

Flood Risk Management Bill 2013
Second Reading approved

3.1. Mr Houghton to move:

That the Flood Risk Management Bill 2013 be read a second time.

The Speaker: We turn to Item 3, Bill for Second Reading, the Flood Risk Management Bill, and I call on the mover, Mr Houghton.

Mr Houghton: Thank you, Mr Speaker.

I am pleased to be able to move the Second Reading of the Flood Risk Management Bill, which is promoted by the Water and Sewerage Authority.

There are few places on earth where people need to be concerned about flooding. Flooding is a particularly important issue for the social wellbeing and economic prosperity of our Island community. We all live and work near water. Many of the Island's towns and villages, critical infrastructure and agricultural land are vulnerable to flooding from surface water, sewers, rivers and the sea. Changes in our climate, such as more frequent and intense rainstorms and sea-level rises will increase the likelihood of floods occurring in the future. The desire to build in areas at risk of flooding and changes to existing drainage systems can also add to increased flood risk. Flooding cannot be prevented. However, the risk can be managed through a wide range of measures to reduce either the likelihood of flooding, or the impacts of flooding, when it occurs.

The current flooding legislation on the Island is the 1934 Land Drainage Act. However, as its title suggests, the focus of the existing legislation is the drainage of land, which of course continues to be vitally important for our quality of life. Many of the principles within the 1934 Act are carried forward into the Flood Risk Management Bill. However, the Land Drainage Act is archaic and limited in scope. The Island's ability to deal with flooding problems relies heavily on civil law, which is practically unenforceable, as we have experienced during the prolonged rainfall over the past year. New legislation is urgently needed to ensure that drainage systems are managed in a way that does not cause problems for others and to provide a sound legal framework for implementation of the full range of measures needed to reduce the likelihood and impact of flooding in the most cost-effective ways.

The proposed Bill will establish the Water and Sewerage Authority as the flood risk management authority for the Isle of Man. The Bill provides the Authority with discretionary powers to manage the risk from all sources of flooding, including storm tide surges, surface run-off, rivers, other watercourses and sewers, as well as the sea. The Bill is intended to replace the existing land drainage legislation on the Island. The only alternative to this Bill would have been to continue with the existing land drainage legislation, which, as I say, is antiquated, limited in scope and practically impossible to enforce.

The Bill that is now before the Keys is a substantially redrafted version of the Flood Risk Management Bill, that was introduced in the 2010-11 session. However, the original Bill was withdrawn at the consideration of clauses stage in this House in March 2011, in order for the genuine concerns of the Manx National Farmers' Union to be explored and wherever possible addressed. The revised Flood Risk Management Bill repeals and replaces the Land Drainage Act 1934 and introduces a number of new provisions. The Bill is divided into 11 parts and I will explain the Bill, one part at a time and include information on the new provisions that have been introduced as a consequence of the discussions with the Farmers' Union.

Part 1 contains the opening provisions, it introduces the short title of the Act and provides for its commencement. It contains definitions of the terms used in the Bill and introduces modern terminology, for example, flood risk management, abbreviated throughout the Bill as FRM.

Part 2 describes the flood risk management functions of the Authority. It makes the Water and Sewerage Authority responsible for all flood risk management matters on the Island. The Authority will exercise its functions by a combination of measures, including surveys to identify those areas that are at particular risk of flooding, publishing strategies and plans for carrying out appropriate flood-protection works and provision of flood warning arrangements. When exercising its functions, the Authority will be required to consider cultivation, archeological and wildlife aspects.

Part 3 deals with general provisions relating to flood risk management works and watercourses. It will enable the Authority by order to designate flood risk management works or watercourses that it considers to be of major importance in terms of flood risk management. Such designated works and watercourses will be the sole responsibility of the Authority for flood risk management purposes. However, ordinarily, the land in question will remain in the ownership of the landowners concerned, who will continue to be able to use it in the normal way, for example, the grazing of animals, but following designation of the land, the Authority's consent will be needed for certain activities that may otherwise cause or contribute to an additional risk of flooding, although that will not apply in emergency situations. Moreover, consent will not generally be required for the

carrying out of necessary maintenance works on a watercourse. This was a particular concern of the National Farmers' Union in relation to the 2011 Bill, but their concern has now been addressed.

Part 3 deals also with the applications to the Authority for its consent under the Bill. The Authority will not be permitted to withhold its consent unreasonably. A provision to that effect has been introduced into this Bill. Again, this has been done in order to address a concern that the Farmers' Union had in relation to the 2011 Bill. In the event of the Authority refusing to grant consent, or imposing conditions with which the applicant is dissatisfied, there will be a right of appeal to the Flood Risk Management Tribunal.

Hon. Members will note that the penalty imposed by clause 21 and clause 19 also, which deals with undertaking activities without the Authority's consent, is a fine only. I would explain that the Manx National Farmers' Union had expressed their deep concern, in relation to the equivalent provisions in the 2011 Bill, which had imposed a possible period of up to two years in custody.

