



LEGISLATIVE COUNCIL OFFICIAL REPORT

RECORTYS OIKOIL
Y CHOONCEIL SLATTYSSAGH

PROCEEDINGS

DAALTYN

HANSARD

Douglas, Tuesday, 4th March 2014

*All published Official Reports can be found on the Tynwald website
[www.tynwald.org.im/Official Papers/Hansards/](http://www.tynwald.org.im/Official%20Papers/Hansards/)Please select a year:*

Reports, maps and other documents referred to in the course of debates may be consulted on application to the Tynwald Library or the Clerk of Tynwald's Office. Supplementary material subsequently made available following Questions for Oral Answer is published separately on the Tynwald website, [www.tynwald.org.im/Official Papers/Hansards/Hansard Appendix](http://www.tynwald.org.im/Official%20Papers/Hansards/Hansard%20Appendix)

Volume 131, No. 11

ISSN 1742-2272

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 J R Turner and Mr T P Wild
with Mr J D C King, Clerk of the Council.

Business transacted

Leave of absence granted	173
Order of the Day	173
1. Copyright etc (Amendment) Bill 2013 – Third Reading approved.....	173
2. Limited Liability Companies (Amendment) Bill 2013 – Third Reading approved	176
3. Post Office (Amendment) Bill 2013 – Third Reading approved.....	178
<i>The Council adjourned at 10.57 a.m.</i>	<i>180</i>

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

Leave of absence granted

The President: Leave of absence has been given to the Hon. Member, Mr Downie.

Order of the Day

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

Mr Crowe to move:

That the Copyright etc (Amendment) Bill 2013 be read a third time and do pass.

The President: We proceed with our business at the Third Reading of the Copyright etc (Amendment) Bill. I call on Mr Crowe.

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

The Copyright etc (Amendment) Bill 2013 seeks to amend the Copyright Act 1991, the Design Right Act 1991 and the Performers' Protection Act 1996 with the goal of ensuring that the Isle of Man's laws on unregistered intellectual property rights are modern and up to date.

15 Changes made by the Bill, such as the increase in maximum penalties for copyright infringement, will demonstrate to business operations that the Isle of Man is a place where intellectual property rights are taken very seriously, and that the levels of protection offered are similar to those in the UK and the European Union.

I thank Members for their comments during the Second Reading and clauses stages and would respond as follows.

20 Firstly, Mr Turner raised the issue of the Isle of Man Copyright Tribunal. On the subject of the rules I can confirm the rules that the Department intends to bring forward, though based on UK rules, will be modified to suit the Isle of Man's needs, and fully consolidated so that applicants to the tribunal will simply need to refer to the one version of the rules. The rules will of course be laid before Tynwald for approval in due course.

25 Mr Turner also raised the issue of the behaviour of collecting societies and whether this should be regulated in some way. The clause on extended collective licensing, which was discussed during clauses stages, does not make any provision for the regulation of collecting societies. However, the Department intends to research the operation of collecting societies on the Island, in order to gain further information about any problems that may be faced by businesses on the Island. The
30 Department also notes that measures which seek to raise standards for collecting societies across Europe are being considered by the European Union. The Department will keep this under review.

Madam President, Mr Butt raised two issues: firstly, in relation to the reduction in the term of copyright for unpublished works, he asked how it would be determined which works would be covered. The change will be made by regulations very likely based on UK regulations for the same
35 purpose.

Secondly, regarding orphan works, Mr Butt asked whether any provision would be made for a situation where an orphan work is licensed for use but the creator subsequently comes forward. It is presently envisaged that when an orphan work is used, the licensee will have to pay a fee to an authorising body. This fee would be held in the case that the creator of the work comes forward and
40 can be paid to that person, and that person will be able to gain control of their work. The appropriate body to which the fee will be paid has not yet been determined.

Mr Coleman raised the issue of the transfer of original ownership of design right from the commission to the designer. Mr Coleman used the example of software created for a company and stated that businesses will need to be aware of the change. I can confirm that, prior to the change
45 coming into effect, the Department will communicate the change to businesses.

Madam President, the Bill is an important part of the Department of Economic Development's wider moves to update the intellectual property legislation for the Isle of Man as set out in the consultation document, Intellectual Property in the Isle of Man, published in 2011. The changes will undoubtedly assist in driving further growth and the further development of the Isle of Man's
50 economy.

