



LEGISLATIVE COUNCIL OFFICIAL REPORT

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PROCEEDINGS

DAALTYN

HANSARD

Douglas, Tuesday, 25th February 2014

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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 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, Mr J R Turner and Mr T P Wild
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 prayers.

PRAYERS

The Lord Bishop

Order of the Day

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

Mr Crowe to move:

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

The President: Hon. Members, we have three Readings and clauses to consider.

I call on the Hon. Member, Mr Crowe, to take the Second Reading of the Copyright etc (Amendment) Bill 2013.

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

The purpose of Copyright etc (Amendment) Bill 2013 is to amend the Copyright Act 1991, the Design Right Act 1991 and the Performers' Protection Act 1996.

15 The Bill is one important part of the Department of Economic Development's programme to modernise the Island's intellectual property law. The Bill increases maximum penalties for infringement of copyright in performers' rights and gives additional powers for forfeiture of infringing copies and illicit recordings. This will ensure that copyright piracy on a commercial scale can be adequately dealt with.

20 It makes new provision to allow publication of works for which the copyright owner cannot be traced, and provision to allow streamlined copyright clearance where copyright is owned by more than one individual. A new right gives protection to the first publisher of an out of copyright work allowing the commercial exploitation of such works.

The Bill also changes the ownership of commissioned designs from the commissioner to the designer, in order to simplify the rules over first ownership of designs.

25 Finally the Bill makes provision on the Isle of Man for performers' 'moral rights', which remain with the performer even when economic rights for a particular work have been transferred.

Madam President, the Department has also proposed some amendments to clause 14 of the Bill. Members have received a note on the reasons for those amendments. These changes alongside those of the Department have progressed through subordinate legislation, and orders in Council will ensure that the Isle of Man offers intellectual property protection in line with that of the UK and the
30 European Union.

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

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

35 **The President:** The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

At this Second Reading, I would like to thank the Hon. Member for meeting with me a number of weeks ago to discuss a couple of issues that I had experience of, and I should just declare it was in a matter a couple of years ago in a copyright issue. The reason for me meeting with the Member was to actually discuss the procedure that was experienced in trying to get a copyright issue resolved through the local Copyright Tribunal. The experience we had was that it was very difficult for that particular dispute to get to the local tribunal when it was dealing with a UK copyright – they were the rights holders in the dispute.

45 The regulations were incredibly messy. They were partly adopting UK regulations, they were partly Manx regulations: there was no one-stop shop where somebody with a dispute in the Isle of Man for the use of material could pick up a set of regulations and actually understand them.

So what I would like is assurance that the Department, in taking this Bill forward, will be reviewing the whole procedures that local people, businesses or individuals who have a copyright dispute can ensure that it is a clear and concise process. And can we have assurances that disputes in the Isle of Man can actually be dealt with by the Isle of Man Copyright Tribunal – because that is the whole purpose of having one – and not allow UK rights bodies, such as the likes of PRS and PPL who we hear so much about with shops and all that having disputes with them, almost riding roughshod over the fact that there is an Isle of Man tribunal... and relying on what the UK has decided.

55 The whole point of having our own legislation is so that we can exercise our own functions in dealing with these matters. It would seem pointless to me having a whole bureaucracy of a tribunal if they are actually going to be able to deal with disputes that are originating in the Isle of Man, *for* the Isle of Man.

60 I know that the bulk of this is not particularly related to that but, whilst we are on this Second Reading and discussing the deeper principles of the Copyright Amendment Bill, I wonder whether the Member could give us assurance that the Department will continue to look at this area and ensure that, first of all the guidance is clear to the public and the procedures are clear, and when bringing regulations if they could maybe bring a *full* set of regulations rather than having people go searching the UK statutes to try and find the missing bits.

I hope that is a clear explanation.

Thank you, Madam President.

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

Mr Crowe: Thank you, Madam President.

I thank Mr Turner for his comments. We did meet on a particular issue a few weeks ago and we did talk about the Copyright Tribunal, and this is actually being changed under the Tribunals Act instead of being dealt with by the Council of Ministers. So there are issues with the Tribunal that we need to look at, that we *are* going to look at, and the Department will be bringing regulations to
75

Tynwald which will clear up the powers of the Tribunal, the procedures and to make sure that guidance is clear.

So I have taken that on board and a member of the Department is here, taking notes... Mr Tallach will be taking notes on these issues.

80 So with that, I beg to move the Second Reading.

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

**Copyright Etc (Amendment) Bill 2013 –
Clauses considered**

The President: We turn now to clauses. Perhaps we could take clauses 1 and 2 together?

85

Mr Crowe: Thank you, Madam President.

Clause 1 gives the Act its short title.

Clause 2 provides for the Act to be brought into force by order.

Madam President, I beg to move that clauses 1 and 2 stand part of the Bill.

90

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

The President: The motion is that clauses 1 and 2 do stand part of the Bill, Hon. Members.

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

95

Clause 3.

Mr Crowe: Clause 3, Madam President, amends the Copyright Act 1991 to bring the maximum penalties for some offences into line with those in the United Kingdom. As I made clear in the Second Reading of the Bill, 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.

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The change brings the maximum penalties into line with those for counterfeit goods in the Island. Madam President, I beg to move that clause 3 stands part of the Bill.

105

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

The President: The motion is that clause 3 stands part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 4.

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Mr Crowe: Clause 4 gives additional powers under which a court can order the forfeiture of pirated goods or a 'master' from which infringing copies can be made over and above those available after seizure of, or on a conviction for dealing with, infringing copies.

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Currently, the Copyright Act 1991 enables a court to order the forfeiture or destruction of infringing copies or masters which have been ordered to be handed over, either on an application by the copyright owner or on the conviction for an offence or which have been seized by the copyright owner.

120

The new powers will be available whenever such articles have come into anyone's possession in the course of investigating or prosecuting certain offences, including offences relating to trade descriptions, fraud or theft.

The change brings the law into line with that for counterfeit goods in the Isle of Man.

Madam President, I beg to move that clause 4 stands part of the Bill.

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

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The President: The motion is that clause 4 stands part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 5.

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Mr Crowe: Madam President, clause 5 repeals provisions of the Copyright Act 1991 which limit to 25 years the term of copyright in certain mass-produced artistic works. As a result of this change, these works will enjoy copyright protection for 70 years from the designer's death, which is the term of protection applying to all other copyrighted works.

