schools at 8.30 a.m. and 8.35, that is, at least 10 minutes before the accepted times at which these schools accept responsibility for the children's safety? Can you confirm that you will press the director of public transport to reverse his decision and, if he will not, can you tell me who will accept responsibility for the children's safety from 8.30 until 8.45?

**Mr Cannan:** The department is aware that the buses are delivering children earlier than 8.45. The department has drawn this matter to the attention of Department of Tourism and Leisure which is responsible for the school buses and hopefully they will accept that school buses should not arrive at schools earlier than 10 minutes before that school's start time.

**Mr Cretney:** Mr Speaker, could I ask the hon. member who is standing in for the Minister for Education to refer to his administrator, Mrs Gash, who received a letter on 19th May last week which confirmed that the Department of Tourism and Leisure, after receiving representation on this point, has made sure that the new bus network will be arriving at the schools at the appropriate time and that children will not be left unaccompanied.

**Mrs Crowe:** Well done!

**Mr Cannan:** I thank the minister for the information that adjustments have now been made to the schools bus service and that children will not now be left unattended at schools.

**Mr Downie:** I would like to ask the member for the Department of Education if he can clarify the position with regard to responsibility for pupils within the school curtilage during the lunch-time period? Have you any responsibility at all for children over the lunch period?

**Mr Cannan:** The school has responsibility for the children as long as they remain inside the curtilage of the school grounds during the lunch-hour.

### **Needle Exchange Scheme - Question By Mrs Cannell**

**The Speaker:** Item 3, hon. members, and I call upon the hon. member for Douglas East, Mrs Cannell.

**Mrs Cannell:** Thank you, Mr Speaker. I beg leave to ask the member for Health and Social Security:

*Following the feasibility study conducted by your department, does the department intend to introduce a pharmacy-based needle exchange scheme?*

**The Speaker:** I call upon the member for Health and Social Security, the hon. member for Onchan, Mr Karran.

**Mr Karran:** Vainstyr Loayreyder, in responding directly to the hon. member's question, I can advise that my department has now completed its deliberations in relation to the introduction to a pharmacy-based needle exchange scheme and has made recommendations for the introduction of a pilot scheme to the Council of Ministers.

**Mrs Cannell:** Mr Speaker, can I ask the hon. member for Health if his department can relay to the Council of Ministers that they require a degree of priority in relation to this, particularly in view of the recent publicising of the heroin problem that we have, the continuing heroin problem that we have, and the fact that heroin addicts are exchanging needles and the associated diseases that can result from that? Will he please relay to the Council of Ministers that there is a priority here in relation to getting it started?

**Mr Karran:** Vainstyr Loayreyder, I welcome the support and enthusiasm of the hon. member as far as the exchange scheme is concerned. As a member that has pushed this for some time I think it is important that we do realise that it needs to come in sooner rather than later and I just hope that other departments of government will do their bit in the war against drug abuse on this Island and the way that the roots of such abuse are taking place in this Island, into our society. I will obviously bring back her concerns and make them available to the minister and I am just disappointed that where you have only got an eight-man drug squad on the Island it is not enough on this Island and I think these issues need to be addressed as well as the needle exchange scheme.

**Mrs Cannell:** Mr Speaker, I welcome the positive reply from the hon. member for Health. Can he also advise members of this House, when he talks about a pilot scheme, how will that actually be run? Are we talking about one particular area, perhaps Douglas, or are we talking about a pilot scheme that will cover north, east, west and south?

**Mr Karran:** Vainstyr Loayreyder, as far as the pilot scheme is concerned, it will be based in five community pharmacies. We had long deliberations as far as this is concerned. The reason why we have brought this about is to try and stop the spread of infections, primarily hepatitis B and the likes more than HIV, but that is a problem which will grow on this Island as far as this issue is concerned. I just hope other government departments start working as a team in order to try and make sure that as few people as possible end up having to take up the opportunity of a needle exchange scheme in the Island.

### **Beef Fillet - Packing - Question By Mr Cannan**

**The Speaker:** Item 4 on the order paper, hon. members, and I call upon the hon. member for Michael, Mr Cannan.

**Mr Cannan:** Mr Speaker, I ask the Minister for Agriculture, Fisheries and Forestry:

*Why do the Fatstock Marketing Association refuse to supply butchers with fresh beef fillet unless it is in the cryovac packing?*

**The Speaker:** I call upon the Minister for Agriculture, Fisheries and Forestry, the hon. member for Peel, Mrs Hannan.

**Mrs Hannan:** Thank you, Vainstyr Loayreyder. For the benefit of members, cryovac is a method of vacuum packing, sealing the meat, in airtight packets. The packs can be refrigerated and on opening the contents are still fresh. This principle is universally used to supply all types of fresh food.

If I turn directly to the question, the basic answer is that cryovac packing is the best possible way to ensure the meat reaches the butcher in the freshest and most hygienic manner. The meat plant is not designed for butchers to collect their meat, as this is a potential source for introducing contamination into the protected and environmentally secure premises. The Fatstock Marketing Association therefore provides a delivery service.

It is to be expected that when fresh meat is delivered it is done so in a hygienic way, especially where cuts are concerned. Where the opportunities for contamination spoilage are so much greater, cryovac provides the assurance of freshness and is hygienically secure. Beef fillet would be boned out of the carcass by the Fatstock Marketing Association and cryovac-ed on the same day. It is therefore in all respects fresh meat, refrigerated rather than frozen for delivery to butchers. It is the most sensible and hygienic way to transport meat from the meat plant to the butcher and is accepted by butchers as such. Over 42 per cent of the Fatstock Marketing Association's sales are in cryovac packs, the remainder being in full carcass form.

The Fatstock Marketing Association do not consider it beneficial to serve one customer on a basis that could compromise the strict hygiene standards in force for production and delivery of meat, while most butchers prefer the flexibility of cryovac packaging. Thank you, Vainstyr Loayreyder.

**Mr Cannan:** Is the minister aware that a butcher in the west of the Island does not agree that meat packed in cryovac packing is the most hygienic way and prefers to have it delivered otherwise and, as he is the customer and as the customers prefer it that way, why is the Fatstock Marketing Association not agreeing to supply in accordance with the wishes of his customer?

**Mrs Hannan:** Vainstyr Loayreyder, most butchers prefer the flexibility of cryovac packing. However, if a butcher prefers meat that has not been cryovac packed, he could purchase half carcasses, full carcasses, and bone the meat out himself. It is purely this flexibility of cryovac packaging which allows meat to be cut at the meat plant.

However, in a letter to the Fatstock Marketing Association, a letter dated 23rd April, this particular butcher wrote to the Fatstock Marketing Association and he said, 'Dear Sir, Please confirm in writing that the FMA will no longer supply Manx beef fillet unless it is in cryovac pack. I need a letter to convince my customers that it is a Manx fatstock managerial decision and not mine.' I am not sure whether he received a reply to that letter, I do not have a reply on my desk, but he needed the letter of confirmation that it was a managerial decision and not his, and I can assure him, through the member for Michael, that it is a fatstock managerial decision and not a decision of any one butcher.

### **Standing Orders Committee - Member Elected**

**The Speaker:** Hon. members, we turn then to item 5 on our order paper, the election of one member to serve on the Standing Orders Committee of the House in the place of the hon. member Mr Crowe. Now, the present members are myself, Mr Gilbey, Mr Quine and Sir Miles Walker. Nominations, please, for one member to serve on the Standing Orders Committee. The hon. member for Ayre.

**Mr Quine:** May I propose Mr Braidwood, sir?

**Mr Duggan:** I beg to second, sir.

**Mr Cretney:** Could I propose the hon. member for Castletown, Mr Brown, please?

**Mr Gilbey:** I have much pleasure in seconding Mr Brown, Mr Speaker.

**Mr Cannan:** Could I propose Mrs Crowe?

**Mr Corkill:** I beg to second, Mr Speaker.

**Sir Miles Walker:** I am pleased to second Mrs Crowe, Mr Speaker.

**The Speaker:** Hon. member for Onchan, did you wish to nominate?

**Mr Karran:** Vainstyr Loayreyder, I would like to propose the hon. member for West Douglas, Mr Shimmin.

**Mr Gelling:** I will second that, Mr Speaker.

**The Speaker:** Hon. members, we have four nominations. I ask for the ballot papers to be circulated, please. When you have your ballot paper I will ask the Secretary to confirm the names.

**The Secretary:** Mr Speaker, hon. members, the members who have been proposed and seconded are Mr Braidwood, Mr Brown, Mrs Crowe, and Mr Shimmin.

**The Speaker:** Can I invite the hon. member Mr Houghton and the hon. member for Garff, Mr Rodan, to act as our tellers, please?

*A ballot took place.*

**The Speaker:** Hon. members, the result of the ballot is that Mr Braidwood received 7 votes, Mr Brown received 10 votes, Mrs Crowe received 1 vote, and Mr Shimmin received 5 votes. Hon. members, under standing order 111(j) we require a majority of votes of members of the House present and voting. No member has received such a majority. We therefore proceed to item 111(l) and we drop off the member receiving the lowest number of votes and vote again. So will you submit ballot papers, please, and this time you will be voting for one candidate, the candidates being Mr Braidwood, Mr Brown and Mr Shimmin. Can I ask that the same tellers act, please?

*A second ballot took place.*

**The Speaker:** Hon. members, the result of that ballot is that Mr Braidwood received 11 votes, Mr Brown received 10 votes and Mr Shimmin received 2 votes. The same applies, hon. members, as did at the first stage of the ballot but in this case we will drop off the name of Mr Shimmin and you are required to ballot again between Mr Braidwood and Mr Brown. Hon. members, I am aware that the hon. member for Douglas South, Mr Duggan, is currently absent and has taken part in the previous two ballots. The same tellers, please.

*A third ballot took place.*

**The Speaker:** Hon. members, the result of that ballot is that Mr Braidwood received 10 votes, Mr Brown received 13 votes, in which case I declare that Mr Brown is elected to serve on the Standing Orders Committee of the House.

### **Standing Committee On The Declaration Of Members' Interests - Members Elected**

**The Speaker:** We turn then, hon. members, to item 6 on your order paper, the election of two members to serve on the Standing Committee on the Declaration of Members' Interests in the place of Mr Crowe and Mr Kniveton. The present Keys member is Mr Singer. I call for nominations, please.

**Mr Braidwood:** I would like to propose Mr Gilbey, Mr Speaker.

**The Speaker:** Mr Gilbey is proposed.

**Mrs Hannan:** I second that.

**The Speaker:** Seconded by Mrs Hannan. Sir Miles.

**Sir Miles Walker:** Could I propose the hon. member for Douglas West, Mr Downie, please?

**Mr Rodan:** I second Mr Downie.

**The Speaker:** Seconded.

**Mr Downie:** I propose Mr Cretney.

**Mrs Crowe:** Seconded, Mr Speaker.

**Mr Corkill:** I second that.

**Mr Karran:** Vainstyr Loayreyder, I would like to propose somebody who has no external interest. I would like to propose Mr Shimmin, the hon. member for West Douglas, as I think it is important we have people who have no outside interest and my Onchan band directorship might affect my judgement.

**Mrs Cannell:** Mr Speaker, I would like to propose David Cannan.

**Mr Singer:** I second, Mr Speaker.

**The Speaker:** Mr Cannan is proposed and seconded. I have not had a seconder for Mr Shimmin.

**Mr Downie:** I second Mr Shimmin.

**Mr Quine:** May I propose Mr Houghton, sir?

**Mr Cannan:** I will second that.

**The Speaker:** Hon. members, when you have your ballot papers then the learned Secretary will read out the names and you are required to vote for two members to serve on the standing committee, two. Read the names, please.

**The Secretary:** Mr Speaker, hon. members, the hon. members who were proposed and seconded are, in alphabetical order, Mr Cannan, Mr Cretney, Mr Downie, Mr Gilbey, Mr Houghton and Mr Shimmin. This time can I call upon the hon. member for Ramsey, Mr Bell, and the hon. member for Onchan, Mr Cannell, to act as tellers, please. *(Interjections and laughter)*

*A ballot took place.*

**The Speaker:** Hon. members, the result of that ballot is that Mr Cannan received 7 votes, Mr Cretney received 8 votes, Mr Downie received 5 votes, Mr Gilbey received 8 votes,

Mr Houghton received 6 votes, and Mr Shimmin received 12 votes. Hon. members, Mr Shimmin is therefore elected to serve on the Standing Committee on the Declaration of Members' Interests and we are required to ballot again for the remaining place. We will ballot between the same names excluding Mr Shimmin. So your names will be Mr Cannan, Mr Cretney, Mr Downie, Mr Gilbey and Mr Houghton. One place, hon. members. Can I ask the same tellers to continue, please?

*A second ballot took place.*

**The Speaker:** Hon. members, the result of that ballot is that Mr Cannan received 5 votes, Mr Cretney received 8 votes, Mr Downie received 5 votes, Mr Gilbey received 3 votes and Mr Houghton received 2 votes. Hon. members, you will be required to ballot yet again and on this occasion we will drop off the name of the hon. member for Douglas North, Mr Houghton. Hon. members, I will ask the learned Secretary to read the names so that there is no confusion.

**The Secretary:** Mr Speaker, the hon. members remaining in the third ballot are, in alphabetical order, Mr Cannan, Mr Cretney, Mr Downie and Mr Gilbey. The same tellers, please

*A third ballot took place.*

**The Speaker:** Hon. members, the result of that ballot is that Mr Cannan received 6 votes, Mr Cretney received 13 votes, Mr Downie received 4 votes and Mr Gilbey received 0 votes.

**Mr Houghton:** He did not even vote for himself!

**The Speaker:** Hon. members, Mr Cretney is elected.

### **Estate Agents Bill Committee - Member Elected**

**The Speaker:** We then turn to item 7 on your order paper, the election of one member to serve on the Estate Agents Bill Committee, the present members being Mrs Crowe and Mr Quine.

**Mr Brown:** I beg to propose Mr Braidwood.

**Mrs Cannell:** I beg to second, Mr Speaker.

**Mr Rodan:** I beg to propose Mr Corkill.

**Mr Karran:** I beg to second.

**The Speaker:** Are we content with that, hon. members?

**Members:** Yes.

**The Speaker:** Distribute the ballot papers, please. Hon. members, we are dealing with item 7 on the order paper, the election of one member to serve on the Estate Agents Bill Committee. Two members nominated are Mr Braidwood and Mr Corkill. I call upon the hon. member for Middle, Mr North, and the hon. member for Rushen, Sir Miles Walker, to act as our tellers, please.

*A ballot took place.*

**The Speaker:** Hon. members, the result of the ballot is that Mr Braidwood received 7 votes and Mr Corkill received 16 votes. I declare, therefore, that Mr Corkill is elected to serve on the Estate Agents Bill Committee.

### **Sewerage Bill - Second Reading Approved**

**The Speaker:** Hon. members, we then turn to item 8 on your order paper, the Sewerage Bill for second reading, and I call upon the hon. member for Castletown, Mr Brown.

**Mr Brown:** Thank you, Mr Speaker. The Bill before hon. members is promoted by the Department of Transport and is to replace the existing legislation relating to sewerage and sanitation and to introduce new controls over trade effluent.

Part 1 contains general provisions and imposes duties on the Department of Transport with respect to sewerage and sewage disposal and enables the Department of Transport by agreement to delegate its functions under the Bill to local authorities.

Part 2 deals with sewerage and sewage disposal and empowers the department to lay and maintain sewers and gives owners and occupiers the right to connect to a public sewer, subject to certain safeguards and the payment of prescribed fees.

The Bill also provides for it to be an offence to put certain matters into a public sewer, that is, any matter that is likely to injure the sewer or drain or to interfere with the free flow of its contents or to affect prejudicially the treatment and disposal of its contents.

The Bill also provides for the adoption of sewers and other works by the department and enables the department to enter into agreements with developers for the adoption of a sewer. There is also a provision for an appeal against the refusal by the department to adopt a sewer. There is also another provision within the Bill to enable a developer to acquire a public sewer to be provided at his expense, that is, the developer's expense.

There are powers within the Bill to enable the department to impose requirements as to drains and sewers and to provide for all public sewers and sewage disposal works to vest in the department and it requires the department to keep maps of its sewers.

Part 2 also contains a provision as in existing legislation to enable a sewage rate to be set. To enable this sewage rate to be implemented, however, it will require an order to be approved by Tynwald Court.

Part 3 of the Bill contains a new code for controlling discharges of trade effluent into sewers and requires the consent of the department to any such discharges. It also enables the department to enter into agreements for the disposal of trade effluent.

The Bill also provides for the department to specify certain substances as special category effluent and provides the department with special powers for such disposal. Part 3 of the Bill provides the department with the power to make an order deeming certain substances as trade effluent.

Part 4 of the Bill deals with sanitation and enables local authorities to require building owners to install proper drainage and also to do so such works themselves in an emergency. This part of the Bill also requires disused drains to be sealed off and enables the local authority to require premises to be provided with closets and gives the Department of Local Government and the Environment similar powers in relation to workplaces.

Part 4 of the Bill also enables the local authority to require earth closets to be replaced with WCs and gives local authorities powers to deal with unhealthy streams, pools et cetera. There is also a power to permit local authorities to provide conveniences.

Part 4 requires a building authority to consult the department on plans of work affecting a public sewer.

Part 5 is supplemental and imposes civil liabilities for damage caused by discharges into sewers in contravention of clause 6 or part 3 of the Bill. It applies certain provisions of the Local Government Act of 1985 to the exercise of powers under the Bill.

The department has undertaken consultation with all the Island's local drainage authorities and government departments and the department hosted a seminar with representatives of the drainage authorities which was held on Tuesday, 13th January 1998 at the Museum at which myself and Mr Kniveton MLC, who is responsible for sewage within the department, and officials discussed the basis of the Bill with everyone present.

Finally, this Bill is not expected to have any net effect on public revenue or expenditure or manpower.

I therefore beg to move that the Sewerage Bill 1998 be read a second time.

**Mr Singer:** Mr Speaker, I beg to second and reserve my rights.

**Mr Downie:** A couple of points I want to raise, Mr Speaker. The member moving the Bill, the minister, the member for Castletown, made reference to trade effluent and we notice in a memorandum that we are going to adopt the polluter pays principle. I wonder if the mover could explain to us what he means by 'the polluter pays', whether he can give us an example of a present person who is perhaps polluting the sewerage system at the moment and what steps we are going to take. The best example I can give is if you go down to the quay in Douglas there are numerous drums of chemicals which arrive on this Island, some are used in engineering, for use with machinery cutting oils. At one stage there used to be substances like cyanide that came into the Island where we had plants here which used them for metal hardening processes and so on. I never recall seeing any of these materials being shipped back to the UK for reprocessing. Now, are these being disposed of in the sewerage system? Some of the industries on the Island at the moment use ethylene and other chemicals for cleaning. I take it at the moment they are being disposed of into the sewerage infrastructure and network. I do not know whether any, as I say, are collected.

So we need to know what is going to take place, what regulatory process businesses will have to go through whether they will have to put returns in to explain exactly what is going into the sewerage infrastructure, how the money will be extracted from them, using the principle the polluter pays, and whether at the end of the day the sewerage infrastructure and the treatment works will be able to cope with some of these chemicals.

The other area I want to make reference to is clause 3 in the Bill where under the new legislation the sewerage authority does not need to obtain a wayleave or any other form of legislation to acquire land or rights compulsory in order to lay sewers; it need only serve notice on the owner and occupier of the land. However, it is required to pay compensation for depreciation and disturbance. I would like to know if there is going to be a tribunal set up or if a person has a disagreement with the Department of Transport do they have to pursue the issue

through the courts or are we going to have a similar system, as happens now under the planning process, when there is an opportunity that arises there either to appear at the bar of Tynwald or in some other place to seek compensation.

They are the two points I want to make. I know it is difficult when you are moving a Bill but if the member cannot give me the answers today I will be happy to receive them at some other time when it is convenient to him. Thank you.

**Mr Rodan:** Mr Speaker, can I begin firstly by saying how very helpful the brief has been that the minister kindly circulated to members and it was of great assistance really in going through what is quite a complex Bill.

The Bill I would certainly generally welcome. It is tidying up the legislation and bringing it all together, and the powers of the department are fairly clear in the discharge of their responsibilities for sewerage.

Now, I have a number of points I would like some clarification on. The first is really fairly minor but it is a drafting matter, I suppose, on page 2, clause 2, part (6) which relates to delegation of functions to local authorities. 'Before exercising any of its powers under this section the Department shall consult the Department of Local Government and the Environment ("the Environment Department").' Now, what is meant exactly by 'consult'? Does it mean obtain the approval of?

The shorthand of 'the Environment Department' I think is somewhat sloppy and could lead to possible confusion by those reading this Bill and the reason I say that is that in this clause it is the functions of the DLGE in relation to their responsibilities for local authorities which are being referred to and not anything to do with their environmental responsibilities, and we have a similar situation in clause 43(2) where it refers to 'the Environment Department' but in that case it is in the context of the DLGE's responsibilities as a planning authority. So I do not know why we need to have this shorthand; 'the Department of Local Government and the Environment' - there is no reason why that should not appear throughout the Bill.

But more of a concern than that is clause 3 which relates to the powers given to the department to lay sewers. Now, clause 3(1) stipulates that the department may lay a sewer in, under or over any street and do so subject to the roadworks code. Part (2) of that clause says that the department may lay a sewer, whether above or below the surface, on any land which is outside the curtilage of the highway. Now, I think this surely, particularly the provision for the department having power to lay sewers over land, requires some qualifications and safeguards. For the DoT to have the power to lay any sewer above the surface without the owner having any apparent rights of appeal and arbitration, to my mind, is going too far, and in the brief the minister supplied it stated that it is a well-known principle that in the provision of sewers and water in the interests of public health private rights cannot be allowed to prevent or hold them up, and that is stated.

But I think the minister would agree that when you think about it the ability for the department to lay sewers over the land so that it is visible and it is there could have the potential to compromise what the landowner wishes to do with that land, it could compromise the future development ability of that land from a planning point of view, it could compromise the amenity of the land if we have sewers over land.

Now, in the case of sewers under gravity, they may be restricted in the choice of route, but given that those above ground are usually transmission sewers, there is surely much scope in deciding where they should be placed and I think that the reasonable wishes of the owner and the long-term occupier of the land in respect of the route, the minimum depth and what may be left showing above the surface is a consideration and should be provided for.

Now, part (1) of this clause, as I said, gave some control by stating that work in, under or over any street would be subject to the roadworks code and of course, as the minister well knows, under the Town and Country Planning Acts any building, engineering, mining or other operation in, on or over land constitutes development and this of course includes such operations as may be carried out by statutory undertakers such as a sewerage authority, and as such they are subject to the planning system.

Of course it is entirely possible for the Department of Local Government to make an order excluding specified operations under any conditions as it may specify by statutory undertakers and certainly there is a new permitted development order relating to statutory undertakers being considered at the moment and I can inform the House it is talking about exempting from planning control operations not above the ground. But when you think about it, even that ought to be subject to qualification because in the minister's own constituency, Castletown square for example, it is most important that the reinstatement in what is a conservation area of the road surface following any works underground be subject to that bit of extra control and certainly in the case of sewers above the ground or any ancillary works, a pumping station for example, I am quite sure we would not wish to see these appearing in conservation areas without any sort of planning control.

