

**REPORT OF PROCEEDINGS OF
LEGISLATIVE COUNCIL**

**Douglas, Tuesday, 3rd November 1998
at 10.30 a.m.**

Present:

The President (the Hon Sir Charles Kerruish OBE LLD (hc) CP), the Attorney-General (Mr W J H Corlett), Hon C M Christian, Messrs E A Crowe, D F K Delaney and E G Lowey, Hon E J Mann, Messrs J N Radcliffe and G H Waft, with Mr T A Bawden, Clerk of the Council.

The Chaplain of the House of Keys took the prayers.

Apologies for Absence

The President: Hon. members, we have apologies for absence from the Lord Bishop and from the hon. Mr Kniveton.

European Communities (Amendment) Bill – First Reading Approved

The President: Now, turning to the agenda, in the absence of the hon. Mr Kniveton we will not be taking the first reading of the Sewerage Bill today. So we turn to item 2 and I call upon the learned Attorney-General to take the first reading of the European Communities (Amendment) Bill.

The Attorney-General: Thank you, Mr President. The purpose of the Bill is to amend the definition of ‘the Treaties’ or ‘the Community Treaties’ in section 1 of the European Communities (Isle of Man) Act 1973.

By virtue of section 2 of the 1973 Act the Treaty of Accession, as applied to the Island to the extent set out in article 227(5), and by protocol 3 to the Act, annexed to the treaty, together with other provisions relating to the European Communities and the European Union, as set out in section 1 of the Act, has effect in the Island. Section 1 of the Bill adds to the list of such provisions certain specified articles and provisions of the Treaty of Amsterdam, which was signed on 2nd October 1997.

Mr President, I beg to move that this Bill be now read a first time.

Mrs Christian: I beg to second.

Mr Crowe: Mr President, could I just ask does this Bill have any effect on protocol 3, the fundamental principles within protocol 3, or is it purely amendments to take account of changing circumstances?

Mr Lowey: Can I ask? My reading of this particular Bill, Mr President, is that it actually gives the police the opportunity to work in closer co-operation with their counterparts in Europe? Is that correct? And if that is the case, then I think it must be welcomed.

The President: Reply, learned Attorney.

The Attorney-General: Mr President, in answer to the hon. member, Mr Crowe, I confirm that this Bill does not affect the fundamental provisions of the treaty which governs the Isle of Man’s special relationship with the EC or the EU. It might be helpful, Mr President, if perhaps I

could circulate a summary of the main provisions before the next session and that would summarise the position.

The President: Thank you, Mr Attorney.

The Attorney-General: Mr President, perhaps in relation to the question raised by the hon. member Mr Lowey, in fact the parts of the Treaty of Amsterdam which relate to police and judicial co-operation are not in fact included in this particular Bill, it is not affected by this Bill. I think that appears in the explanatory memorandum to the Bill.

Mr Lowey: Could I ask the Attorney, if it is not included in this Bill, is it included in any other legislation that will be coming before the House? Because I would have thought that we would have wanted to be included in what I would call co-operation with the European network, as crime now knows no boundaries and therefore I would have thought that the Isle of Man should be wanting to involve itself with the international police, as we have just heard in this recent weekend where major crimes of very heavy drugs in our near neighbours actually had a Manx connection.

The President: Reply, sir.

The Attorney-General: Mr President, I am pleased to confirm that notwithstanding that this Bill does not necessarily extend to further co-operation with the police and judicial authorities, nonetheless there is in place and there has recently been put in place a judicial network throughout the European Community, and the Isle of Man has elected to play its part in so far as that network is concerned and in fact the Attorney-General and his officers involved in criminal law are the nominated persons, the contact points, for the purposes of that network. So I am pleased to confirm that we are indeed fulfilling our part in combating international crime, particularly throughout Europe.

The President: Hon. members, the resolution is that the European Communities (Amendment) Bill be now read a first time. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Road Traffic Bill – Second Reading Approved – Consideration of Clauses Commenced

The President: Item 3, hon. members, and I call upon the hon. Mr Delaney to take the second reading of the Road Traffic Bill 1998.

Mr Delaney: Thank you, Mr President. First can I clear the two queries that were made by our colleagues Mr Crowe and the Lord Bishop in relation to the costs and whether or not a campaign will be mounted from the costs of informing the public of the consequences of this Bill going through this place. The fact is I have spoken to the minister, although the costs in this Bill will not encumber the actual situation whereby the policy of the department, both the Department of Home Affairs and the Transport Department, is to give this Bill a lot of publicity for the very good reason that Mr Crowe raised, particularly the change of the testing, where people who have had a few drinks the night before could well still be intoxicated the following morning, and we would not like to see, and we hope that does not happen, but the situation where the police then arrange a large campaign to stop people on Peel Road, for example, testing every driver that comes through, and people who have been caught out by having a few drinks the night before would find themselves in an offence. So the minister has given me the assurance they will give a lot of publicity to this.

Now, the Isle of Man, as members are aware, did not follow Great Britain in allowing the police to breathalyse a driver or give a roadside test to a driver or make it an offence simply to drive or to be in charge while over the limit. However, the Road Traffic Act of 1985 provided somewhat of a halfway house towards a reform in that a driver is deemed to be unfit to drive if he is shown to be over the limit by an analysing of a specimen of blood or urine. The provision of the specimen of breath was added by the Road Traffic Act of 1989.

