



**LEGISLATIVE COUNCIL  
OFFICIAL REPORT**

**RECORTYS OIKOIL  
Y CHOONCEIL SLATTYSSAGH**

**P R O C E E D I N G S**

**D A A L T Y N**

**(HANSARD)**

**Douglas, Tuesday, 1st February 2005**

**Present:****The President of Tynwald (The Hon. N Q Cringle)**

The Lord Bishop of Sodor and Man (The Rt. Rev. Graeme Knowles), The Attorney General (Mr W J H Corlett QC),  
 Mrs C M Christian, Mrs P M Crowe, Mr D F K Delaney, The Chief Minister (Mr D J Gelling CBE),  
 Mr J R Kniveton, Mr E G Lowey, Mr L I Singer and Mr G H Waft,  
 with Mrs M Cullen, Clerk of the Council.

**Business transacted**

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*The Council sat in private at 12.12 p.m.*

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## Legislative Council

*The Council met at 10.30 a.m.*

### PRAYERS

*The Lord Bishop*

[MR PRESIDENT *in the Chair*]

## Orders of the Day

### Fiduciary Services Bill

#### For Second Reading

#### Motion not made

**The President:** Now, Hon. Members, I understand that Mr Waft will not be moving the Second Reading of the Fiduciary Services Bill this morning, as, I understand, he is awaiting some amendments, or a possible amendment, to appear before us at some time shortly.

### Suspension of Standing Order 6 to debate Manx Electricity Authority Motion lost

**The President:** Now, before we do start with the Trees and High Hedges Bill, I understand that, maybe, Mr Lowey wishes to catch my attention. Mr Lowey.

**Mr Lowey:** Thank you, Mr President.

May I, under Standing Order 6, I believe, ask that we suspend Standing Orders so that we can debate a subject that I think is of public importance and needs to be addressed. That is – and I put it this way – the ‘MEA affair’, which has been rumbling on for some little time.

I know we are awaiting an independent inquiry by a firm of accountants, but, in the light of evidence that was circulated last week, by the Treasury, and public utterances by the former Chief Executive, I think that this Council ought to debate that particular issue. I think it is of such importance that some of the misleading statements and half-truths that seem to be flying around ought to be put to rest.

Therefore, I would urge that this Council take a little time to debate a matter of outstanding public importance that needs to be aired, and I so formally move:

*that Standing Order 6 be suspended to enable Council to debate the Manx Electricity Authority.*

**The President:** I find it easy to debate things, Hon. Member, when, in fact, we have something which is firm and concrete before us. It is a bit ethereal just to say we wish to debate. Could you tighten it down a little bit, so that I know where we are trying to go?

**Mr Lowey:** Well, let me put it this way: I referred to the accountants looking at the financial affairs of the Authority. Therefore, I believe it needs something much more all-embracing than just the financial affairs of the Authority being looked at, and I do not believe that the accountants can do just that.

Therefore, I would be asking, or seeking through the Chief Minister informing the Council of Ministers, to form either an internal or a Tynwald committee to look at what has been a complete breakdown – there are no two ways about it – between the MEA and the agencies that are there, allegedly, to be controlling them.

Therefore, I think that cannot be done by accountants, but that must be done by Government and so, therefore, that is the end result that I am desirous of seeking.

**The President:** Mr Delaney.

**Mr Delaney:** Mr President, I wish to second this, and I will give you my reasons straight – unlike the statement that was made by a political correspondent this morning, I would like the opportunity to clarify why I want this.

I believe a lie has been told to the public – a complete lie that they have a right to have, at least in part, answered.

The last time we debated this, and being a person who likes to be a stickler of sticking to rules and regulations, where possible, we were told that no statements would be made, because of requests by the Government on Manx Radio just after the debate in relation to this matter. On Sunday, I heard a lot of time being spent by the senior gentleman involved, making statements that we had said would not be made and making accusations, I believe some of which are incorrect, and I do not like...

I will put this: I may be a pygmy, but I bite people on the knees when they upset the public! I want a chance to offer the opportunity to bite back, particularly where I am given to understand that statements and letters have been given as evidence of their good faith, which I believe are somewhat erroneous. The public never had a chance, and we never had a chance, to debate with this gentleman on the radio, nor on behalf of the Government or the parliament, the matters concerned here.

I am also aware of some of the public’s concern that the Chairman of Manx Radio was also a colleague on these companies involved in these debates, and the closeness of the relationship between these two persons and the radio station, if not incorrect, should have been thought about before what happened on Sunday occurred.

Mr President, I wish to second, and I feel that if it –

**The President:** I appreciate, Mr Delaney, that your wish is to second. Now, at the moment, the only thing that I have really got out of Mr Lowey’s proposition that we suspend Standing Orders this morning – what we were going to debate – is that the Legislative Council supports the setting up of a Tynwald committee to consider the future of the MEA. I think that is... towards the end, he came almost down to that sort of discussion.

**Mr Delaney:** I was interrupted, Mr President. Can I finish, and complete my statement?

**The President:** Well, you can, but, in fact, the point I am making, Mr Delaney, is that we need to get it in front of

the Council. What I am trying to get is what the Council is going to discuss. Complete your statement, considering you were reading.

**Mr Delaney:** I could have been very brief, but I thought out of courtesy – unlike the discourtesy, being shown to the Members of parliament here by this gentleman on Sunday – I believe courtesy is why we have to justify the lie we told the public. That lie was told to the public in relation to this matter that no statement will be made until the report, that the public are paying for, was brought back.

**The President:** Well, I think that will evolve. If it evolves, it will evolve in the future. Mrs Christian.

**Mrs Christian:** Mr President, I understand Members' desire to air this matter, which is of great concern because of the numbers involved, the information that has been circulated, but I do have some reservations about suspending Standing Orders when we do not have a particular resolution before us.

There are allegations being made that lies have been told. I am not sure, in this forum, to what extent we have the information at our fingertips to put right whatever these suggestions are. So, I would be anxious, when the mover of suspension has an opportunity to reply – and I am not quite clear whether he does – I would have the gravest concerns that we can do anything usefully in this forum, in this manner, at this time. We should wait for the report.

**The President:** Mr Kniveton.

**Mr Kniveton:** Thank you, Mr President, and following on from Mrs Christian, I support what she says there. I have not seen anything in writing, Mr President, so I can only try and memorise what has been said, but were the words 'Tynwald committee be appointed' part of the – ?

**Mr Lowey:** It could be.

**The President:** Now, Mr Lowey, hold on.

**Mr Kniveton:** Well, I do ask the question, sir, because, as I say, I have nothing in front of me. If that is the case, then I do not think it should be here as a matter for this Legislative Council. I think it should be taken over to the next sitting of Tynwald, and brought up there – not just by us here, if that is to be...

**The President:** My difficulty, Hon. Members, is that I understand the anxiety and I understand the feeling that, okay, we will use this forum to 'debate' the MEA. If you need to debate something, in my view, rather than being ethereal and just talking around it, for the sake of talking around it, you need to have a proposition.

The best that came out of Mr Lowey's opening remarks was that the Legislative Council supports a Tynwald committee to consider the future of the MEA. Now, if you want to debate that, that seemed to me something that was there. Mr Singer.

**Mr Singer:** On the terms that you have just stated, Mr President, the Legislative Council would support it, or not support it, by a motion in *Tynwald*. (**Mr Kniveton:**

Exactly.) This is a major item. I understand the concern – the great concern – but I, certainly, think we ought to wait for the report, even if it is just a financial report, but that will certainly take a great part in the whole overall debate.

I would think that Mr Lowey's motion, or similar wording, should be before Tynwald, even if it is on a supplementary agenda, because it is very important.

**The President:** Mrs Crowe.

**Mrs Crowe:** I do support Mr Lowey in his intention to seek some clarification – and I think that is what he is intending to do; he may disagree with me.

I think we have to realise it is only as a result of a Question in Tynwald that Mr Delaney asked, and I further embellished by asking, 'Well, did these directors get any...?' that we have had the information. We keep having to drag information out.

Now, I do not know whether it is Government we are dragging it out of, or the MEA, but I think what Mr Lowey is trying to say – or I would feel that the feeling might be – is that we need to have some open discussion about things like what we have heard today – travelling expenses. Is it true? Is it not true? None of these things... I am not sure that the auditors' report will cover *any* of those.

It is not in their remit to say whether the MEA was in... or where they were, but what we will have is a full report on the financial viability, I suppose, of the MEA and how they spent the money, and I think what the mover is trying to do is seek an expansion of those terms.

**The President:** But how do you get an expansion of those terms, by just talking about it this morning?

**Mrs Crowe:** Yes, exactly.

**The President:** That is the point which I make.

**Mr Lowey:** Well, I will try to explain, Mr President.

**The President:** Okay, Mr Lowey.

**Mr Lowey:** Parliament is supposed to hold the executive to account. Number one: when do you hold them to account? Once a month? Once every five months? In the meantime, the public are being fed, as the Hon. Member said, contrary to what we were told in Tynwald...

