

**REPORT OF PROCEEDINGS OF  
LEGISLATIVE COUNCIL**

**Douglas, Tuesday, 30th June 1998  
at 10.30 a.m.**

Present:

The President (the Hon Sir Charles Kerruish OBE LLD (hc) CP), the Lord Bishop (the Rt Rev Noël Debroy Jones), the Attorney-General (Mr W J H Corlett), Hon C M Christian, Messrs E A Crowe, D F K Delaney E G Lowey, Hon E J Mann, Messrs J N Radcliffe and G H Waft, with Mr T A Bawden, Clerk of the Council.

*The Lord Bishop took the prayers.*

**Apologies For Absence**

**The President:** Hon. members, we have apologies from the hon. Mr Kniveton who is making a splendid recovery from a recent illness, and this morning it is a delight of course to welcome Mr Delaney back to the fold.

**Mr Delaney:** I have missed you! *(Laughter)*

**The President:** Perhaps we could say the same, sir, and express our pleasure that you are once again in your accustomed place.

**Public Order Bill - Third Reading Approved**

**The President:** Now turning to our agenda for this morning, hon. members, we have the third reading of the Public Order Bill and I call upon the hon. Mr Waft.

**Mr Waft:** Thank you, Mr President. This legislation concerns certain situations which can result in violence and which cannot at the moment be brought to a halt before the inevitable takes place. It is not just the threat of actual violence which the Bill addresses, it also of course addresses the circumstances when a person or persons have an antisocial and abusive attitude towards other members of the public who are going about their legitimate business in a peaceful and law-abiding manner. Why should the hooligan element of our society be allowed to intimidate and deny the peace and tranquillity of our people?

This legislation will prove to extinguish many situations which may lead to violence. I am also quite satisfied that this legislation will be warmly welcomed by the constabulary and members of the public and will go quite some way to stemming the growing social disease.

The minister and the Department of Home Affairs strongly support the Bill and I would urge hon. members to do likewise.

Mr President, I beg to move this Bill be read a third time.

**Dr Mann:** I beg to second.

**Mr Crowe:** Mr President, I would just like to say I support the Bill, as it will give the police and the judiciary further powers to protect law-abiding citizens from the perpetrators of crimes of the type that are included in legislation on the Island for the first time. Thank you.

**The President:** Does any other hon. member wish to speak to the third reading? Then reply, sir.

**Mr Waft:** Thank you, Mr President. I have nothing further to add. I think it has been gone into in fair detail.

**The President:** Hon. members, I will now put the resolution that the Public Order Bill be read a third time and do pass. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

### **Street Traders (Amendment) Bill - Consideration Of Clauses Concluded - Third Reading Approved**

**The President:** Now, we turn next to the Street Traders (Amendment) Bill and hon. members will recall that when we last sat here we were considering the first clause. During the consideration of that clause I think that the learned Attorney-General expressed some concern about drafting and also, I think, undertook to produce for us a document portraying how the new measure would relate to the old one and I think, Mr Attorney, if you would now perhaps present your findings to us, that would help us in our consideration of this clause.

**The Attorney-General:** Thank you very much, Mr President. I have, since the last sitting, circulated to hon. members the text of the Pedlars and Street Traders Act 1906 showing the proposed amendments, that is, those proposed by this Bill and emphasised in italics. I hope that that now gives a clearer exposition of the Act as proposed to be amended, and as I mentioned at the previous sitting, it would, I think, have been helpful to members if that had been available to them when the matter was last considered.

I think the hon. member Mrs Christian had a number of points. I have been able to discuss these with her briefly before this morning's session and I believe I am right in saying that Mrs Christian is broadly content with the amendments, but if there are any other points on the drafting of the Bill which she or other members would like to raise I will do my very best to assist.

**Mrs Christian:** Mr President, I would like to thank the Attorney for producing this integrated volume, which was very helpful in terms of getting a better understanding of how the original legislation would be amended.

The Attorney-General is right in saying that most of the points which I have raised have been addressed, specifically I think my main concern in relation to clause 29 has been removed because clause 29 does not exist in this particular Bill. The version which I had obtained from the library did contain clause 29 and no reference to the fact that it had recently been repealed. Now in the light of the knowledge that it has been repealed by the Police Powers and Procedures Act 1998, clearly my concerns about that clause have disappeared.

The other points that I did raise with regard to drafting - I am assured by the learned Attorney in part III that the preliminary comment is in effect a margin comment and can be amended by the draftsman without being formally amended through the legislative procedure, and I am content to accept his advice on that.