So it is for those reasons that I would express some concern that there has been no acknowledgement within the Bill as drafted of the relevance of the planning system. Just as the roadworks code is acknowledged as a control over laying of sewers in the case of a street, so should the system of development control under our planning system be acknowledged, even more so when it is a case of installing sewers above land. So I would quite like his comment on that.

Again in clause 3 when we are talking about periods of notice, less than three months' notice in the case of laying of a sewer to the landowner, seven days' notice in the case of repairs, and 21 days' notice in any other case, no less notice than this should be given to the landowner, with such an important matter, why are we not a bit more explicit in saying 'in any other case'? Perhaps the minister could just comment what he intends that 'any other case' to refer to?

Now, moving on, I have a concern also with clause 5, on page 7, (1)(b) which relates to the department's ability to prescribe fees: 'The Department may prescribe different fees as respects sewers in different areas if, having regard to the provisions of the development plan and to all other material considerations, it appears to the Department that development in any area ought to be encouraged or discouraged.' Now, this seems to be a considerable power for the department to have. I appreciate that there is a requirement under clause 43(2) for the Department of Transport to consult the Department of Local Government and the Environment, but it does not seem to me that it is for the Department of Transport to say whether development should or should not be encouraged in any particular part of the Island. It is for the forward planning system to identify encouragement of development and it is for the

Department of Transport, as a service provider, to respond and to oblige by providing services where the need for development has been identified or indeed where overdevelopment is perceived as being a risk, then certainly they ought to have the ability to respond by discouraging such development by the imposition of a different scale of fees. But it is not for the minister's department to identify where it appears development should be encouraged or discouraged.

Clause 6 talks about what people can throw into the sewers, put into the sewers, and we talk about the department may restrict any matter of a description prescribed for the purpose and later on we talk about trade effluent. If I could just have from him a comment as to whether he sees the department prescribing non-biodegradable matter, i.e. that which is not decomposed by bacteria, being allowed to be disposed of in the sewers because it is this non-biodegradable matter, of course, and the washing up of that on the beaches and the failure of our beaches to meet the bathing water standard often as a result of the presence of non-biodegradable matter, that has given the impetus for on-land-based sewage treatment, because it would surely be the case that a bag it and bin it campaign, for example, which removes much plastics and so on from the system would allow for a degree of treatment perhaps that is less complicated than is being proposed. I do not wish to go into an argument about the merits of IRIS and the degrees of treatment that IRIS is offering but I would just flag up that particular point as an option.

Clause 17 I would like a little bit of clarification on. It is to do with trade effluent. For discharging trade effluent without consent a fine of £5,000 is proposed on summary conviction, and on conviction on information a fine. Now, I wonder whether there should not be a further fine for the continuing of the offence at so much per day or so much per week and should the Department of Transport not have power to cut off the connection at the expense of those who persist in the discharge of trade effluent, something that can have very serious consequences, and the reason I suggest this is that under clause 6 where we talk about non-trade effluent there is also the provision of a fine of £5,000 but also the further provision of a further fine not exceeding £50 per day for every day the offence continues after conviction. There seems to be some discrepancy here and I would be interested in his comments on that. Similarly, clause 18 when there is a condition imposed on trade premises by the department and this is contravened there is a fine not exceeding £5,000 but again no fine for every day that the offence continues.

So, with those remarks, I would appreciate some clarification from the minister.

**Mr Cannell:** Mr Speaker, I would like to ask a couple of questions of the hon. mover of the Bill, firstly regarding clause 33 on page 27 which specifies in sub-clause (1) that a building used as a workplace shall be provided with sufficient and satisfactory accommodation in the way of sanitary conveniences. Would he view that as including every individual retail shop, many of which, to my knowledge, do not actually include this provision at the present moment? They would be regarded as workplaces for those employed in them and also of course for the facility of the public who are the customers of them. Certainly in Douglas and a number of retail outlets within my constituency do appear to be inadequate in this respect.

Also I would seek reassurance from the hon. mover of the Bill that sufficient provision is made within the terms of it to actually have full confidence in the reinstatement of any sewerage works which can place and I would point to a number of occasions previously where

sewerage systems have been installed and totally unsatisfactory reinstatement has been made of the roads and lanes and footpaths et cetera in connection with those works.

**Sir Miles Walker:** Mr Speaker, could I first congratulate the hon. member for Onchan on his maiden speech. (**Members:** Hear, hear.) His contribution was interesting and I think arising out of his contribution and the one made by my hon. colleague Mr Rodan I wish to say that it caused me some discomfort. It seems to me that there is likely to be a fair amount of conflict between the Department of Transport and the Department of Local Government on the contents of this Bill and when it is enacted, if it is enacted, the way that it is followed up and implemented, and I would just make a plea for these two departments to work together.

I am aware of planning conditions laid on applications for development for business purposes which require that business to be connected to the public sewer and so any business effluent being discharged down that pipeline to the sewer, and it seems to me that there is a cause for a great deal of conflict arising out of this Bill if the department is not going to consult very closely with the Department of Local Government in its planning applications, and I would like the minister, if he can, to tell us what the practical consequences of this will be to those businesses on the Island that have probably been discharging effluent to the sewers for the last 50 years and how in fact the department is going to phase in this new policy of the polluter pays? So that causes me a concern.

I was also concerned, I think, when I heard my hon. colleague Mr Rodan say that it is not for the minister's department to say where development can or cannot take place, and I know that statutorily that is the case and it is fairly and squarely a matter for the department and the planning system. But it does seem to me that where the sewerage capacity is known and there is room for development, then it is a very relevant point and one for the Department of Transport to make and also to signify quite clearly if there is development land allocated on the development plans which is not capable of sewerage. It seems to me that those issues need to be looked at very carefully.

As I say, I was just left with a slight feeling of discomfort that perhaps there had not been the conversation that there should have been between these two departments.

**Mr Karran:** Vainstyr Loayreyder, I would also associate with the former Chief Minister and hope that the new member for Onchan has a long and happy association with this hon. House and the points that he brought up that I had not thought about personally myself, so I think it is a worthy input as far as the debate is concerned.

There are a couple of points I am concerned about. I think the points that have been interesting are the points from Mr Downie and Mr Rodan. I think he has a very valid point as far as the point of the planning system and I think that if everybody else has to go through the hoops, I do not think utilities should be any different to anybody else, and that includes the Water Authority, and I do hope that will be looked at in detail at the clauses stage.

There is also a point on the charges and I think the need for more flexible charges within this present piece of legislation needs to be looked at and I think it is something that is going to be more important to this Bill than many of the other more minor details in this Bill.

I think regarding the other issue that the hon. member for West Douglas, brought up Mr Downie, to do with testing of poisons and effluent, I know within the Water Authority that until

recent times there were some very fundamental poisons caused through the water supply that were never tested, and I think the point needs to be brought up that it is not going to be cheap in order to police such tests, as I know my authority is paying thousands of pounds for certain tests now which will be small fry as far as the sewerage is concerned which will have a broader amount of testing to be done.

His point arising from that I think is a good point and could the hon. mover consider whether we should have some sort of import ban of chemicals that are coming into the Island at the present time? I know that the Department of Agriculture has already done that as far as certain agricultural produce is concerned and that has had a benefit to the Water Authority and maybe the issue needs to be addressed that we need more stringent controls on the import of chemicals within the Island, and will his Bill have any effect as far as that is concerned?

The other issues that I am concerned about are there was great play about the fact of bringing in new powers as far as trade effluent poisons are concerned, but as we have seen just recently in my former constituency, where we brought in legislation on noise pollution but then do not have any cover for such legislation, it makes that legislation worthless, and I think the point is that if we are bringing in new legislation for being able to test and try and keep poisons out of the sewerage system, there will have to be a recognition that that will be part of somebody's duty and to be able to do it, because obviously people who are in manufacturing are not going to do it when it suits us, they are going to pollute when it suits them and they hope to get away with it, and I think that it is important that we appreciate there are going to be great costs as far as that is concerned.

I would also wonder whether the hon. member could tell us in this Bill regarding such costs, if they do fall to ratepayers at a later date - and I know there are claims that that will never happen but I am not as sure as hon. members in this hon. House as to what is the real agenda as far as this Bill is concerned - will there be a recognition of people who have private drainage to have to pay some of the costs for the IRIS plant if it does go ahead? Will there be any powers within this Bill that it is not just people in the urban areas that will have to foot the bill but people throughout the Island will have to foot the bill of this system? Can he give us some idea as far as that is concerned so that we can make sure that everybody gets to fund this thing, as if they come in to Douglas and use a toilet, I do not see why it should be just left to the unfortunate few that are not on private drainage. I think there should be some recognition as far as that is concerned.

I am also a little bit concerned and I think one of the hon. members brought up about the power of being able to put a sewerage pipe through private land, and I think it does need to be clarified what the position is as far as the individual's right to appeal and to have somebody independent as far as that is concerned.

In the Bill itself the other concern I have with this Bill is the fact that there is no watchdog or structure for people who will have a legitimate grievance against the sewerage authority, whether it is in the Department of Transport or wherever else, and particularly if it ever does go to a rating authority I do think there should be some way of putting some sort of watchdog committee where people can complain about it, whether it will be a branch of the Board of Consumer Affairs or what it should be, but there should be somewhere where people who have a legitimate complaint about the services they are being provided by a utility can complain to because if ever sewerage ends up as a rateable commodity it will make water

rates, even allowing for our proposals as far as our cost equalisation plan of looking at something over the next five to 10 years of rates going up 7 per cent over inflation in order to pay for it, look quite cheap if the whole funding of sewerage goes on to a rate basis. So I do hope that the hon. member, if he could look at that, I would appreciate it.

I also feel that it is important and I know that you would hope, with it being part of the Department of Transport, that there was a scheme proposed as far as the opening up of roads is concerned. I do hope there will be a statement that roads should not be opened up willy-nilly and that if utilities such as electricity, water and sewerage do not plan ahead when roads are being opened up they should be fined and prosecuted by the Department of Transport, and I hope that the sewerage section of the department, if it does not conform to these proposals, will be penalised like any other utility.

I am a little bit concerned on clause 35 as far as the drainage is concerned and it says about leaving it with the local authority as far as drainage is concerned. I think of the likes of in the north of the Island in particular. I think that we have to accept the reality that where you have parishes with 300 and less persons living in those local areas to allow anything like drainage to them really is rendering any proposals impotent of any effect. So I do think that the mover needs to clarify where the buck stops, particularly in the north of the Island where if we do not sort out the drainage system right it will only aggravate the erosion problem that we already have in the north of the Island.

So I do hope that the hon. member will look at that. I will certainly be supporting the Sewerage Bill for the second reading. I do think that there are maybe a few amendments that need to be brought out and I do hope that the hon. mover of the Bill will see these suggestions by myself as constructive and not destructive.

**The Speaker:** Hon. members, can I call upon the hon. member for Castletown to reply to the debate?

**Mr Brown:** Yes, thank you, Mr Speaker, and I thank hon. members for their constructive comments on this and trying to seek some clarification and certainly I will endeavour to respond as best I can to the points that have been made by members.

Can I just say that this is an important piece of legislation. Much of our legislation relating to how we deal with this very important public health matter, that is, dealing with the sewage system in the Isle of Man, is very much outdated and in fact it is fair to say that government and local authorities are extremely vulnerable under the present legislative system we have in terms of taking action against developers or in fact identifying what developers are actually carrying out when they are doing developments. At present, if there are more than two properties on a sewer system it is a public sewer and a developer can do what he likes, basically, and we have to accept that sewer. One of the major changes in this legislation is that we do not have to accept it unless the sewer system is correct, and that is a fundamental change in principle and one that I think merits considerable support by this hon. House.

Now, as far as the polluter pays principle is concerned, which was raised by the hon. member for West Douglas, Mr Downie, all I can say is that certainly we, like the department which the member is a member of, the Department of Local Government and the Environment, are looking at a basis of polluter pays where it is appropriate and when we are talking about trade effluent where we are talking about businesses, and to be honest where

we are talking really of businesses which will be discharging trade effluent, not a retail shop that will be discharging into the sewer system or a cafe that will just be discharging into it but where they are actually discharging what is defined as trade effluent, then from our point of view we believe that there may well be a case to charge that polluter for the additional service that they require, and as hon. members will know, we are not necessarily talking of just a basic sewer system in some of these cases, it may well be much more than that.

So I think there is quite a lot to be done in this and certainly as far as the matter of bringing chemicals into the Island, which was mentioned by a number of members including the member for West Douglas and the member for Onchan, Mr Karran, it is not a matter for this legislation, I have to say, to stop or control matters such as chemicals coming in to the Isle of Man. That is a matter for the Department of Local Government and the Environment and I suspect are covered already in the Public Health Act 1991. So it is clearly a matter with them, and I think one thing has to be clear. What we must not do is cause confusion in legislation by having different controls within different bits of legislation, so one minute you go off to the DoT for something, the next minute it is the DLGE. We must clearly define a clear demarcation in such matters. So quite clearly, in chemicals coming in to the Island and whether they are controlled, and chemicals going off the Island, certainly when I was at the Department of Local Government and the Environment we undertook quite a lot of work to get some of the chemicals and just oil, for example, off the Island, which we know in many cases were being put down the public sewer system, and the powers were limited to deal with it. So again from that point of view that is a matter that I am sure can be dealt with under existing legislation and if it cannot, it certainly, I believe, is not a matter for the Sewerage Bill in terms of controlling it.

Now, on clause 3 which was mentioned by a number of members, again can I say what you have to understand on this legislation is firstly public health is absolutely paramount. We are talking about the public health of the people of the Isle of Man in the overall term. This legislation, if enacted, will put a duty on the Department of Transport, it will put an absolute duty on them under clause 1, to provide and improve the sewer system. Therefore within the legislation we have to have an absolute provision to lay a sewer and we cannot be in a position - and I would put it to members it would not be to the benefit of this Island - if a landowner just did not want you to lay a sewer under his field, for example, simply because he just did not want it there, because it may well be that there is no other option, and if you put into place, where there is a public health matter, all sorts of appeal systems, then clearly you could be a position where, and just take planning, it could go on for nine months, a year or whatever before you could lay a sewer in a place where half a mile up the road people are suffering unacceptably because the sewer system cannot cope with their sewage. So clearly there has to be an absolute right there and I would suggest to members that as long as we provide compensation, then government cannot do any more. The alternative of course would be to go to compulsory purchase and I have to say (1) that would be a lengthy system because compulsory purchase can take a long time and (2) you actually could be in a position where the whole thing is held up for a considerable amount of time. Now, that is where we lay a sewer under the ground.

As far as going above the ground, it is quite straightforward. There is no problem. It is a matter for planning. The department would have to get a planning approval, no different than anybody else, and in fact the landowner would then be a party to that planning application. So

there is absolutely no matter of somebody being denied rights if you go above their land. So if you go below the land, once it is done there is no problem. If it is above the land, and that is very, very rare in the Isle of Man, then it is a visual matter, it is a matter subject to planning, and I would suggest to members that is where it should stay. That then is the department having to make its case to the planning authority as to why it should go above land.

Now, Mr Rodan asked a number of points and I thank him for his comments about his comments about the brief which I hope will have been helpful to all members because whilst we all know the complexity of the legislation, at least that gives an indication in a simple term so that we can all hopefully understand and follow what is going on, as I say, with regard to provision of what we are doing, if the House passes the legislation you will put a statutory duty on my department to provide a public sewer system. You have to compensate that on the other side then to ensure it has adequate powers to be able to carry out that responsibility, and I hope that answers that.

The hon. member asked what does it mean under clause 2(6) with regard to 'consult'. Well, 'consult' is quite straightforward: we consult. The DoT has a statutory responsibility but it will consult, and has to under the legislation, with the DLGE, and I would make the point, in answer to the comments made by the hon. member for Garff, Mr Rodan, and the member for Rushen, Sir Miles Walker, my department has been in consultation over a period of time with the DLGE on this legislation and we have been endeavouring to meet some of the concerns that they have, and my department has got from the DLGE an indication that they are content with the legislation. There was a concern and we have gone part way to meet that concern and we have now got their consent.

So from our point of view it has got to be 'consult' because, again, if you said that the Department of Local Government and the Environment could not do it without the authority of the DLGE you are then taking away the statutory responsibility under clause 1, and if you do not want a department of government to have a statutory responsibility, then do not give it it, give it to two departments or three departments or to somebody else. But if you are going to start off on the basis that there has to be a government department totally responsible for sewers in the Isle of Man, then that department has to have that. We have built into the legislation where we should consult and we have made provision there to deal with it, and if the department does not consult with the DLGE, then it fails in its duty. It is as straightforward as that. It fails in its duty.

As far as private land is concerned, I hope I have answered part of what the hon. member said about going over private land and I have to say I think that is right. Keep it in its right compartment: it is a planning matter. When it is over land, it is a planning matter.

Now, what I would say to the hon. member - and I think he was flying the flag from his conservation officer on the PDO - was that I do not see a problem in sewers and utilities being exempt from planning where you dig a road up, you put a pipe below it and you cover it up and the road is back to what it was. If you do not change materials and you do not change any structure or shape of the road, why on earth do you have to go to planning to put a pipe in the ground or a water pipe? It is absolutely crazy. You see nothing at the end of the day, and my department has made that representation now for about three years to the DLGE and the member has made it clear that that is a matter being considered by the PDO. I am not talking about where we go above the ground. I am not talking about where we may change the

materials or the shape of a road or whatever. We are talking purely about you dig a trench two feet wide, say four feet deep, put a pipe in it and close it and put the tarmac back. For goodness' sake, why go through planning?

**A Member:** Bureaucracy.

**Mr Brown:** So I look forward to the department coming forward with that change in the legislation. I hope they will make it.

The hon. member also made the point there was no acknowledgement of the planning system, but we do not have to put an acknowledgement of the planning system. The law is the law. We do not need to in this legislation say 'and the department must comply with the Planning Acts' because it has to, because the Planning Acts say you must comply. It does not matter who it is. So I hope that answers the hon. member on that one.

Also he raised under clause 3 periods of notice and his concern was about in any other case and why not specify. I think the simple answer has to be to that, because it is impossible to specify every case and what we are saying is that if something comes up that none of us ever thought of - and who knows what it is - there must be power to enable the department to serve notice. Hence why in that case we are talking 21 days, the longest notice we can give in terms of against the others. We do not know what it is, but we cannot specify every case, it would be impossible, because what happens if after we pass the legislation six months down the road something we never thought of comes up, which always happens? We have got to change the primary legislation. That would just be impractical. So I hope that would cover that.

The hon. member raised about clause 5(1)(b) and development fees, and I have to say I have some sympathy with the hon. member on that, but there is a view that we should endeavour to influence, where developments happen, where to connect up to the sewer system is going to be quite a considerable cost. I would make the point that if it is a considerable cost the developer will firstly look at it, the planners certainly will look at it and for any fees to be effective they are going to have to be quite astronomical. But again they are a matter that would need approval and I think all I can say to the hon. member is it is a matter that has been put in the Bill in an endeavour to have an extra influence in what happens. But again it does not take away from the Department of Local Government and the Environment their responsibilities in terms of the Island's strategic plan and of course all the local plans that are developed.

Now, in clause 6 the hon. member raised about the department may restrict, and he was concerned about non-biodegradable plastics et cetera. Well, I have to say my department has been concerned for some time, as has the Department of Local Government and the Environment, about some of the products that are disposed of in the sewer system, and many from households - nappies, all sorts of things that are put into the system - and I have to say we see that round our waters where we actually see on our beaches many items that really are not biodegradable and it is more than just getting the waters clean. We have to show people it is clean. We have to make sure that we can comply with certain standards, and again, the Isle of Man Government has voluntarily adopted the EC standard on this and we would be working to that and that is what we are all endeavouring to do with the investment in the sewer system, and, yes, it may well be that the two departments need to do a promotion campaign at some stage to actually promote people and explain to them the dangers and the

potential problems that they are creating for our environment by disposing of unsuitable products down the sewer system.

Now, in clause 17 the hon. member raised there about a fine of £5,000 on summary and on conviction a fine, and the hon. member made the reference to the other bits where there was a summary fine and then £50 a day and why weren't we saying under clause 17 'and then a charge per day'. Well, what the hon. member has to understand is that when we say 'a fine' there is no limit. It can be whatever the courts decide. It could be £5,000, £10,000, half a million pounds. It does not matter. The courts will determine. So if somebody is dealing with the sewer system in a way that is not acceptable, then on conviction there can be a fine which is totally unlimited. So when you see the words 'a fine', it is in the hands of the courts. They can do whatever they think right. They could, if necessary, fine a person so much that it bankrupts their business. It is totally open to the courts to make whatever decision they have to make, and I think that is right and I think that in clause 6 where it is £50 a day, because of the basis of that - in other words it is domestic - then that is a more realistic one as against, let us say, we might have a manufacturer on the Isle of Man whose turnover is £5 million a year and clearly a £5,000 fine is of no consequence and £50 a day is of no consequence, but if they get hit with a million-pound fine it is of consequence and that is why 'a fine' is the best way forward on that, and I think that answers the point the hon. member Mr Rodan for Garff made about clause 18. I hope it does, anyway.

Now, the hon. member Mr Cannell who I also add my congratulations on to his maiden speech in the House - can I just say he raised with me about clause 33(1) and if the member goes to clause 33 on page 27, sub-clause (1), he was concerned about workplaces. Now, firstly, if he goes to sub-clause 33(2) which he will find on line 31, there it states: 'If it appears to the Environment Department' - which is the Department of Local Government and the Environment - 'that subsection (1)' - which is the point relating to workplaces - 'is not complied with in the case of any building, it shall by notice require the owner or the occupier of the building to make such alterations in the existing conveniences, and to provide such additional conveniences, as may be necessary.'

**Mr Cannell:** That has cost implications.

**Mr Brown:** Well, everything has cost implications but at the end of the day the hon. member raised the point about what happens in the workplace if there are no WC facilities -

**Mr Cannell:** In an individual shop.

**The Speaker:** Hon. member, the hon. member for Castletown has the floor.

**Mr Brown:** What it states is what is the situation. The Bill provides powers for the Department of Local Government and the Environment to take action.

The hon. member also raised, the hon. member for Onchan, Mr Cannell, the point about workplaces. Now, if I can refer him to page 33 of the Bill he will see under page 33 at the top of that page, and it is covered in clause 42 which deals with interpretations, it states there ' "workplace" ' and then it gives the definition and it states, 'includes any place in which persons are employed otherwise than in domestic service.' So, for example, the point the hon. member raised about retail outlets et cetera et cetera, there will be a requirement for people to comply with this legislation, whether they are a shop, a garage, a factory or whatever it is, and if they

do not comply with that, then a complaint can be made to the Department of Local Government and the Environment. They can look at it and, if necessary, they will be able to serve notice on a workplace, whatever that workplace is within the definition, and then a person who either owns the property or rents the property or whatever and the business will have to comply with the requirements of the legislation. So I hope that answers the hon. member's point about what is allowed to be done and so on.

