

ST. HELENA
LEGISLATIVE COUNCIL

THE SPEAKER

The Honourable Eric William Benjamin

EX-OFFICIO MEMBERS

The Honourable Chief Secretary	-	Mr Roy Burke
The Honourable Financial Secretary	-	Mr Dax Richards
The Honourable Attorney General	-	Mr Angelo Berbotto

ELECTED MEMBERS

The Honourable Wilson Charles Duncan
The Honourable Gavin George Ellick
The Honourable Cyril Robert George
The Honourable Lawson Arthur Henry
The Honourable Brian William Isaac
The Honourable Bernice Alicia Olsson
The Honourable Mike Olsson
The Honourable Dr Corinda Sebastiana Stuart Essex
The Honourable Derek Franklin Thomas
The Honourable Pamela Ward Pearce

The Honourable Christine Scipio O'Dean (Overseas)
The Honourable Cruyff Gerard Buckley (Overseas)

CLERK OF COUNCILS

Mrs Carol George

PROCEEDINGS OF THE LEGISLATIVE COUNCIL

Friday, 9th December, 2016

The Council met at 10.00 am
in the Council Chamber, Jamestown

(The Speaker in the Chair)

ORDER OF THE DAY

1. FORMAL ENTRY OF THE PRESIDENT

2. PRAYERS
(The Right Reverend Bishop Fenwick)

3. ADDRESS BY THE PRESIDENT

Good morning, Honourable Members, ladies and gentlemen. Welcome to this first sitting of the seventeenth meeting of the Legislative Council. My thanks are extended to the Right Reverend the Lord Bishop of St Helena for opening this meeting in prayer and to all who have engaged in the preparation of these premises and its facilities and the business for this meeting today. I welcome, in particular, the presence of our newly elected Deputy Speaker to his first meeting following his recent election to this House. May I welcome back the Honourable Lawson Henry and Honourable Derek Thomas from what I understand has been a successful and enlightening meeting of the Joint Ministerial Council in London. We shall look forward to their reports shortly. I also welcome back the Honourable Pamela Ward Pearce who had attended the 65th Westminster Seminar in London. The Honourable Member will also report on her attendance at these meetings. Two Honourable Members, the Honourable Christine Scipio O'Dean and the Honourable Cruyff Buckley are currently absent from this forum today due to their attendance at the Commonwealth Parliamentary Conference in London which will take place from 11th to 17th of this month.

There's a reasonably large amount of business before this House today, Honourable Members, this comprises of twenty-one Sessional Papers, five Questions for oral answer, ten Bills for consideration, which includes the Marriage Bill, the Road Traffic Bill and the Food Safety Bill and there are eleven other Motions for debate. Additionally, two Questions for oral reply will be asked at Monday's sitting. So, Honourable Members, as we seem to be heading for a very busy session over the next few days, I wish to thank South Atlantic Media Services in advance for relaying this meeting via their radio broadcast facilities so that members of the public may

be informed of the decisions taken in this House and with such a full Order Paper it would seem right for me now to proceed on the business of this House without further delay. I wish Honourable Members well in their deliberations and will call on the Clerk of Councils, who I wish to thank Carol for standing in today, to call the next item of business. Clerk of Councils.

4. PAPERS

SP 43/2016 – The Honourable Cyril George

The Speaker –
Honourable Cyril George?

The Hon. Cyril George –
Mr Speaker, I beg to present Sessional Paper No. 43/2016 - St Helena Public Accounts Committee – Report to Legislative Council on the Formal Session of the Public Accounts Committee held on 3rd October 2016.

Ordered to lie on the table.

SP 44/2016 – The Honourable Cyril George

The Speaker –
Honourable Cyril George?

The Hon. Cyril George –
Mr Speaker, I beg to present Sessional Paper No. 44/2016 - Public Accounts Committee – Report to Legislative Council on the Formal Session of the Public Accounts Committee held on 3rd October 2016 with regards to Expenditure in Excess.

Ordered to lie on the table.

SP 45/2016 – The Honourable Financial Secretary

The Speaker –
Honourable Financial Secretary?

The Hon. Dax Richards –
Mr Speaker, I beg to present Sessional Paper No. 45/2016 entitled St Helena Government – Financial Statements for the year ended 2014/15.

Ordered to lie on the table.

SP 46/2016 – The Honourable Financial Secretary

The Speaker –
Honourable Financial Secretary?

The Hon. Dax Richards –
Mr Speaker, I beg to present Sessional Paper No 46/2016 – St Helena Audit Service Management Letter to the St Helena Legislative Council for the Financial Statements of 2014/15.

Ordered to lie on the table.

SP 47/2016 – The Honourable Derek Thomas

The Speaker –
The Honourable Derek Thomas?

The Hon. Derek Thomas –
Mr Speaker, I beg to present Sessional Paper No. 47/2016 – Government of St Helena – A Bill for an Ordinance – The Food Safety Ordinance, 2016.

Ordered to lie on the table.

SP 48/2016 – The Honourable Financial Secretary

The Speaker –
The Honourable Financial Secretary?

The Hon. Dax Richards –
Mr Speaker, I beg to present Sessional Paper 48/2016 entitled Government of St Helena – A Bill for an Ordinance, the Second Supplementary Appropriation Ordinance, 2016.

Ordered to lie on the table.

SP 49/2016 – The Honourable Financial Secretary

The Speaker –
Honourable Financial Secretary?

The Hon. Dax Richards –
Mr Speaker, I beg to present Sessional Paper 49/2016 entitled St Helena Government – Second Supplementary Appropriation, 2016/17 Estimates of Recurrent Revenue, Expenditure and Capital Expenditure, 2016/2017.

Ordered to lie on the table.

SP 50/2016 – The Honourable Lawson Henry

The Speaker –
Honourable Lawson Henry?

The Hon. Lawson Henry –
Mr Speaker, I beg to present Sessional Paper 50/2016 - Government of Saint Helena – A Bill for an Ordinance – The Motor Vehicle (Third Party) Insurance (Amendment) Ordinance, 2016.

Ordered to lie on the table.

SP 51/2016 – The Honourable Brian Isaac

The Speaker –
The Honourable Brian Isaac?

The Hon. Brian Isaac –

Mr Speaker, I beg to present Sessional Paper No. 51/2016 – Government of St Helena - A Bill for an Ordinance - The Public Dances (Repeal) Ordinance, 2016.

Ordered to lie on the table.

SP 52/2016 – The Honourable Derek Thomas

The Speaker –
The Honourable Derek Thomas?

The Hon. Derek Thomas –
Mr Speaker, I beg to present Sessional Paper No. 52/2016 – Government of St Helena – A Bill for an Ordinance – The Factories (Repeal) Ordinance, 2016.

Ordered to lie on the table.

SP 53/2016 – The Honourable Lawson Henry

The Speaker –
The Honourable Lawson Henry?

The Hon. Lawson Henry –
Mr Speaker, I beg to present Sessional Paper No. 53/2016 – Government of St Helena – A Bill for an Ordinance – The Bulk Fuel Agency (Repeal) Ordinance, 2016.

Ordered to lie on the table.

SP 54/2016 – The Honourable Wilson Duncan

The Speaker –
The Honourable Wilson Duncan?

The Hon. Wilson Duncan –
Mr Speaker, I beg to present Sessional Paper 54/2016 – Government of St Helena – A Bill for an Ordinance – The Marriage Ordinance, 2016.

Ordered to lie on the table.

SP 55/2016 – The Honourable Lawson Henry

The Speaker –
The Honourable Lawson Henry?

The Hon. Lawson Henry –
Mr Speaker, I beg to present Sessional Paper No. 55/2016 – Government of St Helena – A Bill for an Ordinance – The Financial Services (Amendment) Ordinance, 2016.

Ordered to lie on the table.

SP 56/2016 – The Honourable Pamela Ward Pearce

The Speaker –

Honourable Pamela Ward Pearce?

The Hon. Pamela Ward Pearce –

Mr Speaker, I beg to present Sessional Paper No. 56/2016 – Government of St Helena – a Bill for an Ordinance – The Road Traffic Ordinance, 2016.

Ordered to lie on the table.

SP 57/2016 – The Honourable Lawson Henry

The Speaker –

The Honourable Lawson Henry?

The Hon. Lawson Henry –

Mr Speaker, I beg to present Sessional Paper 57/2016 – Government of St Helena – a Bill for an Ordinance – The Customs and Excise (Amendment) Ordinance, 2016.

Ordered to lie on the table.

SP 58/2016 – The Honourable Chief Secretary

The Speaker –

Honourable Chief Secretary?

The Hon. Roy Burke –

Mr Speaker, I beg to present Sessional Paper 58/2016 – Government of St Helena – Proceedings of the Legislative Council - Wednesday, 18th May 2016 – First Sitting of the Fourteenth Meeting.

Ordered to lie on the table.

SP 59/2016 – The Honourable Chief Secretary

The Speaker –

Honourable Chief Secretary?

The Hon. Roy Burke –

Mr Speaker, I beg to present Sessional Paper 59/2016 – Government of St Helena – Proceedings of the Legislative Council – Monday, 18th July 2016 – First Sitting of the Fifteenth Meeting.

Ordered to lie on the table.

SP 60/2016 – The Honourable Chief Secretary

The Speaker –

Honourable Chief Secretary?

The Hon. Roy Burke –

Mr Speaker, I beg to present Sessional Paper 60/2016 – Government of St Helena – Proceedings of the Legislative Council – Monday, 18th September 2016 – First Sitting of the Sixteenth Meeting.

Ordered to lie on the table.

SP 61/2016 – The Honourable Lawson Henry

The Speaker –
The Honourable Lawson Henry?

The Hon. Lawson Henry –
Mr Speaker, I beg to present Sessional Paper 62/2016 – St Helena Fisheries Corporation – Report and Accounts for Financial Year ended 31st March 2016.

Ordered to lie on the table.

SP 62/2016 – The Honourable Brian Isaac

The Speaker –
Honourable Brian Isaac?

The Hon. Brian Isaac –
Mr Speaker, I beg to present Sessional Paper 62/2016 – Government of St Helena – Appendix 1, Procedure of the Investigative Commission Pursuant to the Code of Conduct for Members of Legislative Council.

Ordered to lie on the table.

SP 63/2016 – The Honourable Financial Secretary

The Speaker –
Honourable Financial Secretary?

The Hon. Dax Richards –
Mr Speaker, I beg to present Sessional Paper 63/2016 entitled Government of St Helena – Response to Recommendations following adoption of PAC Reports 9th December 2016.

Ordered to lie on the table.

The Speaker –
Thank you, Honourable Members, that means to say that those documents are now public documents and can be assessed by anyone.

The Hon. Angelo Berbotto (Attorney General)
Mr Speaker, on a point of clarification and to amend the record, I think the Honourable Lawson Henry referred to Sessional Paper 62 by mistake, he should have said 61. Just to amend the record.

The Speaker –
Right, thank you very much indeed. Clerk of Councils, call the next item, please?

Question No. 1 – The Honourable Dr Corinda Essex to ask the Honourable Chairman of the Economic Development Committee.

The Speaker –

The Honourable Dr Corinda Essex?

The Hon. Dr Corinda Essex –

Thank you, Mr Speaker. Will the Honourable Chairman of the Economic Development Committee tell this House what action has been taken by the St Helena Government to support farmers suffering losses as a result of the current water shortages?

The Speaker –

Thank you, Honourable Member. The Honourable Chairman of Economic and Development Committee?

The Hon. Lawson Henry (Chairman, Economic and Development Committee) –

Mr Speaker, I thank the Honourable Member for her question. SHG through ANRD has been working collaboratively with Connect St Helena Ltd for some time to support farmers during the current water shortage. ANRD has been undertaking assessments of arable crops across the island to help inform decisions regarding the continued provision of irrigation for crops that are still to be harvested. From this week, ANRD has started making available small supplies of water at the Scotland site from the Earth Dam in Harpers for small producers to collect for arable use where an exemption for irrigation has not been granted by Connect St Helena Ltd. Where losses are reported to SHG and are able to be verified as a direct consequence of the current water shortage SHG will consider options for a reduction in rent for Crown arable land for those producers suffering crop losses and for those who have been unable to continue planting. Any rent reductions will be awarded in the new financial year. Producers should contact the Agricultural Development Officer at Scotland on telephone 24724. Thank you.

The Speaker –

Thank you, Honourable Member. Honourable Dr Corinda Essex?

The Hon. Dr Corinda Essex –

At what point in the new financial year will such rebates be possible?

The Speaker –

The Honourable Chairman?

The Hon. Lawson Henry –

I thank the Honourable Member for her supplementary question. At the start of the new financial year. Thank you.

The Speaker –

Thank you, Honourable Member. Honourable Dr Corinda Essex?

The Hon. Dr Corinda Essex –

Have other efforts been made to support farmers, for example, through the importation of animal feed?

The Speaker –

The Honourable Chairman?

The Hon. Lawson Henry –

Mr Speaker, I thank the Honourable Member for her supplementary question. In terms of livestock production, ANRD has supported producers grazing livestock on the drying pastures on the eastern side of the island to ensure those livestock at the highest risk of loss of grass for grazing were being supported. This support has been made to cattle graziers in the form of free veterinary treatments and making available free supplementary feeds in the form of chaffed flax and imported herbivore cubes. Further consignments of imported herbivore cubes will arrive through SHG support for the next two months and in the first instance be disseminated to livestock producers from next week based on a system of risk assessment against pasture quality and risk to livestock. Thank you.

The Speaker –

Thank you, Honourable Chairman. Honourable Dr Corinda Essex?

The Hon. Dr Corinda Essex –

Are there contingency plans in place should the drought continue for more than the next two months?

The Speaker –

Honourable Chairman?

The Hon. Lawson Henry –

I again thank the Honourable Member for her supplementary question. Yes, Mr Speaker, we are continuing to import supplement food and it will be issued based on continued assessment. Thank you.

The Speaker –

Thank you, Honourable Member.

The Hon. Dr Corinda Essex –

Thank you.

The Speaker –

Are there any other supplementaries from anyone? Next question, please.

Question No. 2 – The Honourable Gavin Ellick to ask the Honourable Chairman, Public Health Committee

The Speaker –

The Honourable Gavin Ellick?

The Hon. Gavin Ellick –

Thank you, Sir. Will the Honourable Chairman of the Public Health Committee tell this Council precisely what progress has been made to improve the processes and procedures in relation to the medical patients that are in Cape Town?

The Speaker –

Thank you. The Honourable Chairman of the Public Health Committee?

The Hon. Derek Thomas (Chairman, Public Health Committee) –

Mr Speaker, I thank the Honourable Member for his question. Mr Speaker, through a procurement exercise St Helena Government has engaged the services of Medical Services Organisation, MSO

International, who now co-ordinates the provision of hospital and clinical services. MSO are clinical case managers and are well-trained health professionals which will add value to patient health care. Panorama Mediclinic was identified as the preferred site for clinical services. This facility provides a wide range of clinical health care services, however, depending on patients' medical requirements if Panorama is not able to provide the specialist type of medical services required then the services are extended to other medical providers. With these new arrangements, the Health Directorate is now achieving value for money. All medical procedures which are undertaken are approved by the Senior Medical Officer. In the past there wasn't any ability to control the services, medical specialists used their own discretion. Since these arrangements are relatively new, the Directorate is continuously looking at ways on how the service can be improved. All patients travelling to Cape Town are now provided with questionnaires and are encouraged to complete the questionnaires and return them to the Directorate in order to see how the service can be improved. I am pleased to say that some patients have completed the questionnaires and have provided decent and good feedback which has led to further actions being taken, although not in all cases patients are returning their questionnaires and the Directorate emphasised the importance of the questionnaires before they leave St Helena.

Mr Speaker, recently on my return to Cape Town I was able to have a series of meetings with MSO senior management and some of the specialist doctors at Panorama Mediclinic. The meetings proved to be extremely useful. A greater level of communication links are now established with specialist doctors at Panorama and our Senior Medical Officer here. I was given a tour of the Panorama Health Facility and I was very impressed with the high standards and the range of medical services they are able to provide. I also visited the accommodation facilities, Panorama Lodge, which is right alongside of the Hospital, to look at accommodation and recently some of our medical patients has been occupying that Lodge. The Honourable Member himself had the experience on his recent visit in staying at the Lodge and from the feedback he has provided he was pleased with the standards. However, Mr Speaker, the Director are looking at accommodation facilities and how they can best be improved and also looking at the daily rates patients receive on their medical treatment when referred to Cape Town. Thank you, Mr Speaker.

The Speaker –

Thank you, Honourable Member. The Honourable Gavin Ellick?

The Hon. Gavin Ellick –

Does the Honourable Chairman know that MSO owns part of the, is part of the quarters in, what owns Panorama Lodge and hospital and is it beneficial to the St Helena, good or bad?

The Speaker –

The Honourable Derek Thomas?

The Hon. Derek Thomas –

Thank you, Mr Speaker. The Health Directorate has not been advised that MSO owns part of Panorama Lodge or, indeed, the Hospital. However, what I can say is that the Health Directorate is satisfied that the services they are providing now is value for money and accountable.

The Speaker –

Thank you, Honourable Member. Honourable Gavin Ellick?

The Hon. Gavin Ellick –

Mr Chairman, I did have that idea of being at Panorama Hospital, but it was me, but I believe that the care for the patients at the Panorama Hospital at this moment, and the Lodge, is not up to satisfactory standard.

The Speaker –

Alright, Councillor, you shouldn't be making statements at this stage, you should be asking questions, is the care at Panorama up to a satisfactory stage, Councillor. The Honourable Derek Thomas?

The Hon. Derek Thomas –

Mr Speaker, that is the whole idea of the questionnaire. If medical patients experience difficulty with their hospital or any of the care then they are fully aware that they must complete the questionnaire, feed that back to the Directorate so that the Directorate can act upon it and that work is ongoing.

The Speaker –

Thank you, Honourable Member. Honourable Gavin Ellick, a question, please?

The Hon. Gavin Ellick –

Thank you, Sir. I, too, filled out the questionnaire, but when....

The Speaker –

Honourable Member, you have to ask questions at this stage, not make statements.

The Hon. Gavin Ellick –

Sorry, Sir. When filling out the questionnaire, does the Public Health take onboard all the criticisms or are they feeling that they haven't made a mistake in moving to Panorama Hospital?

The Speaker –

Thank you, Honourable Member. Honourable Chairman?

The Hon. Derek Thomas –

Mr Speaker, if the Honourable Member completed the questionnaire then he's quite entitled to ask the Directorate for feedback, that will be readily provided to him or any other patient.

The Speaker –

Thank you, Honourable Member. Honourable Gavin Ellick, you have your button on, are you wanting....? No? Thank you. Any other supplementaries from any Member? No other supplementaries. Clerk of Council?

Question No. 3 – The Honourable Dr Corinda Essex to ask the Honourable Financial Secretary.

The Speaker –

The Honourable Dr Corinda Essex?

The Hon. Dr Corinda Essex –

Will the Honourable Financial Secretary tell this House what is the current situation, including expenditure to date, projected budget and timeline regarding construction of the new Fire Station?

The Speaker –

Thank you, Honourable Member. The Honourable Financial Secretary?

The Hon. Dax Richards (Financial Secretary) –

Mr Speaker, I would like to thank the Honourable Member for her question. Mr Speaker, the Fire Station is one of those projects that we have not delivered on in the past. However, a new Project

Board was established earlier this year where the design was simplified with the proposal for a steel, portable frame building which would be constructed upon a concrete pad foundation on a single level and incorporating a large area of hard standing. Concerns have been raised about the suitability of ground conditions and the integrity of the fill material to provide a significant load bearing capacity for the new structure. It is not possible to do a proper design until you understand what the ground conditions are. SHG has since engaged the services of WSP to carry out a geotechnical investigation into the suitability for supporting a steel portable frame structure on the proposed site of the Fire Station at Alarm Forest. WSP concluded that the site could be suitable for the development of the Fire Station but it would require some specific geotechnical engineering to ensure the successful construction and maintained integrity of the structure. SHG and WSP are now in discussions to understand the next steps in order to develop an accurate costing for the remedial works. Once this costing has been received then a decision will need to be taken as to whether or not we should continue with developing the current site based on value for money. Once a decision has been taken on whether to proceed on this site the next steps will be determined. Work has already been completed on identifying alternative sites in the event that the current one is deemed unviable. Members will be aware that Mr John Cox, the SHG Infrastructure Adviser, explored options of other possible sites on his last visit in October and these will be explored if the current site is deemed unsuitable. If it proves viable to proceed with the current site the indicative timelines for the project are as follows: - 6 to 8 months for the preparation of detailed designs for the geotech solution, including foundations as well as completing the detailed designs for the steel portable frame building and the tendering of those works. The following 12 to 15 months complete the geotech foundation and bulk concrete works, erection of the steel-frame building, fit out hard standing areas and then finally commissioning. At this time I do not have any firm dates as to when the project will be completed as there are still a number of unknown pieces to the jigsaw which I've described already. Much will depend on the outcome of discussions next week with WSP on the cost of remediating that site. The current proposed budget for the Fire Station is estimated to be £1.5m. However, this will be subject to the formulation of a detailed Bill of Quantities once the detailed designs have been completed. To date, total spend on the project is £72k which includes excavation costs, project management fees, design fees and the recent survey works completed by WSP. Thank you, Mr Speaker.

The Speaker –

Thank you, Honourable Financial Secretary. Honourable Dr Corinda Essex?

The Hon. Dr Corinda Essex –

Thank you for that comprehensive answer. You stated that a new Project Board has been appointed, can you state the composition of the Board, please?

The Speaker –

Honourable Financial Secretary?

The Hon. Dax Richards –

Mr Speaker, I don't have the exact details here in front of me but of the top of my head I would say it involves the key stakeholders from the Directorate, so there's a representative from the Police Department, it's shared at the moment by the Acting Director of ENRD, has representation on there from Corporate Procurement and also there's some support given by the Secretary to the ENRC Committee.

The Speaker –

Thank you, Honourable Financial Secretary and Honourable Dr Corinda Essex?

The Hon. Dr Corinda Essex –

Who is providing the technical support?

The Speaker –
Honourable Financial Secretary?

The Hon. Dax Richards –
Sorry, Mr Speaker, I should have mentioned that it also includes the Chief Engineer at this point in time.

The Speaker –
Thank you, Sir. Honourable Dr Corinda Essex?

The Hon. Dr Corinda Essex –
It is known that the current Chief Engineer will be completing his duties here very shortly, is the interim until a new Chief Engineer appointed likely to have a negative impact on progress of this project?

The Speaker –
Honourable Financial Secretary?

The Hon. Dax Richards –
Mr Speaker, at this point in time we expect to engage the services of a member of WSP in the interim to support the Environment and Natural Resources Directorate, we would more than hope that that person will have the skills and ability to be able to fill the role that is currently conducted by the Chief Engineer.

The Speaker –
Thank you, Honourable Financial Secretary. Honourable Dr Corinda Essex?

The Hon. Dr Corinda Essex –
Have the WSP studies to date been done on island or as desk studies?

The Speaker –
Honourable Financial Secretary?

The Hon. Dax Richards –
Mr Speaker, the studies have been done offshore, however, there were site visits carried out by the WSP team while they were here on island in October and the excavation works in terms of the geotech assessment was carried out by Basil Read.

The Speaker –
Thank you, Honourable Member. Honourable Dr Corinda Essex?

The Hon. Dr Corinda Essex –
When is it expected that the WSP technical support will actually be on island?

The Speaker –
Honourable Financial Secretary?

The Hon. Dax Richards –
Mr Speaker, we're in negotiations with WSP at this point in time but we're anticipating to have someone here on 3rd January or 4th January when the RMS arrives.

The Speaker –

Thank you, Honourable Member. Honourable Lawson Henry?

The Hon. Lawson Henry –

Mr Speaker, can consideration be given to a local engineer to be recruited? Thank you.

The Speaker –

Thank you, Honourable Member. Honourable Financial Secretary?

The Hon. Dax Richards –

Mr Speaker, consideration has been given for a local engineer to be recruited where possible and those are part of the discussions that are ongoing at this point in time.

The Speaker –

Thank you, Honourable Member. Honourable Dr Corinda Essex?

The Hon. Dr Corinda Essex –

The Honourable Financial Secretary indicated that a costing will be expected shortly, how shortly?

The Speaker –

Honourable Financial Secretary?

The Hon. Dax Richards –

Mr Speaker, I don't have the exact date, but we are due to meet with WSP early next week.

The Speaker –

Thank you, Honourable Member. Any further supplementaries? Thank you. Clerk of Councils?

Question No. 4 – The Honourable Mike Olsson to ask the Honourable Chairman, Environment and Natural Resources Committee

The Speaker –

Honourable Mike Olsson?

The Hon. Mike Olsson –

Thank you, Mr Speaker. Will the Honourable Chairman of the Environment and Natural Resources Committee clearly explain to this House what the consequences are for the development of our fishing industry from the recent decision to create a 200 nautical mile marine protected area around the island and the subsequent application to extend our economic exclusive zone to 200 nautical miles?

The Speaker –

Thank you, Honourable Member. The Honourable Chairman of the Environment and Natural Resources Committee.

The Hon. Pamela Ward Pearce (Chairman, Environment and Natural Resources Committee) –

Mr Speaker, I thank the Honourable Member for his question. The Marine Protected Area, Category 6, designation for St Helena's 200 nautical mile exclusive fishing zone provides for commercial and recreational fishing activities to continue to be undertaken and developed. This declaration of a Marine Protected Area requires that the development of our fisheries sector is

undertaken in a controlled, sustainable and environmentally friendly manner. In this context, sustainable refers to target and non target species and direct and indirect effects on marine habitats. The Marine Management Plan, as adopted by Executive Council in September this year, provides for management strategies for our marine environment and one of these strategies is focused on management of our fishery. The Fisheries Management Strategy provides for restrictions with regards to fishing methods and gears allowed in the Marine Protected Area and prohibits all forms of destructive fishing. The strategy also supports a framework within which best practices of sustainability, monitoring and enforcement are implemented. Declaring our exclusive fishing zone as a Marine Protected Area also means that it provides the fisheries sector opportunities to promote St Helena's sustainably produced fish products. Consumer demand for environmentally friendly and sustainable fish products is increasing and with high quality fish caught from a marine protected area through selective low impact pole and line fishing the Fisheries Sector can benefit through accessing niche markets that pay premium prices for a small range of Tuna exports. Other benefits of a marine protected area designation include increased opportunities for St Helena to attract donor funding towards an improved fisheries science programme, facilitating best practice of traceability and enhancement of monitoring and enforcement capabilities in the sector, to underpin sustainable management of St Helena's marine ecosystem. The exclusive economic zone is a concept that was adopted at the third United Nations Conference on The Law of the Sea in 1982. It enables a coastal state to assume exclusive rights over the exploration and exploitation of marine resources within 200 nautical miles of its coastline. St Helena has not asserted its claim to the exclusive economic zone but the Economic Development Committee has given the green light to this and the Attorney General's Chambers is working with the Foreign and Commonwealth Office for the declaration to be deposited with the United Nations. Thank you, Sir.

The Speaker –

Thank you, Honourable Chairman. Any supplementaries from anyone else? No supplementaries. Clerk of Councils?

Question No. 5 – The Honourable Dr Corinda Essex to ask the Honourable Financial Secretary.

The Speaker –

Honourable Dr Corinda Essex?

The Hon. Dr Corinda Essex –

Will the Honourable Financial Secretary tell this House precisely what actions are being taken to address the current water shortage and how these will be funded?

The Speaker –

Thank you, Honourable Member. The Honourable Financial Secretary?

