

REPORT OF PROCEEDINGS OF THE HOUSE OF KEYS (LEGISLATION AND OTHER MATTERS)

**Douglas, Tuesday, 26th November 2002
at 10.00 a.m.**

Present:

The Speaker (the Hon. J A Brown) (Castletown); Mr D M Anderson (Glenfaba); Hon. A R Bell and Mr L I Singer (Ramsey); Mr R E Quine OBE (Ayre); Mr J D Q Cannan (Michael); Mrs H Hannan (Peel); Hon. S C Rodan (Garff); Mr P Karran, Hon. R K Corkill and Mr A J Earnshaw (Onchan); Mr G M Quayle (Middle); Mr J R Houghton and Mr R W Henderson (Douglas North); Hon. D C Cretney and Mr A C Duggan (Douglas South); Hon. R P Braidwood and Mrs B J Cannell (Douglas East); Hon. A F Downie and Hon. J P Shimmin (Douglas West); Capt. A C Douglas (Malew and Santon); Hon. J Rimington, Mr Q B Gill and Hon. P M Crowe (Rushen); with Mr M Cornwell-Kelly, Secretary of the House.

The Chaplain took the prayers.

Items Considered

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Questions were taken at this point and concluded at 10.56 a.m. They are published separately.

A Bill to Make Provision for the Control of the Size of Hedges, Trees and Bushes – Leave to Introduce Granted

Item 3. Mr Rimington to move:

That leave be given to introduce a Bill to make provision for the control of the size of hedges, and of trees or bushes whose size or position detrimentally affects adjoining property, and for connected purposes.

The Speaker: We now go to item 3 on the order paper, leave to introduce, and I call on the hon. member for Rushen, Mr Rimington.

Mr Rimington: Thank you, Mr Speaker. High hedges and the problems with high hedges are here on the Isle of Man, as they are in every part of the United Kingdom and elsewhere. Although the problems are not endemic and we believe that, amongst the general population, most people are quite happy with their hedges and their neighbours' hedges, where a hedge has overgrown or been allowed to grow too high in proximity to a person's house or garden, then feelings can run exceptionally high. Therefore, this is a Bill to try and remedy that particular problem.

The legislation for high hedges is technically in the legislative program under DoLGE, for some years down the line and, given the volume of work that that particular unit has, it is considered low on their priorities. Therefore, I wish to try and bring the matter forward, in a more timely manner, and have spoken with the officers of DoLGE, who are content that that comes forward under my name, as a private member's Bill.

There is, and has been, some legislation in the United Kingdom on high hedges, and it was actually under way prior to the last general election in the UK. Unfortunately, the general election caused that Bill to die, and it now awaits parliamentary time. It is one of the many Bills which is in the whip's office of the major parties, waiting for a private member with sufficient interest to pick that Bill up, and I believe – and I understand from what I read in the national press – that it is high on the agenda in the UK and is likely to be picked up by a member – whoever – in the ballot for the time in the UK parliament in the near future. That work that was done in the UK has proved very useful for ourselves – that is, it provided an initial framework of legislation. There has been quite a lot of consultation and research on the issue in the UK, through what was then the Department of Environment, Transport and the Regions, and there is quite a bit of documentation available there. That gives

us, on the Isle of Man, a good starting point, at least, to address the issue.

There were two areas where I propose to have a difference with the UK legislation. One is that the word 'evergreen' in the definition of a hedge should not be used in the Isle of Man. Any hedge which is allowed to overgrow and become tall and dominant, whether evergreen or not, can be a problem, and in particular on the Isle of Man we have fuchsia hedges, which are very rapid growing and can be very vigorous and can become a problem. Secondly is to address the other area, where you may have a single tree or a shrub which, allowed to grow in an inappropriate position, in an appropriate place, in proximity to a neighbour's property, can become overpowering and dominant. So, if you live in a small suburban garden and you have a boundary on the south side and your neighbour has, or somebody has in the past, planted three sycamore trees along there, they do not necessarily form a hedge but, in time, those three sycamore trees can grow up and completely overpower and dominate your garden and destroy any amenity value that you might have. (**A Member:** Hear, hear.) So, there are issues there, and there are also issues where sometimes trees are planted in the passageways between suburban houses – you think, 'Oh, it would be nice to put something in there' – and then no-one looks after the said item and it grows and grows and grows and then becomes not so much a danger, but very oppressive to the neighbour's property.

Unfortunately, though, when we are dealing with such issues, we are getting into the realm of nuisance and determining what is nuisance, and that is difficult. There have been guidelines produced by the UK Building Research Establishment on hedge heights and light deprivation and various mathematical formulae applied for what is acceptable and what should be cut down and what length of hedge should be cut down et cetera, but even those guidelines, which I believe are being updated at this time, recognise that those guidelines alone are insufficient and cannot meet all circumstances where the problem may exist and that there will be many circumstances where you cannot use clear criteria to say, 'Ah, that hedge should be cut down to this height according to this mathematical formula' and you would be relying on a subjective determination by an appropriate party. But those guidelines, obviously, would be very useful, and that really becomes part of the solution to the problem which I have outlined in the memorandum that I have passed round and which, first of all, is to provide information so that people know what is and what is not acceptable, and really for garden centres, maybe, to take on a more responsible rôle. (**A Member:** Hear, hear.) When they actually are encouraging people to buy these particular plants, the leylandii plants, they should actually have an information leaflet that goes with it to outline what may happen if you do not look after them. Unfortunately, leylandii, when allowed to grow, become very quickly dominating. If they are grown as a hedge, they actually are a very wonderful

hedge, but there are so few of them around that are of that nature because it requires somebody to be cutting them many, many times a year. Those who do and who do know how to look after them do actually produce a very fine hedge with a very good surface, but in the majority of cases they are just allowed to get out of hand. So information must be a large part, and secondly mediation, in that, before any recourse to judicial process, you can try and encourage and make sure that grievances have been raised between the parties and that the defendant party is aware of what the law is and what should or should not be expected of them and try and arrive at a solution by mediation before recourse to the judicial process.

In terms of the judicial process, thoughts at this moment are still not finalised, and I do not wish to finalise them at this point but need to obviously discuss with appropriate bodies what that might be. I can tell you that I had a very useful discussion with the Chief Registrar the other day about what might be a possible avenue for processing this, but that is still at an early stage and I wish to talk with DoLGE officers and members prior to taking that and making it firmer. But there may well be a very useful method there, and finally, whoever provides that adjudication, there must be a right of appeal to that, and that would be, obviously, to the court.

Mr Speaker, I think that really covers the main elements of this. In terms of potential resources to the public purse at the end of the day by such a process, if we took the expected figures that the UK have and pro-rata them down, we might have 12 to 20 backlog cases to be dealt with, although, having raised the issue and spoken to different members, maybe that is an understatement of how many. But with information and with advice, with mediation, we would hope that not many would come into that judicial sphere. So, there would be a small resource requirement in terms of officer time and judgement time, and possibly there would be the right to charge a fee for the body which was being the primary administrative body, as is proposed in the UK legislation, but after that initial flush of cases, as it were, of historic problems and as information and advice becomes more prevalent, it would be hoped that the number of cases would actually slow down to a trickle, maybe one or two a year at the most. Thank you, Mr Speaker.

The Speaker: Hon. member for Rushen, Mr Gill.

Mr Gill: Thank you, Vainstyr Loayreyder. I beg to second and, in doing so, I would like to begin by congratulating my colleague for Rushen on his initiative and determination to progress this legislation and also to offer wholehearted support for this Bill, which I think addresses a problem which may be of a fairly limited nature but is nonetheless very real for people who suffer the difficulties that this Bill would seek to remedy. So, in doing that, I will wholeheartedly be supporting the Bill and have

pleasure in seconding. Thank you, Vainstyr Loayreyder.

The Speaker: Hon. member for Douglas North, Mr Houghton.

Mr Houghton: Thank you, Mr Speaker. I, too, rise to welcome this legislation when it comes and congratulate the hon. member for bringing forward. It was something that I was considering doing myself. Where the hon. member states that he would work in consultation with the Department of Local Government and Environment's officers, Environmental Health, our door, of course, is always open; we would be more than delighted to assist wherever possible with this. This matter is making certain people's lives a misery, simply by irresponsible and ignorant neighbours. We know, by planning law, that there is no right to a view. As you see a hedge or a tree growing high, you can see your view disappearing in front of you as the years go by. Can that be right, especially when it is done in an irresponsible manner? Loss of light has been mentioned, but also, in addition to that, there is dampness. (**Mrs Crowe:** Yes.) Loss of light causes dampness in a garden and also dampness to people's houses, and that must be addressed.

As I say, I can only congratulate the member for bringing this forward and welcome it, but also I congratulate him for bringing out a thoroughly interesting and comprehensive briefing note, sir. That is quite unusual for someone coming forward for leave to introduce. It is very interesting. It is quite obvious that the hon. member has gone to some depth in researching this matter before he has brought it to this hon. House, even though it is for leave to introduce, and I congratulate him for that, too, sir. Thank you.

