

Licensing (Amendment) Bill 2012
First Reading approved

4. Mr Lowey to move:

That the Licensing (Amendment) Bill 2012 be now read a first time.

The President: Item 4, the Licensing (Amendment) Bill 2012. I call on Mr Lowey.

Mr Lowey: Thank you, Madam President.

This is a Private Member's Bill, but I would like to say that the Department of Home Affairs is fully in support of this particular piece of legislation. It was included in the rather large Bill that hit the rocks a little while back as being too large and they would introduce it, but they are very supportive of this piece of legislation.

Madam President, the Bill has two main provisions. It provides that whereas, currently, areas may be designated within which a constable may order a person to desist from consuming alcohol, a constable should be able to order a person to stop consuming alcohol in any public area of the Island. Secondly, it provides for an officer to dispose of liquor seized from a minor as he or she sees fit, rather than have to seek a court order for disposal or to have to hand it over to the parents or guardian.

In various parts of the Island there are designated areas made under section 76 of the Licensing Act 1995, within which an offence is committed if a person consumes liquor after having been warned by a police officer not to do so, and this carries a punishment, on summary conviction, of a fine not exceeding £500. There are more applications to create such areas in the pipeline. There is also public confusion as to what is permitted in the present designated areas, and the Police can have problems where, by moving across the road, a person is no longer in the designated area. By encompassing this provision Island-wide, it would also eliminate the need for a large number of unsightly signs in the major towns marking the entry to such areas.

Section 76 also provides an offence of refusing to dispose of an open vessel containing liquor when required to do so and gives the police officer the power to seize and dispose of a vessel containing liquor as he or she sees fit. These powers, at present, only extend to specified areas and the intention of this Bill is to extend the powers to cover the whole Island.

We are all aware of problems that have been encountered, and are still being encountered, by police officers in relation to anti-social behaviour, and these regularly involve juveniles and alcohol abuse. Offences of drunkenness have increased during the past few years and there has been an increase in the number of reported instances of minor criminal damage attributed to both juveniles and adults who have been drinking. Extending the area to cover the whole Island would, I feel, provide the Police with additional discretion to deal with inappropriate potential anti-social behaviour.

At present, a person warned within a designated area by a policeman simply has to move out of the area and the Police then have to either ignore the problem or go through the whole arrest procedure. When the mover of this particular piece of legislation in another place sought information from the Department of Home Affairs, he was informed that this proposal was included in the provisions of the Criminal Justice (Miscellaneous Provisions) Bill 2010. As Members are aware, this was a very large Bill and it failed to complete during the life of the last Government. It is being presented as several smaller Bills, but the mover was then... that the provision would be included, but this particular Bill would actually bring that forward, and I do not think that is a bad thing. Having had discussions with the Department and the Hon. Minister, they have offered their full support to bringing this section of the Bill forward.

I cannot emphasise too strongly to Hon. Members that this provision will not stop drinking of alcohol in public places, but it makes it an offence to drink if causing a nuisance and after being asked to stop by a police officer. The exercise of the power conferred on a constable by this provision will be governed by a code of practice; in other words, regulations. Sitting or standing outside a pub or having a picnic in the park will not be affected. The power will be a conditional one preventing overzealous police constables using their powers to prevent, for example, picnickers having a glass of wine with their meal, and I will refer to this shortly.

What this provision does do, I would contend, is it stops law-abiding persons being adversely affected by people whose behaviour is unacceptable. The Department of Home Affairs consulted very widely, and of the 44 groups... and the proposal was very well received by the vast majority. There were a couple of points dealing with a constable's powers and a comment that the matter of seizure from minors should remain with the courts, but the overwhelming majority were in favour.

I would like to point out to Hon. Members that under the Police Powers and Procedures Act 1998 there is a code of practice for the Police in regard to Police behaviour which makes them subject to disciplinary procedures for not complying with the code.

If this Bill becomes law, the code of practice will be reviewed to define the Police limits in exercising their new powers. Hon. Members will see in the Bill the fines for the offence allow for a figure of up to £500, which I believe is the right level at this time.

I therefore move that the First Reading of the Licensing (Amendment) Bill 2012, in respect of the disposal of liquor and drinking in public places, be approved. I beg to move.

