

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

2. Mr Callister to move:

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

**The President:** Hon. Members, we now move on to the Road Traffic and Highways (Miscellaneous Amendments) Bill, for Second Reading again, and this time in the hands of Mr Callister.

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

First of all, I would like to thank Hon. Members for the support they gave to the Bill in the First Reading stage.

Summarising the purposes of the Bill, they are basically threefold: first of all, to deal with bad or irresponsible driving, whether it involves, for example, careless or dangerous driving, driving when prohibited from doing so, drink-driving or speeding; secondly, 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, thirdly, 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 principal defence is not proven.

The Bill also contains a miscellany of lesser amendments to road traffic and highways legislation.

During First Reading I undertook, Mr President, to come back at this stage and clarify certain matters which were of particular interest to Hon. Members and I will amplify some remarks I made at the close of the debate.

Mr Downie enquired about the number of convictions for speeding and for driving a vehicle while holding a mobile telephone in hand. Over the last three years, the figures average 702 convictions and 19 cautions per year for speeding, and 96 convictions and nine cautions per year for the use of a mobile phone while driving.

Mr Downie also expressed the need to tackle more resolutely the problems of drink-driving and the failure to insure. I can advise Hon. Members that the Bill seeks to do precisely that. By virtue of clause 18, the minimum period of disqualification is increased up to five years in the case of certain offences, where the person is intoxicated or fails to provide a specimen. In addition, clause 12 caters for the seizure, retention and disposal of vehicles in drink-drive cases, also in cases where a person uses a vehicle on roads not only when uninsured but also unlicensed and disqualified.

It is also true, as Mr Downie remarked, that the Road Traffic Act provides for spot checks on vehicles on roads. Clause 17 is aimed at materially increasing the frequency of such checks by enabling them to be conducted by the Department's vehicle examiners and when only one police constable is in attendance. The present situation is that it is normal for having two constables to be there.

In view of the scarcity now of Police manpower, this limits the occasions when spot checks may currently occur.

The Hon. Member, Mr Turner, expressed regret that the Bill did not address the matter of driving ages. Provision was taken, in fact, in the Road Traffic (Amendment) Bill 2001, for prescribing of driving ages in regulations, but that provision has not yet been brought into force. When finalising the regulations to be made under it, the Department will take into account Hon. Members' comments, which are helpful.

Mr Turner referred to the proceeds of sale arising from the disposal of vehicles seized under clause 12. Their destination is to be prescribed in the regulations to be made under section 47B and, in the light of the Hon. Member's remarks, the Department will consider in due course whether, as he proposes, the proceeds should go elsewhere than to the owner.

Mr Turner's proposal requiring the Manx Highway Code to be purchased at the same time as a provisional licence will also require some consideration. It is a matter, therefore, for possible inclusion in the later Road Traffic Act, which is in the offing. A revised code is presently being drafted and it may be that it will be posted free of charge on the web.

As to the short-term disqualifications proposed by Mr Turner, the courts already do have flexibility to pursue this course, should they think fit.

In the light of advice from Chambers, I am able to advise the Hon. Member that clause 33, which substitutes a new section 38 in the Highways Act, will *inter alia* enable the holding of Soap Box Derbys and similar entertainment. Indeed, as the Member correctly surmised, the Department is advised that such events may already be authorised under the section in its present form.

Turning now, Mr President, to the points raised by Mr Butt, the Hon. Member addressed the matter of night-time driving by young persons, suggesting consideration of a curfew. Such a proposal is highly controversial and, if it were to be acted upon, it would need to be the subject of wide public consultation. Therefore, it is not a matter for this Bill, Mr President.

Mr Butt also expressed general concern about the liability of young drivers involved in road accidents and commented on what else could be done about it. The concern of the Member is well founded and, because of like concern, the Department has recently explored the options of a so-called Manx Pass Plus Scheme. This is a scheme in which newly qualified drivers would purchase extra training in order to benefit from discounted insurance premiums. Sadly, it had to be dropped on account of cost. The Department has also considered a scheme of providing additional training as an alternative to prosecution. The convictions for speeding by R-plate drivers have been 10 over last three years, with one caution. (**Mr Downie:** Ridiculous.) This proposal, too, has not been progressed, but the Department has set up a working group to consider how less experienced drivers might benefit from additional support or more onerous sanctions, or a combination, perhaps, of the two. The Department considers that particular care needs to be taken so that we do not introduce measures that would discriminate on the grounds of age alone.

Mr Butt also went on to propose a graduated series of penalty points for careless or inconsiderate driving, which is an interesting suggestion and it is one the Department will take into account when it is drawing up the later Road Traffic Bill.

Regretfully, I must advise the Hon. Member that the Department does not share his view that the offence of causing death by careless or inconsiderate driving should be only an alternative verdict to the offence of causing death by dangerous driving. Given the definition of 'careless or inconsiderate driving' in clause 7 of the Act, the Department is of the opinion that it is perfectly feasible for the offence to stand alone and, for the reasons that I later set out, it believes also it should be a matter of policy.

The Hon. Member touched on a consideration appertaining to the defences of causing death or serious bodily harm by careless or inconsiderate driving. As manoeuvres amounting to careless or inconsiderate driving frequently take place without any death or injury resulting, it is often argued that taking account of the victim's death or injury is to attribute too much importance to chance or misfortune. This argument was rebutted in the GB consultation paper which preceded the GB Road Safety Bill 2006, and it put forward the view, with which the Department of Infrastructure agrees, that the rules of the road are designed largely to avoid collisions, injuries and deaths. Anyone who falls below the standards is culpable. Any driver who does so without causing an accident is fortunate and it is justifiable to punish those whose bad driving does cause death or injury because that is the risk against which the rules of the road are meant to guard.

I have been given illustrations, Mr President, of accidents which took place at which the maximum penalty would have been ridiculously low in view of the resulting accident and the deaths caused within them. I will just quote one. This is a case which involved a woman who was travelling on the Mountain Road. A motorist heading north lost control of his vehicle and collided with her car. She suffered multiple fractures and life-changing brain injuries, exacerbated by a stroke. The only sanction available was to charge the offender with the minor offence of careless or inconsiderate driving, for which the maximum penalty was a fine of £2,500, of which he was found guilty. He was fined £400 and given three months' disqualification, and the penalties were not remotely commensurate with the harm that he had done. So, apart from providing a deterrent, Mr President, both specific and general to unsafe driving, the two offences address the equally important matter of retributive justice, which is a central pillar of criminal law.

The Hon. Member, Mrs Christian, enquired about the meaning of 'traffic sign' and whether the offence of placing unauthorised traffic signs would extend to those placed by members of the public – for instance, those warning traffic of the movement of stock. A traffic sign, within the meaning the Bill, is a statutory sign prescribed under section 15 of the Road Traffic Regulation Act and contained in the Traffic Signs Regulations 2002. It is not a sign of the kind to which Mrs Christian referred. Statutory signs are those for placing by the Department or other statutory bodies, and it is inadvisable and certainly potentially unsafe for members of the public to take this function to themselves. As regards providing information for the driver for movement of stock, that is not covered there, so it is appropriate to do so, Mr President.

Mr Braidwood enquired about the estimated number of uninsured vehicles in the Island and when we can expect to access the motor insurance database. The answer to the first point is about 5% to 10%, we believe, whereas the access to the database is expected within the next couple of months.

Mr Lowey expressed reservations about the disposal of seized vehicles. Under the regulations to be made under clause 12, disposal will be a matter for the courts to decide, as supplemented by the regulations, and vehicles will not be allowed to sit and fester in compounds.

Finally, Mr President, I think you queried the way that references were made to male and female gender to persons mentioned in the Bill. References of this kind follow on from a resolution of the Court that henceforth the drafting of Bills should be gender neutral.

Having addressed those points of Hon. Members, Mr President, I am convinced this Bill will, in particular, make a material contribution to road safety, besides providing for other matters that are equally in the public interest. Within the Chamber today the Director of Highways is present, Mr Pearson, also, Projects Officer, Chris Hannon, and should we come across difficult areas, they would be available, Mr President, to make comment.

I beg to move the Second Reading, Mr President.

**The President:** Mr Crowe.

**Mr Crowe:** I beg to second, Mr President, and whilst supporting the Bill, it is just interesting to see that this major piece of legislation amends various other pieces of legislation, such as the Road Traffic Act 1985, the Highways Act 1986, the Road Traffic Regulations 1985, and there is a whole series of other legislation going back even to the Summary Jurisdiction Act 1927.

So I think this Bill has probably been long in the gestation and I guess, for the future, it would be interesting that possibly changes to the motor legislation or road traffic legislation could be inbuilt into a timetable to bring it to up to date more quickly, because I think we do have a very large Bill with very large measures covering a very wide-ranging series of events.

**The President:** Mr Turner.

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

I do have some queries as we go through the clauses of the Bill.

As Mr Crowe has just indicated, it does amend various other Acts. I have attempted to find out where the Order-making powers lie and where the approvals for those powers are. I appreciate that there is a vast array of road traffic Orders which do not, obviously, come to Tynwald because they are more operational than policy but, as we go through, I would appreciate if the mover would be able to indicate, where we have regulation and Order-making powers through here, what the approval process is for those.

Again, I do appreciate some of the things like temporary speed limits and all those sorts of Orders do not, for good reason, come before Tynwald, but there are, for example, regulations made for seizure, retention and disposal. Presumably, those sorts of Orders will require Tynwald approval, so as we go through I would appreciate if he could highlight those.

I also wish to raise for consideration, as well, something I brought up whilst on the Department of Transport and that was penalties for speeding through roadworks. As I had a former delegation for works at the Department of Transport, one of the problems we were encountering was high speeds through roadworks. I brought back, imported, an idea I saw in the United States where, at roadworks, they have signs that say, quite simply, speeding fines doubled when workers present. I thought that was a worthy suggestion and, sadly, it did not go anywhere. I did get a million reasons why it could not happen. I do not accept that. I think if the Department has the powers to bring forward legislation, then it can happen. If it can happen elsewhere in the world it can happen here.

This nonsense about, 'Well, they don't do that in England,' I do not accept. This is the Isle of Man. We have the ability to bring in our own legislation to suit ourselves and we should be doing that.

There are various things I will pick at as we go through this, but broadly in support of the Second Reading and, hopefully, the Member can answer those points as we go through.

**The President:** Mr Downie.

**Mr Downie:** Thank you, Mr President.

Could I, first of all, thank the Hon. Member for doing some really good research there and answering, I think, most of the questions that were asked at the previous reading.

I think those of you who drive, who are out on the roads on a regular basis... I think it is pretty abysmal that we are only succeeding in catching two people per day speeding. That is what the figures indicate: 702 drivers, taken over a three-year period, average in a year. The number of mobile phones, as well... It is ridiculous, and when you get a situation where the Police stand up and say the crime has reduced in the Isle of Man by 25% to 35% in some areas, where are they?

I gave an instance at the last reading where the law is so obscure now about commercial vehicles. I happen to have been passed on Sunday by a white van doing about 70 miles an hour, and no sign on the back of it to say it was restricted. The law is quite clear: it is supposed to have that disc on the back which says what the maximum speed of that vehicle is. We just do not seem to be... We are pushing this forward and yet it is quite clear to me that, within the existing legislation, there is plenty there to attack the motorist who will not abide by the rules.

I think it is sad that the judiciary do have a number of measures available to them, but seem to be reluctant to deal with the desperate situation Mr Callister pointed out about the poor lady on the Mountain Road.

If the law needs changing there, I am all for changing it, but it seems to me it is a pity that when these pieces of legislation go through there is not an opportunity to let other people know, either the judiciary or the Police, what our views are in here. I think it is just sad that we have already got legislation but, for some reason, they

are reluctant to use it, to utilise it. Even construction and use regulations, you go driving at night now and there are dozens of vehicles on the road with only one headlight or rear lights out. It is as if people do not care.

I would not mind if the Police pulled people over and said, 'Look, I'm giving you a warning. If I see you again either driving recklessly or dangerously or speeding with R-plates...' That is what we should be doing. We should be getting the message across.

I notice all these signs going up for the TT all over the place – losing your friends, and so on – but there is no enforcement. If you came to the TT 30 or 40 years ago, there were policemen there that would pull you over. There are provisions within the legislation to put your bike in a compound and they used to threaten people with that. It soon quietened them down and calmed them down, but you never see a policeman now out on the course.

I think that, unless we can get the message across, by bringing more and more legislation in we are just deluding ourselves that the system is actually working. If you go to the UK now, or you go to other jurisdictions in Europe, the Police are very much to the fore and the message that they are getting across is that road safety is paramount and they are not going to accept people behaving irresponsibly while they are on the road. Generally, I think the legislation we are proposed to put through now I can support, but it just seems to be this issue that, whatever we seem to do, the people who are on the other end of it and responsible for dealing with it just do not seem to be stepping up to the plate.

That is my rant for this morning!

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, I can support much that is in the Bill, but I do think that enforcement is an issue.

On the other hand, we have seen creeping extension of speed limits all over the place where you really do not think that they are necessary and wonder what the justification for them is and, therefore, you will see why people are tempted to ignore them. So we have got to try and get a reasonable balance here between where we do need speed limits and where we do want to protect people against injury and so on, and where it just seems to be officious.

**The President:** Mr Butt.

**Mr Butt:** Thank you, sir.

Although I broadly support the Bill and all the clauses, I would just like to comment on what Mr Turner said. I am glad to see that some of the suggestions are being looked at by the Department and are being investigated.

Mr Turner said, 'Why can't we do what other countries do?' There are many examples throughout the Commonwealth and Europe about how young people are protected better by imaginative regulations and imaginative punishments and conditions, and I hope the Department are taking that on board.

I could say a lot about the Police and how they police, and I had probably best not do so, but I remember when I joined in the 1960s, when we had 30,000 visitors every week here, we had a lot more motorcycles over here. We had 89 police officers, of which all but six were on the beat, dealing with these matters, and did deal with them. Now we have 250, I think, police officers, and it is quite distressing to know that only 10 young people have been prosecuted for speeding on R-plates. That is amazing. (**Mr Turner:** Hear, hear.) I will not criticise the Police because it is not my place to do so, but I do support this Bill.

**The President:** Mr Callister to reply, then.

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

First of all, in reference to Mr Turner's comment about Orders etc, as a general rule, Orders and regulations do have Tynwald approval. You will find that we also have the ability to put notices, which are the responsibility of the Department to do those, and there will be some reference here to notices as we go through, but more or less the Orders and regulations are given Tynwald approval. You will find that that will happen with this Bill.

