

Licensing (Amendment) Bill 2012
Second Reading approved

4. Mr Lowey to move:

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

The President: Licensing (Amendment) Bill 2012, Second Reading. I call on Mr Lowey to move.

Mr Lowey: Thank you, Madam President.

This Bill seeks to amend the Licensing Act 1995 in respect of the disposal of liquor and drinking in public places. There are two main provisions. Currently, a constable may order a person who is causing a nuisance to stop drinking in public areas of the Island designated for such permissible intervention – this Bill will permit the constable to act in all public areas of the Island. Secondly, the Bill provides for an officer to dispose of liquor seized from a minor as he or she thinks fit, rather than as at present having to seek a court order or to hand the liquor over to a parent or guardian, both of which are time-consuming matters.

There are designated areas on the Island, specified under section 76 of the Licensing Act 1995, within which a person commits an offence if, after having been warned by a police officer to stop drinking liquor, he/she continues to do so, and this carries punishment of a fine of £500. There can be, as I said at the First Reading, problems if a person, having been warned, moves to a non-designated area and continues drinking, when normal arrest procedures then have to take place. By encompassing the provision Islandwide, it controls also the need for any unsightly signs in the major towns marking the entry to such areas.

Public areas are defined in the Bill. The Bill will protect those people who are out socially from being adversely affected by persons whose behaviour is unacceptable. The Department of Home Affairs consulted widely – and I have issued you with a list of those, as requested last week – and has received strong support for these measures.

There are two important points which I want to stress. This Bill will not stop law-abiding people out in public areas from having a drink – whether outside a pub or having a picnic, for example. An offence is only caused by a person who is causing a nuisance because of drinking or making a noise and refuses to stop drinking when requested to do so by a police officer.

The question was asked about overzealous police officers, and under the Police Powers and Procedures Act 1998 there is a code of practice for the Police in regard to Police behaviour, and they are subject to disciplinary proceedings for not complying with the code. If this Bill becomes law, then that code of practice will be reviewed to define the Police limits in exercising their new powers.

Madam President, last week, when Mr Callister asked for the list of people who had been consulted... I have given the list there, and you can see there are 44 people – 44 organisations, rather – that actually... There were only two queries raised, and all were in support: one referred to an overzealous policeman, and as I said, these regulations are going to be reviewed, so that has answered that particular point that was raised by one of the people who were consulted; and the second individual was... not the overzealous policeman... one was the amount of alcohol that was involved that could be confiscated, and that is actually defined also. A hip flask would not be confiscated; that would be acceptable.

Mr Braidwood: Good, I can still go walking!

Mr Lowey: Can I come to the points that were raised last week. Again, Mr Callister asked for detailed statistics. I have got the last two years' Chief Constable's Reports, which delineate the amount of drinking offences that were committed. I am afraid last year was an increase of nearly 20% for drinking offences – not all of the minor cases that we are dealing with here, of annoyance. Can I just say to Mr Callister, as is my wont, last Sunday morning I was doing my usual thing, listening to Mr Callister broadcasting on the radio with his excellent programme of miscellaneous music, which I rather like.

Mr Crowe: Is this advertising for you?

Mr Lowey: The news came on and I was greeted by the Police telling us that it was an offence to make a noise and annoy your neighbours, that it was a criminal offence and that it should not happen – quite rightly too, just prior to the Christmas season when we all tend to be just a little bit over the top. It was preventative. A lot of this is preventative. What the statistics will not show is the number of times the Police had to act in situations and diffuse them. People responded to the request to move on, to stop drinking, and that is the continuum of policing, but nowhere in the statistics will that actually show.

I think most of us would agree that we do have a problem with drink-related offences of all types. Records of the Chief Constable... and I have not issued Members with a copy of it but I am very happy to, but it will show that there was an increase last year of nearly 100 offences, which is equating roughly to about a 20% increase.

The Police welcome this Bill. I quoted last week the inspector from the north of the Island whose experience was being explained to the local commissioners in Ramsey, and he would welcome this extension of powers to deal with the problem. It will alleviate what I would call bureaucracy by not having, if you have taken drink from minors, to go to the parents and give the... The Police actually said to me that sometimes they went to the homes, the parents were not in – they were out drinking – and they would have to wait and then give the drink to the parents, which was not perhaps the best and wisest thing to do in certain circumstances. However, this will give the policeman the right, which will be codified in their code of practice so they cannot leave it to one side and say, ‘I will dispose of that later.’