We have, however, retained this option for the most serious offences under the Bill, such as wilfully damaging designated flood risk management works. I believe this now strikes the right balance. Although the Authority will be able to charge an administrative fee for dealing with applications for its consent, any prescribed fees will be laid before Tynwald.

Part 4, Mr Speaker, deals with the Authority's powers in respect of flood risk management works and watercourses. This part will enable the Authority to maintain or improve existing flood risk management works and watercourses, or to construct new ones where it considers that to be necessary. However, this will normally only apply to designated flood risk management works and watercourses. In contrast, the Authority's works, powers, in relation to all other non-designated works and watercourses are more limited. For example, in order to deal with a serious flood risk, the Authority will have appropriate powers of entry on land for connected purposes. The Authority will be required, in appropriate cases, to pay compensation to the landowners concerned, who suffer damage as a consequence of the exercise of the Authority's works and entry powers. The Authority will also be able to deal with any emergency flooding event that will arise on the Island. It will be able to enter into prior arrangements with other public bodies, including emergency services for the discharge by them of some of the Authority's functions in appropriate circumstances.

Finally, the provisions contained in part 4 will enable the Authority to take appropriate enforcement action under the Bill. These provisions have been extended to encompass a situation where the condition of watercourse is impeding important land drainage improvements. This was a specific concern that the Manx National Farmers' Union had in relation to the 2011 Bill. This has now been addressed. Failure to comply with a remedial action notice served by the Authority under these provisions is made a criminal offence. Here again, the penalty has been limited to a fine only, in view of the concerns that were expressed by the Farmers' Union in relation to the equivalent provisions in the 2011 Bill.

In addition, the Authority will be able to undertake the required work itself and to recover the costs involved from the person responsible. However, there will be a right of appeal against a remedial action notice to the Flood Risk Management Tribunal.

Part 5 deals with some other powers that are conferred on the Authority. It will enable the Authority in appropriate cases to seek a warrant, where, for example, it has been refused entry onto land in order to carry out flood protection works. It will also enable the Authority to carry out flood prevention works on behalf of private landowners on a rechargeable basis, for example, to protect houses from the risk of flooding. Alternatively, the Authority will be able to take over responsibility on appropriate terms for private flood risk management works where the Authority considers that such works should come under its direct control. If necessary, the Authority will be able to apply to the High Court for an injunction to ensure compliance with the requirements of the Bill, for example, against a persistent offender. A private individual will likewise be able to apply for an injunction against another person who is, for example, failing to comply with *his* flood risk management obligations. I will explain that the right for an individual to seek an injunction was added at the specific request of the Farmers' Union.

Finally, it empowers the Authority to make byelaws in order to deal with certain detailed issues under the Bill. Such byelaws will require the approval of Tynwald. The power to make byelaws, however, already reflects the current position under the Land Drainage Act 1934.

Mr Speaker, part 6 deals with landowners' drainage arrangements on other lands. I would point out that part 6 of the Bill, comprising 11 clauses, was inserted into the revised version of the Bill at the specific request of the National Farmers' Union, who wished to see the equivalent provisions in the current Land Drainage Act retained. These provisions will enable a landowner to lay drains through neighbouring land in order to, for example, develop or improve his own land. He will require the agreement of the neighbour and may be required to pay compensation. However, in the event of the neighbour refusing to agree to the proposed arrangements, then the landowner will have direct recourse to the flood risk management tribunal, who will decide the matter.

Mr Speaker, part 7 deals with appeals under the Bill. This part establishes a new tribunal to be known as the Flood Risk Management Tribunal, which will operate in accordance with the Tribunals Act 2006. As I have mentioned earlier, the Bill provides for the rights of appeal in certain circumstances and those appeals will be

dealt with by that tribunal. Decisions of the tribunal will be binding on the parties, subject only to any further appeal to the High Court on a point of law.

Part 8 deals with general offences. This part creates certain criminal offences under the Bill, for example, obstructing the carrying out of works by the Authority. It also imposes appropriate penalties on those who commit such offences, as I have previously explained. The more serious offences, for example, wilfully interfering with apparatus installed by the Authority, may be subject to custody of up to two years, while the less serious offences will be subject to a fine.

Mr Speaker, part 9 deals with a few other miscellaneous provisions. This part will require the Authority to obtain the prior consent of statutory undertakers, or the Department of Infrastructure, in relation to harbours to the carrying out of any works by the Authority under that Bill that may affect the operations of such bodies. However, consent is not to be unreasonably withheld and in any event, will not be required in cases of emergency.

It also imposes a requirement on the Department of Infrastructure, when it considers applications for planning permission to consider the extent to which the development may create a significant risk of flooding. If so, it will be open to the Department to either refuse planning permission for the development or to impose appropriate conditions, for example, requiring the developer to construct suitable flood risk protection works before the project can proceed.

