



**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, 6th December 2005

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

The Attorney General (Mr W J H Corlett QC), Mr D Butt, Mrs. C M Christian, Mrs. P M Crowe,
 Hon. A F Downie, 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 adjourned at 1.02 p.m.

Legislative Council

The Council met at 10.30 a.m.

[MR PRESIDENT *in the Chair*]

PRAYERS

The Chaplain of the House of Keys

LEAVE OF ABSENCE GRANTED

The President: Hon. Members, we have apologies today from the Lord Bishop and from the Chief Minister, Mr Gelling, who is away, again, on Government business.

Questions for Oral Answer

CHIEF MINISTER

Government Office security card system Cost of upgrading and authorisation

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

- (a) *What was the total cost of the recent upgrading of the security card system for Government Office;*
- (b) *why was the upgrading necessary; and*
- (c) *who authorised it?*

The President: We turn, then, to our Legislative Council Order Paper. We turn to Item 1, Questions, and I call on the Hon. Member, Mr Lowey.

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

The President: In the absence of the Chief Minister, Hon. Members, I call upon the Hon. Member, Mrs Christian, to reply.

Mrs Christian: Thank you, Mr President.

A decision was made jointly by the Information Systems Division of Treasury and the Department of Local Government and the Environment, in 2001, that it would be necessary to phase in a new access control system. This was because the old system in Government Offices was not functioning properly, and it was clear that there was no option but to replace it.

The new system is supplied by Bewator and installed by Eye Spy, an Island based company. Officers from ISD and the Department evaluated various access systems, and decided that the system being used by the Department of Transport was the best value for money, because it was robust, flexible and the least expensive.

The cost of the work was met by the Department of Local Government and the Environment, which is responsible, as landlord, for Government Office.

The cost of the system for the Central Government Office was £44,000.

The President: Mr Lowey.

Mr Lowey: Thank you, Mr President.

Could the Hon. Member, who is speaking on behalf of the Chief Minister, explain to me who authorised the first system. It was inadequate. It must have been installed because it was robust and adequate for the purpose.

Was it the same two organisations who authorised the first instalment, and how long was that in place for, before they discovered it was necessary to change it?

The President: Mrs Christian.

Mrs Christian: Yes, Mr President.

The original system was installed in 1991. It was ordered by the Isle of Man Government, by the Department of Highways, Ports and Properties, at that time.

That system was installed initially in Murray House, and then in Central Government Offices. As the demand for access readers grew, there was a significant expansion of the system, requiring more door combinations and security access levels.

At that time, the system only provided for 32 levels, and it was obvious that the system needed to be expanded, to meet the needs of Government. In 1995, DoLGE upgraded the DOS based system, which gave extra facilities, but primarily an increase to 128 access levels.

Since 1995, further buildings have been connected to the system, resulting in the present day total of 135 door access controllers and 1,500 access cards.

In 1997, the suppliers of the system advised the current DOS based products were to be phased out, because Sabre were releasing a Windows platform. Perhaps this is indicative, Mr President, of the frequent change that occurs in these computer based systems, and I am sure, in 1991, they may not have expected that by 1997 a new platform would be introduced.

In 2001, it became clear that the system could not cope with future expansion and that unreliability was increasingly a problem. Obtaining spare parts also became problematic and expensive.

Over the last few years, ISD and the Department of Local Government and the Environment have had to cope with an increasingly unreliable access system. Quite recently, security officers have had to be employed at the ports, when the Sabre access, the original system, failed.

The new system being installed is the same as the one employed by the Department of Transport. It has been installed at St George's Court and St Andrew's House. I can only suggest, Mr President, that those responsible have assessed, on the best of their present, current knowledge, that the system will be reliable and robust.

The President: Mr Lowey.

Mr Lowey: My final supplementary, and thanking the Hon. Member for her replies, can I have an assurance that the new refurbished buildings in Government Offices, the

'wedding cake', will be able to be accommodated within the new system that is being installed, or are we to have a complete new system?

The President: Mrs Christian.

Mrs Christian: Mr President, the Tynwald Management Committee has agreed to adopt the new system for the refurbished accommodation in Government Office, the 'wedding cake', and they will be incorporated into this new system. They have accepted that that is an appropriate system for the Offices.

The President: Mr Singer.

Mr Singer: Could I ask the Hon. Member: because things move so quickly, is there any projection of lifetime for this new system, or are we expecting it to last for many, many years ahead? Is it going to be adequate?

The President: Mrs Christian.

Mrs Christian: Mr President, I cannot, I am afraid, answer that. All I can say is that there was cooperation between the Constabulary, the Information Systems Division of Treasury, and the Properties Manager in DoLGE about what would be an appropriate security system, going forward.

As to its life, I have no information, I am afraid. But I am advised, in the information I have been given, that ISD, in particular, were satisfied that the software which is now being used was compatible and appropriate for all the Departments, and that it would be the best system to introduce, going forward.

But I cannot give you any information, I am afraid, about what they assessed to be the life of this particular installation, except to say that it is being phased in and that it will not completely be installed before 2007-08. So, one hopes that, after that, it has still got a good bit of life ahead of it.

TREASURY

New Treasury office in London Annual costs

1.2. The Hon. Member (Mr Lowey) to ask the Member for the Treasury:

With respect to the new Treasury Office which is to be opened at No 1 Cornhill, London –

(a) what are the anticipated annual costs of –

(i) accommodation,

(ii) staffing, and

(iii) other running costs; and

(b) how long a lease for the property has been entered into?

The President: Okay, Hon. Members, we turn to Question 2. 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: On this occasion, I call on the Member for the Treasury, the Hon. Member, Mr Waft.

Mr Waft: Thank you, Mr President.

I thank the Member of Council for this Question, and welcome the opportunity to give a comprehensive reply.

In answering the Hon. Member's Question, I would like to provide a full background to the decision and reasons for setting up a London office.

This project has been developed in close consultation with the various sectors within our financial services community, primarily through the Isle of Man Finance Steering Group. This has been chaired by the Chief Minister and, more latterly, the Treasury Minister.

It serves the purpose of raising the awareness of both the Isle of Man and the services that are affected by our businesses, combined with the provision of a cost-effective base for our small and medium-sized financial services businesses who wish to develop contacts in and increase business flows from London, which is seen as the Island's primary market.

It also follows feedback from City professionals, who have given clear indications that the Isle of Man needs to establish a presence in London, in order to increase awareness and update perceptions of the Island.

The address of the London office is No 1, Cornhill. It is situated in a prominent position and prestigious location in the vicinity of the Bank of England. No 1, Cornhill, is a suite of offices, within which we are renting a general office area and two dedicated meeting rooms, along with access to a more informal communal meeting area.

The cost in total for the first year to 23rd November 2006 is £132,000. There is a fixed rental increase of 5 per cent compound in the second and third years.

There will be no Isle of Man staff permanently based in London, so there will be no additional staffing costs.

The Isle of Man Finance have budgeted from their existing votes for initial setting-up costs, estimated to be no more than £4,000, and annual running costs are estimated to be no more than £2,600.

In answer to part (b), the rental agreement is for three years, with a minimum period of 18 months. Therefore, the option exists, after 12 months, for a six-month period notice of termination to be given. After 18 months, the rental agreement provides for a six-month period of notice.

Treasury has deliberately entered into this arrangement, to enable a cost effective means of evaluating this project, without the risks or costs of a more substantial or long-term presence. From the end of the first year, an evaluation of the success or otherwise of the project will be undertaken by the Isle of Man Finance, in consultation with industry, and a report made to Treasury, with recommendations, which may include, but are not limited to, continuing the operation, withdrawing from the operation or increasing the administrative charge to industry.

The Isle of Man has significantly increased its profile in the international market place and media, demonstrated by the commitment of 30 Island businesses which accompanied Isle of Man Finance in the trade delegation led by the Minister for Trade and Industry to Dubai last week, and which has most recently been acknowledged by the announcement by *The Banker* magazine, a global publication in the FT Group, that the Isle of Man has won its prestigious 2005 European Finance Centre of the Future award.

The establishment of a presence in London, at one of the most prestigious locations in the city, can only further increase our standing in the international arena and is designed to significantly increase the business flows from London to the Island in a cost effective manner.

The President: Mr Lowey.

Mr Lowey: Thank you, Mr President.

Can I, first of all, just ask the Hon. Member of the Treasury to refer the Treasury to the press release which we got on Saturday morning? I had heard it on the radio on Saturday morning early; I got my mail on Saturday dinner time, informing us of this decision.

Would the Hon. Member not agree that the press release virtually gave no information, other than it was opening an office in London: is that the way in which the Treasury wants to bring people along with them?

I read in the *Examiner* newspaper of the details on the Monday. Again, this was not information that was readily available to Members. Would he also not agree with me that the cost is not £135,000, but we are committed to £½ million of public expenditure on this exercise?

Now, I may very well have a lot of sympathy with the sentiments expressed by the Answer given this morning, about the profile of the Isle of Man, but I do think Members ought to be told in advance of the press, ought to be told the true cost and ought to be told the reasoning and thinking behind this quite substantial expenditure. Would he think that that is a reasonable request?

The President: Mr Waft.

Mr Waft: Thank you, Mr President.

I do apologise if the Members were not advised in advance of the press. I have not confirmed that is correct. I presume, if the Hon. Member says so, that is correct, but I would agree with him in that instance.

£½ million: I have tried to give the amount that we are committed to. If he thinks that is £½ million, then so be it, (*Interjection by Mr Lowey*) but I do not see it is. It is only an 18 months' set-out.

I would explain, as well as the fact that we have these offices, there is a hope that companies will be using these offices, and, in the first year, there will be an administration charge of £500 plus VAT levied on each company wishing to use the facilities. So if 30 companies signed up, a total of £17,610 inclusive of VAT would be received to offset the costs. Obviously, if 60 signed up, it would be £35,220.

So, there will not be too many costs involved if we do increase the number of people using the facility in the London office.

The President: Hon. Member, Mrs Christian.

Mrs Christian: Thank you, Mr President.

The Hon. Member has indicated that there might be some income generated by people who are using it. Could I ask whether it is anticipated that the office will be available to Government Departments who may or may not have to go to London for various reasons, and may prefer to hold meetings on their own territory, as it were, rather than in other people's offices, and would it also be available to individual Members who are in London on Government business?

The President: Mr Waft to reply.

Mr Waft: I think, Mr President, that is the indication, that people who want to use the offices would need to contact the Isle of Man Finance, who will be administering the premises in future.

Mrs Christian: Mr President, may I ask a further supplementary?

What information, then, has the Treasury disseminated to Departments about this facility?

The President: Mr Waft.

Mr Waft: I could not exactly give an answer to that, but I am sure they will be in the process of doing so.

Mrs Christian: Now! (*Laughter*)

The President: Mr Downie.

Mr Downie: Thank you, Mr President.

I would just like to ask the Hon. Member answering this Question if he will agree with me that we, currently, have four flights a day from the Island to London City, three flights a day to Gatwick; two flights to London Luton; this week we saw the opening of the new railway link with London City and the city of London; there are three local law firms who have dedicated offices in the city; shipping, industrial links to the Baltic Exchange, part of maritime London; we have various film and media companies; there are further opportunities to promote the Isle of Man for banking, insurance, shipping, corporate work, film (**A Member:** Tourism.) and tourist related opportunities?

Would he agree that the offices will give the Isle of Man a presence in a vibrant and fast growing area of international business and e-commerce? Would he relay to Treasury that this should be a facility that is available for the whole of Government and, in fact, any Isle of Man companies, to fully utilise to establish business in that part of the city?

The President: I think the answer is probably yes. Mr Waft.

Mr Waft: Yes, indeed. I thank the Minister for his support of the project and there are, certainly, other countries that do operate from London. I know Gibraltar operates a London office, as indeed do the British Virgin Islands and the Irish Development Agency.

So, we have to move in those sort of circles, and we need an office down there, from what I am told.

The President: Mr Singer:

Mr Singer: Would the Hon. Member agree that, as well as having prestigious offices in London for the Isle of Man Government, there will be savings, particularly for Departments and individuals of Isle of Man Government who wish to use these offices, in that they will not be having to rent out other premises in London, at considerable cost, when they want to meet various people and various companies? So there will be a saving coming back, in not having to rent other premises.

The President: Hon. Member, Mr Waft.

Mr Waft: I think, Mr President, that is the principle aim, and the Isle of Man Finance Division will be operating the premises and should be contacted by Departments, if they have need for use of the offices.

The President: Hon. Member, Mr Lowey.

Mr Lowey: Yes, the Finance Steering Group, who authorised or suggested the expenditure: is this a group that is in the public domain and who were the...?

If our London presence is essential today and things do move on, I remember it was essential a few years ago... To suggest that we never had a presence in London: we *have* had a presence in London, and we ceased it many years ago.

