



# LEGISLATIVE COUNCIL OFFICIAL REPORT

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# PROCEEDINGS

DAALTYN

HANSARD

**Douglas, Tuesday, 11th February 2014**

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**Present:**

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

The Acting Attorney General (Mr J L M 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.

**Business transacted**

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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:** In the absence of the Lord Bishop, the Chaplain will lead us in prayers.

### PRAYERS

*The Chaplain of the House of Keys*

#### Leave of absence granted

**The President:** Hon. Members, leave of absence has been given to Mr Wild and to the Lord Bishop this morning.

## Order of the Day

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

Mr Crowe to move:

*That the Copyright etc (Amendment) Bill 2013 be read a first time.*

**The President:** We turn to Item 1 on our Order Paper, the Copyright etc (Amendment) Bill 2013. I call on Mr Crowe to take the First Reading.

10

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

15

The Copyright etc (Amendment) Bill 2013 seeks to make changes to the Island's law in relation to copyright, design rights, and rights in performances. The Bill is very much part of a wider programme of intellectual property modernisation currently being undertaken by the Department of Economic Development. The driver for these changes is the importance of intellectual property – or IP, I will call it in abbreviated form – to the Island's economic growth. Intellectual property rights exist to encourage the creation of intellectual property, by allowing the creator to control its exploitation and to benefit financially from such exploitation. Such diverse areas as e-business, e-gaming, the

20 space industry, clean tech, software development, and high specification manufacturing are underpinned by intellectual property.

It is in the Island's economic interest to ensure that the IP assets of its visitors are sufficiently protected, and that the Island is seen as a suitable location for the establishment of a company to hold IP. The focus of the modernisation programme is to ensure that our intellectual property laws are in line with those of the UK and the European Union, so that businesses and individuals can expect an IP regime as good as that in operation in those jurisdictions.

25 Intellectual property law is a complex area, and it may help for me to provide a brief overview for Members.

IP rights can be divided into two categories. The first category, 'registered rights', require registration with an institution: this covers patents, trademarks and designs. The second category, 'unregistered rights', are rights that exist from the moment a work is produced, and covers copyright, performance rights, and design right. In the area of registered rights the UK legislation on patents, trademarks, and designs extend to the Island with modifications. A separate registry would increase bureaucracy and costs, and would offer no significant advantages over the Island remaining part of the UK system of registration. For unregistered rights Tynwald passes its own legislation, the principal Acts being the Copyright Act 1991, the Design Right Act 1991, and the Performers' Protection Act 1996.

30 The Bill today before us is concerned with *unregistered* rights. The basis for the current changes is the consultation document, Intellectual Property Rights in the Isle of Man, which was published in May 2011. Following consultation it was decided to take forward 76 proposals. In addition, the Department identified some additional IP measures being taken through the UK Parliament, and it was decided that these too should be implemented. Madam President, the Department has progressed these changes in a number of ways through subordinate legislation, orders in Council and the present Bill.

45 Looking at this Bill, the main changes are: an increase in maximum penalties for infringement of copyright; and additional powers for forfeiture of infringing copies. Normally, breach of copyright is only a *civil* wrong, but the increase in maximum fines and custodial sentences will ensure that copyright piracy on a commercial scale can be dealt with appropriately – and that would be on a *commercial* scale, I would just repeat that.

There is new provision to allow publication of works for which the copyright owner cannot be traced. These are known as 'orphan works'. There are many works such as books, photographs, films and music in the collection of libraries, archives, museums and galleries, where the copyright owner cannot be traced, and therefore the institutions are limited in what they can do to make the works available to the public, without threat of legal action. The provision will allow the Department to make regulations to enable the licensing and commercial exploitation of these works, with appropriate safeguards.

50 A further provision will streamline copyright clearance where copyright is owned by more than one individual. For example in the case of a film, copyright may be owned by the screenwriter, the producer, the director and the composer of the soundtrack. The agreement of all is required before a public performance can take place, as at present all need to opt into the agreement and this can take time. The change would allow licences to be granted on behalf of all the owners of a copyright in a work, except any who opt out.