Further amendments to bring Manx law closer into line with the British law were made in 1991 and 1996, but the Isle of Man has never adopted the 1967 reforms in full. However, now this Bill adopts the 1967 reforms with the latest amendments but with modifications, members should note.

The basic scheme of the Bill is as follows. New offences of driving or being in charge of a vehicle while over the limit are created. The offences of driving or being in charge while unfit to drive through drink or drugs revert to their old form. The police are given power to administer roadside breath tests in two cases: after an accident, where the driver is believed to have committed a specific offence, dangerous or careless driving et cetera or matters of that sort, but additional offences may be added by order, subject to a Tynwald approval. If a driver fails such a test he may be arrested, taken to the police station and required to give a specimen of breath or blood or urine for analysing.

This Bill differs from the British legislation in certain respects. The circumstances in which the police can breathalyse a driver are more limited. In practice, though not in strict law, the police in Britain can administer random breath tests. Here a roadside test can only be administered after an accident or if a driver is thought to have committed one of a limited number of offences, mainly moving traffic offences.

That is the basis of this Bill and I would like to move the second reading.

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

Mrs Christian: Mr President, just to support the Bill and to note that it has been subject of debate as to whether or not it goes far enough, but I think that, as the mover has indicated, it varies from the provisions in the United Kingdom in a way which has been quite consciously done, given the feeling in the Isle of Man at an earlier stage that the breathalyser would not be welcomed here. I think it is true to say that public opinion has changed in some degree with regard to that and in particular young people are very much more conscious of the stupidity of driving and drinking, and this provision, in dealing only with the breathalyser for specific offences, is, I think, a step-by-step approach to the use of the breathalyser in the Island and it does, as the hon. mover has indicated, give powers to extend that list of offences which may be subject to roadside breath tests in future, and I think that is the proper approach, a sensible approach for the introduction of this assistance to the police in the Isle of Man, not least because it will give them an opportunity to sustain good working relationships with the public, I think.

Dr Mann: Mr President, I support this Bill and I am sure the limitations, as you might say, of the use are fairly clear.

The one thing that I am not happy about is the implications because we have a system at the moment where if somebody feels they do not or cannot drive because they feel they are

over the limit, there is not an adequate taxi provision because of our other laws, and I have always said that I would support this wholeheartedly as long as somebody sorted out the regulations governing taxi services at the moment.

I have had several people living in my area who have come to the conclusion that they were over the limit and have totally failed to get any alternative transport and have ended up by having to walk to Laxey or to Baldrine or whatever because nobody would come out there because the taxi regulations at the moment fail to enable taxis to move freely about the Island and pick up passengers throughout the Island, and I think that the Department of Transport should be made to have an assurance that we will have got this sorted out before we put people in this position.

Mr Lowey: While supporting the Bill, could the mover reassure me of the present position where this Bill here now spells out the police can administer roadside breath tests after an accident or where one of a limited number of offences has been committed: dangerous, careless or inconsiderate driving? But the present position is if a policeman stops me because I have not got a rear light and then smells drink or suspects me of drinking, they would send me to the police station where I could be breathalysed on the machine. That is the existing position. Will that existing position not be affected in any way? The only difference this Bill will make is it will permit the policeman to stop me if I am dangerously driving along the promenade and tell me to breathe into a bag on the spot, but at the moment if I am driving without a light he can still stop me and if he suspects he would send me to the police station, so this is in addition to the existing legislation.

So I think we ought to be clear in our minds that we are not substituting something in lieu of when in effect all we are doing is permitting the police to actually use the machine to breathalyse. I believe personally that that will be welcomed not just by the police but by the public because sometimes if you have been stopped you would like to get it cleared there and then on the spot instead of having to go up to the police station and then getting cleared, with all the attendant publicity that comes from it.

So I think the Bill is a good one, but I would just like that reassurance.

Mr Waft: I would support the Bill wholeheartedly, Mr President. The clause 6 which defines the prescribed blood alcohol limits at 80 milligrammes per 100 ml is only going halfway with the need to have no alcohol at all when you are driving, and the power to vary it, subject to Tynwald approval, does indicate that the department will be in the future be seen to be reducing this, and I would certainly be in support of that.

Mr Crowe: Mr President, firstly let me thank Mr Delaney for clarifying the situation over the education or awareness campaign that the department will be undertaking. Again I am supporting the Bill and am happy for it to go through.

There is just a comment I would like to make on the question regarding driving under the influence of drugs, either prescribed or even illegal drugs, as to whether there is a specific test that can determine whether a person is driving under the influence, because this covers drink and drugs.

Just on the taxis that Dr Mann mentioned, I think obviously there is a specific problem after midnight on a Friday and Saturday and at holiday periods in the winter, but I believe there

is a Bill with the Department of Transport in this legislative session to come through on all-Island licensing that might iron out some of the anomalies that exist, but I believe you can hire a taxi from anywhere in the Island by telephone, but I can understand there are problems at certain points of the week or even at very heavy holiday periods.

