

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

3. Mr Callister to move:

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

The President: We go on, then, to Item 3 on our Order Paper, which is the Road Traffic and Highways (Miscellaneous Amendments) Bill, again as a Bill for Third Reading, Hon. Members, and this time Mr Callister, please.

Mr Callister: Thank you, Mr President.

I would thank Hon. Members, first of all, for their support throughout the Bill at the First and Second Readings and indeed clauses stage, as well.

Just to summarise again, briefly, the purposes of the Bill. They are threefold. First, to deal with bad or irresponsible driving, whether it involves, for example, carelessness or dangerous driving, or driving when prohibited from doing so, or drink-driving or speeding. Secondly, to cater for the punishment of offenders in accordance with the Department's and, indeed, the general public's increase in perception of the gravity of the offences involved. And, thirdly, to provide, in the interest 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 offence is not proven. There are also a number of lesser amendments to road traffic and highways legislation.

During the clauses stage I undertook to come back at the Third Reading and clarify certain matters which were of particular interest to Hon. Members and I will also amplify some of the comments I made during that debate.

Mr Lowey enquired when the penalties were last increased for the offences of causing death by dangerous driving and causing death by careless driving when under the influence of drink or drugs. Both offences were introduced in the Road Traffic (Amendment) Act 1996, the first of which replaced the offence of causing death by reckless driving. In each case, the prescribed maximum penalties were the same, namely 10 years or an unlimited fine, or both, and that remains the position today.

The proposed increases in the custodial options to 14 years reflect partly the Department's need for more serious consideration to the gravity of offences and the general public, I think, feel the same way to a large extent, as well. So there are cases where there are lenient sentences imposed by the judiciary and there are cases where, even in the most serious ones, they are well below the maxima that can be applied. So raising the maximum penalties is seen as a way of raising the general level of sentences.

Mr Lowey also enquired why the words 'and only if' were inserted in the definition of careless driving. Mr President, that is there in order to prescribe the exclusivity of the definition – so I am told.

The Hon. Member went on to question whether the effect of the amendments made by clauses 9 and 10, which relate to exemptions from the ban on motor or motorcycle racing on highways – or cycle racing, indeed – will be able to disapply Tynwald approval for such exempted races, when it is presently required. I am advised, Mr President, that no, it will not.

Mrs Christian addressed the matter of disqualification for drink and drive offences and enquired about the rationale underpinning the amended disqualification provisions which are made by the table in clause 18. This has been based on two impressive reports, one by Richard Allsop of the Centre for Transport Studies at the University College London, and the other by the National Institute for Health and Clinical Excellence. Both broadly agree there is strong evidence of a person's ability to drive is affected if he or she has any alcohol in their blood. Drivers with a blood alcohol content of between 20 and 50 milligrams per 100 millilitres of blood have at least three times greater risk of dying in a vehicle crash. This risk increases to at least six times with a blood alcohol count of between 50 and 80 milligrams, which is the legal limit, to 11 times with a limit between 80 and 100 milligrams, and then exponentially thereafter. Against this background, the amended table does three things. First, it introduces a new limit relating to a material level of impairment and prescribes a minimum disqualification period of two years.

Second, it adjusts the limit of the high impairment and prescribes such a period of three years instead of two, and then, finally, adjusts the limit for the gross impairment and prescribes a period of five instead of three.

As far as the Department of Infrastructure is aware, the proposed alterations are not preceded elsewhere, but as, for example, with the prohibition on driving a motor vehicle with a mobile telephone in hand, the Department is inclined to conclude that the absence of a precedent does not militate against the Island again leading the way.

The Hon. Member also sought the number of convictions for drink-driving offences over the past three years. These have averaged at 112 per year.

Mrs Christian and Mr Braidwood proceeded to enquire how a vehicle seized under clause 12 will be disposed of. Under the regulations to be made under 47B, it is presently envisaged that the release to the owner, or forfeiture or sale or destruction, will be entirely a matter for a decision by a court in the light of the circumstances of the case to which the seizure relates. *Ipsa facto*, no vehicle will be able to be crushed without a court order at that time, and consequently there will be no instances of premature crushings, as have occurred in Great Britain.

Mr Downie referred to the breaking up and reinstatement of highways by statutory undertakers and other bodies and enquired whether there was any requirement for them to place a bond. I am advised there is no such requirement in the case of statutory undertakers. However, for others where there are highway works, it would be a matter, then, for other statutory provisions which are not within this Bill.

Turning, then, to the queries raised by Mr Turner, the Hon. Member questioned whether or not double red lines might be used in connection with the prohibition on double parking which was made in clause 23.

