

1. Road Races Bill 2015 – Clauses stage completed

The President: This morning, Hon. Members, we return to the Road Races Bill and see if we can untangle the tangle. *(Laughter)*

We had considered some clauses and now we return to clause 9, which has been moved and was adjourned, you may recall. So we now proceed to continue to debate clause 9.

We have an amendment in the name of the Hon. Member, Mr Henderson. I call on Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

Following the confusion relating to this clause which led to its adjournment until today, the Department of Infrastructure reassessed clauses 9, 10 and 11 of the Bill. As a result of that review, the Department has asked me to bring forward amendments to clauses 9, 10 and 11, which it believes simplify and clarify the operation of the Bill. The intent and policy of the Bill has not changed as a result of the amendments that I intend to bring forward on behalf of the Department.

In addressing clause 9 specifically and my proposed amendment to it, it was pointed out by Mr Turner that the current wording did not make explicit the need for a marshal's identity card to contain the name of the marshal. The Department of Infrastructure has considered the issue and wishes to remove any doubt, in that an identity card must contain the full name of the marshal. The amendment standing in my name stipulates that the marshal's identity card, issued by the organiser, must contain the marshal's full name.

Eaghtyrane, I beg to move that amendment 9 do stand in my name:

Amendment to clause 9

1. Page 13, after line 10, insert —

«(d) state the full name of the marshal;».

Renumber subsequent paragraphs.

The President: Do we have a seconder?

Mr Crookall: I beg to second, Madam President.

Mr Cretney: I am happy to second.

The President: Does any other Member wish to comment on either the amendment or the clause?

In that case, I call on the mover to reply.

Mr Corkish: Thank you, Madam President.

I thank Mr Henderson for moving the amendment and also thank those Members who have taken part in the debate regarding this and helped to satisfy what the clause is meant to bring to the Bill.

Madam President, I beg to move that clause 9 stand part of the Bill.

The President: Hon. Members, the motion is that clause 9, which was printed at clause 8, stand part of the Bill.

To that, we have an amendment in the name of the Hon. Member, Mr Henderson. I put to you the amendment first, Hon. Members. Those in favour of the amendment, please say aye; against, no. The ayes have it. The ayes have it.

I now put to you the clause as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We continue then, Hon. Members, to clause 10, which is printed as clause 9 in the Bill you have before you. I call on the Hon. Member, Mr Corkish.

Mr Corkish: Thank you, Madam President.

Clause 10 sets out the functions and powers of a marshal, and clause 11, which follows, details the power to remove. However, together they give the marshals the powers required to marshal both a racing and spectator event. They limit the powers to those of marshalling an event, but the powers are applicable to both the race track and land and roads other than the race track.

Clause 10 identifies the two key functions of a marshal: (a) to marshal the race for which the marshal is appointed; and (b) to administer and enforce the racing authorisation in accordance with the directions given to the marshal by the organiser.

A marshal, in performance of those functions, may do the following: (a) move or cause to be moved a vehicle, person or animal using, if necessary, reasonable force and assistance to do so – the term ‘reasonable force’ is an established legal phrase that takes account of the circumstances prevailing at the time of an action; (b) require any person to stop doing anything which, in the marshal’s opinion, puts the safety of the competitors, officials or spectators at risk – for example, if a passive protestor lights a smoky grass bonfire in their garden, disrupting a race by causing smoke to blow across the course, the marshal can instruct them to stop; (c) detain a person for as long as is necessary to secure the person’s or the public’s safety; (d) stop or otherwise control traffic – this can be on the lead up to, during and after the race in compliance with the racing authorisation; or (e) erect, maintain or remove apparatus to close a road or otherwise control traffic.

There may be a slight misconception that this Bill will give marshals many additional powers: it does not. The 1982 Act gives marshals the wide-ranging powers of a constable. The new Act will limit these powers to those that might be needed to marshal a safe event. The Department expects the organisers to issue guidance to marshals on the use of these powers and it will support the organisers in the development of that guidance. This means that although there are strong legal powers available to marshals, some organisers may choose not to approve the use of these powers for their marshals or limit them to specific situations.

A marshal, when performing the functions in the Bill, must show his or her identity card when requested. If the identity card does not contain a photograph, then the marshal must also produce relevant photographic identification in support of the marshal’s identification card.

Madam President, I beg to move that clause 10 stand part of the Bill.

The President: Hon. Member, Mr Crookall.

Mr Crookall: I beg to second, Madam President.

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I have put forward amendments to clauses 10 and 11 that, with your permission, Eaghtyrane, and that of the Council, should be taken as one as they are linked and do not –

The President: I am sorry, Hon. Member, clause 11 has not yet been moved, so you will need to move the amendments separately.

Mr Henderson: They are interlinked, Eaghtyrane – that is the problem. As far as I am given to understand, they are actually bolted together.

The President: Well, there is an amendment to clause 10 printed in our Order Paper, which you can ... They may be similar, but unless the mover ... Clause 10 has been moved. If you can address your remarks to the amendment to clause 10, which is a new clause set out on page 5 on the Order paper ...

Mr Henderson: Yes, I understand what you are saying, Eaghtyrane, and I understand the instructions that have been given to me, so I will try my best with that, but I must just say that there is an interlinkage here, which I will try my best with.

The amendments standing in my name simplify the operation of clause 10, and they also would have an effect, if enacted, to clause 11 by eliminating the considerable overlap that exists in the current Bill. This overlap is unnecessary and could be confusing for those who have to use the legislation on a day-to-day basis.

