



**SELECT COMMITTEE
OF THE
LEGISLATIVE COUNCIL
OFFICIAL REPORT**

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**PROCEEDINGS
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**Road Traffic Legislation
(Amendment) Bill 2016**

HANSARD

Douglas, Thursday, 9th February 2017

PP2017/0037

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Members Present:

Chairman: Mr J R Turner
Mr M R Coleman
Mr R W Henderson

Clerk:
Mr J D C King

Assistant Clerk: Miss F Gale

Contents

Procedural.....	3
EVIDENCE OF Mr S Broad, Ms A Broad, Mr M Ellison and Mr P Howe, representatives of the Island Road Transport Association.....	4
<i>The Committee adjourned at 11.40 a.m. and resumed at 11.43 a.m.</i>	20
EVIDENCE OF Mr N Black, Chief Executive, Mr C Hannon, Project Co-ordinator, and Mr J Robinson, Director of Highway Services, Department of Infrastructure; with Mr Duane Allen, Legislative Drafter, Attorney General's Chambers.....	20
<i>The Committee sat in private at 1.20 p.m.</i>	46

Select Committee of the Legislative Council on the Road Traffic Legislation (Amendment) Bill 2016

*The Committee sat in public at 10.30 a.m.
in the Legislative Council Chamber,
Legislative Buildings, Douglas*

[MR TURNER *in the Chair*]

Procedural

The Chairman (Mr Turner): Good morning. We will start the formal proceedings now. Welcome to this public meeting of the Select Committee of the Legislative Council on the Road Traffic Legislation (Amendment) Bill 2016.

I am Juan Turner MLC; I am the Chairman of the Committee. With me are Michael Coleman MLC and Bill Henderson MLC, who unfortunately is going to be a little bit late – he has an appointment this morning but hopefully will be joining us during the course of proceedings. Also with us this morning is our Committee Clerk, Mr Jonathan King, and Francisca Gale, who is the Assistant Clerk. So that is who is with us here this morning.

If we could just ask that mobile phones are turned off whilst here in the Chamber, or on silent, as we do not want any interruptions to the recording equipment. Also, during the discussions this morning, if we can make sure that people are only speaking one at a time and we do not have talking over each other, because there is a recording being made and transcript.

The Road Traffic Legislation (Amendment) Bill 2016 was introduced into the Legislative Council on 26th April 2016. It started life in the Legislative Council and has not yet been to the House of Keys. It passed its Second Reading on 24th May. During the clauses stage it was referred to this Committee.

We issued a call for evidence last summer and we were grateful to those who responded. We obtained written evidence from the Department of Infrastructure at that time. However, following the change of Minister in October – there was, obviously, the General Election – we decided to write to the new Minister of the Department and ask if he was still intent on progressing the Bill. We were told on 7th December that he was but there were three clauses he would be content to remove. That is three clauses of a 75-clause Bill, so there is plenty still left in the Bill that is before us to scrutinise, and also those clauses that I have referred to are at the moment still in the Bill and it would be up to the Committee to take the recommendations back to the Legislative Council to see whether it is appropriate to remove the clauses.

Today we are going to hear first from some of the people who have responded to our public call for evidence last year, and also from representatives of the Department of Infrastructure itself.

Good morning and thank you for coming along today.

EVIDENCE OF

**Mr S Broad, Ms A Broad, Mr M Ellison and Mr P Howe,
representatives of the Island Road Transport Association**

30 **Q1. The Chairman:** Our first witnesses to the Committee this morning are representatives of
the Island Road Transport Association. First of all, for the public record, could you each state
your name and your role in relation to the Association.

Mr Howe: My name is Peter Howe. I am the Treasurer of the Island Road Transport
35 Association. I am also a driving instructor for heavy goods and cars.

Ms Broad: My name is Aileen Broad. I am the Secretary of the Island Road Transport
Association.

40 **Mr Broad:** My name is Stephen Broad. I am the Chairman of the Isle of Man Transport
Association and I own my own business.

Q2. The Chairman: Thank you very much.
I think first of all we would like to establish what is the Island Road Transport Association.

45 **Mr Broad:** The Island Road Transport Association was probably set up – although Peter would
probably know that better than me, timewise, but I am guessing probably 15 years ago. It is an
association of road haulage contractors and we have had quite a lot of input from some taxi
drivers and bus operators and people like that in the past. I think the current membership is
50 around 40 companies, ranging from large businesses to owner-operators of commercial vehicles,
vans and things like that, and people who generally use vehicles in connection with their
livelihood.

Q3. The Chairman: Okay, and how long have each of you been involved in the Association?

55 **Mr Broad:** I have been the chair for the last ... I think it is four years now. We have our
general meeting in February this year and it is obviously up to the members if we carry on in
those roles. I think Aileen has been the secretary for a similar sort of time and I think Peter has
been the –

60 **Mr Howe:** I have been there for about 10 years.

Q4. The Chairman: Thank you. Before we go into more detail I will give you the opportunity
now to make an opening statement if there is anything you would like to address us with before
65 we ... obviously we have some questions for you. So would you like to make an opening
statement?

Mr Broad: Yes, I think so. I think basically we want to try and get the views of some of our
members over to you today.

70 We have put the regulations out as we have received them to our members for their
comments. Obviously these people are not technically minded, they are not legal draftsmen,
they do not maybe understand the full implications of some of the ways the Bill is drafted; but I
feel the overwhelming response and views I have received are very much that this is a
sledgehammer to crack a nut.

75 People are asking questions: why do the Government need these powers; what is broken
with our legislation at the moment? They do not see the problems that Government or the
Department are portraying in the Bill and I think that is ... The underlying term is that guys out

there on the shop floor do not see the problems that the Bill is portraying and are wondering why we need legislation like this in place. I think that is the underlying issue that I want to get
80 over to you, that it seems very much that some aspects of the legislation seem draconian in some respects, very much a sledgehammer to crack a nut, and we do not have these problems on the Isle of Man.

People are also concerned about cost. Many of our members are concerned about the costs that these regulations are going to put on their businesses. Every day we see businesses going
85 into liquidation, closing their doors, folding voluntarily. People are concerned about costs on the Isle of Man at the minute and they are looking at these regulations and thinking, 'Where do we go from here? How is this going to affect my business? How is this going to affect my income stream?' They are genuine concerns of genuine working people on the Island.

90 **Q5. The Chairman:** I get the impression then that the feeling of the organisation is that this is legislating for problems that are not there. Is that –?

Mr Broad: Very much so. It is a massively weighty document, and to drive through it is, to say the least ... I have read through it on a number of occasions and every time I see something else.

95 I looked through it last night and I picked up on just a couple of parts, and one was a £2,500 fine and three penalty points for seat belt offences. I thought: is that proportionate; is that justified, to fine somebody £2,500 for what is a minor road traffic offence? Is that right? Is that justified? And that is one part of it.

Another part of it I looked at ... And please do not think for one minute we are condoning
100 people using motor vehicles with no insurance, we are not, but I looked at it and it sets out an obligatory driving disqualification for people who are found to have no insurance. At the same time, I am looking on Isle of Man Newspapers' website and the High Bailiff is criticising legislation for not giving him the discretion and the powers he needs to alter and deal with things as he sees he wants to. They could be poles apart, driving without insurance offences. We
105 could have on the one hand someone who is driving around with no insurance, maiming and killing people. At the other end of the spectrum could be someone who is simply late back from holiday and their insurance has expired by a day but they had every intention of reinsuring their car, and they may fall foul of the law in some form. But do the public need the confidence in the judiciary to give the punishment that is needed? I think if Government is to take those powers
110 away from the judiciary it somewhat ties the judges' hands a little bit and I am not really comfortable with that in some respects.

They are the sort of things that are coming back to us from our members.

115 **Q6. The Chairman:** Okay. Just to get a feel then, we have got the Department, obviously, who are going to be giving evidence following you. They are here and they will be, hopefully, able to answer some of the points that you have raised this morning.

Can I just ask: you mentioned the businesses and some businesses having to close. Representative of about 40 companies on the Island, would you say the impact then on the smaller businesses for this extra level of regulation is the problem, whereas the bigger firms
120 obviously have the resources and the staffing to be able to comply?

Mr Broad: Absolutely, Mr Turner. I think regulation probably plays very much into the hands of larger operators. Other aspects of legislation that is going through at the minute still play into the hands of larger operators – like HGVO licensing and things like that. If you have got one
125 vehicle and you go to the Test Centre and you fail your MoT, you have a 100% failure rate. If you have 10 vehicles and two fail, it is a 20% failure rate. The odds are very much stacked up against the smaller operator to comply with rules and regulations, and especially ...

If look at driver CPC, for instance, there is a clause in this Bill to bring in driver CPC. Driver CPC in the UK is a course that you will attend for I think it is about 30 hours, and you get a certificate

130 at the end of it. There is no examination, there is no benchmark to test anybody with; it is an
attendance qualification. I know people in the road haulage industry in the UK who say it is
European bureaucracy gone mad. Why are we bringing this into the Isle of Man? Do we need a
driver CPC on the Isle of Man? Do we have any problems with commercial vehicle drivers on the
135 Island causing problems, not able to tie the load on properly? A lot of it is down to tachograph
regulations that we do not even have here. The Isle of Man is not getting any bigger. It is
30 miles long by 10 miles wide. People are not driving the same distances and for the same time
as the UK. I do not believe the road haulage industry on the Isle of Man, or even the taxi
businesses, have a problem where we need driver CPC.

140 It is the cost as well. The Department put down here that most of these things are cost
neutral. Putting someone through a driver CPC is not cost neutral and a smaller business has got
the abstraction time as well for the person who has the business, that they are not earning
money while they are doing that.

145 **Mr Howe:** Could I just pick up on one of those?

The Chairman: Yes, certainly.

150 **Mr Howe:** When we have had meetings before, they have tried to say that Government
employees would be exempt from doing these sort of things, but we feel that that would be
unfair. It is not going to be cost neutral if all the drivers who drive for Government, whether it is
a minibus or a truck or whatever ... They will all have to do CPC, and that cost to Government
will be a huge amount.

155 **Ms Broad:** I think as well, if I can just say, you have got the same thing with the medicals,
because they are talking about bringing in medical examinations for heavy goods drivers. That
becomes a cost not only to the person having the medical but also to the medical centres.
Where are the doctors going to get the time? And why? What issues are on our roads where
drivers need medicals? What problems are there? Where is the justification for it?

160 **Q7. The Chairman:** So this comes back to the question of what problems are we trying to fix?

Ms Broad: Yes.

165 **The Chairman:** Okay. Mr Coleman.

Q8. Mr Coleman: How would you react then to the situation that happened in Scotland
where the driver had a heart attack in the truck and mowed down people?

170 **Mr Howe:** Yes, but he will have had a medical which did not show that he had a problem. You
will always get somebody to die at the wheel, whether it is in a car or a lorry, at some time. I
know of one on Cronk y Voddy hill who passed away in a lorry and crashed into a hedge, and
that is the only one that I know of in the Isle of Man.

175 **Q9. Mr Coleman:** But how many of those particular incidents may have been prevented by
the fact that there was a medical?

Ms Broad: His wasn't, was it? I do not know enough about the case, but his was not because
he did not declare ... Wasn't it down to ... he did not ...?

180 **Q10. Mr Coleman:** Well, he had a condition and he did not declare it. If he had had a medical
they would have picked that condition up.

Ms Broad: He had had a medical.

185 **Mr Howe:** He had a medical and the medical passed him fit to drive, but then he developed a condition and it caused him to have heart failure.

190 **Mr Broad:** I think I understand it as well that it will only be a medical every 10 years, so if my driving licence was to run out say next year – I am 50 years old – I am going to go for a medical, the doctor is going to look at me and say, ‘You are unfit,’ or fit, depending what he thinks, but in three years’ time or five years’ time I may be unfit to drive a goods vehicle, or even a car for that matter.

195 When we look at the eyesight test as well, people are always going to change throughout their whole life. A medical every 10 years for a driving licence, whether it be a car, a goods vehicle or a bus, they are going to have periods in that timeframe when they are perhaps unfit to drive for various reasons – people may have this disease where they fall asleep – and if people are not going to be open and honest and come forward and declare those, no medical is going to resolve that in any way, shape or form.

200 **Q11. The Chairman:** Okay, thank you very much.

If we can go through some of the issues then that you have raised, in particular – I know we have touched on some of them during the course of your opening address to us – clause 22, the inspection of driving licences.

205 This clause would give authorised examiners the power to ask a person to produce his or her driving licence for inspection, meaning that a constable will not have to be present. You say this is going to place vulnerable groups at risk. Could you outline your concerns on this?

210 **Ms Broad:** As a female, I am quite prepared to stand up for myself, but if I had somebody other than a uniformed officer trying to stop me at five o’clock on a dark winter’s evening, or seven o’clock on a dark morning, I would not stop. I think there are sections of the community – elderly people ... you cannot impersonate a police officer, but I am not aware of anything saying you cannot impersonate a vehicle examiner. I certainly think from that point of view, for me as a woman and from talking to my parents and people who are elderly, it is something where they would feel vulnerable, because they can recognise a policeman.

215 **Q12. The Chairman:** Okay. Is there anything, short of leaving the requirement for a constable in place, which may alleviate your concerns; or do you feel that it should be with a uniformed officer present?

220 **Mr Broad:** I think as well you have to look at the checks and balances and the accountability of a police officer. If we are going to give great power to people, then they have got great responsibility that comes with that. If those people are going to abuse those powers or face complaints, what procedures are the Department of Infrastructure going to put in place for their vehicle examiners similar to the confidence people have in a police constable?

225 At the moment it is well known within the road haulage industry that if you take your truck up to the test station and you complain about the decision of the vehicle examiner to pass it or fail it, you are not going to pass your vehicle test the next time. That is well known within our industry, and I would just want to know where the checks and balances are and safeguards for the general public in abuse of authority, abuse of power. They need to be in place. Just like a police officer is accountable, a vehicle examiner has to be accountable.

230

The Clerk: May I ask a question, Mr Turner, just on this point?

The Chairman: Certainly.

235 **Q13. The Clerk:** I am looking at section 43 of the Road Traffic Act 1985 as it now stands without the Bill. It says 'Any ... person ... driving on a road a motor vehicle ... shall, on being so required by a constable' produce his licence. From your experience – because I had not realised this until you said what you said a minute ago – does this mean police constables actually get you to stop and produce your licence?

