



**LEGISLATIVE COUNCIL
OFFICIAL REPORT**

**RECORTYS OIKOIL
Y CHOONCEIL SLATTYSSAGH**

**PROCEEDINGS
DAALTYN
(HANSARD)**

Douglas, Tuesday, 22nd January 2008

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

The Attorney General (Mr W J H Corlett QC),
Mr D Butt, Mrs C M Christian, Mr E A Crowe, Mrs P M Crowe, Mr A F Downie,
Mr E G Lowey, Mr J R Turner and Mr G H Waft,
with Mr J King, Clerk of the Council.

Business transacted*Page***Orders of the Day**

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The Council sat in private.

Legislative Council

The Council met at 10.30 a.m.

[MR PRESIDENT *in the Chair*]

The President: Hon. Members, I call upon the Chaplain to lead us in prayers.

PRAYERS

The Chaplain of the House of Keys

Orders of the Day

Manx Museum and National Trust Mr Turner elected member of the Trust

1. Mr Downie to move:

That Mr Juan Turner MLC be elected to the position of Legislative Council member of the Trust under the Manx Museum and National Trust Act 1959, section 3(1)(b).

The President: Hon. Members, we have a full complement this morning, and we have Item 1 on our Order Paper as the Manx Museum and National Trust.

Mr Downie.

Mr Downie: Thank you, Mr President.

As most Hon. Members will be aware, since the Bishop left us, there has been a vacancy on the Manx Museum and National Trust. Some time ago, Mr Turner did express to me an interest in taking up that role.

I think most of the Hon. Members on the Legislative Council will be aware of how the system operates. There is a nominee from both Houses, from the Keys and from the Legislative Council. The Speaker is also a member. I am an ex-officio member. I am interviewed now, and I was appointed in my own right this year.

The reason I am putting Mr Turner's name forward to you is that, those of you who know the Trust, they are generally people who have given a lot to the various organisations and heritage bodies, but we do need some keen young men or women, and I think that, given the interest Mr Turner has expressed, he would be a suitable candidate for that office. I am sure he would relish in the work. He tells me he has not got enough to do at the moment, so perhaps, with the support of the Council today, he could go on and be our representative on the Manx Museum and National Trust.

So I would like to formally move that Mr Turner be elected to the position of the Legislative Council Member, under the Manx Museum and National Trust Act 1959, section 3(1)(b).

The President: Mr Waft.

Mr Waft: I would support the nomination and second it wholeheartedly, and would agree with the sentiments already expressed.

The President: Mrs Crowe.

Mrs Crowe: I am delighted. I, too, would agree with the sentiments that have been expressed and I sure that some young blood on the committee would be an asset.

The President: Hon. Members, we have the proposition that Mr Turner be elected as a Member to the Manx Museum and National Trust.

Hon. Members, I will put it formally to the Council: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Mr Turner, that means that you are now our representative from the Legislative Council on the Manx Museum and National Trust. We will notify the Trust so that you will be then formally notified of the meetings from thereon.

Agricultural (Miscellaneous Provisions) Bill Second Reading approved

2. Mr Butt to move:

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

The President: We turn, then, Hon. Members, to our Item 2, which is the Agricultural (Miscellaneous Provisions) Bill. It is for Second Reading. We had the First Reading on Wednesday, 12th December.

Second Reading and clauses, Mr Butt, please.

Mr Butt: Thank you, Mr President.

The Agricultural (Miscellaneous Provisions) Bill 2007 is put before us today because, following an audit by the Department of Agriculture, Fisheries and Forestry, of their primary legislation, a number of Acts were identified as no longer having relevance. This Bill sets out to repeal defunct, superseded and unnecessary legislation in relation to agriculture and rural industries and sea fisheries provisions. Some of the Acts are no longer relevant to the industry, and some are in conflict with labelling regulations in the more modern legislation of DoLGE and the Office of Fair Trading.

The Bill also makes amendments to the Agriculture and Rural Industries Act 1914, in relation to the operation of Knockaloe Farm. The main amendment is that the Department 'may', rather than 'shall', run an experimental farm, but there is an additional amendment to the 1914 Act, stating the Department shall take such steps as it thinks proper to further education in agricultural and rural industries.

There are also amendments to the Wildlife Act 1990 by introducing the offence of recklessly disturbing wildlife, which strengthens the current legislation, where a deliberate intent to disturb wildlife has to be proved. The Act also provides offences of disturbing the structures of listed animals, and the amendments now include sea creatures such

as whales, dolphins etc, which have no living structure. The amendment includes them being disturbed, wherever they are. There is also a change in relation to paying compensation for an area of special scientific interest, again substituting that a payment 'shall' be paid, to that it 'may' be paid.

The Destructive Imported Animals Act 1963 is amended by increasing the level of fines for offences under that Act, which have never been increased since the Act was introduced in 1963.

Mr President, in order to take the first steps in tidying up the legislation operated by the Department, and to introduce further revisions to protect Manx wildlife, I beg to move that the Bill now be read a second time.

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

The President: Mr Crowe.

Mr Crowe: Yes, I support this, because it is a useful tidying-up exercise, as far as the herring industry is concerned, and also the question of whether DAFF shall or may maintain Knockaloe as an experimental farm will be cleared up, and could possibly allow Knockaloe to be used for other purposes, or even rented out to a young farmer.

I was intrigued, really, as to the extent of this obsolete legislation. The 1916 Act is 92 years old, and the others are 87 years, 73 years, 69 years, 60 years, and so on, and it is quite staggering to think that... It is very good that DAFF have gone through their legislation and decided to remove a lot of this legislation, but I am sure there could possibly be a lesson to other Departments that may wish to clear up some of the legislation. Perhaps the learned Attorney might wish to take it on board.

Thank you, Mr President.

The President: Mr Downie.

Mr Downie: Yes, I too will be supporting the Bill and, in particular, the amendment of the Wildlife Act.

There is no doubt in my mind that there are certain irresponsible individuals on this Island who, despite numerous warnings from the Department and other authorities, relentlessly pursue schools of dolphins, basking sharks and other marine mammals, in ribs and jet skis, and harass them. I suppose, Mr President, this is where the word 'recklessly' comes in, because I do think that people do really behave in a reckless and irresponsible manner sometimes, and I think it is quite right that there should be provision within the legislation to deal with people who persist in causing problems of this nature. I have witnessed people out and actually snagging basking sharks with hooks and things called 'murderers', and watching the boat get towed along and everybody thinking it was a hilarious thing to do. So, for those reasons alone, I think this is a good opportunity to strengthen the various parts of the Wildlife Act.

I have a question for the mover, under the Destructive Imported Animals Act: I see that we are strengthening it, but can he give us any evidence of an increase in destructive imported animals? I have not got a copy of the explanatory memorandum, but I will get one before the next Reading.

Most people do not know – because it has been very poorly publicised in the past – that hamsters, and some of the other rodents which people expect to go and buy in a

pet shop here, are prohibited into the Isle of Man. There are laws preventing their import, and yet for years people just seemed to be oblivious to that; certain types of rodents, other types of animals.

I know when I was in the Department, we were mortified to find that somebody had imported a herd of wild boar into the Island, and some of them had escaped and there was a great deal of concern. However, they were all rounded up and captured, but those going native in the Isle of Man – as they have done in certain parts of the UK now – not only cause significant problems for the farming community, because they will go through any type of fence or structure, but imagine trying to give certainty to running an event like the TT Races, or rallies, where you knew there were these animals loose in the countryside and you could not do anything about them. I would just like to have that clarified, but, in general, I am fairly supportive of the legislation.

The President: Mr Butt to reply.

Mr Butt: Thank you, sir.

In response to Mr Crowe's comments about Knockaloe, as far as I understand, from my time in the Department, there is an intention to carry on farming at the farm. It still will be a farm, there will be a tenant farmer in there, if the use does change from the Department, and there are moves and projects afoot to actually use the buildings perhaps for some other purposes – industrial units or light industry – but they are still in discussion.

Mr Downie's comments about the Wildlife Act and the whales etc: I think one of the main problems that has been discovered is the use of jet skis and ribs etc, which are disturbing to the creatures. Under the Wildlife Act, as it stands, there has to be damage to the structure of the animal. Of course, these particular animals do not have structures, so it just actually accounts for the fact they can be disturbed – whether they are in a structure, or not – anywhere they are.

In regard to the term 'recklessness', I have a personal experience of this. Some years ago, I prosecuted, before High Bailiff Henry Callow, in the Sulby area, an offence of disturbing a peregrine falcon's nest, which was in the Sulby valley, in an old raven's nest on the cliff. Two young men were seen in the area of this nest, having to climb the cliffs to get near it, but their defence was that they just happened to be climbing the cliffs by chance and there was no intent to disturb. In fact, there was, because they were actually there to steal the eggs. They were successfully prosecuted, but it was hard to prove. Had we had 'reckless', it would have been a far simpler job to say they were near a nest where it was obvious there were birds in the area. This would make those cases much easier to prove in the future. Now the intent can also be accompanied by a recklessness as to what they are doing in the area, so I think this is a good move forward.

