

**Licensing (Amendment) Bill 2012**  
**Consideration of clauses concluded**

Mr Lowey to move.

**The President:** We move on to the Licensing (Amendment) Bill, Mr Lowey.

**Mr Lowey:** Thank you, Madam President.  
We were dealing with clause 4. Am I summing up now?

**The President:** You carry on with clause 4. We did not conclude the debate, so in respect of clause 4, just to remind Hon. Members where we got to: Mr Lowey had moved the clause and we were in the middle of debating it, so if any Hon. Member wishes to speak to that clause, they may do so.

**Mr Butt:** Madam President, I think I was about to speak at the time –

**The President:** Right, you may carry on.

**Mr Butt:** – but I am not quite sure what I was going to say! (*Laughter*)

I suppose I would just reiterate my view that this legislation is not actually necessary, that the present legislation does deal with the problem, has dealt with it for many, many years and I think that the powers given to the Police in this Bill are actually less than the original Bill, because they have to act under section 76(2)(a) to (e) which takes away some of their powers. My main concern was that this could be abused, in that they could make a judgment and move people on, who are perhaps behaving themselves. At the moment, if people want to drink in public, but behave themselves properly, they cannot be moved on under this Bill. Whereas under the old Act they could be moved on.

There was some mention about the phrase ‘likely to cause’ or ‘likely to result in’ issues happening. I think that leaves the judgement totally in the hands of the police officer concerned and you cannot always guarantee consistency among police officers. So that was my great concern on that.

I think Mr Lowey is aware of my views on this and I really do think this is not a step forward, it is a bit of legislation that is not needed, to deal with a problem which is not really there. There is drinking in public and drinking is a great problem in the Isle of Man. Drinking in public as such is not a particular problem; most of it takes place within licensed premises which are regulated quite well.

So I will be opposing this clause, Madam President.

**The President:** Mr Callister.

**Mr Callister:** I share the views of the Hon. Member, who has just spoken. I might slightly revise my thoughts on this if the Member moving this Bill can tell me, categorically, if this legislation exists in England, Wales, Scotland, Northern Ireland, or any European country?

**The President:** If no other Member wishes to speak, Mr Lowey to reply please.

**Mr Lowey:** Thank you, Madam President.

I did have a long session with the parliamentary draftsman who dealt with this piece of legislation – the last was last Friday. Firstly, I would like to tell you how I attempted to deal with the points that were raised last week and they have been reiterated this morning, but even more defined. Also the Bishop had a point which I will address, hopefully.

Mr Butt and Mr Callister’s concerns can be co-joined, really. I am always worried when I co-join things because I know they are slightly different, but in general terms they are the same: a sledgehammer to crack a nut and maybe it is a step too far, for the size and scope of the perceived problem, which I think is what my good friend, Mr Butt is saying.

This legislation by itself I do not think will ever completely resolve the points that were raised, but it has been raised and desired by a whole group of people – not mainly the Police, I may add, but the people who take the Police and the local commissioners and the consultative bodies. Even the Home Affairs Department itself is in favour of this piece of legislation. There is a chorus of requests for the essence of the 1995 Act to be extended and this is perceived to be the right vehicle for that.

Mr Butt says – and I think it was a point where he says – there are enough regulations now to deal with it and it can be dealt with. There are problems – they are not perceived problems; they are real problems, moving

them over from one side of the road in a controlled area and moving out of the area and continuing; getting rid of the alcohol only by bringing it home to the parents or by a court order. This gives the Police the time to do it.

So this legislation... All those people who have been consulted have expressed, in experiencing the results of the anti-social behaviour pattern on the Island, that they have all agreed this will help. Only time will tell if those expectations will be met to the full.

What are they? Well, I have told you, the Department of Home Affairs included this piece of legislation in their own withdrawn piece of legislation last year, because it was too big; the local advisory boards; the local commissioners; the Police – and I may add, the House of Keys unanimously supported this piece of legislation because they thought it would be an improvement and help. All agreed that the 1995 Act was good, but experience over the 15 years – or 17 years – let me get this... I am in the Treasury, I should be able to count, shouldn't I? – 15 to 17 years of experience has shown that it needs tweaking and brought up to date and this piece of legislation has been introduced by Mr Singer, as a means of bringing it up to date.

Can I come to my friend, the Lord Bishop – I wish he was here – his concerns regarding the use of the words 'any' person in subclause (2)(d) and (2)(e) and actually comforted himself with subclause (6)(b), regarding the chalice, which was alright. He then worked backwards and he came to subclauses (2)(d) and (2)(e), which gave him concern.