But I appreciate very much the changing patterns and the need to be in the market place, where our potential customers are, but, really, what I am after today is: is this Finance Steering Group an authority in itself to recommend the expenditure of money for a purpose?

Who are they accountable to? You said it was chaired by the Chief Minister, and latterly by the Finance Minister; who are the other members of that Steering Group?

The President: Mr Waft.

Mr Waft: I am afraid I am not sure who the other members were of that Steering Group, Mr President.

I know that the Isle of Man Finance is operating the system, and the rental will be paid from the Isle of Man Finance's existing vote, until April 2006, and the Isle of Man Finance will be submitting a proposal to Treasury to include provision in the Budget to allocate funds through the Marketing Initiative Fund for the remaining rental costs to 23rd November 2008.

If this proposal is not approved, the Isle of Man Finance have identified areas of their current marketing activities which can be reorganised to fully fund the three-year project from their existing funds.

I am aware, Mr President... I hope I did not give any indication that we have not had a presence in the past. I know the Department of Tourism and Leisure did have a presence down there at one time, and I think they abandoned it, for whatever reason.

Mr Lowey: Times have changed. Absolutely, no problem.

The President: Mrs Crowe.

Mrs Crowe: Thank you, Mr President.

I would wish that the Member of Treasury would take back the message to Treasury that, as it has already been stated, Isle of Man Finance can, in fact, find the funding for this, at the present time, through their existing budget, and that no application will be made to Treasury for extra marketing funds, in view of the fact that other Departments involved in marketing, i.e. Tourism, will not be getting any extra vote for such activities.

The President: Mr Waft, we are beginning to stretch out on the Question.

Mr Waft: I am sure, Mr President, the Treasury Minister would like a level playing field for all Departments of

Government. (*Laughter and interjections*)

Mrs Crowe: I'm sure he would!

Mr Singer: Except Health!

The President: Okay, Hon. Members, it seems we have covered all the Questions in relation to our Order Paper this morning.

Orders of the Day

BILL FOR SECOND READING

Noise Bill

Second Reading approved

2. Mr Singer to move:

That the Noise Bill be now read a second time.

The President: So we turn to the Noise Bill, which is our second Item on the Order Paper, and it is down for Second Reading. So, in this particular instance, I call upon the Hon. Member, Mr Singer, to take the Second Reading of the Noise Bill.

Mr Singer: Thank you, Mr President.

This is the Second Reading of the Noise Bill 2005, which is a Private Member's Bill in the name of Mr Houghton, MHK.

The principal objective of the Bill is to prescribe offences relating to noise nuisance in domestic surroundings during the night-time, between 11 p.m. and 7 a.m. It gives powers to Police and environmental health officers who, in the latter case, would deal with any protracted noise complaints.

The Bill also addresses vehicle alarms which sound continually, giving annoyance to persons in the vicinity during any time of the day. Provision is made for an offender's vehicle to be entered, by using force if necessary, or the removal of the vehicle at the owner's expense, but does not create an offence.

At the First Reading, Members were all in agreement that they were aware of many complaints from the public about noise nuisance incidents, based in domestic surroundings, which the Public Health Act 1990 fails to adequately address.

Domestic noise may include loud music, the use of power tools, door-banging, screaming and shouting, dogs barking uncontrollably and birds kept in a domestic environment which continue to make a loud noise. The Bill addresses any such noise which can be considered as being unreasonable.

However, any incidence of babies and young children who are crying during the night would not be considered as causing unreasonable noise. This Bill does not address noise from industrial or commercial sources.

The Bill sets out a clear procedure for bringing forward staged enforcement action upon those occupying the offending premises, until the unreasonable noise is

stopped. It is envisaged that police officers will deal with most domestic related complaints, in order to silence that unreasonable noise or remove the noise source from the offending premises. It will be for a court to decide upon the forfeiture or return of any seized noise equipment, animal or bird back into the possession of the offender.

In conclusion, Mr President, the Bill sets out clear and practical powers for officers to bring an immediate halt to excessive unreasonable noise late at night.

I would suggest, however, that most offenders are likely to stop the noise once they have been warned, but if they have to be revisited, following a further complaint of noise, they will be issued with a £100 fixed penalty notice which, I feel certain, will bring the matter to an end in the majority of complaints, or they can elect to go to court.

However, the Bill does provide further powers which would only be used in extreme cases if necessary.

Mr President, I beg to move that the Noise Bill be read for a second time.

The President: Mr Lowey.

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

The President: Mrs Christian.

Mrs Christian: Mr President, this is an interesting piece of legislation. It will be interesting to test how it can actually be applied, and I have some concerns about how you actually identify who is going to be responsible, in respect of the creation of the noise, particularly if you have a party going on. Perhaps, when we come to clauses, the mover can outline his thoughts on that.

The other thing I have a query about is that, in clause 10, land used for agricultural purposes is excluded from the provision of part 1, and he has just commented that this does not apply to industrial or commercial premises – and I accept the word ‘premises’ in there – but I wonder if he could expand further on what the thought is behind this particular clause.

I can understand very well that, at harvesting period, for example, people will be working in the dark till the late hours of the night. Is it for that reason that this clause is in?

If it is that, I am not sure that the wording is sufficiently tight to cover just that sort of activity, but I would appreciate some comment from the mover when he responds.

The President: Mr Downie.

Mr Downie: Thank you, Mr President.

The Hon. Member, in his opening remarks, made reference to a complaint involving a bird or an animal, and said that there was provision in the legislation for this animal or bird to be confiscated until the complaint was finally determined by the court.

I would like him to identify who would accept responsibility for somebody else’s bird or animal, who would meet the cost of keeping this bird or animal, until the matter was determined by a court and whether there were any facilities available, at the present time, within Government, to do this or would any agency have to be appointed to deal with this issue?

In clause 8, the interpretation of part 1, there is a section which deals with ‘noise source’ meaning anything capable

of emitting noise, including an animal or bird. There are instances where poultry, for instance, are kept in areas in a lot of the towns and villages in the Isle of Man, which are not kept on agricultural land. I would suggest that a person moving from an area where they have not been accustomed to poultry could find a cockerel crowing in the morning objectionable, from a neighbour’s property.

Also, there are houses on the Isle of Man, again in a non-agricultural setting, where people keep things like peacocks. They could be determined by someone that they are causing a nuisance.

Finally, clause 10:

‘The provisions of this Part do not apply to any noise emitted from land used as agricultural land within the meaning of section 33 of the Animal Health Act.’

I would like to know... We have a problem, at the present time, where fields and areas of land get taken over some weekends by young people with very noisy motorcycles. At the present time, the only way to deal with this is through the planning system, where the planning officer determines whether to have a change of use to run a motorcycle on this type of land.

This has proved to be a very, very difficult area, and I would like to know if provisions of this piece of legislation will deal with nuisances caused by four-wheel drive vehicles and some of these not properly noise covered motor cross vehicles and motorbikes will be able to be dealt with.

Thank you.

The President: Hon. Members, I appreciate that both Mrs Christian and Mr Downie have raised section 33 of the Animal Health Act. I do not know whether Mr Attorney would like to alert us to what section 33 of the Animal Health Act is?

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

Section 33 of the Animal Health Act 1996 defines ‘agricultural land’ in a very brief way, Mr President, simply by saying that agricultural land means land used for agriculture which is so used for the purposes of a trade or business.

So, there are all sorts of interesting permutations now, Mr President. If there was a piece of fallow land which was not being used for trade or business and if, for example, there were to be a race track used at the weekends by people and that caused nuisance to adjoining landowners, we can see that, immediately, there is a question of interpretation and difficulty on the face of the Bill.

The President: Hon. Member, Mrs Crowe.

Mrs Crowe: Could I just ask the Attorney General, then, if the definition of the land use for agriculture is as such, then I assume that a person with sufficient area to keep some chickens on their land and sell the eggs as, perhaps, free-range eggs, that land, which in effect is their garden, could be considered agricultural.

The President: It is trade. Mrs Christian, do you want to come back?

Mrs Christian: If we are in committee, Mr President, I would like to come back.

The President: We are still dealing with the Second Reading, in effect. I want to deal with it bit by bit, if I can. Do you wish to continue?

Mrs Christian: Yes, if I may. I would just like to comment on the point made by Mr Downie, in that planning issues can only resolve the land use, but motorcycles would not be covered by this, unless they were between 11 o'clock at night and seven in the morning. That is the point about the noise issue.

The other issue, about noise in the day time, is that if it creates a nuisance, there is other legislation under which nuisance can be claimed and pursued.

But with regard to this definition of agricultural land, unless it is being used for a rave, which might be possible –

Mrs Crowe: Now you've given them some ideas! *(Laughter)*

Mrs Christian: – I cannot see what the relevance of this particular clause is to the notion of noise nuisance.

The President: I think that if any other Member wishes to make a contribution... Do not forget, we are on the Second Reading still. Mr Singer, do you wish to reply, sir?

Mr Singer: Thank you.

I think Mrs Christian just made the main point of this. This is for noise nuisance at night, from 11.00 p.m. to 7.00 a.m. So, that is what we are considering at the moment.

So far as the definition of agricultural land is concerned, it is a very short definition, and what this is trying to do, basically, is that if somebody goes and sets up at night a rave or any kind of concert or whatever, where there is loud noise, or even if somebody goes and sets up a tent on agricultural land and they are making a lot of noise in the tent, the Police can take action.

What it does not mean: you cannot have people who are in the town going to live out in the country and they complain that the cockerel is making a noise at 5 o'clock in the morning at the farm, or that the cows are mooing – or whatever the term is they do.

Mr Butt: I think it's 'mooing'!

Mr Singer: Is that still the term? Is it mooing? Right, thank you!

Mrs Crowe: Yes, it is. And it's 'oink'! Carry on!

Mr Singer: Yes, I did not learn much about that, when I was a child.

So, it is agricultural land which is used for the purposes of trade or business. Now, land on which people have some chickens or they have a cockerel in a built-up area is not agricultural land. It is not agricultural land, if somebody is keeping them as a hobby.

Mrs Crowe: No, that is not what is defined in the...

The President: I am sure we are going to get to this, so –

Mr Singer: Maybe for a business. If somebody is selling

a few eggs, it is not considered... If they are not registered for a business, they are just selling a few eggs, maybe the Attorney General will be able to come back on that.

But, certainly, this is to stop noise nuisance, it is particularly in built-up areas and this is what is happening at the moment. Under this law, under this proposed Bill, any animal, whatever it is, causing a noise nuisance, can be seized by the Police, if necessary, if the person cannot stop it – whether it is a dog, whether it is a bird, whether it is a cockerel etc, that is covered within this Bill.

I think it has been answered, the point that Mr Downie raised, about motorbikes: this is not happening at night between 11 p.m. and 7 a.m., so I do not think that is particularly relevant to this Bill. As has been said, it can be handled under other Acts.

Mr Downie: You must go away TT week!

Mr Singer: So, I think, basically, Mr President, that has answered the points that have been raised. I do not know, have I missed anything out?

Perhaps the Attorney General could come back on this, about people having...

The President: Yes, I will allow the Attorney to come back. It may need to be tested under section 33, I think. Mr Attorney, do you wish to comment on trade?

The Attorney General: Well, it is certainly true, Mr President, that this Bill has a fairly narrow scope, in terms of the hours during which it bites, but as I say – perhaps that is an unfortunate phrase, when we are talking about animals and birds! – the point is that during the night-time hours, if we do have a nuisance coming from land which is part of a farm and is not used for trade or business, then there does seem to be a difficulty. You can, certainly, appreciate that people in the country are entitled to be protected from noise nuisance, as much as people in the town.

I am just really taking up the example raised by the Hon. Member, Mr Downie, that if there were to be a concert, a rave or whatever from fallow land, you would have thought that people who lived nearby would be entitled to the protection of the legislation. *(Mr Singer: Yes.)* The difficulty is that clause 10 seems to provide a let-out for people who wish to take advantage of the narrow meaning of 'agricultural land'.

The President: Hon. Member, Mr Singer.

Mr Singer: This is something I discussed, obviously, with Mr Houghton. Is the Attorney General saying that, if somebody sets up a concert on land which is not being used for trade or business at a particular time, but is it still not registered as agricultural land, but whatever land somebody sets a concert up on, or a tent up, and makes noise, comes under this Bill?

The Attorney General: Mr President, I think, as is apparent from the explanatory notes which have been issued, the purpose of clause 10 was to provide an exemption for animals which are on land used for agricultural purposes.

So if, for example, Mr President, you live next door to a working farm and the cattle are lowing –

Mrs Christian: The baby awakes! *(Laughter)*

The Attorney General: – and so on and so forth, clearly it is not appropriate that people should be able to take advantage of this Bill during night-time hours. They might have other remedies, but the Bill is not directed to agricultural land in the accepted *bona fide* sense.