The purpose of this clause is to prohibit double parking on all carriageways and all highways in the Island, wherever they may be. This being so, it would be a Herculean task to carry out red lines, and quite impractical to do so on all of the lines around the Island.

Mr Turner also went on to enquire about the notice to be given to members of the public about road closures for filming, under section 3A of the Road Traffic Regulation Act 1985, which was modified by clause 25 in the Bill. Such notice is prescribed in subsection (8) and substituted by this clause, which simply fine-tunes the requirement, so that it requires road closure notices instead of, at present, road closure orders. There have been no problems, Mr President, with the operation of the subsection in the past and the Department anticipates no problems in the future.

Mr Turner concluded by questioning whether there was a need for ancillary orders in connection with road closures for filming under 3A and, again, from past experience, there would not be.

Finally, Mr President, you enquired what a portable light signal was. I am advised it is a signal referred to in the Traffic Signs Regulations 2002 and is commonly used to control traffic on roads, where lanes are closed due to highway works.

Mr President, having addressed what I hope are the outstanding queries raised by Members at the clauses stage, I beg to move that the Road Traffic and Highways (Miscellaneous Amendments) Bill 2011 now be read a third time.

The President: Mr Crowe.

Mr Crowe: Thank you, Mr President.

I wish to second the Reading and reserve my remarks.

The President: Mr Turner.

Mr Turner: Thank you, Mr President.

I seem to remember at an earlier reading I was asking the mover about the subordinate legislation under this. Obviously, it is quite complex, in that the various amendments amend various parts, and I wonder, whilst not going to oppose the Third Reading, whether at some stage the Member could provide a list of the powers that do and do not require Tynwald approval, because reading through this, it is not altogether clear which bits do, which Orders do require Tynwald approval. I understand things like doing restriction of parking and things like that do not come to Tynwald, but there are other powers contained in this which should, and maybe they do, but I would appreciate if that could be provided at some point.

One of the issues that came up through the earlier readings of this Bill was the issue of enforcement and it is quite interesting now, post the TT period, reflecting on the enforcement. I hope the Department, as the owner of the road network, will liaise closely with the Police to have better enforcement. For example, in TT Week I witnessed a police officer out in the middle of nowhere catching people, when down in the village where I live they were screaming through like idiots. It was completely ineffective where he was, but was obviously a good spot to catch people. That is not the role of enforcement. Enforcement should be in the places where it is needed, and I think that message should go back from the Department to the Police regarding that, to make sure that they do not just go to those places but they do go to appropriate...

I also think, going forward, if the Department has policies which they wish to discuss in public, I am unsure as to where the driver for some of those policies is. We seem to have had... The Police have been like a public roadshow over the last couple of weeks, being on the radio commenting on what the Department should be doing, and I do not feel it is their role to be doing that.

I note that, sadly, some of the fatal accidents we have had are in existing speed limit zones and, again, this comes down to the enforcement issues and maybe the Department should be liaising closer with the Police so that they are not at conflict with the messages that they are putting out to the public.

I said at earlier readings there are many very good provisions in this Act, such as the Highway Code. I think the revision of the Manx Highway Code is a positive step. I know there has always been one. I still feel that one should be issued with a provisional licence as it does form part of the requirements. I take the point that it is available on the Internet or will be available free of charge, which, again, is a good step. I also applaud the will to remain in there the rules and regulations of motorway driving because the majority of people will at some stage encounter those roads.

So I will not go on any further because there are a lot of provisions in here which I have aired at previous readings of this Bill, but I thank the Members for the answers he has provided me so far and hope he can provide answers to the additional questions.

The President: Mr Downie.

Mr Downie: Thank you, Mr President.

I think the Bill that we have seen progress does have some very good new pieces in it, particularly when dealing with the penalties. There has obviously been a situation develop where a much clearer definition is required of the penalties for causing death and so on, driving without insurance, driving vehicles when they are not taxed and so on. I think that is all required to be brought up to date and laid out in a much more easy to understand situation. No doubt, there have been cases which have come to court, where a person has perhaps got off on a much less serious charge than they would and I hope that this Bill will now address that situation.

My colleague, Mr Turner, hit on a very good point. We can legislate until we are blue in the face, but if there is not proper enforcement or lack of enforcement, I think we are just wasting our time and I find it hard to believe that there are only, to use the Hon. Member's own figures, 112 people per annum convicted of drunken driving.

When we asked, at previous sittings, about the number of people convicted of committing offences while driving with 'R' plates, it was pitifully small, and yet we know that lots of younger drivers, in particular – you only have to go to the compound up behind the test centre and see the written-off cars there with 'R' plates on. You have only got to look at the figures for insurance. They are the people at risk and yet there are little or no offences coming before the court by people driving irresponsibly, or recklessly, with 'R' plates.