The Hon. Dax Richards –

Mr Speaker, I'd like to thank the Honourable Member for her question and before I respond I'd just like to declare my interest as a member of the Connect St Helena Board of Directors.

The Speaker –

Thank you, Honourable Member.

The Hon. Dax Richards –

Mr Speaker, there are currently three key work streams that are being pursued by Connect St Helena to address the current water shortage. These streams are the bowsering of water to supplement consumption in the key areas around the island, particularly the Red Hill and Hutts Gate distribution

systems; the addition of three new water transfer systems and exploring options for the sustainable use of deep boreholes. Bowsering provides an immediate solution for moving water to those areas where it is most needed. Unfortunately though this is also a relatively costly option for moving water around with the average cost of around £4.80 per cubic metres. At present there are six vehicles involved with the bowsering operation. Where they operate depends on where the water is most needed. However, as of yesterday, there were three vehicles operating from Jamestown to Red Hill and three in the Longwood area. Between all the bowsers there was a capacity to transfer around 28 cubic metres of water with each trip.

The three new water transfer systems are being introduced; the first is a transfer system from Jamestown distribution system which will include the laying of a new line from Chubb's Spring to the Scott's Mill reservoir. This transfer system will include a new Pump Station which will allow for a dual lift to get the water to the required elevation. This new system is complete and has been commissioned yesterday and has started to move excess water from Jamestown to the Red Hill distribution system. In addition, a small, temporary dam is being constructed just above the Pond in Jamestown, near New Bridge, which will capture the water and allow this to be pumped back to Chubb's Spring and then on to Scott's Mill. The second is a water transfer system of approximately two kilometres in length which will be laid from the current fire water tank at Prosperous Bay Plain to the Fishers Valley pumping system which will allow the water to be pumped to the reservoirs in the Longwood area or alternatively back to Hutts Gate where it can then be transferred to other water systems around the island. Most people will be aware that the fire water tank is fed from the Basil Read Borehole No. 5. The laying of this line has commenced with fifty percent of the line already laid. However, there is insufficient stock of pipes on island at this present time which means the remainder of the line won't be laid until the pipes arrive in early January 2017. Preparatory work will continue on this line to aid swift commissioning of the system once the pipes actually arrive on island. The third system is a line from lower Sharks Valley through to Hutts Gate which will see a dual lift system from lower Sharks Valley to the Sharks Valley Dam; Members and members of the public will probably know this area as the area built by Mr Philip John a number of years ago, water will then be pumped from there to Fishers Valley system which will then feed the Hutts Gate system. To date, progress has been made with the clearance of land, the construction of a new sump at the bottom of Sharks Valley and the laying of the pipe works from lower Sharks Valley to the Sharks Valley Dam. This system also requires pipe due to arrive in January so it can be completed. Once these transfer systems are all complete, this will allow Connect to use the bowsers to find smaller sources of water that have been identified but are not currently being collected. In addition, Connect has issued tenders for both a hydrogeology consultancy and the exploration of deep borehole drilling with a target to evaluate tenders returned prior to Christmas. It is possible that some deep borehole drilling will commence before the end of the financial year, subject to the findings of the hydro geologist and the views of Councillors. Members and the public will be aware that Basil Read used water from deep boreholes for the construction of the airport. As mentioned earlier, this borehole continues to supply the Fire water tank on Prosperous Bay Plain.

In terms of funding, the Department for International Development has agreed to finance the additional operating costs associated with movement of the water through to the end of the financial year. In addition, the capital costs associated with installation of the transfer systems will be financed from this year's Capital Programme. Discussions are ongoing with regards to financing the survey and drilling works, however, we anticipate that this will form part of the new Capital Programme which is expected to commence in April 2017. Thank you, Mr Speaker.

The Speaker –

Thank you, Honourable Financial Secretary. Honourable Dr Corinda Essex?

The Hon. Dr Corinda Essex –

Is it true that the water levels in Borehole 5 have actually diminished significantly?

The Speaker –
Honourable Financial Secretary?

The Hon. Dax Richards –
Unfortunately, Mr Speaker, I don't have an answer to that question.

The Speaker –
Thank you, Honourable Member.

The Hon. Dr Corinda Essex –
Would it be possible for the Honourable Financial Secretary to obtain that information for the House, please?

The Speaker –
Honourable Financial Secretary?

The Hon. Dax Richards –
Mr Speaker, we'd be happy to find that information and supply it to all Members.

The Hon. Dr Corinda Essex –
Thank you.

The Speaker –
Thank you, Honourable Financial Secretary. Any other supplementaries? Honourable Cyril George?

The Hon. Cyril George –
Mr Speaker, the Financial Secretary mentioned that the transfer system from Jamestown to Chubbs Spring was completed yesterday, this morning I see bowsering continues from Jamestown to Chubbs Spring, can you explain the reason why?

The Speaker –
Honourable Financial Secretary?

The Hon. Dax Richards –
Mr Speaker, I can't explain the reasons why at this point in time, however, I can say that the bowsering still continues in Jamestown, as you quite rightly said, but I know that the new system was commissioned yesterday, so I don't have an answer but I can find out for you, Honourable Member and circulate an answer.

The Speaker –
Thank you, Honourable Financial Secretary. Honourable Cyril George?

The Hon. Cyril George –
Can I also ask at what rate or how much, if you can also let us know what rate of pumping has been achieved to date from Jamestown?

The Speaker –
Honourable Financial Secretary?

The Hon. Dax Richards –

Mr Speaker, I'll sure to find that information out for the Members.

The Speaker –

Thank you, Honourable Financial Secretary. Honourable Cyril George?

The Hon. Cyril George –

Can I also ask, Mr Speaker, how was the transfer system from Jamestown to Chubb's Spring funded now that the works are completed?

The Speaker –

Honourable Financial Secretary?

The Hon. Dax Richards –

Mr Speaker, I did mention that in my response that it's being funded through the Capital Programme.

The Speaker –

Thank you, Honourable Member.

The Hon. Cyril George –

Thank you, Mr Speaker.

The Speaker –

Thank you. Any other supplementaries? Thank you. Clerk of Councils, next item, please?

6.

MOTIONS

Motion No. 1 - The Hon. Financial Secretary

THE SECOND SUPPLEMENTARY APPROPRIATION (2016/17) BILL, 2016

The Speaker –

Thank you, we're on to Motions and these Motions are mainly Bills at the present time. There's a proper procedure for taking the Bill through the House and Members will be aware of the procedure, I am sure. Honourable Financial Secretary?

The Hon. Dax Richards –

Mr Speaker, I beg to move that Standing Order 13, Rule 1 (3) be suspended so that all stages of this Bill can be completed today.

The Speaker –

Thank you, Honourable Member. Is there a seconder to the proposal?

The Hon. Roy Burke (Chief Secretary) –

Mr Speaker, I beg to second.

The Speaker –

Honourable Chief Secretary seconded the proposal. The proposal, Honourable Members, is that Standing Order 13, Rule 1 (3) be suspended so that all stages of this Bill can be completed today. Perhaps I can help the Honourable Members here. Standing Order 13, Rule 3, usually

provides that the Bill has to stand adjourned, a finance Bill like this, has to stand adjourned until some other time for the process to be taken ahead. What is asked at this particular stage, because it's such a short Bill, can we suspend that Order and deal with this today, alright? So I put the proposal to Members, the proposal is that Standing Order 13, Rule 1 (3) be suspended so that all stages of the Bill can be completed today.

Question put and agreed to.

The Speaker –
Honourable Financial Secretary?

The Hon. Dax Richards –
Mr Speaker, I beg to move that the Second Supplementary Appropriation 2016/17 Bill, 2016, be approved in principle and referred to a Committee of the whole Council. I formally confirm that this Bill is presented on the recommendation of the Governor in accordance with section 73 (2) of the Constitution.

The Speaker –
Please can I have the recommendation laid on the table?

Yes, you may proceed. Is there a seconder to the Bill, please?

The Hon. Roy Burke –
Mr Speaker, I beg to second.

The Speaker –
Thank you, Honourable Chief Secretary. Honourable Financial Secretary?

The Hon. Dax Richards –
Thank you, Mr Speaker. Mr Speaker, the Second Supplementary Appropriation 2016/17 Bill asks this House to consider the authorisation of £980k of expenditure with the greatest proportion of this £980k related to the cost of extending the RMS St Helena beyond the original schedule of July 2016. In addition, the Bill requests additional expenditure for Corporate Services, the Police, the Health and the Environment and Natural Resources Directorates. This Ordinance increases the 2016/17 budgets for the respective Directorates which were approved by this House back in March this year. The increases are based on the latest available forecasts from the Accounting Officers. Mr Speaker, I'm pleased to advise that there is no requirement for a withdrawal from the Consolidated Fund, with savings being found in other Heads of Expenditure across the service. If approved today, the subsequent withdrawal Warrants will be approved by the Governor on the advice of Executive Council. Mr Speaker, I'd like to take this opportunity to thank the Accounting Officers, the teams and my teams led by Mr Nicholas Yon, for their support in getting this Bill before the House today. Mr Speaker, we will provide the details of the expenditure for each Head during the Committee stage. Mr Speaker, I beg to move.

The Speaker –
Thank you, Honourable Member. Honourable Members, I put the question that the Second Supplementary Appropriation 2016/17 Bill, 2016, be approved in principle and referred to a Committee of the whole House. Honourable Members, the Motion is now open to debate. Any Member wish to speak, and this time you're speaking on the principles of the Bill and not the

details. No Members wishes to speak? So there's no need, I think, for the Financial Secretary to reply in this case.

Question that the Bill be approved in principle and referred to a Committee of the whole Council, put and agreed to.

The Speaker –
Mover?

The Hon. Dax Richards –
Mr Speaker, I beg to move that Council do resolve itself into a Committee to consider the detailed provisions of the Bill.

The Speaker –
Is there a seconder, please?

Mr Roy Burke –
Mr Speaker, I beg to second.

The Speaker –
Thank you very much, Honourable Chief Secretary.

Question that the Council do resolve into a Committee, put and agreed to.

The Speaker –
Normally the President usually moves down into a Lower House, but I can't go any lower here so I'll sit here for the second part of the process.

Council in Committee.

The Chairman –
Council is now in the form of a Committee which means to say that I'm the Chairman of the Council at the moment in this House here and we can speak at random, take your time and take your turn, okay? Alright. Now, because this is a Finance Bill, it has a special way of dealing with it, unlike other Bills. We have to look at the Schedules first so you turn to the back of your page and look at your Schedules.

The Hon. Dax Richards –
Mr Speaker, can I also request that the Assistant Financial Secretary, Mr Nicholas Yon, joins us at the table for Committee stage?

The Speaker –
He may do so. Nicholas, can you pull a chair? Right, at the back of your book then is the Schedules and the first Schedule there is Schedule 12, I call Schedule 12, Corporate Services Support, Policy and Planning, standing in the sum of £88k. Any questions please or comments. You want to explain?

Mr Nicholas Yon (Assistant Financial Secretary) –
Yes, Mr Chair, if I can explain in terms of Corporate Services, Support, Planning and Policy. The £88k requested for recurrent expenditure is in relation to salary revision required to be

appropriated from the central funds. These are salary revisions that took place after the 16/17 budget was developed. It also is requested for other employee costs incurred during the year, including vacancy savings that was not achieved during this year. In addition to this, also requested is an increase in budget in respect of the annual retainer fee for the Chief Justice and also for the additional costs of Supreme Court Sitting and additional fees and travel costs also required for the Court Sitting. Also requested is for travel expenses and legal fees for the Supreme Court Sitting for the Attorney General's Chambers.

The Chairman –

Thank you, Honourable Members. I should have drawn your attention to the fact that you should consider the estimates of revenue at the same time, expenses on another paper that you have, the estimates there. Thank you very much for explaining that. Any questions, please? No questions? The Honourable Mike Olsson?

The Hon. Mike Olsson –

There is a total of £133k, £88k recurrent and £45k in capital expenditure, which referred to is the capital expenditure of this?

Mr Nicholas Yon –

So Schedule II of the Bill, as we move down through the Bill then we'll come on to Schedule II which is the Capital element of the request.

The Hon. Mike Olsson –

Thank you.

The Speaker –

Any other questions, please? No other questions?

Head 12 – Corporate Services – Support, Policy and Planning - £88k.

Question put and agreed to.

The Chairman –

Head 15 – Police, in the sum of £40k. Nicholas?

Mr Nicholas Yon –

So if I can explain again, Mr Chairman. So the £40k for recurrent expenditure is in relation to salary revision and market forces supplements required to be appropriated from central funds and those were revisions that were made after the original budget was put together. In addition, also for an internet connection from the airport to Jamestown, it was not budgeted for in the original budget and also for travel costs associated with accompanying a prisoner to St Helena.

The Speaker –

Thank you. Any questions? No questions.

Head 15 – Police - £40k.

Question put and agreed to.

The Chairman –

Head 17 – Corporate Services – Corporate Finance - £18k. Nicholas?

Mr Nicholas Yon –

Yes, Sir. This amount is the remaining balance of compensation payments that have been paid out in this financial year.

The Chairman –

Any questions? No questions? Yes, Councillor Derek Thomas?

The Hon. Derek Thomas –

Thank you, Mr Chairman. Compensation payments, obviously I don't need the detail, but compensation payment for what?

The Chairman –

Can you explain?

Mr Nicholas Yon –

Yes, Sir. So there are different compensation payments, some for medical negligence claims and some are for employment claims that came through, but this is the residual amount of the budget required to cover those amounts.

The Chairman –

Yes, satisfied Councillor?

The Hon. Derek Thomas –

Thank you, Mr Chairman.

The Chairman –

Any other questions, please?

Head 17 – Corporate Services – Corporate Finance - £18k.

Question put and agreed to.

The Chairman –

Head 21 – Shipping - £705k. Yes, Sir?

Mr Nicholas Yon –

Yes, Mr Chair, the additional amount requested here of £705k is the additional funds required for the continuation of the RMS St Helena Shipping Service up until March 2017, this takes into account estimates of revenues and also estimates of expenditure required to run the RMS, including estimates on rates of exchange and also the value of the cost of fuel to run the RMS as well, so all of this taken into account, this is the money required to fund that amount.

The Chairman –

Thank you. Any questions, please?

Head 21 – Shipping - £705k.

Question put and agreed to.

The Chairman –

Head 26 – Environment and Natural Resources - £21k.

Mr Nicholas Yon –

Yes, Mr Chair, the additional recurrent request of £21k is in relation to market forces supplements required from central funds that was approved after the original budget was agreed and also increased costs associated with LEMP activities.

The Chairman –

Questions, please? No questions.

Head 26 – Environment and Natural Resources - £21k.

Question put and agreed to.

The Chairman –

I put the total to that section of £872k do stand part of the Bill.

Question put and agreed to.

The Chairman –

Schedule II – Head of Expenditure – Head 12 – Corporate Services – Support, Policy and Planning - £45k.

Mr Nicholas Yon –

Yes, Mr Chair. The £45k requested for capital is in relation to the Contract Fee for the Revision of Laws of St Helena, Ascension and Tristan da Cunha. This is a contract that already exists and this is the element that relates to this financial year.

The Chairman –

Thank you. Honourable Mike Olsson, you want to touch the button?

The Hon. Mike Olsson –

That was what I was looking for before, Mr Chairman. Is Law Revision, is that a capital expenditure?

Mr Nicholas Yon –

Yes, so what we will end up with at the end is an intangible asset.

The Hon. Mike Olsson –

For some people they will see the law as a liability more than an asset.

The Chairman –

Yes, Attorney General?

The Hon. Angelo Berbotto –

Perhaps I can clarify. The Ordinances that we have at the moment, and every time this Honourable House passes a new Bill, those Bills amending other Ordinances, stay there. The work of the Law Commissioner whose contract is of this value, what he's doing is

consolidating, that means that whatever new Bills that affect the old Bills, he is going Ordinance by Ordinance, we have over a hundred and sixty for St Helena, there is another number for Ascension and for Tristan and he's doing that work and some of the?..., we have already received some of the revisions, because at the moment we are working on the consultation stage. This Law Commissioner is a lawyer that is external to the Attorney General's Chambers and the revision will bring the consolidated set of Laws for St Helena up to the 31st December 2016. I don't know if that clarifies what the actual contract is for.

The Chairman –

Thank you, thank you. Honourable Derek Thomas, I saw you first?

The Hon. Derek Thomas –

Thank you, Mr Chairman. Does this mean then that St Helena pays for law revision for Ascension and Tristan da Cunha as well?

The Chairman –

Financial Secretary or who's going to answer? Attorney General?

The Hon. Angelo Berbotto –

What we have obtained on this contract is three for the price of one, basically, so the main work is on the Laws of St Helena, the other two come basically as a gesture of goodwill. The Laws of St Helena, there is an Ordinance, Application Ordinance for Tristan da Cunha and for Ascension which means that they apply lots of the Ordinances that this House passes. The actual meat in this work is involving our own Ordinances for St Helena.

The Chairman –

Honourable Mike Olsson?

The Hon. Mike Olsson –

Yes, just out of curiosity, what is the depreciation rate on the Laws of St Helena?

Mr Nicholas Yon –

There's different accounting rules for different types of assets, but that will be considered when we put those financial statements together.

The Chairman –

Honourable Mike Olsson, you're alright? Anybody else has any questions at this stage? No?

Head 12 – Corporate Service – Support, Policy and Planning - £45k.

Question put and agreed to.

The Chairman –

Head 23 – Health - £43k. Yes?

Mr Nicholas Yon –

Yes, Mr Chair, this £43k is the capital contribution towards the purchase of a Mammography machine for the hospital. Part of this cost was donated by NGO's and this is the SHG contribution towards the cost of that machine.

The Chairman –

Thank you. Any questions? No questions? Councillor Brian Isaac?

The Hon. Brian Isaac –

Mr Speaker, can I ask what was the cost of the contribution from the NGO's?

Mr Chairman –

Financial Secretary?

The Hon. Dax Richards –

Mr Speaker, we received £20k from one of the NGO's and the other we are still waiting final confirmation of the amount that will be contributed.

The Hon. Brian Isaac –

Thank you, Mr Speaker.

The Chairman –

Thank you, Honourable Member. Any other questions?

Head 23 – Health - £43k.

Question put and agreed to.

The Chairman –

Head 26 – Environment and Natural Resources - £20k.

Mr Nicholas Yon –

Yes, Mr Chair, this £20k is for the purchase of a bio remediation pad and replacement bird control net. The funds that have been identified are from the recurrent budget, but this is now to be funded from the capital element of it so because we appropriate separately for recurrent and capital this is the process by which we appropriate for capital.

The Chairman –

Any questions, please? No questions.

Head 26 – Environment and Natural Resources - £20k.

Question put and agreed to.

The Chairman –

I'll put the total to that sum section, please, standing in the sum of £108k, that it stands part of the Bill.

Question put and agreed to.

The Chairman –

Now the second stage is for me to go back into formal LegCo and I'm the Speaker or the President now and it's more formal at this stage.

Council resumed.

The Speaker –

So turning to your Bill, I put the question that the Title, the Enactment Clause and Clause 1 do stand part of the Bill.

Title, Enactment Clause and Clause 1.

Question put and agreed to.

The Speaker –

Clause 2. Consolidated Fund, provision for the financial year, £980k. Any question on that.

Clause 2

Question put and agreed to.

The Speaker –

Mover to report.

The Hon. Dax Richards –

Mr Speaker, I beg to report that the Second Supplementary Appropriation 2016/17 Bill, 2016, passed the Committee with no amendments and move that this Council approves the said Bill and recommends to the Governor that it is enacted.

The Speaker –

Thank you, Honourable Member.

Question that Council approves the Second Supplementary Appropriation 2016/2017 Bill, 2016 and recommends to the Governor that it should be enacted, put and agreed to.

The Speaker –

Thank you, Honourable Members for that. Clerk?

Motion No. 2 – The Honourable Pamela Ward Pearce

THE ROAD TRAFFIC BILL, 2016.

The Speaker –

The Honourable Pamela Ward Pearce?

The Hon. Pamela Ward Pearce –

Thank you. Mr Speaker, I beg to move that the Road Traffic Bill, 2016, be approved in principle and referred to a Committee of the whole Council.

The Speaker –

Thank you, Honourable Member. Is there a seconder for that?

The Hon. Dr Corinda Essex –

Mr Speaker, I beg to second.

The Speaker –

Thank you, Honourable Member. Honourable Mover, do you wish to speak to the Motion?

The Hon. Pamela Ward Pearce –

Mr Speaker, the Road Traffic Ordinance 2016 seeks to consolidate and amend the law relating to road traffic. This Bill has been ongoing for some time and has come about as a result of the various inconsistencies and shortfalls identified whilst applying existing legislation from an analysis of criminal prosecution which shows a considerable rise in alcohol related and road traffic accidents within the last eighteen months. The changes that are expected in St Helena when commercial flights arrive here in the future as the extent of the existing legislation is no longer adequate and requires updating. This Road Traffic Ordinance, 2016, has been through the required stages and has had extensive island-wide consultation. As a result of this consultation there have been some changes to the original proposal, such as making the wearing of seatbelts mandatory, which has been removed. There are still issues of safety around this and it could still be considered at some point in the future, but will require further public awareness and engagement. Other changes proposed in this Bill, that has been accepted, it allows for the testing provision of both alcohol and drugs-related road traffic offences. The proposal to lower alcohol levels will be set by regulation. At consultation this was found to be acceptable to the majority of people, but there were some dissenting voices who felt more local evidence should be required. The concept of a driving licence that would be valid for ten years or until age 70, provision for robust penalties and fines to act as a deterrent. It was recognised that the fines cited were for the maximum. Medical examination provision has been expanded to include not just over seventy years old but also include conditions, for example, diabetics on insulin, epileptics, people who have had strokes or transient ischemic attacks, fits or blackouts, any type of brain surgery or severe head injury, implanted cardiac pacemaker or defibrillator, total loss of sight in one eye. This is not, however, a definitive list, but there are others. Additionally, with the over seventy year old the Doctor can decide if the interval between medical examinations could be extended from the current one year up to possibly three years. It also now includes pedal cycles and quad bikes and the use for protective helmets. Finally, Mr Speaker, it allows for the introduction of a parking scheme for Jamestown which most people will recognise is long overdue and which my Honourable Colleague, who has been involved since the start, will touch on. Thank you, Mr Speaker, I beg to move.

The Speaker –

Thank you, Honourable Member. I put the question that the Road Traffic Bill, 2016, be approved in principle and referred to a Committee of the whole Council. Honourable Members, this Bill/Motion is now open for debate. I see some red lights on, Honourable Derek Thomas, are you? No, sorry. Honourable Dr Corinda Essex?

The Hon. Dr Corinda Essex –

Thank you, Mr Speaker. The Honourable Chair of the Environment and Natural Resources Committee has already touched on a number of the key aspects in relation to the Bill, but as the member of the Committee actually designated to lead on the public consultation I would like to highlight a few key issues.

First, I wish to thank all those who participated. Overall, comments were received from over a hundred constituents and although at times differing views were expressed these were conveyed constructively and appropriately. I also extend thanks to the other members of ENRC who were actively involved in the consultation process and to the Inspector of Police who attended five constituency meetings. They all made very important contributions to the

process. In particular, I wish to thank the Acting Director for his unfailing support and very helpful contributions to the debate concerning a document that he had inherited from his predecessor only shortly before the consultation exercise started. The input of the Honourable Attorney General in preparing successive drafts which culminate in the Bill before us today also deserves public recognition, a huge thank you to you all.

The public will be pleased to know that their feedback was carefully considered and has resulted in a number of changes within the current Bill. In particular, as the Honourable Chairperson has already mentioned, the clause making the wearing of seatbelts compulsory has been removed and the Police Directorate have given an undertaking to work with elected members to provide evidence and more public awareness on this issue before regulations are drafted and public consultation on these takes place. Similarly the prescribed limit for drink/driving is no longer set within the Bill but will be addressed through regulation. I have some concerns about this as regulations only require the assent of Executive Council whereas a Bill has to be formally approved in this Honourable House and I believe that a matter of such importance is perhaps more appropriate for decision at this level. However, as the public also requested more local evidence to support the need for change this should help to inform the formulation of the relevant regulations and I am sure that Executive Council will request such evidence before making their decision.

The other key change made in response to public queries and concerns is that the schedule relating to the classes of driving licences has been removed to allow for closer comparison with the existing classes and to meet consultees views regarding the specifications of vehicles that are considered suitable for seventeen year olds and novice drivers to be eligible to operate. Constituents were also concerned that the Bill does not state whether the penalties stipulated are maximums or fixed penalties. I raised this matter with the Honourable Attorney General and he assured me that the provisions of the Interpretation Ordinance make such a statement unnecessary; therefore, no change has been made in this regard.

The Speaker –

Yes, just, without disturbing you, I just wonder if your paper might be hiding the microphone and taking your sound down a bit. Thank you.

The Hon. Dr Corinda Essex –

I fully support the Bill as road traffic conditions on St Helena are much different to those existing in 1985 when the current legislation was enacted. Furthermore, as the Honourable Chair has already alluded, the provisions of this Bill are aimed to address a number of anomalies existing at present and to enable regulations to be passed relating to key issues which are a source of constant frustration and unhappiness to the general public and have been so for years. Therefore, Mr Speaker, I support the Bill.

The Speaker –

Thank you, Honourable Member. The Honourable Lawson Henry?

The Hon. Lawson Henry –

Thank you, Mr Speaker, I, too, rise in support of this Bill and I, too, would like to commend the Honourable Mover and the Working Group for the hard work over the last months or couple of years I suspect for bringing this Bill before the House today. I am disappointed that the provision for the wearing of seatbelts has been taken out. I'm a great advocate of road safety and I am really concerned that whilst we as adults can make decisions for ourselves, by taking this out we are also making decisions for those who can't or are not able to and I'm referring

here to young people and children who have to ride in vehicles, so I am disappointed that has been taken out.

I'm not gonna go through what my Honourable Colleagues has already said, but I would like to touch on some of the key points that they mentioned too, to put my aspect to those issues. As has been said, that the Bill will also make provision for the testing of drivers and for the first time for the testing of drivers for drugs, I welcome this, and that the fact that testing of alcohol will remain. However, I want to make it very clear that when we come to making the regulations to lower the alcohol limits I want to be convinced by evidence and that is local evidence that it is the right thing to do for the island, but I think we need to go further. As I say, I'm a great advocate of road safety and as the island get more and more vehicles the risk increases, so it would be incumbent upon this Government to look, have a re-look at our transport system, because you don't want to lower the alcohol limits and don't have a transport system that is not appropriate to the island. This is a very small community and things need to change and I support change, but the change need to be appropriate to the community and the lowering of the limits is going to change the social fabric and I will support that if it is evidence based, but we need to have a transport system in place so that people can move around the island. The transport system what we got now is really based on home to duty and some outside of that. We need a transport system like many other countries got and if the price of that means that we have to subsidise it then that is the price we need to pay for the social life on this island and I would be supporting that. The Bill also strengthens by robust penalties and fines to act as a deterrent for the commission of those offences that I've just referred to. Importantly, the Bill gives provision for the making of regulations that will have a positive environmental impact. This include prescribing the levels of emissions, overall this could improve air quality and lower pollution levels, including noise pollution arising from the use of defective or unsuitable vehicle parts. And as I said previously, when we come to the parking regulations, it is imperative that this Government re-look at public transport system, so I support this Bill and again thank the Honourable Mover for bringing it before the House today. Mr Speaker.

The Speaker –

Thank you, Honourable Member. The Honourable Derek Thomas?