The speeding through roadworks: I can endorse what Mr Turner is saying about that. I have driven through roadworks in the States where you do get the sign saying fines will be doubled. If it has been rejected by the Department in the past, it may not need to be in the future and it is something that now can be considered again. The problem with that, of course, in the States as well, is that unless there is someone there to enforce that, drivers still ignore it, in any case.

Enforcement takes us on to what Mr Downie has been saying, really. It is not a matter for the Department of Infrastructure, unfortunately. We do not have policemen out. It is a matter for the Police. Whilst we can make the legislation, we cannot account for the activity of the Police or, indeed, direct them. I do not know whether Mr Downie would favour speed traps all around the Island. There are plenty of those in England, which the

public have taken great exception to, and they are regarded, often enough, as a revenue raiser, I think these days, rather than for speeding. Nevertheless, my personal view is the public of the Isle of Man would not take kindly to the idea of speed traps.

That Mountain Road tragedy points to the fact that the penalties have not been sufficient for accidents of that kind, and this Bill, to some extent – perhaps maybe not far enough, in my view, but to some extent – will be able to correct that.

**Mr Turner:** It does not apply.

**The President:** Can I just check, Mr Callister, because I think, on that one, which I know has been referred to a couple of times, you also said, in relation to that particular case, that the fine could have been £2,500 and the court decided the action at £400.

**Mr Callister:** That was the information I was advised from the Department.

**The President:** The point I make is that it is the court that made... They had the availability of increasing... Continue, sir.

**Mr Callister:** They did, yes, indeed.

Mrs Christian again referred to the creeping expansion of speed limits, and I have some sympathy with that because there seem to be too many speed limits, in my view, and they are perhaps not all appropriate for the areas they are in. That is a matter, no doubt, the Director of Highways is making a note of at this very minute and will be considering for the future, Mr President.

I thank Mr Butt for his comments, as well, and the numbers of Police who are now, instead of out on the beat, sitting down at their typewriters or computers, or whatever it is that they have to spend so much time on today.

I thank Members for their support and I beg to move, Mr President.

**The President:** The motion, Hon. Members, is that Road Traffic and Highways (Miscellaneous Amendments) Bill be read for a second time.

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

### **Road Traffic and Highways (Miscellaneous Amendments) Bill 2011 Consideration of clauses commenced**

**The President:** We go on to the clauses stage, Hon. Members. Perhaps we could take part 1, clauses 1 and 2, Mr Callister, please.

**Mr Callister:** Yes, sir, we can take clauses 1 and 2.  
Clause 1, Mr President, gives the Bill its short title.  
Clause 2 denotes the provisions for Appointed Day Orders.  
I beg to move, Mr President.

**Mr Crowe:** I beg to second, Mr President.

**The President:** The motion, Hon. Members, is that clauses 1 and 2 do stand part of the Bill.  
Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
Perhaps, Mr Callister, with your permission, we could take clauses 3, 4, 5 and 6, sir.

**Mr Callister:** If you wish, sir, yes.  
This, of course, is in part 2 of the Bill now. It deals with the amendment of the Road Traffic Act 1985, and we are taking clauses 3, 4, 5 and 6.  
Clause 3 simply provides a subheading for the Bill itself, that:

‘The Road Traffic Act 1985 is amended in accordance with this Part.’

Clause 4, by way of inserting the section, originally drafted, created a new offence by causing grievous bodily harm by dangerous driving. The penalties, on conviction, are prescribed in clause 21.

The expression 'grievous bodily harm' is not defined statutorily, but has long been interpreted in case law. Generally, as interpreted by the courts, the expression 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 or no less than serious, but because of its connotation with wounding with intent, the expression 'grievous bodily harm' was considered inappropriate by the House of Keys. Consequently, an amendment was carried which replaced the word 'grievous' with the word 'serious', and that amendment occurs several times further in the Bill, Mr President.

Clause 5 is essentially consequential. The effect of this clause is to apply the existing definition of 'dangerous driving' to the offence of causing bodily harm by such driving.

Did we say clause 6, Mr President?

**The President:** Yes.

**Mr Callister:** By inserting – this is clause 6 – the sections in question, this clause, as originally drafted, created the new offences of causing death and grievous bodily harm, respectively, by careless or inconsiderate driving. The penalties on conviction are prescribed again in clause 21.

The amendment that was carried by the House of Keys relates – that being the change of 'grievous' to 'serious'.

I beg to move that clauses 3, 4, 5 and 6 stand part of the Bill, Mr President.

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

**The President:** The motion, Hon. Members, is that clauses 3, 4, 5 and 6 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Clause 7.

**Mr Callister:** Clause 7, Mr President, inserts a section defining careless or inconsiderate driving for the purposes of driving offences in which such driving is involved.

I beg to move clause 7 stand part of the Bill.

**The President:** Mr Crowe.

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

**The President:** Mr Turner.

**Mr Turner:** We are at clause 7, aren't we?

**The President:** Clause 7, sir.

**Mr Turner:** Inconsiderate driving and driving without due care and attention is quite interesting.

I wonder whether the mover has an opinion on that. For example, driving at 20 miles per hour across the mountain I would consider is inconsiderate. When you see people dawdling along with a massive queue of people behind them, you then end up with the safe driver, who is doing 20 miles an hour, actually causing considerable inconvenience and then you get the person who decides to have a go to get past, and that can all spiral out of control. I just wondered how that is going to be applied and tested.

You do often see farmers and tractors who have the courtesy to pull in and let the traffic pass, which is clearly considering other road users, but you get others, who may be towing trailers and things on their way to the tip, who do not consider the 20 or 30 cars behind them, and so forth. I just wonder how that is going to be tested.

Also, I know of one person who got a phone call out of the blue from the Police that another motorist had reported them for bad driving, and I just wonder how that is all going to be applied, because what one person would consider inconsiderate driving another person might consider not to be.

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, this only applies in respect of an accident, doesn't it, causing serious bodily harm?

**Mr Turner:** I am not sure whether it does.

**Mrs Christian:** Doesn't this section...

'This section has effect for the purposes of sections 2B, 2C, 3 and 3A.'

So, it seems to be a definition in respect of causing serious bodily harm as a result of careless or inconvenient driving.

**Mr Turner:** The Police use that phrase 'other offences' and I wondered whether that...

**The President:** Sorry, Mr Turner, we have got to be careful about running backwards and forwards and not getting picked up correctly. Your point, sir.

**Mr Turner:** Apologies, Mr President. I was just wondering, because I know the Police use that term 'for other offences'... it could be accidents where there is not harm to persons, and whether that was going to be applied.

**The President:** Mr Butt.

**Mr Butt:** Thank you, sir.

I think Mrs Christian is right that this actually applies to the previous sections but, in terms of inconsiderate driving, that has been an offence for many years and there have been prosecutions, I think, in the past, for people dawdling and holding people up. There have been prosecutions for people driving close to the gutter and spraying people with mud, that sort of thing where there often are not accidents but the driving is... I think it is defined, actually, in part 4, as inconveniencing people.

**Mr Braidwood:** I think as well, from what Mr Butt has said, one of the classic examples, Mr President, is when chippings have been put down on the road and you are supposed to only go at a slow speed. You get other people speeding past and the chips are coming up and they go onto your paintwork and chip the paintwork. I think people have been prosecuted for that, for inconsiderate driving.

**The President:** Mr Lowey.

**Mr Lowey:** In subsection (2), it is the word... It may be in existing law – forgive me if I am wrong – but it says:

'A person is to be regarded as driving without due care and attention if...'

and then, in brackets:

'... (and only if) ...'

Why 'and only if'? Surely it is either it is, or it is not.

**Mrs Christian:** Mr President –

**The President:** Have you finished, Mr Lowey?

**Mr Lowey:** Yes. It is a point I... It may very well be repetitive in existing legislation, I do not know, but I just wonder why we have to emphasise if, 'but only if'.

**The President:** Mrs Christian.

**Mrs Christian:** Mr Lowey has made an interesting point, because if you are reading this in the context of sections 2B and 2C, it is to define 'without reasonable consideration' in respect of serious bodily harm. Well, surely anybody who has suffered serious bodily harm *has* been inconvenienced. I am not quite sure how this definition fits into that particular clause.

**The President:** Mr Attorney.

**The Attorney General:** Mr President, one has to read the provisions of 2B, 2C, 3 and 3A of the principal Act. Section 2B will be amended in respect of causing death by careless or inconsiderate driving. Section 2C will be causing grievous bodily harm by careless and inconsiderate –

**The President:** Serious.

**The Attorney General:** Sorry, my apologies – causing *serious* bodily harm by careless or inconsiderate driving. Section 3 is simply the offence of careless or inconsiderate driving, which is not –

**Mrs Christian:** Printed here.

**The Attorney General:** You have to look back to the principal Act. So, clause 3ZA also applies to section 3 of the principal Act, and 3A, which is causing death by careless driving when under the influence of drink or drugs. So, it applies to all those four sections of the principal Act. So that includes an offence, or offences, which do not involve either death or serious bodily harm. Hopefully, that is of some assistance.

**Mrs Christian:** Thank you.

**The President:** Mr Callister to reply, then.

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

I thank the Attorney General. He has gone ahead of me on what I was going to refer to there. Mrs Christian is quite right that the meaning of careless and inconsiderate driving, in this respect, is about causing death by dangerous driving.

Nevertheless, the comments by Mr Turner about people driving at 20 miles an hour when they are in a 50-mile speed limit area can be very irritating. Whereas you used to be able to drive to Peel in about 15 minutes about 40 years ago, it now takes the best part of half an hour, mainly because it is impossible to get past because of the number of cars on the road, but also you get some drivers who hold up the caravan that is following behind them. Particularly you do get this in some areas with tractors and large lorries, who will not pull over when they have got a contingent of vehicles behind them. I think that is bad driving but, nevertheless...

As for the chippings Mr Braidwood referred to, again that is most irritating. If you get a chip banging on the side of your window of your car, it can do some damage. It is just that there are a few irresponsible people around, Mr President.

I beg to move clause 7.

**The President:** Hon. Members, the motion I put to Council is that clause 7 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Clause 8, sir.

**Mr Callister:** Clause 8, Mr President.

By inserting this section, the clause creates a new offence of causing death by driving when unlicensed, disqualified or uninsured. The penalties on conviction are prescribed in subsection 21(1)(g).

I beg to second, Mr President.

**The President:** Mr Crowe.

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

**The President:** The motion, Hon. Members, is that clause 8 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Perhaps we could take clauses 9 and 10, sir.

**Mr Callister:** Yes, sir. These clauses extend the exception to the ban on motor racing and cycle racing respectively to occasions when it is permitted under any enactment – for example, section 38 of the Highways Act 1986, instead of just under the Road Races Act 1982.

I beg to move clauses 9 and 10 stand part of the Bill, Mr President.

**The President:** Mr Crowe.

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

**The President:** Mr Lowey.

**Mr Lowey:** Just for clarity's sake, for me, is this actually making it easier for the Department to make an Order without having to come to Tynwald, or is it making it all Orders have to, no matter which enactment, come under Tynwald?

The point, I think, raised by Mr Turner earlier on, where he said on these two clauses, as I read it:

'... "by an order made by the Department under section 1 of the Road Races Act 1982" substitute "by or under any enactment".'

Does that strengthen it or weaken it?

Clause 10 is exactly the same... but the principle.

**The President:** Reply, Mr Callister, please.

**Mr Callister:** It takes away the restriction of having to be specific, as far as I can see, Mr President.

By moving it under any enactment, it has to be the enactment that applies, obviously, to the purposes here, but unless the Attorney General can advise me otherwise, I think it widens and improves and strengthens the situation that we have at present.

**The President:** I think Mr Lowey's query really was if the Department makes an Order, would that Order have to be laid before Tynwald or approved by Tynwald, or simply approved by the Department.

**Mr Callister:** The Orders are normally approved by Tynwald, Mr President, but this is taking away the word 'Order' in this respect and replacing it with something else, so we are removing the requirement by an Order under the Road Races Act 1982.

**Mr Lowey:** So we could come to the position where Members of Tynwald, whose constituents, for example... Let me give you a classic, where they can say, 'We are going to have a kermesse every Wednesday throughout the summer – and by the way, the Order has been granted by the board.' The Member does not have a right to be able to say, 'I did not approve of that.' Under the existing law, you would have to get an Act of Tynwald to do it. That is being taken away.

**Mr Callister:** I do not see it that way, Mr President.

**The President:** Mr Attorney.

**The Attorney General:** Mr President, I think that one has to go to section 8 of the Act here and read the whole section. Section 8 of the Act is 'Motor racing on highways':

'(1) Subject to subsection (2), a person who promotes or takes part in a race or trial of speed between motor vehicles on a public highway shall be guilty of an offence.'

So that creates the actual offence of racing, or a trial of speed, between motor vehicles on a public highway without legal authorisation to do so.

Subsection (2) confirms that:

'This section shall not apply in the case of a race or trial of speed on public highways which are closed and the right of way thereover suspended...'

by or under any enactment. So, basically what that is saying is there shall not be an offence under the circumstances set out in section 8(2).

**Mr Callister:** Nevertheless, it will require the Department, for a race of that kind, to have given permission for the road to be closed.

**The Attorney General:** Yes, Mr President, that is correct.

**Mr Braidwood:** Be in the paper...

**The President:** In that case, Hon. Members, the motion that I put to Council is that clauses 9 and 10 do stand part of the Bill.

Those in favour, please say aye; and against, no. The ayes have it. The ayes have it.  
Clause 11, sir.

**Mr Callister:** Clause 11, Mr President.

By way of the substituted section, this clause makes two principal changes to the section which it replaces. First, it caters on a permissive basis for the Manx Highway Code to consist of the Great Britain Highway Code, subject to adaptations, exceptions and modification; and second, the Code, which contains commonsense advice on the use of the highway, is required to be laid before Tynwald, instead of being subject to Tynwald approval.

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

**The President:** Mr Crowe.

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

**The President:** The motion I put to Council is that clause 11 do stand part of the Bill.

Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
Clause 12.

**Mr Callister:** Clause 12, Mr President, inserts four new sections concerned with the seizure, retention and disposal of motor vehicles and related matters.

Subsections (1) to (4) of section 47A give power to a constable to seize a motor vehicle if he or she has reasonable grounds for believing that it was being driven without insurance, had no current tax disc for at least a month, or was being driven by a person who was disqualified from holding a driving licence, otherwise held no current driving licence or was unaccompanied when he or she should have been accompanied, or was committing a serious driving offence connected with drink or drugs.