Same again with mobile telephones. This week, I have virtually watched probably thousands of people driving on Manx roads, while on the mobile phone and it would be a very good opportunity to put a question down for Tynwald next month, as to how many people have actually been stopped and charged with driving on mobile phones, and I will bet there are very, very few.

I cannot understand what is going on here, because we have over 240 police officers in the Isle of Man now. When the Isle of Man really was busy and we had TTs which attracted probably twice, if not three times, the number that are coming now, we had about 65 to 70 police officers and yet we just do not seem to be able to get on top of these issues.

We are also told that crime is down by 25% to 30%, so the law of averages states that there must be more time for the Police to get out and deal with some of these traffic offences and traffic problems. I hope that, once this piece of legislation is enacted, the Department of Infrastructure and the Police will sit down and actually work together to try and come up with a formula to improve road safety, make the motorist and all those using the roads much more aware that if they do break the law there is a good chance of them being caught and sentenced, because if we do not have a situation here where we are getting the message out, there is nothing going to happen. We need to be much more proactive instead of reactive and it is futile, in my opinion, waiting for an accident to happen and then sending 20 policemen, two fire engines and three teams of paramedics, which seem to happen, when, by applying a little bit of common sense and probably stopping people and warning people and being proactive, we might be able to prevent the accident happening in the first place.

Thank you, Mr President.

The President: Mrs Christian.

Mrs Christian: Thank you, Mr President.

I thank the Hon. Member for the statistics he has given us for convictions for drunk-driving.

It would be interesting to know – and I do not suppose he has that information with him – how 112 cases break down in respect of the new tables which will be applied in the future, i.e. how many fall into the potentially two, three or five-year ban categories. I do hope that the Department will be monitoring the data going forward, because I think that quite often, in Government terms, we lack data on which to properly structure our statutory provisions, so I do hope they will maintain the data in relation to those particular issues, to see how effective or otherwise the statutory provisions will be in relation to the two, three and five years.

My fear is that when people get past a certain stage they continue to drink, where the landlords allow them to do so, and sense goes out the window, and three years or five years will not come into their thinking.

The President: Mr Butt.

Mr Butt: Just briefly, Mr President.

I support the Third Reading of the Bill and thank the Member for bringing it forward as he has.

He mentioned about the Isle of Man can take the lead in some things and I do think there is an opportunity, or there was an opportunity, to be innovative in some ways because actuaries, the insurance Mr Downie mentioned, the insurance industry knows exactly where the risk group are and they know exactly that they are people under 23 mostly. Some countries do have innovation in the way they deal with young people driving, in terms of the time they drive, the passengers they have, the type and size of car they can use etc, and I think if we can lead the way, or maybe follow some countries other than the UK, we should perhaps take the chance to do so to save and help the young people of the Isle of Man.

Just to finish, Mr President, in terms of drink-driving, I can tell the Council that, in the past, there used to be 300 offences per year on average years ago – 250 to 300. Things are much better now than they used to be, which we should be grateful for. I think now drink-driving has become more socially unacceptable than it used to be and the penalties have become stronger. Prison is often invoked for offenders and I think we are moving in the right direction in terms of drink-driving.

The President: Mr Braidwood.

Mr Braidwood: Thank you, Mr President.

I will also support the Third Reading and I would like just to carry on from what the Hon. Member of Council, Mr Butt, has just said, where there has been a reduction from previous years, because I think now, particularly younger people do not drink and drive. I think it would be interesting to see, of the 112 people who were convicted this year, the age profile of those people. My view is that it would be probably an older category who would be caught drinking and driving.

I would also like to say that I do agree with the sentiments expressed by Mr Turner and Mr Downie, particularly on people driving whilst on hand-held mobile phones. One point which Mr Callister, the mover of the Bill, mentioned, is on insurance – I have mentioned it in previous Readings – so that we will get an input into the motor insurance database. Hopefully, that will be coming through in the next few months of those companies, such as on the Island – not the large, such as Tower, automatically, if you are insured with them, you are on the motor insurance database – but when the local insurance companies are able to input onto the motor insurance database, so that the police will know, then, that they can check on every vehicle on the road, if it is insured.

I was a little bit disappointed that the force in the UK is not going to be applied over here for uninsured vehicles, that it will have to go to court, because I do believe that it would send out a quite clear message to people who are driving whilst uninsured. If the vehicle is taken from them or sold or scrapped, it would send a very clear message that driving in the Isle of Man whilst uninsured is not permitted at all, and draconian measures will be taken against them.