The Hon. Derek Thomas –

Thank you, Mr Speaker. I, too, rise in support of this Bill, it is a good Bill to address road safety and I'm not going to be repeating what has already been said, but it is pleasing to see that there will be a provision for the Police to test, not only on alcohol, but on drugs as well and there's also provision there for drivers over seventy to have, if they're in good health and wellbeing, to have a licence for up to three years, because that has been an issue for some while and at the same time it deals with those people seventy who perhaps have health complaints to be properly tested, that is right, but I was just reading through the Bill here, Mr Speaker, and I see here under section 27 – Restriction on driving by young Persons, there is provision for seventeen to era person under seventeen of age may not drive a motor vehicle on a road and there's also provisions of persons under twenty-one. Now, there is restrictions proposed here for persons under twenty-one and when this came to Executive Council there was a whole range of restrictions on driving age and we agreed that that go back out and further work be done on it and I am concerned now that we're imposing restrictions on people under twenty-one, already there's a law in place for people to drive heavy goods vehicles once they're twenty-one, now we're restricting against that and that was not what was agreed. This could have serious implications on those people who are at present driving vehicles, twenty-one, it will have restrictions there, depending on the certain type of vehicle and we hadn't agreed so I'm proposing then for that to be amended, Mr Speaker, and I apologise for the late notice, I've

just picked it up. I believe, and this Council agreed, that we shouldn't be placing any restrictions on driving ages until a proper review is carried out and recommendations made. Here now, we're imposing conditions on people and restricting them from driving certain classes of vehicles if they're under twenty-one. There is already law in place, so I'm proposing that it be deleted from the Ordinance.

The Speaker –

Yeah, okay, Councillor, you're going into detail. At this stage you talk about the principles of the Bill, whether it's good, whether it's bad, whether you think there might be need for a change, but you will deal with any amendments in Committee stage, so.....

The Hon. Derek Thomas –

I'll be guided by you, Mr Speaker.

The Speaker –

Pardon?

The Hon. Derek Thomas –

I'll be guided by you, I'll bring it up in Committee stage.

The Speaker –

In Committee stage you will deal with it when you come to that section. If I was you I'd take note of that section and in Committee you can make any amendments you want to if you get the support of the House, alright?

The Hon. Derek Thomas –

Thank you, so I will bring that in Committee stage and there's also another section as well, but I'll bring it up in Committee stage, but.....

The Speaker –

Yes, at this time now it's just the principles.

The Hon. Derek Thomas –

.....I give my support to the other parts of the Bill. Thank you.

The Speaker –

Thank you very much indeed. Honourable Mike Olsson?

The Hon. Mike Olsson –

Thank you, Mr Speaker. I just want to address something else already mentioned by the Honourable Councillor Essex and that is the quite extensive use of regulations instead of Ordinance in this Bill. It is very practical, I just highlighted, it's a warning for using this as a system because it will deteriorate the power of the Legislator and empower the Executive, all they need five members for quite substantial changes which normally should have been in the Ordinance, but before I say that, I should say they have done a great job, the Committee that's been working on this, the subcommittee and they should be congratulated. I have reservations about what I just said, with giving too extensive powers in the regulations in the long run, but my objections are not so severe so I will oppose this Bill, but I think it's something we should look out for in the future because we need public consultation to put forward a Bill, we don't

really need public consultation, many issues that are regulations, so that was just what I wanted to say, Mr Speaker, so I support it but under slight protest. Thank you, Mr Speaker.

The Speaker –

Thank you, Honourable Member. Honourable Cyril George?

The Hon. Cyril George –

Thank you, Mr Speaker. Mr Speaker, I rise in support of this Bill. Being a member of the ENRC Committee and a member of the Working Group preparing this legislation, it took us over three years that I'm aware of getting to this stage and I would also like to, I'm not gonna repeat what's been said by our colleagues already, but I rise in support of this Bill. Thank you, Mr Speaker.

The Speaker –

Thank you, Honourable Member. The Honourable Brian Isaac?

The Hon. Brian Isaac –

Mr Speaker, I rise in support of this Bill, it's been out to public consultation, elected members have had quite a number of occasions when they were able to discuss it at informal LegCo, the public is in support of most of it, the seatbelts is controversial at the moment and I will raise that and any other issues in Committee stage, but it has my full support at this time. Thank you, Mr Speaker.

The Speaker –

Thank you, Honourable Member. Any other Honourable Member wish to speak to the Bill? Honourable Attorney General?

The Hon. Angelo Berbotto –

Thank you, Mr Speaker. I just wanted to clarify the use of Regulations. The Ordinances that this House considers paint the picture, provides the policy framework, the role of the Regulations is to implement, to articulate in the minutia, in the little details, what you'd choose to be the law, the Ordinance. Whatever the Regulations deal with, those Regulations need to trace the power to the Ordinance, so ExCo, the Executive Council, does not have an unfettered power, it only has the power that you give ExCo in this forum. The Honourable Cyril George said that it took about two years to come to this point, if, as a matter of pragmatics, to be practical, if all the issues were, that the Regulations are going to deal with, were to be put in the Ordinance you would need probably another two years and that is the rationale for Ordinances and for Regulations. Please let me be very clear, consultation doesn't limit to Bills, consultation takes place under any enactment that Ordinance or Regulation and it is your own colleagues who sit as member of ExCo, Honourable Olsson, and I am sure that they discuss any matters that they considered in ExCo, I only think it is fair to trust their judgement when they are wearing their different hat as members of the Governor in Council. I just hope that this clarifies the role of the Ordinance and the role of the Regulations. Thank you.

The Speaker –

Thank you very much, Attorney General. Any other Member wish to speak? Honourable Mover, would you like to wind up, please?

The Hon. Pamela Ward Pearce –

Thank you, Mr Speaker. I would like to endorse the thanks for those involved in bringing the Bill, it was very remiss of me not to have done it initially and I thank my colleague for highlighting this, but it's not just those that you mentioned, I think my Honourable Colleague deserves a mention here as well, she has taken, and I'm referring here to the Honourable Corinda Essex, she has taken this Bill out for consultation in my absence abroad and did a very able job, thank you very much. And the Honourable Lawson Henry mentioned improved transportation. This has always been intended to fall out as part of this Bill, that this was going to be, the Bill was going to be the start of it, but we looked forward to having improved transportation following this and this was highlighted during the consultation process. The safety aspect regarding seatbelts, especially with young children, I share his concerns and I did mention earlier that there were still issues of safety around this and it still could be considered at some point in the future, but it will require further public awareness and engagement. I thank my Honourable Colleagues who have all supported it at various points and also, again, I thank everybody who has done a lot of work. As has been mentioned before, it took two years to come to a point, it was still a very, very fragmented Bill after that two years and the team that worked on it at this last bit, the Attorney General, the Police, the Honourable Corinda Essex and the ENRC and, of course, the Acting Director, we have worked very hard and there's been some involvement from Public Health as well, Dr Kevin also did quite a bit regarding the examinations, so I want to add my thanks to everybody who has done particularly well and worked extremely hard, especially in these last few months. Thank you very much, Sir, I move the Bill. Thank you.

The Speaker –

I put the question that the Road Traffic Bill, 2016, be approved in principle and referred to a Committee of the whole Council. Mover?

The Hon. Pamela Ward Pearce –

Mr Speaker, I beg to move that the Council do resolve itself into a Committee to consider the detailed provisions of the Bill.

The Speaker –

Is there a seconder, please?

The Hon. Dr Corinda Essex –

I beg to second.

Question that the Council resolves into a Committee, put and agreed to.

Council in Committee.

The Chairman –

We're now in Committee and then we have to go through the Clauses of this Bill. It's quite a lengthy Bill and I make no apology for taking it clause by clause and where possible a number of clauses, so Pamela, thank you, Attorney General will give us some help with the clauses. My aim here is to suspend the sitting at 12 o'clock, 12 noon, so we'll go through the first few paragraphs now and then we'll come back at 1 o'clock and continue again, okay?

So I'll call, it's the, and don't forget, Honourable Members, if you pass, once you pass a section you can't go back to it, remember that, if you approve the section you can't go back and say, oh, I'd like to go back and change one we've just approved, you're out of order, so make sure that you challenge anything that you want to challenge early on.

So the Title, the Enactment Clause and Clause 1.

Title, Enactment Clause and Clause 1.

Question put and agreed to.

The Chairman –

Clause 2 – Interpretation, that’s such a long clause. Attorney General, you want to speak generally on the principles of the Interpretation?

The Hon. Angelo Berbotto –

Yes, this section deals with defines the terms that are used in the Bill, for example, “driver”, “bus”, “foreign driving licence”, so there is no room for ambiguity or doubt as to what these main terms and expressions mean as used in the Bill.

The Chairman –

Thank you. Nothing in the Interpretation that worries Members? This is your chance now, you can’t go back.

Clause 2.

Question put and agreed to.

The Chairman –

Clause 3 – Appointment of Officers, quite simple.

The Hon. Angelo Berbotto –

Yes, it appoints the Director of Police as Registrar and Licensing Officer and gives the power to the Director of Police to appoint Inspectors, Examiners and other people, other persons to carry out the functions of Registrar. There are penalties for obstructing the work of any individual acting under the power to this section.

The Chairman –

Thank you. Any questions?

Clause 3.

Question put

The Chairman –

Sorry, did somebody want to come in? Yes, Gavin?

The Hon. Gavin Ellick –

Yes, Sir. I was just going to make a thing on the fines, I thought the fines was, like, quite heavy, like £5,000 and for twelve months imprisonment or £500 for three months , I always had this thing that even though I know there would be obstructing the law or whatever, to £5,000 is a bit steep?

The Hon. Angelo Berbotto –

If I may address the Honourable Member?

The Chairman –

I allow that.

The Hon. Angelo Berbotto –

The fines and the imprisonment terms are the maximums that the Magistrates can provide, that is not the starting point, that's the very, very end, so the starting point is £1 and one day in jail and from that the Magistrates will consider the case, the facts in the case and that is the maximum.

The Chairman –

Yeah. Thank you, Gavin, for the clarification. These are for my own purpose now, these are maximum fines you say and is there anywhere laid down that these will be maximum fines?

The Hon. Angelo Berbotto –

Yes, the Interpretation Ordinance lays out the rules for reading and interpreting legislation and it says that, when it says the fine is so and so it is to be read, this is the maximum that the Court can impose.

The Chairman –

I see. What about disqualifications then? Are disqualifications also maximum periods?

The Hon. Angelo Berbotto –

Yes, unless the Ordinance is very clear as to whether there is no discretion, but otherwise it is to the discretion of the Bench, of the Judge hearing the case.

The Chairman –

You see, because people were informed that disqualification periods for OPL is twelve months mandatory and it has the same sort of interpretation like this and I wondered whether there was a need to have clarification when there's a mandatory fine and when there's a maximum fine.

The Hon. Angelo Berbotto –

If, when we get to that provision I'd be happy to comment on that, but on this particular provision there is no issue whatsoever that this is the maximum that the Court may impose, the minimum being one day and £1.00.

–

If, when we get to that provision I'd be happy to comment on that, but on this particular provision there is no issue whatsoever that this is the maximum that the Court may impose, the minimum being one day and £1.00.

The Chairman –

Thank you, Attorney General.

The Hon. Angelo Berbotto –

Thank you.

Clause 3.

Question put and agreed to.

The Chairman –
Clause 4 – Regulations.

The Hon. Angelo Berbotto –

Yes. This section gives the Governor in Council, that is ExCo, the power to make regulations and there is a list of matters that they can make regulations on, for example, and these regulations are in relation to the motor vehicle, so what may be the maximum weight of vehicles, the maximum height and length of motor vehicles, what can be, what conversions or changes can be made to vehicles, what can be affixed, the training and qualifications, so this is a list of power of areas in which the Governor in Council may make regulations and you will note that we're talking into quite specific areas. The other thing that I wanted to mention is that in section 1 the date when this Ordinance will come into effect is 1st April and the reason for this is that the Regulations that will be made under this Ordinance come in force at the same time, so nobody is taken by surprise.

The Chairman –
Okay. Honourable Members, happy?

Clause 4.

Question put and agreed to.

The Chairman –
Clause 5, I'd like to take this singly.

The Hon. Angelo Berbotto –

Yes, Clause 5 deals with the offences relating to construction and use regulations, so once there are regulations about what is permitted to be added on a vehicle, for example, then if there are breaches of those there are penalties imposed, that is the core of the section 5.

The Chairman –
Any questions?

Clause 5.

Question put and agreed to.

The Chairman –
Part III, I will take Clauses 6, 7, 8 and 9 because they deal with the one thing. Attorney General?

The Hon. Angelo Berbotto –

Thank you. Yes, these sections deal with the registration of the motor vehicles, basically getting your, paying your licence for the..., register your vehicle and what needs to be declared by the owner of the vehicle on the forms and the responsibility on the person buying a vehicle and that person is responsible for notifying the authorities of changing ownership and making the changes to the registration and licence of the vehicle.

The Chairman –

And since it is for registration purposes only, consider that a three-month prison sentence is likely for that, is it?

The Hon. Angelo Berbotto –

As I said before, the penalty that you are referring to is for any person who wilfully, and that means that they have the intention, wilfully refuses without lawful excuse neglects to notify the change in ownership of a motor vehicle or trailer in the prescribed period.

The Chairman –

Does seem to be a bit hefty, doesn't it, three months imprisonment because I failed to tell somebody that I.....?

The Hon. Angelo Berbotto –

No, it's one day imprisonment, maximum three months.

The Chairman –

Yes, maximum three months.

The Hon. Angelo Berbotto –

And the Court hearing your case will consider your circumstances, if you have an excuse or a reason and certification, so these are not automatic penalties, this is for the Judge, the Chief Magistrate or the Bench to consider.

The Chairman –

Yes, okay. Any other comments on that?

Clauses 6, 7, 8 and 9.

Question put and agreed to.

The Chairman –

We can take sections 10, 11, 12 and 13, still on the licence periods.

The Hon. Angelo Berbotto –

Yes, and section 10 deals with licences being required for motor vehicles and for trailers and it deals also with the situation where it may be that certain vehicles, certain categories need to be exempted and the procedure to ask the Licensing Officer for that. Section 11 is about the application for the licence and what information needs to be provided and the power to prescribe fees for those licences. Section 12 deals with the licence, the duration of the licence, this is the licence for the vehicle we're talking about, which is annual and section 13 – provision for a refund of licence or the fee and the licence, taking into account whether the vehicle was purchased recently etc, whether it has been a not used vehicle that is no use for driving anymore and it considers a number of situations where an applicant may ask for a refund of the licence fee.

The Chairman –

I put the question, if there's no other questions on that, that.....Gavin, sorry, Gavin?

The Hon. Gavin Ellick –

Thank you, Mr Speaker. Would it have been better to put the fines at a maximum and actually put it in the Ordinance, because if it left in the interpretation, like, it will be all over the place, like, so I was thinking that if we gonna put these fines, because we didn't really discuss these fines, I don't think so. We did? But anyway, would it be possible for us to put this as a maximum fine, because everything I looking at has got a fine, if all the different things, £1,000 six months, but if we had a maximum fine then we would really know what we selling to the public.

The Hon. Dr Corinda Essex –

The Attorney General has already explained that all these fines are maximums, that point has already been made on several occasions this morning.

The Hon. Gavin Ellick –

I thank my colleague for that there, but as for me, I talking about the wider public now.

The Hon. Dr Corinda Essex –

If you'd attended the public consultation meetings you would be fully aware that I emphasised that point at all the public consultations and, indeed, I was criticised by one individual because he felt that it was irresponsible of me to have actually highlighted that these amounts are maximums, because by doing so I was detracting from the deterrent element associated with the penalties.

The Hon. Gavin Ellick –

Thank you, Madam.

The Chairman –

Okay, so now where have I got from, it is from 9, number 10?

The Hon. Angelo Berbotto –

I think we're on 14 now.

The Chairman –

From 10 up to 13, isn't it?

Clauses 10, 11, 12 and 13.

Question put and agreed to.

The Chairman –

Clauses 14 and 15 will complete that section.

The Hon. Angelo Berbotto –

Thank you, Mr Speaker. Number 14 is about suspension of motor vehicle or trailer licences for defects, so it just gives the Licensing Officer the power to suspend the licence if there are defects on the motor vehicle for safety issues and Number 15 is about duplicate licences, so it is possible to get a duplicate licence if your first original licence is destroyed or lost etc.

The Chairman –

Yes. Yes, Councillor Thomas?

The Hon. Derek Thomas –

Thank you, Mr Chairman. Can I ask under section 14, 14 (4), it says here the owner if he is aggrieved by the decision of the Licensing Officer he may appeal to the Chief Magistrate in writing, what time span that individual has to appeal in writing, is it open end or?

The Hon. Angelo Berbotto –

I think this is a very good question and I would add after “in writing” “within 21 days of the decision being notified” because that would be a reasonable period of time.

The Chairman –

Yes, Councillor Lawson Henry?

The Hon. Lawson Henry –

In the same section it make use and assumes that we are always going to have a Chief Magistrate and I wonder it maybe an idea now to say Magistrates Court rather than Chief Magistrate, because that term is fairly new to our jurisdiction?

The Hon. Angelo Berbotto –

I don't have an objection to replacing every occasion where there is Chief Magistrate with Magistrates Court.

The Chairman –

Yes, it doesn't change unless you have a proposed amendment, so you can't just go away from here now and say I'll think about that and I'll write this down at all, this is the law, once you pass this it passes as stands right here. Councillor Thomas?

The Hon. Derek Thomas –

Yes, in light of that then, can I make a proposal where it says, Appeal, the Licensing Officer, the person can appeal pending the decision of the Licensing Officer, to the Chief Magistrate, I got no difficulty there with that being the Magistrates Court, but can I make a proposal that it be within 21 days?

The Hon. Angelo Berbotto –

Yes, that seems a very good suggestion and can I propose that section 14(4) reads, “the owner of a motor vehicle or trailer in respect of which the licence is suspended may appeal against the decision of the Licensing Officer to the Magistrates Court in writing within 21 days of suspension.” So today the Licensing Officer suspends the licence, I have 21 days working days.

The Chairman –

Twenty-one working days?

The Hon. Angelo Berbotto –

Yes, which is also part of the Interpretation Ordinance, so it is not necessary to put it there, 21 days, in these 21 days I have to make the application in writing to the Magistrates Court.

The Chairman –

Yes, now what is the proposed amendment, please?

The Hon. Angelo Berbotto –

The owner of a motor vehicle or trailer in respect of which the licence is suspended, may appeal against the decision of the Licensing Officer to the Magistrates Court in writing within 21 days of suspension.

The Chairman –

Okay, so the amendment is that after the word “writing” insert “with 21 days of suspension”?

The Hon. Angelo Berbotto –

Yes, and replace “Chief Magistrate” by “Magistrates Court”.

The Chairman –

Okay.

The Hon. Angelo Berbotto –

Thank you.

The Chairman –

The Honourable Mover will take notice that that is one amendment, okay? So, I’m going to put the question then that Clause 14.....

The Hon. Dr Corinda Essex –

Mr Speaker?

The Chairman –

Oh, sorry.

The Hon. Dr Corinda Essex –

Mr Speaker, excuse me, on a point of information, has that proposed amendment been seconded?

The Chairman –

A very good point. Excellent.

The Hon. Brian Isaac –

Mr Speaker, I beg to second.

The Chairman –

Thank you.

Can I put the question then that the amendment isClerk, you’ve got what it is, can you read it out for me?

Clerk –

The amendment is thatthe owner of a vehicle or trailer in respect of which the licence is suspended may appeal against the decision of the Licensing Officer to the Magistrates Court in writing within 21 days of suspension.

Question on amendment, put and agreed to.

Clause 14 (as amended) and Clause 15.

Question put and agreed to.

The Chairman –

Honourable Members, it's now five minutes past twelve, I think we should adjourn at this stage and come back to the next section. It's now five minutes past twelve so we can say quarter past one. Council is adjourned.

Council adjourned.

Council Resumed.

(In Committee)

The Hon. Mike Olsson –

Mr Speaker, may I address you on a small matter of protocol?

The Chairman –

Alright, Sir.

The Hon. Mike Olsson –

It is very warm today and would it be any possibility that we can take the jacket off, Mr Speaker?

The Chairman –

Alright, I usually be reluctant because sometimes we relax and we get into a relaxed mode when we argue but shall be it, it's rather hot, I might allow you to take it off.

The Hon.?..... –

You say you might, Sir?

The Chairman –

I will do it. Right, Honourable Members then, can we get back into Committee mode if you don't mind. Can you remind me where we got to Carol? How far did we get down to? Registration? Oh yes, we're in Committee at the present time, please, so we're looking at Licensing of drivers of motor vehicles, isn't it?

The Hon. Angelo Berbotto –

That's correct, yes.

The Chairman –

Or have we finished that? No, we haven't finished that. Okay, let's see, Licensing of drivers, I'd like to take that section alone if you don't mind, Clause 16. Attorney General?

The Hon. Angelo Berbotto –

Yes, Clause 16 says that no person may drive on a road a motor vehicle without a licence and subsection (2) is what a person needs to do to obtain the licence, basically apply to the Licensing Officer and submit with the application submit a declaration and prescribed fee. Subsection (3) gives the Governor in Council power to make regulations dealing with the

classes of vehicles and requirements and the Licensing Officer, subject to the requirements as to the fitness of the applicant, may grant this drivers licence in the prescribed form. The penalty for anybody failing to comply with this provision, somebody who drives without a licence, is a fine of £500 or imprisonment for three months or both and those are the maximum penalties.

The Chairman –

Okay, thank you for explaining that. Any questions on that clause? No questions on that clause?

Clause 16.

Question put and agreed to.

The Chairman –

Clause 17, clause 18, we can take together, it's foreign licences, recognition of foreign licences.

The Hon. Angelo Berbotto –

Thank you, Mr Speaker. Section 17 is about the recognition of foreign licences and it says that somebody who has been in St Helena for less than three months does not need one, but somebody staying here for longer than that needs, sorry, I'm confusing this.

This provision is about which foreign licences will be recognised and there is a Schedule dealing with the nationalities of those foreign driving licences, that is Schedule I, so somebody having a British drivers licence that can be recognised, but an older European Community and European Economic Area licences, licences from Australia, some of the countries in the Caribbean, the Falkland Islands, Gibraltar, those foreign driving licences are accepted on St Helena.

Section 18...

The Hon. Derek Thomas –

Can I raise, Mr Chairman?

The Chairman –

Yes.

The Hon. Derek Thomas –

Can I raise for clarification on 17, please? Can I proceed?

The Chairman –

Yes.

The Hon. Derek Thomas –

Thank you, Mr Chairman. I just, for clarification here, foreign licences, 17(b) it says, between the ages of seventeen and seventy and just clarification on seventeen, are we allowing people to drive at seventeen and if so is it a car, and when I look at the definition of a car, motor car, it says constructed to carry a load of up to eight passengers, including the driver, with a maximum authorised mass of up to 7,700 pounds, so are we saying now we're allowing seventeen year olds, ...?.... buses carries up to eight passengers and I just raising this for clarification as an issue because I know when we looked at the Schedule previously we were saying we were going out and doing this, a fresh start in looking at it and coming back with clear justifications, I'm just looking now, what is a seventeen, if this goes through what is a

seventeen year old allowed to drive and if it is a private motor car the definition of a private motor car carrying up to eight passengers, we got some big vehicles carrying up to eight passengers around here.

The Hon. Angelo Berbotto –

Thank you for that question. So this provision, section 17 only deals with, sorry, 17, deals with foreign licences, so, for example, let's say that somebody comes from the Falkland Islands, that person doesn't have a St Helenian drivers licence, that person has a valid Falkland Islands drivers licence, that person with that licence, if that person is here for three months, for those three months can drive using the Falkland Islands drivers licence, that person, the holder of that licence needs to be between seventeen and seventy, so what this provision does is that we take at face value the foreign drivers licence.

The Chairman –

Yeah.

The Hon. Derek Thomas –

Yeah, I do appreciate that, I understand what it means and thank you Attorney General. Once we're allowing foreigners from seventeen to drive vehicles on a licence then we're allowing anybody on St Helena to apply for a licence at seventeen and if it is for a car I just quote the definition of a car carrying up to eight passengers, is that what we want to do or are we gonna be.....

The Chairman –

Yeah, I think the Attorney General has explained it that this section here deals with a licence. Another section later will deal with age range and which you can drive, so that will refer to even a person who has a foreign licence at age seventeen, so it just says that a person who is a foreign driver at age seventeen can drive like a local person at age seventeen can drive, okay? Now, if you want to talk about what they can drive, that's a later section, and you can put an amendment into that if you want to do so at a later section. That is correct, Attorney General?

The Hon. Angelo Berbotto –

Well, it's a little bit different because what this provision says is that as long that person is seventeen and seventy you just rely at face value on the licence, you don't go behind the licence, so if the licence to, the Falkland Islands licence for a seventeen year old says no description of vehicle, any car, that will allow that person to drive a car, we don't add any more to the interpretation. I don't know if any other country allows people under eighteen to have licences, but if there is an issue with this we can increase the age if that makes elected members more comfortable or leave it as it is, but the provision of, this provision is for when tourists come they can drive as long as they have a valid foreign drivers licence and those licences that are recognised are the ones in the Schedule that I referred to before.

The Chairman –

Councillor Henry?

The Hon. Lawson Henry –

Thank you, Mr Speaker. I think we need to be quite careful here. When we come to deal with the age range of our local licences we are more than likely to make provision for a limited number of vehicles that a young person at age seventeen will be able to drive. Now, one of the reasons we're doing that is because first of all of, perhaps, they're gonna be new drivers, but

also because of the type of roads we got on the island, Mr Speaker, and whilst we already got a provision for foreign licence in our Ordinance, are we saying then that if somebody coming in from one of the permitted countries at seventeen years old can drive the vehicles that he can drive in his country and I think that is where I think we may have to re-look at this because that will be good for his country, but is that same competence going to be on our roads here? We've only got single lane roads here and I think it's bit more burdensome, I'm not in any way saying that young people shouldn't or not competent but I think we need to be a bit careful and I can see some mischief in that provision now and when we get to categorise our own drivers who gonna be issued with licence here. Thank you, Mr Speaker.

The Chairman –

Thank you, Honourable Member. Councillor Mike Olsson?

The Hon. Mike Olsson –

Yeah, if I understand it right, Mr Chairman, there's also ambiguities between section 17 and what comes up in section 27, because in section 27 is what regulates how heavy vehicle you can drive at what age on a St Helena licence. Wouldn't it make sense that the two are similar or the same? So by, can I propose an amendment to 17(1) saying that notwithstanding anything contained in section 16 and subject to the provisions in section 27(1), (2), (3) and (4), then we get out of the problem?

The Hon. Derek Thomas –

Mr Speaker, I think trying to solve this here can get bit messy because I got concerns over 27 too when it comes up. At the moment you cannot drive on the island unless you are eighteen. We had a whole range of ages came to us for different ages, different categories and the Police went away to look at and come back with another recommendation, why don't we leave it as it is, as it stands and then when the Schedule comes back with all of the recommendations we can properly look at it, because I can see all kinds of problems here if we start allowing this and then allowing, because I had issues on 27 as well, why don't we leave it as it stands until this exercise is completed, because I was of the view that is what we were intending to do, that we was going to leave it and then if the Police want changes it will come back with the whole schedule of changes that we can properly look at debate it. By rushing in with a decision here now I think it is dangerous for the reasons as outlined. I got nothing up against seventeen year olds driving but we need to be, we need to know and have a clear understanding what they are allowed to drive if we're going to allow it and I think that work needs to be done. Thank you.

