

4.2. Highways (Amendment) Bill 2015 – Second Reading approved

Mr Gawne to move:

That the Highways (Amendment) Bill 2015 be read a second time.

The Speaker: We turn now to the Highways (Amendment) Bill. I call on the mover, Hon. Member for Rushen, Mr Gawne.

Mr Gawne: Gura mie eu, Loayreyder.

This wide-ranging Bill variously affects the law on highways. The Bill may be said to have five key themes: first, the improvement of highways or their surroundings; second, the dealing in a broad sense with the misuse of highways; third, the conferment of certain permissive powers on local authorities with respect to highways; fourth, the creation of an advance payment code related to the making of private streets; and finally the better facilitation of highways.

I shall now deal with those themes in that order.

As far as the first is concerned, the Bill empowers the Department of Infrastructure to improve highways in various ways. First, it enables it to designate improvement lines for widening highways and to acquire by agreement or compulsorily any land, including premises, lying between an improvement line and a highway.

May I at this point assure the House that these powers are intended to be used only sparingly in the event that the Department considers the existing contours of a highway present a material danger to persons using it. There is also an appeal to the High Bailiff, I understand, on that clause 2.

Second, the Bill enables the Department to improve access from a highway to any land abutting it, in a case where the Department is of the opinion that highway safety is in question. Again, a right of appeal to the High Bailiff is conferred on an owner or occupier.

Third, in the interest of highway safety the Department is empowered to require the corners of a proposed – not an existing – building to be rounded or splayed off to remove what would otherwise be an obstruction to view.

Finally, the Bill extends from footpaths to footways the Department's power by order to convert them into cycle tracks or bridle-paths.

The Bill goes on to make provision of an environmental nature enabling the Department to develop or redevelop any of its land surrounding a highway in the event that it considers doing so will improve its surroundings. Supplementary provision enables it to acquire land by agreement or compulsorily in order to mitigate the adverse effects of a highway on its surroundings. May I again assure Hon. Member Members that this power will be used only rarely.

As regards the second theme – tackling certain misuse of highways – the Bill: makes it an offence to erect a gate or stile across a footpath or bridle-path without lawful authority; clarifies and amplifies the power to instal on highways equipment for the detection of traffic or other offences; empowers the Department to remove debris or objects causing an immediate danger at the side of, over or within a highway; additionally prohibits private owners of motor vehicles from misusing parking spaces to advertise the sale of their vehicles; makes it generally an offence to mix or deposit cement, mortar, etc. on highways; and re-enacts provision enabling the Department to make regulations for preventing the commission of nuisances on highways and the distribution of handbills, etc.

As to the third theme – the conferment of certain permissive powers on local authorities – I should advise the House that certain authorities, in their responses to the public consultation, perhaps misunderstood the thrust of the powers enabling them to undertake on a purely permissive basis the maintenance of bridle-paths, cycle-paths, cycle tracks or footpaths that are maintainable at the public expense. The powers do *not* in fact affect the Department's duty of maintenance. What

they *do* is, where there is a disagreement about priorities between an authority and the Department, they enable the authority to act.

The Bill goes on to enable an authority to approve the erection of gates or stiles across footpaths or bridle-paths in connection with agriculture or forestry; and to authorise an authority expressly to erect flagpoles and the like for the display of decorations, but subject to the Department's approval.

As far as the fourth theme is concerned – the creation of an advance payments code – the provisions are unavoidably complex. In a nutshell they provide, with appropriate safeguards, for the advance funding by developers of the cost to the Department of its making up to its satisfaction of private streets abutting their developments.

As regards the final theme – the facilitation of highway amenities such as street cafés and kiosks, the Bill enacts new provision doing away with the bureaucratic duplication which exists at present. Given that a local authority exercises now certain planning functions, it is no longer considered expedient to involve the Department in approving an amenity. Duplication of other consents is therefore disappplied.

Where an amenity is proposed for a trial period of no more than four weeks, the period in which responses may be made to the public advertisement of the proposal is reduced from 28 days minimum to seven days minimum.

Finally, the law is clarified by expressly authorising a local authority to charge rent for an amenity located on a highway of which it is the owner of the subsoil.

The Bill concludes by making a small miscellany of improvements to highway law. It enables the Department to acquire by agreement any land blighted by highway works; it clarifies the Department's powers with respect to the disposal of minerals in connection with its quarrying activities; and it makes better provision for the road works code, being a code that applies to the opening up of highways by statutory undertakers.

All in all, I am sure that the Bill makes a material contribution to the improvement of highway law and in doing so promotes the public interest. It will also reduce bureaucracy and hopefully make the Department more efficient. As such, I commend the Bill to the House, and I beg to move the motion standing in my name.

The Speaker: Hon. Member, Mr Houghton.

Mr Houghton: I beg to second, sir, and reserve my remarks.

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

Mr Karran: Vainstyr Loayreyder, would the Shirveishagh maybe consider with this Bill the possibility... Obviously, the present legislation is failing. When we talk about statutory authorities and their ability to be able to open and shut roads the legislation is not working right when we keep on seeing roads being opened and shut on a regular basis at great cost to the statutory authority, which will mean the consumer. Does he feel that this Bill might be used as a vehicle to try and tighten up on that legislation in order to try and stop what obviously the present legislation... as far as the regime of being able to open up a road and notify other organisations such as gas, water and electricity? Does he feel that the present legislation is not sufficient as far as that is concerned? And does he feel that maybe we should be putting something into this piece of legislation once and for all so that we can stop the situation where we are seeing roads repeatedly being ripped up on a regular basis? How would his Department feel about such suitably worded amendments for this legislation on that point?

