



**LEGISLATIVE COUNCIL
OFFICIAL REPORT**

**RECORTYS OIKOIL
Y CHOONCEIL SLATTYSSAGH**

P R O C E E D I N G S

D A A L T Y N

(HANSARD)

Douglas, Tuesday, 28th October 2008

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

The Attorney General (Mr W J H Corlett QC),
 Mr D Butt, Mr D A Callister, 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 and Mrs M Lambden, Third Clerk of Tynwald

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THE LEGISLATIVE COUNCIL DEBATES OFFICIAL REPORT

IN THE PARLIAMENTARY SESSION 2008-09

Tuesday, 28th October

Volume 126

Legislative Council

The Council met at 10.30 a.m.

[MR President *in the Chair*]

PRAYERS

The Chaplain of the House of Keys

Leave of absence granted

The President: This morning, Hon. Members, the Lord Bishop has leave of absence.

Welcome to Marie Lambden, new Third Clerk

The President: Hon. Members, we welcome this morning Marie Lambden, our Third Clerk of Tynwald. She is shadowing in the role of Clerk of the Council. Marie's first day with us was, I think, 25th August, and you will have noticed that she was with us in Tynwald last week. We wish her well.

Orders of the Day

BILL FOR SECOND READING

Tree Preservation (Amendment) Bill Second Reading approved

1. Mr Butt to move:

That the Tree Preservation (Amendment) Bill be now read a second time.

The President: We have but the one Item on our Order Paper, Hon. Members, which is the Tree Preservation (Amendment) Bill. It is down for Second Reading, Hon. Members, and I call upon the Hon. Member, Mr Butt.

Mr Butt: Thank you, Mr President.

The Tree Preservation (Amendment) Bill is a short but important Bill. All trees within the Isle of Man are protected under the general terms of the Tree Preservation Act 1993, which this Bill amends.

The Department of Agriculture, Fisheries and Forestry has identified the need to remove any ambiguity surrounding intent to damage or kill a tree, and to increase the scope to prosecute, where a tree is not instantly destroyed by works. The proposed amendments contained in the amending Bill will cover any unlicensed works to a tree that adversely affect its health or long-term appearance, whether with or without intent but with recklessness.

Mr President, the 1993 Act was a milestone when first introduced and it was comprehensive in its protection of trees and in recognising the importance of trees. Since then, there have been occasions when it has become apparent that there is a need to include reckless acts towards trees. Omitted from the original Act was the word 'reckless' and you will notice that in this Bill the word 'reckless' is added to the word 'intentional'. This will give the Department power to pursue a case where recklessness, or a reckless act, has been the cause of damage or death to an important tree.

Mr President, I experienced this at first hand in 2007 at a proposed building site where groundworks were undertaken in close proximity to the roots of several large and ancient trees. Tree Preservation Orders were put upon these trees as soon as it was realised that works were starting, but using heavy plant near the roots of the trees was likely to have caused them long-term damage, which could have led to them dying. It was quite possible that the builders did not know that their actions would cause that outcome, but their actions were reckless as to that happening.

At that time, and indeed until this Bill is passed, there was and is no offence of being reckless as to the welfare of trees and the Department would be unable to take any action to stop such damage. Under the current Act, no offence would have been committed in relation to those trees because they had not been killed or destroyed and the damage to the root system may not have been a deliberate attempt to injure the trees, but simply the builders' recklessness.

There is also an amendment to the time when the

Leave of absence granted
Welcome to Marie Lambden, new Third Clerk
Tree Preservation (Amendment) Bill – Second Reading approved

Department should be notified in the event of urgent and necessary work being undertaken. Formerly, the Department had to be notified as soon as reasonably practicable and the amendment of section 4(1) states that, in any event, the notification has to be within 48 hours after the action was taken.

A third feature of the Bill is the clause relating to planning. Under section 5(4)(a) of the 1993 Act, the Department had a duty to consult the Planning Division whenever it refused a felling licence or issued a licence subject to conditions, and apparently in practice, Mr President, this rarely, if ever, happened. The new clause 2 determines that the Department *shall* consult the planning authority *before* refusing a licence or granting one subject to conditions.

Mr President, I beg to move the Second Reading of the Tree Preservation (Amendment) Bill 2008.

The President: Hon. Member, Mr Callister.

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

The President: Mr Crowe, Hon. Member.

Mr Crowe: Thank you.

I am very happy to support this piece of legislation.

I would think we all recognise that often the root spread of a tree can be as extensive as the branches above the ground, so it can be sometimes difficult for property developers or property owners who are building on a site, building trenches for utilities and services... It is a case of identifying very carefully where the extent of that root spread extends to, so there is a natural onus on developers to see that the root spread is protected.

I know in Planning, when I was there, conditions can be put on trees to preserve them and, if necessary, action can be taken, I should think, in enforcement, but as far as this legislation is concerned, I am very supportive of it.

The President: Mr Downie.

Mr Downie: Thank you, Mr President.

I am in support of the Bill that is before us today.

Most of us know too well, to our disappointment, the large number of specimen and unique trees that have disappeared on this Island over the last few years. It is only a few years ago that you could walk along Tromode Road in Douglas and there were some fantastic chestnut trees there; they were a pleasure to behold. The same thing applied in Noble's Park. There was a very substantial tree lost there recently down to the undermining of it and the cutting of its roots, and then eventually it had to come down. I accept that some people do not perhaps hold trees in as high a regard as others, but, there again, there are times when they do form an important part of the woodland infrastructure in this Island, and I would agree that certain of them need to have some element of protection.

I have one query, however. In clause 1(1), at the very bottom, there is a section that says:

'he or she is guilty of an offence.'

I wonder if the mover can broaden that out for me and tell me whether 'he or she' also involves a company or a

Statutory Board, or someone who comes in, say, as a one-man band who is operating on behalf of a Statutory Board, or an entity that may not be a company. Sadly, a lot of the damage that is done to the trees appears to be done by very small contractors, some of them self-employed. They are not huge corporations, but we need to know that there is an audit trail here and, if somebody goes and purports to do something on behalf of somebody else, the person who is having the work carried out cannot turn around and say, 'Well, it was nothing to do with us; we have employed these men.' There needs to be some clarity, I think.

Overall, I think the Bill, as it stands, will stand us in good stead and it will help to preserve some of the marvellous trees that do exist on this Island.

The President: Mrs Christian.

Mrs Christian: Mr President, yes, I think everyone appreciates that trees add a great deal to our environment, both in terms of their effect on carbon emissions and they add beauty to our surroundings. This is an amendment Bill, so this builds on the other legislation which deals with whether or not you are dealing with self-seeded scrubby things that you can cut down in any case, but this is presumably to protect more mature trees and specimen trees.

I note that in clause 2, there is a provision here for the Department of Agriculture, Fisheries and Forestry to make observations and consult the Planning Authority, where it appears that there is an application on which a tree stands. I do not know to what extent your Department currently does this, but they are going to have quite a lot of work to do looking at applications to see if there are issues in connection with trees.

