



**LEGISLATIVE COUNCIL
OFFICIAL REPORT**

**RECORTYS OIKOIL
Y CHOONCEIL SLATTYSSAGH**

PROCEEDINGS

DAALTYN

HANSARD

Douglas, Tuesday, 24th April 2012

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Present:

The President of the Council (Hon. C M Christian)

The Lord Bishop of Sodor and Man (The Rt Rev. R M E Paterson),
Mr R P Braidwood, Mr D M W Butt, Mr D A Callister,
Mr E A Crowe, Mr A F Downie OBE, Mr E G Lowey, Mr J R Turner and Mr T P Wild,
with Mr J King, Clerk of the Council.

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The Council adjourned at 11.55 a.m.

Legislative Council

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The Council met at 10.55 a.m.

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[MADAM PRESIDENT *in the Chair*]

The President: Moghrey mie, Hon. Members.

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Members: Moghrey mie.

The President: The Lord Bishop will lead us in prayer.

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PRAYERS

The Lord Bishop

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Leave of absence granted

The President: Hon. Members, the learned Attorney General has leave of absence for continuing illness.

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Orders of the Day

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Casino (Amendment) Bill 2012 First Reading approved

1. Mr Lowey to move:

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That the Casino (Amendment) Bill 2012 be now read a first time.

The President: I call on the Hon. Member, Mr Lowey, to take the First Reading of the Casino (Amendment) Bill 2012.

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Mr Lowey: Thank you, Madam President.

May I just say, in case I get into hot water or difficulty, I have at my disposal and the Council's disposal, Mr Mark Rutherford, the Director of Policy and Legislation for the Isle of Man Gaming Commission in the Public Gallery. If I get into trouble, I will, with your permission, Madam, call on his expertise to rescue me.

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This Bill is introduced by the Treasury with the intention of further consolidating the Isle of Man's already sound reputation as a centre of excellence for offering gambling activity to global consumers and to capitalise on the unique opportunities that the industry offers the Isle of Man and its economy. The gambling industry is a highly innovative and dynamic sector of the economy, both locally and worldwide. The Isle of Man is extremely well placed to facilitate both licensable and non-licensable elements of this international industry. Indeed, the Isle of Man gambling sector has already shown unprecedented economic growth over the last three years, despite the general downturn in the global economy.

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Madam President, it is because the industry is fast moving that it is essential that new opportunities are identified as they occur. Last year the Department of Economic Development identified an opportunity which promises to generate additional revenue for the Isle of Man Government and, more importantly, the local economy through tourism, as well as offering opportunities for existing gambling operators to diversify and expand their portfolios.

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65 Online gambling is one of the fastest growth areas in the overall gambling sector and many
 people choose to spend their leisure time in this way. Alongside the more traditional gambling
 activities available online, such as slot machines, casino games and sports betting, a large
 percentage of the population increasingly enjoy competitive gambling. That is where each player
 plays against another player or players, rather than against the house. These games are known as
 peer-to-peer gambling, and this model is typical for games such as poker, mahjong and rummy.
 70 Indeed, the appetite for these games is such that, alongside the casual day-to-day play, it is
 common to find online tournaments being organised. These tournaments are normally played on a
 knockout basis, with the competition's prizes going to those players who are able to find a place at
 the final table. Such online tournaments are hugely popular and attract hundreds of thousands of
 players each week worldwide.

75 However, even the profile of these online tournaments pales into insignificance when
 compared to the live tournaments that are held from time to time. Live tournaments are highly
 prestigious events, usually open to allcomers or those who have qualified online, and are
 frequently televised. They bring players from all parts of the world to a single venue, and these
 players compete against one another for large prizes. Some players are so successful in this
 environment that they acquire a degree of celebrity as a result, which in turn fuels interest within
 the gaming community towards further live tournaments. Such tournaments are often sponsored by
 80 large operators. For example, a local gambling operator in the Isle of Man has sponsored hugely
 successful poker tournaments in Europe, Asia, Latin America, Australia and New Zealand, Italy
 and Czechoslovakia. Closer to home, it sponsors a UK and Ireland tour which visits a new
 destination in the UK and Ireland for each leg of the tournament.

85 Madam President, as the legislation on the Isle of Man covering casinos currently stands, it is
 only possible for a live tournament to be hosted in the Isle of Man if it is held on the premises of a
 casino. This has the unfortunate side effect of restricting the maximum size of the tournament to
 those facilities that our casino can offer. The Casino (Amendment) Bill 2012 proposes the concept
 of temporary certification of premises other than those of a casino for use as approved by the
 Gaming Supervision Commission.