As far as the Bill is concerned, that is not the issue. The rest of the Bill is a minor thing, but that is something that could be used as a vehicle with the Second Reading of this Bill at the clauses stage so that we put some proper regime in, in order to make sure we have efficient effective access into the road system and where the different authorities who have that ability can be actually prosecuted,

fined or surcharged money for not doing an effective programme when they open up a road in the first place, and effective planning.

The Speaker: Hon. Member for Douglas West, Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.

I think this is potentially a small matter that can be dealt with in the Department: can the Minister assure us that he can provide us with further information about clause 20, which is amending section 92 of the Highways Act 1986 in terms of definitive maps of rights of way, such that by accident Tynwald does not lose oversight of the important function of making sure that public rights of way are preserved?

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

Mr Singer: Thank you, Mr Speaker.

Can I say to the Minister I think this is a very sensible Bill. I think it will make right a lot of things and make things clear.

One question I would ask the Minister is... We have been waiting now a long time after the consultation for legislation to come forward from his Department on new drivers. The consultation concluded many months ago, and I know that I started with this probably over two years ago. Perhaps he could give us some indication if we are going to get that legislation through before the next election period.

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

Mr Quirk: Thank you, Mr Speaker.

I am just rising to support my colleague from Onchan, Mr Karran, regarding the issue of those persons who are authorised to use the highway. I did say, in another place, to the Minister... I was not joking, really, when... Mr Karran is quite right – when we do have people who are authorised by the Department and permission is granted, there is a slight failure where we should be having a registered list of authorised contractors to work on the highway. At least if there was a register there and there was a sign-off from your Department by your officers, what would happen is we would know when the holes were being dug or imperfect... instead of the taxpayer having to pick it up twice to repair it when your own team go out to do that.

I would support Mr Karran if there was a possibility of putting a small amendment together, or if the Minister would consider when he responds to Members here that he was prepared to do that. Because we do see a lot of works on pavements, as well as the highway itself. I think that would be a good move and it really would save the taxpayer and his Department some money.

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

Mr Gawne: Gura mie eu, Loayreyder.

First of all I would like to thank my seconder.

In relation to the statutory undertakers opening up and repairing roads, I believe that the Bill already does quite a bit to assist us. The existing Roadworks Code will in due course be repealed and replaced by a code prescribed by regulations, as opposed to being part of, effectively, primary law. So by amending this, this enables the Department, firstly, to relax the extent of roadworks in any given case; secondly, to give directions to undertakers as to the timing of roadworks; and thirdly, to issue or approve, for their guidance, a code of practice as to the carrying out of such roadworks, including the arrangements to be made for control of traffic. So it is actually giving us that extra

power anyway, but I am more than happy to work with both the Hon. Members for Onchan in looking at any other amendments that they may wish to bring forward in this regard.

One thing that we have to be careful about, as I found to my cost after last week's sitting when I followed the diversions, having been heading my usual way from the Braaid through past B&Q into town, and of course the Department had closed the road as we are doing some major repairs. I knew about the road closure. I thought, 'I'll follow the diversion sign': I followed the diversion sign into a 25-minute queue of traffic because there had been an emergency water issue at Union Mills. Had we had the powers that we have here, we might have been able to direct the MUA to be a little bit more responsive to what was obviously a queue of traffic two miles long in one direction and two or three cars coming from the other direction. So I think that is an issue that this Bill will be able to assist – and perhaps I just need to leave the House an hour earlier to ensure that we do not hit the roadworks!

So certainly happy to work with the two Hon. Members for Onchan on that if they wish.

In relation to the point that Mr Thomas raised in relation to clause 20, what we had intended clause 20 to do is basically to allow the Department to amend the definitive map where it is obvious that the definitive map is different to what people are actually walking. There are many examples that have come across my desk, both as DEFA Minister and DoI Minister, where it is blatantly obvious that the definitive map is wrong because that is not where people are walking. The purpose of this clause was to allow us to correct the definitive map where it is clear that there is no particular problem and no particular objection.

I think the point the Hon. Member for Douglas West raises is a very important point though: are we, in essence, effectively giving up a power that Tynwald has had to amend the definitive map in relation to other perhaps more controversial footpaths? So we have gone back to the Attorney General's Chambers in relation to that and, certainly if inadvertently this clause has allowed us effectively to take that power away from Tynwald, we will look at that and put forward an amendment if we need to.

I think the only point I have not addressed now is in relation to the Hon. Member for Ramsey, Mr Singer, who describes this as a sensible Bill, which is always an encouraging start. As for the new drivers, we had, the Hon. Member may recall, been working on a very large Road Traffic and Highways (Miscellaneous Amendments) Bill. Having witnessed various guises of that Bill – I think it was back in 2006 when parts of the legislation we are now still trying to bring forward failed to be delivered by the then DoT Minister because it was in such a large Bill that Members really could not get their heads around the scale of what was being proposed – I have decided to split the Bill. Instead of having one Bill, we will have three Bills. The other two parts of the Bill are due to come forward hopefully in October. We are hoping to go out to public consultation on the other two very shortly. So the Bills have all been drafted, but basically, to allow Members time to properly consider all the clauses, we felt it was better to try and split them up rather than going in one huge big Bill. My intention is certainly to have the Bill before the House in October or November, if at all possible. I certainly have no reason to believe that that should not be possible.

I beg to move the Second Reading.

The Speaker: The motion is that the Highways (Amendment) Bill be read for the second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.