Now, I am a great believer, Mr President, that Tynwald is the place where policy and financial matters matter, but we are branches of Government that meet on a weekly basis, and we should take the opportunity, if that enables us to correct wrongs that have been done. You cannot wait.

Now, it comes as no surprise to hear a Member of the industry board, who is involved, saying, 'Well, we'll leave it for a little bit longer; another two or three months won't make much difference'. It hopefully...

This is what is happening: statements are being made which are half correct. (**Mr Delaney:** Unchallenged) (*Interjection by Mrs Crowe*) Let me tell you: the Attorney General, on Sunday, was used by the MEA Chief Executive (**Mrs Crowe:** Quite.) as supporting his case – 'nothing untoward'. Now, if I have interpreted what the Attorney has said in here, that the companies did not have to borrow money, but if they then lend the money to the MEA, they

would need it – that is not the message that was given out on Sunday by the Chief Executive. (*Interjection by Mrs Crowe*)

Well, I am trying, Mr President, not to get in a frenzy, because I was told that I would get into a frenzy. I do not get into a frenzy.

Let me just tell you what parliament, Tynwald, was told by the Treasury Minister – and I would suggest, if Members have not got it, those that are not keen to debate it today, they should have got it – when we raised the £185 million loan, the then Treasury Minister, former Chief Minister, Mr Corkill, said in moving it:

‘The MEA has now finalised its proposals, a major element of which relates to the gas-fired power station and associated natural gas supply. Indicative costs of the MEA infrastructural which make up the £185 million are as follows: the power station, £80 million; the gas pipeline infrastructure, £20 million; the cable buy-out and refinancing, £50 million; windfarm proposals, £10 million; network reinforcement, £25 million.’

All of that, in detail: that is what we were going to get for the £185 million. And, also, he said that:

‘the £185 million will provide secure and long-term finance sufficient that the MEA will be able to fund any future capital projects without further government or external borrowing’,

and I could quote you chapter and verse, but I will quote you the very last paragraph which he started:

‘There are no further plans to issue any further bonds. Indeed, the Treasury is not likely to agree to further external borrowings in the future.’

Now, that was what was sold on the first bond issue. All of these things were going to be done, and what do we find? We all know the history.

Now, I have got a whole speech made here, Mr President, which I do not want to go into at the moment, but what I am attempting to do –

**The President:** Well, at the moment what I am trying to stick to is suspending of Standing Orders.

**Mr Lowey:** Yes, exactly, but I am trying to answer the Members who say we do not need it, let us leave it to the accountants. Now, we know, with the greatest respect, if you analyse that, that is precisely what Mrs Christian said: ‘At the moment, let’s wait for the report,’ if I heard the Hon. Member right. (*Interjections*)

Now, we know that this report will be dealing with financial matters. We know it – otherwise, why have we got accountants? And as far as I am concerned, there are political...

We know, from the letters that you have seen last week, that the letter from the Chairman of the MEA to the Treasury, which was a simple request for information, the hostility that was in that letter beggars belief! Now, this is not a private firm; this is a public utility that is wholly-owned by the Government, and we know that the Chief Minister could not even get any information out of them – not our present Chief Minister, the former Chief Minister – and had

to invoke the Act to get information from them. Now, that cannot continue.

**The President:** Right, Mr Lowey, okay. I still find it difficult, Hon. Members, in all honesty, to know exactly what the outcome of this so-called ‘debate’ of the MEA is going to be, because it is somewhat ethereal to say that we will just discuss the MEA this morning. It is not very logical in many ways.

But, as I said before, if you are looking for some sort of hat to pin it on, from Mr Lowey’s original, I think that the Legislative Council is supporting a Tynwald committee to consider the future of the MEA – something on those lines, will do me to append it.

**Mr Delaney:** Mr President, could I ask a question, then?

**The President:** You can ask a question.

**Mr Delaney:** Could I ask a question on this motion that is in front of us? Is it right and proper that a branch of administration, where the administration and the parliament is being called, by a person – paid for, by the way, by the public – virtually incompetent, has a right to answer back to find the truth of some of the statements he made on our local radio station, two days past? Is that not a matter for parliament and parliamentary branches?

**The President:** I am sure it is, and I mean to say, (*Interjection by Mr Delaney*) it depends, in fact, if you were listening to the radio programme and knew what was said.

**Mr Delaney:** I know what was said.

**The President:** So, let us deal then with the suspension of Standing Orders.

**Mr Singer:** Can I make a personal statement, because some accusations were made, Mr President –

**The President:** Mr Singer.

**Mr Singer:** – that, because I am a Member of the DTI, I do not want to discuss this. That is totally untrue.

What I believe is that if we are going to discuss it, we discuss it with all the facts. Mrs Christian referred to the financial report – fine, that will be one taken, we need to know that.

But to say that I do not want the whole thing discussed is incorrect, but the right place, I believe, to discuss it is in Tynwald, (**Mr Kniveton:** Hear, hear.) when there are people there and Ministers there to answer.

**The President:** We are going over the same ground again. Right, I am going to put to the Council that, in fact, I need a majority of the Council. Under Standing Order 18, the motion needs a majority of those Members here. Those in favour of suspension of Standing Orders, please say aye; against, no. The ayes have it, but I think we will take a division.

**Mr Lowey:** Yes.

*A division was called for and voting resulted as follows:*

**FOR**

Mr Lowey  
Mr Delaney  
Mrs Crowe

**AGAINST**

The Lord Bishop  
Mr Waft  
Mr Singer  
Mr Kniveton  
Mrs Christian  
Mr Gelling

**The President:** I think it is 3 for and 6 against was the vote, Hon. Members. Therefore, that will draw to a conclusion our business –

**Mr Lowey:** It will not be the end of the matter, I am sure, Mr President.

**The President:** Absolutely. I am absolutely certain, Hon. Members, it will not be the end of the matter, not in any regard.

### Procedural

**The President:** But I would point out to Members, yet again, that, in fact, if we are seeking something of this nature, it is much better to have it down, firmly, as a particular motion. It will make it a lot –

**Mr Lowey:** But, with respect, Mr President, we did not get the letter until last Thursday, we did not hear the radio programme until Sunday, so that is impossible –

**The President:** Yes, I appreciate that, but there is still a need to put down a motion that is subject to debate, rather than just making statements.

**Mr Delaney:** It will be seen by the public as a cover-up, as usual.

**Mr Lowey:** You are absolutely right.

### Trees and High Hedges Bill Second Reading approved

2. Mrs Crowe to move:

*that the Trees and High Hedges Bill be now read a second time.*

**The President:** Can we deal with the Trees and High Hedges Bill, Hon. Members. As I indicated, the Fiduciary Services Bill will not be dealt with this morning, so we have reached, then, the Second Reading of the Trees and High Hedges Bill. Mrs Crowe, please.

**Mrs Crowe:** Thank you very much, Mr President.

There were some queries I would like to tidy up from the First Reading, if I might. I think it was the Hon. Member, Mrs Christian, who asked about the roots of trees and, in

fact, that is covered in other legislation. The reason for this legislation is there is no other method for a resolution on these difficult problems.

So, the purpose of the Bill, as we know, is to provide a mechanism for the resolution of disputes between neighbours regarding either a tree or a high hedge which, allegedly, adversely affects the reasonable enjoyment of the property of the complaining party. Whilst the primary cause for complaint is a lack of light, there may be other factors which could be taken into account, before the recourse to legal mechanisms embodied in the legislation.

There is an agreed policy to delegate some of the functions of the Department of Local Government and the Environment to local authorities, and such powers of delegation are contained within the Bill.

I think the legislation is, indeed, quite closely linked to part 8 of the UK Antisocial Behaviour Act 2003, and it is expected that the Department will have regard to the guidelines and criteria which are currently used throughout the United Kingdom for the resolution of these problems.

Thank you, Mr President. I beg to move the Second Reading.

**The President:** Have we got a – ?

**Mrs Christian:** I beg to second and reserve my remarks.

**The President:** Mr Singer.

**Mr Singer:** Unfortunately, I could not ask any questions last week. Perhaps I can ask just a couple of questions.

Does this affect trees that are, for example, along pavements and that overhang into people's gardens and then cut out the light, or if somebody is backing on to almost a forested part, where you are going to get...? I see it talks about space between trees, but, basically, you get all the trees in a distance growing very high and cutting out light et cetera. Does it affect...? Even though it is not actually in the person's, or in between people's, gardens, does that come within this legislation?

**Mrs Crowe:** The Tree Preservation Act has primacy over this legislation, so any matter concerning, as you were saying, trees on a sidewalk that may be troublesome to a householder is a matter for the local authority, or whoever – if it was a landowner with a forest behind a house – and that is a matter for the Department of Agriculture and Forestry to deal with.

**Mr Singer:** Under this Act, does it make any difference? Will the householder be able to – if there are no tree preservation orders on the particular trees in question – ask for some action to be taken?