But it does seem to me, Mr President, as I say, that if there were to be land which is not used for trade or business, it is just set-aside land, and people start racing bikes at night-time, with the benefit of floodlights or whatever, then this Bill does not catch them. It may be that other legislation does; it may be that common law nuisance catches them, but not this Bill.

The President: Agricultural land, looking at it from Mr Singer's point of view, is recorded under the... or every owner of more than, I think, half an acre has to register it under the annual June returns, but I think that is separate legislation totally and I am getting into deep water here! So, Mrs Christian.

Mrs Christian: I would just query that, Mr President, because what I would think and most of us would think of as agricultural land is used for horses. It is not, in the eyes of the Department of Agriculture, for agricultural purposes, so we need to be careful who we are catching or not catching.

Mr Lowey: Mr President, surely the purpose of the Bill is clear. It was aimed at – we are talking animals – *homo sapiens* who make a noise and keep their... Now, I appreciate very much that this could then impinge on what I would call legitimate noise in the countryside.

I do think the main purpose of the Bill is clear, but I do think we need, in examining the clauses, to make sure that the definition is right and clearly spelt out.

The President: Which is where we came in before, Hon. Members. We are still dealing with the Second Reading, and I have been very loose in my interpretation of that this morning.

I appreciate that point but, nevertheless, Hon. Members, what I will put to Council at this stage is that the Noise Bill 2005 be read for a second time. Those in favour, Hon. Members, please say aye; and against, no. The ayes have it. The ayes have it.

Noise Bill

Clauses considered

The President: That releases Council, Hon. Members, so that we can now move on to consideration of the clauses and the first thing which we are dealing with then is clause 1. This is as has been amended by the Keys. Mr Singer.

Mr Singer: Thank you, Mr President.

Clause 1 sets out the provisions for investigations of complaints of noise from premises at night. It permits a constable or authorised officer to issue a warning notice if he or she is satisfied any noise from the offender's premises is unreasonable.

Subclause (2) determines a complaint under subsection (1), which may be made by any means.

Subclause (3) determines 'night hours' to be the period beginning at 11.00 p.m. and ending with the following 7.00 a.m.

Subclause (4) excludes the lawful activities of the emergency services, sirens etc or a local authority discharging its functions – that is, refuse wagons etc. That is also subject to an amendment made by the Keys, which clarifies even further the exemptions. I think Members will have a copy of that amendment.

Subclause (5) makes provision for exemptions for a Department or Statutory Board.

This clause permits a constable or an officer from the Environmental Protection Section of the Department of Local Government and the Environment to make his or her own independent judgment as to whether a complaint of noise is unreasonable between night-time hours, that is between 11.00 p.m. and the following 7.00 a.m.

The constable or officer is permitted to take immediate action by issuing a notice to a person or persons within the offending premises, instructing them to turn off or stop the noise from continuing. The clause permits exemptions for official bodies, which may continue to carry out their lawful duties.

I, therefore, move clause 1 be part of the Bill.

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

The President: Mr Waft seconds. Hon. Member, Mr Downie.

Mr Downie: Thank you, Mr President.

I would just like to raise an issue. The Bill in clause 1 deals with noise at night, but we have, whether we like it or not, an awful lot of people in the Isle of Man now who work unsocial hours, people on night shifts, nurses and so on. I would have thought that, in putting this Bill together, there would have been a clause to deal with unreasonable noise during the daytime, (**Mrs Crowe:** Yes.) so if a person who is working nights is adversely affected, they can make a complaint and that can be properly monitored and dealt with. If it is proven that there has been unreasonable noise over a period of time, there could be an abatement notice or some other form served on that premises.

The other issue I want to raise is with regard to the Keys' amendment, which really deals with the lawful activities of the Police, Fire Brigade or Ambulance Services. Now, I would suggest – and Mr Attorney may correct me, if I am wrong – the present lawful activities of the Police allow them to run a police social club. If they have a function which is noisy, or it goes on late into the night, and there is a problem caused for people living in the surrounding area, the way I read this, they would have complete (**A Member:** Immunity.) immunity from the law, because, at the end of the day, the operation of their social club is a proper and just, lawful activity of the Police.

Mr Butt: It is existing law.

Mr Downie: Well, if we are writing law here, or looking at law here, which may, we hope, be carried on for years to come, but if there was a social club, either the Fire Brigade, Ambulance Service, Police, it does not deal with a nuisance that could be caused in the area.

The main complaint I hear from people living near the fire station and Police is that when activities do take place, they slam car doors and they cause a disruption during the night, but most people accept that. I think, by and large, most people working in that area are aware of the noise that they can make and try and keep it to a minimum.

But I just raise those two particular points, Mr President, and would like to see if the Member moving the Bill has any comment to make.

The President: I would make the comment, Hon. Members, that I think it was spelt out perfectly at the First Reading, and again this morning at Second Reading, that this Bill applies to specific hours. If there is a move to alter those hours, it is in your hands now, when we are dealing with the clauses stage.

Hon. Member, Mrs Crowe.

Mrs Crowe: It is not the mention of the hours so much, although I do take my hon. colleague's comments about people who do have to sleep during the day do expect to have reasonable noise prevention. In fact, I do have, at the present time, a person in Port Erin who is a night nurse who, unfortunately, has got a new neighbour who is a trainee drummer and is causing a great deal of problems.

But the particular portion that I would just like to comment on is clause 1, the amendment in (4)(b), a local authority discharging its functions within a district. I do not really wish to personalise this, but the local authority in Port Erin caused enormous difficulties with the amount of noise that was made from a skateboard... which was placed in the wrong position, which the manufacturers recommended should be at a specific distance from any residential property, which was completely ignored and placed within 25 yards of residential properties in the area.

We, also, have local authorities who do, indeed, arrange functions in the evening and at any other time. I do believe that they should not be exempt from the provisions of this Bill. If they arrange and do not properly monitor the noise levels of any activities or functions within its district, I think that they should be, quite rightly, held responsible.

The President: Are you moving the deletion of part (b)?

Mrs Crowe: I am, Mr President. I will need to consider if there is any other area in that revised section, but certainly part (b) I would like to see deleted.

The President: Mrs Christian.

Mrs Christian: Yes, Mr President.

With regard to this particular clause, I suppose my main concern is that officers will be required to attend.

Well, maybe I should wait for a different clause. No, it is clause 2 – I shall wait to make my remarks on this.

But I would like the mover to explain under what circumstances he imagines that the Department may exempt another Department for a period not exceeding six months. What is the thinking behind that provision?

The President: Mr Attorney.

The Attorney General: Mr President, I would not

ordinarily comment on the substance of a Bill, but this is a Private Member's Bill, to which amendment has been made in another place. I hope you will think it is appropriate that I should just make this comment, which is that, whilst I have been Attorney General, the main source of complaint, in relation to noise, is in relation to noise which emanates from licensed premises and in respect of club premises and so on.

It does seem to me, with the greatest respect to the amendment which has been made in another place, that if these amendments do carry, the whole purpose of the Bill will be substantially weakened in relation to those people who live nearby licensed premises and club premises, because the licensing court, of course, has lots of things to take into account when deciding whether to grant a licence but there is no doubt, as I said, that neighbours of these premises do suffer, particularly where the licence permits music and dancing to go on beyond midnight. I do feel, with respect, that there may be some difficulty in relation to that.

The President: Mr Butt, Hon. Member.

Mr Butt: Yes, Mr President. In respect to parts (a) and (b), the activities of the Police and emergency services and local authorities, I think, maybe, if the wording were changed that could be covered and left in.

If it were the lawful 'duties' of the police and emergency services and the local authority discharging its 'duties', rather than 'functions', as 'functions' could mean, as Mrs Crowe says, having an organised event –

Mr Lowey: An annual ball.

Mr Butt: – annual ball, or whatever. If it is their duties, which would be, say, waste collection or fixing a road and emergency procedures, put them both as duties rather than activities, and then they are confined to doing things they are supposed to do, not the ancillaries.

I move:

In clause 1(4)(a) for 'activities' substitute 'duties'
In clause 1(4)(b) for 'functions' substitute 'duties'

The President: I think, Hon. Members, we have got to be careful, when we are moving along here, because we are dealing with the clause stage, and I need to be plain in what I have to put to the Council ultimately for our decision.

Now, we have got the Hon. Member, Mr Butt, and if I can just be absolutely sure that what you are proposing, at the present, Mr Butt, is that part (a) should read, 'the lawful duties of the police, Department of Transport, fire brigade, ambulance' etc and (b) 'a local authority discharging its duties within its district'.

So, in fact, 'activities' in part (a) and 'functions' in part (b) would be replaced with the word 'duties'. (**Mr Butt:** Yes.)
Mrs Crowe.

Mrs Crowe: Mr President, I shall be bringing forward my amendment. There is no definition in... The whole of the local authority statutory functions are very loosely defined, and some would see that as a function that... Many local commissioners have fireworks displays, the beach activities and we have, in one particular instance, down in the south, where big bands are arranged, late evening entertainment on

those beaches, by the local authorities.

Now, I just believe that they should be as responsible as anyone else for the level of noise they make, so I am going to bring forward the amendment for all of the... with the exception of (a), to delete... It is just being typed now:

Delete clauses 1(4)(b), (c), (d) and (e).

The President: Can I make a point, Hon. Members, that we are getting hung up here and, in fact, Mrs Crowe was originally suggesting that (b) should be deleted. (**Mrs Crowe:** Yes.) To my knowledge, that did not receive a seconder.

Mr Butt is now proposing that, in fact, 'activities' in (a) should be replaced by 'duties' and 'functions' in (b) should be replaced by 'duties'. As yet, that has not been seconded.

The question in relation to (c), (d) and (e) has still to be put before the Council.

Mr Lowey.

Mr Lowey: Could I second, then, because I think Mr Butt has made a valuable contribution. I do think it is definition.

This Bill... and I bow the knee to my learned Attorney, who says that most of the noise complaints have been against licensed premises. Most of the noise complaints that I have received have been about individuals, bad neighbours, and I think this Bill is clearly a serious attempt to try and control noise levels between 11.00 p.m. and 7.00 a.m. I could make a very strong case for noises, for little children going to bed early and being kept awake until 11 o'clock. However, I am not.

This is a deliberate attempt, in my view, well intentioned. I think it has been well scoped. I do think it can be redefined and polished a bit and I think Mr Butt's amendment does that. I think it does draw attention that it is a duty, not a function or activity. I think that is sufficient in this instance, and I would be supporting the amendment.

The President: Mr Waft.

Mr Waft: Yes, Mr President.

I would support the amendment, as well, from Mr Butt with regard to activities and duties.

There was one mention made of people living in flats, perhaps, and unsocial hours, with people coming home late at night or early morning, because of their shifts. I think we did deal with that, Mr President, on the Housing (Multi-Occupancy) Bill, some time ago. I think that fairly well covered that.

I am a bit concerned at the reasonableness of the whole of the Bill, where it is a reasonable man, I would think, would be giving the interpretation. If he thinks it is unreasonable then, perhaps...

But I just wondered if there was any thought gone into that. One person's 'reasonable' is not another's view of what is reasonable. There is nothing about decibels or anything to be a guide in there. I think it is common sense, I suppose, at the end of the day, we have to adhere to.

But I would, certainly, support the Hon. Member, Mr Butt, for his amendments to the clause.

Thank you, Mr President.

The President: Mrs Christian.

Mrs Christian: Mr President, I just wonder if we could have some guidance from the learned Attorney with regard to the amendment which is now before us from Mr Butt as to what is a local authority's 'duties'. I do not know that anywhere in the legislation their duties are actually defined.

Is it satisfactory then to quote duties and that it would be interpreted by whomever as what common sense would say might be their duties? Is that adequate, given that there are no duties, as I recollect – and I may be wrong – specified?

Mrs Crowe: No, there are not.

Mrs Christian: Indeed, their functions are not very well specified, either. (**Mrs Crowe:** No.) but could that be interpreted applying common sense, if that were adopted?

The President: Mr Attorney, do you wish to respond?

The Attorney General: Well, Mr President, I am sure that the Hon. Member, Mrs Christian, is right when she says that the duties are not defined in the local government legislation and, therefore, if a court were to construe this, as amended, it would have to adopt a common sense meaning of the word.

Duty is something which a local authority must do. It does not have a discretion; it is something the local authority must do and that, in fact, may limit it considerably – maybe too much, but that is, indeed, what would be the result.

The President: Mrs Crowe.