Another minor point which I do not believe it is significant enough to hold up the Bill for is in clause 30 where there is a reference to 'streets or thoroughfares' and there I feel that the reference to 'thoroughfares' is superfluous because a 'thoroughfare' is included in the

definition of a 'street.' However, that has been in the original legislation for many, many years and presumably does not cause any confusion, it just perhaps is rather untidy in the duplication of the wording, so I would not wish to raise issue on that point.

I am therefore satisfied that in terms of the actual wording of the Bill I am content with what is in the clauses.

I think my comments with regard to the specific intent were largely made last week. If we may be allowed to discuss that again now I would just raise one or two points again if I may in that the provisions of the new Act, when we have agreed it, will impose a licensing procedure which has a right of appeal to the Department of Trade and Industry and a certain timescale is set out. I would be a little concerned about the practicalities of a 14-day period between notification by the local authority to the claimant and then the claimant applying to the department for a review. However, I do understand that most of these applications may well be for short term periods and everyone will be anxious to process them quickly.

In the amended version of 24, the second part, the department will set out, by order, procedures under which they will hear those reviews. Now, one of the concerns I did express before was there are no criteria set anywhere by which a decision will be made about the issue of a licence, except in clause 30 there is a provision that byelaws may be made from time to time for regulating the conduct of street traders and the conditions under which licences may be issued. My query is, will the department have to have cognisance of those byelaws in determining its review and in the absence of such byelaws may they exercise different criteria in their determination than the criteria which were exercised by the local authority? There is nothing to say what procedurally may or may not be done.

There are time limits under which orders may be made, but I accept that these orders have to have approval by Tynwald, but they are orders in this particular section which will not have a timescale, but which will be procedural, so I can accept that. I think, Mr President, that that is my major concern.

The other one is that it would be possible, it seems to me, for local authorities in parishes to control farm-gate sales by this mechanism if they chose to do so. However, I think that it is probably unlikely, but I do believe that it could be interpreted in that way.

**The President:** Now, we have perhaps an approach from the mover here as to the situation as you see at this moment. I think it would be desirable if you would represent the clause to us. You have presented the clause; I appreciate that. We have looked at the clause. We have an Attorney's reaction. Would you care at this stage to make any comment, sir?

**Dr Mann:** Yes, Mr President. I think during the last sitting there was considerable confusion as a result of our inability to relate this Bill to the original Bill which of course it is amending, and I thank the Attorney for the very rapid response in producing this paper which sets out the original legislation plus the proposed amendments, and when one sees them sitting side by side they of course sit correctly and comfortably and regarding the points that have been made, as the hon. Mrs Christian has already said, some of the worries automatically disappear, one of which was of course a clause that did not exist. So from the point of view of the legislation now I think it is very much clearer and obviously the two sit quite correctly together.

I have myself asked around the members of the other place to see how they saw these sitting together and obviously the response almost a hundred per cent was that as far as the amendment and the original Act went there was no problem. I think the main problem is how this legislation is to be used and I think behind everybody's anxieties that have been expressed have been the anxieties of how this is going to be used, and once again I have to take issue - I know I have taken issue before with the hon. Mrs Christian - because this does not necessarily impose a licensing system. It only creates a licensing system if the local authority decides so to do and if they decide so to do, that is, to indicate publicly that certain areas will be in the future subject to licensing, then all the safeguards automatically come into place and the safeguards could not be more comprehensive, I would suggest, and some, particularly rural, local authorities would have the greatest difficulty, I would have thought, to actually impose this by public presentation and appeal and so on, even if they wished and I would have thought most rural areas who have no problems and would have no wish to bring it into effect anyway.

As far as the byelaws are concerned, of course the byelaws are very much the responsibility of the local authorities, although byelaws of course are subject to review in Tynwald and certainly the questions of appeals and so on, the actual details of how that will take place are very rarely in the modern type of legislation, they are always by regulation or by public display.

I do not see all the bogeymen, as you might say, of this legislation: the safeguards are so comprehensive. So I would suggest that we have very carefully gone through almost every possibility of things going wrong as a result of this legislation. They have all been looked at carefully and I think there is a valid answer to all of them.

I would propose that after all this extensive discussion, Mr President, I would now like to move that clause 1 in fact become part of the Bill.

**The President:** Ah, just a moment, sir, no. I would not accept that. I do not think Council as a whole has the opportunity of reacting. The hon. member Mrs Christian has reacted I do not know whether any other members would wish to speak.

