



**LEGISLATIVE COUNCIL  
OFFICIAL REPORT**

**RECORTYS OIKOIL  
Y CHOONCEIL SLATTYSSAGH**

**PROCEEDINGS**

**DAALTYN**

**(HANSARD)**

**Douglas, Wednesday, 12th December 2007**

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

Mr D Butt, Mrs C M Christian, Mr E A Crowe, Mrs P M Crowe,  
Mr E G Lowey, Mr J R Turner and Mr G H Waft,  
with Mr J King, Clerk of the Council.

**Business transacted**

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*The Council adjourned at 10.47 a.m.*

## Legislative Council

*The Council met at 10.28 a.m.*

[MR PRESIDENT *in the Chair*]

**The President:** Good morning, Hon. Members. We will start in the formal manner: we will start with prayers.

### PRAYERS

*The President of the Council*

### Procedural

**The President:** Hon. Members, can I say thank you very much for being prepared to come in on this Wednesday morning, following our Tynwald sitting yesterday, but I think it is useful that the Legislative Council keeps up to speed with the work which is in front of it.

Incidentally, I would pass comment in relation to our business which we were dealing with with the Office of Fair Trading this morning, and the presentation, which I felt was useful for Council. I am grateful for that opportunity also.

## Order of the Day

### Agricultural (Miscellaneous Provisions) Bill First Reading approved

1. Mr Butt to move:

*That the Agricultural (Miscellaneous Provisions) Bill be now read a first time.*

**The President:** Hon. Members, we have but the one Item before us, and that is the Agricultural (Miscellaneous Provisions) Bill for First Reading.

Mr Butt.

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

The path of this Bill is the result of an audit of the Department of Agriculture, Fisheries and Forestry primary legislation, where a number of Acts relating to the herring and kipper industry were identified as for appeal, as they are considered no longer relevant.

The Department is content that the provisions contained in the Sea Fisheries Act 1971 contain enough powers for the Department to regulate the fishing of herring in Manx waters, should such a need be identified.

The labelling of kippers is now provided for under legislation made by the Department of Local Government and the Environment, under the Food Act 1996: hence the repeal of current Acts dating back as far as 1916 and

considered no longer relevant in relation to current marketing and trading practices. A number of amendments and repeals to enactments relating to agricultural or rural industries are also being made.

Some of the Acts being repealed are, like those relating to the herring and kipper industry, considered unnecessary for modern-day practices. For example, the Public Markets (Weighing of Cattle) Act 1933 requires the Department to provide facilities for weighing cattle, sheep and pigs in or near a market. The provisions of that Act are somewhat old-fashioned in comparison with modern-day practice, where proper calibration of weighing machines is dealt with by the Office of Fair Trading, thus obviating the need for the 1933 Act today.

A number of provisions contained in these older Acts are now dealt with under food and labelling requirements set out in more modern legislation promoted by DoLGE and the Office of Fair Trading. Details of the repeals made are contained in the explanatory notes.

The Bill also makes an amendment to the Wildlife Act 1990, by introducing an offence of recklessly disturbing wildlife. This move increases the enforcement of powers of the 1990 Act. Under the Act, it is already an offence to intentionally disturb birds which are listed in schedule 1, and this amendment will make it an offence to recklessly disturb the birds.

In addition, the offence of intentionally damaging any structure or place a wild animal listed in schedule 5 is using for shelter or protection is extended to cover reckless damage or disturbance.

Certain marine species listed in schedule 5 of the Act do not, however, have such places of shelter or protection, such as cetacea, basking sharks, seals and turtles. These species are also considered vulnerable to reckless disturbance: for example, the use of motorised personal watercraft in their vicinity. The Act is therefore amended to include an offence against such species which can occur in any place.

An amendment is also prescribed under the Bill which increases the level of fines in the Destructive Imported Animals Act 1963, and these fines have not been reviewed since the introduction of the Act some 43 years ago.

Also, in the second schedule, you will note that there is a section which actually amends the need for the Department to provide education and an experimental farm under the Agriculture and Rural Industries Act 1914, which provides the Department shall, in future, take steps as it thinks proper to further education in agriculture and rural industries.

Mr President, I beg to move that this Bill be read for the first time.

**The President:** Mrs Christian.

**Mrs Christian:** I beg to second, Mr President, and note in particular, perhaps, the change in relation to the maintenance of an experimental farm. I think it is recognised that the Department can still carry on doing experiments, but with local farmers. What the policy will be in relation to the future of Knockaloe, I guess we do not know just yet.

I am interested in the bits relating to kippers and the marking of kippers.