Just on this intoximeter, again it will save people having to go to Douglas police station to breathe into the intoximeter if there is a breathalyser bag in every police car, or are you saying that that will still exist, the intoximeter?

The President: Reply, sir.

Mr Delaney: Right, it shows the benefit of this chamber, Mr President, the amount of interest and questions, and some of these were not raised in the other place and I am pleased that one, a very important one, has been raised, thanks to my colleague Mrs Christian for she has a clear indication of exactly where this Bill is going and the situation will be, although we might disagree on what quantity, as raised by Mr Waft on what a person should consume before he is unfit to drive, which is a matter, I would suggest, for other persons than us, that the Bill is an improvement on what we have got and it is obvious to some of us that it was something needed doing; it is quite obvious.

The most interesting point this morning is the taxi situation where people need an alternative if they do not wish to commit an offence, and remember in this Bill also if you have got the keys on you with the intention of driving it will be an offence, you will read later on. They must have some other form of transport. Recently I have had meetings with Douglas Corporation in relation to taxis and I must admit this particular matter, not in relation to drink and driving, but to the difficulty of getting taxis in this Island was raised, and I will give an undertaking to both Dr Mann and Mr Crowe that I will readdress this situation with my colleague Mr Lowey and the department because we are concerned about the way the taxis operate to some extent and I do believe we can have a great improvement so that people will not be caught out by this Bill and they will have an alternative to get to their place of abode by being able to get taxis, and I am sure the taxi firms will be quite happy and willing to carry passengers, but the difficulty at the moment seems, as Dr Mann has pointed out, not getting taxis. It is very difficult, even in Douglas sometimes, to get a taxi from a licensed premises, particularly on a wet Friday night or Saturday night, they are so inundated with calls, and I think it needs addressing and I certainly will address it and I will see if I can get back together with Douglas Corporation and the Minister for Transport to see if we can get what progress is being made from him on this all-Island licensing of taxis and making sure the taxis do not only turn out at the busy times but are prepared to turn out, if they are licensed, at a time when the public require them, because it seems to be they cannot turn out at the moment for the heyday and the holidays and a lot of them do not turn out the rest of the week when the public are requiring those taxi services. That point, I think, is well made and should be addressed and I will address it.

Mr Waft's point - as I say, we will disagree on what amount of alcohol is laid down before they are over the limit and of course if you feel that it should reduce, the situation will be of course it can be brought forward and reduced by an amending Bill coming through here or coming through the other place. Whether or not that would find favour with the members is another question.

Mr Lowey's point here - he raised about the police station and whether or not we are going to have a situation where this will supersede the existing legislation. As I understand it in reading the Bill and asking the questions from the minister on it, the fact is if you have got a damaged light you could be up for inconsiderate driving, but the Attorney-General will clear that for us, I hope. I would imagine that if he smells drink on you, you could be breathalysed there, in this Bill, because you could be over the limit and he has the power to do so if you are driving in an erratic manner or a danger to the public or inconsiderate driving. I am sure the Attorney will tell me if I am wrong and if I am wrong I do not mind being wrong, but I understood that was the case.

I think I have covered the points. Is there anybody I have missed? No.

The President: Would you like to respond to that query, sir?

The Attorney-General: Thank you, Mr President. I have not researched this point, but my view is that the police are in actually quite a difficult position. If, for example, they are patrolling at night and they see that a car is driving ahead and there is a defective rear light, it would be their duty to stop that vehicle and to warn the driver that there was an offence under the Road Traffic Act, namely driving with a defective rear light. Now, if in the course of talking to the driver the officer then suspects that the driver has been drinking, then again it would be the duty of the officer to administer the roadside breath test.

I think the important thing is this, that it is not proper for the police to stop a driver with a view to giving him a breath test and as a way of obtaining that to say, 'Well, look, you've got a defective rear light.' In other words the police can not expand their net to catch drunken drivers by going out spotting people with defective rear lights.

It is a difficult area, this. As I say, I do not think the police can avoid administering a breath test if in fact they spot somebody with a defective rear light. Perhaps this is a matter which I should more carefully research, but that would be my immediate comment to that.

Mr Lowey: Could I just query that, Mr President. We are making a law here and first of all could I ask the Attorney is the phrase 'inconsiderate driving' defined anywhere, either in this statute or other statutes, and secondly, if I was a defence lawyer I would say, 'Why was my client stopped by the police in the first place?' And if then he said, 'Well, he had no rear light and then I smelled drink off him', was that inconsiderate driving?

I am just looking at it purely in a mechanical way of what we hope that this law will enforce, which is first of all to stop people drinking and driving. I do not approve of it, nobody does, nobody sensible does, but again I think if we are drawing up a law here we ought to be quite clear in our minds how it is going to operate and will it be effective?

Mr Delaney: I understand, Mr Attorney, that the situation was that inconsiderate driving could be not having a vehicle in a not proper state, in an improper state: a flat tyre or worn tyres, dangerous driving et cetera. I understand that is the situation. If the policeman stops you because you have a fault he can obviously spot on the vehicle and he smells, as you asked originally, Mr Lowey, that you have had drink on you, he can then breathalyse you. Now, that is my understanding I was given.

