

Weeds (Amendment) Bill 2013
Second Reading approved

1. Mr Turner to move:

That the Weeds (Amendment) Bill 2013 be read a second time.

The President: We move now to the Second Reading of the Weeds (Amendment) Bill 2013. I call on Mr Turner.

Mr Turner: Thank you, Madam President.

First of all, I just start by making a little apology for the lack of distribution on the code. It was due to the e-mail list not being quite up to date. Modern technology does have its wonders at times, but I hope Members now all have a copy of the code circulated, with us this morning, because it forms the basis of what this particular piece of legislation is all about.

So at earlier Readings, I previously advised that this Bill – the Weeds (Amendment) Bill – makes a number of amendments to the Weeds Act 1957. It is intended to introduce clarity in relation to the management and destruction of injurious weeds.

The Bill enables the production of a code of practice, which has been circulated and I understand will be available, for reference, to members of the public. There will be a copy of this available on the website in due course. It is to do with the management of ragwort. The code will be placed before Tynwald for approval once the Bill has been enacted.

The amendments to the Weeds Act 1957 mean that the focus of injurious weed management will be in relation to animal welfare on agricultural land.

Madam President, I beg to move that the Bill be read a second time.

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

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

Weeds (Amendment) Bill 2013
Clauses considered

The President: We move now to clauses. I suggest we take clauses 1 to 4, if you would like to move them together, please. We can vote on them separately.

Mr Turner: Certainly, thank you, Madam President.

Clause 1 will give the Act resulting from the Bill its short title.

Clause 2 provides that the resulting Act will expire on the day following its promulgation. The amendments made by the Bill will have been inserted into the Weeds Act 1957 on the date on which Royal Assent is announced.

Clause 3 introduces the amendments to the Weeds Act 1957.

Clause 4 repeals section 1 of the Weeds Act 1957. Section 1 is no longer relevant to the current practice in relation to the management of weeds. If the current provisions of the 1957 Act were followed to the letter, it would mean that all injurious weeds listed must be removed by a specific date each year, therefore resulting in complete extermination of those weeds. This duty is considered unachievable – and, I think we have mentioned, unenforceable – and contrary to sound environmental practice and convention.

Madam President, I beg to move clauses 1, 2, 3 and 4 stand part of the Bill.

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

The President: The motion is, Hon. Members... Did Mr Downie wish to speak?

Mr Downie: Yes, Madam President.

I am sad to hear that the Member thinks that the legislation is unenforceable. It would be interesting to hear, during the passage of the clauses, what his Department might consider doing if there were infestations of certain weeds.

It is quite obvious to me that parts of the Isle of Man now, which are not being, let us say, properly looked after, for whatever reason – whether it is a downturn in the economy and agriculture, whatever – are quickly being overrun and overgrown with a species that a few years ago we would not even let get into certain parts of the Isle of Man.

So perhaps it would be useful to find out what the Department is going to do about these issues; and secondly where it is going to get its money from to tackle these issues.

The President: The mover to reply.

Mr Turner: Thank you, Madam President.

I think, really, this is the whole point of this Amendment Bill that is before us. That is for the Department to be able to focus its attention where these particular species are the most threat, whereas, under the present system, everywhere the injurious weeds grow, it would have been an offence and it would be impossible to be everywhere and enforce it. It just cannot be done; whereas this is designed to be able to focus attention to the areas where they are going to do harm. The whole purpose of the Act in the first place was to prevent harm to certain animals, where it is extremely poisonous.

The Hon. Member makes a point about other species. I think we need to recognise the difference between ‘injurious’ and ‘invasive’. Some of the species I think that the Hon. Member is referring to are more invasive species, and that is covered under different existing provisions, under, I think, the Wildlife Act. I am just getting a nod there from Dr McEvoy – it is under the Wildlife Act, so that can still be handled under there.

