



Isle of Man
Government

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ROAD RACES BILL 2015
RESPONSE TO THE CONSULTATION

DEPARTMENT OF INFRASTRUCTURE

Part 1 – Introduction

The Department of Infrastructure (DOI) consulted publically on the proposed Road Races Bill 2015. This document contains the DOI's analysis and comments on the respondent's views; and documents the DOI's intentions.

The DOI's Minister, Members and Officers would like to thank those who have been involved in the development of this Bill and those who took the time to respond to the consultation. The DOI believes that the development of good legislation relies on good consultation.

Background

Road racing is an important part of the Island's heritage and culture. The Road Races Act 1982 is the legislative instrument through which the DOI allows racing on what would normally be public highway. Over the past 33 years the existing Act has become increasingly out of step with modern approaches to event management generally and road racing specifically. The roles and responsibilities of various parties are unclear, the operation of the Act is bureaucratic and its restrictive nature has resulted in measures being added to other legislation to circumvent the current Act.

The Consultation Document Contained

1. The draft Road Races Bill 2015
2. Explanatory Memorandum to the draft Road Races Bill 2015
3. An Impact Assessment
4. A short commentary on the draft Road Races Bill 2015 highlighting key aspects of the new proposed legislation and some related questions.

Part 2 – The Consultation Exercise

The consultation ran from 6th August 2015 until 17th September 2015 and the consultation documents were drawn up following extensive consultation with the Isle of Man Constabulary and the Department of Economic Development's Motorsports Team.

Consultation documents were distributed to the following:

- Tynwald Members
- Local Authorities
- Isle of Man Constabulary
- Isle of Man Fire and Rescue Service
- Approved Driving Instructors
- The Isle of Man Employers Federation
- Institute of Advanced Motorists
- Road Transport Licensing Committee
- Attorney General
- Government Chief Officers
- The Isle of Man Chamber of Commerce
- The Isle of Man Law Society
- Government Officers Association
- Driving Examiners
- Island Road Transport Association

The consultation was made available to the public on the Government's website and a press release was issued to inform the public.