Dr Mann: That is how it has always been interpreted. One advantage of this Bill is that the innocent, that is, the people with a blood alcohol under 80, will not now be dragged off to

the police station and kept there for an hour or so before they are discharged as not being guilty.

Mrs Christian: Mr President, I stand correction but I think that what has been said is at odds what was said in another place, where it did, as I recall, imply if you were stopped because you had a faulty rear light and were then found to have alcohol on your breath you could not be tested with a breathalyser. Now, I stand correction on that, but that is my recollection from *Hansard*. Nevertheless I would have thought that under the provisions of the Bill the person then suspected of being unfit to drive through drink or drugs would be subject to that element of the legislation and could therefore be taken to the police station to be tested. Now, whether they would choose voluntarily to be tested at the roadside with the breathalyser at that point -

Mr Lowey: It is not an option.

Mrs Christian: - I do not know whether it is a voluntary option, but as I read *Hansard* from another place, it was not within the power of the police to breathalyse because of a fault such as a lack of a rear light. So I think we do need some clarification on this.

Dr Mann: I am sorry, but I cannot possibly agree with that. The main difference between random testing and any other testing is random testing is when you are testing when there is no other offence. You have to draw the line somewhere and the line has to be whether you have committed any other offence.

Mrs Christian: Mr President, I am not arguing the point, I am simply saying this was quoted in another place as being the implication of the legislation. What we need is clarification.

The President: May we know who it was quoted by?

Mrs Christian: I think by the mover.

Mr Delaney: I have it, I think, here, Mr President. I have it here in the third paragraph of his remarks in the House of Keys. I will just quote him, please.

The President: Would you quote him, please.

Mr Delaney: Yes. 'I think it is worth emphasising at this point that the Bill allows the roadside test to be administered for a limited number of offences' - which we have already gone through - 'and that our proposed legislation is more restrictive in this regard than that which exists in the UK. This is a clear recognition of the concerns which have been expressed that the police should not be allowed to carry out random breath tests' - the point made by Dr Mann - 'Under this legislation they will be fairly restricted in what they can do. Equally, though, there needs to be the facility to extend their powers over a period of time.' And what we are doing with this legislation, as I have pointed out, is the department can come back to Tynwald with amended legislation to clarify this point, but I am given to understand that in this Bill the point made by Dr Mann is if you have committed a traffic offence under inconsiderate driving et cetera, which is a damaged rear light - and if you have got a damaged rear light, that is not very helpful to anyone following you - and they smell drink on you, they can give you a breathalyser. That is what I understand, Mr President.

Dr Mann: They can always argue themselves into doing it, yes.

The Attorney-General: Mr President, I do feel that there is a distinction between random testing and then testing as a result of another offence. There is no question that this Bill does not set out to establish random testing. In other words it would be quite impossible for the police to set up, say, a roadblock outside a public house and to test everybody who comes out of the public house. On the other hand, as I say, if, for example, a police officer is tailing another vehicle on Douglas promenade at night, say, and he spots the rear light is defective, it would be his duty to stop that driver and if in the course of interviewing the driver about that offence the officer detects alcohol, then it would be entirely proper, in fact I think the officer would be in breach of his duty if he did not administer the breath test.

Mrs Christian: Mr President, may I just quote from *Hansard* in another place: 'For example, if someone is driving with a rear light not working, the police will not be able to flag them down and breathalyse them. They will not be able to harass them on the road in that sense. It may well be that experience in time will show that there is inconsistency in the Bill'. I think that probably they can flag them down and they can test them for alcohol, but this does not allow them, in the view of the mover, to breathalyse them at the roadside. Now, maybe we need some clarification on that.

The Attorney-General: Well, Mr President, can I undertake to try to clarify this in time for the next reading of the third reading stage?

The President: Of course.

The Attorney-General: It is obviously most important.

Mr Lowey: I did not want to show the red light.

Mr Delaney: That was obviously a slip-up there. I did not go by that and just read that out. What I have done is I have asked my own questions to find out, and I understand Dr Mann's situation. If there is something wrong with the vehicle and you are stopped and the police smell alcohol on you, they breathalyse you. That is not random testing.

Dr Mann: After they have questioned you about the original offence.

Mr Delaney: Yes.

The President: Hon. members, it is obvious we are into a grey area.

Mr Delaney: It is a good area!

The President: The learned Attorney-General has offered to clear it up for us and I think that is an offer we should accept and proceed with our consideration of the measure.

So the resolution, hon. members, is that the Road Traffic Bill 1998 be now read a second time. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Now we come to clauses, sir, clause 1.

Mr Delaney: Clause 1, Mr President. This clause creates a new offence of driving or being in charge of a vehicle when over the limit. It also reinstates the existing provisions making it an offence to drive or be in charge of a vehicle when unfit through drink - drunken-driving literally or drunk in charge - and removing the provisions deeming a person over the limit to be unfit to drive.

Mr Lowey: I beg to second, sir.

The President: Does any hon. member wish to speak to that clause? If not, will those in favour of clause 1 standing part of the Bill please say aye; against, no. The ayes have it. The ayes have it. Clause 2, sir.

Mr Delaney: This section, Mr President, is section 5 of the Road Traffic Act. It brings that in, then are inserted the following sections. Am I going ahead of myself or not?

