

Road Traffic and Highways (Miscellaneous Amendments) Bill 2011
Second Reading approved

3.2. Mr Gawne to move:

That the Road Traffic and Highways (Miscellaneous Amendments) Bill 2011 be read the second time.

The Speaker: Item 3.2, the Road Traffic and Highways (Miscellaneous Amendments) Bill.
I call on Mr Gawne.

Mr Gawne: Gura mie eu, Loayreyder.

This is a far reaching Bill, which affects the law on road traffic and highways in various ways. As such, it has evolved in part from proposals contained in the then Department of Transport's Road Safety Initiative, published in 2004.

Of the Bill's principal provisions, the most weighty are those set out in part 2, which deals with the amendment of the Road Traffic Act 1985. This part has three key themes: first, to deal with bad or irresponsible driving, whether it involves, for example, carelessness or danger, driving when prohibited from doing so, drink-driving or speeding; second, to cater for the punishment of offenders, in accordance with the Department's and, indeed, the general public's increased perception of the gravity of the offences involved; and third, to provide in the interests of justice, a wider range of alternative verdicts so that, in any given case, lesser offences may be considered by the courts in the event that the principle offence is not proven.

I shall now deal with those themes in order. This part begins by creating four new driving offences: causing grievous bodily harm by dangerous driving; causing death or grievous bodily harm, respectively, by careless or inconsiderate driving; and causing death by driving when unlicensed, disqualified or uninsured.

It is perhaps unnecessary for me to expatiate on the creation of new offences, except to assert a perhaps self-evident and simple fact, namely that a principal purpose is to deter, by way of punishment, actions or omissions of a particularly injurious nature that, in the public mind, evoke disgust, extreme repugnance or horror. So deterrence, both specific and general, is a predominant factor, but there is an equally important purpose, namely retributive justice, which in its classical form embraces the idea that the amount of punishment should be proportionate to the amount of harm caused by an offence.

Despite criticism in recent years, the concept remains a central pillar of the criminal law, and it is perhaps right that it should be so, for if individuals begin to believe that society is unwilling, or unable, to impose penalties commensurate with injurious behaviour, then seeds of anarchy and vigilante justice are sown. When the penalties for the new driving offences are compared with those of the existing offences, it is considered that they are proportionate and complementary. The House will, of course, be aware that they are in fact maxima and that it will be for the good sense of the courts to determine, within the prescribed limits, whatever penalties are appropriate in any given case. Indeed, the provisions will provide the utmost flexibility, ranging from trying a case summarily or on indictment, depending on the seriousness of the case, to imposing penalties on conviction that may involve a simple fine, a custodial sentence or a combination of the two.

This part goes on to provide for the seizure of motor vehicles in cases where the persons in question are prohibited from driving them on roads. The underlying policy can be clearly and succinctly explained. It is based partly on the impropriety of permitting persons to retain possession of their vehicles when, for example, they are to be charged with driving while disqualified or with committing a serious driving offence connected with drink or drugs, in case they should be tempted to reoffend before their cases are disposed of, partly on the risk to safety of the public if the vehicles are retained by the persons in question, and partly on the desirability of providing a further deterrent to persons driving on roads when they are prohibited from doing so.

By virtue of regulations to be made under the provisions, it is intended that vehicles will be kept in storage until a court orders them to be released to the owner or otherwise disposed of. Where, for example, the court convicts a person of an offence to which the seizure relates and orders the vehicle to be sold, it is intended that the proceeds of sale will be given to the owner, minus the Police's expenses in seizing, storing and selling the vehicle. Drink and, in certain cases, dangerous driving is further addressed by catering for increased minimum periods of disqualification partly, as elsewhere, to deter unsafe driving and partly to remove unsafe drivers from roads.

As the House will be aware, this part does not, in the case of certain drink-and-drive offences, amend the present blood-alcohol limit of 80 mg in 100 ml of blood by lowering it to the level of 50 mg per 100 ml operative in most European countries, but not the UK. There have, however, been two impressive reports recently published for the United Kingdom's Department of Transport, which recommend the adoption of the lower limit in Great Britain. One by the National Institute for Health and Clinical Excellence is entitled, 'Review of effectiveness of laws limiting blood alcohol concentration levels to reduce alcohol-related road injuries and deaths', whereas the other by Sir Peter North QC, a former Provost of Jesus College, Oxford, is

entitled, 'Report of the Review of Drink and Drug Driving Law'. The Department proposes to keep this matter under review, clearly, but it will be for the new Department, after the General Election, to determine whether to promote primary legislation introducing the lower limit here.

