



**LEGISLATIVE COUNCIL
OFFICIAL REPORT**

**RECORTYS OIKOIL
Y CHOONCEIL SLATTYSSAGH**

**PROCEEDINGS
DAALTYN
(HANSARD)**

Douglas, Tuesday, 29th November 2005

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

The Lord Bishop of Sodor and Man (The Rt. Rev. Graeme Knowles),
Mr D Butt, Mrs. P M Crowe, 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 11.00 a.m.

Legislative Council

The Council met at 10.30 a.m.

[MR PRESIDENT *in the Chair*]

PRAYERS

The Lord Bishop

Almighty God, humbly acknowledging our need for thy guidance in all things and laying aside all private and personal interests, we beseech thee to grant that we may conduct the affairs of this Legislative Council and of our Island to the glory of thy holy name, the maintenance of true religion and justice, the honour of our Queen and Lord and the public welfare, peace and tranquillity of the Isle of Man and this we beg through Christ our Lord.

Members: Amen.

APOLOGIES FOR ABSENCE

The President: Now, Hon. Members, we have apologies, this morning, from Mr Attorney, Mr Gelling and Mrs Christian and Mr Downie – Mr Gelling, Mrs Christian and Mr Downie all being off the Island, along with Mr Attorney, on Government business, Hon. Members.

Constitution Bill 2004

For First Reading

Debate resumed and adjourned

The President: We turn, then, to the Constitution Bill 2004, Hon. Members, which is for a resumption of our First Reading of this particular Bill.

Members will be aware that, when it came before us, at that particular stage, we decided that we would not continue with that particular measure until the other business, relative to the constitution of the Legislative Council had completed its passage.

Now, Hon. Members, I am aware that that has not yet completed its passage, but, nevertheless, I thought it was right that we should bring back, before this body, the Constitution Bill 2004, so that we could be seen to be moving with it.

I call on the Hon. Member, Mr Singer.

Mr Singer: This is a Private Member's Bill in the name of the Hon. Member, Mr Rodan and, as you said, Mr President, we determined that we would be putting the cart before the horse, in June 2004, and we decided to adjourn consideration of the Bill. As you say, Mr President, the Bill has not actually passed through the two branches yet, and it is here today because of the possibility that the Keys could interpret our not further discussing the Bill as inaction, and this could be passed by them in its current form.

But I must tell Members that I did speak to Mr Rodan, and he expressed an element of surprise that we were bringing it back, at this stage. I am just wondering, before I proceed with it, whether Members felt that we should proceed. We cannot apply the conditions that we placed on bringing it back. They have not occurred yet, the Bill not having gone through both branches.

The President: Yes, Hon. Member, I am prepared to put that before the Council, if the Council so wish. It is a Bill which is to reduce the power of the Legislative Council to delay Bills passed by the Keys, which was the measure, as you rightly say, brought by Mr Rodan as a Private Member's Bill.

It was felt that as we had a light Agenda, and it appears as if the other Constitution Bill, whichever way it will go... it was felt that we ought to get this one back on the road, as it were, so that we would be looking at, maybe, if Council are of a mind, getting it back to Keys early in the new year.

Nevertheless, does any Member wish to comment as to whether or not we should delay further our consideration of this Bill, until the other Bill has cleared? Mr Lowey.

Mr Lowey: Yes, it never ceases to amaze me: we are damned if we do, and we are damned if we do not.

I do not believe we did delay the other Bill, Mr President, but we have already had a joint meeting with a committee of the Keys, and that was nearly a fortnight ago. We await their decision of reporting back to the House, and they have not reported back to the House.

So, I have no difficulty in delaying this Bill, until that Bill has actually passed its... or they make a decision on it, whichever way it goes. So, to that degree, I would...

As the original author of the Bill has expressed surprise to our present mover, then I can see no difficulty in not proceeding to the Second Reading stage this morning, but to delay further consideration of this particular Bill.

The President: Mrs Crowe.

Mrs Crowe: Thank you, Mr President.

Yes, I would agree, of course, with my learned colleague, Mr Lowey, but it was on the mention of the previous Bill and the perceived delays that were caused by Council.

