



**LEGISLATIVE COUNCIL
OFFICIAL REPORT**

**RECORTYS OIKOIL
Y CHOONCEIL SLATTYSSAGH**

PROCEEDINGS

DAALTYN

(HANSARD)

Douglas, Tuesday, 26th October 2010

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BUSINESS TRANSACTED

	Page
Procedural	3
Newly installed Voice Recognition system in Legislative Council	3
Orders of the Day	
1. Fisheries Bill – For Second Reading – Debate commenced.....	4
Welcome to Mrs Brenda Romans and family.....	8
Fisheries Bill – Debate continued – Second Reading approved.....	8
Fisheries Bill – Consideration of clauses commenced.....	12
<i>The Council adjourned at 1.02 p.m. and resumed its sitting at 2.30 p.m.</i>	
Fisheries Bill – Consideration of clauses concluded.....	32
2. Civil Partnership Bill – Second Reading approved.....	38
Procedural	46

The Council sat in private 3.46 p.m.

Present:

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

The Lord Bishop of Sodor and Man (The Rt Rev. R M E Paterson),
The Attorney General (Mr W J H Corlett QC),
Mr R P Braidwood, Mr D M W Butt, Mr D A Callister, Mrs C M Christian,
Mr E A Crowe, Mr A F Downie, Mr E G Lowey and Mr J R Turner,
with Mr J King, Clerk of the Council.

Legislative Council

The House met at 10.30 a.m.

[MR PRESIDENT *in the Chair*]

The President: Hon. Members, I call upon the Lord Bishop to lead us in prayer.

PRAYERS

The Lord Bishop

Procedural

The President: This morning, Hon. Members, I welcome you back to the first sitting of Council in our new parliamentary year, a short year though it may be. For the Council, of course, a General Election year will mean that we are faced with a lot of legislation and, as you will be aware, on the Order Paper for the other place today they already have, I think, it is five Bills down
5 for their First Reading on the Keys Order Paper.

Newly installed Voice Recognition system in Legislative Council

The President: Members will be aware, of course, that we are using Voice Recognition for Hansard for the first time in this Chamber. We start off the new year by using our Voice Recognition system, and I think, Hon. Members, we will soon have it tested and soon know where
10 we are going, but I think it is a plus factor for the Isle of Man – Voice Recognition, in relation to Hansard.

For those who are unaware, sitting in Tynwald last week, we actually had the Questions, morning session of last Tuesday, published and on the web by teatime last Tuesday afternoon. I think that is quite a remarkable achievement by the Hansard department and the Voice Recognition system is certainly working a lot faster. Of course, as you are aware, we have got our
15 new microphones ‘seated’ and fitted alongside us, so that should all work.

Hon. Members, I want to tell Members that to get the most out of the investment which has been put into this room in the Hansard voice recording, it is our intention that parliamentary committees, from time to time, will also be using this room, so that in fact committee work can be done on the Voice Recognition system as well: so we may find that on occasions the Council room
20 is getting used for committees.

The President: Mr Callister, do you wish to...?

Mr Callister: Yes, Mr President, in reference to the microphones: in Tynwald, of course, we
25 have a button which we can press, which kills the mic if you have a conversation with someone else. I see there is no provision here for that.

Mr Turner: There is one under here.

Mr Callister: Is there?
30

The President: I do not think we have got buttons, so I do not think... It is not common for...
(*Interjections*) We do have a button? (**Mr Braidwood:** Yes.) Oh, Mr Turner has found a button, so there we are! (**Mrs Christian:** We don't!) That system will – (*Interjections*)

35 Hon. Members, as you know, we tend to be more relaxed in Legislative Council than we are in
Tynwald, anyway, and I am sure that will come to the fore as we develop along with the new
system.

40 Incidentally, Hon. Members, so that you are right, your microphone should be to one side of
your desk, with the head of the microphone pointed towards your mouth – not in the middle, so
you should not be sitting in the middle.

Orders of the Day

Fisheries Bill For Second Reading Debate commenced

1. Mr Turner to move:

That the Fisheries Bill be read a second time.

The President: We turn, then, to our Order Paper, this morning, Hon. Members.

45 In turning to our Order Paper, we move on to the Fisheries Bill, which is up for Second
Reading, and Mr Turner.

Mr Turner: Thank you, Mr President.

50 As Members are aware from the First Reading, this Bill is intended to replace, with more up-
to-date provisions, the Sea Fisheries Act 1971 and the Inland Fisheries Act 1976. Those Acts
currently provide the Department with powers necessary to carry out its functions relating to the
enforcement and protection of freshwater and sea fisheries.

55 The two Acts are nearly 40 years old and, following a review in 2008, a consolidated and
updated Bill was drafted. The majority of the Bill reflects the content of the Acts which it is
replacing. However, there are a number of additional provisions included in the Bill, which reflect
the needs of fisheries today. Those additional provisions will be explained in more depth during
the clauses, and I will flag up, when we get to new provisions, as we go through the clauses stage.

Once this Bill is enacted, the Department will have an opportunity to introduce supporting
secondary legislation and will be returning to Tynwald for approval in respect of that legislation.

60 There were some queries during the First Reading and I will hope to answer those points now,
and also, with regard to some of those queries, we actually have a handout here which has got
some diagrams which Members may find useful so, with your permission, sir, I would like to pass
those to Members as they relate to some of the queries.

65 Mr Crowe and Mr President referred to the definition of a fishing engine. The term is defined
in clause 3 and is not new to Fisheries. It is already defined in the 1976 Act as any type of device
which is used for the taking or killing of fish. It could be a rod and line, a net, a trawl. A fixed
engine is also defined in clause 3, and again the handout has got some diagrams there.

70 Illegal freshwater fishing methods were also queried. Mr Crowe mentioned the various types of
devices specified in clause 28(1)(c), which are illegal for taking or killing freshwater fish. They
are all recognised terms in Fisheries and throughout the fishing industry, but to assist in
clarification the handout should help Members with that.

75 Mr Crowe enquired about aquaculture, and he stated in part 7 it refers to the rearing of aquatic
species in both freshwater and the marine environments. He also mentioned the Trout Lodge
facility at Glen Wyllin, which raises rainbow trout and has a huge export market for the eggs.
Examples of marine aquaculture can include oysters, mussels and, indeed, even seaweed, which is
why both fish and vegetables are specified in the Bill, as seaweed can be used for a variety of uses:
food, cosmetics, fertilisers and other things as well.

Mr Callister asked about the appointment of fishery officers. They will be from existing staff.
They are appointed under the old legislation at the moment, so we will have to reappoint under the
new Bill when it comes in. There will be some transitional arrangements, but this will ensure that

80 the employed staff of the Department will be fully warranted officers, and there is also another level of fishery watchers, who are effectively volunteers. They are appointed by the Department under the powers of the Act. They will enforce provisions in here as well. They are volunteers and their payment is the issuing of a free licence. If Members have further questions on that process, I will be happy to answer that.

85 Removal of material was also queried at the First Reading. This is a new clause in the Bill. The cobble and gravel in the rivers provide prime habitat for spawning, for salmon and sea trout, and also a nursery ground for juvenile fish. It is recognised that it is necessary to remove that at times, for various works but the intention of this clause is to prevent the unnecessary removal of large amounts of material, particularly around the spawning time, so it gives the Department powers to have a say in that process – and work with the other bodies that are wanting to carry out work, to ensure it is done to keep the damage to a minimum.

90 Mr Lowey has picked up on the additional protection for eel populations. There are good, healthy populations of eels in Manx rivers. They are not commercially fished. The recent reports of the widespread decline of the European eel: we want to obviously protect and develop our populations.

95 The Department has got two students researching the population, or has had, in recent years, and we have that scientific data now in the Department.

100 Consultation: the Anglers' Forum was mentioned in the July sitting of Council. This Forum was established with the intention of acting as a proactive consultative group. They have been actively involved in this. It has worked particularly well and the Forum has committed its full support to the provisions in this Bill.

105 Mr Lowey raised a query about waders, the use of waders in rivers. Clause 28(2) makes it an offence to be in possession of waders for the purpose of taking any fish contrary to any provision of the Act. This clause is a direct transfer from the 1976 inland Act. It is an existing provision. Provided an angler is in possession of a valid fishing licence and is fishing lawfully, then he is permitted to wear waders in a river. However, it is worth noting that, under the 1983 Regulations, it is an offence to wade in a reservoir. This is in place to protect the water supply from contamination. Again, the access to the reservoirs is by permission of the owner which, in our case, is the Water and Sewerage Authority, and that is something that they wish to see continued.

110 A definition of inland waters and the sea: there is a provision, within clause 4 of the Bill, for the Department to create an Order, in conjunction with Harbours of the Department of Infrastructure, to define boundaries of where we are going to stipulate where the inland and the sea fisheries boundary will start and end. It is most likely to be... I will just use, for example, and this again has to be discussed with Harbours... It may be that what was the E B Christian bridge, for example, may be cited as the boundary for the purpose of this. Even though the tide goes in further, there needs to be a clear boundary, so that will be discussed with Harbours and an Order brought.

120 There was a query relating to fish passes in dams and weirs. There is, in clause 12, a query there. The clause concerns the provision of fish passes in dams. They are required for the free upstream passage of the migratory fish, such as salmon and sea trout and, indeed, eels. By providing a fish pass within a new dam, it will mean that the fish will be able to reach the spawning grounds that may be further up. If the dam has been constructed before a certain time, then the Department will be responsible for funding that. However, all new owners that put an obstruction in will be required to put in a fish pass.

125 There is also a new clause, which we will come to in more detail, about the registration of fish buyers, I will be happy to go through that in more detail when we reach that particular section.

130 There were some amendments in the House of Keys, which Members will be aware of, reflecting the restructuring of Government. It now includes references to the Water and Sewerage Authority. Indeed, they have been involved in an amendment to the Bill. Clause 18 was discussed at length between the Department and the Water and Sewerage Authority. They expressed concern at the need to obtain consent from DEFA for their annual routine river maintenance works, which do require the removal of gravel and other materials. They were concerned that they have no control over any conditions attached to a consent issued by DEFA. In addition, the Authority stated the clause did not provide for emergency works that may require unacceptable delays. So there was a discussion on that. There is an excellent relationship between the Department and the Authority. It was agreed that the clause be amended to allow the Authority to carry out urgent works necessary for the protection of property or public works.

135 So, very briefly, then, Mr President, before I formally move the Second Reading, I will give a summary of each part of the Bill for the Second Reading. It is promoted now by the Department of

140 Environment, Food and Agriculture to replace the Sea Fisheries Act 1971 and the Inland Fisheries Act 1976.

Part 1, which is clauses 1 to 4, is introductory and provides for the title, commencement and interpretation of the Bill. Clause 4 enables the Department to specify the legal limits of sea and inland waters.

145 Part 2 deals with the functions of the Department and gives the Department its responsibilities, also for the appointment of warranted officers.

Part 3 is specific to inland fisheries. It enables provisions for the protection and improvement of fisheries, including the stocking of waters, removal of obstructions, construction of fish passes in dams and the protection of native fish stocks and their habitats. This part also refers to schedule 1, which allows for the protection and free passage of fish in the vicinity of mills.

150 Part 4 provides for the regulation of fishing in inland waters. This part deals with fishing licenses, the prohibition of certain methods of fishing and further protection measures for spawning and juvenile freshwater fish.

155 Part 5 covers the regulation of fishing in the sea. It enables the Department to introduce secondary legislation to regulate both commercial and recreational sea fishing activities, including the licensing of fishing boats. It also allows for the registration of fish buyers and enables UK and European sea fisheries legislation to be applied to the Isle of Man by Order.

Part 6 deals with miscellaneous restrictions affecting fisheries. This part enables the Department to introduce an annual close season for freshwater and migratory fish and allows further protection to spawning fish. It also restricts the sale of fish under certain conditions.

160 Part 7 is specific to fish farming and other types of aquaculture. It enables the Department to engage in aquaculture and to issue aquaculture licences.

Part 8 establishes the enforcement powers of authorised persons, which include Fishery officers, the Police and watches. There are also specific powers associated with the protection of inland fisheries.

165 Part 9 contains various miscellaneous and supplemental provisions, including the setting of licence duties, provisions for the forfeiture of boats and equipment on conviction, and the protection of marine nature reserves. It also provides for amendments and revocations, as set out in schedules 2 and 3.

170 So I hope, Mr President, Members will support the Second Reading of the Bill. With that, I beg to move the Bill is read for a second time.

Mr Braidwood: I beg to second.

175 **The President:** Mr Callister, are you seconding?

Mr Callister: Yes, I am quite happy to second, Mr President, and there are some remarks I would like to add.

180 Fisheries management and conservation is very important to the Isle of Man and it becomes more important as the years go by, particularly sea fisheries. Even this morning I have had a news release which refers to Ramsey Bay: the Manx Fish Producers Organisation has proposed a 40-square-kilometre section of Ramsey Bay and the Ballacash Channel as an area to be closed to scallop dredging and queenie trawling, so that in itself is something that certainly I would support.

185 There are a couple of matters in the Bill, Mr President, that still concern me. It is a consolidation exercise, and that is perfectly fine, but I am not entirely happy with the provision for recreational fishing, or the way it is now being put forward at clause 45. There was an outcry when this proposal to license recreational fishing was made at the time of the consultation and, whilst the Bill ostensibly excludes rod and line fishing from coastal areas, it appears to me that any regulations that are eventually brought forward under a blanket licence could exclude a wide number of species and that, in itself, could very likely reduce the ability to catch with rod and line, in any case. Further to that, though, any regulations in respect of this clause that come forward will only come to be laid before Tynwald. They would require annulment at a further sitting, and that is a process I am not particularly happy about. I would prefer to see this, if it does come forward in regulations, in an Order.

195 Also I am not entirely happy about the system of registration for fish sellers and buyers, because there are very few fishmongers left on the Island. On the basis that fishmongers both buy and sell fish, presumably they would appear on both registers, if we had them. Beyond those individual fishmongers, I think we are talking presumably, then, about restaurants. Now, they are fish buyers: I wonder how many restaurateurs are even aware of the additional requirements they would have to meet under this legislation.

200

It seems to me to be unnecessary bureaucracy. It may well need further staff appointments at a time when, in my belief, Government should be reducing headcount.

So I hope, when we get to that clause, the mover can convince me this registration scheme is absolutely essential; otherwise I shall not be voting in favour.

205

Thank you, Mr President.

The President: Mrs Christian.

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Mrs Christian: Mr President, whilst being generally supportive of the Bill, there will be a couple of things that I will seek some further clarification on, in relation to clauses.

The first is that there does not seem to be a definition of what is a river. There are certain provisions in the Bill which prevent you from removing material from a river without authority, and there are other provisions which cover fisheries, which presumably extend to areas that we would consider not necessary to be a river, but may be a stream. I presume that there is a distinction between the two, but I wonder where and how one would find what that is.

215

I know from the Water Authority's point of view, they are quite clear which are the main rivers, and I presume the Department of Infrastructure is, too, in relation to its commitments, but I wonder, in the context of this Bill, whether you can give us any clue as to what constitutes a 'river' in the Island. Some of them are quite obvious, but I know, from my own experience, having had ditches cleared out, on my land, that I was amazed to find that there were fish there.

220

Mr Lowey: Absolutely.

Mr Downie: Lots of brown trout.

225

Mrs Christian: So there are matters there which I think need some clarification, and whether I would be in breach by clearing my ditches, I do not know. Whether I have got to get permission in future to do, I do not know that either, so some clarity would be appreciated.

The other point is that it seems interesting to me that you can seize matters without anyone being charged with an offence. I can only imagine that might be because you cannot find the person who has offended, but I would be interested to know under what powers materials, gear, fishing engines and so on can be seized if someone has not committed an offence.

230

The President: Mr Lowey.

235

Mr Lowey: I do not want to be accused of repetition, but some of the points that have been raised by my colleagues are things that I have got down and for various reasons.

First of all, I would like to commend the Department for their efforts to safeguard species and fish stocks in the Irish Sea. I think they are to be commended, they have a very good record and more power to their elbows. I just wish they were more in charge of their affairs than apparently it would appear, but I think the Department will be working on that. They get my support for that. So they do have an excellent record at sea.

240

Can I come to the sea fishing, for what I would call leisure and pleasure, and as Mr Callister said, I was a little perturbed as to why we need to be concentrating on these areas, that do not seem to me to be the threat that maybe the Department sees they are. I know there was the case in Port Erin Bay where a leisure fisherman scooped out all the shoals of fishing, which was despicable, but then so be it. Anyway, I just wonder whether we are going a bit too heavy handed there.

245

You may wonder why I raised eels. I am not an authority on eels, but I do know that eels actually can go over land – they do not need rivers. It was interesting to hear the mover say on dams and river courses where they have fish ladders, it is for the eels to get up. I do not think the eels need much assistance to go up. When I was first elected to this House, my old headmaster said to me, who was Leighton Stowell, by the way. I was his first old boy ever to come into Tynwald.

250

He sent me a lovely letter and he said, 'Lowey, at long last you have chosen the right profession. Your name, Lowey, means "son of an eel fisher", and you were always a slippery customer!' (*Laughter*) So I am in the right profession; hence my interest in eels. But no, eels show the health of a river – large, small or the little ones.

255

The definition of a harbour – Mrs Christian is quite right. They are not all... Douglas has E B Christian's. There are small streams which come out all over the place and not just the... I could think of the Neb, and all the rest, and they do not have an E B Christian's to draw the line. There is a definition of a harbour, but I am sure, after consulting with the Harbour Board, they will come

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up with a satisfactory answer. But there are small streams and rivers that come out into the sea, which allow sea trout and the like to go up, and I wonder how they are going to define them.

265 By and large, this Bill is attempting to put in place a regime to safeguard fish stocks, and make them available to most people. I hope that is the thing in a regulated way. The first priority is looking after the stocks of the fish, and giving the opportunity for people to enjoy the gains of fishing.

