



**LEGISLATIVE COUNCIL
OFFICIAL REPORT**

**RECORTYS OIKOIL
Y CHOONCEIL SLATTYSSAGH**

PROCEEDINGS

DAALTYN

(HANSARD)

Douglas, Tuesday, 27th May 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, 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

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The Council adjourned at 1.05 p.m.

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Legislative Council

The Council met at 10.30 a.m.

[MR PRESIDENT *in the Chair*]

PRAYERS

The Chaplain of the House of Keys

In our prayers this morning, we remember the people of Myanmar; Zimbabwe; also of China, in their various troubled times.

Leave of absence granted

The President: Hon. Members, our hon. colleague, Mr Callister, is absent this morning. You will recall that in fact, prior to his election, he had indicated that he would be absent from the Isle of Man on this day.

Procedural

The President: We turn then, Hon. Members, to our Order Paper. We have but the one Question on the Order Paper and that is actually down for Written Answer. The Written Answer is before me now on the desk, Hon. Members, and I assume that in fact every Member equally has that Written Answer.

Question for Written Answer

TOURISM AND LEISURE

TT 2008

Prohibited and restricted areas

1.1. The Hon. Member (Mr Turner) to ask a Member of the Department of Tourism and Leisure:

(a) Can you provide copies of the detailed risk assessment for each prohibited and restricted area on the TT Course for 2008, and details of who made the decision on each area, together with any reasons for making their decisions; and

(b) in addition, can you provide details on who recommended fencing be erected at Quarterbridge and the basis of their decision?

Answer: (a) Prohibited and restricted areas around the TT Course are identified by the Clerk of the Course during a recorded visual inspection and are based on rider, marshal and spectator safety judgements. These are then ratified by

the Auto Cycle Union Ltd, who are the governing body and track licensing authority. Details of these areas are now published with a full illustrated version available at www.IOMTT.com.

(b) Recommendations on course safety came from the Clerk of the Course and in relation to the Quarterbridge fencing, this was based on previous rider feedback on safety concerns.

Orders of the Day

Town and Country Planning (Amendment) Bill

First Reading approved

2. Mrs Christian to move.

That the Town and Country Planning (Amendment) Bill be now read a first time.

The President: We turn, then, Hon. Members, to Item 2 on our Order Paper which is the Town and Country Planning (Amendment) Bill. This is for First Reading and I call the Hon. Member, Mrs Christian.

Mrs Christian: Thank you, Mr President.

The Town and Country Planning (Amendment) Bill is solely for the purpose to restore to the courts the position that existed prior to the introduction of the Town and Country Planning Act 1999.

Members may recall that that Act was not actually introduced until 2005. It has now been in operation over two years and the Department, because of a court case, has recently become aware of an omission within the enforcement powers of the courts. The courts cannot, at the moment, require someone in breach of planning control to restore to the position that existed prior to that breach. The Department is very anxious to speedily plug this particular loophole and this provision will do that, Mr President, if it is accepted by the Council and another place.

There are powers for the Department to take steps to restore matters themselves, but that is rather a complex matter and it is considered preferable to have the restoration of this previous power which allows the court to make an instruction for restoration, and any breach of that will be subject to further action by the courts.

I beg to move the Town and Country Planning (Amendment) Bill 2008.

The President: Mr Waft.

Mr Waft: I beg to second, Mr President.

Often as not, sometimes things like this do get missed. It is urgent that we put this situation right at the earliest possible opportunity.

I fully support this Town and Country Planning (Amendment) Bill.

The President: Mr Turner.

Prayers : Leave of absence granted : Procedural

TT 2008 – Prohibited and restricted areas

Town and Country Planning (Amendment) Bill – First Reading approved

Mr Turner: Yes, thank you, Mr President.

I, too, am very supportive of this. I am sure we are all aware of cases where buildings have appeared or constructions have appeared unauthorised. I know of one particular case which has caused misery to the neighbours and has been left half built for years. If we can give the necessary powers here to rectify these situations, then it is obviously important we do so in the manner before us.

The President: Mr Crowe, Hon. Member.

Mr Crowe: Thank you, Mr President.

Yes, I too am happy to support the Bill.

Can I just ask the hon. mover a question on restoration? Mrs Christian did say that there is power for the Department to restore a building to what it should have been or what it was originally and then charge the person who is in breach in the planning condition. How would that actually work in practice?

The President: Mr Lowey.

Mr Lowey: Yes, Mr President.

I support the principle of the Bill. The only thing that I would have is that in our recent past, in the last month or two, we had a problem with mobile advertising. Is it proposed under this Bill that the regulations would cover that? In other words the fact that you can move an offending piece from one area because you have got a wheel on it, to another area.

This actual Bill shows what I would call the convenience of small legislature: we can act quickly when we see an omission in the law, in primary legislation. So we can actually act quickly to deal with it.

I am supportive of it. I am supportive of the Department in what they are attempting to do, but I just raise the matter, have they got enough adequate powers? I know and I am mindful of the reply that she gave me that she thought the powers were adequate, but I still believe the offending thing was still, if you like, an offence in my view. It was just a clever way of getting round it. Has the opportunity been taken to tighten the regulations up on that?

The President: Mrs Christian to reply.

Mrs Christian: Thank you, Mr President.

I thank Members for their support of the principle of the Bill.

Could I just comment, though, that we need to be clear about what it is doing, specifically with regard to the remarks made by the Hon. Member, Mr Turner. This does not empower the Department to take action on someone who has not completed a building. That matter is not within the scope of this measure. It is for someone who has actually breached a planning approval.

Now if the building the Hon. Member is talking about is in breach –

Mr Turner: It was.

Mrs Christian: – then maybe some action could be taken. If it simply had not been completed, that would be a matter for the local authority in terms of something which is not accepted by them as enhancing the neighbourhood, if you like.

Mr Crowe has asked how the Department would go about exercising its current powers. I am not aware that the Department has exercised those powers but I think that we would need to do it in consultation with the Attorney General's Chambers, because whilst the Department may have a power to restore, I think that there are various challenges that might be made against the Department, in terms of other damage to the property or whatever. So those are powers which I think could be exercised perhaps with some difficulty.

It is certainly the Department's view that it would be preferable that the court make the order and then, if it is not complied with, action can be taken against the offender again with the reserved power that the Department can still go in and do the restoration work.

With regard to the Hon. Member, Mr Lowey's comments about mobile advertising, he will see that there is a provision in here which specifically says if there is a breach of planning approval in respect of... I think it is advertising – yes, advertising, section 35. It is in subclause (1)(c) of subclause (3) of that clause. So if there is a breach of advertising control, action may be taken.

However, I would say that there are issues in terms of the interpretation of the advertising law at the moment which we are seeking clarification on. What he may regard as unacceptable may in fact be permissible, but that is something that we are in discussion on and clearly, I think, have some concerns about the permanence of advertising of the nature he has described.

I hope that has answered all the questions, Mr President, and as I say, I am very appreciative of the generous support which has been given for the First Reading.

The President: In that case, Hon. Members, the motion that I put to Council is that the Town and Country Planning (Amendment) Bill 2008 be read for a first time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Town and Country Planning (Amendment) Bill

Standing Order 4.3(2) suspended to take remaining stages

Mrs Christian to move:

That Standing Order 4.3(2) be suspended to the extent necessary to allow the remaining stages of the Town and Country Planning (Amendment) Bill to be taken at this sitting.

The President: Now, Mrs Christian, as I understand it, you wish to suspend Standing Orders.

Mrs Christian: Yes, Mr President.

Hopefully, with the concurrence of the Council, we might agree to suspend Standing Orders. I am very conscious that this a move that I personally would not normally seek to be making, especially to take Second and Third Readings and the First Reading all on the same day. However, I feel that it is a fairly straightforward measure. It is one which the Department clearly wishes to get through at the first

opportunity, because any cases in breach at the moment will not be subject to this provision of the court, which clearly is not beneficial to the community.

I, therefore, seek support from the Council: I beg to move that Standing Order 4.3(2) be suspended to allow the Second and Third Readings of this Bill to be taken at this sitting.

The President: Mr Waft.

Mr Waft: I will second, Mr President.

In a Bill of this size and the need for it to be done quite speedily, I have no problems with doing the three Readings at the one sitting. There are other Bills of similar small sizes as well which could be adequately dealt with, because (**Mr Lowey:** Hear, hear.) there are some Bills that can be lining up for us to deal with – some large Bills. So the small ones that are not controversial, that are only one, two or three clauses, I think we could deal with much more speedily.

The President: Mr Lowey.

Mr Lowey: Yes, I support it. The principle of Standing Orders is there to protect people's rights and I agree with Mrs Christian, it should be exercised carefully but people's rights in this instance are the majority rights that are being protected. I do think that this case warrants it.

Can I just say that I too share Mr Waft's view that there are some... one for example that comes to my mind straight away is we know of a weakness in the payments of Members' expenses. I will not go into the details of that, not our Members but for the payments that we make to others, and we know there is a flaw in the law there. I believe that sort of legislation could quite easily be introduced quickly and dealt with, because it is an anomaly. It is a known anomaly and should be dealt with quickly.

The President: I think we have the background of the central heating or the air conditioning rumbling in the room this morning so assist *Hansard* by speaking up, Mr Lowey, if you would. I am sorry, I do not normally have to tell you that!

So, Hon. Members, the suspension of Standing Orders. I put to you then, Hon. Members, that we suspend Standing Orders to take the remaining stages, Hon. Members. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Town and Country Planning (Amendment) Bill Second Reading approved

The President: We go on then, Mrs Christian, to your Second Reading.

Mrs Christian: Thank you.

Mr President, if I could just expand slightly on what I have said at First Reading stage: the court will be given the power to make additional orders under the Bill requiring them to restore or cease activity in the first instance any breach of planning control and to restore the position to what it had been before the breach.

There is also a concern about registered buildings and that is covered in the Bill as well. It is our concern that in a circumstance where alterations are made to a registered building without proper planning permission, then the Department will have a power through here: the court may require the defendant to undertake such works as the Department considers appropriate in respect of that registered building.

There are mixed views about registered buildings and I am very conscious of that, but we do want to protect our built heritage. The issue is whether or not we can strengthen the law to require works to be restored where it is practical to do so. Clearly, it is preferable in the first instance that people do not damage registered buildings without the appropriate planning approvals and then of course it would not be damage, it would be properly structured works. But I do think that this is also an important part of the Bill which we need to progress.

There will be no increase in administrative or financial burdens, Mr President, in relation to Bill.

I beg to move:

that the Town and Country Planning (Amendment) Bill 2008 be read a second time.

The President: Mr Waft.

Mr Waft: I beg to second, Mr President.

There has been comment previously with regard to the enforcement officer being perhaps understaffed in that area. Perhaps when we are thinking about the situation with town and country planning, if some thought could be given to that office and see if there is a problem there.

Thank you, Mr President.

The President: Mr Downie.

Mr Downie: Yes, I would like to speak in support of the Bill, but I would just like the hon. mover to clarify for me: one issue that seems to occur on a regular basis in planning terms is where a farm which has some low lying land all of a sudden becomes a temporary landfill site. You see thousands and thousands of tonnes of demolition materials or other materials dumped and spread onto the whole profile of this area. I know some time ago there was difficulty in addressing this and the query is whether this piece of legislation will actually address this particular issue and whether the engineering works, for want of a better word, will be properly covered and catered for.

There is no doubt about it: some areas of the Island have been altered out of all proportion and not always to the betterment of the environment. For example, if you go down past the Highlander, there is a whole area of land on the left that was reclaimed, for want of a better word – a whole raft of longstanding planning issues. It may be acceptable in some terms, but I am sure a lot of people would say that the environmental aspect and the wetlands which formed a fantastic habitat all down through there have actually gone forever.

So just to see if this would ease the situation if something like that was to happen again.

The President: Mr Crowe.

Mr Crowe: Thank you, Mr President.