Another very important point was raised by my good friend, Mr Butt, illustrating it by the Colonnade people we had – I use the word ‘vagrant’, but in a nice way – who used to inhabit the Colonnade area of the town, the Rose Garden etc, and it has now been... But if I can remind Mr Butt, when we introduced this Bill, nearly 20 years ago, there was a different atmosphere and a different world. I have to pay tribute to the third sector here, and I am not cosying up to the Bishop, but Street Angels, Kemmyrk... They have got houses now to go to. We have got more people looking after young people on the streets. We recognise the problem and the third sector is helping to alleviate that problem in conjunction with the Police, and so I think that there is a difference, but in the clauses I have been assured that the same wording will catch people in that area.

If I can go to (c):

‘(2) A police officer may not give a warning under subsection (1) unless it appears to the officer that the person concerned – ... (c) is acting in a manner that has resulted, or is likely to result, in any member of the public being intimidated, harassed, alarmed or distressed;’

Therefore, it is within those frameworks and those parameters that a person who would be walking past the Colonnade of old and could see somebody... They could be distressed, they could be harassed, and that is how they have the ability to act. They would be able to do that, even today, so I would like to reassure the Hon. Member that the new Bill will carry forward the successful interpretations plus what I would call the third sector involvement now in these social problems. The Isle of Man – and the Bishop would confirm this – has these problems. Although they are not maybe as acute as somewhere else’s, they are still acute to the individuals concerned and there are steps being taken to alleviate them.

This Bill, I think, will assist what I would call the general public in being able to go around in their lawful business and in a manner that is not disturbed by people being intoxicated and perhaps being over-boisterous in their behaviour. It has the full support of the Department of Home Affairs, the Police, and it also has the unanimous support of another place that has passed this legislation.

Therefore, I would move the Second Reading of the Licensing (Amendment) Bill 2012.

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

The President: The Hon. Member, Mr Downie.

Mr Downie: Thank you, Madam President.

I would like to speak in support of this Bill because I do not think that the legislation we have at the moment, the current Act, actually works. The best example I can give of that is that when the warmer weather is on we have people who buy drink from the hostelrys on the promenade, they go across to the other side of the road, they sit on the wall where the children’s paddling pool is, they break their bottles, they urinate behind the wall, they behave in what I think is unsatisfactory behaviour, and sadly, for whatever reason, the Police just do not seem to want to know.

During my time as Minister for Agriculture, we tried to improve facilities down at places like the Curraghs, and sadly people were going down there –

Mr Turner: Claddaghs.

Mr Downie: The Curraghs.

Several Members: The Claddaghs.

Mr Downie: Well, the Carragh...

Mr Braidwood: There is ‘Curraghs’ and there is ‘Claddaghs’.

Mr Downie: Sadly, people were going down there, they tore the fences down, they burned them, there were wild parties going on. I seem to recall a former police officer telling me that he rounded a group of unruly youngsters, who had been involved with drink, from this area, took them to Ramsey and let them make their own way home, and that was part of resolving the problem.

I meet endless people who go down to the Smeale and places like that, who like to have a social drink, a glass of wine or beer, sitting there in the summertime, then lo and behold, groups of young people arrive and misbehave, get drunk, cause damage, and I think although I have painted a picture here that is probably not akin to what normally happens in the Isle of Man, these are the situations that arise, and sadly we have not got any real teeth to deal with the matter, other than to try and move people along.

So I support the Bill in its present form, but I also support the commonsense approach that the Police take from time to time, because in TT week there is not enough room for people to be in the pubs, drinking. I will take my hat off to the members of the licensed trade who have invested, like the Queen's Hotel, where they have built facilities in the front of their premises where you can go and sit in there and have a social drink. There is no requirement in this day and age for people to be out and about, drinking out of bottles and smashing them in the streets. To me, that is a thing of the past, and if we are ever going to raise the standard in the Isle of Man, I think we have got to get the message across that behaviour like that is not acceptable. You only have to go through the street sometimes on a Sunday morning and see all the broken bottles and see what has been going on in the doorways to see that this is unacceptable in this day and age.

So I would support what we are trying to do within this Bill.