I support the Bill. It is just interesting, you sent a picture round of a ‘tailer’:

270 ‘The wide loop at the end of the tailer is used to slip over a fish tail and will close instantly with an upward pull.’

I have to say to you, sir – (**Mr Downie: Yes!**) (*Interjection by the President*) and this is in the presence of an ex-policeman –

275 **Mr Butt:** It doesn’t always work!

Mr Lowey: I have seen it in the hands of an expert and it works.

280 **Mr Downie:** Yes – Robert... [*Inaudible*]

Mr Lowey: I believe that I could not do it in a thousand years! But it is interesting to know that you can put a piece of wire round the tail of a fish: if it is in by the side of a bank, on its way upstream, they do work. It is right you should outlaw them.

With that bit of history, I will support the Bill.

Welcome to Mrs Brenda Romans and family

285 **The President:** Hon. Members, I know other Members want to speak, but I just break into our discussion very briefly, because probably some of you may know, and some of you may not know, but sitting with us, joining us in the Public Gallery this morning, we have, as I understand – and I have got to get these ‘greats’ right, so... It is interesting that we are talking fish this morning, on the Fisheries Bill when, in fact, the connection with these folk is back to Laxey, which is the salmon river on the Isle of Man.

290 As I understand, and forgive me if I get it wrong, we have with us the great-great-granddaughter – yes? – and the great-great-granddaughter and her husband of the late Capt. Rowe of Laxey fame. So the miners of Laxey and Capt. Rowe have been immortalised in Stewart Slack’s version of ‘The Laxey Wheel keeps turning’. That memory will be kept for a long time!

295 So, welcome very much to the Isle of Man and welcome to your visit. We hope you enjoy your visit round our Tynwald Chambers and watching us ‘at work’ trying to thrash out legislation this morning. Welcome.

Fisheries Bill Debate continued Second Reading approved

The President: Mr Downie, back to you, sir.

300 **Mr Downie:** Thank you, Mr President.

Largely, I think I am in favour of the Bill. As we get into further clauses of it, I do wish to make some additional comment. Other Members have commented about the problems that may occur where the ordinary person goes fishing from the pier or from the rocks and part of the Bill tends to bring in some sort of regulation to cover that.

305 I think one of the structures that it is important to understand is that a lot of the fishing clubs on the Isle of Man, the leisure clubs, fish to what is called the National Federation of Sea Anglers’ rules. They have certain fish that they have to throw back, but if they want to keep the fish there has to be – there is a size, a limit and perhaps, what should be examined by the Department is taking the rule that the responsible fishing clubs have and perhaps trying to apply that to members

310 of the public, so that places like Peel breakwater, the breakwater in Douglas where people can get access to fish...

There is information there and a sizing chart available and then, if an inspector comes along and people have been catching fish and keeping them and they do not fit the size criteria, well, obviously they are breaking the law. In fairness, fishing is something that we have taken for
315 granted for years. Lots of young people enjoy it and I think that if we are going to continue to make it attractive to young people and people who are retired, we do not want to be over the top with all sorts of silly rules and regulations and licensing, I think that is very, very important.

My hon, colleague, Mrs Christian, raised some interesting points about what is a river. My understanding at present, the dubs on the Isle of Man are not controlled, you can fish those any
320 time of the year, if you like. There is no legislation to control fishing in those because a lot of the fish that exist in the dubs, I am told the Department say do not exist.

You know, we have got roach, tench, bream, quite a lot coarse fish that have appeared in the Isle of Man over recent years. I was told by somebody years ago that perch were put into the reservoirs during the wartime to act as a guardian so that if our water supply was poisoned or
325 polluted, the fish would come to the surface and we would know straightaway there was a problem. That is not archived anywhere, but it is another example of how fish can be introduced at certain times without the authorities knowing about it.

There is nothing in the Bill that mentions some of the other species of fish that we have in the freshwaters in the Isle of Man. I know that, in some parts of the Isle of Man, we have got five-spine and seven-spine sticklebacks, not the greatest thing to talk about, but they have a place in the
330 hierarchy. A lot of those are abundant in some of the dubs and places like the Lhen Trench – there is another area, a big piece of water in the Isle of Man – is that a river? Is it classed as a river? But, definitely, I think there is an issue about the dubs.

The harbours were also touched on, and it is interesting to see that salmon that have been caught in the last couple of weeks from the Douglas River are a very red colour. The reason that
335 they are a very red colour is that now they are not coming into the rivers directly. They are lying in the water-retention scheme, they are lying in there at the bottom of the walls, and people who know a little bit about salmon fishing will know that the males are developing a thing called a kipe, which is a beak, and they are quite red and runny at the sides, which indicates that they are actually staying there now for probably two or three months before they come into the river. So it would be logical now, with the development of the water-retention schemes, to bring the areas out, say to the ends of the piers – if there is a breakwater, the end of the breakwater. That should be the area that we are talking about, so that they have got this added protection. I know there are one or two people scratching around the harbour at night time, and one or two fish are being taken out, so
340 there is a little area that we have got to be very careful that we do legislate for and we do not start the river, say, at the stone bridge, because the goalposts have been moved now. Peel harbour is the same. Peel harbour actually starts from what I would call Spit Corner – Weatherglass Corner. That is now where the start of the new approach to the river is.

Mr Lowey, I think, touched on this issue about mullet. These were not caught by a recreational fisherman; these were caught by a person who I believe was a licensed fisherman. The problem there was that mullet were not what was called precious stock, and therefore it was perfectly legitimate for somebody to go and catch them all. To me, that was a sad day, and I hope that, within this legislation, there are provisions to prevent that happening again. So if somebody does
350 want to go and take some mullet there is a limit put on them. They can take enough for what they want, but the sad part of it is I have been, most of the summer, visiting Peel harbour, Castletown harbour, and I have not seen one mullet in any of our harbours. I think it is sad, because if you look at poetry, if you look at T E Brown, there is reference to them swimming in the moonlight. They are very, very attractive fish – not really of commercial value, but sad to see the way they were all caught, and sad to see the way they all finish up, in my view, a complete waste.

I will be supporting the Bill, having had a quick run through it. I think a lot of it in here does make sense, but we just need to make sure that we iron out some of these areas I have highlighted.

Thank you, Mr President.

365 **The President:** Mr Butt.

Mr Butt: Thank you, Mr President.

I will just briefly say that I welcome this Bill and will support it. Just to bear in mind that the vast majority of this Bill is a consolidation of the 1971 and 1976 Acts and most of the provisions in here have applied for many, many years and there is not much that is different from what has
370 been in practice for a long time.

I can say, from my short time in Fisheries, that the Department has consulted widely with both the sea industry and the inland industry, and with the recreational anglers. There is an Anglers' Forum, as the mover said, where they have had discussions about this Bill. They have actually made suggestions which have led to amendments of this Bill. So I think they are reasonably happy with the progress of this Bill.

The only thing that might cause controversy is section 45, the licensing of sea angling. I think maybe the mover can explain that. I think, apart from the mullet issue, there are issues with recreational boats coming from the UK, taking large quantities of stock with several anglers on board, taking perhaps more than their fair share of what is expected. I think that is one of the issues as to why there may need to be a licensing regime in respect of sea angling.

I will support this Bill and welcome its completion.

The President: Mr Braidwood.

Mr Braidwood: Thank you, Mr President.

I have not got a lot to put forward. I think the majority of Members have spoken in favour of the Bill and, like the Hon. Member of Council, Mr Callister, I read with interest the news release on Ramsey Bay.

We have had protection now for a number of years in Port Erin, which has protected the scallop beds and I am in favour of the legislation, sir.

The President: Mr Lowey.

Mr Lowey: Yes, one final point. I had at the bottom of my notes, 'fish in dams and ladders' but it is a serious point. In schedule 1, where it says sluices – it is no. 2 on schedule 1 – Sluices etc of mills deriving water from rivers. In (3) it says:

'If there is no fish pass in the dam belonging to the mill and the waste gate on the upstream side of the mill sluices is erected in a channel suitable for the passage of fish, the mill sluices shall be kept shut and the waste gate kept open during the periods specified in subsection (4).'

If you read subsection (4)(a):

'24 consecutive hours in each week between 6.00 pm on Saturday and 6.00 am the following Monday;'

The point being there, there are 24 hours where the millers could not mill. You may say that is not as important today, because the water mills were part of our lifestyle and vital for the grinding of flour and all the rest of it. That may not be in being now. Why do we need to have that in for the 24-hour restriction? I raise it now because maybe the mover has not got the answer, but he perhaps will have when we come to deal with it in the clauses. I think it is important for us to recognise that we – and it may be that this is existing legislation. I have not worked that one out yet, but I do know there is a restriction there for 24 hours between a Saturday evening at six o'clock and six o'clock on a Monday morning.

The President: Mr Turner to reply.

Mr Turner: Thank you, Mr President, and again, thanks also to all the Members who have spoken on this and supported the Bill.

I will go through some of the points. I am pretty sure I will be able to answer Mr Lowey's query, but I am going to get some additional information on that, just to make sure I give you the right information.

First of all, I will start with Mr Callister, who mentioned, as did Mr Braidwood, the Ramsey Bay. This is quite a major achievement for everybody involved because what we are seeing is that fishermen and the organisations who are engaged in commercial activity historically may have been opposed to closing areas of the sea but, of course, what they are realising is that it is essential to have havens for areas to enable breeding, which is going to help the long-term sustainability of the stocks. The Ramsey Bay has been an area that has been suggested, and Members will have got the press release with the wider public this morning, which goes into detail as to why that area was chosen.

I certainly recommend, if you have not seen that, to read up on the details. It is quite extensive, so I will not go into all the details now. It was the producers' organisation who worked with the conservation team to identify this area. There is also going to be some seeding of juvenile scallops,

which they are hoping, when they are released, the spat will then drift in the natural flows into the fishing grounds and it will act almost like a fish farm. So it is a very important scheme and we are delighted everybody has supported that.

If I run through: a few Members this morning have mentioned clause 45. I think the reason why this is perceived as being controversial is that it was originally clause 44 in the draft of the Bill, but since that consultation was carried out there have been some amendments made to that, and again, most of the parties involved are quite content with the amendments that the Department has made. It does, as Mr Callister says, specifically, in the primary Act, prevent the Department from introducing a licensing regime for rod and line fishing.

However – and this is tied in with the comment regarding the mullet – it is necessary if we are to have powers to deal with situations such as netting the mullet, if the proposed clause 45 in this Bill is implemented, then it would be easy to licence that sort of activity, the netting from the shore, and impose a catch limit, for example. As already mentioned, the Department does not have any science on the stocks and I think Mr Downie mentioned that. So conditions attached to a licence would be that catch returns would have to be submitted to the Department. We are part of the global fisheries world and we are linked into the EU and, again, I will deal with the fish buyers clause in more detail in a moment. If we are to have greater control over our fisheries management, then it is essential we have that data. Also, there are actually recreational anglers who want a form of regulation because they may be reporting that certain species are becoming a little more scarce. So this will enable the Department, by issuing a formal notice to, for example, put a bag limit on certain species. So that is the intention of this.

Mr Downie mentioned silly rules and bureaucracy That certainly is something the Department does not want to do and we certainly do not want to be restricting people's freedom to be able to go down the pier and fish or fish off the rocks. We hope that, with the amendments that were made to the clause before the Bill was brought to the other place, it has managed to strike a balance to what we really need to do and what could be seen as over-bureaucracy and restrictions of people's enjoyment. We think this is a fair balance and, indeed, it does have the support of the Anglers' Forum. So, hopefully, Members will be satisfied that this is a positive step and will support the clause. Again, I will be happy to go into it when we actually reach that clause.

Mr Callister is unhappy about the way the Order will come before Tynwald, being laid before and then, if there is something particularly undesirable, it will be up to a Member to attempt to have it annulled at the next sitting. That is the format that the Department has chosen, but I hope that Mr Callister will have faith in the Department and its track record, to ensure that the Regulations will be made with full consultation of the industry. Our intention will be to make sure they are right before they get to Tynwald, so hopefully to have them annulled will not be necessary.

Registration of fish buyers is a new provision, as you say. It does actually have the support of restaurants. The intention of this is that there is no... People, if they are the first point of contact with the fish from a vessel, from the operation that catches the fish, will be required to register. There is a hole in our responsibility, I believe, at the moment, where we are not able to submit the data into the EU system of monitoring stocks. Whilst the fishermen put in the returns, there is nothing to match what is being purchased with the catch returns. This will fill the final hole in the jigsaw – the final piece in the jigsaw. Restaurants – anyone who buys from a merchant – will not be required to register, but if a restaurant, for example, buys direct from the fishing boat, as quite a few of them do, then, yes, they will be required to register.

Indeed, I am told that one of the Island's more famous seafood restaurants is in full support of this. They do not see it as extra bureaucracy; they do see it as a positive step. This is all about sustainability of the stocks and it is important that, whilst some parts of the world are scooping up everything in sight, in our waters we are working with the other jurisdictions to make sure we actually know just what is coming out of the sea. It happens elsewhere, but here, the Isle of Man has a hole, and we could have our vessels landing in England, or English vessels landing here, and that piece of the overall jigsaw is missing. So that is why, and it does have support. Naturally, there may be some who do not like this because it is an extra step but, overall, we think this is the right way to go and is required.

Mrs Christian mentioned the definition of a river. I am hoping I can get more information on that. The business with the ditches: you are quite right, there are fish populations appearing in ditches, and it is a very good point. I hope to get more information on that. I am not sure whether there may be some definition in the Water and Sewerage Authority's Acts with regard to what the definition is. There are main river designations, as Mrs Christian will know, but we are fortunate that there are not that many in real terms on the Isle of Man that will be fished, so we are confident we will be able to bring forward a very clear Order, defining where these limits start and stop.

495 Seized items was also brought up. This is so officers will be entitled to seize equipment,
pending a court appearance. So, for example, the vessel may be officially seized by the Sea
Fisheries' Officers and brought to port, where it will have to remain until a court determines the
outcome, depending on the offence. In the case of a vessel, it is likely there would be, depending
on the scale, probably a fine regime and then the court would determine whether that vessel is
500 released back to the owner or whether something more serious happens with it, but that is on the
very upper level.

There have been cases where inland officers have seized fishing tackle from people allegedly
poaching. Again, the court would then decide whether that seizure would then form a confiscation
and the tackle would then be destroyed. So that is what would happen. The Department does not
505 have the power to go around seizing equipment and disposing of it; that decision would come from
a court case, but in the interim they have the powers. I think I am right in my interpretation.

Mr Lowey commended the Department and I am very grateful for those comments from Mr
Lowey. It is a relatively small team and he also made mention that it would be nice if the
Department had more... I think in charge of the affairs, of course, looking at the wider issues of
our territorial seas and that is the aim of the Department.

510 I think I have answered about the recreational and the mullet.

Mr Downie mentioned dubs and close seasons. Of course, the primary purpose of that is for the
migratory fish to have a close season to prevent interference during spawning and when they are
juvenile. I am also aware about species that are here but may not be listed in the recognised... and
515 that is something that the Department is working on with the Animal Health Division, to identify
what species are here, and you will see that species are being added to the list of native fish at
various points. Again, the Forum did agree to the provisions of clause 45, which was queried. Mr
Butt also was part of that process, so also reinforced that point.

I hope I have answered all the points, Mr President, that were brought up at the Second
520 Reading. I thank Members for their support, and again will answer any points as we go through the
clauses.

With that, I beg to move the Second Reading.

The President: Hon. Members, the motion I put to Council is that the Fisheries Bill 2010
525 receives its Second Reading.

Those in favour, Hon. Members, please say aye; against, no. The ayes have it. The ayes have it.

Fisheries Bill **Consideration of clauses commenced**

The President: Hon. Members, if we go on to the clause stage of the Bill, and we deal with the
clauses, I understand that Mr Turner is anxious, or quite content, that we take it in sections. I
propose to go along with Mr Turner, but if any Member wishes to pick up on any particular clause
and treat it separately, so be it.

530 Hon. Members, that said, then, perhaps we could take part 1 and clauses 1, 2, 3 and 4.

Mr Turner: Yes, thank you, Mr President.

Indeed, as you say, if Members do have queries, I will make it known to Members where we
535 have a new provision which is not featured in the Acts from the 1970s, so I will do that.

Clauses 1 and 2 introduce the Bill and set out the commencement provisions for the Bill, which
is that it comes into operation on a day or days appointed by Order.

Clause 3 sets out the definitions of terms contained in the Bill.

540 Clause 4 provides that the Department may, by Order, define where inland fisheries and sea
fisheries jurisdiction begins and ends, to clarify where a river licence is required to fish for
freshwater fish and migratory species, for example. It also enables the Department to define the
points to or from which the distances are to be measured. An example of this is where setting a net
within 500 metres of a harbour entrance is prohibited.

I beg to move that clauses 1 to 4 stand part of the Bill.

545 **The President:** Mr Callister.

Mr Callister: I beg to second, Mr President.

550 Just looking at these definitions on page 5 of the Bill. There is a reference there at the top of the page to 'recreational sea fishing licence,' but recreational fishing is in itself not defined. However, that is the only comment I have in that respect.

Mr Downie: Mr President.

555 **The President:** Mr Downie.

Mr Downie: Clause 3, page 3:

'fishery' means any water –'

560 and then it goes on to say:

'(a) holding populations of fish, or
(b) where fish may be caught for commercial or recreational purposes;'

565 I will give you a scenario. A person has a large house with an ornamental pond in the garden. They have koi carp in the pond. They might wish to give some of those koi carp to their friends. They may be diseased. The Department may want to come in with an Order because they know that these fish have a disease that might affect the well-being of other fish stocks in the Isle of Man. What is actually meant by 'any water'? If a garden pond is kept for recreational purposes,
570 does that come into the Department's domain?