Members: No.

Mr Delaney: No, you are quite happy, are you? In sub-clause (1), for example, it creates two new offences, to drive or attempt to drive or be in charge of a mechanically propelled vehicle or on a road or in a public place when over the limit, with an alcohol in blood, breath or urine over the prescribed limit as in Manx law, not in the British law.

Sub-clause (2) explains that 'in charge' implies there is some chance that a driver might drive the vehicle, a point made by Dr Mann, and I am clarifying that.

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

Clause 2 is a simple point in that this clause gives the police a new power to breathalyse a driver, 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 the certain specific moving traffic offences, and, as I said, such as a broken traffic rear light. I still believe that but we will wait.

It is clause 2 I beg to move, Mr President.

Mr Lowey: I beg to second and reserve my remarks. Could I ask the hon. mover? This is a breath test instrument and it is for driving while impaired under the influence of alcohol or drugs. Can I have an assurance that the machinery is there to detect drugs because 'drugs' is a wide definition, isn't it? There is everything from hallucinatory, to making you sleep, to making you awake, to whatever. Is the machine capable of detecting all those sorts of drugs?

Mr Waft: I think, Mr President, it is purely for alcohol purposes, the intoximeter, and drugs would have to be tested via the bloodstream.

Mr Lowey: Is that so?

Dr Mann: There is currently no test which will detect all the drugs.

Mr Lowey: So how do I get tested for drugs then, if this is saying drugs?

Mr Waft: A blood sample.

Mr Lowey: A blood sample would have to be taken and is this covered in this particular clause?

Mr Delaney: Yes.

Mr Lowey: Right.

Mrs Christian: I think, Mr President, this indicates that whilst this measure deals with alcohol and you can clear the notion at the roadside one way or another as to whether you are under the influence of alcohol within the limits prescribed, presumably then an officer of the view that you are not fit to drive could still take you back to the police station for a test in

relation to possible intoxication or the effect of drugs. So there must be a matter of judgement there for an officer.

The President: Reply, sir.

Mr Delaney: Yes, the one about the drugs surprises me because recently, unfortunately, I have had to take a certain amount of pills and medicines myself and you are warned by the GP that these will make you drowsy and therefore they recommend you usually not to drive when you are taking them, but I know that some, such as certain pills on the market which you can buy in a pharmacy, have the same effect, they can make you very, very drowsy, and I have had experience of this myself, unfortunately, and the situation is that they, I would imagine, would have to be tested, as has been pointed out, by a blood test, but whether or not that automatically makes you committing an offence when you have actually been prescribed them, I would imagine if the GP has not told you not to drive, that is a query that I have raised with this one. If the GP has not warned you or the chemist has not warned you that these drugs will make you drowsy and you are in a traffic offence would you then be still guilty of an offence because you have unwillingly taken the drug not knowing they were dangerous or could impair your driving? The Attorney-General, I am sure, would answer this one.

The Attorney-General: Mr President, the offence, I think, is driving whilst the drink or drugs are in your system. Whether or not you know about that is an immaterial matter, unless of course it was suggested in some way that the alcohol had been placed in a harmless drink: if your drink had been laced in some way, you might have something to say by way of mitigation in court. But the offence is driving whilst drink or drugs are in your system.

Dr Mann: I think the question raised was if a person who is thought to be suffering from having taken more than the limit of alcohol is found then not to have it but still to be under the effect of some other drug, has the police constable then the right to suggest that this person goes to have a blood test? And I think under present legislation that is not the case. This is mainly aimed at drink-driving, purely and simply.

Going back to the original argument as to whether it is of benefit, the breath test is of benefit to those people who have a physical disability. There are people sitting round this table who, if they got out of a motor vehicle, without the police constable knowing who they were or what they had suffered from, would suggest that they were drunk. Now, they are not and would not be, but under the present legislation a police constable could insist that those persons go to a police station. Now, under this legislation they will be protected because they will breathe into a breathalyser and show themselves to be negative. So to a certain extent it will help a lot of people.

Mr Crowe: Mr President, just picking up on that, some proprietary medicines certainly warn you not to drive or to use heavy machinery if you are taking certain medicines for coughs or cold or whatever, so that added to drink could actually put you over the limit. So I think in this awareness campaign that will be launched that all the various alternatives of putting you over the limit should be pointed out to people because I think again it talks about having -

Dr Mann: That is not right.

Mr Crowe: It talks about a constable having a reasonable -

Dr Mann: No, it will only detect alcohol. It will not detect the effect of any other drug, nor the additive effect either.

Mr Crowe: But I am saying it could impair your ability.

Dr Mann: Oh, it could indeed.

Mr Crowe: You might be under the 80 milligrammes for your alcohol but if you had taken a proprietary medicine for flu or whatever, that could in fact impair your ability to drive a motor vehicle. So you are getting borderline cases where you might have an accident due to a mixture of alcohol and proprietary medicines.

Dr Mann: But you would still not show positive on the breathalyser.

The President: Right, would the mover care to wrap this one up, please.