Mrs Crowe: Mr President, I can only stress the amount of difficulty I have had in the past two years, and I am not speaking personally. I know I am an affected party in this, but so are at least two dozen pensioners who abut the leisure area that is controlled by the local authority. I think that if they were not able to take a prosecution, if that was what was necessary, or, in some way, for the local authority to be excluded from not making due care about the level of noise that would be made from any activity they put on, be it motor cross or sand racing, whatever, between –

Mr Lowey: Between 11 o'clock and seven.

Mrs Crowe: Well, I am afraid, Mr Lowey, it was happening at midnight that the pensioners were ringing up, because, unfortunately, unless these things are locked up and barricaded in some way, if there is free access, they can make as much noise as they wish on whatever equipment is provided. Whilst I quite understand it is between the hours of 11.00 and 7.00, those are the particular hours when it is very quiet in a particular area which, surrounding a park, is generally very quiet, no noise from traffic. The noise nuisance is exacerbated, and that is the time that really does make a difference to the people that are affected.

I cannot see any reasoning for excluding a local authority. I just believe that the local authorities, any local authorities, should be as responsible as any other person.

The President: Mr Downie.

Mr Downie: Yes, Mr President, I have just sought advice from Mrs Cullen there about putting an amendment together

for clause 1(1). The intention of that amendment is to cover a complaint made by a person present in a dwelling house during night hours, to change the 'night' for 'any' hours, to give protection for people who are working shifts, where there is a reasonable complaint that can be properly investigated by a constable or the appointed person, but to leave in the night hours which deals with other commercial premises, to try and give some support to people who are working unsocial hours and trying to get some sleep in the daytime, when there is perhaps a major problem in an adjacent dwelling house.

I think that is an area that should be covered. It is a big problem for people, particularly when you have got –

The President: I was just looking at it to be sure, in Mr Downie making a comment of night hours, if you turn to clause 8 – in the 'General' section, in clause 8 – you will see that 'night hours' has the meaning given to it by section 1(3). There it refers again to the 11.00 to 7.00, so it would require a further amendment there, Mr Downie, if you were to progress on that line.

Hon. Members, we are getting ourselves into an element of difficulty. I am beginning to find it even more difficult to keep up myself here, but, at the present time, I still have before the Court, properly before us, Mr Butt's amendment proposed and seconded.

Other than that, Hon. Members, these amendments which are circulating now, in writing and on paper for you, I have yet to have them seconded, other than Mr Butt's.

Mr Downie: No, I am content. I will leave it be, Mr President, for the time. I will have a look at some other legislation. I will leave it be.

The President: In that case, I invite Mr Singer to reply.

Mr Downie: I will second Mrs Crowe's, before Mr Singer comes in.

The President: Now, let us get this straight. Mr Downie, you are seconding Mrs Crowe's amendment, (**Mr Downie:** Yes.) which will be, in effect, to delete (b), (c), (d) and (e) amendments, which rewrote the original part (4) which was in the Bill. I think Mr Attorney actually referred to the fact that the provisions of this part do not apply in (c), (d) and (e) to licensed premises. It was an extension of that deletion, if you like.

Mr Singer.

Mr Singer: Can I refer, maybe, to that amendment first, Mr President?

The President: Yes, of course.

Mr Singer: I understand that this was introduced on the request of the Minister of the Department of Transport, who felt that, perhaps, the Department could be caught by the law in certain of these items. I understand that he wanted some of these introduced.

The President: That would be reference to (a), would it not, where, in fact, he was introduced? (**Mr Singer:** Yes.) It says, in my understanding, as it came from the Keys, that in (4)(a), it says the 'lawful activities of the Department of Transport' was introduced. Yes, not in the remaining –

Mr Singer: Oh, yes, sorry.

The President: Okay, thank you. (*Interjections*)

Mr Singer: I accept that there is plenty of legislation already, Mr President, covering licensed premises, and I really have not got an explanation as to why this was inserted, under whose advice and why this part was inserted, in the other place. (**Mrs Crowe:** Yes.) The clause must have been drawn up within the Attorney General's Department.

The Attorney General: It would have been on advice, Mr President, from the mover of the Bill. It is not our job to develop policy.

The President: Somebody would ask –

Mr Singer: If he had received the advice we have received today, it might not have been put forward. Anyway...

The President: I think we need to be straight on this Hon. Members. It is a Private Member's Bill and the Private Member has invited the Bill to be drafted, in the lines with which he wished, which is absolutely right, and my understanding was he was governing the periods between 11.00 and 7.00.

When that Bill then went before another place, in fact they deleted 1(4) and replaced it with a new (4) which is, in effect, completely different. It introduced new measures, entirely, than what was drafted in the Bill. Perfectly entitled so to do, I do not decry that in any way, but I think that is where we come, in relation to the drafting of the Bill.

Mr Singer: And amendment.

The President: And amendment, yes, sir.

Mrs Crowe: We do not know who moved the amendment.

Mr Singer: I understood it was the Minister for the Department of Transport who moved it, but I have not got that with me here.

Mr Downie's comments about reasonable noise, and an example of the police social club, I think that is probably covered now.

I would accept Mr Butt's amendment, in that it is that the word lawful 'activities' actually means 'duties'.

Mrs Crowe talked about local authority functions and what it meant. I suppose the local authority wanted this, because it means that, if they are emptying the bins, as they often do, at 6.45 in the morning, they are not trapped by this Bill, so they cannot do it till 7.00. I would say, probably, that is similar to them putting on a function which goes on after 11 o'clock at night, one would think they would have enough sense, any local authority, or they have got the sanctions of the local ratepayers to censure them for doing that sort of activity (*Interjections*) – one would think.

One Member – I think it was Mrs Crowe again – talked about the functions of, I think it was the local authority, or it might have been the DoT, again, on emergency works. Did you mention emergency works?

Mrs Crowe: No, indeed, I did not.

Mr Singer: But the fact is they would need this exemption, so if they need to do emergency work... This was where they are exempted for up to 12 months on a licence. Somebody mentioned that.

Mrs Christian: I did, sorry.

Mr Singer: Again, that is so that if they have to repair a road, or something to do with any emergency that needs to be done and tackled immediately, it gives them permission to do it. They cannot be stopped; they would be entitled to do it.

I think the final point I want to make was Mr Waft talking about 'reasonable' and 'unreasonable'. I think, I did talk about this in the First Reading, that it is up to the police constable to decide what is reasonable and unreasonable. They have that power now, in deciding whether to stop a car at night, whether to talk to a drunk, either take a drunk home or take a drunk to the police station. It is up to the policeman, as a neutral person, to decide what is reasonable and what is unreasonable.

The main point of this Bill is that it saves the public all the trouble and the concern of this being able to continue on, (**Mrs Crowe:** Absolutely.) as it does at the moment, in that the local authority, at present, has to go and identify over a period of time, ask the people to take readings, and, in the end, I think I did say, there would be no prosecutions. It has never, ever got to a prosecution.

This is to stop the noise, to give people the peace of mind and the chance to go to sleep, that is the whole point of the Bill. I do think that some of the points that have been raised are a little bit nit-picking, when you consider what the main function of this Bill is to do.

If we want to talk about the skateboarding, as an example – not the particular one – after 11 o'clock at night, it would be unreasonable, and the policeman would be able to go for the individual who was doing that at night.

Whether it is unreasonable earlier on in the night, that is not covered by this Bill, and I am sure there must be other legislation that can cover this.

Mrs Christian: Mr President...

The President: Mr Singer is actually replying.

Mr Singer: Well, that is really... I did have a note that Mr Henderson, actually – I beg your pardon – moved the amendment to clause 1 in the Bill. He moved the amendment.

The President: Mrs Crowe, you are looking concerned. No, no, Mrs Christian.

Mrs Christian: I am concerned that the Hon. Member has just indicated that in respect of skateboarding, the Police could go for the individual. They cannot under this Bill, (**Mrs Crowe:** No.) it has got to –

Mr Singer: No, not under this Bill, under other legislation.

Mrs Crowe: No.

Mrs Christian: No, because you have got to do what

you have illustrated: you have got to measure it and say it is happening regularly, and it is creating nuisance –

Mrs Crowe: For 12 months.

Mrs Christian: It is only under the nuisance legislation that you could tackle it.

Mr Singer: Right, perhaps I could ask the Attorney General: if somebody is creating a noise at night in a public place, can the Police stop them under legislation?

The Attorney General: Under this legislation?

Mr Singer: No, no, under current legislation.

The President: Any legislation.

Mr Butt: Provoking behaviour.

The President: Yes. (*Interjections*)

Mr Singer: I'm hearing words from the left here: 'provoking behaviour' – a breach of the peace.

The Attorney General: Yes, well, nothing comes immediately to mind, Mr President, I have to say.

Mrs Crowe: Mr President, I do now have a little experience of noise – that is why I am so fully supportive of this Bill. (*Interjection by Mr Singer*) No, no, but that is the reason that I want to make everyone accountable.

It would not be for, perhaps, the individual to be dealt with, but it would be for the authority to ensure that no-one could access whatever was the noisy equipment – be it bikes or skateboards or whatever it might be – that they could be prosecuted, if the noise continued.

The President: But there is a judgement in there somewhere, (**Mrs Crowe:** Yes.) and that has to be sorted out, not an immediate action. I think the difference is that we seem to be getting ourselves hung up on this one of what is an immediate action and who can take reasonable occasions.

Mr Singer: You cannot stop people going on to a football pitch at night and making a noise and kicking a ball about after 11.00, because you cannot close that off, can you?

Mrs Crowe: But this is the whole point of –

Mr Singer: But you cannot do it.

The President: So, Hon. Members, I am really in your hands, but we are going round in rings.

I think there is no question that Council were supportive of this Bill. All the indication given to me by Members in their contributions to the First Reading was that they were fully supportive of the introduction of a Noise Bill. I think, similarly, the indication was given when we were trying to deal with Second Reading this morning, although a few queries were being raised.

We are on clause 1, Hon. Members, and I have amendments to clause 1. I will have to put those to the Council, but I am concerned that we still seem to be unhappy

as to whether or not we are going down the right line. So, I am in your hands. Mrs Christian.

Mrs Christian: Mr President, is it too late – we have not finally voted on this clause yet – to propose that the clause be moved to a committee for consideration?

I am concerned that we probably have not quite got it all right yet, and we have two amendments before us, in my mind, neither of which satisfactorily resolve all the issues. Perhaps it is symptomatic of us tabling amendments on the hoof.

So, if it is within Standing Orders, Mr President, I would so move.

Mr Lowey: Speaking against that particular action, at this time, Mr President, this Bill, when it was presented to us – and my own contribution was on the experiences that we have all endured, or our fellow citizens have endured – is identifying a period of time in the night-time. It is also identifying that a person who will prevent it from happening, which cannot be helped otherwise, who is a constable. He will be the judge – is it reasonable or not? If he says it is unreasonable that is it.

That seems to me to be quite adequate. Alright, ‘functions’ may not be defined. Perhaps we could, for example, in clause 8, when we are defining things make a ‘reasonable’ clause there to cover that.

The point I am making is that it will not cover every eventuality. I think we are in danger, Mr President, to coin your phrase, of trying to cover every single contingency. I think it is our job to try and cover them, but even gold, I have to say to the Council, is not 100 per cent purity; it is 99 point something.

I think this Bill makes a very good attempt at trying to get to a problem and resolve it and, therefore, it deserves support.

While we can polish and define certain words in it, I would hate it to be shoved off to, actually, cover all the eventualities that will actually be thrown up. So, I think it is... I will not say the word ‘unreasonable’, it is far too strong, and I know Mrs Christian, certainly, is not attempting to do that, but I would think that, in my view, ‘reasonableness’ should be put into this particular Bill, at this particular time.

We can always amend it, on reflection, next week at Third Reading, but I think, at this time, to get on with the Bill, we should address it as it was intended by the mover.

The President: Mr Butt.

Mr Butt: Yes, I agree with Mr Lowey, Mr President.

The nitty gritty of the Bill is that people in their dwelling houses at night are being disturbed by people on other offending premises. There has always been a gap in the law, as far as I can see, in that the Police can deal with matters of disorder in a public place, in licensed premises under those Acts, but Police have no powers to go into other people’s premises or take any action in a private premises or dwelling.

This Bill actually gives that power. It fills that gap, so if somebody is disturbed at night in their own dwelling from another premises, the Police can go there, take these actions, serve the notices and, if necessary, go inside and stop the noise.

It does not affect what happens at half past ten at night,

in the middle of Onchan or Port Erin, or wherever, amongst a group of children. It purely affects noises coming from offending premises, and the Police would now have the power with this to go in to those premises and take some action, which they did not before.

The President: Mr Waft.

Mr Waft: Can I ask the Attorney General to clarify what he said previously, that the number of complaints that the Department or the Police receive are mainly from licensed premises. Is that correct or not?

The President: Mr Attorney.