90 This will have the effect of retaining the already very strong regulatory framework that protects
 the Isle of Man players and visitors while allowing a casino licenceholder to temporarily rent
 accommodation that is of a suitable size for one of these tournaments. With this ability, a casino
 licenceholder can obtain the ideal premises for a tournament and then offer the facilities to an
 online gambling operator which is interested in staging a leg of its tournament circuit in the Isle of
 95 Man. Such a tournament would be good for the Isle of Man's economy. Visitors would utilise the
 local accommodation and retail outlets, as well as the transport links to and from the Island. The
 extra business opportunities created for casino licenceholders would allow for business
 development and greater revenue. In addition, it would offer the Isle of Man yet another
 opportunity to showcase its wonderful assets to a global audience and to underline its commitment
 100 to this important growing sector of business on the Island.

As with the expansion of any activity, safeguards must be put in place to ensure that the
 interests of citizens and consumers are protected. The Isle of Man Gambling Supervision
 Commission has established an enviable global reputation for the strength and quality of its
 regulation, and it is through regulation that citizens and consumers in the Isle of Man will continue
 105 to be protected if this Bill is enacted. A mechanism will exist to allow unsuitable tournaments to
 be declined by the Commission. Tournaments will need to be advertised in good time and citizens
 who have concerns about a particular venue will be able to lodge objections. The laws that govern
 minimum age and standards of conduct within the Isle of Man casino will be the same in the
 temporary premises and the inspection regime will operate to the same standards.

110 The consultation, which has already been undertaken to canvass views on the proposals to this
 Bill, produced feedback from industry, Government and individuals alike, and all of the feedback
 on the concept was positive and encouraged the Bill's introduction. Likewise, when the Bill
 undertook its passage through the House of Keys, there were no objections and the only matter
 arising was related to the consultation process. Specifically, one Member wished to understand to
 115 whom the Bill had been passed for consultation. This information was clarified at the Third
 Reading and the Bill passed unanimously.

Madam President, given the favourable feedback and the potential benefits that I have outlined
 today, I hope that this Council will agree that this is business that the Isle of Man can do, should
 do, and I beg to move that the First Reading of the Casino (Amendment) Bill be read.
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Mr Braidwood: I beg to second, Madam President, and reserve my remarks.

The President: The Hon. Member, Mr Callister.

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

I think the Member moving this Bill has done so with great clarity. I have never seen him more poker-faced on previous occasions.

I have some questions for the mover. First of all, referring back to this consultation, his notes, I think, tell us that there were only eight results from the consultation. Were any of those from
130 religious organisations, or were they just simply Government and interested companies and so on? Is he not disappointed with the response that came, with only eight?

Where might temporary premises be located, say if they were all Island? Would he be thinking in terms of (**Mr Braidwood:** Villa Marina.) the Villa Marina, for example, the largest venues perhaps that we have?

135 I take it that this is not something that would involve croupiers or the requirement to recruit croupiers from elsewhere, but if it did – or some kind of officials to oversee these things – would we require to get into the world of Work Permits, and in that connection, does the Work Permit Act, in fact, extend beyond the land into territorial waters?

I think that will be enough for the time being.

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The President: Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

I would like to give the principle of this piece of legislation my full support. I know Mr Lowey is a... I do not know if a regular in Las Vegas, but I know he has been there fairly recently, as
145 have I myself and it shows really how you have to be innovative in terms of raising revenue for the country. We are in times now where we have to be innovative and move along and whilst I probably understand that, although the comments have been largely favourable, there will be areas who will not approve of this particular principle behind this legislation, I would like to support it for a number of reasons.

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The rest of the world is moving on and if we do not take this opportunity to enable this, we have already decided we are going to grasp industries such as e-gaming, then we may as well do it properly. One of the points that we made when setting up the Commission as a statutory body was that we have to give them the right tools to be able to do the job and this obviously, I see as part of
155 that process. I think it will be good for the economy. I think we had a televised poker tournament here about six or seven years ago at the Palace Hotel. I was working for ITV at the time and was doing some work on that for the news and that seemed to give the Isle of Man an incredible amount of publicity and spin-off from that.

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Mr Lowey, I think, is right, it will be good for the economy in terms of bringing people here for these televised tournaments. Transport links were one of the key things and I think with the addition of the new jet terminal, then we are going to see potential there of bringing in people who are going to be involved in these tournaments.

I do have some questions which I will do at the appropriate stages, but at this First Reading I would like to give the principle of this Bill my full support.

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The President: Hon. Member, Mr Downie.

Mr Downie: Thank you, Madam President.

I would like to speak in support of the Bill. I think what bringing events such as poker or mahjong, or rummy, for example, do bring about a great social occasion. There are a lot of people who enjoy taking part in these pursuits. There are several places around the world where people do
170 congregate and, as far as I am concerned, in a very well-regulated jurisdiction like the Isle of Man, where we do have reasonably good hotel facilities and at certain times of the year we could accommodate occasions like this, provided that they are properly regulated and run, and this is what the Bill is all about.

