

**4. Highways (Amendment) Bill 2019 –
First Reading approved**

Mrs Lord-Brennan to move:

That the Highways (Amendment) Bill 2019 be read a first time.

The President: We turn now to the Highways (Amendment) Bill for First Reading and I call on the mover, Mrs Lord-Brennan.

Mrs Lord-Brennan: Thank you, Mr President.

5 I am promoting this short Bill on behalf of the Department of Infrastructure to rectify a deficiency in the definition of ‘planning approval’ within the Highways Act 1986, which I will refer to in this speech as ‘the Act’. Essentially the issue relates around the cross-referencing of a changed definition.

10 The background is that the Department has powers within the Act to make highway closure or highway diversion orders under section 33. These powers enable the Department to divert or extinguish a highway for the purpose of enabling development to be carried out in accordance with a planning approval. Where the Department is satisfied that it is expedient to do so, it may then make an order to deal with extinguishment or diversion of the highway and therefore enable the development to proceed.

15 However, it should be noted that planning approval, as defined in section 119 of the Act, only means approval to the development of land granted pursuant to a development order under Part 2 of the Town and Country Planning Act 1999 and to no other approvals, including planning approval.

20 The situation has arisen due to the Transfer of Planning and Building Control Functions Order 2015. Before this, planning approvals via an order or an application would give sufficient reason for the Department to extinguish or divert a highway. The Transfer of Functions Order amended the definition of a development order within the Town and Country Planning Act by limiting it to approvals granted by an order. Inadvertently, this had the effect of preventing the Department from making orders to close or divert a highway so as to enable development to occur, where an approval had been granted via a planning application.

25 To rectify this, the Bill before us proposes to omit any reference to a development order from the definition of planning approval in the Act, which will in turn allow the Department to make the necessary highway orders to enable development to occur. Therefore, this Bill is simply reinstating the powers contained within the Act before the Transfer of Functions Order came into operation.

30 The opportunity presented by this Bill is also being used to improve an anomaly in the process for highway closures and diversions with regard to public footpaths. Public footpaths are classed as highways, and if a highway closure order or highway diversion order, which requires Tynwald approval, is made for a footpath, the Department is then required to make a subsequent order under a different section of the Act and again seek Tynwald approval to amend the definitive map itself, i.e. Tynwald is asked twice to approve the same change.

35 Highway closure orders and highway diversion orders have to be approved by Tynwald, essentially giving agreement to the principle of the proposed change to the definitive map. Therefore, this Bill will amend section 92A to provide that an order made under that section as a consequence of (a) an order under sections 33, 34 or 91; or (b) an agreement under sections 4 or 87; or (c) both such an order and such an agreement need only be laid before Tynwald, because in these
40 circumstances the process is essentially administrative in nature.

I must stress the Department is not intending to change the procedure set out in the Act where any proposed closure or diversion orders are advertised and open to objection by the public. These orders will still be subject to public scrutiny and the scrutiny of Tynwald.

45 Having outlined the broad principles of the Bill, I hope that Hon. Members will now give it their full support.

I beg to move that the Highways (Amendment) Bill 2019 be read for the first time.

Mrs Sharpe: Thank you, Mr President.

50 I would like to second the First Reading of this Bill today, having discussed it with the hon. mover, having given thought as to its provisions and having taken into account the fact that there is an immediate practical need for the application of the Bill. Mrs Lord-Brennan has mentioned a quarry in the Island which really does need this Bill to be instigated in order to operate.

55 Mr President, this Bill is needed to rectify a deficiency in the definition of 'planning approval' within the Highways Act 1986, as explained by Mrs Lord-Brennan. Currently, the Department of Infrastructure simply cannot make orders to close or divert a highway so as to enable development to occur, even when an approval has been granted already by a planning application. Clearly this anomaly needs rectifying.

60 As a keen walker of the Island's footpaths, my immediate concern was that this Bill might somehow make the dissolution or diversion of a footpath easier to execute. However, having scrutinised the Bill, I am content that this will not be the case. Current procedures, as set out in the Highways Act 1986, will still be followed, meaning that any proposed closure or diversion orders will still be subject to public scrutiny and to the scrutiny of Tynwald.

Mr President, I beg to second the First Reading of this Bill.

Thank you.