The Attorney General: Well, Mr President, I can only speak from my own experience, and I am afraid I do not have any knowledge as to the number of complaints made to the Police. But, certainly, complaints made to me in letter form and by telephone – and there have not been many, Mr President, but those that have been made – have been related to licensed premises and clubs where the music goes on beyond midnight.

Neighbours of those premises, certainly, have been very disturbed and, I think, rather frustrated by the fact that they have to then instruct the Department of Local Government to take noise readings, over a long period of time, to build up a case for a prosecution.

So, that was it, Mr President, and, as I say, normally, I would not dream of making the comment I did, but it seems to me that, because it is a Private Member’s Bill, because the amendment has been in the Keys, I just wanted to point out to Hon. Members that it seems to me there is quite a gap being created in the enforcement of genuine nuisances.

The President: Okay, Mr Waft do you wish, sir?

Mr Waft: I would just clarify exactly which subclause there would close that gap for him?

Mrs Crowe: (c), (d) and (e).

The Attorney General: Well, Mr President, yes, if Hon. Members felt it appropriate, then they could delete (c), (d) and (e) from the amendment made in the other place.

The President: Right, in fairness I think Mr Singer should have the last word on clause 1, Hon. Members. (*Interjection*) No, we have not.

Mr Singer: I thank Mr Butt. I think Mr Butt clarified it, made it very clear just then, what this Bill is actually doing, and Mr Lowey, as well.

The other thing about reasonable and unreasonable, if a policeman makes a judgement that a noise is unreasonable, and the person who he goes to disagrees that person can go to court, and object to what the policeman’s judgement was. So, there is always that particular form of action.

Personally, if the majority of Members feel that (c), (d) and (e) should come out, and then it is left to the Police, I have not got any particular feelings about that, if Members felt that that should be the case, if we are taking each part individually.

But I, certainly, would support Mr Butt’s amendment.

Mrs Christian: Mr President, can I clarify that we cannot take them individually.

The President: We can take the amendments individually.

Mrs Christian: Yes, but not (c), (d) and (e) individually.

The President: We cannot take the sections individually. Mrs Crowe.

Mrs Crowe: Mr President, I wonder if the Attorney General could clarify one other query. I am sorry about this, but we are working on amendments put forward to the original Bill by the Keys. We have already had the exclusions of (c), (d) and (e) quite carefully explained by the Attorney General. Many local authorities rent out village halls, town halls, halls that they own. On occasion, there have been problems with the people they have rented it out to, for whatever activity it might be.

So, in that case, if we were excluding a local authority, then the policeman presumably could not go in... I am seeking to improve the lot for the people who are offended by this noise, and these halls are in residential areas, so if a local authority had rented out the hall, of course, they just take the money for the rent of the hall. But, presumably, by the exclusion of (b), it would mean that no action could be taken, because it is a local authority hall.

The Attorney General: The difficulty with that is that the amendment has been further amended, (**The President:** Yes.) to say it is the local authority discharging its *duties* (**The President:** Duties.) (**Mrs Crowe:** Yes.) within the district. The question arises as to whether the local authority has a duty to rent out premises.

Mrs Crowe: Well, they certainly have.

The Attorney General: I am not certain that is the case at all. (**The President:** No.)

Again, Mr President, if I may, it does seem to me that the whole mischief of clause 1, which all Hon. Members seem to be fairly clear about, would be preserved if we had clause 1 as it originally was drafted, (**Several Members:** Exactly.) and without the amendments, because it does leave, then, the police officer the function (**Mrs Crowe:** Decision.) of deciding whether, in any case – that is, excluding the Police, Fire Brigade and Ambulance Services or local authority discharging its functions – absent that, in every case, it is then for the police office to decide whether it is reasonable or unreasonable.

The President: Mr Butt.

Mr Butt: Mr President, could I take the converse view on that.

I think (c), (d) and (e) should be left in, because people who have problems as neighbours of licensed premises could use this legislation, in effect, to shut down every licensed premises after 11 o'clock at night. That could be an effect of it, which could be disastrous.

I think the Licensing Acts have lots of powers in them for the Police and other people to regulate noise, and the time of

the function, etc. I know it is sometimes complicated. If the licensing courts see fit to give a licence to 2.00 a.m. or 3.00 a.m., including music and dancing, that is the responsibility of that court and the enforcement of the Licensing Act from thereon.

To actually say this Bill does not exclude licensed premises, it could mean them shutting down from 11.00 p.m. onwards, and it could be a disaster for the tourist industry and other people, as well.

The President: Right, Hon. Members, I think we have gone round, and Mrs Christian did suggest earlier (**Mrs Crowe:** Yes.) that, in fact, we should –

Mrs Crowe: I will support that.

The President: You are a bit late, Hon. Member.

Mrs Crowe: Well, I am sorry, Mr President.

The President: Well, hold on, Hon. Member, you have had plenty of opportunity.

I think the easy way of dealing with this particular measure, in all honesty, is to continue to deal with clause 1, exactly as we have, and, in fairness, to the mover and in fairness to anywhere else, if Members wish, ultimately, to come back on it. I think that is for you.

But at this stage, what I will do is put to – (*Interjection by the Clerk*)

Right, okay. Hon. Members, I think on the list which you have in front of you, in relation to part (a), amendment by the Keys, as I indicated before, when I read it to you, on your white sheet, you have not had introduced into that particular part (a) 'the Department of Transport'.

In actual fact, the amendment in the Keys does read: 'the lawful activities of the Department of Transport, police, fire brigade and ambulance services', so it actually did put in the Department of Transport. I do not think that is on the white paper that was circulated to you.

Other than that, Hon. Members, can we deal with the amendment moved by Mr Butt? Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Then, Hon. Members, having introduced that amendment, can I put to you the amendment in the name of the Hon. Member, Mrs Crowe and that is to delete the subparagraphs in 1(4)(b), (c), (d) and (e). Those in favour, please say aye; against no. The noes have it.

A division was called for and voting resulted as follows:

FOR	AGAINST
Mr Waft	Mr Lowey
Mrs Christian	Mr Singer
Mrs Crowe	Mr Butt
Mr Downie	

The President: Now Hon. Members that carries in Council, with 3 votes against and 4 for, Hon. Members.

Now, Hon. Members, having amended clause 1, in that particular part, so that, in fact, in paragraph 1(4)(a), it will read instead of 'activities', 'duties', and we have now deleted (b), (c), (d) and (e), as amended by Mrs Crowe's amendment, I put to you the clause, as amended. Those in favour, please say aye. Mr Lowey.

Mr Lowey: I want clarification. As we have deleted the amended, does that mean the original goes back in?

The President: No, no, no.

Mr Lowey: So, we have nothing there?

The President: You have deleted (b), (c), (d) and (e).

Mr Lowey: So, there is nothing –

The President: You left in (a), which will now read: ‘the provisions of this Part do not apply to the lawful activities – (**Severall Members:** Duties.) duties of the Department of Transport, the Police, Fire Brigade and Ambulance Services’.

Those in favour of clause 1, as amended, please say aye; against, no. The ayes have it. The ayes have it.

We turn, then, to clause 2. Maybe, we will move a little easier. Mr Singer.

Mr Singer: Clause 2, Mr President, prescribes the issuing of warning notices to the appropriate person within the offending premises, or by affixing a warning notice in a conspicuous position on the offender’s premises.

Any such person identified by the constable or officer will be told to stop the noise immediately, or further action will be taken to cease or remove the noise source.

An official warning notice must be issued to the person or persons within the offending premises, or in the cases where an individual cannot be identified a warning notice can be placed on the premises.

I wish to move clause 2 be part of the Bill.

The President: Mr Waft.

Mr Waft: I beg to second.

The President: Mrs Christian.

Mrs Christian: Mr President, can I just follow up on a point made earlier by the Hon. Member, Mrs Crowe, where she gave an example of a property being hired out to another individual or organisation for the holding of a function. Presumably, then, it will be for the warning to be given to the hirers, rather than the local authority, as outlined in her example, and if the notice is then, because no-one will confess to being in charge, affixed to the property, it is still served on the people who are hiring, yes, as the occupiers of the property, at the time.

Right, thank you.

The President: The answer in both cases is yes. Mr Lowey.

Mr Lowey: I am just trying to clarify this one. If I hire premises from my local council – this is for illustrative purposes – I take on the responsibility that I hire it and it is subject to contract. In other words, that I am subject to the law, that I will obey any lawful instruction from the whatever, and, surely, when I take that in, it would be covered anyway, but I do take the point that, although it may be owned by the authority, if it was leased out for a wedding reception or an 18th birthday, or whatever, then the...

But this Bill is quite clear, it is the premises and those in charge of the premises at that time, not the council who leased it in the first place.

The President: Mr Attorney.

The Attorney General: Mr President, I am sure that that is correct ordinarily, but I think the really important provision of this clause is subclause (5), which says that a person is responsible for unreasonable noise emitted from the offending premises, if he or she is a person to whose act, default or sufferance the emission of the noise is wholly or partly attributable.

So, you could have a situation whereby the landlord of the property could be responsible. If we take an example, say a local authority, which has an annual dance, and the local authority knows that every year that this happens there are complaints from the neighbours about noise that goes on after midnight and so on.

Now, if the local authority leases the hall out to an operator, and the operator, say, cannot be found – let us say it is a company which has done a midnight flit, as it were, and returned back to the UK – the landlord, in those circumstances, could be responsible, because he or it has suffered the nuisance to continue year after year, or it may have been month after month.

So, I would not like it to be said or thought that a landlord is always going to be able to wash his hands of the nuisance. In 99 per cent of the cases, I dare say, it will be the tenant or the hirer of the premises, but an owner of the property can sometimes be caught by that fairly wide definition of clause 2(5).

Mr Lowey: We are getting them into more difficulty. I thought the essence of this Bill was to prevent the noise emanating there and then, not if it is being repeated year after year after year. So, it is a different problem that we are dealing with on this repetition. (**The Attorney General:** Yes.) The noise at that moment is to be stopped, and the aim of this Bill is to do just that. I cannot support it.

Mr Singer: Practically, what will happen is the policeman will go into the premises and say, ‘Will you turn the noise down. Who is in charge? Turn the noise down.’ If nobody is in charge, then the policeman has the right to fix a notice on. If they refuse to turn it down, he can then issue, on the person he believes is causing the noise, a £100 penalty immediate fine or, if that is not acceptable, he can seize the equipment, and then the court can sort out whose property it was. But it stops the noise.

The President: Yes, that comes later on – seizure. Right, Hon. Members, in relation to clause 2, I put to the Council 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.

We move, then, to clause 3.

Mr Singer: Thank you, Mr President.

Clause 3 makes a provision of an offence when noise continues after the service of a notice. This is the second stage of action following the initial complaint.

A person guilty of an offence, under this clause, is liable, under summary conviction, to custody for a term not exceeding three months or to a fine not exceeding £2,500 or to both.

If the noise continues at any time during the same night, following the issue of a warning notice, the person or persons occupying the offending premises are guilty of an offence. In the event of a person refusing to accept a fixed penalty notice, as set out under this clause, it permits a summons to be served upon the offender, under which he or she will be prosecuted in a court.

It is envisaged such action would be taken against repeat offenders or in serious cases of unreasonable noise from offenders' premises.

Mr President, I wish to move that clause 3 stand part of the Bill.

Mr Downie: I beg to second.

The President: Mr Downie seconds on this occasion. Mr Butt.

Mr Butt: Yes, I have a minor amendment, Mr President:

Page 3; line 4, in clause 3(1) for 'If' substitute 'After'.

I think the wording of 'If a warning notice has been served' is a little nebulous, and the actual use of the word 'after' provides a definite statement that the notice has been served and thereafter the action takes place.

It makes no real difference in terms of legislation, I understand, but it provides more of a focus for those who read the Act.

Mr Singer: I would accept that.

The President: Mr Downie.

Mr Downie: Can I have a point of clarification, then, from the Attorney General.

If the hirer of the premises is a body corporate, could you clarify who would be the person responsible for receiving the notice? Would it be the secretary of the company, or a director, or...?

The Attorney General: Mr President, I do not think this Bill deals with offences by corporations –

Mr Downie: There are a lot of small organisations, now – even the Pony Club is a limited company, to get over other areas that they have problems with, insurance and...

The Attorney General: It is an interesting point, Mr President, because, normally, any notices would have to be served at the registered office of the company, which, of course, might be many miles away from the source of the nuisance.

Mr Butt: As I say, this section you mentioned before, Mr Attorney, it says 'a person responsible for unreasonable noise', so you are looking for a person on every occasion.

The Attorney General: But I think, Mr President, the point is well made by Mr Downie, because, of course, a company is a person in law, as well as an individual.

Mr Lowey: Can I just follow that through, Mr President?

How many angels can you get on the end of a pin head?