The President: The Hon. Member, Mr Callister.

Mr Callister: Thank you, Madam President.

I will thank the mover of the Bill for supplying this list of persons and bodies who regard this Bill as being useful. I did not get the information from the mover as to, under the present legislation, how many arrests have been made or ASBOs issued. My suspicion is that there have not been any, (**Mr Lowey:** There have.) but the Member might be able to correct that.

Whilst this might be an impressive list, it does not necessarily deter me from some of the points I need to make, I feel, in relation to this Bill, because what we have... and I think I have said this before. We are talking about small elements, small pockets of people, a nuisance element which can easily be dealt with under the laws that we have existing at the moment.

If you look at page 5, 76(2), an officer looking at the situation... that an offence 'is likely to' result – on three occasions there in subsections (c), (d) and (e) – in a member of the public being intimidated. I do not know how on earth he can say that it is likely to intimidate or harass a member of the public.

It also – with the fine that is being... not exceeding £500 – leads me to thinking that this will be moving on towards fixed penalty charges, fixed penalty fines again, rather than having to go through the court procedures.

The Bill has arrived here, Madam President, as a result of legislation that was put through that was quite unworkable because in no way could the separate designated areas be handled under the legislation. It was destined to fail, it was flawed from the start, and it was never going to achieve what it set out to do. This amendment Bill now seeks to solve that problem by widely designating it across the entire Island, though I do not know if it extends to the Calf of Man, but somebody described it as a sledgehammer to crack a nut. That is a perfect description for it. It is just going too far to deal with a matter that is not such a massive matter. The Police like it, of course, because it will make their job easier.

The problem of drunkenness and rowdy groups has been dealt with in the Isle of Man through all my lifetime. If you think about the Scottish wakes weeks that were held here, there were horrendous battles and rows and fights and broken bottles and goodness knows what, and threats to people. They were dealt with with the present law that we have, so why can we not simply deal with these incidents in the same way now?

I think there must be sufficient methods of the law available to the Police to deal with these issues without going into the length that this has to go. I also think the Bill, Madam President, is dangerous in what it could lead to. It could very well provide the basis, in fact, for a number of regulations that will inevitably be tagged onto it. These could actually then designate areas within the Island where there will be drinking forbidden entirely, and getting that through as an Order in Tynwald, or to vote that out as an Order in Tynwald, is very difficult indeed.

There are also *strong* lobbies here and elsewhere who want to treat alcohol and drinking in the same way that tobacco and smoking have been dealt with, and that is virtually blanket bans, really, when you come down to that. With tobacco, clearly there are health problems involved that can be harmful to other people. The people consuming alcohol can only harm themselves. I think this all-Island proposal is out of proportion to the offences that are being committed.

The Hon. Member, Mr Lowey, referred to traffic offences and how that has grown from what was not to be a terribly onerous matter for the public. It was only going to be in the areas that were dangerous, on corners... I remember all this being said, (**Mr Turner:** So do I.) and this also can grow into something that is much more than simply what it is on the face of it here. So, those are points that I wish to make.

I think, in fairness to the Member, I will go through with the clauses, but I cannot guarantee the support at Third Reading.

Thank you, Madam President.

The President: The Hon. Member, Mr Butt.

Mr Butt: Thank you, Madam President.

Firstly, I would like to start off by saying that I do think that drinking in the Isle of Man is a problem. I think it is a big problem for the Isle of Man overall, and there does need to be some sort of curtailment of the amount of drinking that goes on amongst particularly young people and how it does damage and destroy families. However, I do not think this Bill has a lot to do with that.

If I can just give a bit of history, perhaps, on the Bill, if you think back to the 1960s and the 1970s, people used to sleep out in the shelters, actually live in the shelters overnight, and the only job of the Police in those days was to give them a nudge at night and make sure they were still alive, and that was what we used to do.

Then, around the time of the original Bill in 1995, when that came in there came to be one person – and I think we had better call him Ted, for the sake of accuracy – who slept in the Colonnade shelters at the Villa Marina. He slept there and he drank, and he was untidy and he was scruffy. He did not cause any problems, he was not loud, he was not abusive, he did not commit any offences; he just slept there and lived there, but he did attract to him lots of other people who sat with him and sat drinking all day. The original Bill was brought in purely to deal with him and his acolytes who hung around with him and moved along with him, and that was why the Bill was brought in. Gradually, the public places had to be extended because people – Ted and his colleagues – used to move around to avoid that.