The imported animals, Mr Downie has comments on. They mostly are mammals which are indigenous to the UK – the badgers, the foxes and the squirrels – and the reason this amendment to the fines has come about is because, a few years ago, there was a grey squirrel imported into the Island, and the man concerned, I think, was prosecuted, but the fine was very low – so low that it attracted comment of the court that it was not really a worthwhile piece of legislation for such a low fine and it was no real deterrent. This is a tidying-up exercise to ensure that proper fines can

be enforced on people importing such animals.

Thank you, Mr President.

Mr Lowey: It did not stand a chance in Peel, did it, the grey squirrel!

The President: Hon. Members, the motion that I put to the Council is that the Agricultural (Miscellaneous Provisions) Bill be read for a second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Agricultural (Miscellaneous Provisions) Bill

Clauses considered

The President: We go on then, Hon. Members, to the clauses stage.

Mr Butt, move clause 1, please.

Mr Butt: Thank you, Mr President.

I now move clause 1 and part 1 of the schedule. These repeal various Acts of Tynwald that relate to the herring industry, and these Acts are now considered defunct, superseded or unnecessary. I do have a copy of all the Acts, which stem from 1916 onwards, if anybody wishes to have a read of them later on. I will just go through them for the benefit of the Council.

The Herring Fishery (Branding) Act 1916 provides for the branding of barrels filled with cured white herrings. The Act also makes it an offence to forge or counterfeit any mark on such barrels. The herring trade covered by this legislation no longer exists on the Island; therefore, the Act is no longer considered necessary.

The Imported Kipperred Herrings Act 1921 requires every box or package, whether open or closed and imported into the Island, to be branded and durably marked 'Imported Kippers'. This requirement has not been in force for many years and may well be considered unlawful in terms of free trade.

The next Act is the Imported Kipperred Herrings Act 1935. Whilst kippering was formerly based on the two or three-month season during which the herring shoals were found in the Irish Sea, that has been found to be impractical in the past 15 to 20 years. The number of vessels interested in fishing for herring has reduced drastically, and those that do so have either targeted a late roe in herring, which is too poor for kippering, or catch fish in such a way that the size and quality is very diverse, leading to a great deal of unsustainable waste in catches caught by kipperers.

The 1935 Act amended the 1921 Act by extending its scope to require any kippers which have been made from herrings landed in any port or place outside the Island, or transshipped in any port or place outside the Island, also to be branded and durably marked as imported kippers. In the light of recent commercial development, this is considered an anachronism which, if applied, would lead to the virtual closure of bulk kippering, which promotes the connection of the well-regarded product with the Island worldwide.

The Fishery (Herring Industry) Act 1939 is an enabling Act, whereby powers are conferred on the Department to carry out a number of activities connected with the promotion and sales of herring, the fabric of the herring fishing fleet, the

participation of boats, curers, salesmen, kipperers, processors and wholesalers of fresh herrings, and the operation of auctions, branding and marking and the levies payable in relation to these activities. The industry has not operated in this way for at least 30 years.

Another enabling Act is the Fishery Act 1948, which gives the Department power to regulate the production, marketing and sales of kippered herrings, and these are now considered to be commercial matters for the kipperers themselves.

The Fishery (Herring Industry) Act 1961 confirmed the Department's power to levy contributions on the first sale of herring each year. When herring auctions were held and the fishery was still being closely regulated, contributions were collected, but then the Board of Agriculture and Fisheries made donations to charity out of the accumulated funds at the end of the season. Levies have not been raised in this way for some 20 years.

As I say, Mr President, I do have the Bills here, which make some interesting historical reading.

I now move that clause 1 and part 1 of the schedule stand part of the Bill.

Mrs Crowe: I beg to second, Mr President.

The President: Mr Crowe.

Mr Crowe: It is interesting that a lot of this legislation is to rule out the obsolete Acts concerning kippers. I was fortunate last year, when I went to buy some kippers in the shop in Mill Road. The owner offered to show me round the old workings and some of the old machinery that was used, and it was very interesting. If anybody gets an opportunity to see it and how it operated in the heyday of the kipper industry, it is quite fascinating.

What struck me as quite archaic were the smokehouses, where the kippers were all put on racks and... (**Mr Downie:** Tenterhooks.) That is the word! I was trying to look for the word 'tenterhooks', where the word 'tenterhooks' came from, where they climb up on wooden supports, right up to the roof, and hang all these kippers, and then set fire to it, and the smoke was going, and the doors get closed. It is very interesting to see such an ancient system still operational, and I am sure more possibly could be done to promote the Manx kipper industry, as an omega-3 benefit and a healthy food, but that is for another day.

I do support the clause.

The President: Mrs Christian.

Mrs Christian: Thank you, Mr President.

Yes, I have seen that operation, too, and I am very pleased that it has been revived, because it had stopped operating for a period of time.

I would endorse the remarks of the Hon. Member, Mr Crowe, in congratulating the Department in clearing out a quantity of redundant legislation. I suspect this is due to them effectively – I will not say 'poaching' – acquiring an officer from the Department of Health and Social Security who is a very good legislative officer –

Mrs Crowe: We now have no-one.

Mrs Christian: – who has now qualified with a law

degree, by virtue of her own efforts. I suspect that the Department of Agriculture possibly has less legislation than some others, which would be hard-put to find the capacity to go through their legislative bundles.

It is pleasing to see it happening here, Mr President, and I am happy to support clause 1 and the schedule.

The President: Mr Downie.

Mr Downie: Thank you, Mr President.

It is interesting to see all these old pieces of legislation being superseded or being made redundant. Could the mover confirm that, in the processing of kippers in the Isle of Man, their quality is still catered for under food regulations, where it is not possible to use artificial dyes? That used to be part of the kippering legislation, but I feel that some of that may have been transferred under the EU food regulations. But I think, like the brewing of beer in the Isle of Man, we did keep our own peculiar rules and regulations about kippering.

It probably does not have any bearing on this legislation, but I think anybody looking at *Hansard* – or if there is ever any chance of anybody listening on Manx Radio – would be pleased to know that process is still in place and we are not polluting a pure and natural food, high in omega-3 and fish oil levels, with imported dyes and other substances just to give them a good colour.

The President: Mr Waft.

Mr Waft: Thank you, Mr President.

I can smell the kippers coming through here!

The Wildlife Act 1990 includes the offence of recklessly disturbing wildlife. It does not, in this Bill, actually describe what wildlife is intended to be.

It has been mentioned about falcons being disturbed, but I wonder if it included seagulls being disturbed from their nests. There is a class description between the different wildlife and I just wondered whether it was possible to get them listed.

Thank you, Mr President.

The President: Mr Lowey.

Mr Lowey: We are all going through Memory Lane. We have lived through the demise of the herring. Of course, remember it was a fishmeal factory in Peel, where the herrings were brought in just to go through to make fishmeal. I can remember walking across the decks of the boats when there were hundreds of fishing boats in Peel harbour. That is in my lifetime.

Coming down to that, the only thing I hope they have not culled is the Admiral of the Herring Fleet. You have not got much of a fleet to be an admiral of now, and I hope you do not cull that one! I think that is a tradition, and I will cite in my defence... Do they have the Master of the Cinque Ports? The Cinque Ports in the UK are not what they were when it was an honour to become the High Commissioner, or whatever it is, of the Cinque Ports. So I just hope that the Department are not keen on getting rid of the Admiral of the Herring Fleet.

The President: Mr Butt to reply.

Mr Butt: Thank you, sir.

In response to Mr Crowe about the historical kipper houses, I have learned where the word ‘tenterhooks’ comes from, so I am pleased to add it to my collection!

I note on some of the legislation here that there are actually penalties of penal servitude with hard labour involved in some of these offences! (*Interjection by Mr Downie*) So it just shows how ancient the legislation is.

Mrs Christian’s point about the legal officer... I will name her: I think it is Ms Janice Skinner she is referring to, who I have had excellent help with, for some time in the Department. She does know her stuff and, if possible, I would like to poach her back into Social Services, where we have got lots of pending legislation! (*Laughter*) She has done an excellent job.

Mrs Crowe: Or Health Services.

Mr Butt: Or Health Services. We can share her, perhaps, Mrs Crowe. She is an excellent officer and has been very supportive to me through my Bills I have taken through this Council.

Mr Downie’s comment about the quality of the kippers as food: I believe the standards have been maintained traditionally, but I can check on that. I think it is under the Food Act 1996, which is legislation sponsored by DoLGE, which replaces lots of these issues in these now defunct Acts, or soon to be defunct Acts.