**Mr Lowey:** Branding of herring.

**Mrs Christian:** The branding of kippers, labelling

### Procedural

Agricultural (Miscellaneous Provisions) Bill – First Reading approved

regulations. I once worked in a research laboratory where food colourings were of importance, and one was called BFK. I thought it was an abbreviation for a chemical name, which I sought to look up. It actually turned out to be 'brown for kippers'. (*Laughter*)

Mr President, I am happy to second the First Reading of this Bill.

**The President:** Mrs Crowe.

**Mrs Crowe:** Just for the record, I think it is true to say that we do not have BFK added to our kippers: they are totally natural! I am delighted that we are actually clarifying some of the older legislation.

I want to congratulate the Department of Agriculture, because I do not know of any other Government Department that is actually reviewing all their legislation. We have got a number of Bills coming through – I think we had one arrive yesterday as well – and I think, really, there are many Government Departments that look upon the Department of Agriculture with envy – the fact that they obviously have an officer dedicated to policy and legislation.

**The President:** Mr Crowe.

**Mr Crowe:** Yes, thank you, Mr President.

I will be supporting the Bill, and I would share in Mrs Crowe's comments about this review of legislation.

Usually, we are bringing forward new legislation, and it is useful at times to remove from the statute book any defunct or unnecessary piece of legislation. So legislation needs to be constantly up to date and relevant.

Just as an aside – not necessarily for this debate – Manx kippers maybe should have the classification of Stilton cheese or Parma ham. Maybe we should be protecting what is left of an industry that was oak-smoked kippers.

The other point that was put to me – again slightly outside this – was the review of the agricultural legislation. A few years ago, I brought forward – when I was on the Department of Agriculture – a Bill to stop the Isle of Man having genetically modified (GM) foods. The current Members were asking me why this was done, and I explained why it was done. I note it is not being repealed here, so I am pleased that still we are protected as a GM-free Island. That was my exposure to agriculture!

Thank you, Mr President.

**The President:** Mr Lowey.

**Mr Lowey:** Yes, Mr President.

I am all for miscellaneous provisions legislation. It is a tidying-up exercise. Government used to do one of its own. We stopped that a few years ago, which I think is a shame.

However, coming to this particular Bill, yes, I thought, when I read it, it was the demise of the herring. The poor herring is having a rough old time. The protection is being removed from it. The very first repeal is the Herring Fishery (Branding) Act, and I had this vision of a rite of spring, where you went and branded a herring – all the fun of the fair! (*Laughter*)

However, in a week when I have just sent four boxes of kippers away as Christmas boxes, I am glad to hear from the mover of the Bill that Manx kippers can be protected

and the standards can and will be protected, because I think it is important.

Now I will come to my weaknesses in the Bill. Somewhere in the Bill we are going to remove the word 'shall' and replace it with 'may'. I am always suspicious when Departments take away mandatory powers and give themselves permissive powers, and wonder why they are wanting to do that at this particular time.

For example, in clause 3(c) – this is on page 3, top paragraph:

'in section 29(1) (compensation for an area of special scientific interest) for "shall" substitute "may".'

That is a weakening of what I would call the position in the existing law, and I wonder why they are doing it.

Can I also draw attention to clause 3(b)(i), where it says:

'in subsection (1) after "Schedule 5" add "without reasonable excuse"'

That seems to me a phrase that is not often used in legislative terms. What is a reasonable excuse? There must be a definition of it somewhere. Perhaps the mover can, some time in the future, refer what is a reasonable excuse. What is reasonable to me...

Those are just two of the items that I think need explaining: why you are weakening the mandatory powers in certain legislation from removing the word 'shall' to 'may'; and also, what a reasonable excuse is. Perhaps the mover can... If he has not got it today, I am sure he will be able to find it through...

The Bill is a tidying-up exercise, and the board is to be congratulated for that, and I am supporting the main thrust.

**The President:** Hon. Member, Mr Waft.

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

I have not got any big problems with this Bill, but I just wonder if... It might be an aside, but nevertheless it is serious, the fact that they have the ability to sell off land. The Minister, in Tynwald this past week, has said the biggest landowner is the Department.

The problem, as I find it, is if you sell off land without any covenants on it, or making it an area of special beauty, it is open to all kinds of abuse, and developers could move in and keep persisting and persisting. If they have ownership of the land, you will find it more difficult, as the planning applications keep flooding in for the same piece of land, even after you have been refused.

So I think there should perhaps be some thought as to covenants on any land that they sell and whom they sell it to, with a view to the overall beauty of the Island, and make sure that it is not abused by developers.

**The President:** Mr Butt to reply then.

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

Can I just go through some of the points made. Firstly, concerning section 2, which changes part of the 1914 Act, the Agricultural and Rural Industries, there is a 'shall' and a 'may' issue in there.

