



**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, 25th January 2005

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

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 E G Lowey and Mr G H Waft,
with Mrs M Cullen, Clerk of the Council.

Business transacted

	<i>Page</i>
Leave of absence granted.....□	85
1. Questions for Oral Answer	
1.1 Government liability in insurance claims – Details of decision and costs.....	85
1.2 Recent storm damage – Evaluation and restoration costs	86
Orders of the Day	
2. Fiduciary Services Bill – First Reading approved	88
3. Trees and High Hedges Bill – First Reading approved.....	89
In Committee of the whole Council (in private)	
4. Summary of Proceedings in the Council of Ministers (November and December 2004) considered.....	91
5. Constitution (Legislative Council) Bill considered	91

The Council sat in private at 11.10 a.m.

Legislative Council

The Council met at 10.30 a.m.

PRAYERS

The Chaplain of the House of Keys

[MR PRESIDENT *in the Chair*]

LEAVE OF ABSENCE GRANTED

The President: This morning, Hon. Members, we have three Members missing: the Lord Bishop is off the Island on Church business; Mr Singer is off on Government business; and Mr Kniveton is looking after Mrs Kniveton, who, I understand, comes out of hospital this morning.

Questions for Oral Answer

TREASURY

Government liability in insurance claims Details of decision and costs

1.1. The Hon. Member (Mr Lowey) to ask the Member of the Treasury:

- (a) *When was the decision taken to make Government Departments and Government agencies liable for the first £10,000 of costs incurred in any insurance claim;*
- (b) *was any prior consultation undertaken by Treasury;*
- (c) *has any consideration been given to setting up captive insurance for Government; and*
- (d) *what is the total annual amount expended by Government on insurance?*

The President: Can we turn, then, to Questions, and I ask the Hon. Member, Mr Lowey.

Mr Lowey: Thank you, Mr President. I beg leave to ask the Question standing in my name.

The President: Chief Minister.

Mr Lowey: No, 'Member of the Treasury'.

The President: Mr Waft.

The Member for the Treasury (Mr Waft): Thank you, Mr President.

I thank the Hon. Member of Council for his Question, and advise, in response to the first part, that decisions relating to the various policies of insurance held by Government are reviewed in conjunction with Government's insurance brokers on an annual basis. The decision to increase the

excess on the Collective Material Damage and All Risks Policy was taken in April 2003, and communicated to all Departments in June 2003.

It should be noted that the excess figure of £5,000 per claim had not been amended since 1990, and inflation had, therefore, effectively reduced the amount of self-insurance by some 50 per cent. The decision was taken in the light of the ever increasing value of buildings and contents owned by Government that had resulted in significant increases in premiums in recent years.

It should be noted also that £10,000 excess does not apply to every insurance claim made by Government, as there are a range of insurance policies that have differing terms and conditions, for example, the current own damage excess on the Central Motor Policy is £500.

Turning to the second part of the Question, I can confirm that Treasury is in regular contact with its insurance advisers, when any change to the central programme is being considered. However, the extent to which Departments and Statutory Boards consult with insurers, in respect of those policies that are not held by Treasury, cannot be answered at this time.

With regard to the issue of captive insurance companies, I would advise the Hon. Member that these entities are established mainly to maximise interest earning opportunities for large organisations who wish to establish insurance subsidiaries in low taxation jurisdictions because captives are, effectively, a form of self-insurance. The principle is similar to the increasing use of larger excesses to reduce insurance costs.

Although the use of captives has been considered in the past, it has been concluded that there is no benefit to be obtained from establishing a self-owned captive insurance subsidiary, as administrative and other costs would outweigh any benefits. However, Government has two funds – the Insurance Fund and the Medical Indemnity Fund – which provide self-funding arrangements for certain categories of claims.

In answer to the final part of the Question, the gross premiums paid in respect of the insurance policies arranged by Treasury during the financial year ended 31st March 2004 were £2,184,240. This figure includes the broker fees.

An element of these costs is then recharged to Statutory Boards and Government-owned companies. This figure does not include premiums relating to insurances that are not arranged by Treasury, for example, specific engineering risks, directors' and officers' liability policies and marine and airport covers.