135

This clause repeals section 52 of the Copyright Act 1991, which creates the exception. Section 52 applies where an artistic work, following the authorisation of the copyright holder, has been copied by an industrial process and marketed anywhere in the world. Twenty-five years after copies of the artistic work were first marketed, the work may be copied by third parties without infringing copyright. With repeal of the clause, such works will receive protection for 70 years.

140

Clause 5 also repeals section 79(4)(g), which provides a similar exception to the moral rights of the designer to be identified as such; and schedule 1, paragraph 19, which makes a transitional modification in relation to works existing before the 1991 Act came into force.

Madam President, I beg to move that clause 5 stands part of the Bill.

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

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The President: The motion is that clause 5 stands part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 6.

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Mr Crowe: Madam President, clause 6 extends an exemption which deals with the sometimes overlapping rights for copyright and designs. Designs of objects can attract two separate intellectual property rights: firstly, they are copyright protected; secondly, the design can also be registered.

155

The extension of this existing exemption will mean that a person who uses a design registered in the Isle of Man and the United Kingdom, with the permission of its registered owner, is not treated as infringing any associated copyright in the design. The exemption is extended so as to also cover designs registered at the European Union design registry – otherwise known as Community Designs.

Madam President, I beg to move that clause 6 stands part of the Bill.

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

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The President: The motion is that clause 6 stands part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 7.

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Mr Crowe: Clause 7 removes a duplication in the legislation under which procedural rules for the Isle of Man Copyright Tribunal may be made by the Council of Ministers under either the Copyright Act 1991 or the Tribunals Act 2006. In future, the rules will be made under the 2006 Act with a saving for the existing rules made under the 1991 Act.

170

The Isle of Man Copyright Tribunal is an independent specialist tribunal whose main responsibility is to decide disputes over the terms of licenses granted by licensing bodies on behalf of copyright owners. It was created in 1991 in place of the UK Copyright Tribunal, which had previously had jurisdiction in the Isle of Man, and was brought into the common system of tribunal appointments in

2006. Its procedure is laid down by the Copyright Tribunal Rules 1996, made under section 145 of the Copyright Act.

175 The rules apply, with modifications of the UK Copyright Tribunal Rules 1989, as amended. It should also be noted – and this is in response to Mr Turner's earlier query – that the Department intends to bring forward updated Isle of Man Copyright Tribunal Rules, based on the UK Copyright Tribunal Rules 2010, later this year.

Madam President, I beg to move that clause 7 stands part of the Bill.

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

The President: The Hon. Member, Mr Turner.

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

I thank the Member for the information in this clause and I think it highlights one of the things I was referring to, where it refers to parts of the UK rules. I think that is something that we should be trying to get away from when bringing in our own time subordinate legislation: to simply have lines in where you have to then go and look for the UK rules. I would hope that we start seeing more and more subordinate legislation actually brought in in full – it may well be based on rules in other countries but actually bring in the full set so that there is the one place where people can go.

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It does, I think, slightly concern me that we simply shoehorn the UK rules in and then there is a question of, well if we are simply going to do what *they* do, why are we bothering setting up our own at all? If we are going to rely constantly on UK legislation then what is the whole purpose of having our own? Is it not just an extra cost we do not want?

195

I have to say that is not what I am advocating because I would much prefer to see the Isle of Man deal with its issues in its own right. But, I think the fact that the UK is doing something as a principle, we should not always rely on, we should be looking at rules that suit our own purpose and are right for the Isle of Man. That is something I have highlighted in this place on other issues before.

200

So it is just a final observation on that.

The President: Does the Hon. Member wish to respond?

Mr Crowe: I thank Mr Turner. Obviously if we have a tribunal it must be meaningful and it must have rules which are meaningful (**Mr Turner:** Absolutely.) and deal with Isle of Man issues, because if there is no benefit in having an Isle of Man tribunal then the benefit of having it ceases to exist. So I think what we have to do is have a tribunal that will deal with local issues properly.

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As for the rules, they will be based on the UK rules because we do not want to reinvent the wheel, but we need to 'Manxify' them to make sure they are relevant to the Isle of Man.

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Mr Turner: That is my point.

Mr Crowe: I beg to move, Madam President, clause 7.

215 **The President:** The motion is that clause 7 do stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 8.

Mr Crowe: Clause 8, Madam President, concerns unpublished works created prior to 1992, that is before the Copyright Act 1991 came into force. The Copyright Act 1991, which replaced the UK Copyright Act 1956, contains transitional provisions to protect such works. The provisions mean that the works remain in copyright until the end of 2042 – 50 years from the end of 1992.

220

The provision, however, has absurd effects for older documents. For example, as set out in the explanatory notes, a library in possession of an unpublished 13th century manuscript may not

225 publish it until 2043, nor may it copy the manuscript without risking legal action, except for use in non-commercial research or private study.

In the United Kingdom, the Enterprise and Regulatory Reform Act 2013 enables the Secretary of State to make regulations reducing the term of copyright in the corresponding provisions of the UK Copyright, Designs and Patents Act 1988. Clause 8 gives a similar power to the Department of Economic Development so that any changes in the UK can be adopted here.

I beg to move clause 8 stands part of the Bill.

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

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

Mr Wild: Thank you, Madam President.

I was only going to make the observation that if we looked at an unpublished 13th century manuscript being published today, I am not quite sure who would actually take the legal action!
240 *(Laughter)*

Mr Corkish: They would not understand it anyway!

245 **The President:** Do you wish to reply, Mr Crowe?

Mr Crowe: No, it is a comment more than a query, *(Laughter)* thank you.

The President: The Hon. Member, Mr Butt.

250 **Mr Butt:** Just a query for the mover: who makes the decision in this case, then, who decides which works need the extension or the reduction in time? As an individual, when you say it is the Department, is there anybody of expertise to actually make those decisions?

255 **The President:** If there are no further Members' queries, could the mover reply.

Mr Crowe: This clause gives the Department power to make regulations, I do not think anybody has been delegated to make these decisions yet, regulations will set all this out. So it will be dealt with in regulations which will come before Tynwald and have to be approved by Tynwald.

260 **Mr Butt:** Thank you.

The President: The motion before Council is that clause 8 do stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.
Clause 9.