The Chairman –

What are you suggesting?

The Hon. Derek Thomas –

I am suggesting that the age, under 17(1)(b) that the ages be from eighteen to seventy years and not seventeen to seventy until the Schedule of Driving Ages is presented to the Council. I am suggesting an amendment, from seventeen to eighteen, Mr Speaker.

The Chairman –

Alright, an amendment is on the table, I have to take the amendment, if there is a seconder to the amendment?

The Hon. Gavin Ellick –

Can I just ask one question, Sir?

The Chairman –

Yes, you can ask any question.

The Hon. Gavin Ellick –

We got seventeen to seventy and you're saying eighteen to seventy, but how about those people who are seventy and over who I know on the island who's able bodies, will they still have a licence?

The Hon. Pamela Ward Pearce –

These are foreign licences.

The Hon. Gavin Ellick –

Okay.

The Hon. Lawson Henry –

We're still dealing with the foreign licences.

The Hon. Gavin Ellick –

Alright, thank you.

The Hon. Brian Isaac –

Mr Speaker, I beg to second the amendment.

The Chairman –

You beg to second. An amendment is on the table, just so that you are clear in what you are doing, you are recommending now that the age of seventeen is changed to eighteen in paragraph (b), 17(b), 17(1)(b), that's the recommendation on the table. Is there anybody else who wish to hear on that before I put the proposal?

The Hon. Lawson Henry –

Yes, and I think that is the right way to go to safeguard the people who want to drive. Now, if we get a seventeen year old as a visitor who want to drive then it wouldn't prevent him from driving, it's just that he might have to take out a local licence, because what we're saying we're not confident that they come in and drive any class of vehicle on our roads, because I am foreseeing that we are going to define the class of vehicle that a seventeen year old will be able to drive locally. Thank you, Mr Speaker.

The Hon. Angelo Berbotto –

There is no difficulty with that provision. Also the international driver's licence I think need to be eighteen to apply for it, so.

The Chairman –

Okay, the proposal on the table is that in Clause 17(1)(b) the age of seventeen, the figure 17 there is amended to read 18. We have a seconder to that. The proposal need to be put.

Question on amendment, put and agreed to.

Clauses 17 (as amended) and Clause 18.

The Hon. Angelo Berbotto –

There is one typo in 18(2)(b) which says county, the last, it says in the county of issue, it should be the country of issue, so it's 18, subsection (2), paragraph (b).

The Chairman –

Right.

The Hon. Angelo Berbotto –

Thank you.

The Chairman –

You propose, is there a seconder to the amendment?

The Hon. Dr Corinda Essex –

I beg to second.

The Chairman –

You second it, thank you very much indeed. I put the proposal that the word in 18(2)(b) with the word 'county' is amended to 'country'.

Question on amendment, put and agreed to.

The Chairman –

Anything further on that before I put the both together?

Clauses 17 and 18.

Question put and agreed to.

The Chairman –

Can we look at Duration of licences, number 19 please, Clause 19?

The Hon. Angelo Berbotto –

Yes, duration of licence, a driver's licence may be issued and be valid for up to ten years. Any driver's licence will expire when the driver reaches the age of seventy, after that age a driver's licence may be issued for any length of time, but up to three years and the Regulations will deal with the medical tests, etc for drivers after the age of seventy.

The Chairman –

Alright.

The Hon. Angelo Berbotto –

But the main change is that at the moment drivers licences are annually and the provision is for ten years duration.

The Chairman –

Right, so if I purchase a licence at age 69 then I will have it for one year only, will I, not ten years?

The Hon. Angelo Berbotto –

That's right, that's right, so better renew it before then, Mr Speaker.

The Chairman –

I put the question.....any questions on that? Yes, sorry Mike?

The Hon. Dr Corinda Essex –

Mike first, then me.

The Chairman –

Yes, you're first.

The Hon. Mike Olsson –

Just the wording of it, just a question, a driver's, subject to, a driver's licence is valid for up to ten years, but it can only be subject to subsection (2) and (3) otherwise it is ten years, is that how I should read it, because other.....or is it discretionary?

The Hon. Angelo Berbotto –

Yes, and discretion maybe because you prefer to have a licence for one year because of the cost, you may not want to pay upfront for ten years.

The Hon. Mike Olsson –

Okay, but I mean it's discretionary on my behalf, it's not discretionary from the Police, you get the driving licence of ten years and I get one for one year, that's, it's just a question?

The Hon. Angelo Berbotto –

It is, once this subsection, this section is articulated into the forms etc there will be different cost implications, it may be that you as a driver because you are a driver approaching the age of seventy, like the example that Mr Speaker gave, may not want to renew for ten years, may want to, so this gives discretion and flexibility as well.

The Hon. Mike Olsson –

Thank you.

The Chairman –

Is it Dr Corinda Essex, you were trying to.....

The Hon. Dr Corinda Essex –

Mr Speaker, that was the point that I was wanting to clarify, this discretionary from the point of view of the applicant for the licence, not from the point of view of the Licensing Authority, so if someone only wants a licence for five years, they can apply for a licence for five years, but they cannot apply for a licence with a duration of longer than ten years.

The Chairman –

Is that so, isn't this discretion here on both parts now, as written it can be discretionary on both parts, couldn't it?

The Hon. Angelo Berbotto –

As you will see in the following provisions there are particular, the discretion needs to exist there because we'll be dealing with special drivers who may have illness or other conditions and for those drivers the length of any driver's licence will be conditional on periodical checks,

so it brings flexibility into the system, it doesn't mean that the driver will be worse off, on the contrary.

The Hon. Dr Corinda Essex –

But to give an example, if I may, Mr Chairman, for the benefit of the public, if I wanted to apply for a five-year licence, but I had a serious medical condition which made it necessary for me to have annual medical examinations, I would have to have those annual medical examinations and have a year by year licence even though I would ideally like to have a five-year licence.

The Chairman –

Yes, it's discretion on both sides, you're right.

Clause 19.

Question put and agreed to.

The Chairman –

Section 20.

The Hon. Angelo Berbotto –

Yes, this section is about physical fitness of applicants, so when somebody fills out their form to obtain a driver's licence or renew a driver's licence this person will have to make a declaration on whether that person is suffering from illness or disability or persistent misuse of drugs or of alcohol and depending on the responses there may be referral to a Doctor or maybe just a grant of licence there and then and these provisionals are for if, for example, I apply for a licence for five years and on the fourth year of my licence I become aware that I have a debilitating illness that may impair on my capacity to drive, this subsection makes it the responsibility of the driver licence to raise that and this applies to foreign licences as well, so somebody who is driving here on a foreign licence and is aware of this then they need to declare it. This is just a provision so that not to penalise anybody but to make sure that if there is a condition that a driver has that is monitored, because mention has been made about the roads and how tricky it can be sometimes to drive in St Helena, heavens forbid that somebody has a condition that is triggered driving and that person suffers an accident or causes an accident with loss of property and lives, so these are just caution measures, preventative measures.

The Chairman –

Okay. Any questions on this Clause 20? Councillor Lawson Henry?

The Hon. Lawson Henry –

20(4), Mr Chairman, the use of the word Chief Magistrate again appears and I wondering if it is sensible again to say Magistrates Court?

The Hon. Angelo Berbotto –

Yes, I agree with that change and I propose that subsection (4), section 20, subsection (4) reads at the end, may within 14 days of such decision appeal to the Magistrates Court in writing. Thank you.

The Chairman –

Magistrates Court. So the proposal is that the words Chief Magistrate are replaced by Magistrates Court, that's right? Is there a seconder for that amendment?

The Hon. Pamela Ward Pearce –
I beg to second, Mr Speaker.

Question on amendment, put and agreed to.

Clause 20 (as amended).

Question put and agreed to.

The Chairman to Deputy Speaker –

You have to talk to me, you can't take part in the debate. Alright, what has been drawn to my attention in 20(2), clause 20(2), you have one word missing I think there in the second line on the top page, that's where it says "which is likely to cause driving by that person of a motor", motor vehicle that supposed to be or what? The question has been asked whether the word "vehicle" should be in there otherwise it will be the driving of a motor?

The Hon. Angelo Berbotto –

Yes, thank you very much, the word "vehicle" is missing.

The Chairman -

Will you make the proposal then for amendment?

The Hon. Angelo Berbotto –

Yes, I propose that in section 20, subsection (2) second line the word "vehicle" be inserted after the following, "that person of a motor vehicle, the word "vehicle" after the word "motor".

The Chairman –

Alright, the proposal is that "vehicle" be inserted after the word "motor".

Question on amendment, put and agreed to.

The Chairman –

So that's another amendment, Chairman, are you taking notice of the amendments, Chairman, number? Okay.

Clause 20 (as amended) –

Question put and agreed to.

The Chairman –

Clause 21, 22 is missing.

The Hon. Angelo Berbotto –

Yes, I will suggest that Section 22 is included that says "Left Blank" so that it will not affect the numbering of the rest of the provision.

The Chairman –

The proposal is that Section 22 is a blank section but remains a Section 22. Is that what you want?

The Hon. Dr Corinda Essex –

Mr Speaker, I think it would be better to amend the current Section marked 23 to 22 and make the consequential amendments throughout the document.

The Chairman –

Alright, there's a second proposal on the table, that instead of leaving a blank section that there be consequential amendments and they will run automatically down the line. Is there a seconder for that?

The Hon. Brian Isaac –

I beg to second, Mr Speaker.

The Hon. Angelo Berbotto –

Mr Speaker, the only difficulty with that is that the internal referencing will be affected and will create more changes because there are sections that refer to other sections and that is the reason why I didn't propose that myself.

The Chairman –

I can see the difficulty, because all sections might need to be reworded completely around, but there should be something established there that Section 22 is not filled in inadvertently, unintentionally.

The Hon. Angelo Berbotto –

Yes, left and intentionally, no, Left Blank, and that's it, that means that you were not, does not affect the reading on the rest of the document, it will be there as a white elephant.

The Chairman –

Yes, Councillor?

The Hon. Derek Thomas –

Thank you, Mr Chairman. I do support what the Attorney General has said, it makes sense, but is there in the Ordinance any cross references to Section 22?

The Hon. Angelo Berbotto –

I don't believe so, but there are cross references to other sections and that is why I would like to avoid taking out of sync.

The Chairman –

Yes.

The Hon. Angelo Berbotto –

I apologise for the drafting mistake.

The Chairman –

That's okay.

The Hon. Derek Thomas –

I support the Attorney General's recommendation.

The Chairman –

Alright, so the proposal is here that there'll be a section 22 included, which is "Left Blank" and the record should show that so that any time you're reading the law there is an intentional omission here. Is there a seconder for that proposal? You seconded it yourself?

The Hon. Derek Thomas –

I already second it.

The Chairman –

Thank you very much indeed.

Question on amendment, put and agreed to.

The Chairman –

So, I'm taking now section 21, section 22, section 23, section 24.

The Hon. Angelo Berbotto –

Thank you, Mr Speaker. Section 21 deals with the competence to drive and deals with the test of knowledge of the Highway Code, the test for somebody to be able to obtain a driver's licence, the age limits. Section 23 deals with the disqualification for offences. Criminal offences in connection with driving of a motor vehicle that can prevent somebody from renewing or obtaining a new driver's licence. Section 24 deals with disqualifications and suspensions.

The Chairman –

Yes, Councillor?

The Hon. Derek Thomas –

Thank you, Mr Chairman. In relation to Section 23(4) saying that a person against whom an order is made may appeal, may appeal, suspend the operation of the order depending determination of an appeal, is there a time for that or?

The Hon. Angelo Berbotto –

Yes, well, it says, a person against whom an order is made, so an order is referring to (3)(a) where the Magistrates Court commits an offender to the Supreme Court or defers passing a sentence on an offender under this Ordinance, it may order the offender to be disqualified until he or she has been dealt with in respect of the offence. That means that person X comes to the Magistrates Court for a driving offence, the Magistrates Court commits them and sends the person to the Supreme Court but in the interim the Magistrates Court can disqualify that person. Then (b) says, any period of disqualification order on conviction is deemed to include a period during which the person was disqualified under paragraph (a) so that means that when the Supreme Court hears the actual case and let's say that the Supreme Court says, yes, you committed the offence, I'm going to disqualify you, they have to take into account the period under which the Magistrates disqualified. Now, number (4) says that the person, a person against whom an order is made under this section can appeal as any other sentence or order. So you appeal in the same procedure and that's why there's no specified any further and my advice is that it doesn't need any further clarification. The Court will know how to deal with this.

The Chairman –

Okay. Councillor, are you happy?

The Hon. Derek Thomas –

I'm content with the Attorney General's explanation.

The Chairman –

You do have, I think Councillor Lawson Henry might have missed out again on Section 21, you have appeal to the Chief Magistrate again.

The Hon. Angelo Berbotto –

Thank you, yes.

The Chairman –

Do you intend to leave that or do you.....

The Hon. Angelo Berbotto –

No, my intention is at every occasion where Chief Magistrate appears in the Bill to change it to Magistrates Court.

The Chairman –

So that's the proposal where it appears where the Chief Magistrate appears it is the words to be changed to Magistrates Court, is that your proposal? Is there a seconder for that?

The Hon. Lawson Henry –

I beg to second.

Question on amendment, put and agreed to.

The Chairman –

Sections 21 then, 22 and 23. Have we dealt with 24 yet?

The Hon. Angelo Berbotto –

Yes, as far as I'm concerned, I don't know if there are any questions in respect of 24.

The Chairman –

Any other questions on 24? Yes, Sir?

The Hon. Mike Olsson –

They seem, both 23 and 24 seem to give very wide powers to the Court, wider than they are today when it comes to, very little guideline indisqualify offenders. Oh, do that again, there's very little guideline in section 23 and section 24 when it comes to disqualifications, it's quite open, of course the Court should have discretion but I'm just questioning if the discretion is almost too big?

The Hon. Angelo Berbotto –

As a pre, as a clarification point. In any prosecution that the Crown brings, the Crown meaning the Attorney General's Chambers, on the instruction of the Police, the Court will consider all the facts in the case. Any disqualification that the Crown says should be imposed the Court

will scrutinise on the basis of the evidence available. We trust our Lay Magistrates and our Chief Magistrate to apply the law and the provisions, it is my advice to Honourable Members that the provisions are not without its checks and balances, but that it is drafted in a way that would allow a Court to do their job in the way that pretty much they're doing at the moment when dealing with these issues.

The Hon. Mike Olsson –

Yeah, my argument would just be that we got a relatively few cases and before we will build up a bank of relative cases so that we can see the relativity of different offences it could be maybe to much up to the discretion of the Court without enough guideline from the legislator which are us?

The Hon. Angelo Berbotto –

If you look at section 24, it says that a person, section 24(2) a person who while disqualified from holding or obtaining a driver's licence, drive or attempts to drive a motor vehicle or obtains or attempts to obtain a driving licence, sorry, there is a typo there in 24(2) it says 'diving' licence, it should say 'driving licence' commits an offence. This to me reads the Court will have to be satisfied that that person has been disqualified, the Court will have to be satisfied that that person has breached that disqualification, the Court will consider any other facts in the case, for example, if there was an emergency or there is a fire in the house and that person had to drive to alert the authorities, they will discuss, sorry, they will consider all the entire range and that is why these provisions need to be wide enough to anticipate any potential situation. The more the legislator narrows the field the more provisions they have to anticipate and consider in advance and that's the beauty of this common law system in which the legislator trusts the judiciary to follow the spirit of the provisions.

The Chairman –

There is always an opportunity to appeal to Supreme Court and most of the cases are in Magistrates Court.

The Hon. Angelo Berbotto –

That's correct.

The Chairman –

Alright, Councillor, happy? Now, where am I?

The Hon. Angelo Berbotto –

You're on 24 (2), Mr Speaker, and my proposal is that 24, subsection (2) paragraph (b) is amended. At the moment it says "obtains or attempts to obtain a diving licence" and that should be, that may be the case but I think the legislator here the intention was a "driving licence" and I apologise for the typo.

The Chairman –

The proposal is that the word "diving" should be amended, it's really typographical, to "driving", is there a seconder for that?

The Hon. Pamela Ward Pearce –

I second it.

Question on amendment, put and agreed to.

The Chairman –

Did I call section 24 only or which section?

The Hon. Angelo Berbotto –

You stopped at 24, Mr Speaker.

The Chairman –

I stopped at 24 and I took it from where? 21, so I'm going to put, unless there's any further debate on sections 21 to 24, I'm going to put the question that clauses 21, 22, which is blank, 23 and 24 do stand part of the Bill?

Clauses 21, 22, 23 and 24.

Question put and agreed to.

The Chairman –

Clauses 25, dealing with licences and 26 do stand part of the Bill? Attorney General?

The Hon. Angelo Berbotto –

Thank you. 25 deals with surrender of licences, so if a licence is revoked or by suspension or disqualification and if the Licensing Officer in writing tells the person that they have to surrender the licence then the driver has seven days to surrender the licence otherwise the driver breaches the law. Section 26 deals with production of licences to Police Officers so if a driver is asked by a Police Officer for the driver's licence and the driver doesn't have it on the spot he or she needs to produce that driver's licence within seven days. Unless there are any questions those are the clauses.

The Chairman –

Okay, any questions on that?

Clauses 25 and 26.

Question put and agreed to.

The Chairman –

We'll take 27 on its own, clause 27 – Restriction on driving by young persons.

The Hon. Angelo Berbotto –

Yes. This section 27, (1) says that a person under seventeen may not drive a motor vehicle and that a person under twenty-one may drive but only a certain type of vehicles; motor car that has a maximum authorised mass of 4,960 pounds, that's 2,250 kilos and a maximum engine capacity of 1.4 litre petrol or 1.6 litre diesel. Also a person under twenty-one may drive a light motorcycle or a quadricycle, but this provision exempts agricultural vehicles, so a person under seventeen may drive an agricultural vehicle as long as it is within the internal operations of a farm. So if a child of sixteen is helping their parents with farm and they're driving a tractor they wouldn't breach the law as long as they're not driving the tractor on Market Street. The penalty for any of these young persons breaching these provisions is £500 fine or three months imprisonment or both and that is the maximum that the Court may award on breach. Unless anybody has any questions?

The Chairman –

Yes, there are three people, four people looking for questions, let's take Councillor Thomas first.

The Hon. Derek Thomas –

Thank you, Mr Speaker. I have concerns about this section, I have no difficulty in placing restrictions on the type of vehicle a person seventeen years of age can drive, but the problem I have is placing restrictions on persons under the age of twenty-one. At the moment persons aged eighteen to twenty-one can drive vehicles, in certain cases they are quite large type vehicles, I have difficulty in placing restrictions upon these persons, it will impact upon private sector, we don't have any evidence available to us to make this decision so I am proposing an amendment that section (2) be deleted until such time the evidence is produced in terms of placing restrictions on persons under the age of twenty-one. Like I say, I have no difficulty in Council deciding the class of vehicles persons seventeen years of age can drive, but at this time I don't feel we should be placing restrictions on persons under twenty-one. Thank you, Mr Chairman.

The Chairman –

Alright, I see there's about four people wanting to have a discussion on this section, I will take note of that and put it to the vote afterwards if you get a seconder. Councillor Corinda Essex?

The Hon. Dr Corinda Essex –

Yes, Mr Speaker, Mr Chairman, I would like to propose that instead of deleting the clause totally it's amended to read "a person of seventeen years of age may only drive the following classes of vehicle".

The Chairman –

Okay. There are two proposals on the table, I have to take them in order, but I just want to see what the other Members have to comment on them. Councillor Olsson?

The Hon. Mike Olsson –

Mr Chairman, my concern is the effect it will have on those who are eighteen, nineteen and twenty now, they have a Ford Escort 1.6 petrol, there are quite a few actually and all of a sudden introducing this law they can't drive their own vehicle, that is my concern. I have, in the longer term nothing against what is proposed here but then we wouldn't need the long incubation period, so the ones that are eighteen now this should only apply to new driving licences, not to existing ones, because they have already bought their vehicle and can't.....?..... but otherwise the principles of this I have nothing against, but we can't do this overnight, that's what I'm saying, so either go for the suggested amendments or make some change so, which would be my preferred option, but I will follow whatever goes through that we have some incubation period on that to make it work practically. That's all.

The Hon. Angelo Berbotto –

Mr Speaker....

The Chairman –

Alright, I'll come to you in a minute. Councillor Gavin Ellick? I'll let you reply.

The Hon. Gavin Ellick –

My problem is I got twenty-one year old with the quad bikes, quad bikes are used on dirt tracks and plus on farms, but mostly they are used as recreation vehicles, some use them on the road, but for twenty-one for them to use it after twenty-one, I don't think that seems quite right, I'd like to see that be down to seventeen.

The Chairman –

Alright, now you've all got varying ideas, I wonder if you debated all this before you brought it to the table here, that's the problem. Can you answer that please?

The Hon. Angelo Berbotto –

Yes. Firstly, there's no difficulty for a twenty-one year old driving a quadricycle so I don't know if I understood Councillor Ellick's objection. He says that you can't drive, subsection (2) says that you may drive only the small motor car, the light motorcycle or the quadricycle, so it's fine for a twenty-one year old. I am grateful.....

The Hon. Gavin Ellick –

I rise on a point of order, I say for seventeen year olds.

The Chairman –

He wanted the age to be reduced I think, but he has to make a proposal for that anyway.

The Hon. Dr Corinda Essex –

Mr Speaker, it says a person under twenty-one, so that would include seventeen year olds can drive quadricycles.

The Hon. Gavin Ellick –

My humble apologies, Madam.

The Hon. Angelo Berbotto –

Thank you and I am grateful for Councillor Olsson's incubation idea, if I may call it differently, the provision can be included for subsection (2) to have operation from 1st April 2020, that means that young people that now are applying to have a licence will not be affected or at a later stage, that is one solution. The other solution is to remove the text of subsection (2), leave it blank, and then consider this at a later stage.

The Chairman –

Yeah, if we don't be careful we'll be ending up on all blank pages of blank clauses inside this legislation which is not very good at all, so think twice before you make that proposal, that's all. Councillor?

The Hon. Derek Thomas –

Thank you, Mr Chairman, I think it is dangerous for us to try and work this out round this table here. I mean, my concern was putting restrictions on persons under twenty-one as to what they can drive and, you know, why don't we just leave it and let the work that we already asked to be done be done and we can have the evidence in support of it, then we can make proper, informed decisions. Sitting round here now is not the time, I do have concerns about this and certainly I don't support having restrictions placed upon persons under twenty-one when they are already allowed to drive certain heavy vehicles, so I think the whole thing should be suspended until the proper schedule is worked up with the evidence attached to it. Thank you, Mr Chairman.

The Chairman –

Chairman of ENRD, you got any comments on that?

The Hon. Pamela Ward Pearce –

Well I must confess to being rather surprised. It has been out for public consultation, none of this has been raised, it's been through all the Committee stages and also at ExCo, so I'm a bit confounded that this is only being raised here now, Sir.

The Chairman –

Yeah, so am I, we're getting a lot of amendments in this piece of legislation.

The Hon. Derek Thomas –

With all due respect, when this was out for consultation I was off island, I just got back, Mr Chairman, and I've raised it now because it will impact upon the local people out there.

The Chairman –

Yeah, it will impact. Honourable Lawson Henry?

The Hon. Lawson Henry –

What I would say, I take onboard what the Honourable Chairman say, and she's quite right, that was the process it went through, but I don't think what has been done when we sat in informal session and my colleague who raising the issue now, we raised these issues then and another piece of work had to be done to bring all the ages and the schedules of vehicles that young people were going to be able to drive, and I agree with my Colleague, sitting in formal session is not the right place to be doing this and I accept all the hard work that has been done on the Bill. Some reason, that work what we asked earlier and it would have been before 12th October actually, because that's when we both left the island, we asked for that work to be done, so that's slipped through somewhere and with the best will in the world you yourself accept that you can't continue to make these amendments. Thank you.

The Chairman –

What are you suggesting, are you suggesting that the whole Bill should be suspended or not?

The Hon. Derek Thomas –

Mr Chairman, I'm not suggesting the whole Bill should be suspended, what I'm suggesting, recommending here that the interference with the age limits to drive should be deleted until the work that we asked to be done is done. There was a whole range of recommendations regarding ages, we wanted justifications so when we make decisions we are properly informed, that work, we haven't seen that work yet and sitting here now making decisions which going to affect upon the local people out there, in some cases their livelihood, because in some cases people driving rather heavy vehicles and I think we need to make a proper decision here, so I'm not opposing to the Bill, I'm just opposing to the age limits here.

The Chairman –

Okay, I see here. Dr Corinda Essex?

The Hon. Dr Corinda Essex –

This matter was raised when the Bill was brought before Executive Council and an undertaking was given by the Police to do some further work on this. However, the proposal that I made

to amend this clause to read “a person of seventeen years may drive only the following” will not have any impact on any current drivers on the island, because at the moment there are no seventeen year olds driving on the island, but it will enable persons who have got licences from elsewhere to drive these categories of vehicles on St Helena, so therefore it would be a step forward towards being able to allow seventeen year olds to actually obtain driving licences and it would not be clashing with eighteen, nineteen and twenty year olds who currently are driving different descriptions of vehicles in any way, but just for the information of the public and for the information of others present here today when the issue was raised in Executive Council the Chief of Police gave an assurance that if, indeed, this was passed those individuals who are currently driving those types of vehicles would not be penalised, it would only be new persons wishing to obtain those types of licences, because those are currently using those types of licences and driving those types of vehicles would have, what I think he termed, grandfather’s rights.

The Hon. Wilson Duncan –
That’s right.

The Chairman –
Thank you, Councillor.

The Hon. Angelo Berbotto –
Thank you, Mr Speaker, and thank you to all Councillors. A solution, if I may propose one, may be for subsection (2) to say “a person under twenty-one years of age may drive only the classes of motor vehicles as prescribed by the Governor in Council in Regulations”. What that would mean is that this debate can be taken to ExCo. If ExCo decides that there should be no restrictions no regulations are enacted, but at least it provides, puts there a footnote for this to be taken on and if regulations are needed and if not a person under twenty-one will have no restriction and I think that would be a compromise to continue with the other sections without stopping at this stumbling block.

The Chairman –
Alright, it seem to be there’s three proposals on the table, I’ll try see if we can.....oh, sorry, Councillor Tony Duncan?

The Hon. Wilson Duncan –
Ah yes, this is on a different matter, Mr Chairman, 27(2)(b) light motorcycle, what is a light motorcycle? Okay, thank you, I missed that.

The Chairman –
Alright, can we then go back to where we were? There are three proposals on the table, look like to me, one is a proposal to delete section 27(2) altogether and I take it, oh no, it’s renumbering of that section; the second proposal on the table is to amend the age of twenty-one to seventeen and the third proposal from the Attorney General is that to make a new paragraph there....to replace the same paragraph, section 2.....

The Hon. Angelo Berbotto –
To replace section (2) with the following words “a person under twenty-one years of age may drive only the classes of motor vehicle on a road as prescribed by the Governor in Council in Regulations.

The Chairman –

So you'll be deleting all the other?

The Hon. Angelo Berbotto –

That's right, delete (a), (b) and (c).

The Hon. Lawson Henry –

Could I ask that that be read again, slowly, please?

The Hon. Angelo Berbotto –

Oh, sorry. Section 27, subsection (2) would read – a person under twenty-one years of age may drive only the classes of motor vehicle on a road as prescribed by the Governor in Council in Regulations, so that if the Governor in Council never makes regulations about this there's no limit, seventeen and they can drive anything, but if the Governor in Council makes regulations then the power is here for the Governor in Council to do that.