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The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

70 I would like to thank the hon. mover for addressing a question that I had, and I wonder whether it is worth sharing that on the public record. The question I had was in relation to section 4 and section 87 agreements to adopt roads as public highways, that those agreements currently do not come before Tynwald for approval. And so my question to the hon. mover was whether, by removing the requirement for changes to the definitive map to be approved by Tynwald, anything would be lost because effectively Tynwald currently then has no engagement in agreements under
75 sections 4 and 87. My understanding is that the principle with those agreements is that they are to create new highways and adopt new highways and therefore to the public benefit, and Tynwald has never engaged in considering or approving those agreements, so there is nothing lost, in effect.

I would like to thank the hon. mover for engaging with me on that question and I wonder if, for the record, she would just confirm that my understanding is correct.

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The President: Mrs Lord-Brennan.

Mrs Lord-Brennan: Thank you, Mr President, and thank you to Mrs Sharpe for seconding.

85 I am grateful also to Mrs Poole-Wilson for raising those queries, and that is correct. The important thing is that where there are going to be proposed closures to public rights of way, or diversions, they are the ones that come before Tynwald. So yes, it is possible to add. And the other sections that are within the Act to do with that, there are no changes. The idea is that we are maintaining the proposed diversions, or changes or extinguishment of any footpaths would still come to Tynwald. So that is correct.

90 Thank you.

The President: Mr Crookall.

Mr Crookall: Thank you, Mr President.

95 Mrs Lord-Brennan has actually just confirmed it again for a second time. It is about confirming that Dol cannot extinguish any public rights of way without coming to Tynwald. I think there was

grave concern over what happened down at Meary Voar before and we do not want to see that happening again, so I thank her for confirming that again on *Hansard*.

100 **The President:** Miss August-Hanson.

Miss August-Hanson: Thank you, Mr President.

Just a query, I suppose, that I would quite like to have on the record, if that is all right, and that is just regarding clause 3, which amends section 92A regarding the definitive map itself and whether or not it might have been perhaps a little bit more sensible to remove the requirement of section 92A orders where orders are made under sections 33, 34 and 91, to ensure that perhaps these issues which seem to have cropped up – this is just me having a conversation with the drafter about this – whereby approval has been made by Tynwald and when it has come back with approval by Tynwald to the definitive map perhaps there might be some disagreement with the definitive map as opposed to opposing the approval itself. I wondered if perhaps she might be able to explain why we would not just amalgamate these orders in order to ensure that perhaps there is no confusion in future, whether it be laid before or whether it be approval by, or whether that might have been perhaps too technical a move to make at this stage with the need for some level of expediency.

115 **The President:** Mrs Lord-Brennan.

Mrs Lord-Brennan: Thank you, Mr President.

I am happy to answer the query from Miss August-Hanson. I suppose in short it is for that reason. If you have got an order which is putting the diversion or extinguishment of a footpath and then a second chance to look at any changes to a definitive map. If there were to be a case where there was something not quite right, then it is there for Tynwald scrutiny. The definitive map is the map that records footpaths. So I think it is right to not make too much of a change. I think if you have the main approval coming from Tynwald for the order, there is no harm in maintaining the status quo in terms of actually having the approval of the map section come to Tynwald. So, all that is changing is that it would be laid before rather than a second approval for the same thing. So, rather than remove that second element entirely, I think it is better to keep it there.

The other point – I did take some advice on this and it was also felt by the drafter that if we make that change, then that could in turn affect lots of other things. And mindful that one of the other purposes of this Bill has come from a change being made in another piece of legislation that has then gone on to affect something else, I feel that actually this should be quite straightforward, so I did not really want to broach that then, although I do take the point that it might have been a smoother process, but why not just have that section come back to Tynwald as well is what I think about it at this stage.

135 **Miss August-Hanson:** Thank you.

The President: Hon. Member Mrs Lord-Brennan, did you wish to wind up further?

Mrs Lord-Brennan: Just to thank Mr Crookall for his points, and Members hopefully will support this. Mr Crookall is absolutely right, that is the way things should be and I hope that Members can support the First Reading of this Bill.

The President: Hon. Members, I put the question that the Highways (Amendment) Bill be read for the first time. Those in favour, say aye; against, no. The ayes have it. The ayes have it.