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What is before us today, Hon. Members, is not new, by any means. Those of you who have been around this place for a while will know that we have a Bowls Festival, and we allow gaming at the Bowls Festival, and there is an Order that comes to Tynwald every year to allow that great social occasion to happen. If people want to want to wager on what the outcome of the Bowling
180 Festival is, well, they can do that.

Some years ago, we had another piece of legislation which allowed us to look at on-course betting and some entrepreneurial people were running events at Great Meadow. They were bringing horses here. It was a great day out for everybody and that was looked out on as a very

encouraging sign.

185 I think my hon. colleague, Mr Turner, has made some very good points. We have got to get real if we are going to attract people to the Isle of Man. We have got to provide facilities in a similar vein that happens in other jurisdictions. I see no problem putting a piece of legislation like this together which will allow these events to take place.

190 At the present time, the present casino is quite small, in modern-day terms, and the purpose of the Bill is to allow an extension of that out to somewhere else for these activities to take place and I think if we do not do this, we will be missing out. We have companies on the Isle of Man who are more than capable of providing this sort of great social occasion. As was said, a lot of these are televised now. There are channels on Sky which do nothing else but follow these tournaments and what is going on and I think if we are serious about developing the gaming industry in the Isle of Man and having all the checks and balances in place, we have got to proceed with legislation such as this.

The President: The Lord Bishop.

200 **The Lord Bishop:** Thank you, Madam President.

I am interested... obviously agree that the gambling sector is an important one for the Island, although I do not think just the argument that it is good for the economy is a good enough one. It may be, as the mover says, a highly innovative and dynamic sector, but during the presentation, Mr Lowey mentioned that there was a growth in the sector, despite the turndown in the economy. I think any observer of the gambling sector will know that the growth always happens when there is a turndown in the economy. It is not despite it; it is because of it.

205 Gamblers ultimately, collectively, never win. Those who operate gambling facilities, those who run casinos, do not do it for charitable purposes; *they* always win ultimately and collectively. So it is obvious why gambling grows in times of financial adversity, because it offers hope of a quick fix for a very small minority of people. That is what it does, which is why people who are up against it are the most vulnerable and also the most unknowing – one might almost say innocent.

210 I am sorry to disagree with Mr Downie, but I really do not think it has any great connection with a bowls festival.

215 So I am torn, really, in this Bill, because I support the safeguards in the Bill and I recognise that there are safeguards in the Bill, but I do not support an encouragement for growth in gambling on this scale, so I am pulled two ways and I am afraid at the moment I am likely to vote against it.

The President: Mr Braidwood.

220 **Mr Braidwood:** Thank you.

I can understand the sentiments expressed by the Bishop and he is quite right that, generally when there is a downturn in the economy, people will turn to other means to try to achieve more revenue and one of those is gambling. I think we can see this in the National Lottery, where people have bought tickets or purchased more scratchcards.

225 However, what I feel with this Bill, is another string to the bow, basically, which allows, as Mr Downie said, peer-to-peer, if it is poker. It could be *chemin de fer*, and there are other areas of card games. It probably could expand into craps games – I do not know – in larger venues, because the casino is now small in comparison to other jurisdictions where they have casinos. Generally, one of the queries raised by Mr Callister was about croupiers who would come over: it depends if it is, say, poker, there might not be enough qualified people over here, so they would have to bring other croupiers in to deal the cards or whatever and to act as banker, depending on what games are being played, because I do not think that the casino here would lend some of their croupiers to an alternative company.

235 So, as I have already seconded the Bill, I will be supporting the Bill, Madam President.

The President: The Hon. Member, Mr Butt.

Mr Butt: Thank you, Madam President.

240 I do tend to agree with what the Bishop said in this case, but I will be supporting the Bill. I am not a fan of gambling. I was brought up with games of skill like cribbage and whist, which did not involve money at any stage. I do think I will support it because (a) it is minimal in trying to deal with raising revenue and (b) the people that will come here to the Island to play these games will actually be professional or semi-professional people, coming here to undertake the games and earn a living, in effect. So I do not think it will actually affect the population of the Isle of Man in any

245 way at all, no matter how morally we may disagree with it. So I think the people actually using it will be there of their own volition and will be gambling for their own sake and not to the detriment of the Isle of Man.

I have a couple of queries for the mover, when he comes to the other stages. One he mentioned in the Bill was a mechanism to decide if a game or a terminal is unsuitable: I wonder who decides that, what 'unsuitable' is and how that comes into place.

The second thing I would like to raise is the fact that gambling is often a vehicle for money laundering and I hope the Gaming Commission are aware of that. I am sure they are, and I would like to know what protections there are under the money-laundering regulations to make sure that this is not used for that purpose.

255 I will support it, but I would give my support more strongly if it was a televised whist drive. That really would interest me! *(Laughter)*

The President: The Hon. Member, Mr Wild.