265 **Mr Crowe:** Clause 9 gives the Department power to make regulations to introduce a licensing system for so-called 'orphan works' and for what is referred to as extended collective licensing.

Orphan works are copyright works for which the owner cannot be traced. Such works may be held by libraries, archives, museums and galleries but, without the permission of the copyright owner, they are limited in what they can do to make such works available for public view without threat of legal action.

The UK is introducing a system to license the use of orphan works, subject to safeguards, for the missing copyright owners – and this clause enables provision to be made for the use of orphan works on the Isle of Man too.

275 Extended collective licensing allows a streamlined, simplified system to be put in place, subject to safeguards, for works which have more than one copyright owner. 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. At present the agreement of all is required before a public performance can take place: as *all* need to opt into this agreement, this can take time.

280 The change in this clause is to enable regulations to be made allowing licenses to be granted on behalf of *all* the owners of copyright in a work except any who opt out.

Madam President, I beg to move clause 9 stands part of the Bill.

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

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The President: The Hon. Member, Mr Turner.

Mr Turner: Yes, thank you, Madam President.

290 I accept the Member's explanation about the orphan works, but talking about collective licensing for, say, performances, I am not quite sure whether it would fall under the new provisions here, but if I give an example... I dealt with something to do with public performance in a shop.

A butcher's shop (**A Member:** Playing music.) had a CD on, or the radio on, and suffered very aggressive behaviour by one of the collective bodies, because of the number of people involved in a performance.

295 Again, I am not sure whether this is particularly the area that covers it but, if they are looking at regulations, is there going to be any provision in those regulations to cover the conduct of the bodies which may represent a group? Because, like I mentioned earlier on, we are seeing some of these collective agencies rely on UK provisions and UK decisions and schemes, and come to the Isle of Man and act in a very aggressive way towards local users of material. If we are talking about performances of films, for example, we could have a shop playing music, or it could be a church hall screening a film.

300 In these regulations, will there be any thought of providing for a way of regulating the conduct and behaviour of the bodies who may be assigned the right to act on behalf of the copyright owners? I think that is something that does need looking at, because there have been some horrendous cases of aggressive behaviour towards shops and businesses.

305

The President: The Hon. Member, Mr Butt.

Mr Butt: Thank you, Madam President.

310 Just a query about the orphan works.

If there has been a diligent search for the owner and they have not been found and then a licence is issued under this section, if an owner then comes forward at a later date and says, 'this is my work', has he got a right to actually have the license changed into his own favour or to take back his copyright ownership?

315 Is there a process under this Act to do that – presuming of course at the time it was done legitimately because they could not find the owner, but then the owner comes forward? So I wonder is there an answer to that, Madam President.

The President: The mover to reply.

320

Mr Crowe: Thank you, Madam President, and I thank Mr Turner for his queries.

325 I think this Bill, this clause itself, is talking more about collective licensing, which is collective of the people that own the copyright in a particular film. It does not deal with the performance rights societies or people administering the use of these in, say, a butcher's shop. But I will check that issue out and come back at the Third Reading for an explanation if I have misinterpreted what you are trying to say.

Mr Turner: Madam President, if I may just clarify? (**The President:** Yes.) I think that is why I was saying I am not sure whether this is the relevant clause, but these bodies license the collective piece of material to, for example, a shop to perform that, whether it be TV screens or a radio or a CD or whatever, and I think that is where I am coming from... as I say, it might not be the right clause but it appears to be similar...

Mr Crowe: I will clarify that on the Third Reading, Madam President.
As for Mr Butt's query: yes, if the copyright owner is found or a relative claims copyright, that will all be dealt with in the regulations as to they get their proper rights and entitlement to the (**Mr Butt:** Return.) value of the copyright ownership.

Mr Butt: Thank you.

The President: The motion is, Hon. Members, that clause 9 do stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.
Clause 10.

Mr Crowe: Thank you, Madam President.
Clause 10 removes the need to make orders applying the provisions of the Copyright Act 1991 to countries that have qualified for reciprocal copyright protection. Currently, under the Copyright Act 1991, orders need to be made which specify the countries that qualify for reciprocal copyright protection. Instead, this clause incorporates the countries into the Act, removing the need for such orders.

Madam President, I beg to move clause 10 stands part of the Bill.

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

The President: The motion is that clause 10 stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.
Clause 11, introducing schedule 1.

Mr Crowe: Madam President, clause 11 introduces schedule 1. This creates a 'publication right', which gives protection for 25 years to the first publisher of an out of copyright work.

Publication right gives rights broadly equivalent to copyright to a person who publishes for the first time a literary, dramatic, musical or artistic work or a film in which copyright has expired. However, there is one major difference which is that the publication right only lasts for 25 years from the year of publication of the material, rather than 70 years from the death of the creator in the case of copyright.

Madam President, I beg to move that clause 11 and schedule 1 stands part of the Bill.

The President: The motion... (**A Member:** Second.) I think Mr Downie seconds –

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

The President: The motion is that clause 11 and schedule 1 do stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.
Clause 12.

Mr Crowe: Madam President, clause 12 simplifies and clarifies the scope of 'design right', which is the right of the creator of an industrial design – for example, the shape of a car body – to control the exploitation of the design.

380 The protection for designs is clarified in two respects. Firstly, trivial features of designs are excluded
by making sure the protection does not extend to 'any aspect' of part of an article. It is expected
that this will reduce the tendency to overstate claims as to the extent of the rights in the design.
385 Secondly, protection only applies to original designs and, to be considered original, a design should
not be 'commonplace' in the relevant field. It is not certain whether this means commonplace in the
Isle of Man or elsewhere and, to remove that confusion, it is provided that it means commonplace in the
Isle of Man and other qualifying countries, designs from which are protected in Manx law.

Madam President, I beg to move clause 12 stands part of the Bill.

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

390 **The President:** The motion is that clause 12 do stand part of the Bill. Those in favour, please say
aye; against no. The ayes have it. The ayes have it.

Clause 13.

395 **Mr Crowe:** Madam President, clause 13 changes the initial ownership of designs created on
commission from another person.

Under the Design Right Act 1991, the person by whom the design is commissioned is the first
owner of the design right in it. It should be noted that in the closely-related system of copyright, in
the case of commissioned works copyright rests with the creator. Further, in the system of EU
designs which the Department of Economic Development is seeking to introduce recognition in the
400 Island, the first owner of a design is the creator, rather than any commissioner.