Mr Waft, as far as I am aware, seagulls are a protected species still. It is an offence to disturb their nests, as well. So gone are the days... which I did, myself, as a young child, climbed the cliffs at Laxey for eggs to make omelettes and cakes. No longer are we allowed to do that.

Mr Lowey commented on the Admiral of the Herring Fleet. I have seen a sign on the door of a Member of Tynwald claiming that rank – I am not sure if he is entitled to, or not – and I think the Master of the Cinque Ports used to be the Queen Mother.

Mr Downie: You are right, it was one of them.

Mr Crowe: And Edward Heath, I think.

Mr Butt: I am to be proved wrong on most of these points, but with that, Mr President, I move that this be read.

The President: Hon. Members, the motion that I put to the Court is that clause 1 and the schedule relating to the repeals be approved. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 2, Mr Butt, please.

Mr Butt: Yes, sir.

Clause 2 and part 2 of the schedule amend and repeal enactments relating to agricultural and rural industries which are considered defunct, superseded and unnecessary.

Section 4(1) of the Agriculture and Rural Industries Act 1914 sets out the Department’s general duty of promoting the interests of agriculture, horticulture, forestry and rural industries.

The remaining subsections in section 4 provide that the Department may undertake the collection and preparation of statistics, may make or aid in the making of any inquiries, experiments, research, collection or aid in collecting

information relating to that, as they think advisable. It says the Department has a duty:

'to promote, aid, and develop instruction in agriculture, horticulture, forestry and rural industries.'

(4) The Department may or shall take such steps as they think proper for the promotion and development of agricultural organization and co-operation.'

Subsection (5) of that section 4 says:

'The Department shall provide and maintain an experimental farm or farms.'

So the Department's functions and duties are not therefore dependent on the existence of an experimental farm. However, the basic functions and duties set out in section 4, other than maintaining the experimental farm, are still considered appropriate.

It is proposed, in regard to the experimental farm, to amend section 4(5) by replacing the word 'shall' with 'may', but the Department still continues to intend to promote, aid and develop instruction in agricultural, horticultural, forestry and rural industries.

Following advice from the Attorney General's Chambers, sections 6, 7 and 9 of the 1914 Act are repealed. Section 6 is a spent provision. Sections 7 and 9 describe a financial process that no longer takes place, and there is no longer an agricultural fund, and farm income goes to general revenue. All DAFF spending is agreed with Treasury before being approved by Tynwald as part of the Government Budget.

The next Act is the Agricultural and Rural Industries (Amendment) Act 1923, which amends sections 6 and 9 of the 1914 Act, which are being repealed. Thus the provisions within the 1923 Act are spent.

The next Act which is changed is the Public Markets (Weighing of Cattle) Act 1929. It requires market authorities to provide facilities for weighing cattle, sheep and pigs in or near the market. The provisions of the Act are anachronistic. Consumer protection, including proper calibration of weighing machines, is dealt with by the Office of Fair Trading.

The Public Markets (Weighing of Cattle) Act 1933 amended the 1929 Act to include a definition of fat cattle. That is also spent, following the repeal of the 1929 Act.

The Agricultural Produce (Grading and Marking) Act 1931 empowered the Department to make regulations prescribing grade designations to indicate the quality of any articles of agricultural produce. The Act particularly refers to eggs, though it is capable of extension to other produce. Such matters are now dealt with under food and other labelling requirements of DoLGE and the Office of Fair Trading.

The Agricultural Holdings and Dwellings Act 1951 enabled the Department to require landlords to install water and electricity on agricultural holdings and agricultural dwellings. This provision is no longer required.

I move, Mr President, that clause 2 and part 2 of the schedule stand part of the Bill.

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

The President: Mrs Christian.

Mrs Christian: Thank you.

Looking at the first part of clause 2 and the Agricultural Rural Industries Act, and the proposed changes to it, I can well understand the Department's wish to change 'shall' to 'may' in respect of the maintenance of an experimental farm. I can see that the Department may wish to consider using the current experimental farm in perhaps a different way.

But I hope that it will not mean that the Department will not be involved in some way in experimental agricultural work. I wonder if the mover can indicate what the current thinking of the Department might be on that issue.

I appreciate that it has in the past carried out experimental work on privately controlled land, on other people's farms, so that there is still scope for experimental work, albeit on land which is not owned by the Department by virtue of agreements with landowners.

Now moving to 2(1)(ii), there is a proposal to add a section in relation to education in agricultural and rural industries. Now the use of the word 'shall' here is very much diluted by the words which follows, in fact making it a 'may':

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

You might think it is proper not to do anything at all! So I think it is a little bit misleading to have the 'shall' and create the feeling of comfort here that something is going to continue by way of education in agricultural and rural industries.

To be honest, I am not quite sure what the Department does in relation to rural industries these days and what it defines as rural industries. (**Mrs Crowe:** Millinery.) Well, I gather millinery is a growing thing –

Mrs Crowe: Yes, exactly.

Mrs Christian: – amongst farmers' wives.

But I have some concerns about the wording there and perhaps the mover could give us some indication of what he feels are the intentions of the Department, if he can do so, in relation to that.

The removal of a requirement to have electricity is an interesting one. I am sure most dwellings have electricity now, I can think of one or two that have not, but I guess these days it would be easier to produce it in remote sites from generators and so on. It does not presumably mean mains power.

So, Mr President, if the mover could respond to those particular points, I would appreciate it.

The President: Mr Downie.

Mr Downie: Yes, thank you, Mr President.

Rather on similar lines as the previous contributor, Mrs Christian, I too think that the Department should have the option to be a bit more flexible with what they can do with Knockaloe.

If you actually look at Knockaloe, most of the work that goes on there now is undertaken by contractors anyway. So you could have experimental work carried out on the Isle of Man, particularly with cereal crops and the development of further strains of cereal crops which would grow well in the Isle of Man. If you were to do that, you probably would not do it at Knockaloe anyway, because the soil there is not

particularly good. You would go to a place down on the northern plain and you would have an agreement with the farmer.

So, I think in supporting this clause, it does give the Department the option. It does not mean that, every year, the Department has to allocate monies for Knockaloe, they have to employ certain people down there and it does give them an awful lot more freedom.

Really, agriculture is probably one of the more quickly changing environments than any other at the present time, the developments that are coming on now. But there again, I do think that one of the important aspects of the work that is done at the Department is educational. Like lots of other people, farmers are loath to change, but I think when they do make change and they see the benefits, it is very good. But there needs to be a group there to encourage them, to go into pastures new, and try new things and perhaps grow new crops.

I would also just like comment on the final piece, the Agricultural Holdings and Dwellings Act 1951: the Act empowers the Department to require landlords to install water and electricity on agricultural holdings; this provision is no longer required. If you were a cynic, you would say it seems to be strange. But we all accept what it is that they are trying to do. It is accepted generally that premises will have a proper potable supply of water, and there will be electricity provided.

I am content with this particular clause, Mr President.

The President: Mr Waft.

Mr Waft: Thank you, Mr President.

I mentioned before at the First Reading with regard to... it is not only Knockaloe; the Department has the power to sell any land purchased with the money, etc. With regard to the situation with Treasury now, getting high net worth individuals to the Island, they will be looking for some high net worth land, as it were. Areas of special interest could be perhaps thought of as that, and they will be looking to site themselves in an area of special interest around the Island. I would not like the Department to be tempted by large sums of money to make themselves a high net worth building in the countryside. I hope they have thought of that.

Thank you, Mr President.

The President: Mr Lowey.

Mr Lowey: Yes, Mrs Christian took word for word what I was going to say on that thing, and said it so much better than I could.

Could I just come to the 'may' and the 'shall' and especially 'the Department shall take such steps as it thinks proper': well, one assumes that they would, but it does diminish the word 'shall'.

Having said that, can I go over the page in subsection (7)(a). It says:

For the avoidance of doubt –

(a) the Department has the power to sell any land purchased with the money provided under the Memorandum of Agreement set out in the Schedule to this Act'.

I take it that is the 1914 Act, is it? (**Mr Butt:** Yes.) That is fine, because I was looking at the schedule and I could not see it. Anyway, that is for the avoidance of doubt.

Can I then come to: if the Department does sell the land or property in its possession, does that money under the law not go back to the Treasury or does it remain with the Department to do what it likes with the money of the proceeds? If that is the case, it does seem there is a temptation for the Department to sell something and to implement what I would call a... I will not say a fashion of the day, but it may be a very good project of the day – without having to go through the usual financial constraints that are upon all elements of Government.

So with those two, those are the two parts that I pick up in this particular clause.

The President: Mr Crowe.

Mr Crowe: Thank you, Mr President.

Yes, I too will be supporting the clause. It just struck me that two words that we agonise over is the use of 'shall' or 'may' in lots of legislation. I know Mr Turner raised this in one of the early Bills that he was looking at, commented on. The other is in clause 4 which we will be coming on to about ASSIs, about permissive or mandatory. I think this 'shall' or 'may' is a difficult one, but obviously, in this case, Knockaloe has become not the experimental farm it was intended to do.