Thank you, Mr President.

The President: Mr Lowey.

Mr Lowey: Mr President, could I, first of all, say that I find it strange, although the Hon. Member of the Treasury says the message was communicated to the Departments in 2003, no consultation took place with the Departments. Raising the excess, although be it for 10 years – they had not been raised for 10 years – did it actually reduce the premiums being paid by the Treasury?

Would he not agree with me that, in paying out £2.1 million a year in premiums to the insurance companies... does that match and has he any idea of just how many claims are made by Government in any one year? If you are paying out £2 million-plus in premiums and getting nothing back,

it would take an awful lot of administration costs to cover that premium.

The President: Mr Waft.

Mr Waft: Thank you, Mr President.

I was not in Treasury at the time the Hon. Member mentions the consultation, but I presume consultation did take place.

With regard to the other questions, with regard to the premiums, it might help the Member, if he is given to understand that the 2001-02 property premiums, for instance, were £325,044, the excess was £5,000 and the Treasury vote was £1,800,000. In 2002-03, property premiums were £399,324, the excess was £5,000 and the vote, again, was £1,800,000. In 2003-04, property premiums were £473,285, with excess of £10,000, and the Treasury vote was £2,100,000.

Any unutilised funds from Treasury's revenue vote are transferred to the Insurance Fund, where they are used to meet self-insured claims relating to employers and public liability claims and professional indemnity claims. The transfer to the Insurance Fund in recent years has been: 2001-02, £809,000; 2002-03, £639,000; 2003-04, £423,000.

The President: Mr Delaney.

Mr Delaney: Could I ask the Member if he would agree with me – and am I correct? – I have always believed that civil servants are insured against any action, while they are employed by us, for any errors or mistakes made that may lead to a civil case; but they are not insured where it may be actionable against them, where a criminal charge is made against a party, and they are called in on that to be a party to that charge?

Could you tell me if that is correct, and, if so, is this going to be addressed in the near future, that they will be covered where they are – by the nature of their employment – brought in on what could be a co-respondent on a criminal charge?

The President: Mr Waft.

Mr Waft: Thank you, Mr President.

There is, as I understand it, public indemnity for civil servants and the actions they take in good faith. If it is subsequently found to be a criminal case, because of actions taken not in good faith, or, indeed, on their own behalf outside of Government, then I think that would be a different scenario which would have to be addressed.

Mr Delaney: Could the Hon. Member arrange to see me, so I can have some clarity on some of the other questions I would like to ask in private, before I ask him publicly?

Mr Waft: Certainly.

The President: Mrs Crowe, do you wish to...?

Mrs Crowe: No thank you.

The President: Mr Lowey.

Mr Lowey: Could I again come back to this... of communication. It was communicated by the Treasury to

the Departments, but there was – so I am led to believe – no consultation with those Departments. Would the Member of the Treasury also not agree that to ask the Departments to find the first £10,000 of any claim puts an intolerable strain on the Departments?

The President: Mr Waft.

Mr Waft: Thank you, Mr President.

The extent of the consultation with Departments is beyond my knowledge, but I would presume there would have been consultation, as they normally do – the Treasury.

If I could just mention, the philosophy adopted by Treasury when arranging insurance is to protect Government against disasters or high levels of unpredicted expenditure, where appropriate substantial deductibles are accepted. This is to contain the cost of insurance to Government, and is an incentive for Departments to pursue good risk management.

CHIEF MINISTER

Recent storm damage Evaluation and restoration costs

1.2. The Hon. Member (Mr Lowey) to ask the Chief Minister:

In view of the extensive damage to trees etc in the forests and national glens during the recent storms –

(a) has a complete survey taken place to –

(i) evaluate the extent of the damage, and

(ii) ascertain what, if any, extra finance and resources will be required by the Department of Agriculture, Fisheries and Forestry in the short, medium and long term to restore these national assets;

(b) will you confirm that sufficient funding will be allocated for this essential work; and

(c) when do you anticipate that the glens will be open to the public?