240 **Ms Broad:** Well, they have the power to, don't they? (**Mr Howe:** Yes.) They can stop you on the road and ask you to produce your licence and give you a producer if you do not, that you have to go to a –

245 **Q14. The Clerk:** Yes. It says a person driving a motor vehicle on a road. I must say, when I read that I imagined the person might be driving, but they might be stationary. I did not think it was a sort of a blue light thing where they come up behind you and say, 'I'd like ...' –

Mr Howe: You are classified as being in charge of the vehicle whether you are actually driving it along the road or sitting in the car with the keys, stationary.

250

Q15. The Clerk: Is that something that happens frequently in the Isle of Man?

255 **Mr Broad:** Yes, it is quite frequent (**Ms Broad:** Roadside checks.) that police vehicles will stop cars that perhaps may be licensed on Friday and have not shown up on the computer for the weekend. If they are driving behind it they will do a check on it, they will pull him in, they will give that person – it used to be known as a 'HORTI' – an IOMRT1 form to produce their driving licence and certificate of motor insurance at a police station within five days. Five working days it is as well; it does not count weekends. That is quite a common occurrence for people to be stopped at the side of the road, and that happen to them, by the Police.

260

Q16. The Clerk: And the purpose of them stopping you is what?

265 **Mr Broad:** Is to check your driving documents are correct, i.e. you have a driving licence, you have a certificate of motor insurance and your car is licensed.

265

Mr Howe: I believe that also a traffic warden in uniform has the right to stop a vehicle as well; a policeman or a traffic warden in uniform, but not a person from the Government Test Centre – he has not got the right to stop you. Only the policeman can stop you, pull you in, and then the vehicle is inspected by the members of the Test Centre.

270

275 **Q17. The Chairman:** Looking at the Bill – and this is a question we will be putting to the Department when they give evidence – it does state that they are looking at this for ... 'an authorised examiner is inspecting a vehicle for certification ...' So it could be – and we will hear from the Department, as I have said – that they are asking for the licence when it is already at the testing facility, but I think we will obviously seek clarity:

42 Constables and authorised examiners: production of driving licences

(1) Subsection (3) applies if –

... (b) an authorised examiner is inspecting a vehicle for certification, pursuant to regulations made under the Licensing and Registration of Vehicles Act 1985, at the Vehicle and Driving Test Centre operated by the Department.

I think we will get some clarity, because there are additional provisions on there.

280 **Mr Howe:** Could I ask also on there ... They are trying to get vehicle examiners the right to enter a person's property without a warrant to look at that vehicle without the owner being

present. I believe only police officers with a warrant ... Customs and Excise can enter without a warrant, but they are now asking for the examiners at the Test Centre to be able to go into somebody's property and look at vehicles. I find that very odd.

285 **Q18. The Chairman:** Yes, I think that refers to clause 36. We might, if we may, come back to that particular item.

We will get some clarity on this, but you have raised your concerns about, effectively, roadside stopping.

290 The enforcement of fines: you have also raised clause 24, which would allow the Department to seize or immobilise a vehicle if the owner has not paid their vehicle duty or some other fine. You are saying you are concerned about the cost to the taxpayer if the authorities seize older vehicles and end up having to scrap them. Can you say why you think this would happen?

295 **Mr Broad:** What has brought that to my particular attention is I know a few people who run recovery businesses in the UK and they have had this power for quite a while in the UK to seize vehicles that are not taxed or are not insured on the side of the road, and the ... [*Inaudible*], as a vehicle operator service agency at the time, were quite keen on this and they were grabbing cars and they were going off to the crusher. That is back in the days when scrap metal was I think £100 or £200 a tonne and it was probably quite a profitable business – end-of-life cars, crushing them from the side of the road. But today in the Isle of Man an end-of-life car is going to be of a value of about £25 at a local scrapyard.

300 Most of these cars that are accumulating these parking tickets that are not getting paid are end-of-life vehicles which have probably been registered in two or three previous owners' names. You are never going to track down the real beneficial owner of it. You are going to incur the cost of collecting it at the side of the road and taking it to the scrapyard or storing it for a period of time to give people the lawful ability to come and get it if it is a good car, but most of them are going to be end-of-life vehicles and you are going to end up with a lot of cost for not a great amount of profit at the end of it, if any profit at all. I just think: why are we doing this? Surely there must be a better system, that is going to safeguard public funds, than collecting cars for £100 or £200 at the side of the road that are worth £25. It just seems silly.

305 **Q19. The Chairman:** What the Department are clearly trying to achieve by this is for people who are not paying their fines it is a threat that if they do not pay their fines then the vehicle could be seized, rather than potentially abandoned vehicles, which obviously is a different problem, isn't it?

310 **Mr Broad:** I think as well most of the vehicles that have got ... I do not think there are a great number of vehicles that people do not pay the fines on. I could be wrong, but from the meetings I have been to with the Department I think we were talking a handful of cars in the past, not a great number of vehicles, and those vehicles, as I said, are predominantly end-of-life vehicles that have passed hands one or two times and are taxed in someone's name two or three times down the line and owned by somebody else. You are not going to recover the cost of taking those vehicles to the scrapyard, and I just wonder is there a better way to recover those funds, especially with the low price of scrap metal today and especially on the Isle of Man.

325 **The Chairman:** Okay, thank you.
Hon. Member.

330 **Q20. Mr Coleman:** There is, of course, now the possibility of recovering fines by deducting from benefits and deducting from pay. I have to confess I have not seen that many defunct vehicles around the streets recently, to be honest; I think they seem to be being better at clearing them away.

I think the issue here is not necessarily the cost to the taxpayer but the environmental cost of having those vehicles still hanging around in certain areas and the people complaining about the fact that these defunct vehicles are in areas not doing the environment an awful lot of good. So I personally do not necessarily think this is truly an issue of cost to the Government; I think it is possibly a cost of not doing. Would you have a comment on that?

Mr Broad: Yes. I would think possibly a more robust system of collecting debts may be a better system than the coroner system we have at the minute. I know people complain about the coroner system we have at the minute and they always look to the United Kingdom, to the bailiff system and things like that, and say this works far better than our coroner system. Whether that is the case or not I do not know, but I just think we are legislating again, or looking at legislation for a handful of problems that are really quite minor problems. How many cars have got outstanding fixed penalties on them going for long hundreds of pounds? We all have to look at the cost of everything, and if the cars are end-of-life cars we already have a system in place where they are identified and they are removed at very little or zero cost. I know Tony Saunders does it, doesn't he – and I think that was done through DoLGE and I thought that worked quite well.

Q21. Mr Coleman: And of course you can go to prison for non-payment of fines, so that is quite a sobering thought, isn't it. As I say, benefits now can be attached in the same way that earnings can be attached.

Ms Broad: I think that is probably a cheaper way from the taxpayer's point of view than removing a car, storing it and going through all the process of paperwork to then find you get £25 at the end of it.

Q22. The Chairman: I think we have got two issues here, haven't we. We have got the abandoned vehicles situation – again, we will hear from the Department – but also the clause specifically deals with:

if an authorised person

– whoever that may be –

or a constable, after making such [lawful] enquiries ... has reasonable grounds for believing that the owner of a motor vehicle owes a fine [for the payment]

I am certainly going to want clarity. It could be a fine for an overgrown hedge. Does that mean they can say, 'Well, you owe a fine to the General Registry, therefore we are going to take your vehicle'? So there are some matters that need clarifying here, because it also applies to do with no vehicle tax being displayed and so forth.

We have taken on board your concerns and comments there, but we will move on and, as we have said, we will get a response from the Department.

Can we talk about the safety regulations now, which you raised in clause 34? This would give the Department powers to make safety regulations, and in particular we are talking about the part-worn tyres here. It appears similar to the UK's Motor Vehicle Tyres (Safety) Regulations. Would you prefer to see a free market in part-worn tyres?

Mr Broad: I think regulation again is the problem – who is going to regulate this? At the end of the day, if Bill Smith is going to sell a tyre to John Jones he is not going to be regulated. It is only going to be a business that is regulated as such, isn't it? And again, we are looking at the cost of Government regulating that business. Where does it end?

380 We are not aware of any major problems with part-worn tyres on the Isle of Man but we all stand to be corrected. Our members have not brought any concerns to us about buying part-worn tyres from people and them being defective, so we are not aware of any major problems with people selling or buying part-worn tyres on the Isle of Man.

385 The Department may say, 'Oh no, there are a hundred cases of it every year and the tyres are defective and people are being duped.' Well maybe so, but is that a role for the Department of Infrastructure, or is that a role for the Office of Fair Trading? That is what I would ask in that respect.

Q23. The Chairman: Surely a tyre is either legal or it is not, depending on its condition?

390 **Ms Broad:** How are you going to stop people buying part-worn tyres on the continent, shipping them in and putting them on your vehicle? I cannot see how you are going to enforce it, really.

395 **Mr Broad:** I think we are just saying how is it going to be policed; how is it going to be regulated?

Ms Broad: And again, why do we need it?

400 **Mr Broad:** Yes. Is there a problem with it? Does this problem exist? Are cars turning up at the Test Centre every day having bought part-worn tyres that are then failing the test? Or are they coming to the attention of the Police in road traffic accidents? Where does it end? Where is the justification for it? I think that is what we are saying.

405 **Q24. The Clerk:** The Department says in its explanatory notes on this clause that a recent example of this kind of regulation is the UK's Motor Vehicle Tyres (Safety) Regulations 1994, and they say:

Among other things, they regulate the part-worn tyre market, which a recent survey has established exists in the Island ...

Are you saying that that market does not exist, or that it does exist and is not a problem?

410 **Mr Broad:** I do not know. If I was to go out and buy a tyre today, Mr King, I would go to National Tyres or ATS and buy a tyre. I do not know anybody who sells part-worn tyres on the Isle of Man – but that is just me, personally. I do not know about –

Mr Howe: I do.

415 **Mr Broad:** Peter does.

Mr Howe: Yes, one of the car dismantlers on the outskirts of Douglas will sell second-hand tyres that have come off a scrap car, that have probably got half the life left on the tyres. But he is a good chap and he does check, and he would never sell a tyre that was not acceptable.

420 **Q25. The Chairman:** So are you submitting to this Committee, then, that there is a market but there is no evidence that part-worn tyres being sold, as far as you are aware, are part worn to the state where they are illegal?

425 **Mr Howe:** I think that the part-worn tyres that he sells are well within the legal limit of 1.6 mm in tyre depth, but as wagon owners we nearly always tend to go for new tyres and rarely do we use second-hand ones.

Q26. The Chairman: Clearly there will be a market for car owners and –

430 **Mr Howe:** More for car owners than wagon operators, I would think.

Mr Broad: I would definitely say that from a commercial point of view the cost of fitment is prohibitive for a second-hand tyre. If you are looking at a tyre for a truck, for instance, it may cost you £50 or £60 to have that tyre fitted by a tyre fitter. A brand new tyre is £150 or £200, so you are going to weigh up – the lifetime of the tyre and the cost of fitment against a new tyre – but that is a business issue that you would be looking at.

Certainly, car-wise, I have never bought second-hand tyres. I did not even know they existed and I am surprised at that.

440 **The Chairman:** I must admit I have never bought second-hand tyres either. Mr Coleman?

Q27. Mr Coleman: Are you aware of any incidents which may have occurred as the result of someone putting a part-worn tyre on?

445 **Mr Broad:** I am not, no.

Mr Howe: No, I am not either.

450 **Ms Broad:** How can you prove that, as well? If they say, 'No, it was a new tyre and it has been on for three years', I do not know how you can –

Mr Broad: I think you would have to look at perhaps an accident, and if the accident was caused by the fact that the tyres has prematurely deflated or popped or the tread has peeled off, as they do with some remoulds, I think that person would probably have to say, 'I only bought this tyre two days ago from Bill's Tyres and look what's happened to it.' I think that is possibly the issue there.

I do not believe that there is a massive trade in part-worn tyres on the Island. I do not think it is a big trade.

460 **Mr Howe:** No, it is not a big trade.

Mr Broad: It is certainly not something that I have come across.

465 **Q28. The Chairman:** So given this would be regulated by the consumer people, the OFT, would it not be quite an easy market to regulate in that they are already set up for it and they already have a role in that? Obviously I think the protection is obviously of the public, who need to be sure that when they are buying a tyre it is of the appropriate standard. As you already indicated, Mr Howe, the merchants that you know already ensure that what they are providing is road legal. So do you still think this really is not required?

Mr Howe: I do not think it is required. There is only one car dismantler that I know of. There could be others, but it does not appear to be a big problem.

475 **The Chairman:** Okay.

Mr Broad: I think, as well, if we go down the road of regulation and licensing you would perhaps force it underground a little bit more, because the guy that does it would probably think, 'I'm not making a lot of money out of this, I'll get rid of that business; but if people come and meet me in the back street with 10 quid they can have one.' And that is probably not a good thing either – it probably forces things to go to more of a black market, I would possibly suggest.

I honestly do not know about the size of the market and whether it is such a problem that it would warrant regulation.

Q29. The Chairman: Of course there is already the onus on the driver to ensure that their tyres are in the right condition.

Mr Broad: If I was going to buy a second-hand tyre off somebody I would be having a good look at it.

Q30. The Chairman: Okay. Let's talk about the regulation of professional drivers, because this is one of the key points that you have concerns about.

They are looking, through clause 34, to introduce the requirement that professional driver cards must be renewed every five years. You say this is going to add massive costs to the industry. How massive?

Mr Broad: I do not know the cost of a driver CPC and I certainly do not know the cost of what it would be in the Isle of Man. Peter might be able to answer that one a bit better: do you know the cost of a driver CPC, Peter?

Mr Howe: I think it is around about £1,000 to do a CPC, but I am not exactly certain on that. That is the UK one.

Mr Broad: That is the UK one, which I presume would be of a similar ilk to what the Isle of Man is proposing.

Ms Broad: I think it is a week's course –

Mr Broad: It is a week's course; it is a 30-hour course. There is no examination at the end of it. I am aware that people tend to do it in modules and they will do it over a longer period so they are only abstracted for maybe a day or two days over a longer period of time.

But again we would really ask the question: why do we need driver CPC on the Isle of Man? We do not see the problems with commercial vehicles. I do not see lorries shedding their load on the Isle of Man. I do not see problems with commercial vehicles that justify this requirement here. We just do not see it.

Q31. The Chairman: Anything further?

