



LEGISLATIVE COUNCIL OFFICIAL REPORT

RECORTYS OIKOIL
Y CHOONCEIL SLATTYSSAGH

PROCEEDINGS

DAALTYN

HANSARD

Douglas, Tuesday, 5th November 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 J R Turner
with Mr J D C King, Clerk of the Council.

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Legislative Council

The Council met at 10.30 a.m.

[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 prayer.

PRAYERS

The Lord Bishop

Leave of absence granted

The President: The Hon. Member, Mr Wild has leave of absence, Hon. Members.

Order of the Day

1. Public Health (Amendment) Bill 2013 – First Reading approved

Mr Turner to move:

That the Public Health (Amendment) Bill be read a first time.

The President: We turn to the first Item on our Order Paper, the Public Health (Amendment) Bill. I call on Mr Turner to take the First Reading.

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

This Bill makes a number of amendments to the Public Health Act 1990. They provide new health control measures to assist in the prevention and control of the spread of serious disease by infection and contamination from chemicals or radiation. They empower the Department to give effect in the Isle of Man to new International health regulations adopted by the World Health Organisation in
15 relation to the international spread of disease in ways which are commensurate with and restricted to public health risks and which are intended to avoid unnecessary interference with international traffic and trade.

The amendments reflect modern concerns about the spread of infectious diseases and ensure that public health inspections may take place in the Isle of Man to address incidences where serious
20 disease, infection or contamination occurs.

In the modern day of increased international travel and trade, we must have robust procedures in place to enable the Isle of Man to address any threats that occur in relation to this issue.

Madam President, I beg to move that the Bill be read a first time.

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

The President: The motion before Council 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.

**2. Prohibition of certain persons from being marshals –
A Bill to amend the Road Races Bill –
Leave to introduce granted**

Mr Turner to move:

That leave be given to introduce a Bill to amend the Road Races Act 1982 to make provision for the prohibition of persons with certain convictions of being appointed as marshals.

The President: Item 2, motion for leave to introduce a Bill. I call on Mr Turner.

30

Mr Turner: Thank you, Madam President.

I was not expecting that last Item to be so short! *(Laughter)* Always the way.

This morning I am seeking leave to introduce a Bill, which concerns the Road Races Act. Now it comes from a case that was heard in the Isle of Man, where it was highlighted that there was not the relevant statutory provision for the refusal of an issue of warrants to marshals who were appointed under the Road Races Act.

35
40 Now, as Hon. Members will probably know, the Road Races Act 1982 in its current form provides for marshals that are on duty on closed roads to have certain powers and functions. Those powers and functions are similar to that of a special constable, so it is quite a position of responsibility and indeed, it is unique, as through my links to motorsport, marshals in other places such as Northern Ireland do not have the same powers and privileges. It is vital, I think, that we retain this position, and indeed it is envied by motorsport organisers in other jurisdictions.

45 The Clerk has agreed, with your leave, Madam President, to circulate copies of the case which came to light in the Isle of Man Courts. It was where the Chief Constable had refused to issue a warrant to an individual who had been convicted of sexual offences involving internet pornography of children – some of those offences deemed to be at the highest level. The aggrieved party was refused the warrant by the then Chief Constable, Mr Langdon and the aggrieved party engaged through the Legal Aid process and, through a court procedure, had the Chief Constable's decision effectively quashed.

50 Now, I think a great number of people would find it of great concern that when marshals are appointed to these positions, they are in extreme responsibility and trust of the public, and my feeling and certainly I know the word of the Department of Home Affairs – I have included a letter, which I circulate also with the papers – was that, and I quote from the letter:

'[the situation] has caused great consternation within the Constabulary as well as the Department.'

55 So, what I am seeking this morning, as a result of the case, which does highlight that the Deemster made the decision in the absence of a statutory provision, is that we need to have a look at this to see how we can enable provisions, so that certain persons who are deemed unsuitable are legally able to be prevented from holding that post.