The President: We turn, then, to Question 2 and again I call on the Hon. Member, Mr Lowey.

Mr Lowey: Thank you, Mr President. I beg leave to ask the Question standing in my name.

The President: This time it is the Chief Minister to respond.

The Chief Minister (Mr Gelling): Thank you, Mr President.

In reply to the Hon. Member's Question, I am able to confirm that the Forestry Amenity and Lands Division of the Department of Agriculture, Forestry and Fishing has completed an initial survey and a valuation exercise, following the storm of 8th January.

This has established that the extent of the damage in national glens falls into two distinct categories: first, those where only a small number of trees have been blown down or damaged by the wind, which will be cleared and re-opened to the public glen by glen over the next two months; second,

the category of catastrophic destruction and damage by the wind, which will require long-term measures.

Now, Mr President, I am able to inform Members that the following glens fall into the first category, with a small number of trees blown down or damaged, which will be cleared and reopened to the public over the next two months, and they are: Ballaglass, Colby, the lower section of the Dhoon, Glen Mooar, Glen Wyllin, Laxey, Molly Quirk's, the Ramsey Glens and Silverdale.

Now, major works will be required in the five remaining glens, where very extensive damage has occurred, and they are: Bishop's Court, Glen Helen, Glen Maye, Groudle and Tholt-y-will. These five glens will remain closed to the public until the full cost implication has been established, and repairs undertaken to ensure public safety.

Now, as regards funding, Mr President, it is the Department's intention to seek Treasury concurrence to enable sufficient funding to be vired for this work from within the Department's existing vote. However, the unexpected nature of the event and the extent of the damage are very likely to push the Department's resources to the limit.

Members will, no doubt, be aware that the Forestry Amenity and Lands Division teams have been working to provide very valuable skilled labour and specialist plant and equipment, to assist both the DoT and the MEA since 8th January, and both authorities have, indeed, expressed their gratitude for the willing co-operation provided.

In doing so, the opportunity for the Division to attend to work in the glens was temporarily restricted, but it is now under way. However, I welcome the opportunity to express appreciation for the hard work put in by the teams to provide important specialist services in the wake of the recent storm.

Mr President, I have referred to the impact of the storm on the forest plantations. A detailed survey of these areas is under way, but priority has been given to the glens. The early indication of damage in the plantations shows an amount roughly equivalent to the full annual felling programme in a normal year.

The harvesting of this timber will then take precedence over the annual felling programme, which had been prepared for 2005-06. Within the plantations an area of 12 acres in the Tholt-y-will plantation, on the hillside overlooking Sulby Reservoir, will be given priority for harvesting.

As Members will be aware, the Forest Amenity and Lands Division of DAFF is developing its plans to establish a sustainable basis for public access and recreation in the glens and plantations. Until the plantations have been checked and fallen trees removed from roads and rides, certain plantations will also be closed for organised events. These will be reopened as soon as they have been declared safe. However, the public have been asked to abide by the safety measures installed on site, preventing access to damaged areas.

Whilst harvesting of wind blown timber is more costly than normal felling operations, no new funding is required outside the Department to handle the aftermath of the storm, which is categorised as 'catastrophic wind blow', predicted to occur only once in every 100 years, I am delighted to be able to inform you, Mr President.

Now, since having that this morning, I received an e-mail to say that the Treasury have, indeed, approved the virement from the heads of normal harvesting, to allow that to be done for the wind blown of this storm. So, that is why, indeed, we are hoping that there will be no extra cost, other than the

moneys already allotted to the Department.

Mr Lowey: Could I, first of all, thank the Chief Minister, and endorse his views of the staff. These are unsung heroes: it just happens, they are there, they are done – and then they are forgotten, until the next crisis.

But having said that, I am a little bit perturbed that they are going to vire money from other headings, and if the agriculture, which is going through... and this Department has got Agriculture – is it to be vired from Agriculture? If that is the case, then there is less money for that particular area of activity.