Mr Speaker, part 10 contains savings and transitional arrangements. In particular, this part deals with the question of the appeal rules that are to apply for the purposes of part 7 of the Bill.

Part 11 sets out the various repeals and amendments and it also amends the Wildlife Act 1990 to the effect that, except in cases of emergency, the Authority will require the prior consent of the Department of Environment, Food and Agriculture before the Authority can exercise its functions under the Bill, in circumstances that may have implications for wildlife, including wild birds and plants. Where the consent of the Department is needed, such consent is not, however, to be unreasonably withheld. A similar amendment is also made to the Tree Preservation Act 1993.

Finally, this part amends the Sewerage Act 1999 in two important principles: firstly, in order to enable the Sewerage Authority – meaning, of course, the Isle of Man Water and Sewerage Authority – to refuse its consent to the making of a connection between a private drain and a public sewer, where the Authority considers that the capacity of the sewage system is insufficient, creating an additional risk of flooding. However, the Authority will not be able to refuse consent, where the connection with the public sewage system is necessary, in order to facilitate a development in respect of which planning permission has been granted by the Department of Infrastructure.

Secondly, there is an enabling provision for the Authority to introduce sewerage charges, when it considers that to be appropriate. However, I would emphasise that, before it can introduce sewerage charges, the Authority will need to make an order, which will require the formal approval of Tynwald. At this stage, however, there are no plans to introduce such a charge.

Mr Speaker, having outlined the broad principles of the Bill and explained the reasons why it is considered necessary to introduce such legislation, I hope that Hon. Members are now able to give it their full support and I beg to move.

The Speaker: Mr Cretney.

Mr Cretney: Thank you, Mr Speaker.

I rise to second the Flood Risk Management Bill Second Reading and I believe that the Hon. Member has been very helpful in his detailed explanation of the 11 sections. This is a very important Bill, as far as I am concerned and all of us will have witnessed in the last 12 or 18 months exceptional periods of wet weather, which have caused practical difficulties to many around the Island. (**Mr Anderson:** Hear, hear.) I do believe that this legislation will assist in real life examples, in terms of improving that situation, which I do believe we may well expect will be the case into the future, in terms of extended periods of such weather.

I am very happy to second the Bill and wish the Hon. Member good luck with the rest of it.

The Speaker: Mr Quirk, Hon. Member for Onchan.

Mr Quirk: Thank you, Mr Speaker.

I also welcome the introduction of this particular Bill and the comprehensive consultation that has been taken prior to the Member becoming Chairman. The one minor issue I do have regarding the Flood Risk Management Bill really is, when it affects the Department of Infrastructure, when the Department of Infrastructure has surface water drainage systems, or drains in the road which are causing difficulty to members of the public, mostly in urban areas. I wonder if there are to be disputes, or the Member could give us some helpful information regarding if those disputes will be ironed out at an early stage or is there a mechanism there

for tribunals under his control?

The Speaker: Hon. Member, Mr Anderson.

Mr Anderson: Thank you, Mr Speaker.

Can I thank the Hon. Member for his explanation and also for the invitation to the presentation on Monday, 18th February. Maybe he would like to tell us, will the Water and Sewerage Authority be supplying drinks for that occasion?

Also, maybe he would like to go into detail and tell us, he referred a few times to the flood risk management tribunal, who will make up that tribunal and how will they be appointed and can he assure us that all the landowners concerns have been fully addressed in his comments? He also made reference in his remarks to wild birds and plants: what about birds that are not wild? Maybe he could find out about that as well.

The Speaker: Mr Singer, Hon. Member for Ramsey.

Mr Singer: Thank you, Mr Speaker.

I would like to support the Bill, but there is one specific area, which I want to refer to. The mover will be aware of the previous debate in another place, where planning permission in my constituency came under the spotlight, because the planning given by DoI was in conflict with the advice given in regard to building in flood plains and areas identified as likely to flood. In this case, the Bullen Report gave that comment and was quite specific and was the subject of a petition to Tynwald.

Can the hon. mover give an assurance that DoI are required absolutely to follow the advice of the Water Authority in relation to areas designated as flood plains and areas at high risk of flooding? I am concerned when I look at clause 68, which deals with this matter and the section that applies to the Department of Infrastructure, 68(3):

‘If that Department considers the flood risk is significant’

– and that would be, obviously on the advice of the Water Authority –

‘it *may* refuse planning permission or grant planning approval subject to conditions under section 10 of the planning Act.’

My concern here is that we are not going to change the situation that has been now, but for whatever reason the Department may feel that building should take place in this area and will ignore the comment and that then puts – if it is houses there – therefore, the people who buy the houses at risk of losing money. I think if the Member could comment on my comment that the word ‘may’ is not adequate and should be much stronger.