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

The President: The Hon. Member, Mr Wild.

55 **Mr Wild:** Thank you, Madam President. I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

60 I would just like to take the opportunity to thank the Member and his officers in the Department for looking at some of the issues that I raised. As I said at a previous Reading I have had experience of using the system, which was very cumbersome, and I think this does give the Department the opportunity now to look at the whole process, particularly as this review is going on, as the Member said, in the EU and other jurisdictions. So I genuinely thank him for doing that.

65 It is good news to hear that the regulations that will be brought forward in governing the operation of the tribunal will be consolidated, and that is something we have spoken about many times in this place – about having legislation that members of the public and businesses can pick up from the Tynwald Library, or via our Internet portal, and actually understand without having to hunt around all over the place to get the information. So that is very welcome news.

70 I think this has been an interesting Bill, because the whole area of copyright is a global issue – the electronic world we live in. So what was probably many years ago, *relatively* straightforward – I will

not say it always was – but certainly with electronic form now, with things being whizzed around the world in seconds electronically, then copyright obviously can happen in so many different places. So it is important we have the right framework in place.

75 I imagine that the moment this Bill is enacted there will be new provisions that the Department will have to keep looking at, because it will be changing that fast. So I imagine this is going to go on the statute books but will continue to be work in progress as things evolve. But I will support the Third Reading and, again, extend my thanks to the Hon. Member.

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

Mr Butt: Thank you, Madam President.

85 Just briefly to repeat what Mr Turner has said. To thank the mover, Mr Crowe, for the time and research he has put into dealing with the queries that have been raised and to give my support to the Bill.

Thank you.

The President: The Hon. Member, Mr Corkish.

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

I, too, add my support to this Bill. As a former member of DED, I know how important this Bill is to the Department. It adds value to Isle of Man plc and brings the Island into line with other jurisdictions and also, importantly, ‘Manxifies’ the rules, in particular in respect of the amendments brought by Mr Wild.

95 I am a little bit concerned at clause 18: I notice that the right to object to derogatory treatment, a doctored recording wrongly implying that a singer was out of tune... (*Laughter*) I could hardly vote for that...

The President: The mover to reply.

100

Mr Crowe: Thank you, Madam President.

105 Can I thank Mr Turner first of all for supporting the Bill, and I thank him for his comments. As he says we need to have legislation which is relevant to this digital age, and it will be constantly being reviewed and updated as circumstances change and as other countries improve their intellectual property legislation.

I also thank Mr Butt for his comments and his support for the Bill. And thank Mr Corkish too – I do not know if he does sing out of tune but – (*Laughter*)

110 **Mr Corkish:** Never admit to it!

Mr Turner: Occasionally.

Mr Crowe: But I thank the three Members who have spoken. I therefore move the Bill be read a third time and be passed, Madam President.

115

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

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

Mr Braidwood to move:

That the Limited Liability Companies (Amendment) Bill 2013 be read a third time and do pass.

The President: Item 2, Limited Liability Companies (Amendment) Bill 2013: Mr Braidwood.

120

Mr Braidwood: Thank you, Madam President.

Madam President, during the last Reading of this Bill the Hon. Member of Council, Mr Coleman, raised the question of whether a single member Limited Liability Company could be used to allow the member to hide from his responsibilities. The example that he cited was a USA doctor seeking to evade lawsuits by hiding behind a corporate vehicle.

125

I will now try to explain the rationale, Madam President, to Hon. Members, why an individual cannot hide from his responsibilities behind an LLC.

130

Mr Coleman is correct that the LLC will not afford protection to the member in certain circumstances. The principle of not permitting the member of a company to hide behind that company to escape some sort of obligation, is one that is well established. This is what is known as 'piercing the corporate veil'. The corporate veil exists to distinguish a company as a legal person separate from its shareholders. However, where the relevant test has been satisfied, the courts have shown a willingness to pierce the veil.

135

The recent decision in the English case, *Caterpillar Financial Services UK Ltd v Saenz Corporation Limited 2012*, describes a relevant test that must be met before the courts will consider piercing the corporate veil. These include: that ownership and control of a company are not sufficient in themselves to allow the veil to be pierced; nor can the veil be pierced where there is no unconnected third party, purely on the basis that to do so would be in the interests of justice.