**Dr Mann:** I would willingly take your guidance.

**The President:** Yes. The situation is really this. We were considering the clause 1. We ran into difficulties in respect of clause 1. We have taken a detour and we are back to clause 1 now and the question before Council is whether or not clause 1 do stand part of the Bill. I am prepared to permit any debate on that resolution in the light, obviously, of what has been said here this morning by the learned Attorney General which has helped to clarify the situation. The hon. Mr Lowey.

**Mr Lowey:** Mr President, first of all I want to reassure the mover of the Bill that I will be supporting the Bill because I think it is at least an attempt to try and resolve a problem which we have got, and as I have said before, I think the problem has already changed. We are seeing first of all these people come in and cream off, at TT time and other peak times in the season, moneys from legitimate traders in the Island who have got certain responsibilities. We saw when we licensed them first that they then formed companies and they got round it that way and we even see this summer where they have started to actually put up scaffolding on the steps of hotels on the promenade, so there is already an attempt to get round even these

proposals, and I accept that. These are genuine attempts to resolve a problem and I hope they work. I genuinely hope they work.

I must say, though, that when the mover of the Bill tries to assuage Mrs Christian about how many safeguards there are, he is actually weakening his case. Either this Bill is going to be effective or it is not, and all these safeguards are actually in effect let-outs for these people to operate. They can apply, they appeal and they can appeal and meanwhile they can carry on trading. I hope not. But I do genuinely accept that this is an effort to attack a very complex problem that is virtually changing before our eyes and therefore I can accept that it goes some of the way.

I do endorse exactly what the mover said with the Attorney's paper, putting it with the 1906 Act. I think that is excellent and at least it does make a bit of sense now, from the complicated hieroglyphics of the first published Bill, to actually seeing it lying in bed with its original Bill. It does make sense, it is easier to comprehend, so that must be good.

I will give it a third reading but I do think that if we heighten it too much by saying there are so many safeguards all we do is encourage those people who want to get round the law to get round the law, and they are already doing it, I have to say, so we will have to be pretty smart on our feet to be ahead of them in this particular game.

**The President:** The hon. Mr Radcliffe.

**Mr Radcliffe:** Mr President, thank you very much. I support the Bill, which is addressing a real problem, but it is a problem which exists really in only one area or one area of the Island, it is not Island-wide, the problems which we all know about, and I make no apologies for once again raising the question of these street markets where stall holders sell various goods. We see and acknowledge that charity stalls are exempt, that is fair enough, but I can think of one market where there is rarely a charity stall. Other stall holders sell clothing, bric-à-brac, plants, other produce and so on and they are trading for themselves, not for charity and I do wonder will these various stall holders of the various classes involved - it is an enterprise for them, it is not just a hobby - be required to seek an appropriate licence from their local authority? Perhaps this is one for the learned Attorney-General to answer rather than the mover perhaps. Will they be required, each one of them, to seek a licence? At the moment, as I understand it, a person sets the stalls up and the people who trade then deal directly with that one person who is a sort of an agent, and I think that situation exists over two if not three of the market-type things which are held on the Island during the summer months.

The hon. mover says that local authorities will rarely exert pressure on people to seek the licence and any difficulties there may be. Local authorities, although they may be loath as an authority to do it, are under pressure by shopkeepers particularly in the area and I know that despite the fine words which are said in this chamber on occasion when we are debating a thing, when it comes to the law and in actual fact it is a different situation which exists. It is all very well us chatting round it here, but when it comes to the crunch at the end of it, despite the assurances which I have heard on occasion from movers of Bills, it does not altogether work out as the mover has stated and has satisfied members with his statement.

So I do have the worry that some of these street markets, if not all of them, may well disappear, and they are quite a feature of the Island during the summer months, and I would hate to be a party to that. As I said at the start, I acknowledge the problem in one area of the

Island, but I do not think that exists Island-wide and it is a big hammer to crunch a small nut, shall I say, I think, still.

**Mr Delaney:** My colleague is quite correct on that the market situation, as I see it, and the law on the market situation is very, very difficult, having seen this and attempted on a number of occasions to try to prove it myself, and whatever law we pass we try to fill as many loopholes as possible. That is our job, to make sure that, in another place, actually anything they have missed we try to patch in, but the law otherwise would not have 56 lawyers in the Isle of Man and their job, the lawyers, is to try and find how legally they can get round the law and I am sure, like most law that goes through here, there is some way that legally they can get round it.