Subsection (5) would give power to a constable to immobilise the vehicle concerned.

Subsections (6) and (7) prescribe the fixing or placing of notices advising of the immobilisation.

Subsection (8) prohibits any attempt to release or remove an immobilised vehicle, other than by a constable or by a person acting under his or her direction.

Section 47B enables the Department to make further provision by regulations as to the removal, retention or storage of seized vehicles and for their release, forfeiture or disposal.

Subsection (3) bars civil claims in respect of such matters.

Section 47C creates offences in connection with the preceding two sections.

Section 47D provides definitions of terms used within them, and it should be noted that these would come under regulations to be made, Mr President.

I beg to move.

**The President:** Delete.

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

**The President:** Mr Turner.

**Mr Turner:** Mr President, further to my query earlier, I wonder if he could just explain where the approval procedure is for these new regulations. I have attempted to look in the various sections, but I am unclear as to where that is. It says regulations may be made. Where is the approval mechanism for those regulations, please?

**The President:** Mr Lowey.

**Mr Lowey:** So I just get clarity in my mind, it is about the powers to go in and seize and remove a motor vehicle. In section 47A(1)(b), it says:

‘in order to do so, enter any premises (other than a private dwelling house)...’

Some of our modern houses have built-in garages, don't they, underneath or... are part of the house. Have they got power to go into that? Does a dwelling place mean that part of the house which is a garage?

The other thing... Strange as it may seem, people do keep motorcycles, for example, in very strange places. I can remember electioneering not less than 50 yards away from where Mr President lives (*Interjection*) and in the

Smithy House on the corner, when I was introduced, there was a motorcycle on a stand in the front room. Under this power, if I had been riding that rather speedily and whipped it into the front room –

**Mr Downie:** There is one in my conservatory at the moment.

**Mr Lowey:** – they would not have the power to go in and get it. I will give you the name later of the individual, but Mr President knows who I am referring to.

**Mr Butt:** I have done it myself. Front room, yes.

**Mr Lowey:** I know it is an extreme, but I put it to you it is explicit. There may be a very good reason why and it may be existing legislation, I know not, but it does seem to me, with the modern buildings having these built-in garages, is that defined as part of the house or is that separate? I do not know, but this is primary legislation and needs to be explicit. That is all I am saying. I am sorry if I am throwing marbles under the Hon. Member's feet, because I have no intention. I have no wish to do that, but it does seem to me we ought to be quite clear on it.

**The President:** Halfway down page 9 it interprets what a private dwelling house is, Mr Lowey.

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

**The President:** Mr Braidwood.

**Mr Braidwood:** Thank you.

Where a notice is affixed to the vehicle and then that vehicle is removed within 24 hours and goes to a compound and the Department then has to now make regulations for the forfeiture and disposal of that vehicle, in the UK, of course, some vehicles which are uninsured or not taxed are just taken away and crushed straightaway without having to go into a compound. With the regulations which we will introduce, will they go as far as that or will it be where time is given for the person to come along and, if they do not want the vehicle back, then we can get removal and forfeiture and sale of that vehicle?

**The President:** Mr Attorney.

**The Attorney General:** Mr President, if it would be of some assistance, section 74 of the Road Traffic Act 1985 provides the regulation power of the Department and, in fact, Tynwald control over the regulations. So that would apply to these new sections. Hopefully, that is of some assistance, Mr President.

**The President:** Mr Downie.

**Mr Downie:** Just to broaden out the issue that my colleague, Mr Braidwood, raised where in the UK now, if a vehicle is stopped by the Police and found not to be taxed or insured, or the people driving it do not have a driving licence, that vehicle then becomes the subject of an Order where the vehicle is destroyed. If you look at the circumstances – and you will understand why they have developed this sort of route – you will find that that person might have had four or five convictions for driving without insurance or tax. They have got no money to pay fines, they are absolutely not bothered about being put into prison or anywhere else, and I think the UK developed that policy because they wanted the vehicle off the road. It was becoming a danger. It is other people who are likely to lose out.

I am sure, since the advent of Sky television, we have all watched these chases on television when they find, when they have actually caught the car that has been doing 110 or 115 miles an hour, it is a 15-year-old boy, and when he goes to court he has not got a licence, but they ban him from driving for three years. What good is that? The whole situation in the UK, in my opinion, has had to be changed, and the very fact that the vehicle you are in now is taken from you and crushed, I think is a deterrent and it is one that I think should be available in the Isle of Man for those sort of circumstances. Not right across the board, but it should be available, and I hope that, in bringing the legislation forward, we have... when they introduce the second part of it, we will see provisions available to do that because you are physically removing the danger.

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, I accept a lot of what the Hon. Member is saying but sometimes these vehicles do not belong to the people who are driving them and I think it would be grossly unfair to whip them off pretty quickly and crush them if the owners were not aware. (**Mr Callister:** Stolen vehicles.) I do appreciate

that they are... Well, they are not... Yes... What is the definition of 'stolen'? You read about children taken their parents' cars without approval.

**Mr Downie:** They wouldn't take it again if it was crushed! *(Laughter)*

**Mrs Christian:** No, they would not take it again if it was crushed, but I also think there would be a lesser likelihood of them taking again going through this process as it stands. I think that might be a step too far unless the vehicle is actually owned by the person who has been caught.

I do feel very strongly about people driving without insurance – I think it is the pits, because no-one has any protection against the eventuality of serious accidents and so on – so I do think we want some very strong measures in respect of that, but I am not quite sure if I would be as hardline as the Hon. Member, Mr Downie.

**The President:** Mr Callister to reply, then, to clause 12.

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

First of all, Mr Lowey I think raised the matter of whether a garage is part of a house, and I am grateful to Mr President for pointing to page 9, where the definition says:

“private dwelling house” does not include a garage or other structure occupied with the dwelling house or any land appurtenant to the dwelling house;

As for the motorcycle on a stand inside the room, that would be safe but I cannot see a car on a stand inside a room. I think it is a bit unlikely.

**Mr Lowey:** Big front rooms in Ballabeg!

**Mr Callister:** When you come to crushing vehicles, Mr President, this matter arose before in a debate, I remember. I am not sure if it was in Tynwald or in the Legislative Council. Anyway, it was the number-one preference of the former Member, Mr George Waft, who recommended we should not bother with any of this, we should just have the vehicles crushed, and we called him 'Crusher Waft' for several weeks afterwards, I think. It might be a move too far at the moment, Mr President, for the population of the Isle of Man, though when these vehicles are taken away to a compound, as some surely will be, they will be disposed of. Some of them might be impossible to sell; they might be just crushable items, anyway.

I would thank the Attorney General particularly for clarifying the fact that these regulations will go before Tynwald.

I was thinking just yesterday, I think it was, of these television chases with cars – stolen vehicles, usually – being chased around the place and how it would work in the Isle of Man if you... how you would get away from the Police for very long here. We have not got the road systems that they have got in America or in England, or whatever. I think they would very soon be caught if that happened. Mr Butt is shaking his head.

**Mr Butt:** Half an hour, at least.

**Mr Callister:** Mr Downie, though, did make some interesting points.

I thank Members and move that clause 12 stand part of the Bill, Mr President.

**The President:** The motion, then, Hon. Members, is that clause 12 do stand part of the Bill.

Those in favour, please say aye; and against, no. The ayes have it. The ayes have it.

Clause 13, Mr Callister, please.

**Mr Callister:** Yes, clause 13, Mr President. This clause inserts a new provision into section 53 of the Act, enabling the punishments set out in schedule 6 to be varied by order.

I beg to move clause 13, Mr President.

**The President:** Mr Crowe.

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

**The President:** The motion, Hon. Members, is that clause 13 do stand part of the Bill.

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

Clause 14.

**Mr Callister:** Clause 14, Mr President.

This clause makes amendments to section 55, consequential upon the substituted part IV of schedule 6 which is set out at clause 21, to be found on page 19 of the Bill.

I beg to move, Mr President.

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

**The President:** Hon. Members, the motion I put to Council is that clause 14 do stand part of the Bill.

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

Clause 15.

**Mr Callister:** Clause 15, Mr President. This clause amends section 63 about inquiries so that they are to be conducted by a person independent of the Department.

I beg to move, Mr President.

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

**The President:** The motion, Hon. Members, is that clause 15 do stand part of the Bill.

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

Clause 16.

**Mr Callister:** Clause 16, Mr President.

This clause has the effect of requiring Tynwald approval to Orders made under the new provision inserted by clause 13.

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

**The President:** The motion, Hon. Members, is that clause 16 do stand part of the Bill.

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

Clause 17, Mr Callister.

**Mr Callister:** Clause 17, Mr President. This clause amends paragraph 4 of schedule 2 of the Act so as to empower examiners appointed by the Department to stop vehicles on roads for testing when a constable in uniform is present. It becomes an offence to fail to stop as required and the penalty on conviction is prescribed under clause 21(1)(r).

I beg to move that clause 17 become part of the Bill, Mr President.

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

**The President:** Mr Downie.

**Mr Downie:** Yes, earlier on, the mover made an interesting comment that if Police were available, or due to manpower shortages or whatever... But we have already heard, during the debate on the Bill, that there are over 240 to 250 police officers in the Isle of Man now.

As I understand it, in the UK, there is a group of people there who are authorised not only to stop normal vehicles, but also can stop commercial vehicles. I happened to be on a bus recently in the UK, going between two airports, that was pulled over by these people. They checked the tachograph and so on. They checked it, but there did not seem to be a requirement for a police officer. I would have thought that now that we have got the traffic wardens, who I understand have the power of special constables, all working within the same Department as it were, within Infrastructure. Would it be much more efficient and effective to utilise, perhaps, one of those or two of those, when we are going to have these periods of spot checks, rather than have to get a constable in uniform?

I would be happy that these people carrying out the checks, if they are wearing the proper clothes, they are used to dealing with vehicles and traffic. I see no reason why they could not pull vehicles over and stop them. In the normal manner that we see now, where we usually have a spot check at the Grandstand, or I have seen them at Braddan Bridge sometimes when they pull people in. They obviously know that there are problems with the cars – usually in the evening, when there are lights out and things like that.

So it is just a comment, really, to see if we can maybe tighten things up and make the legislation a bit more efficient for the benefit of the Department, rather than relying on the Police all the time who do not seem to be doing anything about the existing offences.

**The President:** Mr Turner.

**Mr Turner:** Mr President, I think there should be a small amendment to this particular section regarding stopping vehicles. On approach to roadworks or other interruptions in the highway, there is appropriate signage placed. I think to have somebody just walking out in the road is not acceptable.

I would propose that there should be an added subsection (d) in the (1A) section that says, advanced signage placed at least 250 yards before the inspection area and I think it is important that, if traffic is approaching where somebody is... there is going to be a hazard in the road, then they should have the appropriate signage out. There was much play made on signage in a court case which Department of Transport Works Division were involved with and there was not appropriate signage placed, or it was deemed there was not appropriate signage placed with required distances –

**Mr Downie:** An ‘R’ plate driver.

**Mr Turner:** – and I think that these sorts of things, if you are in other areas there are notices in advance that say, ‘Statutory Checks Ahead’, or ‘Caution’, and so forth.

**The President:** I am getting a little confused, Mr Turner, because in 17 it goes down on line 12 to 20 there, (b) it does say ‘at least one sign indicating...’ etc.

**Mr Turner:** Yes, but they have not been. There is no description of where that sign has to be is the point I am making; the distance.

**Mr Braidwood:** So as to be visible to them, I am sure.

**Mr Turner:** The point Mr Downie raised was at the location – for example, the Grandstand – there is no advance sign of a distance. The point I was making is that the Department were criticised for not having signage appropriate on the approach to such hazards.

**Mr Downie:** You would turn down Victoria Road then, wouldn’t you?

**The President:** I think (b) makes sure that they have to have a sign: ‘at least one sign’, it says.

**Mr Turner:** ‘... indicating a police presence...’

**The President:** ‘... and warning drivers... that they may be required to stop... displayed so as to be visible to them at such a distance from the area where the test is to be conducted as will enable them to stop safely...’

**Mr Turner:** Yes, but my proposal puts in a distance for that advance sign as a condition that has to be satisfied.

**The President:** Right, and your distance is, sir?

**Mr Turner:** Well, to remain with the – (*Interjection*)

**The President:** Your amendment is going to be?

**Mr Turner:** It was an advance sign placed at least 250 yards before the inspection area.

**Mr Braidwood:** People would turn away. (*Interjections*)

**Mr Butt:** They would turn around.

**The President:** Mr Butt.

**Mr Butt:** Sorry, sir. I was going to make two points, sir.

Firstly, about the constable in uniform at the scene – I think that should be maintained. I think that is a wise thing to leave in the clause because when the car is stopped, then maybe they may find things wrong with the car, for which the person has to be investigated, reported and eventually a summons is taken out. They may also

be under the influence of drink. You may need a policeman there for those reasons, so I think that should be kept in.

Can I say, Mr President, as a person who somehow seems not to be able to own a pristine car, I have been recently stopped at the Grandstand by this very process, by the vehicle examiners with a police officer there, and there was plenty of warning to let you know you were going to be stopped. They signed you in properly and (*Interjection*) there was a sign and there were people in fluorescent jackets waving you in. You had plenty of time to stop and you knew exactly what was happening and I think being there, personally, is more than satisfactory... or satisfactory.

**Mr Braidwood:** I totally agree with Mr Butt on that procedure that had been adopted by the Department and the police presence there. Generally, they are normally conducted in the evening. There are normally lights, so you can see it from a long distance away and you know that they are conducting an exercise. (*Interjection by Mr Turner*)

**Mr Butt:** If I can just continue, sir, if I had known that my light was not working, I would have turned round and gone home and fixed it (*Laughter*) before I was stopped, had there been advance warning!

**The President:** Hold on. Mr Turner, come back again, sir.

**Mr Turner:** I do not accept all the arguments. The world and his wife have a fluorescent jacket these days and I do not think it is acceptable where somebody can just come out on the road. They do not always stop in places... If you come round Braddan Bridge, you are not prepared to be pulled into the layby, and there should be advanced warning, a set distance. As I said, the Department was taken to task by a court because signage was not placed at an appropriate distance, and I think there should be an appropriate distance before that to alert drivers that they are going to be pulled in.

**The President:** You have failed yet to get a seconder, sir.

**Mr Turner:** I believe so.

**The President:** In that case, I will ask Mr Callister to wind up on clause 17.

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

This requirement for a constable in uniform to be present was available. It has been removed, of course, as you can see, from the original Bill in order to get the rest of this change in here, so it has to be retained.