The Speaker: Mrs Cannell, Hon. Member.

Mrs Cannell: Thank you, Mr Speaker.

A similar concern to the previous speaker, Mr Singer in respect of this, having been the Chair of the Authority during the time of the terrible flooding that the Isle of Man experienced and, of course, the bursting of banks and things like that in Sulby.

Again, looking at clause 68, it does not seem to be robust enough, because it is giving a bit of a let out and I just wonder whether or not the Member moving the Bill might consider an amendment, perhaps, to beef that up a little bit, because when you look at the actual explanatory notes as well and it talks about clause 93, it reads:

‘To permit the Sewerage Authority to refuse its consent to the making of a connection between a private drain and a public sewer, where the Authority considers that the capacity of the sewerage system is insufficient thereby posing an additional risk of flooding. This is in addition to its existing right for the Authority to refuse consent to such a connection where it considers that the mode of construction of the drain is unsatisfactory.’

Okay, they have an existing power, but it is not good enough at the moment. This is why, of course, the extra additional power has been put in here. The explanatory memorandum goes on to say:

‘However, the Authority will not be able to refuse consent where the connection with the public sewerage system is necessary in order to facilitate a development in respect of which planning permission has been granted by the Department of Infrastructure...’

It seems to me, Mr Speaker, that there needs to be... it is a permissive 68, it is a ‘may’ or ‘may not’ and it needs to be toughened up, or it needs to include a process where both the Authority and the relevant Department come together at an early stage, in terms of a planning proposal in what is regarded as a flood risk area and

come to some sort of heads of agreement prior to even accepting a planning application, possibly. So I think that needs to be beefed up.

The other question I would ask of the Hon. Member: in terms of the appeals and the tribunals and the right to complain etc, that is going to have a cost and what we have had previously, when considering Bills before the House of Keys, is an idea of the cost of bringing this law in. It would be very useful to know what it is going to cost, because the legislation is proposing an additional layer of bureaucracy, in terms of the setting up of tribunals, so that will have a cost.

The other thing I would like the Hon. Member, perhaps, to let us know what the Department's thinking is in terms of this sewerage charge, which is being suggested in clause 11, sewerage charges. Of course, at the end of that, it says:

'In imposing the charges, the Sewerage Authority must consider the amounts it will need to perform the functions to which the charges relate',

which suggests to me that they are bringing in a provision in law to enable them to be able to charge for things that we currently do not pay for and that the sewage treatment plant deals with, which has been highly contentious previously when another place has debated a concept of it.

So if the Member can let us know what the thinking is behind this and reassure us that any such order applying a sewerage charge would in fact need Tynwald approval and would be subject to a debate in another place and not merely rubber stamped, where we have got a situation where it would be laid before Tynwald without debate and the negative resolution would apply. In other words, it would lie there, unless a Member picked it up at that sitting or a subsequent sitting and called for it to be rejected.

I am sorry I have got a number of queries there. It would have been useful, had the Hon. Member been able to arrange for the presentation, possibly prior to Second Reading, but we are debating the principle of the legislation, so if he could answer, I would be most grateful.

The Speaker: Hon. Member for Onchan, Mr Karran.

Mr Karran: Vainstyr Loayreyder, my concerns are... We have to face up to the reality that we need a new Flood Risk Management Bill. It is just making sure it does not turn into some sort of Trojan horse, that it does a lot of things, that it gives powers without the ability of a citizen to hold the Authority to account.

We talk throughout the Bill about unreasonableness. I think it is important that maybe we could get some sort of definition on a legal basis of what do they think will become the unreasonableness, as far as this Bill is concerned, when having the sweeping powers that this Bill actually gives to people.

I think it is important that we look at the issues when we talk in clauses 17 to 19 about the development within a 9.1-metre corridor, as far as the main river is concerned. If you take the likes of where I live, if there is a problem with flooding where I live, the whole of Douglas has drowned! (*Laughter*) I am more likely within a nine-metre corridor as far as a river is concerned, within my own constituency. (*Interjection*) But the point is the power does specifically say, Vainstyr Loayreyder, that it is at what level and the level of this corridor on the Groudle River, going through the Groudle Glen would be totally different to the Sulby River, as far as the corridor is concerned. I think these are important points.

Also, as I said with clauses 20 to 22, when it talks about this unreasonableness to withhold consent, I think it is important that we are in a changing climate as far as the Island is concerned. The recent experience, I was quite amazed how horrendous it was a couple of Fridays ago, in areas that I would not have thought it was possible to get flooding, such as the likes of up at St Mark's and places like that, trying to get through. I think it is important when we talk about new courses in new developments, it is important that we make sure that the developers and the people who are making the money will have the power to put that into the process, as far as that, which deals with the issues in clauses 23 to 25.