Speeding is a problem, and accordingly this part substitutes '1-10' for '3' penalty points. The purposes are to enable courts to respond more flexibly in the light of the circumstances of a case and to provide a greater deterrent to excessive speeding. Marginal exceeding of a speed limit will attract penalty points at the low end of the scale; grossly excessive speeding at the high end; and intermediate speeding in between.

As far as the second theme – the punishment of offenders – is concerned, this part provides for increased penalties by way of amending schedule 6 to the Act. In particular, the maximum custodial option is increased from 10 to 14 years on conviction of the offences of causing death by dangerous driving and causing death by careless driving, when under the influence of drink or drugs.

These increases reflect partly the Department's and, indeed, the general public's increased perception of the gravity of the offences, and partly widespread concern at the very lenient sentences imposed by the judiciary – sentences which, even in the most serious cases, are invariably far below the maximum. Raising the maximum penalties is seen as a way of raising the general level of sentencing.

Excluding penalties for new offences and increased penalties for certain existing offences, broadly in line with inflation: this part imposes increased penalties in the case of certain other offences, reflecting the Department's increased perception of their gravity. For example, in the case of driving a vehicle while holding a mobile telephone in a hand, the maximum penalty is increased from £1,000 to £2,500, and provision is made, firstly, for discretionary disqualification, obligatory endorsement and four penalty points, and secondly, for a court to order the mobile telephone to be forfeited. For instance, in the cases of failing to stop and report an accident and of making false statements and withholding material information, the custodial option in the first case is increased from three to nine months, and in the second is set at three months for the first time. If the Bill is enacted in its present form, it will enable the punishments in schedule 6, and also in certain other Acts, to be varied by order, subject to Tynwald approval.

As to the third theme – the catering for a wider range of alternative verdicts – the provisions in this part are preceded by existing ones in the Act and in the Criminal Jurisdiction Act 1993. If the principal offence with which a person is charged is not proven, it is in the interests of justice that, if there is a lesser charge or charges to answer, they should also be considered. Safeguards for defendants answering lesser charges are provided, by affording them the opportunity of cross-examining witnesses whose evidence has already been given, otherwise answering the charges, and requiring the court to adjourn hearings, when it considers the defendants will be prejudiced in their defence by reason of the new charge or charges.

Among matters of lesser weight addressed by this part, there are the Manx Highway Code, supplementary regulation of paid driving instruction, the conduct of inquiries by persons independent of the Department and the stopping by the Department's examiners of vehicles on roads for testing when a constable in uniform is present.

I now turn, if I may, to the rest of the Bill, which involves a miscellany of lesser amendments, principally to the Road Traffic Regulation Act 1985, the Highways Act 1986 and the Road Transport Act 2001.

The amendments to the 1985 Act include prohibitions on double parking and parking adjacent to dropped footways and the like, facilitation of the use of the Island by the film industry, clarification and amendment of the provisions of the placing of traffic signs, the transfer of responsibility of traffic wardens from the Department of Home Affairs to the Department of Infrastructure, and deregulation of certain provisions.

The amendments to the Highways Act deal with the recovery of the Department's expenses, due to extraordinary traffic on a highway, the designation of improvement lines for the widening of highways, together with the acquisition of land between those lines and the boundaries of highways, the creation of walkways by agreement, being rights of way on foot in developments, such as comprehensive shopping centres and blocks of flats, thereby better enabling access by the Police to maintain public order, the deregulation of the temporary closure of highways for the purposes of entertainments, so that closures may be effected by direction of the Department, instead of a statutory order, the cutting of trees or other vegetation overhanging highways in a dangerous or obstructive way, when such cutting has not been attended to by owners or occupiers, together with the recovery from them of the Department's expenses, in cases where the Department carries out the work itself, agreements capable of providing a means of access or other facilities in connection with highway, being agreements mostly following on from planning permissions, which, if they are to be implemented, require the works involved to be carried out and a better reinstatement of highways or bridges by statutory undertakers, in cases where such bodies have opened up highways to gain access to their apparatus.

Finally, the amendments to the Road Transport Act, which deals at present with the registration or licensing of public passenger vehicles by the Road Transport Licensing Committee, enable such registration or licensing to be refused, suspended or revoked by the Committee on health grounds and regulations to be made requiring that, when application for registration or licensing is made, it shall not be granted by the Committee, unless, in addition to existing requirements, such requirements as may be prescribed are met. All in all, I am sure that this

Bill will, in particular, make a material contribution to road safety, besides providing for other matters that are equally in the public interest. As such, I commend the Bill to the House.