This potentially could lead to a confusing situation where a commissioner of a design could claim
ownership under Manx design right, whereas the designer could claim EU design right and any
copyright associated with the design.

405 To avoid the anomaly of design right belonging to one person and Community rights to another,
the clause brings the Isle of Man into line with the UK and the EU by making the designer the first
owner of design right, even where the design is commissioned by another person. However, it
should be noted that the provision will not prevent a commissioner of a design transferring
ownership to themselves. However, that would need to be specifically addressed in a contract.

Madam President, I beg to move clause 13 stands part of the Bill.

410

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

The President: The Hon. Member, Mr Coleman.

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

I have a slight concern with this clause. If we are talking perhaps of someone commissioning a
portrait of the wife – and you get the portrait after the artist has completed the work – I can
understand that. And I can understand why the actual artist might wish to keep the rights to do
things like Christmas cards, not with the... of a scene, or something like that – or maybe the wife...
420 *(Laughter and interjections)*

I think we get into quite dangerous territory here, and maybe I am getting totally the wrong end
of the stick here. Suppose I, as a business, bring in a software developer to develop a system for me.
As a part of that, you would actually be providing business-sensitive information to the person
commissioned. That can actually be factors which make your business stand alone in the
425 marketplace.

Now I take the idea that you can contractually transfer the rights from the designer to the
commissioner. But I think that this... people would need to be very aware of this change, certainly in
the software commissioning industry, because you are actually saying the designer has the rights on
it and unless you contractually have handed them back to the commissioner, they can then go out
430 and sell your unique software selling points to your competitors.

If I have got the wrong end of the stick I apologise, but that is how I perceived that clause.

The President: The Hon. Member, Mr Butt.

435 **Mr Butt:** Yes, just moving on from that, I think, and as the mover said, it highlights the need for a person commissioning work to actually have in the contract that they will then take over the ownership. I think that is what you said in moving the clause. So the public, the 'us', the people commissioning work, need to be aware of that from the moment this is made into an Act.

440 **The President:** Lord Bishop.

The Lord Bishop: Madam President.

445 Surely this is not something that people are going to be surprised about. Twenty years ago – when I was part of a thing the Church of England and the Church in Wales calls a 'liturgical commission' – when you write liturgical work, before you write it, you sign away that writing to the church that you are writing it for.

Now, if the church can catch up with this 20 years ago, surely commissioners of electronic material have caught up to it sooner than that.

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

Mr Crowe: Thank you, Madam President, and I thank Mr Coleman and Mr Butt and the Lord Bishop for their comments.

455 I think Mr Coleman had mentioned this to me last week after the Second Reading, because we are actually turning the legislation round, in effect, flipping the Isle of Man legislation, but it will accord with EU legislation.

I thank Mr Butt, as he mentioned the contract will override any commissioning rights. And the Lord Bishop, we are hopefully catching up with the church.

460 **The President:** The motion is that clause 13 stands part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 14: Mr Crowe.

Mr Crowe: Thank you, Madam President.

465 The Design Right Act 1991 extends protection to unregistered designs. As stated in the explanatory notes for the Bill: to qualify for this protection currently the designer, or the article made to the design, must have a connection either with the Island or with the qualifying countries – such countries as specified in an order.

470 Countries qualify on the basis that reciprocal protection for Manx designers is available there. The intention of the clause is to simplify the criteria by making it dependent on where the designer or the employer is economically active, or where the designs are first marketed.

If the designer or his employers are economically active in a qualifying country, or the article is made to the design first marketed in the qualifying country, then the design will be protected.

Madam President, I beg to move clause 14 stands part of the Bill.

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

The President: The Hon. Member, Mr Wild.

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

May I on behalf of the Department of Economic Development, propose four amendments to clause 14. These were alluded to by my hon. colleague in the introduction to the clauses stage of the Bill, and there has been an explanatory note from the Legislative Council on these amendments.

485 So that clause closely mirrors a provision in the UK Intellectual Property Bill, which is currently nearing the end of its progress through Parliament there. However, at the end of January 2014 the United Kingdom Government proposed, and Parliament agreed to, amendments to the clause.

The amendments were the result of the concerns that the clause will inadvertently give undue protection in the United Kingdom to designs by businesses based in foreign countries, even though reciprocal protection would not be available to United Kingdom businesses in those countries.

490 The same situation would apply in the case of the Isle of Man should the Bill not be amended, and so it is in the interests of the Island that the amendments should be made.

The first amendment omits subsection (1) of clause 14.

The second amendment amends subsection (2) of clause 14.

495 The third amendment substitutes a new definition of 'qualifying person' in subsection (2) to ensure that businesses must have a legal personality under the law of a qualifying country for their designs to receive protection on the Isle of Man.

The fourth amendment ensures that any designs protected on the basis that they were first marketed on the Island are by a qualifying person as referred to in subsection (2).

Madam President, I beg to move the amendments standing in my name:

Amendments to clause 14

Page 15, omit subsection (1).

Page 15, in subsection (2), for "that Act" substitute "the Design Right Act 1991".

*Page 15, in subsection (2)(a), for the definition of "qualifying person" substitute —
" "qualifying person" means —*

(a) an individual habitually resident in a qualifying country, or

(b) a body corporate or other body having legal personality which—

(i) is formed under the law of the Island or another qualifying country, and

(ii) has in any qualifying country a place of business at which substantial business activity is carried on."

Page 16, for subsection (4) substitute —

"(4) In section 8 of that Act (qualification by reference to first marketing) —

(a) in subsection (1)(a), omit "who is exclusively authorised to put such articles on the market in the Island";

(b) in subsection (2), for "requirements" substitute "requirement";

(c) in subsection (3), for "those requirements" substitute "that requirement"; and

(d) omit subsection (4)."

500 **Mr Downie:** I beg to second, Madam President.

The President: As you have seconded the clause, Mr —

Mr Downie: Do you want somebody else to do it?

505

Mr Braidwood: I was going to second the amendment, Madam President.

The President: Mr Braidwood, right, thank you.

510 Hon. Members, the motion before Council is that clause 14 do stand part of the Bill, and to that we have the amendments in the name of Mr Wild.

As no Member seems to wish to speak on it, I will move the amendments as one. Those in favour of the amendments, please say aye; against no. The ayes have it. The ayes have it.