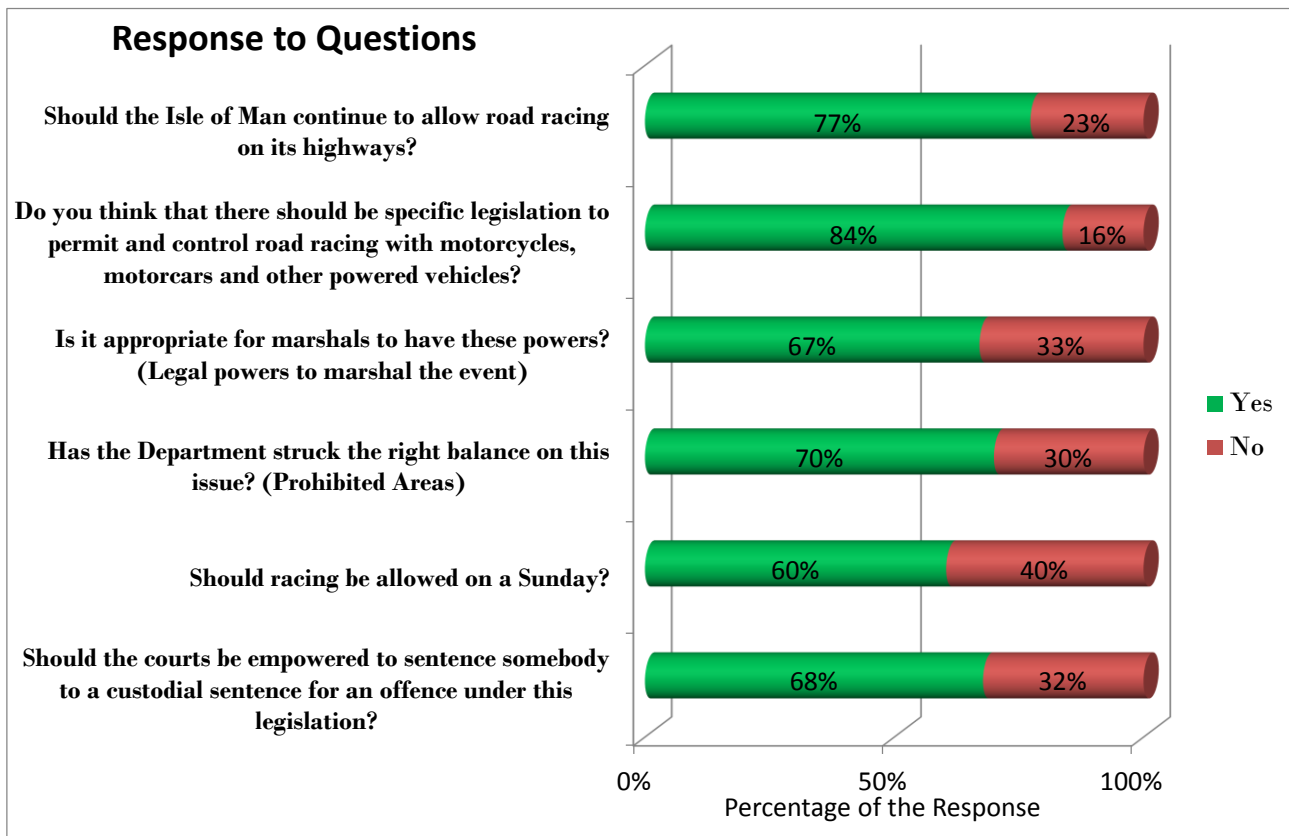
Part 3 – The Responses

The DOI received 33 written responses and 220 responses via the on-line survey.

Written Responses

The following organisations and individuals responded to the consultation by letter or email, and some individual respondents have asked that their name is not disclosed.

Michael Commissioners
Isle of Man Chamber of Commerce
Mr and Mrs Gilbert
Coroner of Rushen (Chief Marshal for Rally IOM)
Department of Home Affairs
Manx Auto Sport Limited
Mr TA Quayle
Mr and Mrs Newall
Mr Keith Price (Church Minister)
Gary Thompson- ACU
Peel Town Commissioners
Mr Peter Murcott
Southern 100 Motorcycle Racing Ltd
Mr Davidson
Ramsey Town Commissioners
Bishop of Sodor and Man
B & B Furniture
Mr Hanson
Marown Parish Commissioners
Ms Oldham
Mr Bao
Mr Chadwick
Mr Bill Henderson MLC
Penny Hamilton
Jurby Parish Commissioners
Ballaugh Parish Commissioners
Andreas Parish Commissioners
Patrick Commissioner
5 respondents requested anonymity



Question 1

Should the Isle of Man continue to allow road racing on its highways?

The majority of written comments were in favour of continuing to allow road racing on the Island's roads. When combined with the results of the online survey 77% of respondents were in favour of continuing road racing on the Isle of Man. This consultation was not a referendum on the future of road racing, but the result does indicate a good level of support in the community.

The primary reason for the question was to better understand the views of those who generally support road racing and those that do not. As can be seen in the following questions there was a marked difference between the two groups.

There were several comments within the written response by individuals and local authorities that better consultation and consideration of residence was required by the race organisers. Although supportive of road racing, Michael Commissioners suggested that it is now unreasonable to trap residents into their homes for the whole day. The DOI accepts these comments and will address them with race organisers and promoters; however, it is probably not appropriate to try and use a legislative instrument for something that is within the power of the organiser to address.

Many of the written respondents who did not support the continuation of road racing pointed to the loss of life, mainly around the TT, being unacceptable in a modern society.

Question 2

Do you think that there should be specific legislation to permit and control road racing with motorcycles, motorcars and other powered vehicles?

A significant majority, 84%, of respondents supported the need for specific legislation. Of respondents who supported road racing 90% supported the need for specific legislation. Interestingly, 60% of those who were against road racing also supported the need for specific legislation perhaps recognising that if racing did continue that it needs specific legislation.

There was some concern expressed that the legislation should not impose additional cost on to the organiser. This theme was developed by more respondents in the general comments and is discussed later in this report.

Question 3

Is it appropriate for Marshals to have these powers?