Again, supporting the Second Reading and just looking at the specifics at subclause (4), where if a registered building was demolished, there is power for the courts to order that a building of a similar shape and size could be built in its place. There are some cost implications for the owner of that former registered building but that, again, presumably, would be picked up by the courts and as means of paying for such a new building.

The President: Mr Lowey.

Mr Lowey: The point is that very last item on clause 1, where it says:

‘The Department may recover the costs mentioned in subsection (7)(b) summarily as a civil debt.’

How else would they claim it, if it is not as a civil debt? It is the word ‘summarily’ that really hit me and drew my attention to it, but as we are writing the law, how else would you call it?

The President: Mrs Christian to reply.

Mrs Christian: Thank you, Mr President.

Can I touch, first of all, on the enforcement issues raised by Mr Waft. We have only one enforcement officer in the Department. We also have pressures in other aspects of planning and we need more officers but, as Members know, there have been no increases in head count, so we are struggling to cope in that area. But there is definitely an acknowledgement that one officer to cover enforcement issues is not adequate. He does his best, but he is keeping his finger in the dyke wall, so that is an issue we do acknowledge.

It will be beneficial, I think, in terms of enforcement that courts have powers to require reinstatement. If the court is effective in achieving those reinstatements, then the power of the Department will not need to be invoked. I think that, certainly, if the Department were to have to use their powers, that would put an additional pressure on in terms of who is going to actually deal with those enforcement issues that the Department can exercise so we note those comments and we are very appreciative of support for the general principle that we should have a stronger enforcement area.

Mr Downie has commented on low lying land and landfill. I would just comment that landfill does require planning approval and any works which were carried out without permission would clearly be a breach of planning control and subject to the provisions of this measure and the existing measures which we have.

I cannot comment specifically on the area he has talked about. I am not, from memory, familiar with any applications which came in, in relation to that. That is not to say they have not got an approval, but I cannot recall offhand what the status of that particular area is in planning terms. I can certainly find out whether or not it is a legitimately approved landfill.

Mr Crowe has commented on the issue in relation to a new registered building, where a registered building has been damaged or work is carried out without consent. There is an issue here. If a registered building is damaged we have lost, essentially, the essence of what we were protecting and to put up a new building rather defeats the object of the registration.

So clearly, our concern is to ensure that no detrimental action takes place on registered buildings.

But where something has been done, we will see when we come to the clauses that the Department has a power to determine what would be reasonable to restore and what in fact might do more damage to the remaining structure if it were carried out and we will see at that clause stage that the Department, in its conservation section, may take a view on what is the best way to restore the damage.

It certainly would be for the courts to make an order to restore the building to its former state. It is not for me to say what they would take into consideration there. I imagine that they may or may not have cognisance of the financial position of the owner, but clearly if there is an issue about damage to a registered building, they would clearly take into account the fact that they had breached planning and gone ahead and created some difficulty with a registered building which they were supposed to be protecting.

I cannot answer the Hon. Member, Mr Lowey’s point. Perhaps the learned Attorney could indicate why it is necessary to have ‘summarily’ in the wording there.

Mr Lowey: We could do that in clauses, anyway. It doesn’t matter.

Mrs Christian: Perhaps Mr Attorney could advise, please?

The President: Mr Attorney.

The Attorney General: Thank you, Mr President.

Mr President, this amendment is tacked on to section 39 of the existing Act. I think that the Act contemplates that criminal proceedings will be brought before a summary court, before the High Bailiff, Deputy High Bailiff or one of the magistrates. As I read this amendment, Mr President, it will mean that the summary court, when dealing with criminal aspects of the case, can also go on to adjudicate whether the costs of the Department are properly recoverable as a civil debt. In other words, a debt which would ordinarily be recoverable in the civil courts, but the criminal court in this case will have the jurisdiction to deal with the debt.

Mr Lowey: That is fair enough.

Mrs Christian: I thank the learned Attorney for his explanation.

The President: In that case, Hon. Members, I put to Council that the Town and Country Planning (Amendment) Bill 2008 be read for a second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Town and Country Planning (Amendment) Bill Clauses considered

The President: We will take the clause stage then. Clause 1, Mrs Christian.

Mrs Christian: Clause 1 gives additional powers to the court.

Clause 1(2) amends section 37(2) of the 1999 Act to clarify the powers of the High Court in relation to applications by the Department for injunctions in respect of breach of planning control. This new power will allow the court to grant an injunction for the purpose of restoring the land or the registered building to the condition it would have been in prior to the contravention or breach.

I think this is particularly relevant: breach of an injunction is a contempt of court and may be punished by fines or imprisonment.

Clause 1(3) inserts a new section, 39A, into the 1999 Act. The new provision will enable the court, in sentencing a person for an offence under section 23 which is a breach of planning control, section 29, breach of registered building control, or section 35, advertising control, to make certain additional orders requiring the person to cease activity in breach of planning control and restore the position to what it had been before the breach.

If there is some demolition or damage to a registered building the Department considers restoration not to be reasonably practical or to be undesirable, then the court may require the defendant to undertake such other works as may be necessary to alleviate the damage that they had already done. In this respect the Bill restores our planning law to the position which it had been in under the old Act before this 1999 Act came into operation.

I beg to move clause 1 do stand part of the Bill.

The President: Mr Waft.

Mr Waft: I beg to second, Mr President.

I wonder if the mover has any comments on the new listed building at the prison and what the future is there, and if she has any idea as to what the future of the prison is. The old one, not the new one! (*Laughter.*)

The President: Hon. Member, Mr Lowey.

Mr Lowey: Yes, I may have got my questions the wrong way round. Maybe the 'summarily' one should be on the clauses, and the one I am going to pose now to the Member...

I note from the general notes of the Bill that the 1999 Act has only been in force for two years, so that brings me in mathematical terms, it has been five years, since the Bill was passed, before we have actually brought it in. I understand there are different parts come in at different times. It does seem rather strange that we pass a Bill and then take five years to implement it. Perhaps the Member – and I know it is not specifically related – I could wait for the Third Reading, but it is just a query that I... I am sure the general public would find it interesting, as to why it has taken five years after passing it, to bring it into being.

The President: Mr Crowe.

Mr Crowe: Thank you, Mr President.

Yes, I was interested in subsection (5) about the advertisements and offences committed under this subclause. I think we are all concerned when advertisements appear out of nowhere in unusual places but the courts can give or grant the Department power for that to be removed, but it is interesting that if that person does not, or is unwilling, to remove that advertisement, the courts may authorise the

Department to do whatever the person convicted has failed to do, and to recover the cost of so doing from the person convicted.

So I can see very good justification for that. There is a staffing implication as to whether the staff could climb up on walls, or whatever. Presumably they would subcontract that to a person to remove the offending advertisement?

The President: Hon. Member, Mr Downie.

Mr Downie: Thank you, Mr President.

I think one of the problems that existed with advertising is that there are various pieces of legislation I think still in being. One relates to advertisements on the TT Course. What does appear to be happening is that I think in TT period, or the build up to TT, or between TT and Manx Grand Prix, most people do not bother about the advertisements on the Course; but what is tending to happen is other people are now coming along and using parts of the TT Course to display types of businesses and other things which are not really related to the racing. I hope that this section will deal with that, and we are not going to be hung up with this old legislation relating to the TT Course.

An interesting point that my hon. colleague, Mr Crowe, made about the Department having the power to remove these signs or these advertising banners or whatever it is. The old Local Government Act actually gave the local authority powers in this area. Particularly within the Borough of Douglas here, they did have some very good local byelaws and I think a lot of those still apply to things like fly-posting and so on. But sadly there seems to be a reluctance within the local authority to actually get out there and flex its muscles. So it is just a comment I was making.

I am very supportive of the whole principle behind this Bill. I can understand why we are having to go down this particular route, because there have been some examples where there has been abuse of the legislation, there has been this greyness and, hopefully, this will tighten everything up now and we will be able to give the Department the power that it really requires to do its job properly.

The President: Just in relation to subclause (1)(3)(c), Mrs Christian, just out of interest, it says:

'to restore any land affected by such development to its original condition'.

That is followed up by (d):

'to do such other things in relation to such land as the court considers proper in the circumstances.'

It appears to me that in fact (c) is superfluous because it is an absolute impossibility to restore any land affected to its original condition. You can try to put a field back to grass again, but you cannot put it back to its original, no matter what happens but you can do such other things in relation. I just thought that (c) is superfluous.

Nevertheless, Mrs Christian to reply.

Mrs Christian: Thank you.

Right, now the first question was in relation to the registration of the prison, which is really not a matter to do with the Bill, and I cannot give the Hon. Member an answer to that.

The President: Good try though, Mr Lowey! (Laughter)

Mrs Christian: It is not in my hands!

The Hon. Member of Council, Mr Lowey, has asked why the Act took so long to become actually enforceable and brought into effect. I was not a Member of the Department, but I think I would be right in saying that there were a number of regulations and other measures that had to be put in place before the Bill could be enacted.

I do not know why five years. I can only surmise that it is because there are so few people to do so many things in that particular area. So there was an interim there where the old Act was still operational, notwithstanding the original had been approved.

The question of advertisements from Mr Crowe: the current position is that where there is a breach of planning control, the Department does have a power to go in and restore, but clearly it is much better if we are seeking to enforce that the court can give an instruction to the owner to go and put it right.

As I have indicated, the amendment in this Bill will allow a person who has been subject to such an order to put it right. Where that person is in breach and still does not do it, they will be subject to a further fine for that breach and to potential imprisonment. If it is still not done, then the Department has a residual power to do the work and, as I indicated before, clearly that would have implications for the Department, as the Hon. Member has illustrated, but it is a power that is there and may have to be used on occasion.

The whole question of advertising is a very difficult one. Clearly, most of us advertise local events for a week or two and posters go up here there and everywhere. Whether or not we would, as a community, feel that that should all be subject to control, I would doubt, but there is a need for some control and Members will be aware that in the recent passing of regulations, advertising has been subject to a requirement for a planning application.

There are issues of what is advertising on the side of a van and what is subject to the need for a planning approval.

The Hon. Member, Mr Downie, talks about the use of the Course for advertising, for different purposes. Partly that may be in the hands of the owners of some of the adjoining property, but still subject to planning requirement. So again this is down to enforcement and this particular measure will assist us with regard to enforcement, by enabling the courts to put some additional pressure on those who are in breach.

Local authorities, as the Hon. Member has indicated, may wish to look at their own control of advertising, but that is not a matter that we can influence to any degree.

The Hon. Mr President has commented on whether or not the wording of (3)(c) in clause 1 is superfluous. I think what he means by 'original' and what most of us would interpret as 'original'... I accept that it is not the original 'original' but I do not know how else you could word it, if you do not say to its original condition, former condition perhaps? I think we all know what the intention is –

Mr Lowey: Humpty Dumpty comes to mind, doesn't it?

The President: All I say is that it is covered by (d) anyway, isn't it, because the court could consist proper what they do? Anyway –

Mrs Christian: There may be other matters which the court would wish to add to the simple restoration to original condition. So whilst I accept that (d) would cover that if it were worded slightly differently, I do not think that we are doing any harm by having both (c) and (d) in that subclause.

The President: In that case, Hon. Members, what I put to the Council is that clause 1 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 2, Mrs Christian.

Mrs Christian: Clause 2, Mr President, is the short title of the Bill. It will come into operation on the day in which it is passed, with the announcement of Royal Assent in Tynwald.

I beg to move clause 2.

Mr Waft: I second, Mr President.

The President: The motion, Hon. Members, is that clause 2 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Town and Country Planning (Amendment) Bill

Third Reading approved

The President: We will move straight on, Hon. Members, to take the Third Reading of the Bill, in line with your suspension of Standing Orders to take the remaining stages. Mrs Christian, Third Reading, please.

Mrs Christian: Thank you, Mr President.

Members have been very supportive of this measure. Clearly, we found ourselves in a difficult position when it was recognised by the courts that they no longer had the powers which they previously had, and this had been an omission in the new Bill when it was passed – when the 1999 Bill was passed.

