

Flood Risk Management Bill 2013
Second Reading approved

1. Mr Downie to move:

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

The President: We move now to our Order Paper and to the Second Reading of the Flood Risk Management Bill, which is being taken by Mr Downie.

Mr Downie: Thank you, Madam President.

In moving the Second Reading of the Flood Risk Management Bill 2013, I would like to welcome the presence of Neil Caine from the Isle of Man Water and Sewerage Authority, who has come along today to represent that Department and will be available to take any technical issues, should they arise.

I would also like to thank, before we start, Mr Crowe for agreeing to move the amendments that were indicated by me that were required at the First Reading of the Bill, and in the interim period, due to the diligence of Madam President, we have identified one or two other minor typographical errors, which we hope we can deal with along the way.

I would, first of all, like to thank Hon. Members for their support during the First Reading, and I am pleased to be able to move this Second Reading of the Flood Risk Management Bill.

Madam President, it is vitally important that we have modern flooding legislation to provide a sound legal framework for a wide range of measures needed to reduce the likelihood and impact of flooding on our community. The Bill will establish the Water and Sewerage Authority as the flood risk management authority for the Isle of Man. It provides the Authority with discretionary powers to manage the risk from all sources of flooding. The Bill repeals and replaces the existing land drainage legislation on the Island.

The Bill is divided into seven parts, and I will briefly explain the Bill, one part at a time.

Part 1 contains the opening provisions. It contains definitions of the terms used in the Bill and introduces modern terminology – for example, ‘flood risk management’ abbreviated as ‘FRM’ throughout the Bill.

Part 2 describes the flood risk management functions of the Authority. It also makes the Water and Sewerage Authority responsible for all flood risk management matters on the Island. The Authority will exercise its functions via a combination of measures, including surveys to identify those areas that are at a 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 conservation, archaeological and wildlife impacts.

Part 3 deals with the general provisions relating to flood risk management works and watercourses. It will enable the Authority to designate flood risk management works or watercourses that it considers to be of major importance. Such designated works and watercourses will be the sole responsibility of the Authority for flood risk management purposes. However, ordinarily, the land 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, consent will not generally be required for the carrying out of necessary maintenance works on a watercourse.

In the event of the Authority refusing to grant consent, or imposing conditions with which the applicant is dissatisfied, there will be the right of an appeal to the Flood Risk Management Tribunal, which will be entirely independent of the Authority.

The Authority will be able to charge an administrative fee for dealing with applications for its consent, and any prescribed fees will have to be laid before Tynwald.

Part 4 deals with the Authority’s powers in respect of flood risk management works and water courses. This part will enable the Authority to maintain or improve existing FRM works and watercourses, or to construct new ones where it considers that to be necessary. However, this will normally only apply to designated FRM 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 the appropriate power of entry onto land for connected purposes. The Authority will be required 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 may arise on the Island. It will be able to enter into prior arrangements with the other public bodies, including the emergency services, for the discharge by them of some of the Authority’s functions.

Finally, the provisions contained in part 4 will enable the Authority to take appropriate enforcement action under the Bill. These provisions encompass a situation where the condition of a watercourse is impeding important land drainage improvements.

Failure to comply with a remedial action notice served by the Authority under these provisions is made a criminal offence. In addition, the Authority will be able to undertake the required works itself and to recover the cost involved from the person responsible. However, there will be a right of appeal against a remedial action notice to the 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 is being refused entry onto land in order to carry out flood protection works. It will also enable the Authority to carry out flood defence 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 FRM obligations.

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 reflects the current position under the Land Drainage Act 1934.

Part 6 deals with landowners' drainage arrangements on other land. In general terms, part 6 of the Bill retains the equivalent provisions in the current Land Drainage Act. 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 FRM Tribunal, who will decide the matter.

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. 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. 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 only.

Part 9 deals with a few other miscellaneous provisions. This part 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 protection works before the project can proceed.

Part 10 contains savings and transitional arrangements. In particular, this part provides that consents issued under the current Land Drainage Act will continue to be valid for the purposes of the Flood Risk Management Act.

Part 11 sets out the various repeals and amendments. This part repeals in its entirety the current land drainage legislation on the Island. 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, and 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 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, creating an additional risk of flooding. 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 approval has been granted.

Secondly, there is an enabling provision for the Authority to introduce sewerage charges when it considers that to be appropriate. 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 Court.

Madam President, having outlined the principles of the Bill, I beg to move that the Flood Risk Management Bill be read for the second time.

The President: The Hon. Member, Mr Crowe.

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

The President: If no Hon. Member wishes to speak, the motion before Council is that the Bill be read a second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Flood Risk Management Bill 2013 Consideration of clauses

The President: We will move now to clauses, and we will take some of these in groups, Hon. Members. We start with clauses 1 and 2.

Mr Downie: Madam President, as outlined in the Second Reading, the Bill replaces the existing land drainage legislation on the Island.

The Bill has 96 clauses and 11 parts, as well as a schedule. If it would be helpful, Madam President, and with your consent, I propose to consider the clauses in 50 groups.

Clauses 1 and 2 give the Act its short title.

Clause 2 provides for the Act to be brought into force by Appointed Day Orders.

I beg to move that clauses 1 and 2 stand part of this Bill.

The President: Mr Crowe.

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

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

Clauses 3 to 8.

Mr Downie: Thank you, Madam President.

Clauses 3 to 8 contain definitions of the various terms that are used in the Bill.

I would draw the attention of Hon. Members to the definitions of, firstly, 'flood', which is intended to cover all forms of flooding, irrespective of its cause or source.

Secondly, 'flood risk management', abbreviated in the Bill as 'FRM', describes the range of measures that can be taken to reduce the likelihood and impacts of flooding, and these include, very importantly, land drainage, as well as the provisions of flood defences and flood warning systems.

Finally, 'FRM works': this is a wide term and encompasses, for example, the provisions of new and improved flood protection works, such as sea walls and flood drainage areas.

Madam President, I beg to move that clauses 3, 4, 5, 6, 7 and 8 stand part of this Bill.

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

The President: The Hon. Member, Mr Butt.

Mr Butt: Thank you, Madam President.

I think, as was pointed out in First Reading, the emergency flooding events are becoming more and more frequent. They did happen occasionally over the years, but when the original legislation was passed in the 1930s, 1940s and 1950s, I think such events were quite rare. (**Mr Braidwood:** In a hundred years.)

I think that in recent years, since 2003 onwards, there have been emergency floods every year since then in the autumn, so this legislation and these particular clauses will be used, I am sure, in the future, as, if climate changes in the way it seems to be, this Bill will be a valuable addition to the tools of the Department.

The President: The motion is, Hon. Members, that clauses 3 to 8 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

It is interesting that this is, I think, the first time that we have seen examples quoted, in the clauses, of interpretation.

Clauses 9 and 10, and the schedule.

Mr Downie: Madam President, clauses 9 and 10, including the schedule of the Bill, contain various general definitions of the terms used in the Bill, together with provision dealing with interpretation matters.

Madam President, I beg to move that clauses 9 and 10 and the schedule stand part of this Bill.

