



# LEGISLATIVE COUNCIL OFFICIAL REPORT

RECORTYS OIKOIL  
Y CHOONCEIL SLATTYSSAGH

# PROCEEDINGS

DAALTYN

HANSARD

**Douglas, Tuesday, 22nd October 2013**

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**Present:**

**The President of Tynwald (Hon. C M Christian)**

The Lord Bishop of Sodor and Man (The Rt Rev. R M E Paterson),  
The Acting Attorney General (Mr J Quinn),  
Mr R P Braidwood, Mr D M W Butt, Mr M R Coleman, Mr C G Corkish MBE,  
Mr E A Crowe, Mr A F Downie OBE and Mr T P Wild  
with Mr J D C King, Clerk of the Council.

**Business transacted**

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# Legislative Council

*The Council met at 12.00 noon*

[MADAM PRESIDENT *in the Chair*]

**The President:** Moghrey mie, Hon. Members.

**Members:** Moghrey mie, Madam President.

5 **The President:** The Lord Bishop will lead us in prayers.

## PRAYERS

*The Lord Bishop*

## Leave of absence granted

**The President:** Hon. Members, the Hon. Member, Mr Turner has leave of absence on Government business.

## Tribute to Brian Barton, former Member of Tynwald

10 **The President:** Hon. Members, yesterday, we received the sad news of the death of Brian Barton, our former colleague, who served Tynwald both as an MHK and a Member of the Legislative Council. After service in the RAF and a lifetime career with Marks & Spencer, which brought him to the Island to manage the Douglas store, Brian successfully stood for election in Middle in 1986. He was then elected to this Council in 1988 and again in 1993. He retired after 12 years of committed  
15 parliamentary service.

Brian worked conscientiously in a number of Departments which benefited from his previous experience, and his participation in the Institute of Management and chairmanship of the Isle of Man Chamber of Commerce. He had many interests outside of business, such as his active participation in his church, the organising committee of the Isle of Man Special Olympics and Rotary, to name but a few. These gave him a rounded view of life and coloured his approach to his political  
20 endeavours.

Those Ministers with whom he worked could not have had a more dedicated team member, and in that I speak from personal experience. The regard in which he was held by his Tynwald colleagues was reflected in his selection for many Tynwald Committees, giving particularly long service on the Ecclesiastical and Overseas Aid Committees. As a keen member of the Commonwealth  
25 Parliamentary Association, he represented the Island on a number of occasions and remained an active associate member after his retirement.

30 Brian Barton was a sincere gentleman, and as we extend our condolences to his widow, Barbara, and his children and grandchildren, I invite you, Members, to stand for a few moments in silent reflection on his contribution to our community.

*Members stood in silence.*

## Order of the Day

### 1. Custody (Amendment) Bill 2013 – First Reading approved

Mr Coleman to move:

*That the Custody (Amendment) Bill be read a first time.*

**The President:** Now, we turn to our Order Paper, the first of our new legislative session, which carries only one Item, Hon. Members: the Custody (Amendment) Bill 2013 for First Reading.

I call upon the Hon. Member, Mr Coleman

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**Mr Coleman:** Thank you, Madam President.

Madam President, I recognise that this is the only Item on the Order Paper today and that Members have had to wait for the matter to be passed by the Keys, and I am grateful to Members. As indicated on the Order Paper, if Members are with me, following this debate, I will be inviting

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Members to suspend Standing Orders to permit me to take the next stages today. Madam President, in moving the First Reading, I propose to outline the background, technical and legal issues behind the Bill and why it is being moved with such urgency today.

The background: the presence and use of controlled drugs or alcohol by prisoners is harmful to the maintenance of good order and discipline in the Prison. Disciplinary issues arise due to the behaviour of detainees who abuse these substances and the associated activities of those detainees involved in the smuggling, supply and storage of controlled drugs or the production of alcohol. To deter prisoners from abusing controlled drugs and to provide a means for detecting and disciplining those who do, the prison operates a vigorous drug testing programme. Through this testing programme prisoners are selected on either a random or risk -assessed basis to provide samples to test for the presence of controlled drugs.

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The most effective way to test for controlled drugs in custody is through the taking of urine samples. In law, urine samples are defined by reference to the Police Powers and Procedures Act 1998, and are therefore 'intimate samples'.

The legal power to require prisoners to submit to testing of drugs or alcohol comes from section 19A of the Custody Act 1995, which was inserted into this Act by the Criminal Justice Act 2001. It actually empowers the taking of samples that are not intimate samples.