As my hon. colleague, Mr Crowe, has indicated, the Planning Committee does look at trees when they have applications before them, but there are sometimes issues of timing, and whether or not, if the Planning Committee say, 'Yes, those trees should go,' the Department concurs or not. So I just want to ask the Member what process will the Department have now for looking at applications which involve trees, and that is an awful lot of applications. There are measures taken to try and protect trees where development is occurring, but it is not always easy to ensure enforcement. However, this will strengthen the provision to protect those trees.

The President: Mr Waft, Hon. Member.

Mr Waft: Thank you, Mr President.

There appears to be an element of speed to be able to enable this Act to actually come into being with regard to areas where planning permission has been sought. I would like to think that, when planning permission is sought, they identify trees which need to be felled because of the planning application, and I wondered, if they did not notify and the tree has gone... there is no bringing it back, so... I know when the planning goes in there is usually a notification to the Department of Transport, especially with regard to sewerage, access and egress, water perhaps. I did not know there was any particular need to inform the Department of Agriculture, Fisheries and Forestry, so I just wondered under what concept, when it says:

'Where it appears to the Department that a planning application relating

to development on land on which the tree stands...'

If they are not going to have a monitoring of *all* planning applications and a knowledge, indeed, of where all the trees are on the Island, it is going to be very difficult, until after the event, to suddenly now say, 'Oh, well, you should not have done that,' and 'Oh, well, we did not know it was happening, because we had not been informed, or we had not had oversight of the application; indeed, we did not know there were any trees on the site.'

So there is a bit of a monitoring problem that could arise with this. That is the only thing I find within the Bill, Mr President.

The President: Mr Turner.

Mr Turner: Thank you, Mr President.

I would just like to focus on the fine. I understand we have been talking, in the debate on this Reading, about developers but, of course, this will affect the normal householder, resident and so forth, and I just think, in proportion to some of the Bills that we have been passing lately – we have had fines relatively low – £20,000 does seem a rather high amount. Obviously, I understand the argument that if it was a low fine you could have developers viewing that they could take a hit on maybe £5,000, and on a large development it would be worth them breaking the law, but obviously £20,000 focuses the mind. I just wondered, maybe, if the mover could outline a little bit on how the amount of £20,000... maybe clarify the reasons for that.

I am supporting the Bill for a number of reasons. I know from personal experience... I had an incident not far from my property, where I came home and found that trees fairly close to me had been lopped so severely they looked like a row of telegraph poles. I am pleased to say they are actually growing back now and the work has been done, but obviously there does need to be a mechanism for people who, maybe, deliberately lop trees, knowing that they are not going to survive. Obviously, we want to try and avoid that, so I am supportive.

I would like a little bit of clarity on the fine. I have possibly answered that myself, but I would like to hear that from the mover.

The President: Mr Lowey, Hon. Member.

Mr Lowey: Thank you, Mr President.

Like most of my colleagues, I will be supporting this Bill because of the way in which it is being presented, but I just ask myself: will the Bill actually meet it? I would like a definition of 'a tree'; what is a tree? We have heard of mature trees, we have heard of saplings, and there is something in between. When does a little tree become a grown-up tree? In other words, does it get protection from the day it is sprouted, or does it get protection from the day it is over a certain size? I am sure that must be somewhere in the definition, but I think, just for clarity, what is a tree?

Mr President, we all get invited to talk at various groups at one stage or another and I regularly go, and people say to me, 'What makes you tick, and what are your passions?' I have got two passions in life. I lead a very sad life, of course, obviously, but trees and hedgehogs happen to be high on my list of passions. I am not in favour of capital punishment, so I cannot put the penalties up as much as I would like. The

nearest I would come is deportation, and when I see the fine – answering my good friend over there – I think £20,000 is erring on the low side. I do think you have got to have a conviction rate.

Can I then come to what I would call my concerns, and I would like the mover, if he could please today, to tell me... At the end of clause 1(2) on page 2, it says:

'In section 4(1) of that Act, for paragraph (d) substitute –
“(d) that notice in writing specifying the action taken and explaining the need for it was given to the Department –
(i) as soon as reasonably practicable, and
(ii) in any event, within 48 hours after the action was taken.”'

I am reading that in the context that here am I, I have rung through to the Department, waited for a reply, but I have taken the action and I have got to report on that action after it has happened. So, if I have been lopping trees and I have cut them to such an extent that they die, it is alright: I have reported to you within 48 hours. I hope I have made the point clear. I am sure there may be other areas in section 4(1) of that Act that explain it but, as written... and that is the point I am making.

Other than that, I think tree preservation is important. People have explained today that they have seen trees in various parts of the capital under attack. I remember feeling very aggrieved, coming into work past the Mount Murray, to see trees collapsing as if there had been an overnight tsunami, and nothing was done about it by any of the authorities. I found that offensive, because everybody was agreed that those trees were an important part of the landscape. So the need for it I think has been recognised, and I am sure this Bill is meant to do it. I just wonder whether the wording is going to make it as effective as it could be.

The President: Mr Lowey, in your query in clause 1(2)(i) and (ii), I think you said 'as soon as reasonably practicable, or in any event'.

Mr Lowey: No, I said –

The President: In fact it is 'and in any event'.

Mr Lowey: 'and in any event, within 48 hours'.

I stand corrected, sir, but still the point, I think, is valid, whether it is an 'or' or an 'and'.

The President: I am glad you raised the query as to what was a tree, because Mrs Christian made the comment that, presumably, this Bill is to protect mature and specimen trees. Unless we know what a tree is, what is the point of moving down the road to start with? (**Mr Lowey:** Absolutely.)

Mr Butt to reply, sir.

Mr Butt: Yes, sir. Thank you.

I can give the definition of a tree, but first I will come to those who responded, and I am grateful for the support everybody has given to the principle of the amendment Bill.

Mr Crowe is quite right about root spread. In fact, one of the main reasons for this Bill coming forward was the incident at Noble's Park, where apparently a beautiful specimen tree was destroyed – had to be destroyed – because of damage done to the roots by a plant operator in the vicinity who damaged the roots, which was a similar scenario to the

building site I mentioned before, and that was one of the spurs for this Bill coming forward. I think this Bill, when – if – passed, would act as a deterrent to builders and people operating in that area to be more careful when they are near large trees and to be aware that the root systems are, as Mr Crowe says, extensive and need to be protected.

I thank Mr Downie for his support as well, and he also mentions the Noble's Park incident, which was one of the spurs for this Bill. His query was about the 'he or she' for the person committing the offence. Obviously, from my reading of the Bill, the person who cuts down the tree would be liable for the offence, but also, if you look at clause 1(1)(d), it is also any person who causes or permits another to do anything falling within the paragraphs (a), (b) and (c). So that would be also the builder himself or the operator, or the person who gave the instruction for the tree to be cut down, and I think 'person', under that definition, would include a company. Maybe the Attorney General could help me on that.