The key, really, for this particular Act is to go back to the beginning of clause 4 and the beginning of clause 4 spells out what it is about and then what it does not do. So I think, again, he is imagining that this Bill will increase the number of 'any person' being able to object. The parliamentary draftsman assures me this does not increase or decrease that possibility which exists today, but it itemises in detail where the Police can act and where it cannot. Therefore, I think entering the word 'chalice', which is a new departure, has perhaps provoked a clouded question mark, where really none exists. I am assured that this Bill, neither increases nor decreases any perceived abilities to use the law to unsettle or to prevent religious ceremonies.

He used the word 'reasonableness' and I think reasonableness should be applied in this instance, where the parliamentary draftsman has assured me that it does not add or detract anything from the existing, as it does for the shipping. I have attempted to see how I could reassure the Bishop and he said is there another word that we could have used instead of 'any'? I have come to the same conclusion as the parliamentary draftsman that it would be a pointless exercise.

Can I just finally deal with Mr Callister's point where he says, can I give a categorical assurance? I cannot, because I have not researched it enough, but I do know that they do have exclusion zones in town centres, they have ASBOs, just as we have as well. There is not one instrument that is used. It is used selectively and in different situations. I believe that this legislation, which, as I say, has been cleared by those who are actually monitoring social behaviour in our communities, is of benefit to them and it would enhance the law.

I know Mr Callister and Mr Butt – and who I respect, I mean, on the professional side, Mr Callister, because he does have his finger on the pulse of public opinion. I found it strange that everybody who is involved professionally with this seeks it.

I could quote you Ramsey Commissioners. (*Interjection*) I could quote you a letter from Ramsey Commissioners. Obviously the local Member, who brought this as a private Member, consulted closely and his experience in the town of Ramsey, but that has been reflected in other areas throughout the Island. I can only say that I do not believe the Police would have approved it if they thought that it was diminishing their powers; they think it is extending their powers and it will be an improvement and is welcomed by the Police.

So with that I ask the Council to give support to clause 4, as it stands printed in the Bill. I beg to move.

**The President:** The motion is that clause 4 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it.

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

**FOR**

Mr Lowey  
Mr Turner  
Mr Braidwood  
Mr Downie  
Mr Crowe  
Mr Wild

**AGAINST**

Mr Butt  
Mr Callister

**The President:** There are 6 votes in favour; 2 votes against. The motion therefore carries.

**Licensing (Amendment) Bill 2012**  
**Standing Order 4.3(2) suspended to take Third Reading**

**The President:** Now Hon. Members, we have a slight technical issue to deal with. As Mr Lowey has pointed out, the Order Paper is in error in printing that we were doing the Third Reading, when we had not quite finished the clauses. The indication has been given that we are going to take the Third Reading and I wonder if Mr Lowey would like to suspend Standing Orders in order to do so?

**Mr Lowey:** Thank you, Madam President.

I would ask, with due deference to Council, for the Third Reading to be taken this morning. It has had a very good airing. I think the points of concern that have been publicly raised have been underlined and I just feel that this Bill should get its Third Reading and would have done if we had finished last week, or the last time we met, which I think is understandable and I think it is understandable why it has not been put on the Agenda.

But I would ask for the suspension of Standing Orders to allow me to take the Third Reading of the Bill.

**Mr Braidwood:** I beg to second the suspension.

**The President:** Is that agreed, Hon. Members?

*It was agreed.*

**Licensing (Amendment) Bill 2012**  
**Third Reading approved**

4. Mr Lowey to move:

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

**The President:** We proceed then to the Third Reading, Mr Lowey.

**Mr Lowey:** Thank you, Madam President.

I am not going to recite a long speech. 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: (1) 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.

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 of the Island at the moment specified under 76 of the Licensing Act of 1995 within which a person commits an offence if, after having been warned by a police officer to stop drinking liquor, continues to do so. The Bill will protect those people who are out socially, being adversely affected by persons whose behaviour is unacceptable.

The Department of Home Affairs, as I said, has consulted widely and received strong support for these measures. There are two important points, which I cannot stress too strongly. This Bill will not stop law-abiding people 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 and refuses to stop drinking when requested to do so by a police officer.

The question was asked about over-zealous police officers. 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.

If this Bill becomes law, then that code of practice will be reviewed to define the power limits in exercising their new powers.

Madam President, I beg to move the Third Reading of this Bill.

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

**The President:** The Hon. Mr Callister.

**Mr Callister:** Yes, thank you, Madam President.

At the clauses stage, I asked the Hon. Member if he could tell me whether this legislation exists in England, Wales, Scotland, Northern Ireland or any European country and obviously I do not suppose he has that information to hand. He did however say that, in some towns there are designated areas, but that is not what we are talking about here, we are talking about the *entire* Island, every scrap of the Isle of Man – it is a wonder the Calf of Man has not been included; maybe it is! If you had brought this legislation in England, that would be the whole of England, the whole of Wales, or of Scotland, if they brought these in individually. If you brought it into European countries, can you imagine the uproar that you would get in Spain and France and Italy about the entire country being refused to deal with certain activities? I am not talking of the unlawful ones, but there are lawful ones here that could run into serious problems.