**Mrs Crowe:** Not through this particular Act. There is a Trees Preservation Act which deals with those matters and that will be dealt with through that legislation.

**The President:** Mr Waft.

**Mr Waft:** Yes, Mr President, just a comment about 'only when an officer is satisfied that the process of mediation has been exhausted'. Usually, in these instances, one neighbour is

not talking to the other neighbour, anyway, and the mediation process has broken down many years prior to this. Are they going to have to go through a further conference with the neighbour where there is some problem? What is actually meant by 'the process of mediation has been exhausted'? Is that a letter, is it conversation? I would just like clarification on that.

**Mrs Crowe:** Well, I would think that both parties have to explain, to whichever officer is dealing with this, that they have gone through a process of mediation, and I think, as you say, in *all* of these cases, not in most of them, that process of mediation has broken down. That is the reason for the legislation, where you get people who are so disadvantaged, living in their own homes, who, perhaps, have all the light cut out from the front or the rear of their properties and there is, at the present time, no way to resolve that matter. That was the reason for the introduction of the legislation.

**The President:** Okay, Hon. Members, what I will put to the Council this morning is that the Trees and High Hedges Bill be read for a second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

### **Trees and High Hedges Bill** **Clauses considered**

**The President:** So we move on to clauses. Hon. Member, will you take clause 1, Mrs Crowe, please.

**Mrs Crowe:** Thank you, Mr President.

Clause 1 describes the complaints to which the Bill applies, who may make a complaint, and stipulates that the tree or high hedge must adversely affect the reasonable enjoyment of domestic property.

Clause 1(2) precludes the application of the Bill to damage caused by roots of either a tree or a high hedge.

Clause 1(3) deals with the interpretation of certain terms used in the Bill.

Clause 1(4) permits a complaint to be made by the owner of an unoccupied property in certain circumstances.

I beg to move clause 1, Mr President.

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

**The President:** Mrs Christian.

**Mrs Christian:** We tend to think of this Bill in terms of blocking light, and so on, but, certainly, in the recent storm it has, perhaps, come to our attention that neighbours have been concerned about the potential for neighbours' trees to crash down onto their properties. Would the mover confirm that this Act might be a vehicle for discussing the concerns of a neighbour on that account?

**Mrs Crowe:** Yes, I think, although it may need some clarification, I do believe that there is other legislation that covers those problems, that if you do have concerns that a tree in an adjoining house is dying from the inside out or

whatever, it is a matter of the Department of Forestry dealing with that under their Tree Preservation Act.

**The President:** Mr Attorney.

**The Attorney General:** Mr President, I wonder if the Hon. Member would agree that clause 1(1)(b) states that the complainant must show that his reasonable enjoyment of the property *is being* adversely affected and, perhaps, the difficulty with the interpretation which has been suggested is that the hypothetical tree indicated by the Hon. Member, Mrs Christian, might *in the future* adversely affect the enjoyment of the property. That is the difficulty, and it may be, Mr President, this Bill is not designed to cover that situation that has been raised by the Hon. Member, Mrs Christian.

**The President:** Mrs Christian, do you wish to comment further?

**Mrs Christian:** Yes, I note the learned Attorney's interpretation and, perhaps, given that there is other legislation, that is the way to tackle it, although I would say that recent experience has shown that it is not diseased trees that are an issue; it is just large trees which are an issue, (**Mrs Crowe:** Yes.) and that, indeed, a person's enjoyment is being adversely affected psychologically, if not physically, by having such an adjacent tree.

**Mr Lowey:** Is that not intrinsic, with respect, in clause 2(1), because that does not apply to complaints about damage caused by the roots of either a tree or a high hedge? Is that not really implied, that it is not the damage, it is the reasonable enjoyment of a property that is being adversely, as was pointed out by the Attorney, but the damage, I think...?

**Mrs Christian:** Indeed, but I would argue the psychological case. If there is other legislation, Mr President, that is fine.

**The President:** Mr Waft.

**Mr Waft:** I am just thinking about the situation of large trees even being planted and the danger in the future, because if something does subsequently happen, it suddenly becomes an act of God. It is nothing to do with... If it falls and it has been put in a very dangerous position, it will eventually come down. I do not know where that is coming from.

**The President:** Mrs Crowe to reply to clause 1.

**Mrs Crowe:** Thank you, Mr President.

This actually was also mentioned at the First Reading stage, about a sapling being planted which could, in time, be dangerous. I was assured that that also is a matter for consultation with the Department of Forestry, that they would, perhaps, advise an adjoining property that it was not appropriate to plant a tree of a species that might grow to 100 feet high in an area, such as the intention was.

So yes, I do believe that it is covered in other legislation, and I take the point about damage being caused by trees, at the present time, in adjoining properties, but this particular Bill is about the neighbourly disputes caused by the nuisance value of mainly high hedges.

**The President:** Hon. Members, the motion that I put to the Council is that clause 1 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 2, Mrs Crowe.

**Mrs Crowe:** Mr President, this clause defines a high hedge for the purpose of the Bill, and in the Act, a 'high hedge' means so much of a barrier to light as (a) is formed wholly or predominantly by a row of two or more trees or shrubs; (b) rises to a height of more than two metres above ground level.

Subclause (2): for the purposes of subsection (1) a row of trees or shrubs is not to be regarded as forming a barrier to light if the existence of gaps significantly affects its overall effect as such a barrier at heights of more than two metres above ground level.

Mr President, I beg to move.

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

**The President:** The motion, Hon. Members, is that clause 2 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 3, Mrs Crowe.

**Mrs Crowe:** Mr President, clause 3 defines a domestic property for the purpose of the Bill. A 'domestic property' means a dwelling or a garden or a yard which is used and enjoyed wholly or mainly in connection with that dwelling.

In subsection (1) 'dwelling' means a building or part of a building occupied or intended to be occupied as a dwelling.

Subsection (3), any reference in this Act to a person's reasonable enjoyment of domestic property includes the reference to his reasonable enjoyment of any part of such property.

Mr President, I beg to move.

**The President:** Mr Lowey.

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

**The President:** The motion, Hon. Members, is that clause 3 do stand part of the Bill. Those in favour, please say aye; and against, no. The ayes have it. The ayes have it.

Starting on the complaints procedure, with clause 4, Mrs Crowe, please.

**Mrs Crowe:** Thank you, Mr President.

As you rightly say, this clause 4 is the complaints procedure for this particular Bill.

This section has effect where a complaint to which this Act applies is made to the Department and is accompanied by such fee, if any, as the Department may, by Order, prescribe.

If the Department considers that the complainant has not taken all reasonable steps to resolve the matter complained of, before proceeding by way of such a complaint to the Department, or that the complaint is frivolous or vexatious, the Department may decide that the complaint should not be proceeded with.

If the Department decides to proceed with the complaint, it must decide whether, in its opinion, the tree or high hedge specified in the complaint is adversely affecting the complainant's reasonable enjoyment of domestic property so specified, and if so, what action, if any, should be required to be taken in relation to that tree or hedge, in pursuance of a remedial notice under section 5, with a view to remedying the adverse effect or preventing its reoccurrence.

The Department must, when acting under the subsection, take into consideration all matters appearing to be relevant: the extent to which the tree or high hedge in question is capable of affording – or, in the case of a high hedge, if reduced in height, would still be capable of affording – privacy to the occupier of the neighbouring land; in the case of a tree, after consultation with the Department of Agriculture, Fisheries and Forestry, the extent to which the tree contributes to the amenity of the neighbourhood; and the provisions of the Tree Preservation Act 1993, to which this Act is subject, and any other legal obligations relating to that tree or hedge.

If the Department decides under subsection (3) that the action should be required to be taken, as mentioned in paragraph (b), then it must, as soon as practicable, issue a remedial notice under section 5 implementing its decision, send a copy of that notice to the following: the complainant; every person who is the owner or occupier of the neighbouring land; and, in the case of a tree, to the Department of Agriculture, Fisheries and Forestry. It must also notify those mentioned in paragraph (b) of the reasons for their decision.

If the Department, under subsection (2) decides that the complaint should not be proceeded with or, under subsection (3), decides either or both of the issues specified in that subsection otherwise than in the complainant's favour, then it must, as soon as reasonably practical, notify the appropriate person or persons of any such decision, and the reasons for it.

For the purpose of subsection (6), the complainant is an appropriate person in relation to a decision falling within paragraph (a) or (b) of that subsection. Every person who is the owner or occupier of the neighbouring land is an appropriate person in relation to a decision falling within paragraph (b) of that subsection.

Mr President, I beg to move clause 4 stand part of the Bill.

**The President:** Mr Lowey.

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

**Mr Gelling:** Could I just ask a point, Mr President?

It is, basically, on the light and the trees. Usually these things crop up because of, perhaps, neighbourly disputes, but, in recent years, I have certainly had one particular one where they did not use trees, they used big bale silage. If you put two lots of big bale silage on top of each other you reach something like a height of 10 feet, if not more, and I understand you cannot do anything about it whatsoever, because it is a farmer's fodder, stored in his field. It caused terrible anxiety, during this particular time, and I just wondered whether, if we get the trees sorted out, there is any repercussion, then, on seeing big bale silage rolled up alongside people's houses, instead of trees?

