



## **HIGHWAYS (AMENDMENT) BILL 2019**

### **EXPLANATORY NOTES**

*These notes have been produced for the assistance of Members with the approval of the Member in charge of the Bill, the Hon R. K. Harmer MHK*

#### **INTRODUCTION**

1. These explanatory notes relate to the Highways (Amendment) Bill 2019. They have been prepared by the Department of Infrastructure in order to assist readers of the Bill. They do not form part of the Bill and have not been endorsed by the House of Keys.
2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

#### **SUMMARY AND BACKGROUND**

3. The Department has powers within the Highways Act 1986 ("the 1986 Act") to make highway closure or highway diversion orders ("highway orders") under section 33 of that Act.
4. This enables 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 the extinguishment or diversion, and therefore enable the development to proceed.
5. However, it should be noted that planning approval, as defined in section 119 of the 1986 Act, means approval to the development of land granted pursuant to a development order under Part 2 of the Town and Country Planning Act 1999 ("TCPA").
6. The problem has arisen due to the Transfer of Planning and Building Control Functions Order 2015 (SD 2015/0150) ("TOFO").
7. At that time, planning approvals via an order **or** an application would give sufficient reason for the Department to extinguish or divert a highway.

8. However, the TOFO amended the definition of a development order within the TCPA by limiting it to approvals granted by an order and did not cover planning approvals granted via applications.
9. This Bill will amend the definition, which will in turn allow the Department to make the necessary highway orders to enable development to occur.
10. In addition if a highway closure order or highway diversion order is made for a footpath, the Department is required to make a subsequent order to amend the definitive map to reflect the closure or diversion as agreed in the highway closure order or highway diversion order.
11. The Department can amend the definitive maps by making an order under section 92A of the 1986 Act. These orders require Tynwald approval, as required by section 92A of the 1986 Act.
12. Highway closure orders and highway diversion orders have to be approved by Tynwald, essentially giving agreement to the principle of the proposed change. Therefore, this Bill will amend section 92A to provide that an order that is made under that section as a consequence of —
  - (a) an order under section 33, 34 or 91; or
  - (b) an agreement under section 4 or 87; or
  - (c) both such an order and such an agreement,

need only be laid before Tynwald (because in these circumstances the process is essentially administrative in nature).

## **THE STRUCTURE OF THE BILL**

13. The Bill contains 4 clauses.

### **Clause 1: Title**

14. This clause gives the Act resulting from the Bill its short title. There is no commencement clause, so the Bill will come into operation on the announcement to Tynwald of Royal Assent.

### **Clause 2: Highways Act 1986 amended**

15. This clause introduces the amendments to the 1986 Act.

### **Clause 3: Amendment of definitive maps and associated statements: section 92A amended**

16. This clause amends section 92A of the 1986 Act to provide an order which amends a definitive map only in consequence of the making of —
  - (a) an order under section 33, 34 or 91; or
  - (b) an agreement under section 4 or 87; or
  - (c) both such an order and such an agreement,

only need to be laid before Tynwald (because in these circumstances the process is essentially administrative in nature).

**Clause 4: Interpretation – section 119 amended**

17. This clause adjusts the definition of “planning approval” for the purposes of the 1986 Act. The change is required because, as a result of the transfer of certain planning functions to the Cabinet Office, planning approval is no longer always granted by means of a development order under Part 2 of the Town and Country Planning Act 1999.

**HUMAN RIGHTS**

18. It is considered that the provisions of the Bill are compatible with the Convention rights within the meaning of the Human Rights Act 2001.

**FINANCIAL EFFECTS OF THE BILL AND EFFECT ON HUMAN RESOURCES**

19. This Bill will not increase any public expenditure or reduce the income of any public body.