The Speaker: Hon. member for Onchan, Mr Earnshaw.

Mr Earnshaw: Thank you, Mr Speaker. I think it is three cheers for Mr Rimington for putting forward the motion on today's order paper, and I think it will raise the hopes of people around the Island. I think there are possibly more than he anticipates. Perhaps they have not had any hope in the past, but I think it will raise the hopes of people around the Island whose property suffers detrimentally from large or poorly sited trees.

Although this will be tricky legislation to frame, I wish him well and I will be happy to support his efforts, so I am sorry if the following comments sound a little bit negative. With legislation of this type, the main problem, as I see it, is its subjective nature. Who decides what? Any action that is taken will be driven by complaints. Also, the motion as it appears on the order paper relates to adjoining properties, so I would like to hear Mr Rimington's views regarding trees which affect properties which are separated by a pathway or a lane or a road. I think that is important because I can think of quite a few instances where

pathways and roads separate the property from the problem.

Trees and bushes, Mr Speaker, which, due to their height or their position, have become unwelcome can, as the hon. member for North Douglas says, be a cause of great stress. They are often planted in a thoughtless way without consideration of the nuisance they can cause to neighbours, and in many cases they do not need to be particularly tall to be anti-social – that is the trees, not the neighbours. *(Laughter)* Many have, of course, understandably been grown to protect privacy as a response to a property being overlooked by the windows of neighbours, and this factor also needs to be taken into account.

Finally – a hobby-horse of mine – we come to the thorny – if you will pardon the pun – subject of enforcement. If we go down this road, is anybody going to actually enforce the law or will it be in just the same category as litter, dog licences, dog fouling, **(Mr Houghton: Hear, hear.)** car tax discs and the other myriad of laws we have which go unenforced due to the authorities being too busy or not sufficiently bothered to do anything about them? This, I believe, is a major consideration, because we already have laws regarding hedges and trees which overgrow footpaths, as I am sure members are well aware. At the moment, these are usually the responsibility of the DoT. I am not having a go at the DoT on this occasion, but very little action, in my experience – I have spent a lot of time as a commissioner – is seen in this area. So, as I said in my opening remarks, Mr Speaker, I am sorry if I sound negative, I do not wish to be so and I shall be supportive of Mr Rimington's Bill and wish him well with its introduction.

The Speaker: Hon. member for Douglas West, Mr Downie.

Mr Downie: Thank you, Mr Speaker. I just want to indicate to the hon. member my support for his leave to introduce. This legislation, I think, is overdue. There have been a lot of problems in the past where people have been denied their right to light but, as previous speakers have said, not to a view – it is only a right to light they are entitled to under Manx law.

Basically, I just want to flag up a few points that give me cause for concern, and I am glad to hear that he said that the Bill was not yet finalised. I had a meeting some years ago with a very senior officer in government who made a case to me that he classed all trees as a nuisance; he was quite clear about that. In the case of single trees or shrubs which are inappropriately planted or maintained, does this mean inappropriately planted 50 years ago? Have we not provided a proper breathing space around that tree so that, if development is going to take place, we can keep the trees as specimens and features in our countryside? I am sure that an awful lot of developers out there would love to go to a brand new, flat, green field with no trees; are they going to be able to make a case? Regarding single specimen trees, there have been

many prospective developers anxious to achieve full development potential, and I would not like to see this used as an excuse to get rid of mature trees. Our policy, in the past, has not provided a proper level of protection for certain trees which, unfortunately, are not really protected by statute. This has been obvious in a number of contentious issues on the Island.

I think, by and large, that the paper that the hon. member set out has been useful. There are a number of areas, I know, which I have had correspondence with constituents about, particularly on hedges, but I think that when we do start to look at the tree issue, we have got to be very, very careful that we are not leaving ourselves open for somebody to come along to a department with expert advice that they provide and which will mean the loss of those particular trees or single trees when it is to a developer's advantage. So I would urge the hon. member to try and give this area some attention. I do not think that he will have a problem with the rest of it, and I wish him well with his ventures in the new year.

The Speaker: Hon. member for Douglas North, Mr Henderson.

Mr Henderson: Thank you, Mr Speaker. I would just like to add my support to the hon. member for Rushen, Mr Rimington's leave to introduce and would just add, as many other hon. members have already put into the debate, that this has been an ongoing nuisance and really an almost intractable situation to try and resolve over the years. Having come across it myself on several occasions and really trying to end up as the mediator between the two in one particular instance, I hasten to say that it did not really work. This is obviously what we do need, and congratulations to him for taking the enthusiasm and interest in picking this one up.

I would just offer one word of caution, though. The hon. member is focusing on fuchsia hedges. I am sure you will not, but please be careful that you do not focus too much on, say, the fuchsia hedges that line our roads in some particularly attractive places and that are actually adding to the amenity. I know that they can grow pretty quickly and the gardens can become overgrown with them, but there are various areas round the Island where they do actually enhance the amenity of the area and in fact, they appear on the Island's stamps, so we need to have a little word of caution on that one.

The Speaker: Hon. member for Ayre, Mr Quine.

Mr Quine: Thank you, sir. I am pleased to support the principle that is embodied in this Bill, though I must say that the hon. member for Rushen, Mr Rimington, has this unique ability to cultivate support by classifying the likes of myself as a 'disinterested gardener'. *(Laughter)*

Mr Houghton: How did he know that?

Mr Quine: I can assure him that my wife is an enthusiastic gardener. But there are three points that I think that I feel should be made, and they have been touched on in part. If we are going beyond the normal 'evergreen' classification and if we are going to go beyond what might be boundaries between properties, then I think we may run into difficulties because, certainly out in the country, there are houses situated very close to roads, and immediately in front of them run very narrow roads, so they would only be a short distance away. Along those hedges, you have got trees, other than evergreen trees, which are substantially over three inches in diameter, and I can see that unless this is recognised and the legislation built around this, we are going to have some problems. We are going to have trees being felled along the hedgerows, out in the country, simply because somebody living opposite takes exception, perhaps with due cause, to the fact that a tree is going to throw shadow over their particular house. So I think that is a problem which needs to be confronted in this legislation because I presume that somehow it has got to interface with the legislation which is already in being for the protection of trees. Getting those things to interface is not going to be easy, but I have no doubt that the hon. member will take that on board.

The other problem which I am sure is going to be a difficulty, of course – I think most of us have come across this, having been drawn into disputes – is this matter of ownership. You have got trees which are grown over many years or in the process of growing, and it is going to be very difficult to establish whose tree it is, because it is going to be plumb in the centre of a dividing line between the properties or it will have grown to the point where it has gone over. This issue of ownership is also a matter that will need to be focused on in this legislation.

So, they are the two points I would ask the hon. member to pay particular attention to. One is: because we are going beyond this matter of the evergreens, how is this going to sit in relation to properties that abut directly onto narrow roads and then you have got quite promising trees and shrubs across the road which could become the subject of a complaint? And then, following on from that, how easy or how difficult is it going to be to establish ownership, not least out in the country, along these country lanes? It is going to be rather difficult, in certain circumstances, to establish ownership. I can think of two cases where I have been drawn into these and I have failed singularly to find out exactly which part of the tree was in whose property, so if we are going to spread our wings and go beyond the evergreen, then I think we have to address these problems. But I am very happy with the principle; I think it is certainly overdue. Thank you, sir.

The Speaker: Hon. member for Ramsey, Mr Singer.

Mr Singer: Thank you, Mr Speaker. I will certainly support leave to introduce this Bill, but could I ask the hon. member if he could paint for me, perhaps, a clearer picture at this stage? Will the legislation be retrospective? It is unusual for legislation to be retrospective, but if it is retrospective, it will be extremely expensive and many people would not be able to afford suddenly having to find the amount of money to cut down a very large hedge. To have that sort of thing suddenly pushed on them, thrust on them, by the Bill I think would be very difficult, and some people could not cope. There would also be a limited number of qualified persons able to undertake the work, and therefore this will also push up the costs, so perhaps Mr Rimington could define the retrospective position of this legislation and whether, when it is passed, it will mean that people whose trees are already above the height permitted will then be forced to cut them down at considerable expense to themselves, which they may well not be able to afford.