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

The President: The motion is that clauses 9 and 10 and the schedule do stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clauses 11 and 12. I just point out that, in clause 11(2)(g), there is a typographical error. It should read 'monitoring of systems'. I suggest, Hon. Members, that these be corrected when the Act is produced, rather than being subject to amendment.

Mr Downie.

Mr Downie: Madam President, clause 11 imposes a duty on the Authority to exercise general supervision of all aspects of flood management on the Island. Basically, the Authority will exercise that function via a combination of measures, including surveys to identify those areas that are at a particular risk of flooding, strategies for the carrying out of appropriate flood protection works, and the provision of flood warning and monitoring arrangements.

Clause 12 imposes on the Authority an obligation to take into account the likely cost and benefits involved in carrying out major flood protection works. I would concur with your remarks, Madam President, that... We have checked with the Department, and that is a mistake and needs to be corrected at this stage.

Madam President, I beg to move that clauses 11 and 12 stand part of the Bill.

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

The President: The motion is that clauses 11 and 12 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 13.

Mr Downie: Clause 13: the Authority will, importantly, be under an obligation to consider conservation implications when exercising its functions under the Bill. This will extend to, for example, important archaeological sites and wildlife, flora and fauna.

Madam President, I beg to move that clause 13 stand part of this Bill.

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

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

Just a comment on this particular clause, which I support. I would hope that the Authority, and indeed other Departments and statutory authorities, already have such conservation plans in place. Just a comment coming out of this particular clause.

The President: The Hon. Member, Mr Braidwood.

Mr Braidwood: Thank you, Madam President.

In regard to this clause, particularly when we look at 13(1)(a):

'protecting and conserving land, buildings, sites and objects of national, architectural, archaeological or historic interest;'

– does...? Look at (b) as well:

'conserving and enhancing the Island's natural beauty and amenity;'

In the north of the Island, particularly Kirk Michael, there is a lot of coastal erosion. A lot of this can be affected by inadequate land drainage on the agricultural land in that area, so the Water and Sewerage Authority will have the powers, if they feel that a lot of the erosion is being caused by bad land drainage, that they could go in and put a lot of land drainage in to preserve that coastal...

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Madam President.
Just a comment on clause 13(1)(d):

‘preserving the use of land and water in the Island for recreational purposes...’

I think this is significant, that we retain this right for people walking near reservoirs or alongside riverbanks, or using it even for, I think, yachting on some of the reservoirs. So I think it is significant it stays in the legislation.

The President: The mover to reply.

Mr Downie: Yes, thank you, Madam President.

I thank Mr Turner for his comments. Obviously, from my view, where you do have water which is manageable, you also have abundant wildlife, and it is important that the balance has to be right.

Also, there is reference made in the Bill here to being particularly careful where we have archaeological sites or Viking burials, or something like that, because the last thing we want is serious floods in those areas, which would sweep all these archaeological sites out to sea and cause significant damage.

Mr Braidwood made a good point about the coastal erosion and land drainage. I am going to have to take advice on this. If there were severe flooding and a river burst its banks, or a river was at risk of bursting its banks and washing part of the land away into the sea, I would assume that comes under the auspices of this piece of legislation. I am not sure what the situation is from the other end, where we had persistent gales for months on end and driving rain, which was causing a problem to the sea.

Madam President, with your consent, would it be possible to ask Mr Caine for his view on that? It is important to clarify that, because this is an area in the Isle of Man that does come under a lot of scrutiny from time to time and I think it would be useful to get the facts out on the floor, because I am not sure what seaborne damage is classified as, whereas from water from a source within the Island...

And then finally, Mr Crowe, land for recreational purposes. I would agree with him 100%: some of the nicest places in the Island that the public can visit are alongside watercourses and streams and footpaths and so on, and reservoirs, and it is important to make those accessible wherever possible.

The President: Hon. Members... I take it you wish to ask Mr Caine for his advice now?

Mr Downie: Yes.

The President: Perhaps we could have the microphone in place.

Perhaps I can explain to our new Members that this is a procedure we go through in Council, which is somewhat different from the House of Keys. We do allow people with particular expertise to come and give information to Council, to assist them in their consideration of the clauses of a Bill.

Could I ask you, Mr Caine, to give your name and explain your role, and then, if you could, answer the question about drainage and erosion as this piece of legislation impacts on that?

Mr Caine: Thank you for the opportunity, Madam President.

I am Neil Caine. I am Strategic Planning and Technical Services Manager with the Water and Sewerage Authority, and my division encompasses the flood risk management function of the Authority.

I thank the Hon. Member, Mr Braidwood, for his question. In relation to sea coastal erosion, that is covered under the Coastline Management Act, which is quite distinct from this legislation.

In the case that Mr Downie replied to, which is where river flooding is causing erosion, then yes, that would fall under this Act, so we could take action to prevent coastal erosion at a river estuary that is being caused by river flooding, but the erosion of the sand cliffs at Kirk Michael, for example, through tidal action, is covered under the Coastline Management Act.

The President: Could we clarify the point, please, Mr Caine, as to whether or not bad land drainage at the coastal boundary –

Mr Braidwood: That is the one.

Mr Caine: Yes.

The President: – is covered? I imagine it is not flood, as such, but maybe you can explain that.

Mr Caine: There is an enabling provision for the Authority to manage erosion from designated watercourses and rivers.

Mr Braidwood: Madam President, the clarification I really wanted is that... In many instances, there is bad land drainage which causes the erosion – because erosion can be caused by wind, it can be caused by the sea, and primarily as well, particularly on that coast, there is bad land drainage of the actual land by the owners.

It was just that, through this Bill, you have authority to go on, and I am just wondering if the Water and Sewerage Authority, through this Bill, could go onto the land if there is bad land drainage which is actually causing erosion to that coast because of insufficient land drainage by the owner.

Mr Caine: Thank you, Mr Braidwood.

If it is caused by land drainage and it is caused by a failure to maintain drains or a blockage in the drainage system, then yes, we could take action, but we have no power to require a landowner to construct drains for the first time, for example, if it is poor drainage of the land.

Mr Braidwood: Thank you, Madam President.

It was... they do have the power to go on if it is causing major erosion.

Mr Caine: That is fine.

The President: The Hon. Member, Mr Coleman.

Mr Coleman: Thank you, Madam President.

I would just like to –

The President: This is slightly out of order, but we will do it for the point of clarifying this issue. Is it related to the –

Mr Coleman: It is not to do with this issue. I thought Mr Caine had finished on that point.

The President: Well, Mr Downie is actually replying to the issue on the clauses, so if you could make any comment on clauses before he replies, that would be helpful. On this occasion, we will perhaps allow you some leeway, sir.

Mr Coleman: It was the issue of the recreational duty of the Water and Sewerage Authority. I think the recreational duty has to be taken in hand with the water quality risk of recreation as well, and that is why the Water and Sewerage Authority is currently preparing recreational guidelines for each of the major catchments around the reservoirs. Obviously, you do not want the risk of oil getting into the water at the reservoirs and things like that – it is very difficult to treat – but that is in hand.

I am just saying that it is not going to be an unlimited recreational duty. It will be within the terms of ensuring that the water quality is maintained to the general public.

Thank you, Madam President.