The President: Mr Attorney.

The Attorney General: Mr President, yes, I hope to help.

Section 35 of the Interpretation Act 1976 makes it clear that:

'Words in an enactment importing (whether in relation to an offence or otherwise) persons or male persons shall include male and female persons, corporations (whether aggregate or sole) and unincorporated bodies of persons.'

So it includes companies, partnerships, Statutory Boards and so on.

Mr Butt: Thank you for that. I think, the way this section is worded, it covers the person who does the actual cutting and the person who causes or orders the cutting to be taking place.

Mrs Christian is also supportive and mentions the fact that trees are essential for our wellbeing into the future with their sucking-up of carbon-dioxide, which I think is not their main function but, of course, the beauty of them is important, as well. As regards planning, the Department does recognise there is going to be a lot more work involved in this. They will have to have a regime in place whereby, whenever they are asked to grant a licence to cut down a tree, they will then have to consult the DoLGE Planning Office to let them know that this is what they are trying to do. It is to try to get better liaison between the planning authorities and the Department, and they are aware it will require a lot more work on their part.

Mr Waft's is the same query, in effect. It is, in effect, a reverse of what happens now. At the moment, licences are given without Planning being aware of it. In this case, in the future, Planning will be aware before the licences are actually... Mr President is shaking his head at this. It is the duty of the Department that they *shall* notify Planning before they grant a licence.

Mr Turner, the fine of £20,000: in the original Act of 1993, that was the fine then, in 1993, and obviously it was considered to be sufficient 15 years ago. This would be a deterrent for those who do have considerable financial means, in effect builders and developers. If the fine was less than that, perhaps they could, with reasonable financial impunity, be able to destroy trees and take the consequence

of a fine without it affecting their operation too much. A fine of £20,000 is a deterrent for those people who may wish to override the law with impunity, but it would not affect the ordinary householder, because fines are always levied by the courts on the basis of the financial ability of the person to pay and the circumstances of the case. So I think the fine is sufficient.

Mr Lowey asked for a definition of a tree, and in the original Tree Preservation Act the following are not trees: a dead tree; a fruit tree on land comprised in an orchard or garden; a coniferous tree in a plantation grown for commercial purposes; or any tree, not being a registered tree, with a diameter not exceeding eight centimetres, or in the case of underwood, not exceeding 15 centimetres, measured over the bark at a point 152 centimetres above the ground. I think any tree that does not fit those definitions is a tree which would fit within this amendment Bill.

I thank Mr Lowey for his comments and appreciate he has a passion for trees and hedgehogs. Maybe we should have a hedgehog preservation Bill before us, as well.

His question about the notification about actions taken: in the original Bill, section 4(1) relates to actions that are taken where the action in question was urgently necessary in the interests of safety or health or for the preservation of the tree in question, and if it is not possible to meet those needs by remedial or repair works or temporary measures. So, in effect, there has to be an emergency action taken. The action is taken, and then after the event the Department had to be notified as soon as practicable, but in future they also, in any event, need to be notified within 48 hours of the action taken. So it is only in relation to emergency actions.

Mr Lowey: Such as a storm and it is dangerous, yes.

Mr Butt: Mr President, I think I have covered all the points raised by Members, and I move that the Second Reading –

The President: Just for my own purposes, Mr Butt, before I put it to... Could you just explain what you meant... You read out the bit about 8 centimetres, and then, in the case of underwood, with a diameter not exceeding 15 centimetres. Could you explain what you mean by 'underwood', please?

Mr Butt: I believe 'underwood' means items such as scrubland, such as gorse bushes and the like of that which is not a defined separate tree, but again I may be wrong in that, Mr President.

The President: So in fact the felling of a 'tree', in your definition is 8 centimetres, but if a gorse underneath has diameter 15 centimetres, it becomes a tree?

Mr Lowey: It would be a mighty good gorse bush!

The President: That would become a tree.

Mr Butt: It could not just be gorse itself, but other scrubland, as well, that could exceed that.

The President: Anything that became 15 centimetres. Thank you.

Mr Lowey: Could I ask –

The President: No.

Mr Lowey: – for clarification.

The President: Okay, Mr Lowey.

Mr Lowey: Thank you.

He said planning, you *shall*, and you have introduced it: DAFF now *shall* inform planning.

Mr Butt: Before they issue a licence.

Mr Lowey: Before they issue a licence. What is the penalty if they do not? Is that a defence?

Mrs Christian: Mr President, I just feel that is not what the clause says, but I will come to that when we get to clauses.

The President: Mr Butt, would you like to reply, sir?

Mr Butt: Yes, sir, that was my interpretation of the clause. They shall consult the Planning Authority before refusing or granting, subject to conditions, a licence to cut down a tree on land affected by a pending planning application. That is how I read the clause, and that is how it is defined in the explanatory memorandum.

The President: Okay, Hon. Members? In that case, what I do is put to Council that the Tree Preservation (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.

Tree Preservation (Amendment) Bill Clauses considered

The President: Now, Hon. Members, we go straight on, on this occasion, to our clauses stage, and I call upon the Hon. Member, Mr Butt. Clause 1, sir.

Mr Butt: Thank you, sir.

Clause 1 of this Bill provides that anyone who recklessly destroys or damages a tree is deemed to have committed an offence. Damage is to include cutting down, uprooting, topping or lopping a tree. This clause adds the word ‘reckless’ in addition to ‘intentional’. It is not, however, an offence to damage a tree for which a licence has been granted by the Department for undertaking any work on any tree.

There is also a requirement for anyone who has to undertake emergency work on a tree, to notify the Department within 48 hours of such work.

I move that clause 1 stand part of the Bill.

Mr Waft: I beg to second, Mr President.

The President: Mr Callister, will you second?

Mr Callister: Sorry, I beg to second.

Mrs Christian: Mr Waft seconded.

The President: Did he? Right, okay. It is accepted that Mr Callister has seconded, Hon. Members.

Mr Callister: Yes, indeed.

The President: Mr Downie.

Mr Downie: I just want to raise an issue about the penalties and fines on summary conviction. The mover did say to us that the figure of £20,000 has been on the books for at least 15 years. I do not want to spring anything on him, but I wonder if he could possibly tell us: what is the maximum fine that any court has imposed to date?

Off the top of my head, to try and be helpful, I know of a case where there was a fine of £4,000 imposed at one time. I am not aware of any higher fines than that but, given that, when you are talking about the development of a plot of land now, for development purposes, where there is a specimen tree there, that plot of land itself could be worth £150,000. Access to some of these areas for development, a row of specimen trees could be the key to getting in there – access and egress – and I still feel that some unscrupulous person would be prepared to take a hit and get rid of a tree if it only cost them £5,000, £10,000, £12,000. We do put these figures in, the maximum, but most cases when they come before the courts, they are dealing with a first offence, so a much lesser figure is generally awarded as a fine.