I believe that the problem does lie in Douglas and other places. I have lived with it for many, many years and tried to tackle it every certain periods of the year, and my hon. colleague Mr Lowey knows this, and at the end of the day we have to do something. This will not cover everything we are doing but it will help to fill in some of the hole, and that is why it is worth supporting, and I can assure my hon. colleague that although it affects one or two places, surely it is our job to try and stop the problem there, and the other areas which have not got a problem do not have to impose this law, and that is what is good about this particular legislation. It can only be done by the local authority, and it is about time we gave local authorities more and more change to look after their patch, and that is why this is worth supporting.

**Mr Waft:** Mr President, I would just clarify the situation with regard to the time lapse between the application for the licence being refused and perhaps the appeal taking place. I take it that the street trader is not allowed to operate during that time, because that time could include TT week and the moment is gone. I would just clarify that point.

The other point was the hon. mover was going to check the situation with regard to the enforcement officer's ability to address the situation under the change of use of land, and I think the hon. member was going to have a look at that for me. Thank you, Mr President.

**The President:** Are there any further points? The hon. Mr Crowe.

**Mr Crowe:** Mr President, I would just again say that I will support the Bill. This Bill will plug a gap in legislation and I believe there are enough safeguards in the Bill to cover any problems that might occur. The local authority must see that there is a problem before they bring in byelaws or bring in licences. The Department of Trade and Industry has the sanction to approve or not approve. There is an appeal procedure in there as well and Tynwald has the ultimate sanction, so I think there are throughout the Bill the checks and balances that will allow it to be interpreted in a fair and responsible way.

**The President:** Reply, sir.

**Dr Mann:** Thank you, Mr President. First of all dealing with street markets, the hon. Mr Radcliffe did say we may need to get the Attorney's view, but there should be nothing in this amendment Bill which alters the present rights and regulation of street markets. Street markets are in a street and are subject to the original Act.

**Mr Radcliffe:** An open place rather than a street perhaps.

**Dr Mann:** If they have been part of the traditional scene a local authority would be in very great difficulty, I would have thought, locally to get support for altering their status, but as a street market the legal situation is not changed by this Bill at all.

As far as the 14 days' gap between an application and an appeal is concerned, of course it largely depends on how the local authority operates this licensing system. Presumably enough notice will be given of events and when they will come in, which would include enough time for their appeal procedures. A local authority is not going to announce on the eve of the TT that suddenly they have got to have a licence to the operation that they will announce their intention because their intention in any case will have been to Tynwald. So there will be plenty of notice to traders that this is required and there will be plenty of time to allow the appeal procedure to continue.

The planning - I have not got an absolute answer to the planning situation, but my understanding is that it is a temporary use and it is a temporary use that would not alter because the original question was whether it altered the allocation of land use within an agreed planning situation for each area, and I do not think, and it may need confirming by the Attorney, that any temporary change of use that is envisaged in this Bill would in fact alter the zoning of certain land for particular use.

I think that deals with most of the matters that have been raised. I thank the hon. members for raising what has been a very wide range of apprehension. I hope we have been able to reassure members on the way in which this Bill will operate and I beg to move that clause 1 stand part of the Bill.

**The President:** I will put the resolution, hon. members, that clause 1 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 2, sir.

**Dr Mann:** Clause 2 is the short title and also enables its commencement by appointed day order made by the Department of Trade and Industry. I beg to move that clause 2 stand part of the Bill.

**Mrs Christian:** I beg to second.

**The President:** I will put the resolution, hon. members, that clause 2 do stand part of the Bill. Will those in favour please say aye; against, no. the ayes have it. The ayes have it. Bill read a second time.

**Dr Mann:** Mr President, as I indicated at the last sitting and this is of course the last sitting before the recess, I would like to now propose that this Bill, which I think has been fairly exhaustively gone into should now be read a third time. I beg to move the Street Traders (Amendment) Bill 1998 be read a third time.

**Mr Delaney:** I second, Mr President.

**The President:** Does any hon. member wish to speak to the third reading? If not I will put the resolution, hon. members, that the Street Traders (Amendment) Bill be now read a third time and do pass. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

I think before we continue with our business I would like to express to the Attorney-General our sincere thanks (**Mr Delaney:** Hear, hear.) for his clarification of this measure.

Now, hon. members, that concludes our public business for this day. The Council will now sit in private.

*The Council sat in private.*