This is the worst nanny state piece of legislation I have seen! I have seen some bad ones in the past, Madam President and this has just got to be the worst example.

**The President:** The Hon. Mr Downie.

**Mr Downie:** Madam President, I would speak in favour of this Bill, because I have a slightly different view from my hon. colleague, Mr Callister. Unfortunately the Isle of Man is not a London borough or it is not part of a metropolitan organisation like Greater Manchester and so on, where I do know that legislation like this, or identical to this, exists. I know in the UK for a number of years the Police have had the power to take alcohol away from young people, to pour it down the drain, to make sure that they do not drink it. This is ridiculous having to take things home to parents and all the rest of it.

The Isle of Man has to be looked at in its own perspective. It is going to be very difficult to get four or five local authorities to come up with a common policy for drinking in public places in the Isle of Man. So the best thing to do is to get the Department of Home Affairs or another Department to do it, with the co-operation of all the authorities and I think this is what we have got here.

I do not think it makes a police state. It actually provides some common sense. It provides for somebody who, if they want to go out into the country and have a picnic, fine; but if someone comes out alongside them and are drunk and abusive and are causing problems, which happens from time to time... You have only got to look at what has been going on at the Ayres and down in some of the other Government-owned pieces of land, there is a lot of abuse out there and whilst the initial Reading of this particular drinking in public places on page 6 would seem that we are taking a sledgehammer to crack a walnut, you have got to bring in a piece of legislation that would be available for all the different issues that arise.

I actually think that this covers it at the present time and if it is Island wide, at least nobody can turn round and say that they were not aware that the law was different in Castletown than it was in Douglas, as we have got at present. We have got the worst of all worlds at the moment and using the argument of common sense and issues like TT week, when we know people will be outside pubs drinking and so on: provided they are doing it in an orderly manner and they are not using bad language or are affecting the enjoyment of other members of the public, it can carry on, but the moment that it becomes a problem there is going to be some power in place for the Police to do something about it. I think the legislation we have at the present time has been such a mystery, where we have had these areas, which, in my opinion, have not worked, this now will put the whole situation on a much more formal footing and we will be able to understand exactly what the law is and the poor policeman out there who has got the job to do will actually know that there is something behind him to actually back up what it is he is trying to achieve.

I support the Bill.

**The President:** The Hon. Member, Mr Butt.

**Mr Butt:** Thank you, Madam President, just to come back on a couple of points Mr Downie has made.

Firstly, this legislation has worked because we do not see people sleeping out in the streets drinking, like we used to a few years ago. This legislation dealt with that problem.

Another point he made about different authorities would have different legislation, different in Castletown, to Peel, to Ramsey: the present legislation makes it uniform. The only thing that is different is the area, so the actual law is the same in Peel, in Castletown, in Douglas, in Ramsey. It just actually defines the area where it is going to be, so it is consistent throughout the Island at the moment.

I just want to make a couple of points about the Police – and I am not accusing the Police of being over the top – but I do know, for example, that Bushy's in TT week many years ago, I was in charge there for several years when we had 10,000 or more people there enjoying themselves and we had to also try to maintain some form of law and order and it was sometimes difficult. I had on occasions to rein in policemen who had been over-zealous and spoiling the atmosphere, partly because, if we had not done that, there may have been a riot, a sort of self-protection for the whole Island in a way, but there are police officers who will do more than they

perhaps need to in the circumstances. The same in Ramsey, I was there for three years so, when you say the present police say there is a problem, I have been in these problems and dealt with them and it is not a great problem that it cannot be dealt with, if you use sensible policing methods – it does work in Ramsey and it has always worked. They have got one character in Ramsey walks round with a can of lager all the time, who Madam President might know – actually in that can of lager is water. It is all the impression he is trying to give.

**Mr Lowey:** That is all lager is, anyway! *(Laughter)*

**Mr Butt:** That is true!

But what I would say about police powers: first of all, under (a) to (e) they are all offences in their own right, if they are committing... if they are being indecent and disorderly, committing these offences, there is a power to deal with it. I really think it is in a way, not the Police, but it is a way of saying it is easier to do this than take them to a court, or to caution them, or to take action just to move them on. If they are committing these offences, they should be dealt with and dealt with properly. If you say to the Police – with all due respect to them – ‘Here are some more powers, would you like them?’ they are going to say yes. It is inevitable they are going to say yes – and here are some powers: they are not going to object to these powers, Mr Lowey. They are going to say ‘Yes, we would like these powers, because it makes our job easier’ – and it does make it easier.