Now, the hon. member also raised with me the reinstatement of sewer works and I have to say at the Department of Transport one of the concerns that we all have was a point that was raised by the hon. member Mr Karran, the member for Onchan as well, about utilities not being allowed to open up roads willy-nilly, they should not be allowed to do it. I have to say I very much support that view. The difficulty we have of course is the practicalities of that view. My department, for example, has just spent a considerable amount of money on Peel Road. We now have a lovely road which is perfect and hopefully not, but you do not know, something happens and we might have a water leak or a gas leak -

**A Member:** Well, that is the Water Authority.

**Mr Brown:** - and they have got to come and dig it up -

**Mr Karran:** Fair enough.

**Mr Brown:** - or there might be a change of a development in a house that is now converted to something else and it requires a heavier power cable to that house. They have got to dig it up. Now, we are not happy because our view is 'We don't want you to dig our road up because as soon as you cut a channel in the road you actually considerably reduce the life of that road. Never mind that you cannot get it perfect again, you actually reduce the life of the whole road.' So from the department's point of view we would love to be extremely draconian and say, 'We've put a new road in: you can't come back here for five years.' We cannot do it. It is impossible. So we do have a problem with that and it is extremely frustrating when we see this happen. Another example I can give is in Castletown, Farrant's Way, which a year ago was totally reconstructed. It has already got three, four trenches in it because of new developments, but we cannot stop it because the people have the right to the development, have the right to connect up to the utility, whether it be water, electricity, gas or the sewer system, and we unfortunately have to cope with it. But what we do expect is a reasonable standard of reinstatement and we do have inspectors who go round and inspect on that and all I can say is that if it is not done, then clearly that would be a failing on our behalf. But we do take a far more proactive role and I think I am right in saying that we have one officer in the department who consistently now chases up on reinstatement works and all the time trying to get them sorted out. So I hope again that answers the hon. member's point that was raised.

Again, I think I have answered the hon. member Sir Miles Walker on the departments working together, and there is no problem on that and there will be differences because we have two different statutory roles, but clearly it is in the best interests of the Isle of Man, whether it is my department or any department, to work in the best interests of the people of the Isle of Man. But where there is conflict, sometimes there may have to be for statutory reasons.

The hon. member for Onchan, Mr Karran, again raised the bit about planning, and I would just say that planning is with the planning legislation. This is not planning legislation.

This is purely to deal with the provision of sewer systems in the Isle of Man and we have to keep that separate. My department is not exempt from planning unless the department comes in with a PDO.

I have answered about the import of chemicals, and also the member did mention about the noise legislation. Again, that is with the DLGE under the Public Health Act of 1990 or 1991, whichever it is, and there is a way of people dealing with it. The problem, I understand, is that because the person who complains has to keep a diary and has to be a witness in the court many people do not want to do that and therefore there is a problem. Maybe that legislation needs strengthening but that is a matter again with the DLGE and I am sure if the member wants to take that up.

Now, the other thing the hon. member for Onchan, Mr Karran, raised was what is the real agenda behind the Bill? I can give him a straightforward answer on that. The real agenda behind this legislation is straightforward. It is to strengthen the role of government in the provision of public health relating to the sewer systems of the Isle of Man and the sewers of the Isle of Man. That is what this is about. That is the only agenda.

Now, the hon. member said about the rates and private works et cetera. He also mentioned about a watchdog. All I can say is it is quite straightforward. Tynwald policy is that there shall not be any rates charged for the treating of sewage. That is Tynwald policy and the only people who can change that is Tynwald, nobody else, Tynwald and Tynwald alone. This Bill re-enacts the provision to enable a sewage rate to be enacted, but it will require Tynwald approval, so it is in the hands of every member of this House and it is in the hands of those in Tynwald Court. Tynwald Court alone is the only one who can implement a charge for sewage. Government might promote it, in fact members might promote it, but at the end of the day it will lie with those elected by the people to make a decision.

As far as the private works are concerned, again I do not have a real answer for that except to say if it is not connected to the public sewer system, then it is totally private and has nothing to do with the public system, but my department, as members will know, have for many years opposed the implementation of private sewer systems and we are looking at that very issue at the moment.

Then all I have got is that Mr Karran was concerned that responsibility is left with local authorities in clause 35. In fact there is a change of responsibility there from the DLGE to the local authority and again the view has been taken that where possible and where practical, then let us allow a local authority to have some functions. Now, if there are problems in the future, then we will have to change it, but clearly that does not take over from the Land Drainage Act which is a separate issue, which I think the hon. member was talking about, as against the issue that is in this legislation which are gutterings, pools et cetera. When we are talking about a Land Drainage Act, that is clearly a matter with my department and that is where it stays.

So I hope I have answered the hon. members' questions on that. I thank them for the attention on the Bill and would just say finally, to wind up, it is an important piece of legislation. We have undertaken considerable consultation with departments of government and with local authorities and the general view is that the departments and the local authorities are content

with the legislation which we are now promoting through the House and I hope that members will feel able to give it a second reading.

**The Speaker:** Hon. members, the motion is that the Sewerage Bill be read a second time. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

### **Road Traffic Bill - Consideration Of Clauses Commenced**

**The Speaker:** Item 9 on our order paper, hon. members, the Road Traffic Bill for consideration of clauses, and I call upon the hon. member for Ramsey, Mr Bell, to move clause 1.

**Mr Bell:** Mr Speaker, clause 1 creates new offences of driving or being in charge of a vehicle when over the limit. It also restates the existing provisions, making it an offence to drive or be in charge of a vehicle when unfit through drink or drugs, that is, drunken driving and drunk in charge, removing the provision deeming a person over the limit to be unfit to drive.

Clause 1 introduces a new section 5 to the Road Traffic Act of 1985 and subsection (1) makes it an offence to drive or attempt to drive a mechanically propelled vehicle on a road or public place when unfit to drive through drink or drugs.

Subsection (2) makes it a separate offence to be in charge of a mechanically propelled vehicle on a road or public place when unfit to drive through drink or drugs. This covers the case where the driver is able to drive the car but is not actually driving.

Subsection (3) explains that 'in charge' implies that there is some chance that the driver might drive the vehicle. So if he is asleep in the car, having handed the keys to someone with instructions to bring them back the next day he is not technically in charge.

Subsection (4) enables the court to disregard injury to the driver or damage to the vehicle in deciding whether there was any chance that he might drive it. So a driver cannot escape conviction if the reason why he could not drive it is because he was too badly injured or the car was too badly damaged in an accident.

Subsection (5) defines 'unfit to drive' as having one's ability to drive temporarily impaired.

Subsection (6) gives the police a power to arrest a drunken driver without a warrant, and subsection (7) gives a power of entry to any premises in support of the power of arrest conferred by the previous subsection.

New section 5A creates subsection (1) which itself creates two new offences: (a) to drive or attempt to drive or (b) to be in charge of a mechanically propelled vehicle on a road or public place when over the limit, that is, with alcohol in blood, breath or urine over the prescribed limit at any particular time.

Subsection (2) explains that 'in charge' in subsection (1)(b) implies that there is some chance that the driver might drive the vehicle.

Subsection (3) enables the court to disregard injury to the driver or damage to the vehicle in deciding whether there was any chance that he might drive it.

I beg to move clause 1.

**Mr Shimmin:** I beg to second, Mr Speaker, and reserve my remarks.

**Mr Karran:** Vainstyr Loayreyder, I move this to a committee because I believe that this Bill is a trade-off as far as this legislation is concerned. I know that the art of politics is the possible and I appreciate that there will never be unanimous agreement as far as breathalyser legislation is concerned but we have already seen that there are a number of amendments to do with this Bill that could fundamentally change the Bill. I would have had a number of amendments myself but I have been off the Island on parliamentary business and, to be fair to the Attorney-General's department, I will criticise them when they need criticising and, to be perfectly honest with you, the amendments I want would have been very difficult for them to come up with in the short period of time that I have been back on the Island to do so.

I have to say that myself I am not happy with clause 1. I am concerned about 7A, the protection as far as hospital patients are concerned, and I am gravely concerned about schedule 1 as far as what should be obligatory and what should not be obligatory.

I do not need any lectures and I do hope that when we do get a reply from the hon. mover of the Bill he will reply fairly and openly and will answer my points fairly and honestly, as I was quite disappointed with the previous piece of legislation that once again they miss out the good bits and misquote the bad bits.

I hope that this hon. House would support my proposal. I do not need anybody standing up saying that I am trying to fudge the issue, I am trying to delay getting the breathalyser. I was the one that raised the issue many years ago when many of you would not have been in this House. I think it is important as a legislature to have good, sound legislation. I believe that that is most important and I believe that this Bill is not sound legislation as it is at the present time. There have to be compromises by the hon. member, the hon. mover of the Bill, and I understand the arguments why this has happened.

I hope this hon. House will not just rush this piece of legislation through because I believe it needs to be well thought out. I believe that this House does a dishonour to the legislative process if it allows it to be hammered through at the present time. I have already had mentioned, 'Oh well, we want to try and get it on the statute books as soon as possible.' It is virtually impossible for this piece of legislation to be on the statute books before the summer recess.

I would suggest, hon. members, let us make sure that we are going to put through a piece of legislation that is well thought out without the political compromises of one side or the other and I hope that we are not going to see the dead hand of executive government using its influence in this legislature to force the issue through. I hope that this hon. House will support my proposal and allow it to go to a committee, allow the committee to look at the amendments that are here, look at any amendments that any other hon. members have and also if there are any inputs from the general public. This piece of legislation will not be speeded up any further by stopping this going through this process. Hon. members, if this hon. House wants good primary law, then I hope the hon. House will support my proposal and allow it to go to a committee. I beg to move:

*That the Road Traffic Bill be referred to a committee of three members for consideration and report.*

**Mrs Cannell:** Mr Speaker, I have not formed any opinion on this Road Traffic Bill other than to feel that perhaps it should be going a little bit stronger in terms of its clauses, but I am

very happy to actually second the proposal made by the hon. member for Onchan. I feel that there is merit to actually look into it further to ensure that what we are putting in in terms of legislation is the right legislation for the people of this Island and I believe that given the time that we have before us in terms of sittings et cetera, I do not believe that even if it were not to be supported the minister will be successful in getting it through perhaps to be in place prior to this Christmas and in view of that I feel that this House does have time to properly consider the implications, the ramifications of this Bill and any proposed amendments that may come forward and I am happy to second.

**Sir Miles Walker:** Mr Speaker, the promoter of this Bill, the minister, has been very straightforward in his attitude to it. He has told us in no uncertain terms that it is a compromise, that it is seen as a way forward. I have to say that it is a compromise that I feel fully comfortable with and I think the alternatives to that are very clearly set out in the amendments that we have before us, that have been tabled, and it would be my view that we should continue with the Bill as it is written and consider those amendments, which are not terribly complicated in their content, when they are moved from the floor and I think that the House of Keys could well deal with this legislation without going to a committee.

**Mr Houghton:** Hear, hear.

**The Speaker:** Hon. members, I call upon the hon. member for Onchan to reply.

**Mr Karran:** Vainstyr Loayreyder, I am very appreciative of the hon. member for East Douglas who seconded my proposal. I think it is important to get the legislation right and that is what I want to make sure, that we get it right.

The hon. member for Rushen recognises that it is a compromise, but the way forward is to make sure you get it right for the good government of the Isle of Man, and what I would suggest is that there are not amendments that I feel should be in this Bill. I think it is crazy, in schedule 3 for example, that we talk about the obligatory banning and imprisonment and all the other issues as far as that is concerned but a fundamental issue which I think should have been in this legislation is the fact that it is crazy that somebody is banned for three years but then he can go and drive on the road again. I believe that there should have been in this primary legislation an automatic retesting for people who have done drink-driving. I think that should have been done. I think that, maybe with vested interest, my proposals as far as the courses on alcohol abuse should be an automatic thing as well.

I think that the hon. member for Rushen - I sympathise with his concerns - I believe that he will be doing a disservice to this House and to the legislative process if we do not take the road of going down and having a look at a committee as far as this issue is concerned.

I think the fact that the hon. mover of the Bill has remained silent means that obviously he sees there is some merit in what my concerns are. *(Laughter)* Maybe I have misread that or maybe it is the fact that he understands that he is on very difficult ground to defend. I do not think he is being charitable. I think he knows that he is on very difficult ground to justify bludgeoning this piece of legislation through.

There is no-one in this hon. House who is more committed to getting the breathalyser on this Island. This hon. member was doing this a decade or so ago -

**Mr Downie:** It was not in in the UK.

**Mr Karran:** - when members would not touch the proposal, but I want it to be good, sensible legislation. It has already been recognised by the member for Rushen that it is a fudge. If we want good sensible legislation I think it is important that we go for a committee. I beg to move.

**The Speaker:** Hon. members, the motion is that the Road Traffic Bill be referred to a committee of three members for consideration and report.

**Mr Bell:** Do I not get the chance to reply to the clause?

**The Speaker:** No, we are deciding whether it goes to a committee or not and then we will continue with the clause debate, sir.

**Mr Bell:** Sorry.

**The Speaker:** So the motion is again, hon. members, that the Road Traffic Bill in its entirety be referred to a committee of three members for consideration and report. Will those in favour please say aye; against, no. The noes have it.

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

*For: Mr Rodan, Mrs Cannell and Mr Karran - 3*

*Against: Messrs Gilbey, Cannan, Quine, North, Sir Miles Walker, Mrs Crowe, Messrs Brown, Houghton, Cretney, Duggan, Braidwood, Shimmin, Downie, Mrs Hannan, Messrs Singer, Bell, Corkill, Cannell, Gelling and the Speaker - 20*

**The Speaker:** Hon. members, the motion to refer the Bill to a committee fails with 20 votes cast against and 3 votes cast for.

We continue then with the debate on clause 1. Does any other hon. member wish to speak to clause 1? I call then on the hon. member for Ramsey to reply if he wishes.

**Mr Bell:** Thank you, Mr Speaker. I apologise to members. I was caught out on that one. But briefly, can I thank members for supporting the continuation of the Bill without it going to a committee. As has been said by the two previous speakers, it is an honest attempt at a compromise between extreme views and an attempt to at least ensure that the breathalyser, in certain circumstances, is available to the police to assist them in their pursuance of the law and also to prevent inconvenience to many members of the public who otherwise would be called to come into Douglas police station for alternative testing.

There are only two points, I suppose, really I could raise. The hon. member for Onchan refers to protection of hospital patients. That has got nothing to do with clause 1 at this stage but it is covered in a later clause and it is quite clear that if the doctor feels that no testing should take place, then the doctor will overrule the police. There is that protection for hospital patients there.

Secondly, on the point raised by the hon. member for Onchan again, can I assure members that neither the dead hand of executive government is forcing through legislation here nor is it the intention of my department to bludgeon legislation through. This legislation has been well thought out for quite some time. It has the support of the Council of Ministers. It had, I think from memory, the unanimous support of hon. members last week at the second reading. We are not trying to force through anything. It is open to hon. members to make their

comments and indeed move their amendments as we go on through on the Bill and I think the amendments themselves highlight the two areas perhaps where contention may take place and it is in the hands of members then as to which way they vote on those particular matters.

So, Mr Speaker, I beg to move clause 1.

**The Speaker:** Hon. members, the motion is that clause 1 stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 2, sir. The hon. member for Ramsey.

**Mr Bell:** Thank you, Mr Speaker. Clause 2 gives the police a new power to breathalyse a driver, that is, to make him undergo a roadside test to see whether he is over the limit if there has been an accident or he is believed to have committed one of a certain specified number of moving traffic offences.

It creates a new section 5B of the Road Traffic Act of 1985 and subsection (1) enables the police to breathalyse a person suspected to have been driving or in charge of a mechanically propelled vehicle involved in an accident, that is, to require him to provide a specimen of breath for a breath test.

Subsection (2) enables the police to breathalyse a person suspected (a) to have been driving or in charge of a mechanically propelled vehicle and (b) to have committed a specified moving traffic offence.

Subsection (3) provides that the police can breathalyse a driver either at the place where they ask him or, in the case of an accident, at a police station.

Subsection (4) requires the police to notify the doctor in charge of a hospital patient if they wish to breathalyse him and allows the doctor to veto the breath test. If a breath test is allowed it has to be administered at the hospital.

Subsection (5) makes it an offence for a driver not to provide a specimen of breath when required to do so. There is a defence of reasonable excuse.

Subsection (6) gives the police a power of arrest without a warrant (a) if a breath test is positive, so that the driver can be taken to a police station and required to give a specimen of breath, blood or urine for analysis, or (b) if the driver fails to give a specimen of breath.

Subsection (7) gives a power of entry to any premises in support of the power to arrest conferred by the previous subsection.

Subsection (8) defines 'breath test' for the purposes of this section and subsection (9) defines 'specified offence' for the purposes of subsection (2) above. It is dangerous driving or careless or inconsiderate driving but additional offences can be added by order of the Department of Home Affairs with the approval of Tynwald.

Mr Speaker, I beg to move clause 2.

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

**Mr Downie:** Mr Speaker, hon. members, I rise to move the amendment that has been circulated in my name with regard to clause 2:

*Page 2, line 37; for subsections (1) and (2) of new section 5B substitute -*

- 5B.** (1) *Where a constable in uniform has reasonable cause to suspect -*
- (a) *that a person driving or attempting to drive or in charge of a mechanically propelled vehicle on a road or other public place has alcohol in his body or has committed a traffic offence whilst the vehicle was in motion, or*
  - (b) *that a person has been driving or attempting to drive or been in charge of a mechanically propelled vehicle on a road or other public place with alcohol in his body and that that person still has alcohol in his body, or*
  - (c) *that a person has been driving or attempting to drive or been in charge of a mechanically propelled vehicle on a road or other public place and has committed a traffic offence whilst the vehicle was in motion,*

*he may, subject to subsection (4), require him to provide a specimen of breath for a breath test.*

(2) *If an accident occurs owing to the presence of a mechanically propelled vehicle on a road or other public place, a constable may, subject to subsection (4), require any person who he has reasonable cause to believe was driving or attempting to drive or in charge of the vehicle at the time of the accident to provide a specimen of breath for a breath test.*

*Page 3, line 20; for "(1)" substitute "(2)".*

*Page 4, line 16; for "(1)" substitute "(2)".*

*Page 4, line 31; for subsection (9) of new section 5B substitute -*

- (9) *In this section "traffic offence" means an offence under -*

  - (a) *any provision of the Road Traffic (Public Service Vehicles) Act 1964;*
  - (b) *any provision of the Road Traffic Regulation Act 1985 except Schedule 5A,*
  - (c) *any provision of this Act except Schedule 4.*

I would just like to clarify a point. Originally I circulated an amendment, amendment number (1), which had the words 'motor vehicle' in the first section. This has subsequently been replaced. So the amendment is exactly the same. The only difference is that where the word 'motor vehicle' was inserted it is now a 'mechanically propelled vehicle'.

Some members may be aware that in the UK there are certain categories of vehicles which are exempt. They are vehicles controlled by pedestrians, lawnmowers, electric carts that handicapped and physically disabled people use, but as the rest of this Bill refers to the vehicles as mechanically propelled vehicles, so there is a catch-all there which includes track-laying vehicles, contractors' plant and so on and so forth, on advice it has been decided that we replace the words 'motor vehicle' with 'mechanically propelled vehicle'.

Now, I listened with some interest to the mover when he was moving the first clause of this Bill and I am happy that in clause 1(3) there is a piece of this Bill there which provides a safeguard for people who fall asleep in a car in the back seat, they have given the keys to somebody else, there is absolutely no way that they are going to drive, and I will just read it out for clarity: 'For the purposes of subsection (2), a person shall be deemed not to have been

in charge of a mechanically propelled vehicle if he proves that at the material time the circumstances were such that there was no likelihood of his driving it so long as he remained unfit to drive through drink or drugs.'

Now, in the first sub-clause (1) it says, 'that a person driving or attempting to drive or in charge of a mechanically propelled vehicle on a road or other public place has alcohol in his body or has committed a traffic offence while the vehicle was in motion'. I believe that by bringing in the first clause we have been more than generous and the reason for my amendment today is to make it quite clear that for people who continue to drive or are in charge of a vehicle in a public place with alcohol in their body we are going to have a system in the Isle of Man which is easy to understand, it is common throughout the rest of the British Isles, and anybody coming here from the UK or Ireland or southern Ireland or Scotland knows that basically the time and reasons for which you can be breathalysed are quite clear. There is no doubt about that.

Now, as far as I am concerned I have had a good look through clause 2 and my amendment. I actually spoke to a senior police officer just after the second reading of this Bill and I was asking about reciprocal penalties and how come the Isle of Man were considering a situation where you were barred in court, where your licence was revoked in a court in the Isle of Man, and yet there was this continual problem where a person is banned here, they leave the Isle of Man at the end of the week and they are driving in the UK and all these other places, and I was told quite candidly that unless we have legislation which is basically similar it is never going to happen, and this is one of the reasons why, when I spoke to the legal draftsman, I asked him if he could introduce this amendment based on the UK legislation so that we were dealing with a situation where if a person was stopped or they committed a moving traffic offence or the police had reason to believe they had been driving or attempting to drive there was the opportunity to breathalyse him.

At the moment under the present Bill if a person is in Port Erin and they have got four or five passengers in the car and the policeman believes that that person is driving over the influence they physically, if this Bill goes through in the present form, have got to arrest the driver, send him to Douglas, get him to blow into the Lion intoximeter and then if he is under the limit return him to his carload of friends in Port Erin. Now, I personally and all the people I have spoken to would rather have a quick sure-fire test by the side of the road, over and done with. Now, if he is over the limit then, you formally charge him and then he goes on to the police station for more tests. It is crazy having this system where you have to be involved in an accident before you can physically be breathalysed.

I think the situation lends itself to the UK. I am not an advocate of UK legislation by any means but as the Bill is written I feel it needs reinforcing. We have also got 10 years of UK case law to fall back on, and I do not know yet in this Bill what type of breathalyser equipment we are going to be using at the side of the road because I know in the UK there was great controversy whether people should blow into a bag or we had one of these little machines here. There is all that to come. If we take the amendment as it is written today and we do what has happened in the UK, it is quite clear as far as I am concerned.

Now, the minister will give me an argument I am sure that he does not believe in this because it will create random testing. Now, I do not accept that for one minute, and if you look at the various parts of my amendment laid out it is quite clear they just cannot stop anybody,

there has to be a reason, and I would think that our police, the way they operate, are not going to go hounding people and looking for trouble. There will have to be just cause for the person to be apprehended or stopped and tested.

Just before I resume my seat, I have thought long and hard about this and there is the other side that we have not even mentioned yet. The incidents of people driving under the influence of drink are still rising. I believe it is up to this House today to send out a positive signal. I am happy that in the previous clause we have put ourselves in a position now where there is a clause there, there is legislation to deal with a person who is silly, who sleeps in the car, in the back of the car, and that has always been a bone of contention here, but for the person who physically drives or is attempting to drive I think we need to bring the strongest legislation we have at our fingertips to bear and I would urge members to support my amendment to clause 2.

**Mr Houghton:** Mr Speaker, I rise to second Mr Downie's amendment which, if passed in this hon. House today, will prove to be a practical way forward in addressing situations whereby police who stop vehicles for minor moving traffic offences will be able to give the driver a breath test if they suspect him of course of driving under the influence, not unless.

A minor moving traffic offence can be as minor as failing to stop at a halt sign or weaving in the road et cetera. If this amendment is not successful today, then the police will have no option in the future but to continue to arrest any suspects and take them to the police station, as has been made quite clear by my hon. friend, when they are treated of course at the police station as a prisoner.

The breathalyser is designed and intended for use at the side of the road. I therefore see no point in disallowing its use in circumstances which attract police attention and to situations which bring the lion's share of persons under the influence of alcohol to light. Thank you.

