

**Sunbeds Bill 2012**  
**Conference to be sought with House of Keys**  
**Deputation of three Members elected**

1. Mr Turner to move.

*The House of Keys has disagreed with the Legislative Council's amendment to omit clauses 15 and 16.*

**The President:** We turn to further consideration of the Sunbeds Bill, and I call on Mr Turner.

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

As Hon. Members will know from the Order Paper, the House of Keys has disagreed with the Council's amendment to omit clauses 15 and 16.

If I just may refresh Hon. Members' memories, I will read out the notes which I read on those two clauses, because the other place has been minded to reject our amendment and have those clauses reinstated.

Clause 15 makes provision, where an offence has been committed, for a fixed-penalty notice to be given to the operator of sunbed premises. The clause stipulates what must be contained in a fixed penalty notice and how much that fixed penalty will be in specific instances. A set time of 28 days is provided in which a fixed penalty is to be paid, although this may be extended if the Department considers it appropriate to do so. The clause also provides for the circumstances in which a fixed penalty may be given and the form which it takes. That was a recap of clause 15.

Clause 16 provides that the Department may withdraw a fixed penalty notice following representations by or on behalf of the recipient, and provision is also made for the repayment of any penalty paid where this occurs.

So those were the two clauses which... If I recall from the debate we had on those clauses, Council felt that the fixed penalty was quite a weak sanction for a potentially serious breach of the Act – because the fixed penalty provisions were quite wide, they could be for any offence under the Act, rather than some of the more minor misdemeanours that may be committed. I seem to recall from the debate that that was the reason why Council felt that these two clauses should be removed and the matter should be dealt with through the courts.

We are considering this under Standing Order 4.6 and I have not actually had this procedure before, Madam President, so I seek guidance.

**The President:** Yes, can I give you some guidance perhaps, then? There are various provisions in Standing Order 4.6 which will allow that the Council can either agree with Keys' amendments, or reject them, or amend Keys' amendments, or disagree with Keys' amendments with a view to a conference.

As the mover, it would be helpful if perhaps you could move a motion in terms of one of those suggestions to enable debate to take place. If other Members disagree –

**Mr Callister:** Madam President, could I just ask a question on this, for information? If the Council decides to disagree with the amendments, what then happens?

**The President:** The terms under which you can disagree are to disagree with the Keys' amendments with a view to a conference. We would then appoint a small committee which could meet with the Keys, if they are willing to meet, and at that point it might be possible to thrash out a mutually agreed solution, or not, as the case may be.

**Mr Turner:** It would be more helpful to hear the views of Council and then... Is it permitted to hear the views of Council and then decide which would be the most appropriate option to take; or would I have to formally move one of these first?

**The President:** I think you would need to have a motion before the Council, so I think you have got to choose what you want them to do, and then, if other Members disagree with that, they can clearly seek to amend it in terms of one of the other recommendations.

**Mr Turner:** On that basis – I thank you for your guidance, Madam President – moving this on behalf of DEFA, I would move that we agree with the Keys that these clauses are reinstated to the Bill.

**The President:** Do you want to say anything else, like why? *(Laughter)*

**Mr Turner:** Yes, okay, I will.

**Mr Callister:** It will have to be seconded.

**The President:** It will have to be seconded, but he is putting the motion at the moment.

**Mr Turner:** I notice that the seconder is not with us today, so I am quite interested to see where this is going.

The feeling of the Department was that there seem to be more and more moves to have fewer penalties and offences dealt with through fixed penalties. Certainly the Department of Home Affairs are looking at this for certain offences, and this is why the Department felt that to go through the full court proceedings is a timely... It takes a lot of time and a lot of cost for what could be a premises not displaying a warning notice or having the correct pamphlet available, whereas the opposite end of the spectrum is that a child goes in, uses these facilities and ends up with burns, or more serious injuries as a result of those burns.

So they felt that they need the scope to be able to deal with small-scale offences under the fixed penalty regime, where it can be applied, dealt with, and then, obviously, if they have persistent offenders where they go back and find the notices is not up, they can still say, 'We have already given you a fixed penalty for breaching this once, you have done it again and we are going to prosecute you this time.' That is why they want this provision in there. I take the point that the clauses actually do not specify... There is actually the power to issue a fixed penalty for any offence, is the way it reads.

That is the background behind where the Department is coming from and why they want these provisions, and I understand it was put in at the suggestion of the legislative drafter because that is what is happening in other Acts and legislation that is coming forward.