I now put to you the clause as amended. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

515 Clause 15.

Mr Crowe: Madam President, this clause introduces two new exceptions to infringement of unregistered design right: one for use of protected designs for experimental or teaching purposes; and one which exempts from infringement action the use of a protected design in a ship or aircraft registered outside the Isle of Man which is temporarily in the Island.

520 These mirror exemptions applying to registered designs under the Registered Designs Act 1949 of Parliament, and will harmonise with EU regulations.

Madam President, I beg to move clause 15 stands part of the Bill.

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

The President: Hon. Member, Mr Coleman.

Mr Coleman: Thank you, Madam President.

530 I seem to recollect that in the United States when a drug is coming to the end of its patent, for a year or so before the end of the patent rights, other drug companies can incorporate that drug into the development of another drug.

Would this be covering things like that?

535 **Mr Crowe:** If I can find my notes on the Roche-Bolar exemption –

Mr Coleman: That is the one!

The President: The mover to reply, at least when he has found the right notes.

540

Mr Crowe: Thank you, Madam President.

Mr Coleman is absolutely right. The Roche-Bolar exemption allows that the trials of a generic medicinal product within the EU for the purpose of obtaining a market authorisation do not count as an infringement of patent. The order would apply to the Island in a directive containing this exemption. The order would also apply to the Island a directive which contains a simpler exemption with respect to veterinary medicinal products.

545

The Roche-Bolar exemption was introduced to the Island as a result of the Patents (Isle of Man) Order 2013.

550 **The President:** Hon. Members, the motion before the Court is that clause 15 do stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 16.

555 **Mr Crowe:** Clause 16 amends the Performers' Protection Act 1996 so as to increase the maximum penalties for unauthorised dealings with recordings of performances on similar lines to the increases in respect of breaches of copyright made by clause 3.

Madam President, I beg to move that clause 16 stands part of the Bill.

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

The President: The motion is that clause 16 do stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 17.

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

Clause 17 gives additional powers under which a court can order the forfeiture of an 'illicit recording' of a performance over and above those available after seizure of, or on a conviction for dealing with, infringing copies – in other words, pirated copies.

570 The powers are similar to those conferred by clause 4 in relation to infringing copies, and are available whenever such recordings have come into anyone's possession in the course of investigating or prosecuting certain offences, including offences relating to trade descriptions, fraud or theft.

575 An illicit recording is one made without the consent of the performer or, if a record company has an exclusive recording contract, without the record company's consent. Recordings made for private purposes do not qualify as illicit recordings.

The Performers' Protection Act 1996 currently enables a court to order the forfeiture or destruction of illicit recordings which have been ordered to be handed over either on an application by the rights owner under section 16, *or* on a conviction for an offence under section 21, *or* which have been seized by the rights owner under section 17.

580 Madam President, I beg to move that clause 17 stands part of the Bill.

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

585 **The President:** The motion is that clause 17 stands part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 18 and schedule 2.

Mr Crowe: Thank you, Madam President.

590 Clause 18 with schedule 2 provides for performers to have artistic, non-commercial rights in relation to their performances, similar to those which authors and directors have in relation to certain copyright works.

These are referred to as 'moral rights' and are concerned with protection of the personality and reputation of the performers. Specifically the rights are: firstly, the right to be identified as a performer; and, secondly, the right to object to derogatory treatment of the performance.

595 The protection of authors' moral rights was introduced by the Rome revision of the Berne Convention in 1928 and is given effect in Manx law by the Copyright Act 1991. Protection for performers was introduced by the World Intellectual Property Organisation's Performance and Phonograms Treaty in 1996. Authors' moral rights were introduced by a revision of the International Berne Convention 1928 and are given effect in Manx law by the Copyright Act 1991.

600 This clause makes provision for performers' moral rights in the Isle of Man for the first time.

Madam President, I beg to move that clause 18 stands part of the Bill.

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

605 **The President:** The motion is that clause 18 introducing schedule 2 do stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 19.

610 **Mr Crowe:** Clause 19 makes provision for the licensing of 'orphan rights' and extended collective licensing in relation to performances. This corresponds to the provision made in clause 9 for orphan works and extended collective licensing for copyright works.

Clause 19 amends schedule 1A of the Performers' Protection Act 1996, which deals with the licensing of performers' commercial rights and is based on amendments made to the UK Copyright, Designs and Patents Act 1988 by the Enterprise and Regulatory Reform Act 2013.

615 Madam President, I beg to move that clause 19 stands part of the Bill.

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

The President: The motion is that clause 19 stands part of the Bill. Those in favour, please say
620 aye; against no. The ayes have it. The ayes have it.
Clause 20.

Mr Crowe: Clause 20, as in the case of copyright and design right, the Performers' Protection Act
625 1996 includes the concept of 'qualification'. For a performance to be protected it, or the performer,
must have a connection with the Isle of Man, an EU member state including the United Kingdom, or
another qualifying country specified in an order.

At present, the other qualifying countries are specified in the Performers' Rights (Reciprocal
Protection) Order 2003. That Order applies to the Isle of Man a UK order which lists numerous other
countries.

630 New UK orders have been made almost annually since 2003, to reflect the accession of countries
to various international conventions, and should in turn have been applied to the Isle of Man. In
consequence, Manx law does not afford protection in all cases required under those conventions.
Under this provision, it will no longer be necessary to replace or amend the order every year, as a list
of most of the relevant countries will be incorporated in the Performers' Protection Act 1996.

635 Madam President, I beg to move that clause 20 stands part of the Bill.

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

The President: The motion is that clause 20 do stand part of the Bill. Those in favour, please say
640 aye; against no. The ayes have it. The ayes have it.

That concludes consideration of the Copyright etc (Amendment) Bill, Hon. Members.
(Interjections)

Mr Butt: Clause 21 –
645

The President: Clause 21 was not moved in another place, Hon. Members.

Mr Crowe: Do you want me to put that on *Hansard*, Madam President?

650 **The President:** It was an *amendment* in the other place (**Mr Crowe:** Oh, right.) and therefore it
comes forward in its *amended* form without that clause, Hon. Member.

Mr Crowe: Right, thank you, Madam President.

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

Mr Braidwood to move:

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

The President: We turn now to Item 2 on our Order Paper, the Limited Liability Companies
655 (Amendment) Bill 2013. I call on Mr Braidwood to move: Second Reading.