The President: I was more interested, Mr Downie, in your comment earlier, when you referred to a dub. We all may know what a dub means, but it is difficult to put it into interpretation. If you do look at page 4, to help Mr Turner – or hinder him, I do not know! – it
575 says:

""inland waters", subject to subsection (2), includes any river, lake, pond, pool, reservoir, watercourse or estuary..."

580 So the pond is actually there.

Mr Turner: Yes, thank you, Mr President.

585 First of all, to talk about the diseased fish. There is, Mr Downie brought up... Pet shops are only permitted to bring in fish that are certified disease free, so there would have to be... It depends where they were getting the fish from.

Obviously, there are restrictions on the movement of some of these species and it would cause the Department great concern if people were moving fish from various dubs to other dubs. I think that, when you talk about dubs, that is covered loosely here in private waters.

590 **Mr Turner:** I am not quite sure, Mr President, whether Mr Downie is querying whether the movement is legal or illegal. Could I have some clarification?

595 **Mr Downie:** Just to clarify, Mr President, as I said, if someone had an ornamental pond in their garden, or a water feature in their garden, and there were fish in there that may be diseased – they may be carrying something that is hazardous to the rest of the fish stocks in the Isle of Man – does the Department actually have power to go in and control that area, or stop fish being transported, or given as gifts to somebody else?

600 **Mr Turner:** Mr President, as I understand it, the Animal Health Division does have the powers to enter land. There was a case recently, which was in the papers, where the officers of the Animal Health Division did go to land to take samples, so there are powers contained in other legislation for them to undertake those inspections and, indeed, take samples.

Mr Downie: So we are happy that is covered, then.

605 **The President:** In that case, Hon. Members, the motion I put to Council is 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.

We will take part 2, the general functions, clauses 5, 6, 7 and 8. Mr Turner.

610 **Mr Turner:** Thank you, Mr President.

Clause 5 sets out the Department's responsibilities and the matters to be taken into account when exercising its functions in relation to both inland and sea fisheries.

615 Clause 6 provides the Department with the power to appoint fishery officers and indicates that such officers are to be employees of the Department. Fishery officers will have the ability to undertake duties in either freshwater or sea fishery jurisdictions, where deemed necessary by the Department. This particular clause also enables the appointment of voluntary fishery watchers, previously called river watchers under the replaced legislation.

620 Clause 7 provides the Department with necessary powers to undertake research, enquiries and investigations into sea or inland fisheries matters, in order to assist in managing, conserving and protecting those fisheries.

625 Clause 8 is a new provision. It makes clear the Department position in respect of licences, permits and authorisations granted under the Bill. It requires the Department to notify persons affected by any licence, permit or authorisation by any means. This clause also enables the Department to issue a general licence, such as one issued to a group who are under the care of a charity, for example. Previously such licences had to be applied for individually.

Mr President, I beg to move that clauses 5 to 8 stand part of the Bill.

Mr Callister: I beg to second, Mr President.

630 **The President:** Thank you, Mr Callister.
Mr Crowe.

Mr Crowe: Thank you, Mr President.

635 We are dealing here, in this Bill, with traditional fishing – sea and inland – and aquaculture, which to my mind is fish farming.

I notice in clause 5(1)(b) it talks about fostering the establishment and development of such fisheries, which is all fisheries. But there seems to be a potential to develop fish farming as an industry, and I am just wondering has the Department any current initiatives to promote this on the Island to encourage new people coming into aquaculture?

640 **The President:** Mr Lowey.

645 **Mr Lowey:** I am always interested in words, Mr President, and in clause 5(2)(d) – I wonder if he can say it, never mind tell me what it means – 'geomorphological'. I have never heard of that one in my life. I am sure it rolls off the tongue after a bit of practice!

I am not being flippant; it is just a word I am supposed to be putting into law, and I have no clue what it means.

650 **The President:** The Lord Bishop will explain.

Mr Lowey: Good!

655 **The Lord Bishop:** Mr President, geomorphology is to do with the shape of the ground, (**Mr Turner:** That's right.) so that if you see a U-shaped valley or a V-shaped valley, or whatever it is...

Mr Lowey: Thank you, sir. That is... Well, now I know.

660 **The Lord Bishop:** – it tells you about the rocks underneath it.

Mr Lowey: Very good! I hadn't a clue.

665 **The President:** Mr Turner, Hon. Members, if I may, I thought it was quite interesting, really, in clause 5, and I understand exactly how it comes about, but we read the long title of the Bill, which is:

'... to re-enact with amendments and further provisions the enactments relating to inland and sea fisheries; and for connected purposes.'

670 I felt it a little bit difficult and stretching things a little bit far when, in (2)(e), you are giving the Department the power:

‘to protect buildings and other objects of architectural or historic interest,’

675 I know that it is in the exercise of its functions under this Act, but it does seem to me to be stretching things a little far in that regard, and I think it would be worthy of the Member to explain what he sees as possibly the necessity to have that in. I assume it is to do with mills and weirs and whatever, but it just ought to be made clear.

Mr Turner, reply, sir.

680

Mr Turner: First of all, Mr President, I would like to thank the Bishop for throwing me a lifeline, (*Laughter*) because it was a question I had asked the Department as well. He has explained it absolutely perfectly.

685 If I may deal with that point, first of all, indeed that was a question I had regarding protecting buildings. What this is is the Department has, when this comes into being, a duty to protect the rivers and the life in the rivers, but if there are historical buildings which are bordering a river, the Department has to have regard to the need to protect those buildings.

In other words, we cannot insist that it is demolished, for example. You have to have regard, whilst making your decisions on works in the river, that there is a need to protect buildings of historic interest. So it is not really giving the Department the power to protect those; it is acknowledging the need to protect those old buildings.

690

The President: We are getting into deeper water, Mr Turner, because it quite specifically says ‘to protect buildings’.

695

Mr Turner: To protect buildings. Yes, in exercise of its functions under this Act, the Department shall have regard to the need to protect buildings and other objects of architectural and historic interest. So, we have to –

700

Mr Butt: Do we need to?

Mr Braidwood: We need to.

705 **Mr Turner:** I think, if it is read in context with the header...
The Attorney is...

The Attorney General: The only example I think that comes to mind is, occasionally, one has a situation where the Department may wish to straighten a river to take out bends which are liable to flooding. It may be that on the banks of the river, or nearby, there is a building which has intrinsic architectural interest and the Department would have to weigh the advantages of straightening the river against the disadvantages of perhaps bringing the building down.

710

I think that is an example that I would bring to mind.

715 **The President:** I am struggling to see a building in the Isle of Man affected by that.
Never mind. Continue Mr –

Mr Turner: It is an existing provision in there but, again, it was something that was discussed at length in the Department because, on reading it, it does appear to stick out as rather a strange function for the Department – but I think the Attorney has answered that.

720

Mr Crowe mentioned fish farming. We are very fortunate to have a relatively new operation here with Trout Lodge – been here for maybe three years now. Their main activity is the export of the eggs to all over the world and that is an example of an industry that, through the former Department of Trade and Industry, was able to establish here and is running a very successful operation. The benefit of them being here is our disease-free status, which ties in with Mr Downie’s query about diseased fish and why our animal health people are so conscious of that, because if the disease-free status was to change, then that would seriously undermine this operation.

725

They have also recently taken over the Department’s fish hatchery at Cornaa. That is being run on a lease arrangement, so they are actually farming the rainbow trout which are used to stock our

730 reservoirs. That is an initiative the Department has been supporting, along with other Government agencies.

As I mentioned at the Second Reading, it may be that waters around the Isle of Man are used to cultivate seaweed. It is another form of aquaculture. I think it was trialled in the past (**Mr Lowey:** Derbyhaven.) – Mr Lowey says Derbyhaven, that is right – and again could form mussels, oysters and so forth.

735 Mr President, I beg to move that clauses 5, 6, 7 and 8 stand part of the Bill.

The President: Hon. Members, the motion is that clauses 5, 6, 7 and 8 – part 2 of the Bill – be approved. Those in favour, please say aye; and against, no. The ayes have it. The ayes have it.

740 Now we turn to part 3, which is a lengthy part, Mr Turner. My preference would be, sir, to take clauses 9 to 15 and schedule 1.

Mr Turner: Thank you, Mr President.

745 The following clauses are existing provisions. Clause 9 enables the Department to stock any inland waters for the purpose of developing or improving fisheries in those waters. This includes the power to introduce fish of any kind into any waters.

Clause 10 is existing, but there is a partly new power in this. Clause 10 empowers the Department to improve fisheries in inland waters of any type at its own expense, or at the expense of others. This also includes entering into agreements with owners or occupiers of land to allow persons to pass and repass over that land to access inland waters for the purposes of fishing. The Department is initiating a fish beat scheme and this provision will enable that scheme to take place. The clause allows the Department to issue grant payments to landowners to improve and develop their fishery for angling purposes.

750 Clause 11 makes provision for the removal of any obstructions in both rivers and the sea to enable the free passage of migratory fish.

755 Clause 12 requires the construction of a fish pass where a dam has been constructed in any waters. Such fish pass will permit the free passage of fish, including eels. There are particular exemptions included in this clause and discretion can be used where the construction of a fish pass is considered unnecessary.

760 Clause 13 makes it an offence to take fish from a fish pass.

Clause 14 provides that it is an offence to use anything other than a rod and line within 200 metres of a dam. Previously, it was 200 yards.

765 Clause 15 and schedule 1 set down certain rules in respect of mills, pools, works and watercourses and is intended to protect upstream migrations of fish.

I beg to move that clauses 9 to 15 and schedule 1 stand part of the Bill.

Mr Callister: I beg to second, Mr President.

770 **The President:** Mr Crowe.

Mr Crowe: Thank you, Mr President.

Just turning to clause 13, I would just thank the mover during the Second Reading for answering my queries on ‘fishing engine’ and clarifying all that, so thank you for that, sir.

775 **The President:** Mr Attorney.

The Attorney General: Mr President, in relation to clause 9 of the Bill, the Department has the power to introduce fish of any kind.

780 I wonder if the hon. mover could say whether it is the intention of the Department to improve the head of brown trout in the rivers, as opposed to rainbow trout? The brown trout, of course, is the native fish of the Isle of Man and, whereas we do have a good head of rainbow trout in the reservoirs, I think it would be very good if we could say that we had a good head of brown trout.

785 **Mr Braidwood:** I think, Mr President, they are a lot better to fish as well – brown trout than the rainbow trout.

The President: Mrs Christian.

790 **Mrs Christian:** I do not know much about fishing, but I just if, under clause 14, you could give me some clarification. It says that within 200 metres above or below a dam you can only fish

with a rod and line. Are we allowed to fish the rivers with other 'fish engines', as defined here at the moment? Can you use nets and things in our rivers at the moment?

795 **Several Members:** No.

Mr Downie: No – or hand lines.

Mrs Christian: I just wonder why that is necessary then.

800 **The President:** Mr Downie.

Mr Downie: Yes, Mr President.

805 On the point about fishing close to a dam, obviously that is a place where, if there is a lot of water in the river and the fish has had a tough time getting through, he will then go and lie up. That is why this particular clause is in. You can fish there, but it is with a rod and line. People go to places like that and use a thing called a stroke haul, which is a treble hook with a lead weight at the bottom of it on a hand line. They throw it out and they pull it through where the eddies are, where the slack water is, where they know that the fish is lying. That is really why this particular section has got to come in. It is also where poachers might look to find some poor unwary fish.

810 On the subject of the indigenous brown trout, I concur fully with the Attorney General. I think one of the mistakes that the Department does make is concentrating so much on rainbow trout now that it is quite rare to find a decent-sized brown trout in any of our reservoirs. At the end of the day, the rainbow trout – the *Salmo trutta* – comes from two different species. One is called the steelhead and the other is called a shasta. These were fish that were indigenous in North America, and they do migrate. So when the reservoir is at its maximum, they will swim out over the top. They go down into the watercourses. There is not enough food from them to survive in the main rivers, and they disappear off. Really, we should be trying to put as many brown trout into the reservoirs as we possibly can. That has been the policy in the UK and other big fisheries in Ireland. That is why they are very, very successful. If you go fishing on the Corrib and places in Ireland, they specialise entirely now in brown trout fishing. It is what the more sophisticated angler would like to catch!

820 So I support the comments of my hon. colleague.

825 **The President:** Mr Lowey.

Mr Lowey: Can I just say on the brown trout, the trouble with the Isle of Man and our rivers is the water gets into our rivers very quickly and discharges into the sea even quicker and there is very little water in between, except for our pools and we do have problems with that.

830 The brown trout is, without doubt, the best trout to fish. There is not the slightest doubt, but again in this world, I think to anglers size does matter and hence the need... I think the Department are trying to cater to the anglers having the big fish on the end of their rod, whereas the real angler enjoys the skill of getting the fish out of the... the fight he has and enticing them onto the hook. It seems a bit strange, but these clauses – and again I come back to the point I made at the start – and I understand the Member not being able to answer – if I can have it on the Third Reading, about the fish ladders going up into dams and shutting. That is in the first of the things, so I am quite happy to leave that until the Third Reading, if you have not got the answer now.

835 I do feel that the Department ought to recognise – and I am sure it does – although it is not even put down here – that the indigenous fish are being overtaken by exotic varieties and I can understand the reasoning behind the need to meet the market at this given time, but I do think the brown trout has got a lobby of support here in Council. So bigger and better facilities in the river.

The President: If I may, Mr Turner, clause 11, where you have, in (1), obstruction to the passage of the fish, at the top of page 10, sir, it says:

845 'the Department may on the application of any person interested in a fishery in the river ("the owner") authorise the construction...'

and if you continue to read (2) and (3), when you come down to (4), it says:

850 '... the Department may, by agreement with the owner, cause the works to be constructed...'

I understand all that, but can you give us some example of who ‘any person interested in a fishery’, other than the owner, is likely to be?

855 **Mr Turner:** I think, Mr President, this was put in to create a definition of that person, so if the person interested in the fishery, listed here as ‘the owner’... So when ‘the owner’ appears further down the Act it is more of a technical...

860 **The President:** Why don’t we say the Department may, on the application of the owner? Why put ‘any person’ and put ‘owner’ in brackets?
Mr Attorney, a legal question, sir?

865 **The Attorney General:** Mr President, again, perhaps what comes to mind is that the owner of the fishery may have granted a lease to a fishing club, or to another individual, who is very interested in developing the fishery and, hopefully with the consent of the real owner, applies to the Department for the construction of various works.

I think that would cover the situation where a person is interested in the fishery but he actually is not the owner.

870 **The President:** Thank you.

875 **Mr Lowey:** And the classic of that, Mr President, was at the burn that comes out at the end of Kentraugh, where the fishing club actually developed the river and put in a pipe to allow the sea fish to come up because the river does not go into the sea, it disperses through the pebbles. They actually put in a pipe so that when high water came, the sea trout could actually get up the pipe. So there is a classic example of it in practice.

880 **The President:** There were sea trout at Colby Bridge ever before they put the pipe there, I can assure you, Mr Lowey.
Anyway, never mind.
Mr Turner.

885 **Mr Turner:** Thank you, Mr President.
First of all, the great support for brown trout members will be delighted to know that current monitoring indicates a large healthy stock of brown trout. So maybe Mr Attorney needs to invest in new fishing tackle to... he has obviously not had much success. There are large healthy stocks of brown trout, but I am told that they are very difficult to rear artificially and the Department’s view is that it is better to improve the habitat for them. So tight lines, Mr Attorney. *(Laughter)*

890 We are told there are excellent populations in Cornaa, for example. You may see the Attorney there this weekend! *(Laughter and interjections)*

895 Mrs Christian mentioned fishing engines. This, as I understand, creates the offence... I am just trying to find where that was now. Yes, clause 14, ‘Any person who uses a fishing engine...’ I think Mr Downie touched on this, that you may have a dam or possibly a weir where, as Mr Downie mentioned, the fish are holding in the pool. So it creates the offence that if somebody is in there with something other than a rod and line, that is quite a serious offence, and a fine up to £5,000 created for that activity. So that is the purpose of that particular clause. It does not, of course, stop fishermen and anglers from going there and fishing through the conventional legal methods.

900 Mr Lowey mentioned fish ladders and mills and why there is a period where they have to be open. This is to allow one period of complete free passage of the fish where they are not going to be –

Mr Lowey: On a Sunday.

905 **Mr Turner:** And Sunday, historically – we had this discussion earlier – was a day when the mill, obviously in the past, would prefer not to work, so that is why it is there and it is still in the provision, to ensure that there is still that period of free passage.
So, Mr President –

910 **The President:** Sorry, Mr Turner. I take the point entirely, but in relation to the hours, the hours are quite specific. The 24-hour period is quite specific over the Sunday period.

Mr Turner: Yes.

915 **The President:** Okay, thank you.

Mr Turner: So I beg to move clauses 9 to 15 and schedule 1 stand part of the Bill.

920 **The President:** Okay, Hon. Members, those in favour, please say aye; against, no.
The ayes have it. The ayes have it.
We continue, then, with clauses 16 through to 21. Mr Turner.

Mr Turner: Thank you, Mr President.

925 Clause 16 makes it an offence to introduce, or intend to introduce, any live fish to inland waters, in order to address disease risks and protect native species, such as the brown trout, from alien introductions. Provision is made for the Department to consent, in writing, to some introductions.

Clause 17 makes it an offence to use, or possess, deleterious matter for catching, destroying or injuring fish in inland waters.

930 Clause 18 is actually taken from the Fisheries (Northern Ireland) Act 1996. Clause 18 makes it an offence to remove material from the bed of any river, without the consent of the Department. Where consent is given and that consent is contravened, an offence is committed. The wording of this clause has been based on the Northern Irish legislation and is felt to complement other provisions in the Bill which concern the protection of fish. Provision is made for an exemption where works of an urgent nature are undertaken by the Water and Sewerage Authority, which is now the Authority which has taken over the drainage from the former Department of Transport.