The Chairman –

Yes, Councillor, you want to comment on that?

The Hon. Derek Thomas –

Yes, thank you, Mr Chairman. I not gonna **die in the ditch** over this, my concern is placing restrictions on persons under twenty-one, I don't see the justification as alluded to, so the Attorney General's proposal is a way forward because in that way it won't impose any restrictions on persons under twenty-one unless Governor in Council properly decides with the supporting evidence. Thank you.

The Chairman –

Will you then withdraw your proposal.....?

The Hon. Derek Thomas –

I withdraw my proposal.....

The Chairman –

Alright, that leaves me with two. Councillor?

The Hon. Dr Corinda Essex –

I will withdraw mine because that is covered by the Attorney General's.

The Chairman –

Alright, thank you. I think we've got a way forward here. Attorney General's proposal, Mike, you got something?

The Hon. Mike Olsson –

Yeah, I just have to repeat what I said at the beginning with the discussions of this Bill that we already put too much in the Regulations and this is not good for transparency of Government. As soon as we end up with something that's controversial, chuck it into the Regulations where it's less visible, I don't agree with that, but if it's what other Councillors want to do then let them do it, but I just have a warning when it comes to this, this is not good for transparency.

The Chairman –

Councillor Pamela Ward Pearce?

The Hon. Pamela Ward Pearce –

No, I was just going to say, Sir, that I would find the Attorney General's compromise satisfactory.

The Chairman –
Councillor?

The Hon. Derek Thomas –

Just on a point of information, as far as I concerned I don't think as soon as we find something controversial it goes in regulations, I don't believe that is the case, Mr Chairman.

The Chairman –

Alright. It seems I am left with one proposal and let's try get the proposal right. The proposal is that after the word "road" is it, in 27(2) delete the following words, so we got rid of that first and insert "as prescribed by the Governor in Council in Regulations". Yes?

The Hon. Angelo Berbotto –

Well actually, you delete more than that so I would say delete 27(2) completely and replace with the following – "a person under twenty-one years of age may drive only the classes of motor vehicle on a road as prescribed by the Governor in Council in Regulations".

The Chairman –

That's what I just said.

The Hon. Angelo Berbotto –

I think you left the word "following" and I...

The Chairman –

Took what word

The Hon. Angelo Berbotto –

Following classes and I removed the word following....

The Chairman –

You want to take "following classes" out?

The Hon. Angelo Berbotto –

Yeah.

The Chairman –

Delete the word "following", okay. So the way to deal with this, Attorney General, is to delete the word "following" in Clause 2, alright?

The Hon. Angelo Berbotto –

Yes.

The Chairman –

Delete all after the word “road”, all the words after the word “road” and insert after “road” as prescribed by Governor in Council in Regulations”, yeah?

The Hon. Angelo Berbotto –
Yes.

The Chairman –
Okay, I think we will have that. Clerk, you’ve got all that? Good, okay. So we’ve got as far as Clause 2. Any other thing within that Clause 27? You see, that’s why it’s so important to take clause by clause when they are?.....
So I put the proposal that Clause 27 (2) is amended as has been recommended that time.

Question on amendment, put and agreed to.

Clause 27 (as amended).

Question put and agreed to.

The Chairman –
Clause 28 and 29 together – Speed.

The Hon. Angelo Berbotto –
Yes, 28 is about control of speed and it says that any person who drives over the maximum speed commits an offence and there is a fine of £100 or imprisonment for one month or both and a person convicted of this offence may be liable to disqualification from holding or obtaining a licence for a period of two years and also provides for a person charged under this section is not liable to be convicted of the offence solely on the evidence of one witness. Subsection (4) says that a person who keeps or carries in a vehicle any device which can detect the presence of any measuring device, so a radar, or any other device that can interfere with a speeding measuring device commits an offence.

The Chairman –
Does that mean that if he’s taking it from the wharf to his home that he’s committing an offence?

The Hon. Angelo Berbotto –
Could you repeat that, please?

The Chairman –
He’s just got it off the ship, so he want to take it home, is he committing an offence?

The Hon. Angelo Berbotto –
If you have a device that can interfere with the Police’s radar that is measuring the speed you are committing an offence, that’s what subsection (4) says.

The Chairman –
Yes, Councillor?

The Hon. Derek Thomas –

Thank you, Mr Chairman. Great emphasis has been placed on this Bill in relation to safety, road safety and I'm a bit surprised here to see that exceeding the speed limit the fine is only up to £100 or one month in prison when you compare all of the other penalties within the Ordinance, it is rather low when we're talking about, I mean, speed could be really excessive here, that's a dangerous issue.

The Hon. Angelo Berbotto –

May I comment on that? Yes, the reason for that is that speeding can be for different reasons and it depend on the zone because there are 20 mile, 30 mile, but when you look at the penalties in isolation, okay, perhaps they're not very heavy, but if you look at subsection (2) it says that the Court can also disqualify you and that is a very heavy penalty because it means that you won't have a licence for a while, so there are checks and balances and trying to strike that balance there, so if a person on a 20 mile zone is doing 25 and gets, you know, a fine, is different from somebody who is collecting fines and then the Court can say, well, this is a bit of a habit, so we're going to break the habit by taking your licence for a couple of months.

The Chairman –

Okay. Honourable Lawson Henry?

The Hon. Lawson Henry –

And I suppose, Mr Speaker, I can see where my Colleague coming from, but I suppose depending on the gravity of the speed other charges could be brought rather than speeding which already carry heavy offences and I'm talking here about dangerous driving, so I agree with the Attorney General's interpretation. Thank you.

The Chairman –

Alright. Anybody else has any comment to make? No, okay then I'll put the question.
Clauses 28 and 29.

Question put and agreed to.

The Chairman –

Section 30 and section 31 I think we can take those two together.

The Hon. Angelo Berbotto –

Thank you, Mr Speaker. Section 30 is Causing death by driving. This is a very serious offence and the penalty is £10,000 or imprisonment for life or both and section 31 is Dangerous Driving and that is a fine of £8,000 or five years imprisonment or both and the definition of Dangerous Driving is if a person drives a, the manner in which a person drives falls far below what would be expected of a competent and careful driver and it would be obvious to a competent and careful driver that driving in such a way would be dangerous.

The Chairman –

Yes, Councillor?

The Hon. Derek Thomas –

Thank you, Mr Chairman. I see in section 29(3) that is the Governor may on application by the Director of Police prescribe speed measuring devices for the purposes of this section, not Governor in Council, the Governor alone?

The Hon. Angelo Berbotto –

Yes, that is just the Governor, which, basically, authorises the use of the device, for example, their radar gun is an administrative type procedure.

The Hon. Derek Thomas –

Thank you for that. Previously, from my recollection, it's been Governor in Council, sophisticated devices, Mr Chairman, is changing all the time, it's changing all the time and if this is going to be embedded in the body of the Ordinance then Governor in Council has no control?

The Chairman –

You want to comment?

The Hon. Angelo Berbotto –

Well, my response is that the Governor has powers under different Ordinance to deal with these things that may need expediency, the power here is not a controversial power, in my view, it's just authorising, okay this machine can be used, but it is up to this House to choose whether they prefer to make that Governor in Council.

The Chairman –

You want to go backwards on this?

The Hon. Derek Thomas –

Mr Speaker, Chairman, that is my view, it should be Governor in Council, I don't know how other Members feel, you know, whether they support what I'm saying or not, so obviously that is my proposal that it should be Governor in Council.

The Chairman –

You can't amend it now at this stage, can you, because we've already gone past it.

The Hon. Derek Thomas –

No, we're on 29.

The Chairman –

No.

Various

No, 30 and 31.

The Hon. Derek Thomas –

In that case, Mr Chairman, nothing can be done then.

The Chairman –

Thank you. Alright, 30 and 31, we're on 30 and 31 now, Causing Death and Dangerous Driving. Is there any particular.... Yes, Gavin, sorry Gavin?

The Hon. Gavin Ellick –

Again, I'm looking at 31 and it say a person who drives dangerously on a public road or public place commits an offence, fined £8,000, that's a bit steep, Sir?

The Hon. Pamela Ward Pearce –
Maximum.

The Hon. Gavin Ellick –
Even for maximum, with £8,000?

The Hon. Lawson Henry –
Serious offence that.

The Hon. Gavin Ellick –
You serious?

The Hon. ?
Yes, we are serious.

The Hon. Gavin Ellick –
We need to have Donald Trump down here then.

The Chairman –
Okay, so the figure there is £8,000 unless you wish to amend it there's nothing else that we can do about it at this stage I think. This has been through Committee, has been through Executive Council, has been out for discussion and now you're in the final time, you see. Okay, so Clauses 30 and 31, I put the question.

Clauses 30 and 31.

Question put and agreed to.

The Chairman –
Careless and inconsiderate driving and I think we can take the other one, Offence of aiding, abetting, counselling, procuring and Racing as well.

The Hon. Angelo Berbotto –
Thank you. Careless and inconsiderate driving is an offence under this proposed Ordinance and with a fine of up to £5,000 or imprisonment for three years and what is the definition of careless and inconsiderate driving? Well, a person is regarded as driving without due care and attention if the way he or she drives falls below what would be expected of a competent and careful driver and in determining what would be expected of a careful and competent driver in a particular case regard must be had not only to the circumstances of which he or she could be expected to be aware but also to any circumstances shown to have been within the knowledge of the person and a person is regarded as driving without reasonable consideration for other persons only if those persons are inconvenienced by his driving. The section 33 – Office of aiding, abetting, counselling, procuring or inciting the commission of an offence deals with any person that aids to somebody causing death by driving, dangerous driving, the previous offences, so if anybody is not driving but is in any case helping to cause death by driving or to driving dangerously that person is also captured by this provision. And, for example, you may have somebody, the passenger, who is trying to gain control of the steering wheel, for example, let's say I'm driving and the person next to me is distracting me in a way that is causing me to drive dangerously, for example, so this provision would cover those situations. Racing – a person that doesn't have a licence to promote racing activities and indulges in racing is

committing an offence and the fine is of £3,000 or imprisonment for nine months and this situation is not if there is an accident, if there is an accident while racing there you have two offences, but let's say that Councillor Olsson and I decide to race our cars in Ladder Hill road and we do it, there's no accident, but still there is an offence. If we do it and then there is an accident, it will be more than one offence. Unless there are any questions?

The Chairman –

Okay, but in that same clause it's not only on the road, it's in a public place, can you explain that?

The Hon. Angelo Berbotto –

Yes, and, for example, it could be that the race is not on Ladder Hill road but is on Rosemary Plain. Rosemary Plain, the actual green, is not a road but would be considered a public place.

The Chairman –

Okay, I'll put the question, unless there's any....yes, Councillor?

The Hon. Dr Corinda Essex –

Just on a point of clarification from the public's perspective, if you look in the Interpretation section, vehicle is defined as every type of machine or implement of any kind which is drawn or propelled along any road, so would this include go karts, for example?

The Hon. Angelo Berbotto –

Yes, it would, and that is why anybody organising a race needs to get a licence first.

The Hon. Dr Corinda Essex –

Can you tell the public how they would need to go about getting a licence and how this would be issued?

The Hon. Angelo Berbotto –

Yes, the Licensing Officer is the Chief of Police so anybody interested in organising one of these activities should contact the Chief of Police. Thank you.

The Chairman –

Yeah, thank you for that, I think that is useful information for the public. Councillor?

The Hon. Derek Thomas –

Thank you, Mr Chairman. The racing here, what is the difference, racing and speeding, I mean, you got racing here, the Attorney General alluded to you racing up Ladder Hill road and that the fine is £3,000, you speeding it is £100?

The Hon. Angelo Berbotto –

Yes, the difference is that racing involves more than one vehicle and is in relation to which of the vehicles in the race arrives at the finishing line first, so as long as there are more than one vehicle and these people are trying to get to the same place in the earliest possible time that is a race and it will, of course, be a question of fact for the Court considering if actually Mr Olsson and I were racing up Ladder Hill or we were just in a hurry to get to our dinner, so it would be a question of fact for the Court, but if there is any suggestion that two or more vehicles are engaged in a racing activity it will be for the Court.

The Chairman –
Yeah. Alright Councillor?

Clauses 32, 33 and 34.

Question put and agreed to.

The Chairman –
Clause 35, please?

The Hon. Angelo Berbotto –

This is causing danger to road users and it is an offence if a person intentionally and without lawful authority or reasonable cause causes anything to be on, in or over a road interferes with a motor vehicle, trailer or cycle or interferes with traffic equipment. So, for example, if I put a rope from one side of the road to the other I am interfering with the road or if I apply something on a motor vehicle, if I decide to tie down my neighbour's car to a tree, that would be interfering with a motor vehicle, or, with traffic equipment, for example, if I decide that I don't want the mirror on Ladder Hill and I remove it that would be caught by this provision and the penalties of £3,000 or imprisonment for nine months or both.

The Chairman –
Right. Any questions?

Clause 35.

Question put and agreed to.

The Chairman –
Clause 36.

The Hon. Angelo Berbotto –

Prohibition of driving motor vehicles elsewhere than on roads. Well, we know that roads are the lawful place to drive vehicles, but this provision allows also to drive a motor vehicle within thirty yards of a road, that is not a problem, but driving on common land or Crown land, that is an offence. If anybody wants to drive on their own private land they're not stopped by this provision and the penalty is a fine of £1,000 or imprisonment for six months or both.

The Chairman –
Alright, I think that needs to be aired so's that people outside understand that. Driving on Crown land is an offence unless there's lawful authority.

The Hon. Angelo Berbotto –
That's right.

The Chairman –
And there's a penalty for that attached as well.

The Hon. Angelo Berbotto –

That's right, yes, but if it is land that is within thirty metres of the road, for example, if you park on Rosemary Plain and you are thirty metres from the road, that's fine.

The Chairman –

So you can't drive on Rosemary Plain, can you? What gonna happen to all the picnickers round there now?

The Hon. Angelo Berbotto –

I'm sorry?

The Chairman –

What's gonna, how is this gonna affect the picnickers?

The Hon. Angelo Berbotto –

The provision is, it is not an offence to drive a motor vehicle on any land within 30 yards, 27 metres of a road, being a road on which a motor vehicle may lawfully be driven.

The Chairman –

Will it affect people on Rosemary Plain?

The Hon. Angelo Berbotto –

I can not imagine the Police starting to interpret this provision in a way that may arbitrarily affect people doing things. The reason of this provision is to preserve, for example, the fragile flora on St Helena, to make sure that what common sense tells us, which is you drive on a road and.....

The Chairman –

You see, I am aware that on Sunday coming, if this law had been passed and had effect from today, there will be people playing carols on Rosemary Plain and they drive their vehicles there. Is that an offence? Do they then have to get lawful authority, legal authority to do that before they do that?

The Hon. Derek Thomas –

Within thirty metres, Mr Chairman.

The Chairman –

No, thirty metres isn't very far, is it?

The Hon. Derek Thomas –

Thirty yards from the road.

The Chairman –

Thirty yards?

The Hon. Angelo Berbotto –

I don't think that you, from the space, and I am not a surveyor, but I don't think anybody would be caught by that, especially when the Police, who are going to enforce it, are looking at what the spirit of the provision is, which is any unlawful use of vehicles on land for the purpose of destroying the fragile flora of St Helena or any unlawful purposes, but.....

The Chairman –

Okay. Yes, Councillor?

The Hon. Dr Corinda Essex –

At a very early stage in the discussions relating to this Bill, I raised some serious concerns about this particular clause, because I felt that it was too restrictive and I argued as to what regard it would have on people, for example, camping at Thompson's Wood or camping at Horse Pasture and I was assured that because those are recognised camp grounds it would be deemed that they would have legal authority to use those areas for that purpose.

The Hon. Angelo Berbotto –

Remember, Mr Speaker, that any prosecution brought by the Police will ...?... ...?... the Magistrates who will use common knowledge and commonsense in relation to allow a prosecution to be successful or not. The spirit of this provision is that people should not be driving in places where we may have the Mole Spider or little plants growing, they need to be protected, that is the purpose. If the Police try to use this for a purpose that is different from what it was intended I would anticipate them having a lot of difficulty trying to persuade the Bench that their interpretation is correct. Remember, as I said before with these provisions, the legislator makes them wide enough so that the judiciary can interpret them according to the situation they have before them and we cannot anticipate what those situations may be.

The Chairman –

Alright, Honourable Members. Councillor Olsson?

The Hon. Mike Olsson –

Yes, just there what the Attorney General is saying, not all these will go to prosecution because the Police can give a caution or the Police can give a warning and the person presumably faced with that don't dare to do anything else than accept it and that is use their own ...?.....?.....after I think that is the risk. Not everything face the Magistrates, does it, Attorney General?

The Hon. Angelo Berbotto –

There is a special provision under 36(2)(b), it says if the person proves to the satisfaction of the Court that he or she was driving the vehicle in contravention of this section for the purpose of saving life or extinguishing fire or meeting any other like emergency, there is a special reference. If elected members, Honourable Members are concerned about the distance to the road, that can be made bigger, but the spirit of this provision is that there are very fragile flora, fragile vegetation on St Helena and it's not right for somebody who has a 4 x 4 just start driving because the destruction could be very hard to restore and any of the elected members are invited to talk to any of the volunteers at the National Trust that working hard to restore the very fragile vegetation that has been decimated to the goats or erosion or for other reasons.

The Chairman –

Councillor Thomas?

The Hon. Derek Thomas –

Thank you, Mr Chairman. I do support what the Attorney General is saying, in trying to protect our flora and fragile environment here, we have a responsibility to protect that, but my only concern is going on from what Councillor Olsson say, if the Police chooses to give a caution, it goes on criminal record, it goes on a criminal record and I just concerned now that when it comes to the areas where people frequent like picnic areas whether if the Police choose to give a caution then that goes on a criminal record, but I do think we need to have some measures in

place to protect our flora, but I'm just concerned about areas that people frequently uses and if it does result in Court, the result is in a caution and it goes on ones criminal record.

The Hon. Pamela Ward Pearce –

Can I just reinforce what Councillor Corinda Essex said earlier, during the discussion part of the earlier stages of the Bill there was discussion around this and it was recognised that traditional recreational areas would be exempt from this, so that would include Rosemary Plain, Horse Pasture, Longwood Avenue, those sort of areas, and it would be within that....

The Chairman –

But does the Bill say that?

The Hon. Pamela Ward Pearce –

No.

The Hon. Angelo Berbotto –

We can add it.

The Hon. Pamela Ward Pearce –

Could we do that, Attorney General? Thank you.

The Hon. Dr Corinda Essex –

I would second the proposal to add that, to say except within the boundaries of traditional recreational areas.

The Chairman –

What is the wording and where does it go, Attorney General?

The Hon. Angelo Berbotto –

I'm just thinking about it, Mr Chairman.

The Hon. Gavin Ellick –

Mr Chairman?

The Chairman –

Yes?

The Hon. Gavin Ellick –

So what would happen to the existing tracks, like, say for instance, when you go to Man and Horse and Botleys Ley down to South-west Point? I got a stake in this here because that is Wirebird territories and they're more fragile than all the vegetation because they nest on the ground? How far do we go with this here?

The Chairman –

Okay, speak so we can all hear, please?

The Hon. Gavin Ellick –

Because they're more than 30 yards from the main highway.

The Hon. Angelo Berbotto –

What is?

The Hon. Dax Richards –

.....?.....?.....are more than 30 yards away from the highway.

The Chairman –

Can we just see if the Attorney General has come up with anything?

The Hon. Angelo Berbotto –

Yes. Firstly to address the concern of Councillor Ellick. 36(1) refers to land forming part of a road, so as long as it is a road, you are fine, you are not committing any offence. I would like to propose, section 36, subsection (4) that says that “in interpreting this section, due regard should be had to areas traditionally recognised as recreational areas to be exempted”. I think that, as I said before, the spirit of this provision is to protect the fragile environment, not to deprive people from going on a picnic on Easter weekend.

The Chairman –

Okay. Councillor?

The Hon. Mike Olsson –

It’s a concern that, because recreational areas, what’s that?

The Hon. Angelo Berbotto –

It is a question for.....

The Hon. Mike Olsson –

That’s not been identified, the Peaks is a recreational area, but not for the purpose of taking vehicles there, so.....

The Hon. Angelo Berbotto –

We’re going back to the job yourselves as making the law and the job of the Judiciary to interpret it. If Councillor Olsson goes on Easter weekend on a picnic to one of those areas where you usually have a picnic and drive there, the Bench will be aware of those areas. Now, if Councillor Olsson goes on a picnic in the Millennium Forest with a 4 x 4 and does a wheelie and has a lot of fun with the 4 x 4 then when we go to Court, the Police takes Councillor Olsson to Court it will be up for the Bench to see whether any explanation that that is a traditional recognised recreational area is such or not, but in my opinion a provision along these words would protect those traditions without, you know, tipping the balance.

The Chairman –

Okay, can I draw this more or less to a conclusion here? Is there a proposal for an amendment here or not?

The Hon. Angelo Berbotto –

For an addition. Addition of section 36, subsection (4) to say “in interpreting this section due regard should be had to areas traditionally recognised as recreational areas”.

The Chairman –

Alright. Can I put the proposal, is there a seconder for that?

The Hon. Pamela Ward Pearce –
I'm seconding it, Sir.

The Chairman –
Thank you, Honourable Member. I'll put the proposal as an amendment that's been proposed by the Attorney General, an additional section, as section (4) under Clause 36, that's right, Attorney General, and you'll read the wording once again, please?

The Hon. Angelo Berbotto –
Yes. In interpreting section 36, subsection (4). "In interpreting this section due regard should be had to areas traditionally recognised as recreational areas".

Question on amendment, put and agreed to.

The Hon. Gavin Ellick –
Mr Speaker, could I ask something just in relation to this here. So will it be possible then to have something in the clause where vehicles going over endemic Wirebird grounds, for instance, people getting in 4 x 4's and just go willy nilly all over the place killing Wirebirds nests, killing Wirebirds and stuff like that, would that come under here or that would be a separate issue?

The Chairman –
That's covered, is it?

The Hon. Pamela Ward Pearce –
That's already covered.

The Hon. Gavin Ellick –
Thank you.

The Chairman –
Clause 37, yes, Clause 37 and 38.

The Hon. Angelo Berbotto –
37 deals with persons to comply with traffic directions. This is very simple. If the Police Officer says Stop, please stop. If the Police Officer, and this applies to cyclists and to drivers of motor cars or any other vehicles. This also applies to pedestrians who proceed across or along the road. And section, that was section 37, did you also say section 38? Yes? 38 deals with mobile telephones, hand-held radios and any other communication devices, basically don't use a phone or anything else whilst you drive. Stop, use it and then turn it off, don't hold it in your hand and then continue driving. The offence is if you have something in your hand, not if you're using the phone talking to somebody or texting, just having it in your hand commits the offence.

The Chairman –
Yeah, I think that needs to be emphasised for the public consumption because people, some people do drive with a telephone. They know now it's an offence, that's why it's so important to debate and discuss this, yeah. Thank you very much. So clauses 37 and 38, any questions before I put the question?

Clauses 37 and 38.

Question put and agreed to.

The Chairman –
Clause 39.

The Hon. Angelo Berbotto –

This is about fitting and supply of defective or unsuitable vehicle parts, so if I am in a garage or in the business of providing vehicle parts or as an amateur but I just like giving my friends parts of vehicles and I fit them or I know and because of this there is danger of injury to a person, I'm committing an offence and the offence is £1,000 fine or imprisonment for six months. There is a provision here that if a person knows or has reasonable cause to believe that the vehicle wouldn't be used on the roads or if I think of, the owner tells me that is not, the vehicle is not going to be used or driven until something else is fixed, that maybe explanations enough not to be caught by the offence, but basically a person must not fit anything on their vehicle that may be dangerous.

The Chairman –
Yeah, okay?

Clause 39.

Question put and agreed to.

The Chairman –
Clause 40.

The Hon. Angelo Berbotto –

This deals with uncorrected defective eyesight. I wear glasses and my glasses are for long distance. If I don't wear them and I know that I need them I'm committing an offence. So, it is important to say that the new driver licence will have a little picture of glasses or it will be indicated there if the driver is licenced to drive because he or she wears glasses, so it is common sense, Mr Speaker, but this is what the provision basically states.

The Chairman –
Councillor Thomas?

The Hon. Derek Thomas –

Thank you, Mr Chairman. Can I ask who will be responsible for carrying out the eye tests?

The Hon. Angelo Berbotto –
Yes, it will be the Hospital Doctors.

The Hon. Derek Thomas –
Doctors at the Hospital?

The Hon. Angelo Berbotto –

Well, Medical Practitioner, I think that is defined somewhere in there. It will be somebody qualified to carry out this test. It will not be the Policeman.

The Chairman –

Then I need to put that I think.

Clause 40.

Question put and agreed to.

The Chairman –

Pillion driving, section 41 and Duty to give the name and address, 42.

The Hon. Angelo Berbotto –

Alright, pillion riding means that if I'm riding a motorcycle or quadricycle and I have pillion, only one, a sidecar for example, only one person may be in the sidecar. If I have more than one that's an offence. There's a fine of £500 or imprisonment for three months or both. The next provision, Duty to give name and address and to stop and power of arrest in certain cases, means that if a Police Officer stops a driver or a passenger and asks for their address and that person fails to provide their name or their address without a reasonable ground to deny that that person is committing an offence and the Police may arrest without a warrant a person that the Policeman suspects has committed an offence.

The Chairman –

Okay. Is there anything on the clauses there that Members worried?

Clauses 41 and 42.

Question put and agreed to.

The Chairman –

Now these are restrictions on prosecution on the preceding sections, clause 44. Attorney General, restrictions...

The Hon. Angelo Berbotto –

It's 43, Mr Speaker.

The Chairman –

43, yes.

The Hon. Angelo Berbotto –

It says that if a person is prosecuted for an offence under any provision of this Ordinance relating to the maximum speed at which a motor vehicle may be driven the checking of the speed and other safety measures to be taken, dangerous driving or to careless driving, such person must not be convicted unless such person was warned at the time the offence was committed that the question of prosecuting him or her for an offence under one of those provisions would be taken into consideration or within fourteen days that person was summoned or a notice was given. Basically this is a procedural provision that means that a traffic offence cannot be prosecuted five months after the commission unless within two weeks you've received a notice of it.

The Chairman –

Yes.

Clause 43.

Question put and agreed to.

The Chairman –
Clause 44.

The Hon. Angelo Berbotto –

Clause 44 – Duty to stop in case of an accident. This section applies where presence of a vehicle on a road, an accident occurs by which personal injury is caused to a person other than the driver of that vehicle. Basically, if you are engaged in an accident, stop. Don't just keep on driving, that is the essence of this section.

The Chairman –
Alright.

The Hon. Angelo Berbotto –

And an accident here can be running over a sheep or it doesn't mean that your car is, you know, going up the road, but as long as you realise there is an accident or there is damage to, let's say there is a gate that is fully opened on to the road that would be covered as well.

The Chairman –
Alright. Any question on that?

Clause 44.

Question put and

The Hon. Pamela Ward Pearce –
Mr Speaker, sorry Sir, I did have my light on earlier.

The Chairman –
Alright.

The Hon. Pamela Ward Pearce –
44(7).

The Chairman –
44(7).

The Hon. Pamela Ward Pearce –

It was the intention of the Group to take out all references when we were looking at it, to Horse and Mule, as there's none actually on the island.

The Hon. Angelo Berbotto –

My advice would be like, there may be none at the moment, but if there is in the future, just for the sake of clarity and to provide for as many situations as possible, you wouldn't like a poor Mule to feel worse off than a sheep because she's not captured by this provision.