If the hon. mover is happy with this, I am prepared to accept that, but I do think we need to look more realistically at having some legislation which does have some teeth in it.

Thank you, Mr President.

The President: Mr Watterson. (*Laughter*) Sorry, Mr Turner.

Mr Turner: Thank you, Mr President.

Yes, with regard to the fines, I also thank the mover for explaining during the Second Reading. Of course, my actual point – I know Mr Lowey was in favour of deportation and various other methods – but my point was that the figure in comparison to other Bills that we have put through, for some quite serious offences, we have had lesser fines. But I understand that we are potentially dealing with an industry here who, as my colleague, Mr Downie, said, could abuse the system. Therefore, we do need to make sure that the fine is appropriate.

I do accept what the mover said in the previous Reading as well, that the courts will take into account if it is a privateer who may not have had the knowledge with regard to a tree on a private dwelling, for example, but I, too, would like to know if the mover has any information on what sort of levels these fines have been. I think Mr Downie is right. We do need to have some teeth in some of these to stop abuse.

The President: Mr Callister.

Mr Callister: Thank you, Mr President.

On the matter of the fines, I would have thought £20,000 for a small builder who had removed a tree recklessly would be a substantial amount. Now, when you come to the builder, the contractor who may remove a row of trees, half a dozen trees, five or six trees, or whatever, according to this, he would be liable to a fine per tree, because it defines here destroying ‘a tree’, not a series of trees so he could be facing, in that

case, £100,000 maximum fine. (*Interjections*)

The President: Mrs Christian.

Mrs Christian: Thank you, Mr President.

My interpretation is as Mr Callister has just indicated, but it also seems to me that two persons could be fined for the same offence, one for actually committing the offence and the other for permitting it. So, we could be into quite a lot of argument here about who did permit, if it was alleged that they were permitted.

I can also see arguments about whether or not topping, lopping were carried out in a manner such as to be likely to destroy it. Presumably, someone could have a defence that it was not their intention or they did not believe that what they did would destroy the tree. So, there seems to be room for argument on that particular score, which is fair enough. I think that, with a fine of this size, we could see some argument coming forward, or potentially, at that size.

My concern about this clause – well, any clauses really – is what steps the Department might take to make it widely known that these newly introduced – if this goes through, they would be newly introduced – provisions exist. It is going to be quite a shock to someone, if they are not familiar with the law and they suddenly find themselves in court, subject to a fine of this order. So, I do hope that consideration is given to making people aware of the changes in this Bill.

Other than that, Mr President, I cannot argue with the principles here, because there is another route. One can go to the Department and get a licence. If you do not get a licence, okay, that tree needs preserving.

What I do think that this may be useful in relation to is where, for example, there have been planning approvals given, provided that trees are appropriately protected before development takes place. One can see the reckless element of this coming into play there, where, if they had not protected it in accordance with the parameters of the planning condition, they may well recklessly damage the trees and this gives scope to the Department.

The President: Mr Waft, Hon. Member.

Mr Waft: Yes, thank you, Mr President.

Much has been said previously, but the other thing that I was concerned about is when you have a number of trees, it is worth keeping a weather eye out for nesting birds and the time of year. I know it is covered by the Wildlife Act, but they need to bear that in mind, when they are given permission to fell trees.

The President: Mr Crowe.

Mr Crowe: Thank you, Mr President.

This subject of tree preservation is very relevant and it must be happening all the time because in today's *Isle of Man Examiner*, there is an advertisement about the Tree Preservation Act. I think the key word – I was looking at in the advertisement – is 'intentionally' destroy a tree or 'intentionally' damage a tree. Now, it would appear from the latest legislation that we are looking at that the question of intentionally or accidentally must be a fine point. I think including the word 'recklessly' absolutely brings clarity to this.

So, I am happy to support clause 1, because it puts a

greater onus on the individual to act responsibly, so that they do not do anything to damage the tree in a reckless manner. So, it is a greater protection to the Department in this way.

The President: Mr Lowey.

Mr Lowey: No, sir, not on clause 1.

The President: Okay. In that case, Mr Butt.

Mr Butt: Thank you, sir.

Just in relation to Mr Downie who mentioned the fine of the £20,000, as did other Members of Council, can I just reiterate that this Act has been in operation since 1993 and there have been several prosecutions, over the years, for people destroying and damaging trees.

I do not know if the £20,000 fine has ever been used as the maximum amount. It is quite rare, I find, in fines, that the maximum amount is ever imposed by a court. It is usually a gradation up to the maximum. But I am aware that many people have been fined for contravening this Act and I do believe that it is per tree. I am aware of one incident where there were fines in relation to each tree. So, the figure can be quite substantial, if it was imposed to the maximum.

But, as regards the £20,000 fine, the Act has been acting successfully for many years without any demur from anybody and it seems to be doing its job, to a certain extent. Of course, as Mr Downie says, it may not stop the unscrupulous person who wishes to carry on regardless, but at least it is some deterrent to taking those actions that might damage trees.

Mr Turner made the same point again and Mr Callister said, would it be per tree? Well, as far as I am aware, it is per tree – I think Mr Attorney has agreed with that, as well.

Mrs Christian says that, in effect, two persons could be fined in relation to these offences. Now, I think that happens in other offences, too. If somebody conspires with somebody to make something happen or agrees that something should happen, both parties – the person who does the act and the person who encourages it – can also be fined and that is quite common throughout our judicial system.

She also mentions the fact that the Department needs to make this known that this is now a change in the law, that 'reckless' is an element in the make-up of the Bill. I agree with her wholly. To my mind, this should be now a deterrent to people to stop them acting recklessly towards trees, not just a penalty, but maybe this will deter people from taking action which they should not do. I hope the Department will take all steps, if this is passed, to make sure that this is publicised. As she quite rightly says, if people need to cut a tree down, they can always apply for a licence – there is always that option.

Mr Waft makes a mention of wildlife regarding the removal of trees. From my short spell in the Department, I am sure that the Forestry people are in touch with the Wildlife Division and will understand the implications of issuing licences at the wrong time of year.

Again, Mr Crowe mentions the reckless element. If you look at the clause, the only two additions in the first part are the words 'or reckless'. That is the only addition, alongside 'intentional'. 'Recklessness' is a well-known phrase that the courts use quite often. They understand the definition of 'recklessness' and how it applies to many Acts. The courts will be able to interpret what is reckless and what is not.

With that, Mr President, I beg to move that clause 1 of the Bill be passed.

The President: The motion, Hon. Member, 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 and probably clause 3 as well. Mr Butt, please.

Mr Butt: Clause 2 imposes a requirement on the Department, where it appears to the Department that a planning application relating to development on land on which a tree stands has been submitted to the planning authority, to consult the Planning Office before it considers the refusal or granting of a licence in respect of a tree on land affected by the planning application.

Mr President, I beg to move that clause 2 stand part of the Bill.

The President: Mr Callister.

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

The President: Mr Lowey.

Mr Lowey: I am trying to get my head around this and I am not being pedantic – I hope I am not, anyway, because the mover knows me better than that.