As I said in my opening remarks to clause 9, the amendment standing in my name does not change the policy or intent of the Bill as drafted, but it does have the effect of clarifying and simplifying.

The amendment to clause 10 bring to life the functions and powers of a marshal. The functions of the marshal remain the same: to marshal the race and to administer and enforce the racing authorisation in accordance with any directions given by the organiser. Marshalling the race includes taking any reasonable steps to secure safety and to prevent any person, animal or vehicle from obstructing or otherwise hindering the conduct of the race.

In performing a marshal's functions, a marshal may remove a person, animal or vehicle from any land, road or position and detain a person until it is safe to release the person or until the person is passed into the custody of a constable. The marshal may also require a person to stop doing anything that puts the safety of competitors, spectators or the public in danger. It is perhaps important to remember that these powers are only in relation to the marshalling of the race or the enforcement of the racing authorisation and that an organiser may decide to limit the actions of its marshals if it sees fit.

To facilitate the race, marshals may stop or otherwise control traffic and erect, maintain or remove apparatus to close a road or otherwise control traffic. This will be done in accordance with the traffic management plan agreed with the Department of Infrastructure as part of the racing authorisation. In many cases this power legitimises what already happens on the ground at many race events. Some may not support the current situation, but the days when the Police and/or the Department of Infrastructure employed the staff and had the budgets to carry out all road closures and diversions are long gone.

As in the Bill, my amendment facilitates a marshal using reasonable force and assistance. Again, an organiser may decide to limit or place conditions on the actions of its marshals. Any person assisting a marshal has the same powers and immunities as the marshal and is subject to the same liabilities. Before exercising her or his powers in relation a person, a marshal must warn the person that their actions constitute an offence and inform the person of the marshal's powers.

Eaghtyrane, I beg to move that the amendment at clause 10 stand in my name:

Substitution of clause 10

2. For line 15 on page 13 to line 11 on page 14, substitute —

«10 Marshals: powers and functions

(1) The functions of a marshal are —

(a) to marshal the race for which the marshal is appointed; and

(b) to administer and enforce the racing authorisation in accordance with any directions given to the marshal by the organiser by whom the marshal was appointed.

(2) For the purposes of subsection (1)(a), marshalling the race includes taking any reasonable steps to —

(a) secure the safety of competitors, officials, spectators or the public; and

(b) prevent any person, animal or vehicle from obstructing or otherwise hindering the conduct of the race.

(3) A marshal, in performing those functions, may —

(a) remove, or cause to be removed, a vehicle, person or animal from any road, land or position;

(b) detain a person for so long as is necessary to secure the person's safety or public safety or until he or she can be delivered into the custody of a constable;

(c) remove a person from any road, land or position and thereafter detain that person for so long as is necessary to secure the person's safety or public safety or until he or she can be delivered into the custody of a constable;

(d) require any person to stop doing anything which, in the marshal's opinion, puts the safety of competitors, officials, spectators or the public at risk;

(e) stop or otherwise control traffic;

(f) erect, maintain or remove apparatus to close a road or otherwise control traffic.

(4) In exercising the powers conferred by this section the marshal may, if necessary, use reasonable force and assistance.

(5) Any person assisting a marshal in the exercise of the marshal's powers and in the performance of the marshal's functions has the same powers and immunities as the marshal and is subject to the same liabilities as the marshal.

(6) Before exercising the powers conferred by subsection (3)(a) to (d) in relation to a person, the marshal must —

(a) warn the person that the marshal considers the person's conduct constitutes an offence; and

(b) inform the person of the marshal's power under this section.»

Mr Cretney: I am happy to second that, Madam President.

Can I make it clear that I think it is good that this matter is clarified, because there was some confusion even in this Chamber until clarified by the Bishop with our discussion in here. So I welcome the move here because I do believe it makes the situation much more clear.

Thank you.

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

I do have some concerns about some of the powers that are being introduced here. The bulk of them I think are perfectly sensible:

(1) The functions of a marshal are —

(a) to marshal the race ...

— that goes without saying —

(b) to administer ... the racing authorisation

— which effectively is the situation now, where they enforce the road closing order, as it currently is. And then it says ... This is the amendment, Madam President:

(2) For the purposes of subsection (1)(a), marshalling the race includes taking any reasonable steps to —

(a) secure the safety of competitors, officials, spectators or the public;

— that again is what you would expect, and —

(b) prevent any person, animal or vehicle from obstructing or otherwise hindering the conduct of the race.

That again is what you would expect the functions to be.

But where I do have concerns is where ... During earlier drafts of this Bill there were some quite draconian powers wanting to be introduced, which thankfully we have had removed, but the next section here, which I know is in the amendment, and the amendment is tidying up of what we have in the green copy but it says:

- (3) A marshal, in performing those functions, may —
(a) remove, or cause to be removed, a vehicle, person or animal from any road, land or position;

Whilst I accept if there is the example of a bonfire being lit, with smoke billowing across the road, then clearly that is an action which is affecting the race, and indeed I think there are even powers that if that is going across a general highway that can be dealt with, but what I would like to know is if we get a case where we have marshals who do not think people should be stood in their gardens, their private property, their rightful property – they may not even be watching the race – it says they can ‘cause to be removed’, so it is giving these marshals powers to have a say over what is happening on that land. That is what it says in the Bill – ‘from *any* road, land or position’.