260 **Mr Wild:** Madam President, just about the comment that... I acknowledge the sensitivities and concerns expressed by the Bishop, but having said that, I do believe this is a practical piece of positive legislation which is there to develop and protect an element of the economy, and it has my support, subject to the necessary safeguards, balances and checks being in place.

Thank you.

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The President: The Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Madam President.

270 Yes, I too will be supporting the Bill, and I accept the reservations of the Lord Bishop and others who have concerns, but as long as there are safeguards in the legislation, it should protect the players and the community.

The thing that I was just interested in, in reading this Bill and the three Bills before us today, is this automatic repeal mechanism, which seems to be a new measure which is part, presumably, of the legal drafting that will happen for all of this amending legislation. The mover might just like to comment on that, when he replies.

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The President: Mr Callister.

Mr Callister: Can I just come back on the Lord Bishop's comments, Madam President?

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The President: Not usually at First Reading.

Mr Callister: Okay. I will leave it to Second Reading, thank you.

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The President: The Hon. Member to reply, please.

Mr Lowey: Thank you, Madam President.

First of all, can I congratulate my colleagues on a full House speaking on the Bill. *(Laughter)* If you would care to read the comments in the Lower House, nobody spoke on this particular Bill.

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To the first comment of Mr Callister's: was I surprised that only eight people responded to the adverts to comment on this legislation? Yes, I was. And, as far as I am aware, there were no churches that actually commented on the Bill, and that surprised me too.

Having said that, I think we must accept the realities of the Isle of Man. In my younger days, this Bill would have been very hotly contested; but the Isle of Man has moved on since then and we have come to learn to live with what we have got in this changing world of ours. So that is number one.

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Number two, the Bill is designed to enable something to happen. There is no guarantee it will happen, but it is designed, should we be prepared to accept a concept of gambling, which we did many years ago in accepting a casino on the Isle of Man and we have operated with and lived with it every since. That has developed then into the gaming industry as we know it today – not so much casinos, but international gambling online and the like – and it is a welcome adjunct to the economy of the Isle of Man and above all it is a good employer and it is catering to a need that is being expressed worldwide.

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I note very much the Lord Bishop's comments about a quick fix, it is the vulnerable that want it and we know that the house usually wins. As I said in my opening remarks, these particular

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tournaments tend to be not the house but actually people gambling against each other. Having said that, there is no doubt about it that in entertainment... and the Far East, which is not in recession, is seeing a dramatic growth. South America is seeing dramatic growth, and they are not in recession. So I accept the general concept that the Bishop rightly says, because that is my element which I have been brought up with, but having said that, gambling is here, it is big business.

Should the Isle of Man be involved? We are involved. We are recognised as a centre of excellence for regulation. There are many areas that look to the Isle of Man as the template for their legislation. Europe looks to us at this moment in time as, 'This is how the Isle of Man does this; this is how we should do it,' where, before, they had their face set against us. So imitation is the sincerest form of flattery.

But back to this particular Bill and the comments that were made about it. This Bill enables the Isle of Man to host some prestigious events. No guarantee, but it enables us to do so. My good friend, Mr Turner, rightly says that we did have one a few years ago in the existing casino. Well, it was not quite in the existing casino; it was in the car park of the existing casino, in a tent. I have to say that if Mr Turner was responsible for what I would call the photography that led into it... There was a helicopter shot of all the Douglas Bay. You could have been in Naples. It came in over... and I think everybody who saw the film thought that the tournament was being held in the white castle above it. Tell me, help me out. (**Several Members:** Falcon Cliff.) The Falcon Cliff, because there it was – it did not show you down below, but it showed you the Falcon Cliff, which was beautiful in the trees and this white castle. It was wonderful, but again it is illusion.

Can I just say to you that Mr Callister asked me, for example, where would we have these. The Villa Marina is a classic. The Villa Marina is a prestigious building which would lend itself to this form of thing. I should not really expand, because it is not for me to pick venues, but another that would really... The International Business School is an area with extension that could be used. I do not know whether it will or could, or has even been considered, but if you ask me, as a person – bear with it... But they are limited. They are very limited, but I think those are the sort of places with imagination and flair, and these people have got imagination and flair. That is why they are successful.

I think the point on the croupiers has been answered by my good friend, Mr Braidwood.

Can I come to Mr Turner. He has mentioned that I have been on holiday to Las Vegas. Yes, I have, and enjoyed every moment of it, and I also used it as an excuse to go horseriding in Arizona and into the Grand Canyon. We do not have a Grand Canyon, but my word, we have other attractions which can be sold via these events! I think the most underrated and undersold natural phenomenon that we have is the return, year-on-year, of the basking sharks, and if anybody could make a story and a lead-in, (**Mr Braidwood:** Gambling sharks!) it is one of these. Not sharks, (*Laughter*) but basking sharks and the return of these things and the manner in which we have actually done that pioneering of the research into basking sharks – where they go in the winter, what they do. I think we have a story there to tell, which I think can quite easily be... So, again I am adding to what I would call the availability and the ability to sell the Isle of Man.