I think the issue of clause 28, I have no problem with, where there is a legitimate reason for the Water and Sewerage Authority needing access onto lands to performing its function, but I do think it is important that we just have some sort of clarification that it is not just on an *ad hoc* basis. We look at the acquiring of land: I think it is important also that, when we look at clause 39 as far as the situation of being able to acquire interests in land or rights over land to create new interests or rights, we do make sure we do have the safeguards within giving power to the state, that it can be made sure that ordinary individuals do not feel hostage to it.

I think the other issue, as far as the byelaws are concerned, the byelaws should remain in the situation as far as approval is concerned of Tynwald and there should be no devolution, as far as being put there where it has to be picked up through the function of having to take it to a following sitting, as far as that issue is concerned.

I am concerned about the Flood Risk Management Tribunal. My concern is that I feel some sympathy for the Council of Ministers, who created this tribunal system of appointing these people and it does not seem to work very successfully. I just think that maybe we need to be discussing, when we are talking about part 7 of the Bill,

whether there should be some sort of electoral college for the Flood Risk Management Tribunal, so that it is not just picked by the Tribunals Commission at the present time. If we are to give big powers, we must make sure that those powers are representative and are dissipated so that all sections of the community can have some chance of sorting that out.

I have concerns about the giving of false information. I think there is not a problem with the principle of that, but if it is a criminal offence for citizens in the Isle of Man to give false information, then the offence should also equally be on the staffs so that, if they are doing anything that is giving false information, they have the same liabilities under the criminal system as far as the individual citizen is concerned.

I totally agree with the input from the Member for Ramsey, Mr Singer. The issue as far as the Ramsey affair is an appalling situation and highlights the problems we have had as far as the whole planning procedure, where we could end up with people getting planning permission in such bizarre and extreme circumstances. It brings into question whether some big businesses have managed to get above the whole due process, as far as the planning and the law of the Isle of Man is concerned.

The other thing I am a bit concerned about is the clause to do with the sewerage charges. If there were no plans to bring it in, I do not know why we are bringing in clause 93. The reality is we are in extremely difficult times. The fun and games of having no accountability, as far as spending is concerned and I think we should have some sort of clear declaration by the mover, if we are bringing in a rate or a charge for sewerage, then we need to know and we need to get that out into the public domain, so that our citizens who are finding hard times can adjust to know that information. I think it is wrong for people in this House to try and play – I had better not say the ‘dumb blonde’, as some get very upset around here... but the reality is everybody in this House knows that there is going to be a sewerage charge, otherwise, we are going to end up with the situation that that well-thought out business plan that was brought about over the water re infrastructure will go down the tubes, (*Laughter*) and go down the tubes big style, as far as the fact that it will be paid off, not like the reincarnation that we are going to have to all have several times over to pay off the MEA debt.

The other situation that I have that I think is important, when you have your presentation, is that we need to make sure that in this legislation we ringfence the different functions, as far as the Water and Sewerage Authority is concerned. We must not allow a situation with a cross-subsidisation of the water rate paying for the flood, or paying for the sewerage and I think it is important that maybe in the reply, we do have a clear understanding that, hopefully, the policies that were brought about many years ago, as far as the financial planning as far as the water debt is concerned, the water sinking fund, will be protected.

So they are just a few points that I would like to ask, because I do not mind giving power to the Water and Sewerage Authority, I do not mind giving power to Government bodies, but I also want some accountability. I want some level playing fields, so that we cannot end up with situations where we bring in sweeping powers and we go back to the old days, where when we want to stop people we do not like, we can blight their interests. I think that is important we have that balance, so as far as I am concerned, I am happy to support the Second Reading of this Bill. It will be interesting to see the presentation that is coming later on next week, as far as the issue is concerned.

I will be moving amendments on several issues which I have asked the AG’s department to draw up, but they are too busy at the present time and, to be fair, we have another fortnight before the clauses will take place, Vainstyr Loayreyder.

The Speaker: I call on the mover to reply, Mr Houghton.

Mr Houghton: Thank you, Mr Speaker.

I think it has been a very good debate. It has drawn out a number of points that I do hope I will be able to wear satisfy Members before the vote on this Bill this morning. Those that I have not or am unable to or wish to add to, of course I will be pleased to do that both at the presentation next Monday, and also before I move clauses stage, if we get Second Reading for this today.

Firstly, Mr Speaker, I do thank the Hon. Member for South Douglas, the Minister for DoI, for his full support, Mr Speaker. Basically, even though the Department of Infrastructure of course, are not the promoters of the Bill, quite obviously the Water and Sewerage Authority as the authority with the responsibilities of flood risk management in the future will be working hand in glove with the Department of Infrastructure; it cannot do otherwise. The Water and Sewerage Authority, other than a few small diggers for digging trenches for water pipes, etc have not got the infrastructure for large works that would be required by the Department of Infrastructure or the calling on the Department of Infrastructure to use.