**Mr Brown:** Mr Speaker, hon. members will see that there is an amendment from me relating to clause 2 and if I can just take hon. members to page 4 and line 38 which is at the bottom of the page, the amendment is a slight amendment which is that we remove the words on the last line where it states 'of Home Affairs'. This will then mean that the provisions of this legislation for this part go with the Department of Transport. This was a slight hiccup on our side and I have been in consultation with the minister on this issue and we are content for this change to be made. The basic reason is that for all the other offences relating to such provisions in fact the matters are dealt with by my department, and the police are the enforcement agency, not those who specify the offences, and therefore to correct - and I hope the House will support the correction of what has been a slight oversight - I hope members will support the amendment that I have in my name under clause 2.

Just before I move on, just a general comment about the legislation and the points that were made and the amendment moved by the hon. member for West Douglas, clearly part of what he said is quite a straightforward argument. I do think that we should not ignore the point that there is a public view on this, from those who do want it in with all its warts and all sorts of ways of dealing with people, to those who do not want it at all and then people in the middle who say, 'Yes, but if. . .' whatever.

Now, we have to do a job, and I accept that. We have to say, 'What do we believe is in the best interests of the Island?', and I think that the proposals within this legislation are

moving us in the right direction and I think that if we go maybe as far as the hon. member is proposing we will have a reaction, as we have seen in the past, where the legislation is found to be unacceptable, I think is the nice way to put it, to many people in the community.

It is made a little bit black and white. We should not forget that of course the breathalyser is only a piece of equipment to enable an officer to take a roadside test which enables him to determine there and then whether or not he arrests somebody, and the point that has been made here is - and I am taking the point of the hon. member for West Douglas - 'Oh, if he stops four people in a car in Port Erin the police constable has to take him in to Douglas.' The police constable does not have to take him in to Douglas. The police constable only has to take him in to Douglas if he suspects quite seriously that the person is under the influence of alcohol.

Now, there are a number of roadside tests that can be undertaken, quite simple ones by a constable on duty, where he can identify whether or not a person is likely to be over the legal limit, and it is interesting that last night on television there was a programme all about America and they had no breathalysers but what they did have was quite clear tests undertaken at the side of the road, very simple ones, to ascertain whether or not that person was likely to have consumed too much alcohol.

So I think we should keep this clear. The breathalyser is a piece of equipment. And the hon. member for Onchan goes on. He has a view, I have a view and we differ. I think the point is that the breathalyser is a piece of equipment. It enables an officer to take a roadside test and helps him to determine whether or not he should arrest a person and take him in to Douglas for further tests and that, I understand it, is the basis of the breathalyser.

So I think we just need to balance that up and I think it is a matter members are going to make their own mind upon. I do not have any doubt about that. I think members will come from different directions on this issue, and I think the hon. mover, the member for West Douglas, putting it on the floor gives options to members and the House can decide and that decision will then be the view of the House, but I have to say I have a concern as to how far we do go on this legislation. Our difficulty is of course we can control absolutely everything and, to be quite honest, if we do not believe in drink and driving at all, then we should make it an absolute offence, but we never do. I beg to move:

*Page 4, line 38; omit 'of Home Affairs'.*

**Mr Singer:** Mr Speaker, can I first of all second the amendment moved by Mr Brown, if this is the time to do it, in omitting the words 'of Home Affairs'.

If I could comment now on Mr Downie's amendment, and I do support it and I am pleased to support it, in my view any measure which is introduced by this hon. House is one which we hope will have a positive effect on behalf of the community in general. The proposals within this Bill, however, will do little to reduce drink-driving, as the reasons allowing a motorist to be stopped and breathalysed are so limited that unless, as has been said, an accident occurs or there is an obvious case of poor driving the police are helpless and intoxicated drivers will go undetected. The positive effect on the problem of drivers who are over the 80-milligramme limit therefore will be trivialised and the general public and the police will become disheartened and frustrated at the impotence of the Bill, the fact that we have introduced the breathalyser but there is not very much we can do with it.

How can the effect of the Bill be monitored or a change in attitude of drinking and driving be detected if the roadside breathalyser cannot be used reasonably? The heavy persistent drunk drivers will still be detected from the serious accidents that occur but the suspected over-the-limit driver will probably not be breathalysed if the proposed clauses are strictly adhered to.

I did say at the second reading that it had yet to be demonstrated that the Council of Ministers and the home affairs department were paying more than lip-service to those requests in the introduction of the roadside breathalyser. Unless the police have the power that is proposed under Mr Downie's amendment, then the true effect of the roadside breathalyser in reducing drinking and driving and therefore accidents and serious injuries and deaths will never be clear.

This amendment under the control of our sensible police force will have the effect that is essential to make our roads as safe a place both for drivers and pedestrians and therefore I support the amendment.

**Mr Gilbey:** Mr Speaker, I should like to make it quite clear at the outset that I certainly do not support or condone persons driving motor vehicles with an excess of alcohol or drugs. Far from it, I abhor and condemn such behaviour and I would go further and say that I abhor and condemn drunkenness in any form. Furthermore I would have such swingeing sentences for drunken driving that people were really deterred from it, and in this respect I certainly support the sentencing policy of the High Bailiff.

However, when we come to the points made by the hon. member for West Douglas, Mr Downie, and his amendment he first of all says that he needs the amendment so we have the same as the rest of the British Isles. I see no need for this at all. We do not have the same in many other ways. If you come to motoring matters we do not have special arrangements for fleets of heavy vehicles, we do not have MOTs for all vehicles et cetera. (*Mr Downie interjecting*)

Now, if our law was going to be more onerous we would clearly have to warn people when they came here that it was, but as in fact it would be less onerous I cannot see there is a problem and I do not believe that because we are not absolutely the same in everything we could not enter into an agreement regarding the reciprocity of people being banned from driving in both countries.

But if we come to Mr Downie's other point, I certainly do not believe in random testing. Now, he claims that his amendment would not lead to random testing but I would ask that hon. members should look at it very carefully. It says, 'Where a constable in uniform has reasonable cause to suspect - (a) that a person driving or attempting to drive when in charge of a motor vehicle on a road or other public place has alcohol in his body or has committed a traffic offence whilst the vehicle is in motion, or (b) that a person has been driving or attempting to drive or been in charge of a motor vehicle on a road or other public place with alcohol in his body and that that person still has alcohol in his body, or (c) that a person has been driving or attempting to drive or been in charge of a motor vehicle on a road or other public place and has committed a traffic offence whilst the vehicle was in motion, he may, subject to subsection (4), require him to provide a specimen of breath for a test.' Now, that is virtually identical to the UK's wording and it clearly says that 'If a constable in uniform has

reasonable cause to suspect a person has', and I quote, 'alcohol in his body'. Now, it would therefore be reasonable for a constable to suspect that a person had alcohol in his body if he was leaving a public house, a licensed restaurant, a hotel after a mealtime, indeed any place where there had obviously been a private party; he could have alcohol in his body in all these circumstances. The same could be said of anyone driving late at night. However, there is no certainty that such people had too much alcohol in their bodies and therefore the very wording of such legislation gives power for random testing.

However, far more important than any arguments of mine is the fact that such amendments are entirely based on UK legislation regarding the breathalyser and I therefore refer to the House of Commons Library reference sheet on the Transport Bill 1981. This, on page 15, states, and I quote, "The Blennerhassett Report comments on the present legislation. The compromise which was adopted in response to this opposition did not, despite impressions to the contrary, actually forbid 'random testing'.

Equally important, a High Court ruling by Lord Justice Lloyd and Mr Justice Macpherson held that police officers who stopped cars to see if drivers were over the alcohol limit were acting in execution of their duty. The judges swept away any remaining doubts that motorists could be stopped only if an officer had reasonable suspicion that an offence was being committed, but they stressed that the distinction had to be drawn between random stopping and random breath testing. The fact is that the High Court ruled that random stopping was legal and once this happened the officers were in order to insist on breath tests. Thus the case effectively confirmed the legality of random breath testing.

Therefore once legislation of this type reached the statute book we could have random testing in this Island. I believe this is totally contrary to the Manx beliefs in freedom of the individual and our wish not to bring in blanket legislation to the detriment of the majority merely to deal with a tiny minority.

It is interesting that a consultative document on drink-driving produced by the Department of Transport on 20th December 1979 commented as follows, 'Indiscriminate testing would be undesirable', and this was supported by a leading article in the UK newspaper *The Independent* edition of 30th December 1987. This said, 'Even if random checking for drunkenness was effective, the question arises whether the intrusiveness of the law, which amounts to the loss of the assumption of innocence, amounts to an unacceptable loss of civil liberty for the motorist. We have done away with the old sus law under which it was all too easy for police to work on the broad assumption that black people might have drugs on them and search them to find out if they had. Spot checking motorists will be almost as offensive, except it would not carry a racist stigma.'

Now, the sus law was one they had in the adjacent isles under which the police did have power to stop black people or any other class of person they thought might have drugs or anything and they could be stopped in the street, and this was felt to be so against civil liberties that it was done away with.

Now, we are not now dealing with pedestrians in the street, we are dealing, though, with people driving in the street and it is quite wrong that there should be any kind of random way of stopping them just to see if they were drunk. You might as well just stop them at random to see if they could see properly or if they were fit enough to drive. (*Interjection*)

Going on, further in an article in *The Times* on Saturday 1st August 1987 Mr Robert Kilroy-Silk QC, a former Labour MP, wrote, 'What we don't want, however, is that the rest of us should be stopped at the whim of a police officer, inconvenienced, and probably humiliated, because of the anti-social actions of a criminal few', and I know that in the past at least one distinguished member of this hon. House has said how embarrassed and upset he felt when he was subject to a random test in the adjacent isles, and I can well understand this; even someone like myself who hardly drinks at all would feel upset and embarrassed and you might think 'Could I by any chance be over?' It would be a worrying situation.

But going on with this article, it says, 'We don't stop people at random merely because of the existence of burglars, or muggers or rapists.' He continued with a very important point, that the introduction of random breath tests would be a large and unnecessary extension of police power and an unacceptable intrusion of our privacy. However, even more important is the damage that it would do to the police and police community relations. How right he is that a breathalyser could sour police public relations, which is the last thing we want to happen in the Isle of Man, and therefore it is not surprising that the Isle of Man Constabulary are satisfied with the Bill as it is and have made it quite clear that they do not want it to contain the powers in this amendment, and those of us in this hon. House who are members of the Police Authority will have heard senior police officers say just that. They do not want anything additional to what is in this Bill at this time (*Mr Downie interjecting*) for the very reasons that I have stated. I think, Mr Speaker, perhaps Mr Downie has had a chance to speak; he will have another one. There is no need for him to interrupt. (**Members:** Hear, hear.) Perhaps his interruptions are because he realises I am so right in what I am saying.

**Mr Karran:** Vainstyr Loayreyder, I am appalled with this House today as far as this Bill is concerned. We are now seeing the point that this Bill is full of loopholes, it is wrong, it has not had the input that it should have.

The hon. member for North Douglas is quite right. The point is that people will be having to be dragged off to the police station if the amendment by the hon. member for West Douglas does not go through. Let us not hide about that.

I listened to the last member with disbelief: the person who knows the price of everything and the value of very little. He talks about civil liberties. He is always on about the price. Well, I remember years ago I think we were talking about something like £140,000 it costs us for a death, a premature death. Now, we are talking about £21,000 here as far as that is concerned. So let us be honest about it. It is good value if we have random breath tests and if it saves one life it will save more money as far as what it would cost in implementing random breath tests.

He goes on about the civil liberties of the driver. What about the civil liberties of the poor soul that is walking along the road and a car decides to mount it up on to its bonnet? What about the civil liberties of the harm, the damage, the death that it causes? He was on about people have got rights, we have got to protect the driver. This was the man who, on a number of road traffic legislation that I tried to bring in, was arguing against making it criminal again for unroadworthy vehicles and he believed, 'Well, what would the poor people drive if they are not allowed to drive unroadworthy vehicles?' You pay them a decent wage. And what concerns me about his whole input into this debate is the way it is totally and utterly misguided as far as the reality of the situation is concerned.

We heard the mover of the amendment go on about we are losing the battle. Let us be honest about it. You are far better doing burglary, aggravated burglary. You have got more chance of getting less imprisonment than you have for being pie-eyed drunk behind a wheel. You cannot do much more apart from public executions as far as drink-driving is concerned, and the point is that this Bill is flawed as far as the schedule is concerned of this Bill, but once again vanity is more important than sanity and you will have your way, and the hon. mover of the Bill, the hon. mover of the amendment, is going to lose his proposal today even though you have got no-one more experienced on this Bill than his seconder, the member for North Douglas here, who knows the reality of the situation.

The fact of the matter is, the bottom line is, the best way of cutting down the deaths and unnecessary injuries on this road is to catch more. This tokenism of sending the poor sod who gets caught at a weekend out of the other 400 or 500 that are drinking on our roads and making an example of him is not a way forward. You want to get more people off the road that are drinking and driving and the best way to do that is detection.

But what we have got here today is crass hypocrisy, that is what we have got as far as this Bill is concerned, crass hypocrisy. You do not want random breath tests because it will affect your votes. It does not matter about the person who gets killed because the fact of the matter is they cannot vote for you any more anyway, and that is the truth of the matter and the fact of the matter is maybe a few more might be caught out when they are coming home from the Tynwald Banquet (*Interjections*) and that is the reason why we do not want random breath tests -

**Mrs Crowe:** Oh, Peter, rubbish!

**Mr Karran:** - in this hon. House today and that is the bottom line as far as that is concerned.

I feel as far as this Bill is concerned I will support the amendments of the hon. member for West Douglas. He will not get them through because it will not be done. It just highlights the fact that the Bill should have gone to a committee. It highlights the fact that the Bill is fundamentally flawed and the fact of the matter is that this hon. House has done a tremendous disservice to the parliamentary set-up of this legislature. We have seen once again today the executive of this hon. House being able to bludgeon this through as far as this is concerned when it should have gone to a committee, it should have had this amendment by the hon. member, because the points that the hon. member for North Douglas raises are valid points of the practical implications.

The hon. member for Glenfaba said about his police committee. Well, as far as his police committee is concerned, I cannot talk about it. I know many policemen who have said to me that it is long overdue, it is long overdue that we do have a more effective way of detection, and when I hear the member for Castletown telling us about the fact that you do not need it, we do not need the breathalyser, you can do a few simple tests, 'We will make you walk along the road in a straight line or let you put your finger to your nose', it is absolute nonsense. It is a political compromise and political claptrap as far as that is concerned, because many people in this hon. House and outside simply, if you were to do that assessment, would be almost certainly sent down to Douglas police station on a regular basis because they would never pass their test as far as that is concerned.

This Bill is flawed. It is badly flawed. You will force it through today and we will add it on to the window-dressing exercise that has come to be an art form of the executive government of this Island.

I hope hon. members will support the hon. member for West Douglas, but I can tell you now, as I say, it will be an even bigger farce than it should be. We lost a golden opportunity as far as this Bill is concerned to have it done properly. I only hope one day we will have a House of Keys that is strong enough and has a sincere commitment to deal with the unnecessary deaths and injuries on this road who will do their oath of honour, to do their service without fear or favour, because today there are far too many talking with forked tongue in this hon. House.

**The Speaker:** Hon. members, it appears by the House clock that this is an opportune time at which to retire. We will recommence the sitting at 2.30. The first member to speak on that occasion will be the hon. member for West Douglas, Mr Shimmin, if he should so wish.

*The House adjourned at 1 p.m.*

### **Road Traffic Bill - Consideration Of Clauses Concluded**

**The Speaker:** Hon. members, we resume our deliberation of the Road Traffic Bill. We are on clause 2 and the next to speak was the hon. member for Douglas West, Mr Shimmin.

**Mr Shimmin:** Thank you, Mr Speaker. If I can take hon. members back an hour-and-a-half, we have just heard another of my hon. friend, Mr Karran's oft used, easily forgotten rantings about how we are remiss if we fail to take his suggestion. I admire much of Mr Karran's sincerity and he holds a view on the breathalyser that I have shared for many years.

One of the first jobs that I did whilst attaining this position was to look up previous debates on the breathalyser in order to find out how many of the dinosaurs were left in this Court who would continue to vote against such a breathalyser. I was then encouraged by many of the new members to this Court; particularly my colleague at the time on Home Affairs, Mrs Cannell, and myself argued strongly that if the Department of Home Affairs did not introduce legislation, then we would be prepared to do it as private members. All through my driving life I have been totally opposed to drink driving and anything which will benefit or safeguard the rights of the innocent victims on our roads will get my support.

We then come to the legislation before us today and whether it is a fudge or whether the amendments are to be adopted. I admire the number of people in this chamber who have already changed their viewpoint, some many years later than I would have liked, but certainly my own minister, the former speaker, Mr Gilbey, the mover of this amendment, Mr Downie - all in the past have been passionate opponents to breathalysing legislation. Does this legislation achieve what we want? Does it go far enough? Well, again, I admire the minister for admitting that this is an acceptable way forward which has brought a majority consensus view of the Council of Ministers and would, most likely, get the support of this chamber.

Hand on heart, I would be quite comfortable with moving all of these amendments and going with them; I would be quite comfortable for police officers hiding behind hedges in pub car parks, jumping out and putting any breathalyser on any person who is putting a key anywhere near a car, but that is not likely to get the support and approval of this Court. I have no doubt that there will be opponents to it and I could not believe, whilst reading previous

speeches, how anybody could try and legitimise the rights of those people breaking the laws, endangering lives and attempting to legitimise their actions.

Yet what has happened this morning? Once again we have allowed a debate on an issue which I was hoping would have received unanimous support of this Court, once again getting back into the old trenches whereby members such as Mr Gilbey, who has acknowledged that this legislation would gain his support, has to come out and defend his position on avoiding the random breath tests. It is a position he has held for many years and I can admire that position to be a genuine one, but it should not have been necessary today. Likewise, Mr Brown, somebody who has previously been opposed to breathalyser legislation, still refers to people who do not want it: it will be unacceptable to many. It will be unacceptable to those people who choose to break our laws and endanger the lives of others around them. I genuinely believe that both Mr Brown and Mr Gilbey will be supportive of the legislation as put forward by the minister, but once we go into these amendments, once we go into the old debate of what can or cannot be done, we start the old fears up.

I personally will be opposing all of the amendments, not because I would not happily endorse them, but I have argued at length with the minister and in the department, he in turn has been swayed and has gone to the Council of Ministers, they again have debated this issue and I would assume that it has taken some discussion before there was a unanimous decision where the Council of Ministers would support this legislation. If it were amended substantially, once again we will get the old fears arising and the old prejudices coming in. I believe that the legislation, as written, is a beneficial step forward. It comes down to some concern over the interpretation of what this legislation will or will not do.

Then I would refer members to page 4, lines 33, 34 and 35, 'specified offence' meaning an offence under', and it goes on to, 'dangerous driving' and 'careless or inconsiderate driving'. Now, there has been much debate and factual evidence firmly, strongly put down in this chamber this morning that what this means is this, and we have all been to the police and we have all got different interpretations. I am going by the trust that I have in the minister and in the officers of the police and the Department of Home Affairs who have spoken to me on this issue, and I would refer to those examples of driving which could be construed as careless and therefore lead to a requirement to provide a breath sample - this is police interpretation. It does cover the area of a driver whose vehicle is wandering in the road; it does cover a driver who fails to observe a stop sign; it does cover areas such as a driver who follows too closely behind another vehicle. They are moving traffic offences which are legitimately covered in this legislation as written.

If we are not prepared to accept the interpretation that I and the minister have been given by our advisers, then go with the amendment. Hand on heart, I do not lose. Anything which firms this up and gives the police greater powers will not trouble me one inch. However, I believe that the legislation before you, the substantive motions of the minister, are ones which have been negotiated over a period of time, do the job that it was intended to and are a position which can be supported by the majority of this House.

I regret that it has been necessary, once again, for those people who have previously opposed it and have now become rational and accepted the need for it, once again to go back to the trenches because of this fear of random testing. I have no fear of it. I am very, very sorry that some people do have a fear that the police will not do it fairly and legitimately. This

legislation is worthy, the amendments, I accept, are worthy, but I will go with the substantive part, even though, to his credit, the minister has given me the right to vote as I choose, and if that means to go against the department and with the amendments, I have got the freedom to do that. However, I recognise the changes that some people have had and I will stay with the motion.

**Mrs Cannell:** Mr Speaker, in considering the amendment which has been forwarded for consideration by the hon. member for West Douglas, I believe there is much merit contained within it. Now, I have listened to members and their responses and the debate so far with interest and, as I anticipated, certain members have come forward who really are vehemently opposed to any kind of tightening up of the laws in relation to those who drive whilst unfit to drive through the influence of alcohol and/or drugs. Now, this has not been mentioned very much in the debate so far but it is those under the influence of alcohol and drugs.

Now, whilst I see initially some merit in the overall Bill - and I made mention to this during the second reading and gave the minister my support, that I could understand why it had been worded in such a way, and it had been worded in such a way to try and bring the middle ground, to bring the opponents of the Bill when it was previously mooted, into supporting the Bill presented today, and it was a step in the right direction, but we are at clauses stage and it is at this stage that we can consider improving the measures contained within the overall Bill.

But just speaking on the amendment in relation to what we have before us in clause 2, in clause 2 it does, as we understand it, give the power to the police to be able to breathalyse following a road traffic accident - that is to say, that is the only time at which they could use the breathalyser in the case of an accident. Now, that is fine, it is a good measure, but it is rather a limited power because, of course, the police today have the power, under other road traffic legislation, to be able to stop someone if they are wavering in the road, if they are driving dangerously, if they suspect that the person is under the influence. They can stop, but in doing so, if they come across a driver who is obviously inebriated by alcohol and possibly had a mixture of drugs with it which produces an overall cocktail within the body, then it becomes obvious very quickly to that police officer that that person is perhaps over the limit.

Now what are his options? His options - this is the police officer's options - if this legislation is passed as it is before us unamended are that wherever he stops a driver, be it Douglas, Ramsey, Peel, Castletown, wherever, if he suspects that driver has had too many to drink he has to take that driver to police headquarters and he has to subject him to the test of the toximeter. Now, if I cast my mind back to when I was on the Department of Home Affairs and we began looking at this legislation, the view at that time was that there was a lot of waste of time in relation to this and that the police really were very much in support of being able to be given the powers to breathalyse as and when they saw fit to save on time, to save on manpower, given that you could have a person suspected of drink driving having to be accompanied by possibly two officers.

Now, those officers, whilst they are accompanying the alleged perpetrator, are of course coming away from their area which they would be policing otherwise. We hear many an argument in this hon. House that we would like to see more policemen on the beat; we would like to see more visible police, particularly in areas of Douglas and also in areas outside of Douglas. Now, if you have a skeleton police force who are on duty of an evening, say, in Castletown or Peel or anywhere else down south or anywhere else in the Island or the country

areas and their time is taken up with escorting somebody who they suspect is under the influence of alcohol, then that leaves that area unpoliced for the length of time which it takes to escort the person to Douglas to police headquarters to undertake this laborious task of proving whether or not he has indeed the legal limit or is it over the legal limit?

Now, that was the consideration at that time and I do not think we should forget that that is a prime consideration here. We want to see more police force out on the streets; we want to see more police force on the beat; we want to see them in densely populated areas, and so therefore we should be supporting any measure which is going to call for more efficiency in terms of police and policing matters in this Island.