Mr Howe: We can understand you would need a driver CPC if you are going over to England and using your vehicle commercially to take stuff and bring it back, but on the Isle of Man there is absolutely no reason for having a CPC. All you do is you attend for 30 hours. You can fall asleep in the lecture theatre and at the end of the 30 hours you get your certificate. There is no test or anything.

Mr Broad: There are quite a lot of components to the driver CPC as well that do not really apply in the Isle of Man, such as the motorway driving, the driver's hours, the planning of your routes, the weak bridges in the UK and the abnormal load stuff. A lot of those things are just not

part of Isle of Man commercial vehicle driving, and we would really ask the Department why they feel the road haulage industry needs driver CPC on the Island.

530 **Q32. The Chairman:** Forgive me for asking – it might be a question for the Department – but there is some sort of reciprocity with driving licences on the Isle of Man, so can your drivers, as it stands, without this, drive in Great Britain; or are they restricted because they have not got this particular ticket?

535 **Mr Broad:** At the moment, drivers who are travelling to the UK are doing the UK driver CPC because the UK are demanding that everything they have in the UK we have to comply with if we want to visit and drive on their roads on a commercial basis, just like they are saying tachographs in trucks have to be calibrated and have a calibration sticker every two years – every two years they are calibrated. There is no facility on the Isle of Man to calibrate a
540 tachograph, so trucks that are travelling to the UK are having to go to test centres in England, or an authorised dealer or whoever, to have that tachograph calibrated. It is very much the same with the driver CPC: if they are getting stopped by the Police or roadside enforcement in the UK, Manx drivers are finding it far easier to have a UK CPC card so it gets them on their way quicker.

545 **Q33. The Chairman:** Does that apply to all these drivers coming over from Europe and driving in the UK? I know when you are on the motorways you see a lot of European state heavy goods vehicles.

Mr Broad: As far as I am aware, the EU is the birthplace of driver CPC and that is where it was
550 born. I think it is quite different from member state to member state and I do not think there were any grandfather rights given. Because there is no test at the end of it, I do not think there were any grandfather rights given to any existing drivers – I think because it was more like an attendance course, whereas if it had had an examination at the end of it I think they would have had to give them a grandfather rights certificate in relation to it.

555 **Q34. The Chairman:** So would those drivers from France, Belgium, Poland or wherever have taken them in their own countries, or would they have applied, like Manx drivers, to take a UK/Great Britain one? Would they have one from their home country or would they have to take it in the UK?

560 **Mr Broad:** As far as I am aware, it is EU member states who issue it, so German people would have a German certificate.

Q35. The Chairman: Which is valid around the whole Union?

565 **Mr Broad:** The whole of the Union.

Mr Howe: As we do not have CPC here we could not go commercially, other than to collect a load and bring it back, without the full CPC.

570 **Mr Broad:** If you were to go to England and collect a load in a Manx truck and take it from Liverpool to Manchester, you would commit an act called ‘cabotage’, so you could not do that anyway in a Manx truck.

575 There is lots of legislation now that is coming on board in the UK that is really restricting the use of goods vehicles there, as in driver toll and stuff like that as well.

Mr Coleman: It came from an EU Directive in 2003: 2003/EC.

580 **Q36. The Chairman:** Well, we wait to see what happens with the regulations post-Brexit, although they are of course going to be keeping all the regulations and then deciding what they want to get rid of, which seems the best way of doing it.

585 Construction and use of vehicles: we did touch on this earlier and we said we would come back to it. The testing of vehicles on private property – this is without the owner’s consent. Do you not think that would benefit the public? You were concerned that they can appear without warrant. Do you think maybe this should be done only with a magistrate’s warrant perhaps?

590 **Mr Broad:** Possibly. Again we would ask why. Why does the Department need the power to test a vehicle without the owner there and enter private premises to do that? Surely if a vehicle needs examining there is a reason why, i.e. it has been involved in an accident or it is ... There must be some reason why it needs to be examined, and we would ask why would the Department want to test that without the owner’s consent and without the owner there.

595 **Mr Howe:** Also I am concerned that if they are going to test in a private property they have not got the facilities that they have at the Test Centre, i.e. rolling road, braking pit and all that sort of equipment. They could not possibly do a correct examination of a vehicle, whereas a letter telling the owner to bring it to the Test Centre where they have the facilities would be far more beneficial.

600 I cannot see one of the vehicle examiners being able to do a correct job if he cannot lift the vehicle, rotate the wheels or put it on a rolling road to get braking qualifications, whereas that all can be done at the Test Centre – plus if you had a stranger coming into your property without your consent, you could have a situation where he could get thumped.

Q37. The Clerk: I must say that when I read this I thought we were talking about someone who had crashed off the road. It says:

Regulations ... may provide that the testing and inspection of a motor vehicle [or trailer] may take place on any premises with the consent of the owner of the premises, or where the authorised person reasonably suspects that the motor vehicle [or trailer] was involved in an accident, on the premises where the vehicle [or trailer] is situated, without that consent.

605 **Mr Howe:** That would be a police officer, wouldn’t it?

610 **Q38. The Clerk:** Well, it does not say a police officer. And is it not conceivable that a vehicle might crash off the road into somebody’s driveway and it would be quite useful to be able to check it there and then?

615 **Mr Howe:** But again that would be referred to a police officer to go and inspect the accident, not a vehicle inspector from the Test Centre, because he would not have the authority to go on it. A policeman could let him come on with the consent of the owner, not to go in without consent.

The Clerk: Okay.

The Chairman: Mr Coleman, anything on that point?

620 **Q39. Mr Coleman:** I think on that point 4AA gives the authority for it to be towed to the Test Centre for that to be done; and I take Mr Howe’s point.

Mr Howe: But that happens now by a police officer instructing a recovery vehicle to take the vehicle to the Test Centre for inspection if there has been the possibility of a fault on the vehicle.

625 But to just go into somebody's property and inspect a vehicle, especially a heavy goods vehicle,
without any facilities, he would not be able to do the job properly.

Q40. Mr Coleman: Although if you are looking at it from the point of view of cars, that may
630 have been involved in accidents, parked on private property and the Police suspect that they
have had an accident and driven away –

Mr Howe: But again we are coming back to that and saying the Police have the authority to
go in if they suspect there has been an accident, but not an examiner from the Test Centre who
does not have the authority to enter property – unlike Customs and Excise, who can.

635

Q41. Mr Coleman: But Customs and Excise have a writ of assistance for doing that.

Mr Howe: They can go anywhere, yes. But you are almost making the examiners similar to
the Customs and Excise by allowing them to go on to somebody's property without a search
640 warrant.

The Chairman: Thank you.

We welcome Mr Henderson. We explained earlier that he would be joining us during the
process this morning, so Mr Henderson is now joining us here on the Committee.

645 Mr Coleman.

Q42. Mr Coleman: Your response on clause 37, your question 11 with reference to driving
licences and the possibility of revoking a newly qualified driver's licence if they collect six points
or more: you have recommended that the Department legislate for the use of black boxes to
650 incentivise safe driving among newly qualified and/or young drivers. Can you let us know how
you think that would work?

Ms Broad: In the UK – I did some research on this just because my son was over there – they
655 have discovered that for the young drivers who have the Telematics black box, the driving
standards have gone up greatly. Not only have they got the incentive of the insurance coming
down, and the insurance is lower to start with, but they also have the ability to go over where
the problems were. So if they are contacted and told 'You drove round x corner', they can
actually go back through the black box, look at it and see how their driving was poor and have it
pointed out to them. I just think that visual ... 'Oh, that's what it looks like', and reason it out ...
660 And also in your back pocket – if you can get your insurance refunded, some money refunded, I
think that will be an incentive for young drivers as well. But I think the visual impact ... and that
is what they are finding, that the visual impact of them seeing how they have just driven round a
corner or how close something was ... it is the reliving it.

665 **Q43. Mr Coleman:** There are actually two issues here, though, aren't there? One of them is if
they are getting six points and they have got a black box, do you not think that the possibility of
revoking the licence should still be there?

Ms Broad: That is there anyway, isn't it? Yes.

670

Q44. Mr Coleman: In essence what you are saying is there is an ameliorating factor before
that, and if they had had the black box there they might not have got the six points. But if they
do get the six points, then you do not actually have a problem with the revoking of the newly
qualified driver's licence?

675

Mr Broad: I think we very much felt and our members very much felt that the Department needs to be proactive as well as reactive in relation to young drivers. It is very much a carrot and a stick, Mr Coleman, so we try and encourage them to do this with processes and with requirements before we hit them with the stick and take the licence off them.

680 It was very much across the board with our members that we would like to see proactive things put in to try and make driving better and driving standards better across the Island.

Q45. Mr Coleman: But does that mean if those proactive things fail you would wish to have revoking the licence at three points?

685

Mr Broad: I think eventually if the –

Ms Broad: Not if the three points you get are because you were not wearing a seat belt. If you get three points on your licence because you did not wear a seat belt, no.

690

Q46. Mr Coleman: So you think that those points should be based on the offence?

Ms Broad: Yes.

695

Q47. Mr Coleman: If you are caught not wearing your seat belt twice –

Ms Broad: You could lose it.

Mr Howe: You could lose it then for maybe a month – not necessarily remove it completely and have to become a learner again, just disqualify; very similar to New Zealand's system, where they disqualify for one month. You are not allowed to drive for one month, then you get your licence back and you can continue without having to take a test.

700

Ms Broad: They have certainly found in the UK with the black boxes that more young drivers get refunds from their insurance than pay more, because there is the carrot there and that is the way it is heading, and they have found they are much more safe because they are being monitored.

705

Mr Howe: An average young man or woman who is getting insurance for their car is paying between £1,000 and £2,500. If they have the black box and at the end of their one year they have been good, they could have a refund or reduction on their insurance for the next year, and that would be a good incentive.

710

Q48. Mr Coleman: But in principle you are not against the revocation of licences as long as ameliorating factors are brought into that?

715

Mr Howe: I think that would be acceptable, yes.

Q49. The Chairman: Thank you very much.

720

Just to wrap things up then this morning, is there anything else in the Bill that you are concerned about and you wish to raise? And – obviously we have the Department coming in next, and you are very welcome to stay and listen to that from the public gallery – is there anything else you think we should be asking the Department?

725

Ms Broad: I think from our members' point of view ... I am not against road safety, do not take this the wrong way, but a big issue for members with HGVs is this 1.5 m distance from

730 cyclists. It would mean if you are having to pass a cyclist 1.5 m away, there are quite a lot of roads on the Isle of Man where your big commercial vehicles will not be able to pass the cyclist. They are feeling that if you are in a position where you have got to pass them, you also need to be able to identify the cyclist.

I was driving down following the crane into Ballasalla the other day and we were doing 20 miles an hour and a cyclist undertook us. If it is dangerous for me to be going past them at 20 miles an hour, them coming under me not 1.5 m away from me is the other side to it. Surely we need to be able to identify people. And if it is a danger for us to go past a cyclist at less than 735 1.5 m, surely you have got to say horses and other road users. You have got to have a consistency in what you are saying and you have got to have all road users identifiable. You cannot just be going along, pull out, give the 1.5 m, and the cyclists come into your track. Do you follow me?

740 **Mr Howe:** It is difficult to enforce. If you have got a lady pushing a pram in the countryside but there is no pavement, are you going to have prams with numbers on? And with bicycles and horses, are they going to have a number on? It is just a little bit overboard.

745 **Q50. Mr Coleman:** The other problem, of course, that you have is that you cannot withdraw their licence.

Mr Howe: No.

750 **Ms Broad:** No.

Mr Howe: Charged with driving a pram dangerously.

Mr Coleman: Recklessly!

755 **Mr Broad:** People have come up to me and said there appears to be a lack of regulation for cyclists within this, they do not seem to mention cyclists.

I know one of the big bugbears for many people is that the lights on bikes these days are so bright – cyclists coming the other way have them on their heads and they turn their heads towards the motorist coming the other way and they are dazzled and they have to stop.

760 There are many issues in road safety that involve cyclists and other road users that are not addressed within this.

765 **Q51. The Chairman:** I have raised the issue of the bright lights with the Department when I was there, and indeed with the Police, because there is no doubt about it that with the new LEDs some of them are *incredibly* dazzling – and there certainly needs to be something done about that – focused entirely wrong and facing the windscreen of the oncoming traffic. So you do have a point there we will pursue.

770 **Mr Broad:** Would this be a good opportunity to put some regulations in for cycle lights as well in this Bill, maybe?

Q52. The Chairman: We will put that to the Department.

775 **Mr Howe:** We are also concerned that whenever you are driving out and you come across a pair of cyclists, many is the time we have had to go all the way from Union Mills to Ballacraigne before we could get past because they will not go into single file – not all of them, but quite a lot. I think it should be specified to cyclists that if they are holding up traffic they go to single file.

780 **Mr Broad:** One of our members came to me and said that if the law for having to pass a cyclist at 1.5 m comes in on the Isle of Man, on 30% of our road network you will never legally be able to overtake a cyclist. Assuming the cyclist is one metre from the pavement or the verge, you will never be able to pass them.

I think it is very much down to circumstances, isn't it? If you are following a cyclist up Druidale Lane and he is really struggling to get up the hill, maybe passing him at a metre is quite safe, but if he is cycling at 30 miles an hour maybe 1.5 m is needed. It is very much circumstantial on that road and how straight it is and what is in the way obstacle-wise –

Q53. The Chairman: Who is going to measure it afterwards?

790 **Mr Broad:** Who is going to measure it afterwards?

Mr Howe: All cars will have a sticker up the side with 1.5 m: if you hit the cyclist you are too close.

795 **Ms Broad:** I think the other thing is if you are saying it from a safety point of view, it is a slight contradiction when you are driving down a road, for example from Jurby to Ballaugh, and you come across a group of cyclists two abreast – fine, not a problem, you are held up behind them – then a car is coming the other way and because they are two abreast they are not 1.5 m apart. So that is not safe, is it?

800 **The Chairman:** That is a fair point.

Q54. Mr Coleman: If I may, a lot of the things to do with cyclists are actually in the Highway Code.

805 **Mr Howe:** But the Highway Code is not a legal requirement –

Q55. Mr Coleman: In the Highway Code, with reference to cyclists it actually says 'must' and it is in red in the Highway Code when it is actually in the legislation as well, in which case if ... They use positives: 'You must not ...', 'You will not ...'

810 Again, I have been looking at this and I have been looking at the incidence of cyclist-caused accidents on the Island over the last six years, so we will be raising these issues when we speak to the Department.