Douglas promenade – I think the whole of the promenade – is a designated area, so the part Mr Downie mentions is part of a designated area. I think the mover, Mr Lowey, when he moved this, actually argued what I am going to say. The previous Bill has been in existence for 17 years, and you do not see those problems on the promenade any more. You do not see people sleeping out, drinking on benches all day; it just does not happen any more. The Bill has actually been effective. People coming out of pubs and having a drink across the road is a different issue, but people sleeping out and using the streets as a public place to live in and to drink in has virtually disappeared. The Bill has been effective.

I know that there are problems with designated areas being different and separate – that is a messy way to do it – but it has worked, it has been successful. So I think, in a way, he has argued against his own new Bill. The fact that we have Kemmyrk and other organisations helping as well has also helped the problem, so again the problem as it was has dispersed and disappeared. The Bill has worked. To bring this in now to make it Islandwide – a good idea for the Police, obviously; they have not got to worry about where they are standing or where they are talking to people – I think, as Mr Callister – it was his phrase originally – is a sledgehammer to crack a nut, and that has really crystallised my thoughts on this.

My problem is with section 76, with the five conditions whereby a police officer cannot warn them to move on unless they satisfy those conditions. This is down to the interpretation of a police officer. In fact, every one of those five is an offence under the Public Order Act, the Licensing Act... Provoking behaviour, breach of the peace and disorderly behaviour – all those are actually offences. It is being left to the police officer to decide whether an offence is being committed or not before he moves somebody on, and it could be you sitting at the Smeale with your glass of wine. It could be you. I would say let the court test those out. If there is an offence being committed, let the court deal with them. If there is disorderly behaviour by a person in the street drinking, let the court decide. If they are causing harassment and alarm and distress to people in the street, let the court decide. It is not for a police officer to decide. If he thinks there is that going on, he should arrest the person and take them to court. I am worried that the police officer could use what are quite strong powers to stop people who are behaving properly, who are drinking in the street, from being moved on.

My other point, which I made last week, is the unintended consequences of this could be that if the Police act diligently and properly and stick very strictly to this list of five, if people like Ted and his colleagues were to be around today and living on the promenade and sleeping on the promenade and on the benches, if they behaved themselves totally, they could not be moved on. So, in a way, it would be a self-defeating act: we come back to where we were in 1995. You would have people living on the streets again, living on the benches and drinking all day. As long as they did not upset the public, cause alarm or harassment, did not urinate, did not become indecent, did not shout, did not cause disorderly behaviour, you could – and I do not think we will, but you *could* – revert back to what we have now. So, in a way, I think this Bill is flawed in that regard. The consequence could be that we could go back to where we were in 1995.

The President: Lord Bishop.

The Lord Bishop: I instinctively want to support this Bill.

Perhaps not a lot of Members of the Legislative Council have had what we might call a tramp alcoholic sleeping in the doors of their house for 11 years, which I had. Gary was a young man who, at the age of 18, had become an alcoholic, had married. By the time his child was born, his wife had thrown him out of the house. Some 14 years later, he managed, by some means or other, to get in touch with the ex-wife and met the daughter in a park with the mother. Gary was asked by the daughter if he would buy her an ice-cream, and he said, 'I told her I couldn't because I hadn't got any money. But I had got money; it was in my pocket. I knew I had to spend it on alcohol. I couldn't buy my own daughter an ice-cream.' He was an interesting man. He died, in the end, of cold one Christmas after I left that parish.

Alcohol misuse is a *major* problem. I think this Bill does, in some way, help us to deal with it. I do not think it is a sledgehammer to crack a nut. I think it allows us to use the nutcracker in a variety of contexts, and it does rely enormously on the discretion of the Police. (**Mr Lowey:** Absolutely.) The third sector – Kemmyrk, Street Angels, and so on – do work closely with the Police, and I think they work very successfully in many different ways in order to achieve what we are trying to achieve, which is not just a matter of order but hopefully, long term, a possible opportunity for those who are learning a very foolish way in life, which is the misuse of alcohol, to find a better way.

I too have problems with clause 4, with the revision of clause 76 about drinking in public places, but I will raise that if we get to the clauses stage.