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When the Department undertook a review of the legal powers it has relied on to undertake tests for the presence of controlled drugs, it was determined and this was confirmed by legal advice in late June of this year, there was a question over whether the Department has the power to test for drugs using urine samples, because they are in fact defined as 'intimate samples'. Upon receiving this advice, the Prison ceased conducting tests for controlled drugs using urine samples to ensure there was no question as to whether it was acting within the law.

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Given the key role such testing plays in maintaining the discipline and good order of the Prison, it is a significant issue for the Department that it is unable to conduct testing the controlled drugs at

65 this time, due to questions over its legal power. The Bill therefore clarifies the law by replacing section 19A of the Custody Act 1995 with provision that will enable officers to take urine samples as well as any other non-intimate samples.

The Bill also provides that if it is necessary to establish the presence of alcohol in a person, a sample of breath may be obtained.

70 Madam President, I beg to move that the First Reading of the Custody (Amendment) Bill 2013 be approved.

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

75 **The President:** No Hon. Member wishes to speak to the First Reading. 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.

**Custody (Amendment) Bill 2013 –  
Standing Orders suspended to take the remaining stages at this sitting**

**The President:** Mr Coleman.

80 **Mr Coleman:** Madam President, in my First Reading speech and through the subsequent debate, I set out the background to this matter and indicated it was considered important for Prison discipline and good order that this matter be resolved as soon as possible. I mentioned the issue was identified as requiring resolution at the end of June, which meant it was too late to get an emergency Bill into the branches before the summer recess. Today represents the first opportunity to address this matter and time, we submit, is of the essence.

85 For these reason, Madam President, I beg to move that Standing Orders are suspended to permit the remaining stages of the Bill to be taken today

**Mr Butt:** I second that, Madam President.

90 **The President:** The motion is that Standing Orders be suspended. Is that agreed, Hon. Members? (**Members:** Agreed.) We seem to be unanimous.

**Custody (Amendment) Bill 2013 –  
Second Reading approved**

**The President:** I invite Mr Coleman, then, to take the Second Reading of the Bill.

95 **Mr Coleman:** Madam President, I am grateful to the Hon. Members for permitting the suspension of Standing Orders.

This Bill is really about correcting a gap identified in the law in relation to the method used for the testing of prisoners for the presence of controlled drugs. The practical effect of this Bill will not be to usher in a new way of testing for controlled drugs in an institution, but to more correctly underpin what is considered the most effective method of testing for drugs in prison from a legal perspective.

100 Madam President, I beg to move that the Second Reading this Bill be approved.

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

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**The President:** The Hon. Member, Mr Crowe.

**Mr Crowe:** I thank the hon. mover for this Bill and am happy to support it.

110 Can I just ask for clarification? You talk about in the Bill 'institution', and you talk about in your speech the Prison. Does it include prisoners in the custody suite at the police station?

**Mr Coleman:** I –

**Mr Braidwood:** There might be other questions.

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**The President:** Could we just wait until there are any other comments and reply for everyone?  
Mr Downie.

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

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Obviously, the Bill has my full support. I am aware of the problem and the situation that the Department finds itself in, but I have just got a couple of points to ask.

The requirement must be made in accordance with custody rules. Could you just outline what the custody rules are?

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And in section 19A(c), a non-intimate sample, could somebody explain what a non-intimate sample is? Is it, for example, hair, DNA or what? Just so that we are perfectly clear on what it is we are approving today.

**The President:** Hon. Member, Mr Butt.

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**Mr Butt:** Thank you, Madam President.

I think from my reading of the Bill, Madam President, that this would apply to the Prison alone, because it applies to the custody rules of the prison rather than the procedures within the police station, where they have other powers to take samples if they require them.

So I think that maybe will clarify that, Madam President.

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**The President:** The Hon. Member, Mr Wild.

**Mr Wild:** Thank you, Madam President.

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Just to say that the Bill has my full support, and like my hon. colleague, Mr Downie, I just would like clarification of what a non-intimate sample is.

**The President:** The mover to reply.

145

**Mr Coleman:** Okay, I think the Hon. Member of Council, Mr Butt, has answered the first question posed by Mr Crowe.

With reference to the second question about what constitutes an intimate sample at the present time with the present legislation, prior to this Bill, a non-intimate sample means a sample of hair, other than pubic hair; a sample taken from a nail or from under a nail; a swab taken from any part of a person's body including the mouth, but not any other body orifice; saliva; and a skin impression.

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An intimate sample is defined presently as a sample of blood, semen or any other tissue fluid, urine or pubic hair; a dental impression; a swab taken from a person's body orifice other than the mouth.