The other thing that I would like to say is that not only is it the trees that will be damaged, but the footpaths, where people walk, and the replacement. Now, I have every confidence that Mr Pollard and his team will reinstate, sympathetically, as they have done, but having said that, I just feel that we do have unemployment looming, and there seems to be an area where one can marry an emergency need with an emergency situation. Perhaps, in the short term, those two could be put together, to expedite the refurbishment and replacement of these national assets.

The President: Mr Gelling.

The Chief Minister: Yes. Now, Mr President, the way I have... my information is that, from the programme for the normal felling of trees, those moneys will be utilised for the trees that have actually fallen. It is more difficult to harvest those trees, because, obviously, they are in a tangled mess. But those trees will be felled in the programme which normally would have been to harvest the trees.

The hard wood, again, has been harvested and brought back to St John's to actually be, hopefully, made into furniture, and so on. (**The President:** Yes.) So, in other words, very conscious of the utilisation of the timber that is out there. Unfortunately, it is down, but try to make best use of it.

So, I would certainly hope there will be no virements from other than the Forestry Division's programmes that they had in place, where they were actually starting to upgrade... I take the point about paths. There are areas that are going to have to be done in an emergency, because they cannot actually get to those areas that they perhaps had planned. So, I suppose it would be fair to say that that programme might very well be put back, maybe, six or seven months, as they clear the way with the storm damage, but, certainly, the impact of the storm has brought ahead a lot of emergency work, which you quite rightly illustrated. So, that will be dealt with before any of the planned work is then re-started.

I can also say, of course, Mr President, that we have got lots of trees in rivers, and we know what happens, if we happen to get a flood. So, there is co-operation, I am delighted to say, between the DoT and the Forestry people because of the specialised equipment.

I am also informed that the private people that are out there that have all the specialist equipment also have been engaged, and a lot of the £120,000 which was identified will be paid out to them, as well, but they also help in the normal way of things, anyway.

So, hopefully, Mr President, the answer is, yes, if there is a need, and there are people unemployed, I take the

suggestion, it would be obvious – if they are skilled, because it is quite dangerous work – but if that can be done, I am sure it will be done.

The President: Mr Delaney.

Mr Delaney: The Chief Minister realises – and I thank him for his Answer, too – my colleague and I come partly – mainly, I think – from the Tourist Department angle, where I have visited these glens and seen the devastation, and the need to make sure they are open for the public, both ours and the visiting public. Could the Chief Minister, please, give us an assurance that that will be the priority. He has said so, but let us make sure there is no doubt, and we can advertise we are open for business.

The Chief Minister: Yes, without any doubt, Mr President, –

Mr Delaney: Thank you.

The Chief Minister: – the whole emphasis is on opening the glens. Those that, obviously, I have listed are... I was going to say, ‘fairly easy’ – they will be cleared in the next two months. The others will take a little longer, but I am quite sure that, come the season, they will be open.

Mr Delaney: Thanks very much. Thank you.

The President: Could I ask, Chief Minister, will the Forestry Department be able to keep up with their sales of their normal soft wood, which they annually do in their annual fell, or will they be relying on imported timber to replace that?

The Chief Minister: No, again, the initial hint was that the felled timber that has fallen, wind blown, will actually satisfy the amount of timber that they would normally harvest.

Now, there are 12 acres on the side at Sulby Glen which, probably, normally would have been cut and harvested, which has got wind blown, so they will be clearing that in that particular area.

So, I will pose the question, Mr President, just to be able to report back that that is the case.

The President: Thank you.

Orders of the Day

BILLS FOR FIRST READING

Fiduciary Services Bill First Reading approved

2. Mr Waft to move:

that the Fiduciary Services Bill be now read a first time.

The President: Right, having finished with our Question

Time, Hon. Members, we now turn to the Fiduciary Services Bill. It is down for First Reading, and is in the hands of the Hon. Member, Mr Waft. Mr Waft, please.

Mr Waft: Thank you, Mr President.

The purpose of the Fiduciary Services Bill is to extend the licensing and provision of Corporate Service Providers to persons who provide professional services to trusts. The expression ‘fiduciary’ is used as a collective term to refer to both trust service providers and corporate service providers.