**The President:** You and I know where it has happened before, don't we, Mr Gelling? (*Laughter*) Mr Waft.

**Mr Waft:** I am just wondering about the reasons why they do not have to take any action here. I just wondered if, in drawing up the rules and regulations by the Department, with regard to the Trees and High Hedges Bill, if it is written in such a way that it is going to put people off – not complaining because of the bureaucracy that seems to be involved, and all the people involved, and all the things to be taken into consideration before somebody actually moves themselves, and says, 'Right, we're going to do something about it.' It seems to be a bit convoluted, if I might say.

**The President:** Mrs Crowe to reply.

**Mrs Crowe:** Well, with regard to the statement that has just been made by Mr Waft, I think he would reasonably agree that all complaints procedures, when they are laid down in legislation, seem very cumbersome and, indeed, I think if we, highhandedly, or if a Department or Statutory Board just decided, 'Well, yes, it's far too high, we'll have it chopped down,' I think we would be criticised.

There has to be a formal complaints procedure in place and, of course, when it is written in these terms, it does look cumbersome.

The whole reason for this Bill is that, at the present time, there is no resolution to these complaints. There are strict criteria to be observed, and I hope that it will help many people who are, at the present time, being caused a nuisance.

I will be fully expecting an amendment on big bulk storage silage to be included in this, (*Laughter*) if that is the will of my hon. colleague, Mr Gelling. As you know, agricultural matters do not fall within my sphere of knowledge.

**The President:** Hon. Members, the motion I put to the Council is that clause 4 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 5, Mrs Crowe.

**Mrs Crowe:** Thank you, Mr President.

Clause 5 provides for the issue of remedial notices, and for this purpose in the Act a remedial notice is a notice: (a) issued by the Department in respect of a complaint to which this Act applies; and (b) stating the matters mentioned in subsection (2).

Those matters are: (a) that a complaint has been made to the Department under this Act about a tree or high hedge specified in the notice which is situated on the land so specified; (b) that the Department has decided that the tree or the height of the hedge is adversely affecting the complainant's reasonable enjoyment of a domestic property specified in the notice; (c) that such action as specified in the notice must be taken in relation to that tree or hedge, with a view to remedying the adverse effect before the end of the compliance period; (d) if the Department so decides, that, following the end of that period, such action as is so specified must be taken in relation to that hedge or tree, with a view to preventing a recurrence of the adverse effect, so long as the hedge or tree remains on that land; and (e) the consequence under sections 10 and 11 of a failure to comply with the notice.

Unless the subject of the variation under section 6 and, in the case of a tree, the Department of Agriculture, Fisheries and Forestry has notified its approval, the action specified in the remedial notice for the purpose of the subsection may not involve the removal of the tree or hedge, or a reduction of the height of the tree or hedge to less than two metres above ground level. A remedial notice shall take effect on its operative date.

The operative date of a remedial notice is such date falling within at least 28 days after that on which the notice is issued, as it is specified in the notice as the date on which to take effect.

The compliance period, in the case of a remedial notice, is as set out in the subsections, to have effect in relation to a remedial notice subject to: (a) any variation or withdrawal of the notice under section 6; and the operation of any provisions made by or under section 6(6) or sections 7 to 9 in relation to the notice.

While a remedial notice has effect, the notice shall be a burden on the land pursuant to paragraph 14 of schedule 5 of the Land Registration Act 1982, and shall be binding on any person who is, for the time being, the owner or occupier of the land to which that notice relates.

Mr President, I beg to move that clause 5 stand part of the Bill.

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

**The President:** Seconded by Mrs Christian.

The motion I put to the Council, Hon. Members, is that clause 5 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 6, Hon. Member.

**Mrs Crowe:** Clause 6 deals with the procedures and circumstances in which the variation or withdrawal of a remedial notice at the instance of the parties involved and the Department of Agriculture, Fisheries and Forestry is permitted.

The remedial notice may be varied or withdrawn by the Department, in pursuance of an application to the Department which is made at any time after the notice is issued, jointly by a person or persons falling within subsection (2)(a) and a person or persons falling within subsection (2)(b), or which is made at any time after the end of the compliance period by a person or persons falling within subsection (2), on the grounds that there has been a material change in circumstances.

The persons falling within this subsection are: any person who is the complainant; any person who is the owner or occupier of the neighbouring land; and the Department of Agriculture, Fisheries and Forestry.

Where the Department has made its decision on the application under subsection (1), it must, as soon as reasonably practical, notify each person falling within subsection (2) of the decision and its reasons for it and, if the decision is to vary the notice, send each person a copy of the notice as varied by it.

Subject to the operation in relation to the notice of any provisions made by or under subsection (6) or sections 7 to 9, if the decision is to vary the notice, the notice shall have effect, as varied by the Department, as from the date of the notification given it under subsection (3); and, if the decision is to withdraw the notice, the notice shall cease to have effect from that date.

The withdrawal of a remedial notice does not prevent the Department issuing a further such notice in respect of the high hedge or high tree in question in connection with any subsequent complaint.

The Department may make regulations to make provision with respect to the procedures to be followed in connection with: applications under subsection (1); and decisions of the Department on such application; other matters consequent on or connected with such applications or decisions.

Regulations under subsection (6) may, in particular: (a) in connection with matters falling within paragraph (a) of that subsection, make provision corresponding or similar to any provision made by section 4; and (b) make provision with respect to the operational effect of a remedial notice in a case where an application for the variation notice is made under subsection (1)(a) before the end of the compliance period; and (c) make provision for any decision made on an application by a person or persons under subsection (1) to be binding on other persons falling within subsection (2).

Mr President, I beg to move clause 6 stand part of the Bill.

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

**Mrs Christian:** Mr President, I wonder if the mover could, under section 6(1)(b), give any example of the sort of material change in circumstances which might affect the remedial notice?

**Mrs Crowe:** Well, I would have thought that the change in circumstance may well be, perhaps, the property has been sold to another party, and so negotiations have to begin with another party or...

I could get some clarification on that, but I would have thought that material changes would be, maybe, if the matter had been attended to.

**The President:** Mr Gelling.

**Mr Gelling:** Could I ask my question there because it follows on. I was going to bring it up later.

I was a little concerned about a neighbour who, perhaps, their means have changed or circumstances change. It could be that they could neither afford it, or have the ability to actually remove the hedge, and I just wondered whether that appeal could be accepted, and, in fact, the person whom it is affecting could then, during that appeal procedure, actually offer to do the work.

I just wondered, then circumstances could very well be that an elderly lady in a little cottage cannot afford to do it, perhaps admits that it is a problem, but has not got the means to do it.

**The President:** Mediation, I would have thought. Mrs Crowe.

**Mrs Crowe:** Yes, the appeals section, there is an appeals process and, of course, I do believe that, in many cases, mediation, as you say, with the person whose light is being damaged: very often they are willing to pay to remove the high hedge if it is someone who cannot, indeed, afford to pay, or even if it is someone who can afford to pay. It causes great distress to have the light cut from their properties, and

they are very often anxious to pay for the removal of these trees or hedges.

**The President:** Are you going to pick that up? Mr Attorney.

**The Attorney General:** Yes, thank you, Mr President.

I was just going to observe that clause 11 may, in fact, also provide the answer to the Hon. Member, Mr Gelling, because it provides there that, where any action required by a remedial notice has not been taken as it should have been, then the Department can take the initiative and do the work. And it says then, in clause 11(1)(b), the Department may recover any expenses reasonably incurred in doing the work.

So, clearly, in the hypothetical question, Mr President, if there was an elderly person who was not able to pay for the cost of the work and, as it were, put her hands up and said, 'Look, I agree the hedge should be brought down, but I don't have the wherewithal to do it,' the Department can then do it, and I would have thought it would be most unlikely in those circumstances the Department would seek to recover the expenses from the elderly person.

**The President:** It is permissive, with the word 'may'.  
(**The Attorney General:** Yes.)

The motion I put to the Council is that clause 6 do stand part of the Bill. Those in favour, please say aye; and against, no. The ayes have it. The ayes have it.

Appeals: clause 7, Mrs Crowe, please.

**Mrs Crowe:** Clause 7 deals with the appeals, as you quite rightly say, Mr President, and so, where the Department issues a remedial notice in accordance with section 5, or decides to vary or withdraw such a notice under section 6, or decides to refuse an application under section 6(1), any persons falling within subsection (2) may appeal to the High Bailiff against the notice or decision.

The persons falling within this subsection are: any person who is the complainant; any person who is the owner or occupier of the neighbouring land; and, in the case of a tree, the Department of Agriculture, Fisheries and Forestry.