I think Mr Butt is perfectly correct that if a decision has to be made that this car shall not continue its journey on the road, you need to have the power of the Police in order to make that decision. I do not think we would be in a position, or I do not think the public would accept very well the position where a person from the Department was simply taking their vehicle off the road, though there may be reason for it.

I know Mr Turner's proposal has not been seconded. I am very pleased it has not, because if he had wanted to cause a car crash he would have caused a crash of this Bill, considering there are only two further sittings of Keys and Council and it would not make it through to the end.

**Mr Turner:** That is not a reason not to [*Inaudible*].

**Mr Callister:** Nevertheless, there has not been a seconding for it.  
When it says:

‘at least one sign indicating a Police presence and warning drivers of oncoming vehicles that they may be required to stop...’

it would be a matter for the distance to be appropriately chosen by the Department in conjunction with the Police as to where that sign should be. It seems to have worked very well so far, Mr President, so it should not have any problems in the future.

I beg to move that clause 17 stand part of the Bill.

**The President:** The motion I put to Council is that clause 17 do stand part of the Bill, Hon. Members. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
Clause 18.

**Mr Callister:** Yes, Mr President.

Clause 18: by virtue of the amendments made by subsection (2)(a) and (b), the minimum period of disqualification is increased from one to two years in the case of persons convicted of certain serious driving offences; and to five years, in the case of persons convicted of the offence of failing to provide a specimen or failing to allow a laboratory test of a specimen of blood.

Subsection (2)(c) makes a consequential amendment by substituting a new paragraph, 11(3), and goes on to prescribe revised minimum periods of disqualification in the case of persons convicted of certain drink and drive offences, with the period being increased from three to five years, where gross impairment is involved. The periods are set out in the table in the new paragraph, 11(3A).

Subsection (2)(d) enables the Department to amend the table by regulations, subject to Tynwald approval. In the event that a court orders a person to remain disqualified until he or she has passed a driving test, subsection (2)(e) prescribes that the test is to be an extended test, as defined in subsection (4). Schedule 3 presently requires a court to order a driving test, when it considers that the facts of the case raise a serious doubt as to the offender's competence to drive.

Subsection (2)(f) substitutes 'reasonable doubt' for 'serious doubt'.

Subsection (2)(g) makes a consequential amendment of paragraph 11(7). If a person accumulates 12 or more penalty points, a court must, unless special reasons obtain, order him to be disqualified. Yet if a person is convicted of two or more offences committed on the same occasion then, at present, of the number of penalty points they may carry, only the number, or the highest number, for one of those offences may be endorsed.

Subsection (3) gives the courts discretion to endorse in respect of all of the offences.

And, finally, consequent upon the carrying of amendments in the House of Keys, Mr President, on page 12, line 1, the word 'grievous' is replaced by 'serious'.

I beg to move clause 18 stand part of the Bill, Mr President.

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

**The President:** Mr Lowey.

**Mr Lowey:** I have long held the view that the biggest deterrent to drunken driving is the loss of a licence and that I think is more of what I would call a salutary, 'Oh, hang on, this is going to be...' I have a great worry, though, that we are reducing it, you know, from that, which is fine. It is keeping with my philosophy: zero rate. What alarms me is, though, you go from two years' mandatory, never mind if you are 50 plus one, it is man... you know, the book is thrown... you get the full two years and that should, in theory, stop people from drinking alcohol. It is the impairment. It is not driving under drink. It is the impairment that you are guilty of, and I am sure these... Are these scientifically proven maxima? Are they in being in any other jurisdiction?

On balance, I genuinely believe that the taking away of a licence is more effective than a big fine. I think we can all get over a big fine, but it is the licence that is the key, I think, and as this Bill is, one of its main *raison d'être*s is to prevent accidents and we know that a lot of the accidents do occur when you are impaired. I think it is the only way we can deal with it. I just wish, maybe, that there was a little more flexibility and maybe that would weaken my main argument – you know that... I argue against myself – but there does seem to me that, if you are one point over it, you get the full maximum as if you were 74, or up to 75. It does not sort of give any incentives. I do not suppose there is a magical way of overcoming that and, therefore, I will be supporting the Bill as printed. I do believe it is the right way to address it, by getting it down to zero in the finish. I understand that that is almost impossible, but this is the next best step and I think it is the licence being taken away that really will be an effective tool.

**The President:** Mr Turner.

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

I have just a couple of queries over the table but, first of all, I want to pick up on the comment that the mover made with regard to a possible amendment and I think, if the Department's intention is there should not be an amendment because it would derail the Bill, that is the wrong reason and if an amendment is required, an amendment is required and it should not be to rush this legislation through, or we may as well not bother looking at the rest, we may as well just approve it and allow it to go through. I think that is wrong intentions from the Department. It may have just been a throwaway line...

With regard to the table, could the mover just explain some of the quantities involved with the different figures. For example, we have got micro... we have got a mixture of measurements there, if you could explain that. We have over 50 micrograms, but not over 75 micrograms. Is that the right table of analysis?

**The President:** Mrs Christian.

**Mrs Christian:** Yes, Mr President, I think the Hon. Member, Mr Lowey, is right: losing a licence is a great penalty – there is no doubt about that – and it impinges on families as well as the individuals concerned.

I would like to hear from the mover what evidence there is, on the basis of accidents which have occurred in the Isle of Man, for the particular changes which are being proposed. Are there any statistics which have moved the Department to make these changes, or are they simply following another jurisdiction?

**The President:** Mr Downie.

**Mr Downie:** Just to back up what has been said by previous speakers.

I think the way to tackle people who drive under the influence of drink and over the prescribed figures... a much more extended term of disqualification and also having to take a test before you can get back into driving again. It seems to me to be a ridiculous situation at the moment, where most drivers who, say, have been banned for two or three years, after they have done about 50% of their time, can re-apply to the courts and if they make a reasonable enough case, generally they get it.

What I would like to see is where a person has been banned two or three times, I would be inclined to say, three strikes and you are out. You do not drive any more. That is what happened in Scandinavia and in other countries, but I think, in setting the limit, we have got to bear in mind that diabetics, people who are on other types of medication will always have a proportion of alcohol in their blood, so we are never ever really going to get down to zero. So we have to bear that in mind.

I honestly think the message, particularly with younger people, has got through, because we seem to be having fewer young people drinking and driving. The sad point about it is that we seem to be having recidivists where, on a regular basis, we get people who are drinking and driving time after time and being caught. I think anything the Department can do to try and address this problem is going to be helpful. Therefore I support this particular clause.

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

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

Well, the loss of licence would be the ultimate deterrent, I think. It could affect families; it could affect other people as well, there is no doubt about that. It might affect, in the case where there is an old couple, the husband can still drive, the wife is disabled in some form or other. Their means, then, of getting around is ended for them, or they have to go to other means. That is a poor example, I must say, but there are cases where it does affect other people.

I thank Mr Lowey for his support of these changes that are being made. We think they improve the situation from what we have at the moment. I am sure the Department will consider the points that Mr Lowey has made.

On Mr Turner's query, I think, reference amendments, well, if amendments are moved, amendments are moved, and if they are successful, they are successful; if not, that is the way it has to be.

On the query from Mrs Christian, the only statistics I have are the overall accident statistics on the Island, since 2001 up to 2010. If you go back to 2001, if you take all accidents, there are about 820 or so and there are over 1,000 currently in the year 2010. Some of them are just simple damage, some are slight damage, some are serious, some are fatal and, certainly, within those numbers, there will be some where drink was involved. I have not got any figures to separate that, Mr President. If we have them, I can certainly supply them at the Third Reading.

Mr Downie: recidivist drinkers – three strikes and you are out. There is some sympathy, I think, for that probably, as well. Again, it is a matter for consideration by the Department, but I beg to move, Mr President.

**The President:** Just before I put the motion, Mr Turner.

**Mr Turner:** I did query with the mover to explain the units of measurement in the table.

**The President:** Mr Turner was enquiring about the micrograms or the...

**Mr Turner:** Millilitres.

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

In the Act itself they are very similar, in fact. What has happened is that the maximum was previously three years in any of these categories and has now been increased so that, if you are over 300 milligrams in urine, over 230 milligrams in blood and over 100 micrograms in breath, then they have been increased from three years to five years, a maximum, and that is a change that was made from the Act itself, Mr President.

**The President:** Okay, Hon. Members, in that case the motion that I put to Council is that clause 18 do stand part of the Bill.

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

We turn to page 14 and clause 19, sir.

**Mr Callister:** Clause 19, Mr President.

This amends schedule 4 of the Act. At present, only instructors giving paid instruction in the driving of motor cars, namely passenger cars or light vans, are required to be registered or licensed by the Department's registrar.

Paragraph (a)(i) of this clause amends paragraph 3(1) of the schedule 4, so as to enable regulations to be made, catering for registration or licensing in the case of motor vehicles of other prescribed classes.

Paragraph (a)(ii) substitutes paragraph 3(2) of the schedule, the effect of which is that instruction given by, or on behalf of, a motor trader in connection with a supplied motor vehicle is to be treated as paid instruction, irrespective of whether or not it is ostensibly given free of charge.

Paragraph (1)(b) amends paragraph 4 of the schedule, so as to extend the Fire Brigade instructors to exemption from being registered and (1)(c) inserts a paragraph, 4A, which provides for the service of stop notices by the registrar on persons giving paid instruction when unregistered or unlicensed and that, provided certain conditions are met, if such a person gives instruction to someone other than a close relative in contravention of a stop notice, it is an offence for which the penalty on conviction is prescribed in clause 21 on page 19.

Paragraph (f) substitutes a paragraph 9 in the schedule, the effect of which is to include provision for appeals against stop notices and provide for the appeals to be conducted by an independent adjudicator appointed by the Appointments Commission.

Paragraph (g) revises paragraph 10 of the schedule in order to reflect the current test for becoming a registered instructor and to incorporate, in the case of a person failing to pass an examination or any part of it, amended provision in respect of the time that must elapse before another examination, or part, may be attempted and to fine tune the provisions as to examinations or parts of them that may not have been properly conducted.

I beg to move clause 19 stand part of the Bill.

**The President:** Mr Crowe.

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

**The President:** Mr Downie.

**Mr Downie:** I have a little bit of concern about this particular clause. There are a couple of issues.

In recent years, some of the motorcycle manufacturers – people like Honda, Yamaha, Suzuki... if a young person went along and was interested in buying a motorbike, or acquired his first bike, as part of promoting health and safety and safety on the road, that organisation or retailer would provide them with some free tuition. They would get a couple of hours tuition, which I thought was very good and there is no doubt in my mind it has reduced the number of accidents involving learner drivers and new drivers to motorcycles.

But we now have a grey area. If I was interested in buying a car, for instance, and it was quite technical – maybe off-road and had all sorts of sophistication – is the person who is going to take me out to show me how this works now going to have to be licensed with the Department? Is this instruction treated as paid instruction, irrespective of whether or not it is actually given free of charge? I know we are not trying to hit the family, where the father takes the daughter or the son and knocks the rough edges off and then eventually they might go on to a driving school.

Everybody has got to start somewhere, and I know that the piece of legislation is trying to get us into a situation where people are properly qualified to give tuition and so on. There are various exemptions for Police instructors and Fire Brigade instructors and so on, but I do think we are starting to go down the nanny state to some extent here and we are building another empire where we have people who are registered with the Department, people who pay a fee.

We have just seen a tremendous increase in fees for driving instructors and so on go through Tynwald Court. I just want to be convinced in my own mind that what we are going to do here is not detrimental to people who need to have the initial stages of driving. I still think that family and friends can do as good a job as some of these professionals. I hope this is not the beginning of the end here, and I hope that having to, perhaps, take away this free tuition that is given by the motorcycle manufacturers is not going to have a detrimental effect.

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, I wonder if the mover can just give a bit more explanation with regard to paragraph (a)(ii), which, it says, substitutes 3(2) of the schedule and that the effect is that a motor trader in connection with the supply of a vehicle is to be treated as a paid instructor.

Why are we doing this? What does it achieve? Presumably, if they are going to be a paid instructor they have then to become licensed in some way or other. For the most part, one imagines that they are selling a vehicle to somebody who already has a licence and that they themselves are competent to drive this vehicle which they are trying to sell. It is not clear to me from the explanatory memorandum what this is about, why we are doing it.

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

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

First of all, as far as Mr Downie is concerned, had this amendment left the words 'motor car' in, his motorcycle thing would not be a problem. However, the motor vehicles that will be dealt with will be dealt with through regulations and if it is thought that the training of people buying motorcycles, or tuition given, is something that is appropriate to remain, then the regulations might exclude motorcycles, who knows. I cannot... that is a matter for the Department to consider. If it is of that kind of value that the Hon. Member insists that it would be, that will be a consideration for the Department, I would think. They will be prescribing the kind of vehicles in the regulations that come forward for this.

I think, certainly, now moving to Mrs Christian's query, on the fact that this would affect people who sell vehicles – in other words, selling cars – the whole purpose of this is to prevent, in the future, people who are giving driving instruction and taking payment for it but not being registered, being a maverick kind of group of people who are not controlled and may not be qualified, sir. I mean, you need to have a whole series of qualifications to become a driving instructor and they are, I think, quite onerous. In becoming a driving instructor you have got examinations, you have got to have certain abilities, you have to satisfy the Department that you are capable, and therefore you become a registered instructor. So the idea behind this is primarily to prevent any one other than proper driving instructors, qualified driving instructors, or immediate family members from giving paid instruction, or indeed giving instruction, because it would mean that if we did not have these provisions, you could just simply have the instructors not bothering and they would not need to go through the system. That is the way that I read it, Mr President, and I may stand to be corrected by others on this, but I –

**Mr Braidwood:** Mr President.

**The President:** I appreciate, Mr Callister, you are still continuing, but I also have the feeling that Mr Braidwood is getting excited. (*Laughter*)

Mr Braidwood.

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

The way I look at it, and following on from what Mrs Christian said, this a motor trader who is actually supplying a vehicle to a person who is purchasing it. What Mr Callister was explaining was if it was paid instruction but it was not talking about a motor trader who was supplying the vehicle... and that was the problem I had because, generally, when you buy a vehicle, you normally are already in possession of a driving licence or whatever; but, for a motor trader, I could not understand because it was a query I was going to raise before Mrs Christian first mentioned it, and it says:

'the effect of which is that instruction given by on behalf or motor trading in connection with the supply of a motor vehicle is to be treated as paid instruction irrespective of whether or not it is ostensibly given free of charge.'