The President: Mr Callister to reply then, please.

Mr Callister: Thank you, Mr President.

Mr Turner referred to some of the legislation, really the subordinate legislation, I suppose, that will come forward in regulations. As far as providing the information that he asked for in relation to the... If I can just read my notes here... Just to go back to Mr Turner, I think the information, if I may ask, that you were seeking in relation to the legislation, I take it it is not that that you are expecting to see in regulations, it is other matters of legislation.

The President: Shall we just clear that point, Mr Turner?

Mr Turner: It was whether the provisions contained in the amendment Bill, which give the Department powers to just make secondary legislation without the approval of Tynwald.

Mr Callister: Oh, without the approval of Tynwald?

Mr Turner: Yes.

Mr Callister: Well, we can easily circulate the information, there is no problem with that. Thank you, yes.

As far as the enforcement is concerned, and in particular the comments about the TT, the Department works very closely with the Police over the whole TT period and the buildup. In fact, they have meetings throughout the whole year, in advance of the TT, as I expect, Mr Turner, you are probably aware. Where the Police can be located, whether they should be out in the country somewhere or they should be in a town or village, is not a matter for this Department unfortunately. That is a matter for the Chief Constable and we can certainly have discussions with the Chief Constable over these issues, but we cannot make any rules and regulations how that would apply.

I also note that the Police are now using Twitter, which is something I do not regularly read, but maybe they would be better not using Twitter and getting out on the road (**Mr Downie:** Hear, hear.) and doing some work instead.

Also, Mr Turner referred to the Highway Code and welcomed that and the fact that it is going to be available, as he says, for free on the Internet, will be, I think, probably, ideal, because the people who are learning to drive are people who are regular users of the Internet, mostly in any case. I hope that covers the points that Mr Turner made.

Mr Downie referred to the improvement in the penalties and that is something that I would say would be welcome generally, certainly by the public and the enforcement issue again crops up. Probably the comments Mr Downie made this morning about the Police and the lack of enforcement would be best sent direct to the Chief Constable, because it is not a matter that the Department really can deal with, but it would be quite useful probably to have the Chief Constable read an extract from that speech, that you made when it comes out in *Hansard*. The matter of mobile phones crops up again and it would be interesting to have a new question asked about that. It has been asked in the past, and we have got the statistics. I have not got them here to hand, but perhaps that again is something that could be improved, there is no doubt about that.

The 'R' plates and young, reckless drivers is another issue that was raised and also raised, of course, by the Hon. Member, Mr Butt. This is something that has been a problem, we know, for a very long time and what the answer to that is, I do not have. It certainly needs to be more closely looked at. The matter of road safety is something that – well, the Department meets with the Police throughout the year on road safety matters.

We have campaigns. We had a campaign before the TT this year and it seems to have made little difference. Do we raise the age to learn to drive to 21? (**A Member:** No.) It is another possibility.

Turning to Mrs Christian, the two, three and five-year ban. I do not have that data, unfortunately, but it is something that can be monitored in the Department, given that we have the resources to do it. We try to monitor things as far as possible, but the number of the people available for that kind of work is not always appropriate. Again, Mrs Christian referred to the drink-driving problem.

Mr Butt, on the matter, again, of young people speeding and he referred to 300 offences a year in the past. He did not define how far in the past. but I would suspect, since the past he is talking about, would have had fewer drivers and fewer vehicles on the road –

Mr Butt: This is for drink-driving levels.

Mr Callister: This is for drink-driving, yes, not speeding. More vehicles now, more drivers now, presumably, although he has not defined, and may wish to define, the period. Are we talking about the 1940s, 1950s and 1960s, or more recently?

Mr Butt: Talking about the 1970s and 1980s, really. There have been improvements over the years.

Mr Callister: Thank you for that.

Mr Braidwood, the age profile of convicted drink drivers, again, would be an interesting statistic to have. I do not have it to provide now, unfortunately. Mobile phones again mentioned there.

The motor insurance database as to who is, and who is not, insured is now running at 70%. We know 70% of the drivers on that database are insured. The other 30% we do not know at the moment and we think that is going to be fairly gradual to find out. It is not something you can instantly discover.

As for crushing vehicles – I think that was the inference that Mr Braidwood made – I think we are taking the easy way, first of all. We are taking it gently, I think, by leaving this as a court matter and I think, perhaps, that is sensible.

I hope, Mr President, that has covered the points that were raised.

The President: Hon. Members, the motion I put to Council is that the Road Traffic and Highways (Miscellaneous Amendments) Bill 2011 be read for a third time.

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