The President: Thank you, and congratulations on your maiden contribution, sir. *(Laughter)*

A Member: Hear, hear.

The President: Mr Downie, would you like to continue with your reply?

Mr Downie: Yes. I would just like to, first of all, thank Mr Caine for explaining to us the differences between the two pieces of legislation, and responsibility which is shared between two separate Departments, and having made that clear now.

I would like to thank Mr Coleman for his remarks. I know that, in the past, there has always been an exclusion area around reservoirs for the keeping of livestock. There are only certain activities allowed to take place, and I think a code of conduct that is easy to understand would be very useful and acceptable now for people, because they are becoming more and more popular, and in the summertime... Even today, I would think Baldwin reservoir would look absolutely beautiful – it would be like a scene from a Christmas card – but we have got to treat these places with respect, and if anything happened to our water supply I am sure we all agree we would have severe problems.

I beg to move clause 13 standing in my name.

The President: The motion is that clause 13 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 14.

Mr Downie: Under clause 14, the Authority will be able, by order, to designate those flood risk management works or watercourses that it considers to be of major importance in the context of flood risk management. These will, of course, comprise the larger watercourses and sea walls that provide protection against inundation by the sea.

However, before making such an order, which will in any event be subject to annulment by Tynwald, the Authority will be required to consult with those affected, including all relevant landowners.

Madam President, I beg to move that clause 14 stands part of the Bill.

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

The President: The motion is that clause 14 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 15.

Mr Downie: Under clause 15, the Authority will be obliged to keep proper records of all designated flood risk management works or watercourses which will be open for inspection by the public free of any charge.

Madam President, I beg to move that clause 15 stands part of the Bill.

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

The President: The motion is that clause 15 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 16.

Mr Downie: Madam President, as Members will recall, following designation under clause 14, the Authority will take over responsibility for the works or watercourses involved for flood risk management purposes. This arrangement is comparable with the main river designation under the current land drainage legislation.

In contrast, responsibility for the more minor, non-designated works or watercourses will remain with the landowners concerned, but the Authority will be empowered to intervene in cases where a serious flood risk arises.

Madam President, I beg to move that clause 16 stands part of the Bill.

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

The President: The motion is that clause 16 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
We move on to division 2, subdivision 1, clauses 17 to 19.

Mr Downie: Clauses 17 to 19.

Clause 17 makes it a criminal offence to wilfully damage works or watercourses that have previously been designated under clause 14.

Clauses 18 and 19 impose appropriate restrictions that are primarily aimed at controlling certain activities that may otherwise cause or contribute to an additional risk of flooding.

At the outset, I would like to reassure the Council that these restrictions are necessary if we are to be in a position to properly manage flood risk wherever that arises, whether that be inland or on the coast.

Having said that, may I please draw the attention of Hon. Members to the important safeguards that are included in the Bill: firstly, the activities that are controlled under these clauses can, of course, go ahead with the Authority's consent; secondly, the Authority's consent will not be required in cases of emergency; thirdly, there is a right of appeal to an independent tribunal where the Authority refuses its consent under part 7; fourthly, these restrictions will not apply to works that are required to maintain the condition of the watercourses, whether designated or not.

Madam President, I beg to move that clauses 17, 18 and 19 stand part of the Bill.

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

The President: The Hon. Member, Mr Wild.

Mr Wild: Thank you, Madam President.

I just want to make the comment that I think these are very useful clauses, because with a lot of development that has gone on on the Island, whether it is relating to agricultural land or building development, I have seen examples of watercourses being diverted, blocked, which has caused considerable problems in certain areas as the historical drainage patterns have been change. So I think it is a useful set of clauses to make sure that existing watercourses are protected or designated.

Thank you.

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

The Hon. Member, Mr Wild is right: certainly, where we have seen areas of what was once agricultural land developed and effectively tarmacked over, of course, it is almost a seal over the ground and becomes a huge catchment area. That effectively swallows up the water quicker and puts it into the system for drainage, so it is very important.

I just want to raise another angle on this. Probably about 20 years ago, we were involved with some river improvement schemes. I am just looking at some of the provisions in these, and hope that the improvement schemes to put in things like – and Mr Downie will remember this from his days in DAFF – salmon pools and other such additions to the river... Sometimes, that has to balance against completely channelising a river out for drainage purposes, and I hope there is going to be a good balance here in allowing some of these works to continue.

I have just got an issue to raise when we come to the next clause, to do with fees.

I hope that the Authority will continue to work with the likes of the Manx Rivers Improvement people to ensure that ongoing development of nice habitats can continue.

The President: The Hon. Member, Mr Butt.

Mr Butt: Thank you, Madam President.

I have a small query for the mover. I have not read the Land Drainage Acts, I am afraid, but I think most of these offences which are listed here already exist in some form or other under the old Acts, so this is not additional powers or new powers. They already exist, I think. Is that correct?

Mr Downie: Yes.

The President: The mover to reply.

Mr Downie: Thank you, Madam President.

Firstly, I would like to thank Mr Wild for his comment that these are very useful clauses. In my time in Tynwald, we have been involved in lots of issues regarding problems with land drainage. There was quite a major inquiry into flooding in Sulby, where watercourses were diverted (**A Member:** Mill Race.) and Mill Race was diverted. That has actually cost someone an awful lot of money now to put right. A marvellous thing, hindsight.

What this Bill does is try to prevent that happening in the future by highlighting areas, identifying areas which are high risk, and doing something about it, and working with developers and other people, and people in agriculture, to make sure that the land is effectively and efficiently drained.

Moving to Mr Turner's point, again he is correct. Where areas are tarmacked over, considerable areas, we see a huge run-off that is increased. You only have to go up the Richmond Hill now on a wet day and it is like driving up a waterfall, because there is a huge car park area there that empties down onto the road, and eventually into the Middle River underneath. So, we have got to take into account all these things and, where possible, compensate.

I would be the last person in the world who would want to see lifeless drains or canals in the Isle of Man. I think, in the Isle of Man here, we have got to have rivers that are live, vibrant, good for fish and wildlife, and it is important that, when works are done and it is identified in the legislation, the Authority has to liaise and, in some cases, get permission from the other agencies of Government who are there to protect the wildlife, the flora and fauna. If it means putting some pools in and places where fish can lie and so on, that has to happen, but it has to be done in a sensible way.

Mr Butt is quite correct in what he is saying. Some of the issues that are being dealt with here were already dealt with in the Land Drainage Act, and what we are really doing is having an updated version of that, but a lot of the old principles still maintain.

Madam President, I beg to move that clauses 17 to 19, standing in my name, be part of the Bill.

The President: Hon. Members, the motion is that clauses 17, 18 and 19 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Subdivision 2, clauses 20 and 21.

Mr Downie: Clauses 20 and 21.

Firstly, clause 20 deals with applications for the Authority's consent under clauses 18 and 19, which this Council has just considered. When granting its consent, the Authority will be able to impose appropriate conditions in respect of which the applicant will have the right of appeal to an independent tribunal. The Authority will not be permitted to unreasonably withhold its consent.

Secondly, clause 21 makes it a criminal offence to breach the conditions of a works consent that has been granted by the Authority.