The Financial Supervision Commission consulted extensively with the industry in the development of the Bill, and, throughout the consultation, made it clear that it was not its intention to interfere, in any way, with the duties and responsibilities of trustees or trust administrators that arise from trust law.

The purpose of the consultation was to identify appropriate industry acceptable benchmarks for the Commission to assess whether an applicant for a trust service provider’s licence is a fit and proper person.

The ‘fit and proper’ test is based on the key elements of integrity, competence and solvency, and continues to apply after the issue of a licence.

In December 2003, the Commission agreed to appoint an off-Island mediator to review the industry’s residual concerns and provide the industry with further comfort. A shortlist of professionals was drawn up by the industry, from which a firm of London lawyers, Stikeman Elliott, was selected because of their expertise in trust and regulatory law.

The review included a comparison of the Isle of Man’s proposals with the existing licensing regimes in place in Jersey, Guernsey and Bermuda. The consensus agreement with the industry representatives, the Financial Supervision Commission and Stikeman Elliott resulted in some non-substantial changes to the draft Bill.

To illustrate the industry’s acceptance of the outcome of the Stikeman Elliott review and resulting changes to the Bill, I would like to quote from an article on the Isle of Man’s Trust Service Providers’ Licensing Proposals, written for the Society of Trust and Estate Practitioners’ International Magazine, by a committee member of the local branch:

‘The consultation process has now been completed, and it is clear that the process of co-operation has achieved the best possible result.’

Stikeman Elliott attributed the successful outcome of the review to the fundamentally sound draft proposals in place at the time they commenced their review. Stikeman Elliott also felt that the Financial Supervision Commission’s judgements and expertise in the areas under particular review were sophisticated and appropriate, and their policy knowledge and reflexes compared favourably to those of their regulatory counterparts in other jurisdictions, with whom Stikeman Elliott has had considerable contact, in this and similar exercises.

Members should note that this Bill fulfils the Island’s commitment to the IMF to bring in legislation that will apply internationally accepted regulatory standards to trust service providers, and I think it is relevant that Stikeman Elliott has accepted the decisions.

I would like now to briefly highlight the main features of the Bill.

The Bill amends the Corporate Service Providers Act

2000, to make it an offence for any person to engage in any of the trust service provider activities listed in the Act by way of business, unless an exemption under the Act applies.

The Bill also restricts the use of the words with a trust service provider connotation, such as 'trust', 'trustee' or 'fiduciary' in the name or title of any trade or business carried out in the Island, or of a Manx incorporated company that operates outside the Island, unless that business is the holder of a trust service provider licence.

The Bill amends the definition of a trust corporation under section 65A of the Trustee Act 1961. A trust corporation is a company that is currently permitted by the court to undertake functions principally in relation to applying for a grant of probate in respect of a deceased person's estate. Trust corporations will, in future, be regulated under the trust service provider regime.

Schedule 1 to the Bill describes the trust service provider regulated activities, which include acting as a trustee, protector or enforcer, the provision of trust administration services, and acting as a trust corporation. The exemptions include trust services provided by an advocate, legal practitioner or accountant, where those services or the advice given is part, or arises from, the professional activities of a lawyer or an accountant.

Some of the other exemptions relate to: private trust companies; trust service activities that are an integral part of some other activity which is already regulated by the Financial Supervision Commission or Insurance and Pensions Authority; an advocate or accountant who acts as a trustee of a trust that arises from a will prepared by that advocate or accountant for a local resident; and undertaking trust administration work for a trust service provider licence holder.

It should be noted that the legislation applies to activities that are carried on by way of business and is, therefore, aimed at professional trustees and trust administrators, and not at trustees who are doing a favour for a friend or family.

The Bill also extends the definition of 'corporate service provider regulated activities' by adding some foreign types of entity to the definition of companies, and by including certain services provided to partnerships. Thus corporate service providers who use foreign entities, such as foundations established in Panama, Liechtenstein, Austria or Germany, will be regulated, as they are in respect of their traditional corporate work.