I should say, before I move the motion, that I should apologise to the House, in that the formal consultation response document had not been published. I understand that that will be published this afternoon and, again, I would apologise to Members for that oversight, an unfortunate oversight, on the part of the Department. It is something I will be seeking to ensure does not happen again but, with that apology, I beg to move.

The Speaker: Mr Quirk.

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

The Speaker: Mr Houghton, Hon. Member.

Mr Houghton: Thank you, Mr Speaker.

This Bill is a very comprehensive Bill with many points of interest in, as the Hon. Minister has quite clearly set out to the House this morning and I support the Bill, Mr Speaker.

There are a few points I would like to discuss and one area, of course, I would like to home in on and that is the issue of these four new offences.

Mr Speaker, the Department has been a long time coming forward with this Bill. Five years ago, there was a dreadful accident, a fatal accident, that Hon. Members will recall at Hillberry Corner, when Diane Chreseson was killed. The driver was taken to court for dangerous driving and, as Hon. Members will recall, the driver eventually had, after a long pause, the appeals etc... the charge was reduced to due care and attention, simply because there were difficulties in proving dangerous driving: when the accident was so horrific, nobody could understand how a charge of dangerous driving could be proved.

The onus on the proof of dangerous driving which currently exists... and, in the past, a charge that was brought in by the Department 20 odd years ago and withdrawn within two or three years. A charge of reckless driving in replacement to dangerous driving has very many difficulties in actually reaching the burden of proof for the prosecutor to successfully prosecute. So when this horrific accident happened at Hillberry Corner and the public... there was major outcry there and the Minister made a comment in his speech this morning, where he mentions if offences and drivers are not properly dealt with under due process, it could bring forward seeds of anarchy or vigilante justice may be shown and he is quite right in that case.

There was an awful outcry at that time, because of the Diane Chreseson fatal accident, for something to be done about it and it did cause me to look into bringing forward a Private Member's Bill, which the Department now – and I fully support the Department – is trying to address today, in dealing with the burden of proof but then loading the penalty appropriately, according to the magnitude of the accident or the causation of the accident etc. So, as I say, I support that.

I thank the Minister also for the very interesting presentation which covered all of these other aspects in the Bill and also for inviting Mr Dimelow to attend and give the very, very upsetting account to Hon. Members of just what actually happens to a family when they lose a loved one in a road accident. Mr Dimelow told all Hon. Members who were present at that time that, basically, his life is wrecked... and his wife – that is, the mother and father of the child – they still are paying dearly today, even with difficulties with their business and everything else, because of the horrific situation that, of course, came out of the irresponsible driving, even though the driver was dealt with and did not actually get sentenced to an appropriate term, as I may say. That, really, destroys all of those innocent parties, Mr Speaker.

So the issue that I would like to just focus in on in particular in these new offences is where the Hon. Minister goes on about 'grievous bodily harm'. The issue I have with the offence remaining as grievous bodily harm – and I fully concur with what the Department is trying to do – is the inappropriate wording of 'grievous bodily harm', and I will explain that to Hon. Members, Mr Speaker.

Grievous bodily harm is a vicious attack and it is an offence against the person where someone intends to harm that person and harms them. There is currently a provision whereby you can use a motor vehicle now and drive it at someone and hit them and be prosecuted for grievous bodily harm. That has actually happened in the past because, usually with GBH, you are using an implement, a cricket bat, or a vehicle in this particular case. Whatever you are doing to harm that person, under the offences against the person which is, of course, what happens in many cases of violence, grievous bodily harm is next to attempted murder and it is the offence against the person. This I do not see is appropriate in a motoring Bill, even though someone seriously harms someone by their irresponsible, dangerous driving, whichever way you may wish to look at it, I do not think they set out at the start, as far as it is detailed in the Road Traffic Act... it is not set out that they actually went out to grievously bodily harm someone, and that is the issue I have with the wording.

I would like to say to the Minister that I would like to bring forward an amendment at clauses stage in order to helpfully change the form of wording, but leave everything there, because, as I say, the misunderstanding and

the public now reading the Bill in the paper and the forthcoming Bill and it was reported recently – are actually stating that it is inappropriate. The offence is inappropriately worded. So another forms of words, such as ‘serious physical harm’ means the same and must have the same gravity in law, as far as penalties are concerned, which, as I say, I do not wish to interfere with, as far as that is particularly concerned.