Madam President, I beg to move that clauses 20 and 21 stand part of this Bill.

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

The President: The Hon. Mr Wild.

Mr Wild: Thank you, Madam President.

Could I ask the mover if he could just clarify what the independent Tribunal will look like and how it will work, out of interest, please?

The President: The Hon. Mr Turner.

Mr Turner: Thank you, Madam President.

Linked to the previous point I made about habitat improvements, I notice there is provision in here for the Authority to charge a fee for applications. I fully understand, for commercial works, the need to do that, but I wonder if we could have maybe some assurance that the Authority will have the ability to waive the fee for works that go on on habitats.

Quite often, these works are carried out by voluntary organisations for the improvement of the environment, and if the Authority does have the ability to waive the fee for such circumstances, then I am sure that that would be appreciated and encourage these works to continue.

The President: The mover to reply.

Mr Downie: Yes, thank you, Madam President.

Dealing with Mr Wild's question regarding the tribunals, the responsibility of a tribunal is as laid down in the Tribunals Act 2006, and they deal with a number of matters right across Government. They are a statutory body in their own right, and they are people who... I think, when they are being selected, what Government tries to do is to try and find appropriate people who have the knowledge to deal with issues such as those that will be referred to them under this legislation.

Turning to Mr Turner and the fee for an application, I am not sure whether the Department has, in its power, provisions to waive any fees. But, like other Government Departments – Infrastructure in particular – there is this willingness now for Government Departments to work with other agencies, particularly voluntary agencies, and I would have thought that if a group of people want to get together and work with the Authority to make river improvements, to put bat boxes up and make habitat available for all sorts of wildlife –

A Member: Fish ladders.

Mr Downie: Yes – the Department would be pleased to speak to them and talk to them about it. I think the Department's prime role is to make sure that the land is effectively drained and there is no risk of flooding, but if they can, as a bonus, provide some improved habitats or make it easier for fish to move up and down the river, I think that is something that would be worthy of consideration by the Department.

Mr Turner: Thank you, Alex.

Mr Downie: Madam President, I beg to move that clauses 20 and 21 stand part of the Bill.

The President: Hon. Members, the motion is that clauses 20 and 21 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 22, subdivision 3.

Mr Downie: Clause 22. The Council will recall that, when we were considering clauses 18 and 19, I drew attention to the fact that a works consent will not be required from the Authority in the cases of an emergency. Clause 22 gives legal effect to that position and will equally apply in respect of any breaches of the conditions of such a consent under clause 21.

Madam President, I beg to move that clause 22 stands part of this Bill.

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

The President: The motion is that clause 22 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Now we move to part 4 and we take division 1, clauses 23 to 25. That is the first part of it.

Mr Downie: Clauses 23 to 25 provide the Authority with the legal powers, first, to carry out appropriate flood protection works. This could be either the construction of new works or the improvement of existing ones. However, this will normally only apply to designated flood risk management works or watercourses. In contrast, the Authority's works powers in relation to non-designated works or watercourses will, as I explained earlier under clause 16, be limited to circumstances where a serious flood risk arises or in order to mitigate damage caused by flooding.

And secondly, if necessary, to deposit any material that it removes when carrying out such works on the banks of an adjacent watercourse, which is done at present under the current land drainage legislation.

At this point, I would confirm that, if required, the Authority will obtain any necessary waste management licence. This would, of course, be in addition to any licence that might be required under the Minerals Act. Naturally, the Authority will be required to pay compensation to the landowner involved under clause 29.

Madam President, I beg to move that clauses 23, 24 and 25 stand part of the Bill.

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

The President: The motion is that clauses 23, 24 and 25 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 26.

Mr Downie: Thank you, Madam President.

Clause 26 will empower the Authority to inspect and carry out surveys on land in order to decide, for example, whether or not to construct new flood risk management works on that land. Here again, the Authority will be required to pay compensation to the landowners concerned under clause 29.

Madam President, I beg to move that clause 26 stands part of the Bill.

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

The President: The motion is that clause 26 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 27.

Mr Downie: This clause will enable the Authority to deal with any emergency flooding event that may arise from time to time. The Authority will be able to draw on the advice and assistance of other relevant Government agencies, including the emergency services. I anticipate that the required agreements between the Authority and the other bodies involved will be in place by the time that the Bill is in force, assuming, of course, that it is enacted.

Finally, I would point out that this is an entirely new provision and will ensure that, in future, our emergency services will have the required legal protection when they attend to emergency flooding events.

Madam President, I beg to move that clause 27 stands part of the Bill.

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

The President: The motion is that clause 27 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Part 4, division 2, clause 28.

Mr Downie: Clause 28 will mean that before the Authority can exercise its various works or entry powers, it will be required to give 21 days' prior notice of its intended entry to the relevant landowners. I would explain that this will not, however, apply where entry is needed in an emergency situation, or in cases of maintenance that does not involve the use of heavy equipment.

Madam President, I beg to move that clause 28 stands part of the Bill.

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

The President: The motion is that clause 28 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 29.

Mr Downie: Clause 29. As I mentioned earlier, the Authority will be required, under clause 29, to pay appropriate compensation to the landowners concerned who suffer damage as a consequence of the exercise of the Authority's various works and entry powers.

As Hon. Members will recognise, clause 29 is a fairly standard provision in legislation of this nature, and as such the clause is specifically linked to the Acquisition of Land Act 1984.

Madam President, I beg to move that clause 29 stands part of the Bill.

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

The President: The Hon. Member, Mr Wild.

Mr Wild: Thank you, Madam President.

Sorry, again, if I could just ask the mover for reassurance, then: if a landowner has been completely reckless or negligent, so that you have – in a case I saw recently – substantial amounts of water pouring out onto the public highway from a field, there would not necessarily be compensation paid in that scenario, if they had blocked a drain and caused the problem in the first place?

The President: The mover to reply.

Mr Downie: Thank you, Madam President.

As I understand it, the compensation paid would be if there was severe damage done to the agricultural land. For example, if there is an issue where you need to move heavy plant and machinery, particularly at this time, there will be some severe rutting, and then, because of the weight of some of this equipment, there is likely to be significant damage caused.

You might have a period, towards the end of the year when the harvest is about to begin, when we have a severe weather situation, or there is a problem where you have to bring equipment through crops. It is mainly these areas where the farmer would be looking to be compensated.

The Attorney General: Madam President, if I could just intervene for a second, if I may, in relation to Mr Wild's concern, it is specifically dealt with under this clause, in (2)(a)(i), that:

'(a) compensation is not payable—
(i) to the extent that the damage is attributable to the person's fault;'

– and that could be for any reason whatsoever. If it is his fault, then compensation is not payable.

Mr Wild: Thank you.

The President: Thank you.

Mr Downie: I thank the Attorney for that intervention.

The President: The motion is, Hon. Members, that clause 29 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

**Welcome
to visitors from Turks and Caicos parliament**

The President: Perhaps I could just interject at this point to welcome Madam Deputy Speaker and the Clerk from the parliament of the Turks and Caicos. It is a pleasure to have you with us this morning.

Mr Downie and Mr Butt: Hear, hear.