Mr Rimington has talked about the main culprit being hedges, but both hedges and mature trees which grow to a height not only cut out light but the roots could well undermine roads, pavements, neighbours' gardens and houses. Where do you limit actions or justify only certain actions that can be taken and not others within the legislation? I think it has always been considered an unacceptable position to remove a tree unnecessarily, but what powers will there be, firstly, to prevent a tree growing to a height which causes annoyance and damage? What action can be taken if it gets to that unacceptable height? Or to order the trimming of a mature tree – even a registered tree – which may be on private or public and government land, who will be taking that responsibility? You do get trees and hedges which grow and interfere, for example, with television signals; could these, therefore, within the Bill, be liable to be ordered to be pruned, at what would be a considerable cost for, say, a mature hundred-year-old tree, and how do you define where a tree is in an inappropriate position? I think that was a term that the hon. member used: 'a tree in an inappropriate position'. Shall we say that you might understand better 'a blot on the landscape', perhaps? *(Laughter)* So, it does seem to me that 'high hedge' definition cannot be separated from 'high trees' which will cause just as much disturbance. Perhaps the hon. member would like to enlarge a little on those matters that I have raised, but I certainly will be supporting the leave to introduce.

The Speaker: Hon. member for Rushen, Mrs Crowe.

Mrs Crowe: Thank you, Mr Speaker. I, too, congratulate my hon. colleague and ask him not to be too dissuaded by the disenchanting gardener from Ayre; I am sure he will be able to find some solution to the problems that were pointed out. However, I do believe, like the hon. member for Onchan, that there will be a great deal more than 20 cases around the Isle of Man

when we come to look at this, and there are some extreme cases. In my constituency, I have one lady whose little bungalow used to have a nice, sunny, little back garden, which is now totally overshadowed by a 40-foot-high hedge. Within feet of her lounge window, all she can see is greenery. There is no sunlight any more; indeed, there is no light any more. I think the hon. member for Douglas North mentioned the problem of damp; the whole of the back of this bungalow is now covered with a kind of mossy substance. It really has blighted this lady's life, so I do hope that we can find some solution to these problems. I think that if the proposed enforcement route, if that is to be the case, is arbitration, that will make progress, but I do believe that ultimately there will have to be a sanction in law.

A Member: Yes.

The Speaker: Hon. member for Garff, Mr Rodan.

Mr Rodan: Mr Speaker, I would like the mover of this to tell us what consideration he has given to using a system that we already have on the Isle of Man to control development, which, of course, is the planning system. We already have a planning process to determine where, how and whether development should take place and, as we well know, planning applications have to be made for most building and engineering operations and changes of use. These applications go through a well tried and tested system of decision-making, where other parties' views are actively sought and taken into account. The reason, Mr Speaker, of course, why we have a system of people having to get planning permission is in order to control development and prevent it when it is inappropriate, and also in order to strike a balance between the rights of people who understandably believe they should be allowed to do what they like with their own property and the rights of others who might be adversely affected – adjacent property owners or neighbours whose amenity might be affected. Most people abide by the rules that have been set out for many years because they are enshrined in law and have the benefit of statutory enforcement. If you want to build a wall or a fence, you have to seek planning permission if that wall or fence is above a certain height; if it is below that height – if it is a low fence – you may still need planning permission if it is within a certain distance of the public highway. There is no doubt at all that hedges, especially leylandii, grow as high as walls and buildings and fences, and therefore one could well make a case that they, too, should be subject to the planning controls and the system that we already have in place.

The hon. member has talked about mediation and adjudication as the being the means of dealing with disputes. My understanding is that this matter has been looked at for quite a long time in the UK, and the question of using the planning system has been considered in the UK. Could the hon. member tell us

why it was not progressed in the UK? I believe that there are fundamental differences in the planning system between the UK and the Isle of Man, such as to allow that, in the Isle of Man, our planning system could well be utilised towards the objective that the hon. member wishes to achieve. I think I would have some concern as to the workability of a system that relies on mediation and adjudication, as I think is being proposed in the UK, which heavily involve local authorities, which have more fundamental controls over planning matters than local authorities do in the Isle of Man.

Therefore, Mr Speaker, in conclusion, if the hon. member could tell us how he sees the planning system, or the potential for the Isle of Man planning system, operating, I myself believe that it has considerable potential for planting of hedges or the restriction in height in hedges being subject to statutory planning controls, a system that we are all very familiar with.

Mr Speaker: Hon. member for Douglas East, Mrs Cannell.

Mrs Cannell: Thank you, Mr Speaker. It is the first time the hon. member for Rushen has stood in this place to ask for leave to introduce a private member's Bill, and because it is his first time and because he is seeking to do it through a private member's Bill, I will support him in principle, but I do have very grave concerns regarding what he is intending, and therefore I think it is important that the records should state, from my point of view, that unless it is very, very cleverly and shrewdly worded, I will probably not support it at the principle stage when it comes for second reading, and I will explain why, Mr Speaker.

In the Isle of Man, we do not have height legislation *per se*. The previous speaker referred to planning, and I was thinking along the same lines as he. We have planning controls and planning permissions in place for all sorts of things, but the one thing even that does not cover is the height of buildings, and I would have thought it more appropriate . . . We do not have any skyline legislation – it does not exist – therefore when a building is built and it is perhaps half a storey or a whole storey too high, particularly if it is a prestigious office building, there is no pressure brought to bear to reduce the height of that particular building. It has never happened, and it is something that I looked into for some time.

I am surprised that the hon. member is not allowing the department that is looking into this, that is charged with this responsibility, that is the Department of Local Government and the Environment, to pursue it, and I wonder in fact, if they are not . . . Clearly, it is of a low priority, and the member is concerned to speed things on. I think we are all concerned, Mr Speaker, about certain important issues on the Isle of Man and want to see them move forward with more speed than they currently do. However, I am wondering if he can explain, when he does reply, why

his own Department of Agriculture, Forestry and Fisheries is not perhaps pursuing this as a government Bill, and whether or not, looking at his memorandum, in the first paragraph, he will, in fact, consult his own department, the members and officers, and the expertise there. He goes on to say in his memorandum that the problem is not widespread and that tells me that there is no particular demand, therefore, to rush ahead with a private member's Bill to try and establish this control in law.

Then he goes on to say that the main culprits are the leyland cypress hedges, but then what he is proposing is that singular trees or shrubs may be considered. The removal of the word 'evergreen' as part of the hedge definition concerns me because he could, in effect, open it right up to affect any type of species of tree, hedge, shrub et cetera. So, this is why I think it is going to be very difficult for him to word.

I would also take umbrage with his description 'disinterested gardener', although in a way I can understand it because, in one of his previous capacities, the hon. member was, as he described himself, a 'landscape gardener'. (*Interjection by Mr Rimington*) We, unfortunately, do not all have or are equipped with the skills of a landscape gardener, (*Interjection*) and I am the first to admit that, but I do not like the use of these sorts of descriptions; it is so blanket, in that a disinterested gardener . . . And it is just planted willy-nilly. A lot of people out there are very inexperienced gardeners; they try their hardest. You can not start to vilify people because it does not please the eye of an experienced landscape gardener.

Mrs Crowe: It is not a case of pleasing the eye, is it?

Mrs Cannell: The hon. member says he considers it logical to also include any shrub or tree which is planted inappropriately. Again, how would one define, in law, 'inappropriateness' in this respect? The hon. member for West Douglas before raised his concern in respect of: what if the tree has been there 30 or 40 years? What if, when it was there, there was no development around it, and subsequently there have been developments around it? The tree, obviously, is in the way of development in some people's minds, but I would put on record that if the tree is there first, the tree has got every right to stay where it is, and we have to be very careful. I have a lot of respect for trees, and I would have thought the hon. mover would do too.

I have a concern in respect of the fact that the hon. member's memorandum advises us that a Bill is progressing, but then he did say in his opening remarks, 'It is likely that someone will pick it up in the UK.' But it has not happened yet, and all too often, as an excuse for not progressing things that we would like to see progressed, as members of this place, by government, government will say, 'Well, hang on. It is proceeding in the United Kingdom' or 'It has just been approved in the United Kingdom. Let us stand back for a year or two and see how it works in the United

Kingdom before we progress with our legislation, and then if there are any areas – grey areas, anomalies, whatever – we can tweak our legislation so that it does not represent the faults and the problems that the United Kingdom has.' Again, I would say: why don't we wait? I am saying to hon. members: why don't we wait to see how it progresses in the United Kingdom and what problems it throws up?

I have a further concern in terms of cost, the cost of actually . . . The member has alluded to it; he says that 'minimal extra resources are foreseen', but he gives us no idea of who will have to raise those resources and who will look after this piece of legislation, enforce it and administer it. There was a term 'administrative body', but I have a question mark in terms of who that would be. Who is that likely to be? Is it likely to fall on his own department? Is it a local authority thing? If it is local authority, then I would suggest, in his opening paragraph, that not only should he consult with the Department of Local Government and the Environment and his own department and the members here present, but it should also include local authorities. Douglas's local authority does use, very often, legislation which is already law of the land, and it comes on a section 14 notice. A section 14 notice, under the Local Government Act, can be issued for a number of things; it can be issued on unsightly properties that are visible from the road, or it can be issued for unsightly gardens, hedges, trees and all of this, and it is regularly used in this area of the Island, Mr Speaker, fairly effectively, I would suggest. So, I would ask the hon. mover that it is imperative therefore, when he is pursuing this, that he does consult with all local authorities, parish commissioners et cetera, because he may well find that one or two or even three of the main local authorities, the bigger local authorities, are actually utilising very effectively existing law and that the others do not have the power to use it. Perhaps that is what we need to be looking at: extending that power for them to discharge that responsibility.