The purpose of this particular legislation is to deal with the injurious weeds, to make sure they are removed from areas where they are likely to cause harm to livestock. The Department feels that with the enforcement resources it has available, it can manage this. The process is that once it becomes apparent that they are growing in a place where they need to be removed, they can issue a request to the landowner to have them removed and destroyed from that area.

I hope that goes some way to answer the Hon. Member’s query about this particular instance.

So Madam President, I beg to move.

The President: The motion is, Hon. Members, that clauses 1, 2, 3 and 4 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 5.

Mr Turner: Clause 5 substitutes section 2 of the 1957 Act. This new section is consequent to the removal of section 1 from the Act.

The inclusion of this particular section is to enable the Department the ability to focus on issuing notices to occupiers of any land to cut down and destroy specified injurious weeds within a set time specified in that notice.

The issuing of notices is easier to enforce and will only be used in cases of severe infestation which will impact on agricultural land. This focus is expected to achieve the reduction of risk to animals on that agricultural land.

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

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

The President: Hon. Member, Mr Downie.

Mr Downie: I note that the clause refers to the occupier of the land and not necessarily the owner of the land. It would be interesting to know, at this particular time, where Government Departments sit in all this.

Government Departments do own a substantial amount of land, the Department of Infrastructure in particular, and there are times when it is not occupied by anyone. It could be in between leases or whatever. So, are we going to see a situation where we are going to have one Government Department serving a notice on another Government Department? As we have been told in the past, it is not possible to do that... or is the law going to be changed in some way to allow that to happen?

The President: Mover to reply.

Mr Turner: Thank you, Madam President.

I thank the Member for bringing this up. It is an interesting balance, isn’t it, that for the public purse, one Department taking action against another is just a money-go-round and resulting in a waste of money. But then

there is the other side of should Government Departments be immune to prosecution because of that reason? It is one of those things that would not sit right, where a private landowner would be prosecuted.

I take the point that, indeed, the Department that is promoting this is also a large landowner and also has to keep its own house in order, as does the likes of the Water Authority and the Department of Infrastructure. If the land is not leased out, then one would probably assume that the owner of the land is classed as the occupier and would have to deal with the removal of the offending species.

This is maybe something where we could get some advice of the learned Attorney: whether the landowner is ultimately responsible, and if they were to lease out a piece of land, say, to myself and it was put in that agreement that I was responsible for clearing the weeds, would that hold any position in law, or would the ultimate responsibility lie with the owner? That is something I do not actually know the answer to.

Madam President, I wonder if we could... I am sorry to spring this on the learned Attorney, but maybe we could have a bit of guidance on it?

The President: Can we have some advice?

The Acting Attorney General: What I can say is that ‘occupier’ would mean ‘owner’, unless there was another physical occupier. So the law would attach to the owner, unless the owner had – to take the example which has been quoted – by contract or lease, given the rights of occupation to a third party.

What I would have to say, unfortunately, I do not know the answer to, is whether or not a Department – it seems rather strange to me – cannot serve a notice on another Department to comply with a statutory obligation, but I am sure that other people with greater minds than mine would have addressed that in the past, Madam President. But as I sit here today, that does seem strange to me.

The President: The Hon. Member, Mr Braidwood.

Mr Braidwood: Thank you, Madam President.

I am absolutely positive that a Department can take action against another Department. In actual fact, I think a few years ago it was the Department of Local Government and the Environment, where the Health and Safety Section of that Department actually prosecuted its own Department for safety reasons up in Jurby. (**The President:** Yes.) So it can be done.

The President: Yes, it can be done.

The Hon. Member, Mr Coleman.

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Mr Coleman: Thank you, Madam President.

I wonder if I could just point out to the Hon. Members section 9 of the Act which is being amended, which contains the definition of occupier:

“‘occupier’ means, in the case of any public road, the authority by whom the road is being maintained and in the case of unoccupied land the person entitled to the occupation thereof”.