But Las Vegas shows how it is done. It is gambling mainly, but it is entertainment as well. Entertainment for people to watch, but also entertainment that is added on to it. Our prospects here is to have an event where people will come in. This is where the new revenue will come in. Mainly the new revenue will be used for people coming in using our hotels, the taxis and the restaurants for the three or four days these tournaments would be. Then we would be selling the Isle of Man as a venue to come and see and to enjoy. I think there is a win-win situation here for the Isle of Man. Nothing is guaranteed, but it is an opportunity.

Can I come to Mr Downie and his support. He is absolutely right. I think we have got to recognise, whether we like it or not, gaming is here to stay. We have brought our expertise and made our place a place of excellence where the punters are number one, safeguarded. The locals are safeguarded, and I believe that we have done well over the years to do all of that, and to those that are affected, we have a very good helping situation to help people with problems.

As I said, from the Lord Bishop, I recognise the difficulty and I really do appreciate the manner in which he addresses it. I think it is right that he should address it in those ways and he should express the fears that he thinks it may bring. I think they are unfounded – and I say to him it is unfounded – based on the facts that we have regulated the gaming industry on the Isle of Man successfully – after a dreadful start, but over the decades we have successfully managed and introduced the online gaming business to the Isle of Man with success. So I am confident that the modern-day history fits all the things that I am saying.

I, again, would like to thank my hon. seconder for his support and to Mr Butt. I can assure him – and I will be able to answer him later on – that who will actually adjudicate on what is acceptable and what is not: it will be the Gambling Commission of the Isle of Man. I can assure

him that the pitfalls of money laundering are very well recognised in this legislation and in the conversations that have been going on, so that has already been specifically mentioned in this Bill and I will be able to mention that during the clauses stage.

370 I thank Mr Wild for his support and to Mr Crowe, I think a lot of this legislation now has got to be Human Rights compliant. In other words, people have the right to appeal, and if they are turned down, they must have the right to appeal and you will find all the legislation now has got to comply with that. People have the right to appeal, there must be an appeal position, all in place. I hope I have read his concerns rightly that that is what –

375 **Mr Crowe:** No, it is *repeal*, not the *appeal* – the repeal of this legislation, when it gets Royal Assent. Clause 3, I think it is.

380 **Mr Lowey:** Yes, indeed, I will answer that at the clauses stage.

Mr Crowe: Okay. Thank you. I will know.

Mr Lowey: With that, I, again, would like to thank Council. This is our role, this is what we do best and I appreciate the input of all Members here today.

385 I beg to move the First Reading.

The President: The motion is that the Bill be read a first time. Those in favour, please say aye; against, no. The ayes have it.

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

	FOR	AGAINST
	Mr Braidwood	The Lord Bishop
395	Mr Butt	
	Mr Callister	
	Mr Crowe	
	Mr Downie	
	Mr Lowey	
400	Mr Turner	
	Mr Wild	

The President: With 8 votes cast in favour, 1 against, the motion therefore carries.

405

Partnership (Amendment) Bill 2012
First Reading approved

410 2. Mr Braidwood to move:

That the Partnership (Amendment) Bill 2012 be now read a first time.

415 **The President:** We now move to Item 2 on our agenda, and I call on Mr Braidwood to take the First Reading of the Partnership (Amendment) Bill 2012, please.

Mr Braidwood: Thank you, Madam President.

420 The purpose of the Bill is to insert additional accounting requirements into the Partnership Act 1909 in respect of limited partnerships. This is to ensure that the Island complies with the recommendation of the OECD in respect of limited partnerships, and that the accounting records of those partnerships reflect the OECD standard. Madam President, care has been taken to ensure that compliance with the recommendations has not been at the expense of the commercial attractiveness of the Isle of Man.

425 The Bill is divided into four clauses. The first clause gives the Act resulting from the Bill its short title.

Clause 2 makes provisions for the resulting Act to be automatically repealed on the day after promulgation.

Clause 3 inserts a new subsection (2). This applies additional accounting provisions to limited partnerships. This is achieved through the insertion of a new section 48E.

430 The fourth clause inserts new additional accounting requirements for limited partnerships registered under the Partnership Act 1909. These requirements ensure that the Isle of Man meets its obligations and complies with the OECD standard.

Madam President, I beg to move the First Reading of the Partnership (Amendment) Bill 2012.

435 **Mr Lowey:** I beg to second, Madam President, and reserve my remarks.

The President: If no Hon. Member wishes to speak, the motion is that the Bill be read a first time. Those in favour, please say aye; against, no. The ayes have it. The ayes it.

440

Legal Aid (Amendment) Bill 2012
First Reading approved

445 3. Mr Lowey to move:

That the Legal Aid (Amendment) Bill 2012 be now read a first time.