If we take subsection (4A):

‘Where it appears to the Department’

– that is DAFF –

‘that a planning application relating to development on land on which the tree stands has been submitted to the planning authority and has not been determined, the Department shall consult...’

Now, I think the word there is ‘shall’. I understand that is new. But it is only where it appears to the Department. So, therefore, do I take it now that DAFF will be scrutinising all planning applications? Or is this only where I, as an owner of some land with a tree on it, have applied to the Department for planning permission to remove the tree?

I still have not really got my head round what happens if the Department does not comply with the instructions in this clause and, for the Department – I am talking now about DAFF – would it be a defence for me to say, ‘Well, I applied to DAFF and I expected them to tick all the requirements’? I believe that part of the defence... Again, I come back to my Mount Murray thing, that nobody seemed to be taking responsibility – ‘Well, I said this.’ ‘No, I did not.’ ‘Yes, you did.’ ‘Yes, I did.’ And, therefore, they got away with it! Does this tighten that up?

The President: Mrs Christian.

Mrs Christian: Mr President, yes, I am quite keen to clarify what the process is going to be here. Reading it again, it talks about ‘the tree’, so we have to assume that there is a specific tree that DAFF have their eye on, presumably as the mover indicated, one for which an application for some action has been submitted – presumably a licence has been applied for.

It is certainly the case that when a planning application comes in with trees on a site which may be affected by the proposed development that the Planning Committee and

the planning authority look at the position with trees and, where they feel it is necessary, relate to DAFF. This seems to work the other way round and will require the Department, wherever a licence is applied for – and perhaps I am getting... I hope the Member will confirm whether this is the right interpretation. If a licence is applied for, they then have to check whether there is any planning application in relation to the place where that tree stands. Is that what this seeks to do?

And then, it says, ‘where it appears to the Department’. Does that compel them to check the planning applications or do they only do it if they think there might be a planning application? If they have ascertained that there is a planning application, then they shall consult; but it is not very strong on the fact that they have to check.

I would just like him to clarify what he thinks the process will be in respect of this particular provision.

The President: Mr Callister.

Mr Callister: There are a number of people who are much closer to Planning Committees than I have ever been here, but I just wonder if the term ‘has not been determined’ is important in this clause, as to what that means. If it has been determined, then there is no problem to consider and if it has been determined, presumably it means a licence has been approved and a licence has been given for the cutting down of the tree.

Now, if I read it that way, then we are talking about, maybe, isolated incidents outside of planning which, in themselves, are incidents that do not come into the normal system. I may be reading that wrongly but the determination of the decision on the licensing seems to be an important part of that clause.

The President: Mr Crowe.

Mr Crowe: The way I read this is that there are two situations. Any person with land owning a tree can apply to the Department of Agriculture, Fisheries and Forestry for an application to fell that tree or to limb it or whatever – I have actually done this process. The Forester will come along, they measure the tree and they will issue a certificate to carry out the work that is applied for or not, as the case may be. So, that is situation (a), where it is in the hands of the Forester and the Forestry Division.

Reading this piece of legislation, it is only talking about where there is a planning application relating to the development of land on which the tree stands and, once that application has been submitted to the planning authority, the Forestry Division or DAFF then must, shall consult the planning authority before refusing a licence or granting it. So, I think that is the way I read it. It is not otherwise. It is not every tree in every incident. It is just those which are subject to a planning application.

As my hon. friend, Mrs Christian, has said, the Planning Committee... In fact, the advertisement that is in today’s paper is saying that anybody who puts in a planning application where it involves trees, the planning application must include an accurate tree survey giving details of the trees in relation to the proposed development. I think, from my memory, a developer or an applicant will mark those trees which are to be retained, those that they wish or feel should be removed, which the Planning Committee can then decide

whether to agree to be removed or not.

But the question is of it separating the two responsibilities from Forestry to the joint one of the Planning Committee and the Forestry Division.

The President: Mr Waft.

Mr Waft: Yes, Mr President.

It is just the observation and the monitoring of the situation. People, sometimes, think about trees being in the rural area where, in fact, there are a lot of trees in the urban area and they are equally as important, especially with regard to our carbon footprint these days.

It is just the situation with regard to the Planning Committee and DAFF and somehow they look as if they are two stools that could fall in the middle, if we do not actually get the administration of this sorted out. There may be mistakes made, unless it is clarified and people are informed earlier on, before they start looking at cutting down trees.

The President: Mr Downie.

Mr Downie: Thank you, Mr President.

I was under the impression that when an applicant filled in any planning application, there is a box there which, quite clearly, says, 'Are there any trees on the site?' And, from there, there is 'Are any of these registered?' and so on. What you have got to take into perspective is that about 75 per cent of planning applications do not involve trees. Lots of them are for small extensions and all the other things that go on within the urban conurbations themselves and it is only occasionally that you will get an incident involving a tree.

I understand that the Department of Agriculture, Fisheries and Forestry actually monitor these applications now, because if there are trees indicated, there is a mechanism where they are asked for an opinion; likewise, the Fire Officer looks at all the applications as well. They have a day when they go in and go through the files and so on.

So, I would assume that there is a system in place now. I think what we are looking at here is an opening up of another avenue, so that there is a better collation of information.

I listened to what my hon. colleague, Mr Lowey, said about the Mount Murray. The big problem that arose with the Mount Murray and the loss of trees was that when planning consent was granted, it was granted for a Master Plan. The whole area received consent and there were no conditions put on relating to the trees and at no time, as my understanding is, were the trees ever registered. So when various aspects of that development opened up, sadly the trees came down.

It was on the back of the Mount Murray Inquiry that provisions were made to make sure that there was a proper control on tree felling and so on, and there were lots of talks in the Departments, at that time, about preserving our trees. So, that is one that we did lose, but I think Hon. Members will agree that, since that time, the Department and its staff have been much more diligent in their approach to trees.

But I honestly think this is a good clause here. It is one that should give the Bill a bit more strength.

The President: Mr Attorney.

The Attorney General: Thank you, Mr President.

Mr President, Hon. Members will have noticed that the amended clause 3 of the Act – so this Bill is amending

the 1993 Act – section 3 of the 1993 Act, as amended, still maintains the process of obtaining a licence and you will see that at the top of page 2 of the Bill. So:

'Subsection (1) does not prevent the cutting down, uprooting, destruction, topping, lopping or damaging of a tree in accordance with a licence granted by the Department under this Act.'

When we, therefore, Mr President, turn to clause 2, which we are considering now, section 5 of the 1993 Act, which deals with licences, has to be looked at, to give this new subclause its context and meaning.

If I may, Mr President, section 5 of the 1993 Act, as proposed to be amended, will tell us that an application for a licence must be made to the Department in writing by a person having such an interest in the land on which the tree stands as enables him, with or without the consent of another, to take the action for which the licence is sought.