**Flood Risk Management Bill 2013
Consideration of clauses continued**

The President: We turn now to division 3 and deal with clauses 30 and 31.

Mr Downie: Thank you, Madam President.

Clauses 30 and 31 will enable the Authority to take appropriate enforcement action against, for example, someone who has constructed a culvert that affects the flow of a watercourse without the Authority's consent under clause 19.

These provisions have been extended to encompass a situation where the improvement of land drainage is being impeded due to the failure of another person to properly maintain the condition of a watercourse, whether designated or not. This was a specific concern of the Manx National Farmers' Union, which the Authority has now addressed in this Bill.

Finally, there is a right of appeal to an independent tribunal against the issue of a remedial action notice under part 7.

Madam President, I beg to move that clauses 30 and 31 stand part of the Bill.

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

The President: The motion is that clauses 30 and 31 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 32 and 33.

Mr Downie: Clauses 32 and 33 will importantly ensure that any remedial action notice that is served under the provisions that this Council has just considered under clauses 30 and 31 will bind both the current and subsequent landowners in those cases of non-compliance.

Madam President, I beg to move that clauses 32 and 33 stand part of the Bill.

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

The President: The motion is that clauses 32 and 33 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 34.

Mr Downie: Clause 34 is very much interlinked with the provisions that the Council has just considered under clauses 30 and 31, and will enable the Authority to take appropriate action where there is an emergency flooding event, without the necessity of having to serve a remedial action notice. The Authority will be able to recover its reasonable cost in such circumstances from the person responsible.

Madam President, I beg to move that clause 34 stands part of the Bill.

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

The President: The motion is that clause 34 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 35 to 37, and in 37(4) we have some superfluous text in the words 'or comp,' which should not be there and I think will be corrected when the Bill is printed.

Mr Downie: Yes, thank you, Madam President. I concur with your view about the error and this is a good

time to correct it.

Clauses 35 to 37 provide that if a person fails to comply with a remedial action notice, the Authority will have two further remedies under the Bill, namely: to prosecute the person concerned for committing a criminal offence; alternatively, or in addition, to undertake the required works itself and to recover the cost involved from the transgressor.

Madam President, I beg to move that clauses 35, 36 and 37 stand part of this Bill.

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

The President: The motion is that clauses 35, 36 and 37 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Part 5, clause 38.

Mr Downie: Clause 38 will enable the Authority to seek a warrant in those rare cases where it finds that it is being refused entry onto land in order to carry out its very important functions under the Bill – for example, in order to maintain a riverbank under clauses 24 and 26.

Madam President, I beg to move that clause 38 stands part of this Bill.

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

The President: The Hon. Member, Mr Braidwood.

Mr Turner: Mr Turner, it was.

Mr Braidwood: Thank you, Madam President. It was Mr Turner. I was just –

The President: You were waving your pen, sir. *(Laughter)* I was just moving the microphone out of the way; I keep catching it.

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

I think this provision, hopefully, will be used rarely. I would imagine that most people will be quite grateful that the Authority will be actually coming to carry out some of these works, for the obvious reasons. So, I do support the clause.

The President: I do not know whether you wish to reply, sir. There is nothing, really, to reply to, but...

Mr Downie: No, you are quite right, Madam President.
I beg to move clause 38.

The President: Hon. Members, the motion is that clause 38 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 39.

Mr Downie: Clause 39 empowers the Authority to acquire land for the purposes of this legislation. However, I would point out that it is envisaged that this power will be very rarely exercised in practice. This is because, in the vast majority of instances, designated flood risk management works will be constructed on land that will remain in the ownership of the landowners concerned, and as such continue to be capable of being used by them for, say, normal agricultural practices, albeit that the land will, of course, be subject to the various restrictions that we have considered when the Council examined clauses 18 and 19. I would just add that this very much accords with the current position in respect of the main river designations under the 1934 land drainage legislation.

Having said all that, I am advised that there may be some cases where the Authority will actually need to acquire the relevant land, and hence the need for clause 39 – for example, in order to construct a new flood defence pumping station.

Madam President, I beg to move that clause 39 stands part of the Bill, and I am aware that there is an amendment coming to this clause, which the Department fully supports.

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

The President: Hon. Members, we have an amendment tabled in the name of Mr Crowe, to correct what is a typographical error, I suspect. Hon. Member, Mr Crowe.

Mr Crowe: Yes, Madam President, thank you for that.
I beg to move this amendment, which simply corrects a typographical error in the original clause:

Page 27, line 28 for 'compulsorily' substitute 'compulsory'.

The President: Do we have a seconder?

A Member: I beg to second.

The President: Does anyone wish to speak to the clause, Hon. Members?

The motion is that clause 39 do stand part of the Bill. To that, we have an amendment in the name of Mr Crowe. I will put that first. Those in favour of the amendment, please say aye; against, no. The ayes have it. The ayes have it.

I will now put the clause as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 40.

Mr Downie: Clause 40 will enable the Authority to perform services or carry out flood defence works on behalf of private landowners on a rechargeable basis – for example, in order to protect a small group of houses from the risk of flooding.

Madam President, I beg to move that clause 40 stands part of this Bill.

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

The President: The Hon. Member, Mr Turner.

Mr Turner: Yes, I just wondered where this sits with competition with the private sector, because there are a number of commercial organisations which can carry out this work. Could, maybe, the mover just expand on some of the instances where this may be used?

The President: The mover to reply.

Mr Downie: I am not quite sure. I think we need to take advice about this. My understanding would be that it would probably be the private sector taking out the work on behalf of the Department, because I am not sure what the current labour force is – whether the Department actually does have a dedicated workforce to specialise in drainage matters.

Madam President, perhaps it is a good time to...

The President: We refer again to Mr Caine, please, and see if you have any advice as to how you think that the Authority will use this enabling power.

Mr Caine: Thank you, Madam President; and thank you, Mr Turner, for the question.

I think, as Mr Downie said, the Authority has access to specialist equipment to carry out land drainage works, and there are circumstances, for example, where there is private drainage next to a main river that we are carrying out work on and it would make sense, from the landowner's point of view, if we could extend our works perhaps to take in some private drainage whilst we are there, and that would be the most cost-effective way of doing work.

So it gives that capability, that provision in the Bill, but it is not the intention that we would compete with the private sector.

Mr Turner: Thank you.

The President: The mover to reply.

Mr Downie: I am thankful for the answer that Mr Caine has given and I hope that satisfies Mr Turner's enquiry.

Mr Turner: Thank you.

The President: The motion is, Hon. Members, that clause 40 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 41.

Mr Downie: Clause 41 will enable the Authority to adopt private flood risk management works where the Authority considers that those works should come under its direct control. However, before agreeing to do so, the Authority will be able to require those concerned to pay to it an appropriate commuted sum to reflect the anticipated future maintenance obligations.

Madam President, I beg to move that clause 41 stands part of this Bill.

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

The President: The motion is that clause 41 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 42.

Mr Downie: Clause 42 is an important provision in terms of enabling the Authority, where necessary, to apply to the High Court for an injunction – for example, against a persistent offender. Let us hope that there would not be too many of those.

I would also explain that 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, such as failing to properly maintain a flood protection wall.