If I am hiring... I am a corporation, the Pony Club, and I want to hire Ballasalla Church Hall from the local commissioners, the commissioners would say, 'Well, who am I hiring this out to?' The Pony Club, and if that is the Pony Club, the individual who is dealing with it is the Treasurer or the Secretary or whoever – the individual. That is the individual that is going to be dealt with by this.

The Attorney General: No.

Mr Lowey: You say no, but I think if we are to adopt what I would call this sort of application to every individual application, there is no amount of legislation that will cover every single eventuality. There is none, and I think that this is as clear as you can get.

The President: We are trying to widen it out all the time. Hon. Member, Mrs Christian.

Mrs Christian: Yes, Mr President.

I am just trying to clarify... I think what we are really trying to get at is the noisy neighbours having a party, (**A Member:** Hear, hear.) as opposed to, perhaps, the social club having a function in the church hall, which may or may not create a nuisance.

But if we are looking at this situation where it is an individual householder concerned about noise nearby, in clause 2, a warning is served to a person who is responsible. Now, if the officer cannot identify who is responsible they pin it to the door and if the noise goes on, how do they identify specifically who is going to be brought to court for the offence? Are they going to take names, in the first instance?

I am trying to understand how this will work in a practical sense. Do they take names from everybody who is present or do they get one individual to say, 'I will accept responsibility and I am going to turn it down'?

If they do take names from everyone present, and if it continues to go on, do they, then, serve fixed penalty notices to everybody or to one individual? Or is that for the nuisance-causers to determine between themselves and say, 'Well, it will be cheaper if one of us takes responsibility, we will share the...' – except you are going to get a conviction, possibly.

I am trying to understand how, in a group or party situation, this is going to be practically put into effect.

Mr Singer: Under clause 4?

The President: What we are really pointing out is that, although this Bill sets out with good intentions, and I am absolutely satisfied that Council are behind the good intentions of the Bill, it may be difficult in working, and that is something which Council is going to have to decide.

Alright, we can pass legislation that may be difficult in the working of it thereafter, but that is a balanced judgement which Council has to make. Mr Waft.

The Attorney General: Sorry, Mr President, could I just take up the point made by the Hon. Member, Mrs Christian, which I think is an extremely valid point.

Of course, if somebody cannot be identified as being responsible and does not, as it were, own up to responsibility, but there are six people within the premises, all of whom may,

for example, be students who are having a great time whilst the parents are away, the fact is that any criminal proceedings would have to be proved beyond reasonable doubt.

In other words, the court has to be sure that Mr X or Miss X is the person responsible and, time and time again, in the criminal law we know that someone within a group has assaulted somebody else, but they cannot prove beyond reasonable doubt who it was, and, therefore, the proceedings fall altogether. The danger is, of course, that in the example raised by the Hon. Member, it could be that we know somebody has done it, but you cannot prove beyond reasonable doubt who did it. That is always a danger.

Mr Lowey: So the thing to the law-breakers is: get a group of you and nobody own up.

But if that house is owned by Bill Jones, the first thing the policeman will say, with the noise, is: 'By whose invitation are you here?' There has to be a reasonableness, and I come back to that word which has been used in this, the constable has to act in a 'reasonable' way.

If the constable says, 'This house is owned by Jones', and there is not a Jones in the house, 'What are you doing here?' Now, come on, again, I am back to this question of: if you want to put an extreme example, we are not dealing with the extreme examples we are dealing with, quite clearly, a noise nuisance that is being effected between the hours of 11.00 and 7.00, and we are drifting away from that, Mr President. We really are.

Mr Singer: Can I just come in on this?

The President: Yes, Mr Singer.

Mr Singer: I think it partly goes into the next clause, but I think we need to be talking about it.

If the person goes in and issues the original warning notice to the house, fixes it to the door, if he cannot find out who owns it, he says, 'Turn the noise down', and he goes away, and there is another complaint or the person refuses to turn the noise down, he can then issue a fixed penalty notice.

It says, clause 4, 'if it is not reasonably practicable to deliver it to that person, by addressing it to them or to the occupier...', I think he can affix the fixed penalty notice on a conspicuous part of the premises. I think that is under (b) –

Mrs Christian: To whom is it addressed, Mr President?

Mr Singer: It must be to the occupier.

The President: So again –

Mr Singer: But if, again, the people in there do not turn it down, he can come immediately back and seize the equipment, and that will soon sort out who owns it.

Mr Downie: Mr President –

The President: Okay.

Mr Downie: – if I could just make an interesting comparison here. There is a building adjacent to this building where there will be at least 2,500 companies registered there.

We are in the heart of a residential area, they could have an office party in there, any night of the week, which is causing a nuisance. When the constable goes in to serve the notice, who does he serve it on?

The President: Now, we are back onto this question –

Mr Downie: But there are 2,500 offices –

Mrs Crowe: Mr President –

The President: Mrs Crowe.

Mrs Crowe: – I am fully aware of what my hon. colleague, Mr Lowey, is trying to achieve. No-one is more conscious of this nuisance, of late, than myself. Now, it is pointless passing legislation, if the law will not work. I just do not see that as my role. If we cannot bring a prosecution, which is what we are wanting to do, because if people find out –

Mr Lowey: It is to stop the noise.

Mrs Crowe: Well, yes, but if we find out that we cannot take a prosecution, the first case that comes to court, the law will be found to be deficient and will go nowhere.

Mr Lowey: You have stopped the noise, which is the complaint –

Mrs Crowe: In one case, but it will –

Mr Lowey: In every case.

Mrs Crowe: – just be avoided by everyone else.

Now, if we changed... I do not know of this, and I am asking for some advice as well, Mr President. If, where it says 'a person' – I have lost my place, actually – would it be the owner or tenant, if we had the owner or tenant of the premises to be responsible? We have got an occupier, but that could be anyone or...

Mr Lowey: Occupier means the person in actual occupation of the offending premises, in the definition, clause 8.

Mrs Crowe: Well, I know, but the warning notice is to be served to any person deemed to be responsible.

Mr Lowey: Well, that is the occupier.

Mrs Crowe: Well, is it? That is what I was asking for clarification.

At the same time, could I second Mr Butt's amendment, which I do not believe has been seconded.

The President: It has not, right.

Mr Singer: I really think we need to go and look a bit further at this.

In clause 6, it says, quite clearly, that any time period specified in the original warning notice, if an:

'unreasonable noise has continued to be emitted from the offending

premises.

(2) A constable may enter the offending premises from which the unreasonable noise in question is being [...] emitted and may seize and remove any equipment’.

So he can do that, anyway, and then it will sort out who owns it and who is responsible.

Mrs Crowe: Well, I am just asking for some advice, that is all.

Mr Singer: I think we really need to be looking a bit further ahead in this.

The President: I think all law, ultimately, will be tested. I think that this is likely to be tested. I seem to recall reading in a newspaper about one legal eagle in the UK who is now well-known for getting people off motoring offences, because he keeps finding loopholes.

There may be loopholes, and it may have to be amended in the future, but I think the object of the Bill, (**Mrs Crowe:** Yes.) if I am guessing right, the objects behind this Bill Council is trying to support. If we keep trying to push on...

I am quite happy that we should try to get it as practically correct as is possible, but I do not want to lose sight of the ultimate aim, which is to try to assist neighbours who are having a noisy nuisance. I think that is the drive behind it.

Mr Singer, do you wish to add anything to clause 3, sir?

Mr Singer: Only to say, Mr President, that, in the end, as has been said, it is to stop the noise. If the person who is actually making it cannot be identified, in the end, the Police can go and actually seize that equipment and the noise stops and that is what the aim of this Bill is. Then that can be sorted out in the courts.

The President: Yes, and I appreciate it will be sorted out. The answer to Mrs Crowe’s particular difficulty, I think, is exactly that, because they may seize the equipment and the equipment might not belong to the people that were making the noise, and we go down that road.

Mrs Crowe: I would like the advice of the Attorney General, please, Mr President.

The President: Mr Attorney.

The Attorney General: Well, Mr President, it is difficult for me to give an absolute answer to this, but could I, perhaps, suggest that, if the onus was put on the occupier of the property – in other words, to take the example, the police officer has been alerted that there is a lot of noise coming out of certain premises...

Now, it may be very easy, or relatively easy, for the police officer to determine who the occupier of the property is, particularly, for example, if there were to be a record of who is the tenant. I am not, for one moment, suggesting that these problems are going to occur in local authority premises at all, but let us say that there were to be a situation where one particular property was always the object of a complaint.

The police officer could check in advance whether Mr Jones was the tenant of the property in question. He would, therefore, be able to go to the property and say, ‘Right, I know Mr Jones is the occupier of the property, because he is the tenant, he pays the rent’. Even though Mr Jones is

not there, Mr President, it may actually be more sensible to put the burden on Mr Jones to ensure that his house is not being used as a nuisance for others and, therefore, the restraint notice, or the warning notice can go on the property, if Mr Jones is not there, and he is the chap who is going to be responsible.

It is rather like saying that parents are responsible for the acts and defaults of their delinquent children. It is very harsh, but that is the way to stop the nuisance and –

Mrs Crowe: So, it’s the property, not the person. (*Interjection by Mr Lowey*)

The President: I think we are back – and I take the Attorney’s view and I see Mrs Crowe’s problem here, and that is a practical way of maybe getting over the difficulty – to First Reading and Second Reading. The object of the Bill is to try to avoid instant noise, which is creating... not something which is repetitive on a long, rolling basis, but it is somebody who is having a problem that night. I think that is where it is supposed to try to emanate from.

So, at the moment, on clauses, Hon. Members, if we can try to move on. I am sure you will all take notice of what Mr Attorney has said, and we can come back on it if that is your wish.

But, dealing with subclause (1), we have the amendment moved by Mr Butt and seconded by Mrs Crowe, that in line 4, on page 3, in the first subclause, instead of starting that sentence with the word ‘If’ a warning notice, it will now start ‘After’ a warning notice. The amendment is to replace the ‘If’ with ‘After’. Putting to you the amendment, Hon. Members, those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Now, I put to you the clause, as amended, Hon. Members. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 4.

Mr Singer: Thank you, Mr President.

Clause 4 makes provision for the issuing of fixed penalty notices. The fixed penalty fine will be set at £100 or such sum as may be prescribed by order.

The Department of Local Government and the Environment may make further regulations prescribing increased fixed penalties, in respect of further offences under section 3, which are committed within three months of the date of the warning notice served under section 2(3).

The clause gives power to issue fixed penalty notices, which will be set at £100. The issue of a fixed penalty fine would be the alternative to court proceedings as set out in clause 3.

Power is given under this clause to bring into force fixed penalty notices bearing a higher fine, to deal with persistent noise nuisance cases which occur within a three-month period from the date of an original warning notice.

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

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

The President: Mr Waft.

Mr Waft: Mr President, we have the same problem, don’t we, as the previous one?

Mrs Crowe: Yes.

The President: We do.

Mr Waft: 'A fixed penalty notice may be given to a person' and 'Where a person has been given a fixed penalty notice': it was a thought that, maybe, it should be given to the occupier –

Mrs Christian: It does also say that.

Mr Waft: – but it does not actually say that, so –

The President: It says in (2)(b) –

Mrs Christian: Subclause (2)(b) –

The President: – 'by addressing it to them or to the occupier'

Mrs Christian: – 'or to the occupier'.

Mr Waft: Well, how are you going to differentiate between the two, that is my problem –

Mr Lowey: Reasonable for the police officer: we are back to that word, interpretation – reasonable.

The President: Mr Butt.

Mr Butt: Yes, sir, I have some difficulty with this fixed penalty section. I do not quite see the need for it, although I am sure there is a need for it.

It would be, in effect, simpler, if access has been gained, to report the persons with an offence in the normal way, rather than issue fixed penalties, because, once you issue a fixed penalty, as Mrs Christian said before, you may have a party where they all shift the blame onto each other. Nobody will pick the fixed penalty up and take action on it. When that fixed penalty period expires, the Police will then have to come back and revisit the scene, to find out who the offender was, to take out a summons, because the fixed penalty has been ignored.

It would be much simpler, if the Police actually were able – if they can do – to report the people for the offence, there and then, at the time, rather than a fixed penalty – although I can see an occasion when a fixed penalty may be needed, when, perhaps, the door is shut and everybody is gone and there is nobody in occupation. But it would mean in the end, if the penalty is ignored, which it is quite likely to be in some cases, the Police will then have to revisit the scene, and re-open the inquiry and start again.

But that is one of their jobs. I am sure they can do that. (*Interjections*)

The President: Mrs Christian.

Mrs Christian: Mr President, yet again, I have some difficulty with the provisions of the Bill. In this particular clause, we are quite clearly talking about the occupier as an alternative to the... who may or may not be the person creating the noise and it seems to me that this is the second stage. If I cannot get somebody to give me a name or to take responsibility, then I will go for the occupier.