I am just wondering if at the next Reading the mover could give us some idea of what experiments in farming the Department consider as appropriate for the Isle of Man.

Mr Downie mentioned the use of different seeds and cropping, but 'experimental' sometimes evokes issues such as laboratories with men in white suits cloning sheep and things like that – which I am sure would not happen on the Isle of Man. But it is just some indication of the extent or limitations of what might be considered as experimental on the Isle of Man in the future.

The President: Mrs Christian.

Mrs Christian: Mr President, whilst we are still in committee, on reflection and to test the point, I would like to move an amendment, please to clause 2(1)(a)(ii)(6), in lines with 9 and 10, to delete the words 'such' and 'as it thinks proper', so that it will read: 'The Department shall take steps to further education in agriculture and rural industries.'

I believe they do it now, and I see no reason why they should not do it in the future. The mover will be able to express a view as to what the Department's intentions are, but I am concerned that when he has done that, it is probably too late, unless we try to change things at the Third Reading.

So, I beg to move an amendment to that element of the clause, sir:

Clause 2

Page 1, line 8 – Delete 'such'

Page 1, lines 8 to 9 – Delete 'as it thinks proper'

The President: Mr Downie.

Mr Downie: Yes, I would be prepared to second that amendment.

I do think that education is vital, really, particularly with the changing face of agriculture. The Department does an excellent job at the present time, with its agricultural advisers and the different people that they bring to the Island. I

support the view that Mrs Christian has made that we should be really strengthening that. We should not be trying to water it down in any way – not that I am suggesting that the Department would water it down, but we would want to be absolutely clear in the legislation what the objectives are of the Department, which I think is vital to the industry.

The President: Just so that it is clear, Hon. Members, if you just turn to your (6) on 2 there, the amendment would mean that, as Mrs Christian says, you are deleting ‘such’ and then deleting ‘as it thinks proper’, so that the Department shall take steps to further education.

Okay, Mr Butt to reply.

Mr Butt: Thank you, sir.

I would suspect the Department may not have any problem with this amendment, but I will just go through a few points concerning that.

The experimental farm change from ‘shall’ to ‘may’ was done for good reasons, obviously. I felt some comfort with this new subsection (6) which is actually a new section into the 1914 Act, which did say ‘shall take steps as it thinks proper to provide education’.

As regards education, I know that in the plans for Knockaloe, on which I was in discussion with the Members of the Department... but more than eight months ago. I have not been in the Department for eight months, so I cannot comment on what the position is now. One of the main elements which was going to be capped was the training room, which is it at the top of the drive which is used, I know, on a frequent basis by all sorts of organisations and farmers. That was one of the main planks of their future plan going forward: it was going to be kept, so their intention then was to carry on with education, using that classroom.

So I cannot speak for the Department now. I would have to come back to them on that, but that was the position at that time.

I know that, from my experience with those meetings and some of the education that I have watched and observed, that the farming industry as a whole, contrary to what people may think, is very progressive. (**Mr Lowey:** Absolutely.) They are always looking at new ideas and new ways forward. The way the farming industry is changing at the moment, and the nature of the change in subsidies, they need to be totally up to speed with everything they can, to develop their own industries.

I think that also comes to the definition of rural industries: that I think basically is anything they can do which can be useful to them on the farm or whatever it may be.

Mr Downie: Countryside.

The President: Forestry, Mr Butt.

Mr Butt: Forestry.

Mr Lowey: Horticulture. Because they were growing daffodils.

Mr Butt: Yes, horticulture.

The President: The Department is the Forestry Department as well.

Mr Butt: Yes. So I thought the new section (6) gave some comfort. But obviously when you read the words carefully, as Mrs Christian does and has, that does give the Department the option not to do it. So, although I suppose technically, I cannot support the amendment, I can see the reason for the amendment. I have given my explanations as to why I think the Department does intend to continue with education.

I think that answers some of the points Mr Downie made, as well, about the education side of things, because I do believe farmers are keen to progress.

As to the water and power, I think in the old days – and I have some experience of this – some farm workers were put out in the cow shed or in the barn and they were told they could live there. I am sure those days have gone and this legislation is no longer needed. I hope those days are gone!

The President: There aren’t any workers!

Mr Butt: Exactly!

Mr Waft’s point about the... in section 7, it refers to a Memorandum of Agreement. Now this Agreement in the Act was actually money provided by Noble’s Trust to the Government to purchase Knockaloe. This purely refers to the land at Knockaloe which, in effect, means the Government, or the Department, can sell the land purchased with that money, which is the Knockaloe land. So they can sell that if they want; but no other land.

I do know the Department’s policy is to maintain ownership of the land, and in fact, it is part of their ambition to obtain more land, whenever they can, especially in terms of forestry. The plans, when I left, were that there would be a tenant farmer to run the land and use the buildings and the education workshop etc for other purposes.

With regard to Mr Lowey’s point as well, it was the Noble’s Trust which provided the money to buy the land.

Mr Crowe asked what experiments go on. There are numerous experiments and I know there is a plan to carry on with the experiments on other land, other landowners, and they are setting up a plan of schedules as to who could provide that land. I know one of the ideas that we looked at that was out at Knockaloe was the woodchip corrals, which were quite interesting, and were being taken up by lots of farmers around the Island. But they were experimented first with at Knockaloe, not always with some success, but that is the sort of thing: it is a new innovation which is working in the UK which they have tried over here. The weather may be slightly in our disfavour there, but that is the sort of thing it does.

I just do believe the farmers that I have met are keen to progress and experiment, and I am sure the Department will assist them on that.

Thank you, Mr President.

The President: Before I put it to Council, I think, Mr Waft, you wished to comment, sir.

Mr Waft: Yes, it is just on the amendment, Mr President.

You will find this ‘get out of jail free’ phraseology in most Departments, when they want to remain in control, that they may do it or they may not do it. It is not unusual to have it in here, so I will just defend the right to put it in, because he is thinking of the Department at the end of the day. There

could be circumstances where they may not or they cannot for whatever reason.

So it is not only in this legislation; it comes through in a lot of legislation that we see, 'may' instead of 'shall' and arguments about this and that. But in the interests of the Department, you will find that phraseology coming in.

The President: Mr Downie.

Mr Downie: Could I just ask? The point was raised about the Henry Bloom Noble Trust. Some Members may not be aware that that land at Knockaloe was provided, as were places like Noble's Park, the Villa Marina from that very philanthropic person some years ago. Should the Department wish to dispose of land at Knockaloe, could the Member advise us if there would need to be permission from the Henry Bloom Noble Trust to do that?

The President: If you pass this Act, no. Mrs Crowe.

Mrs Crowe: It was just the points that the hon. mover felt that he could not support the amendment. I am not sure as seconder whether I can or not, but I do feel supportive of the amendment!

I think it is very important that, whether it is called educational training, that educative process does go on. I know very little about agriculture, as everyone around this table knows! But I do remember in my time at DoLGE, there were some real difficulties with the eradication of long-tails, and farmers not being able to carry out that very task themselves. That was solved by simply putting in place some training sessions to enable anyone who wished to, to carry out the training to successfully deal with any problems they had on their own farms, rather than burdening officers who had very little time to be doing these things.

But then it extends to much greater ways, really, when you are looking at the way that rural industries in the United Kingdom have developed. I did mention millinery and that was not light-heartedly. At the present time, the best places to go and purchase a hat for an occasion, in the United Kingdom, is from one of the many farm shops that have developed into this successful industry. That was started from very small beginnings and now is a very successful part of the rural industry in the United Kingdom.

So, I do not think the Department had any intention of wanting not to carry on training; I just think it was the way in which it was phrased. So I do hope that the Department would feel able to support Mrs Christian's amendment.

The President: It is up to Members, but we are writing the law which will be effective from the time it becomes an Act.

Mr Turner.

Mr Turner: Yes, thank you, Mr President.
I will be supporting the amendment.

I understand where Mr Waft is coming from, saying that this maybe ties the Department, but of course, for the Department to take steps to further education could be as simple as issuing some pamphlets with information. So I do not think it is going to particularly stretch the Department to have this firmed up. There are many ways to further education, as I have just given by that small example.

So I will be supporting the amendment to ensure the Department continues that.

The President: Now, I think Mr Butt, do you want to finally, finally reply?

Mr Butt: Yes, sir. Just for some information, the Noble's Trust money was the sum of £20,000, which was provided for the purchase land or the purchase of a farm, and any money that was left over was to go into the Agricultural Fund, which no longer exists. Any income from that was to go into that Fund.