So I would ask the question, certainly maybe from the Attorney General: does this give them the powers to venture into people’s gardens? If people are in and on their property, their rightful property – (**Mr Henderson:** Danger.) Well, the Member says about danger, but I am sorry, the landowner is not organising the race, and as in common in many other places in the world, where a race organiser is organising a race, if there is a danger of debris going on to private land or into a dangerous area, they have to erect catch fences. It is wholly unacceptable to start depriving people of their property and their land, and this is something I have been saying to the Department on many occasions, that if they are going to organise a race – they have done it in other areas – they should put sufficient barriers up to ensure that people’s private property is not put in danger.

I think that what we are seeing here is some of these powers coming in by stealth, where we are appointing people who effectively can start dictating to people what they can do with their private property that they own, and that is a concern to me. I think we have to be very cautious here and I would like to know just exactly ... Do they have the right to go on to the land and tell people they cannot be in their garden? As I have said to the Department, they may not even be involved in watching the races; they may be enjoying, rightfully, their land, in which case why isn’t the Department insisting that the organiser of a race or a rally or anything else that is going on ... If the corners are so dangerous, then they should be taking the necessary steps to mitigate that, and there is appropriate ...

You have only got to look at the absolute eyesore we have got along the Grandstand at the moment with the concentration camp style fencing in front of the scoreboards. It is the most appalling-looking thing going –

Mr Henderson: I would agree with you on that, Juan.

Mr Turner: – but it has been put there because they have identified a risk. If that is the case, then why aren’t they doing it in other areas? This is a very important point – they will do it when it suits them; they will not do it when it does not suit them – and I think it needs to be clarified.

The President: I think, learned Acting Attorney General, you have been asked to comment – please.

The Acting Attorney General: Yes, thank you, Madam President.
Looking at subclause (3), which sets out that:

- A marshal, in performing those functions, may —
(a) remove, or cause to be removed, a vehicle, person or animal from any road, land or position;

– that has got to be read in the context of what it refers to, namely the functions, or ‘those functions’, and the functions are set out in subsections (1) and (2), which subsection (3) clearly follows.

The marshal would, looking at subsection (2)(b), have the power, when marshalling the race, including ‘taking any reasonable steps’ – which is the important part there – to ‘prevent any person, animal or vehicle from obstructing or otherwise hindering the conduct of the race.’ So, bearing that in mind, if, acting reasonably, the marshal considers that steps need to be taken to prevent any person, animal or vehicle from obstructing or otherwise hindering the conduct of the race, then he could cause a person, vehicle or animal to be removed from land – so he could actually access the land for that purpose.

So it is a power and the marshal is under an obligation to act reasonably in that regard.

The President: Do you wish to further clarify?

Mr Turner: Yes, thank you, Madam President.

It does say that is then down to the opinion of the marshal, and we have seen some decisions that clearly are not reasonable – they are overzealous. Subclause (c) does say if it is ‘necessary to secure the person’s safety’, so it would be up to the individual to decide whether somebody is in a safe position or not. Again, we are getting down to the opinion of the individual at the particular location, and that – the point I am making – is intruding into people’s rightful private property.

The President: The mover to reply.

Mr Corkish: Thank you, Madam President.

Can I thank the mover of the amendment, can I thank the Attorney General for his helpful clarification, and thank Mr Turner, whose long-time views regarding road racing on the Isle of Man I respect.

Can I just add that, in the marshal’s job ... ‘may remove’ etc. – and I think we mentioned this at the First Reading – is only in relation to the racing authorisation that the marshal is working to, not on any place. So, if the land is not prohibited, then they cannot be moved.

And it is right to point out the dangers, that we are endeavouring through this Bill to make road racing in the Isle of Man a lot safer.

Madam President, I beg to move.

The President: Hon. Members, the motion is that clause 10 – the printed clause 9 on your green Bill – stand part of the Bill.

To that, we have an amendment in the name of the Hon. Member, Mr Henderson, which seeks to substitute the whole of clause 10 with a new clause. I put to you the amendment in the name of Mr Henderson, Hon. Members. Those in favour of the amendment, please say aye; against, no. The ayes have it. The ayes have it.

I now put to you the clause as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We turn to clause 11, Hon. Members. I call on the mover, Mr Corkish.

Mr Corkish: Thank you, Madam President.

Clause 11, formerly 10, makes clear the marshals’ powers to detain, remove or remove and detain a person who is in contravention of a prohibition having effect by virtue of clause 7, formerly clause 6, or who is in such a position to obstruct or hinder the conduct of a race pursuant to a racing authorisation. The person can be detained until they can be delivered into the custody of a constable. Again, reasonable force and assistance can be used. However, before using these powers,

the marshal must warn the person that the marshal considers the person's action constitutes an offence, and inform the person of the marshal's powers.

If a marshal finds an animal or vehicle on a road closed under prohibition having effect by virtue of clause 7, formerly 6, or on land where they could obstruct or hinder the conduct of a race, then the marshal may remove the animal or vehicle from the road, land or position. Again, a marshal must show the marshal's identification and relevant photographic identification, if requested.

Jointly, clauses 10 and 11 ensure that the organiser has the powers to marshal a safe event. An organiser may limit its marshals' powers, but the proposed legislation is permissive in order to cater for a wide range of racing events and the passage of time.

Following the first consideration of clauses debate a couple of weeks ago, the Department has reviewed the operation of clauses 10 and 11, and Mr Henderson has kindly agreed to bring forward both of these amendments.

Madam President, I beg to move that clause 11 stand part of the Bill.

The President: Do we have a seconder?