It has not been recognised for some time, because it is only now that we are getting enforcement cases which fall under the legislation of the new Bill. However, it is recognised that this is a substantial weakness of our current position to protect people, neighbours or just the environment in general from those who simply ignore or breach planning control.

I think it also adds a provision in relation to registered buildings. We know we have had issues with registered buildings in recent years and I am sure Members will be very supportive of measures which give us extra protection for those buildings which are deemed to be of particular value in historical or social terms for our community and our history.

I beg to move:

that the Town and Country Planning (Amendment) Bill be read a third time and that the Bill do pass.

The President: Mr Waft, Hon. Member.

Mr Waft: I beg to second, Mr President.

The President: Mr Lowey.

Mr Lowey: Supporting the Bill, Mr President, obviously, may I just say: what is now the timescale for this Bill? Does it have to go to London or is it a local Bill which could be dealt with locally and equally speedily?

The President: Mr Crowe.

Mr Crowe: Yes, I too support the Bill and obviously it is to be implemented as soon as possible.

There is just a question I would ask as to... obviously, it cannot be a retrospective Bill, but any court actions that have taken place, presumably they are lost and we cannot reopen any or take any further action that may be appropriate.

The President: Mr Turner.

Mr Turner: Thank you, Mr President.

I too fully support this Bill. I know, at the First Reading stage, I mentioned specific cases where developments had been not completed. I was of course referring to the fact that those developments were against planning in the first place. Obviously, this will go a long way to rectify the situation where a development has commenced, a stop has been put on it and then you end up with a carcass sitting there for many years. This hopefully will do it.

Also I hope it will avoid developers from making deliberate damage to registered buildings, knowing full well that once damage goes beyond a certain point, demolition is the only real option, therefore circumnavigating the system. Obviously, it will do that.

I know we referred in the early stages to advertising as well and I understand that the advertising around the TT Course is subject to a Department of Tourism Act which I think was an early 1980s Act, maybe 1981, to do with specific advertising around the TT Course. Some of the main concerns are the more commercial banners that appear everywhere, rather than people promoting village fetes and school jumble sales and things. I am sure nobody would want to see those sort of things disappear, but it is the big banners and hoardings that are starting to appear in farmers fields and in picturesque valleys that we would wish to see the end of, as opposed to community events.

With those comments, I am fully supportive of this Third Reading.

The President: Hon. Members, in relation to Mr Crowe's comments, Mrs Christian, I think in moving the Third Reading, you said words to the effect that, previously, the court had these powers and they had been omitted. In that case they have been deleted from 1999, when that Bill came into force, bearing in mind, presumably in 1999, this power was removed at that stage, if in fact that power came into effect at that time. Mr Lowey is pointing out that it has taken five years for that to come in.

Have you any knowledge of when this particular power did become omitted from the court? Have there been any subsequent cases or consequences of action having been taken which may now be challenged?

Mrs Christian: Right, can I deal with that matter first? My understanding is that the powers were effected from

2005, but if that is not correct, I will circulate that information to Members. So we have had a period of a couple of years where the court did not have the power. However, the court had not recognised that fact and had assumed that they were working under the old powers, I understand, until they tried to make an order and it was clarified to them that the power no longer existed.

I cannot answer, Mr President, whether there were any cases dealt with where the power was not correctly exercised. I imagine that the courts themselves will be considering that matter.

With regard to the timescale for the approval of this measure, it is in my view a very local measure. I do not think the Department can dictate how it is handled, but they will be seeking to having a speedy resolution or approval to this and I would hope that it will certainly get to a Tynwald sitting before the end of this legislative session for signing by Tynwald and thereafter approval.

So it is timing issues in mind that move me to seek suspension of Standing Orders and I am very grateful to you all for accepting that the timing issues are critical, because a lot of applications can go astray in a period of months!

With regard to retrospectivity, cases which have been considered since the Act came in cannot be retrospectively affected by this legislation. It will become effective when it is approved, so there has been a weakness in the structure since the element of enforcement came in, which is again a reason why we wanted to deal with this very speedily. There is still the residual power of the Department to take action in respect of breaches that have occurred in the interim period and it will be for the Department to consider, with the scale of the breach in mind, I would suggest, whether or not it feels it appropriate to take action itself to restore any breaches to the original condition.

Mr Turner has referred to a specific case and I might wish to discuss after with him what that particular case was and whether action has been taken with regard to it. He has illustrated too that some people are not cognisant of their responsibilities, with regard to registered buildings, and have sadly, in some cases, deliberately taken action to damage those buildings. So we want to have the strongest possible armoury against that sort of activity; whereas others very readily come forward and seek to have their buildings registered, because they recognise them for the treasures that they are.

The issue about advertising that he comments on also, with regard to commercial adverts being the object of our concerns and perhaps not the local fete adverts, sometimes it is quite difficult to define in legislation what is acceptable and what is not, but I think that we all recognise that it would be not what our community wants to have legislation in respect of those sort of advertising issues. We want our local activities and community events to be advertised over short spaces of time, without the burdensome requirements of bureaucratic planning applications to go in.

With regard to his own concerns and the concerns expressed also by Mr Lowey about the moving adverts: there are issues with the definition of what is an advertisement on a moving vehicle. Those are issues which we think we are clear about definition in the law and are currently discussing with the learned Attorney's Chambers to determine whether or not such adverts might be permitted on a restricted time basis, in the same way as we expect our local adverts to be there for a limited period of time.

However, those are other issues. The Bill, as we have

said, goes to restore to the previous position the powers of the courts in relation to planning breaches. I am sure, from what Hon. Members have said, that they will be supportive of the Third Reading.

The President: In that case, Hon. Members, the motion that I put to Council is that this Bill be read for a third time and do pass. Hon. Members, those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Interesting comment, Mrs Christian, in relation to advertisement on wheels – I know we have passed the Bill so it is on safe ground – but Mr Lowey might remember somewhere in the recesses of my mind, I think there was something cropped up many years ago, when the Isle of Man Transport decided to advertise on buses and I think there might be something there.

Mrs Christian: Yes, Mr President, if it is helpful to Members in the general scene of things, adverts on the side of vehicles which are normally vehicles used for other purposes quite legitimately do not need planning permission. It is where they just park in lay-bys for the purpose of advertising. They can be used but it is when they are not in lay-bys and perhaps they are better somewhere else other than in lay-bys –

Mr Lowey: On dangerous corners.

Mrs Christian: – but we have that issue to deal with in the Planning Division.

Agricultural Tenancies Bill Consideration of clauses concluded

3. Mr Butt to move.

The President: We will move on, Hon. Members, to the Agricultural Tenancies Bill. In regard to this particular measure, Hon. Members, I think we had reached clause 5, Mr Butt, had we?

Mr Butt: Yes sir.

The President: We had completed up to the exclusion of the Agricultural Holdings Act 1969 and we were at termination of the tenancy.

Mr Butt: Sir, we had done all the clauses bar 5, 6 and 7.

The President: Clauses 5, 6 and 7 we need. So clause 5, sir, or are we going through clauses 5, 6 and 7?

Mr Butt: Yes sir. Mr President, these clauses provide for the termination of a tenancy. If a tenancy is for more than five years and either party wishes to end the tenancy on the agreed termination date, written notice must be given at least three years before that termination date. If notice is not given then the tenancy continues as a year-on-year tenancy until ended by giving of the proper notice.

Clause 5 states that the tenancy of more than five years

shall continue from year to year unless three years' notice has been given in writing.

Clause 5(4) which we discussed at some length at the last sitting, means that the parties cannot negotiate shorter notice periods as at 5(1) the notice period states 'at least'.

Mr President, in relation to clause 5(4) where there was a query as to whether tenancies could be surrendered earlier or not, I have taken advice from the legal draftsman, Mr Gumbley. He informs me that clause 5(4) prevents the landlord and tenant agreeing at the outset that a tenancy for a term of over five years shall expire on the term date and not continue as a yearly tenancy unless proper notice has been given. It does not prevent the tenant agreeing with the landlord to surrender the tenancy either before or after the term date.

He goes on to say, Mr President, that the various provisions in the Bill which are expressed as 5(4) saying 'notwithstanding any agreement to the contrary' are for the most part intended to protect the tenant against unfair terms which a landlord might otherwise impose on the tenant by virtue of his superior bargaining power and to give the tenant statutory rights which override the terms of the tenancy agreement.

However, once those rights have been accrued by an agreement, there is nothing to stop the parties agreeing to a surrender if the price is right and the price will of course take account of the tenant's statutory rights under this Bill.

So on the advice I have from the Department and the legal draftsman, Mr President, there is no reason why, by mutual agreement, tenancies cannot be ended earlier than stated if they need to be.

Mr President, I beg to move clause 5 stand part of the Bill.

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

The President: Mr Turner.

Mr Turner: Thank you, Mr President.

With regard to clause 5, I have heard what the hon. mover has said, but I still feel that it is not altogether clear and the whole spirit of this Bill was meant to be simplicity. It was brought to enable landowners who currently do not let their land, maybe to make that land become available for possibly short-term lets, medium term lets etc. I do not think it is altogether clear that the parties can cease the agreement if they both agree, or if all parties agree if there are more than two parties involved in the agreement.

I would like to move an amendment to clause 5, which I believe has been circulated to Hon. Members:

Clause 5

Page 5, line 19: after 'unless', insert '(a) it is terminated by mutual consent of all parties; or (b)'.

Page 5, lines 28 to 29: delete subsection (4).

I think that would make it absolutely clear to those who are entering into an agreement what they can and cannot do. If we are going to encourage landowners who are currently not allowing land to be used for farming purposes, because of the restrictions of the 1969 Act, then I think we have to give some rights there to both parties to be able to be flexible. That was the whole idea of it and I think that by putting this amendment in, it would be helpful. For those landowners

who may be not so keen, it may give them a bit of comfort to say, 'Okay, then yes, we will make this land available', enter into an agreement and go forward.

So that is the reasoning for tabling the amendment to clause 5.

Mr Downie: Mr President, I beg to second and, in doing so, I think that one of the things about this Bill is to try and provide a less complicated way of going about things. There is no doubt in my mind a lot of the land now that is held in the Isle of Man is not always in the hands of the people who want it to be used for agriculture. If we are going to provide a system where it is fairly easy to get into some sort of a tenancy agreement, there needs to be provision there when, for whatever reason, if two people mutually agree that one needs to give up or the other one... there is a mutual agreement in place, they need to be able to get out of that without going and getting involved in lawyers and legal systems. I would have thought that the way to deal with this would be that if we are in a situation where they want to get out of the tenancy, it is entirely mutual, an agreement is signed, it is placed with the Department of Agriculture and that really should be it. It should not be some long formal drawn out issue.

I think the way the Bill is at the present time, it will provide problems for people because we are providing unnecessary hurdles in some areas. Likewise, where it says in the Bill that the tenant has the first right to purchase, as it were, the seller of the land could put a price on that is completely ridiculous. There is no way a young farmer could buy a piece of land which is totally overvalued. There is no provisions in here for valuation and that is another area.

I suppose I am digressing there, but I think the whole object of this is to make access to land more easily available and more flexible to the people who want to get into farming. I think that Mr Turner's amendment does provide for that little safeguard if things do not go wrong and the landlord and tenant can shake hands and agree that they are not going to have a hold on each other.

The President: Mr Crowe.

Mr Crowe: Thank you Mr President.

I have listened to the mover's comments on the legal draftsman giving that assurance. I would like to think that what we are trying to do here is put some stability into tenancies and some reassurance for owner and tenant. I think any farmer who wants to take up a tenancy would obviously be aware that what they are looking for is a longer term than the annual licence that applies at the minute. They would want some assurance from the owner that it would continue for a period – a reasonable period of certainty almost, in the lease.

So you have got up to five years, over five years or annual tenancies, year by year. I think it caters for different circumstances in different situations, so I would like to think – and perhaps the learned Attorney might comment on this – if we approve the Bill as written, bearing in mind Mr Gumbley's comments, is the provision to surrender a tenancy by mutual consent by owner and tenant outside this actual Bill? Is there a legal framework across any agreement in law that would allow mutual consent to terminate any lease under this Act or Bill or for instance under a commercial building or a private dwelling house?