As was made clear by the Hon. Member for Onchan Mr Karran on this matter as to cross-contamination of budgets and so on, there is a budget that has been handed over to the Water and Sewerage Authority to deal with this and, of course, I dare say most of that budget itself will be passed back to the Department of Infrastructure wherever possible to do the works, because the Department of Infrastructure have the equipment and we do not. That will be a sign of Government working together in that particular regard.

But on the principle of that, where the Department of Infrastructure have the equipment, but the Water and Sewerage Authority have the say-so under the Bill, I feel that that is a very healthy move, whereby the Water and Sewerage Authority have the ability to do all the background works and then of course use its powers under the Bill in the appropriate cases to then call upon the Department of Infrastructure in appropriate occasions to work together to do all this, rather than it is just one closeted organisation, the Department of Infrastructure, who themselves have a massive call on their infrastructure, their diggers and pipe and as I say, course-clearing abilities, that is required to be done under the Bill, when, of course, it will not fall upon the farmers to actually do. So I do see that as a healthy move and I thank the Hon. Member for seconding.

I thank the Hon. Member for Onchan, Mr Quirk, for welcoming the Bill and I will be making some reference to some of the suggestions that he made that have been adopted in the clauses stage. Where he mentions under minor issues, how this would be affected under the DoI, to a certain extent I feel I have explained it in dealing with the issues and the contributions made by Mr Cretney, insofar as we will be working together. We must work together with the Department of Infrastructure, because the Department of Infrastructure are the first people to get to these serious issues and have the power and the equipment in order to do that in consultation and working with the Water and Sewerage Authority, who are charged under the Act.

He makes very valuable comments under surface water drainage in urban areas and I know he has been doing an awful lot of that in his constituency, a lot of which I have been to see myself. There are problems all over the place, up on Birch Hill with water that is actually coming off the roads, not the fields, which is an Infrastructure matter which is being dealt with and I am being kept up to speed with that, as indeed is the Member for Onchan.

He goes on about disputes and how they could be dealt with at an early stage and I can only say that, at early stage issues that arise, matters will not really change on the smaller, minor issues, as the Member points out, they will not change much as they do now, because if you have got something that obviously could be dealt with, on a temporary basis, like I say, using sandbags and then on a more permanent basis doing what they have done as far as the Department of Infrastructure is concerned is straightening... is altering slightly the alignment of roads or kerbing, in order to direct water into gullies, rather than into someone's garden, I cannot see a difference, because that is actually working now. I am sure the Member for Onchan actually supports that way of going about.

The whole issue of contention of this Bill is to deal with issues, long-term issues, of serious flooding, foreseeing them and then dealing with emergency cases as well, but basically foreseeing the issues that we really already know about – and by gosh, do we not know about these issues of flooding now! It is happening all over with highlands coming down onto lowlands and causing the obvious. So it is very relevant that the responsibility is fairly and squarely placed on the shoulders of one lead organisation and that is the main issue of the Bill here.

Of course, Hon. Members are clearly aware from the introduction, my introductory speech and those of you who were here in the last session, when the Member for Peel attempted to bring the Bill forward. Of course it foundered requiring further consultation, but the Bill requires to be brought in and enacted, as best as possible, with the say-so and working with everyone and including, most importantly, the farmers, because it is farming land that is affecting flooding, not necessarily of their blame, but of water coming from the uplands onto their land and then onto lower land, so it is a joint-working prerogative that must be maintained. That is what the Bill sets out to do.

Finally, the Member for Onchan points out, as did the other Member for Onchan, Mr Karran, on the issues to do with the tribunal and this is the tribunal under the Tribunals Act 2006, as I mentioned in my opening speech. How much control would I have on that tribunal? The answer is zero. I would have zero control under any tribunal that is run by the tribunals or under the Tribunals Act and this will be a further tribunal that would be appointed. That tribunal would be appointed under the Appointments Commission.

So this deals with the issue the Hon. Member, Mr Karran, had as far as tribunals are concerned. They are formed as clearly as possible without any interference of Government and an Appointments Committee appoints the members of, the people sitting on, the tribunals. The tribunals themselves only sit when there is an issue that comes before them, so in a number of tribunals currently, throughout Government, a lot of tribunals have never sat to consider anything, because they have never been called upon to do so. So I feel that the tribunals have a very fair balance and transparent way of going forward and the infrastructure of tribunals is in place under the Tribunals Act. I hope that helps to answer the Hon. Member, Mr Karran's questions, with Mr Quirk.

That is the point where any landowner or whosoever has an issue against the wishes of the Authority in the future can go to appeal and appeal too. I feel that is right and proper and it is right and proper that the whole Tribunals Act was set up in the first place, in order for fairness and transparency at that time.