Mrs Christian: Mr President, may I just make another point and that is that, with regard to the comment by the hon. member Dr Mann, he said that if they were found to be clear of alcohol they could not then be checked for drugs. I would have thought that under clause 1 the constable has another piece of ammunition there to check for drugs, irrespective of the breathalyser provision in other clauses.

Dr Mann: Well, technically that is correct but it would be extremely difficult to do.

Mr Waft: I think, Mr President, it is covered under clause 4 to a degree in section 6(1): 'In the course of an investigation into whether a person has committed an offence under section 3A, 5 or 5A a constable may, subject to the following provisions . . .' and one of them is to provide a specimen of blood or urine for a laboratory test. So the course of his investigations may lead him to understand that he is suffering from either drink or drugs.

The President: Now, the hon. member in charge will clear all of these points for you.

Mr Delaney: The point being, as I understand first of all, as one of the persons who does, unfortunately, look awkward when I get out of my vehicle because of my stroke, the fact of it is it will be, as Dr Mann has said, an aid to the police constable to establish whether I am really over the limit or I am not over the limit through my injuries and therefore I will get a breathalyser and that will save me going to the police station and the difficulty and obviously the problems that that might cause. So at least he will substantiate that.

On the drugs side, which I myself raised as the mover of the Bill, if a constable is still convinced, as I understand it, that you are impaired through drugs, he can take you to the station, because, as I said, there are certain drugs which do make you a danger on the road, and there is no doubt about that and that point is fairly clear. If they consider you not drunk but suffering under the influence of drugs, they can take you to the station for a blood test. That still remains the case.

The President: Right. The resolution then, hon. members, is that clause 2 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 3, sir.

Mr Delaney: Can I also make just one little reference back, Mr President? There was a Keys amendment on that clause 2, just to change the ministry responsible in sub-clause (9).

The additional offence can be at an order of the Department of Transport now , not the Home Affairs Department.

The President: That is noted, sir. Thank you.

Mr Delaney: So clause 3. This clause 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.

Dr Mann: I beg to second.

The President: I will put the resolution set out at clause 3, hon. members. Will those in favour of clause 3 standing part of the Bill please say aye; against, no. The ayes have it. The ayes have it. Clause 4, sir.

Mr Delaney: This clause reinstates the existing provisions of the Road Traffic Act 1985, which are already in being, under which the police can require a driver to give specimens of breath or a specimen of blood or urine at a police station for analysing, with amendments principally to take account of the changes in drink-driving offences in clauses 1 and 3, the breathalyser powers of clause 2 also.

Further amendments are a driver need not now have been arrested before being required to provide a specimen. It may be made clear that it is for the police to decide whether the blood or urine should be provided: reinstatement of the thing I said before. The police are given power to detain the driver who is over the limit until he has been sobered up. So even after they are waiting for the specimen to come back, they can detain him until they believe that he is in a fit state to be let from the station.

I beg to move clause 4.

Mr Lowey: I beg to second, sir.

The President: I will put the resolution, hon. members, 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, sir.

Mr Delaney: Clause 5. Mr President, this clause relates to the disqualification provisions of the Road Traffic Act 1985 in schedule 3 of that Act so far as they relate to drink-driving offences, with amendments, consequential or new offences created by clauses 1 and 3 and with two amendments of substance: (a) a sliding scale of periods of obligatory disqualification is provided, with longer periods where the offender was seriously over the limit; and (b) a 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. I beg to move clause 5.

Mr Lowey: I beg to second, sir. Could I ask, in the proposals, why is there no difference in the years, the banning? Because I do believe in the deterrent stakes the loss of your licence is one of the biggest deterrents to stop people from drinking and driving and yet if I am 65 but not over 96, whatever the regulation is -

Mr Waft: Microgrammes.

Mr Lowey: Microgrammes. I will take your word for it, hon. member - there is no difference if I am over 150 to 220 milligrammes. The deterrent ratio is exactly the same, two or

three years, and I would have thought shouldn't it be more or am I reading this wrong, the tables?

Mr Radcliffe: You are reading it wrong.

Mr Lowey: So the sentences are just the same. I would have thought the higher your blood content of alcohol, the longer your sentence of disqualification should be.

Mr Radcliffe: Surely, Mr President, the hon. member is reading it wrong.

Mr Lowey: I must be.

Mr Radcliffe: It gives three examples. There is either breath, urine or blood -

Mr Lowey: I am with you.

Mr Radcliffe: and the proportions of course will be different between one and the other.

Mr Lowey: Yes. I am reading it wrong.

Mr Waft: The breath is measured in microgrammes and the blood and urine in milligrammes.

Mr Lowey: I am quite happy to stand corrected. If I am not sure, I will ask a question.

Mr Crowe: Mr President, it just strikes me that there is absolutely no discretion brought into this at all then, that if somebody is over 80 milligrammes of alcohol per 1000 millilitres of blood, they immediately get a two-year ban for driving. There does not seem to be any discretion for the very marginal cases who might have had to drive the car through some emergency in having to take somebody to hospital, or whatever it is, that they might just have to do that and do the courts have any discretion at all in this in extenuating circumstances if there was an emergency?