The Chairman –

Are you satisfied with leaving it in?

The Hon. Pamela Ward Pearce –

That's okay, Sir.

The Chairman –

No, it's entirely up to you, this is your Bill.

The Hon. Pamela Ward Pearce –

No, I mean, if we had lots of animals I might want to include lots of other animals, but I will concede that. Thank you.

The Chairman –

Councillor?

The Hon. Derek Thomas –

Thank you, Mr Chairman, I just want to ask if there was an accident whereby damage was caused to another vehicle on the road then the person must stop and exchange names and addresses, even though he do that he must still report it to the Police, even if it's just minor damage?

The Hon. Angelo Berbotto –

Yes. If you look at 44(1)(b) so 44, the section applies where owing to the presence of a vehicle on a road or other public place an accident occurs by which damage is caused and then, little one, (i) says, to a vehicle other than the vehicle or a trailer drawn by that vehicle, so if damage, if you are driving and you cause damage to another vehicle, it's covered here and then if you go under subsection (5) if subsection (1)(a) applies, so that is personal injury to another person, and the driver of a motor vehicle does not at the time of the accident produce a certificate of insurance or other evidence, as mentioned in the Motor Vehicle to a Police Office or to some other person, the driver must report the accident and produce such a certificate or otherwise at the Police Station. So the issue arises in relation to (1)(a) but not to (1)(b). Okay, subsection (3) the driver of the vehicle must report the accident to a Police Officer, so the answer to your question is, yes, you must report it to the Police.

The Hon. Derek Thomas –

Yes, the point I was making, even if it's minor damage to another vehicle, he stop and exchange names and address, do he still have to report it to the Police Officer?

The Hon. Angelo Berbotto –

According to this section, yes. Yes, it's subsection (3) the driver of the vehicle must report the accident to a Police Officer.

The Chairman –

Alright, are you comfortable?

The Hon. Derek Thomas –

No, I not comfortable, because, I mean, that just changes to what it is at present, if it is minor accident, minor damage, you exchange names, stop, exchange names and address, end of the

matter. Here now you have to go a bit further, minor damage to another vehicle you have to go a bit further and have to report this to the Police.

The Hon. Angelo Berbotto –

Yeah, but if, there is a point, I think one of the Councillors mentioned, if I am driving and the reason I collide with your vehicle is because I've been at the Mule Yard and stayed longer than I should have, regardless of how minimum the damage is, there may be liability on my part. I am sure that if I am the one colliding into your vehicle and so you would be the victim, you would call the Police if I don't call it, but here it says the driver of the vehicle must stop, sorry, the driver of the vehicle must report the accident to a Police Officer.

The Hon. Derek Thomas –

Yeah, I do understand that then and I do really take the issue about drink/driving, but I'm looking at extreme cases where minor damage, minor damage is caused, you can be out in the country, minor damage is caused, you stop and exchange names and addresses, but even though you still have to have the inconvenience and report this to the Police, wait there, I don't know, for however long it take, until the Police get there, for a minor, what is a very minor accident, minor damage.

The Hon. Angelo Berbotto –

It doesn't say that you have to wait for the Police, it says to report it.

The Hon. Pamela Ward Pearce –

Yeah, that was the point I was going to make that it wasn't necessary that you needed to wait for the Police to come to the scene of the accident, you just need to report it at some point. Thank you.

The Hon. Angelo Berbotto –

If you look at the, it may be that there is a bend or a junction that is dangerous, reporting it to the Police create the statistics to identify any dangerous places, so that is also a reason to have the reporting requirement there.

The Chairman –

Councillor Olsson?

The Hon. Mike Olsson –

I think it a little bit over the top to make a minor road traffic accident into a Police report, it seems to be completely unnecessary and has not been there before, I think it should just be taken out. I don't know what other Members feel, but I see no reason for it, if you agree then it's a matter between the parties and the Insurance Company, that's it, nothing to do with the Police.

The Hon. Angelo Berbotto –

If I may respond. When we get, the provision here is that the driver of the vehicle must report the accident to a Police Officer. If I have a collision with you I may say that is a minor damage, but you may not look at it the same way, you may say you have ruined my boot, so there is a question of degree. The presence of the Police or the report of the damage to the Police may potentially diffuse any tensions, usually nobody likes being crashed into and you don't get out of the car with a smile, so my advice is to leave it there as a provision, it says report, that means picking up the phone, ringing the Police and say, oh, I just had an accident, I just dealt with

Councillor Olsson because he was in the other vehicle, there's no issue, you don't have to come here, but it is a requirement at the moment is to report it, If elected members think that is too onerous it can be removed, my advice is that there's no reason why it should not stay.

The Chairman –
Councillor Gavin Ellick?

The Hon. Gavin Ellick –
I say the same thing like the rest of them, you got a little minor accident when you just scrape one another's car, you just scrape into one another's car, I don't see the reason why you got to be phoning the Police for that there, but like Derek say, you just exchange numbers or somebody might say, oh, put it in the shop, I'll take care of it, but if it is a real accident when you bang into one another I can understand it, but little minor accidents like that, like what we do now, I don't see the need to be calling the Police for that there and then when the Police do come they got two vehicle and five Policemen, so it's just a waste of time and money.

The Chairman –
Thank you, Councillor. Councillor Isaac?

The Hon. Brian Isaac –
If it have to be reported, Mr Speaker, is it a time.....?..... is it twenty-four hours?

The Chairman –
Pardon?

The Hon. Brian Isaac –
Within twenty-four hours. Okay, Sir, thank you.

The Chairman –
Alright. Councillor Tony Duncan, put your mic on please?

The Hon. Wilson Duncan –
Sorry. What we also take into consideration that hopefully when the airport get up running and even without the airport get up running, when tourists come to the island what if you have an accident with them, you know, because they can come this week and next week they're gone.

The Hon. Angelo Berbotto –
That's why insurance is compulsory, that's why insurances is compulsory, but here, elected members, you are assuming that the accident or the damage would be between two vehicles, but what if I reversed into your driveway, Councillor Ellick, and I destroy your chickens or your gate or your plants and because I never stopped and I never told the Police, when you wake up in the morning then you discover, oh, something happened here?

The Hon. Gavin Ellick –
No, I think you blowing it out of proportion now, what we're saying is about little scrapes and minors, if you ever do that to my boundary anything would be different, believe me it would be different, but we talking about here is just a little scrape, when you just scrape up to your car and you got a little scrape on the side, so why should you be calling the Police for that, like Derek said, you exchange numbers and you get it done.

The Hon. Angelo Berbotto –

And who is the one who is going to judge whether it is minor damage or a scrape or whatever?

The Chairman –

We can debate this all afternoon, can we come to a conclusion? Is it in or is it out?

The Hon. Angelo Berbotto –

I propose that it stays in.

The Chairman –

You propose it stays, the proposal is that it stays in.

Question put,

The Chairman –

Can we take a vote?

Division Claimed.

Ayes	Noes	Abstentions
The Hon. Lawson Henry	The Hon. Derek Thomas	
The Hon. Tony Duncan	The Hon. Gavin Ellick	
The Hon. Pamela Ward Pearce	The Hon. Bernice Olsson	
The Hon. Brian Isaac	The Hon. Mike Olsson	
The Hon. Dr Corinda Essex		
The Hon. Cyril George		

The Chairman –

The results – Ayes 6, Noes 4, the Ayes have it, the Ayes have it, it stays in. Thank you. Can I then put Clause 44 as it stands.

Clause 44.

Question put and agreed to.

The Chairman –

Alright. Honourable Members, I don't know if you'd like a ten-minute break. I'm also conscious of movements in the Castle yard at 4 o'clock time or ten to four which might cause a disturbance on this place, but I could go for a further twenty minutes if you want or you'd like a break now? Go for another twenty minutes? Go for another twenty minutes then we stop about ten to four and the noise will go away and then we can come back and finish off. Thank you very much indeed for that.

Alright, so Alcohol offences, this is Part VI, and testing. Clause 45 is Driving or being in charge of a vehicle under the influence of alcohol or drugs.

The Hon. Angelo Berbotto –

Yes, thank you and so.

The Chairman –

Can you also take the 46, I think you can take, 45, 46 and 47.

The Hon. Angelo Berbotto –

Thank you, yes. So under section 45 a person who while driving or attempting to drive a vehicle on a road is unfit to drive through alcohol or drugs commits an offence. It's very important to highlight there is a person who is driving or attempting to drive, so, for example, if I am getting into the driver's seat, that would be considered attempting to drive, so I don't need to start the car to fall under this offence and I fall under this if I'm unfit to drive through alcohol or drugs. The maximum fine is £5,000 or imprisonment for eighteen months and the actual Regulations will prescribe the limits.

Number 46 is Driving or being in charge of a vehicle with alcohol concentration above the prescribed limit, so this a step up from the other offence. So if a person drives or attempts to drive a vehicle or is in charge of a motor vehicle on a road after consuming so much alcohol that the proportion of the alcohol in his or her breath, blood or urine exceeds the prescribed limit commits an offence and this is also £5,000 or eighteen months imprisonment.

The next offence under section 47 is driving or being in charge of a vehicle with drug concentration so it is the same as the one before but concentration of drug rather than alcohol. Unless there are any questions, that's what I wish to say about these provisions.

The Chairman –

Is there a prescribed limit in this or?.... missed them out?

The Hon. Angelo Berbotto –

The actual limits will be dealt with under Regulations.

The Chairman –

In Regulations?

The Hon. Angelo Berbotto –

Yes, in Regulations that will be enacted under this Ordinance at a time in the future, so what this Ordinance does is provide the frame, the actual limits will be put in the Regulations and the reason for this is because the, what is considered now a safe limit in the future may not. The Regulations will allow for that to be changed.

The Chairman –

Yes, willy nilly without coming to Legislative Council, is it?

The Hon. Angelo Berbotto –

But with, that's correct.

The Chairman –

Okay, so the limit is not in here, okay. Okay, any questions on that? Oh sorry, Councillor?

The Hon. Gavin Ellick –

Thank you, Sir. I looking at number (7), it says for the purpose of arresting a person under the power conferred by subsection (6), then it goes on to say it need to be by force, so if I'm drunk and it cause an accident or whatever else and I in a place, they can just come and just rough me up, that means by force, just drag me out through the door and things like that there?

The Hon. Pamela Ward Pearce –

.....if the need be.

The Hon. Gavin Ellick –

Well, if need be, so they can't, describe, I mean, explain that there to me, I may be huddled up under my car or something like that there, don't wanna come out, because I knackered, drunk, so what that means, they can just come drag me, just drag me up from there?

The Hon. Angelo Berbotto –

Firstly, I will be really disappointed if you were caught in that situation. Secondly, driving a vehicle under the influence or with concentration of alcohol or drugs is a serious offence. You can put yourself in danger, you can put others in danger, so let's say, for example, that I am driving, you see me driving in a way that you think I am under the influence of alcohol or drugs, you tell the Police, by the time you see me on the street, now I've driven, I have arrived home driving my car, I'm still completely in a different dimension and the Police come to the place, to my home, they have the power under this provision to enter my home or wherever I may be if they suspect that I am there and this is necessary because by the time I have been seen driving under the influence and by the time the Police catch up with me I may be in a different geographical location.

The Hon. Gavin Ellick –

But surely that would be part of your human rights if you at home and they coming in you house, what about your own rights, because even though you've done an offence, but you got home, you out your car and you in you house, wouldn't that be an invasion of your privacy?

The Hon. Angelo Berbotto –

It would be an invasion of your privacy if there was no suspicion that you were breaching the law, but there is something called proportionality and whether, and the rights are not in the abstract, rights compete with other rights, so you're right not to be disturbed at home is intention with the right of the other users of the road to be safe on the road, so the power of the Police is justified because it is proportionate, because the Police, in order to do this, they need to suspect that you are drunk and you have driven in that state otherwise they cannot use it.

The Chairman –

Okay. Sorry, Derek?

The Hon. Derek Thomas –

Yeah, thank you, Mr Speaker, I just want to go back on the alcohol limits which the Attorney General said will be covered by Regulations and the Speaker you mentioned that Governor in Council can just make changes willy nilly....

The Chairman –

I....?....that, that was intended to provoke discussion.

The Hon. Derek Thomas –

Alright, I suspect though that, but just to carry on from that, I suspect that if there were to be changes that that would be subject to public consultation, it's gonna affect people and although it's covered by Regulations, there should be proper consultation on any changes to any drink/drive limits?

The Chairman -

Yes.

The Hon. Angelo Berbotto –

Can I say, Mr Speaker, that I have no hesitation that the Chair of the ENRC, Mrs Pamela Ward Pearce would consider a thorough consultation the same way she's done with this Road Traffic Ordinance.

The Chairman –

No, I'm satisfied that you all are awake now by that.....

The Hon. Dr Corinda Essex –

Just on a point of clarification, I did state this morning that there would be further public consultation regarding the drink/driving limits, so it looks as though not everybody was awake this morning.

The Chairman –

Mike?

The Hon. Mike Olsson –

Yeah, okay, just to shorten that point because we've gone through it a few times, but it was my observation as well, it should not be done by regulations and the nice with everybody giving promises, but we shouldn't forget that this General Election is in June next year or thereabout, so promises given by people sitting here in the private capacity might not really work, it should be a promise written into the Ordinance in that case, but it was something completely different, because a bit confusing here, maybe the Attorney General can help me, and that is drug concentration, number 47, we got there.

The Chairman –

Alright, have we been down there? Yes, I think we have.

The Hon. Mike Olsson –

Because that is referring to section 61.

The Chairman –

Yes, that's right.

The Hon. Mike Olsson –

And that, okay we go back to the Governor in Council, but that's not what I'm gonna talk about this time, it is the intention of this, because in this Ordinance drugs is, the interpretation is that drug is any intoxicant other than alcohol. Now, intoxicant, what is that, because what I am looking for is that we have a lot of prescription drugs, we're not just looking for recreational drugs, what's the intention here with, should it cover limits on prescription drugs or just recreational drugs, combination of different drugs, can make it just slightly, it's not an easy area, I'm fully aware.

The Hon. Angelo Berbotto –

No, and that's why the Regulations are dealing with a number of substances and the concentrations and that is why it is right that those concentrations are dealt with in Regulations because it's quite detailed and, of course, we have input from the medical professionals when it comes to that, so what I would suggest is that you watch this space and until we have the

draft Regulations, because they will deal in detail, with what amount for what, whether those amounts are in urine concentration, in blood concentration and what is deemed to be dangerous, but I don't know if that answers your question.

The Hon. Mike Olsson –

So....., Attorney General, but it is a concern, because there's no guidelines in here at all, it's just referred to a section that straight away refer to Regulations.

The Hon. Pamela Ward Pearce –

Can I say here too, the prescription drugs if they do impair driving that there comes with a warning anyway so you shouldn't be driving if the warning is there on your prescription drugs.

The Hon. Angelo Berbotto –

And we don't mix prescription drugs with alcohol either.

The Chairman –

Yeah, the Clerk very kindly drew to my attention under section 47 which we were discussing about drugs, it refers to section 61(2) and there's no 61(2) and there supposed to be a list of drugs.

The Hon. Dr Corinda Essex –

The list of drugs are in the Regulations, are in the draft Regulations, they're not in this document.

The Chairman –

So you can't refer to it under 61(2)?

The Hon. Dr Corinda Essex –

No.

The Hon. Pamela Ward Pearce –

That has to be 61(1).

The Hon. Dr Corinda Essex –

The Governor in Council may make regulations prescribing the limit referred to.

The Hon. Pamela Ward Pearce –

61(1)cross references to 47.

The Chairman –

But there's none listed in section 61(1) either? There's none, none listed.

The Hon. Angelo Berbotto –

Well, section 61 is provided a sign that says look at the Regulations, so.

The Hon. Dr Corinda Essex –

Yes.

The Chairman –

It is not correct, it's talking about drugs listed under 61(1) and there's none listed under 61(1).

The Hon. Angelo Berbotto –

We can change that to “after consuming so much of any drug, as prescribed by Regulations”.
“As prescribed by the Governor in Council by Regulations”.

The Hon. Dr Corinda Essex –

Yes.

The Chairman –

Okay, you’ll make that as an amendment, propose it as an amendment? Is there a seconder, please?

The Hon. Pamela Ward Pearce –

I second, Mr Speaker.

The Chairman –

Good, okay. So section 47, which we’re dealing with currently, delete 61(2), sorry, more than that, isn’t it? Tell me the amendment, please?

The Hon. Angelo Berbotto –

It is 47(1)(b) is in charge of a motor vehicle on a road or other public place, after consuming so much of any drug as prescribed by the Governor in Council so that the proportion of it in his or her breath, blood or urine exceeds the prescribed limit, commits an offence.

The Hon. Pamela Ward Pearce –

Can we change the prescribed by Governor in Council because it sounds as though she might be a medical doctor prescribing, it might get a bit confused around that.

The Hon. Angelo Berbotto –

Yes, that can be changed in the following way, so, “is in charge of a motor vehicle on a road or other public place after consuming so much of any drug that the proportion of it in his or her breath, blood or urine exceeds the prescribed limit in the Regulations by the Governor in Council, commits an offence.

The Hon. Pamela Ward Pearce –

Thank you, I’m happy with that.

The Chairman –

So all we need to do now is just trying to get it right, what do we delete, that’s the first stage, before you can change the law you need to delete sections, do you need to insert or add, can you give it to me in that language?

The Hon. Angelo Berbotto –

Yes. So section 47(1)(b) is in charge of a motor vehicle on a road or other public place, after consuming so much of any drug, then delete listed in section 61(2), those four words deleted, so after “any drug” that the proportion of it in his or her breath, blood or urine exceeds the prescribed limit.....

The Chairman –

Now.....

The Hon. Angelo Berbotto –
in Regulations.....

The Chairman –
Alright, you need to delete something first, prescribed limit, delete “commits an offence” and insert what?

The Hon. Angelo Berbotto –
Well, rather than delete “commits an offence” we insert “prescribed limit in Regulations made by the Governor in Council, commits an offence.”

The Chairman –
In Regulations prescribed by the Governor in Council, okay? Made by the Governor in Council.

The Hon. Angelo Berbotto –
Yes.

The Chairman –
Got that? Okay.

The Hon. Angelo Berbotto –
So, “exceeds the prescribed limit in Regulations made by the Governor in Council, commits an offence”. It’s not the most elegant drafting, but I think it will do.

The Chairman –
So, you heard the amendment, Honourable Members, I won’t attempt to repeat it, I might get it wrong.

Question on amendment, put and agreed to.

The Chairman –
Now, I think we had a good debate on that. Alright, so we had the amendment, to try and get this right first, we had a seconder, did we?

The Hon. Dr Corinda Essex –
Yes.

The Chairman –
We had a seconder and now I put it to the vote, vote on the amendment, the amendment as was proposed.

Question on amendment, put and agreed to.

Clause 47 (as amended).

Question put and agreed to.

Clauses 45, 46 and 47 (as amended).

Question put and agreed to.

The Chairman –

Okay. Let's look at clause 48 – Power to administer, 49 I think we can take, 48 and 49.

The Hon. Angelo Berbotto –

48 gives power to the Police Officer to require a person to cooperate with a preliminary test, the tests are dealt with in section 49 and 52 and then provide for an offence if the person doesn't cooperate, so the first preliminary test is a breath test which is the person is asked to provide a specimen of breath to be used with an approved device to indicate if that person has alcohol in his or her breath. So section 50 is a preliminary impairment test and this is where the Police Officer asks the person, sorry, observe the person in performing certain tasks that the Police Officer has asked to do and those tasks are after the Code of Practices issued by the UK's Secretary of State and the Police Officer must follow that Code of Practice. That's number 50, did we say number 51 as well or not?

The Chairman –

No. 49 and 50, it's gone on to 50, oh, you've gone down, yes, okay. I think it is section 48, 49 we were doing. Yes, section 48 and 49, you've gone a little bit further there. Happy?

The Hon. Angelo Berbotto –

And there is a typo in section 48, it should say, 48(1) the second line should say tests referred to in section 49 to 51, rather than 52.

The Chairman –

To 51?

The Hon. Angelo Berbotto –

Yes.

The Chairman –

Okay, so let's do 48 and 49, anything further on 49? You're happy with it?

Clauses 48 and 49.

The Chairman –

Sorry, yes, there's an amendment. The amendment go to 51, does it?

The Hon. Angelo Berbotto –

Yes, section 48, the second line where it says tests referred to in section 49 to 52, should say 49 to 51.

The Chairman –

Okay, so the proposed amendment is to change 52 to 51?

The Hon. Angelo Berbotto –

That's right.

The Chairman –

Okay, the proposed amendment is to change the figures 52 to 51.

Question on amendment, put and agreed to.

The Chairman –

Anything further in that section? Oh yes, there's no seconder, I must be getting tired.

The Hon. Pamela Ward Pearce –

I beg to second it, Mr Speaker.

The Chairman –

You'll second it, okay, thank you.

The Chairman –

I'll have to put the proposed thing anyway, so section 48, just to make it clear before I go on to 49, as amended, stands part of the Bill.

Clause 48 (as amended).

Question put and agreed to.

The Chairman –

Somebody tried to get my attention? No?

The Hon. Gavin Ellick –

.....?.....confused, Angelo said, the Attorney General, sorry Sir, that you have to provide a specimen of breath, but then under 48(2)(b) you got under the influence of alcohol or drug, my question is how do you take a specimen for a drug and who, are Police Officers trained in this here, is this in line with the UK practice or this is something that we trying to put in ourselves and then hoping that it slots in with that?

The Hon. Angelo Berbotto –

Can you break those questions into smaller units, please? What is your first question?

The Hon. Gavin Ellick –

The first question was that you alluded to in 48 that the person must administer a breath test, but under 48(2)(b) you got under the influence of alcohol or drug, so a breath test for me would be alcohol, not a drug test.

The Hon. Angelo Berbotto –

Well, section 48 gives the power to administer preliminary tests, so with 48 it gives the power, 49 deals with the breath test, 50 with impairment test and 51 with the drug test.

The Hon. Gavin Ellick –

So my question is are Police Officers trained to do this here, I know they do the drink/drive thing.....

The Hon. Pamela Ward Pearce –

A point of order, Mr Speaker, we've already agreed 48, we're going back on it.

The Chairman –

Yes, what you went back to 48 for?

The Hon. Gavin Ellick –

No, we didn't agree on 48, we agreed on the amendment.

The Hon. Gavin Ellick –

41 to 51, we didn't agree on the whole clause.

The Chairman –

But we also agreed on the paragraph (2). We did. What is your point, Councillor, I'll try and take that, entertain it. No?

The Hon. Gavin Ellick –

(Inaudible)

The Chairman –

Okay, right, okay. 49, we're dealing with 49, okay? Can we be clear now, we're dealing with 49 and it's still talking about breath tests, Councillor, still talking about tests here, but you were referring to some other tests I think before. Are you happy with this? Anybody got any comments on this? Attorney General, anything further to explain on that one?

The Hon. Angelo Berbotto –

No.

The Chairman –

So I think when I started off I took 48 and 49, so will I put 48 and 49.

Clauses 48 and 49.

Question put and agreed to.

The Chairman –

Preliminary impairment tests in 50. Attorney General?

The Hon. Angelo Berbotto –

Yes, so this is a test procedure where the Police Officer administering the test observes the person performing certain tasks, they are specified tasks, makes observations of the person's physical state and it proves in subsection (2) how it may be administered at or near the place where the requirement to cooperate with the test is imposed or in the Police Station. Now, this provision doesn't actually tell us exactly what the test consists of, it tells us that the Police will use the Code of Practice in the United Kingdom, approved by the UK Secretary of State, this is a tool that the Police in the UK uses and it says in subsection (4) that the Police Officer must follow the Code of Practice, so basically if the Police Officer are not doing this properly then you can complain that you're not doing that properly so you cannot rely on it.

The Hon. Gavin Ellick –

But if you don't know what the test consist of how can you say it is wrong or right?

The Hon. Angelo Berbotto –

Well, this is giving the power to use a preliminary impairment test, remember that this is not coming into force until 1st April, by the 1st April, way before 1st April you will have all the information as to what this test comprise of.

The Chairman –

Any other questions on that?

The Hon. Gavin Ellick –

This what I wanted to know, I say are Police Officers trained to do the drug test?

The Hon. Angelo Berbotto –

No, well, that comes later, we haven't dealt with that yet. This is a preliminary impairment test, so this is if they note that somebody is wobbling or whatever, this is not a drug test.

The Chairman –

Okay?

Clause 50.

Question put and agreed to.

The Chairman –

Preliminary drug test on 51.

The Hon. Angelo Berbotto –

Yes, and this one says a preliminary drug test is a procedure by which a specimen of sweat or saliva is obtained by means of a device approved by the Governor. An indication of whether the person to whom the test is administered has a drug in his or her body. A preliminary drug test may be administered at or near the place where the requirement to cooperate is imposed or at the Police Station.

The Chairman –

Okay, I don't think that is controversial, is it? No?

The Hon. Gavin Ellick –

The question was, are they trained to do this here?

The Hon. Angelo Berbotto –

Well, they will ask somebody to spit on a device or to provide sweat, so they may use one of these tools....

The Hon. Pamela Ward Pearce –

Swab test.

The Hon. Angelo Berbotto –

Yes and then they will use a machine and if they don't have those devices they will protect the sample and take it to the hospital for that, but there is a tox...I can't remember the name now, but the Police has certain equipment to do this, toxiliser, I can't remember the name now.

The Hon. Gavin Ellick -

And in 51(1) should that be the Governor in Council and not just the Governor?

The Hon. Angelo Berbotto –

As I said before, all these devices are at the moment they are approved by the Governor and at the moment under the current Ordinance. Personally I don't think it is something that is of such administrative nature that I personally wouldn't bring it to the Executive Council, the Executive Council has much more important things to deal with. If an instrument is an instrument that the Police in the UK uses and is something new here, the Governor looks at it, signs whatever paper we draft for her saying this is now an approved device and that's it, it's an administrative power, so I wouldn't bring that to the Executive Council, otherwise you will be becoming clerical, secretarial administrative body and that is not, Executive Council is for policy, for driving the policy.

The Hon. Gavin Ellick –

Thank you.

The Chairman –

Right, this is preliminary drug test anyway. Section 51, I put the question that Clause 51 do stand part of the Bill.

Clause 51.

Question put and agreed to.

The Chairman –

Can we perhaps, I'm just looking at the time, the noise will be moving in a minute, can we perhaps do section 52, get the arrests out of the way and then we can do the rest. Section 52.

The Hon. Angelo Berbotto –

Yes, section 52 gives power to a Police Officer to

The Chairman –

And 53.

The Hon. Angelo Berbotto –

Okay. 52 gives power to the Police Officer to arrest me if Police ask me to do the preliminary test, I do the preliminary test and the Police Officer suspects that the proportion of alcohol in my breath exceeds the prescribed limit or if the specimen of breath, sweat or saliva that I provided, if I have provided that, the Police Officer has the power to arrest me without a warrant, so there is provision, if I am in hospital, for whatever reason, the Police cannot arrest me then.

The Chairman –

Okay, that's arrests section.

The Hon. Angelo Berbotto –

And the power of entry is section 53, allows a Police Officer following an accident where the Police Officer suspects that the person involved in the accident and involved injury to any person allows the Police to enter any place and arrest or impose a requirement under section 48(5).

The Chairman –

Any questions on that, please?

Clauses 52 and 53.

Question put and agreed to.