The amendment is almost word for word like the United Kingdom legislation, but almost is not exactly the same and, whereas under normal circumstances I would first say we are free to make our own legislation, we should be considering our own legislation and it should be tailored to meet the needs of our community and not necessarily mirroring the community of the United Kingdom, in relation to this I think we do have a case where we should be considering some kind of reciprocation, because very often we get people coming over, whether they be on holiday, whether they be on business or for any other reason, they leave an Island with quite restrictive legislation in terms of drink-driving to come to an Island that is perhaps fairly liberal in their views in relation to the same, and thus we automatically, like it or not, are encouraging people perhaps to come and drink more and drive than they would otherwise do in their own home, and I do not think that is a good and positive message to be sending out.

Looking again at the other amendment moved by the hon. member for Castletown, Mr Brown, what he did not say was why we should omit the words 'of Home Affairs,' because this particular clause which he is seeking to amend specifies that an order can be made by the Department of Home Affairs in relation to, perhaps, future improvements to this particular clause. What he has not said is who should be empowered to make that particular order; and so, when he responds, which I assume that he will be able to do, I would like him to just clarify that point.

I believe that we should be sending a positive message out to the people of the Isle of Man that we will not tolerate those who abuse alcohol, those who abuse alcohol and drugs and then get into a motor vehicle and risk life and limb of the ordinary, innocent person. The hon. member for Onchan, in relation to his debate this morning, mentioned a particular case where a drunken driver is merrily going along the road in a fashion and can mount a kerb and knock a person down, and I would like to remind hon. members today that there was such an accident not so very long ago - in fact, it is just over a year ago - where a young man was walking innocently through the village of Onchan on his way home on a Sunday afternoon, having had two pints at his local but being sensible and walking - he was not driving a vehicle - was faced with an oncoming vehicle with a whole scutch of children in the back seat and a driver who was way, way over the alcohol limit, and that driver did in fact mount that kerb and knock that young man down to the ground and that man today, hon. members, is still in a head injury unit in the United Kingdom and may never walk again, may never talk again; he may never be able to communicate or recognise his family again, and he has two children aged five and three. That is the reality, hon. members. That is what we are considering today - putting in preventative measures to stop that from occurring in the future.

Now, that is what I see in the amendment which has been moved by the hon. member for West Douglas. What I see in there is much merit in terms of providing a preventative measure, a cost-effective measure in terms that if the police believe someone is under the influence, they can stop them. We have already heard they can stop them anyway. We are not actually giving them increased powers to stop. They have got that power already. They can stop that person, but instead of dragging them all the way to Douglas police station, they can breathalyse there and then clarify the situation there and then. That, to me, is a preventative measure, because if they do stop an individual who does blow into the breathalyser and it proves that this person is actually over the limit, then they can haul that person in there and then, thereby removing a potential danger, a life-threatening danger, from our roads. That is a good preventative measure.

Now, the measure contained within the Bill, as worded, means that we are giving the police the power to act after the fact, hon. members - this is after a road traffic accident where someone may have been maimed or injured or, even worse, killed. This is after the fact. Although there is some merit in it, it really does not, to my mind, go far enough.

I will be supporting the amendment moved by the hon. member for West Douglas. I am unsure as to whether or not I will be in support of the amendment moved by the hon. member for Castletown, because if the Department of Home Affairs are not going to be empowered to bring forward further orders in the future, then who is going to?

But I would just finally like to say that despite previous debates which have taken place in this hon. House in the past in relation to this matter, I would ask hon. members, through you, Mr Speaker, to consider with a fresh mind this one and let us not forget that it is the members of the public who are putting pressure on every hon. member in this House today to bring in some kind of safety mechanism for them, for the innocent ones; for the ones who do not abuse alcohol or drugs; for those who want to feel safe when they are walking the street and they are not going to be attacked by drivers who lose control of their vehicles because they are just not together. I would ask that members seriously consider supporting the amendment moved by the hon. member for West Douglas.

But just finally, in order to try and placate both sides here - because I can see that members are vehemently opposed to it and prefer the liberalised rules and regulations that we have and also those which are contained within this Bill, coupled with those who would support any kind of measure to make our roads safer and those who are unsure, and I can sense that all of those feelings are in this hon. House today - I will be moving an amendment, and I am moving an amendment, Mr Speaker, that clause 2 - and this is to give each hon. member in this House a second opportunity to look at this particular clause - in its entirety be considered and reported upon by a three-member committee. The reason I have done that is because I can fully appreciate that the first amendment moved by the hon. member for Onchan was thrown out, and that was in relation to the whole of the Bill. I see no reason why the rest of the Bill should not progress with a three-member committee looking at clause 2, because clause 2 is the most controversial clause within the entire Bill, although I appreciate there is a further amendment further through the Bill. But this will give hon. members a second chance to fully consider looking to taking all views and coming forward with recommendations and findings to hon. members on clause 2. I believe that if we do not support such a mechanism, we are doing an injustice to our constituents; we are doing an injustice to future generations because,

although there is provision within the Bill as it stands for further improvements in that the department or some other person comes forward with further measures in the future, those are contained, but who is to say that they will ever come forward and who can say that if they come forward they would not be further rejected?

I think now is the time to take the bull by the horns, look into this further, take on board all of the views and come back and report further with some recommendations on clause 2. Rather than risk the whole of the Bill I think members ought to support the amendment that I move in my name to go for a three-member select committee just to look at clause 2. I dare say there will be many more hon. members who will wish to speak on this, but I would ask that they consider the issue with fresh minds, because never before have the people spoken to us as they have spoken over the last couple of months in relation to this matter. Numerous people have been interviewed by the media and they say they want it, and if our people say that they want us to bring in preventative measures, good legislation, then we owe it to them to fully consider all of these things in a proper manner. I beg to move, Mr Speaker.

**The Speaker:** Hon. members, for the purpose of clarification I have, properly signed, an amendment, and I know it has not been circulated to the hon. House, but if you care to take it down it reads, *'That clause 2 of the Road Traffic Bill be referred to a committee of three members for consideration and report.'* Continue the debate, hon. members. The hon. member for Garff.

**Mr Rodan:** Thank you, Mr Speaker. It was in 1967 that the breathalyser was introduced into the UK, and this has worked so well that the UK has the lowest vehicle accident rate in Europe, and one might well ask why it is that it has taken the Isle of Man so long to introduce this important weapon to discourage driving under the influence of alcohol and to take the opportunity of removing at the same time the inconvenience and embarrassment that can occur from our present system of an innocent driver having to make a trip to the police station.

Now, there are many examples of legislation where we have not copied the UK straightaway, especially in social legislation, and some would argue that we have lagged behind the UK in some areas and sometimes there have been good reasons for this sometimes no particular good reason. I believe it is always useful to pause and to take stock and to learn from the UK experience and ensure we have legislation tailored for the Isle of Man situation rather than just copying what they do across.

Basically I see this Bill as a road safety measure, and in passing I might well ask why some of those pushing for tough legislation in this area to deal with accidents caused through excessive alcohol do not agree with controlling accidents caused from excessive speed where alcohol is not involved. But I do acknowledge that this Bill is a compromise, as the department has said, between the competing points of view which have been well argued and are finely balanced, and it was on that basis that I saw some merit in a committee to look at the Bill and why I supported the hon. member for Onchan, Mr Karran. Notwithstanding that the minister has made it clear that the Bill itself is a compromise and has been looked at from different areas, nonetheless it would be useful for members to see if perhaps there was some common ground, and for that same reason I think I would be inclined to second the hon. member Mrs Cannell's amendment.

Just speaking to the clause and Mr Downie's amendment, perhaps the test question should be, are the circumstances under which a roadside breath test will be given any different from those when an intoximeter test will be given? I understand that the differences are fairly marginal between those two criteria. In clause 2 in the Bill we are stating here that specified offences of dangerous driving and careless driving will give cause for a road breath test and I understand that is quite deliberate so as to give the police a clearly defined area to operate in with these particular specified offences. Clause 2(2) gives a police constable who has reasonable cause to suspect that a person has been driving and has committed a specific offence to give a breath test. What Mr Downie's amendment does is to cast the net of specified offences that bit wider, considerably wider, to embrace virtually all traffic offences, plus to allow for the suspicion by a police constable without an offence actually having been committed. To my mind, this is tantamount to random breath testing. We have heard that the police are content with the range of offences drafted inside this Bill and want to avoid at this particular stage any deterioration of the essential good relationship between them and the public. I understand this is the police's position. So at this stage I believe it would be better, with new legislation of this sort to, one might say, suck it and see; to see how effective these new measures work out; to accumulate data and statistics on an Isle of Man basis, to build up our own bank of data so that we can make an informed judgement as to whether the range of offences should be extended as is provided for in this Bill, and it may well be that there is a case that can be made for random breathtesting, but I would prefer it to be on the basis of solid evidence later than just a feeling or a belief at this stage that it would be a good thing.

I think the hon. member for Glenfaba, Mr Gilbey, was quite right to warn of the dangers attendant on widening the scope of legislation so much that it impinges on innocent people going about their legitimate business, because undoubtedly, if the amendment is passed, there will be a risk of that happening and the police themselves do not want that to happen. So there is a balance to be struck and these are issues where I do agree with the hon. member for Douglas East, Mrs Cannell: a committee could be useful to explore to see if there is some common ground across this House. As I said, the minister himself acknowledges this Bill is a compromise and I do not doubt the honest intent of the minister in wishing to bring the Bill forward in this form today and for us to consider the amendments on their merits but, given that there might be common ground and room for compromise, I think it is important that we do take that opportunity to see if we can achieve the right compromise. Thank you, Mr Speaker.

**Mr Cannell:** Mr Speaker, firstly, I am against referring this to a committee. I think we are here to govern and I think we should make the decision, and the decision should be made from the floor rather than brought back to the floor. The Isle of Man is either committed to trying to stop drinking and driving or it is not. There is no half way and I believe that we went down this road when the intoximeter was permitted to be used in the Isle of Man. I do not think we are going much further than that now except that we are benefiting people by preventing them having to go through the ignominy of being dragged to the police station, as we have heard. Anyone under this system who has not broken the law has nothing to fear from this legislation. The only people who would be against it would be those who might be caught out by it.

A concern, of course, as we have heard from other speakers, is what must be described by police snooping - as one member put it, up trees and in public house car parks et cetera. I do not believe that will occur. I think the people most conscious of trying to avoid that and break down the relationship will be the constabulary themselves. They will be anxious to make a good impression. So random testing can be achieved already, so it is not so different, as we have heard from other speakers.

I was in London in 1967 when the breathalyser was introduced, the first Friday night of the week in a very large public house near Wembley. I was not there for a football match but it was a very large establishment and it was deserted. I made enquiries about it, because even then I was interested in legislation, and I was told it was the breathalyser, and the people calling in at that public house and restaurant were 90 per cent down the first Friday. If this is introduced in the Isle of Man expect something similar: roadside houses will be finished, at least to start with.

But what we are talking about here is trying to prevent injury or death to other people by drink-drivers. Now, at one time, prior to the change of our social pattern, it was considered something of a Jack-the-lad thing to do to go out and have a few pints and drive home, and indeed some still do and some will not thank us here today if we vote this through, and no doubt those who vote in favour of this measure being introduced will say, 'Why did you do that when you used to count yourself amongst those?' Yes, I did, but I do not do it now and neither do many others. The young people do not do it. The young people go by taxi or they nominate someone to drink soft drinks and they ostracise those who go for the former point of view where you think you can do it. They despise the people who advocate drink-driving these days.

Now, very shortly we shall have the TT races coming around, but just go back a bit further to a long time ago when the TT races used to have people out on Mad Sunday night at the roadside pubs and some very, very serious accidents occurred because of that. You do not see it now. The machines are all parked up on Douglas promenade and people walk along to the pubs to drink and they do not do the practice that they once did then, and you do not need any more reminders of what can happen than that dreadful crash near Marown Church a few years ago - well, a long number of years ago - when three people lost their lives there. That was a direct result of the type of driving which does not happen very often now but still some people adhere to it.

As I said, the police are going to be more conscious than anybody else that their reputation may be disturbed by people saying that they are going out for perhaps minor vendettas or picking people up because they know they are habitual drunks or whatever, but if you are not breaking the law you have nothing to fear here by this type of measure.

It is time we closed it up, it is time we made a decision on it and not refer it to a committee. I think the hon. member Mr Bell did say earlier on that he too had been convinced by a public change of heart. I too received that message when I was out on the rounds in the past few weeks. The TT, as I say, next week will be a chance for the type of behaviour to be seen and best demonstrated where the social pattern is quite changed. The problem with the TT now is certainly nothing to do with drink, or rarely; it is to do with high-powered motorcycles being driven irresponsibly, and let us hope that the measures which are being advocated for this year's TT do save some tragedy and some heartache there.

So it is not just drivers who are committing offences, of course. Walkers, as we have seen, on Douglas promenade can be just as guilty of committing traffic offences by jaywalking, and many a driver is telling me anyway that it is a bad risk to drive along the promenade now with people jumping out in front of you. So we cannot have both; we cannot have drunken pedestrians and drunken drivers.

In any case, though, finally, I would put this to you that if you are breathalysed - and I have a recent example of this to call upon if needed - you are not convicted on the spot. You are taken to the police station and you have, I think, two more opportunities to prove your innocence, and if you can, as my example only last week proved, still satisfy the testers - which of course will be the constabulary or the medical profession - that you are safe to continue to drive, in other words, that your limit is below, you are released without a stain on your character. So every possible safeguard is built into it and the Road Traffic Bill with its measure of bringing in the breathalyser here holds no fears for the modern Isle of Man.

**Mr Bell:** Mr Speaker, if I can speak to the amendment - I have got it right this time, I hope! - naturally I am rising to oppose any thought of sending this clause to a committee. There is really only once choice to make on this. You either go with the clause with the limitations we have put on the police or we go for random testing. You either go one way or the other. There is no question at all, in spite of the assurances you have been given - and we have had legal interpretation as well - that if the amendment was accepted it would allow for random testing. So you have a simple black and white choice: you either go for the amendment which has been placed before you quite properly on the floor of this House, or you go with the Bill as it is and the limitations which are implicit in that.

Just to clarify matters a little bit further perhaps on this one issue, just so that they know it, my hon. colleague the member for West Douglas has made comment about a number of incidents which the police could assume intimated drunken driving, and I could perhaps just add that, just to put it in some sort of context for you that . . . And these are only a few examples of what the police will interpret as careless driving. Beyond that there is dangerous driving and there is inconsiderate driving, which is really for a lot more minor misdemeanours, and of course we also have the ability to use the breathalyser after accidents have taken place. But careless driving itself includes drivers wandering in the road, not following a reasonably straight course, crossing a white line, failing to observe traffic lights, failing to observe stop signs, pulling in front of another vehicle, forcing that vehicle to alter speed or course, overtaking close to a blind bend, following too closely behind another vehicle, failing to give precedence to a pedestrian on a crossing - even matters which I think are probably more inconsiderate than anything else, which is drivers using the interior mirror for things like combing their hair, using mobile phones, giving misleading signals, driving without headlights illuminated at night and the list goes on. There is a whole range of issues there, all issues related to careless driving where the police can use, rightfully under this legislation, the breathalyser should the individual be pulled up.

It has been said, quite bizarrely as far as I am concerned, that this Bill has been described as liberalising measures. Now, I do not see for a moment how this Bill could possibly be considered a liberalising measure considering the stage we are moving from. We are talking about introducing the breathalyser, we are not getting rid of it or restricting the police from some powers that they have at present. We are giving very extensive powers to

the police to breathalyse in a wide range of matters. The only restraint we are putting on the police at this stage is to say to them we do not wish the police to have the power to random test, which is taken to extremes, which happens on the continent in some places, perhaps setting up road blocks to check drivers at will, as has already been said, perhaps sitting outside a pub car park carrying out vendettas against individuals for whatever reason.

Now, I am not saying for a moment that our police would be irresponsible enough to do that, but we need to give the public - perhaps not all the public but certainly a section of the public - a reassurance that the police will not be high-handed in their treatment of them as the breathalyser itself is brought in. If policing in a small community like the Isle of Man is to succeed, it needs the trust and co-operation of the public, and once that trust is alienated or perhaps being perceived to be alienated, then policing as a whole, not just in this particular area, becomes immeasurably more difficult and I think that is something we need to bear in mind at the moment. We have striven gallantly, I think, to try and get a compromise in this Bill which will give the police the powers that they want, will extend the ability to use the breathalyser over a wide range of offences but, as I said last time in the second reading, will put both police and public on probation for a period of time to show that the public, first of all, will respond to this new legislation, recognising that it is no longer socially acceptable to drink and drive and it also gives the police the opportunity to prove themselves, that they will not abuse these new powers that they have got, thus reassuring the public. It also, of course, gives this hon. House the opportunity, should it be necessary in the future, to extend the range of very few offences which are not encompassed by this Bill, by order of Tynwald in future rather than having to come back with primary legislation. So if there is an anomaly discovered after the operation of this, it can be rectified within two months by order of Tynwald rather than having to come back and introduce new primary legislation.

So the issue to me is quite simple as far as the amendment is concerned: we have the facts laid out before us quite clearly at the moment. You have an option: you either go with the Bill and accept that random testing will not take place in the immediate future or you go for the amendment, which is for random testing. There really is no middle ground on this one, and sending it to a committee - I cannot see what benefit could possibly be developed from that. The hon. new member for Onchan quite rightly has pointed out that this hon. House is here to govern and we are here to make decisions and this is a decision, quite a legitimate decision, which has quite clearly been spelled out and presented to you today and I would urge hon. members to bite the bullet on this one and take the decision today and not try to defer it and, in the words of one or two members, fudge the issue still further by sending it off to a committee which could actually, knowing the history of House of Keys committees, take several months before it returns back to this floor again.

**The Speaker:** Hon. members, I want to be quite plain that we are dealing with clause 2. We already have two amendments moved and then we have an amending motion in the name of Mrs Cannell which suggests we go to a committee. Now, it would be my intent to clear that particular business as speedily as we can so that we know which way we are going before putting the other amendments. So I would ask members who still wish to speak to try to control their remarks so that we are not repeating what others have said previously, if that is practical. The hon. member for Onchan, Mr Karran.

**Mr Karran:** Vainstyr Loayreyder, speaking to the amendment, I think the hon. mover of the Bill has just highlighted the problem that we have got, to know who is right and who is wrong as far as this clause is concerned. He is talking about alienating the general public, and yet as the amendment reads, this will mean at least they will have to just blow into the bag; if they are innocent they can go on their way under the amendment, but under his way he is going to have a situation where, if they cannot get them on the specific issues that are in the clause as it is drafted at the present time, they will then have to be arrested and taken to a police station.

Now, this is the problem we have got and this is why the hon. member for East Douglas is quite right as far as this committee is concerned. We have the Chief Minister nodding one way saying, 'Oh, no, that is not the case,' and we have a man who has worked with the police, was a special for 20-odd years saying that is the case. I believe that we are here to produce good primary law. I think the hon. member for East Douglas is quite right.

I think my new colleague for Onchan - I am all for governing and I appreciate what he says, but I am all for getting off the fence as far as any issue is concerned, but what concerns me is that the hon. member may get off the fence but find that he is standing on a sod hedge when it was something completely different than what he intended it to be in the first place, and I believe that that is the problem you have got at the present time with this clause in particular and with several other issues that I feel need to be addressed. But I hope it will go to a committee.

I think the simple point is this - the hon. member for Garff summed it up: this legislation has been in the United Kingdom from 1967. This legislation has been since then in the United Kingdom. What is the mad rush to bludgeon this through on the fact of 'Oh, well, we have got to defeat the hon. member for East Douglas, we have not got to let it go to a committee,' when, let us be perfectly honest with you, we have great confusion even from the Chief Minister. People do not seem to know who is right, who is wrong, and I believe that what you want is to get a three-man committee down and then we can find out; let them do the assessment, let them report back to this hon. House. At the end of the day all of us want to govern, we want to make decisions, but at the moment if we are on a radio station one is on FM and one is on AM! We are going to end up putting this together. If this is bludgeoned through, which it looks like it is going to be, then we are going to do a disservice to the people outside.

I hope that people, hon. members, will support the hon. member. No-one wants to fudge the issue, no-one wants to fence it, but what we do want to do is make sure that when we have our feet firmly on the ground we know where we are, what we are actually passing, because at the present time there seems to be great confusion between as the clause stands at the moment and the amendment by the hon. member for West Douglas. A couple more weeks will not make any difference.

**The Speaker:** The hon. member for Rushen, Sir Miles, do you wish to speak, sir?

**Sir Miles Walker:** Not at this moment, Mr Speaker, thank you.

**The Speaker:** Hon. members, can I call upon the member for East Douglas to reply to the motion that it should go to a committee?

**Several Members:** Hear, hear.

**Mrs Cannell:** Thank you, Mr Speaker. I welcome the remarks made by the three speakers, the hon. Mr Rodan, Mr Bell and Mr Karran, and Mr Cannell. What I would like to say is that our job here as legislators and representatives of the people is to scrutinise legislation, and sometimes a very common mechanism for doing that is to call for the appointment of a select committee to scrutinise to ensure that the legislation which goes through is the right legislation for this Island and for its people. That is why we have systems such as special committees. This is just in relation to the comments which were made by the new member for Onchan, the hon. Mr Cannell, when he said that we are here, we should get the job done and we should do it here today. It is all very easy, as the hon. member for Onchan said, to bludgeon things through; it is very easy to do that. It is very difficult if you realise later on in the day that what you have done is to pass flawed primary legislation and you have to keep coming forward with amendments to this, amendments to that, orders to this and that in order to try and knock it into some kind of sensible shape which will represent the feeling of the House at the time of considering the primary legislation. That is problematic and it takes up time and it takes resource and it also takes up the time of a legal draftsman, and so therefore this is why hon. members have the mechanism where they can require a select committee to report, to consider, to scrutinise and come back, and the last thing we want in this hon. House is for flawed primary legislation to be going to the Legislative Council, only to be bounced back again because they recognise that indeed there are problems there.

I welcome the support by the hon. Mr Rodan and I am pleased that he had the courage to second the amendment. I feel it probably will fall because there is a determination in this hon. House today to get it through because it is a department's piece of legislation, irrespective of which department it would be pioneering it. That is regrettable because, as I said initially, we are here to scrutinise, not just merely rubber-stamp legislation as it comes before us.

The hon. member for Onchan, Mr Karran, he said one person is saying this and one person is saying that and there is a cross-section of views within this hon. House. That is what makes us democratic, but when it comes to this there is a question mark as to who is right and who is wrong. Which is the best way to introduce the breathalyser? Is it by this door or would it be better taking it through another door? That is what we have to consider here today. I would ask members to consider giving their support to the amendment for this item, for just this one clause to stand referred to a select committee for consideration and report. That way, whatever they come back with, we will have scrutinised in a proper fashion this primary legislation before being asked to approve it. Thank you, Mr Speaker.

**The Speaker:** Hon. members, if we can deal with this particular matter at this stage, that clause 2 of the Road Traffic Bill be referred to a committee of three members for consideration and report. Will those in favour please say aye; against, no. The noes have it.

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

*For: Mr Rodan, Mrs Cannell, Messrs Singer and Karran - 4*

*Against: Messrs Gilbey, Cannan, Quine, North, Sir Miles Walker, Mrs Crowe, Messrs Brown, Houghton, Cretney, Duggan, Braidwood, Shimmin, Downie, Mrs Hannan, Messrs Bell, Corkill, Cannell, Gelling and the Speaker - 19*

**The Speaker:** Hon. members, the motion to refer to a committee fails in the House with 19 votes against and 4 for. We continue then with our deliberation of clause 2. Sir Miles, did you wish to speak?