**Mr Lowey:** Yes, indeed.

**Mr Butt:** I have actually researched this Act, because I thought it might be of interest.

The 'shall' in 2(1)(a)(i) actually refers to:

'The Department shall [...] maintain an experimental farm...'

which refers to Knockaloe, in particular, which is now the experimental farm. That is now becoming a 'may' because the Department have other plans for Knockaloe.

But as a counter to that, the new subsection (6) there says the Department *shall* take steps, so there is a 'shall' there, where they have to carry on with proper education in agricultural and rural industries.

Following on from that, Mr Waft's point about selling off land: I know the Department have plans for the land, but not to sell the land. If they cease farming there, it will be tenant farmed, in effect, but they will always retain ownership. In fact, the policy of the Department, when I was there, not many months ago, was to purchase land wherever they could, when it becomes available. That is their general policy when there is finance available – areas for forestry, etc – so there is no intention, as far as I know, for the Department to sell off land.

In regard to the kipper industry, I have not researched this part yet. It is perhaps a shame that some passing of history will go with the repeal of these Acts – I should imagine they will be quite interesting to read – but I understand the kipper industry is still alive in the Isle of Man, no matter what they put in the kippers! (*Interjections*) They put oak in there.

As regards Mr Lowey's point about 'without reasonable cause', this is an important part of the Act. In the Wildlife Act, there is an offence of intentionally disturbing birds and other animals which are nesting and protected birds, and it was found that it is very hard to prove 'intentionally'. So this section purely brings in the section 'reckless', because if you are reckless and you do an act now, you can actually still be prosecuted. It is easier to prove people who have... It is hard: if they cannot prove they did it intentionally, we now have a 'reckless' clause, and the 'reckless' does give the Department more power to prosecute on offences.

As far as 'without reasonable excuse', I will have to research that, but I would imagine that would be for a court to decide, if a matter goes to court. But if there is a further definition of that, I will bring that up at a further hearing.

In regard to Mr Lowey's point in 3(c) – section 29(1) – that is not connected with the disturbing of nests, etc. It is another issue, which at this moment I cannot explain why that is, Mr Lowey, and I will come back to you.

**Mr Lowey:** It is just the principle of going from a mandatory one to a permissive one.

**Mr Butt:** Yes, I will research that. I have not yet researched the kipper industry either, so that will be interesting when we come to our further Readings.

**Mrs Crowe:** Only corncrakes.

**Mr Butt:** I know all about corncrakes!

With that, I think I have covered most of the points.

We are GM free, Mr Crowe, as far as I know, and I hope we stay that way.

I beg to move that the First Reading is carried.

**The President:** Hon. Members, Mr Butt having wound up the debate on the Agricultural (Miscellaneous Provisions) Bill 2007, I formally put to Council that that Bill be read for a first time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

If I may, Mr Butt, whilst you are doing your research... and you commented in relation to subsection (6), in clause 2 –

'The Department shall take such steps as it thinks proper to further education in agricultural and rural industries.'

That comment is quite interesting, because how wide an interpretation does the Department consider 'rural industries'? Does it include craftwork, or does it include such things as the Isle of Man dairies or the abattoir? How wide will that be interpreted in the future?

It is quite interesting, Hon. Members, isn't it, that in fact we do have an Agricultural (Miscellaneous Provisions) Bill, which I have got no doubt we will give proper research to, but it is interesting that it may be a short Bill of some four clauses, but it in itself actually repeals 12 whole Acts.

**Mr Lowey:** Yes, absolutely.

**The President:** Not amended; it repeals 12 whole Acts.

#### Season's good wishes and thanks to all

**The President:** Hon. Members, can I once again say thank you very much for your attendance and attention this morning.

I wish you all the very best, and your families all the very best for a very happy and peaceful Christmas.

The adjournment, Hon. Members, is to the sitting of Tynwald Court on 15th January 2008, and thereafter –

**Mrs Christian:** Did we vote, Mr President?

**The President:** Yes.

**Mrs Christian:** Did we?

**The Clerk:** You have agreed the First Reading.

**The President:** Yes – and thereafter to 22nd January.

You did vote on it. I did ask, and everybody seemed to be very content.

**Mrs Crowe:** On this side, we are obviously in the dark!

**Mr Lowey:** Can I, Mr President, on behalf of Council, express to you and your family, and to the officers of the Court, our sincere best wishes for a happy Christmas and contented New Year too, and to thank you and the officers for the work that they have done on behalf of us all.

Thank you, sir.

**The President:** With that, Hon. Members, it may be interesting for you to note that, in fact, our particular Messenger started his 10th year – or completed his 10th year...? (**The Messenger:** Completed.) Completed his 10th year yesterday.

**Mr Lowey:** The first 10 years are the worst!

**The President:** Thank you, Hon. Members.

*The Council adjourned at 10.47 a.m.*