815 **Ms Broad:** I think in there as well, from my reading of it, it was talking about safety helmets for bikes and horse riders and that the shops that sell them have to sell a certain level of regulated helmet, but there is no issue there with a cycle helmet. It seems to be the horses and the motorbikes. Again, if it is safety, surely the cyclists' heads are just as fragile as the horse riders' and the motorcyclists' heads.

820 **Mr Broad:** Another issue that was brought to me was the new electric cycles and the fact they are going to be allowed to cycle on pavements and things like that. How does that fit in with the mobility scooter regulations? I think a mobility scooter has to be registered – I am not sure. I think there is a 1996 Act, is there? People were asking about electric bikes and when do those bikes become a motorcycle, in effect?

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Q56. The Chairman: Obviously we are getting into a wider issue here. Officers of the Department are here and I am sure will have taken on your views but will primarily be concentrating on what is in the Bill rather than what is not in it. But it is very useful to hear your

830 views and obviously we have some similar views on certain things as well, which we will also put to the Department.

Can I thank you for coming in this morning. As I said, you are most welcome to stay and hear the submission from the Department if you wish to do so.

835 For now, that brings this part of the session to a close. We will have a very short five-minute adjournment and then we will hear from the Department of Infrastructure.

Mr Broad: Thank you very much.

Mr Howe: Thank you very much.

840 **Mr Howe:** Thank you.

*The Committee adjourned at 11.40 a.m.
and resumed at 11.43 a.m.*

**EVIDENCE OF
Mr N Black, Chief Executive,
Mr C Hannon, Project Co-ordinator,
and Mr J Robinson, Director of Highway Services, Department of Infrastructure;
with Mr Duane Allen, Legislative Drafter, Attorney General's Chambers**

Q57. The Chairman: Welcome back to this Select Committee of the Legislative Council on the Road Traffic Legislation (Amendment) Bill.

845 We now have with us the representatives from the Department of Infrastructure. We will start off, first of all, by asking each of you to introduce yourselves. If you could please state your name and your title in relation to what we are here for today.

850 **Mr Allen:** Good morning. My name is Duane Allen. I am a Legislative Drafter at the Attorney General's Chambers. I am here in the capacity of the drafter who has responsibility for seeing this Bill through the Branches. I am not the actual drafter. This Bill was produced by a consultant before I started working here.

The Chairman: Thank you.

855 **Mr Black:** Good morning. Nick Black, Chief Executive, Department of Infrastructure.

Mr Hannon: Good morning. Chris Hannon, Project Co-ordinator, Department of Infrastructure.

860 **Mr Robinson:** Good morning. Jeff Robinson, Director of Highway Services, here in the capacity of the Division that is leading this Bill.

Q58. The Chairman: Thank you very much indeed.

865 We obviously give you the opportunity to make an opening statement. I understand the majority of you were in the Gallery and heard the submission from our previous people who have been in giving evidence this morning, but do you have a prepared statement you would like to open with?

870 **Mr Black:** Mr Chairman, the Department does not need to make a lengthy opening statement – thank you for the opportunity. My only comment, of course, is that we are, as far as possible, here to assist you. There may be a few matters that require us to take further advice – in particular, I noted from the previous session that there are some matters that you are clearly interested in that are not directly contained within the Bill, so on certain aspects we may say, actually, could we provide you with a written response later, but of course my colleagues and I will try and do our level best to answer everything now today.

875

Q59. The Chairman: Thank you very much indeed for that.

880 The Committee obviously wrote to the new Minister following the General Election – change of Minister, potential change of policies, direction – asking was he, as the Department, still intent on progressing the Bill. We have had a response back from him to say yes, he is still comfortable with that and there are certain things which he would be content to see removed, so we will come to those.

885 First of all, a question we would like to ask is ... We have this amendment Bill amending two Acts. We have got the Road Traffic Regulation Act and the Road Traffic Act, both of 1985. Why are there two Acts and why not consolidate into one piece of road traffic legislation? It is just to enable us to get an understanding, because this Bill amends the different provisions – and I know it also extends into a Local Government Act but it is specifically road traffic legislation. Why have we got the two Acts? What is their purpose?

890 **Mr Black:** Mr Chairman, unless my colleagues know the history better, I cannot advise you as to why, I presume in the early 1980s, the Department – presumably then of Transport ... in fact, it was probably a Board at that time – decided to progress under two separate pieces of legislation. However, as you may recall from your own time in the Department, previous Ministers were concerned about the scope of the change needed to highway legislation, and the potential for a vast and overwhelming consolidation Act was considered but it was decided that that would be such a substantial item of business for the legislative Branches and such a complex challenge to draft that the best way forward was to try to progress in measured steps and, in the case of these two pieces of legislation, to undertake one amending Bill to bring up to date the two substantive 1985 pieces of legislation you refer to.

900 It may be that there are drafting issues that my colleagues would want to refer you to, to amplify my answer, or even policy issues, in which case I would invite them to share them; but if not ...

Q60. The Chairman: It is not critical; it is just to get an understanding of why we have the two separate Bills.

905 I will ask the further question then. The two Bills, in a nutshell what does each of them do? Looking through them, some of them do a bit of regulating of the same kind of things. Is there a headline for each of those Bills as to what they do – what they do on the tin, so to speak?

910 **Mr Black:** Mr Hannon will assist you with that, Chair.

915 **Mr Hannon:** The Bill basically fell out of a Department-developed Bill, called internally 'Bill C', which had a whole raft of various road traffic transport etc. legislation involved. Minister Gawne felt that it was just too vast a piece of work, which Nick was just trying to explain there, so we ended up with the Bill being split: the Road Races Act being one, the Highways Act being another, which have already gone through the process; and the two that we have left we know as the 'Traffic' and the 'Transport' Bills – they cover essentially similar matters but not the same matters. The Transport Bill, for example, covers the Road Transport Act and the Driver and Vehicle Licensing Act, so it is covering things which are, if you will, vehicle related. The Transport Act covers things such as the regulation of PPV public passenger vehicles, it should cover HGVs

920 and the like. The Driver and Vehicle Licensing obviously covers the cars and vehicles getting
registered and so forth on the Island. The Traffic Regulation Act, the Traffic Act, and there is also
the Local Government (Miscellaneous Provisions) Act there, which is a very small amendment at
the back, are covering the actual use of the facility... [*Inaudible*] the punishments, the fines etc.
925 should something go wrong. That is the reason why they are separated out into the two that are
remaining.

Q61. The Chairman: Thank you very much. It is just helpful to get an understanding of the
purposes of that legislation.

930 So, if we may then come to the specifics, we will start with clause 4. It is something we wish
to ask about first. We sent you some questions in January and you sent us some written answers
– which we have received, thank you.

935 If we can start with animal-drawn vehicles, you told us in December the Minister would be
content to drop this clause and we asked why. You have written that the clause could be
removed if it was to ensure a smoother progression for the Bill. Do you want the clause or not?
Let's lay it straight on the table with this particular one.

940 **Mr Black:** Mr Chairman, the purpose of including the provisions related to animal-drawn
vehicles was a political desire to ensure that all those on the road were subject to, as far as
possible, appropriately similar requirements. However, the evidence is that there are quite low
numbers, very low numbers, of accidents involving these vehicles, and purely in terms of public
safety this would not be regarded as a priority. The Department is more than content to leave it
in, but is aware that there is significant work in progressing this legislation and if it were felt
there was only limited parliamentary time or only limited capability to progress through the
legal processes, this would be one of the lower-priority political items contained in the Bill. From
945 a strict sense the intention in including it in the first place was the levelling of the playing field
and providing something for all users, but the Minister would be happy to allow it to fall because
the public safety drive is not great with this element on current evidence.

950 **Q62. The Chairman:** We have discussed that there are a few anomalies with the provisions,
we feel, in that, so if that was to be removed from the Bill would you consider coming back and
dealing with animals in a separate provision? We are not saying that it is not important, but
what we are saying is that for the purposes of this we think it needs more work, and therefore
would you consider coming back, as I have said, with a separate...?

955 **Mr Black:** Mr Chairman, obviously, as you know, I cannot guarantee what the Minister will
wish to do, because the Minister himself is not here, but my advice to him would be that that
would be an entirely sensible course of action that all those issues relating to animals and the
manifold complexities about ownership and liability and control of the same are potentially well
catered for under a separate item of legislation. So that would be, I think, a suggestion the
960 Department would regard as helpful and I will be happy to recommend it to the Minister.

The Chairman: Mr Coleman.

965 **Q63. Mr Coleman:** With reference to this particular part, clause 4, I found it very interesting. I
just wondered how you had intended to penalise people who actually were breathalysed in this
example. You have no licence to take away. Is it just going to be a flat fine, or are you going to
put points on their vehicle driving licence? I looked into this: I contacted the Police and asked
just how many times there had been an accident – two, and they were both horse trams, and
this is in history, really.

970 I am very interested in your philosophy that people on the road should be treated the same. I
just wondered whether you were going to breathalyse people who were offending because you

were treating them as motorised vehicles originally. Therefore, if you are treating it as a motorised vehicle, then you would breathalyse someone who was on a motorcycle. Would you breathalyse someone with a horse and four? I am just interested in that philosophy. But your avowed philosophy in this to try and treat all road users in as similar a way as possible I find very interesting, and we can discuss that later.

Mr Black: Yes, the intention is to treat them in a way that is proportionate to the safety risk, so I think it would be unwise for the Department to say everyone must be treated the same, because clearly the risks from driving heavy goods vehicles, for example, and the potential harm caused in an accident could be greater. As I suspect you will know, Mr Coleman, we have differing regimes for heavy goods vehicles. Drivers are required to be trained to a higher standard, qualified at an initial level of testing, and the vehicles are subject to more stringent requirements for examination. And whilst that is not the same as the car user, I would argue that it is absolutely proportionate to the potential for causing harm and therefore has been, I think, largely accepted by professional hauliers that those are appropriate measures – that people should have the specific licences for those categories of vehicles.

So I can quite see your difficulty with putting points on the licence of someone who does not have a licence – a fine would therefore be the only option. I think again that would be covered nicely by the Chairman's suggestion that we retract from issues of animals and consider those separately and at more leisure.

Q64. The Chairman: But of course we could not have a situation where, say, there was somebody on a bicycle or a horse ... or two people committing the same offence but because one has a driving licence they get points and the other does not. It would have to be an appropriate ...

Mr Black: It would have to be appropriate to the offence committed, rather than to the circumstances of the individual.

Q65. The Chairman: Yes, but the fact that somebody has got a driving licence really should not, surely, come into it, whether they are on a bike or a horse.

Mr Black: That would seem sensible to me.

The Chairman: Yes, okay.
Would you like to take questions ...

Q66. Mr Coleman: Okay. This is clauses 8 to 13, which is the testing for alcohol and drugs. The Bill includes provisions on breath tests and drug tests for drivers. We asked if any consideration had been given to applying these regimes on cyclists. You said you thought the existing section 13 was enough, but the existing section 13 does not provide for breath tests and drug tests. Why not make the breath tests and drug tests mandatory for cyclists in certain circumstances?

I can give an example. A cyclist pulls out of a public house car park into the road, forces a driver to swerve to the other side of the road and there is an accident. In one case, the policeman, who may not have been there, under the Act at the moment judges whether that person is capable or not; it is his judgement. But the other people involved in the accident would probably be required to take a breath test. That is not the philosophy of treating people in a similar way.

The other one with reference to cycling is of course 'riding in a furious manner'. Would that not be better just to be 'without care and attention'? It is archaic, to be perfectly frank. What is your view on the fact that any road user, with the exception of pedestrians, be treated in exactly

1025 the same way? We could be here talking about mobility vehicle users, and we have been
informed of someone who comes from Ramsey on one once a week. There are risks here as well
in this diversion of the way things are treated. I know we have done away with the Segway
things and they are not regarded as being road users, but having said that, if someone on a
Segway swerves and causes a serious accident are they sufficiently insured? I know most people
say, 'Well, I've got house insurance and that will cover me,' but what happens if they do not
1030 have house insurance?

So I think the bringing together of the philosophy here has got to go a bit further and it is not
reflected in those parts of this piece of legislation. In my view, I think that we probably need to
go back and have a look at that if you do want to maintain a philosophy of treating people
equally, because any road user can cause a serious accident. Even though you say the risk to
1035 them may be less, there have been six accidents caused by cyclists where they are down as the
cause in the police books. So I think it is something that we need to consider. I am not happy
with that part of this legislation at all.

Mr Black: Thank you, Mr Coleman. Obviously the Department will reflect on the concerns
1040 you have voiced there – they are welcome.

My immediate thought is that it returns to this issue of proportionality. Treating people
equally does not mean treating them all the same; it has got to be proportionate to the issues
created. A cyclist – and, if you wish, a cyclist who is drunk – if they are involved in an accident,
typically they are the most vulnerable of the road users. They are likely to be the one that is
1045 hurt, or they are likely to be the one that comes off their bike. Someone in control of a large
goods vehicle, or indeed a public passenger vehicle such as a bus, has the potential to cause, in
the case of a bus, up to 80 injuries. So I agree that you treat people the same in that they are all
accountable for their actions, and I think the Minister would take a view that we should
approach them all in the same way, but the standard might differ by virtue of the level of risk in
1050 terms of either the history of accidents or the level of harm that could be caused, and I think
those are reasonable approaches to how legislation is framed.

The Department, in this legislation, has some option because – as later we will come to, I am
sure – there is provision for the making of safety regulations, so that is an issue that we have
already discussed in terms of if you wish to maybe bring in standards for, for example, the safe
1055 riding of bicycles that are not already covered in the Highway Code, which, as you have referred
to, is an approved code of practice and has some weight –

Q67. Mr Henderson: Can I just interrupt? Sorry, Mr Black. We keep mentioning the Highway
Code as if it were a piece of legislation with enforceable regulations. My understanding was the
1060 Highway Code is just that: a code. A constable could not actually stop a cyclist and charge
somebody with a road traffic offence using the Highway Code as the prima facie evidence.

Mr Black: My understanding – maybe Mr Allen can correct me in legal terms – is that you
cannot be accused of a breach of the code itself, but it is used to amplify and explain the duties
1065 in the legislation. So it is exactly that – it is a code, it is a primer, a guide, but it could be used by
a court in understanding the requirement put in the legislation. So it functions as an approved
code of practice. Mr Allen will be better advised.