The President: Mr Waft.

Mr Waft: I am just concerned about this, when it says 'by mutual agreement'. For every action there is always a reaction. I am not totally sure as to what happens if mutual agreement is not obtained. Where do they go from there? It just carries on – does it carry on? It does according to this. I am a little bit concerned that this mutual agreement perpetuates the situation for ever and a day, until the lease is finished. I am just a bit grey there, I think, if you can clarify it for me.

The President: Mrs Christian.

Mrs Christian: Thank you, Mr President.

I was not here when this was first discussed, but having read the *Hansard*, I can see why there are some concerns about it not being specifically stated in here that you can have a mutual agreement to terminate. Notwithstanding what the hon. mover has said, I think it would assist those who are in the business, in reading the legislation, to have a clarity about what the position actually is, if we are to support the amendment, which says that it is possible by mutual consent to terminate an agreement.

It does seem to me that in clause 5(1), whilst both parties commit in the first instance to, say, a five-year lease, there is a requirement to give at least three years' notice, by either party, if they want to terminate that tenancy. Under normal circumstances and all going well, that might be reasonable; but I think someone did illustrate a circumstance last week, where maybe there is illness, maybe there is no other member to take over the farm or the lease, where in fact if the tenant were to vacate, it might be possible that the landlord could enter into another agreement with somebody else who could take on the land. It would seem harsh to me that you made someone, if both parties were in agreement, stick to the tenancy agreement.

The Hon. Member, Mr Waft, has said, what happens if you cannot get agreement? Well, then you are legally stuck with the agreement and I think you know that when you go into it in the first place, so you accept what you are heading out on, but circumstances may be such that you would wish to have an agreement on either side.

Presumably, if it was the tenant who wanted to vacate then the landlord may have another option. If it is the landlord who wants them out then that might be a very different tale. But I do not think there is any harm in putting in a provision to allow a termination by mutual consent.

The other issue... Well, perhaps it is in clause 6, Mr President, so I will wait in relation to that.

So notwithstanding what has been said about what the law apparently says, I think that if it is spelt out in this piece of legislation, even if it is, as the Hon. Member, Mr Crowe said, perhaps covered in some other legislation – or he was enquiring whether it was covered in some other legislation – I do not think it would do any harm at all to put it in the body of the Bill, so that anybody concerned about agricultural tenancies can read it and see just what the position is.

The President: Mr Lowey.

Mr Lowey: Again, it is simple. I have got it down in two simple... I am appreciative of the mover telling us the parliamentary draftsman's interpretation.

I come to a simple equation in my mind and it is very much along the lines of Mrs Christian. What do we lose by putting it in? And I would suggest to the mover that we lose nothing.

What do we gain? Again, I think there is a gain. We are trying here to educate people into what I would call a relaxation mode of operating business, clear guidelines of what you can do. If we say to them, 'Look, if a circumstance arises which could not be foreseen when you started the five years, and it is mutually acceptable, then we move on', and I think it is clear there what the intent is.

So I see nothing wrong in supporting the move, other than maybe it having to go to another place. I understand how the Department wish to move it on, but I do think if we are doing the legislation, let us get it right in the first place and perhaps we will not have to come back with an emergency Bill in the future, if it is not actually working.

I would therefore think I am minded to support the amendment.

The President: Mr Waft.

Mr Waft: Thank you, Mr President.

Just to clarify for myself: with regard to the lease, if the tenant breaks the lease for whatever reason and the landlord wants to get rid of him for doing so, would they have any recourse to say, well, you cannot, because it needs mutual agreement before this lease is terminated? (**Mr Lowey:** No.) Is there any hat to be hung on this particular...?

The President: Mr Attorney.

The Attorney General: Mr President, thank you.

I think that when this issue was raised at the last sitting, Mr President, I did suggest that if both the landlord and the tenant wished the agreement to come to an end, that could be done. I think the way I put it was that it would be most unlikely that anybody would complain about that. That was the way I, as it were, countered the provisions of clause 5(4), which says that this section has effect notwithstanding any agreement to the contrary.

The difficulty with clause 5(4) as it seems to me is that that applies to the whole of the section. The danger, of course, Mr President, is I think well illustrated by the example the Hon. Member, Mrs Christian, made and others have made as well, that if for example the tenant were to become ill and wanted to surrender the lease and the landlord wanted to accept the surrender of the lease, nonetheless, if one applies clause 5(4) strictly, the poor sick tenant would have to carry on paying rent, even though he or she could not farm the land properly, and the landlord equally could not obtain vacant possession.

So, as the draftsman has said, clause 5(4) is obviously intended to protect the tenant but it would seem to me that no harm at all would be done in deleting clause 5(4) provided that was accompanied by the amendment that has been suggested by the Hon. Member, Mr Turner.

To take up the point from the Hon. Member, Mr Waft, if a tenant were to be in breach of his tenancy agreement, that is a completely different set of affairs and that might be a highly contested matter, which would have to go to arbitration or to the Land Court, depending on what had been agreed in advance by the parties.

But what we are concerned about here is that by

mutual agreement the tenancy is to be surrendered. I would respectfully suggest that there is much merit in the amendment moved by the Hon. Member, Mr Turner.

The President: Mr Butt to reply, please.

Mr Butt: Thank you, sir.

I am grateful to the learned Attorney for his advice on that. I think, however, on behalf of the Department, I shall have to resist the amendment. I am assured by the Department and by the legal draftsman, there is no need to have an amendment of this nature and that matters, as the Bill stands, will function and that tenants and landlords can mutually agree to do whatever they want to, within terms of the section.

I think the main point to make is about the bargaining power. Mr Waft mentions about the mutual consent. It could be argued that 'mutual' is not always going to be really mutual because of the superior bargaining power of the actual landlord. Maybe because of his power, because of the fact he owns the land, he may be able to impose a condition on a tenant which the tenant reluctantly accedes to because he has no other choice. I think that is the reason why 5(4) needs to be kept there at all costs, to make sure there is ultimately the protection for the tenant, should he need it.

I know this may be the kiss of death to the argument but this legislation has been operating since 1995 in the United Kingdom with these clauses in without any problem. I know sometimes that does not always go well with this Council but that is a fact. I think, with the view of the Department and the legal draftsman and the fact that similar legislation has worked successfully in the United Kingdom, there is no need in my view to amend this clause as it stands.

Again, as Mr Lowey says, there is an issue of timing, although that should not be a factor, the farming calendar does very much depend on 12th November as being a date when this Bill needs to take effect. I know that is outside, really, our main consideration, but I would ask that in my view there is no need for an amendment to this particular section.

I would ask that Members do not support the amendment.

The President: In that case, Hon. Members, what we have is clause 5 and to that, Hon. Members, we have an amendment in the name of the Hon. Member, Mr Turner, which has been circulated to you and the amendment, Hon. Members, is on page 5, line 19, after 'unless' insert, '(a) it is terminated by mutual consent of all parties; or (b)' and then it continues with that particular paragraph; and on page 5, line 28 to 29, we delete subsection (4). So you are putting a part in after the word 'unless' in the first paragraph and deleting part (4).

Hon. Members, those in favour of the amendment, please say aye; against, no. The ayes have it. The ayes have it.

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

We move on then, Mr Butt, to clause 6, please.

Mr Butt: Yes, Mr President.

Clause 6 states that in relation to a year-on-year tenancy, the notice to quit will be in writing and needs to be given at least 12 months before the date it is to take effect.

At clause 6(2), where a tenancy of more than five years has run on to a year-on-year tenancy, the notice to quit for that year-on-year tenancy has to be for three years. An example of this would be where a 10-year tenancy has been agreed between parties and the landlord fails to give the required three years notice in the seventh year of the tenancy, once the 10-year period ends, the tenancy will continue from year to year, until such time as the landlord has given the requisite three years' notice.

Where a tenancy is for less than five years, if either party wishes to end that tenancy on the agreed termination date, written notice has to be given at least 12 months before the termination date. If notice is not given by either party, such a tenancy will continue as a tenancy from year to year, until ended by giving the required notice. Tenancies from year to year, therefore, must also be ended by giving at least 12 months' notice.

There is some flexibility in the proposed system which will enable parties to agree longer notice periods if it is felt appropriate.

Mr President, I beg to move clause 6 stand part of the Bill.

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

The President: Mrs Christian.

Mrs Christian: Mr President, could the mover just clarify, please: it states that for a tenancy which is from year to year – and presumably that includes for a year – notice has to be given before the date on which it is to take effect. So, effectively, you give notice before you sign the lease. Would he clarify that, please?

Secondly, would he clarify – I think he did say it, but I am not sure I picked it up properly – that if a lease is for less than five years, it is a 12-month period notice; if it is actually five years, it can be a three-year notice or it shall be a three-year notice, and if it is not given in a timely fashion for a five-year lease or if it is a more-than-five-year lease, then it is only one year's notice?

I would like some clarification on that, please.

The President: Mr Butt to reply.

Mr Butt: Yes, if a tenancy is five years or longer, it needs a three-year notice period. If then no notice is given and it reverts to a year-on-year lease for a period that is longer than five years, three years' notice would still be needed.

For another tenancy which goes on year on year which is not for five years, that only needs 12 months notice. So say it was a four-year lease, and it ran onto year on year, you would still only need a year's notice. If it is more than five years, you would need three years.

As regards the one-year lease, I think you would therefore have to say at the time you signed the contract, you would give notice as well at the same time, to make sure it ends on that year. If that is not done, of course, it goes year on year beyond that.

The President: Mrs Christian.

Mrs Christian: Mr President, may I just come back on that.

I thank the Hon. Member for that clarification, so it is three years on anything more than five years, unless you fail to give the proper notice effectively or allow the thing to run on to become a year on year.

Whilst I accept the measure, I do see this as being the issue which is provided for, but I think it will see the sorts of situations, where people forget to give three years' notice. We have that sort of situation – or we did have before – on licences and leases for 364 or, more particularly shall we say on rent revisions, where notice was supposed to be given. I know that happened with DAFF from time to time, but if notice is not given in a timely fashion, you are scuppered.

So I can see situations arising where these will run on year to year because in the scale of things, people will forget that in a five-year lease, after year two they have got to give notice. I presume the Department has considered that in formulating the legislation.

The President: Mr Waft, did you wish to...? No. Mr Lowey?

Mr Lowey: No, Mrs Christian is raising a point I think that we raised last week, on the point that the ink will hardly be dry on the paper before you are giving them notice to quit and it is this unsettling thing that we could see.

We were reassured on that, if I may say Mr President, by saying that this Bill has been in operation in the UK along these lines, so there is a *modus operandi* there. Therefore let us suck it and see. This is an interim towards a loosening up even further, later down the line.

The President: Mr Butt to reply.

Mr Butt: Sir, can I just say there has been wide consultation with the industry, landlords and tenants over this and it was their request that three years was one of the terms for a longer lease. I think the effect of it will be that once the tenancy is running and running well and will see no need to actually terminate, they can run on year to year, but they know from the outset that three years is always going to be the notice they give if it is a longer-term lease.

If it is a shorter-term lease, they know from the outset they need to give 12 months' notice and I think it will be a matter of mutual co-operation between the landlord and tenant, knowing full well what they entered into when they entered the agreement, as to how they are going to progress.

It could be forgotten, but I think in the terms of these leases, where it is a longer term, they have more stability, they have got a longer-term future with the lease. I think, having had the consultation with the industry, this is what they want.

I move, sir, this is the section which will accommodate their needs most.

The President: Hon. Members, in that case I put to you that clause 6 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it. Now clause 7, Mr Butt, please.

Mr Butt: Yes, sir. Clause 7 is the clause that states that for a tenancy of more than five years, three years' notice is required.

I beg to move clause 7 stand part of the Bill.

The President: Mr Crowe.

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

The President: Mrs Christian.