60 If we look at also the roles of people who may be issued with these warrants, there are more and more young people involved in motorsport now. We have the junior cycle racers which take place on close public roads. It is quite probable that those events will take place under the Road Races Act.

We have long tradition with the scouts at the TT Grandstand. Indeed, there are young people now coming out to marshal and it is something I know that marshals' associations are actively trying to encourage.

65 I think the case highlights a very alarming situation for the confidence of the public in what is a reputable sport. It is well governed by the ACU and the four-wheel sport by the Motor Sports Association and I think this is something that needs to be addressed.

I did initially speak with the Department of Infrastructure back in May about the issue. However, there have been some personnel changes and the current Department were unaware of exactly the motives for the Item on the agenda this morning. I have also spoken via letter to the Department of 70 Home Affairs, but there seems to have been some communication within the Department and the Police that they were also unsure quite where this was going this morning, so I have clarified with the Chief Executive of the DOI, Nick Black, who has recently taken up post. He has informed me that the DOI are currently drafting amendments to the Road Races Act for a variety of provisions. He could not – and with him during the conversation was the Director of Highways, Richard Pearson – 75 they could not confirm exactly whether the provisions I am seeking to have included are included in their Bill, but they have said they would be supportive of me to work on this going forward and it is certainly not my intention to see a Private Member's Bill at odds with a Department Bill that is coming through. I understand that it is not on the legislative programme yet but it is in draft.

80 What I would beg Members this morning for is to support the leave to introduce, so that I can then work with the Department of Infrastructure and Home Affairs to ensure that, regardless of whose Bill comes forward and the timing of it, we have the right provisions in to ensure that this loophole is closed.

So, that is the outline of the case this morning. I think I should also point out that what we do not want to be creating here is a huge bureaucracy of having to police check every individual that 85 volunteers for an event, because that would simply not be... I do not believe that would be possible. What I have in my own mind is that there should be a method where on information coming to light or a declaration, or however the signing on forms are prescribed, that the person applying should, like they do in many other cases, specify if they have convictions. My thoughts were that the convictions would not be a case for the primary Bill but would be a matter for the Departments to 90 then decide, possibly by order, as to which convictions they deemed unsuitable for this role, but they need the enabling provision.

So I hope I have explained to Members the outline of the principle of what we are discussing here this morning. This is not the detail and this is simply leave to introduce to enable me to go off and commence the work of the finer detail.

95 With that, Madam President, I hope Members will support my beg to move.

The President: The Hon. Member, Mr Corkish.

100 **Mr Corkish:** Madam President, just for clarification are you saying that you – ?

The President: Are you seconding, sir?

Mr Corkish: Sorry – I am not, sorry.

105 **The President:** We need to have a seconder before we proceed with debate.

Mr Downie: Madam President, I am happy to second, because I think this subject should be aired. I think the mover is quite right to bring this matter to our attention because, at the end of the day, we do not want the system being brought into disrepute in some way and, having read the 110 correspondence, I am quite appalled that a person who has a conviction for a whole string of, to me, quite serious offences, probably on the paedophile register now, has also had the affront to challenge the Chief Constable in court over his decision. There is something wrong here.

115 We fortunately have a fantastic record in the Isle of Man of providing marshals for motorsport events, and the last thing I want to do or anybody else wants to do, is to send the wrong signal out that all of these people in future would be subject to a whole host of checks.

As we all know, rehabilitation of offenders, certain offences are expunged over the course of years, but I think, what we are seeing more and more, offences of this type, involving pornographic images and things involving children are something we can no longer ignore. I think that we have got to try and do something to prevent people like this getting involved.

120 At the end of the day, when a person signs on to be a marshal, they do not just marshal the event; they are on occasions using the provisions that they have, wearing their hats as a special constable, and I know that they are in a very privileged position.

I think there has to be a system devised where, as the mover said, perhaps it is just a tick box, but if that person is known then, to have had serious offences in the past, it is up to the Chief Constable or the organisers to say, 'No, I am afraid on this occasion we do not want you to marshal for our event.' The responsibility should come back either to the organisers or whoever is going to have the ultimate say. But without some provisions in law, you are not going to be able to do this and I think if you do allow this present situation to develop further, it will destroy the whole integrity of the marshals and the goodwill and the trust that the public have in them, and that is what is at the nub of this issue.