I understand, and maybe others can correct me: any land or property owned by the Government, if it is to be for sale, has to be offered to other Government Departments first. (**A Member:** That's right.) It may be that the Department may wish to sell a small piece of that land for, say, a building. I believe one of the industries interested was a flower nursery, which was hoping to move there at some stage. That may not have happened, but that is the sort of area: maybe they could purchase some land as part of the site. But there is no intention, as far as I know, to sell the farm.

As regards the education, it is in the interests of the Department that education of the industry is carried out, because the Department invests a lot of money into the industry and wants a return on that money, wants some employment and wants people to be successful. So I think they will carry on educating.

Having heard the arguments, I agree with the amendment being ultimately sensible. I will maybe be castigated by the Department, but I will support the amendment.

The President: Now, Hon. Members, what I put to Council –

Mr Crowe: Mr President, can I just –

The President: Mr Crowe.

Mr Crowe: Sorry, may I?

The President: Yes.

Mr Crowe: Just on the Noble's Trustees. A few years ago, they wanted to widen Glencrutchery Road as a planning issue. The Noble's Trustees still exist: the Trustees still operate and are a body that still operate, so it is not a defunct body. The Noble's Trustees still operate to approve things, so you might...

Mr Butt: Yes.

Mr Lowey: It is specific: it says for the avoidance of doubt, the money will not be in trust.

The President: Mr Attorney, could you just clear that point: that Mr Crowe is seeking clarification on the position, as I understand it, of the Noble Trustees in relation to land.

The Attorney General: Mr President, I am quite sure that the Hon. Member is correct that the Trustees do exist and, in fact, there was a case not so long ago in the Chancery Court involving the Villa Marina and the Douglas Corporation. There clearly was an appearance there by the Trustees.

But I think, Mr President, the position in relation to this Bill is that if we look at clause 2 of the Bill and the proposed new subclause (7) (b), the Memorandum – that

is the Memorandum attached to the 1914 Act – shall not be construed as creating a trust in respect of that money. Accordingly, the land referred to in paragraph (a), which was the Knockaloe Farm, and the proceeds of any sale of that land are free of any trust.

So in other words, the Department can deal with the land now, free of any trusts which were imposed by the Noble's Trustees.

The President: Just to be sure, that is the Knockaloe land, (The Attorney General: Yes.) and no other land.

The Attorney General: Yes, that is right.

Mr Lowey: Thank you, Mr President. I thank the learned Attorney.

The President: In that case, Hon. Members, what I put to Council is that clause 2 do stand part of the Bill.

Before I do that, Hon. Members, we have the amendment. I am aware that it has not been circulated to Members, but it is plain enough, and I will reiterate it, that in (6), where we are adding (6), it says the Department shall take steps to further education in agricultural and rural industries. In other words we delete the word 'such' and then delete 'as it thinks proper'. Hon. Members, those in favour of the amendment, please say aye; against, no. The ayes have it. The ayes have it.

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

Clause 3. Mr Butt, please.

Mr Butt: Yes, sir.

Clause 3 is an amendment to the Wildlife Act 1990, which extends the offences which require intent to cover situations where a person is reckless. The offence contained in section 9(4) of the 1990 Act is widened.

All wild birds, some animals and some plants are protected by the 1990 Act – I think that includes seagulls. Some controls protect specimens in their natural habitat. For example, it is an offence to injure, kill or take specimens from the wild.

The measures being introduced by the amendments to the Act do not affect these controls significantly or change the species to which they apply. The measures introduced will, however, increase the enforcement powers under the 1990 Act.

Further protection for certain birds is included in the amendments. It is already an offence to intentionally disturb birds listed in the schedule of the Act. However, it has proved difficult to prosecute the offence, mainly because of the need to prove that the defendant went with the objective of causing disturbance.

By including the lesser test of reckless disturbance, a prosecutor will have to show that a person either deliberately took an unacceptable risk or failed to notice an obvious risk and thereby caused disturbance.

The offence of intentionally damaging any structure or place which a wild animal listed in the Act uses for shelter or protection, or intentionally disturbing any such animal while in such a structure or place, is amended so the offence also covers reckless damage or disturbance.

However, due to the ecology of certain schedule 5 marine

species – namely, cetaceans, basking sharks, seals and turtles – they do not have such places of shelter or protection and it would be difficult to apply section 9(4) to them. These species are considered vulnerable to reckless disturbance, for example due to inappropriate use of motorised personal watercraft. Therefore, an offence of intentionally or recklessly disturbing a cetacean, a basking shark, a seal or a turtle in any place is added in section 9(4A).

Also, there is an amendment to section 29 of the Wildlife Act 1990, to make payments of compensation to landowners permissive rather than mandatory, where an area is designated as an Area of Special Scientific Interest, an ASSI, under the Act. Section 29 of the 1990 Act provides that compensation shall be payable where someone with an interest in an area can demonstrate the value of that interest has been reduced through designation. There are no similar compensation provisions in the UK legislation. Under section 27 of the 1990 Act, the Department has discretion whether or not to make a notification, and further, as to the operations or activities which are to be affected. Further compensation is calculated with reference to the value of the land at the time the notification is made. Thus, in deciding to make a notification, the Department would have to consider whether it was in the public interest to do so, bearing in mind the financial consequences, which would obviously depend on the zoning of the land and its value at that time. The effect on the value of the land would depend on the extent to which activities would be restricted, and the area of land so affected as a proportion of that particular parcel of land.

Advice from the Attorney General's Chambers is that it would be sufficient for the Department to have discretion to pay compensation, rather than there being a right to it. In this way, each case could be weighed on its merits and compensation paid where proportionality so requires.

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

Mrs Crowe: I beg to second, Mr President.

The President: Mr Turner.

Mr Turner: Thank you, Mr President.

I would like to just focus on the issue of mainly the sea creatures that are going to get protection. I think it is very important that they do get the protection of this Bill. I think the bulk of the problems are coming from day leisure-craft owners, as opposed to the commercial vessels which tend to go out into the deeper waters. A lot of these creatures – certainly the seals – tend to be round the coastline, and this is where you get a large number of day leisure-craft out.

I just wonder whether the Department could maybe offer some advice to the Department of Transport, as they are currently consulting on their Harbours Bill, whether something could be tied in, because one of the problems I can see is going to be the enforcement of catching people who are out making a nuisance of themselves around these creatures. As a boat owner myself, I have enjoyed viewing basking sharks and, there is no doubt about it, they do need to be treated with a great deal of respect. If you do that, the viewing of these creatures gives a lot of pleasure to the people going out to see them. But revving engines and screaming jet skis round no doubt disturbs them, and I just think there is an opportunity here, with the Harbours Bill, to tie in with the Department of Transport to cut down on

irresponsible boat owners, perhaps. All craft owners who use the harbours have to be registered with the Department of Transport, and this may be a suitable mechanism for the Department of Agriculture in identifying potential people who are reckless in the waters.

I think also it is important that many of these creatures cannot be seen by vessel owners, so I think we should, when this goes through – possibly with the registration of vessels – have the Department issue pamphlets to the DoT to give out with the registration documents for leisure-craft owners to advise them what they should be looking for in the waters, what they should do if they come across these mammals, and so forth. I think that will be a positive step – as opposed to just looking at prosecuting people after the crime – that we can try and take some steps to prevent problems before they arise. I think that is going to be important, because there is no doubt about it, with the advent of more marinas, there is more interest in leisure craft coming every year, so I think we could end up seeing more problems, certainly as the basking sharks become a more regular sight in our waters during the warmer months.

We need to educate vessel owners, because there are not, as far as I am aware, any solid qualifications. Virtually anybody could go out this afternoon, purchase a jet ski, purchase a vessel, and be out there in the sea without any knowledge of what they are doing, and so forth. So, I think the Department has an opportunity here.

Just a question on the ‘guilty of an offence’: I presume the penalty is listed in the actual Wildlife Act. I would be interested, in the mover’s answer, to know what that penalty is for breaching the various sections in this clause, to see whether it is severe enough. Certainly, as a boat owner, I would support a severe penalty for disturbing these creatures.

The President: Mrs Christian.

Mrs Christian: Thank you, Mr President.

The phraseology is ‘recklessly disturbs any wild animal included in Schedule 5’, and I was just going to ask the Clerk to provide schedule 5. Does it cover birds? (**A Member:** No.) That is why I was curious about the analogy given by the mover, who referred to the issue with the peregrine falcons and, in fact, they would not be... I am not sure if schedule 5... Is that continued, or is it...? No, schedule 4 is birds; schedule 5 is animals only. It is a curiosity, really, why the amendment here is covering these certain animals. However, that is the proposal from the Department, and presumably they have thinking which guides them to protect animals only in relation to this recklessness. I wonder, too, what the difference between ‘reckless’ and ‘irresponsible’ is, and whether there is a difference.