Mrs Christian: Mr President, I presume that the provisions in clause 5(1) will take effect in relation to that: if there was a mutual agreement to cease then...

The President: Yes, the mutuality which we have now introduced into clause 5 –

Mrs Christian: Will be applicable to clause 7.

Whilst we are dealing with that, I do notice that the NFU have commented on leaving the 1969 Act alone in their latest publication. Could the hon. mover explain whether they are only concerned with potential changes to the 1969 Act as a separate issue, but are supportive of this measure in respect of land which is not covered by the 1969 Act?

The President: Mr Butt to reply to clause 7.

Mr Butt: Mr President, the point that Mrs Christian was making: the NFU are supportive of this Bill as it stands and had some input into this Bill. The 1969 Act is at the moment being subject to a further review. I believe the results have come in in the last week or so but I have not seen those as yet. There are proposals to amend the 1969 Bill over time, in accordance with the wishes of both the Department and the industry. I believe the results are in, as my colleague at the other side of the Bar may be able to agree, but I am not sure what they are yet. If the NFU have come out saying they want to leave it as it is, that is new to me today, but I will enquire into that.

Mrs Christian: That is for clarification, that is not a comment on this –

Mr Butt: No, they are supportive of this Bill as it stands and they see this as a way forward for...

The President: Do you wish Mr Clague to make a comment?

Mr Butt: Mr Clague, could you comment on the –

The President: In that case, Mr Clague, can I make it plain that, in fact, you are at a distance from the microphone: give your name and the position and then whatever.

Mr Clague: Ed Clague, Department of Agriculture.

Following feedback on this Bill, there was a body of opinion that we look the 1969 Act... so it did go out for local consultation – it is not really a consultation, just seeking views on what people's thoughts were on the 1969 Act, its appropriateness, the need for any amendments or need for appeals. That consultation closed earlier this month. We are just ploughing through the feedback now. There has been a fairly good feedback, I think about 14 responses we have had, which is fairly well split between people wanting to see some amendment to the Act, whilst other people, such as the Manx National Farmers' Union, are saying leave it as is.

Mr Butt: Thank you.

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

Procedural

The President: Now, Hon. Members, I think we had completed the rest of the clauses –

Mr Butt: We did, sir, but you had a query over the schedule.

The President: I had a query over the schedule. However, Hon. Members, I am also aware that on the white paper circulated to us with the amendment for clause 5, Mr Turner is proposing, in fact, the deletion of clause 9.

Now it would strike me, Hon. Members, that if we are to deal with this particular matter it would be better to probably deal with it now before we take the Third Reading, whilst still effectively at clauses stage, if Members are content with that. (*Interjection by the Clerk*)

We would be rewriting history because in fact we have approved clause 9 and I am aware of that. But still, I have to put it to Council, we are aware that Mr Turner is proposing the deletion of clause 9.

I am really in Members' hands, we either do it at this stage, before we take the Third Reading formally, or we take the Third Reading and see what happens at that.

Mr Crowe.

Mr Crowe: Mr President, I think, under Standing Orders, we can make amendments at the Third Reading stage –

The President: We can.

Mr Crowe: – with a sufficient majority, so I think my preference would be, subject to other comments, to stick to Standing Orders.

The President: I am content, Hon. Members, to do it that way round, so in fact there is no particular problem. I just wanted to make sure that we were aware.

In that case, Hon. Members, having completed the clauses stage, I think I did raise that query, as Mr Butt says, in relation to the consequential amendment. Having now looked at the Agricultural Marketing (No. 2) Act 1948, I realise that in fact subclause (2) of clause 1 of the schedule, I now know why that particular measure is in, so I do not think it is necessary, Mr Butt, unless you so wish to go over it at any length.

Mr Butt: If I could just explain, Mr President, that it relates to a committee who decide prices of various products, a long list of them. I think the only one now applicable is milk and to be a member of that committee they must be a producer with a farm of that acreage. It is just an amendment in the schedule to include the Agricultural Tenancies Act 2008, should it be passed. It relates purely to the qualifications to be a member of a committee to decide prices of certain commodities.

The President: Not quite the way I read it, but nevertheless –

Mr Butt: I would appreciate your advice then, sir.

The President: – as I read it, in fact, the original refers to a person who is in occupation of an agricultural holding and, in this particular measure, we introduced the words ‘or land’, so I think of land comprised in a farm business tenancy. I think the bit which is being introduced is land comprising a farm business tenancy, that is the new bit which is being put in here.

So accepting what you say in relation to this, I am perfectly happy.

Mr Butt: Thank you, sir.

Agricultural Tenancies Bill Standing Order 4.3(2) suspended to take Third Reading

Mr Butt to move:

That Standing Order 4.3(2) be suspended to the extent necessary to allow the Third Reading of the Agricultural Tenancies Bill to be taken at this sitting.

The President: Hon. Members, can we go on then to the formal Third Reading of the Agricultural Tenancies Bill 2008.

Mr Butt: Thank you, sir.

Mr Crowe: Mr President, ought we to suspend Standing Orders for the Third Reading?

The President: I think it was asked for, but nevertheless, yes, we will suspend Standing Orders. Mr Butt.

Mr Butt: Thank you, sir. With that request granted, I now read the Third Reading –

The President: No, no, you had better ask first! Mr Crowe might wish to oppose it. I am not sure that he does, but he may. *(Laughter)*

Mr Butt: Thank you, Mr President.
I formally request that Standing Orders be suspended, so that the Third Reading can be read.

Mr Crowe: I beg to second, Mr President.

The President: In that case, Hon. Members, I put to Council formally that we suspend Standing Orders to take this Bill. Are we agreed, Hon. Members?

Members: Agreed.

Agricultural Tenancies Bill Third Reading approved

The President: Now, Mr Butt, you may continue with your Third Reading.

Mr Butt: Thank you, sir.

As Members will be aware, from the various stages of this Bill, its aim is to increase lettings on freely negotiated terms but with key safeguards and to provide a flexible and lasting legal framework. The next few years sees Manx agriculture facing some of its biggest challenges for over 70 years and this Bill is a fundamental part of the Department’s response to those challenges.

The Bill is intended to remove the fear and myth that currently surrounds the letting of agricultural land by providing a simple framework. In addition, the Bill may provide an exit route for retiring farmers who could let their land and receive an income, with the added confidence they can regain the land, if necessary. The Department is strongly of the view that this Bill is an essential step in giving the agricultural industry a freedom to restructure and so to meet the changes which lie ahead.

As I said, Mr President, a version of this Bill has been in operation for some 12 years in the United Kingdom without any problems.

If I could just go to one further point which was raised at the last sitting about the census on land: the Department can confirm that all the land was captured in the census and they know what the land was used for. The part that was missing was what the nature of the tenancy of the occupancy was: they did not have the full details of what was rented and what was owner occupied, how it was actually tenanted. That is the missing figures which they hope to recapture next time. They do know how much land there is and they do know what it is being used for, sir. It is the nature of occupancy they were not sure of.

Mr President, I beg to move:

that the Agricultural Tenancies Bill be read a third time and that the Bill do pass.

Mr Crowe: I beg to second, Mr President.

I just hope that this will give owners and tenants an assurance on cultivation of land and some confidence for young people as well as existing farmers to continue in farming. The proof of the pudding will be in the eating, of course.

The President: Mr Turner.

Mr Turner: Thank you, Mr President.

I am supportive of the principles of this Bill, but I indicated that I do have some concerns on some of the content of it. We were told by the mover that the purpose of this Bill, and indeed it is explained in the explanatory notes that came with the Bill, is to enable land to be let on freely negotiated terms. It goes on to say that the tenancies are to be for negotiation between landlords and tenants to decide what is right for them.

Procedural

**Agricultural Tenancies Bill – Standing Order 4.3(2) suspended to take Third Reading
Agricultural Tenancies Bill – Third Reading approved**

Further notes say that it is proposed that the new legislation does not impose any extended security of tenure beyond the specific length of the tenancy agreed between the parties.

Once you get into the Bill, you find that there is more and more restrictions starting to appear. My concern is that it does not appear to be as freely negotiated terms as was the intent.

The concern I have mainly is with clause 9 and my amendment is:

Delete clause 9.

It takes away a stipulation that a landowner has to offer it on first refusal to the tenant. One would think that if an agreement is in place with a tenant and the ownership of the land changes place, then the agreement for the tenant to remain farming the land is legally binding and presumably that contract would have to continue.

There is provision still in the 1969 Act. It appears from reading the copy that clause 9 is virtually a straight lift of section 8 of the Agricultural Holdings Act 1969 and that obviously remains. So there is some protection there if agreements were made under the 1969 Act. I feel that if restrictions are going to be brought in, then it will put landowners off entering into short-term agreements.

Also, it was mentioned earlier by the Hon. Member, Mr Downie, that there does not appear to be any way of policing what price could be put on the land, so a landowner could offer it for sale at an inflated price, knowing full well that the tenant cannot afford it, or it is an unrealistic price, when really he has already got somebody lined up who is going to purchase it. It could be plans, it could be neighbouring landowners who wish to acquire a bigger acreage, and so forth.

So I think if it is left in, it is rather weak. I do not think it is going to achieve what it is designed to achieve, and at the same time, I also feel that it may just put people off, and the whole essence of this Bill, as it says in the notes, and as we have heard in the opening speeches for each section, that it is meant to be freely-negotiated terms and negotiation between landlords and tenants to decide what is right for them, and that is the powers that we are effectively giving the parties, to get together, negotiate the use of the land for a period, and then hopefully to have that land farmed.

I am sure we are all aware of the difficulties that the industry is facing, and the whole idea of this is to flush out land that is currently not being farmed, and get it farmed, and I think the more we can do to encourage landowners to make that land available, that has to be a good thing for the farming, for the people who are going to farm the land.

That is why I am proposing to delete clause 9, as the section already still exists under the 1969 Act, which I understand will still be available to people, should they wish to use that.

The President: Mr Lowey.

Mr Lowey: Mr President, industry does not need a Cassandra at this stage, but it is life! I am going to feel like a Cassandra, because I am 'woe, woe and thrice woe'. I said at the opening of the First Reading that I did not think it was going to achieve what the Department wants it to achieve.

Let me just say, when they sent out a paper at the start of this, they said:

'The agricultural tenant sector is all but moribund.'

That was the analysis of the Department.

'Although much agricultural land is rented, a substantial amount of this is under seasonal grazing agreements or other short-term arrangements. Such arrangements mean that neither landlord nor tenant can plan ahead with much confidence.'

Then I asked myself, 'Well, we pass this Bill, and is that going to do much?' It will be marginal at best, I am afraid.

I heard the mover of the Bill say this has been in for 10 years in the UK, so I think it is reasonable for me to have asked some friends of mine in the UK, 'Well, has it been a raging success?' No, marginal. So I think the industry has still got some major decisions to take, if it wishes to free itself up.

I have a bit of sympathy with the mover saying, 'Take it out, leave it to the market to get,' then we come back to the... I think we have got to negotiate these things out of existence, not unilaterally. I think we need soft landings, not hard landings, and if, by removing the right to give first refusal to the sitting tenant will make it a hard landing in most cases, as opposed to a soft landing, I think you have got to have a sunset clause in somewhere along the line where you say at the end of 10 years this will have been reached. I do not think we are in that position today, but I do think I will have to support the Bill as is, because I think it is at least an attempt to start to loosen it up.

I wish the Department of Agriculture well. I hope it is a terrific success, but I have got a feeling it will be only marginal. There I am, beginning to sound like Cassandra again, and I do not wish to be. I do realise it is going through very difficult times, but I would like to just put my twopenny-worth in now.

As far as I am concerned, I think the 1969 Act is an impediment, and I also want to actually put it on record that I think, rather than reducing production of the land in a hungry world, we should be increasing production. We live in a very fertile part of the world which could do that, and I think we have to produce food. I think that should be our starting point; not how little we can produce it.

The President: Mrs Christian.

Mrs Christian: Mr President, I find myself on the horns of a dilemma with this particular one!