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

The President: The Hon. Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

The amendment to clause 11 which stands in my name specifies that, when performing the functions of a marshal, the marshal must produce the identity card for inspection upon request or have it displayed. If the identity card does not include a recent photograph, then the marshal must also produce relevant photographic identification.

A marshal must only produce identification if it is reasonable and safe to do so. There may be some instances where a marshal needs to act quickly and it would not be reasonable or safe for the marshal to produce his or her identity card.

Eaghtyrane, I beg to move the amendment standing in my name:

Substitution of clause 11

3. *From line 12 on page 14 to line 4 on page 15, substitute —*

«11 Production of identity card

(1) When performing the functions of a marshal under section 10, a marshal must, if it is reasonable and safe to do so —

(a) produce the marshal's identity card for inspection upon request; or

(b) have the identity card displayed so that it is clearly visible,

and inform any person in relation to whom those functions are to be exercised that the marshal is empowered to exercise them under section 10.

This is subject to subsections (2) and (3).

(2) If the marshal's identity card does not contain a recent photograph of the marshal, the marshal must also —

(a) have relevant photographic identification in his or her possession, and

(b) produce that identification for inspection upon request.

(3) A person assisting a marshal in accordance with section 10(4) does not need to have an identity card (and as a result does not need to comply with the requirements of this section).»

Mr Cretney: I am happy to second that, Madam President.

If I could just ask the Member, or the mover of the Bill, in relation to subclause (3), where it states that a person assisting a marshal does not need to have an identity card etc., does the

Member or the mover of the Bill agree with me that such circumstances will be quite rare, that a marshal would call upon somebody who is not in such position to assist?

The President: Could we clarify about which subclause (3) you ...

Mr Cretney: Sorry, on the amendment, the 3 in brackets.

The President: On the amendment?

Mr Cretney: Yes.

The President: Right, okay, thank you.
The Hon. Member, Mr Turner.

Mr Turner: Yes, I too have a query about subclause (3) regarding a person assisting the marshal. I wonder if the mover, or the mover of the amendment maybe, could clarify what circumstances that would be, because if it is somebody who is not involved in the event then clearly they are not signed on, so there are implications there. And of course the marshal is authorised to be on the closed roads, so I think, from the advice we have had previously through the Department ... who would the assistants be?

Could he clarify what circumstances that is designed to cover?

The President: The mover to reply.

Mr Corkish: Thank you, Madam President.

Can I thank Mr Cretney for his observation. Yes, indeed, it would be a rare occasion that that situation would arise, and that would be when the marshal indeed would need help and assistance, and I think that is part of the safety aspect that a marshal could hopefully rely upon to help a race.

Mr Turner, who I think is well aware of what we are trying to do here, in moving this Bill –

Mr Turner: I am not sure.

Mr Corkish: Is this regarding the powers to detain that the Member is concerned about? Because there may be times when there will be people around the course who repeatedly will want to, for whatever reason, walk into prohibited areas as racing machines pass. The marshal has the power to remove them from the track or the prohibited area in order to maintain safety and the progress of the event, and the marshal can detain them until they get the help from usually a constable.

I do not really understand where Mr Turner is coming from. Is it purely you are wanting to know why an ordinary person can be drafted in to assist a marshal?

The President: I think for clarity we will allow you to come back, because we need to be sure that everybody knows what this Bill is about.

Mr Corkish: And it may even be ... and I thank other people for helping here. It may also be a vehicle and/or a large animal that may need to be removed. It may even be an escaped cat or a dog from a house on the course, where he or she may need assistance to remove that animal. The assistance may be a member of the public or a vehicle removal company.

I think whilst we cannot address every possible term here, what the Bill is trying to do is to drive safety as much as possible for the road racing in the Isle of Man.

The President: Hon. Members, the motion before Council is that clause 11 stand part of the Bill.

To that, we have an amendment moved by the Hon. Member, Mr Henderson, which is the amendment numbered 3 and printed at page 6 on your Order Papers, which introduces a total substitution of clause 11. I put to you the amendment, Hon. Members. Those in favour of the amendment, please say aye; against, no. The ayes have it. The ayes have it.

I now put to you the clause as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, our Order Paper sets out further amendments to the Bill to clauses which have already been considered. Normally, these would be dealt with at our Third Reading stage. However, with your agreement, because they are all related to the two clauses we have just dealt with, I propose to deal with them at this point. Are you content with that, Hon. Members? (**Members:** Agreed.)

I would invite the Hon. Member, Mr Henderson, to move his amendments to clauses 4, 13 and 14 at this point.

I would just make it clear, Hon. Members, that as printed there is further confusion.

I think this is an absolutely salutary lesson that when we have an amended Bill from another place it would be wise to have a printed copy with the numbering corrected for this Council to consider, because in these amendments the sections we are amending are a mixed bunch referring to the old numbering but introducing new numbering.

The important thing, however, is the line number, the page and lines, and the amendment that you are introducing. If we focus on those things I think we will get it right.

So, Hon. Member, if you would move the amendments to clauses 4, 13 and 14 – as printed on your Order Papers, Hon. Members, at page 7.

Mr Henderson: Gura mie eu, Eaghtyrane.

The proposed amendments to clauses 4, 13 and 14 are purely consequential and textual amendments to ensure the numbering and cross-referencing of the Bill operates correctly.