935 Clause 19 is existing with some minor amendments to the existing provision. Clause 19 gives the Department the powers to direct persons to place and maintain gratings across cuts, leats or channels in inland waters where fish are liable to be diverted from inland waters. A new provision is that the gratings must be of a size and specification as stipulated by the Department. An example of where a fish would pass down a channel from a river would be where salmon smolt are attempting to reach the sea.

940 Clause 20 is a new provision. It enables the Department to require a minimum flow of water below any dam constructed in inland waters, in order to maintain the ecology and the integrity of the rivers and the resident fish populations. Consultation with dam owners is a statutory requirement, in addition to the Water and Sewerage Authority, in respect of such matters. Provision is included for an exemption where there has been a prolonged period of dry weather and the natural flow of water is subsequently reduced.

945 Clause 21 enables the Department to make regulations in respect of disease prevention, importation, removal and movement of fish in the Island, conservation or protection of wildlife and the prohibition of any practice that impedes lawful capture of fish. This clause sets out the maximum level of fine where an offence is committed under regulations.

950 Mr President, I beg to move that clauses 16 to 21 stand part of the Bill.

955 **The President:** Mr Callister.

Mr Callister: I beg to second, Mr President.

960 Just referring to clause 19, relating to gratings and the date of 10th March 1977, I take it that that date is carried forward from the previous Bill. Nevertheless, since 1991, if any leats or channels have been cut by someone, it effectively becomes retrospective legislation to that person or persons.

965 Do we know how many persons will be affected by this, where channels have been cut in these subsequent years? Also, as far as dams are concerned, have we got any information as to which rivers are dammed and how many dams we have on the Island? That would be an interesting statistic, if we can produce it, but otherwise those are the comments that I have, Mr President.

The President: Mrs Christian.

970 **Mrs Christian:** Mr President, I will just refer to the point I raised at Second Reading in clause 18. The hon. mover has indicated that this has been introduced on the basis of legislation in another country. It may be reasonable enough.

I think that material traditionally was taken from rivers, (**Mr Braidwood:** Farmers.) which did not seem to have a deleterious effect. However, we are going to introduce a provision here now to

975 get permission to do it, but I do think that we need to know somewhere, how these rivers are going to be defined by the Department.

The President: Mrs Christian, are you referring to the definition of a river *vis-à-vis* a stream, or are you referring to the definition of the mouth of the river, which is a separate matter?

980 **Mrs Christian:** No, I am referring to it *vis-à-vis* any stream or ditch, because you cannot take material from the bed of a river, but it would appear that you can take material from a stream, so I just want to know what the definition is.

985 **The President:** Mr Downie.

Mr Downie: On clause 17 – the use of deleterious matter – I think this might cause one or two problems for people working near watercourses and perhaps, when the Department deals with the regulations, they will allow some sort of licensing.

990 For example, one of the most dangerous things you can put into a river is cement, and lots of people living by rivers will have a bag of cement. They will be working close by the river. We have seen Leigh Terrace, all the fish obliterated down there by the cement going into the river. If cement is put into a pool where there are fish, I will guarantee you they will all go. It will kill them off.

995 People working in agriculture – we have seen how, in the past, it has been very easy for sheep dip and other substances to get into waterways, not on purpose, but I think we need to be aware that, no matter how you try to legislate, I do not think people go with the intent. What we are looking at here in the Act is a person who intends to go and poison a river to take the fish off, to go and sell them, kill them off, whereas there is the other side of this, where something quite innocently could happen and that person could suffer the full effect of the law. So, we just need a little bit of clarification there.

1000 On clause 20, in the UK and Ireland, and I am not so certain about the Isle of Man, the water authorities are required to provide a compensation water flow and that is regulated. That ensures then that, in the summertime, the rivers are not left to dry out. Just to make further comment, when I was a lad in the Isle of Man, the rivers were properly maintained. Where the weirs were, the gravel was taken out and extracted. It was used by the farmers, it was used on the roads, so we had huge expanses of water in the Isle of Man in the summertime, which was quite deep. All at the back of the NSC we used to go swimming in there when we were lads.

1005 Now you can virtually paddle across there any time, because the rivers have been left to get to such a state that they are full of silt and shingle. I think if we are ever going to manage our sustainable fishery in the Isle of Man in the rivers, we have got to be starting to do more work, create more pools in the rivers and more flats in the rivers, so that, during the summer months, all these fish that we are so keen to produce can actually survive. But, under the present circumstances, I would like to know whether the Department can issue a direction to the Water Authority ensuring that there is a proper compensation flow to be put into the rivers where there are reservoirs at the head – we have several of them in the Isle of Man.

1010 **The President:** I do not know whether Mr Attorney was coming in there or not.

If I may, Mr Turner, again – and it is difficult because we are used to using old terminology – but in clause 16,

1020 ‘the inland waters concerned are used for aquaculture’

– which I think Mr Downie picked up on, or one Member picked up on earlier –

1025 ‘pursuant to a licence under section 55’.

Are we happy that, in relation to clause 18

1030 ‘a consent under subsection (2) does not confer on any person a right to remove’?

Should we not have in there something for the Water Authority because the Water Authority are referred to as having rights?

1035 In clause 55, we simply continually talk about aquaculture and the right of the Department of Infrastructure. We do not refer to Water Authority at all.

1035 **Mr Callister:** *[Inaudible]*

The President: Oh, right then. It has already been amended.

1040 **Mr Callister:** Yes, it is in the Keys' amendment, Mr President.

The President: I have only got a pencil note on my book here. It has been amended, Mr Turner. That is fine.

1045 **Mr Turner:** Thank you, Mr President.

A variety of points have come up there. We have to, I think, take into account that dams for the purpose of this also include weirs. If Members look at the definition on page 2, when we refer to dams throughout this, we do refer to sluices, weirs, dams themselves, dykes, embankments or structures. So I am told, the Drainage Division of the Water and Sewerage Authority do have all these weirs mapped out, with a record of where they all are. Fisheries are also in the process of mapping them out as well. That was a query on the dams.

1050 Mr Downie mentioned about the gravel and, indeed, there can be a build-up of gravel in some of these pools. I certainly think it would be a good idea, possibly, to remove some of that material, to re-establish the pools. As you say, they are getting shallower all the time, so it may be something the Department works on with the Water Authority. As you said, it will give nice pools for the fish to lie in, as opposed to them getting... I saw one on the Neb, where there was a small weir – I saw at the weekend – and the gravel on one side of it had completely built up. So there is an advantage to getting rid of some of this gravel.

1055 What this is intended to do is to ensure that we do not just have anybody going in with JCBs, digging stuff out to create infill somewhere, and abusing the material in the river. What this does is to give the Department... they will still permit it, but it will be subject to conditions that are appropriate. Again, what it means is that the Water Authority, which has a duty to keep the main rivers flowing to prevent flooding and risk to property and people, will be able to get in at two o'clock in the morning or whenever a problem arises, without having to phone round and get consent. They can carry out those works. So, hopefully, that answers that – and the intention, of course, is to protect the spawning gravel and nursery habitat, but again we acknowledge that emergency works do need to be done.

1060 Clause 4 will define rivers and inland waters. Clause 4 will define rivers, I am told, and inland waters are defined in clause 3. Hopefully, that will enable the queries raised by Mrs Christian to define what is a river for the purposes of this legislation. There is a note that I have been passed that there are no abstraction licences for rivers in the Isle of Man, so maybe there is something that the royalties department may be interested in looking into further.

Mrs Christian: Could I clarify that.

1075 **The President:** Mrs Christian, yes.

Mrs Christian: I am not sure that clause 4 does define a river.

1080 **Mr Callister:** I cannot see that.

Mr Braidwood: I cannot see it.

The President: It might not now, but it will if they come up with regulations, won't it?

1085 '... may by order define, by reference to a map or otherwise –
(a) the mouth of any river...
(b) the mouth of any tributary...
(c) ... the tidal and freshwater portions...'

1090 So presumably that is permissive, yes? It is permissive.

Mrs Christian: For those things, but not for a river.

1095 **The President:** Well, presumably... I do not know. Mr Turner, you can answer, sir.

Mr Turner: Thank you, Mr President.

1100 I think this is a point where there is obviously some grey area, and I think maybe we could
seek some further advice on this particular point from the Department and maybe come back with
a more firm definition at the Third Reading, unless the Attorney can offer any assistance as to
exactly what is a river.

The President: I do not know but, Mr Attorney, main rivers, in the old Highways Department
1105 days, were defined quite specifically, so main rivers were defined. Streams I do not think were
ever defined, to my knowledge, but you may tell us, sir.

The Attorney General: Mr President, I suppose one is tempted to say one knows a river when
one sees it, but I think the Hon. Member, Mrs Christian, has got a very good point when you try to
examine whether a stream or a dyke is a river for the purposes of the legislation. That is the point.

1110 Certainly under the Land Drainage Act 1934 we have got a very wide definition of
'watercourse', so a watercourse includes all rivers, streams, ditches, drains, cuts, culverts etc. It
may be that the Department would wish to consider whether a more clear definition should appear
in the definition section, but perhaps I could consider that, with my drafters, with the Department,
1115 in time for the next reading.

The President: Mr Callister.

Mr Callister: Mr President, we would need to consider tributaries as well. Are they part of the
1120 river, or are they simply a stream that eventually reaches a river?

The President: Mr Lowey.

Mr Lowey: The point being –

1125 **The President:** Hon. Members, as long as we are clear for *Hansard*. Let us not have too much
conversation.

Mr Lowey.

Mr Lowey: The point being that all of these tributaries, drains – as spelt out – actually feed
1130 into the river.

So if you clear out a ditch that feeds into a river, you could pollute the river inadvertently
because it eventually gets into the river, and the definition when does a stream become a river...
you know, it is a difficult one.

1135 **The President:** Mr Turner, continue then.

Mr Turner: Yes, Mr Lowey has mentioned polluting and Mr Downie also mentioned this.

The purpose of clause 17 is to use this material for the capture, destruction or injury of a fish,
and Mr Downie is quite right.

1140 I recall many years ago on a visit to Scotland to a river there where poachers had – I forget
what the substance was now – Simac... which effectively took the oxygen out. All the fish floated
up to the surface and great quantities of them perished as a result of that. I think that is the
intention of this clause.

1145 Again, any person who happens to have some of this substance in their possession whilst
hovering around the river banks. There is already provision for when works take place for
prosecutions if the matter is released into the river and there have been successful prosecutions in
the last few years of works that have taken place where fish have been poisoned. I think the most
recent was in Laxey.

1150 **Mr Downie:** Yes, by their own Department.

Mr Turner: It was work being carried out by a contractor, as Mr Downie says, and again, care
was not taken and there was a prosecution taking place. I think the onus is on companies and firms
that are undertaking this work to ensure that they have safe working practices and they do not
1155 pollute the environment.

So I hope I have answered most of the points. I think the other points that were raised are going
to have further clarification.

The President: Okay, Hon. Members, on the understanding that we may revisit the 'river' at Third Reading stage, the motion I will put to Council at this stage is that clauses 16, 17, 18, 19 and 21 do stand part of the Bill.

Those in favour, say aye; against, no. The ayes have it. The ayes have it.

We move on to Part 4, sir, clauses 22 to 35. A long stretch, Hon. Members.

Mr Turner: Thank you, Mr President.

Clause 22 makes it an offence to fish for, take or kill, fish without a licence.

Clause 23 is a combination of several sections of the 1976 Inland Act. It enables the Department to introduce regulations, which empowers it to grant fishing licences in respect of inland waters which, incidentally, is defined and that is what most of the act is, or that section of the act is covering. Provisions contained in this clause allow the Department, through regulation, to stipulate the manner in which persons are to apply for licences. The form of those licences and the conditions that may be attached to a licence, the period for which a licence is valid, along with the renewal, amendment, suspension and cancellation of fishing licences.

Clause 24 provides for the protection of information returned to the Department in respect of individuals to meet the requirements of the Data Protection Act. An example of this is the annual catch returns submitted to the Department by freshwater anglers. Basic data is drawn off these returns and made public in a summary format without reference to the named individuals.

Clause 25 stipulates that a fishing licence remains in ownership of the person to whom it has been granted and is not transferable to another person. This clause does not prevent the Department from issuing a general licence, for example to an angling school.

Clause 26 clarifies the situation in respect of licences for rod and line fishing in any inland water by stipulating that a licence only confers rights in respect of what is contained in that licence.

Clause 27 provides that any person who misuses a licence issued by the Department shall be guilty of an offence. This clause clarifies what constitutes an offence in relation to fraudulent or counterfeit licences.

Clause 28 prohibits certain methods of fishing using certain devices or equipment, such as a trailer, spear or gaff hook, known to be used by poachers.

Clause 29 concerns the prohibition of fishing with nets in inland waters, unless the use of such nets is permitted under licence issued by the Department.

Clause 30 provides that where a person is in possession or control of any device listed in clauses 28 and 29, they are guilty of an offence. This clause also sets the maximum penalty for such an offence, if convicted, at £1,000.

Clause 31 makes it an offence to locate, disturb, take or kill, salmon, sea trout and eels by certain activities. This includes throwing stones, using cross lines or damming inland waters.

Clause 32 is intended to protect against the destruction of fish, fish eggs, juvenile fish and nursery habitat for salmon, sea trout and trout. This clause also protects elvers and lamprays, in their larval stage, from disturbance, injury or obstruction.

Clause 33 concerns chasing, injuring and disturbing fish which are spawning or are about to spawn. Exemptions are provided for where a permit is issued by the Department for such activities to take place or where urgent works are undertaken which are necessary for the protection of property or public works.

Clause 34 makes it an offence to obstruct a person lawfully fishing in inland waters.

Clause 35 makes it an offence for any person to take, or attempt to take, fish in any private waters without the authority of the owner or occupier of those waters. Private waters include reservoirs owned by the Water and Sewerage Authority and angling is occasionally stopped when there is a requirement to close a reservoir or part of a reservoir for certain purposes.

Mr President, I beg to move that clauses 22 to 35 stand part of the Bill.

Mr Callister: I beg to second, Mr President. Can I raise a couple of points while doing so, on clause 27?

Clause 27(2): there are a few custodial sentences here, but this one has a custodial sentence on conviction on information of up to two years. This seems to me to be the heaviest penalty that is within this Bill. I wonder if that is a new provision or whether it is something that we have carried forward from previous legislation, and particularly why it needs to be as high as that, or as severe as that.

On clause 28, the matter of using waders: these waders, according to section 2 are not allowed to wade in water above waist high in waders, but it does not say that you can wade in the water as much as you like to any height, if you are just wearing shoes and socks, or boots or whatever.

1220 **Mr Downie:** Or a frogman suit.

Mr Callister: Or a frogman suit, for that matter.
That is all I have to say, Mr President.

1225 **The President:** Mr Downie.

1230 **Mr Downie:** I have just got a query on clause 22. There is a section in here that I think, really, for a person who is not involved in fishing, might be difficult to understand. It relates to the use of the words 'or other fishing engine'. What I would have liked to have seen here was that, if a person is fishing in a river, or in a lake or a reservoir, whatever, I understand, at the present time, there are restrictions put on the type of tackle. For example, if I am not mistaken, it is line of a certain diameter which is about 10 pounds' breaking strain, and you are only allowed to use size 6 hooks. There is an opportunity to put two together in tandem, if you want to put the worm between the two hooks, but you cannot use treble hooks, and you cannot use big hooks because they can be used for other purposes.

1235 It would have been better, I think, to have a clause in here that says that, as well as explaining to you what you are allowed to do in your fishing licences, this is the type of tackle you can have and what rigger tackle you can have. I have always understood a fishing engine is something that is used, not so much by sporting anglers, but more in a commercial type of fishery, like a jigger on a boat. I have actually seen jiggers being used in lakes to catch trout.

1240 So that just needs a little bit of clarification, I think, but other than that, I am reasonably happy.

The President: Mrs Christian.

1245 **Mrs Christian:** First of all, it does cover diving suits (*Laughter*) so you cannot go in your diving suit in breach of your licence.

I think, just to take the point that Mr Callister has raised, it is having those waders. It does not mean that you have got to be in to that depth, it is just having waders that would allow you to go in to that depth in breach of the provisions. So I do not think it necessarily means that you can get away with it if you are only in to ankle deep, but if you have got your waders it is a bit of a giveaway if you are poaching, isn't it?

1250 **Mr Callister:** Yes.

1255 **The President:** Mr Attorney.

The Attorney General: If I may, Mr President, just taking up the same point, I think the hon. mover will be aware of my anxiety about chest waders.

1260 Chest waders are used very, very frequently in rivers, certainly in Scotland and England, often in conjunction with a wading jacket, which is a short jacket and you put it over your long waders. Apart from enabling you to wade, it is also excellent protection against foul weather –

Mr Downie: And a life jacket, if you fall in.

1265 **The Attorney General:** And a life jacket...

Mr President, it does concern me that – and I know that this is a provision from the 1976 Act – merely by wearing chest waders, perhaps in very heavy rain, you are committing an offence, if you are on the bank of the river, and you are susceptible to an offence which could produce a fine of £5,000 or even imprisonment. It seems bizarre.

1270 I know, again, that the Hon. Member and the Department have issued reassurance that a prosecution would only be brought, if there was evidence that the chest waders were being used as part of a poaching operation, but unfortunately that is not what the Bill says.

Of course, it is very difficult for me to move an amendment if this is a Government Bill, but I do have some anxiety about this, Mr President, and wonder if the hon. mover could address that.

1275 **The President:** You are rather in the same position as myself this morning, aren't you, Mr Attorney?
Mr Lowey.

1280 **Mr Lowey:** Yes, it is just clause 33. If you chase, injure or disturb spawning fish or fish on any spawning beds... I do not see a spawning bed described in the description. I may be wrong.

Of course, we all know that there is not one spawning bed for the fish when they come up the river. In other words, it could be spread over a mile and a half of river bank, where fish... (**Mr Butt:** Shallow waters.) it takes their fancy or where they came from originally. How do you define a spawning bed for this clause? If you are guilty of injuring or disturbing, especially on a spawning bed, is it just a general if there is gravel and the fish are there they are obviously spawning? Is it as simple as that, or do you define it? It is not defined anywhere else, and I notice the fine for that is only £1,000.