One can see very well that if the tenant has put a big investment in a piece of land over a considerable period of time they may well feel ownership, even if they do not own it, and so to that extent, it seems a reasonable thing to do to allow them to have the option to buy.

On the other hand, I feel an owner should have a right to sell to whom they wish to sell to. You may not be particularly happy with the tenant you have got at the time, but they may not be circumstances which would lead you to break the tenancy agreement, and what I think this clause might do, as it stands, is move people to go for short tenancies so that they can sell freely when the tenancy is concluded. Whether it will have that effect, I do not know.

The mover of the amendment is seeking to remove this altogether. I think that the issue here is what is it worth, this

clause? As it stands, it does seem that a landlord can ask whatever in the notice, and I do not know whether there is any other provision anywhere where an unrealistic demand, or offer, in a notice on the part of a landlord could be challenged by some other legislation.

It seems to me to be rather a hollow provision in some ways, but on the other hand it does give the landlord a measure of discretion. If it was a tenant that I was extremely happy with and wanted to sell to, I would make a notice offer which was a reasonable offer. If it was one I did not want to sell to, I would make a ridiculous notice offer, so perhaps there is some flexibility in it after all, only if we can be assured, or told, that this is exactly what it says. If the label on the tin says it is only about giving notice and it is not about reasonable prices or otherwise, then maybe it could stay.

The President: I have to make it plain, Hon. Members, Mrs Christian, that at the moment there is no amendment before the Council.

Mrs Christian: Oh, sorry.

The President: It has not been seconded. We are in that position of still dealing with clause 3.

Mr Downie: Mr President, if it is helpful, I will second the amendment just to get it up for some discussion.

I have looked at this particular clause and I can understand where the Department is coming from, but if you take a look at the real world, and if you are on a piece of land as a tenant, margining with Douglas, Braddan or Castletown, the chances are at some time that land may or may not be worth having a go for to see if you can grow a few bungalows on it, or a few other commercial ventures on it, and you then feel sorry for the person who has put his shoulder to the wheel. He has run a small agricultural business from there, and somebody comes along and says, 'Well, we're looking at £260,000 an acre here, can you afford that?' and the answer is he cannot afford it.

If you are looking at the tenant, it puts him in a position of no hope, really, and what would have been good, I think, where we had had the right to first refusal, to have a provision where an independent person was available to value the land and then if there was an issue after that, they could perhaps go to the Land Court and sort it out, but at the present time it is just a straightforward... Yes, the landlord gives his notice. You have got the right to buy, if you can afford to buy, and if not, well tough, you walk off.

I would have thought that, in this day and age, it would be better to come up with something that is a little bit easier, I think, to sell to a person who is looking for a tenancy. I understand the difficulty the Department has, and I am not actually sure, within the legislation, that the Department itself will have some involvement with these tenancies, or is that it, because they do get involved in other areas? I do not think it would be too difficult in circumstances such as this, but I can see both sides of the argument here, and I would like to get the views of one or two Members, if we can, on this.

The President: If I may put my two-penn'orth in again, Hon. Members, and I am reluctant so to do, but in fact what it appears to me, Mr Turner's amendment, is to totally remove clause 9. We need to balance, with the removal of clause 9,

Hon. Members, that in fact we have already approved the exclusion of the Agricultural Holdings Act 1969 section, and particularly clause 4(2), where it says:

'The 1969 Act shall apply in relation to a tenancy of an agricultural holding which is granted under the written contract of tenancy indicating (in whatever terms) that the 1969 Act is to apply...'

So, in fact, anybody entering into a farm business tenancy could actually say at that stage that the Agricultural Holdings Act applies in relation to right of refusal. In that case, the landlord would have the protection – or the tenant would have the protection, whichever way you are looking at it – either way round.

The comment has been made backwards on that one. I think Mr Lowey commented that in fact he had asked agricultural friends in the UK, or whatever, had it had any effect. Mr Clague might help me out even more on this, but my understanding is that in the UK, with the advent of farm business tenancies, there was a loss of, to some extent, the protection which is held in the Agricultural Holdings Act 1969 on the Isle of Man. I think in the UK, they largely lost that element of protection.

I do not know whether Mr Butt has that answer, or not.

Mr Butt: I do not, sir.

The President: Mr Butt, do you wish to ask Mr Clague?

Mr Butt: Mr Clague, thank you. I have no answer to that, Mr President.

The President: Mr Clague.

Mr Clague: Thank you.

Under this Bill, tenancies established under this Bill are excluded from the 1969 Act, so the provisions of the 1969 Act, unless it is intended to invite... In the UK, it is similar to here. I think their Act is 1984 is the similar one to our one. Again, similar to here, new tenancies established under this do not carry forward, to my understanding, the rights from the previous Act.

The President: They still have the rights?

Mr Clague: No, I do not think they do.

The President: I do not think they do either, that is right. That is the subtle difference.

Mr Lowey: My survey of the agricultural industry was two friends that I have in Gloucester, farmers. One is now retired. When I said we were discussing this... 'What is your view? How has it worked since 1984?' I say this without any sort of generalisation, and they said it had not made very much difference, and if it was, it was on the margin – so I borrowed their phrase.

My point is – if I may just continue the debate, Mr President, through you, sir – the true value of land. What is the true value of land? The real true value of land... and here I go back to one of the very first public meetings I ever attended. It was in the Laxey Working Men's Institute, and I heard the late Alderman A J Teare, who was a Member of Tynwald Court, talking about the value of land, and he

opened my eyes as a teenager, when he said the true value of land is what it will produce in food. The reality is we are in a situation now where, because we put roads, water, electric – all the services – in, and planning permission, we enhance the value of that land, and he was making a great play... Well, he would, wouldn't he? He was a socialist. He said part of that enhanced value should come back to the state, as we put in the roads, the water, the electric and all the rest of it.

I did not think he made a bad case. He impressed me, and I have yet to hear to the contrary why that should not be, but having said that, the true value of land is what it will produce, and of course, can it produce buildings, can it produce jobs, can it produce...? Well, there you are. We have opened a can of worms, haven't we? I do think, if we are really interested in maximising what we have got in food production, then I think we have got to get rid of the 1969 Act.

The President: Mr Crowe.

Mr Crowe: I would just like to think that this clause 9 does protect a tenant farmer who may have been on the land for many years, has farmed the land very well and, all of a sudden, the owner comes along and says, 'Oh, by the way, I've sold this land to a developer, and I'm afraid... Tough.' Alright, the lease will continue, because that is a written contract, but...

So I think, morally, the owner should at least say, 'Well, look, although I am selling to a developer, at least I will give you the chance. If you can raise the money in three months, then I am giving you first option.' So I think, on reflection, I would like to see this retained.

The President: Does any other Member wish to contribute? No? In that case, Hon. Members, Mr Butt to reply to the Third Reading.

Mr Butt: Thank you, sir.

In relation to the amendment, may I speak on the amendment?

The President: You can reply as you like, sir. We have an amendment there which has been proposed and seconded –

Mr Butt: Thank you, sir.

The President: – which I will put to the Council before the... But there we are.

Mr Butt: Thank you.

In response to Mr Turner's opening comments about the tenancy agreements being freely negotiated, I would submit that the way the Bill is worded, they can be freely negotiated from the outset. The landlord and the tenant can agree whatever they want in their agreement; it is freely negotiated. They can also set their own limit as to when the tenancy is going to end. The only restrictions in the Act really are safeguards to provide for compensation, appeals etc, which are part of the protection of the tenant, so I think there is a feeling that these tenancies are freely negotiated and will be for the benefit.

As regards the exclusion of clause 9, the 1969 Act has in it something very similar, and if an agreement is entered into under this Bill, it is not a 1969 agreement, so the person

cannot fall back onto the provisions of the 1969 agreement, if they enter into this freely as a farm business tenancy.

As the President pointed out, under section 4, they can still, if they want to, enter into a 1969 agreement, if they want that protection, but in effect they both say the same, that the owner shall give first refusal to the tenant, and that clause is in there because with the consultation with the industry, this is what the industry wanted to retain. They see it for the benefit of the industry as a whole that that clause is in there.

Of course, there is no restriction on the price that might be asked. Mr Downie makes a very good point about, in effect, the location of the tenancy, of the business. If it is on the outskirts of a town where there may be building in the future, both parties will know that before they enter into the agreement, and that will probably take into account what sort of agreement they move into, what length it may be. If they know it might be building land within a couple of years' time, they are going to take that into account when they make their tenancy agreement. So that may affect, quite rightly, the terms and the length of the tenancy agreement.

I would like to thank Mr Lowey for his support. I can tell him that in the UK, they have had a... You can read this, if you wish... A couple of hundred pages' worth of review of how actually the Bill in the UK has worked, and there is an improvement. It is slightly more than marginal, but you are quite right, it was not the panacea they thought it would be, but it has made a difference, and I think that is all we can hope for in the Isle of Man, that it does make a difference. It was not the final solution to everything, but it has been progress. So I would like to thank you for your support.

As regards the possible sunset clause, maybe when the review of the 1969 Act is completed, I am sure there will be something in there which may affect that.

I agree with Mrs Christian that the owner should have the right to sell to whomever they want to, but this protection is still here for the tenant, which has always been there in the past. The industry are comfortable with that and still want to retain that, and so do the Department, because they want the industry to agree, with our consultation with them, that it will give the tenant the protection they have had in the past.

I thank Mr Crowe for his support as well.

I just wondered if the Attorney could help me on section 30 of the Act, which we did refer to in a previous hearing, resolution of disputes, and I wondered if there was any big disagreement over the cost of land etc. Could the tenant use section 30 to perhaps resolve a dispute concerning the offer of the price for the land?

As Mr Downie says, and I think other Members have said, the land is only worth what you think it is worth, and you can ask whatever price you want for land. If you think it is worth a lot of money, you can ask for it. The value of the land is in whatever the person believes it is worth.

So I wonder, Mr Attorney, is section 30 of any use in this to resolve a dispute, should there be one?

The President: It does become quite complicated, in effect, because it also refers there to part 3, Mr Attorney, doesn't it? Part 3 is compensation on termination, so over to you, sir.

Mr Butt: Mr President, I think compensation applies whatever they do, but I just wondered to resolve a dispute.

The President: But it also says any... You are talking about resolution of dispute –

Mr Butt: Yes, sir.

The President: – and in (5)(d), it says ‘any claim for compensation’, so in fact the resolution of dispute of compensation would come under this as well, would it not?

Mr Butt: It could do, sir, yes. That is the question I am asking.

The Attorney General: Mr President, I think probably the real difficulty with clause 9 – and this has been mentioned by several Hon. Members – is that there is no requirement for the landlord to stipulate a reasonable price at which he is prepared to sell. In other words, it does not have to be referred to an independent valuer, and strictly speaking, the landlord could offer the land for sale to the tenant at a price which greatly exceeds any reasonable concept of a fair price.

My recollection of section 8 of the 1969 Act, which I think is a very similar provision, is that it has never been suggested before the Land Court that there is some element of reasonableness that has to be imported into this. In other words, the landlord can indeed, under the Agricultural Holdings Act, offer to sell the land at a price which bears no reference to the true value. I would imagine, Mr President, that the same principle will apply here, that there is no restriction on the landlord as to what price should be fixed by him.

If we look at clause 30 of the Bill, it does say, Mr President, that:

‘Subject to subsections (4) and (5) and to section 31, any dispute between the landlord and the tenant under a farm business tenancy, being a dispute concerning their rights and obligations under this Act, under the terms of the tenancy or under any custom, shall be determined in accordance with this section.’

And then the matter has to be referred to arbitration or the Land Court.

Clause 30(5) does exclude certain matters from the arbitration provisions, and significantly, clause 9 of the Bill, which we are looking at at the moment, is not excluded from consideration, but it would seem to me, Mr President – and it is obviously just a provisional view – that the tenant could not say that there was a dispute concerning any of the rights and obligations of the parties, because there is no obligation or duty for the landlord to stipulate a fair price.