Mr Allen: I agree, generally speaking, that the Highway Code is not, clearly, a piece of
1070 legislation and it is not something that someone could be charged under, as was earlier
observed. I heard whilst sitting in the Gallery that the Highway Code itself does point to
particular pieces of legislation and uses a particular font or colour to indicate certain directives
that are backed by legislation. If there is an infraction, it is the legislation that the perpetrator
will actually be charged under.

1075 Regarding the issue of whether or not the Highway Code would assist the court in
interpretation of the legislation, the Highway Code is generally not considered an aid to
interpretation where statute is concerned. It may be something that in a very limited way the
magistrate or the presiding judge may choose to have regard to, but it is not generally
considered an aid to interpretation.

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The Chairman: Thank you. That is very useful.

Q68. Mr Coleman: Going back to this question of proportionality again in circumstances
where the cyclist has actually caused other people to be damaged by doing something
erratically, going back to drink again, or drugs, which I will come to later, with reference to the
drink side of things, if it went to court and ... *[Inaudible]* If an accident for some reason went to
court, a motorist or even the cyclist, I suppose, and the magistrate is sitting there and is saying,
'Okay, the first driver was breathalysed and with this one it was just thought that he was over
the limit' ... You are a legal person: what do you think they would do?

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Mr Allen: It is difficult to say precisely what they would do, but if a test has not been done
then that information just clearly would not be before the magistrate for it to be taken into
consideration.

I believe this is the appropriate forum for us to discuss issues of this nature, which are largely
policy related, because at the stage when such an incident gets to the court there is nothing that
can be done to rectify it for that particular instance.

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Now that we are talking about it based on ... and about philosophy, one of the things that
Mr Black has already touched on is the question of proportionality, and I would say more
fairness, in light of what Mr Black himself has been saying, because the extent of the possible
risk ought to determine the mechanisms that are put in place to regulate. I am thinking, for
instance, if we were to speak about truly treating all road users fairly, then there would have to
be appropriate mechanisms that are equivalent. Drivers of motor vehicles require a licence and
they will require several different things that cyclists do not require, so if we are now to move to
the stage where we try to treat everyone equally, then it means that we would have to put in
place similar mechanisms. What would be the spin-off consequences of trying to require
someone who is riding a bicycle to get a licence and have a licence displayed and all the
concomitant things that would have to be in place in order for them to truly be treated fairly?

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But again, back to your question, what the court would do: the court would have no choice
but to make a determination based on the evidence that is presented to it.

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Q69. Mr Coleman: And it would not have any legal ... It would not have any firm basis for it,
but it ... Please do not get me wrong, I am not anti-cyclist. I think all road users should be treated
exactly the same. If it was a mobility scooter that came out in front of vehicles, then I would feel
exactly the same way, that there ought to be some mechanism. Plus the fact that in some
countries cyclists are required to be taxed – I think Holland. *(Mr Allen: [Inaudible])* It is a thought
for you when you go back and start looking back at the legislation.

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Mr Black: To try to answer your question, obviously Mr Coleman, I cannot give a better
informed answer than Mr Allen, but the answer we gave you referred to section 13 of the Road
Traffic Act 1985 and the phrase 'a person unfit to ride to such an extent as to be incapable of
having proper control of it', and in your, I accept illustrative, example of somebody leaving the
pub and swerving across the road, a court might be able to consider that the act itself evidenced
failure to have proper control, but that would of course be down to the court at the time.

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Q70. Mr Coleman: But that is also the clause which mentions 'riding furiously' – or it is very
close to it, anyway.

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Mr Black: I think it is close to it, yes.

1130 The aim here is, as Mr Allen has said, to try and explore the policy issues that allow yourselves as legislators and our colleagues in the Attorney General's Chambers to draft something to put those policies into effect.

1135 The Department's position – and, as I say, the Minister is not here so I cannot be absolute on this – appears to be the wish to treat people fairly in proportion with the risk and in such a way as to not place burdens on individual liberty that are not justified by, in this case for example, public safety. As Mr Allen has correctly said, I should have referred to fairness. Rather than
1140 treating people all the same, you treat people in a fair and proportionate manner, and in this case it might be that the Minister would think that licensing and taxing all cyclists would be unfair and disproportionate in respect of the damage they probably almost certainly do not cause at all to the highway. They may not wish to be in some way constrained, and I think it would be unlikely for a Minister to want to advocate that all cyclists should carry tax plates and have a number on their back. I do not know if he would regard that as fair and I do not think he would regard that as justified by the current situation.

Q71. The Chairman: But surely breath testing is an appropriate provision to have in, given that riding whilst under the influence of alcohol or drugs ... At the moment, if there is a case,
1145 then, as we have already heard, there is no evidence that can be presented that the cyclist was riding whilst under the influence of drink or drugs.

Mr Black: I think, Chairman, it is a sensible and logical position to take that if you have a provision about a standard that requires an assessment of whether or not you were drunk, then
1150 providing for the mechanism to establish that is logical and reasonable.

The question then must follow as to whether the standard should be the same as the standard for other road users, because in the section in front of us it is to be incapable of having proper control. That is not the standard applied to car drivers. Car drivers are set an absolute limit. Again, I was not in the Department at the time the limit was set and I suspect that, given it
1155 has been in force some time, most of you were probably not involved in the judgement when the limit was first brought in, but the limit set for car drivers is not a measure of capability at that time, it is a strict interpretation of what the average person could safely be expected to consume and still retain a safe ability to drive a car.

In the cycling section in the legislation in front of you the standard is very different. The
1160 standard is a capability standard. So you could provide for a breath test as a mechanism to assess it, but we are then into the situation of where is the level for incapable of having proper control of it. In car terms there would be a level of either blood-alcohol or a scientific assessment of the amount of alcohol you have consumed. Here it simply says 'incapable of having proper control', and Mr Chairman, that might be a different amount for you and for me
1165 in respect of cycling, whereas for driving a car it would be absolutely the same.

So I can certainly see the sense of having an assessment method to verify whether or not someone is fit and having proper control as in the original legislation, but if you are doing a breath test then surely you have to have a standard, and I think your questions imply that you believe the standard should be the same – i.e. if the car driver fails at point x, then the cyclist
1170 fails at point x. But we would then have to say, 'Well, does that remedy cause any further nuisance?' and I wonder how the Minister would consider a situation where somebody having that much alcohol on board would choose between cycling home from the pub or driving home from the pub. I think generally most people would rather they went on a bicycle than in a car. Of course, you could say, 'Well, they should all walk anyway,' but that does not absolutely
1175 guarantee safety either.

So I think this is where we come into fairness and proportionality and the policy. Mr Allen is absolutely right: this is to be decided as a policy matter long before it reaches the courts, because it is a matter of policy. Do you wish cyclists to be exposed to the same limits of blood

1180 alcohol as car drivers? I have not seen from the Minister any suggestion that that is his policy aim.

Q72. The Chairman: But surely there is a higher risk, in that you have already said that cyclists, without having the metal box around him or her, is more vulnerable, so surely the limit should be more stringent.

1185 **Mr Black:** In a single vehicle accident that would be the case; in an accident involving more than one vehicle then you have got both parties. If you were driving along the road and you saw a wobbling cyclist, with reference to previous discussion you might try and leave a lot more than 1.5 metres as a safe clearance distance – I think I probably would. But the question is: what do you as the legislators, together with the Minister as the person putting forward the policy here brought before you, decide is the fair thing to do? What do you want society to be like? This issue of saying at the moment we have a standard that is based on how the individual copes with the situation they are in – are they capable of having proper control ... A court can determine whether they were capable of having proper control. If you provide for breathalysing, 1190 how does that help you determine proper control? I think following through you –

The Chairman: Well, that would be the test.

The Clerk: May I ask a question, Mr Chairman?

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The Chairman: Yes.

Q73. The Clerk: Is the Department aware of any instances where someone has been cycling with too much alcohol in their blood –

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The Chairman: They would not know.

The Clerk: – and it has not resulted in an accident?

1210 **Mr Black:** I am not quite sure how we would be aware of such cases, Mr King. If someone is cycling with too much alcohol in their blood and they have not had an accident, which I think was your question, all we can say is we would not collect evidence of people drunk in charge of a bicycle. The Police might collect evidence if they met with an accident; but if they did not, surely they just slightly wobbled their way home.

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Q74. The Clerk: Well, are there any cases where there have been accidents?

Mr Black: Where there have been accidents ... I would have to check with colleagues in Home Affairs, I think, but –

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The Chairman: *[Inaudible]* so you would not know.

Q75. The Clerk: Well, have there been any prosecutions under section 13 in the last five years?

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Mr Black: We are not aware of any, Mr King.

Q76. Mr Coleman: May I just say I think we are getting a bit side-tracked here; I do not know whether it is deliberate or not. The breathalyser is a test for the mental acuity to drive a car, not

1230 the physical acuity. Okay? Many people would say 'I can drive quite adequately over the limit,' but we still have the limit.

I would actually see no difference between the two. Whatever type of vehicle it was that is on the road, it is there, it is capable of causing an accident, whoever is on it or in it. Therefore I do not think we should be looking at that particular issue of proportionality or fairness; I think we need to look at risk.

Mr Black: I think, Mr Chairman, it would seem that we could, ourselves, debate this for quite some time; but as you recognise, clearly it is for the Minister to decide what his policy is on this issue. If it is acceptable, Mr Coleman, I will return to the Department and then respond to you with the Minister's views on what his policy line would be, because it raises some quite, as you say, substantial questions about risk and how we tolerate risk and what we accept for individual liberty.

Q77. The Chairman: I think what we have established here then, given the submission from Mr Allen, is that what we have in here is the provision of a Bill which actually is not really worth the paper it is written on because it is subjective to the officer if he thinks they have had alcohol, which then, if it went to court –

The Coleman: That is the existing legislation?

Q78. The Chairman: That is the existing. But if it goes to court and there is no test then there is nothing to go before the court. That is what we were told. So therefore what we are questioning is why not make the breath tests in position so that there is something to go before the court?

Mr Black: Mr Chairman, I think, with respect, I should point out that I do not think Mr Allen did say it was not worth the paper it was written on.

The Chairman: No, I did.

Mr Black: I accept that you did. Mr Allen's advice was it would be for the magistrates or Deemster to decide, based on the evidence put to him, whether somebody was or was not capable.

The legislation has been in place since 1985; I accept it has probably been little used, but it certainly would not be for me to comment on whether or not one of our colleagues in the judiciary was capable of making that decision properly and soundly. I would hope that they would be.

Q79. The Chairman: I do not think it would count. If they are not presented with any evidence from the officer at the scene who says, 'Well, you know, I think he had a drink or two', vis-à-vis if he did have powers in this Bill to breathalyse he could then present and say, 'This person did have alcohol in their system when the accident happened.' That is, I think, the point I am making –

Mr Black: Except you could provide –

The Chairman: – that provision is not really –

Mr Black: You could provide for a test of measuring the amount. What I have raised with you is that does not give them a benchmark to a degree of assessing adequacy or inadequacy of

capability. So I am more than happy to rest the position as that we will understand Mr Coleman's concerns, put them to the Minister and return on the policy issues, if that is –?

The Chairman: Yes.

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Q80. Mr Coleman: Can I just go on to the drugs side of things? This is a simple one, okay. (Mr Allen: Okay.)

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At this time, would it be appropriate to be putting through psychoactive substances into the list of drugs which are in the schedule in here? On page 15 of the Bill it lists a 'controlled drug'. There is now a test for psychoactive substances. The Centre for Advanced Science and Technology in the UK Home Affairs ... and it is now within the law here as a test. So I just wondered whether now it would be NICE putting it through.

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Mr Allen: Well, from a drafting perspective, there is nothing to prevent an amendment being moved either here in the Legislative Council or when it goes to the Keys once there is a policy appetite for it. So if the Department is in agreement then an amendment could easily be moved.

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Q81. Mr Coleman: That is there as a controlled substance now for the Prison and everywhere else, so it would be useful putting it in.

Mr Allen: This Bill has been under construction for some time, so it is understandable that there may have been some more recent developments that were not taken into consideration initially.

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Mr Coleman: Okay.

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Mr Black: Mr Coleman, the aim when drafting was to accept that the legislation that our colleagues in Home Affairs use in respect of drugs generally and particularly in psychoactive substances seems to rapidly change as more modifications are made to some of these substances in an attempt to evade legislative control. Our aim when drafting this was to put in mirroring positions so that it automatically keeps up.

It may be that we have to check that that is effective and I will certainly speak to my colleagues at Home Affairs to make sure, but our aim is to have in here what the Department of Home Affairs has, so we are not looking to lag behind the Department of Home Affairs.

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I will ask Mr Allen to check that the mechanism is drafted – and he has made it clear that he himself did not draft the legislation. I will ask him to check that that is an effective mechanism. But I am confident that the Minister's policy aim was to say that anything here should match the standards applied through the legislation promoted by the Department of Home Affairs.

So thank you, that will be useful and we will check that to make sure.

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Q82. Mr Coleman: It has been put in because I have been involved in the legislation changes for the Prison. They did it through a Customs and Excise Act about possession, supplied – all that sort of stuff – because the test now works on effect of the brain receptors, rather than the chemical construction, (Mr Black: Right.) because with all of the psychoactive substances one of the problems with it was that they kept changing the formula and you could not specify, and our legislation said you have got to put the exact formula down to ban it. Now you do not for psychoactive substances. If it affects certain receptors in the brain it is a psychoactive substance and you do not have to keep changing it to cope with new versions.

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Mr Black: I think the Department will be happy to mirror things that have been worked out at that level.

1335 **Q83. The Chairman:** Okay, thank you. Inspection of driving licences next, with reference to clause 22 – and this is something that the transport organisation has raised as well this morning with us, and I know Mr Hannon was present through the whole of that session.

1340 It gives authorised examiners the power to ask a person to produce his or her driving licence for inspection – meaning a constable does not have to be present. You have said in the recent submission this would allow the Police to utilise their resources elsewhere, so what reassurances can you give that power is not going to be abused by authorised examiners – and isn't this part of the Police's job?

1345 **Mr Black:** Whilst, Mr Chairman, I am sure you are right to say that at the moment this is part of the Police's job, as successive Ministers for the Department of Home Affairs have made clear, budget cuts have had a significant impact on their ability to ensure the safety of the population as a whole from the wide range of potential crimes that it faces.