Mr Braidwood: Thank you, Madam President.

Madam President, during the First Reading of the Limited Liability Companies (Amendment) Bill 2013, I hinted at why the changes that this Bill proposes to make might be desirable. I will take the opportunity during the Second Reading to elaborate on this point.

The Limited Liability Company is an American concept with each state having its own variation of the legislation. At their most basic, LLCs have traditionally been thought of as resembling partnerships, with added protection against liability for the members. This is much the same as the protection afforded to the members of any other 'limited' company.

The Isle of Man introduced LLCs in 1996 under the Limited Liability Companies Act 1996.

The Act currently requires every LLC to have a minimum of two members. This is consistent with the traditional treatment of LLCs as quasi-partnerships.

The tax treatment of LLCs in the Isle of Man is consistent with their close resemblance to the partnerships. It is the members themselves who are taxed and *not* the LLC.

In the United States of America a single member LLC can make the election to be treated as a corporation, or do nothing and be treated as a disregarded entity. The latter achieves tax treatment consistent with that of the Isle of Man. It is the member that is taxed and *not* the LLC.

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

It is common practice for some classes of US assets to be held in single member LLCs that are disregarded entities for tax purposes. 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 US citizen. An example where this might be used is where goods need to be imported into the European Union. Most goods imported into the EU are liable to import taxes and duties, however, some may have specific customs reliefs associated with them, for example End Use relief which, under specific circumstances, reduces the duty rate to 0%.

The EU requirements that must be met in order for a company to take advantage of the special reliefs include that the importing company should be established in the EU. For these purposes, the Isle of Man meets the definition of being within the EU. Use of a single member LLC would go some way towards demonstrating that the company, being established in the Isle of Man, met one of the EU's criteria.

While it may be insufficient on its own, the use of a Manx corporate vehicle, particularly one that requires the engagement of an appropriately licensed registered agent, will go some way to supporting the requirement for a company to be established in the Island.

Madam President, there are some basic requirements that must be met to ensure that companies established in the Isle of Man are eligible for the special reliefs and do not fall within the definition of an 'abusive practice'. There is no change to the existing policy, and this Bill does not seek to circumvent the existing requirements and conditions for qualification for special reliefs.

Madam President, I beg to move the Second Reading of the Limited Liability Companies (Amendment) Act 2013.

The President: Hon. Member, Mr Downie.

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

**Limited Liability Companies (Amendment) Bill 2013 –
Clauses considered**

705 **The President:** We turn now to clauses, Hon. Members.
Clause 1.

Mr Braidwood: Thank you, Madam President.
Madam President, clause 1 provides the short title of the Bill.
710 I beg to move that clause 1 stands part of the Bill.

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

The President: The motion is that clause 1 do stand... Did you wish to speak, Mr Coleman? Yes.
715

Mr Coleman: Yes, I do. Thank you, Madam President.
The title 'The Limited Liability Companies (Amendment) Act' implies that if the company – let's
say a doctor in America – opened a single member limited liability company in Isle of Man, and he
was sued for medical negligence, my understanding is that the company is not 'limited' because the
720 single member can still be personally sued. So the company, yes, is limited liability, but my
understanding is that in the States, the member can be sued for the actions of the limited liability
company.

So I am merely pointing out that possibly it is a little bit of a misnomer. That is my understanding
anyway.

725 Thank you, Madam President.

The President: Do you wish to respond, Mr Braidwood?

Mr Braidwood: I will seek clarification, Madam President, on that, because that is not one point
730 that has been raised with me. I will come back at the Third Reading if I may, Madam President.
I beg to move.

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.
735 Clause 2.

Mr Braidwood: Thank you Madam President.
Clause 2 sets out the proposed amendments to the Limited Liability Companies Act 1996.
Clause 2(2) replaces the existing words 'a body of persons' with 'a body of one or more persons'.
740 Clause 2(3) inserts a new clause 1A into the Act. This new clause makes express provision for a
limited liability company formed under the Act to have only one member. This clause also expressly
applies any existing provisions equally to single member LLCs and to LLCs with two or more
members.

Clause 2(4) amends subsection (6) to remove the requirement for a limited liability company to
be formed with two or more members.

745 Madam President, I beg to move that clause 2 stands part of the Bill.

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

The President: The motion is that clause 2 do stand part of the Bill. Those in favour, please say
750 aye; against no. The ayes have it. The ayes have it.
Clauses 3 and 4.

Mr Braidwood: Thank you, Madam President.

755 Clause 3 amends the Income Tax Act 1970.

Section 2M of the Act considers the tax treatment of the members of limited liability companies.

New subsections (2A) and (2B) will be inserted. These confirm that where an LLC has only one member, that member is liable for taxation on all distributions of profits of the LLC.

760 Clause 4 makes provision for the automatic expiry of the resultant Act on the day after the amendments have been taken. This will not affect any amendments that have been made by the Bill, this is simply a matter of housekeeping.

Madam President, I beg to move that clauses 3 and 4 stand part of the Bill.

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

765

The President: The motion is that clauses 3 and 4 do stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

That concludes consideration of Item 2, Hon. Members.

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

Mr Corkish to move:

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

The President: We turn now to the Post Office (Amendment) Bill 2013.

770 I call on Mr Corkish to take the Second Reading.

Mr Corkish: Thank you, Madam President.

I briefly outlined the purpose of the Post Office (Amendment) Bill 2013 at the First Reading.

775 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 us today.

780 The Post Office Act 1993 constitutes a statutory body called the Isle of Man Post Office and makes provision for the operation by it of the postal system in the Island. The object of the Bill is to update the 1993 Act in order to bring the powers of the Post Office into line with developments in communications in the last 20 years, and to enable advantage to be taken for future developments.

785 Under the 1993 Act, the Post Office has a general duty to convey letters in the Island with a corresponding exclusive privilege in that field, but has the power to carry on certain other activities mainly relating to postal and banking services. The general duty is not affected by this Bill. However, with technological advances – particularly the growth of electronic mail and electronic messaging services in the past 20 years – many postal services around the world have largely ceased to be profitable.

790 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. Previous legal opinion raised some concerns over whether the Post Office *can* undertake services that may not be linked to its general duty. The opportunity has been taken to address this issue.

795 Madam President, it is important that Members are clear over the need for and the intended purposes of the Bill: the fact that the Post Office has been successful in the past does not indicate it can stand still.