450 **The President:** Item 3. I call on Mr Lowey to move the Legal Aid (Amendment) Bill 2012 for a first time.

Mr Lowey: Thank you, Madam President.

Again, I would just like to say I have in the Public Gallery, Mr John Kennish, who is the section manager of the Civil Legal Aid and Legal Costs section of the Rolls Office, who may be able to help me if I get into trouble.

455 With that, Madam President, I am pleased to put before Council today the Legal Aid (Amendment) Bill, which is promoted by the Treasury. The Bill seeks to amend the Legal Aid Act 1986. The Bill consists of 20 clauses and is directed towards all primary objectives.

460 The primary objectives of the Bill are: (1) to allow Legal Aid to be made available for meditation at the earliest possible stage of dispute... not meditation, *mediation*. (**Several Members:** Mediation.) (*Laughter*) I knew I would get that wrong. (*Interjections and laughter*) Perhaps I should go and meditate. I am sure my Lord Bishop will have a quiet place for me somewhere!

465 Number two, to provide the greater recovery of Legal Aid costs by way of contributions from the assisted person and the introduction of a statutory charge. And thirdly, to create a Legal Aid Appeals Tribunal. And fourthly, to reconstitute the existing Legal Aid Committee so that its membership is predominantly made up of non lawyers and to extend its functions to include oversight of the Legal Aid certifying officer and Legal Aid administration.

470 The background of this particular Bill, Madam President, if I may, I would like to provide a summary of the background which has led to the Bill being presented to Council. In 2002, the Council of Ministers announced the appointment of the Legal Aid Commission with the following terms of reference: to consider the provision of administration of Legal Aid and advice and assistance in the Isle of Man.

In 2003, the Commission produced its report and submitted it to the Chief Minister for consideration.

475 In 2006, the Council of Ministers agreed to a phased approach to the implementation of the recommendations contained within the report of the Legal Services Commission.

Between 2006 and 2008, work was undertaken in relation to implementing changes to secondary legislation, and this most notably led to a new financial means test for civil Legal Aid being introduced in August 2008.

480 Included in the report of the Legal Services Commission were also a number of issues which it was recognised would require amendment to primary legislation and subsequent rafts of new secondary legislation. These issues included the provision of a Legal Aid Appeals Tribunal, the introduction of Legal Aid for, again, mediation proceedings and the introduction of a statutory charge.

485 In 2009, a Select Committee of Tynwald was appointed to consider a Petition for Redress of Grievance from Mr Stephen Broad. The remit of the Select Committee was extended in 2010 to also consider a Petition for Redress of Grievance from Mr Paul Smith. After taking written and oral evidence, the Select Committee made a number of recommendations within their First and Second Reports, which included: (1) the introduction of a new board, which has a general remit to

490 oversee Legal Aid administration and to review the actions of the Legal Aid Certifying Officer; (2) that another person or body be able to review the actions taken by the Legal Aid Certifying Officer in response to representations made by the opponent of the assisted person; and (3) that steps should be introduced to a statutory charge as soon as possible.

495 Madam President, the Legal Aid (Amendment) Bill addresses all of these recommendations and issues. In addition, the Bill includes a minor amendment to the Advocates Act 1976 to extend the powers of the Advocates Disciplinary Tribunal.

Madam President, Hon. Members have received advance copies of the Bill, as well as the explanatory notes that provide a paragraph-by-paragraph account of the effect of all the clauses and schedules in this Bill, so I am not going to recite all of them this morning, although I may do, if requested, but I do not see any point in going through the 20 clauses that I have before me when we will be dealing with that on the clauses stage.

500 Madam President, having outlined the broad purpose and contents of the Bill and explained its background, I hope that Hon. Members will give it their support.

505 I beg to move that the Legal Aid (Amendment) Bill be read for the first time. I beg to move.

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

The President: The Hon. Member, Mr Downie.

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

I speak in support of the Bill and the reasons why I tend to support the introduction of this Bill is that there is no doubt in my mind that the Legal Aid system on the Isle of Man has become one of the greatest mysteries since the pyramids, and the number of times, as a politician, that we get lobbied from various parties about how unfair it is, or how ineffectual it is, or how overgenerous it appears to be, it is probably one of the reasons why this Bill is before us today.

515 Civil Legal Aid, I think, has led to quite a number of issues that have come before Tynwald. The one that was cited by Mr Lowey, the Broad case, where under a matrimonial issues Legal Aid was granted to one party, so immediately one of the party is on the back foot the whole time. There was a property there that was the argument of contention, and to me, it just seems to me if your face fits, you get it; if your face does not fit, you do not get it. I hope that this Bill will actually go some way to resolving some of those issues.