I do think I would like to have on record all of the Council's thanks to the learned Attorney General, who is not with us today, and all his staff who did such an enormous amount of work on that Bill, to make it a workable piece of legislation. It was not a case of being delayed by this Council for no reason whatsoever.

So, those were my only comments, and I do entirely agree with the mover of the Bill and Mr Lowey.

The President: Mr Singer, do you wish to add to that at all?

Mr Singer: Well, I was not actually passing a comment on Mrs Crowe's comment, but I just really wanted to know how people felt.

There was, Mr President, if I may say, another problem that was raised, which I have not got the answer to yet, and that was raised at the end of that First Reading by the Attorney General, who is not here today, who spoke about section 10(2) of the 1961 Constitution Act, which was

Prayers

Apologies for absence

Constitution Bill 2004 – For First Reading – Debate resumed and adjourned

going to be repealed by the Constitution Act for Legislative Council reform which is before us at the moment. That was going to remove that, which absolutely took out anything that stopped us holding up Bills. I was not quite sure how that was going to fit back into here, but I could not ask the Attorney General, because he was not here.

The President: Well, Hon. Members, the mover of the Bill is suggesting that we hold it over again. I am perfectly happy with that, Hon. Members.

I just make it plain that, in fact, it came back onto our Order Paper by virtue of the fact that we had completed the passage of the previous Bill, and I did not want Council to lose sight of the fact that we still had this Bill, which we had agreed that we would hold over.

So, I am content, Hon. Members, that we should hold this Bill over and bring it back in, maybe, a week or two's time onto our Order Paper, so that in fact we know that it is still live.

Noise Bill

First Reading approved

2. Mr Singer to move:

That the Noise Bill be now read a first time.

The President: In that case, Hon. Members, we will move forward to the First Reading of the Noise Bill. Again, I call on the Hon. Member, Mr Singer, to take this particular measure.

Mr Singer: Thank you, Mr President.

This Bill is a Private Member's Bill in the name of the Hon. Member for Douglas North, Mr Houghton, MHK.

There are many complaints with regard to incidents of noise nuisance in domestic surroundings, which appear to be a developing disease, and are invariably caused by neighbours who simply could not care less about the environment in which they live. Complaints received cover loud music emanating from domestic households at all times of the night, hammer drilling, do-it-yourself activity, revving of engines, doors banging and crashing, and there was even a case of a motorcycle being revved up in a lounge. In these instances, usually, it is to antagonise the neighbour, in order to directly interfere with their rest.

Most complaints cover the inconsiderate use of what are termed ghetto-blasters, which are used throughout the night, sometimes up to 5 a.m. in the morning. Such behaviour, Mr President, is totally unacceptable. There have been incidents of people using grinding machines and loud cutting machinery after midnight within housing estates and the like.

There is, also, the problem of faulty car alarms going off at any time of the day or night. Hon. Members will be aware that car alarms, once triggered, go off intermittently, and such noise will bring an immediate end to anyone's sleep for the rest of that night.

Such incidents are growing throughout the Island, and need to be addressed in an effective way, in order to restore peace and tranquillity to the public, a right which they

deserve to have protected.

The only legislation covering this area rests in the Public Health Act, whereby on receipt of a complaint the Environmental Health Directorate of the Department of Local Government and the Environment will simply send out a log sheet for the complainant to record the incident, and hope the problem goes away.

The Department does have noise recording equipment. One such item is the Matron system which can be installed in a home and can record noise at any decibel level. This is often used when the noise is intermittent, for example, the slamming of doors. You cannot have an environmental health officer sitting in someone's house waiting for a door to slam, so this equipment has been installed in certain areas. But no prosecutions, as I understand it, have ever been imposed by the Department.

Simply put, the current arrangements are longwinded, weak and ineffective, and I believe this is accepted actually by the Department and the environmental health officers.

The Bill is in three parts. If I can deal, firstly, with part 1, the basis of this part of the Bill is to give the Police and the environmental health officers powers to deal with complaints of noise nuisance at the time of generation.

On receipt of such a complaint, the Police, acting as an independent party, would decide whether the noise being generated was unreasonable. They would attempt to advise the offender, and if that approach failed, they would have powers to enter premises and seize the noise-generating equipment, after which a court would decide whether that equipment would be returned or destroyed.