So, there is the case. I will move, then, that we accept the motion in another place that these clauses are reinstated to the Bill. I beg to move:

*That the Council agree with the Keys' amendments.*

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

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

I am quite happy to second the mover's motion, because if I remember, during the clauses stage of this Bill, in actual fact, I voted against the removing of clauses 15 and 16.

As the Hon. Member of Council, Mr Turner, has said, under clause 17, anyway, an offence under this Act is triable summarily and punishable with a fine not exceeding £2,500. So, as he has quite rightly said, there are fixed penalties there.

However, if the operator of the sunbed saloon – salon... It was only because we were talking about alcohol just previously, Madam President. That is why the Lord Bishop is smiling, because I nearly said 'saloon' instead of salon. (**The Lord Bishop:** You did!)

So, in actual fact, I am quite happy for those clauses 15 and 16 to be reinstated.

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

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

I circulated to all Members an analysis of the treatment of offences such as these in England, Wales, Northern Ireland and Scotland. It appears there is some disparity between the various jurisdictions as to how best to proceed. England and Wales do not have fixed penalties; Northern Ireland and Scotland do.

I think there is room for negotiation, so I think I will keep my powder dry as to whether we accept the Keys' amendments or do otherwise, but for the time being, I will reserve my position.

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

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

I think our debate and amendment were well-intentioned at the time, but having discussed it in some detail with the Hon. Members, Mr Gawne and Mrs Cannell, I can understand the motivation behind the drafting of the Bill in terms of trying to keep enforcement simple, straightforward and quickly effective, with the back-up of the ability to take it to the court if considered serious enough.

Therefore, on that basis, I support the amendments to clauses 15 and 16.

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

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

I will not be supporting the motion as put today.

First of all, the Sunbeds Bill will probably be used very rarely, if at all. It is there to make sure that we change the ethos of the way these premises are run. If it does have to be used, it is very important that there is publicity given to the fact that it has been used, to let young people know what the law is on this, because they probably do not know now – the fact that we have debated it means little to them. It needs to be there for the operators to know that there are serious sanctions which can be imposed against them if they breach this.

The fixed penalty regime... The mover of this motion said that the Department wants to be able to deal with low-level offences. Well, they can deal with low-level offences in a very simple way by issuing a caution. (**Mr Lowey:** Absolutely.) They can caution them if they have not put the right notice in the window or have not got the right pamphlets, and then, if they still do not follow that, having had a warning, then they can be prosecuted.

Using fixed penalties takes away from the public the information that there is an offence out there which is being committed and that it should not happen. The reason for this Bill is to give publicity to the fact that it is dangerous to use sunbeds too much – in particular a danger for children, which is what this Bill is aimed at, young people – and I think using fixed penalties for an offence of this nature...

The Bill does not say you can give fixed penalties only for failing to have the wrong pamphlet, but not for misuse; the Bill says it is fixed penalties for every offence within this Bill. If the Bill did actually say fixed penalties for the minor offences, that would be a different matter, and that is perhaps something which a conference could come to an agreement on. So I believe the way forward for this is to reject this particular motion, and if we go to conference, we can then perhaps discuss the minor offences being dealt with by fixed penalties and the major offences being dealt with by courts.

**The President:** Can I have it clear: are you proposing an amendment to the motion, in that you are proposing a disagreement with the Keys' amendments with a view to a conference?

**Mr Butt:** Yes, I will do, Madam President.  
That is Standing Order 4.6(1)(iv).  
I beg to move an amendment:

*To delete everything after 'that the Council' and substitute 'disagrees with the Keys with a view to a conference'.*

**Mr Lowey:** I would happily second that, Madam President.

It does seem amazing to me that the convenience of the law enforcers is taking priority over the people it is there to protect, and I would think that this particular clause, the amendment...

Exactly as has been said by my friend, Mr Butt, how does the public know? Quite candidly, I just find it quite amazing, really, that a Minister and the mover of the proposition in another place think that by just issuing... It diminishes the seriousness of the damage that can be caused. We are not talking here of an inconvenience; we are talking here of some potential physical damage.

I am quite surprised at the tenor that is being taken on it, that somehow it is the enforcement of the law... It is easier, we are doing this. That is a warning to Hon. Members: beware, in the future, of convenience. The whole idea of the law is to make it inconvenient. As far as I am concerned, I think the amendments passed by the Legislative Council actually highlighted the dangers and put more powers in it, and I do think the amendment at least keeps the ball in play and we can at least tease out from the mover and the seconder in another place, and the Keys, why they feel that these potentially serious situations that could arise should not receive a priority. I really do, and I would therefore second and urge Council to keep the ball in play and talk with the other place.