I have a concern in that, on the second page, the back page of the hon. member's memorandum, he is saying that 'offending hedges should be cut to a height specified by the BRE guidelines (minimum two metres)'. Again, it seems to me a sledgehammer to crack a nut. I do not think that, in any form of legislation, one could actually specify a minimum of whatever, because you do not know the height of the particular bush, the hedge or the tree and of course there is a problem because the trees are interrelated with the hedges and inter-grown. Two metres – okay, they are guidelines, but we have very little information. I appreciate the memorandum, but we have very little information, and so I believe the hon. member has much work and much consultation to undertake before I would be satisfied with the legislation.

'The appropriate authority could be empowered to undertake the work and recover costs.' Again, if one is going to pursue . . . If all else fails, and your mediation

fails, your reconciliation fails, then you have to resort to the judicial system. All of us know, Mr Speaker, that to get justice or to try and attempt to get justice, you have to take things to court, and it costs. Litigation costs; you have to engage legal opinion, legal expertise, and it costs, all because a neighbour will not cut their hedge by a foot or two. It seems to me ridiculous. The resources on the bottom paragraph: 'the Isle of Man could have between 12 and 20 backlog cases'. I, too, have a concern equal to that of the hon. member for Ramsey, in that most legislation is not retrospective. But I understand that there are problems. I have had complaints from my constituents also: 'I am not getting any more light in my garden'; 'I am getting damp patches in my garden; nothing will grow there'; or 'I now have bald patches in my lawn.' I suffer it – or did do – from a neighbour who was not particularly concerned, but to a degree that is life. Mediation between the neighbours, (**A Member:** Hear, hear.) counselling between the neighbours, is a wonderful thing, but how can you legislate for that? How can you possibly legislate for that? And then when it all fails . . . You see, with the problem I had, the legislation will come out and it may – I am only saying it 'may', because we have not seen the draft – have a blanket effect to deal with a specific problem, and I do not believe that one can identify and legislate for a specific problem without detriment to the rest of the scenario. I really do believe that if it did become law, it would not be a case of mopping up between 12 and 20 and then down to a low trickle; I would suggest, hon. members, that it would perpetuate a problem. If neighbours thought they had a right under law to complain about their neighbour's hedge never being trimmed or their bushes not being looked after, all they would have to do is pursue a complaint and things would happen, so I think, if anything, there would be a greater demand from people trying to dictate how others live.

And let us not forget there are all sorts of reasons why people have hedges: they have thick, high hedges for privacy (**A Member:** Hear, hear.); they have thick, high hedges to act as wind breaks in certain situations, particularly in coastal areas (*Interjection*); they grow them because they like them. People have choices. I think we have to be very, very careful because also, of course, as the hon. member for Ayre said, how does one identify who is responsible for the inappropriateness of the tree, the hedge or the shrub? Surely the hon. mover must be aware of self-seeding of trees and hedges and shrubs, which can travel for miles and begin to grow. If they then become an offending item for the neighbour next door and they did not plant it . . . I think it is full of problems, and I really do not know whether or not it is the right solution to actually put it in legislation, but I will be very interested to see what the hon. member comes back with.

The Speaker: Before I call on the next hon. member, could I just advise the hon. member for Douglas East that I do not think it is appropriate for

your back to be shown to the chair while you are contributing to any debates.

Mrs Cannell: My apologies, Mr Speaker.

The Speaker: Hon. member for Douglas South, Mr Duggan.

Mr Duggan: Thank you, Mr Speaker. I have got reservations over this legislation as well, sir. As Mrs Cannell has pointed out, people do have these hedges as a privacy, too. I remember one old lady in Pulrose who went out shopping one day. She used to have this little garden of hers, like her own little domain, and she went out shopping. She came back and the new neighbours had cut all the hedges down. There was one hell of a row over it, you know; that is a typical instance. I think, figuratively speaking, it is a hornet's nest. Is it really necessary? As Mr Rodan said, really, Mr Speaker, planning possibly could cover these aspects.

The Speaker: Hon. member for Onchan, Mr Karran.

Mr Karran: I will support the principle of leave to introduce for this piece of legislation. As far as I am concerned, my colleague knows my concerns about it not being the department's Bill. I think that the biggest problem we have with this piece of legislation is the fact that it is too diverse, but I will support the leave to introduce because one of the problems we have in this hon. House is the lack of debate on issues, and I would not be one of the ones that would want to be party to stopping the hon. member from doing so.

I think the problem with the piece of legislation is that it reflects our society, unfortunately, our intolerance within our society. Once people had a respect for themselves and their neighbours and their standing within the community to work together as best . . . This is really a trait that we have got with the loss of the Manxness of our society.

I do feel that the hon. mover needs to clarify about the Tree Preservation Act. I would not want to see this piece of legislation being used as a Trojan horse for a full scale attack on mature trees. I think that, with the input that there has been in this hon. House, there seems to be some question mark about mature trees; I am sure he will make sure that that will not be the case. I think that whilst it is well-meaning and whilst I will support leave to introduce to see, he is going to find that he is going to need somebody with the wisdom of Solomon when he gets to the insanity that many of us have seen over neighbouring disputes. You even have the lunacy of neighbours complaining about neighbours parking in front of their house and having no cars themselves and things like this. We have seen how crazy it has got. So, I do wish the hon. member well as far as that is concerned.

I do hope that he does draft the legislation so it is clear and concise, because what I do not want is a

situation of 'it is not what you know, it is who you know' and some people being able to get their offending neighbours' hedges dealt with and others not. It will be very good if we can manage to see that within the legislation. I will give the hon. member an example of one case that came to light where a constituent was complaining about the fact that her lawn was being affected by a hedge of mature trees. And it *is* affecting her lawn, but her lawn is at least quarter of a mile away from her house. As far as that issue is concerned, I would say that I would hope that we would not see the decimation of mature trees being in a hedge, and I am sure that the hon. member will clarify that it will not cover mature trees other than hedge material. I think we need to have that clarified at the present time. I do hope that the hon. mover will make sure that all of the costs of cutting the hedge should be on the complainant because, at the end of the day, I think that it is unreasonable that if I have got trees that I am happy with and you have got trees or a hedge of mine that you are unhappy with, I have to cut down the hedge because you are complaining about it. I just wonder whether we can have . . . I just think we need to know the sort of criteria.

Whilst this piece of legislation is terribly well-meaning and whilst, in some cases, it will be one way of trying to get sanity back into a situation between two neighbours who have both lost the plot over the issue, (*Laughter*) we do need to know a well thought-out and well-balanced piece of legislation on this subject. I think you will find that the reason why this legislation has failed in the United Kingdom –

A Member: It has not.

Mr Karran: I think you will find that there has been previous legislation on it, and the reason why it has not been picked up by governments in the United Kingdom is because trying to make sure that you legislate for every eventuality is going to be very difficult. I wish the hon. member well as far as that is concerned, and I will support the leave to introduce, but what I will not agree to is a situation where it is used as a Trojan horse to then destroy the protection that we give under the tree preservation legislation. Then I will not be supporting it when it comes back here.

The Speaker: Hon. member for Douglas South, Mr Cretney.

Mr Cretney: Thank you, Mr Speaker. I will try to avoid repetition. I wish to support the hon. member's leave to introduce. I think most of us in here appreciate the amenity value of trees, and all too often in the past they have been seen as a disposable commodity, too easily swept away for people's convenience. However, there are instances – and I have been in correspondence with him in relation to a constituency problem in my area, where a widow lives right next door to an industrial place and the industrial place has

a tree which does definitely cause difficulties for my constituent. The industrial place is doing nothing about it because they are not required to under the present law. Can he tell me: will his Bill cover the need to properly and effectively manage trees when they are on people's properties?

The Speaker: Hon. member for Peel, Mrs Hannan.