The President: The Hon. Member, Mr Braidwood.

Mr Braidwood: Thank you, Madam President.

As a non-teetotaler, (**Mr Callister:** Drinker.) (*Laughter*) I am supportive of this Bill. I think I was Minister for Home Affairs and brought in some amendments to this to make designated areas in Douglas, and as has been mentioned at First Reading and has also been mentioned during the Second Reading, it was awkward for the Police because we did designate the promenade. Initially, I think it was all of Strand Street, Castle Street and along the Colonnade, but again the Police were very frustrated because people would be drinking at that time... They had to say 'Stop drinking in public...' but then they would move to the area which was out of the designated area. So, with this Bill encompassing all the Isle of Man, I think I said at the First Reading there are areas – I think Port St Mary was one, Port Erin was one – which encompassed all the boundary of Peel as a non-drinking area.

It has been mentioned it does come down to the interpretation of the police officer. You can have officers who are overzealous, you can have those who are more flexible, so we are relying on the discretion of the police officer.

I will be supporting the Second Reading because I do feel that although the Hon. Member of Council, Mr Butt, says he feels that it goes back to the 1995 Act in some ways in regard to clause 4 and section 76... but overall, I am supportive of the Bill.

The President: The mover to reply.

Mr Lowey: Thank you, Madam President.

First of all, again, thanks to Hon. Members.

We have got contradictions, really, haven't we? Let me deal the last point about interpretation: that is reality. If we give the Police authority to act on our behalf, it is interpretation of the law. We have to rely on their judgement. We rely on their judgement in a host of areas, and by and large they have actually responded.

I used, last week, the TT, and it has been illustrated again, how they police. There are other motorcycle races in other parts of the United Kingdom, for example, where they do not operate. I have seen it first hand at Silverstone, I have seen it also at the Reading Pop Festival, and I was horrified to see how they were policing it in such a rough-handle way. I thought, 'If the Isle of Man were here, in five years we would have these eating out of your hands.' It is appreciated by the staff and it is appreciated by the locals, so I cannot accept that suddenly, by extending this power that the Police are going to have, to the Island, Island-wide, that will affect their judgement and they could act in an irresponsible way. I have already said that they will have their powers reviewed to deal with the extended... and it is right and proper that they should be reviewed from time to time – and maybe after 20 years it is time to review that – and we have had that promise from the Department of Home Affairs.

I come back to the point that, although this is a Private Member's Bill, this was part of the Criminal Justice Bill – that large Bill that hit the buffers.

The Member, after responding to local demands for this, actually went to the Department of Home Affairs. They said they were prepared to support it because it dealt, virtually word for word, with what they actually had included in their Bill. So it is the policy and this is supported, as I said, unanimously by the Police.

I do not like quoting from letters which I have not circulated to Members, because you can be selective in your quotes, but this is not taking it out of context at all. This is from the Commissioners of Ramsey, for example:

‘Inspector Kinley has advised that from a policing perspective, the main issue raised by the community in Ramsey...’

– not the Police; this is the community talking to the Police –

‘... related to antisocial behaviour regularly involving those concerned with alcohol and juveniles. Police resources are regularly involved in dealing with persons in the Ramsey town area that have been drinking, many of those under the age of 18.’

I could go on, but you have got the gist. (**Mr Downie:** Yes.) They are dealing with it and the public are concerned about it. You have got to have an agency to deal with that, and Mr Butt – whom I respect, obviously, as a former very eminent policeman who actually has overseen these –

Mr Butt: And worked in Ramsey.

Mr Lowey: He has worked in Ramsey too! I have not worked in Ramsey, but I have visited it a few times on a Saturday night. Maybe I would have been caught in this in my younger days. However, the point I am making is that you have to have an agency to fulfil it.

On the one hand, we have Mr Downie saying that he is going to support the Bill because he does not think the present legislation is working; and we have Mr Butt, who says, ‘Well, it is working, because we do not have these problems in Douglas now.’ I have illustrated, or tried to illustrate, one of the reasons why that has been: it is because we have implemented the law and moved them on a bit; we have dealt with it with the third sector, as the Bishop has referred to; and also, I may add, we have learned an awful lot of... street lighting. The new, modern street lighting prevents things from happening, which it did not before – there were no lights, it was dull, it was dark. So, on a variety of fronts we are moving all the time.