There is a new right giving protection to the first publisher of an out of copyright work allowing the commercial exploitation of such works. A further provision would change the ownership of commissioned designs from the commissioner to the designer. The UK is making this change too and this will bring the Isle of Man and the UK into line with European Union. There is an increase in the maximum penalties for infringement of performers' rights, on similar lines to the increase in respect of breaches of copyright, and additional powers for forfeiture of illicit recordings.

65 Finally, the Bill makes provision for performers' 'moral rights'. Moral rights are independent of a performer's economic rights, and so they remain with the performer even when economic rights for a particular work have been transferred.

70

75 You will note that clause 21 of the Bill was not moved in the House of Keys. This is because the clause sought to correct an error made during the 2010 reorganisation of Government, by which a power to make regulations in the Performers' Protection Act 1996 was mistakenly transferred from the former Department of Trade and Industry to the Department of Community, Culture and Leisure rather than to the Department of Economic Development. However, the Transfer of Functions (Dissolution of the Department of Community, Culture and Leisure) Order 2014, which was approved by Tynwald last month, made the required change and now renders the clause superfluous.

80 I would also like to inform Hon. Members that the Department would like to bring forward some amendments to the Bill during its passage through the Legislative Council, specifically to clause 14. This is to follow amendments that were made in the UK Intellectual Bill, which is completing its progress through Parliament there. I should have the details of the changes in UK legislation at the Second Reading stage.

85 Madam President, I beg to move that the Copyright etc (Amendment) Bill 2013 be read for a first time.

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

90 **The President:** If no Member wishes to speak, the motion before the Council is that the Copyright etc (Amendment) Bill 2013 be read a first time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

## 2. Limited Liability Companies (Amendment) Bill 2013 – First Reading approved

Mr Braidwood to move:

*That the Limited Liability Companies (Amendment) Bill 2013 be read a first time.*

**The President:** We turn to Item 2, the Limited Liability Companies (Amendment) Bill 2013, again for First Reading. I call on the Hon. Member, Mr Braidwood.

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

Madam President, this Bill is the Limited Liability Companies (Amendment) Bill 2013. This type of company originated in the United States of America, and each state within the United States has enacted its own version of the legislation, which is substantially similar in nature, with some regional variations.

100 The concept of the 'Limited Liability Company', LLC, was introduced into the legislation of the Isle of Man with the Limited Liability Companies Act 1996. At the time the Isle of Man's Act was brought into operation, the default position in respect of USA LLCs was that they were required to have two members. In the intervening period, all of the states have amended their legislation to allow for the creation of single member limited liability companies. The Bill proposes to amend the Limited Liability Companies Act 1996 to permit LLCs to be formed with either a single member or, as now,  
105 with two or more members.

An amendment to the Income Tax Act 1970 will ensure that the tax treatment of LLCs remains clear. The amendment will confirm that a single member LLC is subject to the same tax treatment as any other LLC. Profits and distributions are taxable in the hands of the member. The LLC itself is not  
110 taxed. The Income Tax Act 1970 considers LLCs to be transparent for tax purposes.

In the USA some classes of assets that are either located or registered in the USA are regulated by the US state and federal authorities. As a general rule, the US authorities require these types of

115 assets to be owned by US citizens. It is common practice for these classes of US assets to be held in single member LLCs, that are disregarded entities for tax purposes. A single member LLC that does not make the election to be treated as a corporation is treated as a disregarded entity. This achieves tax treatment consistent with that of the Isle of Man. It is the *member* that is taxed and *not* the LLC. The amendments proposed in this Bill should enable a US citizen to satisfy the US authorities that the US asset held in a Manx LLC is indeed owned by a US citizen.

120 Madam President, this Bill, if enacted, will amend and update the Isle of Man's legislation to bring it in line with that of the USA by providing for, and recognising, single member limited liability companies.

Madam President, I beg to move the First Reading of the Limited Liabilities Companies (Amendment) Bill.