Mrs Hannan: Thank you, Vainstyr Loayreyder. I just rise, really, because I think one of the problems that has brought about the need for legislation such as this – and I will be supporting it – is the closeness of living an urban life. Many of the issues that, I think, are brought to the attention of us, as members and departments of government, tend to be neighbourly disputes that cannot be resolved in any other way than trying to get a department of government or a politician to do something about it, and if it is not us, then it is a local authority. So, I do think that if the member who is moving the legislation can bring about legislation which introduces mediation . . . Mediation is very well accepted in many areas of trying to cope with the pressures of even criminal activities, but when it comes to neighbourly disputes and trying to resolve issues, I fully support mediation and see that as a way of solving some of these issues. The issues that have been raised by members this morning – and I was not really going to speak on this – I think could be resolved by mediation, because I think people do not understand the pressures of someone living next door and having a huge great tree which is not pruned and kept properly. They do not understand because maybe they have enough garden and enough land on their side and they plant it as a shelter belt or to protect their privacy or whatever, and then they just completely forget about it because it does not oppress them but can oppress their neighbour. It can take away light, as has been mentioned by the Minister for Local Government and the Environment, in regard to houses being damp. Some members have suggested that planning could deal with this; I do not think planning could. I think there are certain areas where planning is not needed – and that is where walls are built to a certain level – so we do have, from that point of view, areas where planning is taken into account and you can build to a certain level without asking for planning permission. But planning and, I would suggest, somebody arguing at planning whether their hedge is perfectly alright and somebody saying, 'No, it is not', is not how we should be approaching this particular issue; we should be looking at how it impacts on the individual. I would hope, when it comes to mature trees, that it would not be retrospective and that there would be some other way in which that would be dealt with. Thank you, Vainstyr Loayreyder.

The Speaker: Hon. member for Rushen, Mr Rimington to reply.

Mr Rimington: Can I just first of all say, Mr Speaker, that I think some hon. members have wandered off into the ether a little bit and it might be a case of the Chinese rumour, where a genuine concern is expressed about how we might deal with trees – and that is a genuine concern – and that continued on the rounds and expanded as it has gone round the chamber. I would just like to point out to hon. members that previously, in my days of landscaping in Manchester, I belonged to a company which was Westwind Tree and Garden Services and my partner was an arboriculturist, an ex-council tree officer and founder member of the Manchester Tree Club. I organised our trips to go and look at forestry estates, and it is an area, I would say, of some specialism. I have absolutely no concern in providing this House with legislation which will provide a Trojan door for the cutting down of the mature trees around the Isle of Man. We are purely looking at items of nuisance. Within that contact, Mr Speaker, when I was working many times – certainly when I was starting off, in my early days – with tree surgeons, we were in back alleys of houses in Manchester – back-to-back, if you like, the traditional terraced housing – pulling down huge Manchester poplars, which could certainly, in those instances, be described as a nuisance and a threat to all and sundry around them. So, there are situations where mature trees are actually not in the right place, and people within forestry and professionals recognise that there are occasions where mature trees are in the wrong place. However, certainly in terms of development, development must respect mature trees and development, in my mind – and it certainly has not happened at Mount Murray – should give extra special protection to mature trees, both in terms of the actual manner of leaving them in and also taking particular care, when they actually do the development, in making sure that their actions, in terms of cutting through roots for drainage or hard surfaces, do not inadvertently destroy those trees.

I thank, obviously, Mr Gill for seconding and Mr Houghton, and yes, I will try to work closely with the department. I have not walked round Onchan, but I do have one lady in Onchan who is very concerned about an issue which the Chief Minister alerted me to, and I am sure there are many areas –

Mr Corkill: It is 60 feet now.

Mr Rimington: Sixty feet. Nuisance is a subjective area, and that is the difficulty, and that is why we are going to try and bring the legislation in to address that. Primarily, we would try to go through that mediation process. As it happens, the first person who brought this issue to my attention was not somebody who was suffering from the problem on their boundary but, in fact, across a pathway; that was actually encompassed within the UK legislation, and that would have to be borne in mind.

I have deliberately not tried to pinpoint who should be the administrative authority and who should

be making the judicial decision, because I want to go and consult and think about that more carefully. I will be coming back, I can guarantee the members, with either the draft bill before it goes to its final stages or with the outline of what is going to take place. I will actually try and involve members, on a consultative basis, before it gets anywhere near the floor of this House and, if appropriate, I will be consulting – and probably will be anyhow – with local authorities. They may or may not be involved; at this point, I would not like to say exactly what their level of involvement should be, and there are many issues to consider there.

If I could just emphasise again that the protection of more trees would be high on my list, but there are cases where a mature tree is there, whether it is by design or by default – i.e. it seeded itself or whatever – where it is inappropriate. If you have a huge mature tree a few feet away from the back of a line of terraces, then it is just in the wrong place and something should have happened before now. In the current system, there is very little to deal with it, although if there is damage, which the hon. member for Ramsey brought up, then damage can then be adjudged by a professional officer, and damage would have to be adjudged by a forestry officer from DAFF, as the person with the professional qualifications. Roots of trees do not actually give as much damage as people think, as it happens. Certainly, there are some very vigorous trees with root systems, such as willows and alders and so on, which will actually invade drains and cause damage to drainage systems, and if a tree is close to a wall or close to a pavement, then its physical action of growing will cause that wall or pavement to be damaged, but tree roots themselves will not attack a house. They do not cause damage to a house; what is the area of damage is where a mature tree is on clay subsoil and, in a period of drought, the tree's demand for water takes out the water from the clay, the clay cracks and when the water returns the subsoil swells and slips. It is the actual clay subsoil swelling and slipping that provides the damage to the properties.

A Member: It is still the tree.

Mr Rimington: But managing a situation like that is not actually taking the tree out; it is gradually reducing it, and it is a specialist area, which I was involved in in times past.

Obviously, we have nothing against fuchsia hedges – to the hon. member for Douglas North – and that sort of line of approach is not what I am considering, but obviously a fuchsia hedge planted in a small suburban garden and left unchecked can become dominating and very high. One of the things about the guidelines that exist already is that we are looking at the amenity value of such things to be protected, and really it is primarily concerned with light and amenity on their house, so what may be at the end a medium-sized garden or large garden is of no concern, by and large, within the guidelines, and we are looking much more closely there. I will look at the issue about

planning and how that is being considered, but I must admit I do not actually think it would be relevant to bring planning controls in for hedges, because if I wanted to go and plant a hedge in my back garden, I would be very loathe to have to go through a planning process to do that. That is effectively what it would be doing; you would be passing the problem to the planning administration system there. Whether it should be classed as development is a very tricky area. It is true that, in open-plan estates, you cannot build a fence above a metre but you can put a hedge in and just watch it grow. There are things in there which are slightly different.

In the UK, the legislation is based on local authorities being the competent bodies, but then local authorities in the UK are, in fact, similar in many ways to our central government in terms of size and range of operations, whereas our local authorities in the Isle of Man are not, and certainly not in the villages and parishes, so there could not be an easy transference of powers there, which is why I am shying away a bit from utilising local authorities, at the moment, to too great a degree.

I thank Mr Cretney, obviously, for his support. Yes, I am aware of that particular area, that he was concerned about, and hopefully that legislation would cover that area. If we get into difficulties, and that is the area that people are having problems with, then I would probably have to drop that, if that did become an issue, and just concentrate purely on the hedges, which are a bit more straightforward, but hopefully that issue can be addressed and we will look at the legislation as it comes.

The hon. member for Ramsey, Mr Singer, raises this question about retrospect. Yes, it is by nature retrospective, because the problems are there now. (**A Member:** Yes.) It is the problem that was outlined by my colleague, Mrs Crowe: the 40-foot leylandii hedge a few yards from someone's back garden is there now. So, this legislation would be coming in with that express purpose of pursuing that particular issue; that is what it was for. So, yes, it would be retrospective in that sense, but it is a problem that exists for people now.

I thank the hon. member for Douglas East for her, in principle, support and note her less than positive contribution on the issue. I am not sure quite why she took such length to try and rip the proposals apart when it is only leave to introduce. I think it would be better to actually look at the legislation when it came forward. 'Why not DAFF?' she asked. It was considered that it could be with DAFF or it could be with DoLGE, and I asked the forestry division to look at it, not as this ministerial decree but, 'Will you please look at that and come to your own view on that.' And their own view was, correctly, that it was not part of their responsibility, because they are concerned with damage; they do not have expertise in the area of nuisance. Their expertise is in something else, and they do not wish to have part of it, but DAFF would be part of it in the sense that they have the officers who have

got the experience and the knowledge, and they would be involved in giving advice when it was appropriate that that advice should be given. But in terms of a leylandii hedge and what height it should be or not, they have no more expertise than any other officer elsewhere.

I do not think it is necessary to wait for the UK; I think we have got an issue here that can be addressed. (**A Member:** Absolutely.) I am very surprised that the hon. member should suggest that we should do that. There will be consultation. Yes, I have put two metres down there for the guidelines; that is the minimum that you could ask somebody to reduce a hedge to, but the mathematical formulae relating to light deprivation and distance might come out with something completely different. They could come out with three metres or four metres or whatever, and again they are only guidelines. I am aware that things are not necessarily planted. I do not think that you should take the memorandum and try to strip it apart with every word. I am aware that some things do self-seed, especially sycamores, and it can be sycamores that can be the problem in between two suburban houses – something is just there and it just grows up and grows up and no-one does anything about it – but I can assure you that leylandii are a hybrid and are sexually neutral and do not self-seed.