This Bill will bring forward a procedure which would be in a stepped or staged way in the direction of ultimate action, whereby the offender would be firstly advised and warned, secondly issued with a fixed penalty fine or be brought before the courts.

Whichever way, Mr President, the noise would be stopped and the offender appropriately dealt with, depending on the circumstances of that complaint.

I believe the Police are the best service to deal with most incidents at the sharp end. However, they would have liaison with environmental officers in the Environmental Protection Unit, which would deal with any technical or protracted noise complaint investigations.

The Bill would be to bring measures forward to cover night-time only, between the hours of 11 p.m. and 7 a.m. The nuisance of night-time noise is a real problem for society, and behaviour of this kind is antisocial, to say the least, and something should be done.

Part 2 deals with the problems of malfunctioning car alarms. This Bill is not creating an offence by a person whose alarm goes off, but gives the Police powers, or an agent acting on their behalf, to enter a vehicle to disengage the alarm or have the vehicle towed away. The owner of the vehicle is responsible for all costs and the Police are not liable for any minor damage caused.

Part 3 covers miscellaneous and supplementary matters, together with a schedule containing powers in relation to seized equipment and noise sources.

The Bill has some minor amendments from the other place, and I think Members have got a list of these amendments. These are dealing with bodies that are exempt from this Bill – that was in clause 1 – and a change of word for clarification in clause 5, and also clarification of definitions.

Mr President, I would ask Hon. Members today for their full support in bringing forward effective legislation to counter these noise problems. I, therefore, Mr President, beg to move the First Reading of the 2005 Noise Bill.

The President: Hon. Member, Mr Waft.

Mr Waft: I beg to second, Mr President.

I would like to congratulate the Member for North Douglas, Mr Houghton, for bringing forward a Bill that should have come from the Department of Local Government and the Environment a long time ago.

As has been said, DoLGE, in the past, have been allowing people to form their own conclusions and make diaries of the noise and the events and when they took place. At the end of the day, they said, 'Well, you have all the information, why don't you do something about it through the courts?'

This is totally wrong. At the end of the day, it is your say-so against the person you are objecting to, and it is not a way to carry on, regarding noise pollution, effectively.

There is a problem with regard to the need for this Noise Bill. There is a problem, depending on where you live, whether you live in a rural area or an urban area. If you live on a large estate, where there are a lot of problems, then you probably will not be in a situation, where somebody in a rural area would be hearing problems from estates.

So, I think this Bill will, effectively, bring some sort of legislation whereby the Police can act as a mediator when they are informed, that they will be able to come down, and they have all the facilities within this Bill to bring it to an effective conclusion. As I say, I would like to thank Mr Houghton for bringing it forward.

The President: Mr Lowey.

Mr Lowey: Thank you, Mr President.

Well, when I heard the mover of the Bill spelling out his case for it, I had to say that I thought he had had sight of some of the complaints that I deal with. I will use Ballasalla, because it is a classic.

He does not overstate his case one iota. We have a classic case where a person, at 2 o'clock and 3 o'clock in the morning, had dogs barking – and I have to say country and western music is alright played at an early time, but at 2 o'clock and 3 o'clock in the morning and your neighbours are seriously ill, and the other side, the other neighbours, have to get up at half past five in the morning to go to work for six, interrupting their night's sleep is cold comfort, indeed.

Now, I do say, as he has... Again, it is a classic. I have got them down here: a log sheet, noise machines in the home to record the noise – it is an intrusion on those people's privacy that they have to have noise machines installed in their home to record.

Written agreements – that is the latest. The Local Government Board says they have got a written agreement with the tenant not to make a noise: a fat lot of good that is doing!

It is so serious, one of the neighbours actually finished up in the intensive care unit, because he was already suffering from... So, this is real. It is not imaginary. I think it is long overdue, and I would support it, wholeheartedly.

Just as an aside, we are an inclusive society, and we do have a lot of people living in the community now who, for one reason or another, have a lifestyle that is not

conventional. I think that should be uppermost in our minds, when we place these people in communities. I do think it is cold comfort to those who are affected to be told that, 'Well, we can't move them about too often, all we can do is try to educate them.' All I can say is that we have to be very careful where we place vulnerable people, and we must be responsible for what I would call the actions that those people then create in society.