1290 **The President:** Mr Butt.

Mr Butt: Thank you, sir.

A couple points, legal points, I suppose. The waders issue. I think it does actually say you have to have the purpose of taking the fish contrary to the provision of the Act and so, therefore, any prosecution would have to prove that there was a purpose to actually contravene the Act. Mere possession alone would not be enough to have a prosecution.

1295 The second point Mr Callister raised at Clause 27(2) about the high penalty. That is only on conviction on information and that means it would have had to come to General Gaol to be prosecuted and it would only go there if it was a very serious offence and there had to be some particular circumstances that make it that serious. I suspect it will be very rarely used. I suspect the Attorney General may have a hand in deciding whether that should go for trial or not.

The President: Mr Turner, then, reply sir.

1305 **Mr Turner:** Mr Butt has brought the point with regard to waders. The way I read and understood the section of clause 28, on page 21, was that any person who, for the purpose of taking any fish contrary to any provisions of this Act... So my reading is if you are fishing legally and you have a licence, then you would not be committing an offence. It is if you are taking the fish contrary to any provisions of the Act.

1310 **Mr Braidwood:** It is a way with words. (*Laughter*)

The President: Keep going, sir.

Mr Turner: It was the blank looks I think that I got which caused me to pause!

1315 I think that, obviously, there was some confusion as to how that was read. Certainly I would take that to mean that if somebody was poaching, they clearly did not have a licence, they were not fishing legally, they were in the middle of the river with a net or treble hooks or some of the other methods that Mr Downie had described, then obviously, that would be taken into account. That is part of the offence they were committing, along with possibly many others through their activity.

1320 Mrs Christian is right that diving suits are covered, although I think – (**Mr Downie:** Birthday suits.) I was going to say, somebody did mention that if they went in... they would probably have hypothermia to worry about before anything else. Again, I suppose that is a possibility that if somebody was that determined to go in and try and get fish out, but they would obviously be contravening other provisions in the Act, because they would not be fishing with legal methods. So, hopefully, there is a catch-all in that.

1325 There is a bit of information coming here from the Department, with regard to spawning beds – Mr Lowey's query. They are not actually defined, as they will differ for different species and will depend on gravel size, river flow and the time of year.

1330 **Mr Lowey:** We are defining them as a specific...

1335 **Mr Turner:** 'Fishing engine' is defined and also was on the handout from earlier, but it is set in the regulations – the hook sizes and line strengths, etc. Also I am told that there are certain flies that may be fished, along with a treble hook for spinning.

It says here the secondary legislation will be revised regularly and certain restrictions will be updated as we go along, but a lot of that detail will be in the regulations that the Department will make.

1340 With that, Mr President, I beg to move clauses –

1340 **The President:** Clauses 22 to 35, sir.

Mr Turner: – 22 to 35 stand part of the Bill.

1345 **The President:** Hon. Members, the motion that I put to Council is that part 4, which includes clauses 22 to 35, do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Part 5, clauses 36 to 47, Mr Turner.

1350 **Mr Turner:** Thank you, Mr President.

Clauses 36 to 47 concern the regulation of fishing in the sea. Again, I will highlight new provisions as we go through.

1355 Clause 36 is a general power which enables the Department to impose prohibitions or restrictions in respect of any area of the territorial sea. The Department may prohibit fishing for all, or certain species of, sea fish, specify quotas of sea fish that may be taken in specified periods, restrict methods of fishing and size of vessels that may operate in a fishery, and stipulate the gear that may be used in fishing. Provision is also made for the Department to establish certain bodies, the functions of which will be to advise on the making of regulations under subsection (1). By way of an example, this clause will enable them to close areas of the territorial sea to scallop dredging in order to assist in the sustainability of the scallop fishery in the Isle of Man waters.

1360 Clause 37 enables the Department, through regulation, to licence fishing boats engaged in commercial activities within the territorial sea. Regulations made under this clause can stipulate how applications for licences are to be made, the form of the licences, the conditions applicable to those licences, the period for which such licences are to be valid, and the provisions governing renewal, cancellation, suspension and variation of such licences. Provision is also made for the keeping of records of catch and landings of sea fish. In the case where a licence is refused, cancelled or suspended by the Department, provision is included which enables an appeal to be made to a court of law.

1365 Clause 38 stipulates the type and extent of conditions that may be attached to a sea fishing licence for commercial purposes. This is intended to set out the remit for the conditions that may be attached to a licence and complements clause 37.

1370 Clause 39 provides that it is an offence to take sea fish which are subject to certain restrictions or prohibitions. For example, it is prohibited to take king scallops between 1st May and 31st October each year. However, such sea fish are often caught as a by-catch when fishing for queen scallops during this period. This clause would require that any king scallops caught are returned to the sea.

1375 Clause 40 concerns the trans-shipping of sea fish within the territorial sea and makes such activity illegal without a licence.

1380 This is where sea fish are moved from one vessel to another, prior to landing. The section of the Sea Fisheries Act 1971, which has been reproduced in this clause, used to cover such activity as herring fishing, where large catches of herring were transferred to factory ships for processing. This is a useful clause today, where large scallop processing boats have been known to purchase catch directly from fishing vessels operating within the territorial sea.

1385 Clause 41 provides that anyone committing an offence under clauses 36 to 40 could be liable on summary conviction to a fine up to £50,000. The maximum fine cited is currently that set in the Sea Fisheries Act 1971.

1390 Clause 42 is new. It provides for records obtained through electronic automatic recording equipment to be used as evidence in a court. This allows the Department to provide printed evidence taken from the vessel monitoring system (VMS) to the courts when taking a sea fisheries prosecution, for example. A great deal of information on modern fishing vessels is stored electronically, and this clause will enable fishery officers to take copies of such information, using modern technology.

1395 Clause 43 is also new. It is a new provision which enables the Department to introduce regulations in respect of buyers of fish, by creating a register of fish buyers on the Isle of Man. This is a requirement imposed on the Isle of Man by the Common Fisheries Policy and is operated in the UK. These rules are intended to address the illegal selling of fish or 'black fish', as it is known. Buyers of fish will have to be registered with the Department and produce evidence to show the source of that fish, when required to do so, through inspection of records. This will only affect those persons purchasing fish at first point of sale, i.e. from a fishing vessel directly.

1400 Clause 44 enables the Department to obtain statistics on sea fish landings made in the Isle of Man. These statistics will include details of the quantities of sea fish, the areas in which they were

caught and the methods of fishing, amongst other things, which also may be required. Statistics such as these will help inform the scientists of the impact particular methods are having on those fisheries and will assist policy to be made to ensure sustainability.

1405 Clause 45 is the new provision which we have debated earlier on today. It enables the Department to regulate and license recreational sea fishing activities, where deemed necessary. This particular clause, which was previously known as clause 44 during the consultation, caused the most controversy. Readers of the clause assumed that the Department was to introduce an individual rod and line licence for sea fishing in Manx waters. This was never the case. Whilst, technically, the clause provided that the Department could, if it wished, impose an individual licence for recreational activity, it was the intention to use such licences for lobster and crab fishing for personal consumption and for the possibility of licensing gill netting, if it could be shown that such activity was having a detrimental impact on a particular species.

1410 It was following lengthy discussions with members of the Anglers Forum, set up by the Department to allow input from the sector, that a fuller explanation was given and an understanding reached, as to the aims of this particular clause. Admittedly, the Department should have explained in more depth the purpose of the clause at the consultation stage. Unfortunately, that did not happen and we are happy to bring forward the revision.

1420 So to reassure those rod-and-line anglers based on the Island, and those who visit the Island, the drafter of the Bill ensured the Department may not license individuals for recreational rod-and-line angling, which is set out in this clause 45(7). Members of the Anglers' Forum have, however, asked that the Department consider the introduction of a daily bag limit, if evidence shows impact by recreational anglers on a particular species. A good example of this is sea bass, which, whilst not a commercial species on the Isle of Man, is suggested to be under threat by rod-and-line anglers taking large quantities each day. This will enable the Department to issue a general licence in respect of rod-and-line angling, similar to those issued in respect of shooting crows and magpies. Such a licence may state that bass may be caught by rod and line around Manx waters but limited to two bass on any one day. Provisions such as this currently exist in the Republic of Ireland, where recreational bass fishing is promoted via their tourist board.

1430 An additional condition that may be applied is a ban on fishing for a particular species during their spawning period. Currently, a ban on bass fishing is operated in the Republic of Ireland between 15th May and 15th June, where any bass caught are to be returned.

1435 Clause 46 enables the Department to apply United Kingdom legislation, where necessary, in order to meet its obligations in respect of commercial sea fishing activity, as set out in the Common Fisheries Policy of the European Union.

1440 Clause 47 is new for sea fisheries purposes. It echoes the provision of clause 17, where it is an offence to use or possess deleterious matter, which is harmful or possibly disruptive to fish. It was felt that it was necessary to extend this to the sea as well.

Mr President, I beg to move that clauses 36 to 47 stand part of the Bill.

1440 **Mr Callister:** I beg to second and reserve my remarks, Mr President.

The President: Mr Lowey.

1445 **Mr Lowey:** I understand the need to have the register for the international registering of fish and people who use it. Just again, I am on practical grounds.

1450 If you go to Port St Mary, I remember taking some friends from London when the fishermen were coming in and they had the scallops, but there was always a couple of boxes of fish that they had collected for a variety of reasons. I understand the king scallops have got to go back and I am sure the fishermen do put the scallops back, but there are fish that have been killed and we are talking here of sharks or dogfish, I suppose, dogfish and plaice and bottom feeders, that have come up in the trawl. Most of them are not in a fit state to be put back into the sea. What do they do? As it was explained to me, they were the crew's perks, in other words they sold them to the local restaurants. That will have to cease now, I think. Or do they have to register and record all the fish that have been...?

1455 The only point I am making is, there comes a time when you have to put the fish back, whether they are dead or not. That seems to me a waste of the resource, as opposed to reaping a harvest from the sea, and that is what worries me that perhaps it will be a case of over the side, it is not worth the hassle.

1460 **The President:** Mr Braidwood.

Mr Braidwood: Mr President, a couple of points.

1465 With our territorial seas, I know we have enforcement up to... It goes to 12 miles, but we only have enforcement up to three miles, I believe. Also, on the fishing boats, transponders are supposed to be on board all fishing boats now, I believe, so that they can be monitored, so that the boats can be seen where they actually are within our three miles or the 12 miles: does this apply to other boats coming from outside?

1470 Also on the recreational fishing, the enforcement by people: if they are fishing off, say, the Ayres and there is the sea bass coming in at certain times of the year, with a restriction of two, will the wardens be up at that time to enforce it? It is the enforcement, because when you look at the length of our coastline, it is going to be extremely difficult – more so than when the wardens are at the reservoirs checking on people or on rivers.

Thank you, Mr President.

1475 **The President:** Mr Callister.

Mr Callister: Mr President, on the matter of the recreational fishing in clause 45, what will be the process of issuing a general licence? How does that work? It is probably here somewhere, but I have not spotted that. We are assured, then, there will be no requirement for recreational fishermen to have these individual licences.

1480 On the point made by Mr Braidwood, I am not quite sure how you can enforce this. There does not seem to be a system already existing to monitor this kind of fishing. We are already talking about having bag limits and so on. Where do fishing competitions... Do they relate to recreational fishing, or do they not, because a lot of people come over to the Isle of Man for these competitions that are held around the coast. So I wonder where they come in relation to the recreational fishing. That is the point I wanted to make.

The President: Mr Downie.

1490 **Mr Downie:** I want to just explore a bit further the point that my hon. colleague, Mr Lowey, was making. The fish he was referring to is called a bycatch. When scallop fishing takes place, they are dredged. You have got metal dredgers with a chain mail belly in them and then you have got a small net bag which takes the scallop. Many years ago, the big bycatch from the scallop fishing grounds around the Isle of Man was the monkfish. Sadly, they are virtually gone now. It is a rare occasion that a fishing boat comes in with a couple of dozen monkfish. But that bycatch, I am advised, years ago, was never included in our fishery. That is something that was caught and, as Mr Lowey says, it was whacked out between the crew; they either took it home to eat or, if there was a surplus, it was sold on.

1500 One of the big bones of contention – and I do not want to get involved – in scallop fishing because you heard me in Tynwald this month saying that for every one king scallop that is landed, there are a hundred by-species killed because it is sold detrimental to the environment and the sooner we get out of dredging and into a more sustainable method of fishing for them, the better. What is the point of landing all these dead fish on the deck, which are not that many, really, and then throwing them all over the side? You would be better off having a system where that could be recorded so you would know what damage was being done on the grounds and I think that just getting rid of these because it is not fashionable to have them landed...

1505 It is a problem, and if you watch any of these programmes on TV about the fishing industry, the number of fish that have to go back because they have reached their particular quota in some species, these are just lost. To me, this is just a waste, and I think we have got to be very careful that we do not actually go down that particular route. It might not be fashionable in EU terms, but at the end of the day it is a by-catch we are talking about here and I think we are far better being honest and doing something with that by-catch... just to throw it away and to be lost for evermore. That is my only point, Mr President.

1515 **The President:** Mr Turner to reply.

Mr Turner: Thank you, Mr President.

1520 I do not think there is any suggestion that this fish has to be thrown over the side. The purpose of the registration is so that we get a record of the fish that is being landed. Certainly, the days of restaurants buying direct from the vessels is not over, but they will be required to record it. There are no actual sellers on the Island – their designated auction operations that we see on the television quite a lot, featuring in the programmes. But if someone sells fish on behalf... i.e. if

1525 someone selling on behalf of that vessel, so where you see them at the big fish auctions in the UK, we are not going to need additional staffing in the Department for this. It is going to be a relatively straightforward system. The existing staff deal with incoming sales notes from buyers, at the moment. Fishery officers conduct inspection visits, so it is part of their existing process.

1530 Buyers will be required to maintain a ledger, which will be provided by the Department, and record purchases. Larger businesses, such as the main fish processors, will be required to submit electronic sales notes once a week. This is something, again, that they are very keen to be taking part in. I think, on the whole, the majority of the industry are really on board and see the benefits of the system.

1535 Just slightly wider, we are also, in the Department, looking at electronic logging on board the vessels themselves, so the whole process will be electronic from start to finish, and there are great benefits for the operators of the vessels as well.

1540 One large fish-processor business here has actually lost a contract, I am told, with a UK operation, for exporting Manx fish, for not being a registered buyer, and again, if we are going to be trading... because not all the fish that is landed here is consumed here. It is not a local market; it is part of a much bigger market. I am told that we are five years behind the UK in implementing this system, and, technically, we are in breach of our obligations under our 1991 agreement, so by putting this in place it fulfils our international obligations which, in turn, will make it easier... I think Mr Braidwood mentioned our 12-mile limit, and indeed Mr Lowey did. We are not wholly in control of that 12-mile limit and negotiations are under way to enhance that control. This is again another step to show that we are responsible in our fisheries management.

1545 Officers from the Department do intend to visit all potential buyers on an informal basis, to go and talk to them and, as we said, some of the higher-profile restaurants that serve seafood on the Island are fully backing this scheme.

1550 Enforcement of recreational angling... Sorry, if I could just go back, the boxes of fish as a by-catch are known as some of the crew's perks, apparently. Again, we would not want to see these fish thrown overboard.

Mr Turner: Maybe it is the Christmas beer money, I am told.

Mr Lowey: What do you do with starfish?

1555 **Mr Turner:** I have never eaten starfish, so... *(Laughter)*

Mr Lowey: You do not throw them back onto scallop beds, anyway.

Mr Turner: It does not appeal to me.

1560 Currently, under the Logbook Bylaws which are already in place for the vessels, all fish landed must be recorded, anyway. This is the next stage and fish are only discarded where the fish, under the European Commission's quota rules, are prohibited to be landed, due to being under threat. For example, spurdog is now a restricted species and cannot be landed.

1565 Regulation of the two-bag limit, of course, that was an example that we used, which could be brought in but the question came up on how the Department would enforce that. We already enforce the provisions of the River Regulations on bag limits there, and indeed at the reservoirs.

1570 Yes, officers cannot be everywhere at once, and if you have anglers who take more than they should, and there is nobody around, it is like any activity that requires enforcement: they have to be caught in the act. There is a very proactive process in place at the moment, with the river watchers, who regularly inspect anglers, chat with them, ask to see their licences if it is an inland water. Also, anglers are very vocal, anyway. If they suspect other anglers are taking more than they are entitled to, then the Department does get to hear about it, and visits will be made.

1575 The beauty of the new Bill that we are discussing today is that the officers will be able to be warranted overall for Fisheries, where, at the moment, we have inland officers and sea fisheries officers. So, in effect, we are actually potentially doubling the numbers without doubling the staff, because we will be able to warrant the same people in the Department who are employed, and also the volunteers.

So, Mr President, I think I have answered all the points raised.

1580 **The President:** Mr Callister.

Mr Callister: Just the question on fishing competitions, Mr President.

1585 **Mr Turner:** Competitions will not be affected, but it does give us the ability to issue a general licence to an angling club if they wish to undertake a certain activity. The individual members will not require individual licensing for that, so if there is a particular competition on, it will not affect their current practices.

1590 **Mr Braidwood:** And also, Mr President, transponders which are not on fishing vessels which are registered in the Manx –

1595 **Mr Turner:** The Manx system is actually a piggy-back of the United Kingdom system, so that they all will have the VMS, as it is called – vessel monitoring system. That is a requirement and, again, officers from the Department can see on a terminal, and I believe they have remote log-in now both from their home systems and also on board the *Barrule*, the fishery protection vessel, so they can see exactly the activity that is going on. So all vessels commercially fishing in our waters are on the system.