**The President:** 'Such instruction is treated as paid instruction, irrespective...' – that is what it says in the Bill.

Mr Butt. Sorry, Mr Callister I will come back to you, we will continue.

**Mr Butt:** This may help Mr Callister, I am not sure.

I would say this is clearly aimed – because they have inserted, after 'motor car', 'other vehicles' – at the people who do sell motorcycles and give initial instruction. I suspect this is clearly aimed at those people who give instruction to motorcyclists, when they sell vehicles.

Sometimes that instruction, I think, can take several hours or might provide many hours. I suspect this has been inserted purely for that reason – but I may be wrong.

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, if we may just continue the discussion, it does seem to me that whilst that may be its intention, it could be quite onerous. If, for example, someone who drives a manual car decides to have an automatic, they may well have a flip round with the trader to just get some guidance on the proper or best way to drive a car of that nature, or if they have got a hybrid they may get some instruction in how that should function. It seems to me to be drafted in a way that can pull people into this who I frankly do not feel need to be pulled into it.

**The President:** Mr Attorney.

**The Attorney General:** Mr President, I think I hopefully can assist in relation to this. It appears that, originally, the clause in schedule 4 at paragraph 3(2) only dealt with instruction in relation to the driving of a motor car:

‘... being instruction which is given free of charge, to a person who is not the holder of a current licence to drive a motor vehicle granted under Schedule 3 (other than a provisional licence within the meaning of that Schedule), by, or in pursuance of arrangements made by, a person carrying on business in the supply of motor cars, and in connection with the supply of a motor car in the course of that business, shall, for the purposes of sub-paragraph (1), be deemed to be given for payment of money...’

It appears that what the schedule is doing, in effect, is widening the class so it is not a motor car, it is motor vehicles generally, and that could include, of course, I suppose... It certainly would include a motorcycle. It could also include a van or a heavy-goods vehicle, and it appears to me that that is the main reason, the main purpose, of the amended section, so it widens the class of vehicles in respect of it.

**The President:** Mr Attorney, with respect, I appreciate that point – and I do not know whether I am helping or hindering Mrs Christian – that is understandable, insofar as it widens to cover all classes of vehicle, not only limiting it to motor car.

A question still in the air is whether or not it is necessary for a motor trader taking somebody out in an automatic the first time... because it says such instruction is treated as paid instruction, irrespective of whether or not it is actually given free of charge. They are now going to be caught by this particular measure. If they are caught by this particular measure, the question is asked, is that a correct procedure – ? (*Interjection by Mr Downie*) Can I just hold on, Mr Downie?

Mrs Christian.

**Mrs Christian:** Could I ask the learned Attorney to clarify, then, whether that provision in relation to motor cars is currently in the Act and it is being extended?

**The President:** ‘Car’ is in the original Act.  
Mr Attorney.

**The Attorney General:** Mr President, that was the point I was making, the fact that, at the moment the current legislative provision only applies to a motor car. It appears to me that the main aim of this particular – this new amended section – and perhaps the mover of the Bill could assist – is really to catch the wider classes of vehicles.

It appears that they have spotted the fact that it is only applied to motor cars and not other classes of vehicle and it was deemed appropriate to catch other classes of vehicle as well. However, I have to be guided by the mover of the Bill.

**The President:** Mr Attorney, and back to Mrs Christian’s point again.

I acknowledge that in the Act it says ‘motor car’ and now we are saying ‘motor vehicles’ so it covers everything. In the Act it does not say such instruction is treated as paid instruction. That is the new bit that has been put in and so that is the bit which seems to be catching Mr Downie and Mrs Christian.

Is that right, Mr Attorney?

**The Attorney General:** Mr President, in the wording in the old section, it basically said, ‘be deemed to be paid instruction.’ The wording is now changed to ‘such instruction is treated as paid instruction, irrespective of whether or not it is actually given free of charge.’

**Mrs Christian:** So our traders already have to have a licence – is that what you are saying? (**The Attorney General:** Yes.) I would be interested to know if they do.

**Mr Downie:** I think there is a further complication, if you look at the commercial aspect of this. If Mr Lowey had a business, say, selling JCBs or tracklaying vehicles or caterpillars, before I can go and try one of his machines, he has got to find somebody who is suitably qualified for that particular vehicle to give me some tuition. I might have been working 20 years in the construction industry.

We are really getting into the stage here, it is nanny state, Health and Safety, call it what you like. We are just getting into the realms of being ridiculous now. I can understand trying to control people there who run driving schools and cowboy operators and people like that, but you are going to affect quite a lot of business here and we will finish up where you are going to have to bring people from the UK, fly them in for a day or whatever, to show people how to drive a particular vehicle, because they are the only ones who will be competent.

**The President:** Mr Braidwood.

**Mr Braidwood:** Mr President, just to clarify... I understood what the learned Attorney General said, but I think what it does not give clarification on is that it is to a person... Even if the trader who is selling a vehicle... It is to a person who is not the holder of a current licence to drive a motor vehicle. I think that is where the problem is.

It says in the Road Traffic Act 1985, and the learned Attorney General did highlight it, it is when it is being sold to a person who is not a holder of a current licence, and it does not actually say that here. I think that is where the problem has arisen with the motor trader because it could be if a motor trader is selling to a person who has a current licence, then there should not be any charge or instruction. It is only if they are selling a vehicle to a person who is not a current licence holder.

**The President:** Mrs Christian.

**Mrs Christian:** Still, for example, if I wanted to go and buy an HGV, would they have to have a driving instruction licence to –

**Mr Downie:** To take you down the road in it, well, it is ridiculous, isn't it. Jobsworths.

**Mr Lowey:** He would not be able to drive the vehicle on the high road, unless he was a qualified HGV –

**Mrs Christian:** Yes, but he is not necessarily a qualified instructor, registered as such.

**Mr Downie:** That is what it is going to cost his business, is money.

**The President:** Well, Hon. Members... Mr Crowe.

**Mr Crowe:** Can I just read the old clause 2, because what it says is 'for subparagraph (2), substitute a new subparagraph (2).

The old subparagraph (2) says:

'Instruction in the driving of a motor car, being instruction which is given free of charge, to a person who is not the holder of a current licence to drive a motor vehicle granted under Schedule 3 (other than a provisional licence within the meaning of that Schedule), by, or in pursuance of arrangements made by, a person carrying on business in the supply of motor cars, and in connection with the supply of a motor car in the course of that business, shall, for the purposes of the sub-paragraph (1), be deemed to be...'

- paid instruction. So –

**Mrs Christian:** It is there already.

**Mr Crowe:** – it is there already. The wording, as the Attorney says, the word 'deemed' has been replaced. So it is a minor, I would say, technical change, which I think does not... and again it is widening the motor car to other vehicles. So I think it is extending it, rather than altering it too much.

**The President:** I think I would like to finish this clause, Hon. Members, before we take a break, while it is all fresh.

Mr Butt.

**Mr Butt:** Just finally, sir, there is the final fail-safe that, in clause 19(a)(i), the class of motor vehicle can be prescribed in regulations, so I think if there is any doubt about HGVs or JCBs that can be covered when the regulations are made.

**The President:** Mr Callister to wind up, then.

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

Yes, exactly the points that needed to be made. First of all, Mr Braidwood is correct in the way that (2)(a) reads but, most importantly, as I see it, is as Mr Butt suggested, that these regulations are to be prescribed in the future and the Department is able to decide which vehicles shall come under the regulations. They could, if they wished, just have two or three categories. They may exclude motorcycles, they may exclude HGVs or what have you.

The other point, of course, is that, as far as the driving instruction is concerned, the reference here to a person as not the holder of a current licence is someone who is being given tuition as a learner and it would be quite wrong to do that. There is also exclusion here, the exclusion being anyone other than a proper registered instructor or a member of a close family. Other categories are excluded from giving this paid tuition. Collectively, I think we have probably come round to the appropriate conclusion, Mr President.

I beg to move.

**The President:** In that case, Hon. Members, the motion that I put to Council is that clause 19 do stand part of the Bill.

Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, it appears as if it is time we took a break, anyway, so we will presumably come back at 2.30 and continue our deliberations on the Road Traffic and Highways (Miscellaneous Amendments) Bill.

Thank you, Hon. Members, we will recommence at 2.30 at clause 20.

*The Council adjourned at 1.11 p.m. and resumed its sitting at 2.32 p.m.*

### **Road Traffic and Highways (Miscellaneous Amendments) Bill 2011 Consideration of clauses concluded**

**The President:** Hon. Members, when we broke for lunch, we had, in effect, just completed clause 19, so we are picking up again at clause 20.

Clause 20, Hon. Members. Mr Callister.

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

This clause amends schedule 5, so as to require a person to be insured against third party risks by an insurance company authorised to carry on a motor insurance business anywhere in the British Isles or the European Union whereas, at present, the insurer must be authorised in the Island or the UK.

I beg to move, Mr President, clause 20.

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

**The President:** Hon. Members, the motion that I put to Council is that clause 20 do stand part of the Bill.

Those in favour, please say aye; and against, no. The ayes have it. The ayes have it.

Then we turn to clause 21, Hon. Members, as amended. Clause 21, Mr Callister.

**Mr Callister:** This amends schedule 6, Mr President, of the Act.

Subsection (1)(a) increases, from 10 to 14 years, the maximum custodial option 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. It excludes penalties which have been cross-referenced to earlier increased penalties which are broadly in line with inflation, amendments consequential mostly upon the new part IV of schedule 6 substituted by this clause.

Other increased penalties are imposed by sections (1)(e), (m) to (q) and (s) and also by subsection (2), as described in the Bill between pages 19 and 22. Consequent upon the carrying of the amendments to which paragraphs 12 and 14 above refer, the following amendments were carried in the House of Keys, and on pages 19, 20 and 23 the word 'grievous' was replaced by 'serious', Mr President.

Subsection (3) substitutes a new part IV of schedule 6. It caters for a wider range of alternative verdicts when defendants are found not guilty of the principal offence. Safeguards are provided for defendants answering lesser charges 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 that defendants will be prejudiced in their defence by reason of a new charge or charges.

The following amendment was carried in the Keys, providing as it does for a further alternative offence that may be considered in the event of the principal offence of causing death by careless driving or under the influence of drink or drugs is not proven.

On page 23 line 37 in the table, opposite the entry in the first column, insert into the second column, section 2B (causing death by careless or inconsiderate driving).

I beg to move that clause 21 stand part of the Bill, Mr President.

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

**The President:** Mr Lowey.

**Mr Lowey:** Could I just ask one question?

They are increasing the punishment from ten years to 14 years, that is a 40% increase. Could the Hon. Member tell me when the last time it was considered, in other words has it been upped or has it been constant for...? I presume, again, this is an effort to underline real, serious cases and give what most people would deem to be appropriate sentences, as opposed to perhaps lenient ones. If you are increasing the maximum, nobody ever seems to get the maximum, do they? So, just by increasing the maximum does not mean to say we are indicating a highest figure. That is all, really.

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

**Mr Callister:** I have not the information of when that has previously been changed. That can be provided, I hope, in due course, if not, at Third Reading and, as far as the maximum sentences not being applied, it is a matter for the judiciary, of course. I think that covers the points Mr Lowey made.

I beg to move, Mr President.

**The President:** In that case, Hon. Members, the motion that I put to the Council is that clause 21 do stand part of the Bill.

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

We turn then to part 3 and perhaps we could take 22 and 23.

**Mr Callister:** Yes, we could, Mr President. This now moves on to amending the Road Traffic Regulation Act of 1985.

Clause 22 provides that the Road Traffic Regulation Act 1985 is amended in accordance with this part and clause 23 by way of these sections.

The clause makes new provision prohibiting double parking and parking adjacent to a dropped footway, cycle track, cycle path or verge. The prohibitions are enforceable, as if imposed by an Order under section 1. Exceptions to the provisions are prescribed in the case of emergency services and vehicles delivering or collecting goods etc.

I beg to move clauses 22 and 23, Mr President.

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

**The President:** Mr Downie.

**Mr Downie:** Just for *Hansard*, really. If anybody likes to drive along the promenade this evening, you will find eight or nine cars permanently double parked on the promenade. There seems to be no enforcement, even double parked now on zigzag lines approaching the zebra crossings. It seems to me futile that we are pushing forward the legislation, we are trying to tighten up and yet there does not seem to be anybody out there who is interested in dealing with matters on the ground.

**Mr Braidwood:** Following on the observations by the Hon. Member for Council, Mr Downie, the worst offenders are in Victoria Street. You have the taxis, which are double parked, blocking one lane going down Victoria Street, near enough permanently on the left-hand side: you have got to come in and out and nothing is ever done.

**The President:** Mr Callister to reply, then.

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

**The President:** Oh, sorry, hold on, Mr Turner, I think.

**Mr Turner:** Sorry. Thank you, Mr President.  
I just wondered why the Department do not use double red lines?

**Mr Callister:** Double red lines?

**Mr Braidwood:** No parking at all.

**The President:** Mr Callister now to reply.

**Mr Callister:** Thank you!

I must say I have not noticed the promenade double parking, but I am quite sure it goes on, if I am having that from the Hon. Member, Mr Downie. I am sure he will be well aware of it.

Certainly, as far as the taxis are concerned in Victoria Street, there seems to be a constant amount of double parking. However, as we come back to the old enforcement issue, it is a matter of if it is in force, fine; if it is not in force and regularly unenforced or ignored, then it will continue. It needs the enforcement. We have no enforcement officers in the DoI.

**Mrs Christian:** Yes, you do.

**Mr Callister:** As for double red lines –

**Mr Downie:** Yes, you have got traffic wardens who do that.

**Mr Braidwood:** Town parking controllers.

**Mr Callister:** They will be able to do that in the future, but we do not have them at the moment, with that ability, I do not think.

**Mr Pearson:** We do, actually, yes.

**Mr Callister:** Oh, right! They do have that ability, they can enforce it. I am entirely wrong on that – my apologies to Hon. Members!

Double red lines: I do not have the answer to that. It has not been discussed in the Department while I have been there, so perhaps it is something that may have been discussed in the past, but I just wonder whether double red lines, Mr President, would make any difference – whatever colour you painted them. *(Interjection)* You are not supposed to park on double yellow lines, so whether red lines would make any difference is another matter.

**The President:** Presumably, the penalty would be greater.

Hon. Members, the motion I put to Council is that clauses 22 and 23 do stand part of the Bill.

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

Perhaps we could take clauses 24 and 25, Mr Callister.

**Mr Callister:** Yes, we could, Mr President.

Clause 24 amends section 3 so as to enable temporary road closures to be effected by a notice, rather than an Order.