The further point I want to ask about in this clause is (c) at the top of page 3, and again the Department is changing ‘shall’ for ‘may’. Areas of special scientific interest may be declared with Tynwald approval, but I wonder why the Department are backing off a commitment which they currently have to compensate people whose land may be specified as an Area of Special Scientific Interest. I can appreciate that some of those areas are perhaps in parts of the Island where there is not a great commercial value, and one would say, ‘Well, then, there won’t be any commercial compensation required,’ but if they are in an area of, say, farmland, which is of some value to the farmer – and recognising that they are not

having the easiest of times and they are in a very precarious sort of position at the moment with all the changes that are going on – I wonder why the Department is removing from the legislation the requirement that they shall compensate. I have heard that they have not had any claims, but that is not, in my view, a reason why they should change it. Again, Mr President, I think I am minded to vote against this, so that the provision remains ‘shall’.

The President: Mr Downie.

Mr Downie: Mr President, I will be supporting this particular section of the legislation.

I think what is required, at some stage in the future when this Bill progresses and becomes an Act, is some information for the public. We seem to be covered with legislation. For example, all of these marine mammals – whales, dolphins, porpoises, rorquals – are classed as fishes royal, and there is a very separate piece of legislation dealing with those, where it is against the law to kill them, to take them from a beach, to remove teeth from them, and so on.

What is abundantly obvious is there are now certain places in the Isle of Man where the ASSI legislation should apply, but does not, and the areas... Some of them are in what are called marine conservation areas. For example, the Calf and the Sound is a marine conservation area, where you do have a lot of seals and basking sharks and so on, but the most popular place to go and watch basking sharks, or to watch seals, is Peel. They have now taken over as one of the main tourist attractions in Peel, and hundreds of people sit and watch there the antics of them, and it is very popular. It would be good for the Department with the responsibility for this area to produce some sort of guidelines, because I think greater protection could be given to seals, for instance, if somewhere like Peel and its environs was dedicated as a special marine area, which it is not at the moment.

So, you do have, I suppose, five or six different pieces of legislation which do give protection, on the one hand, but there again, it is blatantly obvious that if someone wants to go out and pursue these animals, or harass them, or, as it says in the legislation here, intentionally behave in a reckless manner, at the present time there is very little or nothing you can do about it. That is why I think this piece of legislation is worthwhile and should be supported.

I also take on board the issue that has been raised by my hon. friend in Council, Mrs Christian. There are a lot of farmers who, for whatever reason, do go out of their way to conserve wildlife, and they do not look for any rewards or any compensation. It is comforting to know that, amongst the farming lobby, there are some really good conservationists there, and I think that the Department has an obligation: if a person is prepared to do things over and above, there should be a way of rewarding that person, rather than just turning round and diluting what we have got in the present legislation by introducing the word ‘may’.

The whole industry itself is going to be more and more wildlife orientated and more about the protection of the countryside. They do have enough restrictions on them at the moment, and I think that, as a gesture of goodwill, we should be leaving the existing quite strong legislation as it is if you want to encourage them to do the right thing on their farms.

The President: Perhaps to cover that point, I will allow

Mrs Christian, at this stage, to come back again.

Mrs Christian: It is fine, Mr President. I was busy thinking about something else.

I do, please, want to – rather than vote against the whole of clause 3 – propose an amendment to delete subsection (i) so that we can deal with that separately from the rest of the clause, and leave the issue of compensation as it stands.

May I also come back on the comment –

The President: Can I just hold on that, while you get your thoughts together.

The amendment, Hon. Members, which you have just had circulated to you, in effect, would remove (c) at the top of page 3 of your Bill. So the final item of clause 3 is at the top of page 3 of the Bill:

‘(c) in section 29(1) (compensation for area of special scientific interest) for “shall” substitute “may”.’

Mrs Christian’s amendment, in effect, deletes the whole of that.

Now, just move on from there, Mr Crowe.

Mr Crowe: Thank you, Mr President.

Yes, this is quite a tricky one. I think, from memory, the ASSIs are the Mull Peninsula, Langness, the Point of Ayre and Sulby Glen. I am not sure if there are any others, but they are all areas of natural (*Interjection*) beauty, areas of significant scientific interest. I think the sensitivity is as to who, maybe, owns it.

Mrs Christian has argued that the farming community is having a tough time at the moment and may find that, if an area is designated, it may cause them financial problems immediately and for the future sale of the property. Alongside that, there could well be individuals who own land purely for investment purposes and may not wish, in the national interest, that that may be deemed an ASSI.

So I think it is quite a tricky area, and I think to tie the hands of the Department is quite an awkward issue, and I am not quite sure how the Department would view the amendment. Having –

The President: Sorry, Mr Crowe, to cut across you, but at the moment I have not got the amendment seconded –

Mr Crowe: Oh, sorry.

The President: – which causes me an element of concern, but can I also point out that the Department’s hands currently are tied insofar as they are ‘shall’. The Bill in front of us is suggesting ‘may’. Mrs Christian’s amendment is to remove (c), so that, in fact, the law would remain as it is for the Department.

Mrs Crowe.

Mrs Crowe: It has been seconded now by...

The President: No, it has not.

Mr Lowey: But I will second.

The President: Mr Lowey will second it. In that case,

Hon. Members, Mr Lowey has seconded.

Continue, Mr Lowey.

Mr Lowey: Thank you, Mr President.

In seconding the resolution, I just want to... I lead a sad life, really. When I get the Bills, I turn the telly off, curl up on the sofa and start reading, and Hon. Members will see that this particular clause is marked in two places. One is (i), where it says:

‘in subsection (1) after “Schedule 5” add “without reasonable excuse”’

I highlighted that because I would like to know where ‘without reasonable excuse’ is defined, and how do you define that? I did raise that at the Second Reading and the hon. mover reassured me. But, strange as it may seem – again, Mrs Christian and I are on the same wavelength – I had put that in as well. Here we are, removing something from existing, and the question that goes through my mind, when I read the Bill, is: why? Then I have to try and answer my own question, and I say, ‘Why? Are too many people getting them?’ I do know that, at Langness, for example, the grasshoppers and all the rest, and there is an ASSI on them. I think other areas of the Isle of Man should have ASSIs on them – the likes of the Chasms, Spanish Head and the Sound – and I can think of a whole host of areas around the Isle of Man that should have them. Is this an imposition on the Department? I do not know.

Now I have been told today that there have been no claims for compensation for ASSIs. Why alter it, then? I think we are giving out the signals, as Mrs Christian has said, where we are afraid of this in case some people do ask. I believe that we should say what we mean, and mean what we say, and I believe that, when we passed this originally, we were saying to the farming community: ‘Look, if it does impinge on your ability to make the farm a working entity, then we are prepared to compensate’. I think most people think that is reasonable and fair now – even more reasonable and fair – but this is diminishing that ability, and I do not think we should be doing that; I just genuinely do not think we should. There has been no case made today to say that it is impacting on the Department in an adverse way, and I think agriculture is under attack enough, rather than...

So, those are the two points. It is strange that I did actually highlight them, curled up on the sofa, doing my research, and these are the things that actually concern me when we are making legislation. Mr President has already said this morning we are making legislation that will be interpreted as the will... If it is written like that, we are giving a clear signal that we are going from mandatory to permissive. I think the Department has to tell me why it is necessary for it to do that today, and it has not done so up to now. That is why I do support the *status quo* in this particular regard.

The President: Mrs Crowe.

Mrs Crowe: I think the hon. seconder of the amendment actually clarified for me, really, more the fact that we have to say what we mean, and mean what we say.

I would have thought – and I do not know, unfortunately, because I have never been a Member of the Department – that the ‘shall’ was inappropriate. ‘May’ would suggest

that any farmer who made a claim... If, for some reason you cannot plough the field and have a workable field when it has always been workable, any farmer can make a claim and the Department may pay. But we know that these ASSIs have been identified in many areas. I know particularly that there was one identified on the prison site. There was a wild orchid, or whatever it might have been. So, when we say what we mean – the Department shall pay – does that mean that we would have had inter-Departmental money going from the Department of Agriculture to the DoT or indeed... There are many other areas that are in Government ownership, and ‘shall’ means that, actually, they shall compensate, and the owner of that particular area would be... We would have money going round and round into Treasury. That is my understanding of it.

I do not believe that the Department is deliberately saying that they will not compensate anyone who is disadvantaged by the imposition of one of these environmentally-protected areas. We have heard that there have been no claims, so many areas may not have been in a workable... an area that would come as financial detriment to farmers, but I do believe that the farming community now would make a claim if, indeed, it was going to deprive them of income if a particular field was to be designated. There is the capability within the Department, by the legislation reading ‘may’, that they will be able to compensate. Those are my thoughts in regard to where these areas are. I know an awful lot of them are not in private ownership, and maybe the ‘shall’ makes it rather more difficult for the Department to operate in the meaning of the law.

The President: Mr Waft.

Mr Waft: Thank you, Mr President.