The President: Thank you, Mr Coleman. It is always useful, when you are amending Bills, to make sure you have looked at the original!

Mr Butt: And 1957 was a good year! (*Laughter*)

Can I ask a question, Madam President, of the Attorney? So, a hedgerow beside the road, presumably roadside would be the responsible of the Department of Infrastructure and the other side would be the landowner, the farmer...

The Acting Attorney General: If it is a public road, Madam President, that would be the case.

Mr Crowe: Madam President, can I just mention on the Cushag Code, on page 8, it gives a matrix of all the... who can sue whom and when and why and wherefore. So it might help the debate. I know the Cushag Code comes up in clause 9, but it says who can sue and who can serve notice. This might give some clarity to it.

The President: Thank you, that is helpful.

Mover to reply.

Mr Turner: Yes, thank you, Madam President.

I think the original one was to do with the likes of the highways and the hedgerows. What was interesting was the point Mr Downie raised about whether there was land that was unoccupied and in the process of being let, which I did not understand. I would have thought that would be in a different legal authority. I think the Attorney has explained the background to that.

With regard to Departments serving notice, I think Mr Braidwood is right. It can happen because the notice is served on whoever the owner of that particular land is; but of course, this is not just about hedgerows bordering highways. This is to encompass all agricultural land, which is why this is more specific than the ‘occupier’ in the interpretation that Mr Coleman refers to.

So I think this is a positive step and will certainly enable the Department to focus on where it is needed the most, and that is areas where livestock are likely to be.

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

Clause 6.

Mr Turner: Clause 6 inserts two new sections, 7A and 7B. The newly inserted section 7A provides for the Department to produce a code of practice containing guidance on the prevention of spread of ragwort.

Ragwort poisoning may have a devastating effect on horses, as well as being damaging to the welfare of cattle and other livestock. Ragwort in the correct place, however, where there is no such risk, contributes widely to the biodiversity and the flora and fauna of the Manx countryside.

The code is currently being prepared with input from stakeholders, including horse owners and the Manx National Farmers’ Union, and is intended as a means to educate in relation to managing the growth of ragwort, rather than its complete eradication. Any code made under the provisions of the Act will require laying before Tynwald and will be admissible as evidence in court for the determination of any questions relating to any prosecution taken under the Act.

The newly inserted section 7B enables the Department by order to amend the existing definition of ‘injurious weeds’. This is to address any future introductions of any additional or new injurious weeds that appear into the Isle of Man. Any order made under this section may be made by the Department with reasonable haste, and then submitted to Tynwald for approval at the next available sitting. This will allow the Department to act in a timely manner when further injurious weeds are identified.

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

Mr Butt: Madam President, I think that the mover just moved clause 9 rather than clause 6.

The President: Talking about the code – yes, I was a little puzzled by the reference to that!

Mr Butt: So I second clause 9, Madam President...

The President: Do you want to add anything, Mr Turner?

Mr Turner: Sorry, let me just...

Mr Braidwood: You must have been munching on the ragwort!

The President: Complying with the notice.

Mr Turner: I will just refer to the piece of the Act which is –

Mr Crowe: The Act, section 6.

Mr Braidwood: He must have been pulling ragwort up!

Mr Downie: Ask Alan Titchmarsh! *(Laughter and interjections)*

Mr Turner: Yes, clause 6 relates to penalties and remedies and relating to the failure to comply with the notice. It is listed there with what those penalties are.

So I will move clause 6.

Mr Butt: I beg to second clause 6 be moved, Madam President, and reserve my remarks.

The President: If no Member wishes to speak, the motion is that clause 6 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 5, right of re-entry and penalty for obstruction.

Several Members: Clause 7.

The President: Sorry! *(Laughter)* **(Mr Braidwood:** It's catching!) *Section 5*, I must be catching it!
(Laughter)
Section 5, clause 7.