Mrs Christian: Mr President, I think again aren't we misinterpreting this clause? Isn't this in relation only to specific offences and where it is in relation to other offences the schedule will apply, where it is rather different. It can be two months, six months, three months, whatever. Are we not, in this clause dealing with only the offences under 3A, 5(1) or 5A(1)(a)? Perhaps the Attorney-General could just clarify that one?

The President: Hon. members, will you address your questions, please, to the mover.

Mrs Christian: Oh, I beg your pardon, Mr President.

The President: Reply, sir.

Mr Delaney: As I am given to understand, Mr President, the court can always take into consideration any circumstances which may have brought about the offence, which is one of the benefits of our legal system and justice system. I am sure any court in the Isle of Man, if a case of emergency was brought up, I would be horrified to think that if it was proved that it was an emergency the situations were not laid down in this schedule but a matter of just common justice that the court would find in favour of the defendant.

The President: Hon. members, the learned Attorney-General has offered to respond to the queries but what I would say again is please address your questions initially to the mover of the measure. Learned Attorney-General.

The Attorney-General: Thank you, Mr President. The table of penalties set out in clause 5 of the Bill applies where a person has been convicted of certain specific offences. If we look at them in turn, if he has been convicted of an offence under section 3A. Now, that is the serious, very serious, offence of causing death by driving a vehicle without reasonable consideration for other persons and when you are driving whilst unfit through drink or drugs. So obviously you have been found guilty of driving without consideration and under the influence. In those circumstances clearly it is a most serious offence which hon. members might feel requires there to be a serious penalty. Equally, under section 5(1), that again is the offence of driving, or attempting to drive, on a road whilst unfit to drive through drink or drugs, again a serious offence, and 5A(1)(a) is the new offence which is in clause 1 of the Bill which is driving or being in charge of a vehicle with alcohol above the prescribed limits. Then finally an offence under section 6(6) and that is the offence of failing to provide a sample, I think.

Now, those are the serious offences which are under the Road Traffic Act 1985, the existing offences, as supplemented by the new offences under this Bill, and I think the policy of the courts is to deter drivers who are guilty of those offences by imposing those obligatory periods of disqualification. There is no discretion, as I understand it, in the court to allow for the fact that the offender is only slightly above the limit or slightly below the limit.

Mr Delaney: If I just read you sub-clause (1) where it says 'required to disqualify an offender for 12 months unless he finds there are special reasons not to do so. The reasons must be special to the offence, not to the offender.'

The Attorney-General: This is in . . . Sorry, Mr President, can I ask which clause?

Mr Delaney: Yes, sub-clause (1) of clause 5.

The Attorney-General: I cannot see that, Mr President, I am sorry.

The President: Your reference line, sir?

Mr Delaney: Clause 5, sub-clause (1) -

The Attorney-General: Is this page 11?

Mr Delaney: Yes. May I just approach the Attorney, Mr President?

The President: Of course, sir.

The Attorney-General: I am sorry to have the member waiting.

The President: No problem, that is fair enough.

Mr Delaney: I have read it right, Mr Attorney, haven't I?

The President: What you are reading is the briefing.

The Attorney-General: The briefing note is certainly as you have said.

Mr Lowey: We are not breathalysing you, Dominic!

Mr Delaney: We will have a drink while we are waiting, Mr President!

Dr Mann: Couldn't he speak to it after the third reading?

The Attorney-General: I am sorry, Mr President, I will have to research this, if I may.

The President: Hon. members, we are getting into an area of some difficulty, as I understand it. We have the mover's interpretation and the learned Attorney-General's interpretation and wouldn't it be as well to hold this particular clause over until we get it clarified and proceed with the remaining clauses and then we can, at our next sitting, deal with this clause and the third reading. Would that be acceptable?

Members: Agreed.

Mr Delaney: That is fine, Mr President, yes. I can only go from the notes I am supplied with and the information I receive and if it is written, it is written.

The President: As they conflict, well, if we can follow that procedure then, hon. members

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Mr Delaney: Thank you, Mr President.

The President: - we will hold over a decision on clause 5 and move on to clause 6, sir, along with the schedules.

Mr Delaney: Thank you, Mr President. This clause contains a miscellany of supplementary provisions, chiefly dealing with definitions of procedures which are contained in several Acts which are referred to and I beg to move.

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

The Attorney-General: Mr President, I am sorry to interrupt. I think that there is a motion in my name to amend.

The President: That is right. Proceed, sir.

The Attorney-General: The motion, which I hope, Mr President, has been circulated to hon. members, seeks an amendment to clause 6, schedule 6. I am sorry, clause 6, schedule 1. It seeks an amendment at line 23 so that we have in sub-clause (4) of the clause: in part 1 of schedule 6 to that Act - (a) for the entries relating to sections 5(1), 5(2) and 7(3) there are substituted the entries set out in part 1 of schedule 1; and (b) after the entry relating to paragraph 6(10) of schedule 3 there is inserted the entry set out in part 2 of schedule 1. Then the motion asks for the insertion of part 1 after 'penalties' at page 14, and then an additional entry, part 2, dealing with a specific offence, namely failing to comply with any conditions prescribed for driving within 12 months after passing the test.