I do hope that that has answered that, because it is vitally important that, of course, in cases where you are wishing, or the Authority wishes to go on land and wishes works to be undertaken on that land, that it is done in a fair and even-handed manner at all times. That is what we are about today, nothing short of that.

I thank the Hon. Member, Mr Anderson, he asked would drinks be available at the forthcoming presentation.

I am not sure because I do not know if we can afford any. (**Members:** Ooh!) He mentioned about the tribunal and I hope my explanation of the tribunal has answered his questions there. He mentioned also about wildlife, birds and plants and so on, what about birds, not wild birds? Well, I do not think they will be affected under this particular Bill, unless he knows different. If he does, if he would raise that with me after, I will see if I can provide him with some answers.

The Hon. Member, Mr Singer, makes a very important point. The principal, fundamental point of this Bill is what the Hon. Member for Ramsey said in the terrible experience his constituent had in Ramsey. Indeed, not just Ramsey, but 12 years or more ago, there was that terrible flooding that happened in Carrick Park and Millrace in Sulby, the same thing, severe flooding and it was all really down to neglect. The river was way above its intended height, so was not able to hold the actual surging of water that was coming down the Sulby River and so on.

Without the use of this, without the use of the power of the Bill, if you see what I mean – because the Bill has not, obviously, been enacted – there is a flood zone in Sulby now, dealing with that matter and of course, the walls at the side of people's houses have been built higher and the river bed has been reduced quite considerably. I have been there myself and I was one of those who assisted the then Member for the constituency, Mr Quine, for Ayre, in going through that area and seeing for myself the total devastation that happened in Carrick Park and Millrace on that weekend. I saw it for myself and I tend to think that is probably what spawned the working up of a responsible body and indeed this Bill in the short term.

It has been under construction for many years, it has had one bite at the cherry in coming before this House already, went back for further consultation to get it right, because right it has to be. So I do feel that Millrace – and of course a select committee looked into all that – actually brought about the birth of coming forward with a responsible body, which has been now laid on the shoulders of the Water and Sewerage Authority under the flood risk management regime.

So I do hope that answers, generally speaking, the point the Hon. Member makes in Ramsey – he nods his head in *disagreement*. He was asking also whether the Department of Infrastructure are required to be directed in certain cases and issues to do with planning and the strengthening of clause 68(3) where he still sees this matter as a risk. Back to the dark days, if I may say, on this, where there was really scant or no consideration given to this.

The Hon. Member for Ramsey will see that, in the Bill, there is clear direction for the planning authority in DoI to make cases of new estates and other appropriate occasions in planning to consult with the Water and Sewerage Authority and take note of the Water and Sewerage Authority's concerns, and if there is any work that needs to be put in, before houses are built, or any development is made, before those times, there may have to be flood risk management works put in place first.

So I do hope that does assist the Hon. Member, Mr Singer, and if he has any further queries, I am always there to assist to answer them, but it has been a greatly changed scenario since then and also with the implementation of the Bill – that will then firm things up in the right direction.

As for his situation with clause 68(3), which was also picked up by the Hon. Member for East Douglas, Mrs Cannell, where she wants to firm up the word 'may' in that particular clause and have it strengthened, I will listen to her point that she brings forward any suggested amendment to this. We just have to see that, rather than, as we all know in legislation, when you turn the word 'may' to 'must', that is inappropriate in a number of occasions. So the word 'may' – and we are down to a fundamental point in legislation – the issue of 'may' and 'must' or 'shall' has to be very carefully looked at. So if the Member does bring anything forward in this, I would need to just look at that and balance that off with the practicalities that that could say in that particular clause, otherwise, if the Hon. Member, as indeed, any other Member, wishes to bring anything further to strengthen the Bill, I am quite open to see that, because improvements to the Bill, like in many Bills and amended Bills that follow the enactment of Bills etc, can always be improved upon. But we just must be careful about the wording in certain clauses, and I would just leave that open to the Hon. Member in that particular area.

She was mentioning also that there should be heads of agreement before works would be allowed to commence and as I was explaining to the points made by the Hon. Member for Ramsey, Mr Singer on his points, that would happen, in the future that will most certainly happen with, in those cases that require it, flood risk works being undertaken first, before the development, but it would depend on the occasion and the situation and I cannot say any more than that.

She also asked about the costs and this is a very difficult one – the costs of the Bill, the costs of the works and so on. She makes an excellent point and it is very difficult for me to be able to answer that. First dealing with where she mentioned that the cost of the tribunals, whatever the cost would be for that tribunal – which only sits whenever the need is to sit, which is once a year, twice a year, once every five years, never at all – I would say the cost of operating a tribunal would be reasonably minimal. Hon. Members are aware of the costs are under the Members' expenses scheme to go to Tynwald for updating on occasions, that these payments are made under the Members' Expenses Regulations, which do not amount to an awful lot in costs, so I do not see a lot of costs there.