This is an enabling Act, providing clarity to the Post Office on what activities it can undertake, similar to the Act which it updates, and which has stood the test of time.

800 The diversification that was pursued by the Post Office in recent years is vital to protect the future of the Post Office, the services it provides and provide opportunities to generate economic benefits for the Island.

The introduction of this Bill is brought forward now to allow revenues to be sought whilst leaving open future potential options for the review and operating model of the Post Office, such as corporatisation. Consideration of future operating models of the Post Office will be a matter for the Council of Ministers to consider, and ultimately Tynwald Court. It is not therefore a matter for this Bill.

805 It is essential that wider issues on the future of the Post Office do not delay opportunities to increase revenues and that the universal service obligation – the duty to provide services for the conveyance of letters – continues to be viable.

810 Madam President, I beg to move that the Post Office (Amendment) Bill be read a second time.

The President: The Hon. Member, Mr Crowe.

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

815

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

820 I think the Post Office is – not just here but also across the water – one of the country's best-loved institutions. I think it is important they are able to adapt: it is a balance of having organisations which are... although the Post Office is one of the few profitable areas of Government, it is important that we do still have a body that is under, effectively, the public ownership.

825 Although I am an advocate of privatisation, I am keen in the small community that key services – such as electricity, water and indeed in this case, the Post Office – should very much remain within the ownership and control of the public, in terms of under a governmental level.

As I said, it is important that they have the powers to be able to adapt and offer new services – I think suggestions of possibly going into banking may be something they would consider. I think the public would have confidence in that sort of structure.

830 The one thing I do think they should look at is the piles of junk that they put through the letterbox every week which feeds my wheelie bin. Maybe there should be a system of being able to opt out of some of that. But that is just a comment.

I fully support the Post Office in their endeavours here to modernise their legislation to give them scope for further services, especially in this fast-changing environment.

835 **The President:** The Hon. Member, Mr Coleman.

Mr Coleman: Thank you, Madam President.

I, too, fully support this and I just have a couple of comments, really.

840 One was that I was at a meeting – as I think other people were last night, Hon. Members – to do with a credit union. It was suggested at the meeting I was at that possibly one of the places that a credit union could operate from was a post office – all of the post offices, all the sub-post offices, essentially. That is my first point, and that was not necessarily a question but I think this Bill would facilitate that sort of transaction.

845 The second thing is: is this a prerequisite for you to be able to handle the benefits, using the card system that has been put forward by DSC, or could you have done that without this going through?

Mr Downie: Madam President.

The President: The Hon. Member, Mr Downie.

850

Mr Downie: Thank you, Madam President.

It is interesting we are having this debate regarding this Bill today, after last week in another place the Post Office receiving a huge vote of confidence and an opportunity now to look at the future options available for the Post Office, including the importance of distributing social and welfare benefits in a much more up-to-date and a technological way.

855

I would sincerely hope that in supporting the Bill that is before us today, it will give the Post Office, its administration, a much broader spectrum of avenues they want to go down to generate new business. And I think that this Bill is really at the nub of the matter.

I would also like to support the comments that have been made by my hon. colleague, Mr Coleman. A lot of people in the Isle of Man just will not be able to have bank accounts, for whatever reason banks will not find some of the very small savers and borrowers attractive to them in their present model. If credit unions are introduced into the Isle of Man I think the Post Office could be well placed to offer a facility like that, and link it with the benefit system and Social Security, and so on.

860

So as far as I am concerned, I am fully supportive of the Bill and I can see a whole range of benefits and bringing the whole system up to date.

865

The President: The Hon. Member, Mr Wild.

Mr Wild: Thank you, Madam President.

Just to give the Bill my full support as a practical piece of legislation, in my view, will allow the Post Office to exploit and develop viable commercial opportunities going forward.

870

The President: The mover to reply.

Mr Corkish: Thank you, Madam President.

I firstly thank Mr Turner for his support of the Bill. Yes, increasingly across the water certainly, the Post Offices are being used now by many of the major banks as outlets – in fact the Post Office, as you probably know, does act as front of house for some banks here on the Isle of Man.

875

He also mentioned junk mail, which is not unusual to be directed to the Post Office. We have an obligation to deliver what we have to deliver and junk mail comes under that – we have to deliver, the mail must get through.

880

Mr Turner: Keeps the incinerator going.

Mr Corkish: Mr Coleman, yes, there was a meeting last night – which I could not get to – regarding a Credit Union.

885

The Bill before us today, yes, it is an enabling Bill, and it does not prevent the Post Office from offering banking services. We actually say ‘money services, including banking services...’ that includes a people’s bank and credit unions. And the Post Office *is* a cash business so we would welcome any proposal that allowed it to generate increased revenue through its network of Post Offices.

890

Regarding the credit card – and in another place last week we discussed this. The card system is usable for many areas of Government... and, I forget the actual question part that you did say. Was it ‘Is this Bill requisite?’

895

The President: Required.

Mr Coleman: Would this be a prerequisite to enable you to do that? In other words, do you need to get this through before you can offer those sorts of card services?

900

Mr Corkish: Yes, would be the answer, although we are in protracted talks now with the Department of Social Care, that this introduction would be useful both to them and for the future of the Post Office.

I thank Mr Downie for his support, too, underlining the value of the Post Office network to the Isle of Man, and that was again highlighted by the unanimity of vote in Tynwald Court last week and yes, the Post Office is very much attuned to diversification of business.

Again, I thank my colleague Mr Wild for his support of this Bill.

Thank you, Madam President.

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

Post Office (Amendment) Bill – Clauses considered

The President: Clauses. Clause 1.

Mr Corkish: Thank you, Madam President.

Specific clauses of the Bill: clause 1 gives the Bill its short title. No express provision is made for the commencement of the Bill as it will come into force on the day when Royal Assent is announced to Tynwald, in accordance with the Interpretation Act 1976, section 10.

Madam President, I beg to move clause 1 of the Post Office (Amendment) Bill.

Mr Crowe: 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 deals with the substance of the Bill.

925

Mr Corkish: Thank you, Madam President.

Yes, indeed, clause 2 makes the principal amendments of the 1993 Act, in order to update the powers of the Isle of Man Post Office. Its purpose is to take account of changes over the last 20 years in the commercial environment in which the Post Office operates – particularly in the way information is conveyed – and also potential changes in the future.