1600 **The President:** Hon. Members, the motion I put to the Court is part 5, clauses 36 to 47 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Part 6, clauses 48 to 52. Mr Turner, please.

1605 **Mr Turner:** Clause 48 makes it an offence to take salmon, sea trout or any freshwater fish during the close season. It allows the Department to specify the dates of the close season through regulation.

1610 Clause 49 makes it an offence for a person to buy, sell, offer for sale or expose for sale, any salmon, sea trout or freshwater fish from two days following the close of the season until the end of the closed period. An exemption in relation to imported fish for sale in supermarkets and fishmongers or in restaurants is included in the clause.

Clause 50 makes it an offence to take unseasonable salmon, trout or sea trout: unseasonable fish being those that are spawning, about to spawn or have not recovered from spawning.

1615 Clause 51 is new. It further restricts the sale of fish and makes it an offence to buy, sell or offer or expose for sale unlawfully taken salmon, sea trout or freshwater fish, fish taken by rod and line, fish out of season and fish which are undersized. This has been deemed necessary following evidence of individuals catching and retaining four trout at a reservoir each day and selling them on to a third party. This clause extends protection to salmon and sea trout in this regard.

1620 Clause 52 provides that it is illegal to take salmon, trout or sea trout, which are found dead or injured or killed, otherwise than by lawful means. This is both to ensure public safety, where fish are poisoned through harmful or poisonous matter entering the watercourse and to enable the Department to accumulate evidence of the number of fish deaths caused by the illegal introduction of deleterious matter in a watercourse.

1625 **Mr Turner:** I beg to move that clauses 48 to 52 stand part of the Bill.

The President: Mr Callister.

Mr Callister: I beg to second, Mr President.

1630 **The President:** Mr Downie.

Mr Downie: Thank you, Mr President.

I notice in the Bill a lot of the old terminology that was used in the Fisheries Act has gone.

1635 For example, Mr Lowey made reference to ‘spawning grounds’ and in the old legislation they were called ‘reds’. In clause 50 there is a terminology here which is ‘unseasonable fish’. In the old legislation there was a terminology which was ‘kelt’. A kelt was a salmon that had spawned and was returning to the sea. It was unlawful to take them. Now, is a kelt an unseasonable fish, because you could catch a kelt actually now if it has gone up the river early enough and spawned and is on its way back to the sea? The way to tell them is they lose their depth, they are very, very long and thin, and you can see that, wherever they have been, the goodness has actually gone out of them. So I just wanted to make sure that kelt, which is in the old Act, is actually covered by what is termed here as ‘unseasonable fish’.

1645 **The President:** Mr Lowey.

1645 **Mr Lowey:** Close season: is it flexible? I am a seeker-out of truth here. I lived for a decade at the source of the Santon Burn, and I can only recall one out-of-season run. There is a spring run and there is an autumn run, isn't there, of the fish?

1650 **Mr Downie:** The autumn now.

Mr Lowey: It was Christmas week when the fish eventually arrived.
Does the Department say that you cannot fish for the fish because they are not in the river, but you can fish for the fish when they come in the river? Do you have flexi-time? I have to say, it was Christmas week and I have known Christmas week for a lot of things, but seeing the fish in my pond in the garden was one of the delights of Christmas for me that particular year. So I just wonder, when you say they are out of season, who defines the season? Is it the fish that make regular migratory things, or is to do with the...? I have no idea why the fish were late that year. Could it be the water?

1660 **The President:** Mrs Christian.

Mrs Christian: It seems it would be the Department, Mr President, who would define the close season, and presumably with regard to whether the fish were coming in or not.

1665 **The President:** Mr Butt.

Mr Butt: If that definition was outside the time period, I presume then clause 50 would have come into play: they would be unseasonal fish.

1670 **Mr Lowey:** And you would not be allowed to fish them. That is all I am really after, because it was obviously the main flush of fish that came up at Christmas.

The President: Mr Attorney.

1675 **The Attorney General:** Mr President, just to clarify. 'Unseasonable' is actually defined in clause 3(4) of the Bill. So salmon, trout or sea trout is unseasonable if it is about to spawn, or it has spawned and is not recovered from spawning. So that is the definition of 'unseasonable fish'.

In any event, if you were thinking of going out to fish on Christmas Day, it will be outside the season, anyway.

1680 **The President:** Mr Turner to reply.

Mr Turner: Yes, the Attorney General is correct in the definition of 'unseasonable fish', which are those spawning or about to spawn or have not recovered from spawning. The fishing season is defined by the Department in its regulations and, of course, the licence terms do not permit you to fish outside of that.

Kelts would be unseasonable, I am told, and so would a hen salmon full of eggs. So I hope that answers Mr Downie's query.

1690 **Mr Lowey:** So you are not allowed to fish, then.

Mr Turner: That is correct.

1695 **The President:** Hon. Members, the motion I put to Council then is that part 6, clauses 48 to 52 – we are up to 52 – do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

That takes us to part 7, Mr Turner: aquaculture. Part 7 then, clauses 53 to 58.

1700 **Mr Turner:** Thank you, Mr President.

Clause 53 enables the Department to engage in aquaculture activities to stock or restock waters under clause 9.

Clause 54 provides that any aquaculture activity carried out on the Island must be done so through a licence issued by the Department, otherwise an offence is committed. This covers both inland waters and the sea.

1705 Clause 55 empowers the Department to issue aquaculture licences to persons in relation to both inland and sea fisheries. This clause stipulates what conditions may be attached to an aquaculture licence and sets out the penalties that may be applied if a licence condition is breached. Aquaculture activity could constitute rearing trout in a hatchery or farming mussels on an area of seabed, by way of an example.

1710 Clause 56 enables the Department to amend or revoke an aquaculture licence when it is deemed necessary to do so.

Clause 57 includes supplementary provisions in respect of aquaculture licences, including inspection of any operation holding a licence, and for examinations and sampling for testing purposes to take place.

1715 Clause 58 is new. It empowers the Department to apply, by Order, any UK or European Community legislation relating to aquaculture, to ensure that the Isle of Man meets its obligations in respect of fish health requirements for export purposes. An example is the Aquatic Animal Health Regulations 2009.

1720 Mr President, I beg to move that clauses 53 to 58 stand part of the Bill.

The President: Mr Callister.

Mr Callister: I beg to second, Mr President.

1725 Members will have noted that there was an amendment to clause 55(2) made in the House of Keys.

The President: Mr Lowey.

1730 **Mr Lowey:** It is just that I was going to say does this cover the turbot, the sea fishing and the freshwater, which is the new people who have got the licence from the Department to stock the rivers and do the trout hatchery at Cornaa?

Mr Turner: Yes.

1735 **Mr Lowey:** It does, fine.

The President: Hon. Members, the motion I put to the Court, then, is that part 7, clauses 53 to 58, do stand part of the Bill. Those in favour, please say aye; and against, no. The ayes have it. The ayes have it.

1740 Now, Hon. Members, being aware of the clock, I am getting a little bit concerned as to whether you wish to continue or whether you wish to come back. That is the question I have to put to Council. Would you rather continue, Hon. Members? Do you think we can see this off this morning? Maybe not?

1745 **Mr Lowey:** I have a –

The President: Hon. Members, in that case, we will, at this stage, retire for our lunch break, and we will resume at 2.30 p.m. Thank you, Hon. Members.

The Council adjourned at 1.02 p.m. and resumed its sitting at 2.30 p.m.

Fisheries Bill Consideration of clauses concluded

1750 **The President:** We continue, Hon. Members, with the Fisheries Bill 2010. We have reached Part 8, clauses 59 to 72 Authorised persons.
Mr Turner.

Mr Turner: Thank you, Mr President.
Part 8 concerns enforcement provisions.

1755 Clause 59 requires that any person authorised under the Bill is to produce evidence of their authority to act under it.

1760 Clause 60 enables authorised persons to board boats in order to investigate suspected offences and to detain boats where an offence has been found to have been committed. It also stipulates additional requirements that may be imposed when undertaking investigations in either inland or sea fisheries, such as a penalty that can be imposed where someone obstructs an authorised officer while carrying out an investigation on a boat.

1765 Clause 61 provides additional powers in respect of searching persons, vehicles, packages or containers, where an event is suspected. Under this particular clause, authorised persons are empowered to enter premises, examine fish and fishing gear and to seize any unlawful fish or fishing gear. This can be used by sea fishery officers to search vehicles. For example, at present if a fisherman is seen leaving a vessel with a bag full of scallops or undersize fish and places the bag in a car, there is no power at the moment to search that car.

1770 Clause 62 enables authorised persons to arrest alleged offenders, if that offender refuses to give their name and address, provided that they deliver the alleged offender into the custody of the Police as soon as practicable.

Clause 63 enables an authorised person to seek a warrant from a Justice of the Peace to search and enter premises, where there are reasonable grounds for suspecting that an offence has been committed.

1775 Clause 64 restricts authorised persons and what they may do in respect of the Bill, where fishing rights are in private ownership. An authorised person is unable to enforce any fishing rights imposed by the owner of those fishing rights, but may enter a land where fishing rights exist, if an offence is suspected of being committed under the Bill. For example, an authorised officer could not enter into a private fishery and take someone to task for keeping three fish, when the retention of two was allowed by the owner. However, if the person fishing was in breach of a provision of this Bill or regulation under the Bill, then action can be taken under the normal procedures.

1780 Clause 65 concerns the appointment process for private water bailiffs. Currently there are no private water bailiffs appointed under the Inland Fisheries Act 1976. However, this provision is retained, should the need arise to appoint such a person for a private fishery that may be created on the Island.

1785 Clause 66 provides additional powers to authorise persons in respect of access to inland waterways to investigate suspected or alleged offences.

I may go as far as clause 72, if that is okay, Mr President.

1790 Clause 67 provides that a Justice of the Peace may issue a warrant to an authorised officer, enabling them to enter land or waters for the purpose of investigations of alleged offences. Such warrants are only valid for a period of seven days.

Clause 68 provides that an authorised person may open passages at certain times and remove obstructions, where considered necessary, to enable the free passage of fish, provided there is no damage caused by doing so.

1795 Clause 69 requires that any person fishing in a place, where a licence or permit is required to so fish, must produce a valid licence or permit when required to do so by an authorised officer. Failure to produce a licence when required is an offence. Certain exemptions exist, which enable a person to produce a licence or permit at an office of the Department as soon as practicable when unable to do so at the time of asking, i.e. if they have left their licence at home.

1800 Clause 70 makes provisions for penalties to be applied where an authorised person is obstructed or assaulted whilst carrying out their duties under the Bill.

1805 Clause 71 makes it an offence where an individual warns a person illegally fishing of the approach of an unauthorised person and clause 72 indemnifies an authorised person against loss or damage, whilst undertaking their duties. This indemnity is not applicable, however, where that authorised person has acted in bad faith.

Mr President, I beg to move that clauses 59 to 72 stand part of the Bill.

The President: Mr Callister.

1810 **Mr Callister:** I beg to second, Mr President, and reserve my remarks.

The President: Mr Lowey.

1815 **Mr Lowey:** There is only one query that I have got and that is where people can be prosecuted if they assault a person in the exercise of their duty. I thought it was a criminal offence to assault anybody. Why do they have to be specific to them carrying out this particular duty, or these duties, under the sections referred to in this clause?

The President: Mrs Christian.

1820 **Mrs Christian:** Yes, in clause 66, Mr President, it seems that an authorised person can pass along the banks or borders of any inland waterway and, for the purpose of gaining access, may pass and re-pass along the road, path or way, but it does not seem to allow them to cross any field or land, so have they got to climb over hedges so they stick along the banks of the waterway?

1825 **The President:** I had a look at 66 but I think it is actually covered by 61, Mrs Christian, and I do not want to help Mr Turner on this at all, because the reverse is true. I felt that 66(1)... an authorised person is someone who has got a warrant, but 61(4) gives the authorised person, I think, probably as much power as I have ever seen given to a JP's warrant, insofar as it says:

1830 'An authorised person who exercises any power to enter on *land* conferred by this Act for any purpose may take *with him or her* on to the land such other persons or such equipment as are necessary for the purpose in question.'

and I think it is a very, very wide... 66(1) is less wide but I thought that was a very far-reaching warrant to give to a JP.

1835 Lord Bishop.

The Lord Bishop: Clause 69(4): John has a permit and says to Fred, 'Go on, you can fish with my permit.' So Fred fishes and the authorised person asks Fred for his name and address. He gives the name and address of John, so that that, under (b), John goes to hand over his licence and the evidence of his or her identity. And Fred has got away with it...

The President: Mr Attorney.

1845 **The Attorney General:** Mr President, I think we have seen that there are other provisions in the Bill which prevents a licence being transferred to another, and a further provision, I think, fraudulently to pass off a licence as yours, when it is not.

Mr Butt: The penalty of two years was for deception wasn't it, I think?

1850 **The President:** Mr Turner, would you care to wind up that then, sir.

Mr Turner: Thank you, Mr President.

The explanation given by the Attorney General was what I was going to say.

1855 If we deal with Mr Lowey's comment about the assault of officers, it may be the case, of course, that if that provision was not in here it would be slightly harder to deal with the matter. However, because they are warranted officers of the Department, it was thought right that the offence should be written into the primary law because, whilst on the surface, it may seem like quite a harmless process, history has shown that it can be quite confrontational where some of the individuals that are being dealt with, particularly in poaching, may not have the manners that you would hope. Assaults can happen, threats can be made, and what this does is it places on a firm footing what the offence is for assaulting or threatening the Fishery officers.

1860 **Mr Lowey:** I just wondered whether the penalty of six months and a fine of £5,000 is higher than, say, an assault in generality.

The President: Can we just hold on, because I had asked Mr Turner to wind up the debate, and I want to be sure that *Hansard* is right, Mr Lowey. You come in there.

Mr Butt, could you come in as well, then, please?

1870 **Mr Butt:** Yes, I was going to say that, in general, in assaults, when a person has a particular role, like a police constable or a coroner or a water bailiff, they are separate offences to the ordinary common assault, because they need to be people who are perhaps more at risk and more likely to... so the penalty and the prosecution is on a different basis to an ordinary common assault.

1875

The President: Back to Mr Turner.

Mr Turner: Thank you, Mr President.

1880 I think we covered the situation with them gaining access to the river banks. I think the explanation given by the Attorney covered that. I am sure Mrs Christian is satisfied with the response, that we had. Basically, it is covered in here that they can enter the land.

The President: Mrs Christian.

1885 **Mrs Christian:** In clause 67, does it imply that, in order to exercise a function in clause 66, they have to get a warrant from a Justice?

Mr Turner: Yes.

1890 **The President:** My understanding is that I think it is worded differently than we have seen before, but it is... Mr Attorney, an authorised person does require a warrant, don't they?

Mrs Christian: Do they in clause 66(1)?

1895 **The Attorney General:** Clause 66, Mr President, empowers an authorised person to enter land and so on and to go along the banks for the purpose of protecting inland fisheries or enforcing any of the relevant legislation: but if, for example, he or she were to encounter a problem – let's say that somebody barred entry and refused entry onto the land – then the authorised person could go to a Justice and show, hopefully to the satisfaction of the Justice, that there was reasonable ground for entry and that it needed to be reinforced by a warrant. So they have the power without a warrant –

The President: They have the power without a warrant –

1905 **The Attorney General:** – but, if necessary, they can go to a Justice and ask for –

Mr Turner: An example of that may be if there was a suspected illegal importation of fish to a pond, for example, the officers may wish to go to that land. They have their own warrants as officers of the Department but, as it says in clause 67, if they are obstructed they can go and get a Justice of the Peace to issue an enforcement warrant to enable that to take place.

The President: Mrs Christian.

1915 **Mrs Christian:** Can I clarify, then: in 66 they are entitled to go only along the banks or borders, or along any path or roadway –

The President: Or way.

1920 **Mrs Christian:** – or way, but not, in the generality, to cross land.

Mr Lowey: The word is to 'ramble'.

The President: Mr Butt.

1925 **Mr Butt:** I would just seek clarification: from my understanding of the Isle of Man, there is no offence of trespass on land unless you are in pursuit of game. In theory, there is nothing to stop you going across land in the pursuit of finally ending up at a river. Maybe the Attorney can clarify that, but I do not think there is anything to stop you crossing land.

1930 The reason warrants etc are issued are for people's dwellings and private premises. There is the ultimate protection; but actually walking across land, as far as I know, is not an offence unless you are pursuing game.

I may be wrong on that, but I think that is...

The President: Mr Attorney.

1935 **The Attorney General:** Well, I always defer to the Hon. Member (*Laughter*) on his knowledge of criminal law and, certainly, there is a saving provision in clause 66(2), Mr President, which makes it clear that the authorised person cannot enter a dwelling or an enclosed garden and so on.

1940 It seems to me that if there is power to get to the river and to walk along the banks, it must be implied that you can cross the field to get to the bank, otherwise it would be a nonsensical provision. So I believe that there is power to cross a field to get to the river.

1945 **Mrs Christian:** Right. Thank you.

Mr Downie: Just to add there, Mr President, salmon and trout are referred to as game fish, (*Laughter*) so there may be a provision for those back in the old statutes somewhere.

1950 **Mr Butt:** The old Game Acts – sorry- the old Game Acts used to say there was an offence of trespass on land.

Mr Callister: So is there a difference between game and game fish?

1955 **The President:** Fair's fair. We need to have some structure.
Mr Turner.

Mr Turner: Thank you, Mr President.
Always interesting points that are raised. I cannot speak for some of the old Game Acts that Mr Downie refers to, but I would certainly agree with the Attorney's comments about passing. This gives the officers that power and I think it is relatively clear that they cannot go into properties without that, so I will just formally move clauses 59 to 72 stand part of the Bill.

The President: Are they clauses 59 –

1965 **Mr Turner:** Yes, clauses 59 to 72 stand part of the Bill.

The President: Hon. Members, so I put to the motion to Council, Hon. Members, that part 8, clauses 59 to 72, do stand part of the Bill.