130 We have got to be very careful how we deal with this because it is highly sensitive, but there again, we are doing it for two reasons: to protect the integrity and the viability of the marshals' organisation themselves, but also trying to protect the person who might have to make the decision in the future to say to somebody, 'I am sorry, your past record is not conducive to you being a good marshal or a credible marshal at this time.'

I think there is a long way to go with this and we have also heard today that other Departments in Government are looking at this issue and I would hope that if the Member does get leave to introduce – and I know he will work with them – and eventually we will have a Bill, which has to be approved by two branches, that will come here and can be discussed and thrashed out.

140 But that is the main reason why I am quite prepared to support the leave to introduce.

The President: The Hon. Member, Mr Corkish.

Mr Corkish: Thank you, Madam President.

145 I just sought clarification just for the record that the mover is working in concert with the Department of Infrastructure and not coming at it from an angle. Again, the point I think which has been amply aired by the Member of Council, Mr Downie, that we have to be careful and sensitive in how we introduce this because, from past experience, there is a scarcity of marshals, and I have seen it in other areas, where this could put people off who perhaps would back away from moves which may be made in an insensitive way.

I agree in principle, yes, but – and I also agree with Mr Downie – it is a long way to go and could be problematic as well.

Thank you, Madam President.

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

Mr Butt: Thank you, Madam President.

I will support in principle the leave to introduce a Bill, and maybe that will actually speed up the DOI Bill, if the mover can then work with the DOI to bring the Bill forward more quickly through these branches, initially that might be a move to make things happen before TT week.

160 But I do think that we have got to be careful on two issues. Firstly, when a person is convicted of an offence and sentenced and serves their sentence, they are entitled to have a normal life afterwards. We must not forget that. They have done their time, in effect, and they should be able

165 to resume a normal life, and there is an element of rehabilitation in any sentence, so they should be able to carry with their own lives.

The second reason is, I know there are many marshals, several marshals who I personally have arrested and dealt with for criminal offences and, as a prosecutor, I have prosecuted for criminal offences who are now out there marshalling. They are good marshals and they have had a past, where they have got over that past and they are now living an ordinary life and they are proper marshals.

170 I am worried also about, perhaps if the UK press were to pick this up – they are not here – you may have many marshals over there who would like to come to the Isle of Man and who have got a previous conviction in their 20s, 30 or 40 years ago even, who think, ‘I can’t go to the Isle of Man any more to marshal.’ We must not give that message out.

175 It needs to be restricted to offences where there is a perceived genuine risk of safety to people and that will be basically sexual offences. The schedule 1 offences are the ones that we should be concentrated on and it should only be those where there is actually a risk to safety of persons.

I think we need to make that very clear that, when a Bill does come forward, that is where the area is concentrated on. But I will support it in the principle of leave to introduce.

180

The President: The Hon. Member, Mr Coleman.

Mr Coleman: Thank you, Madam President.

185 I would first like to say that I am fully in support of the sentiment behind this motion. It is certainly undesirable for persons with certain types of previous convictions to be made marshals, where they might have access to areas of vulnerability, whether it be children or property.

I am of the opinion, however, that the motion is little bit premature. Other Hon. Members have now been made aware that the Bill amending the Road Races Act is nearing completion under the aegis of the DOI.

190 This Bill seeks to modify the responsibility for marshalling in one of its clauses. This has been prompted by a legal opinion, whereby the Chief Constable was deemed to be vicariously responsible for marshals when he did not have direct control over them.

May I respectfully suggest that it might be more fruitful if the Hon. Member, Mr Turner, liaised with the DOI, to ensure that the sentiment of this motion is encapsulated within the Bill which is nearing completion within the DOI, rather than putting through a separate piece of legislation, where you do actually have two pieces the potential of two pieces of legislation being drafted in contention with each other.