The Chairman –

I think, Honourable Members of the House, this is a convenient time to have a fifteen minute break so you can stretch your legs and then we can avoid the noises people move from the Castle entrance. Council is suspended for fifteen minutes.

Council suspended.

Council resumed.

The Chairman –

Okay, we're back in Committee, so we can deal with 54. Provision of specimen for analysis. Attorney General, give us an idea of what this is generally about?

The Hon. Angelo Berbotto –

Yes, this is what happens when somebody provides a specimen and how the specimen is analysed.

The Chairman –

So this is more or less the procedure for that, isn't it, in this way? Any questions on that, please? No questions.

Clause 54. –

Question put and agreed to.

The Chairman –

Clause 55 – Specimens – blood taken from a person incapable of consenting.

The Hon. Angelo Berbotto –

Yes, this provision protects a person who cannot give consent from a specimen of blood taken from that person and provides for the situations where that can take place.

The Chairman –

Thank you. Any questions on 55?

Clause 55.

Question put and agreed to.

The Chairman –

Choice of specimen, a very short one, but let's deal with that alone.

The Hon. Angelo Berbotto –

Yes, this one, if there are two specimens of breath, by the same person of course, and their reading is different and the one that is taken into account is the lowest one.

The Chairman –

Yeah. Thank you for that, Attorney General.

Clause 56.

Question put and agreed to.

The Chairman –

Let's do Clause 57 and 58 which is the protection for hospital patients and also detention of persons affected by alcohol or drugs.

The Hon. Angelo Berbotto –

Yes, 57 means that if a person is in hospital they cannot be compelled to provide a specimen. 58 is about detentions of persons affected by alcohol or drugs and the places where they can be detained.

The Chairman –

Alright, Honourable Members?

Clauses 57 and 58.

Question put and agreed to.

The Chairman –

Then under the Interpretation part, Clause 59.

The Hon. Angelo Berbotto –

Thank you. That section deals with certain expressions that are used like “public officer”, “hospital approved analyst”, they are defined in this section 59.

The Chairman –

Yeah, okay. Is there any particular reason why it wasn't put into the beginning with the rest of them, you know, why do you have it in certain section. It's alright, it does the work, but I just wondered why?

The Hon. Angelo Berbotto –

They're under this section because they deal with the specimens and the analyst of the specimens.

The Chairman –

Thank you very much indeed.

Clause 59.

Question put and agreed to.

The Chairman –

Now approved devices and prescribed limits for alcohol and drugs, Section 60, Clauses 60 and 61.

The Hon. Angelo Berbotto –

Yes, section 60 gives the Governor in Council powers to make regulations about declaring a device to be approved devices. Section 61 is about giving the power to the Governor in Council to make regulations. This one should be actually left blank because we dealt with this in section 47(1)(b).

The Chairman –

Okay. Councillor Gavin Ellick?

The Hon. Gavin Ellick –

Yeah, I was going to say before we been, it was just the Governor about the devices and now we got the Governor in Council if the public declare any device, so it bit confusing. It's bit confusing now because before.....

The Hon. Angelo Berbotto –

It says here the Governor in Council may make regulations for the purpose of declaring any device, so the Governor in Council can stipulate what boxes the Governor needs to tick before declaring a device, it's connected but it's not the same.

The Chairman –

Yes. Councillor Dr Essex?

The Hon. Dr Corinda Essex –

Just on a point of clarification, the Honourable Attorney General said that the clause 61(1) is now irrelevant because of the amendment we made earlier, but did the amendment we made earlier actually give the Governor in Council power to make regulations prescribing the limits of alcohol?

The Hon. Angelo Berbotto –

47(1)(b) says a person who is in charge of a motor vehicle on a road or other public place after consuming so much of any drug that the proportion of it is in his or her breath, blood or urine exceeds the prescribed limit in the regulations made by the Governor in Council commits an offence, so I do think it is covered.

The Hon. Dr Corinda Essex –

Because the limit for alcohol does not appear in the list at the beginning of the Ordinance with regard to the things that the Governor in Council can make regulations regarding, that's section 4.

The Hon. Angelo Berbotto –

Yes, I take your point, so my suggestion is that section 61 the full stop finishes after the number 46.

The Chairman –

What should be after 46? Full stop, just a full stop?

The Hon. Angelo Berbotto –

Yes, so section 61, without the, subsection (1) because it's an only provision, so 61, we take out subsection (1) and then the text stops after the number 46, full stop, so we delete and the limit for drugs referred to in section 47, because we?.... that in section 47.

The Chairman –

Okay, thank you. So the amendment proposed by the Attorney General is to delete “and the limit for drugs referred to in section 47”, is that correct? Is there a seconder for that, please?

The Hon. Pamela Ward Pearce –

Yes, I'm seconding it.

Question on amendment, put and agreed to.

Clauses 60 and 61.

Question put and agreed to.

The Chairman –

Evidence?

The Hon. Angelo Berbotto –

Section 62 deals with evidence and the presumptions and the presumptions that need to be rebutted.

The Chairman –

That's all, okay.

Clause 62.

Question put and agreed to.

The Chairman –

Further provisions under 63, Clause 63 and Penalty on 64. Attorney General?

The Hon. Angelo Berbotto –

Yes, section 63 deals with other specimens of blood or urine provided and section 44 is the penalty for a person that commits an offence under section 45, 46 or 47 and disqualifications, etc.

The Chairman –

Any questions on that section?

Clauses 63 and 64.

Question put and agreed to.

The Chairman –

Right, riding of pedal cycles and offences connected therewith. This is a section, Part VII, We can take 65, 66, 67 and 68 under that one section.

The Hon. Angelo Berbotto-

Thank you. All these sections deal with riding pedal cycles. The first one deals with what is reckless and dangerous cycling. Section 66 deals with careless or inconsiderate cycling and section 67 with cycling under the influence of alcohol or drugs and each of them carry fines or imprisonment for offences and section 68 is restriction on carriage persons on bicycles or tricycles, you can only carry one person.

The Chairman –

Not more than one person. Yeah, okay. Any points? Sorry, Gavin?

The Hon. Gavin Ellick –

I quite confused, because cycle and tricycles, I thought that was for kids?

The Hon. Pamela Ward Pearce –

No, as long as it's got three wheels.....

The Hon. Gavin Ellick –

Oh yeah, so this does not go out to kids as well?

The Hon. Pamela Ward Pearce –

No.

The Chairman –

What was the question?

The Hon. Gavin Ellick –

....?.....dangerous cycling, careless and inconsiderate cycling, I said I thought it was for kids, they say it's for grownups, so

The Chairman –

It's for any person.

The Hon. Gavin Ellick –

Any person, so an eight year old kid coming down the road have an accident, you gonna fine him a £1,000 or £500?

The Hon. Angelo Berbotto –

No, you don't fine the kid, you fine the parent who is supposed to supervise the kid.

The Hon. Gavin Ellick –

Say it loud so the people can hear out there.

The Chairman –

Yes, please, Gavin, we're not too casual in this sort of setup, so let's be aware of that. The Attorney General?

The Hon. Angelo Berbotto –

Firstly, tricycles means vehicle propelled by pedalling with three wheels, regardless of the size. Secondly, if the person is a minor, the parents have the responsibility depending on the age, but juveniles are also, that is children can also commit offences from the age, I think it is ten in this jurisdiction, or twelve, I can't remember exactly, either the young person or the parent can be brought to Court to answer for any charges.

The Chairman –
Councillor Mike Olsson?

The Hon. Mike Olsson –
Yeah, just an observation, Mr Speaker, this late in the afternoon, but I think that the penalties, even if there are maximum penalties when it comes to bicycle offences, are excessive, up to three months imprisonment for being drunk on a bicycle, I think we're far outside what much more severe, there must be levels on all the different offences and I think these are definitely very, very high for being, as I see it, minor offences, but it is just an observation, I can't do much about it at this late hour, but just an observation from me, because using a bicycle is one of those ways where we can get people to take the bicycle instead of taking the car home, but apparently not a good idea either if you have....?.....

The Hon. Pamela Ward Pearce –
You're still able to be drunk and in charge of a bicycle, isn't it?

The Hon. Mike Olsson –
Yes, but the offence, very, very heavy fines, penalties for it, just an observation.

The Chairman –
Noted, okay.

The Hon. Pamela Ward Pearce –
The heaviest one is for second or subsequent, so it's a repeat offender.

The Chairman –
Yeah.

The Hon. Mike Olsson –
Repeat offender of inconsiderate cycling.

The Chairman –
Yes, okay.

The Hon. Dr Corinda Essex –
Just on a point of clarification, someone can be killed on a cycle, they can kill someone else with a cycle as well, so although the cycle does not have the same power and so on as a motor car or a motor bike it can still result in fatality if it's used dangerously or carelessly.

The Hon. Pamela Ward Pearce –
And also they could cause a car driver to take avoidance tactics because of their behaviour and could subsequently kill them, so I think, yes.

The Chairman –

Okay, thank you. I don't see any proposal to change so I put the question.

Clauses 65, 66, 67 and 68.

Question put and agreed to.

The Chairman –

Part VIII, Miscellaneous offences, and I think we can deal with these miscellaneous offences under the one section, 69, 70 and 71.

The Hon. Angelo Berbotto –

Thank you. 69 the form it is not in bold, 69(1) should be in bold. 69 deals with the use of helmets and makes it compulsory for persons riding a bicycle, motorcycle or pedal cycle to wear a helmet and if they don't it's a fine of £100 and if a second or subsequent conviction a fine of £200. Section 70 is about restriction on towing and tampering with motor vehicles and section 71 is about taking motor vehicles without the owner's consent, joyriding.

The Hon. Pamela Ward Pearce –

Are we using the bold changing as an amendment, would that be one amendment, for bold for under 69?

The Hon. Angelo Berbotto –

No, I just.....

The Chairman –

Pardon?

The Hon. Pamela Ward Pearce –

69, Attorney General has pointed out that subsection (1) and subsection (2) should both be in bold to be consistent with the other formatting.

The Hon. Angelo Berbotto –

Yes, but it doesn't change the text so it's something that doesn't need....

The Chairman –

No, it doesn't change the text, that's typographical, more or less. Yeah, Councillor Derek Thomas?

The Hon. Derek Thomas –

Thank you, Mr Chairman. Section 69, pedal cycles, are we saying that kids driving little pedal cycles they need to wear a helmet as well?

The Hon. Angelo Berbotto –

The provision is if it's on the road, so if they cycle at home or within the front yard there's no issue, but on the road, the provision is for a helmet.

The Chairman –

Yeah, and a road by definition means any place to which the public has access, it doesn't mean only on the highway, it means on the road.

Clauses 69, 70 and 71.

Question put and agreed to.

The Chairman –

Part IX – Clauses 72 to 74 deals with the one topic – Highway Authority.

The Hon. Angelo Berbotto –

Thank you. Section 72 states that there should be a Highway Authority and says who should be on it, the Director of Police, the Director of the Government Department with responsibility for highways, the Chair of the ENRC in this case, two other persons appointed by the Governor. Section 73 is about what powers and duties the Highway Authority has and section 74 is about the Highway Code which is the responsibility of the Highway Authority to prepare.

The Chairman –

Honourable Derek Thomas?

The Hon. Derek Thomas –

Thank you, Mr Chairman. 72 sets out the composition of the Highway Authority, in this case, who would be the Chairman of the Authority?

The Hon. Lawson Henry –

(c) 72(c).

The Hon. Derek Thomas –

Ah, 72(c) the Chair of the Committee, okay. I beg your pardon for that, Mr Chairman. The other thing, going through it rather quickly here, powers and duties of Highway Authority, the Highway Authority have permission to close roads, designate parks, all of this is in here, eh? Road closures, designating parks? It's in here, right?

The Chairman –

Yeah, uh huh. Alright, any further questions on.....Councillor Mike Olsson?

The Hon. Mike Olsson –

That has to do with the powers when it comes to public service vehicles and taxis, how does this change in this Bill to what we had before? The taxis had to be licensed by the Highway Authority before days or is this something new?

The Hon. Pamela Ward Pearce –

Where are you looking?

The Hon. Mike Olsson –

Yeah, it will come to light, but otherwise this comes under (5), 73(5) because the Highway Authority.....

The Hon. Pamela Ward Pearce –

We haven't got as far as 75 yet.....

The Hon. Mike Olsson –

73(5), sorry.

The Hon. Pamela Ward Pearce –
I beg your pardon.

The Hon. Angelo Berbotto –
73(5) gives powers to the Highway Authority to regulate licences for public service vehicles and taxis.

The Hon. Mike Olsson –
Yes. I just asked how

The Hon. Angelo Berbotto –
This is a new responsibility, my understanding, to the Highway Authority.

The Hon. Mike Olsson –
That's why I just want to have it verified, so it must have a licence or it must be licensed under the Highway Authority to run a taxi?

The Chairman –
Is this meaning that the Highway Authority may make regulations for licences or is it meaning that they may issue licences? I think this is what the Councillor trying to get.

The Hon. Mike Olsson –
I know we're not there yet, but I just looked ahead in section 90, they are actually issuing the licence, I know we're not there yet, but that's the two things hanging together.

The Hon. Angelo Berbotto –
The power of the Highway Authority is to make by-laws, if you look at section 78, not to make regulations, so if there is any question as to the drafting of subsection (5). Well, actually it says here, the Highway Authority must regulate licences for public service vehicles and taxis and make bylaws with regard to the licensing, so I don't think there is an issue there. In the past there may not have been many requests for taxi licences, but that is something that is starting to appear now and the fact that the Highway Authority is composed by representatives of the community as well as the Director of Police....it's a collegiate.....

The Chairman –
You just don't jump your time, Councillor, are you finished with that?

The Hon. Mike Olsson –
No, I'm concerned about when you have taxis running for cruise ships and all this, now every car have to be licensed by the Highway Authority as well, presumably at a cost and effort, before days the only thing they needed to do was to take out a taxi insurance, so we'd be making it more complicated for people to earn a living and I'm not so sure I'm keen on that.

The Hon. Pamela Ward Pearce –
Could the Highway Authority not delegate this power to the Licensing Officer who is also part of the Highway Authority?

The Chairman –
Yes, I suppose.

The Hon. Angelo Berbotto –

At the moment in this we have provided as one of the powers and duties of the Highway Authority to issue licences and one of the reasons for that is a licence to drive your own vehicle and the responsibility for your own safety is different when you are carrying or doing it for gain. There are two sides to the coin, which is protecting the consumer and also protecting yourself and there may be, a vehicle may be fine to drive yourself from here to the farm or wherever you live, but there may be extra checks or extra requirements in order to ensure that that vehicle is safe for somebody who is paying for that service. It also protects the actual person, because I may think that my vehicle is suitable to be a taxi but it may not, for example, because I don't have safety belt or for another reason and if you have the unfortunate situation of acting as a taxi and having an accident where your passenger gets injured there are repercussions, so that is the main difference when you are carrying out the activities of a taxi driver and when you are driving your own family or friends and you're getting no gain from that. It would seem to me that having these through the Highway Authority may provide those necessary checks, so I don't see it as an issue of making it harder for people to make a living, I think it is a balance, because it may be that by using a vehicle that is not completely suitable to be used as a taxi you are exposing yourself to risk.

The Chairman –

Alright. Councillor Derek Thomas, Councillor Gavin Ellick and Councillor Lawson Henry and Councillor Tony Duncan, in that order. Councillor Derek Thomas?

The Hon. Derek Thomas –

Thank you, Mr Chairman. We have to have standards when it comes to taxis, we need to have standards because there are, you know, we're talking about increased business around, but I was just wondering how would the Highway Authority manage this, because at the moment the Chief of Police is the Licensing Officer and vehicles should be properly examined and tested if they're gonna be licensed to carry passengers and, hold on, I not finish, and I was wondering whether that responsibility should lie with the Licensing Officer, there's an Inspector of, Vehicle Inspector, whether vehicles that are wanting to carry passengers for hire and reward business, whether they should be licensed as such, well they have to be licensed now, but whether a proper examination be carried out, the person who'll have the skills to do that would be the Vehicle Inspector as I just see the Highway Authority perhaps having some political overview maybe, might be having some difficulty, but we have to up the standards because that is no doubt about that, but in terms of managing it, I mean, already the Chief of Police is the Licensing Officer, but then you would need somebody with the skills to be able to certify whether that vehicle is safe, fit to conduct business for hire or reward.

The Chairman –

Yeah, I just wonder if there's any difference between regulate licences and issue of licences? This says about regulator, I don't know, but I do see, I see everybody want to come in. Gavin, will you give way? Councillor Lawson Henry?

The Hon. Lawson Henry –

I'll start in response to my colleague's point about, I see it as two different issues. The safety of the vehicle in terms of its roadworthiness is a separate test. I think the background to this clause here is from an Economic Development point of view for the island in going forward and it's about creating a standard for our taxis in going forward. We all hope that in the not too distant future we're gonna have air access, there's gonna be a need for more taxis and one

of the weaknesses in the current law is that we don't have any provision to make by-laws, quite different to regulations and I see this as the way forward for that, because we want taxis to be up to a standard to receive our guests and for the island as well as a whole. Now you can already see that happening, Mr Chairman, through some support that ESH been giving, but we want to regularise that now so that all taxis conform to that and surely from an economic development point of view that is the way we ought to be going. Thank you, Mr Chairman.

The Chairman –
Councillor Duncan?

The Hon. Wilson Duncan –

Mr Speaker, can I, the way I see this is that the Highway Authority, if I'm a taxi driver, so the Highway Authority issues a licence after the taxi driver take his car to the Examining Officer and all the Highway Authority would do is say, right, you've got a licence for a year, but you have to have your vehicle, because you are a taxi here and you're putting up a lot of extra miles than a normal person then you would have to have your vehicle MOT'd every six months, because that, because I was a part-time taxi driver in the UK and that's the way it worked over there. You went to the place that did the testing, you get a certificate, then you had to fill in a form and take it to the Controlling Officer over there, but over here it would be the Highways Authority and they will issue you with and say, right, you've got a licence from now up until a year's time, but your vehicle has got to be MOT'd every six months so that is your responsibility to go to the Vehicle Examiner to get it MOT'd and then bring that certificate to the Highways Authority for you to carry on driving, that is for safety for everyone and it applies to bus drivers and everything, same as, I don't know with the so-called Public Transport out here, they would be subject to the same thing, that because of the miles they put up they would have to be examined, MOT every six months or every three months in some cases. You know, that is what I feel the Highway Authority, when it says comes to regulating that, because it is a special thing when it is public transport and taxis, it comes under a different category and the normal licensing and whatever don't apply to that because these are high risk vehicles, they are high risk vehicles because of the amount of mileage they do so that's why they need more periodic checking.

The Chairman –
Right. Thank you for that explanation. Attorney General?

The Hon. Angelo Berbotto –

Yes, there may be also other considerations that the Highway Authority may want to do. It may be, for example, that the Highways Authority will consider offences under the Road Traffic in a more, in a less lenient way, so, for example, if I am a taxi driver and I get stopped for drink/driving and it's my first offence and the Court let me go, you know, with just a fine, but as I am a taxi driver making money out of driving people, there is a higher standard and that is why the Highways Authority should be the place that regulates this, it's not just about the vehicle, it's also about the driving, it's also about the quality, like Councillor Henry has said and for those reasons I think that the Highway Authority needs to be given the opportunity to make these by-laws so the only suggestion that I make here is that in subsection (5) where it says "must regulate licences" the Highway Authority may issue licences for public service vehicles, that is my suggestion.

The Chairman –
You want to amend that?

The Hon. Angelo Berbotto –
Yes.

The Chairman –
And your proposal is delete “must regulate” and “may issue”?

The Hon. Angelo Berbotto –
Yes, and to say “may issue”.

The Chairman –
Alright, can I have a seconder to that first, I’ll deal with that. Can I have a seconder to the amendment? No seconder.

The Hon. Pamela Ward Pearce –
I’ll second it, Sir.

The Chairman –
You’ll second it. Can I put it to the Members, there’s a proposal to amend section 5, to delete “must regulate” and substitute “may issue”. Those in favour say Aye.

The Hon. Dr Corinda Essex –
Mr Speaker, can we speak to the amendment first, please?

The Chairman –
You want to speak to the amendment first? Alright.

The Hon. Dr Corinda Essex –
Yes, please.

The Chairman –
Derek?

The Hon. Derek Thomas –
Thank you, Mr Chairman. I got no difficulty with standards because we need to have that, but how far do we go with by-laws? I mean, the Highway Authority will have, can make whatever by-laws they see fit, is that going to be the case? I mean, my colleague here mentioned about Public Service Vehicles being examined every six months and that is probably not a bad idea, they are providing a service, but then that is not covered by law, it will have to be legislation because it’s an annual inspection at the moment, so, you know, by-laws might be a way forward but does, you know, the Highway Authority allowed to do this on their own, who manages it, who oversees this, where’s this Governor in Council comes in because certain by-laws may impact upon the public here. I’m not saying it’s not a bad thing, but where, how would it work in practice?

The Chairman –
Alright, Dr Corinda Essex and then coming to Councillor Henry and then coming to Councillor Olsson.

The Hon. Dr Corinda Essex –

I wanted to speak to the proposed amendment, because if it's the wording from "must regulate" is changed to "may issue" the word "may" means that they may not issue, so it might end up that no licences need to be issued, so I don't really think that that addresses the problem that we're trying to solve today.

The Chairman –

Yeah, okay. Councillor Lawson Henry?

The Hon. Lawson Henry –

I think we're getting mixed up with licences here, Mr Chairman. The Licensing Officer will continue to licence all vehicles to be used on the road. The licence that the Highway Authority will issue in going forward is to authorise the owner of the vehicle to operate it as a taxi, so if we go back to the black cabs in England you'll see his licence stick up in the cab, so that's what we're talking about here and it is that what gonna start to drive the standards and I think it is so important in going forward. The Highway Authority will not have authority to decide that vehicles should be inspected every six months, that's a matter already provided for in the law the way I see it. Thank you.

Councillor –

Whereabouts is that?

The Chairman –

Thank you. Councillor Mike Olsson?

The Hon. Mike Olsson –

Yes, thank you for that, Mr Chairman. There are two important issues here because one is to regulate something, but when I started to mention this already now in section 73 is that it actually comes back in section 90 and there is the Highway Authority directly issuing licences. The Highway Authority is a political body that do policy and the ones that should issue the licence must be some kind of competent authority, either the Licensing Officer or it shouldn't be politicians issuing a taxi licence because I think that is going a huge step backwards, because that should be somebody that do that kind of work that should be the Licensing Officer under the guidelines set up by the Highway Authority. That's my view, shouldn't have politicians sitting down and checking to see the cars are clean or whatever, that's not how it should work.

The Chairman –

Councillor Essex?

The Hon. Dr Corinda Essex –

On a point of clarification, the composition of the Highway Authority is not that of politicians and it includes the Licensing Officer, there is only one politician proposed to be on the Highways Authority and the composition includes the Director of Police who is the Licensing Officer.

The Chairman –

Councillor Gavin Ellick?

The Hon. Gavin Ellick –

At this moment you go to the Inspector, he inspect your car and license it up. You go to Solomon they give you insurance. When they register up, do they register up as a taxi then?

The Hon. Angelo Berbetto –

There's different insurance if you want to be a taxi from just your insurance just to drive.

The Hon. Gavin Ellick –

No, I just want to know if they insure you up, so if they insure you up to be a taxi, why is the Highway Authority, because I thought this law here was gonna come in for when you moving big trucks and things and rooting up roads, that's what I thought this law was gonna be, not to be issuing taxi licences. Regardless if you want to up the game or not I thought it would come under Solomon, they're the ones who do the insurance.

The Chairman –

Councillor?

The Hon. Pamela Ward Pearce –

Thank you. I think there's some confusion around the actual regulation. I thought Councillor Lawson Henry gave a very clear explanation of what the licensing is. It's not issuing licence to say that you can do this, it is issuing a standard so that people know what they're getting for it, so like the licensed taxis in different parts of the world, they are issued with the licence from the local government, they know then that they have achieved that standard and this is the role that the Highway Authority will take. They won't be going around doing the nitty gritty checking the vehicle, checking the driver and that, that will all come as part of it and as Dr Essex says, the Highways Authority also has the Licensing Officer on the Board so that should be taken care of there I think. Thank you, Sir.

The Chairman –

Okay. Have we exhausted that before.....is the amendment still necessary, is the amendment still going, the proposal still going forward or not?

The Hon. Angelo Berbetto –

In my view and my advice is that section 5 should be amended to make it clearer. At the moment it says the Highway Authority must regulate licences. If the Members are happy with that, that's fine, I think that if we change it to the Highway Authority may issue licences it makes it clearer.

Councillors –

No.

The Hon. Angelo Berbetto –

The type of by-laws that the Highway Authority will come into, bring into effect are, as it says here, the areas in which they can bring their by-laws to be equipment to be carried, signage to be displayed, requirements and restrictions on vehicles or drivers and these are quite proportionate, Mr Speaker.

The Chairman –

Alright.

The Hon. Angelo Berbetto –

In relation to the submission that the Highway Authority is a political body, I have my reservations about that and the purpose of these by-laws is to make it easier for those who want

to run a taxi service to know what they have to, what requirements they have to meet and also to provide a good service and it may be that the Highway Authority brings into effect a temporary taxi licence and a permanent taxi licence to contemplate periods where a lot of taxis are required, for example, when a cruise ship, but that needs to be something delegated to the Highway Authority. The Authority is going to be composed by competent people, one of which is one of yourselves, an elected member and it seems appropriate that they are given the powers to do the job.

The Chairman –

Okay. I'm not sure where we're going. I asked you before, does your proposal to amend still stand?

The Hon. Angelo Berbotto –

Yes.

The Chairman –

It stands.

The Hon. Pamela Ward Pearce –

I withdraw my seconding of that because I think that, as Dr Essex pointed out, 'may' could mean 'may not' either and I think that the explanation that Councillor Lawson Henry gave regarding regulation means that the section stands as it is as far as I'm concerned. Thank you, Sir.

The Chairman –

Okay, I hear you. The process is still on the table. There's been a proposal to amend the regulation 73(5) by deleting "master" and "regulate". To put 'may' issue. Is there a seconder, is there a seconder?

The Hon. Derek Thomas –

Mr Chairman, can the Attorney General, I mean he's obviously still sticking with the position to amend. I don't think I went to sleep, I might have dozed off, but the justification to amend, I'm not quite clear about that. Can we have the justification from the Attorney General to amend?

The Hon. Angelo Berbotto –

Well, yes, because at the moment it says the Highway Authority must regulate licences. Now, and make by-laws and must regulate licences actually provides a lot of power. May issue licences means that if there are requirements that are met then they have the authority to issue the licence. Actually I think that as it is the powers are bigger because must regulate licences imply revoking, suspending, amending licences, but it's not a big deal, Mr Speaker, so I'll be guided by elected members.

The Chairman –

Councillor?

The Hon. Lawson Henry –

Mr Speaker, I think the word licences is the one that probably is causing the issue here, but I just want to say again you've got a road licence for using the vehicle on the road. Going forward from April next year when we enact this here people who previously licensed with the

Police as a public service vehicle or a taxi will in the future have to do that process with the Highway Authority. In other words, if it was happening in the UK it will be the Local Authority and it is two completely separate licences, you know, and the real reason behind that has been driven by Economic Development, we want to, we're not making it difficult for people, what we are saying, and islanders want this too, we want our taxis to be of as high a standard as we possibly can without putting, you know, the owners through any erroneous problems, any erroneous extra things to do and it is about regulation and the little things that we got here is what you would expect a taxi to have, simple as that. Thank you.