Madam President, I beg to move that clause 42 stands part of the Bill.

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

The President: The Hon. Member, Mr Turner.

Mr Turner: Could I just ask the mover, with regard to a third party, obviously it is a very expensive process for an individual to have to go through. If they thought there was a case of a risk of flooding, would they be able to seek advice from the Authority and ask the Authority to take out such action, if the case was made?

The President: Hon. Member, Mr Crowe, did you wish to speak?

Mr Crowe: Probably the Attorney would be better speaking on this bit.

The President: Mr Attorney.

The Attorney General: Madam President and Hon. Members, there is nothing unique here. If a situation arose where it was alleged by a third party that there had been a breach by an individual landowner of his flood management obligations, then the Department itself could decide to apply for an injunction. It has got the power here. What this does not do, quite rightly, is impose on the Authority an obligation to do so, because of course that would come with cost. So, certainly the Department can accept and hear a complaint and could act accordingly.

The President: The Hon. Member, Mr Butt.

Mr Butt: I was just going to say, Madam President, similar to the Attorney, this is very much a belt-and-braces issue. We can do a criminal offence or an injunction, and there is probably a civil remedy under some old case law – *Rylands v Fletcher*, I think it is; is that right, Attorney? – where substances going from one land to another can be taken out as a civil action. So it is covered in every way possible.

The President: The mover to reply.

Mr Downie: Thank you, Madam President.

I would just like to thank the Attorney General and thank Mr Butt for his comments.

We are dealing with serious matters here which can be very frustrating, and I think it is very important that

the provisions are here so that things can happen quite quickly. If we have a very prolonged spell of bad weather, there is no knowing what damage can be caused to other landowners by somebody's neglect or failure to address these issues that should have been dealt with in the first place. So I think we have got to be quite strong with this legislation.

I beg to move that clause 42 stands part of the Bill.

The President: The motion is that clause 42 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 43.

Mr Downie: Clause 43 will enable the Authority to prescribe the various forms that are to be used under the Bill – for example, when applying for its consent under clause 21.

Madam President, I beg to move that clause 43 stands part of the Bill.

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

The President: The motion is that clause 43 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 44.

Mr Downie: Clause 44 deals with the appointment of authorised persons for the purposes of carrying out the Authority's various functions under the Bill.

Madam President, I beg to move that clause 44 stands part of the Bill.

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

The President: The motion is that clause 44 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 45.

Mr Downie: Clause 45 will enable the Authority to make byelaws in order to deal with the detailed matters under the Bill. I would just add that the power to make byelaws reflects the current position under the Land Drainage Act 1934.

Madam President, I beg to move that clause 45 stands part of this Bill.

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

The President: The motion is that clause 45 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Part 6, division 1, clauses 46 to 48.

Mr Downie: Madam President, I would firstly point out that part 6 of the Bill has been specifically incorporated at the request of the Manx National Farmers' Union, who wanted to see the equivalent provisions in the Land Drainage Act 1934 retained.

Secondly, I would explain that clauses 46 to 48 will enable a landowner to lay drains through the land of a neighbour. This situation could arise, for example, if the landowner needed to develop his land, but in order to do so needed to improve his drainage arrangements. In the first instance, the landowner will need to seek the agreement of his neighbour and his tenants, if any, before proceeding with the work. However, in the event of the parties failing to reach agreement, then the landowner will have direct recourse to the independent flood tribunal under part 7, who will decide the matter.

Madam President, I beg to move that clauses 46, 47 and 48 stand part of the Bill.

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

The President: The motion is that clauses 46, 47 and 48 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 49 and 50.

Mr Downie: Clauses 49 and 50 provide a system of deeds registration in respect of drainage arrangements under part 6 of the Bill. This system will ensure that such agreements are binding on successors entitled to the

land involved.

Madam President, I beg to move that clauses 49 and 50 stand part of the Bill.

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

The President: The motion is that clauses 49 and 50 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Division 2, clauses 51 to 55.

Mr Downie: Clauses 51 to 55 provide that the landowner who carried out the drainage work, or his successors in title, will remain responsible for maintaining those works in the future.

However, if the landowner fails to do so, then the neighbour's land through which the drains have been laid will be able to undertake the required maintenance work and to recover the cost involved from those responsible.

In addition, the neighbouring landowner will be able to divert the drains that were originally laid through his land if, for example, their position prevents the subsequent development of his own land, but only on condition that he provides suitable replacement drains.

Madam President, I beg to move that clauses 51, 52, 53, 54 and 55 stand part of the Bill.

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

The President: The motion is that clauses 51 to 55 inclusive do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 56.

Mr Downie: Clause 56 makes it an offence, for example, to obstruct the carrying out of approved drainage works under part 6 of the Bill.

Madam President, I beg to move that clause 56 stands part of the Bill.

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

The President: The motion is that clause 56 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Part 7, clauses 57 to 61.

Mr Downie: Thank you, Madam President.

Hon. Members will recall that, when we passed through the Bill, I drew the attention of the Council to various rights of appeal to an independent tribunal. Clauses 57 to 60 set out the necessary machinery for dealing with such appeals by a newly appointed Flood Risk Management Tribunal, which will operate under the Tribunals Act 2006.

Clause 61 provides for a further right of appeal from a decision of the Flood Risk Management Tribunal to the High Court, but only on a point of law.

Madam President, I beg to move that clauses 57, 58, 59, 60 and 61 stand part of the Bill.

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

The President: The motion is, Hon. Members, that clauses 57 to 61 inclusive do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Part 8, clauses 62 to 65.

Mr Downie: Madam President, although conveniently grouped together, I will briefly deal with these clauses separately.

Clause 62 makes it a criminal offence to unlawfully obstruct the carrying out of, for example, works by the Authority under the Bill.

Clause 63 makes it an offence to wilfully interfere with apparatus installed under the Bill.

Clause 64, likewise, makes it an offence to wilfully give false information to the Authority.

Finally, clause 65 deals with offences that are committed by corporate bodies. As Hon. Members will recognise, this is a fairly standard provision in legislation of this nature.

Madam President, I beg to move that clauses 62, 63, 64 and 65 stand part of the Bill.

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

The President: The motion is, Hon. Members, that clauses 62 to 65 inclusive do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Part 9, clauses 66 and 67.

Mr Downie: Clauses 66 and 67 mean that, except in cases of emergency, the Authority will require the prior consent of the statutory utilities, or, in the case of harbours, the Department of Infrastructure, before carrying out any works by the Authority under the Bill that may affect the operation of such bodies.

I believe that these clauses strike a fair balance between the functions of the Authority under the Bill and the operations of our various utilities.

Madam President, I beg to move that clauses 66 and 67 stand part of the Bill.

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

The President: The motion is that clauses 66 and 67 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.
Clause 68.

Mr Downie: Madam President, I now turn to clause 68 in the Bill, which is an entirely new provision in the context of flood protection. It will ensure that, in future, the risk of flooding is fully taken into account when applications for planning approval are being determined.

The intended effect of this clause was that flood risk management would become a material consideration for the purposes of the town and country planning legislation.

I would just like to thank Mr Crowe for agreeing to take a substitution of clause 68.

I beg to move that clause 68 now stands part of the Bill.