Eaghtyrane, I beg to move those amendments:

Amendment to clause 4

4. Page 8, on line 4, for “9(1)” substitute «10(2)».

Amendment to Clause 13

5. Page 15, lines 14 and 15, for “section 6, 9 or 10” substitute «section 7 or 10».

6. Page 15, line 17, omit “other than section 9(3), (4) or (5),”.

7. Page 15, line 18, for “sections 6, 9 and 10” substitute «sections 7 and 10».

Amendment to Clause 14

8. Page 15, line 29, for “section 9(2)(b)” substitute «section 10(3)(d)».

Mr Cretney: I am happy to second.

The President: Hon. Members, the motion is that the amendments standing in the name of the Hon. Member, Mr Henderson, to clauses 4, 13 and 14 do stand part of those clauses. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

I now move the clauses as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We are slightly deviating from normal practice, but I hope we have now got those clauses all concluded.

We have left just one clause to consider, Hon. Members. That is clause 12, which is printed at 11 on your green Bills. I call on the Hon. Member, Mr Corkish.

Mr Corkish: Thank you, Madam President.

Can I thank you for your guidance and thank again Mr Henderson for moving the amendments.

Can I also accept that there has been a modicum of inconvenience in the moving of the Bill and the salutary lessons pointed out by you, Madam President.

In moving clause 12, formerly clause 11, under the Bill as drafted, marshals will have the same liabilities and immunities as a constable.

The liabilities of a constable and the immunities enjoyed by a constable are not all written down in statute – some have evolved from case law, i.e. the common law.

In certain circumstances a constable has immunity from negligence claims. There are a number of English cases on this point. The effect of clause 12(1) is that marshals would enjoy the same immunity, where applicable.

Constables can also be liable for a number of statutory and common law offences in carrying out their duties. Section 12(1) provides that marshals would be subject to the same liabilities as constables in exercising the powers and performing the functions of their appointment. Relevant offences would include the use of unreasonable force, false imprisonment or criminal damage to property.

The effect of clause 12(2) is to ensure that 12(1) does not affect the vicarious liabilities of the organiser for anything done by the marshal, i.e. the organiser remains responsible for the actions of its marshals.

Madam President, I beg to move that clause 12 stand part of the Bill.

The President: The Hon. Member, Mr Henderson.

Mr Henderson: I beg to second, Eaghtyrane, and reserve my remarks.

The President: The Hon. Member, Mr Coleman.

Mr Coleman: Thank you, Madam President.

I am particularly interested in 'Marshals: liabilities ... (1) A marshal, in exercising the powers ...' I think we have seen previously that the marshal can call upon someone to assist them. I just wonder whether, from a legal point of view, it should actually read 'a marshal or someone assisting a marshal, in exercising the powers' should have exactly the same indemnities as the marshal.

It does say earlier that the assistants will have the powers, but it has ... the person has the powers. This says 'a marshal, in exercising the powers'. It does not say someone who is assisting a marshal at the marshal's request'. If anyone can point out to me anywhere else in this Bill which would actually provide all the indemnities of a marshal to a person assisting ...

Thank you, Madam President.

The President: The Hon. Member, Mr Turner.

Mr Turner: I think Mr Coleman has a fair point, because the example we had from the mover when I queried the person assisting ... he used an example of a vehicle recovery business. I know in the past where vehicles have been parked on slip roads, for example – and I thank the mover for that example, because that was what I was looking for, some clarification of examples – a vehicle recovery firm has been brought in on many occasions to move vehicles. So surely then, if we are putting into statute for these persons to assist, there needs to be some protection in there, because if they remove the vehicle there could be a claim perhaps of criminal damage. So would that not be best clarified in there, as Mr Coleman says, to ensure that there is the correct wording?

The President: Is it not already accommodated? (**The Acting Attorney General:** Yes.) It is already in the Bill, Hon. Member.

The Acting Attorney General: Madam President, in the new clause 10(5), it provides that:

Any person assisting a marshal in the exercise of the marshal's powers and in the performance of the marshal's functions has the same powers and immunities as the marshal and is subject to the same liabilities as the marshal.

Mr Turner: Okay. I thank the Attorney.

The Acting Attorney General: So it is covered in the Act.

The President: If there are no further queries, I call on the mover to reply.

Mr Corkish: Thank you, Madam President.

Can I thank Mr Coleman for his observations, shared by Mr Turner, and thank the Acting Attorney General for his clarification on clause 10(5), which is offering the same liabilities and immunities to an assistant.

Madam President, I beg to move that clause 12 do stand part of the Bill.

The President: Hon. Members, the motion is that clause 12 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, that concludes consideration of the clauses.

**Road Races Bill 2015 –
Standing Order 4.3(2) suspended to take Third Reading**

Mr Corkish to move:

That Standing Order 4.3(2) be suspended to enable the remaining stages of this Bill to be taken at this sitting.

The President: I understand the mover wishes to seek suspension of Standing Orders. The Hon. Member, Mr Corkish.

Mr Corkish: Thank you, Madam President.

I beg to move the suspension of Standing Order 4.3(2) to enable the Third Reading of this Bill to be taken today.

The President: The Hon. Member, Mr Henderson.

Mr Henderson: I beg to second, Eaghtyrane.

The President: The Hon. Member, Mr Turner.

Mr Turner: Madam President, I would strongly disagree with suspension of Standing Orders.

We have had some quite technical changes here. The Member has not made a case as to why Standing Orders should be suspended to take the remaining stage of the Bill. There is a parliamentary process and we had no prior warning that we would be looking to move two readings of this Bill along at this sitting.

The President: It is on the Order Paper, Hon. Member.