So, in that sense, it does pin somebody down, if you can identify who the occupier is, and I suppose in the sense that we are primarily thinking in terms of household noise and, maybe, household offenders, it may be possible to identify the occupier.

It is then somewhat tough, in my view, that the occupier, who may not have been anywhere near the premises, may be guilty... well, obviously, has the defence to show that there was a reasonable cause or excuse for the act, default, or sufferance, but it seems to me that if you are going for the occupier there is less likelihood, if the occupier was not present, of succeeding in any conviction, because the occupier will say, 'I was not responsible for the noise. I can show, in my defence...' They cannot show that there was not a reasonable cause for the noise, but they could say that their excuse for the act was that they were not there, and that they would not have tolerated it, if they had been.

So, are you ever going to succeed in convicting anybody, unless you get a name on the spot from someone who is present?

Mr Butt: That is why I think it needs, perhaps, to be reported for summons, at the time, would be the best option, although this might be a fall-back position.

The President: Mr Lowey.

Mr Lowey: Again, I think it is... I am keeping strictly to the Bill. Why have a penalty? I think it is a modern equivalent, as a back-up. It is not a first port of call. It is after I have tried to get the thing sorted and it is not likely to be, I can put it there. So, it is not a first port of call.

Then I come to the point that we are not re-inventing the wheel here. Wherever fixed penalties are applied now... I can say I can give my car to a proper driver and it can be parked illegally, and I get a fixed penalty. I then have the option of going and explaining, but, at the end of the day, it is my vehicle.

At the end of the day if I have a premises and it is either my family that is in it or my friends that are in it, and I am not there, and they have created that, tough! For the people who are being offended against, it is cold comfort to say, 'Well, the owner is not there, he is away'. He has permitted that to happen, then I think it is reasonable... I am sorry, I do not think it is unreasonable to say that that owner of that property should be dealt with, there and then.

Coming to the part of the Police, whether you impose fixed penalty or the Police have to revisit the thing, I really think that is... I use the word 'academic' – I am sure it is not for the Police, but to me it is an academic one. Either way, they are the agency in the first instance to adjudge whether it is reasonable or not, and if they thought it was reasonable, to put a fixed penalty on the thing and go for the occupier. Then I think it is reasonable for the Police to be able to come back and say, 'Well, we are going to deal with it.'

The President: Mr Waft.

Mr Waft: No, I think it has been clarified, with regard to the person or the occupier. I think that is as far as we can go, unless you stipulate a particular person in essence, otherwise...

The President: Mr Downie.

Mr Downie: Yes, I think, where another difficulty arises here, and I know it would be an issue for another day, but you can get a circumstance where a person could actually break into premises and they could be making an absolute nuisance of themselves, or they know full well that the owner of that business is away on holiday and they are there –

Mr Lowey: That is an offence.

Mr Downie: – without proper... yes.

So, I think the way this is drafted, my view is we have to go along with this for the present time.

The President: Mr Butt, do you wish to say something?

Mr Butt: Yes, just on the fixed penalty issue. They work quite well for motoring offences, because if the person denies being the driver or claims not to be involved with the car, the legislation always goes back to the registered keeper and he has to then declare who the driver was or accept the penalty himself.

In this case, this fixed penalty, there can be no registered owner of the property. It could be a company in the Bahamas or something that could be the owner of this property.

So, I think it is useful, perhaps, as a back-up, but the actual police action should be with the people directly, rather than a fixed penalty, if they can avoid that.

Mr Singer: Well, yes. I think it is with people who cause the offence. Yes, well, it is, it is the people who are there.

But I think Mr Lowey was quite right that the person who owns a premises is responsible for the premises, and it is up to him, if an instant fine is there, it is up to them to find out who did it and get the money from them and sort it out that way.

We have all got to remember, from the very start, that most of the complaints will be stopped immediately, with a policeman knocking on their door and saying, 'Here is a warning notice, and if you do not turn your music down, there will be a £100 instant fine'.

Now, if it is young people in there, they, actually, will not know themselves who that fine is going to be on. They may well think that they are going to have to pay the £100 fine, and they may say, 'OK, we will turn the music down'. I think, at the first stage, most of the complaints will be eliminated.

There may be difficulties a little bit later on. The Police may have to revisit it, but I do not think it is going to be on any great scale and I think, with a £100 instant fine, it is a deterrent and a very good deterrent.

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

Clause 5, Mr Singer.

Mr Singer: Clause 5 deals with provisions supplementary to section 4 regarding the issuing of fixed penalty notices. The clause is self-explanatory and widely explains all necessary provisions required for the careful issue of fixed penalty notices.

I, therefore, move that clause 5 be part of the Bill.

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

The President: Hon. Members, we need to note that, in fact, the Keys did amend clause 5(2), on line 24, because it now reads:

'If a fixed penalty notice is given to a person in respect of noise emitted from the offending premises in any period specified'.

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

Clause 6, Mr Singer.

Mr Singer: There is a schedule to be taken here, as well. **(The President: Yes.)**

Thank you, Mr President.

Clause 6 and the schedule deal with the powers of entry and seizure of the noise source which, in addition to noise generating equipment, can include an animal or a bird, as defined in clause 8.

This clause permits a police officer not below the rank of sergeant to give written authority to any other police officer to effect a forced entry, if necessary, into the offender's premises, in order to seize and remove the noise source.

If, after a written notice has been served upon the offending premises, noise continues unabated, at a time when a person fails to answer the door to a constable or if, in fact, it appears that the offending premises are unoccupied, the Police are given powers to gain entry into the offending premises by force, if necessary, to seize and remove the noise generating equipment or the noise source.

It is envisaged that such action would only be used following complaints of a very serious nature.

I beg to move that clause 6 and the schedule be part of the Bill.

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

The President: Mr Butt, you have an amendment, sir.

Mr Butt: Yes, sir:

Page 5; line 15, in clause 6(2) before 'seize' insert 'disarm or'.

Page 5; line 21, in clause 6(3) after 'any' insert 'offending'.

Page 5; line 24, in clause 6(3)(a) for 'from offending premises,' substitute 'from the offending premises, and'.

Page 5; line 27, at the end of clause 6(3)(b) add 'and'.

Page 6; line 6, clause 6(4), for 'the 1998 Act' substitute 'the Police Powers and Procedures Act 1998 ("the 1998 Act")'.

The first amendment that I have is on line 15, where I would like to include the words 'disarm or' before 'seize'. This is because I looked at the section on the car and vehicle alarms, which is further on in the Bill. There is no provision for a person in a residential area having a house alarm go off next door to them, which carries on through the night continuously. That is, sometimes, quite a problem, I understand –

Mrs Crowe: And offices.

Mr Butt: And offices. I spoke to the legal draftsman about this and he said that there was no need to, actually, amend the vehicle alarm section, because, if during the night an alarm goes off next door to you, that, in effect, constitutes a noise under section 1. All that would be needed to change that was to actually put in: rather than when you seize the equipment and go in, you disarm the equipment. He said that is really a simple amendment.

That would cover, if you have a house next door to you with the alarm going continuously all night, the Police are called, they can put a notice on. It is not occupied – they are away on holiday or whatever – then the Police can go in and disarm the noise.

Mrs Christian: I would like to clarify, Mr President, that, in those circumstances, the notice would specify one minute or whatever period – it has got to give a period of time.

Mr Butt: I think with lots of these it will be a notice on the door and then –

Mrs Christian: And then in. Yes, but it has got to specify –

The President: But it would have to be reasonable, again. Can we deal also with line 21, sir.

Mr Butt: Yes, sir. Line 21: again, it is similar to the point you made recently, shortly before. It actually says, ‘may enter any premises’. That gives them carte blanche to go anywhere they like. So, it needs to say, ‘any offending premises’, which are defined earlier on in the Bill.

The President: Continue with the rest of your amendment in relation to clause 6.

Mr Butt: Again, under clause 6(3), the officer may give written authority and the way it reads, at the moment, is that any one of (a), (b), (c), (d) or (e) – if any of those criteria are fulfilled – he can give written authority.

I think the intention of this Bill is that three things have to happen before that happens. Firstly, the warning notice is served. Secondly, the noise continues after the service of the warning notice. And, thirdly, there is no entry – entry is refused. Only when those three criteria are satisfied would they then be able to go in with the written authority.

All it requires are some ‘ands’ adding: ‘and’ at the end of section (a), an ‘and’ at the end of section (b) – so that it means that they only enter with this written authority, once all three of those conditions are satisfied. Otherwise, they could pick and choose which one they go in under.

Mr Lowey: I second this...

The President: We are not finished yet. We also have page 6, line 6.

Mr Butt: Page 6, line 6: this is suggested by somebody more eminent than me that, throughout the Bill, the actual Acts referred to are given their full name. In this case, it just says, ‘the 1998 Act’, which is not clear to somebody reading it for the first time. It should, actually, say, ‘the Police Powers and Procedures Act 1998’, for reasons of clarity. I think that, sir, is...

The President: I think I am guilty of raising that but, along with that definition, I think we should, also, delete 18(1)(a), because I do not see why we should have to read for the interpretation of ‘the 1998 Act’ in clause 18. (*Interjections*)

Mr Lowey: Yes, I suppose that is for somebody who knows... I suppose we should all read definitions but, again, the law, in this instance, should be readable by the person who is... and I think, if it is there in the first place...

The President: That is why I raised it last week.

Mr Lowey: That is where I think it should be, and not in a clause later on in the Bill.

Mr Butt: This will be read by a sergeant at 3 o’clock in the morning.

Mr Lowey: Yes, he is not going to go to the...

The President: So, Mr Lowey, you are seconding all the amendments?

Mr Lowey: Yes, I will second all the amendments for clarity, yes.

The President: Mr Singer, do you wish to reply, sir?

Mr Singer: Yes, I do, sir.

Can I say that I am very grateful to Mr Butt for looking very closely and, certainly, coming up with the burglar alarm, which had not been thought of. We have spoken with Mr Houghton, who is very happy that these amendments are being moved. So, I would ask Members to support them.

The President: The motion I put, Hon. Members, are the amendments listed on the white sheet of paper in the name of the Hon. Member, Mr Butt. Those in favour of the amendments to clause 6, please say aye; against, no. The ayes have it. The ayes have it.

I put the clause and the schedule, Hon. Members: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 7.

Mr Singer: Thank you, Mr President.

Clause 7 gives protection for a constable and anyone assisting a constable from personal liability in respect of any such damage caused by effecting an entry, by force, into the offending premises.

I wish to move that clause 7 be part of the Bill.

The President: Mr Lowey.

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

The President: The motion I put to Council, Hon. Members, is that clause 7 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

General provisions – clauses 8, 9 and 10. Mr Singer.

Mr Singer: Thank you, Mr President.

Clause 8 sets out the interpretation of part 1 of the Bill.

Clause 9: the Bill does not affect the right of the Department to apply to the court for an anti-social behaviour order, in accordance with section 28 of the Criminal Justice Act 2001.

Clause 10 makes provision for the exemption from legislation in respect of animals on land used for agricultural purposes. This Bill deals with animals causing unreasonable noise within domestic surroundings.

The Bill is not intended to address noise from farm animals which may be heard inside a domestic property. This clause gives clear exemption of such animals in the Bill.

I wish to move, sir, that clauses 8, 9 and 10 be part of the Bill.

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

Mrs Christian: Mr President, will they be moved separately?

The President: I will move them separately, yes.

Mrs Christian: Right. If I may comment on clause 10. Whilst the mover has indicated what it is intended to do, the wording does not do that, so I have some difficulty with clause 10.

It applies to any noise emitted from land used as agricultural land. It does not refer to animal noises. It does not refer to agricultural practice which, I would accept, should be exempted, if you are combining into the late hours in suitable weather – if you are grain drying or whatever you may be doing, in an agricultural sense – I think should be exempted.

But the wording of this clause does not, in my mind, quite fulfil that purpose. Again some clarification may be given by the learned Attorney, but if, for example, you had a marquee erected on agricultural land for a function, one would assume that it would be exempt, if you read this clause.

Well, if you read the clause, it seems to me that it would be exempt. It is 'from land used as agricultural land' – unless you are arguing that the function is not an agricultural purpose. But the land is used as agricultural land.

I think that there is some doubt about the interpretation of that.

Mr Singer: Certainly, this is something that we have spoken about with the mover, and the interpretation is that it is for agricultural purposes. If someone sets up, on agricultural land, a marquee or anything for a function –

Mrs Crowe: A marquee – this happens all the time.

Mr Singer: – that comes under this Bill – or it is intended that it comes under this Bill. (*Interjections*)

The President: Mr Attorney.