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

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

The thing we are losing sight of, really, is the principle of the use of fixed penalty notices and for which offences they should be used and which they should not be used. Almost, this is something that should have been looked at in principle, possibly by Tynwald, with an agreement on which should be and which should not be fixed penalty awards, because I think it is that important. However, we are not in that position.

I was one of the five Members who voted to remove clauses 15 and 16. It seems to me there is no way of amending clauses 15 and 16. They are simply black or white, a black-and-white case – there are no grey areas there – so it is a matter of a confrontation, really.

I am interested in Mr Butt's comment on how many occasions, though, this is likely to be used. In his view, that seems to be quite a small number of occasions, and perhaps not any at all, so you need to set that against it.

The Minister moving it in the Keys was very keen that this should proceed. The whole matter, though,

hinges, for me, on which areas should be dealt with by these lower penalties. You could say the sunbeds issue could be one or the other, perhaps, but to make the point of getting that information to the public, the only way to do it is to remove these two clauses 15 and 16.

Also, we seem to have forgotten altogether parental responsibility in this, because surely the real problem is with the parents who would allow these situations to arise, and that is an area, really, where the whole thing is wrong, but we cannot deal with that either.

So, like Mr Crowe, I shall wait to hear further comments.

**The President:** Lord Bishop, do you wish to speak?

**The Lord Bishop:** No, thank you.

**The President:** The mover to reply.

**Mr Turner:** Thank you, Madam President, and I thank Members for their comments in this debate this morning.

Just to expand, then, or answer some of the points about the convenience, Mr Lowey said the convenience of the enforcers... was one of the comments he made, and he said it diminishes the seriousness of the offences.

The mover in another place said:

‘The removal of those particular clauses runs contrary to the fundamental principles behind the review of the criminal justice system, which promotes the ability for Departments, when dealing with enforcement matters, to impose fixed penalties for minor infringements of the law...’

– and the mover did stress it was minor infringements of the law –

‘This principle is aimed at reducing excessive costs in taking action through the courts, particularly for such minor infringements, and will enable officers of the Department to act reasonably when an offence occurs.’

We all know the need for Government to reduce its costs, but I think there is a danger that we are on a very slippery slope, that there is a price tag going to be put on justice – so, if we cannot really afford it, we will just not bother and we will do something different – so I think the wider issue of the criminal justice system is something which, no doubt, is going to create a lot of debate. Whether that review has now been brought into the drafting of this particular piece of legislation... It would appear so, and that is where the driver for this provision has come from.

I think Mr Butt, who obviously is a Member of the Department of Health, has highlighted some important issues which need addressing, and that is why he has moved that there be a conference with the other place.

He mentioned that a caution could be given. I am not too well briefed on how that procedure would work, but presumably the Department would be free to warn an operator that if they did not get their act together, then they would be back with the papers and the proceedings will begin for those sorts of matters. But again, I think it was highlighted, the difficulty I think Council has is that the fixed penalty provision in clauses 15 and 16 do, in effect, cover any offences under the Bill.

In terms of publicity, the Minister of the Department has claimed that fixed penalties can be made public in the media. I am not sure how the Department would do that, what the mechanism is; whether they would just issue a fixed penalty and then issue a press release. I certainly have not discussed that with the Department, in terms of how they would publicise fixed penalty regimes. If we get to the stage where we are publicising fixed penalties for parking offences, the newspaper will probably be about two inches thick every week. So there we are. It is clearly in the hands of Hon. Members as to whether they feel that there is merit in having a conference with representatives from the other place. Views have been well known.

I thank Mr Crowe for his helpful circular that he put round. Clearly, there is a variety of different versions between the devolved administrations. Whereas some areas, such as Northern Ireland, and indeed Scotland, offer very low fixed penalty provisions, England and Wales have severe... Wales being the most severe, where the regulations set maximum fines of £5,000... No, sorry, England, £20,000. England has the most severe fine available to the courts. So there are differences in how this is dealt with around the British Isles.

I will just simply now move that clauses 15 and 16 be reinstated. There has been an amendment to that.

**Mr Lowey:** Could I ask the mover just to explain what is minor and what is, in his view, serious?

The fixed penalty is for unsupervised use of the premises. No-one need be there. You go in, put a pound in the machine, or whatever it is, and you can sit under it as much as you like, and under the Act, it will be a fixed penalty of £50 or £100. He thinks that is minor. I do not think it is minor; I think it is major, and I think the mover, having this control...