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

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Madam President.

Following consideration of the Bill in another place, discussions have taken place between representatives of the Water and Sewerage Authority and the Planning Division of the Department of Infrastructure. As a result of those discussions, it has emerged that the original clause did not fully achieve its intended objective. This was that flood risk should, in the future, be a material consideration when considering planning applications.

I believe that this revised clause 68 will address that particular issue. In addition, it firms up the various references to the Town and Country Planning Act.

Madam President, I accordingly move the amendment:

Page 39, lines 2 to 12, for clause 68 substitute –

‘68 Control of development

(1) This section applies whenever the following are dealt with –

(a) an application for planning approval under the Town and Country Planning Act 1999; or

(b) an application for variation or discharge of conditions subject to which such approval has been granted under section 10(3) of that Act.

(2) Where this section applies the following are material considerations to which regard must be had under section 10(4) of that Act –

(a) the Authority’s published FRM plans and strategies; and

(b) the extent to which the proposed development creates an additional flood risk.’

Mr Butt: I beg to second, Madam President.

The President: The Hon. Member, Mr Braidwood.

Mr Braidwood: Thank you, Madam President.

Speaking to the amendment, I think this is an extremely important clause. It has already been mentioned by Mr Downie previously, when he mentioned about Sulby and the Mill Race and the problems associated with flooding in that area. We also know down at Silverdale where there have been problems as well with flooding, and I think this will stop people developing on, you could say, flood plains, when there are the risks and where,

in some instances, Government or Departments have had to step it in to provide additional protection to those houses which have been built on flood plains, and the cost has not been on the developer, but has actually been on the Department. I think it is a *very* useful clause.

The President: The Hon. Member, Mr Wild.

Mr Wild: Thank you, Madam President.

Just to reiterate the comments made by my hon. colleague, Mr Braidwood, I think this is a robust, in fact excellent, clause that is very relevant in the present day.

The President: Do you wish to reply? There is nothing, really to...

Mr Downie: I would just like to thank Mr Braidwood and Mr Wild for their comments. It is a *very* important clause in the Bill. There has been a lot of trouble in the past, and I sincerely hope now that this will put the legislation on a really firm footing in this area.

The President: The motion is, Hon. Members, that clause 68 stands part of the Bill.

To that, we have an amendment in the name of Mr Crowe, which effectively substitutes for that clause a new clause. I will put to you first the amendment in the name Mr Crowe. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

I now put the amendment to you as the substantive clause. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 69.

Mr Downie: Clause 69 means that when the Department of Economic Development or its lessees exercise their functions under the Minerals Act, they will be required to consider whether to do so could create an additional risk of flooding. If so, they will be under a duty to consult with the Authority before proceeding.

Madam President, I beg to move that clause 69 stands part of the Bill.

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

The President: The motion is that clause 69 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 70.

Mr Downie: Clause 70, Madam President, is largely a technical provision and has the effect of abolishing, in relation to designated flood risk management works or watercourses, any private flood-related obligations that may still exist under the current land drainage legislation – for example, an obligation to maintain a particular flood wall.

Madam President, I beg to move that clause 70 stands part of the Bill.

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

The President: The motion is that clause 70 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 71 and 72.

Mr Downie: Thank you, Madam President.

As Hon. Members will understand, clauses 71 and 72 deal with certain technical matters relating to the penalties that are imposed in respect of the various offences that are created by the Bill.

Madam President, I beg to move that clauses 71 and 72 stand part of the Bill.

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

The President: The motion is that clauses 71 and 72 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

I will just say we have never seen definitions in the Bill like this before. This is new drafting.

Clause 73.

Mr Downie: Clause 73 deals with the making of subordinate legislation under the Bill. Ordinarily, orders

made by the Authority – for example, designation orders under clause 14 – will be subject to annulment by Tynwald. However, byelaws that are made by the Authority under clause 45 will actually be approved by Tynwald before they can come into force.

Madam President, I beg to move that clause 73 stands part of this Bill.

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

The President: The motion is, Hon. Members, that clause 73 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Part 10. We will start with clauses 74 to 78.

Mr Downie: Clauses 74 to 78 contain important transitional and savings provisions. These provisions will ensure a smooth transfer from the current land drainage legislation to the proposed new Flood Risk Management Act.

Madam President, I beg to move that clauses 74, 75, 76, 77 and 78 stand part of the Bill.

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

The President: The motion is, Hon. Members, that clauses 74 to 78 inclusive do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 79.

Mr Downie: Thank you, Madam President.

The Council will recall that when we considered part 7 of the Bill, clauses 57 to 61, I drew the attention of Hon. Members to the appeal rules that will apply under the Tribunals Act. Clause 79 deals with the question of interim rules for that purpose.

Mr Crowe will now come forward with a deletion of clause 79, but I think I still have to move the clause under Standing Orders –

The President: Indeed, you do.

Mr Downie: – so I beg to move that clause 79 stands part of the Bill.

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

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Madam President, bespoke tribunal appeals rules will be required for the Flood Risk Management Tribunal, which is covered in part 7 of the Bill, and also in terms of the Tribunals Act 2006. In the circumstances, clause 79 is no longer needed and is therefore best deleted.

Madam President, I accordingly move that clause 79 be deleted:

Page 42 delete lines 34 to 36 and page 43 delete lines 1 to 19. Renumber subsequent clauses and cross references accordingly.

The President: Do we have a seconder?

Mr Butt: I second, Madam President.

The President: Does any Hon. Member wish to speak?

Hon. Members, the motion is that clause 79 do stand part of the Bill. To that, we have a proposal in the name of Mr Crowe that the clause be deleted with the subsequent renumbering of clauses and cross referencing.

I put to you the proposal that, first, the clause be deleted. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Can I just check with the Attorney General – should I have had the clause approved before deletion, or are we simply approving an amendment to delete? An amendment to delete.

I will put the substantive motion, then, if that is appropriate, just to put it not as an amendment but as a substantive motion. Those in favour of deletion of the clause, please say aye; against, no. The ayes have it. The ayes have it.

Part 11, clauses 80 to 82.

Mr Downie: Thank you, Madam President.

Clauses 80 to 82 repeal the current land drainage legislation and amend two associated Acts.

I beg to move that clauses 80, 81 and 82 stand part of the Bill.

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

The President: The motion is that clauses 80 to 82 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Just in case you are getting worried about the clock, Hon. Members –

Mr Braidwood: It is an hour fast.

The President: – it has already been moved forward one hour because the person who is responsible for this is on leave at the weekend. (*Laughter*) It is not five past one, it is five past 12, so don't panic.

Clause 83, Hon. Members.

Mr Downie: Thank you, Madam President – I was thinking this Bill was taking a long time! (*Laughter*)

As Hon. Members will see, clause 83 amends the Rating and Valuation Act 1953. This will mean that the Authority will, in appropriate cases, be able to obtain details of land ownership – for example, where it needs to enter onto land in order to carry out ground investigations before deciding whether or not to carry out FRM works on that land – and this is referred to under clauses 24 and 26.

Madam President, I beg to move that clause 83 stands part of the Bill.

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

The President: The motion is that clause 83 stands part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 84 to 88.