520 I am very, very pleased to see that mediation is mentioned in the Bill. I cannot for the life of me understand why for years we have had various people going to court on matrimonial and other related issues, and issues involving children – a very stressful time for everyone – where one side is being legally represented and paid for by Legal Aid and the other people have been left to fend for themselves. I think that has been a great unfairness.

I notice in clauses 6, 7, 8, 9 and 18, the historical automatic provision for a person to qualify for Legal Aid if they are on benefits is to be subject to some other form, and I cannot also, for the life of me, understand that a person who is, on a regular basis, appearing before the courts for a whole host of offences, on benefit, automatically gets his legal bills picked up. (**Mr Turner:** Absolutely.) There is no... I will not say incentive, because that is not the right word, but there is no deterrent to a person appearing in front of the courts if they think that every time they pitch up, after having committed some silly or fairly minor misdemeanour, they are going to be provided with Legal Aid and patted on the head and walk through it all the time.

535 I think the system that is in the Bill would be a significant improvement. There have been lots of allegations made over the years that certain advocates' practices have benefited greatly under the current Legal Aid system and they have actually built their practice up around the fact that they do Legal Aid work and other practices may have not bothered with it. So I am glad that we are going to go some way to resolving this great mystery.

540 Finally, Madam President, I cannot, for the life of me, understand why practising advocates, who are considered to be wealthy, millionnaires, consultant surgeons and all these other people can qualify for Legal Aid and are supposed to have millions of pounds in assets. I would look to have an answer to that, but I am hoping that if this Bill passes, it will go some way to resolve all these issues which, to the man in the street... They just cannot get their head round it at all and how the system works.

545 So I think this is to be supported. It has got to be better than the system that we have in operation at the moment, which I do not think is fair or understandable.

The President: The Hon. Member, Mr Turner.

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Mr Turner: Thank you, Madam President.

I am not as optimistic as Mr Downie that this will solve the mystery of the system. I understand why it was set up, and that was to provide a mechanism for people who genuinely need the funds. But from what I see seems to happen quite regularly, and maybe the mover could
555 explain – and this probably comes back to Mr Downie’s pyramid mystery; it is a mystery to me – is that surely Legal Aid is set up to aid people who are going to court to resolve an issue, when what we really see is that when two people fall out over an issue, one of them then goes for the Legal Aid...

Just briefly, before I expand on that, Mr Downie mentioned the clauses where if you are on Family Income Supplement you would automatically get Legal Aid. I do note those clauses and I am pleased to see that they are in there. The devil will come in the detail when the regulations come out, of course. So I will be looking very closely at those.

But what happens is that the two people who have fallen out, the one who is on Legal Aid, if they get it, ends up in a campaign of lawyers’ ping-pong letters going backwards and forwards, and it appears that the Legal Aid funds all this arguing, which really is just arguing between two people before it has even got to the court stage. I would like to know if Legal Aid is funding that, because if so, it shouldn’t be. If two lawyers are arguing between themselves, running up huge bills, which is what happens all the time and we see it every day, then the public purse should not be funding that. The Legal Aid should be the next stage, in my view, of when they have not
560 managed to resolve the issue and then if there is a court case, where they need proper representation in court, that is what the Legal Aid should be funding – the presence of that advocate or whoever is representing them.

I appreciate they may come back and say, ‘Oh, but it is all about the preparation in the run-up to the case,’ but most of the time it is not about preparation; it is just about two people trying to bargain, because what happens is they will send an offer out, they will send an offer back, they will reject it. It goes round and round and round, and before you know it somebody has run up thousands and thousands of pounds, which is what the basis of many of the petitions to Tynwald have been over the years, that the unaided person has had to fund all of this whilst the aided person has had what has been described as a bottomless pit of cash. I know the mover may say, ‘Oh, but it isn’t, because there are assessments done,’ and all the rest of it, but there is wholesale abuse of this system going on because people are proving that they have got no assets. They can move assets around, they can show that they have not got any income, and really, the system has been
570 incredibly unfair, whilst its origins were to be fair to the people who genuinely need it.

So I will be looking very closely at the progress of this legislation and making sure I see some of the safeguards which many people in Tynwald have been fighting for over the years, and I hope this is a step towards what Mr Downie said, and that is getting rid of some of the myths. I give it cautious support, but as I have said, the real interest will come in some of these regulations further down the line.

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590 **The President:** Mr Braidwood.

Mr Braidwood: Madam President, just following on from what my hon. friend in Council, Mr Turner, said – with the advocates and the ping-pong – I think this is why mediation is being brought in, to try to take that layer of negotiations out, so it can be, you could say, peer-to-peer mediation.
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On the comments of Mr Downie, and mainly on criminal, with people coming up, there does seem to be a sense that some advocates, in instructing their clients, say, ‘Plead not guilty’ all the way along, which is running up large expensive bills, but when it comes to court they change the plea and plead guilty, and it causes quite an expense on the Legal Aid with the advocates, and I feel that, hopefully, this Bill will be looking at that practice.
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The President: Mr Wild.