1350 In very simple terms, our examiners need to be able to work at the side of the road or where they find vehicles to ensure that they are safe for use. A particular case might be that we operate roadside checks, either for basic safety checks or for more thorough checks of certain types of vehicle. At the moment, we need a police constable there to confirm the identity of the driver, if that is the case, because we have not got the power to ask for their licences, as you have noticed. We could ask the Chief Constable to provide officers to do this, and indeed we have traditionally done so, but the Chief Constable made it clear to, I think, the public generally that his officers are very stretched. If we can relieve them of a fairly low-grade job then those officers can be used for other things. These are not people who will be working around the Island asking everybody for their licence. It will be closely in association with their duties in respect of public safety and particularly of the safe operation of vehicles. As we have said in our answer, there has been a relation to the testing of goods vehicles and public passenger vehicles to confirm identity.

1360 So I think whilst I agree with you that it is currently part of what the Police do, it will allow for us to operate without the Police. That is not so the Police would not continue to assist us, but it would give an option if the Chief Constable felt his officers were better deployed or were more urgently needed on other tasks.

1365 **Mr Allen:** If I may, Mr Chairman, could you clarify the sort of abuse that you think this might be subject to?

1370 **Q84. The Chairman:** We have heard the concerns raised by the trade association this morning, but the point I am making is that budget cuts are one thing – the public are rightfully concerned that what we have is the appropriate people to be pulling in vehicles off the highway network: the Police Force, not officers of a Government Department.

1375 **Q85. The Clerk:** Mr Hannon was here earlier and heard Mrs Broad speaking about her concern. As a female driver, she was concerned that somebody who is not in a uniform, i.e. an authorised inspector, may ask her to stop late at night or early in the morning and how would she know that was an authorised examiner and what would happen if she refused to stop?

1380 **Mr Black:** The situation, I think, could be subject to a number of reassurances. Firstly, departmental vehicles are identified as being departmental vehicles; departmental staff wear – in this case it would be high-visibility – clothing clearly identifying them as members of Department staff; and departmental staff are issued with identity documentation.

So I think it would be relatively easy for an appointed, authorised examiner to confirm to the satisfaction of somebody that they are a genuine person. Although I would defer yourself, Mr King, to Mr Allen, I believe that even if stopped by a police constable you have the option of

1385 driving henceforth to a police station if you are unsure of their identity. That may be apocryphal but that has always been my personal understanding.

I think there would be a great difference between somebody who made it clear that they were not comfortable and did not wish to stop and the matter could then be followed up, and somebody who drove past blaring their horn and trying to, in the common parlance, do a runner.

1390 So I do not envisage this being a significant problem. It is important in the absence of an MOT system that the Department's officers can make sure that the vehicles on the road are safe. The Department went to consultation a couple of years ago. The public were very clear in response to that consultation. Whilst there was no wish to see an MOT-style test or an annual roadworthiness test for all vehicles on the Island, there was an acceptance that vehicles should
1395 be maintained in a safe condition before being used on the road. In the absence of a compulsory annual test – and I have to be clear the Department is still of the view that there is no need to bring in such a test at the moment – then provision has to be made for assessment of vehicles that are either reported to us as being in some way a cause for concern or observed by us as being a cause for concern.

1400 A roadside test, whether done at winter in an advisory 'check your lights, check your brakes, check your wipers' way as is done currently with the road safety colleagues now in the Department of Home Affairs, or something targeted more particularly at heavy goods vehicles – where, of course, we all remember the accident involving the loss of a wheel causing the death
1405 of a cyclist, which has prompted great concern – we have to have the ability to protect public safety, and the Department is asking here simply to be allowed to find a cost-effective, proportionate and fair way to do that. Asking the driver of a vehicle to confirm their identity is, in my view, reasonable. The Department has put that forward as a measure it would like to have in place and would hope that you would accept this and move the legislation through on the basis drafted.

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Q86. The Chairman: I think what we have, though, here is the start of a slippery slope, because I do not think anybody argues against what you are trying to achieve; the issue is about the pulling in of motorists off the highway network without a police officer. My own view is that really is unacceptable. Police officers are there for that very purpose and that is what the public
1415 have the confidence in, and to suddenly say the budget cuts mean that they cannot provide a police constable to pull traffic in, when they have effectively traffic police doing these jobs, is not the sort of reassurance the public want.

I think all of the things you were talking about, looking at the safety elements, nobody would argue with. This is the issue about potentially officers of a Government Department having the
1420 powers to stop traffic and pull them in, and I think that is where the concern has been raised.

Mr Black: Mr Chairman, officers of Government Departments have far more stringent powers under a wide range of legislation that has been approved by Tynwald.

1425 **Q87. The Chairman:** To stop traffic?

Mr Black: Not to stop traffic *per se*, but as you know, Mr Chairman, I was previously an authorised inspector for health and safety and you have the power to take any item into possession, including, if you wished to, traffic. There was not a specific power to stop traffic, but
1430 it is a wide range of powers available to officers of that sort and those powers are still held today by health and safety inspectors, and many other powers are held by many other enforcement officers.

Q88. The Chairman: But you do not pull in random vehicles on a dark winter's evening into a layby.
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Mr Black: But I think it would be unlikely that we pulled in random vehicles on a dark winter's evening at all. As you know, I am responsible for the safety of my staff and I would have to question whether that would be a safe way to act. It is unlikely that we would pull in random vehicles and we are –

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Q89. The Chairman: That is what it says in the legislation.

Mr Black: – talking here about ... That means effectively any vehicle. We are talking here about authorised members of staff – authorised examiners. This is not simply saying that anyone with the DoI hi-vis jacket may stop any vehicle at the time it suits them. There are a small number of highly trained examiners employed at our Vehicle Test Centre who regularly work with the Police, and this provision is being put forward by the Department to allow it to ensure public safety in a way that the Department believes is consistent and appropriate with the issues caused.

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Q90. The Chairman: But the Police are easily identifiable. They already are renowned. All over the world police forces pull in vehicles on highway networks. The point is that what we are doing here is we are, effectively, doing away with the job of the Police to pull in those vehicles. It does not sit well.

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Mr Black: Mr Allen could –

Mr Allen: If I may, Mr Chairman, on the issue of public confidence I think it is appropriate to emphasise the fact that the doctrine of parliamentary sovereignty as applies in the UK applies equally here. The point I am trying to make is that Tynwald has absolute power to set the rules, and everything that the public now has confidence in the Police's ability and their appropriateness to carry out is a result of that power having been conferred on the Police by Tynwald. Equivalently, if Tynwald were now, for whatever reason, to confer some of that power on to other officers, that would be the very genesis of something that the public could eventually be given an opportunity then to have confidence in.

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From the Department's perspective, they have indicated that the Police have made it clear to them that their resources are stretched, so whereas in times gone by and up until now the Police have had responsibility for a wide range of things, they have made it abundantly clear that their now dwindling resources do not facilitate them carrying out all of those functions simultaneously and satisfactorily.

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I know I am drifting into policy here but I think it is unavoidable. One of the things that I think needs to be asked – certainly of the public, through public consultation – is which would they prefer, given the fact that the Police, who once used to be able to carry out a wide range of tasks adequately and now are no longer able to, whether or not anyone thinks that they ought to be able to. Resources do not now permit, so it therefore means that people have to make a choice.

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If members of the public were asked to choose between the Police being available to come to their aid if someone is trying to break in to their house, for instance, as opposed to those same police officers being unavailable because they are standing on the side of the highway to accompany a departmental officer to ask someone for their driver's licence, then that is something that the public would have to determine and assess whether or not their confidence in who will stop them, if not a police officer, is something that outweighs someone being able to come to their aid when they are under threat.

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These are the sorts of decisions that have to be made in the policy arena and we ask Tynwald to sanction it on that basis. So if it is that adequate safeguards are put in place in the legislation to address those legitimate concerns spoken of by Mr King, that persons can have confidence that anyone who is not a police officer who tries to get them to stop on the highway is a *bona*

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fide person, those can be put in place. But the bottom line is when those provisions are put in place it will allow the Police's dwindling resources to be better deployed.

1490 **Q91. The Chairman:** Thank you for that submission. I think that is the point that we are
making: that the Department is asking the legislators to give them this power and it is right that
we fully question why they want this power (**Mr Allen:** Absolutely.) and why – and obviously it is
something we will ask the Police, and both myself and Mr Coleman are members of the
Department of Home Affairs and we will obviously seek to ask them why – they can no longer
1495 provide the resource.

But of course the question is: what reassurances can you give that this power will not be
abused by authorised examiners? We need to know more because at the moment in the
legislation we do not know quite how that is going to be operated and I am still uneasy with the
fact that at the moment we are handing over power to officers of a Department to pull in
1500 vehicles. There need to be safeguards.

Mr Black: Mr Chairman, you are handing over the power to the Department to authorise
examiners to do this duty, but the Department in many cases places constraints around its
officers about the way they do their duty and I do not think the Department would have any
1505 difficulty in guaranteeing to you that authorised examiners would not be permitted to be under
some kind of frolic of their own, stopping vehicles wherever they so fancied. This is not
something we do regularly; it requires some consideration, some preparation, and generally
speaking the selection of a suitable location. Typically in the past we have used areas such as the
Grandstand where vehicles can be safely brought to a halt, where the drivers can be shown any
1510 problems with their vehicle away from any danger from passing traffic.

This is not some issue of subterfuge or covert surveillance. The aim here is to increase road
safety; the aim is to be visible. It is not just the case that we want to pull over every vehicle and
examine it, but we want people to be aware that their vehicle *may* be examined, and whilst you
drive past perhaps somebody being checked, the next nine people might be thinking, 'When I
1515 get home I will check my tyres just to be sure.' That is the point. The point is to ensure public
safety.

I am fairly sure that the Minister would say that this is a proportional and proportionate
response to the need to ensure public safety on the highway. But he will of course take your
view, the views of your Committee into consideration and we can either look to a legislative
1520 constraint on that power or we can provide you some other reassurance. I understand your
concerns and I am happy to undertake that the Department will respond to your Committee
with further thoughts.

Q92. The Chairman: You mention road safety there. Why then was the Road Safety Division
1525 of your Department transferred to the Police, presumably with their budget?

Mr Black: It was transferred with the budget and it was transferred to promote better joined-
up working. As you, I suspect, were aware from your own time in the Department, for many
years a number of organisations have been promoting road safety: the fire brigade, the Police
1530 and ourselves. Two of those organisations were within the Department of Home Affairs and it
made sense to transfer the small number of people involved and the budget involved so that the
Department of Home Affairs would take the lead on it all. That provides better joined-up
working and it allows for better securing of public safety.

Q93. The Chairman: So have they taken the budget and are now saying that they do not have
1535 a budget to deal with these matters, because that is –?

1540 **Mr Black:** The budget for road safety that was transferred was simply related to the salaries of the officers involved and the small amount of money available for PR campaigns, publicity leaflets and adverts and the like. The Department has never funded police officers doing their duties. It does fund the authorised examiners.

1545 I do not think there is any suggestion, and certainly there is no suggestion from me, that the Department of Home Affairs took our money and then spent it on other things. The money we transferred was not for stopping vehicles at the roadside. That has been a longstanding function and one that has for a long time caused us difficulty with availability of police officers when, as Mr Allen has said, the officers are generally deployed to those things that the public might feel were more pressing and more urgent, but that is a policy choice.

1550 **Q94. The Chairman:** Okay, I think we have given that one a good airing. Anything else?

1555 Okay, we can go on to enforcement of fines now. Clause 24 provides for the Department to seize or immobilise a vehicle where the owner has not paid vehicle duty or has not paid a fine. So would this apply if the fine was nothing to do with motoring, because that obviously ... the wording appears to be a little wide. Where are the safeguards in that, that this is not just any old fines that are on the record at the Registry and they could not trot along with the recovery truck and take somebody's Merc off their drive?

1560 **Mr Black:** Mr Chairman, I think your point is very valid. The Department's intention is to restrict this to motoring-related fines. If your view is that the drafting needs a degree of tightening up then I am sure Mr Allen will provide any modification required. It certainly is not the intention to cover *any* fine. It is fines incurred as a result of the activity related, so effectively we are talking about traffic fines, parking fines and any fine for infringing motoring or related legislation.

1565 I think that is a useful observation, Mr Chairman, and I will ask Mr Allen to go through the fine detail of the drafting and make sure that concern is addressed.

Q95. Mr Coleman: Mr Chairman, I have to confess that when I read it I thought it was almost giving you the powers of a bailiff (*Laughter*) to turn up and take the car and the telly!

1570 **Mr Black:** On reflection of the observation, I can see why that concern exists. It is not the policy intention to do that and we will make sure that I ask Mr Allen to tighten that so that the definition of fine is closely related to what was the Department's intention.

Q96. The Chairman: Thank you very much indeed.

1575 Of course there are the other issues that go a bit deeper, of the ownership of the vehicle and it could be on finance or even a hire car, for example. So there are quite a few issues there. I think probably, unless anybody has got anything further to add, that is something that I am pleased you are going to have a look at.

1580 Obviously it says as well that you can make regulations. The process of enforcing fines might need modification. So if we can maybe leave that one with you, that whole issue, and it would be helpful before we report if you could keep in touch with the Committee Clerk and let us know what your proposals are, because obviously when we bring our report, if the Department is minded that there are some amendments you wish to bring then it will just make the process a bit more streamlined.

1585 That brings us in to vehicles used for the purposes of crime. In reference to clause 31 you proposed that it should be possible for a court to impose a driving ban on someone who used a vehicle for the purpose of crime. This was one of the ones that you said you were happy to drop the clause. In our view, it does open up quite a few problems of unfairness. So if you are happy to remove that clause, what are your reasons, just for the record?

1590 **Mr Black:** Mr Hannon has got the detail on this, Mr Chairman, so I will ask him to speak for the Department.

Mr Hannon: Gentlemen, the primary reason for the clause in the first instance was about proceeds from crime and trying to, again, put in place situations whereby we could be seen to be tough on crime, for want of a better way of doing it.

1595 Bearing in mind that these sort of vehicles in the UK, for example, or American TV series are usually the wonderfully attractive sports vehicles or the like that are worth mega millions and so forth, when we look at the sort of crimes that go on in the Isle of Man it seems to be more like your old clapped-out Sierra and such like. So the reason why we revisited this one in light of your queries earlier on was to go back and see whether or not it was a viable proposition to take these cars off the road and in effect punish the criminal element and to cover some of the costs.

Q97. The Chairman: And of course it includes a driving ban.