Mr Turner: Clause 7 amends section 5 of the Act to provide that where an inspection is to be carried out by an officer of the Department or a police officer, it must be taken at a reasonable hour and with reasonable notice. I beg to move clause 7 stand part of the Bill.

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

The President: The motion is, Hon. Members, that clause 7 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 8.

Mr Turner: Clause 8 makes minor amendments to the notes to section 6 of the Act to reflect the actual content of that section, which relates to the proceedings rather than the recovery of penalties. I beg to move clause 8 stand part of the Bill.

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

The President: The motion is, Hon. Members, that clause 8 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 9. We have already talked about the code of practice and the definitions.

Mr Turner: Yes, we have skipped ahead here about the code. I think I have already made clear what the new sections 7A and 7B are about. It is about inserting the code, as I have previously said.

I will just reiterate again that this code has been drawn up and been widely the subject of consultation with the people that it affects. There has been a huge buy-in to this from these individuals and they see it as a very practical way of dealing with the problem. So it does have their support.

Following this Bill, if it is to successfully go through, there will be another opportunity for interested parties to comment on the code before it finally comes to Tynwald.

So I beg to move that clause 9 stand part of the Bill.

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

The President: The Hon. Member, Mr Downie.

Mr Downie: Thank you, Madam President.

I think it is very important that, in the introduction of this code of practice, thought is given to establishing what I would call designated areas. We know there are certain places in the Isle of Man, where you do not tend to put stock, which are beneficial to wildlife. The areas I would look at are down in the Ayres, where we have had refuse disposal sites for a number of years, and I would say some of the best ragwort-growing areas in the Isle of Man.

We do not now take cattle to places like the Calf of Man and there are no horses there, and that is another area that would be good. There are also lots of areas on the Island which do not favour a lot of ruminants or horses and they could be designated as particular areas. I think that if that is what the code is going to be about and people understand that, well, that is fine and then we are actually doing something to promote the wildlife, because there is no doubt about it that to certain types of butterflies and moths, ragwort is a very important species on the Isle of Man.

Likewise, if we go on and look at the other lists of injurious weeds, thistles and so on... we have had a whole host of small birds into the Island this winter that we would never normally see here, and in fact, I have got siskins in my garden at the present time. They love to feed on the thistle heads and things like that, and so if you are looking at creating the biodiversity that we are talking about, you have got to do it in a way that people understand.

I think what has caused the problems in the past is that, for whatever reason, we have just let ragwort take over in certain places and now it is treated more like the norm; whereas 20 or 25 years ago, there was really an organised eradication programme. But if we are going to live with each other, where agriculture is going to be supported and we are trying to keep the risk to horses and cattle to a minimum, there has to be a code that is easy to understand, and then when people go out into the countryside they can see where the benefits are going to be.

So, really, the question is: are we going to be looking at designated areas so that people get a better understanding of what the Department's policy is in this area?

The President: The mover to reply.
Oh, sorry. Hon. Member, Mr Crowe.

Mr Crowe: Can I just ask the hon. mover, it says you 'may' make a code of practice. Well, you seem to have made a code of practice, and so is it the complete and finalised version for Tynwald or is it still open for consultation after this Bill goes through? That was my only query. Thank you, Madam President.

The President: The mover to reply.

Mr Turner: Thank you, Madam President.

First of all, Mr Crowe's point about the consultation, it effectively is the version that will be coming. However, there will be another opportunity, so anything that maybe is not covered... The Department wanted to put the whole package of this together to consult with the people it is going to affect, so they were able to actually consult with them, find out what was needed and draft up the code at the same time as the legislation so that they could consult with everything in one go, which I think was a sensible way of dealing with a short piece of legislation such as this.

It will, as I have said, then be subject to some publicity once this has gone through the branches, but I think, judging by the number of parties that have been involved, it is pretty much in the form that will be in good shape to go forward. So I cannot give the guarantee that it will be identical to what you have in front of you, but there will be another opportunity for Members to comment on it, and other interested parties. Then, of course, the code will then come to the other place to be laid before.