Where the Department makes a decision falling within subsection 4(6), the complainant may appeal to the High Bailiff against the decision. An appeal under this section must be made: (a) before the end of the period of 28 days beginning with the relevant date; or (b) such later time as the High Bailiff may in writing allow.

In subsection (4), the 'relevant date', in the case of an appeal made in pursuance of subsection (1)(a), means the date on which the notice in question was issued; and in the case of any other appeal under this section, means the date of the notification given by the Department under sections 4 or 6 in respect of the decision in question.

Where an appeal is duly made in pursuance of subsection (1)(a) or (b), the notice or, as the case may be, the decision in question shall be of no effect pending the final decision or the withdrawal of that appeal.

The High Bailiff may, on an appeal under section 7, allow or dismiss the appeal in whole or in part.

**A Member:** That is clause 8.

**Mrs Crowe:** Oh, sorry. Thank you, Mr President. I beg to move clause 7 stand part of the Bill.

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

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, it just seems to me, in the appeal process and, maybe, earlier on, looking at subclause 7(2)(b), where a person has filed a complaint about a high hedge and they have been through the procedures and a notice is issued, subclause 7(2)(b) allows the owner or occupier of the neighbouring land to appeal against the notice. Now, they are two different people who may have a neighbour who is willing to chop down the hedge, but the owner of the property, which may be leased, can object. Is that envisaged by the draftsman in this circumstance, or was it anticipated that it was the owner who lived next door? It is not just the resident who lives next door.

**Mrs Crowe:** Yes, I do –

**The President:** Mrs Crowe, I will allow.

**Mrs Crowe:** Sorry, Mr President.

I think it was envisaged. There was a lot of consultation about this Bill and, of course, a great deal of help from the legal draftsman in drafting it, and I think it was envisaged that there are other parties, in the case of a property, and it is not necessarily the resident, but could well be the owner, whether he occupies or not. So, I do believe – (*Interjection*)

**The President:** I think, taking Mrs Christian's point, it strikes me that, in fact, it is wider actually than that, isn't it? On subclause 7(2)(b), it also uses the terminology again 'neighbouring land'. Well, 'neighbouring land' we oft think of as being 'adjacent to', but in actual fact, taking up on Mr Singer's point earlier, about possibly parkland further away, if you had a terrace of houses, the neighbour could be happy with the trees alongside, but people two or three down might not be happy, and they could complain, because 'neighbouring land' simply says land on which the tree or high hedge is situated. So, it is not necessarily 'neighbour abutting', in that terminology.

Hon. Members, in that case, I put to Council clause 7. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

We turn to clause 8, Mrs Crowe.

**Mrs Crowe:** Still part of the appeals provisions, and the determination or withdrawal of such: the High Bailiff may, on an appeal under section 7, allow or dismiss the appeal in whole or in part.

Where the High Bailiff decides to allow such appeal to any extent, he may quash any remedial notice or decisions to which the appeal relates; vary such notice; or, where such a notice has not been issued by the Department in respect of the complaint in question, issue any such notice in respect of it, as if it could have been issued by the Department, as he considers appropriate.

For the purposes of this section, section 4(4) shall apply in connection with any decision by the High Bailiff as to either of the issues specified in section 4(3), as it applies in connection with any decision of the Department under that subsection, and, in section 5, references to the Department shall, where the context permits, include a reference to the High Bailiff.

Once the High Bailiff has made his decision on appeal under section 7, he must, as soon as reasonably practical, give a notification of that decision, and if the decision is to issue a remedial notice, or to vary such a notice, send copies of the notice as issued or varied by him to every person falling within section 7(2), and to the Department.

Where, in consequence of the High Bailiff's decision on appeal, a remedial notice is upheld or varied, the operative date of that notice shall be the date of the High Bailiff's decision, or such later date as he may specify in his decision.

Where the person making an appeal under section 7 against a remedial notice withdraws his appeal, the operative date of the notice shall be the date on which the appeal is withdrawn.

In any case falling within subsection (5) or (6), the compliance period for the notice shall accordingly run from the date which is its operative date by virtue of that subsection, and any period which may have started to run from the date preceding that on which the appeal was made shall, accordingly, be disregarded.

Mr President, I beg to move clause 8 stand part of the Bill.

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

**The President:** The motion, Hon. Members, is that clause 8 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 9, Mrs Crowe.

**Mrs Crowe:** Clause 9 is concerned with the powers of entry, Mr President.

In the first section, where, under this Act, a complaint has been made or a remedial notice has been issued, a person authorised by the Department may enter the neighbouring land in order to obtain information required by the Department for the purpose of determining: whether this Act applies to the complaint; whether to issue or withdraw a remedial notice; whether to vary a requirement of a remedial notice; whether a requirement of a remedial notice has been complied with.

Subclause (2): where the appeal has been made under section 7, a person authorised by the High Bailiff may enter the neighbouring land in order to obtain information required by the High Bailiff for the purpose of determining an appeal under this Act.

A person shall not enter land in the exercise of a power conferred by this section unless at least 24 hours' notice of the intended entry has been given to every occupier of that land. A person authorised under this section to enter land shall, if so required, produce evidence of his authority before entering and shall produce such evidence, if required to do so, at any time whilst he remains on that land.

A person who enters land in the exercise of power conferred by this section may take with him such other persons as may be necessary, and take with him equipment and materials in order to obtain the information required.

If, in the exercise of a power conferred by this section, a person enters land which is unoccupied, or from which all of the persons occupying that land are temporarily absent, he must, on his departure, leave it as effectively secured against unauthorised entry as he found it.

A person who intentionally obstructs a person entering in the exercise of these powers under this section is guilty of an offence and shall be liable, on summary conviction, to a fine not exceeding £5,000.

Mr President, I beg to move clause 9 stand part of the Bill.

**The President:** Mr Lowey.

**Mr Lowey:** I beg to second, sir.

Could I just ask the mover of the Bill: this is a Private Member's Bill, this is a Bill dealing with a problem mainly between neighbours. We know it is not just unique to the Isle of Man. It is throughout the country: the Welsh Assembly has just introduced legislation on a similar line to deal with this. But I always find it incredible that, when we write a piece of simple legislation which is designed to help neighbours resolve problems when they have broken down, for the neighbours to go to law, to look at this, it needs to be – pardon the pun – a simple solution. (**A Member:** Hear, hear.) This is enabling people to enter land to sort out the problem, but we make it so convoluted in words that anybody picking up that legislation and knowing what their rights are... it is almost an impossible dream.

I just wonder if, when we are drawing up legislation in the future, the right of entry should be just referred to 'the right of entry as under such a particular piece of...' because we have already got that in legislation, where officers have the right of entry. I am certain it could save reciting all this jargon, because the law is supposed to be read and understood by the people who it is designed to help, but I defy anybody to say that could be understood by anybody other than with an MA degree – or more than the Castle Rushen diploma that I have got, Mr President.

**The President:** Mr Waft.

**Mr Waft:** Yes, just an observation, Mr President.

We are criticised from time to time – quite often – about taking the responsibilities away from local authorities, and I would have thought hedges, particularly... Local authorities have been dealing with hedges for many years under notice of abatement of a nuisance, and they just tell them to get their hedge cut and they get it cut.

**Mr Kniveton:** Absolutely right.

**Mr Waft:** If you could have extended that slightly and said, 'Sort that hedge out, otherwise you'll come under section whatever of the Local Government Act'... I just think that we are taking a bit of a sledgehammer to crack a nut.

**The President:** Lord Bishop.

**The Lord Bishop:** Thank you, Mr President.

Under subclause 9(5)(a) there is this wonderful phrase, 'take with him such other persons as may be necessary'. (**The President:** Yes.) If it is my land and I suddenly find that you have brought two or three of your buddies with you... I find 'necessary' an interesting word, in that necessary for what?

**Mr Delaney:** Your lawyer?

**The Lord Bishop:** Your lawyer, yes.

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, I am trying to imagine under what circumstances you would need this power. The complaint is because there is a high hedge which exceeds the height of two metres, and it is blocking somebody's light or some other purpose, so I can only imagine it could be to go in and measure the height of the hedge, in which case it might be somebody to hold the ladder for the Lord Bishop! (**The Lord Bishop:** Yes!) (*Laughter*)

But I would have thought that, in most cases, it would be self-evident that the hedge was close to the property, and above two metres and, therefore, was blocking the light. It is a factual matter.

But unless the dispute is about the actual height of the hedge I cannot imagine there are many circumstances where it is necessary to go on the neighbouring land to prove the case.

**The President:** Now, Mrs Christian has just mentioned there 'neighbouring land' again, and I would revert to what I said earlier. 'A person shall not enter land': this could be the officer wishing to go into the abutting property, which is not necessarily the neighbouring land in the interpretation of this particular legislation, in which case I am concerned that, in fact, it says at least 24 hours' notice of intended entry has been given to every occupier. In 'given to every occupier', does that mean that the occupier has actually received it, or does it just mean that they have posted it, or does it mean it has been delivered, or in what terms does that mean? A bit difficult there. Mr Delaney.