Mr Downie: Clauses 84 to 88 make some technical amendments to associated legislation.

I beg to move that clauses 84, 85, 86, 87 and 88 stand part of the Bill.

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

The President: The motion is, Hon. Members, that clauses 84 to 88 inclusive stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 89.

Mr Downie: Clause 89 amends the Wildlife Act 1990, the effect of which is that, except in emergency situations, the Authority will require the agreement of the Department of Environment, Food and Agriculture before the Authority can exercise its various functions under the Bill in circumstances that may have implications for wildlife, including wild birds and plants.

I would just make the comment that I believe this is a provision which represents a very fair balance between the need to protect our environment and at the same time ensure that, as far as possible, the risk of flooding is appropriately managed.

Madam President, I beg to move that clause 89 stands part of the Bill.

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

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

I think this is an important clause. Previously, when I served on the Department of Transport, the Department was locked in quite a bureaucratic and almost bitter battle with another agency of Government over works they were carrying out. They were not drainage works; they were works that were being carried out at the airport. The works were a huge scheme being carried out in very difficult conditions, quite often at night, and there was an issue where there were some protected plants destroyed, purely by accident. It was almost at the stage where one Department was threatening the other Department with legal action.

Clearly, this is a complete waste of public money, and I think it is important that the provisions are

proportional, and when there are emergency works... and that is why, earlier on in the debate, I mentioned that the Authority should already have a conservation plan in place and be mindful of their duties under the Wildlife Act.

I would hope that we never get to a situation where we end up with officers within Departments at loggerheads, that practical solutions are found, and that there is respect for each other's functions whilst maintaining the environment but also looking after serious issues, such as flood flood risk, which pose a threat to property and life.

The President: The mover to reply.

Mr Downie: Yes. Thank you, Madam President.

I think Mr Turner does make a very good point here. During our time in Tynwald, I think a lot of us have heard various debates about slipper orchids and the Manx robber fly, to name but a few, but when we are doing work in the countryside, and particularly when work is taking place near watercourses, they are areas that do attract wildlife and quite rare flora and fauna.

I honestly think that the working relationship now between the Government Departments is much better, and I would like to think that, in the future, when drainage works are being undertaken – river works or working in the river corridors – all of these issues are brought to mind and everybody can work harmoniously, not just for the good of the land drainage but for the good of the habitat and the wildlife and everything else, so that we finish up with something we can all be proud of and associate with.

I thank Mr Turner for his remarks, and beg to move that clause 89 stands part of the Bill.

The President: The motion is that clause 89 stands part of the Bill, Hon. Members. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 90 and 91.

Mr Downie: Clauses 90 and 91 make some technical amendments to associated legislation.

Madam President, I beg to move that clauses 90 and 91 stand part of the Bill.

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

The President: The motion is that clauses 90 and 91 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 92.

Mr Downie: Clause 92 has the effect of amending the Tree Preservation Act 1993, so that, except in cases of emergency, the Authority will require the prior authorisation of the Department of Environment, Food and Agriculture where the Authority needs to cut down a protected tree – for example, a tree that is obstructing the flow of a designated watercourse.

Madam President, I beg to move that clause 92 stands part of the Bill.

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

The President: The motion is that clause 92 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 93.

Mr Downie: Clause 93, Madam President, amends the Sewerage Act 1999 in two substantive respects: firstly, to enable the Sewerage Authority to refuse to consent to the making of a connection to the public sewerage system where it considers that the capacity of that system is inadequate and, as a consequence, an additional risk of flooding would be created. However, the Authority will not be permitted to refuse consent where the connection with the public sewerage system is necessary in order to allow a development to go ahead, where that development has been granted planning approval.

Secondly, it creates an enabling power for the Authority, at an appropriate stage in the future, to introduce sewerage charges. However, I would again emphasise that, before such charges can be introduced, the Authority will need to make an order which will require the formal approval of Tynwald Court.

Madam President, I beg to move that clause 93 stand part of the Bill, and I am aware that there is an amendment to this clause coming from Mr Crowe.

The President: The Hon. Member, Mr Braidwood.

Mr Braidwood: I beg to second, Madam President, and in doing so I would like to comment on the sewerage charge, because I think this is a far fairer way than actually having a sewerage rate – that a charge is the most appropriate way to go forward if it is introduced in the future.

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Madam President.

The amendment in my name simplifies the current wording and takes into account that, in some cases, planning approval is granted by the Council of Ministers, as opposed to the Department of Infrastructure.

Madam President, I beg to move this amendment to clause 93:

Page 47 lines 29 and 30 for 'the Department of Infrastructure has granted planning approval' substitute 'planning approval has been granted'.

Mr Butt: I beg to second, Madam President.

The President: The motion is, Hon. Members, that clause 93 stands part of the Bill.

To that, we have an amendment in the name Mr Crowe. I will put to you the amendment. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

I will now put to you the clause, as amended. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 94 to 96.

Mr Downie: Clauses 94 to 96 again make some very minor amendments to the associated legislation.

Finally, clause 96 deals with certain technical matters.

I would just like to put on record, Madam President, my thanks to Mr Caine, who has come along from the Department today, and to Mr Crowe, who has worked with me over the last four or five days to marshal the amendments and so on. I thank the Members for their support, and formally move clauses 94 to 96.

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

The President: The Hon. Member, Mr Butt.

Mr Butt: Madam President, I am pleased to see that in clauses 95 and 85 the Boundary Walls Act 1851 is still preserved. It is nice to see the old legislation still exists.

The President: I think you have a passion for old legislation. *(Laughter)*

The Hon. Member, Mr Braidwood.

Mr Braidwood: Thank you, Madam President.

I would like to congratulate Mr Downie for taking this very important Bill through its Second Reading and clauses.

I do believe it is a *very* important Bill. I think there are certain sections, such as clause 68, which was amended to prevent building on floodplains... is essential, and I also think that the clauses which were 46 to 55, which was drainage on other land as well, where you have dominant and servient landlords, is the right way forward, and I know that fits in with the Isle of Man farmers' union as well.

The President: That comment was not related to these clauses, sir, but if do you want to reply?

Mr Downie: I would just particularly like to thank Mr Butt. When Mr Butt gets involved in legislation, he always go into the background – the Boundary Wall Act, and things like that. He did not mention *Woods Atlas* today, and it was probably part of all this as well. I am grateful for his support.

I am grateful for the support from Mr Braidwood. Obviously, there have been a lot of outstanding matters that have had to be tidied up when this Bill was was put together, and hopefully, when Council meets again, we can get on and get the Third Reading out of the way, and everybody will be happy then.

As I said, I would just like to thank the trouble that Mr Crowe has gone to, because when I met with the Authority it was clear that there were some issues that we needed to get resolved before we could get to this stage, so I am grateful to everybody for rallying round.

I would just like to finally move that clauses 94 to 96 stand part of the Bill.

The President: The motion is, Hon. Members, that clauses 94, 95 and 96 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

That concludes consideration of the Second Reading and clauses, Hon. Members.

The Council will now adjourn until 16th April, in Tynwald Court, and I hope you all enjoy a very happy Easter.

Members: Thank you very much, Madam President.