Just as in clause 2, where the amendment takes away ‘as it thinks proper’, so it is in (c), on the top of page 3: for ‘shall’ substitute ‘may’. Those are the words that are used, I would say, in most Departments, to keep the right of that Department if there are circumstances which have not been brought up before, to think objectively and not be tied down with legislation to say, ‘We shall be doing this, we shall be doing that’, and not give them any leeway whatsoever. It is just that bit of leeway that is built into all the Bills that we get, quite honestly – ‘shall’ and ‘may’ – and the thread of that need for the Department to keep to itself the right to ‘may not’ do something rather than being forced to do something. I think that goes along a similar line as, of course, to...

Thank you, Mr President.

The President: Mr Waft is perfectly correct, but it is up to the legislature, isn’t it, to decide whether or not they want it to be permissive or mandatory.

Mr Turner.

Mr Turner: A point on that, Mr President, to do with the rights of the Department to decide. Of course, it may be that the landowner, the farmer, has this particular section of his land designated against his will, and the right of him to continue farming that land in various ways is then removed. So, I think it is only right that the farmer should be compensated, if there is reasonable proof that it is land that is in use. If it is just a bit of land that somebody has been storing old cars on, or something like that, then clearly that is a case where the designation is not going to seriously affect

the livelihood of the farmer. But if it was a field that was used regularly for animals, or for cereals or vegetables or something, then clearly there is going to be an effect, and I think the Department should compensate, rather than having the opportunity to maybe shy away and put the landowner to a lot of expense to try and fight that. I think it should be firm that, if we are going to designate these areas, which is going to restrict the use of that land, then sufficient compensation ‘shall’ be paid.

The President: Mr Downie.

Mr Downie: Yes, Mr President.

I think that what we are seeing here is a move away from the general principles that agriculture have worked under. For example, it is established practice that if an animal on a farm is diagnosed with a disease or tuberculosis, or whatever, the rule has always been, in the past, that that farmer is going to be compensated, because it is in the interest of good animal welfare and animal health that that animal is taken out of the herd and disposed of and the farmer is adequately rewarded in some way, or compensated.

When ASSIs come along, there is no doubt about it, in lots of cases there has to be a change in agricultural practice, and if the farmer can show that, by becoming an ASSI, his income or the value of his property is affected adversely in some way, I think the Department, in making his place an ASSI, have an obligation to deal with that. It is alright saying that, if what goes through today, ‘may’... but I think it needs to be put down fairly and squarely that there ‘shall’ be.

The other thing that annoys me too is, if you are living next to an ASSI... I was only talking to a farmer, this last week, who lives next to an ASSI and, on a regular basis now – which he is supportive of – he gets up to 2,000 geese flying in onto his farm. He is not the ASSI, but they are coming because of the ASSI, and they are eating him out of house and home and, at certain times of the year, when his crops are coming up, there can be considerable damage.

They are the things that the Department has got to be dealing with, and if we are going to be encouraging wildlife, and more focused on Areas of Special Scientific Interest, there has to be provision made for that. If they are not putting the money into supporting agriculture by the old tried-and-trusted method of the subsidies, and we are trying to encourage people to go down another route to be more wildlife friendly, there has got to be something in it for them, and I think it is a little bit too open-ended at the moment, and I would go with Mrs Christian’s amendment.

The President: Hon. Members, I know that Mr Attorney is anxious to reply here, as well, before we get round to Mr Butt’s reply. Council seem to be in a questioning mode this morning. It might be a simple Bill, but here we go.

I thought – if I just may put two words in myself – that I felt there was a considerable interest in the word ‘recklessly’, because, to my mind, ‘recklessly’ already implies intent, and I wonder whether ‘irresponsibly’, which shows a disregard, would probably be a better word than ‘recklessly’. But never mind; that is the way it is.

In schedule 5, where you come to (4A), I have already queried with Mr Attorney that schedule 5 is a listing of animals, and not birds, which Mr Butt referred to. Nevertheless, I think we may find that birds are referred to elsewhere, other than in schedule 5.

In relation to the ASSIs, your Areas of Scientific Interest, at the top, section 29(1) does, in fact, say 'shall', but if we put the 'may' in there, I think it was in conflict with the section earlier in the Act, which Mr Attorney may have been able to clear that for me now as well. Have you been able to clear that point, sir? I think that earlier in the Wildlife Act it says that where the Department comes to an agreement for an ASSI, they shall put *into* the contract the financial arrangements. So, if they have to put the financial arrangements into the contract, why are we changing the 'shall' to 'may' in 29(c)?

Mr Attorney.

The Attorney General: Thank you very much, Mr President. *(Laughter)*

I know that the Hon. Member who is moving the Bill is an expert on criminal law, and particularly 'reckless', but I hope, without stealing his thunder... The word 'reckless' or 'recklessly' is used very often in the criminal law statutes, and it is a state of mind which is less than direct intention, and normally is described as closing your eyes to the obvious. So in other words, to use the example used by the hon. mover, in relation to the peregrine falcons, if the boys were climbing the cliff or the tree, they could perhaps assert in court that they did not 'intend' to take the eggs. But any reasonable person looking at the facts would say that they must have been 'reckless', because they were closing their eyes to the obvious: that if the falcon was nesting there, which they clearly knew, it must be clear that they were closing their eyes to the obvious; in other words, that there were eggs there to be taken.

So I would respectfully submit, Mr President, that the use of the words 'or recklessly' is entirely appropriate and we should keep it in.

In relation to the schedule 5 point, wild animals, could I just make it clear, Mr President, that in clause 3(a) of our Bill, we have got a number of sections there in the Wildlife Act 1990 which are to be amended. If we look right at the beginning of the Act, section 1(1) of the Wildlife Act says that if any person intentionally kills, injures or takes any wild bird – and that would be a peregrine – in subsection (5), if any person intentionally disturbs any wild bird included in schedule 1 – and that would include the falcon – then there is an offence. What the Bill is proposing to do is to impose an offence not only on people who intentionally do those things, but also who recklessly do those things. So I think we do not have any problems with our birds. Clearly we have also got the protection for seals I think, Hon. Members: intentionally or recklessly now disturbing the seals, that is covered.

Mr President, in relation to your very good point about clause 29, I am afraid, in the time available, I do not know what the answer is to your conundrum. It looks to me as if you might have a very good point, that if we are going to amend section 29(1), we will have to make some consequential amendment in section 27. But I just have not had a chance to put all the pieces of the jigsaw together.

The President: Like Mr Lowey, I am guilty of reading this morning!

Mrs Christian.

Mrs Christian: Thank you, Mr President.

I thank the learned Attorney for clarifying the issue on the birds, which I should have realised were covered in 3(a). I

wonder if seagulls, which were mentioned earlier, are on that list, because I can think of circumstances where you might, if you have land near the coastline, disturb seagulls, when you are going about your legitimate business.

The President: Ground nesting birds.

Mrs Christian: Or other ground nesting birds, yes, whether it is –

The President: Pheasants in a hedge.

Mrs Christian: I guess it comes down to who is going to prosecute and how that comes about, really. But if you are going about your legitimate business and you happen to disturb seagulls – which is not difficult! – you would probably have to argue a case –

Mrs Crowe: That you were not closing your eyes to the obvious!

Mrs Christian: – if you were brought to court. Who is to rule around here, the seagulls or...? I just wonder whether seagulls would still be protected, if indeed they are.

The President: Mr Attorney.

The Attorney General: Mr President, yes, the policy of the Wildlife Act 1990 is to give protection to any wild birds; but then in the schedule to the Act, there are particular categories of birds which are given special protection.

You find, for example, at the very beginning of part 1 of schedule 1, the avocet, one of the rarest birds and, of course, the emblem of the Royal Society for the Protection of Birds, and so on. So those avocets and bitterns and so on, right down to yellowhammers, are all given particular protection. But yes, seagulls are afforded the ordinary protection given to ordinary birds, house sparrows, starlings and all the rest of it.

In relation to disturbing, you can, of course, inadvertently disturb seagulls or any other bird. You have still got to be able to prove, for the purpose of the prosecution, that somebody has done the act intentionally or recklessly. We are not guilty of an offence under this Act, if we negligently do something.

The President: Mr Downie.

Mr Downie: Mr President, it might be useful at the Third Reading, if the Council be given a list of those birds which are classed as vermin. There is a list of birds classed as vermin and, in certain circumstances – (**Mrs Christian:** No.) Well, hooded crow: are they not allowed to be shot?

Mr Turner: Magpies?

The Attorney General: Could I just say, Mr President, this is a very interesting part of the Wildlife Act. Schedule 2, part 2 of the Act does allow or contemplate that certain birds can be killed by authorised persons without an offence being committed. Of course, hooded crows, magpies and so on –

Mr Downie: Black-backed seagulls.

The Attorney General: Well, indeed, and I think I am right in saying, Mr President, in the old days there was always a bounty: if you got a magpie, you would get two or three cartridges, I think it was. But that has not been brought into effect.