930

Clause 2(1) is introductory.

Clause 2(2) amends section 2 of the 1993 Act to clarify the relationship between the Post Office's main duty under section 2(1) and its powers under section 4. The amendment inserts a new section 2(3A) and, as I have already commented, this is in order to explicitly set out that the Post Office's powers are not linked to its duty to provide a universal service.

935

Continuing with the clauses: clause 2(3) replaces section 4(1) of the 1993 Act, which lists powers of the Post Office – in other words, things which it *may* do but is not required to do.

The new list is deliberately wide compared with the present list and it is worth mentioning that several of the following items overlap.

940

Section (a) covers the conveyance, transmission, storage, custody, handling, delivery or management, by physical or electronic means, of a variety of items which I will briefly run through: part (i) is for postal packets; part (ii), any kind of goods which can be anything from packets and parcels to shipping containers; part (iii) is money, which includes money electronically transferred as

well as cash; part (iv) covers intangible property, including electronic documents; and part (v)
945 information, which covers electronic data

Moving on to parts (b) to (j): these cover a range of powers of postal services; money services
which includes banking services; wholesale and retail sales of stamps, which are provided by the
existing philatelic service; document and data handling, including storage; mail preparation, such as
950 packing and addressing of mail in bulk; electronic communication of information, such as sounds and
images, which is a new and deliberately wide class of services; identity verification; commercial
transactions; business support and transaction processing, with or for other enterprises, which
introduces a new and wide class of activities; and, finally in this section, services of any kind for
Government entities within or outside the Island.

Having dealt with clause 2(3), we move on to clause 2(4) which inserts a new section 4A in the
955 1993 Act, enabling the Post Office's legal duties or powers to be updated in the future, if required,
without the need for further primary legislation.

As part of this section, section 4A(1) enables the Department of Economic Development to make
an order amending section 4(1), so as to reduce or increase the Post Office's powers. The ability,
Madam President, for the Department to change powers is limited by section 4A(2) which requires
960 the Department to consult the Post Office before making such an order.

Further limitations apply in section 4A(3)(a), which enables the order to include consequential
and other provisions and to amend legislation if needed, but is controlled by part (b), that requires
Tynwald approval for such an order. Final approval by Tynwald was included following the
conclusion and consideration of the consultation process.

965 Clause 2(5) makes a minor amendment to section 13, which provides that any scheme of charges
and other terms relating to any of its services must not limit any legal liability of the Post Office, or
amend the law of evidence, for example, by raising a conclusive presumption that it has acted
properly. It is made that this does not apply to 'registered post' or any similar service provided under
section 19, which enables a scheme providing for such a service to limit the Post Office's liability for
970 compensation for the loss of a packet.

Madam President, I beg to move clause 2 of the Post Office (Amendment) Bill.

Mr Crowe: I beg to second, Madam President.

975 I would just support this Bill and this clause in particular which is the nub of the whole Bill, and
say I am very pleased to see this brought forward. In a former life, and working with Mr Corkish, we
went through the early stages of this Bill and it is very nice to see it in its form now, which gives the
Post Office the power and brings it up to date.

Twenty years ago I do not think we had any e-mail system working, and with the digital
revolution taking over and this will enable the Post Office to move with the times.

980 So it is very good from an expansion point of view and widening the parameters of the Post
Office, not only to the Isle of Man but elsewhere as well to take on work from other places, other
countries. And whilst at the top level is the importance of new business for the Post Office, there is
also the community level which nobody will ever lose sight of because it is... we always like to think
the Post Office is the heart of the communities in the Island and support the local communities to a
985 great extent.

So, I think, long live the Post Office and may these powers help in its business formulation.

A Member: Hear, hear.

990 **The President:** The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

As the Hon. Member Mr Crowe said, this is the detail of this particular Bill and I think it gives the
Post Office the ability to continue evolving its services.

995 I know I was up at the Sorting Office last night, having had a bit of an eBay clear out, so a few pounds had gone into the Post Office coffers. The investment in the centre up there has been superb, it is a far more easy-to-use service now with the new counter and the post office boxes up there.

1000 I would ask the Hon. Member, that whilst we all accept the services the Post Office now provides, some are in competition with the private sector, you have got currency exchange... and these are all services that the Post Office should be providing. But I would just hope that in any new venture they look at, they do see where there will be a crossover in the private sector and see what impact that is going to have. Whilst I, in supporting this, agree that they have to adapt and provide more services that people want, because they are at convenient locations across the Island, they should also be mindful that if there are services being provided out there in the community, that may well be affected detrimentally – they should have a proper assessment as to whether that is an area that they do want to venture into at that particular time. So I would like that assurance but again, fully supportive of this Bill going forward and wish the Post Office every success for the future.

1010 **The President:** The mover to reply.

Mr Corkish: Thank you, Madam President.

1015 Firstly, I thank my hon. friend, Mr Crowe, for his support and his understanding of the work of the Post Office. He is a former chairman of the Post Office and understands and acknowledges the strengths and challenges that the Post Office has.

I thank Mr Turner, too, for his support. The Post Office has been in competition with the private sector for the vast majority of its products and services for a long time. There is nothing new there.

The focus for diversification is off-Island to generate investment – the Island is relatively small, of course, for what we need to do.

1020 The Department of Economic Development works closely with the Post Office and is mindful of the impacts upon local business, the Board are very aware and sensitive to that. So no change is proposed to the powers available to the Minister of the DED to direct the Board. The Board are always mindful of the current level of Island competition when considering new products – and from a commercial point of view, better to introduce new products and services rather than try to enter an established market, unless that market acts as inefficient.

1025 I think that addresses the questions raised, Madam President. I beg to move clause 2 of the Post Office (Amendment) Bill.

1030 **The President:** 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.

Clause 3.

Mr Corkish: Thank you, Madam President.

1035 The last clause of the Bill, clause 3, provides for the automatic repeal of the Bill the day following the day when it comes into force. This is simply to keep the statute book tidy, by clearing off legislation which is spent. The amended Post Office Act 1993 will remain in force.

So, Madam President, I beg to move clause 3 of the Post Office (Amendment) Bill.

Mr Crowe: I beg to second, Madam President.

1040 **The President:** The motion is that clause 3 do stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

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

The Council will now sit in private.

1045

The Council sat in private at 11.53 a.m.