**Sir Miles Walker:** Yes, thank you, Mr Speaker. Anybody listening to this debate could be excused for thinking that those of us who are not supportive of the amendment moved by Mr Downie do not care about people who drink and drive and are pursuing a lower standard of driving in that particular regard than those who do support, and I would suggest that that is certainly just not the case. (**Messrs Gilbey and Cretney:** Hear, hear.) I think there is a lot of sense in the point made by Mr Rodan in this regard, that if this Bill is accepted in the way it is written we have a time for sucking it and seeing it - I think that was the expression that he used - and it seems to me that that is a sensible way forward. I think it rather belittles this House when it is suggested by some members that those of us who are not supportive of the harder measures being proposed are trading lives for votes, and again I do not accept that suggestion that was made immediately before lunch.

As far as I am concerned, I do not believe that people should drink and drive and I believe it is all power to the elbow of the police to stop that happening. I do not, though, believe that the police should have the power - and it is not a clever word - to breathalyse somebody because perhaps their brake lights are out. (**Mr Gilbey:** Hear, hear.) It seems to me that there is no reason to do that, and we hope that it would not happen in the Isle of Man, but I am sure that the legislators in the United Kingdom never thought it would happen there either and I do not know if I was the hon. member that has been referred to by the hon. member for Glenfaba or not or whether there is another member who has been unfortunate enough to be breathalysed, but I went through that experience in the United Kingdom. I apologise if I have told this story before and I apologise to Mr Shimmin if we are going over old ground, but it seems to me to be just as important for members who are opposed to an issue in this House to be able to spell out why as well as for those people who are in favour.

I had what I regarded as a most miserable experience of driving in the United Kingdom, being pulled into the side by a police car, being told to get out of the police car without any explanation, out of my own car and into the police car - my wife and the kids were in the back seat and they were only little at this time - and put through this breathalysing issue. Now, I had been driving perfectly properly and, as I say, it turned out that I had a brake light or a rear light not working. I have to say that the attitude of those police was quite aggressive in the beginning and it was a miserable, humiliating and rather degrading experience for me and for the rest of the family who were in the car. As soon as I had been breathalysed and they found that I had not been drinking, then they were perfectly pleasant and it is 'Can we help you to fix your light? It is a fault with this model of motor car that when you have a lot of luggage in the boot you can pull the wires off the back,' and up goes the boot and we fixed it. How much better it would have been if they had pulled me into the side and said, 'Do you know your brake light isn't working? It is a fault with these cars. We can help you fix it.' Then, if there had been any suggestion that I had been drinking, they could have gone on and taken what enforcement measures were available to them. And it was at that time that I decided I would not support random breathtesting in the Isle of Man - a personal experience but a very real one.

I think that the way this legislation is written is certainly acceptable to myself, and I believe that there would be a great deal of sense in letting it get on to the statute books and then measuring its success and, if it is not successful, then let us look at it again. I am sure that is the way forward and I would oppose the amendment in the name of the hon. member for West Douglas, Mr Downie, and support the Bill as it is written in this regard.

**The Speaker:** Hon. members, I call upon the hon. member Mr Downie to reply to his amendment.

**Mr Downie:** Thank you, Mr Speaker, hon. members. Firstly I would like to thank the hon. member for North Douglas, Mr Houghton, for seconding my amendment. He spoke at some length in favour. A point I would just like to make right at the very outset and one that most people seem to have missed in the debate thus far is the fact that the police officer has to stop the vehicle for a moving traffic offence before the use of the breathalyser can take place. It is not a system of random testing at all, and I think if clear guidelines are given to the police they are honour-bound to stick with that. The police, I am informed, have no power to stop people just to randomly breathtest them, there has to be some factor which triggers it and the opportunity to breathtest, and then they can only breathtest if they believe that the person has been drinking or has alcohol in their body, as referred to in section (a) of the amendment.

Now, Mr Brown then got on his feet and he, too, said it was just another form of roadside test, and he made reference to roadside tests in the UK and felt that they were adequate. As far as I am concerned, this coming from a Minister for Transport, I feel is quite appalling -

**Mr Brown:** Am I not allowed my own views?

**Mr Downie:** You are allowed your own views, Mr Brown, but I think that what you are failing to see, quite obviously, is the beneficial side of the legislation which at the end of the day, like it or not, is being introduced in this House today to stop people drinking and driving. That is the only reason it is before this House today, to stop people or to try and deter them from drinking and driving. Whether you go for the soft option or not, I think at the end of the day you will have something on your conscience if you just leave this as it is. As the transport minister you have a very important job to do and there is an important message that needs to get out to all road-users in the Isle of Man and I am sad to say that we do not get it out often enough. Maybe this is why we have such a high number of drink-driving offences in the Island.

Mr Singer - thank you for supporting the amendment. As you have said quite clearly, the legislation is little use without it.

Mr Gilbey does not agree. He does not believe in random testing today, neither does he want to see any of this legislation introduced from the UK. The Isle of Man must be completely different, he believes. So in the future we will not have him harping on about speed cameras, an overall speed limit and some of the other issues that he continues to bombard the House with, because they all arrive from the UK and they are areas which he is continually trying to push into our legislation at every available opportunity. As I said, a constable has to have reasonable cause to suspect a person has had alcohol.

He then went on to read from what he said were 1981 debates. My understanding is that these have come from a House of Commons factsheet and are not contained within a report -

**Mr Gilbey:** That is just what I said.

**Mr Downie:** Yes, but it was implied that they had been part of the 1981 debate on the Transport Bill, and that was back in 1981. Reference was also made to Kilroy-Silk in 1987. We have moved on, you know; I mean, if your driving standards and your ideals are back in 1981 and 1987, no wonder we have got problems with traffic legislation because we are not keeping up to date. He said he would feel embarrassed if he was breathtested and then he went on to say the police do not want this amendment. Well, if the police do not want this amendment, let us see it in writing at the next stage as it comes through here. If I were to be given a letter that the police do not want it, I will be happy to accept that.

Now, the whole idea - I think Mr Gilbey hit the nail on the head: he would feel embarrassed if he was to be breathtested. This is part of the ethos of having a kerbside test when people drive badly or are involved in an accident or they commit a moving traffic offence. This is the whole nub of the Bill. That is why we are trying to introduce breathtesting to stop all of this, 'We suspect you have been drinking, sir. I cannot get you to have a test but I can take you to the police station in Douglas where you will be given the Lion intoximeter to blow in' and all the rest of it. Those people that I have spoken to would prefer a straight, clear-cut breath test, end of story. Now, if they prove positive, they then go on to the police station for further tests, not hanging round or being inconvenienced, plus the fact that it has a deterrent value in it as well.

Mr Shimmin supports breath tests and, hand on heart, he supports the amendment but will oppose it in order that a step forward can be made. I accept where he is coming from; he is a member of the department, and I want to put on record today that if my amendment gets thrown out, I will still support the Bill. I will be sorry that I perhaps was not forceful enough or gave a strong enough argument to go down the same route as they have gone down in the UK, but I have no hesitation about supporting the Bill. In fact, it has my wholehearted support and I think the minister knows that.

Mrs Cannell saw merit in the Bill; we should consider reciprocal laws - that is what she said; there is merit in providing other measures as well. Now, I think this is another area we have got to get involved in and, although it is not referred to directly in the Bill, if we are ever going to get some common approach throughout the British Isles and a system where a person can be disqualified from driving in the Isle of Man and the same applies in the UK and other countries, we have to have laws which are basically similar and then we can make the arguments. She also went on to say that - well, her amendment was not supported so that is gone now; she was trying to placate both sides and move to a committee rather than put the Bill at risk. Well, in my opinion the Bill is not at risk. I will support whether I lose or not and I will be man enough to get behind the Bill.

Mr Rodan was quite right in what he said. He had obviously done some research on the subject. He said that the UK had the lowest vehicle accident rate in Europe. He saw the Bill as a road safety measure. I too see the Bill as a road safety measure, plain and simple: you are either going to stamp out drunken driving and do something positive or you are just going to have an appalling state of affairs as they have in some other countries. He said also the Bill was a compromise; the issue has been well argued; the amendment cast the net wider, yes, and in casting the net wider I would ask members to take account of the fact that they have got nearly 30 years' case law behind them in the UK. There is a system there that actually works. There is a whole ethos based on that particular legislation. Like it or not, we are going

to have to start from scratch again and, if it does not work, we are going to have to go to Tynwald to tinker with it, and I am waiting to see who the first person is that is going to be convicted and see what happens, and to see if somebody can drive a coach and horses through it, because at the moment we have no case law.

We went on to Mr Cannell, the hon. member for Onchan. He was against the issue going to a committee and I agree with him, no half ways, and he said that people had nothing to fear from this legislation if they are not breaking the law - absolutely correct in every way. He felt that breathalysation meant that you were not convicted on the spot; there were other measures that had to take place following the kerbside check.

Mr Bell outlined limitations and he felt that the amendment was too much of a form of random testing. He gave a list of instances where motorists can be stopped for breathalysation. He went on to mention random tests, setting up road blocks; the public need reassurance that police will not be high-handed; the police need to prove themselves. I must ask, hon. members, who are running the police at the moment? If this is the situation we have got in where there is a concern from the Minister for the Home Affairs Department that the police need to be trusted or they need to prove themselves, there is something radically wrong. As I said before, if the amendment falls, I will support the Bill either way.

Sir Miles Walker said, 'Suck it and see', as did Mr Rodan, and he said it was wrong to think that we were trading lives for votes. I intend to agree with him, but at the same time I think we should not be complacent, we have got a problem with drink-driving in the Isle of Man and, if we are going to address it, today is the day to stand up and be counted. He related his experience in the UK when he was breathalysed; he says it was a miserable and degrading experience, but I wonder if he ever drank and drove while he was in the UK and whether that one incident actually put him off. I wonder if that was enough to say, 'In no way am I even going to have a half of shandy. I am going to stay absolutely clean while I am in the UK, because I know the threat hanging over my head if I get pulled for a moving traffic offence, the boys can say, "Here you are, blow into this".' Now, to me I see a different signal. If I was in Sir Miles's position and I was driving down the motorway with my family and some individual crossed over the central reservation with about 290 mg in his body and wrote my car off and my family and I was left in hospital for months, I would be saying, 'Why haven't we got a proper system in place where people can be breathalysed?' I have to see the other side of that. It may be a miserable and degrading experience but at the end of the day it is there as a preventative measure and it is there to let people know that the police are watching and that, if somebody drives badly, erratically, dangerously, the opportunity is there for them to be caught.

Finally, I would just like to thank all those members who have spoken today, either for or against the amendment that I put forward. I think it has been a useful debate and, from my point of view, I will not be too disappointed if I lose, I will still get behind the Bill, because I think it is the way forward and at the end of the day people need to understand that we are prepared to do something about drunken driving and not just try and brush it under the carpet as some anti-social habit. Thank you.

**The Speaker:** Hon. member for Castletown, Mr Brown, will you reply to your amendment, sir?

**Mr Brown:** Yes, thank you, Mr Speaker. In relation to this amendment, Mrs Cannell was the only one who really referred to it and said that she felt I had not said why the change was needed. I have to say I thought I had, but just to repeat it again, basically the reason for the change is quite straightforward: all such provisions are under the control of my department and, if members look, it actually specifies the Road Traffic Act of 1985. This is amending that Act and all offences and all different matters relating to levels of offences et cetera are dealt with by the Department of Transport and the police are the enforcers, and therefore it was felt appropriate that we should correct this error that was in the Bill. As I said, I have been in discussion with the Minister for Home Affairs and we have agreed that this is a way forward. Clearly it can be left with the Department of Home Affairs, but it would step out of all the other road traffic legislation, the rest of the provisions, and you would have these two bits because there are two amendments where in fact they would be with the Department of Home Affairs, yet all the other offences relating to drunken driving and different things would be with the Department of Transport. So I would hope members would support the long-held principle by the Isle of Man that offences are determined by the Department of Transport and the enforcers are the police, and I hope that answers the hon. members on that.

I would just say that, whilst standing here as Minister for Transport as well as in my own right, I do endeavour to carry out my statutory duties properly, and certainly it does not mean I am muted from having my own views as a member of the House. Clearly I put those views forward and always have done and I do not suppose I will ever change. My view is, I will say my piece and I will do what I believe is right for the Isle of Man and, minister or not, it does not worry me, I will do what I feel is right. In this case, I believe that the amendment that is before hon. members should be supported to correct the slight anomaly that is created by the Bill as it is printed, if in fact we put this to Home Affairs.

**The Speaker:** I call upon the Minister of Home Affairs, the hon. member for Ramsey, Mr Bell, to reply to the debate.

**Mr Bell:** Thank you, Mr Speaker. It has been quite an interesting debate, not entirely unexpected, and I think the voting pattern will go the way as predicted as well. It is an important issue; there is no question about that. Not only have we a responsibility to improve the laws relating to drink and driving, to perhaps raise the profile of the message which we wish to send out that drinking and driving together is no longer socially acceptable and that we intend to do something about it. But we have, as has also been pointed out, got to be aware of the potential, anyway, for this hon. House to go over the top altogether and start seriously interfering and alienating the rights of the general wider public. So I think this is a balance that we have had to strike in getting to this stage.

The main issue really hinges around whether or not we go for random testing, and I guess anything I say now will not really influence members one way or the other. The decision will already have been made in people's minds. But I would just briefly like to whip through a few of the comments that have been put forward. First of all, in response to the hon. member, Mr Downie, who has moved the amendment, I have in effect put forward my point when replying to the amendment put forward by the hon. member for East Douglas, but there is no doubt in my mind, and the legal advice which we have received on the amendment put forward by Mr Downie, that if this amendment goes through we will open the doors for random testing. The range of offences which are allowed for though in the Bill as printed are dangerous

driving, careless driving and inconsiderate driving, and that covers virtually every moving traffic offence there is. What will be limited will be the powers of the police, as the hon. member for Rushen has said, to stop vehicles because one of their lights may be deficient or some other physical problem with the vehicle that they are driving, and then breathalyse them for that. We have put certain parameters on the police, but they are very wide parameters. There will be very few traffic offences which will not fall within the bounds of this piece of legislation that we are putting forward. We do, though, have to recognise that although social attitudes have changed dramatically to drink and driving over the last few years, there needs to be a reassurance given to the people that we will not, either through their own enthusiasm or indeed through political enthusiasm, come heavy-handed down on the community to the extent where they feel they are being harassed by the police because, as I said in my comments earlier, if policing is to be effective on the Isle of Man, you have got to have a very good relationship and understanding and trust between the general public and the police themselves. I think at the moment, by and large, we do have that relationship and it is one, certainly as minister, I would wish to encourage and develop further, and I would hate to see legislation going through which in any way could alienate and undermine that particular relationship.

So the hon. member, Mr Downie, is quite right: this Bill is a compromise to try and facilitate the police as best we possibly can by giving them the powers which they have been looking for for quite a number of years to operate roadside breath tests, to bring in the breathalyser, but, as I say, that does have certain limitations albeit very wide ones. On that basis, the point which the hon. member makes about this legislation possibly interfering with any reciprocal arrangements which might be made with the UK or other authorities, I would suggest that because of the wide range of offences which are included in this Bill, there would be no threat at all to any future reciprocal arrangements. They will not be affected, I am absolutely sure by this, because our rules, apart from the limitations on vehicle defects, will be more or less the same as in the United Kingdom.

The hon. member for North Douglas, again on a similar point, I think, was concerned about minor moving traffic offences. He suggested that failure to stop at a halt sign and weaving down the road would not be susceptible to the driver being breathalysed. It has been made quite clear to me from the police that they would most definitely fall within the powers of the police and they would be able to breathalyse anyone in that situation.

Mr Brown I thank for his support and I support the amendment which is being put forward in his name.

I have to say that there have been one or two comments which I find disturbing, to say the least, during this debate which I thought would have been an objective, dispassionate affair. One of the comments which I have been accused of by Mr Singer, my hon. colleague for Ramsey, is paying lip service to the idea of introducing a breathalyser. Now, if the hon. member thinks that, I would suggest that, had he lived on the Island a bit longer, he would have been aware of the long debate which has gone on on this issue for a great many years and the battle it has been to actually get us to the stage we are today where it is on the floor being debated with a realistic chance of being accepted. It is not lip service. If this Bill is passed today, it will introduce to the police the ability to use the breathalyser in almost every moving traffic offence. It is not lip service; this is a very real power which is being given to the

police and powers which the police have been fighting for for a great many years. They are now about to get them, so it is quite wrong to slur the efforts of my department and myself by disparaging it and saying in fact we are only paying lip service.

Mr Gilbey I thank for his general support for the Bill, and I concur entirely with his concerns, particularly for the damage which over-enthusiasm in this particular area could do to the police community relations. As I say, they underpin the whole policing ethos on the Isle of Man and it is something we have to be very, very wary of.

Mr Shimmin, my colleague on the Department of Home Affairs, member for West Douglas, I thank for his views and I thank him also for his indication for support for the Bill as printed, because I know he, as one member, has had strong views on what should be contained within this Bill. I have, as minister, given him the freedom to vote whichever way he pleases. I recognise this is a matter of conscience in his case; it is entirely up to the hon. member which way goes on this matter. But, as I say, I hope he will recognise, as in fact he has indicated, that there are merits in pursuing the particular course which is being proposed in this legislation.

The hon. member for East Douglas refers to the fact that some members are vehemently opposed to any tightening up of the legislation. Well, I have to say, if the hon. member believes that, she must have sat through a different debate to the one I have today, because I have not heard anyone, not a single member, make any comment to that end whatsoever. Everybody who has spoken has supported at least the Bill as printed if not more extreme measures which are proposed in the amendment. So how the hon. member can say that members are opposed vehemently to any tightening up I just cannot understand at all. I would also say that the instance she has quoted about the terrible accident which happened in Onchan - if in fact the breathalyser was in, it really, I am absolutely sure, would not have made very much difference at all in that situation. There will always be instances, whether we like it or not, where accidents of this nature will happen. The police and the breathalyser will not necessarily stop some of the hard core, hardened drinkers which we have on the Island, and we need to recognise that. This is not a panacea; it will not solve all of the problems.

The hon. member for Garff made perhaps one of the most relevant points insofar as, as he sees it, it is an issue which we should 'suck it and see', and that is precisely the way we have approached this particular matter. I am hopeful that with the debate which has gone on within my department, with the legislative draftsmen, with the Attorney-General and with the police we have put together a Bill which meets everybody's requirements, but I did say at the second reading that there may well be, in the light of experience, occasions where anomalies are identified, and this is where the 'suck it and see' aspect of it comes in, because we have recognised that this may be the case and we have put in place a provision for an order to be taken to Tynwald to rectify any shortcomings which we find in the Bill in the future, and that will vastly improve the situation because it will speed any amending legislation through very, very quickly. At most it will take two months to bring through an amendment whereas previously, or indeed with the present situation, any change in legislation would need a primary Bill being drafted which could take, knowing the pace we move at these days, a year or two before it gets to the floor of the House. So the procedure we have identified and recommended, I believe, is beneficial for everyone and, I hope, will perhaps put at rest some of the concerns the hon. member for Garff might have if in fact these anomalies are shown up.

Just a couple of final points, again going back to the hon. member for East Douglas, Mrs Cannell. She referred constantly to flawed primary legislation. I can tell the hon. member this is not flawed primary legislation. There is a tremendous amount of work gone into this with our legal advisers, with the Attorney-General, with the police to put this Bill together in the first place. Now, if the hon. member is in disagreement with it, that is an entirely different matter to saying that the legislation is basically flawed. It is an utterly, totally different issue, and I would have thought the hon. member has been in long enough to recognise that. Also the fact that there has not been enough time to fully understand the implications of this Bill - I would simply remind hon. members this is the clauses stages we are at today. We have had the first reading, we have had the second reading, we had a break for Tynwald and now we are today discussing the clauses. Members have had plenty of time to look at this Bill. It is only seven clauses. If there was a concern over it, then there was plenty of time to talk to legal draftsmen, to put forward further amendments if needs be or indeed, if members felt strongly enough about it, to come and see me or the department about it for further discussions. My door is always open, as many members have already experienced. That did not happen, and therefore I cannot accept the fact that we are bludgeoning this particular piece of legislation through, as has been said by another member.

I thank the hon. member for Rushen, Sir Miles Walker, for his support and I think his personal experience on random testing really bears out our concerns about having limitations placed on this piece of legislation at this particular point in time. It is an experience, I think, which would be unacceptable to the large majority of people on the Isle of Man, strong though they may feel against drink-driving and I would not, unless the situation really gets out of hand altogether, which I can not see happening, wish to see that situation apply in the Isle of Man.

So that really only brings me back to one contribution which I was in two minds whether or not to make comment on or not, and that is the comments made by the hon. member for Onchan, Mr Karran. When I first came into this House debate in this chamber used to be open, courteous, objective and, I think, by and large productive. I am afraid I have to say this happens time and time again now, and particularly as I have been on the brunt of it with a number of Bills over the last few months, it is becoming personalised abuse we are having to deal with in debate rather than objectivity. I find this quite unacceptable and I believe that it demeans the whole House and the standing of every individual member in here when we are dragged down to this level of debate. (**Mr Gilbey:** Hear, hear.) He is appalled; he says the Bill is full of loopholes et cetera. There is no evidence that he puts forward at all where these loopholes are. They are just wild statements which I hope the media will not pick up but frequently do and give a total misrepresentation to the public at large as to what is being debated here. I find, though, what is most reprehensible of all - and I hope every single member in this hon. chamber would join with me - when I am accused of trading lives for votes (**Two Members:** Hear, hear). I think that is an absolutely outrageous statement to make to members in this hon. chamber who are elected to look after the best interests of the Island and are doing their best in a totally genuine and honest fashion. I find it totally unacceptable and I sincerely hope that this level of debate does not continue in future on other issues.

The hon. member also makes comment - and again it is something I think every member of this House should be conscious of - that opposition to the breathalyser coming in in the way he describes it has got more to do with the fact that members are concerned about coming

home from the Tynwald banquet. Now, that might appear to be amusing, it might appear to be funny, but it is a very serious comment which is made and the member has made a number of these comments over the last few months, all of which have appeared in the paper and all of which denigrate the standing of every single member of this chamber (**A Member:** Hear, hear.) and we should be aware of that and not just treat it as a joke, as a light-hearted throw-away comment. These matters are taken seriously by the public outside who elect us to be here to act as their representatives in the good governance of this Island, and statements like that do not enhance our image one jot. I would state, if the hon. member has got evidence of members drinking and driving in such a fashion, then the place to take it is to the police or to my department, which will pass it on to the police, and a thorough investigation should be made, otherwise those sort of comments should be withdrawn and an apology given to members of this House in return.

One final point in relation to Mr Karran's comments: he is accusing us of not going far enough, of putting restrictions on the police, of not giving them the ability to randomly test the public. I have a feeling at the back of my mind that this is the same member who for the last several months has argued vehemently that the police are unaccountable on this Isle of Man, that he has opposed every piece of legislation that is coming along to give the police more powers on the basis that there is no accountability, that the chief constable is not accountable, that the officers are not accountable, and yet here we are, when we are actually putting accountability in to make sure that there is no abuse of power, the hon. member turns on his head completely and now is accusing us of hamstringing the police. He accuses me of hypocrisy. I would suggest that he looks a bit closer to home before he makes statements like this in this hon. chamber.