It is not a question of not allowing DoLGE to progress it; I have discussed it with DoLGE and they were happy that I should progress it, and I felt motivated to do so. I will consult with them all the way through, and I assure the hon. member for Douglas South, Mr Duggan, that this will not be a hedgecutters' charter to go round destroying things. I think we have blown up the issues a bit out of proportion here. There are serious problems in a few areas, and those need to be addressed; it is not opening a door for gangs of landscapers – perhaps they can make a bit of a business sideline out of it, I do not know – to go round wapping down hedges left, right and centre.

I take the hon. member for Onchan, Mr Karran's point: is it too diverse? Potentially, by trying to address the issue of single trees or single plants, it may well be that that is too diverse.

Finally, the hon. member for Ayre, Mr Quine. Yes, ownership is an issue – on whose land is it? – especially if you are in the country. It is primarily driven at suburban gardens, I would have thought, rather than the country areas. Probably, in country areas, you would hopefully get a bit more neighbourliness and so on, especially in Ayre, with the wonderful representative that they have to keep everything going. There is law relating to what you can and cannot take down as standards at the moment, so with any plant that strays across your boundary; you can take down the offending article across your boundary, it is just determining what the boundary is.

Can I just thank everybody for their support for me to introduce this in principle, and we will wait and see what the legislation is when we come forward and the problems thereof.

The Speaker: Hon. members, the motion before you is at item 1, under the heading leave to introduce, in the name of the hon. member for Rushen, Mr Rimington. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Bill for First Reading

The Speaker: I call upon the secretary of the House.

The Secretary: Mr Speaker, the Bill for first reading is the Submarine Cables Bill introduced by the hon. member for West Douglas, Mr John Shimmin.

Medicines Bill – Third Reading Approved

The Speaker: Item 5 on our order paper is Bills for third reading. Item 1 under that heading is the Medicines Bill, and I call on the hon. member Mr Anderson.

Mr Anderson: Thank you, Mr Speaker. The Medicines Bill before you today for third reading gives powers to the department to regulate the trade of medicinal products on the Island and to recognise, where appropriate, other systems of regulation in the UK and in Europe. The Bill is a consumer protection measure which is intended to prevent the sale or supply of medicinal products on the Island which are not of the required standard or which could be dangerous to human or animal health. The Bill largely restates the Medicines Act of 1976 and incorporates elements of this Act relating to consumer protection, regulation of pharmacies, control of advertising and enforcement. However, it replaces the system of licensing of manufacturers and authorisation of medicinal products and in their place confers wide regulation-making powers.

During the clauses stage of this Bill, some issues of concern were raised by hon. members, and I hope that I may take a moment to clarify a small number of points. Concern has been expressed that the powers in the Medicines Bill may lead to a reduction in the variety of medicinal products being available on the Island, and in particular that it may reduce the availability of homeopathic medicinal products and products used in complementary therapy. Homeopathic medicines are currently regulated through the Medicines Act of 1976, which applies UK legislation covering these products. UK legislation is based on European legislation, and therefore it can be said that European legislation concerning homeopathic medicine already applies on the Island. The proposals in the Medicines Bill will not change that current regulatory environment for homeopathic products on the Island. The situation with regard to alternative remedies is different; a scheme for regulation of these products is still developing. There has always been a

grey area between products that are classified as medicines and those which fall outside this classification. There are attempts, at both a UK and European level, to bring some clarity to this area of law. The department accepts that it would be unrealistic for the Island to have an independent classification system due to the cost of administering such a system. The Medicines Bill will allow the department to bring forward regulations to recognise the classification of medicinal products in UK and European law. The adoption of a classification system from another jurisdiction is the only realistic option; this is reflected in UK legislation, where they are becoming more reliant on the classification of medicines set out in European law.

The hon. member for Ramsey, Mr Singer, also raised the question of fees for registration of pharmacy premises. Clause 41 of the Bill gives the department powers to bring forward regulations to charge fees for the registration of pharmacies. The current policy of the department is to maintain the level of fees at the same level as that applicable in Northern Ireland; this is a lower level than levied in other countries of the United Kingdom. Regulations approving the current level of fees were laid before the October sitting of Tynwald and approved. Fees payable for the registration of pharmacy premises are set against the costs of the department administering the registry of pharmacy premises and the costs of visits by a professional standards adviser from the Royal Pharmaceutical Society. It is not anticipated that the Medicines Bill will lead to a change in this policy; however, should this be the case, then the department will have to seek the approval of Tynwald before amending the level of fees applicable on the Island.

Finally, Mr Speaker and hon. members, I would ask for your support for this Bill so that we may ensure a continued high standard for the regulation of medicinal products in order to protect members of the public and ensure that the trade in these and related products is maintained between ourselves and the European Community. Mr Speaker, I therefore beg to move the third reading of the Bill.

The Speaker: Hon. member for Peel, Mrs Hannan.

Mrs Hannan: Vainstyr Loayreyder, I beg to second and reserve my remarks.

The Speaker: The motion before the House is that the Medicines Bill be read for a third time. All those in favour say aye; against, no. The ayes have it. The ayes have it.

I would just remind hon. members that for a third reading to be successful, there need to be 13 votes in the House; we are just over that number by one.

Mr Houghton: Two, three, four – four sir.

The Speaker: The vote is taken; the Bill has been approved. I would just remind those hon. members who have returned that for any Bill that requires third reading, for a Bill to pass through this House requires 13 votes of the House. Not a majority; it needs 13. We had 14 members in.

Property Service Charges (Amendment) Bill – Third Reading Approved

The Speaker: Hon. members, I now call on the hon. member for Douglas North, Mr Houghton.

Mr Houghton: Mr Speaker, the Property Service Charges (Amendment) Bill is a Bill promoted by the Department of Local Government and the Environment. The Bill makes a number of significant amendments to the Property Service Charges Act 1989, thereby increasing the protection provided for residential tenants against excessive service charges imposed by their landlords. The main provisions provide and introduce new powers to the Rent and Rating Appeal Commissioners; in particular, tenants and landlords will now be able to apply to the Rent and Rating Appeal Commissioners for a ruling on whether or not a service charge is reasonable. Other provisions will allow the Rent and Rating Appeal Commissioners to appoint a manager to a block of flats subjected to unreasonable service charges. In addition, certain functions of the High Court under the 1989 Act are also transferred to the commissioners. The Bill will also enable a recognised tenants' association to bring in their own surveyors to advise on works and expenses, with the right to inspect the landlord's documents. Other provisions will restrict the landlord's right to terminate a lease or tenancy for non-payment of a service charge, unless the charge has been agreed or adjudged to be payable by a court or arbitrator.

No amendments have been proposed to the Bill. However, on a related issue, I am aware that several members asked during second reading, 'What were the department's intentions with regard to the introduction of a new system of commonhold tenure?' I am aware that, in the United Kingdom, the Commonhold and Leasehold Reform Act 2002 has received Royal Assent, but part one, which introduces a system of commonhold tenure in England and Wales, has not yet been brought into force. My department has formed the opinion that it is far too early to consider bringing in a similar system in the Isle of Man. Even if the 2002 Act had come into force and had been tried and tested, the land law of England and Wales is so different from that of the Island that it would be an unsuitable model anyway. If such a new system of commonhold tenure is to be a contemplated model, it should be brought into Northern Ireland, where the land law is similar to that of the Island and whose land law working group proposed the introduction of commonhold in 1990. However, Northern Ireland has not, as yet, introduced

this legislation, so the practicality and effectiveness of such legislation has yet to be properly assessed.

Mr Speaker, I would like to thank all hon. members for their consideration of this Bill and for their assistance in taking it through. Mr Speaker, I beg to move that the Property Service Charges (Amendment) Bill 2002 be read for a third time. I beg to move, sir.

The Speaker: Hon. member for Rushen, Mrs Crowe.

Mrs Crowe: I beg to second and reserve my remarks.

The Speaker: Hon. member for Douglas East, Mrs Cannell.

Mrs Cannell: Thank you, Mr Speaker. I just want to congratulate the hon. member for North Douglas for taking this Bill through so swiftly. It is greatly needed, I would suggest, even as we speak, for this to become law of the land, and I would just ask him: I know that it has to go to another place to be checked and reread et cetera, but can he anticipate when it actually will receive Royal Assent? What is he hoping when it will receive Royal Assent? Also, has he any idea, following that, of when the likelihood of the appointed day order comes forward, and can he ensure that, once it has left this place, he will do his utmost to follow it and make sure it does have a smooth passage? Thank you.

The Speaker: Hon. member for Douglas East, Mr Braidwood.

Mr Braidwood: Thank you, Mr Speaker. I am extremely pleased that the legislation today has hopefully received its third reading, but I was a little bit disappointed with the comment by the mover that he will not be looking at commonhold, because I feel this would alleviate a lot of the problems on the Island. Legislation for Northern Ireland, which the mover mentioned – 1990 – was drafted, and I feel that the department should be able to look at that draft legislation.