The Chairman –

Okay. I'm sorry, I come back to my same procedural point. A proposal is on the table.

The Hon. Angelo Berbotto –

I wish to withdraw the proposal, I think the powers as they are even wider than the powers that I was contemplating, so it doesn't make sense to continue with the proposal.

The Chairman –

Okay, we can process and proceed because the proposal has been withdrawn. Councillor Dr Corinda Essex?

The Hon. Dr Corinda Essex –

May I propose that the word "licences" be replaced by the word "permit" so that there isn't any confusion, so it would say the Highway Authority must regulate permits for public service vehicles and taxis?

The Hon. Angelo Berbotto –

I would advise against it because I assume that otherwise we have to go with a fine comb on the rest of the Bill because I am sure that at this late hour we are likely to miss any other provisions where the word "licence" should be exchanged for "permit".

The Hon. Dr Corinda Essex –

I think the only other one is 90, it is only 73 (5) and 90 that make reference to the licensing of public service vehicles and taxis.

The Chairman –

Then you come to the question is a licence and a permit the same thing? Alright, where are we standing at now? The Attorney General has advised against the word "permit" and saying the "licence" should stand because it might have other implications. Are you happy with that?

The Hon. Wilson Duncan –

Myself, I feel that the licence should stay in there, Mr Speaker, because like Honourable Henry said it is two completely things from the normal licence, this is you are licensing a taxi, right, whereas the other licence is you're getting your licence for a vehicle, this here is you are issuing a licence, I want to be a thing and that and like in the UK with the black cabs, they have that thing in there, that is a licence, it's not a permit, it is a licence, regulated by the Local Authority and that, so I read this the same way.

The Chairman –

Alright, your proposal is that you support what the Attorney General has to say.

The Hon. Wilson Duncan –

I support as 5 is already written.

The Chairman –

Alright, is the Councillor insisting that there was a proposal to amend that to “permit” or are you accepting?

The Hon. Dr Corinda Essex –

I am accepting reluctantly because I do think that the word licence is going to cause confusion with the Road Traffic Licence, Driver’s Licence and you’ve got other licensing bodies that, well there are other types of licence that relate to vehicles which are simply issued by the Licensing Authority, in this case it also relates to vehicles but is issued by the Highways Authority and I can see that that can cause confusion and misunderstanding.

The Chairman –

Alright, okay, could I ask then are you still pushing forward your proposal or are you withdrawing it, I need to know what to do about that?

The Hon. Dr Corinda Essex –

I would like it to stand.

The Chairman –

If you’re putting a proposal to stand you want to be heard on that, Councillor?

The Hon. Wilson Duncan –

No, I wouldn’t.

The Chairman –

Okay then, if you’re putting a proposal to stand you need a seconder, is there a seconder?

The Hon. Gavin Ellick –

I beg to second.

The Chairman –

There is a seconder, so can I put the amendment on the table. The amendment is that.....

The Hon. Derek Thomas –

Am I allowed to speak on this, Mr, can I, I know the proposal is put but can I speak, I can still take youproposal, but I’d like to speak.

The Chairman –

Alright.

The Hon. Derek Thomas –

Thank you. I see that the permit is probably a better way to go because I mean the thing is already all vehicles got to be licensed under the law, they have to be licensed, they have to obtain a road licence, but then to do taxi business it is a step up, it’s a step up and then there are standards to be met and the Highway Authority would then satisfy themselves with those standards and issue a permit accordingly, because then if you say licence, well you got to have two licences or what is it, because you’re already licensed under your Road Licence, all vehicles got to be licensed, now in order to do taxi you got to be licensed again? But if you

have the permit it's a step up to conduct that business under guidelines and whatever standards the Highway Authority choose to put in place in terms of safety, so I do see merit in the permit for those vehicles conducting taxi business, because all vehicles have to be road licensed in any event. Thank you.

The Chairman –

Attorney General has any strong feelings, I'm talking about interpretation?

The Hon. Angelo Berbotto –

I am not able to go through the entire Bill to make completely sure that if we change the expression from licence to permit there will not be any issues in the future, that is my only concern. Yes, it's obvious that section 90 can be amended, but there may be other provisions and I don't at this moment have the human capacity to go through everything and that is my only concern. I think, from a point of view of practicality having the word permit helps, but I just don't know that whether by changing that, doing that we undo somewhere else and law, the law needs to be unambiguous, the law cannot create problems in the interpretation, because we don't want a Judge later on saying, oh, but here it says permit, but here it says licence, because that creates doubt and uncertainty, so because the word licence is already there, that's my feeling that it should be there and then it can be taxi licence, the word taxi can be put before.

The Chairman –

Yes, Councillor Tony Duncan?

The Hon. Wilson Duncan –

Mr Speaker, I don't see where any confusion can come into this. Me, as a thing, I've got to get my car licensed as a personal, private matter from the Licensing people, from the Inspectors, you know, you go to them and they give you and say, right, your car passed, so you've got a licence. This here as I see it is you get that, but now I want to become a taxi driver, so now then I will have to apply to the Highways Authority that I would now like to use my car as a taxi and now then the Highway Authority then will have conditions and all that put on that what it's gonna be, so that will be the licence for if you want to drive a taxi or if you want to drive a bus or something, so I can't see the thing, because from my experience, and I hate bringing up about the UK, they does exactly the same thing and that and when it comes to the taxi they've got to go to a designated testing place to have their vehicles inspected and all that and once they get that piece of paper to say that their vehicles have passed that then they go to the Local Authority to apply for this taxi licence, they'll be issued it with conditions on it and like over there one of the conditions is that you have to get the taxi MOT'd every six months because of safety and. as I said, with buses it's every three months, so I can't see where the confusion can be, you see?

The Chairman –

Okay, yes.

The Hon. Wilson Duncan –

Unless I'm on a different planet, I don't know.

The Chairman –

No, thank you, Councillor, the thing is either that you use licence or permit, the words licence or permits, the Attorney General believes that it could set some confusion within the system if

you ever change the words now, others, there has been a proposal on the floor to amend it, now you got to decide on it.

The Hon. Mike Olsson –

Mr Speaker, Mr Chairman at the moment, just I think that it will be nice to call it permit instead of licence but as the Attorney General has said it could be that we are causing problems, especially in this late hour on a Friday afternoon if there is no time to check the rest of the Ordinance, so it could be a conflict between permit and licence, so I just, in all humbleness, suggest, Mr Speaker, because this debate is getting tired, that we pass this, I would support permits, then we adjourn to suspend after that and give the Attorney General and ourselves the entire weekend to make sure that we are not causing any illegal conflicts. Would that be acceptable, Mr Chairman, Mr Speaker, because it is very tired in here at the moment.

The Chairman –

It is tiring, it is a long day, but can I also point out to you and make you understand we can only go up by Constitution, by law, to six o'clock anyway here this evening and if we don't get through with this today it might be another day, we might have to spend the third day in Council because we've got other lengthy Bills coming up, one controversial Bill coming up, many more Bills coming up as well. Now, I'm in your hands on this, if you're really getting tired now we can adjourn so you come back with a clear head on Monday and do just the remaining bits and I think you may have to come back because you'll want to speak to the Bill after that, the Mover will need time to wind up on this, I'm sure, and he'll need to take up on all the amendments. I'm in your hands, will someone make a proposal that either we continue or either we're going to adjourn at this stage?

The Hon. Pamela Ward Pearce –

Mr Speaker, I propose we continue, Sir, because I think that if we set to on this we can conceivably finish with this Bill today, I'd hate to have this hanging over our heads over the weekend, so if we can make a decision on this here and now and continue forward. Thank you.

The Speaker –

Alright, the proposal, who will second that we continue?

The Hon. Lawson Henry –

I will, Mr Speaker.

The Chairman –

Right, can I put that to the floor that the proposal is that we will continue to finish this Bill, if only through the Clauses and then come back for the presentation, winding up on Monday.

Question put and agreed to.

The Chairman –

We continue, okay. Alright, so now let's deal with this, we still have this here to deal with and there's a proposal on the table that the words regulate licences will now change, oh no, I got the right one, yes.

The Hon. Dr Corinda Essex –

Mr Speaker, can I dictate the proposed change, please?

The Chairman –

Yes, yes.

The Hon. Dr Corinda Essex –

Clause 73 (5) would then read “The Highway Authority must regulate permits” so “licences” is removed and “permits” inserted “for public service vehicles and taxis and may make by-laws with regard to the (new words inserted) “issuing of permits for public service vehicles and taxis and drivers thereof. “The Highway Authority must regulate permits for public service vehicles and taxis and may make by-laws with regard to the issuing of permits for public service vehicles and taxis and drivers thereof.”

The Hon. Pamela Ward Pearce –

Mr Speaker, I’m quite happy to endorse that, second it.

The Chairman –

You second it?

The Hon. Pamela Ward Pearce –

Yes.

The Chairman –

Can I then put that as a proposed amendment that we, in 73 (5) the word “licences” in the first line is changed to “permits”? Yes, licence is deleted?

The Hon. Dr Corinda Essex –

Yes.

The Chairman –

And in the second line delete “licensing” and say the issuing of permits?

The Hon. Dr Corinda Essex –

For, delete licensing of.

The Chairman –

For? Delete licensing of.

The Chairman –

Delete licensing of. Issue of permits for. Alright, I’ll put that to the vote.

Question on amendment, put and agreed to.

The Chairman –

Any further amendments in that same Clause?

Clause 73 (as amended)

Question put and agreed to.

The Chairman –

Is there any further debate on any of the other clauses in that section?

Clauses 72, 73 and 74.

Question put and agreed to.

The Chairman –

Regulations, Clause 75, let's see how we can go on this, Attorney General?

The Hon. Angelo Berbotto –

Section 75 provides for penalties for neglect of traffic signs.

The Chairman –

Okay.

The Hon. Angelo Berbotto –

With a fine of £100 or imprisonment for a month.

The Chairman –

Any debate?

The Hon. Mike Olsson –

Wasn't that somewhere else as well, Attorney General, something failing to stop, or that could be the same thing, couldn't it, but with a much higher fine?

The Hon. Angelo Berbotto –

What was before.....

The Hon. Mike Olsson –

Or is it

The Hon. Lawson Henry –

.....stop on the directions of the Police.....

The Hon. Mike Olsson –

That wouldn't be the same thing, wouldn't it, the Police Officer says stop and.....

The Hon. Angelo Berbotto –

Yeah, this is the Police Officer also.....

Clause 75.

Question put and agreed to.

The Chairman –

Leaving vehicle in dangerous position and stretching ropes, wire or apparatus across the highway, 76 and 77.

The Hon. Angelo Berbotto –

This is self explanatory, if you leave your vehicle in a dangerous position that is an offence and if you extend a rope or wire on a road as well is an offence.

Clauses 76 and 77.

Question put and agreed to.

The Chairman –
Regulations. Regulation of traffic by signs.

The Hon. Angelo Berbotto –
That's right, this section gives power to the Highway Authority to make by-laws prescribing traffic signs and there are penalties if people don't follow the signs.

Clause 78.

Question put and agreed to.

The Chairman –
Clause 79 and Clause 80, please?

The Hon. Angelo Berbotto –
Yes, section 79 deals with forgery of licences and certificates and 80 is about prosecution and penalties for offences.

The Chairman –
No debate?

Clauses 79 and 80.

Question put and agreed to.

The Chairman –
Clause 81, clauses 82, 83, 84.

The Hon. Angelo Berbotto –
Section 81 deals with provision applicable to vehicles and persons in Crown Service, 82 is about forfeiture of vehicles, 83 is about restriction on use of road or a public place and 84 is about exceptions for emergency services.

The Chairman –
Alright, you're happy that it does not apply to those in Crown Service if the Governor directs?
Section 81, section 82, section 83 and section 84.

Clauses 81, 82, 83 and 84.

Question put and agreed to.

The Chairman –
85, Power to seize vehicles driven without licence, insurance or failing to stop.

The Hon. Angelo Berbotto –

Yes, section 85 gives power to seize vehicles if somebody drives their vehicle with a licence the Police may seize, take the vehicle or if the vehicle is driven without insurance or if the driver fails to stop and then the Police catches up, power to seize.

The Chairman –

Power to seize. Is there any debate on that? Yes, Councillor George?

The Hon. Cyril George –

No, sorry.

The Chairman –

Okay, no debate on that.

Clause 85.

Question put and agreed to.

The Chairman –

86 and 87.

The Hon. Angelo Berbotto –

Section 86 is about removal of vehicles from road, basically the power to tow away vehicles and 87 gives power to the Governor in Council to make regulations for a list of issues, from fees to regulations on notices and other regulations. I would like to raise, there is a typo....

The Hon. Pamela Ward Pearce –

There's a typo in (f).

The Hon. Angelo Berbotto –

In 87, subsection.....

The Hon. Pamela Ward Pearce –

There's a missing 'l' in public, there's no 'l'. I know it's Christmas, in'nt it , the angels said Noel.

The Chairman –

Where is that please Councillor?

The Hon. Angelo Berbotto –

87 (2) (f).

The Hon. Pamela Ward Pearce –

It's reading pubic instead of public, Sir.

The Chairman –

Where is that?

The Hon. Pamela Ward Pearce –

87 (f).

The Chairman –
87 (f).

The Hon. Pamela Ward Pearce –
Yes, and I don't think we want a public body, not even at this late stage of a Friday afternoon.

The Hon. Dax Richards –
87 (2) (f).

The Chairman –
Got him, okay. So the proposal is that you amend it. Now, who proposed that?

The Hon. Pamela Ward Pearce –
I'm happy to propose it, Sir.

The Chairman –
You propose that the word is replaced by the word 'public' and seconded by?

The Hon. Gavin Ellick –
I second it, Sir.

The Chairman –
Seconded, okay. Put it to the vote.

Question on amendment, put and agreed to.

Clauses 86 and 87 (as amended).

Question put and agreed to.

The Chairman –
Section 88. Seatbelts.

The Hon. Angelo Berbotto –
Yes, it gives the, section 88 does not make the use of seatbelts compulsory, but it gives the Governor in Council power to make regulations, it doesn't mean that the Governor in Council will make regulations, but the Governor in Council may make regulations about the use of seatbelts.

The Chairman –
Yes, Councillor?

The Hon. Derek Thomas –
Thank you, Mr Chairman. I just raising concern, is this appropriate now to be in the Ordinance, providing Governor in Council to make regulations for the wearing of seatbelts and there's no legislation in place for seatbelts?

The Hon. Angelo Berbotto –
Yes, this is the legislation for seatbelts, it gives the power to make regulations on seatbelts, because it says "The Governor in Council may make regulations prescribing the descriptions

of seatbelts to be worn and the manner in which such seatbelts are to be fixed and used and these regulations may” and then there’s a list of things about the power, so it gives the power, it doesn’t mean that the power will be used.

The Hon. Pamela Ward Pearce –

And in the introduction to the Bill I did make reference to this, Sir, because originally we had intended to have seatbelts included in the Bill, but following the consultation we took onboard what people asked for and I think Dr Essex also made reference to it in her speech, but the provision is still there for us to be able to make regulations and we certainly wouldn’t impose them without going out to consultation again.

The Hon. Derek Thomas –

Fair enough, Mr Chairman, but I do find that strange making the provision and we don’t even know if that’s gonna be law.

The Hon. Angelo Berbotto –

Mr Chairman, it’s like I give you a transfer from my account to your bank account and then I say to you if you need you can withdraw a hundred pounds, it doesn’t mean that you will withdraw the hundred pounds, but you have the possibility, so this is what this provision is doing, I’m not giving you the hundred pounds but I’m giving you the permission in case you need it to fill out the form and go to the Bank and get the hundred pounds.

The Chairman –

Any other comments on that? Alright.

Clause 88.

Question put and agreed to.

The Chairman –

Clause 89 – Penalty Notices.

The Hon. Angelo Berbotto –

This section 89 deals with penalty notices and it makes reference to the Criminal Justice and Police Act of 2001 and explains how these penalty notices are to be used.

The Chairman –

Penalty Notices, yes, Councillor?

The Hon. Mike Olsson –

I don’t really know what it has to do in the Road Traffic Ordinance, somebody need to explain that, because it does have to do with everything from....there’s a wide variety given by mental protection and.....that’s a bit confusing to have it in the Road Traffic Ordinance, shouldn’t it, shouldn’t that have been kept separate in some minor amendments Bill or something like that instead of hiding it back in the Road Traffic legislation?

The Hon. Angelo Berbotto –

When we started working on the draft this is one of the suggestions from the Director of Police or the Directorate to have provision for penalty notices, that’s as far as I can assist you with.

The Chairman –

Right, the penalty notices are in respect of being drunk in a public place and throwing fireworks and sale of alcohol, buying or attempting to buy alcohol, there's a whole list of them and you've been through them, depositing litter. Is the Honourable Member's point valid, Attorney General or not?

The Hon. Angelo Berbotto –

I beg your pardon?

The Chairman –

Is his point valid, why it should have been.....

The Hon. Angelo Berbotto –

Well, I wouldn't say whether it is valid or not. My advice is that the input of the Police when discussing the Ordinance and putting the Bill together was to have these penalty notices which is defined an offence committed and any of the provisions below and the Director of Police may appoint persons with the power of an authorised Constable to, well, that's procedural, and if the amount of a permitted fine for any person who is in the preceding three years is found guilty at Court following the issuing of the penalty notice, so the penalty notice is the possibility of not taking the matter further. Section 6 says any further conviction at Court following the issuing of the penalty notice or the payment of a penalty notice will result in the licence being revoked for a further six weeks. It is for Members, if you decide that it shouldn't be here, it will be scrapped, it's something that the Police wanted in this Bill.

The Hon. Mike Olsson –

Thank you. One of the main purposes with introducing the Road Traffic Bill was that we shouldn't have a little bit of the legislation here, another little bit there, another little bit there, we should put it all together and this is doing absolutely the opposite. Who would actually read the law and want to know what's gonna happen and look for destroying, damaging property, oh, that's in the Road Traffic Ordinance. Now, I move that section 89 is removed from the Road Traffic Ordinance. Anybody willing to second?

The Hon. Gavin Ellick –

I beg to second.

The Chairman –

Yeah, okay, that's a proposal. I think you want to speak first, Councillor Henry?

The Hon. Lawson Henry –

Yes, I'm slightly confused over this being in the Ordinance as well, Mr Speaker, because most of the offences referred to in the second column is already being provided for, most of it, not all, in the Summary Offences Ordinance, so why are we doing penalty notices here. If we really want to do it why don't we do it in the appropriate Ordinance for which create these offences in our ...?... legislation in the first place and I agree with my colleague.

The Chairman –

Happy, Attorney General?

The Hon. Angelo Berbotto –

My only suggestion is, so that we don't upset the internal cross-referencing is if we are scrapping this is that we leave 89 as left blank.

The Chairman –
So?

The Hon. Angelo Berbotto –
So the text in 89, section 89, is removed and replaced with the words “left blank.”

The Hon. Mike Olsson –
I can second that.

The Chairman –
Is that what it is, otherwise you could amend the final sections?

The Hon. Angelo Berbotto –
But there may be other sections in other places, I don't like upsetting the numbering, because we may change something now and then we pick up mistakes later. This Bill has been read by so many people and still today we're picking on some typos, it is just, that is my main concern, Mr Speaker.

The Chairman –
Okay. So the proposal is that, and who is seconding the proposal to remove? The proposal is that section 89 will be deleted, that's the right word now isn't it, because if it's deleted it's then taken out, so if you take it out you won't have any 89 there.

The Hon. Mike Olsson –
Left blank.

The Chairman –
Left blank, okay, replaced with a blank.

The Hon. Angelo Berbotto –
So the heading goes out, the number 89 remains, the rest of the text is taken out and the words “left blank” are added there and full stop.

The Chairman –
Okay, thank you very much indeed.

Question on amendment, put and agreed to.

The Chairman –
Public Service Vehicles and Taxis, Repeal and amendment of legislation and Transitional provisions, we can deal with those three, Attorney General?

The Hon. Angelo Berbotto –
Yes, section 90 says Public Service Vehicles and Taxis, any person who operates a vehicle, a public service vehicle, taxi without a vehicle and driver being licensed to do so by the Highways Authority commits an offence and a penalty and fine of £5,000. Subsection (2) says any person who falsely represents that either a vehicle or person is licensed to serve as a public

service vehicle or taxi or a driver of any such vehicle commits an offence, penalty of fine of £5,000 and section 91 repeals and amends legislation.

The Chairman –

Alright and transitional provision, the code remains the same, doesn't it?

The Hon. Angelo Berbotto –

Yes. Transitional Provisions says that any appointments made under the existing Ordinance will continue and the Highway Code remains in effect. Basically it provides for the fact that actions and people have been appointed under the old Ordinance will continue to have their appointment and the same value even when this new Ordinance comes into effect.

The Chairman –

Okay. Thank you. Honourable Dr Corinda Essex?

The Hon. Dr Corinda Essex –

Yes, Mr Chair. Clause 91, 90, Part 1, as a result of the amendment made previously in relation to taxis and PSVs, the wording will need to be amended so that the word "licensed" is removed from the second line and the word "permitted" is substituted. So 90, Part 1 will now read "Any person who operates a vehicle as private service vehicle or taxi without the vehicle and driver being permitted to do so by the Highway Authority commits an offence.

The Chairman –

And that's, you're referring to section 90?

The Hon. Dr Corinda Essex –

90, Part 1 and in 90, Part 2 there needs to be a similar change, any person who falsely represents that either a vehicle or a person is permitted to serve, so again the word "licensed" needs to be removed and the word "permitted" needs to be substituted.

The Chairman –

Alright, Honourable Member, are you happy with that, Attorney General?

The Hon. Angelo Berbotto –

No, I'm not happy, because I'm not happy that the word permit is appropriate, but I have given my advice already so in the circumstances we have already changed section 73, but a licence and a permit are not identical, not in law.

The Chairman –

Okay.

The Hon. Dr Corinda Essex –

No, that's true.

The Chairman –

Okay, so can I put that amendment then? Is there a seconder to the amendment?

The Hon. Gavin Ellick –

I beg to second, Sir.

The Chairman –

Alright, can I put that then, the proposal is that the word “licensed” in Clause 90, section 1 and the word “licensed” in Clause 90 (2) should be deleted and replaced by the word “permitted”.

Question on amendments, put and agreed to.

The Hon. Pamela Ward Pearce –

Can I just have clarification please, Sir. Is that one amendment or two amendments?

The Hon. Dr Corinda Essex –

Two.

The Chairman –

That’s two amendments.

The Hon. Dr Corinda Essex –

Excuse me, Mr Chair, with regard to 91 (1) it states the Road Traffic Ordinance Cap 102 is repealed with effect from 31st December 2016, if the new Ordinance is not going to come into force until 1st April 2017 surely the existing legislation should remain in place until that date?

The Chairman –

Very good.

The Hon. Angelo Berbotto –

Yeah, until 31st March 2017.

The Chairman –

We could have had a free for all couldn’t we?

The Hon. Angelo Berbotto –

Sorry?

The Chairman –

We could have had a free for all.

The Hon. Mike Olsson –

Mr Speaker, I was on about the same thing as Councillor Essex, but do we really need a date there at all, because there are a lot of regulations to write to this Ordinance. Could it not just be worded the Road Traffic Ordinance Cap 102 is repealed upon enactment of this Ordinance? Do we have to give a specific date? I’m not sure, because it seems a bit dangerous to do.

The Hon. Angelo Berbotto –

Well, the other one, this one is coming in effect on 1st April. I think it gives clarity if we actually put the dates, it is not easy unless you are working with the laws all the time to know when something starts, something begins, you as a Lay Advocate you know that it is not easy to find sometimes when something finished and when something started so I see advantage in having the dates here, it says the old one finished on 31st March and this one starts on 1st April.

The Hon. Mike Olsson –

Alright, just to safely in case all these regulations are not finished in time then it can be a free for all term in between, ways around it just to avoid those kind of things, that was all, otherwise I don't have any strong feelings about it.

The Hon. Angelo Berbotto –

I think this will be an incentive for ExCo to finish all the regulations in time?

The Hon. Dr Corinda Essex –

Well, on a point of clarification not all the regulations necessarily need to be in force on the date of enactment of an Ordinance, because further regulations can be developed after an Ordinance is in operation.

The Hon. Angelo Berbotto –

That's right and also some of the regulations may never be enacted, like the seatbelt regulations, but the ones prescribed in the limits for drivers and alcohol, yes, those need to be worked out in the first quarter.

The Chairman –

So what have we decided?

The Hon. Angelo Berbotto –

My proposal is that we in 91 we replace 31st December 2016 with 31st March 2017.

The Chairman –

The proposal is that the words 31st March 2016 is deleted and replaced with 31st March 2017 is it? Is there a seconder?

The Hon. Dr Corinda Essex –

I beg to second.

The Chairman –

Thank you very much indeed.

Question on amendment, put and agreed to.

Clauses 90, 91 and 92.

Question put and agreed to.

The Chairman –

Schedule please, can we deal with the schedule?

The Hon. Angelo Berbotto –

The schedule, lists all the countries whose licences are recognised by this Road Traffic Ordinance and if those are recognised are the British Overseas Territories grouping of Ascension and Tristan da Cunha so an Ascension licence is a foreign licence but is valid here for the first three months of somebody arriving. Same with Tristan. European Community, European Economic area and other countries include Australia, Barbados, Falkland Islands.

The Chairman –

Alright, so those are lists of countries that are valid is it?

The Hon. Lawson Henry –

I just want to raise a point, Mr Speaker, Mr Chairman. We got a selection of our fellow British Overseas Territories in this Schedule, but not all. Now, I don't know what research was done to determine this here, but in going forward and the island developing I can foresee in the future that some of the conferences that Councillors attend overseas with the coming of air access could be held here on St Helena in the future and I do think we should include all other Overseas Territories and not the selection. We got the Falkland Islands here, we got the British Virgin Islands, but I think consideration should be given, it is fourteen Overseas Territories so we're talking about thirteen.

The Hon. Angelo Berbotto –

If I may answer, the Police advised on taking into account the practice of the UK DVLA which is your Authority that issues licences, I don't know what the requirements are in other countries that are not listed here, but from my discussions with the Police the requirements for people to obtain licences may be so different there may no guarantee that a person has a competence that we would expect of somebody licensed under St Helena law and that is the reason. This Schedule I may be subject to modifications in the future. Also, the international driver's permit, international driver's licence, that is contemplated under this Ordinance so, for example, if somebody from a territory that is not here, for example, the USA, somebody who has an American driver's licence wouldn't automatically be able to use it here as a foreign driver's licence, but if that person also has an international driver's licence that international driver's licence, which you can get from the Automobile Club or other institutions like that, there would be no issue.

The Chairman –

Yes. Honourable Members, I'm conscious that the time is running up to six o'clock and we will not be able to sit after six, but I think we've come to the end, I don't know whether you have any way of dealing with what you propose. I have to put the Schedule first before you go.

Schedule I.

Question put and agreed to.

The Chairman –

Thank you. Now, before you move, I have to get back into formal meeting to be able to conclude, so if you don't mind, we're now back into formal sitting and out of Committee stage.

Council resumed.

The Chairman –

Is there a proposal for adjournment, please?

The Hon. Roy Burke –

Thank you, Mr Speaker, I beg to move that the House do now adjourn until 10 am on Monday, 12th December.

The Chairman –

Thank you. The proposal as put please? No seconder, can I have a seconder first?

The Hon. Dax Richards –
Mr Speaker, I beg to second.

Question on adjournment, put and agreed to.

The Chairman –
Thank you, Honourable Members, it's been a long, tiring day. Thank you very much indeed.

Council adjourned.