1605 **Mr Hannon:** And as Mr Robinson has just advised there, it was also reflecting changes brought in in the UK to try again bringing this to a similar sort of level, so the Police here have similar sorts of powers and so forth as their colleagues in the UK.

Bearing in mind the standard of vehicles, the quality of the vehicles, the likely sale price of these vehicles, it is more likely to fall into scrap rather than desirable and saleable.

1610

Q98. The Chairman: So in the UK then, if somebody is driving the getaway vehicle or the van full of the jewels from the jewellery robbery, could they be subject to a driving ban as well as their punishment in the UK?

1615 **Mr Hannon:** Absolutely.

Q99. The Chairman: So that is a provision that is already in the UK?

Mr Black: In the UK.

1620

Q100. The Chairman: When looking at this provision, had you particularly looked at what the positive or negative impact of that has been? Has there been any case history?

1625 **Mr Hannon:** I cannot give you case examples. What I can suggest is that the problem with the criminal fraternity, as you know, is the law does not really matter; it is just trying to put things in place to show that we are trying to do the right thing.

Q101. The Chairman: Yes, I appreciate it is a difficult one. I was recently involved in helping someone report, in the UK, a cloned vehicle that was running around London clocking up congestion charges. Clearly the activity of that person, when we looked at the pictures, was there was possibly fly-tipping and all sorts of things involved. So it is not an easy thing to deal with, but it is interesting to know. So obviously we will consider the question.

1635 **Mr Black:** Perhaps if I may be so bold, Mr Chairman, the Department's aim was to simply try to improve the options available, and in the situation you have given, if the person does not legitimately own that vehicle and is not going to be paying any fines due to their means, then perhaps the only thing the courts can do is take their driving licence.

1640 Whether it is appropriate to use traffic and motoring legislation in place of more general legislation on criminal behaviour is a question, I think, for your Committee, but that is the reason why this Minister was happy to drop that – because our legislation is about traffic and transport and this is perhaps straying beyond that. It may be for social good and the motives, I am

convinced, were good motives, but the Minister would be, I think, content if you were to say this does not fit right – that although the intention is right, it is not the right way to achieve this. The Department would be happy to accept that view.

1645

Q102. Mr Coleman: I think for the primary offence the judge would be allowed to say ‘and we will confiscate the car’, the car will be confiscated and then it is all done at one time. The sentencing is all one thing. If it was a thermic lance it would be no problem, they would do it.

1650

Q103. The Chairman: Can we talk about tyres now, the safety regulations? This is to do with the part-worn tyre market, similar to the UK.

You say that a recent survey established that there is a trade in part-worn tyres existing in the Island. Who did the survey and is this really a problem here on the Island that needs this regulation?

1655

Mr Black: I think I should perhaps be clear at the outset, Mr Chairman: tyres were included here simply as an example, as a sort of thing that this power could be used for. It could just as easily be used for cycling. This is the power to make safety regulations. Officers, on behalf of the Department, simply tried to find out if there were any cases where you could buy part-worn tyres on the Island and they found that you could. I suspect, Mr Chairman, if you were to go on to one of the online classified advert sites you could find a set of wheels and tyres for your vehicle or a vehicle like it quite readily available. That might be a private trade and you might say, ‘Well, under the consumer protection legislation it wouldn’t apply,’ but it might still mean that somebody bought tyres in good faith that were dangerous or were cut or damaged in some way. This was only put as an example of what might be achieved if there were the need for it. The Department is not proposing to make any changes to legislation on tyres at all. It used this as an example of where, in the UK, a nuisance has been addressed through safety legislation made under this sort of legislative provision.

1660

1665

We could use safety regulations to cover second hand tyres. They could be used ... For example, we have covered the issue of the 1.5 metre space. We could use them, for example, to cover lighting to be used on cycles. There are a whole range of things that could be covered by them, so this simply allows for the Department to make safety regulations. It is a power to make regulations. This is just one example.

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1675

Q104. The Chairman: It does say in the explanatory notes with the Bill:

If the section is enacted, DoI proposes to bring forward safety regulations that will fill the gap.

So are you saying now that actually those plans are shelved for the time being?

Mr Black: There is no view either way. The Department, in the absence of having this legislation move forward, has concentrated resources on other issues. Again it was designed there to be an example. I think second hand tyres, and potentially any defective tyres, is a concern to the Department and it would be another way of ensuring public safety.

1680

I can go back to the Minister, Mr Chairman, and get you a confirmed view on whether we would like to progress anything on second hand or used tyres as a priority or as something that perhaps is in the longer term, and I will happily provide that for you in writing.

1685

Q105. The Chairman: I think the problem really here is the terminology, isn’t it: ‘part-worn tyres’ sounds quite sinister. It conjures up images of half the side missing, when actually that is not what a part ... What is a part-worn tyre? Surely it could be some tyres that have been on a car for three months, the car has been involved in an accident so it has been written off, the tyres are still pretty good, but surely they are part-worn tyres.

1690

Mr Black: I think when it comes down to the detail of the regulations, Mr Chairman, obviously they would be subject to appropriate scrutiny and any standards that were put in at that time could be debated in a forum such as this.

1695 I think I understand the point you are making. If I were offered the chance to buy a set of tyres that you had carefully used for 100 miles at a good price I might think that was a very good suggestion –

Q106. The Chairman: But legally they are still part-worn tyres.

1700 **Mr Black:** They are part-worn tyres. If you said to me, ‘My car has been written off because I’ve had a terrifying accident and I locked up at 70 miles an hour,’ I would probably suggest you could keep your tyres, (**The Chairman:** Yes.) but the detail would be in that legislative provision, not here. This simply makes the enabling power.

1705 So I am more than happy to engage in a debate with you and to seek the Minister’s view on part-worn tyres; but, if I may be so bold as to venture, that does not really change the decision on whether this is a correct provision. The provision allows the Department to make safety regulations. That is a provision the Department is keen to maintain. I am happy to separate out the debate on what is a part-worn tyre and engage with you in more detail outside this process.

1710 **Q107. The Chairman:** Yes. I think obviously the message that has gone out with the Bill, especially in the explanatory notes, is that you have given it as an example, we accept that; but you have also said that if it is enacted then you do propose to bring forward these regulations. So it is a little bit more than an example: it is basically telling the industry that you are bringing regulations in to regulate part-worn tyres.

1715 **Mr Black:** No, I accept that and, as I say, Mr Chairman, I am happy to reflect on that and confirm whether that is a short-term intention or an intention that this Minister is less keen on pursuing.

1720 **Q108. The Chairman:** Yes, okay, because obviously we were going to ask for a copy of the survey; but if it is on the basis that you have said, then that is fine, we can engage some more in that.

And again, our observation was it looks like you were copying powers of the OFT, that they already have the Consumer Protection Act, so why not just ask the OFT to bring in ...?

1725 **Mr Black:** It is absolutely the case that the Department would not seek to legislate for something that was adequately catered for in legislation already on the statute book in other areas; that would be unnecessary, so we would work closely with our colleagues in the OFT to make sure that that did not happen.

1730 **Q109. The Clerk:** Can I follow up on that, please, Mr Chairman, because this is something which I did not understand. In the Consumer Protection Act 1991 it says:

8(1) A person shall be guilty of an offence if he —
(a) supplies any consumer goods which fail to comply with the general safety requirement;

And it says:

(2) ... consumer goods fail to comply with the general safety requirement if they are not reasonably safe having regard to all the circumstances, including —
(a) the manner in which ... the goods are being ... marketed ...

1735 And so it goes on. And within this 1991 Act there is a mechanism for enforcing that, which involves notices and presumably going and getting people to explain whether they think the goods are safe etc.

1740 The Bill which this Committee is looking at proposes that the Department – that is the Department of Infrastructure – has ‘the same functions as those of the Isle of Man Office of Fair Trading in respect of road traffic, road transport, or related matters’, but it does not say in the OFT’s existing legislation that they cannot operate in respect of road traffic, road transport or related matters. So why do you need the legislation?

1745 **Mr Black:** I think in answer to the first element of your observation, Mr King, I would wish to be reassured as to the definition of ‘consumer’. I, as you might recall, spent some years working at the Office of Fair Trading and my previous colleagues might be somewhat ashamed of me for not remembering the definition of ‘consumer’ under the 1991 Act, but the vast bulk of the work of the Isle of Man’s Office of Fair Trading is about protecting the individual consumer. A business could buy part-worn tyres and may not therefore be covered. I am afraid I do not have the Act in front of me, I have not studied it for many years and I would have to either ask Mr Allen if he knows the definition of ‘consumer’ under that Act ... It is best perhaps that I respond to you in writing.

1750 I do understand the generality of your view that if the OFT has the wide-ranging power to look after consumer safety items they could do motorcycle helmets just as well as we could do motorcycle helmets. It is not something I have enough detail on to give you a confident answer now. I think the principle we would wish to avoid is any duplication. So I am happy to review your point – I think it is useful, thank you – and we will check to make sure that we avoid any potential duplication.

1760 **The Chairman:** Thank you.

Q110. Mr Coleman: With reference to clause 34, which is the regulation of professional drivers, it introduces the requirement that a professional driver’s card must be renewed every five years. You have said that there have been similar provisions in the UK since 2008. Can you confirm that in the UK all HGV drivers have to renew their certificate every five years?

1765 **Mr Black:** That is my understanding, Mr Coleman.

1770 **Q111. Mr Coleman:** Okay. Moving on a bit to general driving licences at clause 37, in this clause provisions are made for a newly qualified driver’s licence to be revoked if he or she collects six or more penalty points. We asked you if you had considered introducing black box technology and you said you want to wait until the industry standards are in place. How long do you think this will take?

1775 **Mr Black:** At the moment, Mr Coleman, the aim of the provision inserted here is to respond to the concerns of the people of the Island about accidents involving young people. The Department obviously understands those concerns, and, as you know, there was a peak of unpleasant and distressing accidents involving young people and I think everyone felt that something must be done.

1780 The Department, of course, though, is mindful that it is not just the age of a driver that impacts upon their behaviour, and we are also mindful that equality legislation is under consideration by the Branches and we need to be prudent as to how we move forward. The statistics that have been shown to me suggest that if we simply worked on age, then any restrictions we had in place would probably last until someone was in their mid-20s and might then indeed have to be returned when somebody reached something beyond retirement age.

1785 We looked at drafting legislation that was based more on experience, i.e. the number of years you had driving, but much as in your example with the drugs legislation that does not quite get to the issue. The provision is simply here that whilst somebody is learning, any gathering of points beyond six was such that they lose their licence much more readily.

1790 The black box technology is something we are aware of. There are a number of competing systems and whilst the Department feels that they are obviously worthwhile – they obviously, as given in evidence by Ms Broad, encourage better driving and reduce premiums – that is a voluntary measure. The Department could expect this equipment to be of a standard that might be ready within a few years, but even if they were ready now a judgement would have to be taken by the Minister, and ultimately by Tynwald, as to whether it was the right thing to do to monitor everybody's driving all the time if they were a new licence holder. I suspect there will be issues raised by some about civil liberties, about tracking, about Big Brother, and whilst the technology has an option for learners, or indeed their parents, who wish to use it ... I can certainly see why people would wish to use it. It might give you a lower premium and it certainly, on the evidence of Ms Broad, has been shown to improve driving standards, and as a choice of an individual that is clearly worthwhile, but for the state to require everyone to do so might be quite significant. I do not know how much this equipment costs. If, let's say, the black box costs several hundred pounds, is that a reasonable cost to impose on new drivers? Is it something that is affordable? Who is going to monitor it? If we require everyone to have a black box who has been driving, let's say, for less than two years, do we only download their black box in the event of an accident? I believe, listening to Ms Broad, that it is used perhaps on an annual basis to check whether your driving was good and then give you a refund. I can see the sense of that, but how are we to do that as a state? I am not disagreeing with you about the potential benefit of the technology; what I am less sure about is how we would mandate its use and make it compulsory for everyone.

1810 **Q112. The Chairman:** I want to come back to the professional drivers, if I may. Obviously this was quite an issue raised by the Island Road Transport Association and what they are saying is that they think it is going to put in an unnecessary cost. But also the actual process of this, the fact that there is no actual test – it all does seem a bit pointless. Is it not just creating more bureaucracy and red tape for this training?

1815 And how do you see it working? Obviously they explained how it is in use in the European Union and in the United Kingdom and how local drivers, if they wish to drive in Great Britain, have to have the ticket. Is it really needed on the Isle of Man?

1820 **Mr Black:** Mr Chairman, if I may, my reading of this is that the question does not arise now. The legislation was intended to allow the Department to do this if needed, and the questions of whether it will be required, whether it is appropriate and whether it is timely could surely be addressed at the point when the Department brought it forward.

1825 As to why the Department would seek to take the enabling powers now, as we have already discussed, the modification of road traffic legislation is a massive task. You are talking here about items of 1985 legislation, and whilst I accept that there are issues of legislative policy about to what extent a Department can act under the authority of Tynwald without going back for express approval, the Department is not looking for the power to make these rules off its own bat without consultation, without authority from Tynwald. The Department is simply looking for something that can be done through a secondary rather than a primary route, so if Tynwald is convinced that at the time that is a proper measure to be put in place, at that point Tynwald can consider it, and if Tynwald then wishes to have a Select Committee to look into this issue I am sure that colleagues from the road transport industry would be very keen to put their views. But it is not a decision for now; it is an enabling provision so that if it arises it could be done swiftly. If the situation is such that other jurisdictions change their legislation so that people with a Manx driving licence could not drive in the UK without it, there might be a need to

act very swiftly to allow those businesses who, for example, transport domestic goods backwards and forward to rapidly gain access to the market. If we had to resort to primary legislation for that, their businesses might be impeded for months or years.

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Q113. The Chairman: But at the moment they are actually taking it in the UK, I understand, so they are covered by the UK ticket, or permit or whatever.

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Mr Black: I understand there have been some recent changes about the ability for Isle of Man driving licence holders to hold a CPC card. It is a very detailed and complex area and not one I am well equipped to –

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Q114. The Chairman: But potentially they are saying that you cannot hold one of our cards unless you have got one of our licences – is that ...? As in the UK are saying that.

Mr Black: I think that was the position. (**Mr Hannon:** Recently, yes.) This has been changing very quickly. The Department is not seeking to address this issue now; it is seeking to have the power to address it when it needs to.