I think the Bill is worthwhile, and I will be supporting it.

The President: Hon. Member, the Lord Bishop.

The Lord Bishop: Thank you, Mr President.

I, too, support the Bill. I have some slight worries about shifting onto the Police, without too much definition, what is unreasonable and what is acceptable.

I can understand that, in past days, we have been driven back to noise machines, to log books and things like that, in order to prove 'reasonable', 'unreasonable' and 'acceptable'.

I think that this is the most difficult part of this particular piece of legislation, because it shifts the responsibility of that decision solely on to the constable, or so it appears from the Bill as it stands, and I think that is quite a responsibility to shift on to one person's shoulders, to make that sort of decision.

I hope, as we proceed through the Readings, perhaps, we might be able to discuss how that is to be worked out and how help is to be given to the Police, so that they do not become the people who are, as it were, 'victimised' for their decision one way or the other – 'It's not enough noise for me to act'; 'It's too much noise,' and the person who is making the noise responds violently.

I think, if there is a weak link in this piece of legislation, that is it, but I am sure it can be addressed.

The President: Hon. Member, Mrs Crowe.

Mrs Crowe: Thank you, Mr President.

Well, I am delighted to see the Bill here with us today. I do believe there are some areas in the legislation that we will need to test some of our abilities in resolving.

I heard the seconder rather critically mention the way in which DoLGE addresses noise at the present time. I would like to point out that the mover of this Bill was a Member of DoLGE with specific responsibility for environmental health for a number of years, and, of course, at that time, was trying to progress this Bill which, as I have just said, does have some areas that concern me.

When we are talking about the monitoring of noise, things like keeping a noise diary are quite appropriate. Things like monitoring equipment are appropriate. These are all part of the procedures of determining – just as the Lord Bishop said – whether there is a genuine case to take action against someone who is making a noise unreasonably. There is a highly skilled noise specialist actually employed by DoLGE for this very reason.

So, as I was saying, I am pleased to see it here. I do think we will have to look quite carefully at some areas of the Bill, but I fully understand the reasoning behind bringing this Bill forward.

The President: Mr Butt.

Mr Butt: Thank you, Mr President.

I also congratulate Mr Houghton on bringing this Bill forward. It is long overdue, in some ways. It is a measure which will, perhaps, deal with every noise issue, and I would suggest that sometimes the occasional party and occasional wild night are matters which will need to be dealt with with discretion.

The real problem I have found, over the years, is that often these incidents are due to a breakdown between neighbours. The relationship between neighbours has got soured, and these tactics are used deliberately, to upset each other. That is the occasion when this legislation would really come into effect.

I would hope that, when we have gone through the Act in detail, there can be some discretion as to the Police using their powers in a way that is not too draconian. Like the Lord Bishop says, I do have concerns that we are giving the Police a lot of extra powers here to enter people's homes, and we need to look at that very carefully.

I, also, have some concerns about the fixed penalty issue, because it seems to me to complicate the Act unnecessarily, but I would speak to Mr Houghton on that, or Mr Singer, to discover the reasons for those. If we are giving the Police powers to enter premises, perhaps we can give them powers similarly to there and then stop the noise and enter premises, without needing to resort to fixed penalties.

The problem with fixed penalties is that they work fine for motor vehicles, because if the person to whom the penalty is addressed says, 'I wasn't driving, I wasn't there, it wasn't my car at the time,' you always go back to the recourse of the registered owner of the vehicle, and you can then always pin it down. He has to declare who the driver was or pay the penalty.

With a house, that might be rather difficult to say who was the registered owner of the house or the man or the person that ran the party. So, fixed penalties may be a slightly grey area, but I would like to speak to Mr Houghton in detail on that. I am sure he has done a lot of research on this, and he has, perhaps, come to that decision because of the complications he has found. But I do think the fixed penalties do make it rather complicated.

Otherwise, I do support it entirely, and I hope it achieves the effect he wishes.

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

Mr Singer: Thank you, Mr President.

Can I, first of all, thank Members for their support of the Bill.