1970 Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Part 9 then, clauses 73 to 84. Mr Turner.

Mr Turner: Thank you, Mr President.
Clause 73 enables the Department, by regulation, to stipulate fees for the grant or renewal of a fishing licence, where deemed necessary to do so.

1975 Clause 74 is a new provision. It enables the Department, by regulation, to require tagging of salmon or sea trout and to undertake information gathering in relation to tagging of such fish from individuals or fish buyers or sellers. The intention behind such provision is to provide a better understanding of salmon and sea trout stocks in the Irish Sea and to inform regulation and conservation of fish stocks.

1980 Clause 75 provides for an exemption to the rules contained in the Bill, or regulations made under the Bill, through the issuing of a permit for artificial propagation or transplantation of fish for stocking, restocking or improvement of a fishery or for some scientific purpose, either in the sea or inland waters. An example of this could be where the crew of the *Barrule* were asked to undertake scallop sampling during the close season, with a view to collecting scientific information. This clause would enable this to happen, where necessary.

1985 Clause 76 is also new. It provides that any legislation pertaining to sea fisheries shall extend to any marine nature reserve assigned as such under the Wildlife Act 1990. This reflects the Department's restructuring, where the marine biodiversity officers have been placed within the Fisheries directorate of DEFA.

1990 Clause 77 is also new and contains general provisions in relation to legal proceedings. This clarifies the situation in respect of corporate bodies, where legal proceedings take place.

Clause 78 provides for the forfeiture of numerous items if ordered by a court when an offence has been committed and the conviction made.

1995 Clause 79 provides for the manner in which unlawful fish seized or detained are to be disposed of by the Department.

Clause 80 provides for the manner in which boats or fishing gear seized is to be disposed of by the Department. An authorised person may seek an order from a court of summary jurisdiction for the forfeiture or destruction of any boat, fishing gear or fishing engine. The court may also return any item to whatsoever it deems to be the owner of that item.

2000 Clause 81 provides the Department powers to dispose of anything forfeited under the Bill which is not subject to a destruction order.

Clause 82 provides for a court of law to order cancellation of licences where a person is convicted of an offence. It also enables the courts to impose a licence suspension of up to four weeks in relation to sea fishing activities for a person convicted under the provisions of the Bill.

2005 Clause 83 is a general clause which concerns powers to make regulations and orders and provides for consultation to be undertaken by the Department when making regulations or orders. Any order or regulation made under the provisions of the Bill must be submitted to Tynwald at the earliest opportunity, though provision exists for legislation to be made and enacted, subject to being submitted to the next available sitting of Tynwald. A good example of this is where there is a need to regulate a particular fishing activity during the summer months while Tynwald is in recess.

2010 Clause 84 provides that the transitional provisions contained in schedule 2 are to have effect. It also lists those enactments being repealed by the Bill in schedule 3. Provision is included in this clause to enable any secondary legislation made under the Acts which are to be repealed. They will continue in force as if made under this Bill.

2015 Mr President, I beg to move that clauses 73 to 84 and schedules 2 and 3 stand part of the Bill.

The President: Mr Callister.

2020 **Mr Callister:** I beg to second, Mr President.

The President: Mr Braidwood.

2025 **Mr Braidwood:** Just one small thing, Mr President, on clause 81, disposal of forfeitures, I presume under clause 81(3)(a):

‘sold or otherwise disposed of in such manner as the Department thinks fit...’

2030 If it is sold, I presume, then, what is the money is then just returned to the Department.

The President: Mrs Christian.

2035 **Mrs Christian:** Yes, could we just clarify, under clause 80, which allows the court to approve disposal of stuff that has been seized, in a case where no person is charged with an offence. Could the mover clarify and give us an example of the sort of circumstances where you might be making a seizure of gear when no person is charged with an offence, including a boat which was about to be used for a purpose which, under this Act, is unlawful? Is it something that somebody has just abandoned and run off from?

2040 **The President:** Mr Downie.

Mr Downie: On a similar vein, Mr President, there is a very good section in clause 78 section (c), where it says:

2045 ‘any boat, vehicle, fishing gear, fishing engine or other thing whatsoever by means or in respect of which the offence was committed.’

That means it can be confiscated. Then in clause 81:

2050 ‘sold or otherwise disposed of in such manner as the Department thinks fit,’

2055 It has been custom and practice that when vessels come into our territorial seas, or there have been cases in the past where people have been caught poaching in our rivers, and the courts have ordered for the vehicle or mode of transport to be confiscated, but there has been evidence to show that people have been able to buy these articles back, as is the case with the sea fisheries, where nets and things are confiscated: there is an agreement reached and then the skipper or the owner of the boat buys the confiscated items back, pays the Department fee and goes off.

2060 I would like to know who determines what these fees are and, to add to Mrs Christian’s problem or issue, if a person abandons a vehicle or runs off and that vehicle is involved in some areas of unlawful activity or poaching, who determines that? Is it the court or is it the Department itself?

The President: Mr Turner, reply, sir.

Mr Turner: Thank you, Mr President.

2065 Of course, we are talking about authorised persons here, who are mainly going to be the Fisheries officers. The authorised person may apply to that court. So, for example, there could be a line of pots, say, which are not complying with the regulations, as regulations are coming in to, for example, have escape panels, have tags, and various other provisions. So if they are not complying, they could seize those pots, for example. So although there is no person present, they

2070 could apply to the court for an order to dispose of that equipment.

In terms of selling, at the moment, the Department... when items are seized, I think they are just sent to be destroyed. They actually have been going to landfill, I am told, and they are not returned to the actual owner. The Department would have to make the decision on how much they were going to sell, if they were going to go down the route of selling off. Something I have raised

2075 in the past is that if you seize fishing tackle from somebody then, in reality, if they are going to engage in that activity, they will just go out and buy some new tackle. It seems a waste to just dispose of perfectly good tackle that could be sold to a responsible angler. That is something the Department is looking at, but as to who decides the value, that is something that would have to be done through the administrative process of the Department and I do not really have an answer to

2080 how we would value that equipment.

Boats, obviously, would require the guidance of the court to make a decision. It would depend on the circumstances for which that vessel was seized. Possibly vehicles are left behind. I think you mentioned clause 80, where there is a potential for the vehicle maybe left with somebody 'doing a runner' I think was the phrase. Again, I think it would be unlikely that if the Department

2085 was given authorisation the vehicle would probably be disposed of. That is something that the Department would have to decide.

I do not think there were any other queries, so Mr President, I beg to move.

The President: Hon. Members, the motion I put to you is that part 9 and clauses 73 to 84, along with schedules 2 and 3, do stand part of the Bill.

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Those in favour, please say aye; and against, no. The ayes have it. The ayes have it.

That draws to a conclusion our Fisheries Bill and the clauses stage at this particular juncture on our Order Paper.

Civil Partnership Bill Second Reading approved

2. Mr Lowey to move:

2095 *That the Civil Partnership Bill be read a second time.*

The President: On our Order Paper we have the Civil Partnership Bill for Second Reading.

Hon. Members, although it is on your Order Paper, I did anticipate, as you know, there is a linkage between the Civil Partnership Bill and the Marriage Bill. You will be aware that the Marriage Bill was amended here in Council and sent to the Keys. The Keys did not accept the amendments. Consultation was requested. The consultation has taken place.

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As a result of the consultation, heads of agreement have been reached between your delegation and the Keys delegation and I had anticipated that it would have been dealt with by a report to the other place, probably this morning or at some stage. In effect, that report from the Keys delegation to the Keys has not taken place and so I think that we do have a little hold-up in that regard. I do not want to particularly be progressing one Bill in advance of the other Bill having completed its passage.

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So, Hon. Members, whilst it is effectively up to yourselves to decide, I would suggest that it would be best if Council decided, under our Standing Orders, that the clauses stage... that we cease at this particular stage and if we can take Second Reading and clauses in future, when the Keys has caught up, as it were. At this particular juncture I think it was...

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Mr Lowey, do you wish to add to that, sir?

2115 **Mr Lowey:** No, sir, I regret that we are... I think it is in deference to the Keys and I accept your ruling absolutely. I think it would be unwise for us to pre-empt any decision of the other place, however much we think it will be going with an agreement.

I am quite happy to take the Second Reading today and if any Members have got any problems, I could take it today or I can leave until – and do the clauses.

2120 **The President:** If Council is happy that we deal with the Second Reading, well we can deal with Second Reading but, in all honesty, Hon. Members, the Bill was, as I told you, subject to a conference between the branches in July. The Keys side, as I understand it, are preparing their report to the Keys and, if the House agrees to the delegation's proposal, it will amend the Council's amendments and send the Bill back in that form. That is what we ended up with: the delegation have agreed amendments to the amendments which we made to the Bill in the first instance.

2125 Anyway, okay, Mr Lowey, let us take the Second Reading, then, of the Civil Partnership Bill.

Mr Lowey: I am grateful to you, Mr President, and my colleagues.

2130 In moving the Second Reading of the Civil Partnership Bill, I would like to thank Hon. Members for their contribution to the debate during the First Reading. I also thank them for their continued patience with this Bill, which, as we have spelt out, has taken a considerable amount of time to get to this stage.

2135 Mr President, the general principle that we are considering here today is fairly uncomplicated: should the rights for a minority group of Manx citizens be properly catered for? Should same-sex couples who live together in an enduring and loving relationship be entitled to receive similar treatment and benefits as married couples?

2140 In recent years, I have seen positive political and social changes on this Island, and I view this legislation as one of the linchpins in the Government's Strategic Plan by catering for individuals in disadvantaged situations. Mr President, it has taken the Isle of Man several decades to reach this stage, and it concerns me that, even in this day and age, there are people – only a few, perhaps – who are saying we are rushing this particular issue. I say to the Court and my colleagues that we are several decades late.

2145 I believe, Mr President, it was John F. Kennedy who once said history is a relentless master, it has no present, only the past rushing into the future, and to try to hold fast is to be swept aside. I could say these are very wise words from a great 20th-century political leader... and not let this important piece of social legislation be swept aside because of attitudes from times past.

2150 The vulnerable and socially disenfranchised in this Island community must not be treated as second-class citizens. The gay community in this Island must be provided with the right to enjoy their life, the right to establish a relationship with whomever they please and to have that relationship recognised and respected by the law and by the Government of this Island.

2155 Mr President, there has also been some concern shown regarding the manner in which this Bill is being drafted, especially from our colleagues in Council. The concern seems to be on two fronts, if I have read the First Reading right. The first seems to stem from the fact that the Bill is a direct reproduction of the Civil Partnership Act of the UK 2004, which came into force in December 2005. The second is the perception that the Isle of Man Civil Partnership Bill is overly large and somewhat cumbersome.

2160 Mr President, I understand that the Act introduced in the adjacent island did initially have teething problems. To my knowledge, some of the issues were similar to those that have been raised here during the consultation on the Island and during debates in the other place. There was issue in the UK with how the rights of couples were being addressed. For example, should the rights be made available by way of a... and here you will forgive me, Mr President, because my French is useless, even after all this time. In France, they have a *pacte civil de solidarité* – forgive me if I have pronounced that wrong – to all couples of the same or opposite sex.

2165 For those of you who are not aware of this concept, a *pacte civil de solidarité* is the French system of dealing with the legal rights of same-sex couples and unmarried opposite-sex couples. In simple terms, it is a legal contract drawn up between two individuals for organising their joint life and the conduct is stamped and registered by a clerk of the court. On face value, this concept seems to be adequate. It brings some rights and responsibilities, but less so than, say, marriage, and potentially the initial expense to the couple will be significantly greater. The concept of legal rights for unmarried couples of the same and opposite sex was proposed as an option during the consultation here in the Isle of Man, and it was not felt worthy of being adopted as the preferred option at that particular time.

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2175 The UK legislation was attacked by the not-now-not-ever brigade, who tried unsuccessfully to prevent the UK civil partnership legislation from being enacted by Parliament. In the Isle of Man I must confess that I have only had six letters on the subject, four in favour and two against. The two against were what I can only best describe as... I could have guaranteed their opposition. That does not mean I do not respect their point of view – I do – but I just happen to disagree with that on this, and I have written to both those parties and explained, I hope in a nice way, why I thought they were not in keeping with the times.

2180 After the 2004 Act of Parliament came into force, a host of tax-related issues were identified. These tax-related issues were subsequently addressed by literally hundreds of consequential amendments, and that is where I think a lot of the problems arose – in the taxing.

2185 Now we have, or I have, been advised that our Bill, with the help of the legal draftsman, in consultation with the Income Tax Division, has been drafted in such a way to ensure the lessons learned in the UK... and the same errors... are not going to be repeated in our legislation that we debating here today.

2190 I would also like to take this opportunity to point out that, due to the nature of certain amendments made in the Bill by the Treasury Income Tax Division, they have advised me that the Bill will need to be introduced at the start of the tax year. Part of the problem in the United Kingdom, I am told, was that the Bill came into force halfway through the year – in fact it was, I think, December or January part way through – and there were a lot of problems relating to that.

2195 Mr President, I am aware that a number of hon. colleagues believe the Bill we are debating today is far too large and cumbersome. Well, it is certainly large. I cannot deny that. Cumbersome? Well, I hope I will be able to explain why it is so large.

2200 The structure of the Bill is made of six parts and has 15 schedules and there are a total of 107 clauses. The size of the Bill is an inevitable consequence of the fact that the bulk of the legislation relates to essential amendments required to be made to current cross-governmental legislation. Simply put, amendments have been made to all appropriate current legislation in order that the equivalent legal rights currently enjoyed by a married couple are applied to civil partnerships. Hon. Members, what we have done is said these are the present legal requirements for married couples and all of the bulk of this is just adding the requirement to include civil partnerships. We are not writing new laws; it is the existing law, with the addition.

2205 A few hon. colleagues have also said that the current Bill is not fit for purpose and it would be better if we had a bespoke Isle of Man Civil Partnership Bill. Mr President, the fact is that we are where we are after a long, long period of discussion and I am confident that this Bill before us today will do its job of dealing with the complicated legal remedies required to deliver the set objectives.

2210 Furthermore, at this stage of proceedings to suggest we should tear up the Bill and start again from scratch, could, in my opinion, be both costly in time and resource, unless it is resolutely believed by Council with the approach taken to civil partnership arrangements and legal remedies within the Bill is fundamentally flawed. I do not accept that it is flawed. I think we have had unanimous agreement in both branches that this Bill does meet its objectives.

2215 I would like, now, Mr President, to set out the purpose of this Bill and some of its key features. The purpose of the Civil Partnership Bill is to allow same-sex couples to make a formal legal commitment to each other. At present, they have no means of gaining legal recognition of their relationship and, as a result, suffer from a range of disadvantages in their everyday lives, not only during the relationship, but also in the unfortunate effect if they break up that relationship or the death of a partner. The unavailability of legal rights can lead to difficulties in a variety of circumstances.

2220 For example, when a relationship ends, same-sex couples do not have the same protection at the moment as spouses in matters relating to land. One partner might reasonably expect a share in any division of property or to be able to apply for maintenance from their former partner. The latter is not presently possible at all, and the other can be achieved only by recourse to trust law, rather than general family law.

2225 Bereaved same-sex couples find it difficult to achieve full recognition and, for example, for the purpose of fatal accidents, compensation, and in cases where a partner does not leave a will, same-sex partners do not have any rights under the intestacy legislation and partners have been refused a hospital visit to see their seriously ill partners. I have dealt with two of those in recent years and a very harrowing time it was for them, and it was equally harrowing for me because I felt so helpless in not being able to assist. The Civil Partnership Bill will address many of these issues and provide comprehensive rights and responsibilities for the same-sex couples who form a civil partnership.

2230 Mr President, I would like to make it clear that the formation of civil partnerships is not the same as civil marriage ceremonies and is not – I have to repeat it again – is not legislation for gay

2235 marriage. In addition, I can confirm that no religious activity will occur during the process of registering the partnership. Same-sex couples will not be able to enter into a civil partnership anywhere they like. There will be certain offices approved for the registration to take place.

As mentioned earlier, in order to bring about the necessary legal changes, a rather large and complex piece of legislation needed to be fashioned. The Bill amendments touch all Government Departments, or nearly all Government Departments, just as heterosexual marriage does at this moment in time.

2240 Mr President, the Civil Partnership Bill has been drafted in order to enable same-sex couples to obtain legal recognition of their relationship by allowing for the formation of a civil partnership. They may do so by registering as civil partners of each other, provided they are of the same sex, they are not already in a civil partnership or lawfully married, they are not within the prohibited degree of relationship, and they are both aged 16 or over, and if either of them is under 18, the consent of the appropriate people or bodies has been obtained.

The Bill also sets out the legal consequences of forming a civil partnership, including the rights and responsibilities of civil partners.

2250 Additionally, the Bill makes amendments in respect of adoption, in particular to remove existing restrictions on adoption by couples other than married couples. Such amendments are required, in consequence partly of the provisions of this Bill and partly in order to amend certain provisions of the Adoption Act 1984, which are incompatible with the provisions of the Human Rights Act 2001. It will bring into operation legislation that will permit two people of the same gender to register as civil partners of each other on the Island and will provide corresponding rights, remedies and ancillary provisions in relation to registration procedures and requirements, annulments and dissolution of a civil partnership, the separation of civil partners, and the children of the family of civil partners as apply in the case of a marriage. In addition to this, it will provide for the recognition in the Island of civil partnerships registered in the United Kingdom and equivalent relationships formed under the law of the Channel Islands and overseas countries and territories where certain conditions are met.

2260 Mr President, you will observe that this Bill does not currently reflect the full scope of the agreement made recently between the Council and the House regarding the venue and circumstances in which marriage ceremonies can be held. In order to reflect in the Civil Partnership Bill the amendments to the Marriage and Civil Registration (Amendment) Bill as settled, hopefully, by conference, these amendments are by means of an Order, which is to be made at a later date.