The Bill also amends the Financial Supervision Commission's other regulatory legislation to bring it into line with internationally accepted standards of protection to take account of Human Rights issues, and to standardise procedures and rights. These include: an obligation on the Commission to publish statements relating to individuals who are assessed as being not fit and proper to perform a licensable activity, and to keep a register of 'not fit and proper' directions issued; and power for the Commission to make public statements in the public interest, and the expression 'public interest' is defined; to revoke a 'not fit and proper' direction; and to impose civil penalties in respect of breaches of regulatory codes, licence conditions; et cetera.

The Bill also grants additional rights to complainants to apply for a review in certain of the Financial Supervision Commission's decisions and amends the procedures for the release of customer information to other regulatory authorities.

Mr President, I beg to move the First Reading of the

Fiduciary Services Bill.

The President: Hon. Member, Mr Lowey.

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

The President: Mrs Christian.

Mrs Christian: Simply to welcome the Bill, in the sense that it is following up on the various inspections and reports that the Island has had, and, indeed, I think to bring this up to speed in comparison with some of our competitors in this area.

Mr Gelling: Only support, Mr President, for the Bill.

Mr Lowey: I would like to congratulate the Treasury on the consultation they have had with the... This Bill, I think, is a classic of where consultation has taken place, and a very satisfactory outcome has been achieved, I believe.

The President: There seems to be general support, Mr Waft. Do you wish to reply?

Mr Waft: I would just like to thank my seconder, and the Members who have mentioned the need to keep abreast of what is happening around the other jurisdictions.

Thank you, Mr President.

The President: Right, Hon. Members, I put to you, simply, that the Fiduciary Services Bill receive its First Reading, formally. Those in favour, please say aye; and against, no. The ayes have it. The ayes have it.

Trees and High Hedges Bill

First Reading approved

3. Mrs Crowe to move:

That the Trees and High Hedges Bill be now read a first time.

The President: We turn, then, Hon. Members, to Item 3 on your Order Paper, which is the Trees and High Hedges Bill. Again, it is for First Reading, and this time it is in the hands of the Hon. Member, Mrs Crowe.

Mrs Crowe: Thank you, Mr President.

This is a Private Member's Bill brought forward from the House of Keys by the Hon. Member for Rushen, Mr John Rimington, and the purpose of the attached Bill 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 may be a lack of light, there are other factors which could be taken into account, before the recourse to legal mechanisms embodied in this legislation. The emphasis should be on education and mediation.

There is an agreed policy intent to delegate some of the

functions of the Department of Local Government and the Environment to local authorities. Such powers of delegation are contained within the 1987 Government Departments Act, section 3, and thus it is envisaged the first step for any complainant will be to contact their local authority. The officer of the authority will ensure that the complainant is aware of the legal position and the procedures to follow.

Importantly, the officer would need to ensure that the complainant has taken all reasonable steps to resolve the dispute with the neighbour. Only when the officer was satisfied that the process of mediation had been exhausted, would the officer engage the professional expertise of the Department of Local Government and the Environment's officers, who would be called upon to make a decision, under the terms of the legislation, and the accepted guidelines and criteria.

The Department would be able to delegate this latter function and subsequent responsibilities to a local authority that is appropriately staffed and is also willing to take on the responsibility.

In respect of trees, there is an obligation to involve the Department of Agriculture, Fisheries and Forestry in the decision-making process. The Tree Preservation Act has primacy over this legislation, and it is important to stress that this legislation will not provide a method for removing trees, unless they would otherwise have gained permission for that removal from the appropriate Department.

Mr President, I beg to move.

Mr Gelling: I beg to second, Mr President, and reserve my remarks.

The President: Mrs Christian.

Mrs Christian: Yes, Mr President. I would like to ask the mover for some clarification, if possible, please.

The Bill is described as the Trees and High Hedges Bill, and I fully understand the circumstances where hedges – indeed, trees – can become a nuisance to neighbours, by depriving light and for other reasons, though I understand that there is not an argument in respect of a view. Perhaps the Member could confirm that: one cannot be guaranteed a view.

But I am interested in the overlap between this Bill and the powers of the Department of Agriculture, Fisheries and Forestry, in relation to their responsibilities for trees.