We are not really concerned, Mr President, with an application by a developer for the development of land as such. What we are concerned with here – the context is concerned with someone, either an owner or a tenant, say under a long lease, who wants to have a tree either cut down or lopped and he applies to the Department for a licence. So, that is the context in which this new clause is to be considered.

Now, at the moment, under the Act as it is at the moment, Mr President, the Act states that, before refusing a licence or granting it subject to conditions, the Department shall consult the planning authority. That is what the current law says. If you want to have a licence, you apply to the Department and the Department, in turn, has a statutory duty to consult the planning authority. And it is just that aspect of the legislation which is being amended.

So, the new clause (4A) says:

'Where it appears to the Department that a planning application relating to development on land on which the tree stands has been submitted to the planning authority and has not been determined, the Department shall consult the planning authority before refusing a licence or granting it subject to conditions.'

So, it is very, very similar to the current statutory provision that we have; but it does, as it seems to me, impose a duty on the Department to check with the planning authority, whenever an application is made to the Department for a felling licence or a lopping licence. They will not have to check every application for development. It is only when an application is made for a licence to fell a tree and they have to then check with the Planning Committee. I hope that it is of some assistance.

The President: Mr Turner.

Mr Turner: Yes, thank you, Mr President.

Mr Attorney has answered a couple of my points, actually. I suppose this may assist in preventing any conflict between DAFF and the planning authority.

What I wonder may be helpful for DAFF, maybe for the mover to take back to the Department would be, on the application form – it may already be on there – for a licence, a declaration as to whether the application forms part of a development or building. In other words, is the tree being cut down to facilitate some planning issue and that may assist them in going through so many applications?

The workload, if they do have to go through all of these,

to see whether it is going to 'appear to the Department', etc, may be quite a drain on resources. They may have the time to go through the applications on an *ad hoc* basis and, as my colleague, Mr Lowey said, what happens if they do not? It does not really say in here. It says that they 'shall', but it does not actually say what happens if they do not. It appears that it is putting quite an onus on them and, certainly with the restrictions on head counts, are they going to be giving themselves a task that they cannot deliver there?

I think that it may be helpful if they look at their application form, where people can declare the reason – I am sure that they have to put the reason for it – but, specifically, if it is part of a live planning application, it may just help them.

The President: Mr Lowey.

Mr Lowey: Yes. I am sure the mover will forgive us. Past experiences have brought this Bill into being. You rightly said the experience of the tree in the park in Douglas was one of the motivating factors. I do not object to that.

I start from the premise that the Department of Agriculture, Fisheries and Forestry is the protector of trees. They are there to protect the trees.

What my learned friend, the Attorney, has just said, really, in essence, gives me more concern, because he says it is very similar to what we have got now, only it strengthens it a little bit. My past experience – and again, I am sorry if I keep going back to the Mount Murray – was that, as we have heard today, it was because there was a blanket given to it. There was no need for them to go to the trees, to chop a tree down; they could just chop them down willy-nilly, anyway. When they went, a lot of trees were still standing; they were unable to act.

There was just a shrug of the shoulders. I remember very well, and when I went past the next day there were another three or four trees down. It went on and on and on – powerless – so the protector of the trees was not a protection at all. Now I just hope that what we are putting... This is my hope, and why I will be supporting the Bill and have supported it is that it will protect. I want clarity that it will do just that.

The President: Mr Waft.

Mr Waft: If I could just come back, Mr President, I was thinking the socio-economic interests of the Island *per se* could have a bearing on decisions taken, and there might be a conflict between the Department of Local Government and the Environment in planning, and the interest of the trees and the carbon footprint. So there could be a slight difference of opinion there, and what happens when they fall out?

The President: Mr Callister.

Mr Callister: Mr President, I think, as the Attorney has pointed out, 'recklessly' is the important word that we are talking about here. As far as the Department is concerned... I am not in the Forestry Division, however, I do know that the Wildlife and Conservation Division do pay a considerable amount of attention to planning applications. It is a process that they need to do, in any case, to examine where they may impact on wildlife.

As far as the Mount Murray is concerned, although some trees were lost, if you go into Mount Murray now where they

have built the latter houses, there are a lot of very old, well grown, well established trees around all of these houses there and the developer at Mount Murray, whoever that was – we were never quite sure – did plant a considerable number, a very large number of trees, some of which are doing well and some are not.

Mr Lowey: It does not convince me one jot.

The President: Mrs Christian.

Mrs Christian: Thank you.

I think we need to get this in balance. It does not mean that trees will never come down for development, but it does mean that where there are really substantial registered trees there will be considerable weight given to that fact.

Mr Lowey: Copses and forests.

Mrs Christian: I think that the thing that this clause primarily will do – and it has not happened very often – is it will ensure that the Department of Agriculture, Fisheries and Forestry are not giving a licence where we get a planning application where the Planning Committee are minded to say 'Leave that tree,' and they have already been given a permission to take it down. So it will improve the liaison. I must say that does not happen very often, but I can think of some instances where it has happened. The other issue is that you occasionally get planning applications where the trees are not marked where they are actually growing, so that is something that we have to be cognisant of.

I think essentially what we want to do is make sure there is adequate liaison between the two Departments, not with a view to stifling or unreasonably constraining development, but getting the balance right between preserving beautiful, good, old trees and not being too worried about what are sapling self-seeded scrub. I can think of an example in the past where fines were meted out which seemed disproportionate. There is a balance to be found and this will, hopefully, improve the liaison, though I do think that, if the Department is going to appraise itself fully, it will put more of a burden on the Department of Agriculture, and it may well put a burden on the Department of Local Government and the Environment in respect of us having to further give information about every planning application that is in the Department, though I hope that it will work in the way that DAFF will come in and look at the planning applications and so on, rather than us having to dig them all out for them.

The President: Mr Butt to reply.

Mr Butt: Thank you, sir.

I am grateful, in particular, to the last comments from Mrs Christian, and to the Attorney General for putting into words what I was trying to put into words. I have got the original 1993 Act here and I was going to respond by saying that section 5(4)(a) of that Act is omitted, which was that they should consult the Planning Authority, but I think, from what Mrs Christian said, there is obviously, in my notes I have here, a history of the Department *not* consulting Planning, and that seems to have been the norm, rather than as it should have been. They have not been complying strictly with the terms of the old Act. This makes sure they do and it makes sure that consultation takes place with a pending application.

It will increase the workload, but my interpretation is, as Mr Crowe said, I think, that when there is an application to take a licence to fell a tree or to change a tree, that is when the Department needs to then consult Planning to see if there is a pending application and consult with them before they issue the licence. That is the simple essence of what this actual section says. So I am grateful to the Attorney General for his clarification and I agree with Mr Crowe's interpretation.

As to the workload for the Department, that is something for them to look at themselves. The suggestion of Mr Turner that the actual form includes, 'Is there a planning application in being?' is an excellent idea. It may actually be on the form now – I do not know – but if it is not, I think the Department should be aware that that is a possibility. Another possibility is – and I am not sure how the Department of Local Government are progressing on this – that planning applications would be on-line at some stage. I think that was mooted at some point. If that were to occur, it would make the process a lot simpler.