But I do feel simply because it is the other issue about offences that we see in the papers such a lot which are against the... [*Inaudible*] people are looking at it as using a vehicle as an offence against a person, as I have already explained. I would just like to change the wording so that people understand ‘grievous bodily harm’ is exactly how people understand it now. ‘Serious physical harm’ or a form of words similar to meaning that can go in the Road Traffic Act to deal with those drivers and the harm that they cause people as a response to the wishes that the Bill has already set out before, Mr Speaker.

I thought about mentioning this – one of the old memories I have in my past life as a special constable – because I was not sure whether all Hon. Members... Some Hon. Members will have been at the scene of road accidents and come across the scene of serious road accidents, but I do not know whether all Hon. Members have come to the scene of serious road accidents and I would just like to tell Hon. Members of a little story that happened 20 years ago when I was on patrol with PC Callin in Onchan.

We got called to the Laxey side of Whitebridge Hill and we got called to an accident there where a high-powered sports car with three people in it, driven by a male driver and two females... The two females were in the region of 16 or 17 years of age. The car was travelling towards Douglas and there is a nasty lefthand bend with a farm entrance going up the side that an awful lot of other people have come to grief on. The car was travelling down at somewhere in the region of 90-plus miles an hour. They lost it on that bend. The vehicle under-steered, it hit the bank, pirouetted in the air, and then it went bouncing head over heels down the road until it came to rest at the lower entrance to Molly Quirk’s Glen. Whilst that car was bouncing down the road, the two female passengers – one in the front seat and one in the rear seat – were thrown through the then closed sunroof. As it worked out, one was thrown out at the top side of Whitebridge Road, and the other one came to rest not further away from where the car came to rest on the lower part of the hill as such.

When we arrived at the accident it was pitch black. There was nobody else there, apart from somebody who had reported the accident, of course, and come across it. Ambulances – there were only two on duty and they were deployed elsewhere in Douglas – and other police officers were dealing with another serious incident elsewhere. So, for a period of time, myself and the PC, with one other person, who was the driver – who was actually out of the vehicle but was the least injured, surprisingly enough – were the only people there for a good 10 minutes or so, dealing with the accident. The driver told me that he had two people in the vehicle. PC Callin was dealing with the one immediate nearest and I then headed off up the road – a dark road – with a hand lamp, to find the other one. The other one was in the gutter, almost bent over double backwards, with very severe injuries, lying in glass from the smashed windscreen of the car and she was just like a rag doll. I held her in my arms and just did my best to reassure her and tried to do what little I could with a very small first aid box, just to try and keep control over the areas where she was seriously bleeding. She was like a rag doll. It was horrific.

Then one of the girls’ mothers arrived on the scene, and we had a heck of a job, trying to keep them away from the injured girls that were there. That is the effect that you have, especially when a relative of someone involved in a road accident, turns up. They go hysterical – naturally so – and the Police, of course, have got an awful lot to do there, but the situation is you just feel so helpless, knowing the first aid and the experience that you do, and looking after and caring for those people involved in these accident, whilst you are awaiting the ambulance to come. It was just pathetic. It was completely pathetic and there was no need for the accident to have happened – and of course, we could say that about many accidents. But it is just a completely pathetic situation, Hon. Members, for those who actually have not been there, and even when we, fully obviously on duty, expecting to go to any scenes and anything else... You are still in a state of shock when you see the horrific injuries of someone who has been thrown out of a car at high speed.

I know one of those young ladies was in a specialist hospital in the United Kingdom for a very long time. But whatever they were charged for, the charges arose in this particular case... That was, of course, all expedited at the time. We do have – and I know Hon. Members will be supporting, or I am sure most Hon. Members will be supporting the Minister in this Bill – an absolute duty to deal appropriately with those who choose to drive like maniacs and not let anybody escape from the law. I think this is what the Minister is trying to do.

I think that is all I have to say, but I would welcome the Minister’s comments on my bringing forward an amendment just purely to change the wording from ‘grievous bodily harm’ to something more appropriate that would fit appropriately in the Road Traffic (Amendment) Bill, sir.

Thank you.

The Speaker: Mr Watterson

Mr Watterson: Thank you, Mr Speaker.

I do not intend to address the detail of the specific provisions today. I will leave that to the clauses stage. What I do want to mention, though, is what the Minister called the 'oversight' in not producing a consultation response. This was something that I requested from the Department on 10th March, almost two weeks ago, and have heard nothing since.