If it was minor, then why is the case being made for it to be introduced? It is introduced to protect people

from that sort of unsupervised use of a damaging instrument. If it is misused... and I say that... It can be helpful if it is supervised, but a minor offence, fixed penalty, 'And if you do it again, boys...' but you could do the damage in the first one. I just think it is major and it should be... a little bit of consideration...

**The President:** I have allowed the Member a little leeway. We *are* in winding up.

**Mr Lowey:** Well, I think it is important that the mover says, on major and minor... I think it is interpretation of that word 'minor'. I do not think it is minor at all.

**Mr Callister:** Could I, on a point of information, please, Madam President, ask whether, should a conference take place and agreement is not reached, then the House of Keys would be able, on its own rights, to pass that Bill with 17 votes and bypass the Council?

**The President:** Yes.

**Mr Lowey:** You cannot stop it if it needs –

**The President:** Could the mover perhaps respond to the Hon. Member?

We are winding up, so we are not getting into a second debate. You have had your opportunity, Hon. Members. You must grasp it at the appropriate time.

**Mr Turner:** Absolutely. Thank you, Madam President.

I am, though, delighted to answer those points, because obviously that is our function, to thrash out these issues, and trying to send the Bill, in whichever direction it is going, in the best possible shape.

The Hon. Member, Mr Lowey, is right to raise the issue. I certainly did not consider unsupervised use of the sunbed salon as minor. The example I used, which was the example the Department gave to me... Obviously, I am moving this on behalf of the Department. I am no longer a Member of the Department, but I am moving this on their behalf here in Council. The examples they gave of minor offences were the lack of warning notices, the lack of... There are provisions there where they have to provide pamphlets to say what will be the effects of these machines, and so on.

I would certainly hope ... and this is where it comes down to the discretion of the officers in the Department, which I think is what maybe Mr Lowey is having difficulties with, of who decides what is minor. I would hope that unsupervised... The whole point of this Bill is to bring in that these salons have to be staffed by appropriate people. I would suggest that having them unsupervised would be a gross breach of the spirit and provisions of the Act – not just the spirit, but obviously the provisions of the Act – and that would be an offence that would, without any further ado, be taken straight to the courts. But again, there is nothing sure about that, because it will be down to the discretion of those enforcement officers in the Department.

Certainly, as the mover in this place, I did not suggest that a case of unsupervised salons would be classed as minor, (*Interjection by Mr Lowey*) so I hope I have answered him there, and I would certainly place on record that I would hope that the enforcement officers would see unsupervised salons as a gross breach of the provisions of this Act and proceed with it accordingly.

**The President:** The motion before Council, Hon. Members, is that under Standing Order 4.6(1) Council do agree with the Keys' amendments.

To that, we have an amendment in the name of Mr Butt, which reads that, under Standing Order 4.6(1), Council disagree with the Keys' amendments with a view to a conference.

I am going to put the amendment to you first. Those in favour of the amendment, please say aye; against, no. The ayes have it.

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

**FOR**

The Lord Bishop  
Mr Lowey  
Mr Butt  
Mr Crowe  
Mr Callister

**AGAINST**

Mr Turner  
Mr Braidwood  
Mr Wild

**The President:** With 5 votes in favour, Hon. Members, and 3 votes against, the amendment therefore carries.

I will put the amendment to you as the substantive motion, just for security. Those in favour, please say aye;

against, no. The ayes have it. The ayes have it.

We now need to move to consideration of who shall be the Committee for the conference with the Keys. Can we have some nominations, please? First of all, let's establish how many you would wish there to be on this Committee.

**Mr Lowey:** Three.

**The Clerk:** Madam President, under the Standing Orders of Tynwald Court, a conference is three Members.

**The President:** Right, three Members, and this conference operates under the Standing Orders of Tynwald Court.

Can we have nominations, please?

**Mr Turner:** I propose Mr Lowey.

**Mr Braidwood:** I propose Mr Turner.

**Mr Crowe:** I propose Mr Butt.

**Mr Braidwood:** Do we need seconders?

**The President:** Do we have some seconders, or further proposals?

**The Lord Bishop:** I second Mr Lowey.

**Mr Callister:** I second Mr Lowey.

**The President:** I am sorry – the Lord Bishop has seconded...?

**The Lord Bishop:** Mr Lowey.

**The President:** Can we have a seconder for Mr Turner?

**Mr Callister:** I will second Mr Butt.

**Mr Wild:** I will second Mr Turner.

**The President:** Are there any further nominations? If not, the Committee will be Mr Lowey, Mr Turner and Mr Butt, and the Clerk will approach the Keys with a view to a conference being held. Thank you.