195 Thank you, Madam President.

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

Mr Crowe: Thank you, Madam President.

205 Just following on from Mr Coleman’s remarks, I wonder if the hon. mover checked what the timetable is for the amendment the Department of Infrastructure are going to move, because it would be interesting to find that... I would not want him to expend a lot of energy if the work has been done in a parallel basis.

So I think perhaps in reply he might let us know how the Department of Infrastructure are getting on, because we do not want two Bills achieving the same end.

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

Mr Turner: Thank you, Madam President.

215 I thank Hon. Members for their debate this morning on this subject and I think we are in general support of the principle here, which is exactly what this is about this morning. This is about the principle, not the nuts and bolts and the detail.

220 I thank Mr Downie for seconding this. I know Mr Downie has a long history of involvement in road racing on the Isle of Man. But this is important that people appointed with these powers are in a position of trust, authority and integrity and certainly from the information I have circulated to Hon. Members, the case does harm to that image, and it is important we are seen to be dealing with that as a responsible legislature. So I thank Mr Downie for that support.

225 Mr Corkish is right, I am not bothered either way whether this is my Bill that goes through or the Department. It is about the provisions and I certainly would not aim to put together a Bill which would be in conflict with what the Department is hoping to achieve. Indeed, I said in my opening speech – and this also answers Mr Coleman's point – that my aim would be, following this morning, to work with the DOI to ensure that the provisions are there and as the DOI do not have a Member in this Council, I would certainly offer to work with them on bringing that Bill to the Council. So I would give Hon. Members that assurance.

230 I think Mr Corkish is right, marshals in all sports – there is that much going on, getting volunteers for anything is very difficult these days. But we are talking here, not about offences *per se*; we are talking about *serious* offences, as Mr Butt has mentioned – offences that could risk the reputation of the sport. Also, I would imagine there are a great deal of marshals who give their time, who also would be alarmed at hearing that this type of case has gone through, so I thank Mr Butt as well for his support.

235 We all accept there is the rehabilitation of offenders, but of course certain convictions – this is a role, this is a job and this is a position of trust and responsibility – and whilst certain people who are convicted of crimes are entitled to get on with their lives, there are cases where they would be refused certain positions in various employment and other such roles. This, again, is a role of trust, authority and integrity. So I think it is important that it is dealt with and we do send the right signal out here. Mr Butt said about the wider reputation, we do not want people put off because they may have had a some offences in the past. This is about serious offences and I cannot stress that enough.

240 Mr Coleman mentioned that the DOI's Bill is near completion. But we must remember it is not yet on the legislative programme. 'Near completion': I have been in Departments, certainly the Department of Transport, where we have had Bills that were near and have been completed and they still have not made the branches. So I think it is important we do not mix the two up and where I would give my assurance is that if Members support me on this, I will certainly – and I have spoken to Mr Black this morning – will be willing to work with them to make sure that this is also included.

245 Mr Coleman mentioned the legal opinion that was given that they have been working on. That really is down to, as he said, the Chief Constable appointing marshals and to their general conduct and him being responsible. There was some legal opinion that he would not be in a position to actually, in reality, be responsible because of the way the set-up is. That is something they have been looking at, rather than the situation that I have been highlighting this morning. So it may be, and indeed, Mr Black indicated, he could not tell me whether this was actually included in the provisions. So I would aim to go and speak to them.

250 It may be that in the short term, because of the legislative programme and other issues, that they are content for me to bring a short amendment Bill through as an interim measure. That is something that I will have to speak to them about. But again, this is purely the principle. This is leave to introduce and I hope Members will indulge and support the leave this morning. I beg to move.

255 **The President:** The motion is that leave be given to introduce a Bill to amend the Road Races Act 1982 to make provision for the prohibition of persons with certain convictions of being appointed as marshals. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

260 That concludes our public business, Hon. Members. We will adjourn from our public sitting until 12th November. Council will now meet in private.

The Council sat in private at 10.57 a.m.