Mr Turner: Is it? I do apologise. The copy of this I had with my notes on I left behind. I had to get another copy from Jonathan. So I do apologise, but I do disagree with suspension of Standing Orders to take multiple versions of Bills without there being a good reason to do so, and the Member has not given us that case, Madam President.

I will not be supporting suspension of Standing Orders.

The President: The Hon. Member, Mr Cretney.

Mr Cretney: Thank you.

I will be supporting suspension of Standing Orders on the basis that the Department, in good faith, after matters being raised in this hon. place, has gone away and has made alterations to the betterment of the Bill, and I think we should support the Hon. Member now in getting on with the progress.

The President: We have a motion for suspension of Standing Orders, Hon. Members. Those in favour, please say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

FOR

The Lord Bishop
Mr Coleman
Mr Cretney
Mr Anderson
Mr Wild
Mr Corkish
Mr Henderson
Mr Crookall

AGAINST

Mr Turner

The President: Hon. Members, we have the required 5 votes, so suspension is agreed.

Road Races Bill 2015 – Third Reading approved

The President: I call on the mover to take the Third Reading.

Mr Corkish: Thank you, Madam President.

Before I do so, can I just comment. I thank Mr Turner. I respect his views. What we wish to do here is the Department wishes to progress the Bill, which has been well scrutinised, quite rightly, by this Council, and the Department in turn has acted upon those amendments which have been suggested by Council. I am grateful for the Council's wish to proceed with the Third Reading.

In moving the Third Reading of the Bill, I will reflect upon the main themes and, if I may, address some points during the reading of the clauses debate, many of which will still be fresh, and perhaps raw, in our minds.

First, however, I will take the opportunity to thank the many Hon. Members who contributed to the debate so effectively and diligently; in particular, the Lord Bishop, Mr Turner and Mr Cretney. Indeed, the Lord Bishop's keen eye avoided any doubt when he successfully amended Mr Singer's amendment from another place.

I would also like to thank Mr Henderson for his support in seconding the Bill and for the amendment that stands in his name.

Coupled with that, Mr Crookall. This amendment puts beyond doubt the need for the marshal's name to be on the marshal's identification.

We debated at length the marshal's identity card and the need for a recent photograph to be either on the identity or carried in support of the marshal's identity card. We have clarified that a marshal's identity cannot be issued for a year and cover multiple events. It must be issued on an event-by-event basis after the organiser has been identified in a racing authorisation. The Department hopes, however, that this new legislation will allow authorisations to be issued months in advance rather the weeks or days in advance.

We have debated the change to the creation of prohibited areas, which puts the onus on the landowner and occupier to object to land being made prohibited. We appreciate that there are different views on this issue, but also hope that Hon. Members will recognise that the Department has tried to find a practical, reasonable and balanced solution.

Again, we have seen differing views as to the appointment of a marshal. Whilst the Department believes that there was wide support for the organiser to appoint marshals, disagreements remain, we feel, about the ability of this legislation to stop some unsuitable people becoming marshals. The Bill offers safeguards, but the Department recognises that decisions could be challenged perhaps in terms of an individual's human rights. Again, the Department has provided pragmatic legislation. It is the organiser's right to determine who it appoints as marshals; it is not an individual's right to be a marshal just because they want to.

This comprehensive Bill seeks to replace the Road Races Act 1982, which has served us well for many years, with a new and updated Act.

First and foremost, the Bill creates clarity around roles and responsibilities. Ambiguity between the roles of the organiser, DOI and the Police has been removed. It is now clearly the responsibility of the race organisers to organise, plan and implement a safe sporting and spectator event. Recent tragedies in a nearby jurisdiction have reinforced the importance of this approach. Road racing is dangerous. The competitors in these events risk their lives, and we as a community have accepted this fact for many years. This is not to say that we have stopped trying to improve safety. We have not, and neither have the governing bodies. Less comfortable is the fact that spectators also accept risks when they attend these events. Indeed, it is one of the enduring attractions of some of our events that spectators can be close to the racing action. This should not stop us trying to make events safer and the Department believes that this legislation will do that by giving the Clerk of the Course and marshals the powers they need to implement a safe sporting and spectator event.

This Bill will reduce considerably the amount of unproductive administration, and in doing so we believe that there will be a net improvement in safety. The Coroner, reporting on the unnecessary deaths at the 26th milestone inquest, was critical on many fronts: the lack of overall co-ordination and management, the failures of process and the complexity of consent for prohibited areas. Mr Moyle, in his summing up, noted:

As a matter of urgency, section 2 of the 1982 Act should be re-examined to see if a more simplified system can be brought into force.

The Department believes that this Bill simplifies the system and balances the needs of event organisers with the rights of landowners and/or occupiers.

Through its application, the Bill introduces a risk-centred approach to racing events on closed public highways. Road racing with significant risks will be authorised through the new road races legislation. Low-risk racing events – perhaps termed entertainment – will be authorised through the Highways Act.

Through this Bill, as amended, racing will be allowed to take place on a Sunday. This is now common place and creates the opportunity for races to be organised at the weekend when more people will be able to enjoy them. The Department think that a compromise has been obtained through the Bill's progress in another place. Whilst some might think the arrangements for Sunday racing overly proscriptive and untrusting, the changes have brought acceptance from opposing camps and we should all be pleased for that.

The Isle of Man has a celebrated history of road racing, Madam President, and it is an important part of our unique cultural identity. All in all, the Bill makes a material improvement to our road racing law, and in doing so promotes the public interest by protecting the future of road racing on the Isle of Man.