The amendment which is tabled in my name is designed to remedy a mistake in the Road Traffic (Amendment) Act 1996. Section 8 of that Act inserted a new paragraph 6(B) in schedule 3 to the Road Traffic Act 1985 enabling restrictions to be imposed on newly qualified drivers, in particular a speed limit of 50 miles per hour and a requirement for a special plate to be displayed, an R-plate, corresponding to the L-plate to be displayed by a driver who holds a provisional licence. Under paragraph 6B(4) a newly qualified driver who fails to comply with this requirement commits an offence but by an oversight the Act does not specify a penalty for that offence. This amendment inserts the necessary entries in schedule 6 of the Road Traffic Act 1985 making it a summary offence carrying a maximum fine of £1,000 and three penalty points.

Mr President, I beg to move the motion standing in my name:

Page 13 line 23, for subsection (4) substitute -

“(4) In Part 1 of Schedule 6 to that Act -

- (a) for the entries relating to sections 5(1), 5(2) and 7(3) there are substituted the entries set out in Part 1 of Schedule 1: and
- (b) after the entry relating to paragraph 6(10) of Schedule 3 there is inserted the entry set out in Part 2 of Schedule 1

Page 14, after “PENALTIES” insert “PART 1”

Page 15, at the end insert -

PART 2

Schedule 3 paragraph 6B(4)	Failing to comply with any conditions prescribed for driving within 12 months after passing test	Summarily	£1,000	Discretionary	Obligatory	3	Sections 57 and 58 apply
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Mr Waft: I beg to second, Mr President, and reserve my remarks.

Mr Crowe: Mr President, could I just have some clarification on this R-plate then? Are you saying that it is currently law without a penalty, or it is not currently law? So it is currently law?

The Attorney-General: It is currently law, Mr President, but there is no penalty if the new qualified driver does not display.

Mr Crowe: So having passed a test he has to have an R-plate for 12 months?

The Attorney-General: Yes.

Mr Crowe: Right.

Mr Lowey: I think that is sensible.

Mrs Christian: Mr President, could I ask if this is accepted again that publicity be given to both the requirement and the substantial penalty so that the message is driven home?

Mr Delaney: Yes, I can see that this one has to take its place of information to the public on this one because this is one that will probably crop up more often than ever, I would imagine, this situation, so I will bring it up with the ministers of both departments, that is, Home Affairs and the transport department, to make sure that this is highlighted.

Mr Lowey: Could I, as a suggestion, suggest to the ministers that perhaps when people are passing their tests they could be told on the bottom of their form, ‘You must display an R-plate’? There you are dealing with the people who are getting their licences for the first time, or renewed.

The President: Now, hon. members, I have a problem with this particular amendment and the learned Attorney-General, I am sure, can help me. Clause 6 and schedule 6: as there is no schedule 6, what we are dealing with?

The Attorney-General: I do beg your pardon, Mr President, it is schedule 1. I am sorry about that.

The President: Thank you. As long as that is clear, only the printed version has schedule 6.

Mrs Christian: Mr President, I am not clear that it is schedule 1 even. It is an amendment to clause 6.

The President: Are we not dealing with two different Acts here?

The Attorney-General: What we are seeking to do, Mr President -

Mrs Christian: Is to amend clause 6(4).

Dr Mann: We may well be holding another clause over.

The President: Well, let us get it right.

The Attorney-General: Yes. Mr President, the object of this amendment is to insert. . .

Mr Crowe: Is it not the Road Traffic Act 1985?

The Attorney-General: There are so many schedules to this.

Mr Crowe: Is it schedule 6 of the Road Traffic Act 1985?

Mr Delaney: Those are the words that are missing actually.

The President: Yes.

Mrs Christian: That is 7, but in 4, line 13, the amendment to clause 6.

The President: We are amending an earlier Act surely.

The Attorney-General: Mr President, clause 6 of this Bill, you have in sub-clause (4), as presently drafted, in part 1 of schedule 6 to the 1985 Act there are various entries and you may know that there is a very extensive list of offences with their various penalties set out in schedule 6 to the Road Traffic Act 1985. Now, what I hope this motion will achieve is that part 1 of schedule 6 to the 1985 Act is going to be amended.

The President: But we are actually dealing with schedule 1 of. . .

The Attorney-General: We are actually, hopefully, Mr President, dealing with schedule 6 to the 1985 Act.

The President: Yes, well that is the point I am not clear on. There is no mention of the 1985 Act in the amendment.

Dr Mann: Could I suggest that clause 5 and clause 6 and the third reading be taken at the next sitting of this Council?

Mr Radcliffe: Yes

The President: I am wondering, Mr Attorney, if in fact, we have held over clause 5, now we hold over clause 6 as well and that would give you an opportunity to clarify this position to your own satisfaction.

The Attorney-General: Yes, certainly, Mr President. I am sorry this has not been dealt with.

The President: There is no problem here and if the mover would agree to that.

Mr Delaney: I am happy with that, Mr President, because I cleared my mind because I was informed that it was applying to another part of the 1985 Act.

The President: The two clauses along with the schedules will be held over for consideration at our next sitting and then we will deal with the third reading as well because there are answers to be forthcoming in relation to questions posed on this particular examination of the clauses. So given that, hon. members, and if you agree to that course of action, that concludes our public business for this day and the Council will now sit in private.

The Council sat in private.