The legislation seeks to clarify and contain the power of a marshal. In the response to the consultation there appeared to be some misunderstanding. Under the current legislation marshals are given the powers of a constable and these are more wide ranging than those proposed in the Bill. For example marshals can already detain someone committing an offence. The new legislation takes away the general powers now enjoyed by marshals and replaces them with specific powers around the marshalling of the event. The power to detain has been added to allow marshals to stop a person who is intent on continuing to interfere with the race from doing so and to allow a person who has committed an offence to be detained until a police officer is able to attend.

It is worth noting that just because the Bill allows for powers to be given to the marshals, it does not mean that the organiser has to empower its marshals to use all of those powers; for example, some events do not allow marshals to physically move people or restrain them, others only allow it in exceptional circumstances. It is and it will remain a matter for the organisers to consider its guidance on such matters and ensure that marshals are trained and competent. The DOI believes that if there is imminent and real danger then a marshal needs to be able to act quickly and lawfully to protect life. Equally, on circuits where the route cannot be changed then marshals need to be able to ensure that the event can continue without excessive disruption. These are matters where the DOI would look to the organisers to make appropriate provisions.

Concern was raised by one respondent that marshals' powers did not extend to cover off track activities that could endanger competitors or spectators, for example smoke from a barbecue blowing across a closed road. The Department considers that this is a good point and intends to make appropriate provision in the Bill before it goes to the Branch of Tynwald for consideration.

Although only 67% of respondents overall supported giving these powers to marshals, 80% of those who were in favour of road racing supported the powers. Of those who do not support road racing only 19% were in favour of giving the proposed powers to the marshals.

Question 4

Has the Department struck the right balance on this issue? (Prohibited Areas)

Encouragingly, 70% of respondents felt that the Department had struck the right balance on this difficult and controversial area. Of those who were in favour of road racing 79% suggested that

the right balance had been struck; whereas, of those who were against road racing only 35% thought that the DOI had the balance right.

The DOI appreciates that this is a complex issue where views can polarise. Given the range of comments given in writing there is unlikely to be a perfect answer but most people think that the Department has got the balance right. Some respondents have noted that the organiser still needs to insure against damage or injury on this land or property. The DOI's understanding is that racing insurances and the law will still cover racing incidents on such land but that a court and insurance company may take into account the warnings given to the land owner/occupier when considering compensation. In respect of damage to property the organiser's liabilities will remain. In the case of injury or death on the land considered unsafe an insurance company and the court may reduce the level of compensation where clear warnings were given.

Question 5

Should Racing be allowed on a Sunday?

This question divided opinion more than others in the consultation exercise. 60% of all respondents supported Sunday racing. Amongst the supporters of road racing this increased to 74% in favour, but of those against road racing this dropped to 15%.

The Bishop of Soder and Man noted that if racing could be restricted until after 1 pm then this might be a good compromise position for church congregations. The 1 pm restriction is proposed on the whole of the Mountain and Billown circuits not for the whole of the Isle of Man. i.e. the Ramsey Sprint or a hill climb up the Sloc could continue on a Sunday morning because the impact on congregations and people out enjoying the morning would be relatively small from these events. At a meeting with the Southern 100 Club during the consultation period, it was suggested that the Billown Circuit should not be restricted to 1 pm because of its historically good relationship with the Malew Church, which is the only church actually on that Circuit. The DOI have considered this point but feel that because a large number of people are inconvenienced when the circuit is closed it will seek to retain the 1 pm restriction.

Several of the written respondents were concerned that Sunday was not an appropriate time for racing and that it was a day of rest for the community to go about its normal life. Many of these comments appeared to be specifically aimed at the TT and MGP rather than at other events.

The Isle of Man Chamber of Commerce and Ramsey Town Commissioners are concerned that the impact of Sunday racing on businesses had not been properly considered. The Chamber stated that businesses report a drop of 25% in business during race periods. The DOI accepts that the impact on business was not adequately covered in the impact assessment and the assessment will be updated before being submitted to the Council of Ministers and the legislative Branches. The DOI, however, does not accept that this invalidates the consultation. The comments appear to have been focused on the business impact from Sunday afternoon racing on the mountain course during MGP and the TT.