**Mr Delaney:** Yes, I agree with other Members. I understand it is a Private Member's Bill. I looked at this Bill with some trepidation – Mr Lowey's point, I think – because the only story I ever heard where this, really, was enforced was a story that comes, I think, from the unwritten part of the Bible, where the good Lord was walking on his boundary between Heaven and Hell, and he met the Devil. He said to the Devil, 'Get those hedges cut – they are getting to be a disgrace!'

The Devil said, 'I'm not going to cut them; I'm busy burning the devils this side!'

'Listen,' he said, 'if you don't get them cut, you'll hear from my lawyers.'

And the Devil's reply was: 'Where are you going to find a lawyer your side of the fence?' (*Laughter*)

**The President:** All good stuff, and maybe that will be a story that could be used in the future. Mrs Crowe, do you wish to reply at all?

**Mrs Crowe:** I think I can cope. I know that the Attorney General was looking, I am sure, to give me help, and will do so if I get this...

I think, in the case of legislation, Mr Lowey has made the point that we can just refer to another section of the Act. I actually do think that is unsatisfactory. I think if we are creating legislation about a particular matter, then all of that... If there is a power of entry, it should be clearly shown, as a power of entry, because it is quite an onerous power to give to someone, and so it is clearly laid out in the legislation what powers the officers can exercise.

What I would say is, though, alongside the legislation

there is to be, as was stated earlier in the clauses, or in the explanatory notes, clear, simple leaflets given to local authorities and the like, for anyone who wished to make a complaint about this, and I feel certain people like the Office of Fair Trading and others will make sure that that leaflet is very clearly written, to enable this simple procedure to take place.

Of course, like all things, these things escalate when you cannot get mediation, and this is what this Bill is all about.

With regard to Mr Waft's comment about local authorities having always carried out this remit and the rest of it, if, indeed, that was the case, there would be no need for this legislation. That is the whole problem. Local authorities may, in *your* area, carry them out, but throughout the whole of the Island, local authorities do not carry out these functions in regard... and that is even in regard to overhanging hedges on public highways and the pavements and the like.

So some local authorities – and you may be fortunate to be connected with one of the few that do – but the majority do not carry out these functions by way of abatement notices.

**Mr Waft:** Just a point of order, Mr President. My point was that, if you give them the power to do what you want them to do, and then you can appeal through DoLGE.

But I would just like to point out, as well, if a hedge is 30 feet on one side of the fence, the chances are it is going to be 30 feet the other side! But that was my only comment.

**Mrs Crowe:** Yes, but the powers for the local authority to mediate are in this. It is to the local authority that the person would first apply, so that is within the Bill, Mr Waft.

The Lord Bishop made comment about persons 'as may be necessary', and I think Mrs Christian is correct in saying that person may be the lad that carries the ladder, or the theodolite, or whatever he needs to measure the height or width or depth of this hedge, as required by the High Bailiff – because there is an expectation, if the High Bailiff wants a detailed report, then someone could make it, presumably. Also, he may well feel that he needs to be accompanied by members of the Constabulary, if he feels that that is necessary, so presumably that is the reason that it is written in that way.

I think I dealt with the queries by Mrs Christian, Mr Delaney. No, Mr Delaney's was not really a question, I think.

**Mr Delaney:** Just a point of reality. (*Laughter*)

**The President:** I think if the person thinks he needs the requirement of the Constabulary with him on entering a premises, in that case, he should definitely have a warrant before he goes, (**Mrs Crowe:** Yes.) and there are two different authorisations in this particular clause. There is the authorisation by the Department, (**Mrs Crowe:** Yes.) which is just a simple authorisation for 24 hours without a warrant, and there is also the authorisation by the High Bailiff under appeal, which is totally different.

Anyway, Hon. Members, the motion I put to the Council is that clause 9 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 10.

**Mrs Crowe:** Thank you, Mr President.

Clause 10 is about the enforcement of remedial notices. Where, at any time after the end of the compliance period, any action required by a remedial notice to be taken has not been taken, any person who is then the owner or occupier of the neighbouring land shall be guilty of an offence, and liable on summary conviction to a fine not exceeding £5,000.

In proceeding against a person for an offence, under subsection (1), it shall be a defence for him to show that he did everything he could be expected to do to secure compliance with the notice. Where the person charged with an offence under subsection (1) was not sent a copy of the remedial notice under any provisions of this Act, and either at the time of the offence he was the owner of the neighbouring land, or he was not the owner of the neighbouring land, it shall be a defence for him to show that he was not aware of the existence of the notice.

Where a person is convicted of an offence, under subsection (1), and it appears to the court that the failure to comply with the remedial notice is continuing, and it is in that person's power to comply with it, the court may, in addition to or instead of imposing any punishment, order him to take, within such reasonable period as may be fixed by the order, such steps as may be specified in that order, for compliance with the order.

Where a person fails without reasonable excuse to comply with an order under subsection (4) he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding £5,000.

Mr President, I beg to move that clause 10 stand part of the Bill.

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

**The President:** The motion, Hon. Members, is that clause 10 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 11, Mrs Crowe.

**Mrs Crowe:** Clause 11 is where, at any time after the end of the compliance period, any action required by a remedial notice to be taken has not been taken, a person authorised by the Department may enter the neighbouring land, and take the required action, and the Department may recover any expenses reasonably incurred by that person in doing so from any person who is an owner or occupier of the land. Where any such expenses are recoverable from two or more persons, they shall be jointly and severally liable for those expenses.

A person shall not enter land in the exercise of a power conferred by this section, unless at least seven days' notice of the intended entry has been given to every occupier of the land. A person authorised under this section to enter land shall, if so required, produce evidence of his authority and shall produce such evidence, if required to do so, at any time that he remains on the land.

A person who enters land in the exercise of power conferred in this section may use a vehicle to enter the land, take with him any persons as may be necessary, take with him equipment and materials needed for the purpose of taking the required action.

If, in the exercise of power conferred by this section, a person enters land which is unoccupied, or from which all the persons occupying the land are temporarily absent, he

must, on his departure, leave it as effectively secured against unauthorised entry as he found it.

If, on a complaint made by the owner of any domestic property, it appears to the High Bailiff that the occupier of the domestic property prevents the owner from executing any work which the Department may require him to execute under this Act, the High Bailiff may order the occupier to permit the execution of the works. Any person who wilfully obstructs a person acting in the exercise of power under this section shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding £5,000.

Mr President, I beg to move that clause 11 stand part of the Bill.

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

**The President:** Mrs Christian.

**Mrs Christian:** Mr President, I just wonder how you define who is responsible, whether it is the owner or the occupier in respect of a high hedge.

Take the example of a house which is let, and the occupier allows the hedge to grow: is it the owner who is prosecuted or is it the occupier? Can you pursue the recovery of expense from the owner, or does it have to be the occupier, or do you have to look at the terms of the lease, to determine who is responsible?

**The President:** Mrs Crowe to reply.

**Mrs Crowe:** Well, certainly, I think we had the last words there, of course, that many leases may or may not contain who is responsible for external works and whatever. But, certainly, it would be my understanding that it would be the owner of the property where the fault would lie, if it was not prescribed in that lease that the tenant was responsible for the outside, for the trees and the like. I am not sure many leases would contain those provisions but, however, that, I think, is the reason it keeps stating, throughout the Bill, 'the owner or the occupier'.

**The President:** Mr Singer.

**Mr Singer:** Lots of people who are occupiers are transient, aren't they? They move, and I would think it would be very difficult, often, to find the person who is the occupier, who can just disappear. I would have thought that the onus should be on the owner. Whatever is in the lease, I think it should be the owner, and so, if it could be the occupier, I am not very happy with that part of the explanation.

**The President:** Mrs Crowe:

**Mrs Crowe:** Well, I could be wrong, but, in answer to Mr Singer, I would say that my hon. colleague here, Mrs Christian, has made the point that one could have a lease, a long-term tenant who may have been in the house for 25 years or whatever, and there could be a lease, or it may, indeed, be part of their responsibilities to the owner that they keep the property in good order, and that hedges are kept neat and tidy, whatever. So that is the reason that the occupier could also be –

**Mr Singer:** I would have thought that any action should be taken against the owner, and then it is up to the owner, under any terms of any lease, to make sure that the occupier took the action. But as it has come out to me today that does not seem to be the position.

**Mr Lowey:** Could I, Mr President, draw attention to item (7) of the particular clause 11:

'If on a complaint made by the owner of any domestic property, it appears to the High Bailiff that the occupier of the domestic property prevents the owner from executing any work which the Department has required him to execute under this Act, the High Bailiff may order the occupier to permit the execution of the work.'

So, that particular one is quite clear. It is the owner, but if it is not being carried out or being prevented by the occupier, then the High Bailiff can say to the occupier, 'Whether you like it or not, mate, the owner is being told to do it and he is going to do it.' So, the onus is there on the owner, isn't it?