I think my main point is there is a bit of a dichotomy about the law here. These criteria that have to be met before they can move them on, actually could mean that there would be less power, although Mr Lowey says it is more power. So, which is it? I think, if people are behaving, as defined under (a) to (e) they should be dealt with and dealt with properly and not just moved on. I support the idea of... later in the clause there are some good parts about drinking, removing the liquor etc, but that happens anyway with good policing, that is dealt with, whether they have the power or not.

So really my concerns are, if people are behaving in any of those categories (a) to (e) they should be dealt with for those categories, not under this legislation and I do not think it will improve matters in any way whatsoever. I do believe Mr Callister’s point is perfectly correct: in the UK and other jurisdictions, there is not an overall ban on drinking in public places; they are designated areas, exactly like we have here now and that is what the legislation is in the UK.

Thank you, Madam President.

**The President:** Mr Braidwood.

**Mr Braidwood:** I think I have spoken at various stages of the Bill and said there were the designated areas in some of the towns, such as Peel, which was encapsulated, the whole area, Port St Mary, I think it was, Port Erin. However, Douglas was not: it was just a certain proportion of Douglas. I think to encapsulate the Isle of Man totally is the easiest way forward. Instead of local authorities coming forward each time, so it would be done piecemeal, at least this will cover completely all the Island.

Another point that was raised by the Hon. Member of Council, Mr Callister, he mentioned France, Italy and Spain: completely different cultures. There you will get younger people who will not be drinking alcohol all the time, they will be at the coffee shops. It is just a completely different type of culture, and unfortunately it only seems to be in the British Isles, United Kingdom, who have this problem.

So, I will be supporting the legislation because I do feel that it is appropriate that alcohol should be taken off. I think, although Mr Butt has said good policing, I think our Police, particularly during TT, the way they act is exemplary, because otherwise they could have a riot on their hands, which they would not be able to control. At least now it sets it down in stone. I know the Hon. Member of Council, Mr Butt, said it is already there, but I think on the previous legislation, they could not take the alcohol away and pour it down the drain; they had to take it back to the parents.

**The President:** Mr Lowey to reply.

**Mr Lowey:** Thank you, Madam President.

There is really nothing new been added to the thing, but I do first of all... Again, to those people who have supported, I give thanks. To those who have drawn attention to what they perceive as weaknesses of an extension – Mr Callister, who says, if ever there was a nanny state, this is it – I am afraid this is not it for being a nanny state. This is what people are asking for, to put in protection.

To a degree, it actually answers another query of Mr Butt’s, the general public... Let us forget the all-Island and in a perceived area, say a town square in Castletown or Ramsey, and they see a misdemeanour and the designated area finishes on the other side of the street and that person is spoken to here, they move to the other side and continue to do that where they cannot be dealt with at this moment in time. I believe the general public

then say, 'Why are you not...? You have moved them or you have stopped them here, but you cannot stop them there', and the Police then have to explain the law.

But quite candidly, this is the feeling that somehow one is laughing at the other. This is an attempt – I am not saying it is going to be the perfect answer. I believe it has got to be given a chance to the over excessiveness and I admire Mr Butt, I was the person who was bringing them over in their tens of thousands for the TT, in those days in Tourism. I saw Mr Butt in action at the Bushy's tent experience and I do give credit to the Police, but if you have got a police force of over 200 men, there are going to be one or two who just overstep the mark from time to time.

But the regulations are there and I think the comments that have been expressed in this Council will be taken on board by the Police, when they draw up or review these regulations, and I am quite sure that the Police will know then. Whether that will be applied every time... because what is reasonable to me, may not be reasonable to you, but in fact, I do believe we have an extremely good track record.

I do agree with Mr Butt that the law... It is not that it is not working; I disagree with Mr Downie when he says it is not working. I do not think it is working as effectively as it could be and I think this is an attempt to bring that together and strengthen it. I hope in five years' time when you come to review this – and I am sure it will be reviewed in five years' time – that you will be saying our concerns were baseless. I do not believe it is an extension of the nanny state – sorry to disagree with Mr Callister for the second time in the morning – but having said that, I do think that this Bill is a genuine attempt to meet a public requirement and it does have the backing of all the professionals.

I beg to move the Third Reading and the Bill do pass.

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

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

**FOR**

Mr Lowey

Mr Turner

Mr Braidwood

Mr Downie

Mr Crowe

Mr Wild

**AGAINST**

Mr Butt

Mr Callister

**The President:** There are 6 votes in favour, 2 votes against. The motion therefore carries.