Clause 25 amends section 3A so as to enable temporary road closures for filming to be effected by a notice instead of an Order to enable the suspension of parking, to enable parking of up to six vehicles by film participants, despite any statutory provision to the contrary, and to extend the prohibition on through traffic on a road from 24 to 48 hours in an aggregate period of only 72 hours.

I beg to move clauses 24 and 25 Mr President.

**The President:** Mr Crowe.

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

**The President:** Thank you, Mr President.

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

I am fairly supportive of this provision, in that certain Orders, or certain matters, do require a more urgent method of bringing them into force. I am a bit concerned, though, when we have issues such as filming Orders that may cause considerable inconvenience to members of the public, residents, landowners.

I just wondered, could the mover explain whether, as part of the procedure, these notices will be not simply just posted somewhere but, in the event of closing roads, whether those notices will be delivered to each householder on the affected stretch. I know that it is common for road closures for events. The Department requires organisers to make a personal visit to each property and deliver such notices, particularly if it is a section that has not been closed before. I think that if you are to continue to engage the public's goodwill on these matters, there does need to be appropriate public relations in dealing with these. Just slapping a notice up is not particularly the best way to gather support.

**The President:** In relation to clause 25, Mr Callister, (d) on the top of page 30: 'despite any statutory provision to the contrary, allowing the parking of up to six vehicles being used by persons connected with the recording of a scene on film.' Does that give the film company sufficient flexibility if, in fact, they needed parked cars on the road, other than their own vehicles?

Mrs Christian.

**Mrs Christian:** Does this mean they can also double park?

**The President:** As I understand it, the object of this exercise – and I might be totally wrong – is that if an area is closed off for filming, this is allowing them to double park or whatever, and I just wondered if...

**Mr Turner:** Could I come back on that, Mr President?

**The President:** Mr Turner.

**Mr Turner:** I could be wrong, but I understood that certain Orders suspend other traffic from being on it, but there need to be ancillary Orders to suspend other provisions, such as speed limits, parking. I think we could do with clarification on that, because it may be that it allows the road to be closed to you and me, but the rest of the provisions that are in there, such as parking, speed limits and so forth, those parts may need an ancillary Order to be suspended. If we could have clarification on that?

**The President:** I do not know. That is why I asked the question.

Mr Callister.

**Mr Callister:** Certainly, in Douglas, there have been areas where films have been made where some people still had access, vehicular access to the residents, anyway. I think it would vary case-by-case, Mr President, and I think that all of this would be prescribed in the Orders themselves, which will, effectively, deal with different areas at different times.

**The President:** Sorry, Mr Callister, it actually stipulates six vehicles.

**Mr Callister:** Yes, yes, I am coming to that.

**The President:** If ten were being used, or five were being used –

**Mr Callister:** I am coming to that, Mr President.

Your query is whether there would be requirement, then, for further parking for the film people who are there. The six vehicles, as I would read it, would be those which are those large film vehicles that house all their equipment, that house their actors and so on, and who occupy a huge amount of space in an area, so if it is limited to six vehicles, clearly, they will only be able to put six vehicles in that area. However, if that area is free for parking normally, there would be space beyond that, provided they worked to the conditions of the parking in that area; but that is something I would have to have further clarification on.

To go back to Mr Turner on the question of delivering to every household, I would not have thought that that would be... Certainly, it is not a policy at the present time. The policy at the present time is to attach notices in the area where the filming is taking place. It would be much easier, perhaps, to advise people in a country district, where there are fewer properties, but in town, for instance, it might not be possible and we may not have the staff available to go round to all the houses and post notices individually. Again, if that is going to be the policy, I am not aware of it. It certainly has not been discussed when we went through this Bill, Mr President.

Going back to the six vehicles, you are suggesting, I think, Mr President, that only six vehicles could be parked in the area that is closed. That is what it says here, Mr President.

I beg to move clauses 24 and 25, Mr President. Thank you.

**The President:** The motion I put to Council is that clauses 24 and 25 do stand part of the Bill. Those in favour, please say aye; and against, no. The ayes have it. The ayes have it. Perhaps we can take 26 and 27.

**Mr Callister:** Yes, Mr President. Clause 26 is consequential on the amendments made to clauses 24 and 25. Clause 27 removes a redundant provision in section 7 of the Act that is covered by the Interpretation Act 1976.

I beg to move clauses 26 and 27, Mr President.

**The President:** Mr Crowe.

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

**The President:** Again, Hon. Members, the motion I put to Council is that clause 26 and clause 27 do stand part of the Bill.

Those in favour, please say aye; and against, no. The ayes have it. The ayes have it. Clause 28, please.

**Mr Callister:** This clause amends and clarifies the provisions in section 15 regarding the placing of traffic signs. In the case of portable light signs, the Department's consent is always needed. It is an offence to place traffic signs contrary to the provisions for which the penalty, on conviction, is prescribed in the amendment to schedule 4 made by clause 36, Mr President.

I beg to move clause 28, Mr President.

**The President:** Mr Crowe.

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

**The President:** Mr Turner.

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

With regard to traffic signs: earlier on, the mover made reference to signs which are recognised as traffic signs, for example, in the Highway Code, but there are quite often signs placed on access to private lanes, which use speed limit signs. You often see 5 mph, industrial estates that are private roads, no parking in private gateways and some of those are actually made to the same standards, for example, Colas supply them to anybody who wants them. They may want to put a No Entry sign up or something. I wondered how that is going to fit in with this.

At an earlier Reading it was raised by Mrs Christian with regard to farmers putting signs out. Quite often you see portable red triangle signs with the picture of a cow on them, or a horse. Occasionally you see equestrian areas, the A-frame ones with the horse symbol with warning, horse riding for the next two miles or whatever. I think that is going to become quite bureaucratic, if these organisations are not able to put them out. Whilst I think the provision for the statutory authorities, such as MEA and Water and also the other utilities, are covered by this somewhere. I think Telecommunications are covered. I am sure I have read that in here somewhere. I think it is a sensible provision that they can carry on. I think if the Department is going to have to administer all this, I think it could be rather onerous and unnecessary.

**The President:** Does this mean, Mr Callister, picking up on Mr Turner's point in relation to (5) of 28, where it says, 'However, in the case of traffic signs that are portable light signals, despite any other enactment...' I mean to say, what is a 'portable light signal'? Is it light in weight, or is it a light because it is lit and that sort of

thing? Is it on Mr Turner's say-so? Can we not have flashing lights to say that there are tractors turning, or trailers crossing the road, you cannot have them today without asking the Department?

**Mr Callister:** That is the way I read this, Mr President. (**The President:** Yes.) Yes. I am responding, yes? Yes, it says it quite clearly here in the Bill:

'despite any other enactment, they must not be placed on or near a road without the prior consent of the Department.'

However, we need to look at the primary Act which tells us that:

'... "traffic sign" means any object or device (whether fixed or portable) for conveying to traffic on roads, or any specified class of traffic, warnings, information, requirements, restrictions, or prohibitions of any description specified by regulations made by the Department or authorised by the Department and any line or mark on a road for so conveying such warnings, information, requirements, restrictions or prohibitions.'

The Department needs to... and it gives again in the Act that these traffic signs shall be of a size, colour and type as prescribed in regulations made by the Department. So the whole case, in fact, of traffic signs and the placing of them, I think is covered in the main Act, together with this alteration, with the exception of emergency works, in which case if an emergency occurs, then it is possible to bypass that, to some extent, to get signs in place rapidly for the benefit of the travelling public, Mr President.

I hope that covers the points that have been raised.

**The President:** In that case, Hon. Members, the motion I put to Council is that clause 28 do stand part of the Bill.

Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
Clause 29, Mr Callister.

**Mr Callister:** Yes, this clause amends section 17, so as to extend the power to place traffic signs in an emergency to a constable or person acting under instructions of the Chief Constable. I think I have already mentioned that for emergency matters, Mr President.

I beg to move clause 38.

**The President:** Clause 29.

**Mr Callister:** Sorry – clause 29, I beg your pardon.

**The President:** Mr Crowe.

**Mr Crowe:** I second and reserve my remarks, Mr President.

**The President:** The motion, Hon. Member, to Council is that clause 29 do stand part of the Bill.  
Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
Clause 30.

**Mr Callister:** Clause 30, Mr President, is consequential upon the amendments made by clause 24 – that is to say, the substitution of 'notice' for 'order'.

I beg to move clause 30.

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

**The President:** Again, Hon. Members, I put to Council that clause 30 do stand part of the Bill.  
Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
Perhaps we could take clauses 31 and 32.

**Mr Callister:** Yes, sir. Clause 31 amends section 28 so that it is the Department of Social Care that is to issue disabled persons' badges in the form that it considers appropriate, instead of the Department making regulations for the issue of the badges by the Department of Social Care in a form prescribed by the regulations.

A typographical error in this section is also corrected.

Clause 32 inserts a new provision in section 31 to enable the maximum levels of fines in schedule 4 to be varied by Order.

I beg to move clauses 31 and 32, Mr President.

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

**The President:** Mr Downie.

**Mr Downie:** Yes, a query on this one, Mr President, on clause 30.  
If a visitor comes to the Isle of Man –

**The President:** We have approved clause 30, sir.

**Mr Callister:** We have moved on from 30.

**Mr Crowe:** Clause 31.

**Mr Downie:** Sorry, clause 31 then.

**The President:** Clause 31, right.

**Mr Downie:** If a visitor comes to the Isle of Man and he has with him a Euro badge, which are quite common now on disabled vehicles and so on, is that taken automatically as being acceptable or does any visitor coming to the Isle of Man have to go to the Department of Social Care to issue a local badge? Do we accept the international law here or is he committing an offence?

**The President:** Mr Callister.

**Mr Downie:** It is not clear in the legislation.

**Mr Callister:** No, I do not have the answer to that, Mr President. Hopefully, we will be able to have the answer to that in due course.

**Mr Pearson:** There is no problem with that. That will be recognised.

**Mr Downie:** Can I ask, then, where there is a list of what badges are recognised and what –

**The President:** Can we just hold on a bit there because, in fairness, if we are getting comments from the Gallery, then purely for the purposes of *Hansard* if you would give your name and give the response and then we certainly have it picked up and on *Hansard*, rather than having an aside.

**Mr Pearson:** My name is Richard Pearson, I am Director of Highways.

The Department of Social Care would prescribe that badges would be recognised where they are issued internationally. They would also be able to prescribe what the badges would look like for the purposes of issue on the Island, which would mean that we would no longer do that; they would do it, so all would be covered in that.

**The President:** What you are saying is that an EU badge would be accepted as being –

**Mr Pearson:** Indeed.

**The President:** Right.  
Happy, Mr Downie? Happy with that?

**Mr Downie:** Yes.

**The President:** Anything further, Mr Callister?

**Mr Callister:** No, sir.

**The President:** In that case, Hon. Members, the motion that I put to Council is that clauses 31 and 32 do stand part of the Bill.

Those in favour, please say aye; and against, no. The ayes have it. The ayes have it.

Clause 33.

**Mr Callister:** This clause, Mr President, substitutes a new section 31, providing for traffic wardens to be appointed by the Department of Infrastructure to carry out the functions conferred by or under the section under the direction of the chief executive of the Department. Currently, traffic wardens are appointed by the Department of Home Affairs and act under the direction of the Chief Constable.

The opportunity is taken to revise the wording of the section slightly for reasons of clarity.  
I beg to move clause 33, Mr President.

**The President:** Mr Crowe.

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

**The President:** Mr Turner.

**Mr Turner:** Thank you, Mr President.  
I notice in subsection 3(c) it refers to:

‘in accordance with any arrangements made by the Department with the Department of Education and Children...’

I just wondered whether this will enhance the authority and powers of... you are not allowed to call them ‘lollipop men’ any more, are you? – lollipop persons, school crossing patrol officers, because I think these are important positions and they should have some sort of statutory power.

I think most people do observe the directions of these people because they recognise the importance of the role, but nevertheless, I see there is provision there and wondered whether, in future, the school crossing patrol service will be effectively given some of the powers of traffic wardens to maybe... in parking around schools and things like that?

**Mr Braidwood:** Just one point I would like to raise, Mr President –

**The President:** Mr Braidwood.

**Mr Braidwood:** – is that if the Department are able to appoint people as traffic wardens, they can at the moment appoint parking controllers who do not have the same powers as traffic wardens.

You have got a situation where traffic wardens are pensionable, where they are employed by Government. You have got parking controllers who are on contract with an outside agency. Is there going to be an amalgamation, because there is going to be a separation where you have got one person being paid more than the others – I know the traffic wardens have greater powers – or have you got something planned for the future, where everybody is going to be employed as parking controllers and there is going to be no traffic wardens as such?

**The President:** Mr Butt.

**Mr Butt:** Thank you, sir.

I have a query about the functions of these officers, these traffic wardens, in effect. I see section 33 gives power for the Chief Executive to assign other powers to the controllers. I just wonder how far that goes?

Initially, they were there to control the movement of traffic. It now looks as if they can actually take on powers under other parts of the Road Traffic Act and other road traffic regulations. I wonder, could we have a list at some time from the Chief Executive, as to what powers are going to be given to these officers? This is not quite clear in the Bill as it stands at the minute. I wondered how far can they go? I know on some occasions they have to be there assisting a constable, but it seems to widen their powers considerably from the purpose for which they were originally set up.

**The President:** Mr Downie.

**Mr Downie:** In a similar vein, Mr President, as we know, to run the TT now you need 540 marshals. As every one of us knows who grew up with the TT, marshals assist with road traffic management, they direct traffic from time to time, they help out, they do remove vehicles that have been parked on the course, they assist with that. They are sworn in as constables, but I am just wondering what actual protection they have under this, because it seems to me that, under the Road Traffic and Highways Bill we are looking at now, we are putting a

lot more onus on traffic wardens and, really, there is no mention of these other people who come in and help from time to time and assist in traffic-related matters.

**The President:** Mr Callister to reply, then.

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

Mr Turner's question about crossing patrol officers and whether or not their powers would be increased: that will be a matter for the Department if they want to consider it. However, the functions of the traffic warden and the lollipop man – or person, as it is described sometimes – are entirely different functions and the work that is done by these crossing patrol officers would not normally be increased or certainly brought up to a level of a traffic warden.

There are also, as Mr Braidwood pointed out, parking controllers whose powers are less than a traffic warden's, and whether or not there was an intention for those two bodies to be brought together as one specific title has been very briefly considered in the Department, Mr President, and is a matter for future consideration as to how that should be moved on, but the terms and conditions are different for them at the present time. As Mr Braidwood says, they are contract persons at the present time, so it is something very much for future consideration, Mr President.