The Speaker: Hon. member for Douglas North, Mr Houghton, to reply to the debate.

Mr Houghton: Thank you, Mr Speaker. I thank my hon. minister for seconding the third reading, sir, and also thank the hon. member for East Douglas, Mrs Cannell, for her comments. She is pursuing the Royal Assent for this Bill, and I would hope that it would be in for around the springtime of next year – the sooner the better, I am quite sure. I will give that undertaking to see that the Bill is kept on course through its procedures. Obviously, it goes in to the Legislative Council now, and I would think it should be clear of there by late January, early February through its reading, so I do not see any reason why it

should be delayed any longer that is necessary, and I do support her in that.

I also thank the hon. member Mr Braidwood for his comments on commonhold. It is not that we have turned this particular situation down; it is just, as I said in my speech, that the Northern Ireland Bill has not been tried and tested yet, and we need to monitor developments there. We will no doubt, hopefully, bring further action via the department as things progress with that particular model, sir. I beg to move.

The Speaker: Hon. members, the motion before you is that at item 2 under 'Bills for Third Reading', the Property Service Charges (Amendment) Bill in the name of the hon. member for Douglas North, Mr Houghton. All those in favour say aye; against, no. The ayes have it. The ayes have it.

Air Transport Licensing – Select Committee Report Received – Conclusions Accepted

Item 6. Mr Singer to move:

That the Report of the Select Committee of the House of Keys on Air Transport Licensing be received and its conclusions accepted

The Speaker: We now move on to item 6 on our order paper, 'Other Motion', and I call on the hon. member for Ramsey, Mr Singer.

Mr Singer: Thank you, Mr Speaker. I am pleased to present this report to this hon. House and to ask hon. members to accept the recommendations. I was elected chairman of the select committee by my two colleagues, Mr Earnshaw and Mr Shimmin, and I thank them for their co-operation. I think it would be fair to say that the three members of the committee, appointed by this hon. House, went into the first meeting with differing views as to the feasibility and merit of air route licensing as expressed by them at the original debate. We had some very intense discussion within all our meetings, and I would say that the conclusions are unanimous because of the intention of each member to listen and to learn from the other members' opinions. I consider that we were extremely fortunate to have Mr Lo Bao as our clerk, as he has a particular knowledge of the civil airline industry and was a very helpful guide.

During our period of discussion, the airline industry on the Island changed considerably, as indicated in the report, and our views were adjusted as these changes occurred. We were disappointed at the poor response to our invitation to the public to comment and at the few replies from members of Tynwald and government departments. It was also disappointing that we did not hear from some airlines using the Isle of Man, as this would have proved a useful background, statistically, of local views of

people and companies involved in the industry, as far as the Island is concerned.

After initial early discussion, the committee agreed that the crux of this investigation would be to speak to Jersey and Guernsey, the only European jurisdictions which had adopted the system of air route licensing, and to find out their reasons for adopting the system, how it worked in practice, the advantages and pitfalls, and whether their experience was relevant to the Isle of Man. We travelled to Jersey for a day, where we met with Mr Richard Kirkpatrick, the chief executive of the Guernsey Transport Board, and later in the day we attended a meeting with the Jersey Transport Authority. Full notes of that meeting are appended at appendix 8 of this report. Both of these meetings were extremely useful, as we discovered the main reasoning behind their perceived need for a licensing system and we could then directly compare their situation with that appertaining to the Isle of Man. As hon. members will have seen from our report, the situation in the Channel Islands was not directly comparable to the Isle of Man, as far as their three main reasons were concerned: firstly, the need to protect an internal airline that ran not only an hourly service between the islands but also provided the postal service and the emergency flight medical service; secondly, the Channel Islands, in particular Jersey, have a large number of summer charter flights, and there is a danger that these will take away from scheduled services and therefore threaten the viability of those scheduled services; and thirdly, the experience in the Channel Islands also showed that, whether or not there is a licensing authority, an airline ran a route on commercial considerations and could not be forced to continue a service, and that there was little evidence of airlines competing for routes at this time.

I am sure that hon. members would not wish me to go through the final document in detail, repeating what is already in the report, as it does describe the evidence we received and the conclusions we drew from considering and discussing that evidence. Our conclusion, therefore, is that, at this time, we see no need to introduce a system of air route licensing. We should be working to preserve our present routes and positively encouraging new routes to new destinations, but if the economic climate changes, there may well be the need to revisit the air route licensing system for the Isle of Man, particularly if there is a danger of developing monopolistic practices.

I would finally like to thank both my hon. colleagues, Mr Shimmin and Mr Earnshaw, for their work over the last few months, and a particular thanks to Mr Lo Bao, clerk to the committee.

I feel, however, Mr Speaker, that I have to add a postscript to this introduction. I said at the beginning of this introduction that, as situations changed, so we were adjusting this report, taking into account those changes, but at some stage the report had to be printed, and since then there have been some new developments. I would like to make it clear to hon. members that I have not talked to the other members of

the committee, because the following matters that I am going to discuss are very recent. Jersey is reported recently to have made available £1 million of taxpayers' money, aimed particularly to attract a low-cost airline and to subsidise lower air fares. On the Isle of Man-Liverpool route, very recent developments have caused me personally some concern. As I say, I have not had a chance to talk to my colleagues on the committee. As we know, British Airways CitiExpress were joined on the Liverpool route by the small airline FlyKeen, who were originally only flying from Blackpool to the Isle of Man. Recently, EuroManx announced that they will commence on the Liverpool route on December 2nd. British Airways CitiExpress, almost immediately, have announced a comparatively large cut in their price structure, quite obviously linked to EuroManx entering the route and, as of today, I understand that FlyKeen have abandoned the Liverpool-Isle of Man route. This British Airways CitiExpress action does pose a question as to predatory pricing. If it was such, it would be unfair competition, which I am reliably told is unlawful in Europe. Whilst it is said that CitiExpress may not be totally committed to Liverpool, this is the position, as mentioned in the report, of developing a monopoly situation unfairly. Therefore, as a postscript, it may well be that this hon. House, or Tynwald Court, may wish, at some time, to discuss the setting up of a standing committee on off-Island transport, and that is my particular view, Mr Speaker. Meanwhile, I would ask hon. members of this House to accept the report. Thank you.

The Speaker: Hon. member for Douglas West, Mr Shimmin.

Mr Shimmin: I beg to second and reserve my remarks, sir.

The Speaker: Hon. member for Ayre, Mr Quine.

Mr Quine: Thank you, Mr Speaker. I note the postscript, and I also note the recommendation, which has the important words, of course, 'at this time' in it. I am not comfortable with this recommendation. I think it is difficult to be otherwise when you look at the merits and demerits listed in part 3. For example, the words 'might' and 'unlikely' tend to feature very prominently in this evaluation, but I would like to simply focus on the matter of sole operator agreement, which, of course, is first picked up in the report at 3.6.10. Although we are talking of air services – and there are very material differences between our sea passenger services and our air passenger services – it is not unlike the concept that underlines the user agreement with the Isle of Man Steam Packet Company, which I think is generally recognised as having been beneficial. It is not as strongly underwritten by law as I would have had it, but that is water under the bridge; the fact is that we have a user agreement and, even taking that, which has certainly much less force to it, I think it is broadly accepted that

it has been beneficial. I find the reasoning given in 4.3 at best somewhat convoluted and shallow. The simple fact is that the several airlines operating – four or five, depending how you look at it – are providing services on a fragmented basis, small scale, and are consequently – inevitably – uneconomic. There is much dissatisfaction with our air services – I do not think that can be denied – not least in relation to fare structure and costs. The whole costing arrangements that are attached to airline ticketing are at best confusing and, in reality, quite deceitful. It is quite clear to me – and, I am certain, clear to the general public – that the name of the game is cherry-picking; airlines are using our market, the uncontrolled circumstances in which they operate, to cherry-pick. They have us over a barrel, and they are making the most of it.

As I said, we have four or five airlines operating on eighteen routes. In total, we have something like three quarters of a million passengers being carried annually. A number of these airlines are carrying just a few hundred, mainly because they have just been recently established, perhaps, but nonetheless some of these airlines are carrying, on some routes, very, very small numbers of passengers. It does not stack up economically – it cannot stack up – and they are going to be birds of passage and they will be eaten up by the big wolf, who is already making certain moves in that direction. It would seem to me, Mr Speaker, that a sole operator, albeit limited to key routes, would provide a more cohesive, economic and cost-effective air passenger service. It would be certainly more readily understood by the public, and they would be less subject to the exploitation which now takes place. Such an operator could be carrying, as I said, up to 700,000-plus passengers annually, and clearly such a level of business would be much more economic. Given the sole operator's security of tenure, which could be built into a sole operator agreement or whatever you wish to call it, we would at least have a degree of forward planning that would at least be feasible and attainable to some extent. Much, of course, sir, would depend on the specific terms and conditions of service, but it is possible – and we have shown that by going back to the Steam Packet et cetera – to construct an appropriate agreement. Call it a sole operator agreement, call it a user agreement, call it a statutory franchise: it is possible to put such an agreement together, the basis of an economic footing, provided we have the political will to effect the change.