Marown, Patrick, Ballaugh and Jurby Parish Commissioners were all supportive of allowing Sunday racing. Michael, Andreas and Peel Commissioners are against racing on a Sunday because it would have a negative and unreasonable impact on local businesses and the residents of their communities. The point was made that events planned to take place on the Sunday are at risk of being disrupted by racing on a Sunday.

It was suggested by Peel Commissioners that restricting people's movements on the Highway further may be a breach of their Human Rights. The DOI has taken legal advice and does not accept that this suggestion has merit.

Concern was also raised in relation to the impact of racing on many consecutive days which could now spread into Sunday. In relation to the TT, this is seen by some as an imposition too far and takes away the only non-racing day throughout the period. In general, long events such as the TT and Festival of Motorcycling are not organised to race every day, but weather conditions sometimes make it unavoidable. Rallies take place on up to 3 consecutive days normally, but they change locations throughout the event and so have less impact overall.

The DOI feels that a relatively small number of businesses, accessible only from the Mountain Course, would experience a significant negative impact; other businesses may be impacted, but to a lesser extent. In respect of the Mountain Course, the additional impact will be from a couple of additional Sunday afternoons in the course of a year. The negative impact may be offset by the positive impact of events as a whole and in some cases business will only be displaced to a different day and not lost, although it is accepted that this will not always be the case. It is also noted that many businesses do not normally open on a Sunday therefore the displacement of racing from another day on to a Sunday may improve trading.

The DOI takes the view that the proposed legislation will make racing on a Sunday possible; it does not make it a right or a foregone decision. Whilst the DOI understands and appreciates the concerns in respect of major events such as the TT, some small events may be welcomed by the community on a Sunday. Ultimately, the Minister for the Department of Infrastructure will be able to stop any event taking place on a Sunday if he or she does not think it appropriate.

Question 6

Should the court be allowed to sentence somebody to a custodial sentence for an offence under this legislation?

68% of respondents agreed that the court should be allowed to impose a custodial sentence. Several respondents noted that this was a significant escalation in powers for the court. The DOI accepts that it is a significant increase in powers, but that it would be for the judiciary to determine the sentence or fine depending on the circumstances. Giving the court the powers does not mean that all that are found guilty of an offence will be sent to gaol.

It has been suggested that the legislation creates absolute offences. This is not the case because there are defences (of lawful authority and reasonable excuse) that can be used, which are contained in the legislation.

Some, including the police, have noted a change in some spectators and have suggested that there is an increased prevalence of inappropriate behaviour. Given that the foolish actions of a single spectator could result in death or serious injury to many people, the DOI remains of the view that this is an appropriate clause. In the event that serious injury or death is caused by the inappropriate actions of an individual then offences under other legislation with far greater punishments may be appropriate. The penalties outlined in the proposed legislation are designed to deter people and allow action to be taken to stop a more serious incident taking place.

Other Issues

Access Corridors on the Mountain Course

Access corridors are created on stretches of closed road, which remain under the control of the race organiser even though the public are allowed to travel down them. Access on to the road is at the discretion of the Clerk of the Course. It is a matter for the organiser to determine to what extent it can open access corridors and maintain safety and control of events. The DOI believes that it is important not to blur the distinction between closed roads and roads open. When the roads are closed the organiser is responsible even when it allows access corridors to be opened, for example between 5 pm and 6 pm in the case of the TT. When the racing is finished and roads formally opened, responsibility reverts to the DOI and it becomes the responsibility of the police to enforce ordinary road traffic laws, subject to anything in the legal instruments governing the racing.

Photographic Identification

Photographic Identification was supported by some people who felt it appropriate for the public to know who they were speaking to. Equally, representations have been made about the practicality for events to manage photographic identification. Indeed, some respondents including the Southern 100 Club feel that the carrying of photographic identification such as a driving licence is impractical and they would seek to reduce this to presentation of identification when the marshal signs on. It was also suggested that photographic identification issued by motorsports governing bodies, the MSA and ACU, should also be sufficient.

The issue of proportionality was raised in respect of presenting and showing photographic identification. A respondent noted that he was not aware of any incidents or concerns in relation to the identification of marshals in the last 50 years.

The DOI feels that given the considerable powers that this legislation gives to marshals, it is not unreasonable for the marshal to carry photographic identification. However, the DOI is aware that both the MSA and the ACU are introducing photographic identification and accept that this would be a valid form of identification.