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

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

On first sight of this Bill, you always raise concern that it may be a sledgehammer to crack a nut, but on going through the Bill, and certainly from the explanation in the speech by the Hon. Member, Mr Lowey, there is no doubt about it this is a worthy piece of legislation. It certainly is designed to deal with the nuisance element and that is contained in there, that there are restrictions on the actions of the police officer, so that the warning may only be given if the person concerned is acting in an indecent or disorderly manner, using obscene language, and so the list goes on in the provisions in the Bill.

I think that is very important because certainly, as Mr Lowey mentioned, what we do not want to be doing is introducing legislation where we find the undesired effect is that we prevent people from having the proverbial picnic in the park, a drink out on a summer's evening etc, because the majority of people will behave themselves and enjoy themselves.

I think the Police have been quite frustrated over the years. Certainly in my previous life, when working for the television, we have been out and about with the Police, filming news items, seeing some of the problems they have. Mr Lowey is right – they will simply move on to another area and the whole process has to start again, and the public get very angry as to why these people are not being dealt with. No doubt, like any small community – and probably Mr Butt will know from his time in the force – you probably see the same names and faces over and over again, causing a nuisance around the town, so I think this is a worthy piece of legislation.

I am glad it has been taken out of that huge miscellaneous provisions Bill, which had some quite undesirable provisions in it. Of course, if you have a larger Bill where there is quite a lot which is worthy and then there are others, it is a shame for the worthy bits not to go through and the Bill to fall on the back of some of the other provisions. So I am pleased that that Bill is going to be brought through in smaller chunks, and in this case it is a Private Member's Bill.

The code of practice, again that is very important so that police constables know where their boundaries are and have guidance, because quite often they are in situations where they have to deal with matters which are different every time, so they need to know about what is acceptable.

I think the fine of £500 is probably the right amount, because for somebody causing a nuisance of themselves that is quite a sting for them and I think it will certainly focus their mind if they are out and about on a Saturday night and end up having to pay £500. So I support the provisions in this Bill fully.

The President: The Hon. Member, Mr Butt.

Mr Butt: Thank you, Madam President.

I will support this Bill, but I do have some small concerns which I will ask the mover to address maybe in the next reading. The original intent of the original section 76 – in 1993, I think it was, or 1995 – was to do with small pockets of people who congregated in parts of Douglas – mainly the Villa Colonnade, the Rose Gardens, Derby Square I think was another place – where two or three people would get together and would be drinking in the evenings, often with some homeless person at the centre of the drinking, and it was a way to try to move them on so they were not drinking in a public place. Often, in reality, these people were not causing any nuisance; they were just unsightly and it gave a bad impression of the town. This legislation was brought in to deal with those matters and it designated places, and therein lies the problem. As Mr Lowey said, they can be moved on and go across the road, and straight away they are not committing an offence. So there is good merit in making it Island-wide, as long as you protect the ordinary person who wants to go on the beach and have a glass of wine or whatever, the person who is acting in a social way on a one-off basis, often, and this Bill does seem to protect that.

The bit I am concerned about is that those people who used to congregate in the Villa Arcade, as long as they conform with (a) to (e) in part (2) about indecent behaviour, indecent language, not intimidating or harassing the public, not disturbing the peace in any way... as long as they sit still and behave themselves, we will go back to exactly what we had before. We could get people sitting on benches in the open air all day, drinking, and as long as they behave themselves, they will be not subject to anything under this Bill, so we could actually go back to

where we were. Again, they will be unsightly and will give a bad impression of the town, but as long as they conform with (a) to (e) here, they cannot be moved on or they cannot commit an offence.

So, in a way, we are going backwards to some extent. The Police's powers are restricted by these sections in part (2) of 76 and I would like to know from the mover how they intend to deal with that, because if I was an alcoholic who was homeless maybe, and sat still on my own on the promenade all day with drink, I could not be dealt with.

Thank you.

The President: The Hon. Member, Mr Callister.

Mr Callister: Thank you, Madam President.

I am inclined not to support this Bill and I will need to have a lot of information from the mover at the Second Reading stage to persuade me to do so.