Mr Downie's point, I think it raises important issues and that is another reason for bringing this forward. If we were to eradicate this, it would have a cause and effect on other species and so that is why the Department would rather eradicate it from the areas where it is most harmful and leave it in other areas to allow other insects and birds to thrive.

As for designating areas, there are already certain powers under other provisions, such as the Wildlife Act, for those areas which are specifically attracting certain species – insects or birds – and they can designate them as areas of special scientific interest for which landowners do receive some assistance in managing that land, both for advice and I think there is some financial assistance as well. We would obviously like to see that continue.

Madam President, I beg to move clause 9, again, stand part of the Bill.

The President: The motion is, Hon. Members, that clause 9 stand part of the Bill. Oh, we have not had a seconder yet, have we?

Mr Butt: Yes, I did.

The President: Sorry, I have not written this down. I did not wake up this morning! *(Laughter)*

Mr Butt: I did second it, Madam President.

The President: Yes, you did.

Those in favour of the clause standing part of the Bill, please say aye; against, no. The ayes have it. The ayes have it.

Clause 10.

Mr Turner: Madam President, clause 10 is an amendment of section 9 in the interpretation. It clarifies what 'Department' means, which is the Department of Environment, Food and Agriculture, which, of course, is a newly named Department since the original Act was brought in, and also clarifies the species of injurious weeds, which are listed there.

I beg to move clause 10 stand part of the Bill.

Mr Butt: I beg to second, Madam President, and also, can I ask a question of the mover? The definition includes wild oats and I wondered... I could see why the others – thistles, docks and ragwort – are injurious, but I wonder could the explanation be given as to why wild oats are injurious? *[Inaudible] (Laughter)*

Mr Braidwood: Sow them! *(Laughter)*

Mr Butt: Too late. It's too late!

Seriously, I think... Oats do grow wild. I know they grow wild in the hedgerows, but I did not know they were injurious. I wondered why they were included in this Bill.

The President: The Hon. Member, Mr Downie.

Mr Downie: I would just like to ask the mover... Obviously, these lists are not written in tablets of stone. The one that jumps out at me as being missing here is a species called giant hogweed, which we have had in the Isle of Man on a number of occasions, and it is, in my opinion, a very dangerous plant. I am not so sure whether it is classed as a weed.

There are also people who would say that Japanese knotweed falls into this category, not because it is perhaps injurious, in the true extent, but I am told that some of the recent infestations in the Isle of Man... if we want to get rid of the problem now, it is going to cost millions of pounds, and for that reason I think that we should be upfront and honest about some of these things. If we are going to deal with these things properly, they need to be set out in the legislation and we need to have some commitment to getting rid of some of these things once and for all, particularly the ones where we do not see any benefit to wildlife and all we see is them taking over watercourses and ponds and so on, killing the life that is living in them at the present time.

The President: The mover to reply.

Mr Turner: Thank you, Madam President.

With regard to Mr Butt's questions about the wild oats, it is because of the spread, the seeds, and it literally takes over. So it can be injurious to other species of plant, not just the animals, and that is also classed as injurious if it causes problems to other things.

Giant hogweed was removed from this particular Act because that is covered in the Wildlife Act, as is Japanese knotweed. It is an invasive non-native species, and if I can just refer... so if the Hon. Member wants a bit of quiet bedtime reading, then he will find that in the Wildlife Act. The reference to giant hogweed is removed for that reason. It makes it an offence if a person plants giant hogweed or otherwise causes it to grow in the wild. So, again, it is covered in a different provision. This is specifically for the purposes that I have outlined at the earlier reading.

I beg to move that clause 10 stand part of the Bill.

The President: The motion is, Hon. Members, that clause 10 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, that concludes our Second Reading and clauses stage of the Weeds (Amendment) Bill.