That, in many ways, of course, is the weakness of clause 9, but I cannot see that it is required to be referred to arbitration.

Mr Butt: Thank you, Mr Attorney.
Could I conclude, Mr President?

The President: Continue, sir.

Mr Butt: I thank the Attorney for his view on that. As he has said, in the 1969 Act and this Act, there is no actual stipulation as to what the price of the land would be. Can I just say, though, having had consultations with the Department, the view of the Department is that in most cases the landlord and tenant are equal partners and friendly with each other and there is no real problem over the sale of land. It has happened in the past in the 1969 Act.

There may be examples where maybe land suddenly

gets developed on the outskirts of a major town where there would be a problem, but in most cases there is mutual agreement between landlords and tenants as to the land and the sale of the land and the value of the land, which is not to the detriment of the tenant necessarily. It does give them the first option of the land.

Can I also conclude, Mr President, by thanking Members for their support through this Bill. It was not an easy Bill – it got quite technical in some places – and I am grateful for the support that has been given to me throughout the progress of the Bill.

I beg to move.

The President: Hon. Members, we are dealing with the Third Reading, but first I put to you the amendment in the name of the Hon. Member, Mr Turner, that in fact we delete clause 9. Hon. Members, those in favour of the amendment, please say aye; against, no. I think the noes have it, and as there is a requirement for six, I doubt if it is necessary to put it to the vote, Hon. Members.

So, in this case, I go straight on to the Third Reading, Hon. Members, and what I do is to put to Council that the Agricultural Tenancies Bill 2008 be read for a third time and do pass. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Proceeds of Crime Bill

First Reading approved

4. Mr Downie to move:

That the Proceeds of Crime Bill be now read a first time.

The President: Hon. Members, we move on then to the Proceeds of Crime Bill. Dealing with the Proceeds of Crime Bill, Hon. Members, First Reading, and this is a matter which is in the hands of the Hon. Member, Mr Downie.

Mr Downie: Thank you, Mr President.

Before commencing the First Reading of the Proceeds of Crime Bill, we have with us today Mr Paul Gelling from the Customs and Excise Division. He is available should any technical issue arise that I cannot deal with.

To get into the First Reading then, the Proceeds of Crime Bill updates or amends the Island’s legislation in relation to taking the proceeds of crime from criminals, streamlining and enhancing the law relating to money laundering and making various necessary amendments to other criminal justice provisions.

The primary aim of the Bill is concerned with matters designed to bring Island law and procedures into line with those international standards that other states and organisations, like the European Union, FATF – the Financial Action Task Force – and the International Monetary Fund would expect to see in place.

Much of the Bill is concerned with the amendment of existing provisions. However, it does introduce a number of new elements, such as: a civil recovery regime, whereby the benefit from criminal activity can be pursued through the courts; a number of new orders, but with all but one of these

being, in essence, variations of an existing type of order; allowing restraint orders to be obtained at an earlier stage in an investigation; and enabling confiscation of assets after a conviction to be available for a criminal's general criminal conduct over a number of years, and not just for the particular criminal offence for which they have been convicted.

Mr President, the provisions of the Bill are designed to make the Island a less attractive place for those involved in serious crime to place their ill-gotten gains and to make it easier for law enforcement to pursue and recover such assets as they are found here.

Part 1 of the Bill establishes a new civil recovery regime, allowing for the institution of civil proceedings to recover property in the Island which has been obtained through unlawful conduct.

Part 1 also deals with the procedures when Police or Customs officers seizes cash from a person because he or she has grounds to suspect it is linked to criminal activity. In this respect, the Bill extends this power for use anywhere in the Island and not just where a person is entering or leaving the Island which is the case now.

Part 2 of the Bill removes the artificial distinction between drugs trafficking and other crimes in current law, dealing with confiscation orders that may be made by the Court of General Gaol Delivery following a conviction and the restraint orders designed to prevent dissipation of assets prior to a conviction.

The main changes in part 2 include allowing restraint orders to be sought from a Deemster at an earlier stage in a case than at present. Currently, such an order can only be obtained when charges are laid or at least imminent.

The other major change is to allow the court, where certain crimes are involved or a course of criminal activity takes place over a period of time, to make a confiscation order concerned with the offender's criminal lifestyle for up to six years. At present, a confiscation order may only relate to the particular offence or offences involved in the immediate conviction and takes no account of the fact it may be shown that the defendant is, in effect, a career or habitual criminal.

Part 3 of the Bill consolidates and updates the Island's law concerned with money laundering, again combining the currently separate drugs trafficking and other crimes provisions. One of the main features of part 3 is a change in the basis of suspicion required for the submission of a suspicious activity report to the Financial Crimes Unit by a business in the regulated sector: a change to an objective basis where the person involved has reasonable grounds to know or suspect money laundering. Currently, the prosecution has to prove the defendant knew or suspected laundering and this change is designed to deal with wilful blindness and/or those who may be complicit in the offences involved.

Part 4 of the Bill is concerned with the powers necessary for Police and Customs when investigating money laundering, tracing property liable to confiscation or civil forfeiture and the provenance of any cash that has been detained. This part also provides several new court orders. However, all but one of these are in fact variations of an existing type known as a production order. A production order allows law enforcement access to information and documents.

The new variants deal with situations where ongoing information is required, rather than just a snapshot of a client's account. Where a suspect may have an account at more than one institution and where a conventional

production order cannot be used, perhaps because of the whole of the information or materials being sought may be involved in the crime. The new court order is a disclosure order: this is only used where law enforcement is attempting to trace property that is liable to confiscation or civil forfeiture, and it compels a person to answer questions in this respect.

A person against whom such an order is issued is provided with protection against self-incrimination and information provided during interviews cannot generally be used as evidence in proceedings. All of these court orders require the approval of a Deemster and their use will be governed with a code of practice which will be the subject of further public consultation.

The working group that worked on the Bill has already had discussions with representatives of the banking and insurance sectors on the use of certain of these new orders.

Part 5 of the Bill is concerned with the interaction between bankruptcy and winding up provisions and civil recovery and criminal confiscation. The basic aim of this part is to avoid a defendant using insolvency proceedings to defeat civil recovery or confiscation proceedings. Existing legislation also makes provision to deal with the interaction between the two areas.

Part 6 of the Bill deals with how those exercising functions under the Bill may use or disclose information they obtain.

Part 7 makes provisions for co-operation with off-Island authorities in matters dealt with by the Bill.

Part 8 amends the Customs and Excise Management Act 1986, in order to provide a permanent regime for the declaration of large amounts of cash by persons entering or leaving the Island.

Part 9 contains amendments to the Criminal Justice Act 1990 and 1991 designed to improve the effectiveness and efficiency of those provisions affected. Amendments include allowing for increased use of evidence taken by video link and telephone, and for prisoners to be transferred to and from the Island to assist in an investigation.

Part 9 would also make it an offence for a financial institution to prejudice an investigation by disclosing that it had been served with a notice under section 21 of the 1991 Act, in cases where the Attorney General is gathering information for use in relation to the investigation or prosecution of serious crime in other jurisdictions.

Part 10 contains the various miscellaneous provisions necessary to give effect to the Bill and its contents.

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

Mr Waft: I beg to second, Mr President.

I think this is well worthy of our attention and it is long overdue, in my view. We need to provide all the tools necessary with regard to crimes that have been committed and the finances that have been put out of our reach, as it were. We need to enable those responsible to fight crime in this particular area with every possible help we can give them. The important thing with regard to this, as has been mentioned by the mover, is this Bill addresses the need to meet the latest international standards set by organisations such as the IMF and FATF, and I think this goes very much towards fulfilling our duty in this regard.

Thank you, Mr President.

The President: Mr Turner.

Mr Turner: Thank you, Mr President.

I am very happy to support this Bill, but the one thing that does concern me is that we are seeing more and more euros creeping into our legislation. There is a reference in here which I have seen, but I cannot quite find it at the moment. It says so many euros or equivalent in other currencies. We have the pound in this country: why cannot it be stated as pounds or equivalent in other currencies?

I just think there seems to be some underlying assumption here and I think we should be protecting our pound and no more so than in our primary law.

Mr Waft: Manx pounds.

The President: Mr Lowey.

Mr Lowey: Yes, I have no difficulty at all in accepting the broad sweep of this Bill and what it aims to do and I think to myself then, I have to ask... I am not going to get into the detail, just going to give my own broad sweep of why are we here and why do we need to do it?

I can recall introducing Bills on drug money and crime money 20 years ago. We introduced the legislation with all the same talk as we have today. We need to go after those who are benefiting from crime. Then I said, well, why have we got here and why are we introducing this one? A lot of the Bill is consolidation with a bit of tweaking: I have no difficulty with that because, after 20 years, there needs to be tweaking moved on, they are getting cleverer and they know how to do it and all the rest.

Then I asked myself, well, how have we suddenly just come across it now? To be honest, I know we did not just come across it now, but the reality is I do not think we, as a society, actually tell people what we are doing. There is no public account – ‘we have dealt with nine seizures this year and we have got *x* pounds’ – in other words, a public balance sheet. We may know privately behind the scenes. I still believe that if you have it up in front... People say to me, ‘Look, you know he is involved with drugs: he has got a £35,000 car; he has got an £18,000 a year job’ – you name it, we have all heard the talk – he has been convicted and yet he is still riding around in his £35,000 car etc.

I just believe we should, as a society, jump on these people. They should not benefit from the proceeds of crime, so we are all in favour of that. How do we counteract that? I think we could counteract it, to a larger degree, if we had a public statement of account every year, somewhere, to tell us just how successful we have been or we have not been.

Can I then also say that it says in the explanatory memorandum, at 12, that it is going to place more responsibility on the Attorney General’s Department, but the cost would be matched with the income that we got from this confiscation. Now that is fine, but what comes first, the chicken or the egg? Do we wait until we have got some money in from the confiscation and then employ somebody or do we employ somebody?

My view is quite clear: we employ somebody. I do not expect the Attorney General’s Office, which is under pressure as much as it is, to be doing it and then saying, ‘Well, when you get some money in, boys, you can then get somebody to do it’, because I do not think it should work like that. I think we have got to be adult about this and say so, when we are dealing with the legislation.

The only other criticism I have – and I am part of the system, so the criticism is self-orientated – is we do make haste slowly. From the time we pick these people up to the time we confiscate could be three or four years, and we all know with this modern technology, we can transfer this account to that account at the other side of the world, with the press of a button.

So we need to make more haste and I have got down here, ‘We make haste slowly’: we ought to speed that up, in my view, of jumping on these people when we can. I am sure this Bill in its component part will assist in helping that way and that is why I am supporting it. I just use this to highlight where we can actually put pressure on ourselves to make sure that we have an audit trail, we have a publicly accountable thing, and if we are not doing it, why are we not doing it? I just think we should.

I remember some very big cases where we were dealing with America, where we were instrumental in benefiting a major crime being solved and we got the money from it. But it was almost apologetic, ‘keep it quiet, do not let anybody know’. Well, I think we should let the world know. ‘Come here, do your stuff...’ We are back to what I call our advancement of the Isle of Man with an international status and it has already been referred to, Mr President, this morning, that this is part of FATF, and looking at us as a jurisdiction of note and worthiness and trustworthiness to do business in. ‘Do wrong and you are not going to gain by it’, and I think we could do that by publicly disclosing just what it is – when we finish it. I understand you cannot do it in advance, but you can and should, in my view, publicly let the world know what we are about.

I will be supporting the Bill.

The President: Mr Butt.

Mr Butt: Yes, Mr President, I too will support the Bill and I do not envy the mover having to go through 220-odd sections!

I would like to reiterate what my colleague, Mr Lowey, has just said. This Bill appears to be a consolidation in line with the other Bills we have taken through recently – the Collective Investment Schemes, the Corruption Act and other Bills. It seems to tie in with those as well and actually repeals whole Acts from the past. It also captures elements which are scattered in Bills from the last 20 years to do with enforcement in terms of terrorism and money-laundering, drugs and serious crime. I think it is an all-purpose vehicle for that effect and that is probably the reason we have it here.