There are, in the original Act, defences against taking certain actions under section 4, which are still there, so people will be protected.

As regards Mr Lowey's comments about the Mount Murray experience, as far as I am aware, every tree where there is an application to be felled is examined individually and there is not a blanket grant to a section of trees; everything is assessed one by one. I think that is how it should work.

Mr Waft made a good point about differences of opinion. I have been in forestry where I have decided a tree shall not be cut down, and a householder or somebody has said, 'We want to cut down,' and there is an appeal mechanism then which goes to the High Bailiff – I think that is correct – and the High Bailiff can determine whether a decision made by the Department was correct or not. I may have my facts slightly wrong on that, but I think that is how it used to operate about two or three years ago. So there are safeguards in every area.

Thank you for your support on this clause and for raising the queries. I thank Mrs Christian and the Attorney for their clarification.

I beg to move that clause 2 be part of the Bill.

The President: The motion I put to Council, 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.

Finally then, Mr Butt, the short title, clause 3.

Mr Butt: Yes, Mr President.

Clause 3 gives the Bill its short title, and I move that clause 3 stand part of the Bill.

The President: Mr Callister.

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

I am sorry, I thought we had taken the two clauses together then.

The President: Well, I did, but Mr Butt only moved the one, so we will deal with clause 3, Hon. Members, formally, that clause 3 do stand part of the Bill. Those in favour, please say aye; and against, no. The ayes have it. The ayes have it.

Hon. Members, that draws to a conclusion the business before the Council this morning.

Tree Preservation (Amendment) Bill Standing Order 4.3(2) suspended to take Third Reading

Mr Butt: Mr President, could I ask for, perhaps, a suspension of Standing Orders so we could consider the Third Reading of the Bill? This Bill has been in our hands for some months now, and it is a short Bill which should, hopefully, cause no controversy on a Third Reading:

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

Mr Callister: I would beg to second that move, Mr President.

The President: Mr Turner.

Mr Turner: I would support the mover in his suspension of Standing Orders.

Mr Lowey: I do not think we are likely to get a less contentious Bill than this one, Mr President, and in a bid to preserve as many trees as we possibly can from the axe, I suppose there is no difficulty in supporting the suspension of Standing Orders on this occasion.

Mr Waft: It brings to mind to me perhaps to be growing more trees, and I compliment the people involved in the Oak Wood at that time, but there does not appear to be any great rush to plant a lot of trees these days, so we must take care of the ones we have got.

Mr Callister: Hear, hear.

The President: Hon. Members, I am in your hands entirely. The motion is that we suspend Standing Orders to allow the Third Reading of the Tree Preservation Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Mr Butt, we will go for it.

Tree Preservation (Amendment) Bill Third Reading approved

Mr Butt: Thank you, sir.

Mr President, this Bill, as I stated before, amends the Tree Preservation Act 1993 in three material ways. The first is to include the element of recklessness in relation to damage and destruction of trees. As with other Acts, the insertion of the word 'reckless' makes it easier for the Department to prove a case of damage or destruction in the courts and closes a loophole whereby builders and others can take actions near to trees which lead to their destruction, but they suffer no penalty because of their actions. The primary aim of the amendment is to deter such persons from acting in an inappropriate way when they are near trees. The concept of recklessness is well known to the courts and I have no doubt will be used in an appropriate way, and only those

who deliberately or recklessly damage trees will be liable to conviction.

The second element of the Bill is an amendment to ensure that where urgent and emergency actions are taken on a tree, the Department must be notified within 48 hours.

The third element is that clause 2, which determines that the Department shall consult the Planning Authority before refusing a licence or granting one with conditions on a pending planning application. The onus is on the Department to co-operate with Planning before taking action.

Mr President, I beg to move the Third Reading of the Bill be moved:

That this Bill be read a third time and that the Bill do pass.

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

The President: Mrs Christian.

Mrs Christian: Mr President, I am supportive of the general principle. I just hope that, under certain circumstances, a common-sense approach would be taken to its interpretation. I am thinking of the big storm of about two or three years ago –

The President: Last Thursday night.

Mrs Christian: – where there were a lot of trees down round the Island, where emergency services, DoT and everybody else, along with the landowners, were there trying to clear the roads. It seems to me, under those circumstances it is asking a bit much for them then to write in afterwards to explain what they had done, although that is a requirement of the Act. I just hope that it would be sensibly applied. I can think myself of bits of branches which come down and I would lop them in order that I can get up the road. It is a registered woodland, so I presume that all trees there are registered, so I will have to be careful that I am not lopping bits of tree that are registered, but I just ask a practical approach be taken to the application of this legislation.

The President: Mr Callister.

Mr Callister: Only to say it seems to me, Mr President, storm damage is almost in a different category, but it would be necessary, in some circumstances, to cut trees down for safety purposes, for emergency purposes, and the Act clearly covers that.

Mrs Christian: You have got to write in.

Mr Callister: The other point is that this Bill has come from the Department itself, so it clearly feels that these are the elements that they now need to add in form of amendment, and the fact that they *shall* consult with the Planning Authority does... They clearly realise it requires that they shall do so.

Mr Christian: May I further clarify a point? Can I just clarify the position, again, of the MEA, who I understand have an immunity to cut down trees wherever they want. I presume that still prevails, notwithstanding.... For the protection of their power lines – shall we put it like that

– they do not seem to have to apply for any approvals, as far as I am aware. I just wonder whether that continues to be the position.

The President: Mr Lowey.

Mr Lowey: Yes, Mrs Christian has virtually taken the words that I was going to mention about practical application. There is the MEA, of course. For the protection of overhead power lines, they have the right to come and make sure that they lop them, to use the correct... I call it trimming, but they do that on a regular basis, anyway.

Having said that, I agree, when you have got a storm there is a principle, safety-wise, for the general public. I would hope that the Department... and I think their track record is quite good in this in applying a practical approach.

Having said that, the Bill itself has dealt – and I have to be honest – primarily with not what we see above the ground; it is what we see below the ground. In other words, trimming the roots. We can all see a branch, and if a branch comes off, yes, you do not leave a jagged end – you smooth that off and trim it and put a bit of paint on it – but the reality is that this Act is to try and preserve trees, I think. I think the aim of it is a practical one and therefore I would be supportive of it in that way.

For the Electricity Authority, Mrs Christian said ‘their electricity lines’; I would remind Mrs Christian they are *our* electricity lines providing *our* power to *our* people.

The President: Mr Downie.

Mr Downie: I want to speak in support of the Third Reading. I think the Bill will go quite a long way to stop this abuse that there *has* been – no doubt of that in my mind – but if I were to send a message to the Department today, it is that we need to produce some information giving certain scenarios to the general public. We need to explain what trees are, what is protected, why they are protected and if they want to do anything they need to be given contact details and numbers.