I would suggest, in medical terms, for example, if you have got a success – and I believe the legislation *has* been a success – you repeat that success on a wider front. It is then open to invitation that you are using a sledgehammer to crack a nut, that you would be frightened of having a glass of wine on the beach up at the Smeale because one of these community policemen would come along and say you were breaking the law. No, they would not; they would have to be doing certain things.

So I do think that we are like Don Quixote. I looked across at my good friend when he was talking, as he eloquently does on this matter in particular, and I thought he was like Don Quixote. I saw the beard and I thought, ‘No, that is a caricature.’ Tilting at windmills. He sees dragons, but they are really inanimate windmills; they really are. I would hope... Here am I, in my parking mode again: I know it will only ever be used... But I genuinely believe this is a good attempt, and if it was not done at this particular time, it would be done by the Department of Home Affairs in the future, exactly the same.

I believe, myself, it is right that we should move with this piece of legislation at this particular time, for all the right motives – not just for the convenience of the Police, but for the convenience of the general public at large. I believe it *is* working, and to extend it further to all of the Isle of Man I think would be the right thing to do at this particular time.

I think, really, Hon. Members will have made their minds up. Me talking is not going to alter any facts at all. You have got the facts as I have presented them – inadequately, I am sure, but I would urge Members to think very carefully and support this particular Bill for the reasons I have outlined: (a) it has got two main reasons for its existence, to... Let me again recite them, because I think it is important that I should recite them. Keep them in the forefront of your mind, because it really does hit the nail on the head.

There are two main reasons and two main provisions. Currently, a constable may order a person who is causing a nuisance to stop drinking in the public areas of the Island designated, and we have already heard that they do practice... they do know where they can do it and where they cannot do it by crossing the street. That should be an improvement. That is not inhibiting their rights; it is protecting the rights of the ordinary citizen to go about their business, whatever that may be at night, without being harassed. The Bill provides for an officer to dispose of liquor seized from a minor as he or she thinks... I do not think that is onerous either. I believe that is something that can be done quite legitimately by a policeman. It saves an awful lot of court time, it saves an awful lot of bureaucracy, and again that will be dealt with under the regulations that will come forward. I do not think that is inhibiting in any way or a sledgehammer to crack a nut. I think it is a practical way of dealing with the problem, a sensible one. And yes, it may have been the legislation... it may not have been perfect when it was introduced. What piece of legislation *is* perfect, even when we pass it? It is not. This has had a 20-year life,

maybe longer, and it is time to review it. I think now is the time and I would move the Second Reading of this Bill.

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

Licensing (Amendment) Bill 2012 **Consideration of clauses commenced and adjourned**

The President: Clauses 1 and 2.

Mr Lowey: Thank you, Madam President.

I am not used to Private Members'... filing systems!
Clauses 1 and 2, if I may take them together. Clause 1 makes provision about the resulting Act's short title. Clause 2 provides for the resulting Act to expire on the day after its promulgation. This is now a standard provision in new Acts.

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

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

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

Clause 3.

Mr Lowey: Thank you, Madam President.

In clause 3, (a) makes a minor clerical amendment, inserting the word 'or', and (b) substitutes section 74(2)(b) of the 1995 Act, now allowing a police officer to dispose of liquor seized from a person under 18 in a manner he thinks is appropriate.

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

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

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

Clause 4.

Mr Lowey: Clause 4... I think, as a socialist, I remember a clause 4 being... what was it? A thing of the covenant. Clause 4 was a Labour Party thing. I think clause 4 in this particular Bill is going to be something similar.

However, clause 4(1): this clause substitutes section 76 of the Licensing Act 1995, drinking in public places. The 1995 Act specifies where offences take place in a 'designated place'. This now substitutes that with a 'public place'.

In subsection (8) are the definitions of 'public place'. This is defined as: any highway; any place at a particular time to which the public has access, on payment or otherwise, as of right or implied permission. This is to deal with their functions with entrance fees and church fêtes, and things like that.

Subsection (2) limits the circumstances under which a police officer may give a warning not to consume alcohol in a public place. The person must be acting in a specific manner, or using indecent or obscene language before the warning can be given. The method of showing what is a designated space has been removed, as this provision now applies to any public space.

Subclause 4(2) repeals section 15 of the Licensing (Amendment) Act 2001, which is consequential on agreeing clause 4 above.