The Attorney General: Mr President, I am quite sure the hon. mover of the Bill is right when he says that the intention may be to exempt noise from animals which are on agricultural land, as defined. But, certainly, the wording of the clause is far too wide to be restricted only to that.

I entirely agree with the Hon. Member, Mrs Christian, that, if the example is that there is a marquee there, erected

on land which is used as agricultural land – it is for a commercial premises, but it may very well be that the farmer gives permission for the marquee, say, for his daughter's wedding – and the party goes on and on and on, there is no doubt that that is exempt by clause 10.

Mr President, could I also just add one comment, if I may, in relation to the definition of 'noise source'. This may be entirely what Hon. Members intend but 'noise source', as defined, does not include noise from humans, individuals.

The example was given of the apprentice drummer and, no doubt, the noise source there is a set of drums. But, if you had the three apprentice tenors practising for the Guild, and they go on and on and on, night after night, or if there are a couple, or three or four couples, who row night after night, that is not going to be caught by this Bill.

It may be that that, of course, is what Hon. Members want, because the prospect of a police officer going in and removing the three tenors and taking them off to the police station is unpalatable, but, as long as Hon. Members understand that we are not going to catch noise emanating from individuals, as such.

Mr Singer: It says noise from any *thing*. Well, your tonsils are a thing, and your voice box is a thing. (*Laughter*)

The President: Mr Butt.

Mr Butt: On to that noise source, I think if you go to the real reason for this Bill, 99 per cent of these noise sources that are not human, or electrical or mechanical, will be dogs. It is dogs that I know that cause problems for neighbours.

I think when you include animal and bird, as well, then you get the area where the cockerel at 5 o'clock in the morning in the private garden next door becomes a nuisance, and I do not think it should be. They wake with the dawn and, in this Bill as it stands, somebody with a noisy cockerel next door could have it seized from them, which I, personally, think is wrong.

I think the real thing that we are aiming at is dogs. If it sticks to dogs, maybe we could change section 10, in some way, to cover that.

I think Mr Singer in his summing up – in his presentation – of section 10 said that it was intended to apply to animals on agricultural land. It does not mention just noise – animals. I think that exclusion was in there because of animals.

If we kept it to dogs, and left cockerels alone, if we can, I think that would make more sense for what this Bill was intended to achieve.

Mr Singer: Can I disagree completely with that! (*Laughter*)

The President: It is the business of what – which, I think, has faced Council all morning, if I am honest – is the intention of the Bill, which we all applaud. I think that is applauded generally around the room. It is actually the workability and the detail that we are finding difficulties with. I think the intent... as the hon. mover rightly says, we intended to do this. Practically, 'does it or not?' is the question.

Mr Singer: Could I just take up the point that Mr Butt made. If I could just quote again from what I said in the Second Reading – I know that Members picked this up, and picked up the point about the three tenors or whatever they

are. 'Domestic noise' may include loud music, the use of power tools, door-banging, screaming and shouting – some people would think of the three tenors as screaming and shouting – dogs barking uncontrollably and birds kept in a domestic environment. (*Interjection by Mrs Crowe*)

The whole point is noise emanating from a premises which is annoying to people and is causing them disturbance – whatever that noise is.

Mrs Crowe: But that is the point, isn't it? On a number of occasions through the Bill... that is what Mr President said. We know that that is the intention, but we have the learned Attorney saying to us that that, actually, will not be covered by the Bill.

It must be the same for other areas. By us, very often, local farmers rent a field for Battle of the Bands, or whatever it might be, at TT Week – put up a great big marquee, cars coming and going day and night. It could be an incredible source of problem in the residential properties that abut this land. On the whole, it works very well. Everything is finished by midnight. No-one seems to bother and complain, but it *could* be a real problem.

So, I suppose, by saying that rowing and screaming and shouting – in other words, a domestic incident – is covered... Now, the Attorney General tells us that it, actually, is not.

Mr Singer: Under section 10, it says that the provisions of this part do not apply to any noise emitted from land used as agricultural land within the meaning of section 33 of the Animal Health Act.

This 'noise emitted from land' – it is not agricultural noise emitted from that land, is it?

Mrs Christian: But it doesn't say 'agricultural noise' in the part. (*Interjections*)

Mr Singer: I think we all understand and we all agree what we want and, therefore, if at this stage, we could word an amendment, just to clarify what we intend.

Mr Butt: Just to say 'any animal noises'.

The President: Mrs Christian.

Mrs Christian: Yes, Mr President, may I propose an amendment to clause 10. Perhaps, I could take some advice from the Attorney as to whether this would meet the need, but, if we were to say, after the word 'agricultural land', add the words 'for agricultural purposes'.

It seems to me then that the provisions of this part do not apply to any noise emitted from land used as agricultural land for agricultural purposes within the meaning of section 33 of the Animal Health Act.

Unless we put it in after 'from land used for agricultural purposes' – no, I am not sure where it should go in. I think after 'agricultural land'. That would then permit animal noises, farm working noises, but not necessarily the rave or the marquee party or...

Mr Singer: You might just have some kids, or people, setting up a tent on some agricultural land, and they could claim –

Mr Butt: Or you could say it does not apply to any noise

emitted from land 'at that time being used as agricultural land', or 'then being used'. So, in other words, if there was a rave or a marquee, it was not being, at that time the noise was being made, used as agricultural land.

Mrs Christian: I am having difficulty in interpreting that.

Mr Singer: I think that's better.

Mrs Christian: I think if we say 'for agricultural purposes', then you can... (*Interjections*)

The President: I think this whole Bill is going to come down to somebody making a judgement, at the time, on 'reasonable'.

Mr Butt: That's right.

Mr Lowey: But that's key.

The President: I know. Mr Attorney.

The Attorney General: Sorry, Mr President.

As I mentioned earlier, agricultural land is defined by reference to section 33 of the Animal Health Act. Could I just read that again, Mr President.

"agricultural land" means land used for agriculture which is so used for the purposes of a trade or business'.

So, I wonder if we were to say, Mr President, that the provisions of this part do not apply to any noise emitted from agricultural land within the meaning of section 33, because that would then mean that the land has to be used for agriculture.

That would, therefore, catch all the noises which come naturally from land when it is being used for agricultural purposes, but it would not cover noise emitting from the farmer's daughter's (**The President:** Tay.) tay.

Mr Singer: If a farmer's daughter and farmer's son get married, that could be for agricultural purposes. (*Laughter*)

Mr Lowey: Allegedly.

The Attorney General: That would be unlawful for other reasons!

The President: Mr Attorney, your suggestion is – could we just repeat it again, for my benefit, please.

The Attorney General: The provisions of this part do not apply to any noise emitted from agricultural land within the meaning of section 33 of the Animal Health Act 1996.

Mrs Christian: So, we would need to delete 'used as agricultural land'.

The Attorney General: Any noise emitted from agricultural land within the meaning...

The President: Within the meaning. So, Mrs Christian, with your consent, I would suggest, if you are making the

amendment that, in fact, we would be inserting between 'from' and 'land' the word 'agricultural' and deleting 'used as agricultural land' in line... Are we right?

Mrs Christian: No.

The Attorney General: It would read, Mr President, sorry...

Mrs Christian: Just from 'land' –

The Attorney General: Yes, land used as –

The President: So, we just say... Okay, the reverse is the same. The provisions of this Act do not apply to any noise emitted from – delete 'land used as' – and simply say 'from agricultural land'.

The Attorney General: That's correct.

The President: So, we take out 'land used as'. Happy, Mrs Christian?

Mrs Christian: Yes:

Clause 10, line 2: Delete 'land used as'.

The President: Right.

Mr Lowey: I will second that, sir.

The Attorney General: So, it is any noise, then, emitted from agricultural land which is land which is actually used for agriculture, for the purposes of a trade or business.

The President: Yes. So, a farmer ploughing his field gets away with it, but if he has got a marquee playing a loud noise, he does not. (*Interjections*)

Mrs Crowe: Could we quote the Act, rather than just put it as appertaining to the Act, in whatever section it is of the Agricultural Act – the actual words that the Attorney General has just uttered.

Mr Waft: I have got some sympathy with the marquee that is erected for purposes for the family, every now and again. I think the problem is whether it is frequent or infrequent use of the land for that.

Mr Lowey: It does not stop them doing that, but if it is unreasonable noise.

Mr Singer: They can be reasonable in the amount of noise they are emitting.

Mr Lowey: If your neighbour complains that you are making a din at 1 o'clock, then I think it is reasonable – and the policeman says 'My God, that's dreadful'.

Mr Waft: It depends whether he is there or not, doesn't it?

The President: I think we are making it very difficult for *Hansard*, Hon. Members, because I appreciate that we

are acting as a committee. Nevertheless, it is not very easy when we talk across each other.

At the present time, Hon. Members, we have clauses 8, 9 and 10 moved and, to clause 10, I currently have that amendment moved by Mrs Christian, seconded by Mr Lowey.

Are we content in our discussions of these? Mr Singer, do you wish...

Mr Singer: I am content.

The President: You are content. In that case, Hon. Members, I will put to Council clause 8. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 9, Hon. Members. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 10, Hon. Members, which now reads, 'The provisions of this part do not apply to any noise emitted from agricultural land within the meaning of section 33 of the Animal Health Act 1996' – or, rather, that will be the amendment moved by the Hon. Member, Mrs Christian. Those in favour of the amendment, please say aye; against, no. The ayes have it. The ayes have it.

Clause 10, as amended, Hon. Members: those in favour, please say aye; against, no. The ayes have it. The ayes it.

We are making haste slowly, Hon. Members. Maybe we will speed up a little. Part 2, if I may, Mr Singer.

Mr Singer: Thank you, Mr President.

Clause 11 deals with vehicle alarms. The clause makes provision for a constable or authorised officer to enter a vehicle to turn the alarm off, by force if necessary.

This part of the Bill sets out arrangements to deal with any vehicle alarm which, by operating audibly, causes annoyance to persons in the vicinity.

The Bill legislates for appropriate action which can be taken following a complaint of continuous noise from an alarm sounding from an unattended vehicle.

The Bill provides a suitable course of action for a constable or authorised officer to enter the vehicle, by reasonable force if necessary, in order to turn the alarm off. Such a vehicle may be removed at the owner's expense, under the provisions of the Local Government (Miscellaneous Provisions) Act 1984 and its Regulations.

I wish to move that clause 11 become part of the Bill.

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

The President: Mr Downie.

Mr Downie: I think, in view of what we have done earlier on in the Bill, this section does need to be amended slightly. I would be proposing that, where we are saying, in subclause (1)(a), 'alarm installed in any vehicle', we need to add 'premises or equipment', because alarms are attached to premises or equipment. Then, over the page, on (b) 'reasonable enquiry in the vicinity of the vehicle or property', so that we are covering the other angles that we have introduced.

Just to give a little bit of background, there are items of equipment. There are places around the town here that do have audio-based alarms on them and, quite often, these

things can go off, and it can be two or three days before they are dealt with.

Mr Singer: That, Mr President, is already covered by clause 6. This is advice from the Attorney General's Office. All that is covered by clause 6. The difficulty is, actually, breaking into the car. That is the thing – having permission to break into the car.

Mr Downie: You may have to get in... There are low level alarms fitted on oil tanks. There are high level alarms fitted on some of these buildings around here which have water pumped up to them – things like that, which go off from time to time. *(Interjection by Mr Butt)*

Mr Singer: At night, under section 6, that is already covered. A policeman can do that.

Mr Downie: As long as you are content with that.

Mr Singer: Yes.

The President: Hon. Members, the motion I put –

Mrs Crowe: Sorry, Mr President.

The President: Mrs Crowe.

Mrs Crowe: What we are saying now is that, if that alarm cannot be stopped, then the constable can smash the

window and get into the car to –

Mr Singer: The constable will use minimum force or have an agent – such as a mechanic – to get in the car. If, for example, you have got a car that cannot be broken into, then they can tow it off.

The President: In clause 6(2), Hon. Members, if you remember, page 5, line 15, we actually inserted there 'or has been emitted and may disarm or seize and remove any equipment from any source of noise'. So, that is the bit which was inserted in there.

Hon. Members, clause 11, those in favour, please say aye; against no. The ayes have it. The ayes have it.

Hon. Members, you are, again, giving me an even yet further dilemma. I am very aware of the clock at this particular juncture, and we are at the top of the hour. I did, actually, think that we might have cleared this this morning. I am beginning to think that I am going to fail miserably.

So, Hon. Members, I am in your hands again. I am prepared to adjourn this particular measure to our next sitting, should you so wish. In fact, it may give Members time to consider what we have done (**Mrs Crowe:** Yes.) and that may be no bad thing.

So, Hon. Members, Council will stand adjourned at this particular juncture, and our adjournment will be to Tynwald Court next week.

Thank you, Hon. Members.

The Council adjourned at 1.02 p.m.