But I would look at it another way; I do not see what viable alternative is available to us. Our committee has done a great deal of work – they have worked very hard indeed – and they have certainly scratched around to try and come up with the best evidence that they can, but they have not found a viable alternative because clearly, sir, the acclaimed open skies policy has achieved little, apart from lining the pockets of one or two of the operators. It simply facilitates cherry-picking, asset-stripping and

exploitation of the travelling public. I do not consider, sir, that in promoting this approach – and I refer here back to some of the words in the report – I am either confused or unduly attracted by the concept of a secure monopoly; I am simply suggesting and, given the evidence before us, we do not have a better solution. You either live with the present chaotic situation or you decide to try to do something about it. I accept that air services are very competitive. It is a very competitive industry *at this point in time*, using the words that are in the report. That changes from time to time, but I think that statement is somewhat academic when you have regard to the size and the fragmentation of the market, which makes the application of market forces the reality, bringing about the reality of competition, because that is largely impractical and unattainable.

Mr Speaker, I do not think I can accept this report. I think I will be voting against this report, but I would wish to hear out what the committee – at least, two other members of the committee here – have to say on the matter. But on the strength of what is in this report at the moment, I would find it very difficult to support. Thank you, sir.

The Speaker: Hon. member for Douglas West, Mr Shimmin.

Mr Shimmin: Thank you, Mr Speaker. I rise as a member of the select committee appointed by this House, although it is inextricably linked to the fact that I am also Minister for Transport. Therefore, I am disappointed in my colleague from the Department of Transport who expresses very little knowledge of the airline industry, although he has actually been a member of that department for 12 months now. It is an area where, since September 11th, the whole historic background to aviation in this country, and in the United Kingdom, has been changed, and the nature of that change is not yet complete. The chairman of the committee, appointed by this House, pointed out that we came at it with differing starting points, yet all listened open mindedly to the comments of each other and other people we interviewed and the correspondence we received. The hon. member for Ayre appears not to have taken the views of that committee as being acceptable and, although in another place he has referred to the number of committees that he is on, I think that the only way of convincing the hon. member would be to actually put him on every committee of this House in order that he can be satisfied that we have done it impartially, honestly and with due regard to all considerations.

The issue involved in this report is that the committee that you have asked to look into this matter recommends it is not necessary to establish an air transport licensing authority. The chairman of the committee added postscripts to that which he admitted he had not discussed with the committee, and those are his own view. Certainly, what happens elsewhere is for the House or for individuals to determine. Within the

report, on page 17, paragraph 5.1.7, the committee therefore believes that the best solution at present to preserving and developing transport links lies with the DoT engaging in positive, detailed and continual discussion with airlines and offering to them, as incentives, fees and charges that might encourage the further development of routes from the Island. The committee notes that the DoT is already actively pursuing this course of action, and I congratulate my colleague in the department, Mr Kniveton, who for years has worked within this area, for the work that he and the people within the department have done, actively pursuing all of those areas that the hon. member for Ayre or any others can raise today. Meetings are taking place certainly every week, if not more frequently than that, with a view to encouraging small operators to expand and existing operators to consider their position in the marketplace, with the intention of growing volume on the markets and also reducing the costs.

The hon. member for Ayre points out that the attractiveness of some of the routes is questionable, and there has never been so much scrutiny within airline companies as in recent months. We are aware that some of the operators currently operating to and from the Isle of Man have experienced severe financial difficulties, as indeed every airline operator has since the events of September 11th. The Department of Transport has committed to encouraging expansion and is working closely with the Department of Tourism and Leisure. I say this as a member of the committee, and I try and differentiate there. These issues are ongoing; these issues are ones where government departments are tasked with trying to improve what is currently a poor service, which has been identified by the committee. We are probably more aware of the concerns that the public have raised than other hon. members because we have collated more information in the last nine months whilst compiling this report.

I would urge hon. members to merely reflect on the fact that you tasked us with a job. We were, I believe, one of the most balanced committees that this House could have put in place. We have come forward with a recommendation which is quite straightforward, and I would urge all hon. members to support the motion today and support the report. I would then put a different hat on and say that if anybody has any queries on aviation, then you have a government department which is tasked with trying to deal with this matter. Please come and talk to us; we have an enormous amount of information which we are prepared to share with hon. members. This report identifies that a licensing authority, at this stage, would not give the comfort that hon. members seem to believe it would – I think the report makes that clear. Do not be convinced that some alternative mechanism will actually achieve more than we have today; this committee evaluated that and came forward with a recommendation, sir.

The Speaker: Hon. member for Ramsey, Mr Singer, to reply to the debate.

Mr Singer: Thank you, Mr Speaker. Can I thank both Mr Quine and also my colleague, Mr Shimmin, for their comments. I am not surprised; I expected my hon. colleague from Ayre to be commenting on a sole operator agreement, a user agreement. In fact, it was Mr Quine's letter to the committee which stimulated and instigated discussion, particularly in the committee, on this particular matter. But we did not feel that the user agreement could guarantee a service from a major airline, an international airline, on minor routes, because unfortunately we have seen that it has been for commercial reasons that they have swapped the routes at their will and, as we have said in the report – or as I have said in my comments – certain small airlines can find routes viable, whereas a major airline, a bigger airline, would not find them viable. We talk about EuroManx, who have opened recently onto routes that both the airline 'flybe' and British Airways CitiExpress have cut down; EuroManx, with smaller planes, will probably find those routes more viable, and it is important that we do encourage these smaller airlines to work from the Isle of Man. I recently had a conversation with flybe because of the change in the Belfast route; I had letters from people saying 'We cannot go there and back to Belfast in a day.' I spoke to flybe, and they laid it on the line and said, 'We just were not picking up enough people from the Isle of Man to be able to go off in the morning or even bring a plane in from Newcastle, drop it into the Isle of Man, pick up maybe only three or four people and go off to Belfast.' They have said that that just was not viable, and I understand that. I think that is as it is, the practical situation, and I think we do have to accept that.

We found out that security of tenure by licensing did not guarantee a service; in fact, there was only one route from the Channel Islands where there was security of tenure, and that was from Guernsey to Southampton. As far as fare structure is concerned, the licensing authority has little control over the fare structure, and again there was only one, which was that same Guernsey to Southampton route, where there was a vague agreement on prices. So, I think that the points made by Mr Shimmin are important.

I think, hon. members, Mr Speaker, that what we looked at was what we could do practically, not what we could do theoretically. You could not force any airline to put on routes that they did not want to put on, to put on extra flights or to cut the prices. There was also, we found out, in Guernsey and in Jersey – and this was touched on by my colleague, Mr Shimmin – an expectation by the people of Jersey of wonders from this licensing authority; they thought that they would bring in easyJet and Go and that there would be very cheap prices, but that just is not the case. If you read through the report, you will see that easyJet were offered routes, and they just did not take them up because it was not practical. So, we have got to realise

that, from this Island, there are 750,000 people here coming in and out. As I say, unless members wish to consider my postscript – which was *my* postscript – up to then, our conclusions were that any licensing powers, if we looked at what had happened in Jersey and Guernsey, did not particularly retain or improve air services to their island. So, I would accept what the Minister for Transport has said, that we must be going out and encouraging more airlines to come in here, encouraging them to use new routes that we do not already use as destinations. Then, as we said in the report, it may be necessary in the future with changes, both economic changes and the changes forced on us by airlines, to have a look at it again, but meanwhile, I would ask members to except the recommendation as printed in the report.

The Speaker: Hon. members, the motion before you is the motion at item 6.1 in the name of the hon. member for Ramsey, Mr Singer. All those in favour say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

For: Mr Anderson, Mr Cannan, Mr Rodan, Mr Quayle, Mr Rimington, Mr Gill, Mrs Crowe, Mr Houghton, Mr Cretney, Mr Duggan, Mr Braidwood, Mrs Cannell, Mr Downie, Mr Shimmin, Mrs Hannan, Mr Bell, Mr Singer, Mr Corkill, Mr Earnshaw, Capt. Douglas and The Speaker – 21

Against: Mr Quine and Mr Karran – 2

The Speaker: Hon. members, the motion carries in the House, with 21 votes for and 2 votes against.

Procedural

The Speaker: Hon. members, before I adjourn the House, I would just like to make one comment. This morning, we had two mobile phones go off. I know it is difficult – because we all have them – to remember, but I would ask hon. members to try and just be conscious, if they have a mobile phone, either to switch it off or to put it into silent mode, which, of course, a lot of phones can do.

Hon. members, the House will now stand adjourned until 10.00 a.m. next Tuesday, 3rd December, in our own chamber.

The House adjourned at 12.55 p.m.