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

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

The President: The Hon. Member, Mr Downie.

Mr Downie: Thank you, Madam President.

I think this clause actually deals with the nub of the matter. If a person is behaving responsibly – they are out, having a picnic with their family, having a glass of wine – or they are not interfering with anybody else... and there is a whole list in subclause (2) here of the things that you would be told to stop or desist by the police officer, so there is a balance to be struck here. I actually think that, at the present time, we have got ourselves into such a complicated situation that I think lots of people who misbehave and so on take advantage of the inability of the present legislation to deal with the problem.

I think that this section now that we see before us, this clause, actually provides a remedy. It sends a message out to people that if they are sensible – they are not interfering with other people's pursuits, they are not being indecent or disorderly or using obscene language, or acting in a manner that has resulted or is likely to result in somebody being intimidated or harassed – they are quite capable of going about their lawful pursuits, their quiet social drink, sitting down with their family in the countryside or whatever, or in parts of the towns. It is only when these other things are triggered that the police officer can actually turn round and warn them.

So I think there is a balance here and I think that is the right way to go about it. I think if this is looked at, this clause in its entirety, it does provide guidance for people who want to do things, and then it provides a resolution if people are misbehaving.

I think we should be supporting this clause.

The President: The Hon. Member, Mr Callister.

Mr Callister: Thank you, Madam President.

I do not like – when you look at subsections (2)(c), (d) and (e) – ‘or is likely to result’. Those words, I find, are unnecessary. I think that this matter would have to have resulted in some incident taking place, not something that *might* happen. It is all very well saying this is in the judgement of the police officer; it is something that I do not feel I can support.

I also do not like, in subsection (4), something that could be used irrespective of what is in subsection (2), and that is:

‘A person who –
(a) is carrying in a public place an open bottle, flask, can, glass, cup or other vessel which contains or has contained liquor;’

I think I cannot support that because it could be misused, and for that reason I cannot support this particular clause.

The President: Lord Bishop.

The Lord Bishop: Thank you, Madam President.

When I read, in the present section 76(6)(b), ‘a chalice or other vessel’, I thought, ‘Oh, well, that’s okay, that clarifies it.’ Then I decided that I would have a little look back, and in the same clause (2)(d) and (e) you have there:

‘... acting in a manner that has resulted, or is likely to result, in any member of the public being disturbed in his or her peaceful enjoyment of the public place;’

– and then, in (e):

‘... likely to cause, nuisance or annoyance to any member of the public.’

There is a problem there: that members of the public can be very unreasonable at times. We are not saying *members* of the public; we are saying *any* member of the public. I think that is probably my problem.

If you had, for instance, as does happen, not just when the Pope comes to visit somewhere, but you do occasionally have the possibility of an open-air service at which you have communion. The Pope, as we know, holds open-air masses when he goes to visit various other countries – and it is not just Roman Catholics; others might well have local permission to have an open-air communion service. That is where I was attracted by... (6)(b) drew my attention to that. Usually when you have an open-air communion service, in my experience at least one member of the public does not like it, and I have had the experience on many an occasion of somebody saying, ‘I do not wish to listen to somebody singing hymns on the beach,’ even if it is only for half an hour or three-quarters of an hour. This actually does give that person the right, as I read it, to stop such an event, and I think that is unreasonable, so my questions are around 76(2)(d) and (e) and the word ‘any’ in both, and whether some kind of introduction of a word which expresses reasonability... I think there should be some kind of expression of that. The lawyers do tell me that ‘reasonable’ is a word which can be used in a legal case.

The President: Hon. Members, I am looking at the time, and loathe though I am to stop in the middle of a clause, I would just like to get your guidance. Do you want to finish this clause?

Mr Lowey: It is the main clause. I think, as the time is there, I do not mind continuing it next week and, if it is successful, then taking the Third Reading.

Mr Turner: It will not be next week.

Mr Callister: Agreed.

Mr Downie: The week after next.

Mr Braidwood: The 18th.

Mr Lowey: No, the week after next, or whenever it is. That is my view.

The President: In that case, Hon. Members, we did start early, but with your agreement I would propose that we adjourn now and we continue consideration of this clause at the next sitting of Council, and the adjournment will be to 18th December. I thank you for your tolerance in that.