Other Roles within the Organiser

Reference to important positions within the legislation was raised, for example the Chief Marshal. The DOI has taken the view that how an organisation chooses to manage its event is a matter for it in compliance with guidance and rules from its governing body, emergency services and the DOI. The legislation makes clear that it is the organiser's duty to operate a safe event and that the overall decision maker for the organiser is the Clerk of the Course. How the organiser chooses to discharge those duties through the organisation is a matter for it. Reference to other roles within the legislation risks forcing practices on to the organiser that may not be appropriate and which can become out of step with good practice from governing bodies and in safety more generally.

Recharging of Costs

The organiser having to potentially pay the costs incurred by the DOI and the Isle of Man Constabulary produced comment from various parties including the Department of Home Affairs (DHA), which noted that other Divisions within the Department, for example Fire and Rescue Services and the Communications Division, also incur costs in relation to road racing events. The DHA suggested that the provision should be widened to include all divisions of the DHA.

Many of the event organisers indicated alarm that this provision will lead to events ceasing to be viable as costs of administration, auditing, policing... etc. are progressively transferred to events. They warn that this measure could lead to a swift decline in the number of events being held on the Isle of Man and that this would result in a loss of enjoyment for locals and a significant reduction of income to the Island from visitors and competitors.

The DOI recognises that in addition to the police and the DOI, others may also have additional costs resulting from motorsport events (for example the Department of Health and Social Care) and that these costs may be substantial. It is Government policy to support road racing on the Isle of Man and many of the events that would be affected by the imposition of charging have taken place for many years. An argument could be made, therefore, that Departments' budgets already have funding to support these events.

The DOI has reflected on the implications of this clause, and the possible future expansion of its provisions to allow other Departments to reclaim cost, and decided that its inclusion is not desirable. Therefore, the DOI will remove this legislative provision prior to the Bill's introduction into the Tynwald Branches.

Marshals issuing a warning

There is no requirement for a marshal to warn a person under Clause 9(a) and (b), unlike Clause 10(3). The Department will adjust the drafting so as to require warning to be given where practicable.

Reasonable Force

Several respondents have raised concern about the application of the term reasonable force and the fact that it is undefined. This term is deliberately not defined, but is well understood in legal circles. Reasonable force is defined by the context and circumstances that prevail at that moment. What is reasonable in the face of imminent danger may be different to reasonable at other times. For example it may be reasonable to assertively push or move somebody who is about to be hit by a motorbike or car but not reasonable when racing has not started. Ultimately, it is for the court to decide what is reasonable in the prevailing circumstances. Given the level of concern that this matter has raised the DOI may develop guidance notes in consultation with organisers. Interestingly, marshals already have these powers and must already act reasonably in discharging their duties.

A Marshal's Role

The consultation did reinforce a matter of concern for the DOI. It is clear that some marshals feel that they are only there to marshal the race, but this is not the case. The organiser is responsible for managing a safe event as a whole and must ensure that provision is made to marshal the spectator elements associated with the event, as well as the race and the closed roads. This may

mean that different marshals are given different responsibilities and authorisations by the organiser in relation to the event.

Rail Crossings

For the avoidance of doubt, the new legislation will prohibit the crossing of trains and trams when a road is closed.

Positioning of Barriers

It was suggested that more thought needed to be given to the positioning of barriers and signs when racing is not taking place as this may cause some danger. It was also noted that signage was often not removed promptly after the event. The DOI does not reject these comments but believes that legislating against these matters is disproportionate.

Makeshift Platforms

A question was asked about the status of makeshift platforms. This Bill does not seek to control these platforms, which are often used for viewing or filming the race. They are, however, subject to other health and safety legislation and the Mechanical Contrivances Regulation Act 1923.

Part 4 – Conclusion

The Department is pleased with the quantity, quality and range of responses to this consultation. The feedback from the general public, local authorities, businesses and marshals, together with constructive meetings with events organisers has been invaluable. As a result of this consultation some of the Bill's provisions have been redrafted substantially. The DOI believes that the amended legislation being introduced into the Branches of Tynwald will be better as a result of this consultation.

The DOI thanks all of the organisations and individuals who have taken the time to become engaged in this process.