1855

Q115. The Chairman: Okay. And presumably – I do not have the details before me – these regulations ... If you get the enabling powers in the Act, the regulations made under those enabling powers presumably then would need Tynwald approval. Which process of approval does it use? Is it the full approval?

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Mr Black: It is full approval by Tynwald.

Q116. The Chairman: Right, so it would be a motion?

1865

Mr Black: It would be a motion for debate and for vote.

Q117. The Chairman: Okay. Well, that I think would give certainly the commercial operators some comfort that there is a further process here, and also you have indicated that at the moment it is not particularly on the radar but could be. Okay, thank you for that. We have dealt with the driving licences.

1870

Q118. The Clerk: Can I ask a question about the black boxes, just coming back to that? Is there anything to stop an insurer offering motor insurance in the Isle of Man asking a customer to use a black box?

1875

Mr Black: My understanding, Mr King, would be that effectively your agreement with your insurer is a contract under civil law, and if both parties enter into that contract willingly then you would have to abide by it. So, if your insurer says 'I'll give you 10% off if you have a black box' and you say 'Tick that box, yes, I'd like to do that', then I think your contractual part of the bargain is to have that black box in return for that discount.

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Q119. The Clerk: So it could be that a market like that could develop irrespective of any primary legislation or lack of it.

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Mr Black: I think it is entirely foreseeable that if insurers get sufficient confidence in the technology they will say 'if you are under 18 years old we will not insure you *unless* you have a black box' and the market could absolutely drive that.

Q120. The Chairman: Of course the data could actually prove a driver's innocence as well as guilt.

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Mr Black: Absolutely, and where people are voluntarily surrendering their data the issues about Big Brother and data protection perhaps recede; where the state is requiring them to make their data available for inspection, then I think we are into potentially much more extensive argument.

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Q121. The Chairman: I am just conscious of the time, so we will quickly, if we may, just go through the last couple of points that we have and then give you the opportunity to comment on anything we have not raised that maybe you heard from the Road Transport Association to reply to.

1900

The lawnmower exemption, clause 59: we did write and ask why this exemption was not included in the Act originally but we have not really got an answer to that, so is there anything you can add to that at this stage?

1905

Mr Robinson: Clearly none of the people here were involved at that time. We can only assume that they did not envisage other types of vehicles coming along, but we are seeing that technology beginning to appear.

1910

Q122. The Clerk: This goes back to the difference which the Committee started with at the very beginning between the Road Traffic Act 1985 and the Road Traffic Regulation Act 1985. The Road Traffic Act 1985 has a little more exemption in it; the Road Traffic Regulation Act 1985 has not, and you have put it in. I do not think the Committee has got a problem with that, but it is just a curiosity: why wasn't it there in the first place?

1915

Mr Black: It could be anything from political intent through to forgetfulness. I think it has been there some years, as you have spotted, Mr King. I cannot answer your question, I am afraid.

The Chairman: We are not quite in lawnmower season yet, anyway, are we!

1920

Mr Black: Probably safe for now, I think, Chairman!

Q123. The Chairman: The final point we wish to raise before we give you the opportunity to wind up: clauses 69 to 71, the removal of vehicles causing offence.

1925

Section 2(2) of the Local Government (Miscellaneous Provisions) Act allows an appropriate authority to remove an abandoned vehicle from any land in the open air. Section 2(3) requires the authority to give notice to the occupier first and say that if the occupier objects then the vehicle will not be removed. We thought that under the Bill this requirement was being removed, but having read your answer we can see there is a similar requirement under the Bill at clause 73; but the new provision says regulations may make provision about giving notice of the removal of a vehicle to prescribed persons. What happens if you give the notice of the removal to the occupier of the land and the occupier says, 'That's my car, don't remove it'?

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Mr Robinson: My understanding of this clause is to enable the powers that be, in this case the local authority, to remove unsightly vehicles that are deemed to be offensive to the generality of society; whether that is on privately owned land or not is not the issue. So you are right to say if it is deemed unsightly or inappropriate then it could be removed.

Q124. The Chairman: So this is a heavier power than in the old legislation?

1940 **Mr Black:** The intention was to allow vehicles that caused offence to the community, but
were not at the moment able to be removed, to be dealt with. So, for example, if a car is
currently taxed but clearly abandoned on the side of the road with flat tyres and bits missing, it
is still a road-legal vehicle unless it is ... I expect there would be a point where we could say that
it is unsafe, but it could be causing offence in some way or covered in moss and there are
1945 examples where local authorities have said they would like, much in the way we have done with
dilapidated buildings recently, to make sure their amenity and environment is of a good order.

This is an improvement to the current system that is being sought because there appear to
be loopholes in what we have at the moment that make it difficult for them to clear up the
areas.

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Q125. The Chairman: That is fine if it is on the road, but this appears to be if it is on their
private land. (**Mr Black:** Potentially.) Isn't that overstepping the boundary between people's
private life and private property to be able to just come on the land and take things?

1955

Mr Allen: If I may, Mr Chairman, I would just like to bring to your attention Article 1 of the
First Protocol to the European Convention on Human Rights. It reads:

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of
his possessions except in the public interest and subject to the conditions provided for by law and by the general
principles of international law.

And then it goes on to say:

The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws as it
deems necessary to control the use of property in accordance with the general interest or to secure the payment
of taxes or other contributions or penalties.

As I am sure you are well aware, the European Convention on Human Rights does apply to
the Isle of Man and we have incorporated it into legislation by the Human Rights Act 2001.

1960

My point is simply this: these powers or these rights that you are speaking to are not
absolute. There is a qualification on them, particularly highlighted in 'necessary to control the
use of property ... in the general interest'. I believe what my colleagues have been saying is that
the power to remove an unsightly vehicle is something that is deemed necessary in the general
interest, so viewed in that way it would not be infringing Convention rights because it would fall
1965 within the qualification.

Q126. The Chairman: I am just wondering how it would infringe someone's peaceful rights,
unless ... Mr Henderson.

1970

Q127. Mr Henderson: Can I just ask Mr Black if we already have existing powers to remove
vehicles from private land in any case – we certainly used to, where a notice could be applied,
and it was seven or 14 days if I remember rightly, if it was causing a detriment to the area;
perhaps the Bray Hill case is one of the most infamous I can think of at the minute, at the
bottom there by the old shop, where trucks and burger vans were parked, rusting to death – and
1975 this is simply a way to move the whole situation forward?

1980

Mr Black: The intention is very much, Mr Henderson, exactly that where there is a situation
where the individual may be content for a vehicle to rust in their front yard but the public are ...
much like with dilapidated property if it brings down the area, if it causes concern to neighbours
and potentially in some cases could cause a safety risk. In the example you quote that is a freely
available area that looks like the pavement, even though it is private property.

It is designed to simplify the existing power. There is no intention to go running round everybody's back garden collecting any vehicle they might be saving up there for future restoration. The aim is to deal with vehicles that are on a road or in a public place.

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Q128. The Chairman: But it is not simplifying, though, is it; it is extending the power.

Mr Black: Well, with reference to the text in front of you:

(1) This section applies if a complaint is made to an appropriate authority that —
(a) a vehicle is on a road or in a public place;

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Q129. The Clerk: The Bill deletes from subsection (2) the words 'subsection to subsection (3)', so the Local Government (Miscellaneous Provisions) Act as it would be amended says an appropriate authority may remove from any land in the open air any vehicle which appears to the authority to have been abandoned.

Mr Black: That is right, and it deletes that subsection. You are correct, thank you.

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Q130. The Clerk: And that subsection was the subsection which said (**Mr Black:** The public place.) you are to tell the owner of the land, and if they object you cannot take the vehicle.

Mr Black: You are correct, Mr King. As amended, it would delete that phrase, wouldn't it.

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Q131. The Clerk: So the safeguard is removed (**Mr Black:** Yes.) and authorities will be able to take a vehicle from private land notwithstanding any objection from the owner of the land.

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Mr Black: Where it appears to the authority to have been abandoned, (**The Clerk:** Yes.) so it is not any vehicle and notice still has to be served. A notice has to be affixed to a vehicle stating the vehicle is not removed by the date specified.

Q132. The Clerk: Where does it say that?

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Mr Black: That is the new paragraph (3).

Q133. Mr Henderson: Can I just clarify, gentlemen, then, what we are saying here is we are extending the old DoLGE power, where it was a Government job to do that, and filtering it out to the local authorities to enable them to act more in a local authority way, if I can put it like that.

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Mr Black: Yes, I think that is reasonable. It will allow them to deal with vehicles that cause an offence in a measured way, even if those vehicles are not on the highway.

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Q134. The Clerk: I am sorry, but in the new section 3A which is to be inserted in the Local Government (Miscellaneous Provisions) Act 1984 – 'This section applies if a complaint is made ... that a vehicle is on a road or in a public place' – that is where we have affixing a notice to a vehicle, so you are not required to affix a notice to a vehicle on private land.

Mr Black: In a public place I think that is the case, yes.

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Q135. The Clerk: So a public place includes ...?

The Chairman: I think that comes back to the question of –

2030 **Mr Black:** I am not sure of the definition of a public place under the main legislation.

Q136. The Chairman: Well, it would not be somebody's garden, I would not have thought.

2035 **Mr Black:** And it is probably not defined. Would it help, Mr Chairman if we collate a document with 'as amended', so you get something –?

2040 **Q137. The Clerk:** We have got it. Mr Allen provided that to the Committee several months ago and it is extremely useful. (**Mr Black:** So you have got it.) Yes, and it does appear that you have taken a power to take a vehicle off somebody's land without telling them and without their permission.

Mr Black: Without affixing a notice.

The Clerk: Yes.

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Q138. The Chairman: Yes. And if it is deemed that it has got to be abandoned in the view of the person who is going to take the vehicle, if the owner was to become aware of it and say 'It's not abandoned, it's my car', which comes back to my original question ... What happens if they say 'It's not abandoned, that's mine, don't remove it'?

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Mr Black: I think the Department would be more than happy to make sure that the drafting was clarified in such a way that the notice provision was put back in.

Q139. The Chairman: Yes, that is something I think the Committee would be interested in.

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I just refer to the new section 6(3) of this Act, which says regulations may make provision about giving notice of the removal, so it may be that the intention is to put notice that way, but that is not the same as in the 1984 Act.

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I think it would be useful to the Legislative Council for the Department to be able to explain exactly how this is supposed to work. Is it meant to be a greater power than you had in 1984, or is it just meant to be a rewrite to the same effect?

2065 **Mr Black:** I think the intention is to be able to tackle a nuisance that currently cannot be tackled by virtue of the way the legislation is drafted, but not to remove the safeguards for so doing. So, if it is in a public place and causing nuisance the vehicle could be dealt with, but the owner should still be given the appropriate warning etc.

It would appear from your discussion that we have somehow let one bit go undrafted on the basis that it will be in the regulations, so I think we should clarify that for you and return to you in writing. That would be the most prudent course of action.

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Q140. Mr Henderson: I just want to ask a further question: under the old DoLGE powers a vehicle could be removed from private land. (**Mr Black:** Yes, it could.) It would have to be noticed. So what this is doing – just for my understanding – is not actually beefing up anything; it is devolving the powers to the local authority in order for them to be able to take on some of the central function of the Government role that already pre-existed to what you are doing now.

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Mr Black: As far as I can work out, Mr Henderson, the only change from that – as you refer to it, the old DoLGE power – is that if a vehicle is taxed, nothing could be done about it. Now a vehicle could be taxed but fall under the definition of causing an offence, and so could be addressed.

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Q141. Mr Henderson: Under the old DoLGE power, though, I have had vehicles removed from private land.

Mr Black: If they were taxed ... can you recall?

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Q142. Mr Henderson: No, I cannot be honest about that, but they were noticed and they were abandoned and Government did remove them from private land.

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Mr Black: You are absolutely right, I think, Mr Henderson. There was one approach for the highway and one approach for private land, (**Mr Henderson:** Correct.) and our abandoned vehicles officer still uses those, but this I think will provide for the case where it is on private land and taxed but still causing a problem.

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Q143. Mr Henderson: And which was an anomaly brought to light by some local authorities because they were being lambasted by their ratepayers for failure to fulfil their own functions.

Mr Black: That is correct, so it is trying to improve a situation by closing a loophole, not trying to go running round the Island collecting vehicles from gardens.

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Mr Henderson: Thank you for that. Thank you, Mr Chairman.

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Q144. The Chairman: Finally, then – I appreciate it has been quite a long session – is there anything you would like to comment on from the submission this morning from the Island Road Transport Association which we have not already covered, and anything further you would like to add at this stage?

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Mr Black: Unfortunately, Mr Chairman, I did not hear all the submission. However, I did note, of course, the concern raised in respect of the 1.5 metres and the obvious comments and sensible comments made about how do we guarantee that passing place.

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I think if you were to look at the new Programme for Government you will see that there is a provision for an increased interest in and support for 'active transport', which is a phrase that is designed to include cycling and walking and getting people away from the car and carbon-fuelled vehicles. So there appears to me to be a clear interest from the Department in trying to make cycling be seen as safe and a good thing to do. Of course there are people who, I think as we heard this morning, would say that that takes both the motorist and the cyclist to play their part. The concerns about the types of lighting, safety equipment worn, all of that, could be addressed through the safety regulations power that we have discussed at some length this morning.

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The 1.5 metres is not something that is currently departmental policy. There is no current provision for 1.5 metres as a clearance, as has been noted I think by Mr Coleman. There is reference in the Highway Code as to how a motorist should pass a cyclist, and indeed of course there is guidance for a cyclist in there about how they should conduct themselves on the highway, but there is nothing in this legislation that addresses that 1.5 metre issue. It was not the Department's intention to use this session to discuss that 1.5 metres – of course, it has been raised by others – but the safety regulations power would allow us to address that sort of issue, subject to the agreement of Tynwald, if at some point it were needed.

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Whilst I think the overall Government position is that the benefits to health and the benefits to the environment are such that cycling should actively be encouraged, certainly there is no decision yet on whether we should change the law to allow that. The steps the Department is taking at the moment are more to do with providing appropriate facilities, trying to make sure that there are cycle routes and that people have areas where they can choose to cycle in safety,

and if they can be segregated in some way from the motorist then I am sure that would work both for the cyclist and for the representatives who have attended before you today.

2135 **The Chairman:** Yes, okay. Thank you for that and thank you very much indeed for your time in coming in and giving evidence to the Committee.

With that, the Committee will now bring this session to a close and will sit in private. Thank you.

The Committee sat in private at 1.20 p.m.