As to Mr Lowey’s other point about the information we get, I too remember the money we recovered from America: I was part of that and I believe it was well spent – but I am not sure. There is a mechanism whereby we can find out what actually happens and I have bemoaned this several years in a row about the Chief Constable’s annual report and its lack of information and lack of figures and statistics. I do hope that in future years we do have, in his annual report, these sort of figures thoroughly explained as to what has happened, what has been recovered.

In general, I do support this Bill and I do not envy the mover the next few weeks! Thank you.

The President: Mrs Christian.

Mrs Christian: Thank you, Mr President.

It is not often that the mover of a Bill says we want to make the Island unattractive, but in the context of this Bill, I think it is entirely appropriate that we seek to make the Island unattractive!

I think from the point of view of the average member of the public, this will be welcomed, because very often it is hard to explain why, when someone has been in court for an offence, why previous offences – seizure of previous property – cannot be taken into account. I think that is one measure in here which will be welcomed where people see that they should not benefit from their crimes of a previous case. To the extent that there needs to be a balance of course, to ensure the people who are accused have the proper opportunities to make their case, the Bill has to be welcomed, I think.

The President: Mr Crowe, Hon. Member.

Mr Crowe: Thank you, Mr President.

I too support the legislation. This legislation not only deals with the Isle of Man assets gained through unlawful conduct, but also assets held abroad. In addition, the money-laundering laws are consolidated, updated and reformed as far as criminal law is concerned.

So the need for vigilance by all financial institutions and professionals is important, and those responsible to watch out for money laundering as spelled out in schedule 4. A very wide range of people and institutions is covered and there are two pages detailed which covers not only banking, insurance, bookmakers, auctioneers, estate agents but many others as well.

I think the need for good procedures, training of staff, having a money-laundering officer etc is very important. I would just remark that the responsibility often falls on junior staff to spot and report possible money-laundering offences. If we look at a bank or an insurance company or stockbrokers, they are processing hundreds and thousands of transactions a day and it can be quite awe-inspiring for a junior taken on as a school-leaver, picking up an application for an insurance policy to get £1,000 or £10,000 with a cheque or a payment into a bank and to see which is normal course of business and which is not normal course of business. That is why responsibility passes to a higher person up the chain, supervisors or a money-laundering officer.

So I think we should not underestimate there is a big obligation on the private sector to see that the money laundering works in the way it does.

I can see the Department of Home Affairs is going to be very busy as a result of this Bill. There is a requirement to produce revised money-laundering codes, under clause 157, and in clause 194, to prepare a code of practice for the Attorney General's Department and for the Police and Customs officers. So there is not only a lot of work by the mover in getting it through, which I congratulate him so far on his efforts and will support the Bill through the stages, but there are resulting codes which will have to be amended and introduced as a result of this legislation.

The President: In that case, Mr Downie, in your reply, sir.

Mr Downie: Thank you, Mr President.

First of all, I would like to start by thanking Mr Waft for seconding the Bill today. He did indicate he felt that the provisions outlined in the Bill were necessary; there was a

need for this Bill. A lot of it was bringing former legislation up to date, but he did say that we had moved on now. We are in an international forum and we have got to operate to international standards.

Of our course the legislation before you now is not too dissimilar from what has been in the UK for quite a number of years now, so we are bringing ourselves up to speed and we are doing this with the knowledge that the Island is open to more and more scrutiny. We have the International Monetary Fund visiting the Isle of Man later on in the year, so we want to make sure that our legislation is internationally compliant. I thank Mr Waft for his comments and support.

Mr Turner was concerned that, although supportive of the Bill, there was reference to euros and he thought this was a diminution of the pound really. I think that is further from the truth. The Bill has to have an international context and, of course, if you look at the situation within our trading partners, there is only the UK and ourselves who are currently using the pound; the rest of Europe and Southern Ireland are in euros. Of course, it is quite easy now if people are coming into the Isle of Man from Europe, that is generally the type of currency that they will possibly have with them if they were intending to launder.

I do not know how they cope in Europe, because when you see the value of some of the notes now, you have got five hundred and thousand euro notes, things like that. There is one heck of a lot of money in circulation in Europe at the present time. I think that it is a way within the legislation to deal with the situation as it stands, but of course being a multi-national or an international market place, there will be all kinds of different currency, I would think, moving in and out of the Isle of Man and I am sure that is all covered.

Mr Lowey, why are we here? Why do we need to do it? I think as the next couple of meetings of Council go by, Members will get really intensely involved in here and, after a while, it will become apparent what the requirement is for this piece of legislation. It is quite lengthy but, at the end of the day, what we are trying to do is to consolidate lots of the existing legislation and put it in a form that both the business community and the enforcement officers will find it reasonably easy to understand.

As I said, the equivalent legislation has been present in the UK now for almost 10 years. He is quite right in what he says: there have been people within the community benefiting from the proceeds of crime for a number of years. This legislation will prevent that happening. He went on to say that there are people – you have only got to watch some of the programmes on the TV – who have no visible means of support, yet live a highly lavish lifestyle and it makes you wonder where the money comes from. I think when this piece of legislation comes in, perhaps they will be under even more scrutiny and if they do have a past, perhaps that past will be able to be revisited in some cases. This is all contained within the Bill.

He did say that we have not been doing enough to promote our own success, and that was reiterated by Mr Butt. It was suggested that perhaps there might be some sort of an annual report come out of this or the Chief Constable's Report. I actually think that the Isle of Man in recent years has been very successful. There have been some notable cases where money has come to light and it has been repatriated and likewise some assets that have been seized have been given to the Isle of Man Authorities for distribution, and that has worked very well. Quite naturally, there would be a tendency

not to shout from the rooftops, but there is a balance to be struck. I will be passing it on that the view of Council is that we should be doing more to let the public know that these people are being caught, are being brought to book and in fact we do work well and successfully with a lot of other jurisdictions.

Mr Butt, just quickly: he agreed with Mr Lowey, he described the Bill as an all-purpose vehicle. Perhaps it should be an all-terrain vehicle! He raised the issue about some sort of an annual report, and I have agreed to take that on.

Mrs Christian supported the Bill. She thought that the average members of the public would be welcoming this legislation, especially the areas which were subject to previous crimes, where people had made vast amounts of money and salted it away, with the hope that they would never get caught or the issue would never see the light of day.

Mr Crowe: supportive again; made reference to the cross-frontier nature of the business; the need for greater vigilance now than ever before because of this spotlight that is permanently on us, really. He also raised an issue regarding money laundering and what we do to deal with that. Within the legislation, there is a reporting mechanism now which all the finance areas will be using called a suspicious activity report. It should not really be the responsibility of juniors in the banking and finance world to be monitoring accounts. There will be people specifically appointed with this task to keep an eye on and they would be the ones who were producing any suspicious activity reports and they will come in to the various information-gathering networks and then it will be up to the Customs or the Police then to take those up, as a form of investigation. We are looking at revising our money-laundering codes and this is done on a regular basis.

With that, Mr President, I think I have dealt with everybody's questions. I forewarn Hon. Members now, it is quite a long Bill. I am very grateful for your support, I will do my best to provide whatever technical information you want. I beg to move that the Proceeds of Crime Bill be read for the first time.

The President: Hon. Members, I formally put to Council that the Proceeds of Crime Bill 2008 be read for the first time. Hon. Members, those in favour, please say aye; against no. The ayes have it. The ayes have it.

Procedural

The President: Mr Downie, I understand that you would like to do the Second Reading and the clauses at our next sitting. Is that right? (**Mr Downie:** Correct, yes.) That would be 24th June. So that is when we can alert Members that in fact you would like to do the Second Reading and the clauses at that stage; and then possibly take a Third Reading at an extra sitting in the week of the July Tynwald.

I think Hon. Members, we will play that a little bit by ear if we can, but again that would be the indication given, Mr Downie, that in order to try to progress this matter as well, if we have cleared the Second Reading and the clauses stage on 24th, it may be possible to put in a sitting or a short hearing in the week of the July Tynwald.

Mr Downie: That suits me. I am entirely in Council's hands. We can make an awful lot of this Bill if we want, but I think I am providing as much background information to Hon. Members... There have been some group documents produced about the reasons for the Bill and what I will do over the next week or so, I will get those re-circulated and it will be much easier to follow then.

It is the form of a layman's explanatory memorandum, really, which is –

The President: There is the question, of course, that we could continue to sit this afternoon and deal with the Second Reading, if Members were so inclined. We could move on in that direction, but then that equally requires a suspension of Standing Orders to do that.

Mr Downie: I think, Mr President, the Second Reading will not take very long. It will not be much different from what I have given you today. I have tried to give you the basis of it. The Second Reading will be very similar and then the clauses stage will have a lot more detail.

Mr Lowey: I have no doubt at all we can deal with the clauses, Mr President, because a lot of it is consolidation. It is only the areas where there has been... as I used the word 'tweak'.

I was just wondering if it would help the Hon. Member to reach his timetable, if perhaps, for the next sitting of Council, we started half an hour earlier, at 10 o'clock. I think that might very well give us that little bit of breathing space and instead of hurrying it, we can make haste dutifully. I think we really ought to be seen to be giving it a proper thing and I think another half hour on the day would not harm us at all.

I think there are a lot of clauses. Most of them of course, as the hon. mover has said, were to be what I would call reconsolidation of the existing legislation, so I have no difficulty with that. I am sure Members would not either.

Again, I am trying to be helpful in saying maybe half an hour, to start early, would not go amiss. I appreciate that my good friend Mrs Christian has got a difficulty because of her other commitments. She meets on a Tuesday with...

The President: Well, we can also sit in the afternoon Mr Lowey. I mean to say that that is the timetable. Mr Crowe.

Mr Crowe: That is exactly what I was going to suggest: we reserve the whole day for the Bill. (*Interjection by Mr Lowey*)

Mr Waft: This Bill, Mr President, went through with very little debate in the House of Keys and given a fair wind, we would see it off in a day.

Mr Lowey: Well, I would hope so.

The President: I do not see any particular problem that Members really face and I was just pointing out that, as I understood it, that Mr Downie's progress of this Bill would be to take Second Reading and clauses on the 24th. We will play that by ear and it might be possible then to have a short sitting to take a Third Reading in fact in the July sitting of Tynwald, then we are clear for the summer.

I am not sure, Mr Clerk, is there anything coming towards

us from the Keys at the present time? I was aware that the radio this morning said that, in fact, there was pressure on the Council to get legislation through. They forgot to admit, of course, that, in fact, the reason is that the legislation was slow coming from the Keys to us.

The Clerk: Mr President, there is one Bill for Third Reading on the Keys Order Paper for today. That is the Tree Preservation (Amendment) Bill. Assuming that gets or has got its Third Reading, that will be on our Order Paper next time.

The President: That is the only other measure that we are likely to have, so if we consider that the 24th is likely to be dealing with the Proceeds of Crime Bill as the main Item...

Mrs Christian.

Mrs Christian: Mr President, does that mean we have not any sittings for the next two weeks?

Several Members: No, that is right.

The President: It is called 'TT', Mrs Christian!

Mrs Christian: The week after is not TT, is it?

The President: Clerk, have you got the blue sheet with us.

The Clerk: Yes.

The President: Why are we not sitting on 10th?

Mr Waft: I think it has been on the blue card for a while, Mr President.

The President: It has. I think there is usually the two-week period, and it just happens maybe that –

Mr Waft: My apologies, in fact... because it was down that we would have a gap.

The President: That is the two-week period.

The Clerk: Mr President, 10th has been a gap since the blue card was published, so there are two Tuesdays with no sittings: that is 3rd and 10th.

The President: So our next sitting, Hon. Members, we will be looking at the June...

Mr Waft: Seventeenth in Tynwald.

The President: Seventeenth in Tynwald.
That concludes the business before Council this morning, then, Hon. Members. Thank you.

The Council adjourned at 1.05 p.m.