Mr Butt, in connection with the powers for traffic wardens being extended: I think, since they first started, they have been extended over a period of time. They now have different functions than when they first set out, so there was always the possibility that new functions would be allocated to them. I have no information about any intention at the present time to change those functions as they came over from the Department of Home Affairs. I think, if those changes are to be made, Members will be duly informed, but I do not think we have any information to give at the present time on that matter, Mr President.

**Mr Butt:** Mr President, can I just –

**Mr Callister:** Sorry –

**The President:** Mr Butt.

**Mr Butt:** The reason I raised the comment was it actually says in the regulations, 'such functions as the Chief Executive of the Department may assign',

so we would not get to hear about them. I am just asking, will there be a mechanism to let people know what powers have been assigned to them, for the public, as well. That was my point, Mr President.

**The President:** In subsection (3)(b).

**Mr Callister:** Yes, in clause 33 –

**The President:** Clause 33(3)(b).

**Mr Callister:** Yes, I am with that, Mr President. Yes, indeed. I fully accept that is there. What I am saying is that, at this present time and within the response that I know is likely to this Bill, the functions that the traffic wardens have at the present time will remain as they are.

I have no information or any reason to suppose that immediately after this Bill is moved there is going to be a change, and if there is, it will be clearly notified in an appropriate way, Mr President.

**The President:** If you wish, perhaps we could get Mr Longworth to help us out on this.

**Mr Pearson:** Thank you, Mr President.

The traffic wardens – their powers, given by the Chief Executive – would be restricted to traffic purposes by this Bill.

What that means is, as at the present time, they can undertake any type of moving vehicle offence, which includes, for example, the taxis that hang out the back of the rank on Victoria Street, which is an obstruction, not a parking offence: it is an obstruction offence. So they can deal with all those types of offences, as well as parking offences, whereas the parking controllers employed by the private sector, G4S to be specific, are only dealing with the parking type offences and some other fixed penalty offences, like failing to show a current tax disc.

**The President:** But I think Mr Butt's point is, at (3)(b), the chief executive of the Department could decide and give some other function to the traffic warden in relation to more or less anything without it being announced anywhere.

**Mr Pearson:** Thank you, Mr President.

I was referring to (3)(a), which means that he can only delegate functions relating to the control of traffic. In (b), as well, it repeats that. So I think it is only functions in relation to the control of traffic, which they currently have, actually.

**The President:** Happy, Mr Butt?

**Mr Butt:** 'Control and regulation', so it could extend to saying, 'Okay, let's go and look for people driving carelessly,' in theory. I know it will not do, but that is how it could progress without people knowing. I think the Attorney may have an answer there, sir.

**The President:** Mr Attorney.

**The Attorney General:** Mr President, I think the point that the Hon. Member is trying to make is what will be the procedure for effectively publicising what is going to happen. The point is that these functions have to be made, or have to be conferred, by way of an Order of the Department.

Schedule 2 of the Act provides for the procedure for making in Order, and that confirms:

'Where the Department proposes to make an Order to which this schedule applies, they should prepare a draft of the Order and cause notice of the proposal to be published in at least one newspaper published and circulated in the Island, and such notice shall state the general effect of the proposal and specify the land...'

- obviously, that is not appropriate here –

'... or highway, if any, to which the proposal relates.'

So there are notice procedures set out in schedule 2 in relation to the functions which would be effectively conferred upon the traffic wardens by the chief executive. So that would deal with the notice provisions.

Hopefully, that assists, Mr President.

**The President:** Mr Callister, anything further you wish to add?

**Mr Callister:** No. I thank the Attorney General and I beg to move clause 33, Mr President.

**Mr Downie:** I did not get my question answered, Mr President.

**Mr Callister:** Oh, the TT marshalls, I beg your pardon.

They, again, are not traffic wardens. This is dealing with traffic wardens. TT marshalls I do not see as traffic wardens and whatever regulations they work under is not part of this change, Mr President.

**The President:** The motion that I put to Council is that clause 33 do stand part of the Bill.

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

Clauses 34 and 35. Mr Callister.

**Mr Callister:** Clause 34, Mr President, amends section 39 so that Orders made under sections 31 or 33 require Tynwald approval.

Clause 35 makes consequential amendments to schedule 1, concerning the notification of temporary road closures.

I beg to move that clauses 34 and 35 stand part of the Bill.

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

**The President:** The motion I put to Council, Hon. Members, is that clauses 34 and 35 do stand part of the Bill.

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

And completing part 3, clauses 36 and 37.

**Mr Callister:** Yes, sir, clause 36 deals with penalties under the Act and clause 37 makes consequential amendments to schedule 1 concerning notification of temporary road closures.

I beg to move, Mr President.

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

**The President:** Again, Hon. Members, the motion I put to Council is that clause 36 and clause 37 do stand part of the Bill.

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

Clause 38 has been omitted, Hon. Members, so we go on to part 4 then, the amendment of the Highways Act. Perhaps we could take clauses 39 and 40?

**Mr Callister:** Yes, Mr President.

Clause 39 decrees that the Isle of Man Highways Act 1986 is amended in accordance with this part.

Clause 40 inserts 7A(1), which enables the Department, by application to the High Court, to recover extraordinary maintenance expenses arising from excessive weight passing along a highway or from other extraordinary traffic on it. If, however, an operator admits liability for damage to highways caused, subsection (2) provides a procedure for agreeing or determining the sums involved without recourse to the High Court.

Subsection (3) prescribes the time within the proceedings for the recovery of sums must commence.

I beg to move clauses 39 and 40, Mr President.

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

**The President:** In that case, Hon. Members, the motion I put to Council is that both clauses 39 and 40 do stand part of the Bill.

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

Clause 41 has also been omitted, Hon. Members, so we move through to clause 42, please, Mr Callister.

**Mr Callister:** Yes, the inserted section deals with the creation of walkways by agreement, being a right of way on foot in developments such as comprehensive shopping centres and blocks of flats. Subject to modifications made under this section, highway law will apply, which better enables access by the Police for the purpose of maintaining public order.

Subsections (1) to (3) enable a local authority, after consultation with the Department, to enter into an agreement with a building owner for the dedication of ways as walkways, and they go on to cater for matter appertaining to such an agreement.

Subsections (4) to (7) enable highway law to be supplemented by the making of regulations covering, *inter alia*, the conduct of persons using walkways within any given development. The procedure preparatory to the making of such regulations is set out and the penalty for contravening regulations is prescribed.

Subsections (8) to (10) enable further regulations to be made, disapplying, amending, modifying or adapting any enactment or instrument relating to highways or to things done, or in connection with them. The regulations are empowered to deal with the rights of statutory undertakers.

Subsection (11) provides that regulations made under this section are subject to Tynwald approval.

Subsection (12) provides a saving with respect to the powers of this Act or any other enactment to create highways.

I beg to move, Mr President, that clause 42 stand part of the Bill.

**The President:** Mr Crowe.

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

**The President:** Mrs Christian.

**Mrs Christian:** Simply to say, Mr President, that as we are looking forward on a retail strategy and focusing on what our retail offer ought to be and we are looking for regeneration of town centres, I think this is timely.

**The President:** Mr Turner.

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

I wonder whether, if an agreement is entered into, whether that then protects the landowner from having the walkway designated at a later date as highway, whether that casts firmly that the walkways are permissive? We

have had recently, of course, still ongoing discussions over rights of way. Various examples have been used about walkways that have got gates on, including one just down the road here, and I wonder whether that will offer the protection that is intended, so that law and order can be maintained, but also provide protection for the landowner, so that they do not end up losing their strip of land.

Also, will there be any... What indication will there be given to the public that it is a walkway to which the public have access?

**The President:** I assume a walkway, Mr Callister, is both a bridge or a tunnel... could be anything in relation... it says simply, a walkway means a highway over which the public have a right of way on foot only.

**Mr Callister:** Yes, Mr President.

**The President:** Reply, sir.

**Mr Callister:** That is correct, and I think any area that is a walkway, whether it is a tunnel or whatever, where the public have a right of way, is what is described here.

Therefore, what this is about is really to give the Police access to these private areas. They are private walkways, in fact, but with public access. Nevertheless, this gives the Police power to go over these walkways in order to pursue crime that may well be existing and happening in those areas which, seemingly, I would have thought they had now but, according to this, this would be new. I wonder if the Attorney could advise on it.

**The President:** Do you have any observations, Mr Attorney, or not?

**The Attorney General:** Yes, thank you, Mr President.

I think the first thing that one has to look at is the definition of a 'walkway', which is towards the end of the new section. It states in subparagraph 13:

'walkway means a highway over which the public have a right of way on foot only, but subject to such limitations and conditions, if any, affecting the right of way as may be specified in an agreement under this section and to any rights reserved by the agreement to the building owner and any person deriving title to the land under him or her.'

So that makes it clear that a walkway, by definition, is a highway over which the public have a right of way on foot only. That may be through or under parts of a building, or a building when constructed.

Also the section 32B makes provision for the dedication by the building owner of those ways as walkways, in other words, public rights of way. Obviously, there are other supplemental provisions there, which permit, or empower, the agreement to deal with maintenance, cleansing, drainage, lighting, provision of maintenance support etc, powers of entry.

I trust that assists, Mr President.

**Mr Callister:** And the powers would be given to the local authority via the... The Department would give those powers to local authorities, to deal with these matters.

**The Attorney General:** The local authority, after consultation with the Department, can enter into an agreement with a building owner and, effectively, the power is to... The agreement can make provision for those matters. Hopefully, it would be prudent that, when the agreement is actually drafted and entered into, it makes the specific provisions and the powers are there to effectively to do so.

**Mr Callister:** I would also thank Mrs Christian for her support on this matter.

**The President:** In that case, Hon. Members, the motion I put to Council is that clause 42 do stand part of the Bill.

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

Clause 43, then, Mr Callister.

**Mr Callister:** Clause 43, Mr President, substitutes a new section 38, the principal alteration being that the temporary closure of highways for entertainment will be effected by public notice instead of an Order.

The definition of entertainment is now inclusive and has been expanded and I beg to move clause 43, Mr President.

**The President:** Mr Crowe.

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

**The President:** The motion, Hon. Members...  
Mr Turner.

**Mr Turner:** I was only going to endorse earlier comments, that this is a sensible provision.

**The President:** We will move on, then, Hon. Members.  
The motion I put to Council is that clause 43 do stand part of the Bill.  
Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
Clause 44, please.

**Mr Callister:** Clause 44, Mr President, amends section 51 to enable the Department to cut, lop or fell vegetation that is overhanging, or is likely to fall onto, a highway if there is immediate danger, or the owner or occupier otherwise fails to do so within 14 days of being served a notice requiring him or her to do so.

There is a provision for the Department to recover the cost of the works from the owner or occupier and a requirement for the Department, if it sells anything removed from a highway, to pay the proceeds of the sale, less any expenses of removal and sale, to the owner.

I beg to move clause 44, Mr President.

**The President:** Mr Crowe.

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

**The President:** Mr Lowey.

**Mr Lowey:** Could I congratulate the Department on filling me in with 'lopping'. What is the difference between 'lopping' and 'appropriate cutting'? I have not heard the word 'lopping' in legislation for a very long time and I would just like to congratulate the Department in putting a 'lopping' in for me. *(Laughter)*

**The President:** Mr Braidwood.

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

One thing you notice when you are walking along the pavements in many areas is overhanging shrubs and bushes which are eye height and, if you are not careful, you could walk into these shrubs and catch your eye or whatever. It is actually getting worse coming into the summer, overhanging pavements as you walk along.

Will the Department go around? Is it the responsibility of the homeowners to cut back, because I believe there is legislation in another place, such as the Channel Islands, where a person goes around with a rod and the shrubs and everything has to be cut back to a certain height every May, and if not, the person, the occupier, is fined all the time until the work is carried out?

Is the Department going to go around estates, or whatever, where there are overhanging shrubs and cut these back from the pavements for the actual safety of the pedestrians?

**The President:** Mr Butt.

**Mr Butt:** Thank you.

It is not quite to do with this section, but could I congratulate the Department on their recent policy of the last two years, of not cutting back the hedges and verges as much as they have been done, (**Mr Lowey:** Hear, hear.) because, in my opinion, the Isle of Man is much more beautiful in the last two years by the fact that they have delayed cutting on the roadside verges.

This, of course, I think refers to private dwellings and private houses, as well.

**Mr Braidwood:** It is pavements.

**The President:** Mr Turner.

**Mr Turner:** Can I just add to that, Mr President.

I do agree with the comments of Mr Butt. That is not a wholesale endorsement on allowing things to go completely out of control. I think Mr Braidwood's comments are quite right: whilst a lot of the shrubs are private dwellings, there are, indeed, a lot of other areas under the control of the Department that do need

trimming. I think there has to be a balance struck between looking after the hedgerows, but also managing the safety.

**The President:** Mr Downie.

**Mr Downie:** Yes, Mr President. The point I wanted to raise was in (5):

‘Where the Department carries out any works pursuant to subsection (3) it may recover the cost of doing so from the owner or occupier of the land on which the hedge, tree, shrub or other vegetation is situated.’

What is the situation when you are dealing with a piece of land that is owned by a company that is not even registered in the Isle of Man? Do you have to go through a lengthy procedure? Do you have to serve notice?

Do you not think that what is required here, in this particular section, is the same sort of provisions that are in the Local Government Act, where they can serve notice, they can do the work, and then they can put a charge on the property? To me, it seems to be a section in here which actually is meaningless when you are trying to get money out of some of these people. That is part of the problem that we have in the Isle of Man. When we were talking about the local authority responsibility in a recent Bill, I made reference to the number of dilapidated properties. I had a meeting this morning in the Department of Economic Development where some very major investors were looking out onto Myrtle Street here, and the vegetation growing out of the building in an extremely dilapidated and untidy manner... and it seems that we just cannot get our act together and get this sorted out. I am told that that is owned by a company they think might now be in South Africa. It is a similar situation.

I am just trying to be helpful to the Department, really, to see if a better way cannot be found if you are dealing with some of these issues where there are overgrown shrubs and trees which are causing a nuisance.

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

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

I suspect Mr Braidwood might be referring more to urban areas than country districts, as far as overgrowing shrubs are concerned.

**Mr Braidwood:** That is true. If you walk along the pavement in Peel Road, at the moment, dodging all the overhanging branches and everything...