**The President:** It is still not quite the answer to, I think, what Mr Singer or Mrs Christian were pointing out. However –

**Mr Singer:** It was a good try.

**The President:** It was a good try, a very good try. The motion I put, Hon. Members, is that clause 11 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 12, Mrs Crowe.

**Mrs Crowe:** Clause 12 deals with the offences by corporate bodies. Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence, and be liable to be proceeded against and punished accordingly.

Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member, in connection with his functions of management, as if he were a director of that body corporate.

Mr President, I beg to move that clause 12 stand part of the Bill.

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

**The President:** The motion, Hon. Members, is that clause 12 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 13.

**Mrs Crowe:** Clause 13 deals with the supplementary provisions. Before making any order or regulations under this Act, the Department shall consult with the Department of Agriculture, Fisheries and Forestry. Orders and regulations made by the Department under this Act shall not have effect, unless approved by Tynwald.

Any order or regulation under this Act may contain such

consequential, incidental, supplementary or transitional provisions or savings – including provisions applying, with or without modifications, provisions made by or under other enactments – as the Department considers appropriate and make different provisions for different cases.

Mr President, I beg to move clause 13 stand part of the Bill.

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

**The President:** The motion, Hon. Members, is that clause 13 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 14.

**Mrs Crowe:** Clause 14 is, once again, regarding complaints. Any complaint, notice or notification authorised or required to be made, issued or given by virtue of this Act must be in writing. Any notification or other document required to be given or sent to any person or the Department of Agriculture, Fisheries and Forestry by this Act shall be taken to be duly given or sent, if it is served in accordance with section 41 of the Interpretation Act 1976.

**The President:** Which is? *(Laughter)*

**Mrs Crowe:** Mr President, I beg to move that clause 14 stand part of the Bill. Would you like me to recite the Interpretation Act?

**The President:** Mr Lowey.

**Mr Lowey:** If we have section 41 of the Interpretation Act 1976, I beg to second, sir, and reserve my remarks! *(Laughter)*

**The President:** Yes, as I have already indicated, perhaps Mr Attorney might give some interpretation of what section 41 of that particular Act is. Mrs Christian.

**Mrs Christian:** Yes, might we also ask him for some interpretation of what is meant in this e-age of ‘in writing’. Does an e-mail suffice?

**Mr Gelling:** Could I perhaps enter in at that stage? I was waiting for clause 15, actually, Mr President, but where it says, there:

“‘high hedge’ has the meaning given by section 2(1)’

and it says then in 2(1), as we have done:

‘means so much of a barrier to light as is formed wholly or predominantly by a row of 2 or more trees or shrubs’,

right, and I will not go any further, because my question is: when is a tree not a tree? **(Mrs Crowe: Oh!)**

I can only highlight a situation: again, I am going into the practicalities of a row of firs that were about eight feet high, and the dispute was that they should come down. The dispute was not settled. Copper nails were put into each tree, which kills the tree. So, then the neighbour whose trees they were – because it was the other one who put the copper

nails in – trimmed them all off at six foot six and the site is absolutely dreadful. I just wondered: does a tree become a fence post once it has died?

**Mr Lowey:** In situ.

**Mr Gelling:** So, when is a tree not a tree, and when does it become a fence post?

**The Lord Bishop:** That’s a theological question, actually! *(Laughter) (Interjection by Mr Lowey)*

**The President:** In that case, the Lord Bishop will give the response. *(Laughter)*

**Mrs Crowe:** Good!

**The Lord Bishop:** I need notice of that question, Mr President.

**The President:** You posed it! Mr Attorney.

**The Attorney General:** Well, can I restrict myself to the giving of notice, Mr President? *(Laughter)*

Yes, as you have observed, clause 14(2) provides a procedure for serving a documentation in accordance with section 41 of the Interpretation Act 1976. Effectively, Mr President, that states that a documentation can be served if it is posted, by prepaying and posting an envelope addressed to the person on whom the document is to be served at his usual or last known place of abode or business, and containing the document which is required. It goes on to say:

‘the document shall be deemed to have been served at the time at which the envelope would have been delivered in the ordinary course of post.’

So, you can do it like that, by posting, or you can serve it personally, or you can leave it with some person apparently over the age of 16 at the usual or last known place of abode or business. Then there are provisions for if the notice is to be given to a company and so on, it can be delivered to the secretary or clerk and so on. So, it sets out a formula for serving documentation.

**The President:** Is it registered post, Mr Attorney? Registered post has to be signed for.

**The Attorney General:** It is served by prepaying and posting an envelope addressed to the person on whom the person is to be served.

**Mrs Crowe:** But, in theory, all Departments serve notices by registered post, don’t they? *(Interjection by Mr Lowey)*

**The President:** Let us not get into that argument. I mean to say, what we are trying to deal with here is what is written in this particular Bill. Now, Mrs Christian has raised a point relative to modern communication in the form of an e-mail. Now, Mr Attorney, if you would...

**The Attorney General:** Yes, my recollection in relation to e-mails is that there is a provision in the –

**Mrs Crowe:** Electronic Communications Act.

**The Attorney General:** – thank you, the Electronic Communications Act which certainly allows signatures in electronic form to be considered to be the original signatures of someone, and I think I am right in saying that documentation delivered by e-mail is considered to be the same as a letter or document. But, again, can I just check that?

**The President:** Yes.

**Mrs Christian:** But, Mr President, could I ask the Attorney, does clause 14(1) not have to be considered in line with clause 14(2), and, in accordance with the Interpretation Act, it has to be delivered by an envelope.

**The Lord Bishop:** It does.

**Mrs Christian:** So, even if you print it... You have got to print off your e-mail – you cannot deliver it by e-mail.

**The Attorney General:** To send in the post.

**The President:** The point being made is that an e-mail would not comply with this particular legislation, if we do not amend clause 14.

**Mrs Crowe:** But Mr Attorney General did say, in the Interpretation Act, that it does not have to be by post, it can be handed to the person –

**Mrs Christian:** But that is not an e-mail either.

**Mr Gelling:** That is sent electronically.

**Mrs Crowe:** Yes.

**The Lord Bishop:** That is still in writing, though, isn't it? (**Mrs Crowe:** Yes.) Which section 1 talks about.

**Mr Lowey:** E-mails were not in 1976 – that is the point, isn't it?

**The Attorney General:** I would respectfully suggest, if I may, Mr President, it would not be appropriate to have e-mail service of documents in this sort of situation. It is unlikely, or perhaps improbable, that every owner or occupier of land is going to have e-mail services. E-mail is appropriate for commercial transactions, not for disputes between neighbours, I suggest.

**The President:** Right, Mrs Crowe, do you wish to wind up that particular section for us? Have you any further observations to make?

**Mrs Crowe:** No, I do not think so. My hon. colleague, Mr Gelling, whose fence posts –

**Mr Gelling:** Not mine.

**Mrs Crowe:** – or trees have become fence posts – (**Mr Lowey:** Art.) So, rural art works, then! I am sure that there is legislation within the Department of Forestry that deals

with what a tree is, what a hedge is and what a shrub is. We have already been through that, as a first part, with the interpretation of hedges, and that does seem an unfortunate case, but this clearly illustrates how distressful these situations can get when persons get to the stage where they poison trees so they die, and then there is still no resolution. So, that is the whole reason for this legislation.

**Mr Gelling:** It lets the light through them.

**The President:** Dealing with clause 14, then, which is relevant to other documents, Hon. Members, the motion I put is that clause 14 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Interpretation clause, please, Mrs Crowe.

**Mrs Crowe:** In this Act: 'complaint' shall be construed in accordance with section 1(1) and (4); 'the complainant' has the meaning given by section 1(3); 'the compliance period' has the meaning given by section 5(6); 'the Department' has the meaning given by section 1(3); 'domestic property' has the meaning given by section 3(1); 'high hedge' has the meaning given by section 2(1); 'the neighbouring land' has the meaning given by section 1(3); 'occupier', in relation to any land, means the person entitled to possession of that land by virtue of an estate or an interest in it; the operative date shall be construed in accordance with sections 5(5) and 8(5) and (6); 'owner' in relation to any land shall mean a person – other than a mortgagee not in possession – who, whether in his own right or as a trustee for any person, is entitled to receive the rack rent of the land, or where the land is not let at a rack rent –

**Mr Gelling:** What's rack rent?

**Mrs Crowe:** – we've been through that before! – would be so entitled if it were so let; 'prescribed' means prescribed by regulations or orders made by the Department; 'remedial notice' shall be construed in accordance with section 1(5).

**Several Members:** Section 5(1).

**Mrs Crowe:** Section 5(1) – I have dyslexia with numbers!

Mr President, I beg to move that clause 15 stand part of the Bill.

**Mr Lowey:** I have pleasure in seconding, and reserve my remarks.

**Mrs Christian:** Mr President, again I would query the use of the words 'rack rent'. (**Mrs Crowe:** Yes.) We have used them in a recent piece of legislation and, after consideration, had them removed. Now, I am not clear whether that was simply because it was not appropriate in that piece of legislation. My recall of it was that nobody actually understood what it meant any more, and that it had been lifted from some old legislation.