140

There must be evidence of impropriety; however, impropriety alone is insufficient to pierce the veil. It must be further evidenced that the impropriety is linked to avoidance or concealment of a liability through the use of the company structure. For the court to pierce the veil the wrongdoer's intentions may be considered, but in any case, it must be shown that they controlled the company and used it as a facade to conceal their wrongdoing. Whether or not the company was incorporated with deceptive intent, the courts will want to see that it was being used as a facade at the time of the relevant transaction. A remedy will only be provided in respect of the particular wrong that has been committed.

145

Hon. Members will be aware that English case law is highly persuasive in the Isle of Man, so this case is likely to influence the thinking of the Manx courts.

150

This Bill, Madam President, is being progressed with the intention of making the member and owner of the LLC clearly identifiable. You will recall that the Bill seeks to ensure that the tax treatment is that of a disregarded entity: in other words, that the *member* is taxed and *not* the LLC itself.

155

Madam President, I acknowledge that it is possible that some may seek to try to abuse a single member LLC; however, I think that it would be unlikely that this would be, such as, an American doctor seeking to evade negligence claims. It seems likely that other legislation would prevent this in any event. For example, it may be that organisations, such as the American Medical Association, may require doctors to register personally and to carry medical insurance personally. This would then rule off this type of risk. For other risks, as before, it is possible to pierce the corporate veil where the courts deem this to be required.

160

Madam President, I hope that is sufficient explanation for the Hon. Member.

If I may, Madam President, I will now go on with the Third Reading.

I will now provide a brief recap of the Limited Liability Companies (Amendment) Bill 2013. The concept of the limited liability company, the LLC, was introduced into the legislation of the Isle of

165 Man with the Limited Liability Companies Act 1996. 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 tax treatment of LLCs in the Isle of Man is consistent with their close resemblance to partnerships. It is the members themselves who are taxed and *not* the LLC.

170 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.

At the time that the Isle of Man's Act was brought into operation USA LLCs were required to have two or more members. Over time, all of the states have amended their legislation to allow for the creation of single member limited liability companies.

175 The Bill proposes to amend the Limited Liability Companies Act 1996 to permit LLCs to be formed with either a single member or with two or more members. An addition to the Income Tax Act 1970 makes the tax treatment of single member LLCs clear.

180 Some classes of assets that are either located in the United States of America, or are registered in the United States of America, 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. A single member LLC that is a disregarded entity for tax purposes meets the test of being a US citizen.

185 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. This might be desirable where goods are to be imported into the European Union, where the use of a Manx LLC is likely to go some way to meeting the EU requirement that a company must be established in the EU in order to qualify for any reliefs available.

190 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. This Bill does not seek to circumvent the existing requirements and conditions for qualification for special reliefs.

Madam President, this Bill, if enacted, will provide an additional alternative to achieving an outcome that is currently available.

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

195

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

The President: The Hon. Member, Mr Coleman.

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

I am grateful for the Hon. Member of Council for his reassuring comments about the efficacy of limited liability companies with single members. I am happy to be wrong in my previous comments, although I think I am only partially wrong from what the Member has said.

205 I think one of the things we have to be careful of is that some of the states in America actually treat creditors as silent partners within single member limited liability companies, and I think that time will tell as to the long-term use of this vehicle.

Thank you, Madam President.

The President: The mover to reply.

210

Mr Braidwood: Thank you, Madam President.

I just thank the Hon. Member of Council, Mr Coleman, for his comments – and we will wait and see. All we are really doing, Madam President, is changing from having to have two members, just to one member of the LLC which, as I said, has been incorporated into all the states in America.

215

I beg to move.

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

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

Mr Corkish to move:

That the Post Office (Amendment) Bill 2013 be read a third time and do pass.

The President: We turn to Item 3, the Post Office Amendment Bill 2013 for Third Reading.
The Hon. Member, Mr Corkish.

220

Mr Corkish: Thank you, Madam President.

I do not intend to go through this at any length, and will briefly outline its purpose and some of the issues raised. It is important that we are all aware of the need for this Bill which amends the 1993 Post Office Act.