Again, I may need correction on this, but I understand that, in order to remove a tree, you need a licence from DAFF, provided the tree is above a certain size. Can this legislation be used by a dissatisfied neighbour in respect of a tree which *potentially* may become a nuisance, or has it got to be allowed to grow to the size where it *does* become a nuisance, and when is a tree not a tree? When is a tree a hedge, or part of a hedge?

We all know that *cupressus* is often planted as a hedging material, but there may be times when it is planted as a specimen tree or, indeed, there may be other trees which I think most of us, after the recent ravages of the weather, would like to see more of being planted, to replace the trees that have been destroyed.

But I do hope that this Bill will not become so contentious that people are unable to plant more trees, particularly deciduous trees, for the beautification of the Island.

The President: Mr Gelling.

Mr Gelling: Having reserved my remarks, I would like to ask, please – I do not know if the Hon. Member has got the information – I would be interested to know whether, in fact, the trees are on an adjoining property, if they are offensive, or if a road is between the property and it is on the other side of the road... does a highway actually exclude it as being, therefore, not on a neighbouring property?

The other one is: where it says 'is made by the Department' – and the Department means the Department of Local Government and the Environment – are they the sole arbitrator as to whether light is being... do they measure it, or is it in the eye of the beholder, or do they have a meter, or whatever?

Thank you, Mr President.

Mrs Crowe: Thank you, Mr President.

I always seem to land with these nice little Bills that seem to have no contentious aspects at all, until we start the First Reading!

However, I do actually fully support this Bill, and it is about nuisance. That is what the whole purpose of the Bill was about, and the Hon. Member, Mrs Christian, mentioned the fact that: would it enable trees to be got rid of more easily or more swiftly? Well, no, the Department of Agriculture will... their Tree Preservation Act has primacy over this legislation, and it cannot be circumvented by this legislation.

This legislation is, indeed, about nuisance, and the definition of trees and hedges has been defined by DAFF as the size of tree, et cetera. Now, whether a tree that is in a growing state and is likely to become a nuisance is covered, I am not entirely sure, but I will certainly get back to that, because I would have thought that, if you had an oak tree that was developing within two feet of someone's window, it might well be.

But it is about the deprivation of light from an adjoining property, which also goes on to cover the Hon. Member, Mr Gelling's point about a highway intervening. Well, of course, one could have on estates quite a small road between properties, and some of the hedges that, indeed, I have seen myself have grown to the likes of 40 feet high, and the neighbouring property, which may be a small bungalow, is totally deprived of light. They have a dripping green mess covering the whole of their property – sometimes the roofs and the walls – and it can become a very troublesome thing for neighbours.

This Bill puts in place a mechanism for dealing with these complaints, which we do not have at the present time, and contained within the Bill, also, is an appeals mechanism.

But it is all about the nuisance value to some persons, at the present time, who are being totally deprived, and their lives, in some cases, made a misery by neighbours that will not agree to lower the height of hedges or trees.

This Bill, as I say, is putting in place a mechanism to enable not only local authorities, but also the Department of Local Government and the Environment to mediate in some way, to come to a resolution, hopefully.

Thank you, Mr President.

The President: Hon. Members, the motion that I will put to Council, formally, is that the Trees and High Hedges

Bill 2004 be read for a first time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Now, Hon. Members, Mrs Crowe, you have made comment that it is a nuisance Bill, and relies on a nuisance. Perhaps, before we get to the next stages, you could just confirm for me what the position is in relation to 1(2), where it does not... it would appear damage caused by roots is exempt, and I wonder why, when most trees' roots spread out greater than the –

Mr Lowey: The shape.

The President: – the shape above.

Mr Lowey: Yes.

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

**Summary of Proceedings in the Council of Ministers
(November and December 2004) considered**

Constitution (Legislative Council) Bill considered

The President: Anyway, Hon. Members, that concludes our business for this morning and, perhaps, Hon. Members, we will now meet in Committee of the whole Council. Thank you.

The Council sat in private at 11.10 a.m.