As such, I commend the Bill to the House and beg to move the Third Reading of the Bill and that it do pass.

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

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I wish to move an amendment at this point to clause 19, which was clause 18.

Section 38 of the Highways Act is the means through which the Highway Authority closes roads to facilitate entertainment on the roads. Entertainment can range from cycle and walking races through to street parties and carnivals. The organisers of such events sometimes require powers similar to those for road racing, i.e. the appointment of marshals, the powers to put out signage, direct traffic etc. These powers are currently given through the Road Races Act 1982 and they continue to be given through the Bill before you.

This amendment stops the requirement of clause 6 of the Bill applying to section 38 of the Highways Act. Clause 6, the new clause brought forward in another place, restricts the circumstances in which road racing can take place on a Sunday. In practice, this will mean that entertainment on a Sunday does not require the prior approval of the Council of Ministers, unlike a racing authorisation for Road Racing.

Eaghtyrane, I beg to move the clause standing in my name:

1. Page 18, lines 20 and 21, for "sections 5 to 9 and 12 to 16" substitute «sections 5, 7 to 12 and 14 to 16».

Mr Cretney: Happy to second that, Madam President.

The President: Hon. Members, I am happy to have that proposed and seconded, but I would like to ensure that we all know exactly what we are considering, because the amendment as printed on our Order Papers – and this is for my clarity as much as anybody else’s – refers to numbers printed on the original Bill from the Keys, which has subsequently been amended. So we have got a mixture here. We are talking about, on the face of our paper, clause 19, which I agree was 18, and we are referring to page 18, lines 20 and 21 – that is clear – and we are referring to the numbering as it originally was, not as it was subsequently amended from another place.

So, if we are clear about the fact that we are changing the numbering as was originally printed, what I would like confirmation of is that the amended section, the substitution which is being proposed, refers to the clauses as they are now currently standing. So we are talking about a renumbered clause ... We are talking about the new clause 7 as it came from another place, and not the printed version. We have a mixture here of printed numbers and revised numbers, as I see it. I would just like clarification from the mover that the sections we are referring to – 5, 7 to 12 and 14 to 16 – are as revised in another place, where that is appropriate. There was no change to 5 –

Mr Henderson: That is correct, Eaghtyrane.

The President: – but there has been a change to the numbering in the other clauses.

Mr Corkish: I can confirm that is the case, Madam President.

The President: Right, well, it is a salutary lesson in drafting, I am afraid, (**Mr Corkish:** Hear, hear.) amendments.

Lord Bishop.

The Lord Bishop: Thank you, Madam President.

May I ask the mover: as far as I can see, this simply says – but, of course, in the form that it has to say it – in other words omit sections 6 and 13 from the previous provision. Is that right? Because if we look at sections 5 to 9 and 12 to 16, and then you replace that with 5, 7 to 12 and 14 to 16, that seems to suggest that the change is that sections 6 and 13 no longer apply. If that is the case, could somebody explain to me what the significance of this is, rather than ...? Is there any significance?

The President: You are not quite right about the numbering, in that the numbering should have changed.

Mr Coleman: As I read it, Madam President, it is actually now clause 19.

The President: Well, that is why I want to be ... No, clause 19, we are clear about that: clause 18 has become clause 19. What I do want to be clear about is that where, in clause 18(2), was printed ‘5 to 9 and 12 to 16’, that subsequently was changed by the introduction of a new clause in another place, so it should have been amended for our consideration to 5 to 10 and 11 to 16 by the renumbering.

The Clerk: You mean 13 to 17.

The Lord Bishop: Yes.

The President: Sorry, yes, 13 to 17 – 5 to 10 and 13 to 17. That is what we should have been amending, because that is what came from another place. So I want to be clear –

The Lord Bishop: What happened to 11?

The President: Sorry?

The Lord Bishop: What happened to 11?

The President: Well, this is why I want the Department to be clear what we are talking about.

Mr Cretney: Raised eyebrows.

Mr Corkish: Madam President, I am advised the change means that the Council of Ministers ... It is not the approval for holding such a thing as a carnival on a Sunday.

Mr Cretney: Absolutely. Hear, hear.

The President: Can you just confirm for me, please, that when you are referring in the amendment to sections 5 to 9 you are referring not to the printed numbers but to the numbers as they have been revised – ‘and 12 to 16’; or are you referring to the numbers as on the original green Bill?

Mr Corkish: Madam President, I have the Director of Highways here. Could I ask the Council’s indulgence to ask Mr Robinson to explain? I believe the answer is yes.

The President: We just want to make sure the new numbering is correct.

Mr Corkish: I think that is the case.

The President: Could you announce your name for the purposes of Hansard, and your office, please.

Mr Robinson: Jeffrey Robinson, Director of Highways in the Department of Infrastructure.

Madam President, my understanding is that the reference to sections 5 to 9 and 12 to 16 is referring to the green paper as printed, (**The President:** Yes.) and then the sections referring to 7, 12, 14 and 16 are as amended.

The President: As amended, thank you. So 7 was 6?

Mr Robinson: That is my understanding, yes.

The President: Okay, so we have got a mixture there of old printed and revised. Are Members clear now, or have we muddied the waters even further?
Lord Bishop.

The Lord Bishop: Madam President, might we ask Mr Robinson whether he could give us the amendment in the new numbers, please, so that we can make some comparison. I do not think we can do it in the old numbers, but we could do it in the new numbering, so that at least we know which ones are being omitted or added.