2265 Mr President, I believe the Civil Partnership Bill meets with the strategic objective, and the aims of the Government's Strategic Plan by catering for individuals in disadvantaged situations. This meets with the strategic aim of social inclusion, ensuring equality of opportunity and fair treatment for all.

2270 It is my opinion that its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001, ensuring the Isle of Man complies with international legislative and regulatory obligations, protecting the Island's international relations with the UK and Europe. I believe it is important that Council should carefully consider this jurisdiction's commitment to act in accordance with the terms of the Convention of Human Rights and also recognise the existence of parallel legislation in the United Kingdom and other neighbouring jurisdictions.

2280 The way and the manner in which this Bill is handled will place us in an international spotlight and could influence the external perception of our Island and, as anything in the past, it could do damage to our generally good reputation. I trust that my hon. colleagues will consider these points and will be able to give the Civil Partnership Bill their support.

Mr President, I beg to move that the Civil Partnership Bill 2010 be read a second time.

2285 **The President:** Mr Braidwood.

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

The President: Mr Callister.

2290 **Mr Callister:** Thank you, Mr President.

The Lord Bishop's comments at the Second Reading need to be taken into account, I believe, at this stage. He spoke about the complex nature of the Bill, both from the point of view of being understandable to the lay person but also of the complexities when it comes to having to administer it. The Bishop spoke about the Bill having been 'cobbled together' in the UK. Well, we

2295 are hearing a bit about that now, or we just heard, and taking it more or less lock, stock and barrel from there – and that is not satisfactory for the Isle of Man.

I would suggest to Hon. Members that the most important point that the Lord Bishop made at the First Reading concerns the prohibited degrees listed in schedule 1, on page 64. He stated that a whole group of people who might be caring for others are being excluded.

2300 In replying to that debate, the mover, Mr Lowey, stated the aim of the Bill is to make sure that we treat people equally, fairly and justly but, Mr President, there is no justice or fairness or equality for the persons listed under the prohibited degrees. This, Mr President, is discrimination, and what consideration has been given to their Human Rights? I believe, for instance, that two brothers who live together, or two sisters who live together, should be able to enjoy the benefits that the civil partnership can provide. They are excluded from our exclusive – or inclusive – society.

2305 It is supposed to be an inclusive society. It has been claimed that the Bill is not about marriage, but it is simply providing legal rights for two people of the same sex living together. However, if we examine schedule 11, which is on page 162, we see there a list of countries and territories under relationships formed outside the Island. In that list there are at least five listed where the legal relationship is described as ‘marriage’, these being Belgium, Canada, the Netherlands, Spain and Massachusetts in the United States. So it may well have been more sensible for us to examine the French legislation *Pacte Civil de Solidarité* and I would ask the mover to what extent the French legislation was examined, and thoroughly examined, before we were confronted with what is certainly a cumbersome Bill. Was it examined at all because, from what I understand, it may have been more suitable for the Isle of Man and would not have excluded those people listed under the category of prohibited degrees?

2315 I am in no way opposing the Bill, as far as same-sex couples are concerned, but it is discriminatory and not everyone has access to the process. The fact that we are now delaying the clauses stage means that amendments can be moved at our next sitting and it is not too late, irrespective of the tax year, because there is another tax year to follow it. It is not too late, Mr President, to have our Council examine, or have examined, the *Pacte Civil de Solidarité* before we move on to the consideration of the clauses, or even during the consideration of the clauses. I think, in a way, we have a duty to some people to do that.

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2325 **The President:** The Lord Bishop.

2330 **The Lord Bishop:** Mr President, it has been pointed out already, the Bill before us mirrors the UK Civil Partnership Act 2005 which, by anybody’s reckoning, has its problems. I have pointed out before that of the 15 schedules, number 5 has 13 parts and 71 sections, and our Bill passed through the House of Keys very rapidly. As one might expect from a Bill of this length and complexity, like anything as long and as complex as this, it becomes subject to Parkinson’s bicycle shed mentality.

2335 There are definite anomalies to sort out, which this Bill attempts to do and in part achieves: for instance, a person contracted in a civil partnership elsewhere could theoretically marry on the Island because we lack the ability to recognise and prohibit such a thing happening. It is perfectly proper that it should do that. There are injustices to sort out: for instance, the position of two people of the same sex who have lived together and cared for each other for a long time and the other has no pension rights, without a Bill like this.

2340 Given that many children are adopted from the United Kingdom to this Island, the Isle of Man Adoption Society is expected to comply with the standards of UK law in the case of adopters who are in a permanent and stable same-sex relationship. At the moment, we cannot guarantee that in law. So to that extent, and many other extents, the Bill is a good thing.

2345 Zealots on both sides of this issue are likely to make far too much of the Bill, and it is particularly dangerous to be found pointing out the flaws, because then the critic immediately gets pilloried as homophobic. It is amusing, actually, to be considered a dangerous radical in certain circles and a hopeless dinosaur in others. So I am not an all-out opponent of the principles of justice behind this Bill. I have not joined, nor do I intend to join, the not-now-not-ever brigade, or the brigade that is very famous in church circles: ‘spot it and stop it’.

2350 So, I am not an all-out opponent of the principles of justice behind this Bill, Mr President. I hear many calls for freedom, but freedom is not the only value to be prized. This constant appeal to freedom and to ‘my rights’ over ‘my space’ and ‘my life’ is too often deaf to the appeal of the other person’s freedom and rights and space and life. The appeal to freedom works in both directions, or it cannot work at all.

2355 The problem, as I read it, is that the Bill is not even-handed in its dispensation of justice and it awards rights to a minority, while being content to allow those rights to be denied to others, when I think it could put them right. In addition, it attempts to force our understanding of marriage into a new philosophical framework. For instance, the case of Catholic Care, which successfully argued in the English High Court the exemption provided by regulation 18, which exempts charities to aspects of sexual orientation legislation of the Equality Act (Sexual Orientation) Regulations 2007. It was accepted in the UK that it is unjust, at the stroke of a secular pen, to overturn religious convictions which, whether one agrees with them or not, have been held for two millennia.

2360 Another injustice in this Bill would prevent two people related to one another, who could not marry, and may not wish to marry even if they could marry, from entering into a civil partnership in a way which is incontestable on any scale of ethics, and so be deprived of, for instance, those same pension provisions which are regarded as a right by what we might call active same-sex partners. We could cite the case of two sisters who wish to contract a civil partnership in order to avoid punitive inheritance tax on a jointly owned house, but who would be prevented by schedule 1 from doing so.

2370 Schedule 1, Mr President, is the slip that is showing below the maiden's dress. It reveals that this Bill is focused on gay rights to the exclusion of the rights of many others in long-term relationships. The reason I oppose it is that it masquerades as the justice issue, when it is manifestly unjust to some people and it is a carefully placed stepping stone towards the ultimate goal of redefining marriage as the union of two persons, regardless of their sex. I am not alone in wishing to defend the boundaries of marriage as, in the definition of the state, the union of one man with one woman voluntarily entered into for life to the exclusion of all others.

2375 The simple solution would be to delete schedule 1, since that schedule, in two parts, the absolute and conditional, prohibits civil partnerships within the prohibited degrees. The prohibited degrees are there to prevent heterosexual union and procreation between people who are closely related. They prevent incest, near incest and its consequences. So what is schedule 1 doing in a Bill which specifically relates to people of the same sex, because couples of the same sex cannot procreate – at least not yet. It is an attempt to gain for the same sex – that is the gay community – rights that cannot be afforded to many members of the wider community who may be gay, bisexual or straight, but do not wish to be defined by their sexuality.

2380 What we have before us, I believe, is an inherited camel, a horse designed by a committee. Its aims are good, insofar as they go, but that is a long way short of good enough. It does not sort out the pension, disability and inheritance rights for related carers, which is a real justice issue and it shifts the goalposts in our understanding of permanent relationships. I think we can do something better to give proper rights to people, irrespective of whether they are gay or straight. We could just maul this Bill by attacking schedule 1 as unjust or we could start again, which I believe is a far better course of action.

2385 We have heard, Mr President, that since 1999 France has had a much simpler and more satisfactory solution, the *Pacte Civil de Solidarité* – PACS – a contract between two adults, whether they are of the same sex or of the opposite sex for a shared life together. The prohibited degrees apply in PACS, when a pact is contracted heterosexually. Therefore, parents and children, grandparents and grandchildren, uncles and nieces, aunts and nephews and in-laws, if contracting across the sexes, are forbidden, but not if they are not. Those degrees do not, of course, apply to same-sex couples. As with our Bill and the UK Acts, the PACS cannot intrude on marriage or on another civil partnership but, of course, the problem with PACS is that it deals with more than same-sex relationships, and this Civil Partnership Bill is *only* about same-sex relationships. That is why I do not like it.

2390 I strongly urge the Council to have done with the Bill and to request the drafting of a new Bill on the principles underlying such arrangements as the French PACS.

2405 **The President:** Mrs Christian.

Mrs Christian: Mr President, I was not going to speak, but I think the Lord Bishop has made some very interesting points. We know in our own communities there are people for whom there may be a same-sex arrangement, which is not a sexual arrangement, but for whom the civil rights should be considered. Whether or not we consider this Bill as a first step in that direction... (**Mr Lowey:** Absolutely.) we could do that and continue with its consideration.

2410 Whether or not we should seek to amend it, which may be hugely complicated, I do not know. Whether simply changing the degrees of prohibition in the schedules may make some difference to it, I do not know, but I imagine that it is such a complicated measure which impinges on so many other pieces of legislation that I think it might be dangerous to start to tweak it too much and I feel

that maybe the Lord Bishop has made a very valid point in relation to the Bill. I would be interested in hearing what the mover's response is before we seek to move it off somewhere else.

2420 **The President:** Mr Butt.

Mr Butt: Thank you, Mr President.

2425 I was not going to speak, either, but I think the Lord Bishop made some very good points. I am a full supporter of this Bill as it stands, and I think it is needed. It needs to comply with our relationships with the UK and other jurisdictions, especially in terms of pensions and tax, etc. That is probably why it is so lengthy and so long. But I really think the Bill before us today does not deal with issues like two brothers together or two sisters together, or a brother and sister together.

2430 I think we should stick with this Bill, as it stands at the moment, because the Bill before us is about a particular set of circumstances, and I think we should give a strong message to other people that there should be a future Bill, which will include those other people who could also benefit from bereavement issues, from breaking-up issues to do with property. All the things that Mr Lowey raised as being the disadvantages currently for same-sex couples, we should really send a strong message out to our Government and other people to say we want to extend this to those other people.

2435 But I think, Mr President, at the moment, this Bill is so complex and complicated that it needs to go ahead as it is.

The President: Mr Braidwood.

2440 **Mr Braidwood:** Thank you, Mr President.

I think at the present time, we have no alternative. We have to proceed with this Civil Partnership Bill. I have taken on board the comments made by the Lord Bishop and I would agree with the Hon. Member of Council, Mr Butt.

2445 At the moment, this is the only thing in town. We have got to go with it and other legislation can be brought later on to account for those people and those that the Lord Bishop has mentioned. But this is the only game in town at the moment and we need the Bill and I would like to see it proceeded with.

The President: Lord Bishop.

2450 **The Lord Bishop:** Thank you, Mr President.

Thank you for allowing me to speak again. I find myself in a difficult position because I can see the need to have something and to have it fairly soon and I think that if we were to rewrite this Bill, effectively *ab initio*, we would be talking about a couple of years at least before getting to this stage.

2455 So I would be willing, and I think others probably would be willing to go with this Bill, but provided that there are very firm undertakings that the issues which particularly schedule 1 raises... If there is any possibility of our doing that during the clauses stage, even if it meant holding up the clauses stage for a few weeks to do that, or at the very least having a kind of rider Bill which comes in on the back of this one, that one or the other should definitely be... that we should get some sign that that will definitely be processed. Otherwise, if this Bill is just left as it is, then I would have to reject it and I suspect others would do, too.

The President: Mr Attorney.

2465 **The Attorney General:** Mr President, a very brief point, if I may.

2470 I did have the benefit of talking to the legislative drafter about making amendments to the Bill and, without passing any comment at all as to the merits of any such amendments, all I would say is that the observation I had is that it would be very difficult indeed to accommodate amendments to this Bill. I would have thought that if Council wish to look at schedule 1 issues again, it could far better be accommodated in a new piece of legislation.

The President: Mr Lowey, wind up, sir.

2475 **Mr Lowey:** I thank Hon. Members for their contribution. It is a serious matter and does deserve serious consideration.

I would agree with the Bishop when he says it went through the Keys in a rather speedy way. Maybe that was because the people who moved it are better at it than me. I have to say if we have to wait to get everything perfect and everything dealt with in one piece of legislation, we will wait forever, and that goes not just for this legislation but for other bits of social legislation. It cannot ever encompass everything that we would want, but that should not blind us to the legitimate case for quality and justice and all the things that I have spelt out for this particular group of people in our society.

Can I come and deal with Mr Callister first. He used the phrase this Bill was ‘cobbled together’ in the UK. It may have been cobbled together, but it has been amended subsequently quite substantially and has served its purpose. It is settling down, it is being worked, and I note the new administration has not the slightest intention of going near it or to replace it in any way, shape or form.

So it may have been cobbled together; it has been amended and is fit for purpose, and as I said in my few words of introduction, we have been the beneficiary of that, in that, six years later, we have seen where they went wrong and we have tried to cover it as best we can in our legislation. So we have waited for the gremlins, or most of them, to be squeezed out. I do not think there is a piece of legislation passed by any parliament anywhere in the world that has not been able to be reviewed after a few years.

It is complex, and the thing that surprised me when I saw the Bill is just how... I use the word ‘heterosexual’ – I was going to say ‘ordinary’ but we are all ordinary – just how complex the legal provision is for heterosexual people, because all we have done is applied to ally and piggyback, on the back of that, those rights and put them into rights for this minority group of people.

The Lord Bishop: I understand the Lord Bishop’s position. I think it is a principled one and I do think it comes from compassion and wanting to do the right thing. I have no difficulty in accepting many of the comments that he makes. However, I have to say and I think, like a lot of people around this Council, we have lived through a time where fear stalked the land and if you dared to try and help a minority group, you were literally crucified by the media for that. That was not so long ago.

Two wrongs do not make a right. I do not think anybody... What I have very much approved of is the sensible way in which we have been able to discuss these matters, without – and these may be intemperate words – ‘raising the temperature’. We have been able to look at things properly, coolly and see what we can do to advise.

I have to say that we have to recognise that we have accepted obligations willingly – not forced to by anybody – when we accepted the Human Rights legislation. Nobody forced us to do it; we did it. When we have got those obligations, I think we have the duty to implement them. Nobody can accuse us of rushing this. It has been nine years since we passed the Human Rights legislation in the Isle of Man and I believe it is now time that we honoured this particular group of minority people and make their life a better place.

Can I come to the – I am not going to say it again – but the *Pact* and leave it at that, the French way. I am advised that this was an option that was put forward and discussed by consultation on the Island, not in the UK, on the Island. It was looked at to see if it would work here, instead of... and it had shortcomings. What those shortcomings are, I will be able to explain a bit better and it was much more expensive. I believe that what we have chosen to do is to take a workable – contrary to my hon. friend’s view, Mr Callister’s view, that this is not working – it is working and is working very successfully in the United Kingdom and it seems to be meeting the requirement. This is not one that is going to be used by a vast number of people, this is a framework that is for a minority group and it is the same in the Isle of Man. It is working. It has got caselaw behind it now, since it has been passed, and I believe that it is a framework and it will achieve what the aims and objectives are, which is justice and fairness for this minority group.

I accept what the chief... again, what the Bishop says about other groups; sisters and brothers and I, too, have been dealing with cases like that throughout my political lifetime. They are unfair and they should be able to enjoy the protection of the law but, again, I think it’s... I will give an undertaking that I will certainly press as hard as I can that legislation should be grouped. I am sure there are other groups of people out there that we have not touched on today, that may be affected in various ways.

Our job as legislators is to try and deal, firstly, with the broad mass, then... what is the phrase again used? ‘Minorities have rights; majorities have responsibilities.’ I think we have a responsibility, as a majority, to look after the rights of minorities, and I think that is what this Bill is trying to do.

Mr Callister shakes his head.

Mr Callister: You are creating another minority, sir.

2540 **Mr Lowey:** There will always be other minorities – that is the point I am trying to make, rather unsuccessfully. If we are going to wait and try to cover every minority, then we will be waiting a long, long time. That is my view and I respect Mr Callister’s point of view, too, that he disagrees and he says we all should wait. I accept that is a point of view, but not one that I would accept.

2545 Mrs Christian and Mr Butt: interesting that the Bishop should make us think. The Bishop does make us think and I did listen to what the Bishop had to say at the First Reading and I have taken up some of the points that he made with my advisers. I still believe that this particular Bill will achieve its objective and the objective of the Isle of Man Government in our policy document, to be as inclusive a society as we can. This Bill will not make us totally inclusive but it will add another strata of inclusiveness to a sizeable minority in the Isle of Man.

2550 I do not accept what the Bishop says, where this is just being pressurised by a specialist group. I do not accept that at all. I think it is the responsibility of the Government to look after its citizens, all its citizens. As I have said, I have lived through a time where it was deemed to be illegal to even express affection for someone. I did not like it then. I do not like it now and the quicker we can obliterate it, the better.

2555 I would urge Council to accept the Bill, imperfect as it may be in some quarters, but I do believe it is worth supporting for the right reasons and I would urge you to support the Bill during this clauses stages.

The President: Second Reading stage, Mr Lowey: what I put to Council is that the Civil Partnership Bill 2010 be read for a second time.

2560 Hon. Members, those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Procedural

The President: That will effectively bring us to a conclusion for our business today, Hon. Members.

2565 I would just like to say that, at this stage, we adjourn to the second day of November, which will be, I think, quickly upon us now, anyway. So thank you very much and Council will now sit in private to discuss the summary of Council minutes.

The Council sat in private at 3.46 p.m.