It is interesting that the Department, whilst contemplating that there would be a list of certain birds that you could take without an offence, has not implemented that.

The President: Mr Waft.

Mr Waft: Mr President, the reason I raised the seagull issue earlier on... (*Laughter*) I was not here in 1990, when this Bill we are talking about went through, this Act. But subsequent to that, if you remember the problems that we had in the refuse disposal plants – the refuse disposal up in the Ayres – there was a confluence of... I do not know what they are called actually! A large number, or flock or whatever (*Interjections*) of seagulls in the air continually and they were continually on the ground. It made life pretty difficult. I think, at that time, they took them, took seagulls off that list, but the actual date of that, I would not like to guarantee – early 1990s, I would say.

Mrs Crowe: They just netted the site.

The President: Mr Crowe.

Mr Crowe: Can I just ask for clarification.

You mentioned a section 27 consequential amendment: that would only be required if we pass 3(c) today. If we accept Mrs Christian's amendment, we would not need a consequential amendment.

The President: It leaves the Bill as it is. It leaves the *Act* as it is. Are we content for Mr Butt to wind up on clause 3 now? Mr Butt. Hold on. Mr Downie.

Mr Downie: Just before we go, Mr President, I think there is an important issue here to be dealt with, in that some members of the agricultural community, some people who manage the land, could be in a position where they are going out and destroying or shooting jackdaws, magpies, hooded crows, grey-backs, you name it. Now if I have picked up what the Attorney General has said correctly, they are actually breaking the law at the present time.

The President: The Department still pays a bounty. Mr Butt.

Mr Downie: Should we not be rectifying that or clarifying it, at maybe the Third Reading?

Mr Butt: Thank you, sir.

I will just deal with some of the border issues, before I go on to the main point about the amendment.

As regards 'reckless', that was the one area I was confident about speaking about! (*Laughter*) The Attorney has... There are many case law examples of what 'reckless' means, which the court use and can contest and as has been pointed out the birds are covered under those other sections, 1(1) and (5), 3(1) etc.

Can I just go on to the one interesting area, the geese? I am presuming Mr Downie is referring to the geese up north

of the Island? (**Mr Downie:** Yes.) Actually these geese are not proper migratory birds, they have become feral, become locally living and there are plans by the Department to do a cull of those as soon as they can. They certainly were when I left, but again, it will be done under a licence. They can then be culled with permission from the Department. They are not there because there is an ASSI; they are there because they have decided to migrate or to live in that area. The Ayres is not actually connected to it.

The seagulls on the Ayres Mr Waft mentions: there is an interesting story here. When the tip up at the north closed in the last year or so, apparently hundreds of gulls just died. They fell out of the air with starvation, because the generations had got used to living off the tip and they had forgotten how to fish at sea. There was a mass die-out of seagulls in that area – or herring gulls, should I say.

As regards the point of section 3(c), the reason the Department wanted this in or some of the reasons were, first of all, in the UK legislation in England, Wales and Scotland, that does have 'may' and they wanted to be in line with what the UK does. There have not been any significant problems in the UK. It does not mean in the Isle of Man we have to follow exactly what they do, but they would like to have a similar compensation scheme.

It does not stop them paying compensation, they still will be able to pay compensation as it is merited. On the advice of the Attorney General's Chambers, there could be proportionality built in as to what should be paid.

Some of the areas which are ASSIs... one I know in particular is on farmland, where the farmer is aware of it. It is there because the farmer did have good practice in the past. This is why these places exist and most farmers, as far as I know, have co-operated fully and are proud of the fact that they have been the root cause of why these places have become ASSIs. To date, there have been no claims on compensation for an ASSI being established.

But one of the problems the Department has is it has not actually got a budget for this. They cannot predict how much is going to be claimed. There is some element in the Department being deterred from declaring places as ASSIs, for the fear that they may have to pay significant compensation, so it may actually be a bar in some cases to actually declaring an ASSI, because of the cost that may be incurred.

Mr Lowey: I cannot accept that.

Mr Butt: No, but that is in the thinking, that maybe we may have more ASSIs, if (a) we had the budget, or (b) we had the... (*Interjection*) – yes. So, I will try to support the fact that this should stay in the Bill, but if, as the Attorney says section 27 has the 'shall' as well, there is obviously a flaw in this legislation anyway.

The Attorney General: I do not know.

The President: I do not know and I asked Mr Attorney: Mr Attorney does not know. It might be consequential, which could be picked up, of course, at the Third Reading if necessary.

Mr Butt: Right, okay, but from the Department's point of view, they would like to have the option of having 'may' instead of 'shall', partly for financial reasons, because they

cannot predict what their budget will need to be, year on year. To date, there have been no claims and landowners have been co-operative with the Department. I am sure the Department would act in good faith, although of course the Bill says 'shall' or 'may'. I am sure the Department would act in good faith to pay compensation as required.

They do require some reward, in some cases, for what they do. The reason they have ASSIs in the first place is, as I said, because of their good behaviour, initially. I think, Mr President, that covers most of the points that have been made.

As regards the sea creatures, there is a huge interest in them now. There is a mushroom of interest and research on them. I think Mr Turner's point about education from the Department, they know now where they breed, where they congregate, what times of year, and it is worthwhile mentioning to the DoT giving the information out so the public are aware of it.

I think, Mr President, that covers most of the points raised, and I beg to move.

The President: Hon. Members, the motion is that clause 3 do stand part of the Bill. To that, Hon. Members, you have had circulated the amendment moved by Mrs Christian seconded by Mr Lowey that we delete subsection (c) on page 3, lines 1 and 2. Hon. Members, putting to you first the amendment: those in favour of the amendment, please say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

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

Mr Lowey: Quite decisive!

The President: I think it has come out at 4 votes for and 4 votes against, Hon. Members.

I am torn, Hon. Members, between the balance of leaving it as it is in the Green Bill... Presumably it came to us in the form it did from the other place to ourselves. But, equally Hon. Members, I have the almost duty to say that it should remain as it is in the existing law.

I think, from the Chair, one should not change existing law, because you can always come back another day and fight that battle. In that case, Hon. Members, and bearing that as my ruling this morning, my vote will go for the amendment, Hon. Members.

In that case, Hon. Members, putting to you then clause 3 as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, clause 4.

Mr Butt: Thank you, sir.

Clause 4 amends the Destructive Imported Animals Act 1963 to increase the level of fines.

This Act makes provision for prohibiting or controlling the importation into and the keeping within the Isle of Man of destructive non-indigenous animals and for exterminating any such animals which may be at large.

The penalties have been tidied up by removing a reference

to a continuous penalty, as this Act has had no amendment to the level of fines since it was passed in 1963.

The rates of fines set under the 1963 Act range between £200 and £500, with a £5-per-day increase for every day the offence continues. The increased rate of fines being proposed reflect those in similar current legislation and are £2,500 to £5,000, with the daily penalty removed.

I move that clause 4 stand part of the Bill.

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

The President: Mr Downie.

Mr Downie: Mr President, I have no problem with clause 4. I think it is long overdue.

I did, when we talked earlier on about some of the problems that have been apparent, about people importing certain animals into the Isle of Man which, if they got into the countryside, could do not only damage to the indigenous population of animals that we have here, but also they could have effects in other areas as well.

I would just like the Member to confirm that there is a licensing regime available, so that when certain animals are required to be imported into the Isle of Man for special circumstances, such as the making of a film – the fox for *Lassie* – he can confirm that.

The President: Mr Butt to reply.

Mr Butt: Thank you sir.

Yes, also in the provisions of the last clause, somebody mentioned fines there as well: there are substantial fines for these offences of disturbing animals.

There is an ability to licence for certain animals and also, if, say, somebody decided to import red squirrels, there is the ability to make a case to the Department to justify why they should be imported. So it does not mean they are totally excluded forever, as long as a case can be made. But at the moment the Department's view is that they should not be.

Otherwise, I have no other comment to make, Mr President. I beg to move this clause.

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

Finally, clause 5, Mr Butt.

Mr Butt: Yes, Mr President.

Clause 5 gives the Bill its short title. I move that clause 5 stand part of the Bill.

Mrs Crowe: I beg to second, Mr President.

The President: Hon. Members, formally, I put to you that clause 5, that the Act be cited as the Agricultural (Miscellaneous Provisions) Act 2008 be approved. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

That concludes the clauses stage of our Bill, Hon. Members. There are one or two queries, I think, which should be raised during the clauses stage, which may crop up at Third Reading. Could I particularly mention to Mr Butt

that, in fact, I think Mr Turner was anxious to know what the penalties were in the Wildlife Act 1990, which has not been commented on further in his query.

Mr Butt: I thought they were substantial...

The President: In that case, Hon. Members, that concludes the Order Paper for us this morning. We will now sit in private, Hon. Members, thank you.

The Council sat in private.