If I can just take the various points that were raised, Mr Waft mentioned about DoLGE, and I do know from Mr Houghton that, when he was in the Department, he was discussing it with DoLGE, about bringing this forward within the Miscellaneous Provisions Bill. When Mr Houghton left the Department, he did discuss this matter with the Department, which agreed with this coming forward in a Private Member's Bill. So, there is agreement between Mr Houghton and the Department on this Bill.

We also had the mention of rural areas. I think Mr Waft mentioned rural areas, that one of the things that this Bill ensures is that, for example, a person who has been living in a town and goes to live in a rural area does not then bring the Police in, because a cock is crowing, or whatever noise is emanating from agricultural land, (*Interjection by Mrs*

Crowe) which is clearly exempted from this Bill.

Mrs Crowe: No.

The President: Read the Act.

Mr Singer: I thank Mr Lowey for his support and the examples he gives I think every one of us could mention, over the years. We have all had complaints on these type of problems.

Mrs Crowe talked about there were adequate provisions now, but the fact is – and this is what I have come across – they are all longwinded. You cannot get a decision, as you will now, that noise is too great and it has to be stopped. (**Mrs Crowe:** Yes.) It can go on for weeks and weeks, months, without the disturbance stopping, and it can make people ill. It can really make people ill –

Mrs Crowe: I fully understand.

Mr Singer: Then, of course, that actually can add to the confrontation between the neighbour and the person who is producing the noise.

The Lord Bishop talks about the powers of the Police and the word 'unreasonable'. Well, the Police actually can act on the word 'unreasonable' in their own judgement on several matters, for example, stopping cars, stopping drivers of cars, stopping someone who they believe is drunk.

There is a case of 'reasonable' and 'unreasonable', and the constable who wishes to take any action cannot just go up and issue a warrant or issue a fixed penalty fine. He has to do that with the approval – and it is written in the Bill – of a sergeant or above. He needs to have his findings agreed with by a senior officer so it is not just the one person's judgement.

Mr Butt talked about discretion and a noisy party. Well, maybe I slightly differ from him. If someone has a party, you can still expect that that party should not be causing a great amount of disturbance to people living in the area. I would think that, as I believe happens now, a policeman will knock on the door and say 'Will you tone it down?'

That is generally what is happening under this Bill. A policeman will knock on the person's door, he will give them a note, which is a warning, but will ask them to turn it down. That, probably, most of the time, will be as far as it will go. It is only when the person then ignores that warning, that any further action, such as the issuing of a fixed penalty fine or seizing of equipment, takes place.

So the person who is causing the noise will always have the opportunity to tone it down, when he is told. They will also not have to accept the fixed penalty fine. They can choose, if they wish, to go to court.

The Police will only enter people's homes as a last resort. There is no doubt about that. They are not going to just use powers to almost break into people's homes. They will use that as a last resort.

The other point that Mr Butt mentioned was the fixed penalty fine. I will be happy to discuss the reasons with him and Mr Houghton before the next Reading.

So with that, can I thank Members for their support, and move that the First Reading of the Noise Bill 2005 be approved.

The President: Hon. Members, that is the motion that

I put to Council, that the Noise Bill 2005 be read for a first time. Those in favour, please say aye; and against, no. The ayes have it. The ayes have it.

Procedural

The President: Now, Hon. Members, having concluded the First Reading of that particular measure, before we move on to Second Reading, can I just make a little comment. It might only be a short Bill, but the hon. mover has already referred to section 22, which is the Public Health Act, the savings in regard to that, but this particular Bill refers to quite a number of sections in other legislation which I think, by the time we get to Second Reading, we might need to do a lot of cross references.

For example, you have: the Animal Health Act; the Criminal Justice Act; the Police Act; and I have yet to find what section 6(4) of the '1998 Act' ... I have yet to find what

that Act actually refers to.

So, Hon. Members, there is, I think, quite a bit of cross-referencing to do in that particular measure, when we get there.

Funeral of Mr Harris Kneale, MHK

The President: Hon. Members, can I remind Members that this afternoon is the funeral of former Member of the House of Keys, Mr Harris Kneale. Some of us were Members during his short service of the House, and I will certainly be attending that funeral.

Having completed our Order Paper for this morning, our adjournment will be to 6th December, next Tuesday.

Thank you, Hon. Members.

The Council adjourned at 11.00 a.m.