The Hon. Member, Mr Turner, said this looks like a sledgehammer to crack a nut, and precisely that is it. This takes in all the public of the Isle of Man. Every single person could be involved here, and all it is really for is to deal with a small element of nuisance-makers, so therefore it is a catchall for everybody, but only a small element are involved. The nuisance element has been referred to, small pockets of people, and it is being sold to us on the basis that it will protect the rest of the people who might be disturbed by these incidents. It does not mean that you will necessarily be able to drink in your railway carriage as you are going along or on your picnic in the countryside, or sitting in a tent at Glen Wyllin, because it tells us here... Given there are restrictions on the police officer, it says:

'... a person who appears to be committing or to have committed an offence...'

– how they would know that some time later, I do not know –

'... in any place to which at the material time the public or any section of the public has access, on payment or otherwise...'

I have concerns about it. I would like the mover to give me as much information as is available about what has happened in the areas which are currently designated, what has occurred to date in those areas. I want some statistics, I want some comprehensive information on cases that have been taken to court or to the magistrates, or whatever and whether or not, if there were any cases at all, they involved juveniles. I would like a list of all the groups who have been consulted on this.

As far as overzealous police officers are concerned, you *can* get overzealous police officers.

Whether I vote for this or not depends on what I hear at the Second Reading, Madam President.

The President: The Lord Bishop.

The Lord Bishop: Madam President, to me this looks like a very commonsense Bill. I cannot see that there is a problem with untidy alcoholics. I have known a lot of untidy alcoholics in my time (*Laughter*) and I am not sure that they are really a problem, but troublemakers using alcohol clearly are (**Mr Wild:** Yes.) and that is what this is intended to deal with.

The President: The Hon. Member, Mr Braidwood.

Mr Braidwood: Thank you, Madam President.

I am supportive because, in actual fact, a lot of this legislation is already in. (**Mr Lowey:** Absolutely.) I think Douglas was the first place to have designated areas and, as quite rightly said by the mover and by the Hon. Member of Council, Mr Butt, they used to move across the road. There are other areas throughout the Island. I think Port Erin was one which encompassed all the area of Port Erin.

So all this is doing now is making it Island-wide. I cannot see an actual problem. Even now, there is a big distinction between law-abiding citizens who are having a glass of wine in a park or on the beach, or whatever. Really, as the Lord Bishop said, what we are looking at and what we are going to target are those people who have a problem with alcohol or are making a nuisance of themselves. A police officer, at the present time, in the legislation, has to warn somebody first and if he sees that individual again in a public place, he can then take the alcohol off them and dispose of it.

Mr Butt is quite right, there were problems in the Rose Gardens, there were problems in Derby Square with congregations mainly of young people, causing a nuisance, and the Police used to go into that area, and what has tended to happen, particularly around the Rose Gardens and everything, is they put additional lights round, and it is amazing, the additional lights dispersed a lot of the problems that were in that area.

So I cannot really understand, and I think Mr Callister is saying this is a sledgehammer to crack a nut. No, the legislation is already there. What we are doing is encompassing all the Island, as some areas are already encompassed – such as, as I said, Port Erin, I think Peel is one, Port St Mary, I think, is another one. So really, the Police are there. Yes, you can get overzealous police officers. If it is a code of practice, all they need to do is use their initiative, more than anything. So, if they see a family where the parents... one of whom is not drinking, if they are driving, or whatever, is having a nice glass of wine, there is no problem at all.

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Madam President.

Yes, it has been said by many others, but it is just worth repeating this question of changing the designated area, where people could move outside the designated area and causing a problem... Changing it to a public place seems to me a sensible solution and it makes it simpler for the Police to give a warning, rather than having to go into a prosecution, to charge them for an offence, rather than give them a warning.

Thank you, Madam President.

The President: The Hon. Member, Mr Wild.

Mr Wild: Thank you, Madam President.

I was just going to agree entirely with the Lord Bishop. It feels like a commonsense Bill to me. I think if somebody was to sit in a public place and devour vast quantities of alcohol, it would become evident at some point in time, or the Police would be able to interpret the actions, but to me this just simply gives a bit more flexibility in managing what can be a problem for the Island.

I was just going to commend the Hon. Member for Ramsey, Mr Singer, for introducing it as a private Bill, (**A Member:** Hear, hear.) and I am supportive.

The President: The mover to reply.