I know that there are staff within the Forestry Division who are very good about giving advice to people. I know in the past, even in parts of Douglas, they have made an enquiry to the Forestry Division and within two or three days of somebody coming into the office they have actually called and had a look at the tree and given the person the advice. Surely that is what the Isle of Man Government is all about. I think, by educating people... At the end of the day, you are relying on a lot of these people to police this legislation, because there is no doubt in my mind it is the man out there who loves the country, gets out for his walks, and if there is anything going on and people are illegally felling trees or interfering with trees without the proper consent, he will not be long in talking to the Department. So I would ask the Hon. Member moving the Bill to take that on board.

The President: Mr Waft.

Mr Waft: I would support the last Member. I, too, have had reason at one time or another to ask the Department about various things, and they do react very quickly and they do get the job done. I think there is a wealth of information there from very professional people who are really an untapped source at times. People do not realise the possibilities that

they are able to tap into with regard to the Department of Agriculture, Fisheries and Forestry. They have seen a problem here that needs to be sorted and they have gone ahead and done so, and I would support them wholeheartedly on this Bill.

The President: Mr Turner.

Mr Turner: Yes. Thank you, Mr President.

I will be supporting the Bill. I think the point that the Hon. Member, Mrs Christian, makes is quite a valid one about the likes of the Electricity Authority, because it was made clear to us earlier on that Statutory Boards are subject to these rules. Whilst it does not appear, from looking at the Bill before us, it may be that their exemption is in their own Act and, maybe, we could have some clarification on that before we pass the Third Reading, to make sure that we do not put a conflict in here.

The President: We are on the Third Reading now, Mr Turner.

Mr Turner: Yes, I know we are on the Third Reading; that is why it may be useful, as Mr Attorney has the books, if he could maybe clarify that, to make sure we do not have a conflict here and to enable the Authority to continue to carry out its functions.

The Attorney General: It is covered here.

The President: Mr Attorney, then, could you clarify the position of the Highway Board, the MEA and Uncle Tom Cobbleigh and all (*Laughter*) in relation to this, and their definitions, which were in the 1973 Bill, Hon. Members, superseded by the 1993 Bill.

The Attorney General: Mr President, just whilst Hon. Members have been debating the point, I have been able to look at the Electricity Act 1996, and in the second schedule to that Act there is an interesting provision which clarifies the position:

‘... where any tree is or will be in such close proximity to an electric line or electrical plant which is kept installed or is being or is to be installed by the Authority as –
(a) to obstruct or interfere with the installation... or working of the line or plant...’

and it is interesting, Mr President, that the Authority have got the power to give notice to the occupier of the land in question, requiring the occupier:

‘... to fell or lop the tree or cut back its roots so as to prevent it from having the effect mentioned... subject to the payment to him by the Authority of the expenses reasonably incurred...’

but there is also provision, Mr President, that if that notice is not complied with, the Authority itself can cause the tree to be felled or lopped or its roots cut back. So, as Hon. Members have predicted, there is a special statutory power there for the MEA. I have not had a chance to check the Department of Transport.

The President: I think it is the 1986 Act, schedule 8, sir.

The Attorney General: Thank you.

The President: Mr Turner.

The Turner: Mr President, could I have some clarity on that? Does that helpful interjection there from the Attorney actually override this? Is there a provision that exempts them? Because from what we have just heard, it sounds almost like a conflict.

The Attorney General: Mr President, it makes it clear that those provisions apply, despite this Act. It says:

‘Where, but for this paragraph, the felling, lopping or cutting back of a tree would require a licence under section 3 of the Tree Preservation Act 1993, the Authority shall consult with the Department of Agriculture, Fisheries and Forestry before the giving of a notice under subparagraph (2).’

So the MEA has to, again, consult with DAFF before giving the notice to the occupier. There is a special regime created for the MEA.

Mr Lowey: We try not to act in a cavalier way.

The President: Mr Crowe.

Mr Crowe: I think the pragmatic approach would apply. It is rather like that instance last week in Finch Road when MNH and DoT closed the road because there was a tree likely to cause damage to the bridge or to St Thomas’s School. Action has to be taken, and the MEA would have to take immediate action if a tree was across power lines which cause risk to the public, so I think there is obviously reasonableness in all this.

Mr Lowey: Just for example, Mr President, before the winter starts, we obviously have many miles of overhead wires and a lot of them adjacent to trees. We, on an annual basis, check all of those miles and trees and trim as and when accordingly, but we usually try to get the consent of everybody, and 99.99 times out of a thousand we actually get the thing. We do not act in a cavalier way.

The President: Hon. Members, Mr Butt to reply to the Third Reading.

Mr Butt: Thank you, sir.

Just on the legal point, the Attorney has quite helpfully given us the Electricity Act definitions. Also, in the original Tree Preservation Act 1993, section 1, there is a reference to the exercise of actions by the public authorities of any functions which are likely to affect any tree, the cutting down of which would require a licence. Any public authority has two conditions, they:

(a) shall have regard to the need to preserve trees in the interests of amenity; and
(b) unless it is impracticable to do so, shall consult the Department of Agriculture, Fisheries and Forestry... before exercising that function.’

A public authority in this section includes any Statutory Board, so that would include the MEA as well. So it is a very similar provision that they shall, unless it is impractical,

consult the Department beforehand.

Going back to the other main points from Mrs Christian, she mentioned storm damage. On the night of that storm, my mother had six large pine trees fell onto her house and crushed it, along with hundreds of other trees that fell down that night, and then a further tree had to be felled, in the interest of safety, shortly afterwards. In the original Act, there was still a duty, after taking emergency repairs, to inform the Department as soon as reasonably practicable. Whether that was done on that night, I do not know. There were so many, I doubt if it was done, but that was the obligation under the old Act. This Act just increases it to say, and in any case, within 48 hours. There has always been a duty to notify the Department of any emergency action taken.

The MEA issue, I think we have now covered.

I would just like to comment on Mr Downie's comment about the staff and the advice they can give at DAFF. I have worked with the Forestry people and I think they give the best personal service in any Government Department. If you put an application in, they will come to your house and they will examine you and they will look at the tree carefully. I think their service is second to none, and Mr Waft raised the same

point. I would recommend anybody who gets the chance, if they can organise it, to go and spend the day with a forester and go and have a tour of the forests, because it is a fantastic experience. As Mr Crowe says, in all these cases you need to be pragmatic, and you will find nobody more pragmatic than a forester, They are very practical people who deal with things on a real day-to-day basis.

Mr Turner has raised the MEA issue, as well. I think I have covered most of the points, Mr President.

With that, I beg to move that the Third Reading of this Bill be approved and the Bill do pass.

The President: Hon. Members, the motion I put to the Council is that the Tree Preservation (Amendment) Bill 2008 be read for a third time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, that draws to a conclusion the business before the Council this morning. The Council will now sit in private to discuss the Council of Ministers' minutes for May, June and July, Hon. Members.

The Council sat in private.