I am just concerned that this drafting might be suffering from the same effect. Do we know what rack rent means? Is it of any significance in this context? Do we need to have words in there which do not convey anything (**Mrs Crowe:** Yes.) to people?

**Mr Lowey:** It is a bit like New York: it is so good they named it twice! 'Rack rent' is on two different lines, (a) and (b).

**The President:** Mr Attorney, were you about to comment, sir?

**The Attorney General:** Well, I was just going to say, Mr President, I do, I think, recall having to look it up last time, and I admitted that freely. My recollection is that rack rent is the best rent that is obtainable for the property, if it was let between a willing landlord and a willing tenant. (*Interjections*)

**The President:** Lord Bishop.

**The Lord Bishop:** Can I pick up the high hedge bit, again? I think there is an answer to the Hon. Member, Mr Gelling's thing, because if the thing is dead it is no longer a tree or a hedge, but has become an obstacle. So, there must be other legislation which then covers people who put an obstacle in the fence, which then takes us back to these huge bales of whatever, that if I pile obstacles up against a hedge –

**Mrs Crowe:** Well, there we are.

**The Lord Bishop:** – then it must be, but it certainly cannot be considered to be a hedge, because it is dead.

**Mr Lowey:** It may be a fence.

**The President:** Now we are going round in circles. Mr Attorney.

**The Attorney General:** Mr President, I was going to say that I do not think there can be any doubt that this legislation does not affect the ordinary law, the common law of nuisance, which effectively is designed to protect neighbours from nuisance carried out on his or her neighbour's land.

Typically, of course, you might have a situation where someone moves to the country, finds the green fields roundabout and then his neighbour constructs, I think it used to be, glue manufacturing on the adjoining land and, therefore, suffers noise and smells, and all the rest of it. Now, that is a typical case where the person who complains can bring proceedings in court to obtain an injunction to stop the nuisance, and to get damages for the reduction in value of his land.

That, of course, again, involves litigation and cost and expense. This legislation has limited application in relation to trees and high hedges on the limited sphere of light and nuisance by trees and hedges. It does not affect the ordinary law of nuisance.

So, the bales that the Hon. Member, Mr Gelling, refers to, are obviously not susceptible to the definition of trees and high hedges, but the complainant could certainly go to court and get the bales removed.

Insofar as the dying hedge, Mr President, I respectfully agree with the Lord Bishop. It does not look to me as if that could be a tree or a high hedge, but there could be a remedy in the common law of nuisance.

**The President:** Mrs Christian, you have got a further point?

**Mrs Christian:** I am still not entirely clear about this rack rent issue. The learned Attorney has defined it as the best rent that the person could get, so we seem to have some superfluous wording. The owner is the person in their own right or, if there is a trustee, entitled to receive 'the best rent' for the land or, where the land is not let at 'the best rent', would be entitled if it was so let. Well, presumably they are letting it then at a lesser rent, so it is all the person entitled to receive the rent, isn't it? That is all we need to say.

**The Lord Bishop:** And what if I, out of the goodness of my heart, have decided to rent to my hon. colleague, Mrs Christian, a house at not the best rent? I am allowing her to live, so why can it not just read 'the rent'?

**The President:** Mr Attorney.

**The Attorney General:** Mr President, I think some very good points are made there, but in relation to one of the hypothetical points made by the Hon. Member, Mrs Christian, you could have a situation, of course, where the owner does not rent it out at all and simply allows someone to have the use and occupation of the land. Now, that owner would be entitled to the rent, but actually does not want it and opts not to have the rent. That is the point and, therefore, it is that person who is allowing someone else to occupy his land who is covered by the legislation.

**Mrs Christian:** But why then, Mr President, do we need (b) in there at all?

**The Attorney General:** Can I answer that?

**The President:** Yes.

**The Attorney General:** Part (a), Mr President, covers a situation where you do have a landlord and tenant situation, so the landlord is entitled to receive the rack rent by virtue –

**Mrs Christian:** But may not be receiving it.

**The Attorney General:** But it is designed to cover the situation where he is entitled to receive it, (**Mrs Christian:** Yes.) by virtue of a lease, or some other arrangement; and (b), where the land is not let at a rack rent, would be entitled to it if it were let, but it is not let – it is actually allowed that the licensee is entitled to use and occupy the land. I do not know if that makes sense, Mr President.

**The President:** I think Mrs Christian's point is that he would be allowed to use it under (a) even if he was not paying the rent.

**The Attorney General:** Well, I think it is a good point. I think Mrs Christian makes a very good point. I am trying to explain and justify this drafting! (*Laughter*)

**Mrs Crowe:** Well, I think, Mr President, if I might be helpful –

**The President:** One moment, Mrs Crowe. Let us try to finish this with the Lord Bishop, and then you can answer the whole lot, I think.

**The Lord Bishop:** I was going to ask if we, as a Council, might send back to the drafters, asking them to stop using 'rack' rent.

**Mr Lowey:** Nothing wrong with 'rack'!

**The President:** Without a 'w'.

**Mr Singer:** You mean send 'rack' back.

**The Lord Bishop:** Send 'rack' back, yes!

**The President:** Right. Mrs Crowe.

**Mrs Crowe:** I may be mistaken, but I have a feeling the Houses in Multiple Occupation Bill, which was also within my hands, clearly mentioned rack rent, and we wished to have it removed, or at least we wished to make this, and Mr Attorney General came back with a legal definition that meant that it was more appropriate that it should be in the legislation than out of it. Was that not the case?

**Mrs Christian:** I thought it was taken out.

**Mr Gelling:** No.

**Mrs Crowe:** No, it was not. I do not think so. I think Mr Attorney General was even surprised when he looked up what that particular definition meant – but I cannot actually remember what it meant myself.

**Mr Delaney:** Did you not already give us a definition that this is a standardisation rent? (**A Member:** Yes.) You told us it was.

**Mrs Crowe:** So, I do take the point, though, that, of course, these are not the words of the private Member; these are the words of the draftsman that has drafted the Bill. Maybe that message should be going back that we need it modernising a little, when we are coming to simple remedies for neighbours.

**The President:** Now, Hon. Members, we are dealing with clause 15, and we are dealing with the clause stage, where amendments would have been appropriate. If the call is such that you wish to reconsider when you come to the Third Reading, I suppose I could be lenient.

At this particular stage, we will say we are dealing with the clause stage and the motion I put to the Council is that clause 15 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Perhaps we could deal with clauses 16 and 17 together, Mrs Crowe.

**Mrs Crowe:** Thank you, Mr President.

In clause 16 are the financial provisions and, of course, clause 17 is the short title and commencement.

In clause 16, there shall be paid out of money provided

by Tynwald any expenses incurred by the Department of Agriculture, Fisheries and Forestry in consequence of this Act, any increase attributable to this Act in sums payable out of money so provided by virtue of another Act.

In clause 17, this Act is to be cited as the Trees and High Hedges Act 2004. This Act shall come into operation on such day as the Department may, by Order, appoint, and different days may be so appointed for different provisions and for different purposes.

Mr President, I beg to move that clauses 16 and 17 stand part of the Bill.

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

**The President:** Mr Singer.

**Mr Singer:** Could I just ask for an explanation of 'money provided by Tynwald'. Is that just within the normal Department budget? It is already budgeted for, it is not extra money?

**Mrs Crowe:** Yes.

**The President:** Mr Waft.

**Mr Waft:** I did not indicate.

**The President:** Sorry. Mrs Christian.

**Mrs Christian:** I just wonder why only the Department of Agriculture is quoted in this way, and no mention of DoLGE is made.

**Mrs Crowe:** 'By the Department *and* the Department of Agriculture, Fisheries and Forestry' – the Department is defined, I think, earlier.

**Mrs Christian:** I am sorry, I misread it.

**Mrs Crowe:** No, it is alright.

**The President:** It is the two Departments. Mrs Crowe, do you wish to add?

**Mrs Crowe:** No, thank you, Mr President.

**The President:** In that case, Hon. Members, the motion that I would put is that clauses 16 and 17 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Now, Hon. Members, that completes that particular passage of this Bill. Can I say that, in fact, I have confirmation the terminology 'rack rent' was taken out of the previous Bill.

**Mrs Crowe:** Oh, I am so sorry, Mr President. That was my fault.

**Welcome back to Messenger, Mr John Crooks**

**The President:** Hon. Members, that actually concludes our public session this morning. We are now moving on to sitting in private. Perhaps, before we do, we welcome back our messenger, John. Nice to see you back with us this morning, sir.

**Several Members:** Hear, hear.

**IN COMMITTEE OF THE WHOLE COUNCIL  
(IN PRIVATE)**

**Constitution (Legislative Council) Bill considered**

**The President:** So, we will sit in private, Hon. Members.

*The Council sat in private at 12.12 p.m.*