Mr Lowey: Full house! I am delighted we have taken... There is nothing like a debate on alcohol to heighten the experience and raise temperatures, and it is right that people should. I do not know whether I am the only teetotaler in this room, actually, but the reality is they give me alcohol Bills to take through on a regular basis. I must declare an interest: I am teetotal.

The experience, though, as most Members have said, is not... The existing law is already in place and in practice. It is in the light of the experience of that practice...

If I may deal with Mr Callister first, because I think he is right to raise concerns – he has these doubts in his mind. I did mention, and I am very happy to circulate, the list of 44 people whom the Department consulted on the legislation, very happy to do that. I would read part of a letter that came in from Ramsey Commissioners, quoting Inspector Kinley:

‘Inspector Kinley has advised that from a policing perspective, the main issues raised by the community in Ramsey particularly relate to anti-social behaviour regularly involving those concerned with alcohol and juveniles. Police resources are regularly involved in dealing with persons in the Ramsey town area who have been drinking. Many of those are under the age of 18. Offences of drunkenness have increased during the last year and there has been an increase in the number of reported instances of minor criminal damage, often being attributed to both juveniles and adults who have been drinking. The Commissioners of Ramsey would agree with the views expressed by Inspector Kinley as also representing the views of many in the community.’

That is the experience of people on the front line, dealing with the problems. It is like most Members have said, we try... and the Police... Let’s be fair: the Police are our agents, acting on behalf of the law, and the Police do behave.

Let me give you an example of what I would call practical policing within the law as we have got it now. The TT Races are policed by the Isle of Man Police Force in an exemplary manner. We know of the Bushy’s tent, we know of the drinking that goes on there. Lots of the problems are not created there by the way in which the Police operate. They can go in, they can move people on, they can create a good rapport, and that, I think, is mainly where the Police in the Isle of Man do score over many other areas in the United Kingdom, for example, in dealing with large crowds. These are not large crowds, in the main; these are what we would call groups of young juveniles doing what young juveniles do, trying to be loud and thinking that noise somehow impresses those that are around them. But they cause a lot of nuisance to a lot of people and they have got to be tried to be moved on and restrained at that particular moment.

We have a Bill which actually... The law at the moment is you have to designate an area. They quickly cotton on to the fact that by moving across the street they are outside that area and they can continue, and they goad and they push. This Bill, I think, will prevent that from happening. This is the life experience that we have

had under the present law, and I believe that this particular piece of legislation will help to dampen that down, to prevent it. Once people know they cannot do that by just moving across the road, it will stop another degree. It will not stop everybody. I am afraid there will be one or two who will be caught by the law, but that is the law.

The general view is that if it is moved Island-wide it will help. It is a sensible, in my view, piece of legislation. I do take note of all that the Members have said, and particularly Mr Butt, and I do tend to agree absolutely with him why we brought it in in mainly Douglas, and the colonnade in particular, and it was getting offensive to a lot of people to see people drinking and urinating and other associated things that went with that. I do not agree with his conclusion that by passing this Bill we would actually be going backwards, and I will try to explain that at the Second Reading.

I believe it will be extending the existing law, which has controlled that to a very large degree. This is dealing with a new extension of what I would call juveniles who are pushing at the margins and extending their... interfering with the ordinary citizen going about their enjoyment of their town centre on a Saturday night or on a summer's evening, which is legitimate, and they should not be subject to drunken abuse which is caused by the consumption of alcohol.

This Bill will not cure everything – it does not pretend to cure everything – but it does give us the best of both worlds in the sense that it prevents a lot of these things from being allowed to continue by just moving their operation to the other side of the street. The other side effects, of signs and all the rest of it, are peripheral, but I think they are important. I think we should be constant in our vigilance in trying to curb the excesses of alcohol. As we said on the sunbeds, these are things which really are within our control and we should do everything we can to do it. I think this Licensing (Amendment) Bill goes a long way to do that and I think it is a sensible piece of legislation, as has been said by the vast majority of people here.

I have taken note of what the Hon. Members have said and I will expand, hopefully, a little bit more on that next week when we take the Second Reading of this particular Bill.

I thank Members for their interest.

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

That concludes consideration of our Order Paper today. The Council will now adjourn to 4th December, but if Members could just sit in private for a moment to look at our scheduling of business for the next week or two.