Mr Wild: Just, Madam President, to give my support to this Bill, which in my view upgrades and refreshes this legislation, and to make the comment I particularly welcome the focus on mediation, for all the reasons being discussed in this Chamber.
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Thank you.

The President: The mover to reply, please.
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Mr Lowey: Yes, I first of all thank Hon. Members for their contribution. It is a mystery. It is

as much of a mystery to me as it is to the Hon. Members. First of all, how long has it taken? It started in 2002, but it is a complicated matter, and I think you have got to bear in mind there are civil cases – which are mainly family matters, which this mainly deals with – and criminal, which has a different set of rules regarding abilities, and when you are taking the liberty away from a citizen it is a serious matter, and that has to be accepted.

What I have discovered this morning is a lot of frustration by Hon. Members, and I share that frustration. Having said that, this particular piece of legislation goes some of the way. After listening to the... and I have got the reports of all the commissions, the Legal Aid... the family matters Petition for Redress of Grievance, the Second Report, the First Report and the recommendations. This is an effort to... and again, I am not itemising every individual here this morning, but the concerns that have been expressed should be listened to. The idea that somebody who is on benefit should automatically get it, and somebody who is on a minimum wage, which may be just on a par with, does not get it, is not right. (**Mr Turner:** It's outrageous.) That is why the charging is coming in now for everybody. So, as far as I am concerned, that is right, fair and proper.

We also, again, are taking the lawyers out of the overriding position and having lay members, as opposed to the legal profession. These steps may seem small, but they will have long-term effects. I am quite sure of that. They are overseeing what I would call a discredited system that has had many failures in the past, and this is an attempt to unravel that mystery. But, like the Gordian Knot, you do not take one piece of the Knot and just unravel it in one go. It takes a little bit of time. Ten years is a long time, but this legislation, I think, is the first instalment.

Mr Turner is right: this is a lot of enabling legislation, where the regulations will be the key to unravelling the mystery. Those regulations, of course, will be subject to Tynwald approval, so you will have another sight at them. This enables that to take place. It is the first step along the path, and unless you have the Bill which enables that to happen, you will not have the end result, which is the unravelling part, which is the regulations – (*Interjection by Mr Turner*) and scrutiny. This Bill actually gives more scrutiny to the activities of the Certifying Officer and the right to appeal, which is not there at the moment. So, as far as I am concerned, these are positive steps. They may not be the total answer, but I do believe it is the start of a journey which will end, hopefully, in more satisfaction. I do not think you are going to get total satisfaction.

I used the word 'meditation' instead of 'mediation'. Sometimes it is good to meditate, but mediation should be a first step. While it is not compulsory, it should be recommended strongly, and for all the right reasons. When the heat is on, it is time to take the ire out of the fire. Mediation does that, and as far as I am concerned, I welcome that as a really positive step. It will take some doing, because you are quite right, people do tend to think that it is a game of bluff until the very... How many times have we heard – and it has already been mentioned here this morning – that people plead not guilty right until the court, and then they plead guilty at the last minute? That does not happen just in criminal cases. That happens in civil cases too, because the lawyers advise, advise, advise, and then they have a fallback position. So again, this Bill is addressing some of those points – not all of them perhaps, but most of the points that have been raised here this morning are covered in the Bill and will be dealt with by regulation.

I am glad that the general tenor of the debate this morning has been supportive, with reservations, and to that end I would ask Members to support the First Reading of the Bill.

The President: The motion is that the Bill be read a first time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

That concludes the business on our Order Paper, Hon. Members.

Procedural

The President: I just want to make a comment about sitting dates. You may have noticed that the House of Keys voted recently to adjust its published sitting dates. They had to do that because it is in accordance with their Standing Orders. Our Standing Orders are different and we will sit on the days that I determine. We will be following the Keys pattern and, as a result of that, our next few sitting dates, for clarification, are 1st May, 8th May, 22nd May, 12th June and 26th June. And, of course, we will have an extra Tynwald sitting on 22nd May at 9.30 a.m.

Mr Lowey: What was the June one? Could you tell me what the June one was again?

The President: The 12th and 26th June.

675 **The Lord Bishop:** That is not a change from –

The President: No, it probably is not a change. It is just in case anyone was wondering why the Keys were suspending Standing Orders and so on.

680 Just to also advise you that our Clerk will be absent for the next two sittings. He is going to Canada to attend the Parliamentary Officers' Study Programme organised by the Houses of Parliament in Ottawa. He is going to learn about the Canadian system. He will be explaining our system to other people and spending time with clerks from Canada and 13 other jurisdictions, ranging from Azerbaijan through the Czech Republic to Uganda and the USA. So I hope he finds that a fruitful exercise.

685 The Council will now adjourn until 1st May, Hon. Members.

The Council adjourned at 11.55 a.m.