What I think she is also really strongly alluding to, is the costs of course, of flood risk management in different areas, and of course, the Authority, more than anyone else, the Department of Infrastructure with our assistance or anyone else are not going to be able to turn large water courses, the movement of large water courses or the working and operation on those, I do not see that that is something that is going to be done overnight. So, on the costing of large works, as against small works that will help, I do not see how I can bring an answer on the costs. Large works would have to be budgeted for and then taken forward, as far as that is concerned, so I do really have a problem in answering the Hon. Member's question on costs, because of the wide range of work and area, that this Bill actually covers.

She and the Hon. Member for Onchan, Mr Karran, touched on sewerage charges. Yes, this Bill here does introduce an... (**Mr Anderson:** Ability.) the Bill, the clauses Bill, produces an enabling clause for the ability to bring forward sewerage charges by order, and that order means via a Tynwald Order that would go to Tynwald for voting upon, not laid before Tynwald. It is set out clearly and that is the clear intention of the Water and Sewerage Authority to bring forward in the future, if it is so pressurised under the constraints of the Treasury, where it will not have sufficient funds to operate from what it receives from Treasury.

So that is all about how well the budgeting works in the future and so on. But as I noted in my answers to the Hon. Member, Mr Karran, on sewage charges, I do see them coming forward, not tomorrow, not the day after, but sometime in the future, if we are so constrained by the receipt of budget from the Treasury. Hon. Members, how long is a piece of string? This is an enabling clause, it will be brought forward as an order for Tynwald to approve and that is when the debate would happen in the future, if at all in the future.

On to Mr Karran: I know I have answered a number of questions related to Mr Karran, so I will just cover the ones that I have not covered. He said he hoped this was not a Trojan horse. No, indeed it is not. He dealt with the word 'unreasonableness' and this is an issue, when you are dealing with unreasonableness, one is aware of this. It usually takes a court or a tribunal to decide that in the relative context of the case that someone is bringing forward, but because the Water and Sewerage Authority is answerable to this Hon. House through its Chairman, through its board, through the operations of the sponsoring Department, the Department of Infrastructure, through the Council of Ministers and then ultimately through Tynwald Court, I think that anything that would be so unreasonable, as to be outright negligent, I think would be quashed long before anything came to that case, so in case of 'unreasonableness' I think I would ask Hon. Members to disregard.

He mentions also about the 9.1-metre corridor in the water course and so on. Obviously, that is the working area of the water course and that flows into this Act from the previous Act in 1934. What it is, it is basically restating what was already in the previous Act in the cases of the water courses on its maximum width, depending on working areas and the ability to be able to maintain those working areas and so on. They simply now put it into meterage rather than the old feet and yards, as you would imagine. It is simply something that has been brought forward; it makes sense and of course it has to make sense to have in tributaries or water courses that do require that width – many do not – but for that area to be kept clear for clearing the rivers, just like happened in the Millrace/Carrick Park issue with the Sulby River. That whole river there had to be dug out. So it is just laying that and bringing it forward from the previous Act.

He mentioned a number of clauses dealing with the acquisition of land and he wanted to know that these would be brought in on an *ad hoc* basis and were there safeguards. Yes, there absolutely are safeguards and, of course with recourse in the case of acts of criminal damage to any flood risk management works, in order to damage them, to flood people out – God forbid that happening – but that has to be a criminal offence.

Any of the other offences under the Bill would then either be dealt with and punishable under law in the criminal courts, depending on what that was, or issues where there were problems with discussions and negotiations with farmers and the Water Authority, the sponsoring body, those safeguards are in place, where we have got the actual tribunal to turn to. So I hope that assists the Hon. Member.

I do apologise for the time it has taken, but it is legislation, it is something that interests us and it is something that affects us and I feel I must answer (**A Member:** Hear, hear.) just as best as possible.

Yes, he mentioned finally about the cross-subsidy, the Hon. Member for Onchan, of water rates paying for flooding. I have already mentioned this, that there is a budget in order to deal with flood risk management, already transferred to it by the Treasury for those particular works.

I do hope that has indeed assisted all Members with their queries and I would be very grateful for the support of all Hon. Members.

I beg to move.

The Speaker: Hon. Members, I put the question that the Flood Risk Management Bill be read for the second time. Those in favour, please say aye; against, no.

A division was called for and electronic voting resulted as follows:

FOR

AGAINST

Mr Quirk
Mr Hall
Mr Karran
Mr Ronan
Mr Crookall
Mr Anderson
Mr Bell
Mr Singer
Mr Quayle
Mr Teare
Mr Cannan
Mr Cregeen
Mr Houghton
Mr Henderson
Mrs Beecroft
Mr Robertshaw
Mr Shimmin
Mr Corkish
Mr Cretney
Mr Skelly
Mr Gawne
The Speaker

Mrs Cannell

The Speaker: The motion carries, 22 votes for, 1 vote against.