**Mr Downie and Mr Wild:** Thank you.

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**The President:** The motion, I think, before the Council is that the Bill be read a second time, Hon. Members. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

**Custody (Amendment) Bill 2013 –  
Clauses considered**

**The President:** Clauses.

160 **Mr Coleman:** Madam President, turning to the clauses, clause 1 gives the short title of the Bill as the Custody (Amendment) Bill 2013.

I beg to move that clause 1 be approved.

165 **Mr Butt:** I beg to second, Madam President, and reserve my remarks.

**The President:** The motion is that clause 1 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 2.

170 **Mr Coleman:** Thank you, Madam President.

Clause 2 deals with the issues outlined in my Second Reading speech in the following ways: it substitutes section 19A of the Custody Act 1995 with provision that is similar but different in three important ways. Firstly, it uses more direct language by providing for the taking of ‘a non-intimate sample’, rather than ‘a sample that is not an intimate sample’, as before. Secondly, it addresses the issue that the current most effective method of testing for the presence of a controlled drug is by taking a sample urine, and therefore subsection (4)(a) provides for the taking of a sample of urine. Thirdly, although testing for alcohol is not a part of the regular testing regime, this substituted section adds subsection (4)(b), which empowers the taking of a sample of breath.

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180 Madam President, I beg to move that clause 2 be approved.

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

**The President:** The Hon. Member, Mr Braidwood.

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

It is just a question... I totally agree with what is happening and the clarification of the legal requirement to take a sample, but if the person who is tested drugs proves positive, what happens then? It might be where the drugs are secreted on his presence. How do you find if he has got drugs on him? I believed through the British Medical Association that no intimate searches are allowed.

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**The President:** The Hon. Member, Mr Wild.

**Mr Wild:** Thank you, Madam President.

195 Again, no issues with the Bill – full support. Just out of personal interest, is there an assessment as to the scale of the problem in the Prison that this legislation is going to address?

**The President:** The Hon. Member, Mr Downie.

200 **Mr Downie:** Just to broaden the point slightly, I see a person being in prison no different from any other person who is a top-class athlete or in some of these other areas where random testing is really part of accepted life and if there are problems in prison with people obtaining alcohol illegally or drugs illegally, that is a regime that we have got to expect in this day and age because if we drop our guard people could get all sorts of drugs into prison and you could finish up in a situation where some of these things that are available now – crack and things like that – they can wreak havoc in prison populations. We see this to its worst effect occasionally, when you see prison riots in other countries and places like America and South America. So I can support us having a proper, well

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maintained and well organised regime to keep prisoners constantly monitored, to make sure that the prevention methods are in place.

210 **The President:** The Hon. Member, Mr Butt.

**Mr Butt:** Thank you, Madam President.

215 This Bill relates to finding traces of samples of drugs which have been previously taken by using these methods as delineated in the Bill. If there is a suspicion that there are actual drugs in their possession – drugs, not just traces of drugs – then the powers of the Drugs Acts will come into force and Mr Braidwood’s point about searching then is that the searches would then take place under the Drugs Acts, rather than this legislation.

220 So this is purely about finding traces of drugs in the blood or in the urine, or in the hair or any other sample to show had they previously been taking drugs, and I think the other issue is a separate matter.

Madam President, thank you.

**The President:** The Hon. Member, Mr Crowe.

225 **Mr Crowe:** Thank you, Madam President.

Is the testing for... It will be for all prisoners, I would assume, and for new prisoners, it would be to see if they had taken drugs before they were admitted to prison. But if they are existing prisoners, how would the drugs get into the Prison?

230 **Mr Braidwood:** Ways and means!

**Mr Butt:** Let me count the ways! *(Laughter)*

**The President:** The mover to reply, please.

235 **Mr Coleman:** Firstly I will respond to the Hon. Member, Mr Braidwood. I think this is really a separate issue and refers to blood samples more than what we are talking about here. Intimate searches are allowed in there. We have a drug dog in there, we have drug dogs which can come in and sniff in the cells and look for things.

240 In response to the Hon. Member, Mr Wild, the testing is done on a risk assessed basis of prisons and by a random number generating program to do random testing. The failure rate is 10%.

**Mr Braidwood:** It’s quite high.

245 **Mr Coleman:** So I think that that scale fully justifies this Bill going through very quickly!

With reference to how the drugs get in, there are visit days and one would suspect that perhaps the substances can be passed during visits by various methods.

250 I think I have explained about who will be tested. Obviously there is an intimate search done, I think at reception, when they come into prison and the existing prisoners are subject to the regime of risk assessment and random number selection.

**The President:** Does that conclude your remarks? **(Mr Coleman: Yes.)**

In that case, the motion is that clause 2 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.