225 This 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 has stood the test of time.

230 Diversification will continue to be important for the Post Office 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 the providing of opportunities to generate wider economic benefits for the Island.

235 Madam President, Hon. Members have acknowledged the need to support the Post Office and this Bill, which I very much appreciate. At the Second Reading stage, the future role of the Post Office or other money services, such as the credit union, was raised. Some front of house services for a number of high street banks are provided already, and initiatives to introduce a credit union would be the *type* of diversification which the Post Office would consider and would be happy to discuss at an appropriate time.

240 The Post Office is a cash business and would welcome any proposal which allowed it to generate increased revenue through its network of Post Offices, whilst utilising core strengths. Competition with the private sector was also raised and the Post Office Board remains very mindful of the current level of Island competition when considering new products.

245 From a commercial point of view it is considered better to introduce new products and services rather than try to enter an established market. The focus for future diversification is also off Island. In addition the Department of Economic Development is mindful of potential impacts on local businesses, and there is no change proposed to powers available to the Minister to direct the Post Office Board.

250 Madam President, Hon. Members, the Post Office has successfully diversified into new markets in recent years – but we cannot be complacent and assume that this will continue. The Post Office Amendment Bill provides clarity over the powers of the Post Office, which will allow it to seek new opportunities, whilst protecting existing services and the valuable contribution that it makes to Treasury.

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

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

Mr Crowe: Thank you, Madam President.

I am pleased to second the Third Reading of the Bill, and fully support the motives behind the Bill. I wish the Isle of Man Post Office every success in this rapidly changing digital age. As we all know
260 the Isle of Man Post Office is highly regarded throughout the Island and is at the heart of the local community. This legislation, as the hon. mover says, will enable the Post Office to go forward with clear clarity and authority to further diversify the operations of the Isle of Man Post Office.

Thank you.

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

Mr Coleman: Thank you, Madam President.

I, too, fully support this Bill.

I think that with Vickers going on at the present time – the study into banking and the movement
270 to split retail banking away from investment banking – there is an immense opportunity for the Post Office to take advantage of the fact that retail banking institutions seem, at the moment, to be trying to move away from the small value personal accounts, and people are having problems maintaining their accounts in some of these institutions. I think there is a gap that the Post Office could move in and satisfy. It would probably be accounts similar to a credit union, but I would
275 encourage the Post Office to go and get a Class 1 Banking Licence.

Thank you, Madam President.

The President: The Hon. Member, Mr Turner.

280 **Mr Turner:** Thank you Madam President,

Again, it was the point that Mr Coleman has just made: I think the difference is the Post Office is
a trusted entity by the public – I would imagine more so in the Isle of Man. I think it is important that
it remains in public ownership, whether that is in its current form or at some stage it moves to a
corporatised model. But again, the Manx public have confidence in this organisation, and I think that
285 is where that point Mr Coleman makes is that there is a lot of... the trust in the banks has been lost
somewhat and I think that if this was an area the Post Office deemed to move into, I think it would
be quite a success for them.

So again, I support the Third Reading and think the provisions in this will enable the Post Office to
develop and adapt to new opportunities.

290

The President: The Hon. Member, Mr Wild.

Mr Wild: Thank you, Madam President.

Just to say that the Third Reading has my support on the basis that I think it helps modernise and
295 evolve the Post Office to compete in the modern financial economic climate.

Thank you.

The President: The mover to reply.

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

I am grateful to my seconder, Mr Crowe, and to the Members of Council for the support given to
this enabling Bill. In particular, I thank the comments and considerations with regard to the future of
the Post Office in respect to banking, to Mr Coleman and indeed to Mr Turner.

The Post Office is indeed trusted and worked hard to build up its trust within the community. The
305 Post Office is a cash business but will always look to new endeavours to support its work and, as I
mentioned in the reading of the third, to *enhance* the contribution made by the Post Office to the
Treasury.

Thanks to Mr Wild for his support too.

310 With that, Madam President, I beg to move the Third Reading of the Post Office (Amendment) Bill 2013.

The President: The motion is that the Bill be read a third time and do pass. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. *(Laughter)*

315 **Mr Corkish:** Just!

The President: Just!
Hon. Members, that concludes our business for this morning. Council will now adjourn until Tuesday next.

The Council adjourned at 10.57 a.m.