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

**The President:** The motion is that the Limited Liability Companies (Amendment) Bill 2013 be read a first time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

### 3. Post Office (Amendment) Bill 2013 – First Reading approved

Mr Corkish to move:

*That the Post Office (Amendment) Bill 2013 be read a first time.*

130 **The President:** Item 3, the Post Office (Amendment) Bill 2013.

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

135 This Bill amends the 1993 Post Office Act. It was commissioned by the board of the Post Office after discussion, and in conjunction, with the Department of Economic Development. The Department undertook the public consultation over the proposed legislative changes and published the results. Following this process the Bill was amended to take account of the responses received, which has resulted in the Bill in front of you today.

140 It is an enabling Act, providing clarity to the Post Office on what activities it can undertake, having the same duty and similar powers to the Act which it updates, and which have stood the test of time.

145 The Bill extends the scope of the Post Office's powers to cover wide areas of logistics, communications and financial services so that it can operate with a degree of freedom, similar to that enjoyed by other postal undertakings in the British Isles and Europe. The Post Office has diversified its services, and this will continue to be important, not least to take account of developing technologies and markets, in particular opportunities offshore. New activities as pursued by the Post Office in recent years have been vital to protecting the future of the Post Office, the services it provides, and in providing opportunities to generate wider economic benefits for the Island.

150 It is important that Members are clear over the need for and the intended purpose of the Bill: the fact that the Post Office has been successful in the past does not indicate it can stand still.

The Bill has three clauses, clause 2 containing the main changes to the Post Office Act.

Madam President, I beg to move the First Reading of the Post Office (Amendment) Bill 2013.

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

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

**Mr Downie:** Madam President?

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

**Mr Downie:** Yes, thank you, Madam President.

165 I wish to speak in support of the Bill. There is no doubt about it that, in this day and age, it is vitally important that an organisation like the Post Office keeps itself up to date with changes in the marketplace, and continues to provide a good and valuable service to the local... both business and the community it serves.

We seem to be on a fairly regular basis now bringing in legislation such as this, to continually update what the Post Office does, and you have to look at that on the background of the whole way the communications network and systems have changed, in such a short time.

170 I would assume that the Bill that is before us today, in a few years' time we will be looking at replacing it with something else, because technology has moved on. But I think it is vitally important that the Post Office remains viable. Sadly we have seen in other jurisdictions where they have not moved as quickly as they could have done, they have been sold off. There is still a misunderstanding about what is going to happen with the Post Office in the UK, as we know that has been sold off. I think it would be detrimental to the UK in general, if a lot of the services that the Post Office currently provides just disappear.

In a small community like ours, I think it is vital that we have a Post Office that is bang up-to-date, provides a first-class service for the business community, and at the same time looks after all the various issues that we have to deal with on a regular basis.

180 I support the Bill.

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

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

185 I would just like to ask one question of the mover, acknowledging the Post Office has been very successful of recent years, and it does need to expand and develop services which this Bill seems to provide the ability to do so. But I just wondered, is this a precursor in any way to an eventual privatisation? Is that the reason for this Bill, or is it just to expand the services which the Post Office can undertake?

190 Thank you.

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

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

195 Can I thank the seconder, and Mr Downie for his support, understanding as he does the tremendous amount of changes that the electronic age has brought. When this Act was first put together, there was no Internet. So this is modernising terminology, if you like. So I thank Mr Downie for his support.

200 In answering Mr Butt, this in no way conflicts with corporatisation or privatisation, this is purely amending the existing Bill confirming the vires of the Post Office.

**Mr Butt:** Thank you.

205 **The President:** The motion, Hon. Members, is that the Post Office (Amendment) Bill 2013 be read a first time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

That concludes consideration of our Order Paper, Hon. Members. The Council will now adjourn until the Tynwald sitting on 18th February, and thereafter to the sitting in this Chamber on 25th February.

Thank you, Hon. Members.

*The Council adjourned at 10.50 a.m.*