**Custody (Amendment) Bill 2013 –  
Third Reading approved**

255 **The President:** Do you wish to move to the Third Reading, sir?

**Mr Coleman:** Thank you, Madam President.

I am grateful to Hon. Members for supporting the suspension of Standing Orders, so all the stages of the Bill could be taken in Council today.

260 I think all issues have been addressed and hope Members can support the Third Reading of this Bill so it may pass today.

Madam President, I beg to move that the Custody (Amendment) Bill 2013 be read a third time and do pass.

265 **Mr Butt:** I beg to second, Madam President, and reserve my remarks.

**The President:** The Hon. Member, Mr Downie.

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

270 In supporting the Third Reading of the Bill, I would just like to say that obviously the Department identified that there was a problem, they sought advice on this, and in fairness to them, they have moved as quickly as they can possibly do to redress the issue. I think that is a great testament to them and the way that they deal with things. They could have, I suppose, bluffed it through and hoped to keep it under the radar, but we do not work like that in the Isle of Man. If we see a  
275 problem, we like to identify it and we like to deal with it, and I think that is one of the main reasons why I am here supporting the Custody (Amendment) Bill today.

**The President:** The Hon. Member, Mr Butt.

280 **Mr Butt:** Thank you, Madam President.

I also support the Third Reading of this Bill. Obviously, an oversight was made in 2001 when the new clause was inserted into the 1995 Act, and that has now been rectified.

I would also like to congratulate the mover of the Bill in his maiden moving of legislation, (Members: Hear, hear.) It is very unusual to have a Bill of this nature as your first effort and he has  
285 probably broken the world record for getting a Bill through – *(Laughter)*

**The President:** Through the Council, certainly!

290 **Mr Butt:** Through the Council. So I congratulate the mover on his handling of the Readings today.

**Mr Coleman:** Thank you.

**The President:** The Hon. Member, Mr Downie.

295 **Mr Downie:** I have said my bit.

**The President:** Oh sorry, Mr Crowe. *(Laughter)*

**Mr Crowe:** Thank you, Madam President.

300 Yes, I too would congratulate Mr Coleman on moving this Bill through. I am fully supportive of everything the Department is trying to achieve. As a previous Member, with Mr Quirk and Mr Watterson, I know fully the work going on in the Prison and the Department, so by them being here reflects the importance of this legislation. So I thank them for being here.

305 I thank Mr Coleman for his clear presentation and I think one or two of the points raised might be helpful just for purposes of *Hansard* and future clarification.  
Thank you again.

**The President:** The Hon. Member, Mr Wild.

310 **Mr Wild:** Thank you, Madam President.  
Just to give the Third Reading my full support. In my view, this is robust, practical and needed legislation which has required, I think, speedy action. I congratulate my hon. colleague, Mr Coleman on delivering that speedy response.

315 **The President:** The Hon. Member, Mr Corkish.

**Mr Corkish:** Thank you, Madam President.  
I wish to concur with all that has been said before, too, and also I think it might be worth pointing out, perhaps, that the action taken today will also add to the safety of the Prison staff and also other prisoners within the care of Her Majesty's Prison.  
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**The President:** The mover to reply.

**Mr Coleman:** I would like to thank the Hon. Members for their very kind comments – personal comments – and their appreciation of just the urgency that this really needed. I think it is obvious from the speed it has gone through both Houses really – hopefully through this one.  
325

I am very grateful for the comments and I think that very wise words have been spoken about the safety of the prisoners. I think they are in our care and even though they may not realise it, we are there to try and look after them to the best of our ability. I think that this Bill certainly gives us the legal tool, to be able to provide one level of safety in that institution.  
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**The President:** The motion is, Hon. Members, that the Bill be read a third time and do pass. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.  
Can I also add my congratulations to you, sir, on taking your first Bill through.  
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**Mr Coleman:** Thank you, Madam President.

**The President:** I am sure it will not be the last! A nice one to start on – two clauses! *(Laughter)*

340 **Mr Braidwood:** Wait till you get to the Company Bill!

**The President:** Can I just comment that it is perhaps straying from the contemporary practice of having a third clause to remove it after promulgation as an amendment Bill. Perhaps the Department can ponder on that, when they bring something else forward.  
345

That concludes our business, Hon. Members. Unless any Questions are tabled we have no business ahead of us and so we will adjourn until Tuesday, 5th November – as I said, unless any Questions appear.

Can I just advise members that Mr Barton's funeral will take place next Tuesday at one o'clock at St George's.  
350 Thank you, Hon. Members.

*The Council adjourned at 12.28 p.m.*