**Mr Callister:** Peel Road is a particularly bad example of it, yes, and through the town, as well, there are areas where these [*Inaudible*]

The Department will have the powers, obviously, to enforce the owners to do this work or charge for it, but it does depend on the manpower that is available to the Department, Mr President, to deal with all these matters. There are so many that we could not possibly, I do not believe, deal with all of them. What we really need to do, I think perhaps, is have greater publicity about these areas for the people who own properties with overhanging shrubs and what have you, because I dare say a lot of people are not actually aware of the requirement to cut these back. Over the years, it just goes on and there is not a lot of publicity in that way. Perhaps it would benefit from regular notices in the newspapers that people are actually offending against this law, if they do not carry out this work. I think that would probably help, Mr President.

In relation to the comments by the Hon. Members, Mr Butt and Mr Turner, about them not cutting back, I share that view. I think they did very well out, certainly, in rural areas with that; although Mr Turner may not agree with it. But I think that is now the fixed policy of the Department to not start ripping the hedges to pieces, as has happened in the past.

Mr Downie brings us into probably a more difficult area, of owners who do not live or operate from the Isle of Man or, in fact, own the properties here. All we can do, within whatever laws we have to try and make that recovery, is battle it as best we can, but it is a difficult area, Mr President. If Mr Downie has some ideas to put to the Department of better ways to deal with it, they would be very welcome, Mr President.

I beg to move.

**The President:** Hon. Members, the motion that I put to Council is that clause 44 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it. Clause 45 having been omitted, we go to 46, please.

**Mr Callister:** This clause is consequential upon other changes in the Bill with respect to regulation making powers, Mr President.

I beg to move clause 46.

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

**The President:** The motion, Hon. Members, is that clause 46 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it. Now 47, financial provisions.

**Mr Callister:** Sorry, Mr President?

**The President:** Clause 47.

**Mr Callister:** Yes, sir.

This clause inserts section 109A, subsections (1) to (3) of which enable an agreement as to the execution of works to be made in the public interest between the Department and a third-party, whereby that other party pays some or all of the costs of the works, including in particular, the administrative and other costs of the Department. Such agreements will mostly follow on from planning permissions, which, if they are to be implemented, require the works involved to be executed.

Subsection (4) provides the saving with respect to the power of the Department to acquire land for the purpose of the works. The power, in fact, already exists under the Government Departments Act 1997.

Subsections (5) to (7) deal with the recovery of amounts and with related matters in the event that any amount due to the Department in pursuance of agreement is not paid.

I beg to move clause 47, Mr President.

**The President:** Mr Crowe.

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

**The President:** Mr Turner.

**Mr Turner:** Yes, I just wonder, it says about the

‘terms that the person pays whole or such part of the cost of the works as may be specified in or determined in accordance with the agreement.’

What would happen in the event that the third party did not agree... agreed with works, but did not agree that they should contribute towards the costs? I just wonder, then, would the Department still carry out the work, or could a landowner be forced to pay the costs?

**Mrs Christian:** Mr President, I think we have got to get a balance in this somehow.

I can currently think of a case where the landowner is complaining about the potential cost and what they might be asked to do by the planning authority, in order to develop their business. I guess they will make a business judgement as to how much it is worth them investing in roadworks, in order to develop that business, but one can see a situation where one might get quite a considerable amount of pressure put on a business to get involved in expenditure in roadworks, where you would think that maybe there is room for a bit of give and take in this.

**The President:** Mr Callister to reply, then.

**Mr Callister:** Well, it tells us here, Mr President, that the Department, if it is satisfied it will be of benefit to the public, *may* enter into an agreement with any person for the execution by the Department of works etc. and I think that, first of all, if you are going to have an agreement, you have to have both sides agreeing to it. I think that is where it works out and whether the other party decided they would not pay for the work, I assume that the Department could refuse to carry out that work. Perhaps I may have misread that, but that is the way it seems to me, Mr President.

**Mr Lowey:** I do not know whether it helps or not, but in (7), at the top of page 46, the last paragraph of the clause says:

‘This does not affect the right of any of those persons to recover from the person liable under the agreement the amount which they are made to pay.’

So there does seem to be some compulsion there.

**The President:** Mr Attorney.

**The Attorney General:** Mr President, I think this conundrum is dealt with in what will be section 109A(5). What that provides is:

‘If any amount due to the Department in pursuance of an agreement...’

- obviously, the agreement will have been in place between the parties –

‘... under this section is not paid in accordance with the agreement, the Department may do any or all of the following –

- (a) direct that any means of access or other facility afforded by the works to which the agreement relates must not be used until that amount has been paid;
- (b) recover that amount from any person having an estate or interest in any land for the benefit of which any such means of access or other facility is afforded;
- (c) declare that amount to be a charge on any such land (identifying it) and on all estates and interests in the land.’

So there are provisions there to enforce the payment, to effectively get a charge, and it is always important to remember, as Mr Callister quite rightly said, that this is in pursuance of an agreement and, in most cases, if not all cases, there will be a benefit not only to the Department or the local authority, but also to the party who has entered into that agreement with the Department and local authority.

Thank you, Mr President.

**The President:** Do you wish to add anything, Mr Callister?

**Mr Callister:** I thank the learned Attorney, Mr President, and I beg to move.

**The President:** In that case, Hon. Members, the motion I put to Council is that clause 47 do stand part of the Bill.

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

Clause 48.

**Mr Callister:** Clause 48, Mr President.

By way of substitutions, this clause widens the ability of the Department to recover expenses so that it goes beyond its ability to recover just from owners of premises. The interest-charging provisions are modified to match those in the new section, 109A(5).

I beg to move, Mr President, clause 48.

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

**The President:** The motion I put to Council, then, is that clause 48 do stand part of the Bill.

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

Clause 49.

**Mr Callister:** Clause 49, Mr President, amends section 115 so as to increase the maximum penalty for most of the offences under the Act from £1,000 to £2,500. It also enables the Department to vary the levels of fines specified in the section by Order, subject to Tynwald approval.

I beg to move that clause 49, Mr President.

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

**The President:** The motion, Hon. Members, is that clause 49 do stand part of the Bill.

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

Clause 50 and 51, please.

**Mr Callister:** Yes, clause 50 enables the Department merely to specify the form of documents under the Act, instead of having to prescribe them by regulations.

Clause 51 amends schedule 1A so as to remove the requirement for the Department to have to make regulations setting out what it must do when constructing traffic restraint works. I understand this is part of the Council of Ministers’ policy for deregulation.

I beg to move clauses 50 and 51, Mr President.

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

**The President:** The motion I put to Council is that clauses 50 and 51 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Clause 52 having been omitted, we will take clauses 53 and 54, please.

**Mr Callister:** Clause 53 makes a minor consequential amendment, as a result of the removal of regulation-making powers.

Clause 54, Mr President, amends in two ways paragraph 2(6) of the Road Works Code, as set out in schedule 4. First, it requires the reinstatement, or making good, of highways, etc, to be in accordance with the Department's directions, instead of regulations made by it. Second, it increases from no more than 12 to no more than 24 months the period in which undertakers – that is, suppliers of utilities – must keep highways in good repair as the soil broken up continues to subside.

Paragraph (b) deletes a sentence which is superseded by a new paragraph, 2(8C).

Paragraph (c) inserts a new paragraph, 2(7A), which enables the Department to step in and reinstate, or make good, a highway, etc, after undertakers have failed to do so adequately.

Paragraph (d) makes an amendment consequential on the new paragraph, 2(7A).

Paragraph (e) inserts a new provision with respect to the service of default notices.

Finally, paragraph (f) provides an inclusive definition of what is meant by references to reinstatement and making good.

I beg to move clauses 53 and 54, Mr President.

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

**The President:** Mr Downie.

**Mr Downie:** Just one under this particular section. Is there any requirement for an undertaker to place a bond with the Department?

Say, for argument's sake, we were having a company come into the Isle of Man to run a fibre-optic link across. They were not normally known to us, they were not one of our statutory undertakers, water, gas or electricity: could a bond be called for to do any reinstatement works as they have gone? As we have seen to our loss, really, in recent years, I remember the whole of the road south – Castletown Road being dug up a few years ago and the reinstatement works were dreadful. It must have cost Government a fortune in the end. Just want to know if anything can be done?

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

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

**Mrs Christian:** Sorry.

**The President:** Mrs Christian.

**Mrs Christian:** Just to make one point.

This seems to be extending the requirement for reinstatement across the full width of a lane and I wonder if the mover would comment on that? Is that entirely new? If so, it seems to be adding considerable expense, when this is only reinstatement and presumably the Department itself will have to do some work at some stage on the highway. I just wonder, in a time of economic constraint, whether it is a sensible provision to require reinstatement across a full width?

**The President:** Mr Turner.

**Mr Turner:** Yes, thank you, Mr President.

It is an interesting point raised by Mrs Christian. Certainly, again, going back to my time on the Department of Transport works, it was one of the things I was actually asking for, because the carriageways, when they were being patched back up by some of the statutory undertakers, were what was causing the roads to deteriorate quicker. By doing a half resurfacing they would have less –

**Mr Braidwood:** They lose their integrity.

**Mr Turner:** Yes, that is right. Fewer joins in them to break and that was the thinking, but I do accept that it is going to add expense, but I think, recently, we had the most appalling episode of patching going on just up Bucks Road and I ended up ringing the director of operations at the DoI, because they were like molehills in the road.

They said you have got to let them settle in. Well, we do not accept that, when we see patching in other areas of the Island. They do not have that, so we should not be accepting it anywhere and I think that was something that there was a move at the Department of Transport to have them, if they are going to put a trench right up the middle of the road, rather than trying to get away with as little as possible of resurfacing, was to resurface the lane properly, of that stretch where the work was taking place.

**The President:** Reply, sir.

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

With regard to Mr Downie's query with reference to a bond for companies who are coming to the Isle of Man to carry out work, I presume that would be done through, probably, a process of a contract with the company. A quotation would be involved and so forth, so I would have thought that a bond, if there is to be one at all, would be part of the terms and conditions of such a contract. I cannot go beyond that at this stage.

Mrs Christian's question about the full width of the lane, I think very helpfully answered by Mr Turner because the problem we have... We are talking here mostly... The people we are talking about are the Water and Sewerage Authority, the gas and electricity. Some of them do very good repairs. Some of them know what they are doing, they have got the right men and perhaps sometimes call on the Department for assistance, as well. Nevertheless, some are very badly repaired.

Yes, there will be a cost, there would be expense, but if it is not met by the company who have left that bad repair, it would have to be met by the Department, anyway. So I think it is fair enough to ensure that these undertakers, as they are called... It is a curious name, I think. Anyway, I think it is right that they should meet the costs and get the job done properly, and if it means going across the width of the road, Mr President, to do that properly, that is for the benefit of all.

**The President:** Hon. Members, the motion that I put to Council is that clauses 53 and 54 do stand part of the Bill.

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

And, finally, we come to part 5, miscellaneous amendments and repeals. Clause 55, sir.

**Mr Callister:** Clause 55, Mr President, is an amendment of the Petty Sessions and Summary Jurisdiction Act 1927. It amends the above Act so as to bring the penalty for furious driving into line with that of a comparable offence of careless and inconsiderate driving under the Road Traffic Act 1985.

I beg to move clause 55, Mr President.

**The President:** Mr Crowe.

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

**The President:** Mr Butt.

**Mr Butt:** Yes, Mr President, a slight history lesson here.

The 1927 Act provides an offence of furious driving of a carriage, and that was the offence we used in the 1990s down at Bushy's, when people did pirouettes and wheelies. That was the only power we had and there was a power of arrest with that, so people could be detained, but there was no power to either give penalty points or to disqualify and I think this does change those penalties to fit in with the same penalties that were given in the offence of travelling without due care and attention.

So it is an old regulation that I think is still used occasionally – a useful bit of legislation – but now made stronger by having a more appropriate penalty, rather than being locked up overnight.

**Mrs Christian:** Mr President, if there is furious driving of a tram horse down the prom, they will not be subject to penalty points by... [*Inaudible*] – only in respect of mechanically propelled vehicles!

**Mr Braidwood:** People have been done, actually, on the horse trams, Mr President, for driving one of the trams without due care and attention – when he was just ringing the bell and did not put the brake on and went straight into a car which was over the line!

**The President:** Mr Callister, reply, sir.

**Mr Callister:** I thought we were going to back to the furious driving of landaus! *(Laughter)* I thank Mr Butt for his considerable help on that.

Thank you, Mr President. I beg to move.

**The President:** In that case, Hon. Members I put to Council that clause 55 do stand part of the Bill.

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

Clause 56 having been withdrawn, perhaps we can complete with 57, 58 and 59, sir?

**Mr Callister:** Why not, Mr President?

Clause 57. Under this, subsection (2) amends section 7 of this Act, so that the definition of goods vehicle is removed and the definition expanded to include not just motor vehicles and trailers constructed or adapted for use of the carriage of goods, but any combination of them.

Subsection (3) has the effect of supplementing section 10, so that the Road Transport Licensing Committee may refuse an application for registration or an operators' licence under the Act, unless prescribed requirements are met. Subsection (4) inserts provision to enable the Department to make regulations, authorising the committee to refuse to spend or revoke any registration or licence on health grounds.

Subsection (5) updates references in the Act to UK and EU legislation.

Clause 58 corrects a minor error in the Road Traffic (Amendment) Act 2006 and clause 59 provides the repeals provisions made redundant by the Bill.

I beg to move clauses 57, 58 and 59, Mr President.

**The President:** Mr Crowe.

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

**The President:** Mr Downie.

**Mr Downie:** I would just like to put on record my appreciation of the amount of work that has gone into this and the way that the Member moving it has dealt with it. We are all experts in here in traffic. Anything to do with traffic and motoring, it is an Aunt Sally, but I think he has come through it very well. I am very appreciative of the extra mile he has gone in providing information behind the scenes. We have asked him things out of Council and he has come back with the answers and I am very grateful for that, Mr President.

**The President:** In that case, Hon. Members, the motion that I put to Council is that clauses 57, 58 and 59 do stand part of the Bill.

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

Now, Hon. Members, that brings us to the conclusion of the business in front of Council today. As I understand it, you have all had your update as to where we are looking, in relation to legislation, and I understand that, in the other place this morning, the Flood Risk Management was certainly withdrawn, I think.

**(Mr Downie: No Bills.)**

The two Bills in front of the Keys this morning were withdrawn, Hon. Members, so we will just have to look at our legislation now in the light of what the Keys will send us in the future.

Thank you very much. That concludes the business before Council today.