Mr Speaker, this is a radical departure for Manx Government policy. This issue has been discussed a number of times over the years and I have to say, as I did say at the second reading, I have changed my views over the years, over the time. I recognise now that the general public's view has changed as well and they now, by a great majority, support the introduction of the breathalyser. We have tried to find an honest middle way between the two extreme conflicting views on this matter to come to a working arrangement whereby the police will have all the powers they want but the public will have the reassurance they want as well. We have put in a fall-back situation should that balance be not the way we had hoped at this stage, but I would urge hon. members, please reject the amendment and support clause 2 as printed and let us get on with the job.

**The Speaker:** Hon. members, the motion is that clause 2 stand part of the Bill, and to that we have the amendments which has been circulated on the white papers to you. I propose to take the amendment as moved by Mr Downie first. That is the amendment circulated to you which replaces amendment 1, it says at the top, so that 'motor vehicle' has been replaced by 'mechanically propelled vehicle'. Will those in favour of the amendment as moved by Mr Downie please say aye; against, no. The noes have it.

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

*For: Mr Houghton, Mrs Cannell, Messrs Downie, Singer, Karran and Cannell - 6*

*Against: Messrs Gilbey, Cannan, Quine, Rodan, North, Sir Miles Walker, Mrs Crowe, Messrs Brown, Cretney, Duggan, Braidwood, Shimmin, Mrs Hannan, Messrs Bell, Corkill, Gelling and the Speaker - 17*

**The Speaker:** Hon. members, that amendment fails to carry, with 17 votes cast against and 6 votes for.

We turn then to the amendment as moved by the hon. member Mr Brown, which is in relation to page 4, line 38, where you omit the words 'of Home Affairs'. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

I will now put clause 2 as amended, hon. members. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 3, hon. member.

**Mr Bell:** Thank you, Mr Speaker, if there is anyone left to talk to. *(Laughter)* Clause 3 extends section 3A of the Road Traffic Act 1985, which makes it an offence to cause the death of a person by careless or inconsiderate driving while under the influence to cover the case where the driver is over the limit. It introduces new section 3A to the 1995 Road Traffic Act, and subsection (1) makes it an offence to drive a mechanically propelled vehicle carelessly or inconsiderately (a) when unfit to drive through drink or drugs, or (b) when over the limit, or (c) if he fails to provide a specimen of breath, blood or urine when required to do so within 18 hours after the death.

Subsection (2) makes it clear that 'unfit to drive' in subsection (1)(a) has the same meaning as in section 5, as mentioned previously. This is a drafting provision. Mr Speaker, I beg to move clause 3 stand part of the Bill.

**Mr Houghton:** I beg to second, sir.

**Mr Karran:** Vainstyr Loayreyder, could the hon. mover just tell us what safeguards are there as far as these people who have done this if they have taken a drink since they have had the accident? How do you define where and when the alcohol levels are in the bloodstream? The second point is, can the hon. member tell us what tests will be introduced through this section as far as drugs are concerned? What medical tests will he do? And the next point - I am sorry if I upset this hon. House, but as far as I am concerned I tell what I believe to be the truth and I must say that, whilst I cannot say with this particular amendment that I would want to move any amendments, years ago there would have been a common courtesy in this hon. House that if members had legitimate concerns as far as amendments to Bills in this House, movers were generally polite enough to give hon. members the opportunity, and I do hope that the hon. member does apologise as well as the fact that once again he comes out with these assertions about not having stuff in front of us when, beyond issues of my control, I can do anything about that in this particular case, not like in the last case where I was badly let down by the AG's department. They have a legitimate excuse. But I must say, as far as this clause is concerned, I would just like to know the answers to those questions?

**The Speaker:** I call upon the hon. minister to reply.

**Mr Bell:** Thank you, Mr Speaker. I understand that the time of consuming drink would be dependent on a doctor's assessment of that situation and, as far as the identification of drugs in a driver is concerned, this too would be very much dependent on a doctor's medical report. There are developments, I believe, in progressing some form of - I do not know what the word

would be, it is not a breathalyser but some form of assessment which would actually identify eventually drugs in the bloodstream in the same way as it can identify drink, but the technology yet is still unproven and we will be probably still be a year or two away from actually having some sort of facility whereby a simple test can be carried out to identify whether drugs are apparent in the offender's body. So until that date is reached we will have to depend on the medical assessment of the situation.

**The Speaker:** Hon. members, the motion is that clause 3 do stand part of the Bill. Will those in favour please say aye; those against, no. The ayes have it. The ayes have it. Clause 4, hon. member.

**Mr Bell:** Clause 4, Mr Speaker, restates the existing provisions of the Road Traffic Act of 1985 under which the police can require a driver to give specimens of breath or in certain circumstances a specimen of blood or urine at a police station for analysis with amendments principally to take account of the changes in drink-driving offences in clauses 1 and 3 and the breathalyser powers in clause 2. Further amendments are: (1) a driver need not have been arrested before being required to provide a specimen, (2) it is made clear that it is for the police to decide whether blood or urine should be provided and (3) the police are given the power to detain a driver who is over the limit until he has sobered up. It introduces a new section 6 into the 1985 Act and includes subsection (1) which enables the police when inquiring into a possible drink-driving offence to require a driver to give of three kinds of specimen for analysis; that is (a) two specimens of breath for on-the-spot analysis by an approved machine such as an intoximeter, and (b) one specimen of either blood or urine for later analysis at the laboratory. Subsection (2) provides that a requirement to provide a specimen of breath can only be made at a police station, and subsection (3) provides that a requirement to provide a specimen of blood or urine can only be made at a police station or hospital and can only be made at a police station in three cases: that is (a) where the police have grounds to believe that a specimen of breath cannot or should not be given for medical reasons - for example, where the driver tells him he is asthmatic and cannot blow through the machine; (b) a machine is not available or is thought to be unreliable; and (c) the reading by the machine is thought to be unreliable - this is countered by the newest machines which can tell when the specimen of breath is from the mouth and throat instead of the lungs and therefore is unreliable; or (d) the driver is suspected of being unfit to drive and the police are told by a doctor that this may be caused by a drug rather than alcohol. Where the police have this power they can use it even if they have already asked for specimens of breath. Subsection (4) provides that where the police are allowed under subsection (3) above to demand a specimen of blood or urine it is for them to decide whether it should be blood or urine unless the doctor says that a specimen of blood cannot or should not be taken. Subsection (5) provides, in effect, that the police can demand two specimens of urine within an hour, the first specimen being discarded since it may not reliably indicate the blood alcohol level. And subsection (6) makes it an offence to fail to provide a specimen of breath, blood or urine when required to do so. Subsection (7) requires the police, when demanding a specimen under this clause, to warn the driver that failure to provide is an offence.

New section 7 to the 1985 Act incorporates subsection (1) to provide that generally the lower of the two specimens of breath provided under the previous section is to be used.

Subsection (2) provides that where the lower specimen of breath gives a reading of 50 microgrammes or less the driver can insist that a specimen of blood or urine be tested instead.

New section 7A makes provision similar to that of section 5B(4) in that the police must notify the doctor in charge of a hospital patient if they wish to take a blood or a urine specimen and the doctor can veto this requirement and if a specimen is allowed to be taken it has to be taken at a hospital.

New section 7B(1) gives the police power to detain a driver who has been required to give a specimen of breath, blood or urine until they think he is all right to drive. It should be noted that apart from this provision a driver is free to leave a police station once he has provided that specimen. Subsection (2) prevents the police from detaining a driver under subsection (1) above if there is no chance of him driving the vehicle - that is, if he has handed in his keys. Subsection (3) requires the police, before acting under subsection (1) in a case where they think the driver may be under the influence of drugs, to consult a doctor and to act on his advice.

New section 7C(1) sets out the scope of the section and section 7D below, which deal with evidence in drink-driving cases. Subsection (2) requires the court to have regard to any evidence of the proportion of alcohol or drugs in the accused's breath, blood or urine even where the relevant specimen was taken for some other purpose. It also requires the court to assume that the proportion of alcohol at the time of the offence was not less than the proportion at the time the specimen was taken. Subsection (3) provides that the assumption in subsection (2) does not apply if the accused proves that he drank alcohol between driving and giving the specimen and that if he had not done so he would not have been over the limit or unfit to drive. Subsection (4) makes a specimen of blood inadmissible unless it was taken by a doctor with the accused's consent. Subsection (5) enables the accused to demand that he may be given half of any specimen of blood or urine so that he can have it independently analysed. If he does so, the specimen is inadmissible unless the demand was complied with.

New section 7D(1) provides for evidence of the level of alcohol or a drug to be given by a certificate in certain cases - that is, it is not necessary for the police to give oral evidence of the intoximeter reading or for the analyst to attend court to give oral evidence of his analysis. In (a) in the case of a specimen of breath, the print-out of an intoximeter reading signed, dated and timed by the officer who administered the test, and (b) in the case of a specimen of blood or urine a certificate of an authorised analyst. Subsection (2) provides that evidence that a specimen of blood was taken by a doctor with the accused's consent can be given by a certificate signed by the doctor. And subsection (3) requires a copy of any print-out or certificate tendered in evidence to be served on the defence at least seven days before the hearing or handed to the accused at the time, in the case of a print-out or a certificate referred to in subsection (1). Subsection (4) provides that a printout or certificate is not admissible if the defence, at least three days before the hearing or later if the court allows, requires the person who gave the print-out or certificate to attend to give evidence in person. Subsection (5) enables a copy certificate or notice to be served personally or by registered post or recorded delivery. And subsection (6) defines 'authorised analyst' for the purposes of subsection (1)(b) previous. I beg to move clause 4, Mr Speaker.

**Mr Shimmin:** I beg to second and reserve my remarks, Mr Speaker.

**Mr Singer:** Mr Singer, my amendments as before members do look complicated and are drafted in the way shown on the advice of the Attorney-General's office. However, what they wish to amend in the Bill before us is the reduction in the permitted blood alcohol level at which it becomes an offence to drive a vehicle. My amendments seek to reduce that alcohol level from 80 mg to 50 mg per 100 ml of blood.

These amendments recognise two things: (1) that it is a less serious offence than that proposed at the 80 mg per 100 ml level and thus carries a lesser penalty - that is, a non-mandatory disqualification on conviction; and (2) that 50 mg per 100 ml of alcohol in blood is a level at which a driver's judgement can be considerably impaired.

The hon. member for Garff at the second reading of the Bill said that he had received no evidence of the effect of alcohol on a person at the different levels in the body. I have researched this matter and would present this evidence to this hon. House today, and I am sorry that the member for Garff is absent at the moment. I trust that hon. members present will keep an open mind and make a judgement on what they hear today. It is a great concern to me that the Council of Ministers, being aware of this amendment which I circulated last week, may have taken a view to oppose it even though they also have not heard this evidence. The hon. minister indicated a 'softly, softly' approach to the introduction of roadside breathtesting in his speech in the second reading and I partially accept that statement, in that I would not support random testing at this stage. I do believe, however, after considering the evidence of various professional bodies and the scientific research that has taken place over the last few years, that drinking and driving cannot in any way be justified, and that appears to be the message going out from this hon. House today.

It was interesting to hear the random views conducted by Manx Radio at the time of this Bill's introduction, and 100 per cent of the people interviewed, all drivers, agreed with the breathalyser, and it does appear that there is general public support to condemn such anti-social behaviour. I would repeat what I said two weeks ago: most people enjoy a drink and there is nothing wrong with that. The majority do wish to accept their responsibilities to society and thus make arrangements to get home without having to drive a vehicle themselves. I think that our society does regard the 'one for the road' syndrome as unacceptable.

The argument is put forward that the majority of drunken drivers who are detected are well over the limit, perhaps with 150 mg in their blood, but these people are the hardened drinkers who will not change their habits, and in their cases it is necessary to introduce measures that will keep them off the road, if necessary for ever. Penalties are important but rehabilitation has also been shown to be successful within the prison and outside; particularly high risk offenders and middle-aged drivers are amongst those who appear to have reduced their tendency to offend.

The scientific evidence of the link between alcohol in the body and the risk of road accidents is well established. The decision to introduce the level at 80 mg in 1967 was a little arbitrary. Breathtesting was a new concept, novel and controversial, but research at that time mainly in the USA indicated that at this level virtually any driver is significantly more likely to be involved in an accident than when sober, and such drivers are manifestly impaired in their ability to drive. It is generally accepted today that at blood levels between 50 mg and 80 mg an average driver is around two to two-and-a-half times more likely to be involved in an accident, whilst for young and inexperienced drivers this figure increases up to five times. It is also

known that once the level of 80 mg is reached the effect of alcohol in the body rises steeply in proportion to the level of alcohol present.

I would now like to refer to the specific effects of alcohol on driving ability. Many motorists genuinely believe that they are safe with an alcohol level certainly below 50 mg per 100 ml of blood. However, factors like fatigue, illness, stress and prescribed drugs as well as illegal drugs may cause severe concentration loss, even when small quantities of alcohol are consumed. Alcohol will also affect people differently depending on body mass. Research has shown that at a blood level of 20 to 50 mg - that is, the equivalent of 1 to 2 units of alcohol, there has already developed a problem in judging distances and the speed of oncoming vehicles, although there might not be any observable effects in the person's behaviour. Basically drivers at that level may be a bit moody and bad driving habits may be slightly pronounced. At a level of 50 mg to 80 mg - that is, 3 to 4 units of alcohol - there is a feeling of relaxation, mild sedation, exaggerated emotions and behaviour. When driving there is an impaired judgement of distances, impaired adaptability of the eyes to changes in lighting conditions, impaired sensitivity to red lights and severe impairment of the ability to react and reduced concentration with impaired equilibrium. This basically means that a driver with this amount of alcohol in their blood up to the present legal limit will tend to drive too fast, misjudging approaches to bends, longer recognition times of breaking lights, much longer time to bring the vehicle to a halt, overall taking too long to decide and act, and motorcyclists and cyclists will find it difficult at 80 mg to drive in a straight line.

Hon. members, if a person with the impaired reactions I have just described is breathtested under the present proposals that driver will not be committing an offence and will be considered sober. However, it is easy to understand why that driver has a two-and-a-half times greater chance of being involved in an accident. The overall view that a few drinks can be taken without any ill effects on driving has repeatedly been found to be false, and in one simulated test among bus drivers with levels of 50 mg many thought they could drive through obstacles that were too narrow for their vehicles. So whilst the hon. minister is saying, 'Let us see how things go at a level of 80 mg' scientific evidence is clearly demonstrating that risks are present below that level, and hon. members will have to judge if these risks are acceptable. The UK Government has put out a consultation document in February 1998, but it is a paper which, having read several times, to me shows a presumption towards reducing the permitted alcohol level to 50 mg. The majority of countries within the European Union have reduced the maximum permitted level of alcohol to 50 mg, some countries even lower, and I find it interesting that countries such as France and Greece, where the imbibing of alcohol is an everyday way of life, should have reduced their permitted levels.

Several influential groups have now called for a reduction in the level of permitted alcohol in the blood, groups which I would say have no direct interest in seeing alcohol sales reduced for moral or other reasons but basing their decisions on scientific facts and accident statistics. The British Medical Association, which originally recommended the 80 mg level, and the Parliamentary Advisory Council for Transport Safety have called for the lowering of the limit to 50 mg. They say, and I quote, 'Research evidence shows that the relative risk of driving involvement in road traffic accidents is significantly increased at a blood alcohol level of 50 mg per 100 ml.' They also say, and again I quote, 'Many drivers still look to the legal limit for guidance about safe drinking and driving levels' and therefore they look to 80 mg to be safe.

A most telling and in-depth study and report was conducted by Strathclyde Police. It is a 31-page report indicating 49 references which have been used to reach their conclusions: references of scientific research, official road accident statistics, both in the UK and abroad. The report is entitled 'Driving Home the Limit, the Case for 50', and I believe that the police in general, including the Manx constabulary, would support the findings. I cannot obviously today go through the complete report, but I would like to present some of its facts, findings and conclusions on matters that I have not already mentioned.

It is a fact that alcohol is absorbed directly into the blood from the stomach and alimentary tract, unlike most food and drink, and therefore it generates its effects, desired or otherwise, within a few minutes. However, the removal of alcohol from the system is only at the rate of about one unit per hour, and this removal cannot be accelerated by cold showers, fresh air or black coffee, which may make the person feel less drunk but does not in reality reduce the amount of alcohol in the blood. Whilst I have discussed the physical and mental effects of alcohol on driving performance, emotionally people consider themselves fit to drive when they are not or believe that their driving performance is better than it actually is, and they take more risks. In a series of tracking tests scientifically conducted, seven out of eight studies show that the ability to track an object could be affected for up to two hours after drinking a volume of alcohol which achieved only 35mg. A scrutinising of real accidents by collating witnesses and drivers' statements and other evidence found that drivers with a level of at least 50mg were more likely to have been engaged in some secondary activity at the time of the accident, demonstrating their inability to concentrate on more than one task at a time. By and large, people have control over their alcohol intake and will frequently attempt to limit their alcohol consumption when driving performance is required, but studies have also concluded that alcohol increased underestimation. Therefore people are unreliable judges of their intoxication and unlikely to be skilled at avoiding impairment by drinking sufficiently little. In Queensland in 1982 they reduced the permitted alcohol level to 50mg from 80mg with Western Australia being used as an out-of-state control area in order to establish whether a decrease in accidents was restricted to Queensland. Most drink-drive accidents occur at nighttime. There was a significant reduction of 8.2 per cent night-time hospitalisations the first year followed by 12 per cent and 13.6 per cent in subsequent years and, whereas fatal accidents occur usually with a very high blood level of alcohol, this evaluation demonstrated that compared to other drink-driving counter-measures the introduction of the 50mg limit had an accident-reducing effectiveness beyond the first year.

The conclusions and recommendations of the Strathclyde police investigation were: firstly, for the average person subjected to a variety of laboratory tests, a significant degree of impairment can be established with levels as low as 50mg; secondly, the authenticity of scientific research has been substantially improved, thus giving more accurate results in relation to alcohol-impaired driving; thirdly, public tolerance with drink-driving has decreased as it has become socially unacceptable and immoral; and fourthly, liquor-licensing restrictions have continually been removed, allowing for easier access to alcohol, consequently increasing social drinking in general. Accordingly, the present limit is somewhat antiquated, allowing the driver to consume a moderate amount of alcohol before driving. In fact, it is possible that the deterrent effect of the 80mg legislation solely rests on the driver's subjective evaluation of his chances of being detected.

The final recommendations from Strathclyde were that the maximum permissible blood alcohol level be reduced to 50mg in conformity with the report's findings; and secondly, that an education programme be developed and implemented to heighten the driver's awareness of the effects of alcohol on driving performance and to increase a perception of the risks of being apprehended. Neil Kinnock, the European Traffic Commissioner, has been pressing Britain to lower its drink-drive limit, as has the Association of Chief Police Officers, which believes that a cut to limit the level of 50mg would lead to 13 per cent fewer drink-related accidents. Similarly, the Institute of Alcoholic Studies has stated that its aim is to reduce the present limit down to 50mg. A House of Lords committee did express concern that the emphasis on reducing the 14 per cent of alcohol-related road deaths in Britain is out of proportion to reducing the other 86 per cent of road fatalities, but they did say that on balance it supports a reduction in permitted levels.

I apologise for taking up so much time of this hon. House, but I personally felt it necessary to present the case for the reduction in the maximum permitted level because, if we are to make inroads into attempting to reduce drink-driving, then these steps have to be seen to be positive to the benefit of the safety of the public. I believe the evidence is clear and valid. It will give support also to the police and to the medical services by hopefully reducing drink-related accidents. I think that the overall message to go out to the public is not one for the road, but none for the road and many members have said, 'Let us send out a message that drinking and driving will not be tolerated.' I hope therefore that hon. members will support my amendment, which I move as printed, and that they will send out this message. Thank you, Mr Speaker. I beg to move:

*Page 7, line 15; for '50' substitute '30'.*

**Mr Downie:** I will rise to second, Mr Speaker, just to get the issue up for debate on the floor. I apologise to the mover, I missed the first part and I wonder if, when he comes back to us, he can perhaps indicate the amount of alcohol the different amounts of milligrammes correspond to? For example, what does a glass of wine work out at, or half a pint of lager? I think it would be helpful to have some sort of a breakdown, but from where I sit it is quite straightforward and simple. I do not believe that anybody should be drinking when they are driving, full stop.

**Mr Shimmin:** Mr Speaker, I do not intend to take long. Referring to the amendment moved by Mr Singer, I feel some regret that the House had so many members missing during his speech and that so many members were talking because I thought that a lot of the information that he brought forward was worthy. (**A Member:** Hear, hear.) I find that it is a little bit awkward from my position. I have gone through many of these issues in my own head, being fortunate enough to be on the home affairs department, and I have rationalised my own position, which I explained at the previous debate on clause 4. I cannot support his amendment. I believe there are many members within this House who have already come a long way both over this debate today and in the months before. I therefore will recognise their position. I would comfortably go along in the future with Mr Singer's amendment. I believe it will come in, I believe now is not the time and therefore I will not be able to support him.

**Mr Karran:** Vainstyr Loayreyder, on the clause at the present time can the hon. minister, the mover, tell us in his reply what statutory checks they will have to do as far as to make sure the intoximeter is accurate in order to make sure that we do not have a similar situation as

happened in the adjacent isle, where thousands of people had to be let off because it was found to be. . .? Is there going to be something in the regulations that they have to have it tested after so many attempts or is it just going to be left to grace and favour? Can he also tell me, does the recipient of the test done for alcohol get told that he has a right to a specimen? Is that laid down in law and if not, why not? What defence has he got if he claims that he wants to wait until his lawyer has come? Can he wait for his lawyer to be able to be advised to his rights? What effect does that have as far as this clause is concerned?

Now, what concerns me here - I am sorry that members do not like my honesty as far as what I think I perceive and many outside this hon. House perceive - is living in the real world. This new amendment by the hon. member for Ramsey may be very well-meaning, but the fact of the matter is hundreds of people every weekend, I am sure, are drinking and driving. I agree with hon. members that young people are far more sensible than our generation and most of you in this hon. House's generation as well, but the fact of the matter is, we might hear calls for blood when people, drunk, kill people - it is too late then. You have got to get them before then.

As far as the amendment by the hon. member is concerned, I think it has got a lot of goodness in it, but I have to admit that until we get our house in order it is just more window-dressing like his other colleague from Ramsey. As I say, they could open a row of shops up, but one of the reasons why people in this hon. House are not prepared to bite the bullet of random breath tests is because we have not gone through the whole review of this piece of legislation. It should have gone to a committee. We have the ridiculous situation where you can actually spend more time in prison for drinking and driving than you can for burglary and aggravated assault. This is what concerns me and I think this is why it makes it so difficult to try and get the real core problem of drinking and driving on this Isle of Man sorted out - the fact that we have got it wrong.

The hon. member for West Douglas early on said we have still got people doing it. Even with all these stringent confinements it is detection that we need, and detection is what we want, and if we could catch more people before they maim and kill people, maybe we would get somewhere. But I am afraid that the hon. member for Ramsey who has moved this amendment - whilst I think it is very well-meaning, I think until we really grasp the real problems as far as this legislation is concerned, and that is the penalties, it is an absurdity. We see in this Bill you can be banned for three years and then you can get in your car the following day after your ban and drive off and you have never been in a car. . . . Not in the Bill! The hon. mover can insult and abuse members like myself. If we were given the opportunity and the common courtesy of years ago, this Bill would not have proceeded at this present time. It would have made no difference, but once again arrogance and ignorance have ruled in this hon. House.

