

Fisheries (Amendment) Bill 2012
Second Reading approved

The President: That being the case, we will move on then to the Second Reading. Mr Turner.

Mr Turner: Thank you, Madam President, and I very much appreciate Members for agreeing to the suspension of Standing Orders.

So as I have previously said, in the First Reading, the Bill makes two minor amendments to the Fisheries Act 2012, to address issues identified by the Ministry of Justice in respect of compliance with the European Convention on Human Rights. The sections identified as being non-compliant were a straight lift from the Inland Fisheries Act 1976 and, as I said before, that was subjected to a Human Rights audit prior to the introduction of the Human Rights Act 2001.

So the Minister for the Department did give an undertaking not to commence those provisions until these anomalies had been corrected. As I said a few moments ago, there was considerable amount of work went into this Bill and it would have been a shame to have hit the stumbling blocks after the whole process had gone through, so I think it was a very pragmatic way of dealing with it. It was a straight error that had not been picked up, but it has now and obviously, here we are with this Amendment Bill before us.

The Bill introduces a defence into section 28 and provides for independent scrutiny in respect of section 81, which is the forfeiture. I am sure all Hon. Members would agree that it is in the interests of natural justice that if somebody is accused of an offence, they do have the right to put forward that defence and the wording is adjusted slightly to allow that provision, by way of this Amendment Bill.

So I beg to move that the Bill be read a second time.

The President: Do we have a seconder?

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

The President: The motion is that the Bill now be read a second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Fisheries (Amendment) Bill 2012
Clauses considered

The President: We move to clauses.

Mr Turner: Thank you, Madam President.

The President: Take clauses 1 and 2 together.

Mr Turner: Clauses 1 and 2 together, yes.

Clause 1 introduces the Bill and clause 2 identifies that this Bill will amend the Fisheries Act 2012. I beg to move clauses 1 and 2 stand part of the Bill.

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

The President: The motion is that clauses 1 and 2 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 3.

Mr Turner: Clause 3 amends section 28 of the Fisheries Act 2012 by introducing a defence into that section. At present as drafted, the section of the Act would mean that an individual living next to a river who possesses a snorkel and a mask, for example, would be guilty of an offence. The defence is introduced in order to be compliant with Human Rights.

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

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

The President: The Hon. Mr Crowe.

Mr Crowe: Thank you, Madam President,
Yes, I fully support this. Obviously, there has to be defence and there has to be reasonable justification for a person to allow them to hold certain equipment, which otherwise would be caught as a criminal offence. Obviously, this is to be supported, Madam President.

The President: Lord Bishop.

The Lord Bishop: Thank you, Madam President.
I am just interested in the word 'excuse', because it implies that something actually has been done wrong. 'Cause' or 'reason' might have been a less pejorative word.
But I am happy to support it.

The President: The Hon. Member, Mr Wild.

Mr Wild: Thank you, Madam President.
Just for the sake of clarification in my mind, if we lived by the Sulby River or wherever, my son has got a full set of diving gear, because that is his hobby. At the moment, under this legislation, he could be committing an offence. (**Mr Turner:** Yes.) (*Interjection by Mr Lowey*) Right. Even though it is in the garage, just hung up and will be driven to Port St Mary where he goes diving.

Mr Braidwood: And dives for scallops!

The President: The Hon. Member, Mr Callister.

Mr Callister: The hon. mover referred to snorkelling. I had not associated catching fish with snorkelling – it may be a bad example, I don't know! Presumably, if you were walking along with a fishing rod and a bag associated and the tools of fishing, that would be more appropriate perhaps!
Thank you, Madam President.

The President: The mover to reply.

Mr Turner: Thank you, Madam President, and I thank Members.
This is one of those cases where wording can actually cause consequences that nobody had thought of.
I think it is quite interesting that... We used to live at the back of the River Glass and as kids we would be swimming in the river in the summer and I have gone snorkelling in the river, because that is what you do, as kids – but we were not fishing. There are things like this that the Bill was completely rigid on and as Mr Wild said, if you lived on the bank of the river, the wording was such that it completely made things an offence that it never intended to make an offence. This is clearly aimed at the poaching activities of snorkelling and trying to snare fish.

So I think, whilst the reasonable person would say 'Oh, it's the Fisheries Bill, it is all designed about poaching', that is not actually what it said. So it is about tidying up the legislation. I know the Hon. Mr Lowey has said for a long time, something I agree with: the man in the street should be able to pick up our legislation and know what it means. This is just correcting that.

So I thank Members for their support and beg to move clause 3 stand part of the Bill.

The President: The motion is that clause 3 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 4.

Mr Turner: Thank you, Madam President.
Clause 4 provides that a Justice of the Peace can make a decision in relation to disposing of anything forfeited under the Fisheries Act 2012. This provision does not apply to forfeitures made on conviction in a court of law. Prior to this amendment, the power lay with the Department, which is not considered to be Human Rights compliant.

I beg to move clause 4 stand part of the Bill.

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

The President: The Hon. Mr Wild.

Mr Wild: Thank you, Madam President.

Sorry, I should have asked this previously: just out of interest, what is the definition of a 'river'?
(*Interjections*)

The Lord Bishop: It is in the Act, isn't it?

Mr Braidwood: It is in the primary Act.

Mr Wild: I am thinking on the basis that if you have got a wide stream that has little brown trout in, would that fall within the definition of river? (*Interjections*)

The Lord Bishop: I think we did this –

Mr Crowe: We did, yes –

Mr Wild: Sorry, I am just very interested, it is an extreme bit of legislation.

The President: The Hon. Mr Callister.

Mr Callister: Just that Mr Wild might be interested that a former Member of Tynwald, Mr Walter Gilbey once claimed that have no rivers in the Isle of Man, only streams!

Mr Wild: Thank you!

Mr Lowey: Sulby River was about the only one that qualified, under Mr Gilbey's...

The President: I think the mover may wish... Ah, our Clerk has a definition.

Mr Turner: I do, Madam President.

The Clerk: You may be looking in the same place as me: section 18(5)? Or perhaps there is a wider definition somewhere else.

The President: There are rivers defined by the Water Authority.

The Clerk: In the Fisheries Act 2012, for what it is worth, there is a provision about moving materials from the bed of any river, in section 18, which is an offence, and in this section, 'river' means any natural or artificial channel through which water flows, and includes a tributary or stream.

Mr Lowey: It may be a stream to you, but it is a river!

The President: The mover to reply.

Mr Turner: Thank you, Madam President, and I thank the Clerk for his helpful remarks there. I actually brought the... I kept the pack from when I put the Bill through originally, with all the information in anticipation of some challenging questions which I am delighted we have had.

With reference to the removal of material, that is mainly designed – the Clerk mentioned – to stop people digging through rivers to upset spawning fish. So if there was pipework going on or dredging, that was that.

The phrase 'inland waters' is used throughout the main Act and that includes any river, lake, pond, pool, reservoir, watercourse or estuary, but does not include any part of the sea. So it is a catch-all thing: any bit of water that fish will swim in, apart from a goldfish bowl, I would imagine. (*Laughter and interjections*)

Mr Braidwood: It would be hard to dive in that!

Mr Turner: It could be a big bowl!

So thank you, Madam President. I beg to move that clause 4 stand part of the Bill.

The President: The motion is that clause 4 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Mr Turner: Clause 5 provides that this amending Act will be repealed once the amendments made by it have commenced and the Act has been promulgated.

I beg to move that clause 5 stand part of the Bill.

The President: Do we have a seconder?

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

The President: The motion is that clause 5 stand part of the Bill. Those in favour say aye, against no. The ayes have it. The ayes have it.