Mr Robinson: The intention is to omit new numbering 6 and new numbering 13 from the provisions.

The Lord Bishop: Which is what I asked five minutes ago, exactly. Thank you, I’ve got it.

The President: Have we all got it?

Mr Cretney: Yes, I think we've got it!

Mr Corkish: By George, they've got it!

The President: We do not want to send it to another place and find it is wrong.

Mr Turner: I hope they get a reprint of it.

The President: Is there any further comment on the Third Reading, Hon. Members, or the amendment put as proposed?

The Hon. Member, Mr Turner.

Mr Turner: Yes, just to comment at Third Reading that I hope when we do send it to the other place maybe it should be renumbered and they get a copy which will mean something to them.

I am disappointed that despite the modernisation of this Bill it has failed to do certain things.

I think it does fail to deal with the unsuitable people, on which we had confirmation from the Attorney that yes, the process is still open to maybe petitions of doleance. The mover did acknowledge that it is quite within the rights of organisers to decide who are marshals. I think, though, if the likes of law enforcement agencies have a concern and instruct the organiser via the Department to remove a particular person, then they can, at the public's expense, go and take court action. I think that is quite an unsatisfactory situation, and surely when making primary legislation we should be able to put provisions in. I think it is important for the protection of the public.

It was interesting, when talking to an advocate who is involved in road racing, that they said the original 1982 Act did actually have sufficient provisions to deal with many of the issues that they are trying to address in this and there seemed to be a lack of will to acknowledge that, which I think is unfortunate.

I think, as the mover mentioned the coroner's report into the 26th milestone, we have to remember the lack of organisation and the failure of process was in an event that the Isle of Man Government were putting on. It was not in an event that was put on by outside parties, and that is something I have kept saying all the way through – that the fallout from the Government's own failures in their organisation has impacted on other organisations, which in my view should have been used as examples on how to put events on. There are very well structured events taking place all over the world, and yet the fallout from that was that they created a working group, they appointed people on huge contracts of substantial amounts of money – it was meant to be a one-year contract and yet we seemed to be employing these people for years and years. So what came out of that was a very expensive process, and it is unfortunate that it has taken this long to get this Bill. It has gone through all the bureaucracy when they could have spoken to people on the Island very early on and got the advice they needed. So I am surprised it has taken from 2007 to now in 2016 to get this through, and I have my own views on that as to why it has taken so long. Again, the expertise was here. There are some very senior people – international-grade stewards in motorcycling – on the Island, and in the early stages of this they were not even consulted, which I think is unfortunate.

I will support the Third Reading of the Bill, as there are a few new provisions in there which are sensible. Many of the re-enactments of older provisions that have just been tidied up, again makes it a little easier.

But I will say that I am disappointed that the process for Sunday racing has been made quite cumbersome in this Bill. I think that is unnecessary. I think that what we are basically saying is we are going to give the Department the powers, but we do not trust them so we are then going to have

certain decisions filtering up to the Council of Ministers, which I have questioned on a number of occasions. We then have the Cabinet of the Isle of Man dealing with what are quite low-level operational issues, and I think that is just incredible. The Department should have strong policies in place to deal with requests for Sunday racing on its merits. They should have the ability to decide based on a number of factors and based on strong consultation with people affected. But I think what we have done is we have made it a very complicated, convoluted process, which was totally unnecessary.

I hope that we do not lose any weekend events because of this, because, as I have said at earlier readings, the UK is looking to embrace events now with road closing. We could have enthusiasts' weekends. Tourism are always saying that weekend interest groups are very important for the tourism sector. So, if we have got classic car clubs wanting to come here of a long weekend – they do proportionally spend a high amount of money – what we have got to do is make that process quite simple for them to be able to come here and organise their weekend. I have said before that closing off the likes of the Sloc for a classic car hill climb on a Sunday morning is not going to affect people – close people in. They may have to go a few miles round, but that is not closing people in and closing down the likes of places of worship. But we have got to make it easy and I do not think this Bill does that. I think it is a shame that after all these years ... We talk about modernising 30-year-old legislation, we have had the opportunity, and we have gone in and made it ... as we have been going along we have been tinkering with it and making it more complicated.

I think the powers for marshals need to be exercised very carefully, both for the individuals who are volunteering ... they need to know where they stand, they need to know what they can and cannot do, and I would hope that the Department publishes suitable guidance and training, because there are changes in this and the way we have always done it is simply not going to be good enough. Everybody needs to know exactly what this Bill means for them.

I will support the Third Reading, but I am disappointed that the final version of it is not entirely as I think it should be.

The President: The mover to reply.

Mr Corkish: Thank you, Madam President.

Can I thank Mr Turner again for his views. I accept and respect his views, they are long held and valid, and I think it fair to say that there are certain aspects between the Department of Infrastructure and Mr Turner which will always be a matter that may have the handle 'agree to disagree'.

What the Bill is trying to do is to modernise, despite the disappointment from Mr Turner, and make safer and sustain road racing in the Isle of Man. The Department have tried to be pragmatic and make safer the event and cover as many likelihoods, I believe, as possible.

Madam President, again, I beg to move.

The President: Hon. Members, the motion is that the Bill be read a third time.

To that, we have an amendment in the name of the Hon. Mr Henderson, an amendment to clause 19, or 18 as printed on your green Bill. I put to you the amendment, Hon. Members. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

I put to you the Bill as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

The Bill is read a third time and passes, Hon. Members.