There is no point doing a consultation, if consideration is not given to the responses, and we are left unsure whether any consideration has been given, or completely ignored, if we are denied the Department's response to those comments made. It does make a mockery of the consultation process. It deprives Members of this House of the ability to reflect on the responses of the public, with a view to any amendments. It forces Hon. Members to repeat the work that they have already done, in preparing a consultation response, as it is not known which of the suggestions have been accepted, varied or rejected and the Department's reasons for doing so.

The Department appears to run fast and loose with the Code of Conduct on Consultation on taxi issues and is doing it again today. It does not encourage Hon. Members to engage with the process of consultation, if we are not left with the feeling that consultation responses are listened to, considered and then we have the feedback on them.

So, I suppose, something of a protest vote and I hope the Minister will take on board those concerns that I have about the way that the Department is dealing with consultation at the moment.

The Speaker: I call on the Minister to reply.

Mr Gawne: Gura mie eu, Loayreyder.

Taking the second part, Mr Watterson's concerns, first, I did apologise at the beginning and I can only apologise again. I think that I am not entirely clear what he is talking about with regard to us being fast and loose with the consultation process, particularly with regard to the taxi legislation.

Mr Watterson: Publishing the consultation response.

Mr Gawne: Yes, to the motion, so had we moved the motion I could understand where you are coming from, but we did actually withdraw that motion and, hopefully, we will get a better solution as a result.

With regard to the changes, clearly we have responded, but clearly, as the Hon. Member points out, we have not issued the consultation response. That will be published on the website this afternoon, and I thank the Hon. Member for pointing it out to me. I was naturally assuming that the consultation response had been published – it had been approved – so I was surprised to learn that it had not been published. So apologies for that.

We have taken note of a number of the comments that have been made. Obviously, we cannot agree with everybody's comments, because if you have conflicting views then you cannot create legislation that prohibits something but also allows it to happen. If one fella says, 'We want this prohibiting,' and the other one wants it to happen, then you have to decide one way or the other. I know that we have withdrawn three elements of the original Bill that we went out for consultation on and we have included an additional element, so we have certainly listened to what people have said.

I would also like to thank, obviously, Mr Quirk for seconding. I thank the Department Members for the support they have given to this Bill. I do also understand it is quite a lengthy Bill. There are lots of provisions in it. I think most of the provisions are fairly non-controversial but, clearly, Members will have the opportunity to consider this in greater depth at clauses.

I thank Mr Houghton for his very supportive comments. I do not entirely agree with his point in relation to GBH. The intent is not the issue here. It is about what does GBH describe, and the advice that we have is that the expression 'GBH' is not defined statutorily, but has long been interpreted in case law. Generally, as interpreted by the courts, GBH has no other meaning than that which the words convey in their ordinary and natural meaning. 'Bodily harm' needs no explanation, and 'grievous' means no more and no less than serious. So I do not really think that that is a big issue. However, I will consider the amendment that the Hon. Member for Douglas North is proposing. We have actually gone over this in some depth initially when we were considering the Bill, and further to the comments that the Hon. Member made at the presentation, which we gave to Members a week or so ago, and at that stage when the Hon. Member raised this. We thought that we had addressed it at that stage but, clearly, the Hon. Member, Mr Houghton, still has some concerns.

As I say, the Department is happy to consider any amendments that come forward, although at this stage I am not convinced by Hon. Members' arguments. Whether the House is convinced by those arguments or my arguments, then clearly only clauses stage will show.

So I thank Members who have spoken. Again, I apologise to my colleague that we have not got the consultation response out, but it will be published this afternoon.

I beg to move.

The Speaker: Hon. Members, I put the motion that the Road Traffic and Highways (Miscellaneous Amendment) Bill be read for the second time.

All those in favour, please say aye; against, no. The ayes have it.

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

FOR	AGAINST
Mr Quirk	None
Mr Earnshaw	
Mr Karran	
Mr Brown	
Mr Crookall	
Mr Anderson	
Mrs Craine	
Mr Quayle	
Mr Cannan	
Mr Cregeen	
Mr Houghton	
Mr Henderson	
Mr Malarkey	
Mr Robertshaw	
Mrs Cannell	
Mr Corkish	
Mr Cretney	
Mr Watterson	
Mr Gawne	
Mr Gill	
The Speaker	

The Speaker: With 21 votes for and no votes against, the motion therefore carries.