Now, as far as I am concerned, I think that whilst I have a lot of sympathy with the hon. member for Ramsey's amendment, we have got to get our house in order as far as this legislation is concerned. We should be reviewing the penalties on this legislation and then maybe more in this hon. House would have the backbone to get this random breath test in, which is needed, and catch the people who really need to be caught. I think, if this amendment went through, so we catch maybe two out of the hundreds that are doing it in a weekend - we do not want to catch two out of a hundred; you want to catch 50 out of a hundred. It is

because at the moment we have lost the battle because it never happens to you, and that is what happens with this, the mentality of the people who drink and drive on a regular basis - it does not happen to them. If it started happening to them, then you would really sort out the unnecessary deaths and injuries on this road through alcohol abuse. I will not be supporting the amendment. I sympathise with him but I think it would be wrong to support it.

**The Speaker:** I call upon the hon. member for Ramsey to reply to his amendment.

**Mr Singer:** Thank you, Mr Speaker. Can I thank Mr Downie first of all for seconding the amendment. The information required is that up to 50mg per 100ml of alcohol in the blood is equivalent to probably a pint of strong beer. Fifty to 80mg is the equivalent of three to four units, which can probably be transposed into a strong beer and a glass of wine and five to six units, which would take one between 80mg and 120mg, is probably a strong beer and two glasses of wine, but of course it all depends on the body mass and whether one has been eating, et cetera.

Mr Shimmin says that he is very sympathetic and he has a free vote and he has a conscience, and he had a conscience in the last amendment by the hon. member for Douglas West; if he has his conscience and he has this free vote, then go with what you believe. Do not go with this just because it goes with the establishment. Go with what you believe.

Mr Karran has talked about biting the bullet, but I think he probably shot himself in the foot with it! He did say that it was necessary that persistent offenders should be removed off the road. That is exactly what I have said, Mr Karran, that if necessary, people with 150mg or more in their blood and being caught on a regular basis should be taken off the road and never allowed back on again. But my amendment is not actually to do with the case of catching more people, because the proposal of the breathalyser will catch more people. It is a case of deciding what is the level at which people should not be allowed to drive, the level at which they are impaired.

Members will no doubt have to decide. They have heard the scientific research and the comments of reputable authorities and they have to ask themselves, does 80mg mean a driver is sober and fit to drive? Do hon. members accept that below 80mg driving ability is still impaired? Do hon. members believe that accidents and their consequences can be considerably reduced by lowering the levels permitted, and would the public support my proposal as a road safety measure? The hon. minister has said, 'Send out the social message that drinking and driving is not acceptable.' Well, I believe this is a way that we can practically send out that message to the public. I think the case for 50mg is proven but are we prepared to implement the 50mg measure whilst recognising that it is a lesser crime? Thank you. I wish to move.

**The Speaker:** I call upon the minister to reply to clause 4.

**Mr Bell:** Thank you, Mr Speaker. I guess it was inevitable that this particular amendment would be moved today and in a way I welcome it, because at least it gives hon. members the opportunity to clear the air and clear their minds as to, certainly for the medium term, what our policy on this particular issue is going to be. It is one which has triggered off debate in the United Kingdom fairly recently, and my understanding is the United Kingdom for the time being decided not to pursue the reduction of the figure from 80mg to 50mg, accepting that there are now a number of countries in Europe which do operate under this procedure.

There is an obvious attraction in an amendment of this nature, clearly, because if we are vehemently against any drinking and driving, then we should be trying to force down the level to as low as possible, but it is not quite as simple as it sounds, I believe. The hon. member quoted at some length the Australian experience in Queensland and Western Australia, I think. Well, I have met with the Australian authorities - they have been in the United Kingdom on a educational visit, I suppose you could call it - and the figures that the hon. member quotes are accurate, but he did not give you the complete picture, that the reduction of the limit from 80mg to 50mg in Queensland was also supported by a massive increase in police resources, both manpower and also in other legislative ways. So it was not simply just bringing down the limit which created this response; there was a very substantial financial and manpower cost to achieve those figures, and even those figures, whilst granted they did stay low for a little while afterwards, crept back up to the previous figures after only a few months, I understand. So we have to recognise that if you are going to reduce this limit and you are going to ask the police to thoroughly monitor what is going on here, there will very shortly be a demand for more resources for the police to enable them to do so.

It is quite interesting, during a recent debate in the House of Lords on this very matter, the blood-alcohol levels for drivers, the chief constable of Warwickshire, who was previously the chairman of the Association of Chief Police Officers, himself came out strongly against reducing the limit. His three pointers for successfully attacking the problem of drink-driving were: enforcement, which we have touched on today; penalties, which we have stiffened up in this Bill or are in the process of stiffening up in this Bill and which perhaps it might prove necessary to stiffen up still further in the future; but the one he highlighted was education, and that is one thing which I do not think has been touched on today. We need government policy generally, I think, to educate the people more effectively against drink-driving and it has not really been on the floor of this hon. House for debate today. I know we have our Christmas blitzes and we will have a blitz now in the next week or so for the TT period, but perhaps we should be looking at a 52-week-a-year exercise now to actively win over the hearts and minds of the drinkers of this Island in a sensible sort of way to persuade them that no longer is it acceptable for them to do what they have been doing perhaps for a number of years. I am sad, in a way, that the educational aspect of it has not been raised in the debate today but that was certainly one of the points which he has raised.

He also, like the experience of Australia, raised the question of police resources and, in addition to that, questioned whether the pursuit of people who have had one pint of beer is the best way of deploying limited police resources. Are there other ways where these resources could be more effectively used in the pursuit of drink-driving and also, obviously, in the pursuit of crime generally? This was a chief constable speaking who has considerable experience in this area. So whilst the technical evidence which the hon. member, my colleague Mr Singer, has put forward may be accurate, the practical experience of working with it shows somewhat different views, and I think we should bear that in mind and bear in mind also that the evidence which the hon. member alludes to was available to the UK authorities when they made the decision, at this time anyway, not to reduce the level any further. So they, I think, took their decision on a well-informed basis and their decision is to, for the time being, maintain the status quo.

The other concern again that I have on this particular matter is the willingness of the Manx public to accept what will be quite radical changes in policing measures on the Island all in one go. We have tried with this Bill, as I keep repeating, to be honest with everyone, to steer a middle line to try and introduce the breathalyser, to introduce severe and more strict penalties but to keep the public on our side at the same time. I keep repeating it and I cannot do it often enough: it is essential we do not alienate the public in this particular exercise if we want them to respond to it the way we do. I believe what we have done so far - and I thank members for their support so far - will win the overwhelming public support, but if we keep pushing at the boundaries all at the same time and not only bring in all these other restrictions but now bring down the legal limit to 50mgs, which is in effect only one pint, which many, many people enjoy after work, or a glass of wine perhaps, just before they go home, no more than that, that will be in effect reduced and cut out altogether. So this actually, although not in any way condoning drink-driving, will impact considerably on the social one-drink activity which many, many people enjoy and which in no way impairs their drinking but will seriously impair their limited social life in that particular area and I think may generate hostility to the overall package which we are trying to put together at this particular juncture.

Now, with experience, hon. members, it may well be that in a year or two's time we may need to revisit this position again and perhaps make a different decision in the future, but I would ask hon. members to bear in mind the points I have made and to stick with the Bill as printed at this stage. Do not alienate the public unnecessarily. Let us keep them on board and let us move forward unanimously, I hope, in support of the changes which we are introducing, albeit they may not meet everybody's requirement at this stage, but I do believe it will lead to a more general public acceptance of what we are trying to achieve.

I accept and thank again the support from my hon. colleague Mr Shimmin. I know he has probably had a sleepless night or two this week in anticipation of this debate today because I do know how he feels about these things. He has stated that he is prepared to support the Bill as printed and I respect him for that decision and thank him for his bit of compromise as well, perhaps, in the arguments that we have had in the department over the last few months.

The only other comment is the hon. member for Onchan, who asked what statutory checks there are on the breathalyser. I understand that the breathalyser is in effect self-policing, that it will not work if the calibration is in any way faulty and that will be identified immediately by the user, so the concerns that the hon. member has, with the modern breathalyser anyway, would be unfounded. And secondly, of course, any driver brought into that situation and charged with an offence will be told his rights in exactly the same way as any other accused person going into the police station and we, in the Police Powers and Procedures Bill, have identified the procedures which will take place whenever anyone is brought into custody for whatever reason.

The only other point, I think, that the hon. member raises is the one of persistent offenders, that they should be taken off the road. I do not think any of us would disagree with that, and that is probably where the hardcore offenders actually rest. They have drink problems and they are likely to continue to offend unless there are measures to take them off the road. If, though, there is a second offence within, I think it is, a 10-year period, there will be an automatic five-year ban, not just a one or three-year ban as we are proposing. So they can be taken off the road for quite some time, but there may well - with hindsight, as well, perhaps

it should have been included in the Bill - be an argument for anyone losing their licence for three years or longer to have to automatically take a driving test again because, after all, they are off the road for three years. They will be perhaps losing some of their sharpness as drivers as well as a further punishment for drinking and driving as well. So there may well be an argument next time round to toughen up this particular legislation by ensuring that people of three years' or more driving ban have to automatically take their test. So in that point I would agree with the hon. member for Onchan. We need to do all we can to take persistent offenders off the road, and I am sure that will be under consideration in the time ahead. So I beg to move clause 4, Mr Speaker.

**Mr Karran:** A point of order, Vainstyr Loayreyder. I did not talk about the breathalyser, it was the intoximeter; that is what I was concerned about and that has not been replied to.

**The Speaker:** Now, hon. members, the motion is that clause 4 do stand part of the Bill. To that we have the amendment as moved by the hon. member for Ramsey, Mr Singer, submitted to you again on your white sheet. Will those in favour of the amendment as moved by Mr Singer please say aye; against, no. The noes have it.

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

*For: Mr Singer - 1*

*Against: Messrs Gilbey, Cannan, Quine, Rodan, North, Sir Miles Walker, Mrs Crowe, Messrs Brown, Houghton, Cretney, Duggan, Braidwood, Mrs Cannell, Messrs Shimmin, Downie, Mrs Hannan, Messrs Bell, Karran, Corkill, Cannell and the Speaker - 21*

**The Speaker:** The amendment fails to carry in the House, hon. members, with 21 votes cast against and 1 for.

So we put the clause then, clause 4. The motion is that clause 4 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 5, hon. minister.

**Mr Bell:** Mr Speaker, clause 5 restates the disqualification provisions of the Road Traffic Act 1985, schedule 3, so far as they relate to drink-driving offences with amendments consequential on the new offences created by clauses 1 and 3 and with two amendments in substance, which are: (a) a sliding scale of periods of obligatory disqualification is provided with longer periods where the offender was seriously over the limit; and (b) disqualification until the offender has taken a course on the effects of alcohol on driving, which is to be obligatory where the offender was very far over the limit.

Sub-clause (1) is introductory. Sub-clause (2) introduces new paragraph 11(3), which restates with consequential amendments the present rule that obligatory disqualification in the case of a second drink-driving offence, involving actual driving as opposed to being in charge of a vehicle, within 10 years means five years instead of the usual 12 months. New paragraph 11(3A) introduces the sliding scale of disqualification periods where an offender was seriously over the limit. The normal obligatory disqualification under paragraph 11(1) for being over 80 mgs in blood or the equivalent proportion in breath or urine is 12 months. For being over 150mg it will be two years and for over 220mg, three years, and this of course is without prejudice to the five-year term under paragraph 11(3) as I have previously described.

Sub-clause (3) extends and makes consequential amendments to the present paragraph 11(6), which enables the court, when convicting for a drink-driving offence, to disqualify the offender until he has taken a prescribed course of instruction on the effects of alcohol on driving and makes such a disqualification mandatory where the offender was way over the limit. That is subject to three years' disqualification. New paragraph 11(6) restates part of the present paragraph 11(6), which enables the court to disqualify until the offender has taken an approved course of instruction and extends it to cover offences under section 3A. New paragraph 11(7) makes such a disqualification mandatory where the offender is liable to a three-year disqualification. New paragraph 11(8) restates the rest of the present paragraph 11(6), defining the course to be taken, enabling the court to impose this kind of disqualification in addition to any other kind and providing for its termination.

Sub-clause (4) is a transitional provision to ensure the past offences before the commencement of this clause can be taken into account in applying the five-year disqualification in paragraph 11(3) and that a past refusal to provide a specimen of breath, blood or urine under the present section 7(3) will count for this purpose as an offence under the new section 6(6).

I beg to move clause 5 stand part of the Bill, Mr Speaker.

**Mr Shimmin:** I beg to second and reserve my remarks, Mr Speaker.

**Mr Karran:** Vainstyr Loayreyder, I believe this is the clause that fundamentally puts the situation where we cannot get random breathtesting in, because of the fact that we have not got the penalties sorted out as far as other crimes are concerned. I am saddened today that we have seen once again clause by clause. . . and this clause will be bludgeoned the way through. This clause could have given the opportunity of getting the legislation that this Island needs. I would agree with the hon. mover that education is an important factor, but detection is paramount in fighting the drink-driving laws on this Island.

I am not happy with this Bill. I am sorry that we were not given the courtesy of seeing whether there were amendments that could be drafted to this legislation. I cannot support the clauses. I do not want to be known as being weak as far as drink-driving is concerned; it is a serious crime, but at the end of the day I just feel this whole Bill has been a window-dressing exercise and, because we have not sorted this clause out, I believe we are not going to achieve that much to make our roads on the Island any safer for anybody in the Isle of Man.

I am very disappointed as far as this is concerned. I am deeply concerned when you look under the schedule that things become obligatory. I believe that it is very, very dangerous to make anything obligatory. I believe there is an important principle of allowing the judiciary the independence to listen to the case and justify the rights and wrongs of the case as it comes up. I understand why people are very frightened of bringing in random breath tests, because there are many honourable and upright people who could end up behind bars under this piece of legislation. If we cannot get it through because we have got such severe penalties, then we should change the penalties, and I believe in this clause we should have changed the penalties and we should have made the situation where we could have got more detection, because detection is the most important thing. This clause could have made the difference if it had been well thought out. I am sorry that we have allowed this opportunity to be missed. I know there is the possibility of putting amendments at the third reading stage, but that is an

impossibility with the way this hon. House is manipulated by the different sections of different votes within it.

**The Speaker:** Hon. member, I fully acknowledge your disappointment, but I have to point out that the House today has on two occasions voted in relation to a committee stage of this Bill, and the House has on each of those occasions voted quite appreciably as a majority to continue the way we are handling it. The hon. member for West Douglas.

**Mr Downie:** Thank you, Mr Speaker. There are a couple of points I want to raise with the minister. First and foremost, where we refer to the sentence, the two-years or the three-year ban, would I be correct in assuming that the court has discretion to order as many years as they wish? The figures that are referred to in the Bill are a minimum, and if there is an offence where a person is way, way over the limit they can actually exceed that and there is a provision when the person who is convicted can actually go to an appeal for a reduction in sentence? So there is the flexibility.

The other thing I was going to ask: sadly at the moment there are people languishing in prison who have no regard for road safety or drink-driving or anything else. There are a few people at the moment in custody who repeatedly drive while disqualified. Some of them have been driving whilst disqualified and also on drink-driving charges again. Now, I want to know if there will be an opportunity taken at some stage in the future to look at those cases with a lot more severity, because it is quite obvious that people have no regard whatsoever for the law and they are up on a fairly regular basis, driving whilst disqualified, driving under the influence of drink, so that is an area that needs to be looked at.

Now, the other area I wanted to make reference to: in the Bill here there is no reference to where a magistrate or somebody dealing with a repeat case or a severe case of drunk-driving. . . Is there anything funny I have said, Mr Gilbey?

**Mr Gilbey:** No, no, not what you have said but what someone else said.

**Mr Downie:** Oh, right, thank you. I thought I was making a bad joke there.

**Mr Gilbey:** No, no.

**Mr Downie:** Right. I want to know if there is any way under this or other legislation where a person who is continually before the courts can be referred to for detoxification treatment. I know that on legislation that went through this House about two years ago the courts have got the authority to refer people for detoxification when they are continually drunk or they become vagrants and so on and so forth. I just want to know if there is any way that a person who is up in front of the courts two or three times can also be referred for some sort of treatment. Thank you, Mr Speaker.

**The Speaker:** I call upon the minister to reply.

**Mr Bell:** Thank you, Mr Speaker. No matter how often I make these statements it is obviously not going to register with the hon. member for Onchan. There has been no attempt whatsoever on my part or the part of the Council of Ministers or the Department of Home Affairs to bludgeon clauses through. This Bill is being debated in the same way as every other Bill has been in the past and will be in the future, and I take offence at his comments that members have not been given the courtesy of having an opportunity to move amendments. The period of gestation on this Bill has been the same as almost any other Bill. We have had

the best part of a month now, and if members were alert enough they could have made further amendments. We have had a serious debate today from the hon. member for West Douglas and my colleague from Ramsey, who have put a lot of thought and time into drafting amendments. If they can do it the hon. member for Onchan can do it as well, and he has to decide whether his priorities are the CPA or whether it is legislation in this particular House (**Members:** Hear, hear.) if he feels offended by it. Constantly the theme through this debate today has been that we no longer are prepared to condone drinking and driving and we need harsher deterrents to achieve that. This clause introduces harsher penalties. I believe that harsher penalties will have some effect, perhaps not on the dedicated, hardened drinker, but on those who do slip. A three-year ban on the Isle of Man is a very long period without transport, and I think it would be a very salutary lesson to a lot of people if they realised that they could very easily slip into that category. I think it will have some effect and for the hon. member now to start back-tracking and say we should not have obligatory penalties and that in effect we should be going softer on the penalties I find confusing, to say the least.

The hon. member makes the point that detection is more important than penalties. I would say the two go hand in hand. You have got to have detection, obviously, to deter the people in the first place, but I think severe penalties at the end of it will be probably even as great a deterrent as the detection aspect of it itself, so I cannot say that one really should be pursued to the cost of the other. We need to have a dual attack, I think, on drink-driving.

The hon. member for West Douglas, Mr Downie, asks whether in fact the three years is the limit now. If drivers are considerably over the 220 limit then the facility to impose harsher penalties exists at present and they will be maintained, up to and including imprisonment. There will, of course, be a very small number - and I stress, it is only a very tiny number - of persistent offenders who, no matter how long the driving ban might be and how harsh the prison sentence might be, will still, because of whatever their personal problems may be, find themselves in trouble in this particular area. If there is a solution to that, then I think we have probably not found it yet, but at the same time simply extending prison sentences all the time is not the answer. I think we have to balance that with some form of rehabilitation. The hon. member also asks about persistent offenders being sent for detoxification. I think that power is available at the moment, but certainly there are further powers now in clause 5 which would enable the court to order courses in the effect of drink, which I hope will have some salutary effect on the offender and enhance his education in that particular area. So with that, Mr Speaker, I beg to move clause 5.

**The Speaker:** Hon. members, the motion is that clause 5 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. Division called.

*Voting resulted as follows:*

*For: Messrs Gilbey, Cannan, Quine, Rodan, North, Sir Miles Walker, Mrs Crowe, Messrs Brown, Houghton, Cretney, Duggan, Braidwood, Mrs Cannell, Messrs Shimmin, Downie, Mrs Hannan, Messrs Singer, Bell, Corkill, Cannell, and the Speaker - 21*

*Against: Mr Karran - 1*

**The Speaker:** Hon. members, clause 5 passes in the House with 21 votes cast for and 1 against.

Now, hon. members, looking at the Court clock I think we can actually complete this Bill before half past five, and I call upon the hon. minister to move clause 6.

**Mr Bell:** Thank you, Mr Speaker. Clause 6 contains a miscellany of supplemental provisions chiefly dealing with definitions and procedures.

Sub-clause (1) provides definitions of terms used in the new sections 3A and 5 to 7D. It introduces new section 7E, subsection (1) of which is introductory. Subsection (2) defines various terms, in particular 'the prescribed limit.' Subsection (3) makes it clear that a specimen of breath does not count for any purpose if it is inadequate or provided in a way which will not give a proper reading. Subsection (4) makes it clear that a specimen of blood does not count unless it is taken by a doctor with the accused consent. Subsection (5) gives the Department of Home Affairs power by order, subject to Tynwald approval, to vary the proportions of alcohol to breath, blood and urine in the specified provisions.

Sub-clause (2) adds references to two kinds of order under this Bill to those requiring Tynwald approval under the Road Traffic Act of 1985 - that is, an order specifying additional offences for the purpose of section 5B(2), and that is roadside breath tests; and an order under section 7E(5) varying the proportions of alcohol to breath, blood and urine.

Sub-clause (3) adds an extra procedure to an order specifying additional offences for the purpose of section 5B(2) - that is, roadside breath tests. Not only will it require Tynwald approval, it must be laid before Tynwald at the previous sitting. It also requires an instrument approving a device under section 5B(8), the breathalyser, or section 6(1)(a) analysis or specimen of breath at the police station to be laid before Tynwald.

Sub-clause (4) introduces schedule 1. That amends the Road Traffic Act of 1985, schedule 6, which sets out the penalties for offences under that Act.

Sub-clause (5) introduces schedule 2, which repeals previous amendments of the drink-driving provision of the Road Traffic 1985 Act which are superseded by this Bill. I beg to move, Mr Speaker.

**Mr Shimmin:** I beg to second and reserve my remarks, Mr Speaker.

**Mr Brown:** Mr Speaker, hon. members will have noted the amendment circulated in my name to clause 6, which omits the term of 'Home Affairs' and leaves the responsibility again in this area of specifying the offences with the Department of Transport as I explained previously, which is the normal procedure for specifying such offences. I hope hon. members will again support correcting this anomaly which, if we leave it in this Bill would create somewhat of an anomaly, so I hope members will support that. I beg to move:

*Page 13, line 4; omit 'of Home Affairs'.*

**Mr Singer:** Mr Speaker, I am delighted to second, as I might have a better chance on this one. *(Laughter)*

**Mr Brown:** Do not be too optimistic.

**The Speaker:** I would like to call upon the minister to reply to the debate. I do not think it is necessary to reply to the amendment.

**Mr Bell:** No, I am happy to accept the amendment, Mr Speaker.

**The Speaker:** Hon. members, the motion is that clause 6, schedule 1 and schedule 2 do stand part of the Bill. To that I have an amendment moved by the hon. member for Castletown, Mr Brown. Will those in favour of the amendment please say aye; against, no. The ayes have it. The ayes have it.

Clause 6 and schedules as amended then, hon. members. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 7, hon. minister.

**Mr Bell:** Thank you, Mr Speaker. Clause 7 gives the Bill its short title and provides for its commencement with a transitional provision. Sub-clause (1) gives the Bill its short title and provides for it to come into operation on an appointed day or days and sub-clause (2) makes it clear that no change in the Bill applies in relation to offences committed before the commencement of that change with the one exception, that the previous offences can be taken into account in applying the five year disqualification under the Road Traffic Act 1985, schedule 3. I beg to move, Mr Speaker.

**Mr Shimmin:** I beg to second.

**The Speaker:** Hon. members, the motion is that clause 7 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Hon. members, that concludes the business on our order paper for today and I thank you for your co-operation. I appreciate that it has been warm this afternoon. Never mind, we have got through before our allotted time and the House will now stand adjourned until Tuesday, 16th June at 10.30 a.m. in Tynwald Court.

*The House adjourned at 5.20 p.m.*